

---

# PRELIMINARY REPORT INTO THE ALLEGED IRREGULARITIES RELATING TO THE APPOINTMENT OF THE TRANSACTION ADVISORS IN RESPECT OF THE ACQUISITION OF THE 1064 LOCOMOTIVES TENDER AND THE FINANCIAL TRANSACTIONS PURSUANT THERETO.

VOLUME 2b

MARCH 2019

**MNS**

MNCEDISI NDLOVU & SEDUMEDI  
ATTORNEYS



CONTENTS

Chapter	Page No.
1. Introduction .....	7
2. Allegations related to financing and hedging transactions for the CNR and CSR locomotives .....	15
3. Transaction advisory services .....	18
4. Financing of the 1064 Locomotives Transaction .....	23
5. Risk management instruments related to the transactions .....	27
6. Transnet specialist units .....	30
7. Alignment between the realised total execution cost and the execution cost that the transnet dealing room could have achieved .....	31
8. R12 billion Club Loan funding .....	34
9. CDB Loan Funding .....	38
10. “Fixed rate” strategy .....	42
11. R12 billion Club Loan swaps .....	52
12. CDB loan swaps .....	60
13. Interest rate swaps: tsdbf .....	62
14. Conflict of interest .....	67
15. Summary of fees to be recouped from parties .....	70
16. Transnet policy breaches .....	74
17. Conclusion .....	78
18. Additional context for the analysis provided in the body of the report .....	82

LEGAL  
EXPERTISE  
IN **YOUR**  
**CORNER**



## Glossary

**Asset-backed securities** mean a **security** whose income payments and hence value are derived from and collateralized (or “**backed**”) by a specified pool of underlying **assets**.

**Basis point(s)** (bps) means a percentage expressed in terms of units (1 basis point is 1/100<sup>th</sup> of 1%), e.g. 0.5% refers to 50 basis points.

**Blended rate** means the weighting average of the rates applicable to the total loan, as different spreads (margins) are applicable to different loan issues. The outcome is a blended rate that is applicable to the full loan.

**Counterparty** means the other party that participates in a financial transaction. Every transaction must have a counterparty in order for the transaction to succeed.

**Currency swap**, also known as a cross-currency swap is an over the counter transaction in which two parties exchange principal (capital portion of the loan) in different currencies.

**Development finance institution (“DFI”)** or development bank is a financial institution that provides risk capital for economic development projects. They are often established by governments or charitable institutions to provide funds to projects that would normally not be able to get funds from commercial lenders.

**Export Credit Agency (“ECA”)** means a financial institution that offers financing for companies in a country exporting assets. ECAs offer loans and guarantees to such companies to help remove the risk of uncertainty of exporting to other countries and also underwrite the political risks and commercial risks of overseas investments. In most instances, ECA funding is more cost effective than comparable funding.

**Execution Agent** means the intermediary that performs the task of trading a financial instrument in the market.

**Global Medium-Term Note Programme (“GMTN”)** means the issuance of senior and subordinated debt securities, which may be offered to investors via public or private placements.

**JIBAR means the Johannesburg Interbank Average Rate (“JIBAR”)**, which is the money market rate used in South Africa. It is calculated as the average interest rate at which banks buy and sell money and can have different terms, such as 3 months, 6 months, etc.

**LIBOR is the London interbank offered rate** and is similar to JIBAR. It is the interest rate at which banks offer to lend funds (wholesale money) to one another in the international interbank market. LIBOR is a key benchmark rate that reflects how much it costs banks to borrow from each other.

**Loan issuer** means the institution willing to partake (loan the funds) in the transaction at a certain interest rate for a pre-determined duration.

**Mark-to-market** means a fair value determination results from official market data to calculate a daily profit or loss figure.

**Knockout swaps** means an interest rate swap with an additional feature of a knockout barrier. In other words, a knockout swap terminates periodically or permanently if a designated interest rate breaks out above or below a stipulated benchmark for a given floating reference rate. A knockout swap has an embedded option to terminate the underlying transaction when it is favourable for a respective party to do so. In return, the other party has the advantage of paying a lower fixed rate on that swap.

**Point value or PV01** is the present value of one basis point determined by changes in the daily market yield. The PV01 becomes smaller as the maturity of a bond or financial structure becomes shorter.

**Tied loan facility** means credit agreements where the borrowing base is tied to “eligible” assets that permit the borrowing of funding based on the liquidation value of assets on the balance sheet.

**Vanilla [basic] Interest Rate Swap** is a forward contract in which one stream of future interest payments is exchanged for another, based on a specific principle amount. Interest rate swaps usually involve the exchange of a floating interest rate to a fixed rate or vice versa, to reduce or increase exposure to fluctuation in interest rates or to obtain a marginally lower interest rate that would have been possible without the interest rate swap.

List of Abbreviations

BADC	Board Acquisition and Disposals Committee
bps	Basis Points
BER	Bureau for Economic Research
BESA	Bond Exchange of South Africa
CCS	Cross Currency Swap
CCDS	Contingent Credit Default Swap
CDB	China Development Bank
CNR	China North Rail
CSR	China South Rail
DFI	Development Finance Institution
DoA	Delegation of Authority and Approved Mandate
ECA	Export Credit Agency
IPS	Investment Policy Statement
FRMF	Financial Risk Management Framework
GCFO	Group Chief Financial Officer
GCE	Group Chief Executive
LDI	Liability Driven Investment
LOI	Letter of Intent
MSA	Master Services Agreement
NACS	Nominal Accrued Compounded semi-annually
NACQ	Nominal Accrued Compounded quarterly
NCD	Negotiable Certificate of Deposit
PFMA	Public Finance Management Act
RFP	Requests for Proposals
SDP	Supplier Development Partner
TSDBF	Transnet Second Defined Benefit Fund
TPPM	Transnet Procurement Procedures Manual

List of Entities

Below are entities who were involved in the procurement of the 1064 Locomotives referred to in this Report and exhibits.

China Development Bank (CDB)	<ul style="list-style-type: none"><li>• Provided a loan facility in the amount of USD 1.5 billion to Transnet, for financing the 1064 Locomotives acquisition from China North Rail and China South Rail</li></ul>
JP Morgan	<ul style="list-style-type: none"><li>• Lead Manager in respect of the USD 1.5 billion CBD loan (later replaced by Trillian)</li></ul>
KPMG Consortium	<ul style="list-style-type: none"><li>• Unsuccessful bidder for the appointment of the tender for the 1064 locomotive's transaction advisors</li><li>• Members:<ul style="list-style-type: none"><li>o KPMG;</li><li>o Nkonki Incorporated;</li><li>o Norton Rose; and</li><li>o Arcus Gibb</li></ul></li></ul>
Letsema Consulting	<ul style="list-style-type: none"><li>• Member of the McKinsey Consortium</li><li>• Transaction advisor in respect of the 1064 Locomotives tender</li><li>• Withdrew from McKinsey Consortium due to a conflict of interest arising from its association with Barloworld</li></ul>
McKinsey Consortium	<ul style="list-style-type: none"><li>• Successful bidder appointed as a transaction advisor for the acquisition of the 1064 Locomotives</li><li>• Members<ul style="list-style-type: none"><li>o Advance Rail Technologies</li><li>o McKinsey Incorporated</li><li>o Letsema Consulting</li><li>o Advanced Rail Technologies</li><li>o Nedbank Capital</li><li>o Edward Nathan Sonnenbergs (ENS)</li><li>o Koikanyang Inc</li><li>o Utho Capital</li><li>o Regiments Capital (Pty) Ltd (added later to replace Letsema Consulting and Nedbank Capital)</li></ul></li></ul>
McKinsey Incorporated	<ul style="list-style-type: none"><li>• Lead member of the McKinsey Consortium</li><li>• Transaction advisor in respect of the 1064 Locomotives tender</li></ul>
Nedbank Capital	<ul style="list-style-type: none"><li>• Member of the McKinsey Consortium</li><li>• Transaction advisor in respect of the 1064 Locomotives tender</li><li>• Withdrew as a transaction advisor in respect of the 1064 Locomotives tender due to a conflict of interest</li></ul>

PWC Consortium	<ul style="list-style-type: none"><li>• Unsuccessful bidder for the appointment of the tender for the 1064 locomotives transaction advisors</li><li>• Members<ul style="list-style-type: none"><li>◦ PWC South Africa</li><li>◦ Siyaya DB Engineers</li><li>◦ Cliffe Dekker Hofmeyer</li></ul></li></ul>
Regiments Capital (Pty) Ltd	<ul style="list-style-type: none"><li>• Member of the McKinsey Consortium (for the procurement and supplier development elements)</li><li>• Transaction advisor in respect of the 1064 Locomotives tender</li></ul>
Sizwe Ntsaluba Gobodo Inc.	<ul style="list-style-type: none"><li>• A firm of accountants that provided an opinion to Transnet on whether it should do an interest rate swap with the TSDBF</li></ul>
Trillian Asset Management (Pty) Ltd	<ul style="list-style-type: none"><li>• Lead Manager in respect of the USD 1.5 billion CBD loan</li></ul>
Transnet Second Defined Benefit Fund	<ul style="list-style-type: none"><li>• A Transnet pension fund</li><li>• Used a counterparty to the interest swaps in respect of the Club loan</li></ul>
Webber Wentzel Attorneys	<ul style="list-style-type: none"><li>• Legal Advisors in respect of the 1064 Locomotives tender</li></ul>

## Chapter 1: Introduction

### 1.1 Appointment of Mncedisi Ndlovu and Sedumedi Attorneys

- 1.1.1 Mncedisi Ndlovu and Sedumedi Attorneys (“MNS Attorneys”) was instructed to conduct investigations into the alleged irregularities relating to the appointment of the transaction advisors in respect of the acquisition of the 1064 Locomotives and the financial transactions pursuant thereto.
- 1.1.2 Due to the fact that MNS Attorneys does not possess the financial expertise and in order to ensure that the investigation was supported by a comprehensive technical analysis of the financial transactions that Transnet executed on the strength of the advice provided to it by its transaction advisors in relation to the acquisition of the 1064 Locomotives tender, MNS procured the services of a financial expert, Dr Jonathan Bloom (“Dr J Bloom”)¹.
- 1.1.3 Volume 2b provides mainly a technical assessment of the:
- 1.1.3.1 procurement processes followed by Transnet in appointing the transaction advisors² and their respective scopes of work, final deliverables and the fees paid to them;
- 1.1.3.2 business motivation for the raising of capital debt, assess the debt, procurement processes followed in the acquisition of the debt and the role of transaction advisors; and
- 1.1.3.3 risk mitigation to Transnet and the following financial transactions:
- (a) the interest rate swaps executed to hedge Transnet’s debt;
- (b) the cross-currency swaps; and
- (c) the credit default swap.
- 1.1.3.4 In addition to the scope above, Dr J Bloom was requested to highlight any possible deviations from industry norms, Transnet policies and legislation.

### 1.2 Qualifications

- 1.2.1 This Report is to be used solely for the purpose and subject to the limitations set out in this section.
- 1.2.2 Although we have, to the best of our professional ability, examined all documentation made available to us, the information contained in this Report is subject to the following:
- 1.2.2.1 the conformity to the original documentation of all copied documents submitted to us has been assumed;

¹ Dr J Bloom is a graduate from Stellenbosch University and holds a PhD, M. Com and Hon B. Com in Corporate Finance. Dr J Bloom has over 22 years’ experience in finance and investments and as such, provided the appropriate experiential and theoretical assessment of these transactions.

² McKinsey, JP Morgan, Regiments and Trillian.

1.2.2.2 except in instances where we deemed it necessary, we have not verified the authenticity or validity of the documentation made available to us; and

1.2.2.3 where MNS Attorneys has not seen a document following a request to Transnet; in those instances, we assumed that a record of the said document has not been kept.

1.2.3 MNS Attorneys will not accept any responsibility should this Report be disclosed or released to any party, other than the intended recipient.

1.2.4 MNS Attorneys does not accept any liability for any loss, either directly or indirectly, suffered by any third party arising from the fulfilment of the mandate.

1.2.5 The findings are based on information and data available at the time of preparing the report. Care has been taken in the preparation of the analysis and discussion, but these could be amended if further information not at our disposal effects the outcomes of the analysis.

### 1.3 Procedures performed

1.3.1 The procedures followed in producing this Report included:

1.3.1.1 collation of information, documentation and data from Transnet which was perused and analysed;

1.3.1.2 interviews conducted with both former (not all former employees interviewed) and current employees of Transnet;

1.3.1.3 expert opinion sought from locomotive experts who advised on locomotives, commercial and other related issues as well as Senior Counsel;

1.3.1.4 publicly available information sourced regarding legal entities and individuals identified during the investigation; and

1.3.1.5 the investigation focused on the analysis of documentation, information, and data relevant to Transnet, the OEMs and the transaction advisors.

### 1.4 Executive Summary

1.4.1 The objective of this executive summary is to succinctly outline the findings detailed in Dr J Bloom's report below.

#### Capital Raising

1.4.2 In August 2014 the Transnet Board approved the acquisition of a USD 2,5 billion (equivalent to R28 billion) loan from the Chinese Development Bank ("CDB") for the purchase of 359 electric locomotives from China South Rail ("CSR") and 232 diesel locomotives from China North Rail ("CNR"). The locomotive acquisition

transaction formed part of the 1064 transaction which was approved by Transnet in March 2014.

1.4.3 In 2015 JP Morgan was appointed to hedge the CDB loan with Regiments Capital being its 'Supplier Development Partner'.

1.4.4 Informed by his knowledge and research of the capital markets at the prevailing time, Dr J Bloom concludes that a large part of the required debt could have been sourced locally and when considering the financial standing of Transnet within our local markets, Transnet would have probably have sourced more favourable terms than what the CDB offered.

1.4.5 Dr J Bloom further opines that the Transnet Board violated section 8.3 of the PPM by leveraging third parties to negotiate the loan. Transnet had at the time, a fully- fledged experienced debt raising department with employees that were more than qualified and capable of performing the tasks outsourced to JP Morgan and Regiments.

1.4.6 Further to the appointment of the transaction advisors, Mr Siyabonga Gama ("Mr S Gama")<sup>3</sup> motivated for Regiments Capital to be paid a "success fee" for its recommendation to split the CDB loan into two parts:

1.4.6.1 USD 1,5 billion debt facility with CDB (with an optional USD 1 billion standby facility); and

1.4.6.2 a syndicated ZAR loan of R 12billion. This loan would be 'syndicated through five local institutions and would be the ZAR based equivalent of the USD 1,0 billion standby facility. Regiments was subsequently paid a fee of R265,5 million for its advice.

1.4.7 Both the CDB loan and the Club loan were negotiated on 'floating rates' basis viz. variable interest rates.

1.4.8 In September 2015 Mr S Gama compiled a memorandum requesting that the Board Acquisitions and Disposal Committee ("BADC") replace JP Morgan with Trillian Asset Management ("Trillian") as lead arranger for the Club loan. This recommendation was endorsed by the BADC on 1 October 2015 although the Agreement with the CDB was signed in June 2015.

1.4.9 In November 2015, Trillian issued an invoice to Transnet for R 93 million for services it purportedly rendered as the Lead arranger for the Club loan even though it did not execute the work.

1.4.10 Dr J Bloom concludes the following in respect of the debt raising transactions, that:

1.4.10.1 a large portion of the CDB loan could have been sourced locally on terms more favourable to Transnet and this option would have boosted the local markets;

<sup>3</sup> Former Group Chief Executive (2016 – 2015)



- 1.4.10.2 Transnet's structured finance department should have been leveraged to raise these facilities;
- 1.4.10.3 there was no credible basis to replace JP Morgan with Trillian as lead arranger for the Club loan;
- 1.4.10.4 the appointment of Trillian was irregular and the motivation therefore was completely baseless;
- 1.4.10.5 the fees paid to Regiments and Trillian in respect of the capital raising facility services they rendered were significantly above market rates and in the case of Trillian these services were not rendered and thus should not have been paid; and
- 1.4.10.6 no savings were realised by Transnet and thus none of the success fees should have been paid to Regiments.

#### Interest Rate Swaps on the Club Loan

- 1.4.11 An interest rate swap is executed to reduce the risk of interest rate fluctuations. Typically, the 'swap' is from floating (variable) rates to fixed rates.
- 1.4.12 The following two tranches of interest rates swaps were executed by Regiments on the Club loan with Nedbank being the counterparty.
  - 1.4.12.1 R4,5 billion was swapped to a fixed rate of 11.85% for 15 years on 4 December 2014; and
  - 1.4.12.2 R7,5 billion was swapped to a fixed rate of 12.27% for 15 years on 7 March 2016.
- 1.4.13 The Club loan was concluded in November 2014 as a floating facility. One week later the first tranche of the swaps was executed. In the event that the interest rate risk was legitimate, a reasonable person would have negotiated a fixed interest rate loan at the onset rather than enter into swap agreements.
- 1.4.14 Dr J Bloom emphasises that the cumulative skills, experience and expertise within the Transnet Dealing Room at the time were in excess of 100 years and that the Transnet Dealing Room executed interest rate swaps routinely. Therefore, the Transnet Dealer Room was more than well placed to ensure that the execution of these transactions would be in Transnet's favour.
- 1.4.15 Instead of leveraging existing in-house expertise as prescribed in the PPM, Regiments could realise a benefit of R 148.7 million<sup>4</sup> over the 15-year tenure of the swaps. A significantly lower fee would accrue to Transnet if these transactions were executed through its Dealing Room.
- 1.4.16 Further to this, Dr J Bloom's interest rate analysis of the prevailing market conditions together with the motivation from Regiments and Phetolo Ramosebudi ("Mr P Ramosebudi") leads, Dr J Bloom to conclude that short term interest rates were

<sup>4</sup> Regiments accrues a quarterly fee of 20bps. The actual fee realised depends on the interest rate movement at the time and thus, this fee can fluctuate. Regiments gains more when the interest rate drops and gets less, if the interest rate increases. Transnet incurs greater losses when the interest rate drops and could experience value should the interest rate exceed 12.27%.

used as the motivation for a long-term perspective of future interest levels. Dr J Bloom asserts that interest rates cannot be accurately forecasted beyond five years as such these swaps should not have been executed on the agreed fixed rates for a tenure of 15 years.

- 1.4.17 Regardless of the above, the prevailing trends indicated that interest rates would be on a downward trend from 2016 confirming that the motivation to enter into these transactions was fundamentally incorrect and baseless at the time.
- 1.4.18 Dr J Bloom's modelling of these transactions indicates that unless the South African interest rates exceeded 11.44% plus margin, Transnet would experience losses for the term of the swaps. As of 1 October 2018, the following losses have been realised by Transnet:
  - 1.4.18.1 R262,2 million on the R4.5billion swaps executed on 4 December 2015; and
  - 1.4.18.2 R 480.1 million on the R7.5 billion swaps executed on 7 March 2016.

#### The Transnet Second Defined Benefit Fund

- 1.4.19 In October 2015, Regiments Fund Managers (Pty) Ltd was appointed as the Portfolio Manager for the Transnet Second Defined Benefit Fund ("TSDBF"). Regiments was appointed through a confinement process on the basis that they were the only specialists that could execute Liability Driven Investments ("LDI"). Regiments during the same period held a mandate as transaction advisors on the 1064 Locomotives transaction.
- 1.4.20 Between March and April 2016 Regiments, acting as transaction advisors executed interest rate swaps on R11,3 billion of Transnet debt with the TSDBF as the counterparty. The loan issuance involved the following financial institutions:
  - 1.4.20.1 the Export Development Bank Canada ("EDBC") provided R6,9 billion;
  - 1.4.20.2 LIBFIN provided R1,6 billion;
  - 1.4.20.3 Old Mutual provided R1,0 billion; and
  - 1.4.20.4 Standard Bank provided R1,7 billion.
- 1.4.21 Dr J Bloom opines that the TSDBF was used as the counterparty to these transactions because the financial institutions that would typically engage, were weary of the risk that Regiments was placing on Transnet.
- 1.4.22 Again, the Transnet debt secured at floating rates was swapped for fixed rates, for a tenure of 15 years, at rates significantly higher than market norms and with the same motivation as that used for the swaps on the Club loan.
- 1.4.23 These transactions were so controversial that the Chief Trader, Mr Reon Louw ("Mr R Louw") resigned as a member of the TSDBF citing a "conflict of interest" as the reason. Mr R Louw states that the conflict arose from the fact that in his position as Chief Trader, he could not maintain a non-biased view in the best

interest of both Transnet and the TSDBF. Dr J Bloom details this conflict of interest for Regiments on the same basis and concludes that Regiments was conflicted as both the portfolio manager to the TSDBF and the transaction advisor to Transnet.

1.4.24 Dr J Bloom's analysis of these transactions indicates that the interest swaps have realised favourable results for the TSDBF at the cost of Transnet. Transnet is currently experiencing loss from these swaps as the fixed rate exceeds current interest rates and will in all likelihood experience further losses into the future. In this case, it is prudent to highlight that the TSDBF acted as Nedbank did in the swaps related to the R12 Billion Club loan and similarly as the TSDBF is experiencing favourable returns, so is Nedbank, both at Transnet's prejudice.

1.4.25 Regardless of the loss Transnet is accruing, Regiments receives 20bps in fees every quarter for swaps executed on both the R12 billion Club loan and the R11,3 billion Transnet debt (TSDBF counterparty).

#### Cross Currency and CCDS Swaps

1.4.26 The CDB loan was arranged as a floating rate loan denominated in USD with periodic drawdowns that occur to pay either CNR or CSR as it relates to the 1064 Locomotives transaction.

1.4.27 The Locomotive Supplier Agreements between Transnet and CNR & CSR state that payments will be made in ZAR and as such, the CDB debt facility must be 'swapped' from USD to ZAR at each draw down. For this, JP Morgan was appointed as the Account Manager and executes a cross currency swap from USD to ZAR at each draw down on the facility. Dr J Bloom's analysis has not found any adverse findings in these recurring transactions other than the fact that these transactions could have been executed through the Transnet Dealing room at a likely lower cost to Transnet.

1.4.28 JP Morgan accrues fees of 20bps at each draw down, however, the invoice from Regiments amounting to R 7,5 million detailing the transaction advisory services it rendered for these transactions was settled by Transnet. JP Morgan is a global expert in these transactions and would not require advisory services from Regiments.

1.4.29 At the onset of appointing JP Morgan as Account Manager of the CDB loan Transnet expected the transaction advisor to execute contingent credit default swaps ("CCDS") at each draw down. JP Morgan are renowned experts in this field and were well experienced, skilled and positioned to execute on this requirement. Regiments claims to have structured this transaction and accordingly invoiced Transnet for it in July 2015. Regiments was paid an amount of R5,743,592 which has no basis.

#### Conclusion

1.4.30 Dr J Bloom concludes the following:

1.4.30.1 Regiments did not act in Transnet's favour in respect of all its mandates referenced in this report;

1.4.30.2 except for providing some minor specific inputs, all the services rendered by Regiments could have been executed by the specialists' units within Transnet and on that basis, the fees paid to Regiments should be recovered;

1.4.30.3 the CDB loan or at least a large portion of the funding for the Chinese locomotives required should have been sourced locally and as such Transnet should endeavour to unwind this agreement; and

1.4.30.4 all swaps, except for the cross-currency swaps, executed on the advice and guidance of Regiments should be unwound immediately. (our emphasis)

## COMMENTS

## Chapter 2: CNR and CSR Locomotives

## 2.1 Allegations relating to the financing and hedging of the CNR and CSR Locomotives

- 2.1.1 The primary allegations against the transaction advisors and particular individuals within Transnet are detailed below.
  - 2.1.1.1 Standard operating policies and procedures were flouted and the capacity and skills available within Transnet Treasury were underutilised or ignored in favour of external advisory services, which had no justification for certain funding transaction and derivatives executed in the market, except for the Contingent Credit Default Swap (CCDS);
  - 2.1.1.2 Decisions taken aimed to self-enrich individuals within Transnet and various parties that participated in the execution of the financing transactions and subsequently, the execution of several derivative instruments;
  - 2.1.1.3 Many of the funding and derivative decisions had no fundamental or technical basis and were certainly not taken in the best interest of or to the benefit of Transnet;
  - 2.1.1.4 Fees paid for advisory services were excessive and significantly above market norms and standards, and could never be justified in terms of value for money or transparency to which Transnet must adhere to in terms of the Public Finance Management Act ("PFMA").
  - 2.1.1.5 A clear cover-up by certain parties forming part of the transactions occurred; there was no transparency and many of the decisions had limited or no justification. Decisions that were to result in short-term gain for certain individuals and companies have and will result in significant losses to Transnet over the long-term.
  - 2.1.1.6 Deliberate mispricing of interest rate swaps at the time resulted in larger spreads and excessive fees for the parties involved and thus added more profit to the bottom line of parties to the transactions, together with larger and extended losses for Transnet over time.
- 2.1.2 Persons implicated should be held responsible and liable for excessive fees and unwarranted advisory work as well as for the significant portion of the costs that bind Transnet and continue cause significant losses related specifically to the CDB loan financing, together with the execution of derivative instruments that would be perceived to benefit Transnet, but resulted in short-term gain for the parties involved.
- 2.1.3 The allegations stated above are elaborated on in the following sections and are based on a comprehensive analysis of various decisions considered prudent to achieving an outcome that highlights matters that should be considered and

pursued due to the practices engaged in and applied to various transactions.

2.1. 4 The assessment focuses on transaction advisors, the nature of transactions and the outcomes, while relating the same to norms and standards in the market. The premise for the allegations is the advice linked to transaction advising activities and the execution thereof, together with the advisory and transaction fees aligned thereto, and are elaborated on in the following sections.

## COMMENTS



## Chapter 3: Transaction advisory services

### 3.1 Defining the scope of transaction advisory services

- 3.1.1 On 20 August 2012, Transnet's Group Chief Financial Officer, Mr Anoj Singh ("Mr A Singh") submitted a memorandum to Transnet's Group Chief Executive, Mr Brian Molefe ("Mr B Molefe"), motivating the appointment of transaction advisors for the 1064 Locomotive Tender. The memorandum was signed and accepted on 22 August 2012. **(Annex 15.1)**
- 3.1.2 The memorandum recommended the appointment of the McKinsey Consortium to execute the complete advisory services. The McKinsey Consortium comprised of McKinsey (35%), Procurement Partner (20%), Utho & Nedbank (10%) and Advanced Rail Technologies (15%).
- 3.1.3 In addition, Webber Wentzel was appointed for the legal advisory work.
- 3.1.4 The value of the advisory services was estimated to be R50 million and included the following scope:
- 3.1.4.1 Developing and augmenting the business case for the approval of the locomotives by the Transnet Board of Directors and the Department of Public Enterprises;
  - 3.1.4.2 End-to-end requirements of the overall General Freight Programme;
  - 3.1.4.3 Identifying value optimisation potential and technical optimisation options;
  - 3.1.4.4 Setting up the tender process in line with all requirements applicable to State-Owned Enterprises;
  - 3.1.4.5 Developing a shortlist of potential suppliers;
  - 3.1.4.6 Developing the contracts for the Tender; and
  - 3.1.4.7 Developing finance and funding options.
- 3.1.5 On 22 May 2013, the GCFO corresponded with McKinsey regarding a potential conflict of interest with Nedbank **(Annex 5)** and Mr PD Naidoo **(Annex 6)**.
- 3.1.6 On 19 October 2013, the GCFO confirmed the conflict of interest between McKinsey and Nedbank, who together were to provide funding options and deal structures for the 1064 Locomotive transaction. The GCFO recommended that Regiments Capital (Regiments) replace Nedbank in the McKinsey Consortium **(Annex 2)**.
- 3.1.7 On 16 April 2014, McKinsey ceded their rights and obligations to Regiments in respect of the transaction advisory services for the 1064 Locomotive transaction **(Annex 1)**. In addition, the GCFO signed a memorandum addressed to the GCE regarding the transaction advisory services stating the following **(Annex 3)**:

- 3.1.7.1 ratify the amendment for the re-allocation of the scope of work from McKinsey to Regiments as well as;
  - 3.1.7.2 agree that Regiments replaces Nedbank;
  - 3.1.7.3 approve the amendment of the remuneration structure, which resulted in an additional fee of R78 million (excluded Vat); and
  - 3.1.7.4 delegate the GCFO to make all decisions in this regard.
- 3.1.8 The memorandum was approved by the GCE on 17 April 2014.

### 3.2 Comparison of the Transnet agreements with McKinsey and Regiments (LOI vs MSA)

- 3.2.1 An agreement entered into between Transnet and McKinsey/Regiments resulted in a scope of work covered in the Third Addendum to the Letter of Intent ("LOI") and the Second Addendum to the Master Services Agreement ("MSA") regarding advisory services related to the funding and financing of 1064 locomotives. **(Annex 37)**.
- 3.2.2 A need exists to peruse, consider and assess the alignment of the two scopes of work related to advisory services for the financing of 1064 Locomotives. Since the individual tasks stated in the scopes of work presented in the LOI and MSA are not categorised, a level of categorisation was required to align the scopes that were adopted:
- (a) Funding plan and balance sheet implications;
  - (b) Assessment of financing options;
  - (c) Consideration and analysis of applicable funding and financing risks;
  - (d) Ancillary tasks and activities related to the scopes and not included in (a) - (c); and
  - (e) Supplementary tasks not specific to the funding and financing advisory services.

### 3.3 Funding plan and balance sheet implications

- 3.3.1 An assessment of items (d), (e.4) and (b) included in the LOI would form part of the funding plan (b) in the MSA. In other words, a funding plan is already provided for in the assessment of all the items and in particular, matching assets and liabilities (b.2) would be included in the tasks stated in the LOI.
- 3.3.2 The additional scope included in the MSA related to funding plan and balance sheet implications, refers to recommendation, advice and assistance post the successful conclusion of negotiations with [ICBC, Bank of China, China Construction Bank and Sinosure] on the following aspects: Amortization durations, Interest rates, Cross-currency swaps, Calculations and forecasts and Blended funding models.
- 3.3.3 These items (4.8.2) together with the scope included in the LOI, would be required as part of an assessment to consider and address the impact on the Transnet

balance sheet (i.e. assets and liabilities). The assessment of the items stated in paragraph 3.9.2 are therefore considered during an assessment of the “impact” pre-negotiation (or pre-money) and post-negotiation (or post-money). This would be monitored on a post-negotiation basis through internal processes and standard operating procedures and not an outsourced basis.

- 3.3. 4 Based on the premise adopted in paragraph 3.9.1 through 3.9.2, the scopes stated in the LOI and MSA are essentially the same, but stated or crafted differently in the MSA.

### 3.4 Activities related to assessment of financing options

- 3.4. 1 Consideration of the scopes related to financing options stated in the LOI and MSA indicate a complete fit, in other words, the scope of the LOI is duplicated in the MSA with the following task description, “Evaluation of all funding sources including US Exim, EDBC, Bond Issuance under Transnet’s DMTN and GMTN Programme, China Development Bank (CDB), Sinasure and China Exim”.

### 3.5 Activities related to an assessment of applicable risks

- 3.5. 1 The LOI elaborates on several risk items that require consideration in the analysis of financing options. The MSA indicates what appears to be a consolidated scope of the items stated in the LOI with specific reference to the item, “Identification and management of all financial risks (including liquidity, interest rate, credit and currency risks).”

### 3.6 Ancillary activities related to the scopes

- 3.6. 1 Assistance in negotiations is provided for in both the LOI and MSA. Items (h.3) in the LOI, “Participate in the fulfilment of conditions precedent required by the funders”, and item b.5 and sub-items of the MSA, “Assist Transnet in negotiating with a number of potential Chinese sources of ZAR funding including: (b.5.1.) ICBC; (b.5.2.) Bank of China; (b.5.3.) China Construction Bank; (b.5.4.) Sinasure”, are therefore duplicated in the MSA.

### 3.7 Non-overlapping tasks

- 3.7. 1 The following tasks stated in the LOI (Addendum 3) do not overlap with any tasks stated in the MSA Scope:
- (i) 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 project’s contribution to regional integration.

### 3.8 Salient pointers emanating from the analysis

- 3.8. 1 The Second Addendum of the MSA is replicated from the Third Addendum of the LOI, but crafted to imply either an extension of the scope of the LOI or a totally revised scope of tasks stated in the LOI. Notwithstanding, the MSA implies the same work with specific reference to activities of funder engagement, risks assessment and financing processes (which are essentially all encompassing).
- 3.8. 2 Various tasks, such as an assessment of risks and balance sheet implications, are considered after the fact and should have been conducted before any LOI was signed. This in turn would have negated the need for a further agreement in the form of the MSA and consequently, the duplication of the tasks covered in the LOI scope of work.

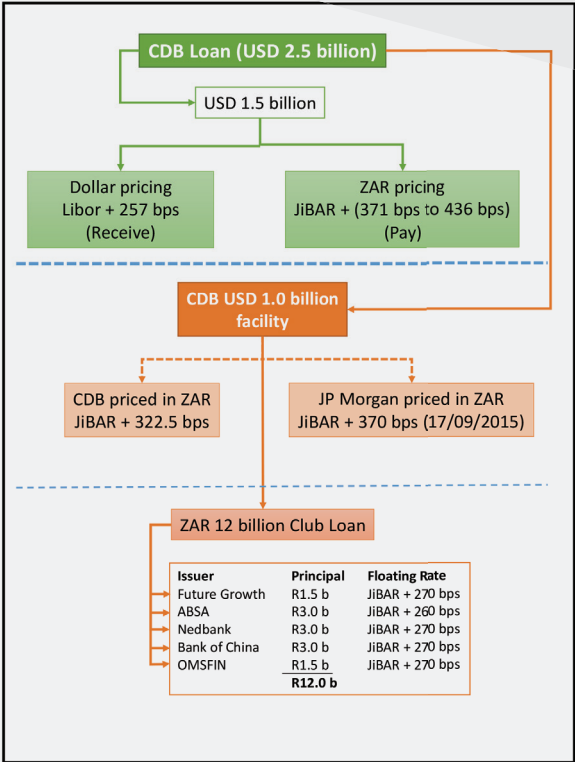
### 3.9 Allegations

- 3.9. 1 Payments to Regiments for work related to both scopes stated in the LOI and MSA are unjustified and unwarranted. The scope of work in the LOI and the MSA are (with the exception of some items) the same, but crafted in a manner that the untrained eye would accept as being different. Regiments was paid on the basis of both the LOI and MSA, which implies excessive payment for no work related to the MSA, as this was covered by the LOI.
- 3.9. 2 The fees paid to Regiments based on both the LOI and MSA, should be recouped and the person that approved both the LOI and MSA, should be held to account for permitting double payment for essentially the same work.

COMMENTS

- 4.1 On 17 March 2014, Transnet awarded the acquisition of 1064 locomotives to the following successful bidders:
  - 4.1.1 CSR: 359 Electric locomotives for a value of R18.1 billion;
  - 4.1.2 Bombardier Transport (“BT”): 240 Electric locomotives for a value of R13.0 billion;
  - 4.1.3 CNR: 232 Diesel locomotives for a value of R9.9 billion; and
  - 4.1.4 General Electric (“GE”): 233 Diesel locomotives for a value of R 8.4 billion.
- 4.2 The value of the deal amounted to R54.5 billion excluding Vat and inclusive of forward escalation, hedging costs and an allocation of R4.9 billion for contingencies.
- 4.3 This transaction had increased in value from the bid value of R 38.6 billion at the bidding stage to R 54.5 billion. **(Annex 38).**
- 4.4 A debt requirement for R28.0 billion (USD 2.5 billion) at an exchange rate of R11.20 was required to fund the Chinese locomotives produced by the CNR and CSR and funding therefore would be sourced from and funded by the CDB.
- 4.5 BT and GE were financed through the EDBC and US Exim loans, respectively.
- 4.6 The CDB loan was approved by the Transnet Board of Directors (Board) in August 2014 for a facility of USD 2.5 billion.
- 4.7 On 28 April 2015, Mr S Gama (Acting GCE) submitted a memorandum to the BADC requesting the appointment of JP Morgan and Regiments Capital as the Supplier Development Partner of JP Morgan to conclude the CDB loan. **(Annex 4)**
  - 4.7.1 The appointment was confined to JP Morgan to hedge the financial risk of the CDB loan at each drawdown.
  - 4.7.2 Approve the extension of the transaction advisory contract for Regiments from R99.5 million to R265.5 million for amongst other items, the advice taken to utilize only USD 1.5 billion of the CDB loan and blend that with a ZAR equivalent syndicated loan of USD 1.0 billion (which became known as the “R12 billion Club loan”). Both loans were sourced on a floating rate basis.
- 4.8 On 27 August 2015, Mr Eric Wood (“Mr E Woods”) from Regiments and Mr P Ramosebudi (Transnet Group Treasurer) agreed to conclude the R12 Billion Club loan. **(Annex 15)**
- 4.9 The syndicated Club loan of R 12 billion comprised the following parties:
  - (a) Nedbank: R3.0 billion
  - (b) Bank of China: R3.0 billion

- (c) ABSA: R3.0 billion
- (d) OMSFIN: R1.0 billion
- (e) Future Growth: R1.5 billion
- 4.10 A schematic illustration of the approved USD 2.5 billion facility and the splitting of the loan into the USD 1.5 billion and a USD 1 billion facility with the associated parties, is indicated in Figure 1.
- 4.11 Figure 1 indicates that for the CDB loan of USD 1.5 billion (as an example), Transnet would receive a LIBOR plus 257 basis points and would pay JIBAR plus 371 to 436 bps for the cross-currency swaps.



**Figure 1: The structure of loans acquired for the financing of the 1 064 locomotives**

**Note:** The payment leg of the cross-currency swap to date has cost Transnet between 371 and 436 basis points and could be referred to as the high and low margins applicable to drawdowns of the CDB loan to date

**Source:** Various & Swap Position Report dated 1/11/2018

- 4.12 The funding for the CNR and CSR locomotives entailed an amount of USD 2.5 billion, which was subdivided into a USD 1.5 billion drawdown and a USD 1.0 billion facility, with the latter essentially an option to extend the funding to the full amount of USD 2.5 billion.
- 4.13 The context of the ZAR swap Rand leg rate (i.e. 3mJIBAR plus between 371 bps and 436 bps) is drawn from the Transnet Treasury Swap Position Report as at 1 November 2018 and represents the range of margins obtained in the market with reference to the 39 drawdowns to date (**Annex 39**). The LIBOR rate plus 257 bps was fixed for the term of the drawdowns. The all-in rate over the period of the drawdowns to date (as at 1 November 2018), ranged between 10.48% (the rate of the first drawdown) and 11.54%.
- 4.14 On 7 September 2015, Regiments provided Mr P Ramosebudi the Nedbank Term Facility Agreement (**Annex 10**). On 11 September 2014, Mr P Ramosebudi forwarded this email to Daniel Roy at Trillian. (**Annex 14**).
- 4.15 On 17 September 2015, the Acting GCE (Mr S Gama) submitted a signed memorandum to the BADC requesting the appointment of Trillian as the lead manager for the Club loan (**Annex 8**).
- 4.16 On 22 September 2015, the recommendation to replace JP Morgan with Trillian was submitted to the GCE.
- 4.17 The appointment was approved by the BADC on 1 October 2015.
- 4.18 On 18 November 2015, the Club Loan Facility Agreement was signed by Mr Daniel Roy from Trillian, Mr S Gama (Acting GCE) and Mr Gary Pita (Acting GCFO) (**Annex 9**).

## COMMENTS



## COMMENTS

## Chapter 6: Transnet Specialist Units

- 6.1 Up until 30 April 2017, the Transnet Treasury Dealing Room team comprised of four Traders and a Market Analyst. The Transnet Treasury Dealing team members have a combined experience of almost a hundred years in the local, Money, Capital and Forex Markets. This includes Banking as well as Corporate Treasury experience. The Transnet Treasury Dealing Room team qualifications include HonsBSc (Applied Mathematics), MCom (Economics), BSc (Mathematical Sciences), CFA, HonsBCom (Economics) and HonsBCom (Investment Management). These dealers have priced and transacted a vast number of different spot and derivative transactions in all markets in the past. The track record is sound and all the transactions are accounted for and can be retrieved, and margins can be compared as proof of the success and especially the financial value that this function has added to Transnet.
- 6.2 During 2014, Transnet had a funding team that had three highly experienced Funding Managers and an Analyst. Between them, they have cumulative experience in excess of 50 years in fund raising in most capital markets.
- 6.3 Transnet's Treasury was rated as one of the best in the world by McKinsey in a 2010 Survey (refer to paragraph 8.9). Transnet Treasury Team had all the ability, skills, qualifications and experience to raise debt and execute financial transactions in most markets.
- 6.4 On 1 March 2015 Mr P Ramosebudi became the Group Head of Treasury (**Annex 40**) and since his appointment, the skills and capability within Transnet Treasury and related departments appears to have been deliberately watered down to the extent that the persons that would execute tasks, were excluded from the transactions or where instructed without the necessary rigour of analysis and confirmation. This approach was the basis adopted for many of the transactions detailed in this report.
- 6.5 There was no need for Transnet to engage transaction advisors for funding, nor to advise and execute financial instruments, except for the Contingent Credit Default Swap (CCDS), which was a complex transaction arranged, structured and executed by JP Morgan.

[illegible]





## Chapter 8: R12 billion Club Loan Funding

- 8.1 In addition to the CDB loan, a second loan denominated in South African Rand ("ZAR") and referred to as the R12 billion Club loan, was sourced for an amount of R12 billion; several of the loan issues had different maturity dates and face values (refer to Annexure B of memorandum prepared by Mr Mohammed Mahomed) (**Annex 41**). Commitments were received from Nedbank, Bank of China, ABSA, OMSFIN and Future Growth. The funds displayed a mix of sources as illustrated in Figure 1.
- 8.2 The RFP to lead arrange the R12 billion Club loan was issued on 6 May 2015 with a closing date of 8 May 2015 (**Annex 29.1**). JP Morgan submitted a Proposal by the closing date and its appointment as the preferred bidder was confirmed on 12 May 2015 to lead arrange and underwrite the R12 billion Club loan. (**Annex 29.2**).
- 8.3 A SLA or funding agreement was concluded between Transnet and JP Morgan. Such an agreement was concluded insofar that JP Morgan were appointed, but a recommendation by the GCE to replace JP Morgan was approved by the BADC on 1 October 2015 (**Annex 41**).
- 8.4 JP Morgan would be paid R24 million for the lead arranging per the Proposal dated 8 May 2015 and confirmed on 12 May 2015 by the then GCFO (**Annex 29.1 & 29.2**). This fee is 241.67% less than the fee claimed by Trillian, who replaced JP Morgan on 1 October 2015.
- 8.5 A raising fee of 20 bps was indicated by JP Morgan in its Proposal dated 8 May 2015 (**Annex 29.3**) to lead arrange the loan. A fee of 50 bps or even less would have been applicable using industry norms for the nature and size of the loans and applied to the notional value of the loan.
- 8.6 The risk of not obtaining financing for the locomotives was significantly diminished due to the nature and scope of the transaction and the standing of Transnet in the international banking community. The arranging fees (or debt origination fee as stated) should therefore be significantly lower. This assertion further relates to the fact that sufficient capacity and skills were available within Transnet to attend to the transaction (refer to paragraph 6.2 and 6.3). This was confirmed by the former Group Treasurer (Ms Mathane Makgatho) at the time and other staff within Transnet Treasury. It was clear from our analysis and discussions with former and current Transnet Treasury staff that sufficient professionals were available from a total Treasury staff compliment of approximately 35 persons to address all the matters related to the CDB loan.
- 8.7 It was further understood that sufficient funding and credit lines were available to Transnet to do large-scale funding of prospective asset purchases. According to Ms Mathane Makgatho, Transnet had commercial paper and bond funding programmes available at seven days' notice and at any given time, R13 billion of bank facilities at

24 hours' notice, which include a contingency overdraft facility of R4 005 million with Standard Bank and other sources (**Annex 42**). The funding of the Chinese locomotives could be obtained from various sources at more favourable rates (see below), with the USA funding in the form of a guarantee being the least expensive at the time. The market was susceptible to the size of the loan being required and structuring of the transaction was available (e.g. a grace period before repayments start). This would reduce the spread or margin.

- 8.8 According to a presentation by Transnet to CDB representatives in July 2014, Transnet could obtain the following spreads based on the 3m JIBAR from various funders at the time (**Annex 43**):
- |          |   |
|----------|---|
| LIBFIN:  | 175 bps (concluded)   |
| EDBC:    | 200 bps (willing to provide ZAR funding)  |
| ADB:     | 230 bps (willing to provide ZAR funding)  |
| US Exim: | 155 bps (willing to provide ZAR supported funding in the form of guarantees being an ECA) |
| CDB:     | 430 bps (translates to LIBOR + 275)   |
- 8.9 It is clear that Transnet was a premier client in the market and thus received preferential rates. The assertion is also considered in the context that the Transnet Group Treasury was rated in the top 10 Treasuries worldwide in a 2013 Global Survey by McKinsey. It is therefore unjustifiable why CDB with a spread between 200 bps and 275 bps (i.e. between the highest and lowest margins stated above) would be selected to provide the funding for the Chinese locomotives. The fees were out of line with market norms at the time and it was apparent that 3mJIBAR funding plus 260 bps could be sourced, while fair value at the time was approximately 3mJIBAR plus 210 bps (**Annex 42**).
- 8.10 Structured Finance and the other departments within Group Treasury were apparently not consulted in the discussions and approval of the CDB facility or the agreed rates. It is unclear in terms of standard operating procedures, how such a transaction would fit with the lines of authority and delegation. Notwithstanding, given the nature and size of the loan facility, the Executive (the GCE and GCFO) would reasonably have consulted with the Group Treasury team. This apparently did not happen and due to the appointment of Regiments as the transaction advisor and lead negotiator through a parallel process, the decision was taken at an Executive level that ignored any formal input from the Group Treasury team and Structured Finance.
- 8.11 The actual fee payable to Regiments as transaction advisers was R99.5 million. This accrued prior to the lead manager and debt origination work for the CDB loan. The R99.5 million fee translates into an additional 88 bps (0.88%) calculated on the notional value of the loan, or 10 bps calculated on the yield to maturity (**Annex 7**).

8.12 It is also strange that the success fee is based on the total loan amount over 15 years, including principal and interest, alternatively stated as the yield to maturity. Success fees, which translate into the arranging fee, are applicable per norms and market standards and are based on the face value or notional value of the loan. This approach to calculate the fees based on the total loan cannot be condoned, is unjustifiable and unwarranted.

8.13 Furthermore, it appears that no performance agreement was signed that addressed this matter and that could justify a payment based on a saving generated through benchmarking. There is also no legal basis for this payment as JP Morgan was appointed to hedge financial risks from interest rates to currency. The justification for the payment relates to a memorandum dated 22 September 2015 that recommended the payment to Trillian and that was signed by the Acting GCEO, Acting GCFO, Acting Group Supply Chain Officer and prepared by the Group Treasurer (**Annex 30**). This attempted to legitimise how the amount was determined, but still does not provide the legal basis for the payment.

[illegible]

## Chapter 9: CDB Loan Funding

- 9.1 The CDB loan facility for USD 2.5 billion was approved by the Transnet Board in August 2014. Regiments advised Transnet to commit to USD 1.5 billion with the remaining USD 1.0 billion being optional and available. The CDB loan was agreed on the basis that it would fund the acquisition of locomotives from CNR and CSR through the 1064 Locomotive transaction.
- 9.2 The CDB provided export credits in the form of direct loans to CNR and CSR as two of four preferred bidders for the provision of a portion of the 1064 locomotives to Transnet. Since these Chinese companies are supplying Chinese manufactured products and would be conducting business in South Africa (a foreign country), the funding from the CDB as a development finance institution ("DFI") underpins the role of an Export Credit Agency ("ECA").
- 9.3 The rationale for the use of ECA funding options is that the cost of funding is normally cheaper than conventional commercial banking institutions as it essentially entails a Transnet-to-country arrangement.
- 9.4 However, the CDB pricing is based on the probability of credit default by Transnet and the sovereign rating of South Africa, which increases the probability that the funding could be more expensive when compared to sourcing the same locally. A credit rating above investment grade for South Africa existed at the time that would enable and facilitate negotiations for cheaper funding. The pricing is therefore quoted in accordance with international benchmarks.
- 9.5 It became apparent after discussions with the former Group Treasurer (Ms Mathane Makgatho) that the pricing of the CDB loan was not in line with other asset-backed facilities offered by DFIs (**Annex 43**). The latter is aligned to a decision by Transnet to diversify its funding sources to include ECAs and DFIs in its funding portfolio and thereby increase the maturity profile of the debt portfolio and achieve cost-effective funding.
- 9.6 The CDB facility is tied to procurement from China and would therefore imply supporting the funding of the CNR and CSR locomotive contracts, where the terms and conditions should mirror that of tied facilities as well as asset-backed facilities. These types of facilities should translate into cost-effective funds where the pricing should be comparable to local funds, together with less stringent terms and conditions (**Annex 42**).
- 9.7 The pricing of a global bond is transparent and in line with other international bond issuance of similar rated entities. A lack of transparency and adequate benchmarking is symptomatic of creating deliberate positions that would not be in the interest of Transnet over the long-term and would likely result in additional costs and/or losses (**Annex 42**).

### 9.8 Fees Paid to Regiments

- 9.8. 1 The letter from Regiment's CEO dated 15 July 2015 (**Annex 31**), further creates the inference that "The total contingency fee paid to Regiments amounted to R166 million" [it appears that this letter was written to justify the payment after the fact] of which R152 756 408 was related to the role of lead manager and debt originator. The total fee paid for this part of the work was R252.3 million (R99.5 million as part of transaction advising services plus R152.8 million (rounded) or 235 bps related to the USD 1.5 billion CDB loan). This is the same work for which JP Morgan were appointed through a confinement on 28 April 2015 and approved by the GCE (**Annex 44**).
- 9.8. 2 A further justification for the payment of fees to Regiments is based on what is termed by Regiments (Trillian) as a saving on the "restructuring" or splitting of the USD 2.5 billion with more favourable interest rates, for which a fee was due and payable. The work related hereto and comparative assessment of the debt origination, by definition, formed part of the work for which Regiments were paid transaction advising fees of R99.5 million (**Annex 45**). The work to assess the best option of either drawing down on the USD 1 billion facility (that formed part of the USD 2.5 billion arranged with CDB) or securing a R12 billion loan, would form part of the analysis related to the original transaction advisory services where Regiments replaced Nedbank.
- 9.8. 3 Trillian (of which Mr Salim Essa is a 60% shareholder) was paid 10% of a "saving" that related to an amount of R820 million, which essentially comprised two "savings". The first saving of R418 million was associated with the equivalent USD funding from CDB and the second with R796 million on equivalent USD funding from JP Morgan, both in respect of the R12 billion Club loan (**Annex 30**). The issuers (providers of the funds) of the Club loan are all South African registered entities, except for the Bank of China, and would provide the funding in Rand for which no conversion or risk hedging in terms of cross-currency swaps was required. The fee payable was recommended on 22 September 2015 by the acting GCFO and acting GCEO with a further endorsement by Acting Group Chief Supply Chain Officer (Mr Edward Thomas). The memorandum dated 22 September 2015 from the Acting GCEO addressed to BADC, was prepared by Mr P Ramosebudi (**Annex 30**).
- 9.8. 4 It is unclear why a "success fee" is due for work that entails advisory services. The comparison of rates related to USD-denominated funding appears to be a theoretical exercise and demonstration of a saving that would have been considered as part of the fees paid to Regiments prior to the debt origination stage for which they obtained transaction advisory fees. This benchmarking exercise does not warrant and justify any payment for the said work as the benchmarking initiative was used to justify a payment. There could thus be no justification for the payment of R82 million to Trillian for work, irrespective if the work was done by Regiments.

- 9.8. 5 The payment is further inflated (i.e. more than doubled) by claiming two savings from an assessment of different funders, i.e. CDB and JP Morgan. The funds paid should be recouped with interest, as the basis for the payment is advice given by Regiments and not by Trillian as part of the splitting of the CDB loan. It does not justify a success fee as the information was already known at the time and formed part of transaction advisory services for which payment was made.
- 9.8. 6 On 17 September 2015 (**Annex 8**), the GCE submitted a signed memorandum to the BADC requesting the appointment of Trillian as the lead manager on the R12 billion Club loan that emanated from the USD 1 billion portion of the CDB facility.
- 9.8. 7 The transaction advisory fee for the lead manager and debt origination was unjustifiably paid to Regiments, given an applicable spread of between 20 bps and 50 bps based on a notional Rand value of the loan, i.e. R18 billion used by Mr E Wood in his calculation of the fee.
- 9.8. 8 The actual payment of R99.5 million for transaction advising fees represented 88 bps (0.88%) calculated on the notional value of the USD 1.5 billion, or 10 bps calculated on the yield to maturity. For this part of the advisory work, a total of 173 bps (85 bps – (R152 756 408/R18 billion) + 88 bps) = 171 bps was paid to Regiments based on the notional value of the loan, or 25 bps (15 bps +10 bps) on the yield to maturity (which was R101 837 605 333).
- 9.8. 9 The yield to maturity used as the basis for the calculation of the advisory fee, which was knowingly and unjustifiably adopted by Regiments to obtain a significantly higher fee, is not within any market norms or standards.
- 9.8. 10 The payment of R82 million is unjustifiable and has no basis as the fee would have been paid by Transnet as part of the R99.5 million advisory services fee charged by Regiments on a so-called “success fee” basis. The fee of R82 million should be returned by Trillian and the Transnet officials that approved this payment should be held accountable for the irregular expenditure.

## 9.9 GCFO Accountability

- 9.9.1 The GCFO did not question the exorbitant fee or ask for any benchmarking, and merely signed off the fees.
- 9.9.2 Transnet should recoup a minimum of the fee stated above together with interest from the date when the invoice was paid.
- 9.9.3 The GCFO should also be held accountable for firstly agreeing to a fee that is neither market-related nor offers value for money, and secondly for authorising the payment. Regiments and the GCFO should be held jointly and severally liable for the repayment of the fees together with interest.
- 9.9.4 Group Treasury departments such as Funding were not consulted in the discussions and approval of the CDB loan facility or the floating interest rate agreed between the parties, and any attempt by Funding to provide input was considered by the Executive as ill advised. The instruction in terms of having the delegated authority and the decision to proceed with the CDB transaction, came from the GCEO and GCFO - assumedly in consultation with Regiments as the transaction advisor and lead negotiator for the CDB loan.

[illegible]



## Chapter 10: “Fixed Rate” Strategy

- 10.1 Transnet adopted a “fixed rate” strategy, but it is unclear who mandated the adoption of the strategy or what the basis for its implementation was.
- 10.2 However, given the financial implications, approval at a level that permits transactions of this size, should have been with the Group Treasurer recommending the transaction and the GCFO approving same.
- 10.3 Interest rate swaps**
- 10.3.1 Typical parties in the transaction to effect an interest rate swap are the loan issuer(s), Principal (in this case Transnet), a counterparty and an execution agent. The TSDBF swap transaction is used as an example.
- (a) **Loan issuer:** ECBD-Investec, OMSFIN, Standard Bank and Libfin (the institutions willing to partake in the transaction for a certain interest rate)
  - (b) **Counterparty:** TSDBF or Nedbank serves as the counterparty party to the interest rate swaps as an over the counter transaction and accepts the risk
  - (c) **Execution Agent/Broker:** Regiments Capital
- 10.3.2 Paragraph 6.1 clearly indicates that sufficient capacity and skill was available within the Transnet Dealing Room to execute the swaps. Hence, it was unnecessary and ill advised to appoint external advisers to trade the swaps. The statement should also be read together with paragraphs 16.1 and 16.2.
- 10.3.3 Vanilla [basic] Interest Rate Swap** is a forward contract in which one stream of future interest payments is exchanged for another, based on a specific principle amount. Interest rate swaps usually involve the exchange of a floating interest rate to a fixed rate or vice versa, to reduce or increase exposure to fluctuation in interest rates or to obtain a marginally lower interest rate that would have been possible without the interest rate swap.
- 10.3.4 The swap is executed to remove risk by shifting the risk to a counterparty by swapping a floating or variable interest rate that fluctuates in accordance with monetary policy decisions, to fixed interest rate over the term of the loan or vice versa.
- 10.3.5 The argument put forward by the Transnet Group Treasurer was that short-term interest rates were forecasted to increase. However, it appears that this was a two-year view in 2016 and 2017 and was based on forecasts available from the Bureau for Economic Research, Stellenbosch University.
- 10.4 The floating to fixed rate structure of the Transnet debt book stood at a ratio of 45%: 55% and was changed to 20%: 80% (This restructuring of the debt is stated in a memorandum of 25 August 2014, which cannot be retrieved).

- 10.5 There could be no justification for the execution of the extreme change to the floating to fixed rate strategy in the manner considered and ultimately executed, while the argument is baseless as can be concluded from the analysis below.
- 10.5.1 The strategy adopted assumes an environment of higher interest rates over a period of 15 years - the tenor of the loans, with quarterly swaps.
- 10.5.2 It is not possible to predict interest rates so far into the future and adopting an extreme adjustment to the structure from floating to fixed interest rates as seen above, is irresponsible and unfounded, especially when conferring the likely losses on Transnet.
- 10.5.3 At best, a phased approach in small increments would have been prudent based on evolving market conditions.
- 10.5.4 It appears that the decision to fix the interest rates of the loans is based on short-term interest rate fluctuations that do not support the interest rate curve; even the curve utilised by Mr E Wood for the calculation of the Regiments fee does not suggest extreme movements in short-term interest rates (**Annex 46**).
- 10.5.5 The Transnet Group Treasurer assumed that a steep yield curve (see Figure 3 below) would be the future trajectory of long-term interest rates (aligned with a fixing strategy), while no indication to date and even at the time alludes to the likelihood of such dramatic upward movements in interest rates.
- 10.5.6 It was therefore irresponsible to fix a large portion of the debt at the time and amend the debt structure from floating to fixed in a manner that had no underlying basis.

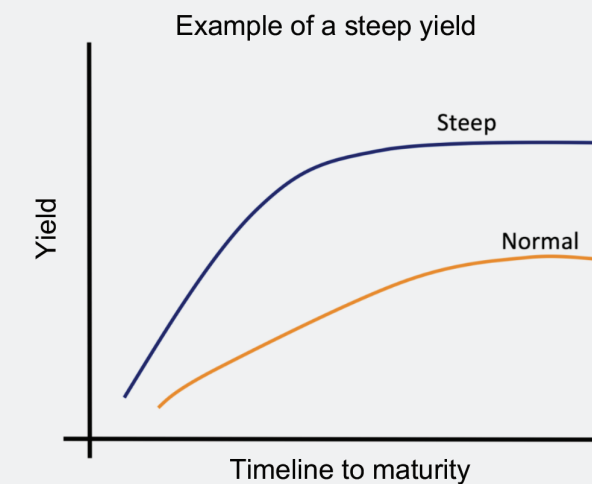


Figure 3: Illustration of normal and steep yield curves

- 10.5.6.1 Figure 4 illustrates the South African Long Bond over a period of 10 years. It is clear that the Long Bond rate over this period has moved within a range of between 6.2% and 10.3%.

10.5.6.2 The fixed rates applicable to the execution of the interest rate swaps is between 11.15% and 12.27%, which is between 100 bps and 200 bps more than the highest point of the Long bond rates over the past 10 years.

10.5.6.3 If an analysis was conducted of long-term rates and aligned with short-term interest rates, such as the 3m JIBAR and even the 6m JIBAR, it would have been clear that there was no need to fix interest rates at the levels that these swaps were executed.

10.5.7 The strategy of fixing rates at the levels executed would be very beneficial to the counterparty and the Execution Agent/Broker, as there was limited risk that rates would achieve or reach those levels unless a substantial financial crisis would confront South Africa and the Rand would weaken to levels that would necessitate a significant and swift increase in short-term interest rates.

10.5.8 Once again, the rationale for such a strategy is baseless and those persons that approved the strategy and mandated the transactions should be held to account for a significant portion of the losses.

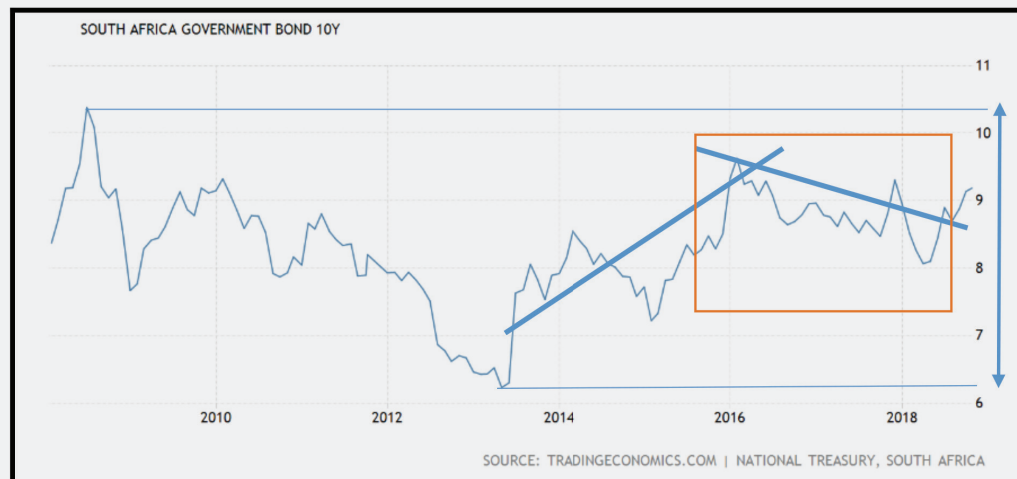


Figure 4: An illustration of the yield on RSA 10-year government bond with trend lines from 2016 when the swap transactions were executed

10.5.9 It is also very clear from Figure 4 that a downward trend emerged after the swap transactions were concluded. The applicable portion of the curve is indicated by the block inserted on the graph and reflects the short-term movements in yields that spiked, but retained a more sustainable downward pattern thereafter, indicating confidence in economic fundamentals and stability. This is further evidence that the transactions were executed quickly without being cognisant of the implications of emerging interest rate trends. It is also clear that the strategy adopted would result in additional cost of financing that Transnet could/would incur and the benefit thereof would be for the counterparty (Nedbank and the TSDBF) and Regiments executing the swaps.

10.6 Further research provides the basis for the irrational decisions made to fix the interest rates of the Club loan.

10.6.1 The illustration in Figure 5 plots the 3mJIBAR against the 6mJIBAR for the period February 1999 to October 2018, with a linear trend line fitted to each of the line graphs. If the premise was for short-term interest rates to rise, it is clearly not evident from the illustration of the 3mJIBAR.

10.6.2 The average spread between the 3mJIBAR and 6mJIBAR is 26 bps in favour of the 6mJIBAR rate. This alludes to a positive or normal long-term yield curve, which therefore does not justify the fixing of interest rates on the Club loan in the manner it was applied.

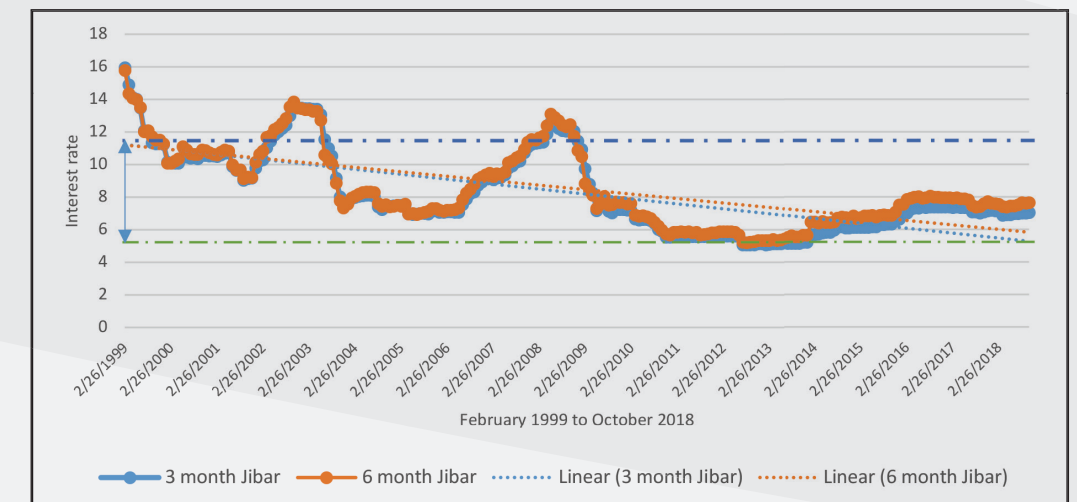


Figure 5: Illustration of the 3m JIBAR and 6m JIBAR over the period February 1999 to October 2018 with a linear trend line and its associated upper and lower bounds

Source: Bloomberg and own calculations

10.7 A further analysis to underpin the unwarranted decision to fix interest rates in the manner applied, which appears more than ever was promoted by a strategy to enable certain parties to the transaction to benefit financially, is illustrated in Figure 6 and indicates the 3m NCD (Negotiable Certificate of Deposit) rate that is closely aligned to the 3m JIBAR rate.

10.7.1 The reason for the use of the 3m NCD rate is that the BER does not forecast the 3mJIBAR, which is indicative of the inability to actually forecast interest rates, especially over the long-term. The 3m NCD rate is plotted against the 10-year government bond yield on an annual basis with a five-year forecast for the period 2018 to 2023.

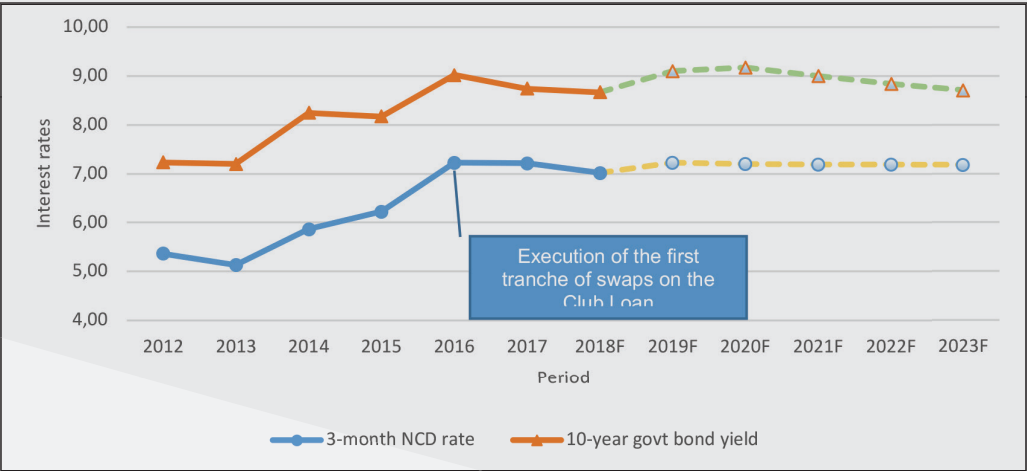


Figure 6: An illustration of the 3m NCD rate and 10-year government bond yield on an annual basis from 2012 to 2017 with forecasts from 2018 to 2023

Source: Bureau for Economic Research (BER) (October 2018)

- 10.7.2 It is clear from Figure 6 that the annual 3m NCD rate historically from 2012 to 2017 ranged between 5.13% and 7.23%. The forecast of the 3m NCD rate by the BER indicates a spread of 7.02% to 7.03% (i.e. from 2018 to 2023).
- 10.7.3 Forecasts for a period of more than five years are likely to have a high margin of error and would therefore be meaningless.
- 10.7.4 If the short-term rate is contrasted to the yield on the 10-year Government Bond, a similar pattern abounds with the historical annual rates between 7.20% and 9.02%, while the forecast by the BER is between 8.67% and 9.17%, not even close to the fixed rates of 11.15% and 12.27% applicable to the interest rate swaps for the R12 billion Club loan and the R11.3 billion of Transnet Debt respectively.
- 10.7.5 There is also no trend of divergence between the short and long-term rates; there appears to be more of a slight convergence that suggest the short and long-term interest rates would move within bounds and no shocks are expected that would justify fixing rates at the levels they were over the long-term.

Should the forecasts be realised over the period 2019 to 2023, Transnet would have paid between 189 bps and 298 bps more based on the lowest fixed rate (11.15%) for any of the loan issues associated with the interest rate swaps, and between 310 bps and 410 bps more for the highest fixed rate (12.27%) at which the swaps were executed.

- 10.8 Figure 7 illustrates what the strategy has cost Transnet in terms of basis points from inception to 1 October 2018 on the first series of swaps for an amount of R4.5 billion executed on 4 December 2015.

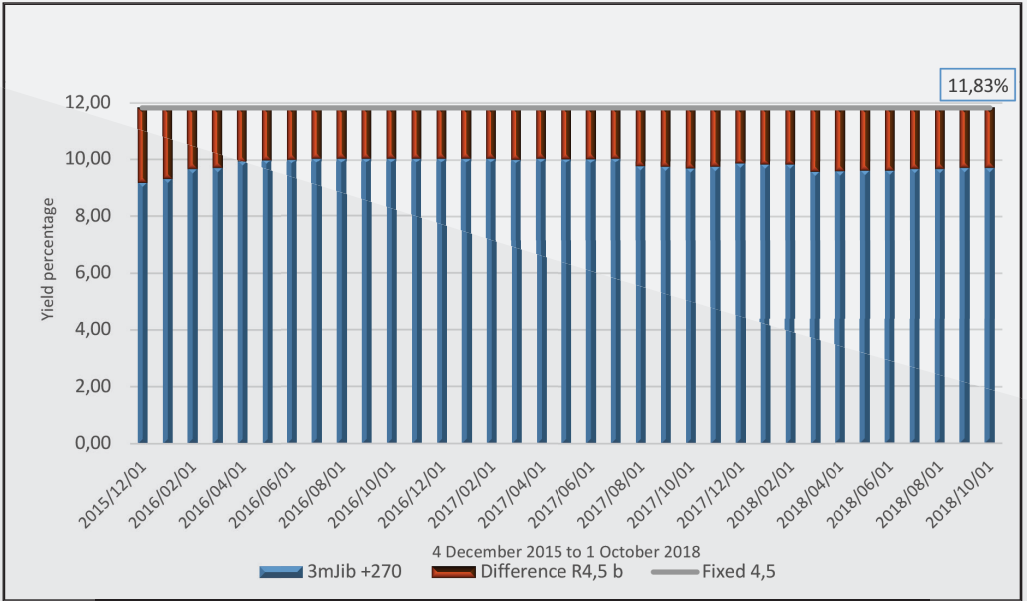


Figure 7: Illustration of the monthly differences (red bars) between the 3m JIBAR + 270 bps and the fixed rate at which the interest rates swaps were executed for the first tranche of R4.5 billion related to the R12 billion Club Loan.

Source: Bloomberg, Transnet and own calculations

- 10.8.1 The red bars indicate the monthly accrued realised negative cash flow accounted for in the Transnet income statement (refers to “Losses”) incurred by Transnet due to the introduction of a regime of fixing interest rates over the period 4 December 2015 to 1 October 2018.
- 10.8.2 A Loss of R262.6 million on the first series of R4.5 billion swaps has been incurred by Transnet as at 1 October 2018.
- 10.8.3 Figure 8 illustrates what the floating to fixed interest rate swaps has cost Transnet from inception to 1 October 2018 on the second series of swaps for an amount of R7.5 billion executed on 7 March 2016.
- 10.8.4 The red bars indicate the monthly losses in terms of basis points incurred by Transnet due to introduction of a fixed interest rate regime over the period 7 March 2016 to 1 October 2018.
- 10.8.5 The Loss as at 1 October 2018, is R480.1 million on the R7.5 billion swaps related to the Club loan.

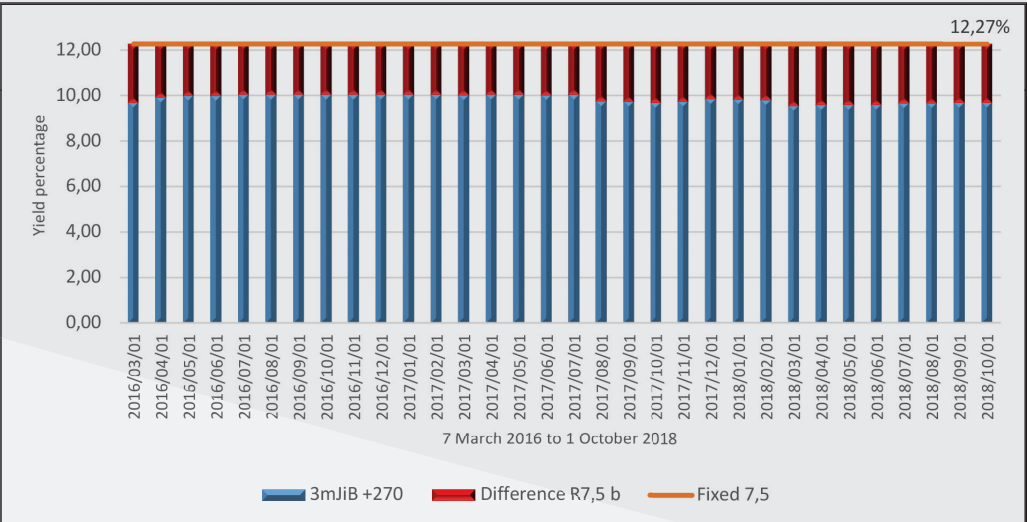


Figure 8: Illustration of the monthly differences (red bars) between the 3m JIBAR + 270 bps and the fixed rate at which the interest rates swaps were executed for the R7.5 billion tranche.

Source: Bloomberg, Transnet and own calculations

A total Loss of R742.7 million related to the R12 billion Club Loan was incurred by Transnet as at 1 October 2018 due to a strategy of fixing rates at the levels executed.

- 10.8.6 The same approach was adopted for the swaps related to the Transnet debt of R11.3 billion.
- 10.8.7 The amount and credit (pricing) is different for each issuer.
- 10.8.8 Table 3 highlights the “Losses” caused by a strategy that was implemented to extract maximum benefit from unfounded interpretation of the market interest rate movements.

Table 3: Illustration of Losses to Transnet for the interest rate swaps related to the Transnet Debt of R11.3 billion

Issuer	Execution date	Pricing	Fixed	Loss to Transnet as at 31 October 2018
EDBC	30 March 2016	6m Jib + 200 bps	12.07	R422.4 million
LIBFIN	8 April 2016	3m Jib + 175 bps	11.15	R92.2 million
Old Mutual	8 April 2016	3m Jib + 205 bps	11.15	R49.7 million
Standard Bank	8 April 2016	3m Jib + 165 bps	11.15	R102.1 million
Total				R666.4 million

The Loss to Transnet of fixing the interest rates of the swaps related to the R11.3 billion of Transnet Debt, is R666.4 million.

The Loss to Transnet by implementing the “Fixed Rate” strategy on a total of R23.3 billion, is R1409 million as at 31 October 2018.

10.9 Benchmarking

- 10.9.1 Benchmarking enables the consideration of several scenarios to ensure consistency in decision-making and to ascertain the cost implications of embarking on a strategy that has long-term implications.
- 10.9.2 The use of interest rate swaps over a 15 year maturity has implications and specifically opportunity costs if the adopted strategy is not thought through and the implications contemplated.
- 10.9.3 Together with the analysis of the SA Government Bond presented in paragraph 10.5.8, a need existed to consider the initial use of Transnet corporate bonds and compare the same to the fixed interest rate swap options in the market.
- 10.9.4 At the time (4 December 2015) when the first tranche of R4.5 billion of the R12 billion Club loan interest rate swaps was traded, it was possible to issue a Transnet TN30 Bond with the same maturity (15 years) and same credit as the interest rate swap. The official JSE/BESA (Bond Exchange of South Africa) closing rate for the TN30 bond on 4 December 2015 was 11.18%.

10.9.4.1 The rate (yield to maturity) of 11.18% was applicable with half-yearly interest payments referred to as Nominal Accrued Compounded semi-annually (NACS).

10.9.4.2 The R12 billion Club loan swaps are priced on a quarterly basis, which, if converted to ensure parity, would imply a rate of 11.03% (Nominal Accrued Compounded quarterly, NACQ) applicable to the R4.5 billion.

10.9.4.3 The PV01 per R1 million nominal on the R4.5 billion structure is R626.35. On the date the transaction was executed, the Transnet TN27 Bond closed at a rate of 10.66% (NACS). If converted to NACQ, the applicable rate is 10.52%.

10.9.4.4 On the date of the transaction, the PV01 per R1 million nominal TN30 Bond was R690.00 and R610.00 on the TN27 Bond.

10.9.4.5 This specific structure is closer to the duration of the TN27 Bond, which could have been issued (NACQ) at 10.52% compared to the fixed rate of 11.83%. This suggests that the fixed rate of the swap should have been closer to the 10.52% yield of the TN27 Bond, which implies an approximate difference of 131 bps.
- 10.9.5 At the time (7 March 2016) when the second tranche of R7.5 billion of the R12 billion Club loan interest rate swaps were traded, it was possible to issue a Transnet TN30 Bond with the same maturity (15 years) and same credit as the interest rate swap. The official JSE/BESA (Bond Exchange of South Africa) closing rate for the TN30 bond on 7 March 2016 was 11.80%.



- |          |   |
|----------|---|
| 10.9.5.1 | The rate (yield to maturity) of 11.80% was applicable with half-yearly interest payments referred to as Nominal Accrued Compounded semi-annually (NACS)   |
| 10.9.5.2 | The R12 billion Club loan swaps are priced on a quarterly basis, which, if converted to ensure parity, would imply a rate of 11.63% (Nominal Accrued Compounded quarterly, NACQ) applicable to the R7.5 billion.  |
| 10.9.5.3 | The PV01 per R1 million nominal on the R7.5 billion structure is R615.31. On the date the transaction was executed, the Transnet TN27 Bond closed at a rate of 11.33% (NACS). If converted to NACQ, the applicable rate is 11.17%.  |
| 10.9.5.4 | On the date of the transaction, The PV01 per R1 million nominal TN30 Bond was R641.00 and R567.00 on the TN27 Bond.   |
| 10.9.5.5 | This specific structure is closer, but lower in duration to the TN30 Bond, which implies that Transnet could have issued a similar duration bond at approximately 15 bps lower than the TN30 Bond, which implies a yield of 11.65%. If converted to NACQ, this is 11.48%. This suggests that the fixed rate of the swap should have been closer to 11.48%, which implies an approximate difference of 79 bps. |
| 10.9.5.6 | The pricing related to the swaps of 4 December 2015 (first tranche of R4.5 billion) were traded at a fixed price of 11.83% and the swaps executed on 7 <sup>th</sup> March 2016 (second tranche of R7.5 billion) at a price of 12.27%.  |
| 10.9.5.7 | The analysis that should have been conducted for benchmarking purposes, was not done and neither were the dealers requested to provide comparative pricing when assessing the financial implications for Transnet.  |
| 10.9.5.8 | In addition to Interest Rate swap, Transnet executed cross-currency swaps on the CDB loan.  |

[illegible]

## Chapter 11: R12 billion Club Loan swaps

- 11.1 A Request for Proposals ("RFP") dated 6 May 2015 was issued for the hedging of financial risks (interest rate, credit and currency risk) and to act as lead arranger for R12 billion Club loan for a period of up to fifteen (15) years (**Annex 29.1**).
- 11.2 On 3 December 2015, Mr P Ramosebudi submitted a memorandum to the Acting GCFO that was approved and stated *inter alia*, the following (**Annex 27**).
- 11.2.1 "Hedge the interest rate risk exposures from a floating to a fixed basis..."
- 11.2.2 "Instruct Regiments Capital as per the 1064 Locomotives mandate to execute the hedges with Transnet approved counterparts."
- 11.2.3 "The execution cost of hedges by Regiments Capital will be all inclusive in the rate of the interest rate swap".
- 11.3 Regiments was appointed to execute the interest rate swaps from a floating (variable rate) to a fixed rate for the remaining term of the loan. This is confirmed by the Affidavit prepared by Mr E Wood related to the Club loan. It is stated on page 62 (807) of the Affidavit "that Regiments would benefit from certain interest rate swaps that would take place as a result of the Club loan" (**Annex 46**).
- 11.4 The Club loan was a floating rate loan, which was swapped to fixed one week later. The initial loan could have also been negotiated as a fixed rate loan, which would then have not necessitated any hedging related to interest swaps from floating to fixed.
- 11.5 The analysis as per the memorandum prepared by Mr P Ramosebudi shows that there was no justification for entering into the interest rate swap transactions to fix interest rates using a "short-term" outlook while knowingly entering into a transaction that would likely have negative financial implications for Transnet over a period of 15 years. Such actions would invariably increase the risk to Transnet due to the tenor of the loan. Furthermore, the rates at which the transactions were executed, were well above market levels and have cost Transnet R742.7 million as at 1 October 2018.
- 11.6 Mr P Ramosebudi should indicate the justifiability of fixing the rates knowing that this was not defensible at levels well above the mid-market blended rate indicated by Bloomberg on the day the swaps were executed (**Annex 47**).
- 11.7 This decision effectively bound Transnet to a significant risk and costs incurred that could not be mitigated at a later stage, except at significant cost, and which has already resulted in substantial Losses for Transnet at 1 October 2018 (R12 billion Club loan) and 31 October 2018 (R11.3 billion Transnet Debt).
- 11.8 A loss of R348.2 million was generated due to the mispricing of the trades when aligned with the Bloomberg blended mid-rate at the time. This is based on the difference between the fixed rate of the swap and the Bloomberg blended mid-rate, and the Point

Value ("PV") determined using the Bloomberg Pricing module, as well as an assumed 30 bps that is the assumed cost the Transnet Dealer Room would be able to trade.

- 11.9 This loss together with interest that would accrue is due and payable and Transnet should recoup the losses from Mr P Ramosebudi as the compiler of the memorandum, Mr Garry Pita (Acting GCFO) and Regiments as the advisor to Transnet, who were responsible for the nature and scope of these transactions and who further approved the swaps from floating to fixed for the second tranche of R7.5 billion related to the R12 billion Club loan on 29 February 2016 (**Annex 48**).
- 11.10 The interest rate swap (float to fixed) on the Club loan was traded in two tranches:
- 11.10.1 Execution of swaps on 4 December 2015 (R4.5 billion):
- (a) Swap Confirmation No 31477670 for R1.5 billion (Nedbank);
- (b) Swap Confirmation No 31477785 for R1.5 billion (Nedbank); and
- (c) Swap confirmation No 31477836 for R1.5 billion (Nedbank).
- 11.10.1.1 Calculations show that the fixed rate of the first tranche of the R12 billion Club loan, after the conclusion of the interest rate swap and a fair value total cost is added, based on the Transnet Dealing team historical trades, should have been approximately 11.35% at closing (blended mid-rate on closing of 11.156% plus 20 basis points).
- 11.10.1.2 The first tranche interest rate swap was transacted by Regiments Capital through Nedbank at a fixed rate of 11.83%.
- 11.10.1.3 The first tranche of the Club loan interest rate swap was traded on 4 December 2015. Mr P Ramosebudi argued a volatile economic environment with high inflation and a volatile exchange rate as the basis for the interest rate swaps. It is so opportune that this argument would only hold water if some "black swan event" could trigger exchange rate volatility or higher inflation, which would invariable drive interest rates higher. Five days after the execution of the first swaps with Nedbank, the Finance Minister at the time, Mr Nhlanhla Nene, was sacked (9 December 2015), which was a "black swan event" and caused significant volatility in the Rand (**Annex 49**).
- 11.10.2 The event referred to in paragraph 11.10.1.3 is best understood in the context of short-term interest rates represented by the 3mJIBAR. Figure 9 indicates the 3mJIBAR for the period 16 November 2015 to 31 December 2015, and also highlights the day on which Mr Nhlanhla Nene (9 December 2015) was sacked and the appointment of Mr Pravin Gordhan (14 December 2015).

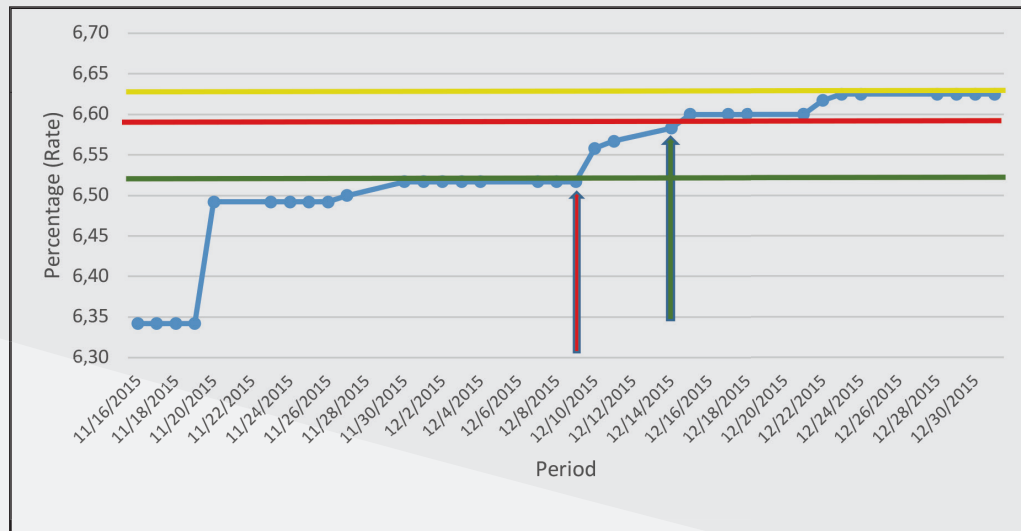


Figure 9: 3mJIBAR interest rates for the period 16 November 2015 to 31 December 2016.

- 11.10.2.1 Short-term interest rates increased by 6.6 bps from the date Mr Nhlanhla Nene (9 December 2015) was sacked and the appointment of Mr Pravin Gordhan (14 December 2015). After the appointment of Mr Pravin Gordhan, short-term interest rates moved within a narrow bound that indicate some stability in the market. However, these events never resulted in short-term interest rates achieving the levels of fixed rates for the R4.5 billion of 11.83% and 12.27% for the R7.5 billion, both of the R12 billion Club loan.
- 11.10.2.2 Figure 10 indicates the impact of the abovementioned events on the long-term interest rates represented by the R186 Government Bond. The spike in long-term yields is clear after the firing of Mr Nhlanhla Nene, reaching a high of 10.35% before receding once it became apparent the Mr Pravin Gordhan would be appointed as the finance minister.
- 11.10.2.3 Not even the “black swan event” resulted in long-term interest rates increasing to above 10.35% when compared to the fixed rate of 11.83% on the R4.5 billion tranche of the R12 billion Club loan. The rates were still 148 bps lower than the fixed rate despite long-term interest rates increasing by 118.8 bps between 9 December 2015 and 11 December 2015. Long-term rates varied between 9.30% and 9.89% from 14 December to 31 December.

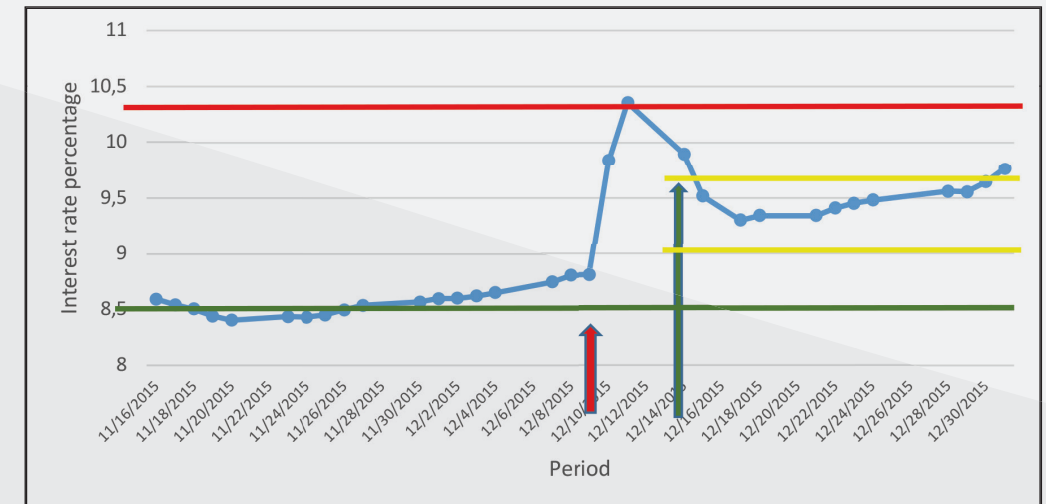


Figure 10: R186 government bond representing long-term interest rates for the period 16 November 2015 to 31 December 2016.

#### 11.10.3 Execution of swaps on 7<sup>th</sup> December 2015 (R7.5 billion) (Annex 26):

- Swap confirmation No 32537127 for R1.5 billion (Nedbank);
- Swap confirmation No 32538332 for R1.5 billion (Nedbank);
- Swap confirmation No 32539770 for R1.5 billion (Nedbank);
- Swap confirmation No 32538073 for R1.5 billion (Nedbank); and
- Swap confirmation No 32537127 for R1.5 billion (Nedbank).

#### 11.11 Mispricing implications

- All derivative instruments must be mark-to-market using the closing parameters to fair value the instrument in order to obtain a daily profit or loss figure.
- Mark-to-market involves recording the price or value of a security, portfolio or account to reflect the current market value at a point in time.
- This indicates to what extent you are recording profits or Losses from your decision. The mark-to-market on the transactions were still out of money (i.e. a loss is still being recorded to date by Transnet), which indicates that short-term and long-term interest rates did not increase as expected.
- As at 1 October 2018, the situation is the same, resulting in losses for Transnet as illustrated above or stated differently, being out of the money.
- After Regiments did the trade, the Transnet Traders requested prices in the swap market and the prices received from two banks (HSBC and ABSA) were 15 and 35 bps above the mid-rate (price) (Annex 58).
- The blended mid-price (rate) according to Bloomberg (utilising the Swap Pricing Module) at the close on the day the swaps were executed, was 11.156% and

11.444% for the first and second tranches of R4.5 billion and R7.5 billion, respectively.

11.11.6.1 The blended rate means the weighting of the rates applicable to the total loan as different spreads (margins) are applicable to different loan issuers.

11.11.6.2 The outcome is a blended rate that is applicable to the full swap.

**The total Losses of fixing the interest rates on all loan issues including fees, i.e. for the R12 billion Club loan (1 October 2018) and Transnet Debt of R11.3 billion with the TSDBF as the counterparty (31 October 2018), is R1 409 million (based on the difference between floating and fixed interest rates).**

11.12 It is important to understand the financial effect of a higher fixed rate to comprehend the additional cost to Transnet and the income / profit to the agent (Regiments Capital) and the counterparty (Nedbank).

11.12.1 One basis point is one hundredth of one percent. The longer the interest rate swap maturity, the higher the present Rand value of one basis point.

11.12.2 It is crucial to understand that one basis point on the swap is not the same as one basis point on the face value of the loan.

11.12.3 The cost of an extra basis point on the swap is an additional cost for each payment on interest that is made until the swap matures.

11.12.4 One basis point on the swap of both tranches is approximately R7.0 million, so 20 basis points or 0.20% is approximately R148.0 million.

11.12.5 Regiments would receive a total fee of R148.7 million for swaps related to the R12 billion Club loan based on the fixed yield (market interest rate).

11.12.6 It should be noted that Regiments would receive a fee of 20 bps every quarter for the execution of the swaps over a period of 15 years, the tenor of the loan, of which about 11 to 12 years remain.

11.12.7 It must be determined whether Regiments is paid by Nedbank on a quarterly basis for the execution of the swaps or in the same manner as dealt with by Transnet, whereby the fees are calculated over time to a present value and a once off payment is affected.

11.13 In terms of market norms, the fee payable on yield would be 1.0 bps or less or a fee of between 20 and 25 bps on the notional value, which is dependent on the agent's fee structure.

11.14 Transnet therefore overpaid Regiments by an amount of R141.3 million for the execution of the swaps on the Club Loan.

11.15 Regiments must repay R141.3 million plus interest (refer to paragraph 18.9.4).

11.16 As Treasury staff were excluded from providing any advice and benchmarking, it is unclear what basis was used to consider the decision to not fix the interest rate of the CDB loan. If the additional inflated cost of the interest rate swap was included, a fixed rate loan would have been a much better proposition.

11.17 As the "fixed rate strategy" was already in place at Transnet, this was a creative way by Regiments as advisers to "produce" more large transactions, especially derivative transactions so that prices can be inflated and hidden, resulting in larger fee income and / or profit, and to defraud Transnet, which resulted in sustained financial losses.

11.18 The funding that was needed to replace the R5.0 billion loan that matured in February 2016, was outside Regiments' transaction advisory mandate, but was included in the negotiated facility and again, Transnet Treasury was excluded by the acting GCFO as well as Mr P Ramosebudi.

11.19 Nedbank as the counterparty for the Club loan interest rate swaps, should explain what arrangement existed between Regiments and themselves with regard to the execution of the transactions in terms of the following:

11.19.1 Was Regiments paid a present value of all the execution fees over the tenor of the loan, which is their "fee recovery policy"? The applicable agreement that refers to the payment of fees to Regiments is required from Nedbank.

11.19.2 Were there any other payment arrangements between Regiments and Nedbank related to Nedbank as the counterparty for the swaps of the R12 billion Club loan?

11.19.3 This is prudent as the Transnet dealers were not party to the pricing, structures or execution of the swaps.

11.20 An email addressed by Mr P Ramosebudi to Mr Moss Brinkman (Head: Balance Sheet Management – Treasury, Nedbank Corporate & Investment Banking) on 16 March 2016 at 15:40, nine days after the execution of the second tranche of interest rate swaps for a value of R7.5 billion, indicates the following (**Annex 50**):

11.20.1 Mr P Ramosebudi clearly indicates that it is acceptable to miss-price the swaps and confirms the same by indicating that "I am further aware and agree that these trades were executed at a level of 12.37% which results in a difference of 95 bps over the mid-market value [11.42% nacq]".

11.21 An email from Mr Moss Brinkman to Mr P Ramosebudi on 16 March 2016 at 13:30 states the following: ".... our compliance is requesting a letter that essentially states that Transnet has looked at the transaction and the rates concluded and that Transnet is satisfied with the pricing and value of the transaction". For ease – essentially, they are looking for something along these lines: "In terms of the Interest rate Swap transactions entered into with Nedbank on or about 8 March 2016, I am aware that these trades priced at a pure mid-market rate of approximately 11.42% nacq. I am further aware and agree that these trades were executed at a level of 12.37% nacq – which results in a difference of 95 bps over mid-market value" (**Annex 51**).

11.22 Mr P Ramosebudi copied the proposed wording from Mr Moss Brinkman and sent the response as stated above. This confirms the endorsement by Transnet of the Swaps at 12.37% and acceptance thereof by Nedbank, irrespective of the large spread. It is also clear in the email from Mr Moss Brinkman that Nedbank appeared unsure of the large difference in the fixed rate and the mid-market rate, but proceeded with the trades anyway, not questioning the *modus operandi*.

11.23 Mr Ramosebudi was responsible for the derivative transactions and should be held accountable together with the GCFO who would authorise the execution of such transactions. Alternatively, in terms of the DoA, all interest rate swap transactions could be approved by Mr P Ramosebudi and the GCFO. The only difference is the approval threshold.

[illegible]



## Chapter 12: CDB Loan Swaps

### 12.1 Cross-currency Swaps (CCS): CDB loan

- 12.1.1 A currency swap, also known as a cross-currency swap, is an off-balance sheet [over the counter] transaction in which two parties exchange principal (capital portion of the loan) in different currencies. The purpose of a currency swap is to hedge exposure to exchange rate risk<sup>5</sup>.
- 12.1.2 JP Morgan would act as sole hedge counterparty, lead and underwrite the equivalent ZAR amount for a loan of USD 1.5 billion. Transnet would enter into a hedging transaction with JP Morgan in the form of a series of cross-currency swaps and credit contingent structures in the form of Contingent Credit Default Swaps. JP Morgan was also mandated to execute the swaps (Annex 52).
- 12.1.3 It should be noted that JP Morgan proposed in the CDB hedging considerations (December 2014) that Transnet and/or its advisors seek a price from two or maximum three banks for a smaller transaction with timing and details that are quite different from the underlying trade, whilst still allowing visibility on comparable execution charges for market and credit risk. It is unclear if Transnet or Regiments did this and what the outcomes were in terms of a pricing comparison.
- 12.1.4 Regiments was paid a contingency fee of R7.5 million for advisory services to Transnet for structuring and arranging the CCS. There was sufficient capacity and know-how within the Transnet Dealer Room to price swap structures and execute the CCS and no need existed for external advice due to the nature of the swaps being referred to as vanilla (simple/standard). It was clearly conveyed by the Group Treasurer to the dealers, which was confirmed by them in subsequent discussions, that all deals and structures would not be priced, structured or executed by the Transnet Dealer Room despite the capacity and skill among the traders to do the same.
- 12.1.5 This fee was unjustifiably paid to Regiments and represents wasteful and irregular expenditure in terms of the PFMA and the TPPM. The invoice submitted by Regiments was not issued to anyone at Transnet in particular, but the GCFO would as part of the oversight role and given the size of the invoice amounts, have the delegated authority to sign-off such large invoices. The GCFO, who worked directly with Regiments with the knowledge of the Group Treasurer, should be held accountable and Regiments should return the fees together with the interest from when the invoice was paid. It is within the mandate of the Group Treasurer and the GCFO to perform the necessary oversight, which clearly was not done and as a consequence, they supported this undue payment to Regiments.
- 12.1.6 Transnet paid JP Morgan 20 bps for the cost of the hedge at each hedging transaction. It is not possible to determine if and what Regiments was paid as JP Morgan was responsible for the execution of the swaps. It is further unclear what role Regiments had in the transaction for which JP Morgan was appointed

<sup>5</sup> <https://www.investopedia.com>

to hedge and execute (Regiments was the SDP of JP Morgan through the appointment).

- 12.1.7 It is unclear why Regiments was paid a contingency fee of R7.5 million for advisory services to Transnet in terms of structuring and arranging the cross-currency swaps, what the basis thereof was and how the amount was determined. The amount paid to Regiments by Transnet does not seem to have any basis.
- 12.1.8 JP Morgan was appointed to deal with all matters related to managing and introducing mechanisms that would protect Transnet from financial and other associated risks over the term of the loan, which included advice, structuring and executing the swaps.

### 12.2 Contingent Credit Default Swap ("CCDS"): CDB Loan

- 12.2.1 A credit default swap<sup>6</sup> ("CDS") is 'contingent' upon two triggers. The first is an ordinary CDS, where the buyer receives the face value of the bond or loan from the protection seller in the event of a default. This is termed a credit event, such as defaulting on interest payments. The other trigger is specific to the contingent part of the CDS and is another event usually in relation to a macro-economic variable (not firm specific). A contingent CDS is designed to provide cover against unfavourable market movements.
- 12.2.2 In order to hedge the CDB loan and mitigate the risk, there was an apparent need for the application of CCDS, which were introduced at each capital drawdown. This was a requirement from Transnet in terms of the RFP issued to prospective bidders for hedging the CDB Loan transaction.
- 12.2.3 Regiments claims to have structured and arranged the CCDS structure to effectively reduce the ZAR interest rate payable on the loan structured by Transnet per the letter dated 15 July 2015 sent by Mr E Wood to Mr A Singh (Annex 31). This is not true as the intellectual property to conceive, implement and execute the CCDS structure was introduced by JP Morgan in terms of their appointment. The approval of their appointment and the agreed terms were signed off by the GCFO and accepted by the Acting GCE. Based on this premise, there could be no justification for any payment to Regiments for the work they purported to have done.
- 12.2.4 The fee of R5 743 592 (unclear how this was calculated) should be repaid by Regiments with interest from the day the invoice was paid. The GCFO at the time should be held accountable for the payment of the fees related to the CCDS, while the Group Treasurer at the time should explain the use of Regiments for advisory services related to the swaps while JP Morgan was appointed in terms of their mandate to price, structure and execute the swap transactions. The latter would have fallen within the mandate of the Group Treasurer and GCFO. Regiments, the GCFO and Acting GCE should be held liable both jointly and severally for the recoupment of the fee together with interest from the date the invoice was paid by Transnet.

<sup>6</sup> <https://www.financialencyclopedia.net>

Chapter 13: Interest rate swaps: TSDBF

- 13.1
- Regiments was responsible for the execution of the interest rate swaps related to Transnet Debt of R11.3 billion.
- 13.2
- The cost to or loss generated for Transnet by fixing the interest rates on the R11.3 billion of Transnet Debt as at 31 October 2018, was R666.4 million and has subsequently increased. These losses are expected to increase further over the remaining tenor of the swaps. The Group Treasurer, who has the mandate and authority together with the GCFO for using derivative instruments, should be held liable for a large portion of the losses as there could be no justification for so drastically changing the debt structure from floating to fixed over such an extended period of time. Attempting to unwind these positions would result in further excessive costs for Transnet.
- 13.3
- Regiments would have been paid 20 pbs as an execution fee totalling R112.4 million for the swaps related to the Transnet Debt (see paragraph 11.13).
- 13.4
- Regiments received or drew R227.8 million from TSDBF for executing the swap transactions on 30 March 2016 and 8 April 2016 at a fee of 20 bps. The alignment of the fee paid to Regiments and the approach adopted for the analysis in this report, indicate that Regiments received 40.537 bps and not 20 bps as per the memorandum (dated 28 August 2017 and prepared by the Group Treasurer) for the execution of each of the four swaps related to the TSDBF as the counterparty (Annex 53). This is well above market norms where transactions of this size may attract a fee of less than one basis point based on yield, and is therefore highly irregular and unwarranted. Regiments was paid R115.4 million in addition to the 20 bps that Transnet would pay the TSDBF as part of the rate for the execution of the swaps. Under normal circumstances, the execution fee is tied up in the yield (market rate).
- 13.5
- These funds should be recouped from the Group Treasurer (Mr P Ramosebudi) who was party to the approval of the execution fee of 20 bps as part of his mandate and from the GCFO Officer (Mr Garry Pita) who approved the fee of 20 bps for the execution of the swaps related to the TSDBF as a counterparty (Annex 54).
- 13.6
- The Group Treasurer (Mr P Ramosebudi) approved the fee payable to Regiments at 20 bps as part of his mandate (Annex 53), acknowledging the fee rate paid to Regiments, and is therefore liable for not adopting marked norms and standards as demonstrated, or eliciting quotations for the fee applicable to the execution of such a large swap. Therefore, the Group Treasurer and others that approved the transaction should be held responsible for the overpayment of fees to Regiments ranging from between R106.8 million and R111.0 million based on market norms. In addition, the Chairperson of the Board of Trustees and where applicable, the Trustees of the TSDBF should indicate how such a large fee for executing interest rate swaps was justified. In addition, minutes of the

meeting where said decision was taken should be provided, failing which a significant portion of the fee should be recouped with interest from the date the swap transactions were executed.

13.7 Cost and fees determination

- 13.7.1
- The cost and fees payable for interest rate swaps are based on a Point Value determined through the Bloomberg Swap Pricing Module on the date the transaction is executed. The applicable notional value of the loan is used as input and a point value (PV01) (i.e. one basis point) is calculated based on the terms of the loan and credit (applicable coupon rate). For the trades related to R11.3 billion Transnet debt, the PV01 for the loans are different as the interest rates are different. A screenshot of the Bloomberg interface for the Interest Rate Swap Module is provided in Figure 11 as an illustration of one of the swaps related to the R12 billion Club loan.
- 13.7.2
- The important figures to note on the screenshot that refers to the ABSA loan of R1.5 billion with the swap executed on 7 March 2016, are the following. The ABSA loan is part of the second tranche of the R12 billion Club loan. There are two legs to the loan as floating rates are to be swapped for fixed rates.
- (a)
- Notional:
- Value of the loan to be swapped
- (b)
- Coupon:
- The blended mid-rate at the time of the swap transaction that is used for benchmarking purposes and refers specifically to the fixed leg of the transaction
- (c)
- Index:
- 3mJIBAR (base short-term interest rate)
- (d)
- Latest index:
- JIBAR rate at the time of execution
- (e)
- Spread:
- 260 bps (margin or profit that the bank wants on the transaction)
- (f)
- PV01:
- Point value for one basis point used for the calculation of fees

91) Actions	92) Products	93) Views	94) Info	95) Settings	Swap Manager
Solver (Premium)	31) Load	32) Save	35) Trade	38) CCP	43) Send to EMIR ID
Deal	4) Details	5) Curves	6) Cashflow	7) Resets	9) Scenario
Amort	Fix	Flt	Swap	Counterparty	SWAP CNTRPARTY
SL4M2ZH4	Amortizing	SL4M2ZH5	Amortizing	Valuation Settings	
Leg 1: Fixed	Receive	Leg 2: Float	Pay	Curve Date	03/07/2016
Notional	1,500,000,000	Notional	1,500,000,000	Valuation	03/07/2016
Currency	ZAR	Currency	ZAR	CSA Coll Ccy	N/A
Effective	0D 03/07/2016	Effective	0D 03/07/2016		
Maturity	14Y9 12/02/2030	Maturity	14Y9 12/02/2030		
Coupon	11.444000	Index	3M JIBA3M		
Pay Freq	Quarterly	Spread	260.000 bp		
Day Count	ACT/365	Leverage	1.00000		
Calc Basis	Money Mkt	Latest Index	6.99921		
		Reset Freq	Quarterly		
		Pay Freq	Quarterly		
		Day Count	ACT/365		
Market					
Dscnt	18 M ZAR LOCAL IRS	Dscnt	18 M ZAR LOCAL IRS		
Fwd	18 M ZAR LOCAL IRS				
Leg 1: NPV	1,727,881,820.70	Leg 2: NPV	-1,716,789,133.02		
Valuation Results				22) Calculators	
Par Cpn	11.310942	Premium	0.73951	PV01	833,675.58
Principal	11,092,687.68	BP Value	73.95125	DV01	836,174.00
Accrued	0.00			Gamma (1bp)	716.78
NPV	11,092,687.68				
Australia 61 2 9777 8600 Brazil 5511 2395 9000 Europe 44 20 7330 7500 Germany 49 69 9204 1210 Hong Kong 852 2977 6000					
Japan 81 3 3201 8900 Singapore 65 6212 1000 U.S. 1 212 318 2000 Copyright 2016 Bloomberg Finance L.P.					
SN 762687 SAST GMT+2:00 H628-2271-0 19-May-2016 17:05:58					

Figure 11: Screenshot of the Bloomberg Swap Pricing Module for the ABSA loan on 7 March 2016

Source: Bloomberg and Transnet

13.7.3 Table 3 indicates the Execution date, Point Value, Blended mid-rate (from Bloomberg), fixed rate at which the swap transaction was executed and the basis point difference between the blended mid-rate and fixed rate.

Table 3:A summary of the swap transaction inputs for loans from the specified financial institutions

Issuer	Loan Amount R' billion	Execution date	PV01	Blended mid-rate	Fixed rate	Basis-point difference
			1	2	3	4
EDBC-Investec	6.991	30 March 2016	R3 557 774	11.27	12.07	80
LIBFIN	1.604	8 April 2016	R856 772	10.43	11.15	72
Old Mutual	1.000	8 April 2016	R603 026	10.43	11.15	72
Standard Bank	1.700	8 April 2016	R601 977	10.43	11.15	72

Source: Bloomberg and own calculations

13.8 The Point Values are used to calculate the total execution cost and any other fees applicable to the transaction. Table 4 indicates the execution cost including the fee paid to Regiments based on the difference between the mark-to-market and the fixed rate of the swaps.

13.9 The data provided in Table 4 indicate that Regiments was paid an execution fee of R112.4 million for swaps related to the Transnet debt of R11.3 billion. A saving of R264.5 million would have accrued to Transnet if it was done by the Dealing Room based on the indicative pricing.

Table 4: Calculation of execution costs and fees applicable to R11.3 billion Transnet Debt with specific reference to Regiments

Issuer	Loan Amount R' billion	Execution date	PV01	Total execution cost including the Regiments fee of 20 bps	Regiments fee (20 bps)	Excess cost utilising Regiments
				5 = (1) x (4)	6= 20bp x (1)	7= (5) – (6)
EDBC	6.991	30 March 2016	R3 557 774	R 284 621 902	R 71 155 475	R 177 888 689
LIBFIN	1.604	8 April 2016	R856 772	R 61 687 569	R 17 135 436	R 35 984 415
Old Mutual	1.000	8 April 2016	R603 026	R 43 417 873	R 12 060 520	R 25 327 092
Standard Bank	1.700	8 April 2016	R601 977	R 43 342 310	R 12 039 531	R 25 283 014
	11.295		R5 619 549	R 433 069 654	R 112 390 962	R 264 483 210

Note: Read with Table 3

Source: Bloomberg and own calculations



## COMMENTS

## Chapter 14: Conflict of interest

- 14.1 Regiments was also appointed as the only service provider to conduct reviews in the LDI DB Pension space and was found through an independent review by Mr Harry Gazendam (email dated 12 March 2014) to be the only provider who met the requirements of Transnet. In terms of RFP NUMBER GSM/12/0775A, Regiments was thereby appointed to perform a review of the TSDBF (Annex 32.1).
- 14.2 In terms hereof, a TSDBF Execution Version Mandate drafted by ENS as a Portfolio Management Agreement ("the Agreement") was entered into between the TSDBF and Regiments Fund Managers (Pty) Ltd on 1 October 2015. The function and responsibilities as well as authority of the Portfolio Manager are referenced in sections 6 and 7 of the Agreement (Annex 36).
- 14.3 It should be noted that nowhere in the Agreement is the TSDBF Policy Investment Statement referred to or referenced. *The purpose of an Investment Policy Statement ("IPS") is to establish a clear understanding regarding the Pension Fund's investment objectives and management practices between the TSDBF and its Investment Managers (Regiments Fund Managers (Pty) Ltd) engaged by the TSDBF.* The Investment and Risk Management Framework is referenced on numerous occasions, but this would be subordinate to the Investment Policy Statement that is overarching, sets the regulatory framework for the fund and is congruent with the Fund Rules.
- 14.4 Advisory services at the time of considering the interest rate swaps related to R11.3 billion from floating to fixed were provided by Regiments to Transnet having been appointed as far back as May 2013. In October 2015, six months before the execution of the swaps, Regiments were appointed by the TSDBF as portfolio managers of the fund.
- 14.5 Clearly, being an advisor to Transnet at the time and having the mandate to manage the TSDBF portfolio of the TSDBF in terms of the TSDBF Investment Policy Statement, resulted in a situation where Regiments was advising both Transnet and the TSDBF related to transactions that would need to and could only benefit one party through the execution of the interest rate swaps and would therefore be detrimental to the other party. This is a clear conflict and there can only be one winner.
- 14.6 In order to understand whether a conflict of interest arose, which could have been knowingly exploited by Regiments, the following checklist prepared by the Law Society of British Columbia in Canada (as amended) would suffice to assess the basis of a conflict of interest.

Statement	Context and view
Did Regiments accept the duty to avoid conflicts of interest, the duty of commitment to Transnet's cause and the duty of candour?	This is clearly not the case as only one party would benefit (be in the money) from the interest rate swaps based on the fixed rate and the other would incur losses (or be out of the money).
Did Regiments disclose potential conflict that takes into consideration the duty of confidentiality to Transnet as their client?	No, officials of Transnet were aware of the elaborate scheme and knowingly would assisted in structuring the deal that would cause likely losses for Transnet based on the manner in which the swaps were structured.
Regiments knowingly jointly represented Transnet and the TSDBF; how did Regiments address the potential conflicts?	Due to the implementation of the interest swaps knowingly advising both parties, conflicts of interest were not addressed and neither declared.
Did either Transnet and/or the TSDBF raise conflict of interest issues related to Regiments advising either party on the potential outcomes of entering into a counter-party transaction with specific reference to the interest rate swaps?	On both sides, officials that were party to transaction were clear on the mandate and unperturbed about conflict of interest. No consideration given to the potential negative consequences for one of the parties when entering into the swap trades.
Regiments' loyalty to or representation of TSDBF could materially and adversely be affected by Regiments' relationship with Transnet, or interest in Transnet or the subject matter carried substantial risk?	Loyalty to Transnet as the client never assumed any good faith and it was an elaborate effort to ignore any potential risks as the conflict of interest was never a burning platform.
Regiments had a financial interest related to both parties that would reasonably be expected to affect their professional judgment in terms of securing a favourable outcome for Transnet.	The essence of the transaction was to enable duplication of fees and irrespective of the outcome, fees would be paid directly and indirectly by both parties to the transaction, and Regiments would consequently benefit irrespective of the outcomes from the trades.

14.7 Contravention of Fund Manager Mandate and Investment Policy Statement of the TSDBF

- 14.7. 1 TSDBF is a statutory fund that is not subject to the rules of the Pension Funds Act, but was established in terms of the Transnet Pension Funds Act, 1990 (Act 62 of 1990), as amended. Transnet controls the board of trustees of the TSDBF, whereas private funds must have half of their board elected by members. The TSDBF is also not regulated by the Pension Funds Adjudicator.
- 14.7. 2 In terms of section 4.9.2 of the Transnet Pension Fund Rules, the Investment Committee shall, subject to guidelines prescribed by the Trustees and the requirements of the Pension Fund Act, 1956 (Act 24 of 1956), invest or cause to be invested the moneys of the Fund not immediately required for current expenses and benefit payments **(Annex 55)**.

- 14.7. 3 The mandate accorded to the Investment Committee is underpinned by the IPS, which is the responsibility of the Trustees. It is usually developed with the assistance of the fund actuary and investment/asset consultant. Notwithstanding, it is adopted and approved by the Trustees **(Annex 35)**.
- 14.7. 4 The Fund Rules and IPS must be congruent. The Fund Rules are approved and is thus the “law” of the Fund; the IPS is a subset of the rules and must align with it. Although not applicable to the TSDBF per se, the Good Governance for Retirement funds (under the Pension Fund Act) and with specific reference to Circular PF130, an IPS must be done for a fund and regularly reviewed **(Annex 34)**.
- 14.7. 5 Regiments Fund Managers (Pty) Ltd was not only required to adhere to the Portfolio Management Agreement (“PMA”), which was subject to all applicable law and the Investment and Risk Management Framework (of Transnet), but also the IPS of the TSDBF adopted and approved as Version 3 on 30 September 2010. Amendments were made to the TSDBF Investment Policy Statement in September 2013 with specific referenced to Unmatched Portfolios. The Statement includes certain Mandate Restrictions and states as follows: “...the mandates given to the Investment Managers [Regiments Fund Managers] that manage portfolios on behalf of the Fund [the TSDBF] include restrictions on among others, the use of Derivatives” (our emphasis). Restriction implies a limiting condition and in this case, a contravention of a mandate and Fund Rules. **(Annex 33)**.
- 14.7. 6 Regiments Fund Managers contravened their obligations of managing the Fund in terms of the Portfolio Management Agreement with specific reference to section 16.3.1 of the PMA that states, “ ..., undertake not place itself in a position where the interests and duties of Regiments may conflict with the interest of the Client [TSDBF].....”, and the TSDBF Fund Rules and by extension the IPS as highlighted above by entering into interest rate swap transactions in terms of the prescribed framework, viz. Investment Policy Statement of 2010 as amended. **(Annex 36)**.

Chapter 15: Summary of fees to be recouped from parties

- 15.1

Regiments, Trillian and various persons in senior positions within Transnet - whether acting or not - with specific reference to the GCFO, GCEO and Group Treasurer, are to a greater or lesser degree implicated having the mandate, authority for approval and acting on advice that led to collusion with reference to the CDB loan, the R12 billion Club loan, TSDBF and related derivative transactions.
- 15.2

The total irregular expenditure incurred by Transnet on fees paid to Regiments for the execution of the swaps is between R248.1 (R146.8 million (R12 billion Club loan) + R111.0 million (TSDBF) and R257.8 million (R141.3 million (R12 billion Club loan) + R106.8 million (TSDBF) based on a comparison with market norms plus the difference in the payment to Regiments by TSDBF (R227.8 million less R112.4 million) based on market norms and the application of sensitivity analysis. The latter refers to a range of fees as these differ between players in the market.
- 15.3

Total fees to be recouped from Regiments and other parties that approved and authorised the transactions, thus range between R363.5 million and R373.2 million plus interest from the date transactions were executed, thus rounded to an effective amount of R370 million plus interest.
- 15.4

Regiments was paid R166 million for advice related to management and debt origination, which was unjustified in terms of the CDB loan of USD 1.5 billion. A further R99.5 million was paid to Regiments as a so-called “success fee” for which no justification was found. There were no grounds to pay for transaction advisory services on a success fee basis and the budget of R21.1 million should have been sufficient **(Annex 45)**. Therefore, an additional payment of R68.4 million cannot be justified.
- 15.5

Losses incurred by Transnet by fixing the interest rate at a rate much higher than the mid-market blended rate plus margin applicable to the R11.3 billion Transnet Debt and R12 billion Club loan, are due to the reckless and dubious nature of the decisions made by persons mandated to ensure that financing decisions are taken in the best interest of Transnet. By 31 October 2018, these Losses amounted to R1 409 million and have subsequently increased.
- 15.6

The total losses from the payment of unjustifiable and excessive fees, transaction costs related to various swap transactions and the blatant mispricing of interest rates associated with the swaps at the time, is estimated at R2 094 million.
- 15.7

Table 5 indicates the nature and scope of each transaction, the responsible party, the amount to be recovered and the reference in the report.

Table 5: Indication of the nature and scope of the transaction, responsible party and the amount to be recovered

Nature	Scope	Party	Amount to be recovered	Reference in report
1064 locomotives	Transaction advising – deal structuring, financing and funding options	Regiments	R68 400 000	Paragraph 9.8.1
CDB financing	Lead manager and debt originator	Regiments	R152 756 408	Paragraph 9.8.1
CDB Loan Facility split	Demonstration of savings	Trillian (Regiments)	R82 000 000	Paragraph 9.8.3
CDB (JP Morgan mandate)	Cross-currency swaps – structure and arrange	Regiments	R7 500 000	Paragraph 12.1
CDB (JP Morgan mandate)	Contingent Credit Default swap	Regiments	R5 743 592	Paragraph 12.2
Fees beyond market norms (R12 billion Club loan (fees)	Interest rate swaps	Regiments	R141 300 000	Paragraph 11.14
Fees beyond market norms (Transnet debt of R11,3 billion)(fees)	Interest rate swaps	Regiments	R112 400 000	Paragraph 13.4
TSDBF (over-payment of fee charge)	Fees less 20bps for swap transaction	Regiments	R115 400 000	Paragraph 13.4
		<b>SUBTOTAL</b>	<b>R685 500 000</b>	

Nature	Scope	Party	Amount to be recovered	Reference in report
Losses to Transnet due to mispricing of interest rate swaps at the time	R12 billion Club loan (R4.5 billion)	Group Treasurer and others	R262 600 000 (as at 1/10/2018)	Paragraph 10.8.2
Losses to Transnet due to mispricing of interest rate swaps at the time	R12 billion Club loan (R7.5 billion)	Group Treasurer and others	R480 100 000 (as at 1/10/2018)	Paragraph 10.8.5
Losses to Transnet due to mispricing of interest rate swaps at the time	Transnet Debt (R11.3 billion)	Group Treasurer and others	R666 446 489 (as at 31/10/2018)	Paragraph 10.8.8
		<b>SUBTOTAL</b>	<b>R1 409 146 489</b>	
		<b>GRAND TOTAL</b>	<b>R2 094 646 489</b>	

**Note:** These figures are not final and will change monthly as the JIBAR changes and calculations are revisited.

15.8 In order to siphon off funds from Transnet to the extent and magnitude realised through the implementation of various schemes, individuals would need to contrive collectively and at a level of executive power and decision-making to achieve the desired outcome. The analysis suggests that Regiments, Trillian and the persons working for and associated with these entities, together with the GCFO, the GCE and the Group Treasurer of Transnet, were pivotal and instrumental in hatching the plan that led to a plethora of decisions that cost and continues to cost Transnet significant amounts of money, while Losses could continue for the remaining tenor of the loans, which to date have 12 years to run in order to reach maturity.

[illegible]

## Chapter 16: Transnet Policy Breaches

### 16.1 Original Transnet Procurement Procedures Manual

- 16.1.1 Clauses 8.3 and 8.4 state, "The Specialist Units mentioned above must be utilised by other Transnet Entities for required Goods and Services falling within their scope. The external market may not be approached for Goods and Services falling within the strategic Specialist Units' or Division's core-competency areas. This would also include specialist services that are required which may be performed by a particular internal functional area, e.g. Group Treasury and Group Tax. The only exception to this rule is if the Specialised Unit indicates in writing that they do not have the ability or capacity to provide the required Goods or Services."
- 16.1.2 Through the appointment of Regiments and Trillian, these clauses were breached as Transnet Treasury and Structured Finance (now the Funding Department) were more than equipped to support these transactions.

### 16.2 Amended Transnet Procurement Procedures Manual (Version 3, dated 1 June 2015)

- 16.2.1 Chapter 8 of the said Manual refers to the identification of **Strategic Specialist Units, but it excludes Treasury** (own emphasis). In section 8.3 that refers to **Compulsory utilization of Specialist Units**, the Manual states the following: "The Specialist Units mentioned above must be utilized by other Transnet Entities for required Goods, Construction Works and Services falling within their scope. The external market may not be approached for Goods, Construction Works and Services falling within the Strategic Specialist Units' or Division core-competency areas. This would also include specialist services that are required which may be performed by a particular internal functional area e.g. **Group Treasury and Group Tax**".
- 16.2.2 Chapter 15 covers with the Appointment of Consultants, which must be aligned with and regulated by the National Treasury Instruction Note 01 of 2013/2014 on Cost Containment Measures. The PPM in section 15.8 *inter alia* states, "In order to justify the appointment of Consultants, the purpose for making use of consulting services must be fully understood and well-motivated. In all instances, the first check is to determine whether the Service can be sourced internally (i.e. are these skills available within Transnet). It is important that there is a justifiable reason and purpose for using external consultants". Subsequently, National Treasury issued Instruction Note 2 of 2016/2017 on cost containment measures, which replaced Instruction 1 of 2013/2014 that introduced revised cost containment measures.
- 16.2.3 The TPPM in section 15.8.2, Approval to appoint Consultants, states, "The engagement of consultants is to be strictly controlled and appropriately approved. Transnet may only contract with a Consultant after a gap analysis has confirmed that Transnet does not have the requisite skills or resources in its full time employ to perform the services in question. A gap analysis would be conducted to identify any gaps between current available human resources and human resources required to complete a specific project".

- 16.2.4 This implies that Transnet should first conduct a skills gap analysis within its structures prior to seeking the use of consultants.
- 16.2.5 "Based on a business case the appointment of a Consultant may only be approved by a person with Delegation of Authority. In this regard, the motivation to appoint a consultant should provide a concise overview of the type of consulting services which are required and why the proposal / motivation for appointment of Consultants should be supported".
- 16.2.6 "The appointment of Consultants should by default follow the Open Bid process to ensure fair competition. In exceptional cases, one may motivate the Confinement route, or the quotation route for low value consultancy appointments. Irrespective of the value, Consultants may only be approached for quotations AFTER the necessary prior in-principle approval has been obtained from the appropriate person / body with the required Delegation of Authority".
- 16.2.7 The TPPM in section 15.8.3 alludes to justifiable reasons for consultant services, which may include:
- Only an external consultant can offer the skills and expertise that are not available within Transnet.
  - Employees within Transnet who do have the skills or do not have the time to get involved in the particular project. Consultants, guided by experience and expertise, can get the job done more quickly as they do not have to continue with business functions.
  - The initiative cannot be assigned to anyone in-house due to confidentiality or sensitivity.
  - An outside perspective is required. A consultant can view the situation objectively, without the filters and existing paradigms that internal employees may have.
  - Exposure to best practices is required. Due to larger consulting houses having a breadth of research and experience from different organizations, including international exposure, a consultant can provide the requisite intellectual property and provide essential skills development.
  - There may be other justified reasons to obtain an external view.
- 16.2.8 The PPM at 15.8.4 Remuneration of Consultants states: Consultants may only be remunerated at the rates:
- Determined in the "Guideline for fees" issued by the South African Institute of Chartered Accountants (SAICA);
  - Set out in the Guide on Hourly Fee Rates for Consultants" by the Department of Public Service and Administration (DPSA); or
  - Prescribed by the body regulating the profession of the Consultant.







## Chapter 17: Conclusion

- 17.1 Regiments was overpaid for transaction advising and services related to funding and swaps by R431.8 million.
- 17.2 Due to deliberately overcharging on fees related to interest rate swaps when compared to market norms of similar trades, a further fee of R246.4 million should be recovered.
- 17.3 A further recovery of funds is associated with the deliberate mispricing of the interest rate swaps at the time that resulted in and continues to result in extensive losses for Transnet. A sizable percentage of the losses should be recouped from the difference between the fixed rate and the blended mid-market rate plus a margin on the day the swaps were executed.
  - 17.3.1 The losses calculated on the basis mentioned for the R12 billion Club loan was R742.7 million as at 1 October 2018 and the losses for the Transnet debt of R11.3 billion was R666.4 million as at 31 October 2018.
- 17.4 Parallel processes were introduced that would generate fees for Regiments and other Transnet officials, while JP Morgan was assigned and mandated to do the same work and provide advisory services covering what Regiments was required to do. In addition, the Transnet dealers with the necessary capacity and skill were side-lined at great expense to Transnet, with no justification. This was essentially orchestrated by the Group Treasurer, who was the mandated person with the requisite authority to ensure that deals are concluded and transactions executed in the best interest of Transnet and the Country.
- 17.5 Several salient matters emanating from the analysis include the following:
  - 17.5.1 Regiments (with the endorsement of Transnet) was paid for the same work related to the hedging of the CDB loan for which JP Morgan was appointed, although sufficient capacity existed within the Transnet Treasury and the Structured Finance division. The Group Treasurer would have been aware of this, but did not question the reasoning for the use of consultants/advisors to replicate the work done within Treasury and its various sub-divisions and as a consequence, contravened various sections of the Amended Transnet Procurement Procedures Manual (Version 3, dated 1 June 2015).
  - 17.5.2 The swaps were mispriced with the knowledge of the Group Treasurer who authorised all the swap transactions, while structuring the swaps in a manner that increased the spread and resulted in Transnet paying more for the cost of funding than comparable rates from institutions providing similar type USD-denominated loans. The implications hereof could be further financial losses incurred due to the use of said structuring derivatives (e.g. knockout swaps) that placed Transnet at significant risk.

- 17.5.3 Unfounded payments were made by Transnet to Trillian for advisory work done by Regiments related to the CDB loan transaction that formed part of and was included in a contingency fee paid to Regiments.
- 17.5.4 Treasury and by implication the Group Treasurer, negated their responsibility to monitor and oversee the work of Regiments with specific reference to the use of derivative instruments in the financing of the CSR and CNR locomotives.
- 17.5.5 Regiments was clearly conflicted being an advisor to Transnet at the time and having the mandate to manage the portfolio of the TSDBF. In terms of the TSDBF Investment Policy Statement, this resulted in a situation where Regiments is advising both Transnet and the TSDBF related to transactions that would need to and could only benefit one party through the execution of the interest rate swaps and would therefore be detrimental to the other party. This is a clear conflict and there can only be one winner.
- 17.5.6 The TSDBF in terms of the IPS was restricted from using derivative instruments and therefore Regiments as the fund managers of the TSDBF contravened the Fund Rules of the TSDBF and the mandate of the Fund not to trade derivatives.
- 17.5.7 Mr P Ramosebudi indicated in a discussion that Regiments was not paid for the execution of the interest rate swaps between Nedbank and between Transnet and the TSDBF and Transnet. This is incorrect as a memorandum dated 28 August 2017 and signed by the Group Treasurer, indicates that Regiments was paid 20 bps on the yield for the execution of the swaps.
- 17.5.8 In terms of governance, it is unprecedented that Regiments was elevated to a role and performed functions that effectively side-lined officials within Group Treasury and the Structured Finance division, where Regiments initially assumed the role as the Supply Development Partner of JP Morgan. There was no oversight of the work done by Regiments by either JP Morgan or the Group Treasurer, who would have the responsibility and delegated authority to do the same. It is incomprehensible that the Group Treasurer was not aware of the alternative and parallel processes operating alongside Treasury.
- 17.5.9 Mr P Ramosebudi by his own admission, did not benchmark processes or have officials confirmed and endorsed the advice provided by Regiments working with JP Morgan with regard to financial derivative instruments, which resulted in certain cases in significant financial losses for Transnet.
- 17.5.10 It further appears that the Group Treasurer did not work with Risk Planning to consider the impacts of the proposals made by Regiments; they appeared to be merely authorised and implemented through instruction.

17.5. 11 The Group Treasurer would have been aware of the use of the TSDBF as a counterparty in the interest rate swap transactions applicable to R11.3 billion of the Transnet debt. Imposing risks on a pension fund using the stated instruments is untoward and it was indicated that the Fund Managers [Regiments] contravened their mandate and transgressed the Fund Rules by engaging with and entering into such transactions. The IPS is clear that restrictions are placed on the use of derivatives, Mr P Ramosebudi would have been party to the transaction insofar as having knowledge of using the pension fund as the counterparty and approving, a day after the execution of the first interest swaps related to the EDBC same (see email addressed to Mervin dated 31 March 2016) **(Annex 57)**.

[illegible]

Chapter 18: Additional context for the analysis provided in the body of the report

18.1 Context of funding for the CNR and CSR locomotives

18.1. 1 Figure 12 illustrates the alignment between the nature of the funding sourced for the 1064 locomotives and the risk mitigation measures adopted to manage the risk over 15 years, the term of the loans applicable to the funding of the CNR and CSR locomotives from China.

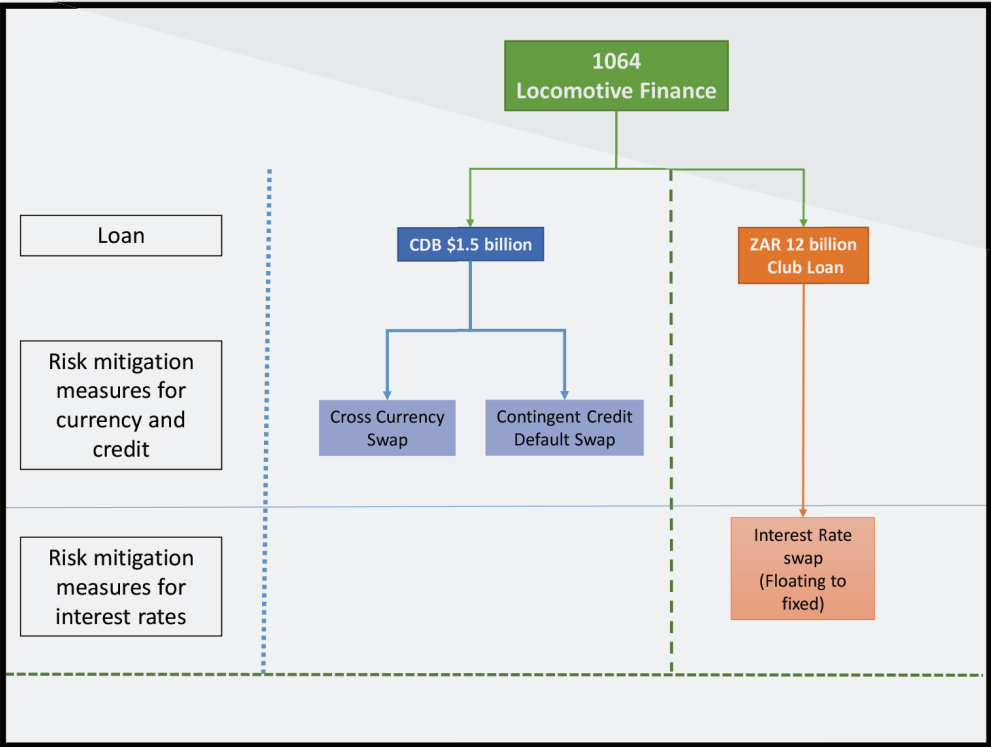


Figure 12: CDB Loan and R12 billion (syndicated) Club Loan aligned with applied risk mitigation measures

18.1. 2 Figure 12 indicates the loan sourced from CDB and a syndicated loan among mostly South African financial institutions denominated in Rand. In addition, the risk mitigation measures are stated and involved the use and application of derivatives that cover various instruments. A derivative is a financial security with a value that is reliant upon or derived from an underlying asset. Its price is determined by fluctuations in currencies and interest rates.

18.2 Advisory fees related to the CDB Loan

18.2. 1 Various advisory fees related to the aforementioned loans were payable and entailed activities related to deal structuring, financing and funding options with

specific reference to the CDB loan. Regiments took over this task from Nedbank. In terms of the R12 billion Club loan, JP Morgan was appointed to lead arrange the syndicated Club loan. The transaction parties/advisors and fees are illustrated in Figure 13.

Transaction Fees	Transaction interests	1064 Locomotive Finance	Transaction interests	Transaction Fees
(Budget) Regiments R21.2m	Regiments advisory and facilitation		JP Morgan Lead Manager	20 bps for lead arrange
Regiments R99.5m (paid)	Regiments lead manager and debt origination	CDB \$1.5 billion China Development Bank	ABSA China Bank Future Growth Nedbank OMSFIN	Trillian paid R82m
Regiments R152,8 m (paid)		ZAR 12 billion Club Loan		

Figure 13: Indications of transaction interests and advisory fees related to the CDB loan and the R12 billion Club loan

18.2. 2 Regiments originally had a budget of R21.1 million, which was part of a R35.2 million fee for advisory services that encompassed several advisors. This figure increased from the budgeted amount of R35.2 million to R51.2 million (which was paid), i.e. an increase of R16 million. From this analysis, is possible to deduce that the fee originally applicable to Nedbank was about R5 million to R6 million, given the replacement of Nedbank by Regiments in the Mckinsey consortium.

18.2. 3 It is unclear why the remuneration model was changed to a success-fee basis after Regiments already completed a portion of the work. What portion of the scope had already been concluded by the time of changing the remuneration model is uncertain. It is not possible to ascertain the extent of the work that had been completed to reduce the risk of engaging on a success-fee basis. This would enhance the opportunity to obtain more fees at almost no or extremely limited risk. The introduction of a success-fee basis of remuneration appears unwarranted and begs the question why Regiments would assume risk if fees to be earned are guaranteed in terms of the scope. This would likely only occur if a great degree of certainty existed and significant benefit could result by embarking on a success-fee based remuneration model.

18.2. 4 Regiments was actually paid fees totalling R99.5 million, an increase of 371.56% (or R78.4 million) from the stated budgeted amount of R21.1 million. The basis for the amendment is purported to be “an adjustment to the remuneration model” that alludes to a “success” fee arrangement for the work that would follow. This should be read in the context of no risk and high reward as information was already available to ensure success and reduce the risk to almost zero.

18.2. 5 In order to align the fees and tasks, the re-alignment of the scope suggests that the increase in fee from the budgeted amount to what was actually paid to Regiments, should have been R31.1 million as they took over a large part of the

work covered by the McKinsey budget of R20.1 million for which McKinsey were only actually paid R10.0 million. This assumes the same original scope as there is no indication that additional scope was added to the work agreed in the original LOI.

- 18.2.6 A need exists to understand the basis for the payment of an additional R68,4 million (R99.5 million less R31.1 million) to Regiments before further payments were made for work related to debt origination, transaction management and hedge advisory services (per letter dated 15 July 2015 from the Regiments CEO), which were essentially covered in the LOI.
- 18.2.7 A further amount of R152 756 408 was paid to Regiments for lead manager and debt origination (brokerage fee) related to the CDB loan. This was based on renegotiating the tenor (term of the loan) from 10 to 15 years and the cost (the 3mJIBAR + spread). No alignment or parallels exist between the fee paid and the advisory services.
- 18.2.8 Further analysis of this matter indicates that the yield to maturity on which the fee of 15 bps is based, is R101.8 billion and not the notional or face value of the loan, which is the norm for calculation of fees related to the nature and scope of work that Regiments was required to do. The yield to maturity commonly refers to the interest or return that the investor receives from a loan and is usually reported as an annual figure. It is based on a ZAR equivalent loan of R18 billion (used by Mr E Wood in an Affidavit related to the Club loan, p. 68) at an exchange rate of ZAR12 : USD1 and an all-in interest rate of 9.508% as at 4 June 2015. The 3mJIBAR at 4 June 2015 and 12 June 2015, the dates used for the calculation of the fees due to Regiments, was the same. In the memorandum of the Group Treasurer dated 28/8/2018 (p. 3), the 3-month JIBAR rate was quoted as 6.308% (the rate in September 2015), which brought the 3mJIBAR + spread to 9.538% and not 9.508%.
- An additional 3 bps was realised as a consequence of what is stated above and a benefit therefore accrued to Regiments that executed the transaction. This occurred due to mispricing the 3mJIBAR rate that increased the margin and resulted in a higher all-in rate at the time.**
- 18.2.9 A need exists to understand the basis of the fee charged by Regiments, i.e. how the yield to maturity was determined. Using the Reuters System, analysis of the transaction data on 12 June 2015 (the date used by Regiments to calculate the advisory fee) indicates that a fixed rate of 8.3877% plus 3.225% (322.5 bps) (per memorandum dated 22 September 2015) plus 0.0015% (15 bps) due to Regiments as an advisory fee was applied, resulting in a Net Present Value ("NPV") of R152 791 710, which is aligned - with a small variation - to the present value of the fee paid to Regiments (R152 756 408).
- 18.2.10 The all-in rate applied was therefore 11.76%. When compared to the highest and lowest rate that Transnet paid for the cross-currency swap to date, it is clear that the additional charge (or loss incurred by Transnet) by using the CDB loan

facility and applying the rate advised by Regiments, is between 0.22% (11.76% less 11.54%) and 1.28% (11.76% less 10.48%). Based on the yield to maturity of R101 837 605 333, the market value of losses incurred to date would be between R224 042 731 and R1 303 521 348.

- 18.2.11 The difference between using the yield to maturity and notional value of the loan for determining the fees, is analysed as follows:
- (a) 15 bps paid to Regiments based on the notional amount of R18 billion, the amount used by Regiments to calculate the fee, at an exchange rate of ZAR12 : USD1 amounted to R27.0 million.
  - (b) 15 bps on the yield of R101.8 billion (the total loan) to maturity is R152 756 408, which translates to a point value (PV01) of R10 183 761 (per basis point).
  - (c) Regiments was overpaid by R125 756 408 (based on R18 billion) for the debt origination based on these assertions.

### 18.3 R12 billion (syndicated) Club loan

- 18.3.1 In response to the RFP issued on 6 May 2015, JP Morgan indicated that as the lead arranger of the ZAR-denominated syndicated loan of up to R12 billion, 0.2% (20 bps) of R12 billion (the notional face-value) or R24 million would be the fee due. Thirty-five percent (35%) of this amount equates to R8.4 million associated with Regiments as the Supplier Development Partner.
- 18.3.2 Estimated fees for the hedging of the risks stated in the RFP, which covered cross-currency swaps, interest swaps and contingent credit default swaps, are approximately R40 million and is determined for each transaction at the due date. An amount of R14 million (or 35%) is related to Supplier Development.
- 18.3.3 The total figure associated with Regiments as part of the supplier development initiatives is R22.4 million of the R64 million due to JP Morgan for lead arranger and hedging transactions of the Club loan.

### 18.4 Fees applicable and flow between the parties in the transaction

- 18.4.1 Figure 14 aligns the parties to the various transactions and offers an indication of the fees paid by Transnet for each type of transaction.



Transaction Fees

Budget Regiments R21.2m

Regiments R99.5m (paid)

Regiments R152,8 m (paid)

20 bps (12,9 + 7)

CCS: R7.5m

CCDS: R5.7m

Transaction interests

Regiments advisory and facilitation

Regiments lead manager and debt origination

JP Morgan •Hedge •Lead •Underwrite •Execute

Regiments •Structuring •Arranging

1064 Locomotive Finance

China Development Bank

CDB \$1.5 billion

Cross Currency Swap

Contingent Credit Default Swap

ZAR 12 billion Club Loan

Interest Rate swap (Floating to fixed)

Transaction interests

JP Morgan Lead Arranger

ABSA

China Bank

Future Growth

Nedbank

OMSFIN

Nedbank Counter Party

Regiments Execute

Transaction Fees

20 bps for lead arrange

Trillian R82m on saving

Fees included in the fixed rate

20 bps on Point Value

Figure 14: Alignment of transaction interests, advisory fees and transaction fees related to the CDB USD 1.5 billion and the R12 billion Club loans

Note:

Fees related to the swap transactions were paid on the yield (market rates) and not on notional value

18.5

Alignment of the total execution cost and Transnet Dealer Room Fee - R11.3 billion Transnet Debt

18.5.1

If one accepts that trades are not executed without the payment of a fee, an analysis was prepared to ascertain the net difference in terms of two adopted approaches:

(a)

Payment of market related fees for execution of swap transactions related to bonds; and

(b)

Transnet Dealer Room doing the trade at 30 bps using the blended mid-market rates quoted by Bloomberg on the day the trade would be executed.

18.5.2

Table 6 indicates the execution cost, including a fee applicable to the Transnet Dealer Room, based on the difference between the mark-to market and the fixed rate of the swaps.

MNS

multipurpose

business solutions

Table 6: Calculation of execution costs and fees applicable to ZAR 11.3 billion Transnet debt loan with specific reference to the Transnet Dealer Room

Issuer	Execution date	PV01	Total execution cost including the Regiments fee of 20 bps	Transnet Dealer Room fee (30 bps)	Total execution cost less Dealer Room fees
			(5)	8= 30bps x (1)	9= (5) – (8)
EDBC	30 March 2016	R3 557 774	R 284 621 920	R 106 733 220	R 177 888 700
LIBFIN	8 April 2016	R856 772	R 61 687 584	R 25 703 160	R 35 984 424
Old Mutual	8 April 2016	R603 026	R 43 417 872	R 18 090 780	R 25 327 092
Standard Bank	8 April 2016	R601 977	R 43 342 344	R 18 059 310	R 25 283 034
			R 433 069 720	R 168 586 470	R 264 483 250

18.5.3

Discussions with Transnet Dealer Room representatives indicate that they had and have the capacity and skill to execute the swap transactions. The hypothetical execution fee of 30 bps is used as a basis for the calculation, but could be lower at about 25 bps. If the fee charged by the Dealer Room is subtracted from the total execution cost (inclusive of the fee [20 bps] paid to Regiments), a saving of R264.5 million would accrue to Transnet. As there was no reason to doubt the capacity and skills of the traders, the overpayment of fees for the execution of the swap transactions cannot be justified and is therefore also irregular and would only benefit the counterparty and party executing the swap transactions.

18.6

Market norms and standards

18.6.1

If normal market norms and standards and the R2030 Government Bond with a 13-year maturity and coupon rate of 8.5%, for instance, were applied as at 25 October 2018, the Rand value of one basis point was R698.94 per R1 million of the notional value of the loan. The loans related to the USD 1.5 billion ZAR equivalent that have different maturity dates, which impact the value per point.

18.6.2

The Agent/Broker determines the fee based on the order to execute and is payable by Transnet to the counterparty. The commission paid for the execution of the swaps is usually included in the yield (market rate) of the trade and is normally a fraction of a basis point per R1 million of the nominal value of the loan. The size of the trade will determine the fraction and is at the discretion of the Agent/Broker. It can range between 0.5 basis points and 1 basis point, depending on the size of the transaction.

18.6.3

The swaps that Regiments executed as the Agent was at 20 bps when compared to market norms of one basis point. If the trade was done in the bond market with the same maturity and size of transaction (Transnet debt of R11.3 billion), the fees payable to the Execution Agent would be R1.4 million at 0.25 bps; R2.8 million at 0.5 bps; or R4.2 million at 0.75 bps. If a full basis point was charged by the Execution Agent, the fee would be R5.6 million. Table 7 indicates the fee Regiments received in relation to market norms and the amount that Transnet overpaid based on the sensitivity analysis of using fractions of a basis point.

86 | March 2019 | www.mnsattorneys.co.za

March 2019 | www.mnsattorneys.co.za | 87



**Table 7: Overpayments made by Transnet due to the use of Regiments as opposed to market-related rates**

Execution fee (bps)	Regiments	Market norms	Transnet overpaid
0.25	R112.4 million	R1.4 million	R111.0 million
0.50	R112.4 million	R2.8 million	R109.6 million
0.75	R112.4 million	R4.2 million	R108.2 million
1	R112.4 million	R5.6 million	R106.8 million

18.6.4 The Group Treasurer confirmed the fee and would have been responsible for approving the fee payable to Regiments at 20 bps (refer to the Regiments and Trillian Review prepared by the Group Treasurer, dated 28 August 2017, acknowledging the fee paid to Regiments) and is therefore liable for (1) not adopting market norms and standards as demonstrated, and (2) not eliciting quotations from financial institutions for the fee applicable to the execution of such a large swap. The Group Treasurer should therefore be responsible for the overpayment of fees ranging from between R106.8 million and R111.0 million. A significant portion of the fee should be recouped with interest from the date the transaction was executed.

## 18.7 Interest rate swaps – R12 billion Club loan

- 18.7.1 Nedbank was paid a fee of 20 bps as the counterparty for the interest rate swaps related to the R12 billion Club loan. Regiments was the Execution Agent for the transaction. In a Regiments and Trillian Review prepared and signed by the Group Treasurer on 28 August 2017, it is stated that Regiments Capital were paid 20 bps on the yield as the Execution Agent (p. 1).
- 18.7.2 As with the CDB USD 1.5 billion ZAR equivalent, the cost and fees payable for the swaps are based on a Point Value determined through the Bloomberg Swap Pricing Module. The applicable notional value of the loan is inputted and a point value (PV01) (i.e. one basis point) is calculated based on the data. The PV01 for the loans are different due to the different notional values. A summary indicating the PV01 for each loan, blended mid-rate, fixed rate and basis point difference is presented in Table 8.

**Table 8: Data applicable to the swaps with Nedbank as counterparty for both tranches of the R12 billion Club loan**

Issuer	Execution date	PV01	Blended mid-rate	Fixed	Basis-point difference
		<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
ABSA	4 December 2015	R866 457	11.156	11.83	67.4
Bank of China	4 December 2015	R972 302	11.156	11.83	67.4
Old Mutual	4 December 2015	R326 601	11.156	11.83	67.4
Future Growth	4 December 2015	R326 601	11.156	11.83	67.4
Nedbank	4 December 2015	R326 601	11.156	11.83	67.4
ABSA	7 March 2016	R833 676	11.444	12.27	82.6
Bank of China	7 March 2016	R939 364	11.444	12.27	82.6
Old Mutual	7 March 2016	R631 503	11.444	12.27	82.6
Future Growth	7 March 2016	R631 503	11.444	12.27	82.6
Nedbank	7 March 2016	R631 503	11.444	12.27	82.6

**Note:** Read with Table 8

**Source:** Bloomberg and own calculations

- 18.7.3 The point values (PV01) are used to calculate the total execution costs and any other fees applicable. Table 9 indicates the execution cost including the Regiments fee, the actual Regiments fee and the total execution cost less the fee paid to Regiments.
- 18.7.4 The data provided in Table 9 indicates that Regiments was paid an execution fee of R148.7 million for swaps related to the R12 billion Club loan of which a further windfall of R422.5 million was generated by the counterparty due to the mispricing of the trades as indicated by the Bloomberg blended mid-rate at the time the transactions were executed.

Table 9: Calculation of execution costs and fees applicable to the R12 billion Club loan

Issuer	Execution date	PV01	Total execution cost including the Regiments fee of 20 bps	Regiments fee (20 bps)	Total execution cost less Regiments fee
			5 = (1) x (4)	6= 20bp x (1)	7= (5) – (6)
ABSA	4 December 2015	R866 457	R 58 399 202	R 17 329 140	R 41 070 062
Bank of China	4 December 2015	R972 302	R 65 533 155	R 19 446 040	R 46 087 115
Old Mutual	4 December 2015	R326 601	R 22 012 907	R 6 532 020	R 15 480 887
Future Growth	4 December 2015	R326 601	R 22 012 907	R 6 532 020	R 15 480 887
Nedbank	4 December 2015	R326 601	R 22 012 907	R 6 532 020	R 15 480 887
ABSA	7 March 2016	R833 676	R 68 861 638	R 16 673 520	R 52 188 118
Bank of China	7 March 2016	R939 364	R 77 591 466	R 18 787 280	R 58 804 186
Old Mutual	7 March 2016	R631 503	R 52 162 148	R 12 630 060	R 39 532 088
Future Growth	7 March 2016	R631 503	R 52 162 148	R 12 630 060	R 39 532 088
Nedbank	7 March 2016	R631 503	R 130 405 411	R 31 575 160	R 98 830 251

Source: Bloomberg and own calculations

18.8 Market norms and standards

- 18.8.1 If normal market norms and standards were applied together with the R2030 Government Bond with a 13 year maturity and coupon rate of 8.5% and using the market yield on 25 October 2018, the Rand value of 1 basis point was R698,94 per R1 million of the nominal amount of the loan. Note that the maturities of the Club loans are also 2030.
- 18.8.2 The Agent/Broker determines the fee based on the order to execute and is payable by Transnet to the Agent/Broker (in this case Regiments). The commission is usually included in the yield of the trade and is normally a fraction of a basis point per R1 million. The size of the trade will determine the fraction and is at the discretion of the Agent/Broker, and can range between 0.5 bps and 1 bps for the size of the transaction.
- 18.8.3 The swaps that Regiments executed as the Agent, was at 20 bps when compared to market norms of one basis point. If the trade was done in the bond market with the same maturity and size of the R12 billion Club loan transaction, the fees payable to the Execution Agent would be between R2.1 million at 0.25 bps ; R4.2 million at 0.5 bps, and R6.3 million at 0.75 bps. If a full basis point was charged for the execution of the swap, the fee would be R8.4 million.
- 18.8.4 Table 10 indicates the fee Regiments received compared to market norms using different fractions and the amount that Transnet overpaid based on the number of basis points.

Table 10: Overpayments made by Transnet due to the use of Regiments as opposed to applying market related rates to execute the transactions

Execution fee (bps)	Regiments	Market norms	Transnet overpaid
0.25	R148.7 million	R1.9 million	R146.8 million
0.50	R148.7 million	R3.7 million	R145.0 million
0.75	R148.7 million	R5.6 million	R143.1 million
1	R148.7 million	R7.4 million	R141.3 million

- 18.8.5 As with the Rand equivalent of the USD 1.5 billion CDB loan, the Group Treasurer approved the fee payable to Regiments at 20 bps and is therefore liable for neither adopting market norms nor standards as demonstrated, or eliciting quotations for the fee applicable to the execution of such a large swap. The Group Treasurer should therefore be held responsible for the overpayment of fees ranging between R141.3 million and R146.8 million.
- 18.8.6 These funds should be recouped from the Group Treasurer (Mr P Ramosebudi) that approved the execution fee of 20bps and from the Group Chief Financial Officer (Mr Garry Pita) who approved the fee of 20 bps for the execution of the swaps related to the TSDBF as a counterparty. However, an execution fee of 40.53 bps was paid to Regiments for each of the swap transactions at each quarterly trade and therefore the recoupment in terms of the TSDBF is between R256.7 and R262.2 million.

18.9 Oversight and parallel process

- 18.9.1 In terms of the role of Regiments as lead manager, the scope of advisory services related to the process associated with the acquisition of the loan and management until drawdown and the management of the loan thereafter, it is our contention that internal structures within Transnet with the scope of expertise (including legal, tax, accounting, structured finance and risk management representatives), were overly sufficient to monitor, evaluate and manage the processes after the first drawdown and any subsequent drawdowns and hedge management and monitoring requirements.
- 18.9.2 It was apparent from the discussion with the former Group Treasurer that CDB was not the only option for funding the Chinese locomotives. However, it became apparent that misinformation of the currency swap rates created a chasm with the rates between 3mJIBAR plus 400 and 3mJIBAR plus 260, a significant spread applicable to a large amount. A fair price or margin at the time was 210 bps plus some upside. It was also clear that creating efficiencies was not part of the operating procedure that would have ensured that fair pricing would have applied.

- 18.9.3 The payment to Regiments for continually managing the financing process after conclusion of the CDB loan agreement, while also being paid upfront for the work, raises questions related to the position, function and role of the internal structures within Transnet that would be mandated to manage the process of locomotive financing and by implication, also service providers that were engaged at the time.
- 18.9.4 Although these are process-related matters, it became apparent from discussions with the existing head of Group Treasury that no oversight role was provided by Treasury to ensure compliance with the scope of work and outcomes assigned to Regiments. This can only be a gross violation of standard operating procedure as all Treasury divisions would be approached at different times in the process of evaluating bids for financing. The Group Treasurer would lead any negotiations on financing. This simply did not happen.
- 18.9.5 In practical terms, it appears that Regiments reported via the Group Treasurer directly to the GCFO at the time and it was therefore not possible for the persons to whom said service providers (including Regiments) would usually report to effectively manage them. This resulted in the required departments within Group Treasury not being part of the process and negotiations as Regiments was performing the work that Treasury would have done as input and advice for decisions taken at the Executive level. Furthermore, no benchmarking was done and no confirmation was provided for rates captured in the Dealer Room. The rates captured in the Transnet Quantum system were not signed off and dealers were simply instructed by the Group Treasurer to book all deals related to the CDB and Club loans.
- 18.9.6 The process of obtaining the funds and introducing cross-currency swaps are in accordance with a procedure that essentially entails several activities, of which the following are important for the assessment: (1) Preparation of an Utilisation Request and (2) Submission to draw the funds from the JP Morgan Dollar account.
- 18.9.7 When a drawdown is required to settle invoices issued by the locomotive manufacturer, an Utilisation Request is sent to the CDB. The payment in dollars from CDB will be made to a JP Morgan Dollar account. In order to draw the dollars from the JP Morgan Dollar account, i.e. for the cross-currency swap, a Submission must be prepared, recommended and approved. In terms hereof, the Group Treasurer together with the accountants and hedge accountant specialists will recommend the transaction and approval therefore would be required from the GCFO. The submission is then sent to the Dealer Room for execution and the booking of the deal.
- 18.9.8 It was noted during the discussion with Group Treasury staff that all deals were not executed through the Dealer Room as would be required by Transnet Standard Operating Procedure. The Transnet dealers did not trade the interest rate swaps with Nedbank or TSDBF and were only instructed by the Group Treasurer to book the trades. For the interest rate swaps, it seems that none of the delegated dealers did the trading activities. It is alleged that these were executed outside of Treasury and the dealers were requested by the Group Treasurer to merely book the deals.

- 18.9.9 In an email dated 29/2/2016 sent by Mr Ramosebudi, Group Treasurer at the time, confirmed the swaps to be executed on 7 March 2016 and ordered the booking of the deals. No email correspondence from the Group Treasurer was available to confirm the instruction to Regiments for the execution of the swaps on 4 December 2015. Confirmation for booking the deals by the Transnet traders was through an instruction issued by the Group Treasurer on 7 December 2015.

## COMMENTS

[illegible]

LEGAL  
EXPERTISE  
IN **YOUR  
CORNER**



Mncedisi Ndlovu & Sedumedi Attorneys  
2nd Floor, 16 Fricker Road  
Illovo, Sandton, 2196  
South Africa



# REPORT 2(B)

## **REPORT 2(B) – EXHIBIT 1**

McKinsey & Company

Transnet (SOC) Limited  
Carlton Centre  
150 Commissioner Street  
Johannesburg  
2001

Date: 16 April 2014  
Reference: GSM/12/05/0447

Dear Anoj Singh,

RE: Transaction advisory services related to the acquisition of the 1064 locomotives ("the mandate")

Pursuant to our discussions and agreement on February 5, 2014 we hereby confirm that the mandate awarded to McKinsey Incorporated and all rights and obligations created thereby was, on February 5, 2014, ceded and/or delegated to Regiments Capital in accordance with such discussion and agreement. On account of, and pursuant to, the aforementioned cession and delegation, all work related to, and in respect of, the mandate was conducted by Regiments Capital and not by McKinsey Incorporated.

Regards,



Vikas Sagar  
Principal

McKinsey, Incorporated, trading as McKinsey & Company  
Sandown Mews East 88 Stella Street Sandown Sandton 2196 PO Box 652767 Benmore 2010 South Africa  
Telephone +27 (0) 11 506 8000 Fax +27 (0) 11 506 9000

Incorporated under the General Corporation Law of the State of Delaware USA Shareholder Liability Limited Registered Agent Corporation Service Company Delaware USA  
Registered in South Africa No 1995/002398/10 Directors AU Dörr (German) VL Molino (American) PM Parbhoo R Villinger (German) SH Wu

## REPORT 2(B) – EXHIBIT 2

Annexure C

TRANSNET



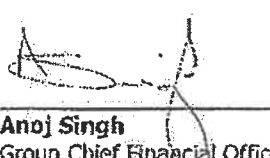
McKinsey Incorporated  
88 Stella Street  
Sandown Mews East  
Sandton  
2196

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

Dear Mr. Michael Kloss

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

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

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

Transnet SOC Ltd  
Registration Number  
1990/000900/30

Carlton Centre  
150 Commissioner  
Street  
Johannesburg  
2001

P.O. Box 72501  
Parkview, Johannesburg  
South Africa, 2122  
T +27 11 368 3001  
F +27 11 308 2630

Directors: ME Hlovanani (Chairman) B Motale (Group Chief Executive) MK Chabeyi MA Fanachhi Y Forbes MD Garedani N Moko MRR Hlovanani M Shamba  
TE Skosana E Tshabalala DL Tshope A Singh (Chief Financial Officer)  
Executive: Indian

[www.transnet.net](http://www.transnet.net)

Group Company Secretary: ANC Cesa



## **REPORT 2(B) – EXHIBIT 3**

ANNEXURE C

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.

## DISCUSSION

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

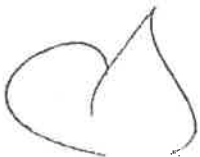
Scope category	Description	Responsible	Comments	Budgeted Fees excluding VAT and disbursements	Actual excluding VAT
Transaction advisory and procurement execution	<p>Leading a fair and precise process to maximise socio-economic impact for South Africa and Transnet</p> <ul style="list-style-type: none"> <li>Designed tendering process in line with requirements applicable to State-owned companies (SOCs) to ensure award on time;</li> <li>Contracting strategy for programmatic approach and maximised localisation;</li> <li>Contracts that maximise Transnet's flexibility if volume predictions are not met;</li> <li>Supplier evaluation criteria and adjudication process;</li> </ul> <p>Overall integration of all stakeholder inputs and communication on process progress</p>	<p>McKinsey</p> <p>Regiments</p> <p>Webber (WW)</p> <p>Wenzel Ningliza (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	<p>Recommended deal structuring, financing and funding options to minimise risk for Transnet.</p>	Regiments	<p>Scope was extended to include:</p> <ul style="list-style-type: none"> <li>Determining the development and sustainability impact of the acquisition</li> <li>Conducting a collateral</li> </ul>	Regiments–R15 million	Regiments–R15 million

	Technical evaluation		Lifecycle cost savings from technical improvement levers, and price		McKinsey and ART	<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"> <li>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</li> <li>Developing and implementing a best practice risk management to the transaction</li> <li>Developing an optimal risk management solution by examining solution that are embedded in the acquisition agreement, funding agreement and separate risk overlays</li> <li>Evaluating all potential funding sources and mechanisms to select the most appropriate avenues to pursue and execute</li> </ul>	McKinsey involvement de-scoped.		McKinsey – R13,4 million		McKinsey – R3,3 million
---	----------------------	--	---	--	------------------	--	---------------------------------	--	--------------------------	--	-------------------------

and optimisation	<p>reduction of locomotives</p> <ul style="list-style-type: none"> <li>• Technical evaluation levers and direct impact on loco lifecycle costs</li> <li>• 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</li> </ul>				
Business case integration	<p>Re-write of the business case, approved by Board and DPE</p> <ul style="list-style-type: none"> <li>• 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</li> <li>• 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</li> </ul>	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



	outcomes	address DPE			
PMO	<ul style="list-style-type: none"><li>• Adequately address queries.</li><li>• Monitor overall process timelines against milestones</li><li>• Setting up and preparing documentation for steering committees and formal reviews</li><li>• Escalate issues through regular project Steercos</li><li>• Prepare external stakeholder communications</li></ul>		Regiments McKinsey oversight	McKinsey and Regiments involvement de-scoped as this was fully executed internally.	



**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. 1064 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.

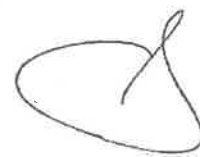
**Change in remuneration model for the transaction advisor**

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 his/her 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
<b>Total</b>	<b>51.2</b>	<b>119.7</b>


**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.

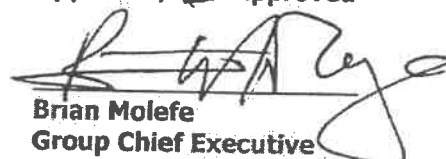
**RECOMMENDATIONS**

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





## **REPORT 2(B) – EXHIBIT 4**

ANNEXURE D

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 1089

TRANSNET



## MEMORANDUM

www.transnet.net

**TO : The Acquisitions and Disposals Committee**

**FROM : Siyabonga Gama, Acting Group Chief Executive**

**SUBJECT : REQUEST TO APPOINT JP MORGAN AND REGIMENTS CAPITAL TO CONCLUDE ON THE CHINA DEVELOPMENT BANK LOAN (CDB)**

### PURPOSE OF SUBMISSION:

1. The purpose of the submission is to request the Acquisitions and Disposals Committee (ADC) to:
  - 1.1. Approve the confined appointment of JP MORGAN to hedge the financial risks (interest rate; credit and currency risk) emanating from the US\$ 1,5 billion China Development Bank (CDB) loan back into ZAR ;
  - 1.2. Approve the confined appointment of JP MORGAN to lead and underwrite the equivalent syndicated ZAR loan of \$1,5 billion;
  - 1.3. Approve the contract extension from R99,5 million to R265,5 million for the appointment of Regiments Capital for transaction advisory services and support to Transnet on the 1064 locomotive transaction, and
  - 1.4. Delegate authority to the Acting GCE to approve all documentation related to this confinement.

### EXECUTIVE SUMMARY AND BENEFITS

2. By favourably considering the recommendation above, Transnet will be able to achieve significant benefits.
3. Approximately ~R46 billion (at R11/\$) of the required R50 billion (excluding contingencies) to fund the locomotive supplier agreements will be concluded on a committed basis (92% secured funding).
4. This is critical to mitigate liquidity risk due to the high levels of committed capital – which is a major area of focus for rating agencies specifically Standard and Poor's (A/B ratio).
5. The overall cost of debt will be within an acceptable levels with the overall cost of the Chinese portion of the debt at approximately 10.5% compared to the current weight average cost of debt of 9,7% with an average repayment profile of 7 years, subject to market conditions at time of execution.
6. Matching the asset and liability profile with longer dated funding structures (10 - 15 years) for long dated assets such as locomotives that have 30 year useful lives.
7. Enabling Transnet to enter into fixed rate funding (50%) for a portion of the borrowing to better manage interest rate risk and volatility.
8. Transnet and other Chinese financial institutions will be able to give effect to the BRICS commitments of both countries within commercial acceptable terms and conditions.

9. By utilising Chinese funding sources Transnet is able to conserve its use of its domestic credit lines with local financial institutions which can be used in the event of a financial crisis similar to 2008.

#### **DISCUSSION:**

10. Transnet has signed a MOU with CDB during 2014 for the provision of funding of up to \$5 billion, however this was non-binding on either party.
11. This MOU was signed in the presence of the Honourable Presidents of the Republic of South Africa and the Peoples Republic of China as part of the respective countries BRICS commitments.
12. Transnet awarded the locomotive supplier agreements relating to the supply of 1064 locomotives during March 2014 following a rigorous open tender process.
13. The award was made to General Electric; Bombardier Transport; China South Railways and China North Railways with a contract value of R54,5 billion including contingencies.
14. Due to the rating agency requirements of matching commitment capital to committed funding sources to reduce liquidity risk Transnet needed to identify appropriate and cost effective funding sources.
15. To this end Transnet successfully concluded committed funding facilities with USEXIM and EDC to fund the GE and BT portions of the locomotive contracts. These facilities have provided approximately R13 billion of the required funding.
16. Given the above Transnet engaged with CDB during 2014 to conclude a possible loan agreement to fund the Chinese portion of the locomotive supplier agreements.
17. The Board of Directors approved the potential loan from CDB during August 2014 - refer **annexure A**.
18. Consequently Transnet signed a Term sheet (term sheet 1) for the US\$2.5 billion 15-year amortizing loan from CDB to finance 232 and 359 locomotives from CNR and CSR, respectively during August 2014.
19. This term sheet was subject to Transnet being satisfied with the cost of hedging as this is significant cost associated with a foreign denominated loan.
20. Transnet's risk management policies require the currency exposure to be hedged back into Rand.
21. The size and tenor of the loan is exceptionally large for the South African market. To quantify this:
  - 21.1. A 1bps (1/100th of 1%) move higher in the USD:ZAR basis market will cost Transnet R15 million on a loan of \$2.5 billion
  - 21.2. The USD:ZAR basis market which can easily move up or down by 25bps in a single day, equivalent to R370 million on a loan of \$2.5 billion.
22. Due to CDBs lack of knowledge of the local financial markets they approached various banks in the local and international market to hedge the possible exposure which resulted in adverse financial consequences for Transnet as the cost of the hedge was unacceptable - see paragraph 30 below.
23. Prudently, Transnet opted not to proceed and communicated to CDB and to the market that it would pursue other funding avenues for the financing.
24. Transnet should choose the route that delivers the lowest Rand funding for Transnet as there is tremendous pressure on its cash interest cover ratio.



**JP MORGAN – cross currency swap**

25. There are two ways to execute a hedge of this magnitude:
26. Transnet could approach a number of banks and ask for quotes, and then select the bank (or banks) with the lowest quotes – similar to approach used by CDB above which resulted in adverse pricing impacts for Transnet, or
27. Transnet could work in strict confidence with one bank that is of sufficient financial substance (balance sheet) to execute the hedge so that the market is entirely unaware of the hedge until after it is concluded.
28. The first route (approach a number of banks) is optically attractive – banks are put into open competition – but it is certain to lead to materially higher Rand funding for Transnet as the basis swap may increase.
29. We are confident in this assertion because unfortunately, this exact route was tested and proven by CDB with disastrous results in August 2014:
  - 29.1. In April 2014, CDB evaluated providing the loan in ZAR to Transnet, and approached several banks for an indicative price on a USD:ZAR cross currency swap.
  - 29.2. This immediately moved the basis swap market on the screen by 25bps against Transnet and resulted in 15bps wider bid-offers.
  - 29.3. Since each 1bps move costs Transnet R15 million in a higher Rand interest rate, the cumulative cost to Transnet would have been R600 million.
  - 29.4. This powerfully demonstrated that absolute confidentiality is critical to obtain the best pricing, and a completely different approach to risk management is required to secure this pricing.
30. To secure the lowest Rand funding, Transnet should instead work with a single bank with a balance sheet large enough to warehouse the risk and execute the currency hedge quietly and in strict confidence.
31. In this way the market is completely unaware that the currency hedge is being executed; so complete confidentiality is maintained at all times.
32. At the same time, Transnet and the bank agree pricing in advance, so Transnet has complete certainty around the cost of the hedge up front and can deem it to be fair and reasonable.
33. J.P. Morgan, with one of the largest bank balance sheets globally, will provide this confidential solution to Transnet. In so doing, we will assume significant market risk.
34. It is therefore vital that the transaction is executed in strict confidence.
35. There are two types of risk that need to be carefully managed in executing this swap:
36. Market risk: A single basis point (0.01%) move up or down during execution represents a R15 million gain or loss to Transnet
  - 36.1. J.P. Morgan can do this because of the large appetite they have to warehouse risk, and because we have a superior ability to tap into several liquidity pools to exit the risk quickly but also smoothly
37. Credit risk: The resulting credit and tenor exposure and on the hedge is significant. We will address this as follows:
  - 37.1. J.P. Morgan has a large appetite and could underwrite the entire transaction whilst holding a significant quantum
  - 37.2. Distribute the rest of the credit risk.
38. This vanilla cross currency swap will enable Transnet to apply hedge accounting to IAS 39 to shield the Transnet balance sheet from significant equity volatility that will have severe adverse impacts on the gearing ratio which is also under some strain.
39. Sensitivity analyses indicate that the volatility could be as high as R33 billion under different stress scenarios of exchange rates and interest rates.



40. Vanilla cross currency swaps are approved instruments that Transnet is allowed to use to hedge financial risks in terms of the Board approved Financial Risk Management Framework.
41. Transnet has successfully executed large cross currency swaps with J P Morgan in the past to hedge currency risk exposures.
  - 41.1. AFLAC loan of JPY 15 billion, hedged in Nov 09 with maturity of 15 Nov 19.
  - 41.2. USD 750 million GMTN issuance, hedged in Feb 11 with maturity of 10 Feb 16.
  - 41.3. USD 500 million GMTN issuance, hedged in Jul 12, with maturity of 26 July 22.
42. Apart from the swaps above, forward exchange contracts are done with J P Morgan on a regular basis for operational and capital imports.

#### **JP MORGAN – contingent credit default swap**

43. In addition to the above and more importantly JP Morgan as provided a proprietary solution that will enable Transnet to further reduce the cost of funding by approximately 112 basis points by the execution of a contingent credit default swap.
44. This instrument will be a stand-alone instrument that will not impact the hedge accounting of the cross currency swap above and will not be hedge accounted.
45. No other financial institution that has presented to Transnet to date has been able achieve the above.
46. Equity volatility on this instrument is a more manageable and acceptable value of approximately R3 billion under various stress tests.
47. The GCFO and GCE are allowed in terms of the Financial Risk Management Framework to introduce new instruments to manage financial risks and consequently will approve this instrument for use post ADC approval.

#### **JP MORGAN – ZAR syndicated loan of \$1,5billion equivalent**

48. To further reduce the cost of funding to Transnet it became apparent that Transnet would need to consider a dual tranche denominated loan to fund the Chinese locomotive purchases.
49. Thus it was decided to utilise only \$1,5billion of the funding from CDB and use the JP Morgan balance sheet to underwrite a ZAR funding facility of \$1,5 billion equivalent.
50. Consequently the GCE signed a revised term sheet (term sheet 2) and mandate letter in April 2015 with CDB for a \$1,5billion only.
51. There appears (gauged during our recent visit to China) to be sufficient appetite from other Chinese financial institutions that are willing to provide Transnet with funding in ZAR namely Bank of China; ICBC and China Construction Bank.
52. Thus we are very confident that the ZAR tranche will be successfully executed.
53. This will enable Transnet to still meet the rating agency requirement of demonstrating committed funding facilities for committed capital.

#### **Other Considerations**

54. All necessary accounting, taxation and legal opinions have been obtained and no adverse issues have been identified in support of the above execution strategy.
55. An application has been made to National Treasury to increase Transnet's foreign borrowing limit from the current R55 billion to a revised R105 billion.
56. We are currently in discussions with DPE and National Treasury to address their queries regarding the above application.
57. Currently approximately R9,5 billion of the R55 billion approved limit is available to be utilised.





58. Due to the confidentiality reasons and adverse impacts outlined above of an open tender it also made sense that Regiments Capital having supported Transnet in the 1064 locomotive tender as the transaction adviser is the BEE and empowerment partner of JP Morgan to enable Regiments to benefit from a significant transfer of skill from JP Morgan.
59. Participation in this transaction together with JP Morgan will lay the foundation for further future co-operation between the two entities.
60. Transnet will again play its role in creating an enabling environment to enhance its socio economic mandate and this time in the financial services sector.
61. Regiments Capital is a level 1 contributor in terms of the BEE codes. Their BEE credentials including black ownership has been verified by the Transnet Supplier development team.

### **Regiments Capital – Transaction advisory**

62. Transnet appointed Regiments Capital as the Transaction advisors on the 1064 Locomotive Transaction. In terms of the aforementioned mandate, Regiments Capital was required to advise on deal structuring, financing and funding options to minimise risk for Transnet.
63. Regiments was required to evaluate a number of funding sources including:
  - 63.1. US Exim funding for the GE locomotives
  - 63.2. EDC funding for the Bombardier locomotives
  - 63.3. Bond issuance under Transnet's DMTN and GMTN
  - 63.4. China Development Bank (CDB), Sinosure, China Exim and ICBC funding for the Chinese locomotives
64. Regiments have been working together with the risk management/middle office of Transnet Treasury for over the last 12 months to achieve the outcome below.
65. Assist Transnet with detailed negotiations to achieve the following tangible outcomes:
  - 65.1. Negotiating a better asset/liability match as opposed to CDB's proposed 10 year amortising profile as well as extending the capital grace period thereby lengthening the duration of the loan profile.
  - 65.2. Work with management to reduce the overall CDB's initial pricing of 300bp over 6 month Libor.
  - 65.3. Evaluating all options that would allow for Transnet to complete the CDB transaction at fair pricing.
66. In order to achieve a reduced blended rate in the funding of the Chinese portion of the locomotives, Regiments recommended that Transnet only utilise \$1.5bn of the CDB facility, and blend that with a \$1bn ZAR syndicated loan issue. The ZAR syndicated loan issue would allow for a reduction in the blended rate paid by Transnet of approx. 37bp (a net present value saving of approx. R666m- as opposed to utilising the full CDB facility of \$2.5bn with the full cost of the cross currency swap).
67. Following the decision to use only USD 1.5 billion out of the total USD 2.5 billion proposed by CDB, an agreement has been reached during the negotiations to have the unutilised USD 1.0 billion available for Transnet with no commitment fee until September 2015. Besides the financial benefit at least in terms of the commitment fee that would have otherwise been paid, the availability of such committed funding facility from CDB would provide an additional ratings benefit to Transnet.
68. Regiments have advised Transnet to achieve a mix of float and fixed rate in this transaction in order to best manage the interest rate risk with regard to Transnet's Financial Risk Management Framework (FRMF).
69. Regiments has assisted Transnet in negotiating with a number of potential Chinese sources of ZAR funding for the ZAR syndicated loan facility, including:
  - 69.1. ICBC (R2bn funding- term sheet to be provided)
  - 69.2. Bank Of China (R6bn – term sheet to be provided)



- 69.3. China Construction Bank (Potential of R2bn- negotiations to be finalised)
- 69.4. Sinasure- (Pursued the potential for a ZAR guarantee)
70. Regiments' advice and the subsequent conscious decision taken by Transnet to utilise foreign sources of funding for both the USD portion and the significant portion of the ZAR syndicated issue have a desirable impact of leaving Transnet's credit lines intact in the domestic market.
71. The savings achieved via the CDB margin compression, the blending of the ZAR syndicated loan, and the change in the applicable reference rate (3 month as opposed to the 6 month Jibar) have allowed Transnet the ability to fix the required portion of the loan without placing undue pressure on the interest cover ratio or the company cash flows. The total financial benefits that accrued to Transnet from the negotiating strategy (comprising of the achievements specified above) pioneered by Regiments is calculated to be in excess of R 2.7 billion.
72. In this regard, with Regiments assistance the weighted average cost of the blended finance for the Chinese locomotives is around 10.40%, as opposed to the current weighted average cost of funding payable by Transnet on its existing loan portfolio of 9.70%. The current debt portfolio has a significantly shorter duration than the Chinese locomotive funding, and the current funding is predominantly ZAR based as opposed to the predominantly USD based funding of the Chinese locomotives.
73. The financial advice and negotiation support that Regiments provided through this entire process which took in excess of 12 months was done at risk with an expectation of compensation only on successful completion of the transaction.
74. The range of NPV fee outcomes can vary between 15bps and 25bps on a transaction of a similar nature – ie R166 million – R277 million based on yield.
75. Given the invaluable contribution of Regiments to the successful conclusion of this transaction, Regiments success based fee will not exceed 15 bps on the yield as reflected in the NPV calculation below, payable on conclusion of the funding and hedging documents with CDB and JP Morgan.

Success fee in bps	Success fee in Rand (NPV)
15	R166 million

#### DELEGATIONS OF AUTHORITY

76. The CDB loan was approved by the Board of Directors of Transnet in August 2014.
77. The vanilla cross currency swap and the contingent credit default swap can be approved by the GCFO or GCE based on the Board of Directors approved Financial Risk Management Framework.
78. The appointment of JP Morgan for purposes of the said transaction is silent in the PPM.
79. The GCE has delegations to approve confinements up to R250 million.
80. The ADC's delegations to approve confinements is from R250 million to R1 billion.
81. Due to the silence of the PPM and the confidentiality required to execute this transaction it was decided to approach the ADC for approval.

#### APPLICABILITY OF THE APPROVED GROUNDS.FOR CONFINEMENT:

82. Appended below, for ease of reference, is an extract from the current Procurement Procedure Manual, par 15.1.2, which sets out the grounds for confinement.
- Where a genuine unforeseeable urgency has arisen which is not attributable to bad planning;
  - The goods/services are only obtainable from one supplier/limited number of suppliers. For instance, patented/proprietary goods or OEM spares and components.

Operating Divisions are however required to satisfy themselves that there are no new entrants on the market who could also be tested;

- c) For reasons of standardization or compatibility with existing products and services. A case must be made that deviation from existing standardized goods or services will cause major operational disruption. If not, confinements based on "standardization" will not be considered' or
- 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 tender 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 prerequisites must be satisfied i.e. the goods or services must be highly specialized, almost identical to previous work done and approaching the market again would result in wasted money and time.

83. We are of the view that this matter continues to comply with ground (a) as set out below, and the request for confinement is therefore fully supported.

Ground for confinement per Par 15.1.2	Confinement considerations
a. Where a genuine unforeseeable urgency has arisen which is not attributable to bad planning;	<ul style="list-style-type: none"> <li>• Genuine unforeseeable urgency has arisen to close the CDB transaction at current rates in light of the economic circumstances, Eskom credit rating and the impact on the sovereign.</li> <li>• The Transnet's risk management policies require the currency exposure to be hedged back into Rand</li> <li>• The size and tenor of the loan is exceptionally large for the South African market.</li> <li>• A 1bps (1/100th of 1%) move higher in the USD:ZAR basis market will cost Transnet R15 million on a loan of \$2.5 billion.</li> <li>• This could translate into additional costs of R600 million.</li> <li>• Uncertainty of counterparty unwillingness could delay full execution, leaving Transnet exposed to broader FX and rate risks on the USD exposure.</li> </ul>

#### Confidentiality in terms of Delegations of authority

- 84. In terms of section 15.1.4 of the Delegation of authority "In instances where a confinement is confidential the GCE may approve such confinement without the confinement request being routed via any other authority".
- 85. In light of the risks we have highlighted, Transnet's key objective should therefore be to engage with a counterparty on a confidential basis that is:
  - 85.1. Qualified and capable to execute the market risk components efficiently
    - 85.1.1. – Transnet should be offered best advice but also the possibility for full risk transfer on the market risk
    - 85.1.2. – The right trade-off between transparency and confidentiality to ensure a fair and proper outcome

- 85.2. Prepared to fully underwrite the credit risk arising from the hedge.
- 85.3. Prepared to reduce the credit costs and therefore all-in pricing from the hedge through optimisation of the position
- 86. There is clearly a trade-off between transparency and confidentiality, in particular, as regards to the market risk components
- 87. Relying on one price from one bank protects the confidentiality and potential front-running.
- 88. However, Transnet must avoid a messy execution environment, as seen when CDB asked for indicative pricing from a number of banks for the full transaction earlier this year. We saw the basis swap move 25bps against Transnet within hours, while bid-offers from banks increased dramatically (15bps).
- 89. If Transnet had been transacting then, this would have crystallised additional transaction costs of ZAR600mm, clearly the opposite effect that Transnet would have been seeking through a competitive bidding/procurement process.
- 90. Moreover, if Transnet had wanted to wait for the market to become 'unaffected' again, this would have delayed execution for several months, exposing Transnet to broader market volatility.
- 91. To secure the lowest Rand funding, Transnet must work with a single bank with a balance sheet large enough to warehouse the risk and execute the currency hedge quietly and in strict confidence.
- 92. In this way the market is completely unaware that the currency hedge is being executed; so complete confidentiality is maintained at all times.
- 93. At the same time, Transnet and the bank agree pricing in advance, so Transnet has complete certainty around the cost of the hedge up front and can deem it to be fair and reasonable.
- 94. It is not in the public interest as there would be additional cost to Transnet.

#### **ENTERPRISE AND SUPPLIER DEVELOPMENT AND BBBEE**

- 95. Supplier development subject a maximum of 35 % will be applicable to JP Morgan.
- 96. Supplier development applicable to Regiments Capital will be subject to a maximum of 10%.

#### **FINANCIAL IMPLICATIONS**

- 97. Given the invaluable contribution of Regiments to the successful conclusion of funding transaction, Regiments is due a success or risk based fee of 15 bp on yield payable by Transnet or JP Morgan (or a portion thereof) subject to a maximum of R166 million.
- 98. The fees for JP Morgan will be part of the market related cost to hedge the exposure to ZAR.

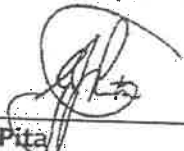
#### **BUDGET IMPLICATIONS**

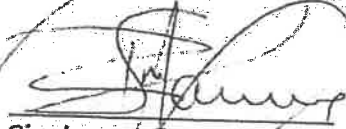
- 99. The costs have been budgeted as part of the funding plan for 2015/16.

**RECOMMENDATION:**

- It is recommended that the ADC:
  - Approve the confined appointment of JP MORGAN to hedge the financial risks (interest rate; credit and currency risk) emanating from the US\$ 1,5 billion China Development Bank (CDB) loan back into ZAR ;
  - Approve the confined appointment of JP MORGAN to lead and underwrite the equivalent syndicated ZAR loan of \$1,5 billion;
  - Approve the contract extension from R99,5 million to R265,5 million for the appointment of Regiments Capital for transaction advisory services and support to Transnet on the 1064 locomotive transaction, and;
  - Delegate authority to the Acting GCE to approve all documentation related to this confinement.

**Compiled by**

**Phetolo Ramosebudi****Group Treasurer****Date:** 28/04/2015**Recommended/Not Recommended**

**Garry Pita****Group Chief Supply Chain Officer****Date:** 28/4/15**Recommended/Not Recommended**

**Anoj Singh****Group Chief Financial Officer****Date:** 28/04/15**Recommended/Not Recommended**

**Siyabonga Gama****Acting Group Chief Executive****Date:** 2015-04-28



## **REPORT 2(B) – EXHIBIT 5**

Anoj Singh, Group Chief Financial Officer



Mr. Michael Kloss  
McKinsey Incorporated  
88 Stella Street  
Sandown Mews East  
Sandton  
2196

Dear Mr Kloss

**POTENTIAL CONFLICT OF INTEREST IDENTIFIED – NEDBANK CAPITAL**

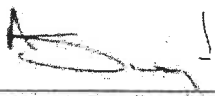
This letter serves to inform you of the potential conflict of interest identified with Nedbank Capital on the 1064 locomotive Transaction Adviser (GSM/12/03/0428).

The conflict is primarily based on Nedbank Capital being appointed as part of the McKinsey led consortium to provide Transnet with Advisory services related to the acquisition of 1064 locomotives tender as well as their interest in providing funding for other related services to Transnet for the same transaction.

If Nedbank Capital chooses to continue to express an interest to provide other services related to Transnet for the 1064 locomotives transaction, thereby resulting in a conflict, I suggest that McKinsey source an alternative service provider as it relates to the original scope envisaged for Nedbank Capital (funding for advisory services).

I would appreciate a response to this letter by 15 June 2013 to enable Transnet to evaluate the credentials and scope of work of the alternate service provider

Kind Regards

  
**Anoj Singh**  
Group Chief Financial Officer  
Date: 22/05/13

**Transnet SOC Ltd**  
Registration Number  
1990/000900/30

Carlton Centre  
150 Commissioner  
Street  
Johannesburg  
2001

P.O. Box 72501  
Parkview, Johannesburg  
South Africa, 2122  
T +27 11 308 2253  
F +27 11 308 1269

Directors: ME Mkwana (Chairman) B Molefe\* (Group Chief Executive) NK Choubey\* MA Fanucchi Y Forbes HD Gazendam NP Mnxasana N Moola NR Njeke IM Sharma  
18 Skosana E Tshabalala DLJ Tshepe A Singh\* (Group Chief Financial Officer)  
\*Executive Indian

www.transnet.net

Group Company Secretary: ANC Ceba

## **REPORT 2(B) – EXHIBIT 6**

Anoj Singh, Group Chief Financial Officer

TRANSNET



Mr. Michael Kloss  
McKinsey Incorporated  
88 Stella Street  
Sandown Mews East  
Sandton  
2196

Dear Mr Kloss

**POTENTIAL CONFLICT OF INTEREST IDENTIFIED – PD NAIDOO AND ASSOCIATES**

This letter serves to inform you of the potential conflict of interest identified between one of your subcontractors for the tender award GSM/12/10/0578, namely PD Naidoo and Associates (PDN&A) and their most recent merger with Mott Macdonald Group.

Transnet is of the view that given the current scope of work for PDN&A envisaged on the project factory, this will provide them and their merged entity, with an unfair advantage on Transnet's capital program and future capital work that may be tendered for.

I would therefore suggest that you identify and source an alternative service provider, with a similar or higher B-BBEE accreditation that can render services of the same or better quality and expertise as envisaged on the project factory.

I would appreciate a response to this letter by 15 June 2013 to enable Transnet to evaluate the credentials and scope of work of the alternate service provider.

Kind Regards

  
**Anoj Singh**  
Group Chief Financial Officer  
Date: 22 June 2013

**Transnet SOC Ltd**  
Registration Number  
1990/000900/30

Carlton Centre  
150 Commissioner  
Street  
Johannesburg  
2001

P.O. Box 72501  
Parkview, Johannesburg  
South Africa, 2122  
T +27 11 308 2253  
F +27 11 308 1269

**Directors:** ME Mkwana (Chairman) B Molefe\* (Group Chief Executive) NK Choubey\* MA Fanucchi Y Forbes HD Gazendam NP Mxasana N Moola NR Njeke IM Sharma  
JB Skosana E Tshabalala DL Tshepe A Singh\* (Group Chief Financial Officer)  
\*Executive \*Indian

www.transnet.net

Group Company Secretary: ANC Ceba

## **REPORT 2(B) – EXHIBIT 7**

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 2251  
F +27 11 308 1269

TRANSNET

**MEMORANDUM:**

www.transnet.net

**To:** Mr. Siyabonga Gama, Acting Group Chief Executive (GCE)

**From:** Mr. Anoj Singh, Group Chief Financial Officer (GCFO); and  
Mr. Garry Pita, Group Chief Supply Chain Officer (GCSCO)

**Date:** 19 May 2015

**SUBJECT: CONTRACT ADDENDUM TO REGIMENTS CAPITAL FOR  
TRANSACTION ADVISORY AND SUPPORT SERVICES ON THE 1064  
LOCOMOTIVE TRANSACTION – GSM/12/05/0447**

**PURPOSE**

1. The purpose of this submission is to request the Acting Group Chief Executive (GCE) to approve the contract addendum to Regiments Capital for transactional advisory and support services on the 1064 locomotive transaction.

**BACKGROUND**

2. Transnet entered into a fourteen (14) month agreement with a consortium of companies led by McKinsey Incorporated for the provision of transactional advisory services related to the acquisition of the 1064 locomotives from January 2013 until March 2014.
3. Upon phase 2 of the engagement being reached it was decided by McKinsey and agreed by Transnet that McKinsey would cede the principal lead role in the contract to Regiments Capital since phase 2 consisted of finance and deal structuring deliverables. As such Regiments Capital assumed the principal lead role in the contract. The letter of intent (LOI) was then amended, by value, to reflect additional scope of work to ensure better implementation and management of risks. (Refer to Annexure A)
4. Subsequent to the cession agreement the contract period was extended by twelve (12) months from January 2014 until January 2015 or until the successful completion of the revised deliverables as mandated by Transnet. (Refer to Annexure B)
5. Regiments then indicated to Transnet that their preferred operating model for such engagements is usually based on a risk sharing model or success fee. A submission was approved by the GCE on 17 April 2014 in support of changing the remuneration model. The agreement was then amended, by value, to reflect a change in the remuneration model as proposed by Regiments. (Refer to Annexure C)



**DISCUSSION**

6. A submission was made to the Transnet Acquisition and Disposals Committee (ADC) detailing the services rendered by Regiments Capital and the successful outcome thereof.
7. The submission included the request for approval to extend the contract value for an allowance of a success fee to be remunerated to Regiments Capital subject to the successful outcome of funding and hedging agreements between China Development Bank (CDB) and JP Morgan
8. The submission was approved in its entirety by the ADC including the delegation of authority being granted to the Acting GCE for approving all documentation. (Refer to Annexure D)

**SCOPE OF WORK PERFORMED**

9. The following scope of work was performed by Regiments in support of payment of a success or risk based fee to them:
  - 9.1 Technical support including building cost escalation models and total cost of ownership models to inform and guide the negotiation process;
  - 9.2 Developed a detailed funding plan for the acquisition of the 1064 locomotives Transnet from GE, Bombardier, CNR and CSR considering the following:
    - 9.2.1 Evaluation of all funding sources including US Exim, EDC, Bond Issuance under Transnet's DMTN and GMTN, China Development Bank (CDB), Sinosure and China Exim;
    - 9.2.2 Matching of assets and liabilities;
    - 9.2.3 Evaluation of the useful life of all underlying assets; and
    - 9.2.4 Identification and management of all financial risks (including liquidity, interest rate, credit and currency risks;
  - 9.3 Assisted Transnet in the negotiations with all of the identified Chinese potential funders and in particular with the detailed and protracted negotiations with CDB;
  - 9.4 Regiments assistance in these detailed negotiations with CDB resulted in the following tangible outcomes:
    - 9.4.1 A fifteen year amortizing profile was negotiated, as opposed to CDB's proposed 10 year amortizing profile (the longer duration provides a better asset/liability match);
    - 9.4.2 The capital grace period was extended from 36 months to 54 months, thereby lengthening the duration of the loan profile further- in line with the asset/liability matching requirements;
    - 9.4.3 CDB's initial pricing of 300bp over 6 month Libor, was successfully negotiated to the final agreed margin of 257bp over Libor- a saving of 43bp (a net present value benefit of \$64.5m- based on the \$2.5bn facility);

- 9.4.4 The reference interest rate for the CDB loan was 6 month Libor. Regiments assisted Transnet in negotiating for a change of the reference interest rate from 6 month Libor to 3 month Libor. This change translates to a significant financial benefit when the liability is converted from a USD loan to a ZAR loan (as required by Transnet FRM framework) and, the interest rate then convert the ZAR loan from floating to fixed. The benefit derived from the change of the 6 month Libor to the 3 month Libor is expected to be in the region of 40 bps at the point that Transnet chooses to fix the resulting 3 month Jibar linked interest rate. (The current market pricing difference between a NACQ and NACS swap of float to fixed for this loan profile amounts to a pricing premium of approx. 40bp on the NACS profile). This NPV difference is approx. R720m- for the \$2.5bn loan; and
- 9.4.5 In the course of the commercial negotiations with CDB, CDB decided (on its own initiative) to test the cross currency swap pricing on this transaction with 8 banks. The effect of this unauthorized action (given the illiquid nature of the ZAR CCS market), was to cause an adverse pricing move for Transnet. Subsequent to this Regiments assisted Transnet in evaluating all options that would allow for Transnet to complete this transaction at fair pricing. Regiments advised Transnet that the transaction should be hedged with a single counterpart of substance, willing to place balance sheet behind the transaction. It is in this light that Regiments assisted Transnet in the selection of JP Morgan as the CCS counterpart;
- 9.5 In order to achieve a reduced blended rate in the funding of the Chinese portion of the locomotives, Regiments recommended that Transnet only utilize \$1.5bn of the CDB facility, and blend that with a \$1bn (R12bn) ZAR syndicated loan issue. The ZAR syndicated loan issue would allow for a reduction in the blended rate paid by Transnet of approx. 37bp ( a net present value saving of approx. R666m- as opposed to utilising the full CDB facility of \$2.5bn with the full cost of the CCS;
- 9.6 Regiments have advised Transnet to achieve a mix of float and fixed rate in this transaction in order to best manage the interest rate risk with regard to Transnet's Financial Risk Framework (FRM). The savings achieved via the CDB margin compression, the blending of the ZAR syndicated loan, and the 3 month (as opposed to the 6 month Jibar), have allowed Transnet the ability to fix the required portion of the loan without placing undue pressure of the interest cover ratio, or the company cash flows;
- 9.7 Regiments has assisted Transnet in negotiating with a number of potential Chinese sources of ZAR funding for the ZAR syndicated loan facility, including:
- 9.7.1 ICBC (R2bn funding);
  - 9.7.2 Bank Of China (R6bn);
  - 9.7.3 China Construction Bank (Potential of R2bn);
  - 9.7.4 Sinosure (Pursued the potential for a ZAR guarantee); and




- 9.8 The financial advice and negotiation support that Regiments provided through this entire process which took in excess of 12 months was done at risk with an expectation of compensation only on successful completion of the transaction. Given the invaluable contribution of Regiments to the successful conclusion of this transaction, Regiments is due a success based fee of 15bps.

#### **FINANCIAL IMPLICATIONS**

10. Regiments Capital is due a success or risk based fee of 15bp on yield payable by Transnet subject to a maximum of R166 million.
11. The overall contract value will be increased to a capped limit of R265.5 million to allow for the remuneration of the success or risk based fee payable upon successful completion of funding and hedging agreements with CDB and JP Morgan.
12. In addition to the 30% supplier development commitment attributable to the R99 million initial contract, an expected ten percent (10%) of the abovementioned success or risk based fee payable to Regiments will be committed towards supplier development initiatives to be identified and agreed to between Regiments and Transnet.

#### **BUDGET IMPLICATIONS**

13. The costs have been budgeted as part of the funding plan for 2015/16.

#### **APPROVALS AND DELEGATIONS**

14. The authority for approving the contract addendum has been delegated to the Acting GCE by the ADC. (Refer to Annexure D)



**RECOMMENDATION**

15. It is recommended that the Acting Group Chief Executive (GCE) approves the following:

15.1 the value of the contract to be increased to a capped amount of R265.5 million; and

15.2 the allowance for the contract period to accommodate the successful conclusion of the funding and hedging agreements with CDB and JP Morgan in order to effect the remuneration (success or risk based fee) to Regiments Capital.

**COMPILED BY:**


Kevin Weir

Executive Manager: ISCM

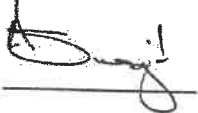
Date: 18/5/15

**RECOMMENDED/NOT RECOMMENDED BY:**


Gary Pita

Group Chief Supply Chain Officer

Date: 18/5/15

**RECOMMENDED/NOT RECOMMENDED BY:**


Anoj Singh

Group Chief Financial Officer

Date: 19/5/15

**APPROVED/NOT APPROVED BY:**


Siyabonga Gama

Acting Group Chief Executive

Date: 2015.07.16

## **REPORT 2(B) – EXHIBIT 8**

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 1089

*Approved  
dated: 02/08/17*

## MEMORANDUM

www.transnet.net

**TO : The Acquisitions and Disposals Committee**

**FROM : Siyabonga Gama, Acting: Group Chief Executive**

**SUBJECT : REQUEST TO APPOINT TRILLIAN AS LEAD MANAGER IN THE US\$1 BILLION ZAR EQUIVALENT CLUB LOAN**

### PURPOSE:

1. The purpose of the submission is to request the Acquisitions and Disposals Committee (ADC) to:
  - 1.1. Approve the appointment of Trillian in the place of JP Morgan as a Lead Manager of the US\$1 billion ZAR equivalent Club loan which was previously confined to JP Morgan.
  - 1.2. Approve the termination of JP Morgan on the ZAR syndication loan.
  - 1.3. Delegate authority to the GCE to approve all documentation related to this confinement.

### BACKGROUND:

2. Transnet has signed the mandate letter and Term sheet for the US\$2.5 billion 15-year amortizing loan from China Development Bank ("CDB") to finance 232 and 359 locomotives from China North Railways ("CNR") and China South Railways ("CSR"), respectively.
3. The Board approved the transaction during August 2014.
4. Transnet decided to split the transaction into 2 tranches the US\$ 1.5 billion tranche and the standby facility of US\$1 billion tranche.
5. JP Morgan was appointed through a confinement approved by ADC to lead the ZAR Club as a substitute for the US\$1billion standby facility to bring the overall cost of the transaction lower and avoid foreign exchange exposure and the need for cross currency swaps.

### DISCUSSION:

6. In order to further reduce the cost of CDB funding, Transnet considered a dual tranche loan to fund the Chinese locomotives acquisition.



7. Therefore it was decided to utilise the US\$1.5 billion from CDB and JP Morgan to underwrite a ZAR equivalent funding of US\$1 billion.
8. This would enable Transnet to meet the rating agency requirements in demonstrating the committed funding against the committed capital investments.
9. Consequently the GCE signed a revised term sheet and mandate letter with CDB for US\$1.5 billion.
10. Regiments Capital was appointed as a 1064 locomotive funding advisor and had SD obligations to Transnet on their contract.
11. One of their SD initiatives is the development of other smaller black owned organisations in the industry and Trillian is one of the beneficiaries of this initiative.
12. When it became apparent that JP Morgan would not be able to deliver the ZAR loan Regiments engaged with its SD beneficiary to see if there were options available to Transnet. It became apparent that Trillian would be able to deliver on Transnet's requirement for a Club loan deal at a price and tenor which was most comparable to both the CDB loan and JP Morgan proposal.
13. The illustration of the benefits is presented below.

#### **TRILLIAN CAPITAL:**

14. Post the successful completion of the 1064 locomotive transaction, Transnet developed detailed funding plan to secure the necessary funding for the locomotives together with the general purpose funding requirement.
15. One of the salient transactions was the approval of the US\$2.5 billion credit facility to finance the purchase of the Chinese locomotives.
16. In order to achieve a reduced blended rate in the funding of the Chinese portion of the locomotives, Trillian recommended that Transnet only utilise \$1.5bn of the CDB facility, and blend that with a US\$1bn ZAR club loan. The ZAR club loan would allow for a reduction in the blended rate paid by Transnet of approximately 37bp ( a net present value saving of approx. R666m- as opposed to utilising the full CDB facility of \$2.5bn with the full cost of the cross currency swaps).
17. Following the decision to use only US\$1.5 billion out of the total USD 2.5 billion proposed by CDB, Trillian recommended that US\$ 1 billion be available for Transnet as standby facility with no commitment fee until September 2015 over and above the ZAR club loan. Besides the financial benefit at least in terms of the commitment fee that would have otherwise been paid, the availability of such committed funding facility from CDB would provide an additional ratings benefit to Transnet.
18. Trillian have advised Transnet to achieve a mix of float and fixed rate in this transaction in order to best manage the interest rate risk with regard to Transnet's Financial Risk Framework (FRM).

19. Trillian has assisted Transnet in negotiating with a number of potential funding sources of ZAR funding, including the following firm commitments:
  - 19.1. Nedbank group(R6 billion);
  - 19.2. Bank Of China (R3 billion);
  - 19.3. ABSA Bank (R3 billion); *and*
  - 19.4. Libfin (R1 billion).
20. Trillian' advice and the subsequent conscious decision taken by Transnet to utilise foreign sources of funding for both the USD portion and the significant portion of the ZAR syndicated issue have a desirable impact of leaving Transnet's credit lines intact in the domestic market.
21. The savings achieved via the blending of the ZAR club loan, and the change in the applicable reference rate (3 month as opposed to the 6 month Jibar) have allowed Transnet the ability to fix the required portion of the loan without placing undue pressure on the interest cover ratio or the company cash flows. The total financial benefits that accrued to Transnet from the negotiating strategy (comprising of the achievements specified above) pioneered by Trillian is calculated to be R820 million.
22. In this regard, with Trillian's assistance the average cost of the Club Loan is around is 9.008%(3month Jibar+2.7% (nominal annual compounded semi-annually)) nacs as compared to the cost of the CDB Loan converted to ZAR at 9.533%(3month Jibar+322.5bps) nacs with 3 month Jibar at 6.308%.
23. Transnet was able to achieve the 15 year tenor at 3 month Jibar +270bps tenor as compared to the JP Morgan advice of 15 Year tenor at 370bps over 3 month Jibar.
24. The financial advice and negotiation support that Trillian provided through this entire process which took in excess of 5 months was done at risk with an expectation of compensation only on successful completion of the transaction.

#### **ENTERPRISE AND SUPPLIER DEVELOPMENT AND BBBEE:**

25. Trillian will be subject to 10% Supplier development obligations.

#### **DELEGATIONS:**

26. The ADC had previously approved the award through confinement, and due to the termination of the JP Morgan mandate and it is required that the ADC approve Trillian to replace JP Morgan.

**FINANCIAL IMPLICATIONS:**

27. Transnet value add to Transnet in relation to the 1064 locomotive ZAR club loan funding can be summarised in the following table:

INITIATIVE	SAVINGS
Saving achieved by securing club loan at 52.5 bps including cost cheaper than the equivalent dollar funding from CDB.(3m Jibar+322.5bps -3m jibar +270bps)	R418m
Saving achieved by securing club loan at 100bps including cost cheaper than the equivalent dollar funding from JP Morgan.(3m Jibar+370bps -3m jibar +270bps)	R796m
Fees	R24m
<b>TOTAL</b>	<b>R820 million</b>

28. The total financial benefits that accrued to Transnet from the negotiating strategy (comprising of the achievements specified above) pioneered by Trillian is calculated to be in excess of R 820 billion.
29. The financial advice, negotiation support and execution support that Trillian provided through the raising of the ZAR club loan took in excess of 5 months and is done with an expectation of compensation only on successful completion of the transaction at 20% of savings. However, Transnet negotiated that the fee is calculated as 10% of the total financial benefit related to the CDB loan:

SUCCESS FEE IN PERCENT (ZAR 12 BILLION)	SUCCESS FEE
10%	R82 million

30. Given the invaluable contribution of Trillian to the successful conclusion of funding transaction, Trillian is due a success based fee of 10% of the savings payable by Transnet subject to a maximum of R82 million.
31. The fees for Trillian will be part of the market related cost to the borrowing costs of the loan.

**BUDGET IMPLICATIONS:**

32. The costs have been budgeted as part of the funding plan for 2015/16.

**RECOMMENDATION:**

33. That the Acquisitions and Disposals Committee (ADC):
- 33.1. Approve the appointment of Trillian in the place of JP Morgan as a Lead manager for the US\$1.5 billion ZAR equivalent club loan which was previously confined to JP Morgan;
- 33.2. Approve the termination of JP Morgan ZAR syndication loan;
- 33.3. Delegate authority to the GCE to approve all documentation related to this confinement.

Compiled by:



**Phetolo Ramosebudi**

Group Treasurer

Date: 17/09/15

**Recommended/Not Recommended:**



**Edward Thomas**

Acting: Group Chief Supply Chain Officer

Date: 17/9/15

**Recommended/Not Recommended:**

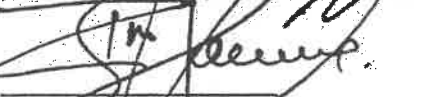


**Garry Pita**

Acting: Group Chief Financial Officer

Date: 18/9/15

**Recommended/Not Recommended:**



**Siyabonga Gama**

Acting: Group Chief Executive

Date: 20/09/15

**EXCERPT FROM THE MINUTES OF THE MEETING OF THE ACQUISITIONS AND DISPOSALS COMMITTEE  
NO. 5-15/16FY**

**HELD ON 1 OCTOBER 2015 AT 14:00 IN BOARDROOM 4902, 49<sup>th</sup> FLOOR, CARLTON CENTRE,  
150 COMMISSIONER STREET,  
JOHANNESBURG**

**5.8 Change In Lead Manager for ZAR Club Loan**

**RESOLVED** that the Committee approved the following:

- The appointment of *Trillian* to replace *JP Morgan* as a Lead Manager of the US\$1bn ZAR equivalent Club loan which was previously confined to *JP Morgan*.
- The termination of *JP Morgan* on the ZAR syndication loan.
- The Delegation of authority to the Group Chief Executive to approve and sign all the documentation related to this confinement.

**5-2015/16FY-7"**

~~1~~

Account	Ref. No.	Description	Type	Date	Amount	Currency	Reference	Date	Amount	Currency
□ *	2005559 20151204	IN101237	KR	18.11.2015	93,480,000.00-	ZAR	1500040734	04.12.2015	93,480,000.00-	ZAR
**					93,480,000.00-	ZAR			93,480,000.00-	ZAR



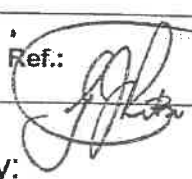

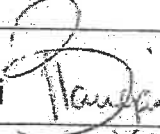
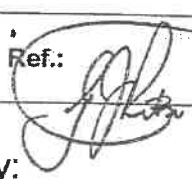


Payee:

**Trillian Asset Management (Pty) Ltd****Postnet Suite 488****Private Bag X1****Melrose Arch 2076****PAYMENT ADVICE**


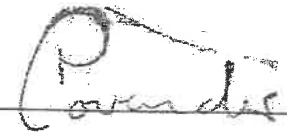
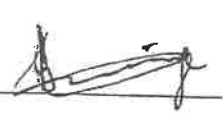
Date :19.11.2015

Description	Invoice no.	Date	R	C
Lead Arranger of ZAR 12,000,000,000 Club Loan Facility for Transnet SOC Limited	IN101237	18.11.2015	82,000,000	00
<b>TRANSNET PAID</b>			Sub total	82,000,000.00
			VAT	11,480,000.00
			Total	93,480,000.00

By Hand	Tel. No (011)308-1217	Ref.: 	
Compiled by: F Bangani 		Approved by: 	

COCE	GL	R	C
1 0 0 3 0 0 6	3 1 2 3 0 0	93,480,000	00

FOR OFFICE USE

Verified:  Approved:  

Vendor No: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Document no: \_\_\_\_\_

2005559

1900151857

2015-12-04

Trillian Asset Management  
2008/023108/07  
VAT No. 4860250580

Trillian Asset Management (Pty) Ltd  
Postnet Suite 488  
Private Bag X1  
Melrose Arch  
2076

## Tax Invoice

Date 18/11/15

Page 1

Document No IN101237

Transnet SOC Ltd  
Carlton Centre  
150 Commissioner Street  
Johannesburg  
2001

Deliver to  
Carlton Centre  
150 Commissioner Street  
Johannesburg  
2001

Account	Your Reference	Tax Exempt	Tax Reference	Sales Code
TRANSN		N	4720103177	Exclusive

Code	Description	Quantity	Unit	Unit Price	Disc%	Tax	Nett Price
1400000	Lead Arranger of ZAR12,000,000,000 Club Loan Facility for Transnet SOC Ltd					14.00%	82 000 000.00

**TRANSNET  
PAID**

*[Signature]* 2/2/12  
*[Signature]* 2015.05.12 03

Trillian Asset Management  
Investec CCM Main Account  
Acc No 50005027729 Br 580105

Received in good order

Signed \_\_\_\_\_ Date \_\_\_\_\_

© Softline (Pty) Ltd

Sub Total	82 000 000.00
Discount @ 0.00%	0.00
Amount Excl Tax	82 000 000.00
Tax	11 480 000.00
Total	93 480 000.00

19-151851

## **REPORT 2(B) – EXHIBIT 9**



- (a) The date of effectiveness of the Club Loan Facility agreement (excluding, for the avoidance of doubt, any facility agreement pursuant to which Trillian is a coordinator or advisor), or if there are multiple agreements, the date of effectiveness of the last such agreement; or
- (b) The cancellation of the Transaction by the Client; or
- (c) the date on which written notice is given by Trillian to the Client after Trillian has concluded, having taken professional advice, that it should cease to act in relation to the Engagement or the Transaction in order to comply with any legal, regulatory or similar enactment or after Trillian has concluded that it should cease to act in relation to the Engagement or the Transaction in order to protect its reputation; or
- (d) the date on which written notice is given by Trillian to the Client that the Client has failed to comply to a material extent with any terms of this Engagement Letter; or
- (e) or such other date agreed by both parties).

We look forward to working with you on the Transaction. Please confirm your agreement to the terms of this Engagement Letter by signing and returning the enclosed duplicate copy.

Yours faithfully,

For and on behalf of  
TRILLIAN

Signed [Signature]

Name: Daniel Roy  
Position: CEO  
Date: 18/11/2015

We agree to the terms of this Engagement Letter.

For and on behalf of TRANSNET SOC LTD

Signed [Signature]

Name: Siyabonga Gama  
Position: Acting Group Chief Executive  
Date:

Signed [Signature]

Name: Garry Pita  
Position: Acting Group Chief Financial Officer  
Date:

**TRANSNET  
PAID**



## 1.1.1 APPENDIX

### 1.1.2 TERMS AND CONDITIONS

#### 1 Definitions

In this Engagement Letter the following capitalised terms have the meaning set out below:

"Associate" means, in relation to Trillian, each of the subsidiaries, alliance and the ultimate holding company of Trillian and each of the subsidiaries of such holding company and each of their respective directors, officers, employees, representatives and agents;

"Trillian" means any or all of Trillian and any Associate thereof (as the case may be);

"Communication" means any document, announcement or statement (including any press release) published, issued or made by or on behalf of the Client in connection with the Engagement or the Transaction;

"Engagement" means the engagement of Trillian by the Client to provide assistance and services in connection with the Transaction, as provided for in this Engagement Letter;

"Party" and "Parties" means each of or both the Client and Trillian;

"Risk Management" means all risk management tools used in connection with the Transaction (including but not limited foreign exchange rate, interest rate, inflation linked and any commodity hedging).

#### 2 Nature of the Engagement

2.1 **Private Engagement:** Trillian's appointment under this Engagement Letter is a private engagement. Accordingly, any assistance or advice rendered or provided by Trillian hereunder, in whatever form, will be solely for the use of the Board of Directors (or other equivalent governance body) of the Client in assessing the Transaction and may not be relied on or used by the Client for any other purpose.

The fact of the involvement of Trillian in connection with the Engagement, and all advice and assistance rendered or provided by Trillian in connection with the Engagement, in whatever form, is confidential and may not be disclosed to any third party, nor used or relied on by any third party, nor quoted, reproduced, summarised, described or referred to, without Trillian's prior written consent. Furthermore, the Client agrees that it shall not make, or permit or procure to be made or solicit or assist any other person to make use of Trillian's name or any name including the word "Trillian" for publicity or marketing purposes without Trillian's prior written consent.

2.2 **Other Assistance or Advice:** The Client acknowledges and agrees that Trillian has been engaged to act only to the extent provided in this Engagement Letter. In carrying out the Engagement Trillian is an independent contractor and is not acting for the Client in any other capacity (including as agent or fiduciary to the Client or any of its affiliates). Nothing in this Engagement Letter, nor Trillian's performance hereunder, nor any previous or existing relationship between the Client and Trillian, will be deemed to create any fiduciary relationship. In addition, Trillian will not be responsible for providing or arranging for the provision of any general financial, strategic or specialist advice, including legal, regulatory, accounting, specialist asset valuation, model auditing, taxation or other technical advice or services which the Client may require. For the purpose of the Engagement, Trillian shall be entitled to rely on any advice provided by other advisers to the Client in connection with the Transaction. However, in no circumstance shall Trillian be responsible for any such advice or for any other work performed by persons other than Trillian.

2.3 **Instructions:** Subject to any written instructions to the contrary, Trillian will have authority to do anything which it considers necessary or desirable to carry out the Engagement. Trillian may assume that instructions have been properly authorised by the Client if they are given or purport to be given by a person who is or purports to be and is reasonably believed by Trillian to be a director, employee or other authorised person of the Client.

**TRANSNET**  
**PAID**



- 2.4 **Commercial Assumptions:** The Client will remain solely responsible for the commercial assumptions on which any financial advice provided by Trillian is based and agrees that Trillian may rely on any commercial assessments conveyed to it by the Client or any director, employee, other authorised person, agent or representative of the Client. In addition, if Trillian agrees to provide any model to the Client in connection with the Transaction, the Client acknowledges and agrees that such model will have been prepared solely for use by Trillian, may not be suitable for use by the Client or any other party and accordingly Trillian shall have no liability whether in contract, tort (including negligence) or otherwise to the Client or any other person arising out of or in connection with the Client's or such other party's use of such model. Any valuation advice or model provided by Trillian will be subject to such assumptions and disclaimers as are considered appropriate by Trillian.
- 2.5 **Independent Investigation:** The Client shall be responsible for making its own independent investigation and appraisal of the risks, benefits, appropriateness and suitability to and for it of the Transaction and any other transactions contemplated by this Engagement Letter and Trillian is not making any recommendation (personal or otherwise) or giving any investment advice and will have no liability with respect thereto. The decision to proceed with any Transaction will be made by the Client in the light of its own commercial assessments and Trillian will not be responsible for such decision to proceed or such assessments. Unless expressly agreed otherwise in this Engagement Letter, Trillian will not be required to assist the Client in the co-ordination of due diligence work to be conducted by the Client and other advisers instructed by the Client. Trillian shall not in any circumstances be responsible for the adequacy of the Client's due diligence exercise and nor shall Trillian be required to either review the Client's due diligence or conduct any due diligence work itself. It is the responsibility of the Client to inform itself of the work performed by and the advice given by its other advisers and to make its own assessment of such work and advice.
- 2.6 **Compliance:** The Client will comply with, and will assist Trillian in complying with, all applicable legal and regulatory provisions relevant to the Transaction, including without limitation those of any stock exchange or other regulatory body applicable to this Transaction.
- 3 **Confidentiality**
- 3.1 **Confidential Information:** Subject to clauses 2.1 above and 7.5 below, all information received by each of the Parties from the other in relation to the Engagement shall not be used otherwise than for the purpose of the Engagement, shall be treated as confidential by the recipient and shall not be disclosed to anyone other than the parties to this Engagement Letter unless (i) it is or later becomes public knowledge other than by breach of this Engagement Letter, (ii) it is disclosed to the recipient by a third party reasonably assumed by the recipient not to have breached a duty of confidentiality to the Client or is already in the possession of the recipient and not subject to any duty of confidentiality, (iii) it is disclosed to the recipient's professional advisers (with the prior approval of Trillian) and employees provided that such advisers and employees are made aware of the confidential nature of the information, (iv) it is required to be disclosed by reason of any law, court or regulatory process or regulation or is necessary in the view of the recipient to establish any defence in such process or (v) it is disclosed by the recipient with the other party's prior consent.
- 3.2 **Club Loan Product Enhancement:** Any financial engineering undertaken or advice given by Trillian in relation to the structuring of any Club Loan Facility (i.e. over and above the relevant Club Loan's "plain vanilla" loan product) by Trillian in connection with the Transaction shall be treated as confidential by the Client and shall not be disclosed to third parties.
- 3.3 **Inside Information:** Trillian shall not be responsible for the creation or maintenance of insider lists other than Trillian's own list of persons within Trillian acting on the Client's behalf and with access to inside information relating to the Client, as required by the appropriate rules or regulations.
- 4 **Intellectual Property**

Trillian and its affiliates retain the copyright and all other relevant intellectual property rights in their work products. If the Client makes any copies of the documents that Trillian prepares, the Client agrees that such copies will be used only for the purposes of the Transaction and not (unless otherwise agreed by Trillian) for other matters.

5 **Payment Terms**

Unless otherwise provided by this Engagement Letter, all fees, reimbursement of expenses and other sums payable to Trillian in connection with the Engagement are payable in cash and are due within ten business days of written demand by Trillian. Unless otherwise indicated, any fees or other prices quoted by Trillian to the Client are exclusive of value added tax or other similar taxes. All sums payable to Trillian shall be paid without deduction or withholding on account of tax of any nature unless such deduction or withholding is required by law. If the Client is required by law to make any deduction or withholding on account of any tax, the amount payable shall be grossed up to the extent necessary to ensure that, after such deduction or withholding, the amount received and retained by Trillian will equal the full amount which would have been received had no deduction or withholding been made.

**TRANSNET**





## 6 No Obligation to Underwrite/Fund

Trillian shall not be obliged by this Engagement Letter to sell, acquire, place or underwrite any securities or to lend moneys or provide any other commitment, facility, product, Risk Management solution or service in any way in connection with the Transaction, nor does Trillian represent by the Engagement Letter that it will be possible or advisable to arrange or provide any applicable financing or Risk Management solution for the Transaction or for any financing or Risk Management solution to proceed. Any such participation by Trillian in the Transaction would be the subject of separate documentation prepared and negotiated in accordance with international standards and would only be signed following (i) satisfactory completion of all documentation for the Transaction, (ii) receipt of all necessary internal approvals and (iii) in the determination of Trillian, the completion of satisfactory due diligence in respect of the Client or the subject matter of the Transaction, as applicable.

## 7 Information, Communications and Publicity

**7.1 Provision of Information:** The Client shall promptly provide or procure the provision to Trillian of all information concerning the Transaction, and the business and affairs of the Client and its affiliates which is relevant to Trillian for the proper performance of the Engagement (including information or advice provided to the Client by its other professional advisers) and all such further information as Trillian or its advisers may reasonably request. In particular, the Client shall provide Trillian and its advisers with such direct access to the directors and management of, and advisers to, the Client and its affiliates for the purpose of the Engagement as Trillian may reasonably request.

**7.2 Accuracy of Information:** The Client shall ensure that any information supplied by it (the "Information") to Trillian, whether provided orally or in writing and including any expressions of opinion, shall be true, accurate, complete and not misleading in any material way and shall not intentionally omit any material information. The Client will promptly notify Trillian if it subsequently discovers something during the term of this Engagement Letter which renders any such information untrue, inaccurate or misleading in any material respect. The Client acknowledges that Trillian will be relying on the Information and any other information supplied to Trillian on the Client's behalf or available to Trillian from public sources without carrying out any independent verification. The Client agrees that any information furnished to Trillian in connection with the performance of its services under this Engagement Letter shall have been properly obtained and may be properly furnished to Trillian.

**7.3 Communications:** All Communications shall be true, fair and accurate and not misleading (whether by omission or otherwise) and shall be published, issued or made so long as they don't prejudice or negatively impact Trillian in any way Trillian (save in the case of any Communication which refers directly or indirectly to Trillian, in which case such Communication shall only be published, issued or made with the consent of Trillian). Save as otherwise expressly agreed in writing, Trillian will not be required to approve, issue, transmit or otherwise disseminate any Communication in connection with the Engagement for the purposes of any applicable legislation, regulation or otherwise.

**7.4 Developments:** The Client undertakes that it shall at all times keep Trillian fully informed of all strategies, developments and discussions relevant to the Engagement and that no action which may directly or indirectly affect the Engagement will be taken without prior consultation with Trillian.

**7.5 Publicity:** The Client expressly authorises Trillian to (a) disclose the existence of the Engagement and (b) advertise and publicise its role(s) with regard thereto in the ordinary course of its business. Trillian may do so by, inter alia, placing "tombstones" or similar advertisements in financial or other publications and in marketing and pitching materials provided to prospective clients. These advertisements and marketing materials may contain the Client's name and logo and may describe the services provided or to be provided by Trillian to the Client. They will be prepared and placed at Trillian's own expense.

## 8 Indemnity

**8.1 Indemnity:** The Client shall indemnify and hold harmless Trillian and its Associates (each, an "Indemnified Person") on an after-tax basis from and against all claims, actions, proceedings, demands, liabilities, losses, damages, costs and expenses (including legal fees, costs and expenses, and all costs and expenses incurred in connection with investigating, preparing for and defending any such claim, action or proceeding which is pending or threatened) of whatever nature and in whichever jurisdiction, which any Indemnified Person may suffer or incur arising out of or in connection with the Engagement, the Transaction or any other matter or activity referred to in or contemplated by this Engagement Letter, or arising out of any breach by the Client of any of its obligations, duties or any representations or warranties the Client may give or be deemed to have given under the terms of this Engagement Letter, save to the extent that any such liability, loss, damage, cost or expense is finally and judicially determined by a court of competent jurisdiction to have been directly caused by the fraud, gross negligence or wilful default of the Indemnified Person.

PAID



**8 Limitation of Liability:** Neither Trillian nor any of its Associates will be liable to the Client in relation to the Transaction. The Engagement, save to the extent that a court of competent jurisdiction finally and judicially determines that the Client has suffered a loss directly caused by the fraud, gross negligence or wilful default of Trillian or such Associate. The Client agrees that, without prejudice to any claim the Client may have against Trillian or its Associates, no claims may be brought, threatened or established against any director, officer, employee or agent of Trillian or its Associates in respect of the subject matter of this Engagement Letter or the Transaction.

**9 Proportionality:** Where any damage or loss is suffered by the Client for which Trillian is or would otherwise be liable with any other person including the Client (an "Other Liable Person"), the extent to which such damage or loss shall be recoverable by the Client from Trillian shall be limited so as to be in proportion to Trillian's contribution to the overall cause of such damage or loss, as agreed between the Client and Trillian or, in the absence of agreement, as finally determined by a court of competent jurisdiction. For the purposes of determining Trillian's proportionate contribution or liability for the damage or loss in question, no account shall be taken of (a) any limitation or exclusion of liability of any Other Liable Person under contract or law (including by virtue of the expiry of any applicable period of limitation or prescription) (a "Relevant Limitation"), or (b) any actual or potential shortfall in recovery from any Other Liable Person whether due to settlement, limitation of liability, or the insolvency, bankruptcy, death or dissolution of any Other Liable Person. The degree to which Trillian may rely on the work or advice of any other person will be unaffected by any Relevant Limitation.

**10 Rights Additional:** This clause 8 is in addition to any rights which Trillian or any of its Associates may have at common law or otherwise including, but not limited to, any right of contribution, and the benefit of this clause 8 is held by Trillian for itself and as trustee for its Associates.

#### Provisions Which Survive Termination or Expiry

Any termination or expiry of the Engagement shall be without prejudice to any accrued rights and obligations of the parties and shall not affect in any way the provisions of the following clauses, which shall survive any termination and / or expiry (as the case may be) and shall remain in full force and effect: paragraphs 2 (Financing and Risk Management) and 3 (Fees and Expenses) of the cover letter and clauses 2.1 (Private Engagement), 3.2 and 3.3 (Confidentiality), 4 (Intellectual Property), 5 (Payment Terms), 7.3 (Communications), 7.5 (Publicity), 8 (Indemnity), 10 (Conflicts of Interest), 11.1 (Governing Law and Jurisdiction), 11.2 (Service of Process) and 11.3 (Assignment) of this Appendix.

#### 10 Conflicts of Interest

10.1 Trillian is involved in a wide range of commercial banking, investment banking and other activities out of which conflicting interests or duties may arise. The Client acknowledges and accepts that there may be situations in which parts of Trillian or their clients or their personnel either now or may in the future have interests, owe duties, or take actions, that could potentially conflict with the Client's interests or duties owed to the Client in relation to the Transaction. Trillian has in place policies and procedures to identify consider and manage such potential conflicts of interest.

10.2 The Client acknowledges and agrees that no part of Trillian is required to restrict its activities as a result of the Engagement or its participation in the Transaction, and that all parts of Trillian may undertake any activity without further consultation with or notification to the Client. Neither the terms or existence of this Engagement Letter, nor the receipt by any part of Trillian of confidential information, nor any other matter shall give rise to any fiduciary, equitable or contractual duties (including without limitation any duty of trust or confidence) that would prevent or restrict any part of Trillian from carrying on any activity, including providing services or advice to any person or engaging in any financing, Risk Management Solution or other transaction (on its own account or otherwise). Furthermore, the Client agrees that Trillian shall not be required to account to the Client for any revenue or profits obtained in connection with any activities of Trillian as referred to in this clause 10.

10.3 In relation to the Engagement, information which is held elsewhere than Trillian but of which one of its individual directors, officers or employees having conduct of the Engagement activity has knowledge (or can properly obtain knowledge without a breach of internal procedures), shall not for any purpose be taken into account in determining Trillian's responsibilities to the Client under the Engagement. No part of Trillian shall have any duty to disclose to the Client or utilise for the Client's benefit any non-public information acquired in the course of providing services to any other person, engaging in any transaction (for its own account or otherwise) or otherwise carrying on its business.

#### 11 General

11.1 **Governing Law and Jurisdiction:** This Engagement Letter is and all matters, disputes, claims or non-contractual obligations arising under or in connection with it are governed by and shall be construed in accordance with South African law and the Parties hereby irrevocably submit to the exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg), (or any successor to that division) to settle any dispute arising out of or in connection with this Engagement Letter (including a dispute relating to any non-contractual obligations arising out of or in connection with this Engagement Letter) or, notwithstanding the foregoing, either Party may elect by written notice to



proceed by way of arbitration ("Arbitration") in South Africa under the Rules of the Arbitration Foundation of Southern African ("AFSA").

In the case of Arbitration, the arbitration rules of AFSA in place at the relevant time are deemed to be incorporated herein. Subject to the AFSA rules, the tribunal will consist of three arbitrators. The claimant shall nominate one arbitrator, the respondent shall nominate one arbitrator, and the third, who shall act as chairman, shall be selected and appointed by AFSA. The chosen arbitrators shall be practising attorneys or advocates with at least 15 years' experience in commercial and banking law. The seat of arbitration shall be Johannesburg, South Africa, all hearings shall take place in Johannesburg, South Africa, the arbitration proceedings shall be conducted in the English language and the Award shall be in English. The Parties agree decision of the tribunal shall be final and binding on the Parties.

The Arbitral Tribunal shall use its best efforts to produce a final and binding award within six months of the date on which the Arbitral Tribunal is fully constituted. The Parties shall use their best efforts to assist the Arbitral Tribunal in achieving this objective.

- 11.2 **Service of Process:** The Client agrees that the documents which start any legal proceedings and any other documents required to be served in relation to those proceedings may be served on it by delivery of those documents to 43 floor, 150 Commissioner Street, Johannesburg.]
- 11.3 **Assignment:** The Client may not assign or delegate any of its rights or obligations hereunder without the prior written consent of Trillian which consent will not be unreasonably withheld.
- 11.4 **Entire Agreement:** This Engagement Letter constitutes the entire agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties with respect thereto, whether written or oral. This Engagement Letter may be executed in counterparts and may not be amended except in writing signed by all Parties hereto.
- 11.5 **Severability:** If any provision of this Engagement Letter is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof will continue in full force and effect.
- 11.6 **Regulation:** Trillian is authorised by the Financial Services Board (FSB) and, to the extent required, the Client acknowledges that Trillian will have imposed on it certain resulting obligations.

**TRANSNET  
PAID**

## **REPORT 2(B) – EXHIBIT 10**

**Noluthando Masondo**

**From:** Nswana Mwangi <nswanam@regiments.co.za>  
**Sent:** 07 September 2015 17:13  
**To:** Phetolo Ramosebudi Transnet Corporate JHB  
**Cc:** Eric Wood; Tewodros Gebreselasie  
**Subject:** FW: Transnet - Term Facility Agreement #0398485#  
**Attachments:** Transnet SOC Ltd Term Facility Agreement.docx; Term Facility Agreement (Compare).docx; Closing Checklist.doc

Dear Phetolo

Kindly find attached Nedbank's redline on the facility agreement.

Please let us know if there is anything else we should request from them and once you are comfortable, when we can set up a meeting with them.

Best  
 Nswana

**From:** Tewodros Gebreselasie  
**Sent:** Monday, September 7, 2015 4:15 PM  
**To:** Nswana Mwangi <nswanam@regiments.co.za>  
**Subject:** FW: Transnet - Term Facility Agreement #0398485#

**From:** Baron, E. (Efi) [mailto:EfiB@Nedbank.co.za]  
**Sent:** 02 September 2015 05:56 PM  
**To:** Eric Wood <EricW@regiments.co.za>; Niven Pillay <NivenP@regiments.co.za>; Tewodros Gebreselasie <TewodrosG@regiments.co.za>; Phetolo Ramosebudi Transnet Corporate JHB <Phetolo.Ramosebudi@transnet.net>; Moleboge Lekwane Transnet Corporate JHB <Moleboge.Lekwane@transnet.net>  
**Cc:** Jonathan Muller <JMuller@omsfin.com>; Joseph Njoroge <JNjoroge@omsfin.com>; Lightfoot Jason <jasonl@futuregrowth.co.za>; Barnes, C. (Charles) <CharlesBa@Nedbank.co.za>; Pietersen, D. (Darryl) (Corporate Banking) <DarrylP@Nedbank.co.za>; Juta, D. (Darshak) <DarshakJ@Nedbank.co.za>; Dawid Chifa (OMInvest) <DChifa@oldmutualinvest.com>; Dube, G. (Gertrude) <GertrudeD@Nedbank.co.za>; Gershwin Long <GLong@futuregrowth.co.za>; Bierman, L. (Leon) <LeonB@Nedbank.co.za>; Brickman, M. (Moss) <MossB@Nedbank.co.za>; Moodliar, P. (Pooven) <PoovenM@Nedbank.co.za>; Pieter Wolmarans <PWolmarans@omsfin.com>; Mistry, R. (Rajshree) <RajshreeM@Nedbank.co.za>; Rolf Canto <RCanto@omsfin.com>; Shaun Harris <SHarris@omsfin.com>; Mangazi, S. (Sidlo) <SidloM@Nedbank.co.za>; Tarryn Mentoor <tarrynm@futuregrowth.co.za>; Hayne, R. (Richard) <rhayne@nedbank.co.za>; Sean Lederman <slederman@ensafrica.com>; Daniella Lupini <dlupini@ensafrica.com>; Mngadi, M. (Masotsha) <MMngadi@nedbank.co.za>; Moyo, R. (Remo) <RemoMoyo@Nedbank.co.za>  
**Subject:** RE: Transnet - Term Facility Agreement #0398485#

Dear all

Enclosed please the first draft of the legal agreement. Enclosed also please find a compare (this is explained in the mail from Lauren (from ENS) below). This version will form the basis of the agreements to be concluded with each of OMSFIN and Futuregrowth (save for minor differences).

For the purposes of outlining what is required in order for the Effective Date (financial close) to occur, ENS has also kindly provided a CP checklist.

We have asked ENS to make a 4 hour slot available for an 'all party' meeting at ENS's office with a view to finalising this agreement, given the intention to draw down on 1 October 2015. ENS have scheduled this for 9 September 2015 at 9:00 to 13:00 and this time suits the Original Lenders.

We trust and hope that the time suits Transnet and Regiments. ENS will send a meeting invite shortly after this email.

ENS, please note that we have added Remo and Masotsha to the distribution list. Please could everyone keep them copied going forward.

We look forward to hearing from you.

Regards – efi



**Efi Bar-on**

**Senior Legal Adviser | Diversified Finance, Advisory and Transactional Services Legal | Nedbank Corporate**  
Sixth Floor Block H Nedbank 135 Rivonia Campus 135 Rivonia Road Sandown Sandton 2196 South Africa | PO Box 1144 Johannesburg 2000 South Africa  
t +27 (0)11 294 7749 f +27 (0)11 295 7749 c +27 (0)74 220 2821 @ [efib@nedbank.co.za](mailto:efib@nedbank.co.za)  
Website: [nedbank.co.za](http://nedbank.co.za)



THINK BEFORE YOU PRINT – At Nedbank we are committed to minimising environmental impact and encourage the preservation of natural capital.

**From:** Lauren Cloete [<mailto:lcloete@ensafrica.com>]

**Sent:** 02 September 2015 05:25 PM

**To:** Baron, E. (Efi); Jonathan Muller; Joseph Njoroge; Lightfoot Jason; Barnes, C. (Charles); Pietersen, D. (Darryl) (Corporate Banking); Juta, D. (Darshak); Dawid Chifa (OMInvest); Dube, G. (Gertrude); Gershwin Long; Bierman, L. (Leon); Brickman, M. (Moss); Moodliar, P. (Pooven); Pieter Wolmarans; Mistry, R. (Rajshree); Rolf Canto; Shaun Harris; Mangazi, S. (Sidlo); Tarryn Mentoor; Hayne, R. (Richard)

**Cc:** Sean Lederman; Daniella Lupini

**Subject:** Transnet - Term Facility Agreement #0398485#

Dear all,

We attach the following:

- a clean version of the Term Facility Agreement (in word); and
- a compare of the current draft of the Term Facility Agreement marked against the execution version of the existing Transnet facility agreement (in word).

We also attach the closing checklist.

Kind regards,  
Lauren

**Lauren Cloete**

senior associate

banking and finance

tel: +27 11 269 7600

cell: +27 82 788 0793

email: [lcloete@ensafrica.com](mailto:lcloete@ensafrica.com)

offices: [ensafrica.com/locations](http://ensafrica.com/locations)

Africa's largest law firm

law | tax | forensics | IP

info@ENSafrica.com  
ENSafrica.com

level 2 BBBEE rating

Edward Nathan Sonnenbergs Incorporated (registration number 2006/018200/21)

This email contains confidential information. It may also be legally privileged. Interception of this email is prohibited. The information contained in this email is only for the use of the intended recipient. If you are not the intended recipient, any disclosure, copying and/or distribution of the content of this email, or the taking of any action in reliance thereon, or pursuant thereto, is strictly prohibited. Should you have received this email in error, please notify us immediately by return email. ENSafrica (ENS and its affiliates) shall not be liable if any variation is effected to any document or correspondence emailed unless that variation has been approved in writing by the attorney dealing with the matter.

\*\*\*\*\*

Nedbank Limited Reg No 1951/000009/06. The following link displays the names of the Nedbank Board of Directors and Company Secretary.

[ <http://www.nedbank.co.za/terms/DirectorsNedbank.htm> ]

This email is confidential and is intended for the addressee only.

The following link will take you to Nedbank's legal notice.

[ <http://www.nedbank.co.za/terms/EmailDisclaimer.htm> ]

\*\*\*\*\*





---

**ZAR 2 500 000 000 - ZAR 3 000 000 000 TERM FACILITY AGREEMENT**

---

for

**TRANSNET SOC LTD**

(Registration No. 1990/000900/30)

as Borrower

with

**NEDBANK LIMITED**

(Registration No. 1951/000009/06)

as Original Lender

## CONTENTS

1.	DEFINITIONS AND INTERPRETATION .....	1
2.	THE FACILITY .....	19
3.	PURPOSE.....	19
4.	CONDITIONS OF UTILISATION .....	19
5.	UTILISATION .....	21
6.	REPAYMENT .....	22
7.	PREPAYMENT AND CANCELLATION .....	22
8.	INTEREST .....	29
9.	INTEREST PERIODS .....	30
10.	CHANGES TO THE CALCULATION OF INTEREST .....	30
11.	RAISING FEE.....	31
12.	COMMITMENT FEE.....	32
13.	TAX GROSS UP AND INDEMNITIES .....	33
14.	INCREASED COSTS.....	36
15.	OTHER INDEMNITIES.....	38
16.	MITIGATION BY THE FINANCE PARTIES .....	39
17.	COSTS AND EXPENSES.....	39
18.	REPRESENTATIONS.....	41
19.	INFORMATION UNDERTAKINGS .....	45
20.	FINANCIAL COVENANTS.....	49
21.	GENERAL UNDERTAKINGS .....	50
22.	EVENTS OF DEFAULT.....	57
23.	CHANGES TO THE LENDER.....	62
24.	CHANGES TO THE BORROWER .....	65
25.	PAYMENT MECHANICS .....	66
26.	NOTICES .....	67
27.	CALCULATIONS AND CERTIFICATES .....	68
28.	PARTIAL INVALIDITY .....	69
29.	REMEDIES AND WAIVERS .....	69
30.	AMENDMENTS AND WAIVERS.....	69
31.	CONFIDENTIALITY.....	70
32.	PRESS RELEASES AND PUBLIC ANNOUNCEMENTS.....	73
33.	WAIVER OF IMMUNITY .....	74
34.	COUNTERPARTS.....	74
35.	SOLE AGREEMENT.....	74
36.	NO IMPLIED TERMS .....	74
37.	INDEPENDENT ADVICE.....	74
38.	GOVERNING LAW.....	75
39.	JURISDICTION.....	75
40.	RIGHT TO QUOTE .....	76
	SCHEDULE 1 CONDITIONS PRECEDENT .....	77
	SCHEDULE 2 FORM OF UTILISATION REQUEST.....	79
	SCHEDULE 3 FORM OF TRANSFER CERTIFICATE.....	80
	SCHEDULE 4 FORM OF CONFIDENTIALITY UNDERTAKING.....	82
	SCHEDULE 5 TIMETABLES .....	87
	SCHEDULE 6 PERMITTED TRANSFEREES.....	88
	SCHEDULE 7 LENDER INSTRUCTION .....	91
	SCHEDULE 8 INCREASED MARGIN NOTICE.....	92
	SCHEDULE 9 INCREASED MARGIN ACCEPTANCE NOTICE.....	93
	SCHEDULE 10 COMPLIANCE CERTIFICATE.....	94
	SCHEDULE 11 OPERATIONS DISCLOSURE SCHEDULE.....	96

**SCHEDULE 12 LITIGATION DISCLOSURE SCHEDULE.....97**  
**SCHEDULE 13 COVENANT COMPLIANCE CERTIFICATE.....98**  
**SCHEDULE 14 EXISTING SECURITY .....99**

**PARTIES:**

**THIS AGREEMENT** is dated \_\_\_\_ March 2019 and made between:

- (1) **TRANSNET SOC LTD**, a company registered in accordance with the laws of South Africa under registration number 1990/000900/30 (the **Borrower**); and
- (2) **NEDBANK LIMITED**, a company registered in accordance with the laws of South Africa under registration number 1951/000009/06 (the **"Original Lender"**).

**IT IS AGREED** as follows:

**SECTION 1  
INTERPRETATION**

**1. DEFINITIONS AND INTERPRETATION**

**1.1. Definitions**

In this Agreement the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and cognate words shall bear corresponding meanings:

- 1.1.1. **A Positive Rating Event** shall bear the meaning ascribed thereto in clause 7.7.3.2.
- 1.1.2. **A Relevant Period** shall bear the meaning ascribed thereto in clause 7.7.3.2.
- 1.1.3. **Accounting Principles** means the generally accepted accounting principles in South Africa, including IFRS.
- 1.1.4. **Affiliate** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.
- 1.1.5. **Agreement** means this term facility agreement.
- 1.1.6. **Approved Exchange** means the Interest Rate Market of the JSE or a recognised exchange as defined in the Income Tax Act, 1962 or any other stock or bond exchange approved by the Lenders.
- 1.1.7. **Authorisation** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration by, with or from any authority.
- 1.1.8. **Availability Period** means the period from, and including, the Effective Date until the second anniversary thereof.
- 1.1.9. **Available Commitment** means a Lender's Commitment minus:
  - 1.1.9.1. the amount of its participation in the outstanding Loans under the Facility; and
  - 1.1.9.2. in relation to the proposed Utilisation, the amount of its participation in the Utilisation that is due to be made on or before the proposed Utilisation Date.

- 1.1.10. **Available Facility** means the aggregate for the time being of each Lender's Available Commitment;
- 1.1.11. **B Positive Rating Event** shall bear the meaning ascribed thereto in clause 7.7.3.1.
- 1.1.12. **B Relevant Period** shall bear the meaning ascribed thereto in clause 7.7.3.1.
- 1.1.13. **Borrowing Programme** means the borrowing programme of the Borrower in relation to its current financial year required to be submitted to the Minister of Finance as prescribed in terms of Section 66(7)(a) of the PFMA.
- 1.1.14. **Break Costs** means the amount (if any) by which:
- 1.1.14.1. the interest (excluding the Margin) which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;
- exceeds:
- 1.1.14.2. the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.
- 1.1.15. **Business Day** means a day other than a Saturday or Sunday or public holiday designated as such by the applicable laws of South Africa.
- 1.1.16. **Change of Principal Business** means any of the following events or circumstances –
- 1.1.16.1. the Borrower ceases to carry on any of the Principal Businesses; or
- 1.1.16.2. the Borrower enters into any agreement which has the effect of disposing of the whole or a substantial part of any of the Principal Businesses,
- 1.1.17. **Change of Control Event** means the Government of South Africa ceases to (a) own, directly or indirectly, more than 50 per cent of the issued share capital of the Borrower; or (b) control, directly or indirectly, the Borrower; or (c) have the right to unilaterally veto any of the special resolution items contained in section 65(11) of the Companies Act. For the purpose of this definition, the Government of South Africa will be deemed to “control” the Borrower if (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract, trust or otherwise) it has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of the Borrower or otherwise controls, or has the power to control, the affairs and policies of the Borrower.
- 1.1.18. **Change in Business Notice** shall bear the meaning ascribed thereto in clause 7.10.1.

- 1.1.19. **Commitment** means, in relation to:
- 1.1.19.1. the Original Lender, the Loan Amount and the amount of any other Commitment transferred to it under this Agreement; and
  - 1.1.19.2. any other Lender, the amount of any Commitment transferred to it under this Agreement,
- to the extent not cancelled or reduced pursuant to this Agreement.
- 1.1.20. **Commitment Fee** means 0,35% (zero comma thirty five per cent), exclusive of VAT, of each Lender's Available Commitment.
- 1.1.21. **Companies Act** means the Companies Act, 2008 (Act No. 71 of 2008).
- 1.1.22. **Compliance Certificate** means the compliance certificate contemplated in Schedule 10 hereto.
- 1.1.23. **Confidential Information** means all information relating to the Borrower or the Group of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under the Finance Documents or the Facility from either:
- 1.1.23.1. any member of the Group or any of its advisers; or
  - 1.1.23.2. another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,
- in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:
- 1.1.23.2.1. is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 31 (*Confidentiality*); or
  - 1.1.23.2.2. is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
  - 1.1.23.2.3. is known by that Finance Party before the date the information is disclosed to it in accordance with Clause 1.1.23.1 or 1.1.23.2 or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.
- 1.1.24. **Confidentiality Undertaking** means a confidentiality undertaking substantially in the form set out in Schedule 4 (*Form of Confidentiality Undertaking*) or in any other form agreed between the Borrower and the Lenders.



- 1.1.25. **Consolidated Total Assets** means, at any time, the amount of the total assets of the Borrower, as appearing in the latest audited consolidated annual financial statements of the Borrower delivered pursuant to Clause 19.1 (*Financial statements*).
- 1.1.26. **Corporate Plan** means the corporate plan of the Borrower which details, *inter alia*, the projections of its revenue and expenditure and the Borrowing Programme in respect of the Borrower.
- 1.1.27. **Covenant Compliance Certificate** means the covenant compliance certificate substantially in the form set out in Schedule 13 (*Form of Covenant Compliance Certificate*) hereto;
- 1.1.28. **Credit Rating** means the credit rating issued by each Rating Agency, from time to time, in respect of the Borrower detailing the credit rating of the Borrower as determined by such Rating Agency.
- 1.1.29. **Default** means an Event of Default or any event or circumstance specified in Clause 22 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.
- 1.1.30. **Designated Amount** means an amount equal to 0.5 per cent. of the Consolidated Total Assets of the Borrower from time to time.
- 1.1.31. **Disruption Event** means either or both of:
- 1.1.31.1. a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- 1.1.31.2. the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
- 1.1.31.2.1. from performing its payment obligations under the Finance Documents; or
- 1.1.31.2.2. from communicating with other Parties in accordance with the terms of the Finance Documents,
- and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.
- 1.1.32. **Distribution** means any payment by way of interest, principal, dividend, capital reduction, return of capital, fee, royalty or other distribution of whatsoever nature and howsoever described (including a repurchase or redemption of shares) by or on behalf of a company to or for the account of any member or shareholder of that company, in its capacity as member or shareholder of that company, or in relation to a loan made by such

shareholder to the company, in each case whether paid or payable and whether paid or payable in cash or *in specie*.

- 1.1.33. **Economic Failure** means, at any time after the Signature Date and on or before a Utilisation Date, the occurrence of any event in the local or international financial markets, banking, financial, monetary, economic, political or financial market conditions and/or any other calamity or event which, in the opinion of the Lenders, makes it unlawful or impossible for the Lenders to fund their participations in the Loans.
- 1.1.34. **Effective Date** means the date on which the Original Lender notifies the Borrower that it has received all documents and other evidence listed in Schedule 1 (*Conditions precedent*), as contemplated in clause 4.1.1 (*Initial conditions precedent*).
- 1.1.35. **Environment** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:
- 1.1.35.1. air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- 1.1.35.2. water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- 1.1.35.3. land (including, without limitation, land under water).
- 1.1.36. **Environmental Claim** means any claim, proceeding, demand, investigation or similar communication by any person in respect of any Environmental Law or alleging potential liability for investigatory costs, clean-up costs, governmental response costs, natural resource damages, property damages, personal injuries, fines or penalties arising out of, based on or resulting from or in connection with Environmental Matters.
- 1.1.37. **Environmental Law** means any applicable law, rule or regulation of South Africa with regard to Environmental Matters and any orders, notices, demands, codes of practice, circulars, guidance notes or injunctions pursuant to the same made or issued by the Government of South Africa or any agency or authority thereof which are binding on and enforceable against the Borrower and any specific agreements entered into by any member of the Group with any competent authorities of South Africa related to Environmental Matters.
- 1.1.38. **Environmental Matters** means any of the following:
- 1.1.38.1. any release, emission, entry or introduction into the air of any contaminants including the air within buildings and other natural or man-made structures above or below ground;
- 1.1.38.2. any discharge, release or entry into water of any contaminants including into any river, watercourse, lake or pond (whether natural or artificial or above or below ground) or reservoir, or the surface of the riverbed or of other land supporting such waters, ground waters, sewer or the sea;

- 1.1.38.3. any release, deposit, keeping or disposal in land or on land whether or not covered by the sea or other waters, of any contaminants;
- 1.1.38.4. any deposit, disposal, keeping, treatment, importation, production or carrying of any waste, including any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process or activity (including making it re-usable or reclaiming substances from it) and any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoiled;
- 1.1.38.5. nuisance, noise, defective premises, health and safety at work, preservation or protection of the Environment; and
- 1.1.38.6. any other matter whatsoever directly or indirectly affecting the Environment or any part of it.
- 1.1.39. **Environmental Permit** means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by any member of the Group.
- 1.1.40. **Event of Default** means any event or circumstance specified as such in Clause 22 (*Events of Default*) (other than Clause 22.18 (*Acceleration*)).
- 1.1.41. **Facility** means the facility made available to the Borrower up to the Loan Amount contemplated in clause 2 hereof.
- 1.1.42. **Facility Office** means, if applicable, the office or offices notified by any Lender to the Borrower in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days written notice) as the office or offices through which it will perform its obligations under this Agreement.
- 1.1.43. **Finance Document** means this Agreement, each Qualifying Guarantee, each Utilisation Request and any other document designated as such by the Finance Parties and the Borrower.
- 1.1.44. **Finance Party** means each Lender and any facility agent appointed under or pursuant to any Finance Document.
- 1.1.45. **Financial Indebtedness** means any indebtedness for or in respect of:
  - 1.1.45.1. moneys borrowed or credit granted;
  - 1.1.45.2. any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
  - 1.1.45.3. any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

- 1.1.45.4. the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with Accounting Principles, be treated as a finance or capital lease;
- 1.1.45.5. receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- 1.1.45.6. any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- 1.1.45.7. any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value or close-out amount under that derivative transaction shall be taken into account);
- 1.1.45.8. any amount raised by the issue of shares which are redeemable;
- 1.1.45.9. any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- 1.1.45.10. the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in Clauses 1.1.45.1 to 1.1.45.9 above.
- 1.1.46. **Group** means the Borrower and its Subsidiaries, if any, for the time being.
- 1.1.47. **Holding Company** means, in relation to a person, any other person in respect of which it is a Subsidiary.
- 1.1.48. **IFRS** means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.
- 1.1.49. **Increased Margin** shall bear the meaning ascribed thereto in clause 7.7.1.2.1.
- 1.1.50. **Increased Margin Acceptance Notice** means the notice substantially in the form contemplated in Schedule 9 hereto.
- 1.1.51. **Increased Margin Notice** means the notice substantially in the form contemplated in Schedule 8 hereto.
- 1.1.52. **Initial Credit Rating** means the credit rating in respect of the Borrower as of the Signature Date, being a Moody's Long Term Local Currency Rating of Baa2 and a S&P Long Term Local Currency Issuer Credit rating of BBB+. Unless otherwise noted, the ratings refer to global scale ratings.
- 1.1.53. **Insolvency Event** means in relation to any Obligor:
  - 1.1.53.1. such Obligor is dissolved (other than pursuant to a solvent consolidation, amalgamation or merger effected *with* the consent of the Lenders);
  - 1.1.53.2. such Obligor becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;

- 1.1.53.3. such Obligor makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- 1.1.53.4. such Obligor institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- 1.1.53.5. such Obligor has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in Clause 1.1.53.4 above and:
- 1.1.53.5.1. results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
- 1.1.53.5.2. is not dismissed, discharged, stayed or restrained in each case within 30 (thirty) days of the institution or presentation thereof;
- 1.1.53.6. such Obligor has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a solvent consolidation, amalgamation or merger effected with the consent of the Lenders);
- 1.1.53.7. such Obligor seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, business rescue practitioner, custodian or other similar official for it or for all or substantially all its assets;
- 1.1.53.8. such Obligor has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 (thirty) days thereafter;
- 1.1.53.9. such Obligor causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in Clauses 1.1.53.1 to 1.1.53.8 above; or
- 1.1.53.10. such Obligor takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.
- 1.1.54. **Instalments** means [43] equal instalments of capital on account of the Loan, payable by the Borrower to the Lenders on each Payment Date such that the Loan is scheduled to amortise over the Term and be repaid in full on the Maturity Date. *[This assumes that the Effective Date will occur before 15 October 2015]*

- 1.1.55. **Interest Payment Date** means 15 October, 15 January, 15 April and 15 July of each year.
- 1.1.56. **Interest Period** means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).
- 1.1.57. **Interpolated Screen Rate** means, in relation to any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:
- 1.1.57.1. the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
- 1.1.57.2. the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,
- each as of the Specified Time on the Quotation Day for the currency of that Loan.
- 1.1.58. **Issuer Credit Rating** means the rating assigned to the Borrower by the Rating Agencies.
- 1.1.59. **JIBAR** means, in relation to any Loan:
- 1.1.59.1. the applicable Screen Rate;
- 1.1.59.2. if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or
- 1.1.59.3. if:
- 1.1.59.3.1. no Screen Rate is available for the currency of that Loan; or
- 1.1.59.3.2. no Screen Rate is available for the Interest Period of that Loan and it is not possible to calculate an Interpolated Screen Rate for that Loan,
- the Reference Bank Rate,
- as of, in the case of Clauses 1.1.59.1 and 1.1.59.3 above, the Specified Time on the Quotation Day for the currency of that Loan and for a period equal in length to the Interest Period of that Loan.
- 1.1.60. **Joint Venture** means an association of 2 (two) or more persons combining assets and/or expertise to carry out a business enterprise and having a joint proprietary interest and a sharing of profits and losses and whether undertaken, without limitation, in the form of a partnership, unincorporated association, trust or incorporated entity.
- 1.1.61. **JSE** means the Johannesburg Stock Exchange, a licensed financial exchange in terms of the Financial Markets Act 2012, or any other financial exchange which operates as a successor exchange to the Johannesburg Stock Exchange, as managed and operated by the JSE Limited, a public company duly incorporated in accordance with the laws of South Africa with registration number 2005/022939/06.

- 1.1.62. **Lender Instruction** means a written instruction from the Lenders addressed to the Borrower, instructing the Borrower to comply with one of the following instructions –
- 1.1.62.1. to provide the Lenders with a Qualifying Guarantee; or
- 1.1.62.2. to prepay the Loans, all accrued unpaid interest thereon and all other amounts outstanding under the Finance Documents,
- in each case, following the occurrence of the Negative Rating Event contemplated in clause 7.7.1.3 (in the form contemplated in Schedule 7).
- 1.1.63. **Lenders** means:
- 1.1.63.1. the Original Lender; and
- 1.1.63.2. any other person which has become a Party as Lender in accordance with Clause 23 (*Changes to the Lender*),
- which in each case has not ceased to be a Party in accordance with the terms of this Agreement and **Lender** means any one of them.
- 1.1.64. **Loan** means a loan made or to be made under the Facility or the principal amount outstanding for the time being of such loan.
- 1.1.65. **Loan Amount** has the meaning given to it in Clause 2.
- 1.1.66. **Margin** means –
- 1.1.66.1. at any time other than the circumstances contemplated in Clause 1.1.66.2:
- 1.1.66.1.1. 2.70<sup>1</sup>% Nacq; or
- 1.1.66.1.2. the Increased Margin Nacq,
- as applicable; and
- 1.1.66.2. notwithstanding anything to the contrary in the Agreement, at any time while an Event of Default is continuing, the rate in Clause 1.1.66.1 plus 2%.
- 1.1.67. **Margin Increase Period** shall bear the meaning ascribed thereto in Clause 7.7.1.2.1.
- 1.1.68. **Material Adverse Effect** means a material adverse effect on:
- 1.1.68.1. the business, operations, property, condition (financial or otherwise) or prospects of any Obligor or the Group taken as a whole; or

---

<sup>1</sup> The Lenders assume that this price to be the clearing price in the current round of fund raising by Transnet. If there are lenders with a higher final clearing price, this margin is to be increased accordingly.



- 1.1.68.2. the ability of any Obligor to perform its obligations under the Finance Documents; or
- 1.1.68.3. the validity or enforceability of the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.
- 1.1.69. **Maturity Date** means the 15<sup>th</sup> anniversary of the Effective Date.
- 1.1.70. **Month** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:
- 1.1.70.1. (subject to Clause 1.1.70 below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- 1.1.70.2. if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- 1.1.70.3. if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.
- The above rules will only apply to the last Month of any period.
- 1.1.71. **Moody's** means Moody's Investors Service, Inc.
- 1.1.72. **Moody's Rating** shall bear the meaning ascribed thereto in clause 7.7.1.1.
- 1.1.73. **Nacq** means nominal annual compounded Quarterly.
- 1.1.74. **Negative Rating Event** has the meaning given to that term in Clause 7.7 (*Changes in rating*).
- 1.1.75. **New Lender** has the meaning given to that term in Clause 23 (*Changes to the Lender*).
- 1.1.76. **Obligors** mean the Borrower and any Qualifying Guarantor and **Obligor** means any one of them.
- 1.1.77. **OFAC Sanctions** means sanctions imposed from time to time by the Office of Foreign Assets Control of the Department of Treasury of the United States of America.
- 1.1.78. **Operations Disclosure Schedule** means the disclosure schedule contemplated in Schedule 11 hereto detailing certain of the Borrower's operations in Zimbabwe.
- 1.1.79. **Original Financial Statements** means the audited consolidated financial statements of the Group for the financial year ended 31 March 2015.
- 1.1.80. **Party** means a party to this Agreement.
- 1.1.81. **Payment Date** means each Interest Payment Date following the date which falls 54 (fifty four) Months after the Effective Date.
- 1.1.82. **Permitted Corporatization** means a corporatization, hive-down, subsidiarization, demerger, merger or other corporate reconstruction (by whatever name called) of any of

the Principal Divisions required to be implemented by an executive or legislative act of the Government.

- 1.1.83. **Permitted Transaction** means:
- 1.1.83.1. a Permitted Corporatization;
  - 1.1.83.2. any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security given, or other transaction arising, under the Finance Documents;
  - 1.1.83.3. the solvent liquidation or reorganisation of any member of the Group (other than the Borrower) so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group;
  - 1.1.83.4. transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading on arm's length terms; or
  - 1.1.83.5. transactions other than any permitted under the foregoing sub-paragraphs entered into with the prior written consent of the Lenders.
- 1.1.84. **Permitted Transferee** means each of the persons listed in Schedule 6 hereto.
- 1.1.85. **PFMA** means the Public Finance Management Act, 1 of 1999.
- 1.1.86. **Principal Businesses** means the businesses of the Borrower operated under each Principal Division as of the Signature Date and **Principal Business** means any one of them.
- 1.1.87. **Principal Divisions** means the Borrower's operations which are, as of the Signature Date, grouped into the following five divisions providing major transport modes, with central support services unified under one brand, which for operational IFRS reporting purposes, are comprised by the following five core business divisions: Transnet Freight Rail, Transnet Engineering, the Transnet National Ports Authority, Transnet Port Terminals and Transnet Pipelines and **Principal Division** means any one of them.
- 1.1.88. **Qualifying Guarantee** shall bear the meaning ascribed thereto in clause 7.7.1.3.1.
- 1.1.89. **Qualifying Guarantor** means a third party, the identity and financial standing of which must be acceptable to the Lenders at their absolute discretion, which guarantees the performance by the Borrower of its obligations under the Finance Documents following the occurrence of the Negative Rating Event contemplated in Clause 7.7.1.3.1.
- 1.1.90. **Qualifying Guarantor Adverse Event** shall bear the meaning ascribed thereto in clause 7.9.
- 1.1.91. **Quarter** means a period of 3 (three) consecutive Months and the term **Quarterly** shall be construed accordingly.
- 1.1.92. **Quotation Day** means, in relation to any period for which an interest rate is to be determined, the first day of that Interest Period unless market practise differs in the Relevant Interbank Market, in which case the Quotation Day will be determined by the

Lenders in accordance with market practise in the Relevant Interbank Market (and if quotations would normally be given on more than one day, the Quotation Day would be the last of those days).

- 1.1.93. **Rating Agencies** means S&P and Moody's and their successors or any other rating agency of equivalent international standing as agreed between the Borrower and the Lenders, from time to time (including successors of such rating agency) and **Rating Agency** means any one of them.
- 1.1.94. **Reference Bank Rate** means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Lenders at their request by the Reference Banks in relation to JIBAR, as the rate at which the relevant Reference Bank could borrow funds in the Johannesburg interbank market, in the relevant currency and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.
- 1.1.95. **Reference Banks** means, in relation to JIBAR, the principal offices in Johannesburg of Absa Bank Limited, FirstRand Bank Limited, Nedbank Limited and The Standard Bank of South Africa Limited or such other banks as may be appointed by the Lenders in consultation with the Borrower.
- 1.1.96. **Related Fund** in relation to a fund (the **first fund**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.
- 1.1.97. **Relevant Interbank Market** means the Johannesburg interbank market.
- 1.1.98. **Relevant Jurisdiction** means the jurisdiction under whose laws the Borrower is incorporated as at the date of this Agreement.
- 1.1.99. **Relevant Period** shall bear the meaning ascribed thereto in clause 20.1.6.
- 1.1.100. **Repeating Representations** means each of the representations set out in Clauses 18.1 (*Status*) to Clause 18.7 (*Governing Law and Enforcement*), Clause 18.10 (*No default*), Clause 18.11 (*No misleading information*), sub-Clauses 18.12.4 and 18.12.5 of Clause 18.12 (*Financial statements*), Clause 18.13 (*Pari passu ranking*), Clause 18.18 (*Good title to assets*), Clause 18.20 (*Authorised Signatories*), Clause 18.22 (*No Immunity*) and Clause 18.22 (*No adverse consequences*).
- 1.1.101. **Representative** means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.
- 1.1.102. **Sanctions Authority** means:
- 1.1.102.1. the United Nations;
- 1.1.102.2. the European Union;
- 1.1.102.3. the Council of Europe (founded under the Treaty of London, 1946);

- 1.1.102.4. the government of the United States of America;
  - 1.1.102.5. the government of the United Kingdom;
  - 1.1.102.6. the government of the Republic of France;
  - 1.1.102.7. the Government of the Commonwealth of Australia,
- and any of their governmental authorities, including, without limitation, the Office of Foreign Assets Control for the US Department of Treasury (OFAC), the US Department of Commerce, the US State Department or the US Department of the Treasury, Her Majesty's Treasury (HMT) and the French Ministry of Finance (MINEFI).
- 1.1.103. **Sanctioned Entity** means:
    - 1.1.103.1. a person, country or territory which is listed on a Sanctions List or is subject to Sanctions;
    - 1.1.103.2. a person which is ordinarily resident in a country or territory which is listed on a Sanctions List or is subject to Sanctions.
  - 1.1.104. **Sanctioned Transaction** means the use of the proceeds of the Facility for the purpose of financing or providing any credit, directly or indirectly, to:
    - 1.1.104.1. a Sanctioned Entity; or
    - 1.1.104.2. any other person or entity, if a member of the Group has actual knowledge that the person or entity proposes to use the proceeds of the financing or credit for the purpose of financing or providing any credit, directly or indirectly, to a Sanctioned Entity,

in each case to the extent that to do so is prohibited by, or would cause any breach of, Sanctions if conducted by a person who is subject to or obliged to comply with the laws or regulations of a Sanctions Authority.
  - 1.1.105. **Sanctions** means trade, economic or financial sanctions, laws, regulations, embargoes or restrictive measures imposed, administered or enforced from time to time by any Sanctions Authority.
  - 1.1.106. **Sanctions List** means:
    - 1.1.106.1. the Specially Designated Nationals and Blocked Persons List maintained by OFAC;
    - 1.1.106.2. the Consolidated List of Financial Sanctions Targets and the Investments Ban List maintained by HMT,

and any similar list maintained, or a public announcement of a Sanctions designation made, by any Sanctions Authority, in each case as amended, supplemented or substituted from time to time.
  - 1.1.107. **S&P** means Standard and Poor's Financial Services LLC, a division of McGraw Hill.
  - 1.1.108. **S&P Rating** shall bear the meaning ascribed thereto in clause 7.7.1.1.

- 1.1.109. **Screen Rate** means in relation to JIBAR, the mid market rate for deposits in ZAR for the relevant period displayed on the SAFEY page alongside the caption "YIELD" on the Reuters screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Lenders may specify another page or service displaying the relevant rate after consultation with the Borrower.
- 1.1.110. **Security** means a mortgage bond, notarial bond, cession in security, charge, pledge, lien, hypothec or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.
- 1.1.111. **Signature Date** means the date on which this Agreement is signed by the Party signing last in time.
- 1.1.112. **South Africa** means the Republic of South Africa (as constituted from time to time).
- 1.1.113. **Specified Time** means a day or time determined in accordance with Schedule 5 (*Timetables*).
- 1.1.114. **Subsidiary** means a "subsidiary" as defined in the Companies Act and shall include an person who would, but for not being a "company" under the Companies Act, qualify as a "subsidiary" as defined in the Companies Act.
- 1.1.115. **Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).
- 1.1.116. **Term** means the period commencing on the Effective Date and ending on the Maturity Date.
- 1.1.117. **Trading Day** means, to the extent that any bonds issued by the Borrower are listed on an Approved Exchange, any day that is a trading day on such Approved Exchange and does not include a day on which trading on such Approved Exchange is scheduled to close or does close or is suspended prior to its regular weekday closing time.
- 1.1.118. **Transfer Certificate** means a certificate substantially in the form set out in Schedule 3 (*Form of Transfer Certificate*) or any other form agreed between the Lenders and the Borrower.
- 1.1.119. **Transfer Date** means, in relation to an assignment or a transfer, the later of:
- 1.1.119.1. the proposed Transfer Date specified in the relevant Transfer Certificate; and
- 1.1.119.2. the date on which the applicable Lender executes the relevant Transfer Certificate.
- 1.1.120. **Unpaid Sum** means any sum due and payable but unpaid by the Borrower under the Finance Documents.
- 1.1.121. **Utilisation** means a utilisation of the Facility.

- 1.1.122. **Utilisation Date** means the date of a Utilisation, being the date on which the relevant Loan is to be made.
- 1.1.123. **Utilisation Request** means a notice substantially in the form set out in Schedule 2 (*Form of Utilisation Request*).
- 1.1.124. **VAT** means (i) value added tax as provided for in the VAT Act; or (ii) any general service tax; or (iii) any other tax of a similar nature.
- 1.1.125. **Withdrawal Event** shall bear the meaning ascribed thereto in Clause 7.8.
- 1.1.126. **ZAR, R and Rand** each mean the lawful currency of South Africa.

## 1.2. Construction

- 1.2.1. Unless a contrary indication appears, any reference in this Agreement to:
- 1.2.1.1. the Borrower, any Finance Party, any Lender, or any Party shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
- 1.2.1.2. assets includes present and future properties, revenues and rights of every description;
- 1.2.1.3. an authority includes any court or governmental, intergovernmental or supranational body, agency, department or any regulatory, self-regulatory or other authority;
- 1.2.1.4. a Finance Document or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- 1.2.1.5. the use of the word "including" followed by specific examples will not be construed as limiting the meaning of the general wording preceding it, and the *eiusdem generis* rule must not be applied in the interpretation of such general wording or specific examples;
- 1.2.1.6. indebtedness includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- 1.2.1.7. a person includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, Joint Venture, consortium or partnership (whether or not having separate legal personality);
- 1.2.1.8. a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- 1.2.1.9. a provision of law is a reference to that provision as amended or re-enacted; and
- 1.2.1.10. a time of day is a reference to Johannesburg time.
- 1.2.2. Section, Clause and Schedule headings are for ease of reference only.

- 1.2.3. Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- 1.2.4. A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived (in writing) and an Event of Default is "**continuing**" if it has not been waived (in writing).
- 1.2.5. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in an interpretation clause, effect shall be given to it as if it were a substantive provision of the relevant Finance Document.
- 1.2.6. Unless inconsistent with the context, an expression in any Finance Document which denotes the singular includes the plural and *vice versa*.
- 1.2.7. The Schedules to any Finance Document form an integral part thereof and a reference to a "**Clause**" or a "**Schedule**" is a reference to a clause of, or a schedule to, this Agreement.
- 1.2.8. The rule of construction that, in the event of ambiguity, a contract shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of the Finance Documents.
- 1.2.9. The expiry or termination of any Finance Documents shall not affect those provisions of the Finance Documents that expressly provide that they will operate after any such expiry or termination or which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.2.10. The Finance Documents shall to the extent permitted by applicable law be binding on and enforceable by the administrators, trustees, permitted cessionaries, business rescue practitioners or liquidators of the Parties as fully and effectually as if they had signed the Finance Documents in the first instance and reference to any Party shall be deemed to include such Party's administrators, trustees, permitted cessionaries, business rescue practitioners or liquidators, as the case may be.
- 1.2.11. Unless a contrary indication appears, where any number of days is to be calculated from a particular day, such number shall be calculated as including that particular day and excluding the last day of such period.
- 1.3. **Third party rights**
  - 1.3.1. Except as expressly provided for in this Agreement or in any other Finance Document, no provision of any Finance Document constitutes a stipulation for the benefit of any person who is not a party to that Finance Document.
  - 1.3.2. Notwithstanding any term of any Finance Document, the consent of any person who is not a party to that Finance Document is not required to rescind or vary that Finance Document at any time except to the extent that the relevant variation or rescission (as the

case may be) relates directly to the right conferred upon any applicable third party under a stipulation for the benefit of that party that has been accepted by that third party.



## SECTION 2 THE FACILITY

### 2. THE FACILITY

#### 2.1. The Facility

Subject to the provisions of this Agreement, the Lenders agree to make a term loan facility available to the Borrower in an amount of:

- 2.1.1. until such time as the Original Lender has delivered to the Borrower a letter stating that the board of directors of the Original Lender has approved an increase in the Facility, (as contemplated in clause 2.1.2), ZAR2 500 000 000; and
- 2.1.2. on receipt by the Borrower of a letter from the Original Lender stating that (i) the board of directors of the Original Lender has approved an increase in the Facility to that amount; and (ii) the Original Lender is satisfied that the Borrower has complied with all terms and conditions imposed by the Lender's board of directors in respect of such increase, ZAR3 000 000 000,

(the "Loan Amount").

#### 2.2. Finance Parties' rights and obligations

- 2.2.1. The obligations of each Finance Party under the Finance Documents are separate and independent. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- 2.2.2. The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.
- 2.2.3. A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

### 3. PURPOSE

#### 3.1. Purpose

The Borrower shall apply all amounts borrowed by it under the Facility towards the general corporate purposes of the Group.

#### 3.2. Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

### 4. CONDITIONS OF UTILISATION

#### 4.1. Initial conditions precedent

4.1.1. The Borrower may not deliver a Utilisation Request unless the Lenders have (a) received all of the documents and other evidence listed in Schedule 1 (*Conditions precedent*); or (b) waived the requirement to receive all or any of such documents or evidence. The Lenders shall notify the Borrower promptly upon being so satisfied or upon making any such waiver.

4.1.2. If the Effective Date has not occurred by the date which falls 30 days after the Signature Date, the Lenders may, on not less than 5 Business Days' notice to the Borrower, cancel the Commitment.

4.2. **Further conditions precedent**

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

4.2.1. no Default is continuing or would result from the proposed Utilisation;

4.2.2. no Economic Failure has occurred;

4.2.3. the Borrower's Issuer Credit Rating is a Moody's Long Term Local Currency Rating of Baa2 or better and an S&P Long Term Local Currency Issuer Credit rating of BBB+ or better;

4.2.4. the Repeating Representations to be made by the Borrower are true in all material respects;

4.2.5. the Lenders have received evidence to their satisfaction that the Borrower has delivered utilisation requests to each of:

4.2.5.1. Old Mutual Specialised Finance Proprietary Limited pursuant to the facility in an amount of approximately R1 500 000 000 to be made available by Old Mutual Specialised Finance Proprietary Limited on or about the Signature Date; and/or

4.2.5.2. Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) pursuant to the facility in an amount of approximately R1 500 000 000 to be made available by Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) on or about the Signature Date,

pursuant to which the Borrower requested utilisations of such facilities in an amount which bears the same proportion of such facilities as the proportion which the Utilisation Request bears to the Facility.

### SECTION 3 UTILISATION

#### 5. UTILISATION

##### 5.1. Delivery of a Utilisation Request

- 5.1.1. The Borrower may utilise the Facility by delivery to the Lenders of a duly completed Utilisation Request by no later than the Specified Time.
- 5.1.2. The Borrower may not deliver more than one Utilisation Request per calendar Month during the Availability Period.
- 5.1.3. The Borrower may not deliver a Utilisation Request less than 5 (five) Business Days prior to the expiry of the Availability Period.

##### 5.2. Completion of a Utilisation Request

A Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

- 5.2.1. the proposed Utilisation Date is a Business Day within the Availability Period; and
- 5.2.2. the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*).

##### 5.3. Currency and amount

- 5.3.1. The currency specified in a Utilisation Request must be Rand.
- 5.3.2. The amount of the proposed Utilisation must not be more than the lesser of:
  - 5.3.2.1. R250 000 000; and
  - 5.3.2.2. the Available Facility.

##### 5.4. Lender's participation

If the conditions set out in this Agreement have been met, the Lenders shall make their participation in the Utilisation available by the Utilisation Date.

##### 5.5. Cancellation of Commitment

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

**SECTION 4**  
**REPAYMENT, PREPAYMENT AND CANCELLATION**

**6. REPAYMENT**

**6.1. Repayment of the Loan**

The Borrower shall repay the Loan by paying each Instalment to the Lenders on each Payment Date.

**6.2. Re-borrowing**

A Loan or any portion thereof repaid or prepaid by the Borrower in accordance with the provisions of this Agreement shall not be available to be re-borrowed by the Borrower.

**7. PREPAYMENT AND CANCELLATION**

**7.1. Voluntary prepayment of the Loan**

Save as contemplated in Clause 7.7.1.3.2 hereof, the Borrower shall not be entitled to voluntarily prepay a Loan or any portion thereof.

**7.2. Voluntary Cancellation**

The Borrower shall not be entitled to voluntarily cancel the whole or any part of any Lender's Available Commitment.

**7.3. Illegality**

If, in any applicable jurisdiction, it becomes unlawful for any Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in a Loan:

- 7.3.1. such Lender shall promptly notify the Borrower upon becoming aware of that event;
- 7.3.2. upon such Lender notifying the Borrower, the Commitment of such Lender will be immediately cancelled; and
- 7.3.3. the Borrower shall repay such Lender's participation in the Loans made to the Borrower on the last day of the Interest Period for each Loan occurring after such Lender has notified the Borrower or, if earlier, the date specified by such Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

**7.4. Change of control**

If a Change of Control Event occurs:

- 7.4.1. the Borrower shall promptly notify the Lenders upon becoming aware of that event;
- 7.4.2. the Lenders shall not be obliged to fund a Utilisation;

7.4.3. if any Lender so requires and notifies the Borrower within 30 days' of the Change of Control Event or of such Lender becoming aware of the Change of Control Event, such Lender shall, by not less than 30 days' notice to the Borrower, cancel its Commitment (if applicable) and declare the participation of that Lender in all outstanding Loans owed to such Lender, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Commitment of such Lender will be cancelled and all such outstanding amounts owing to such Lender will become immediately due and payable.

**7.5. Disposal and insurance proceeds**

7.5.1. The Borrower shall be obliged to apply a portion of the following proceeds received by the Borrower or any other member of the Group in the prepayment of the Loans:

7.5.1.1. The proceeds arising from the sale of assets which, in aggregate during a financial year of the Borrower, exceed the Designated Amount, if:

7.5.1.1.1. such proceeds:

7.5.1.1.1.1. were not used within 90 days; or

7.5.1.1.1.2. were committed (as evidenced by a resolution of the board of directors of the recipient) to be used within 90 days of receipt thereof but were not in fact used within a period of 90 days of the date of adoption of such resolution,

in the replacement of the assets disposed of; or

7.5.1.1.2. the replacement assets were not of the same type and at least of the same quality as the assets disposed of.

7.5.1.2. The proceeds arising from a claim on an insurance policy which, in aggregate during a financial year of the Borrower, exceed the Designated Amount, if:

7.5.1.2.1. such proceeds:

7.5.1.2.1.1. were not used within 90 days; or

7.5.1.2.1.2. were committed (as evidenced by a resolution of the board of directors of the recipient) to be used within 90 days of receipt thereof but were not in fact used within a period of 90 days of the date of adoption of such resolution,

in the replacement of the assets which were damaged or destroyed (as the case may be); or

7.5.1.2.2. the replacement assets were not of the same type and at least of the same quality as the assets which were damaged or destroyed (as the case may be).

7.5.1.3. The proceeds arising from the sale by the Borrower or any other member of the Group of all of its assets or a substantial portion of its assets.

- 7.5.2. The amount of the Loans required to be prepaid (which shall be pre-paid pro-rata amongst themselves) shall be equal to the proceeds contemplated in clause 7.5.1 multiplied by the ratio which the Loans bear to the aggregate of the Loans and all other loans under any other agreement which are obliged to be prepaid before their originally scheduled repayment date as a result of the occurrence of the events set out in clause 7.5.1. Any prepayment required to be made by the Borrower shall be made by no later than the 15<sup>th</sup> Business Day after the occurrence of the event which gave rise to the obligation to make such prepayment and on receipt thereof the Commitment shall be reduced by an amount equal to such prepayment.

7.6. **Right of replacement or repayment and cancellation in relation to a single Lender**

7.6.1. If:

- 7.6.1.1. any sum payable to a Lender by the Borrower is required to be increased under Clause 13.2 (*Tax gross-up*); or

- 7.6.1.2. a Lender claims indemnification from the Borrower under Clause 13.3 (*Tax indemnity*) or Clause 14.1 (*Increased costs*),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues and provided that no Default is then continuing, give such Lender notice of cancellation of the Commitment of such Lender and its intention to procure the repayment of such Lender's participation in the Loans.

- 7.6.2. On receipt of a notice of cancellation referred to in Clause 7.6.1 above, the Commitment of the relevant Lender shall immediately be reduced to zero.

- 7.6.3. On the last day of the Interest Period which ends after the Borrower has given notice of cancellation under Clause 7.6.1 above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay the applicable Lender's participation in the outstanding Loans together with all interest and other amounts accrued under the Finance Documents.

7.7. **Changes in rating**

- 7.7.1. If the Borrower's Initial Credit Rating or the rating after the expiration of the B Relevant Period or the A Relevant Period, as the case may be, falls (each, a **Negative Rating Event**) -

- 7.7.1.1. to a S&P Long Term Local Currency Issuer Credit rating (each an "**S&P Rating**") of BBB or a Moody's Long Term Local Currency rating (each a "**Moody's Rating**") of Baa2, the Borrower shall, upon written request by the Lenders, promptly confer with the Lenders on the occurrence of such Negative Rating Event and for a period of no more than 10 (ten) Business Days calculated from the date on which such Negative Rating Event occurred, discuss the reason for such decline in the Borrower's credit rating and the most reasonable commercial manner in which the Borrower intends to improve its credit rating, provided that the Borrower and the Lenders shall not be obliged to effect any amendments to the provisions of the Finance Documents by reason only of such Negative Rating Event;

- 7.7.1.2. to a S&P Rating of BBB- or a Moody's Rating of Baa3 -
- 7.7.1.2.1. the Lenders shall be entitled, for a period of 20 (twenty) Business Days from the earlier of the date on which any Lender becomes aware of such Negative Rating Event or the date on which any Lender is notified of same in accordance with Clause 19.6.1.2 hereof (the "Margin Increase Period"), to increase the Margin, with effect from the date on which such Negative Rating Event occurred (the "Increased Margin"). In the event that the Lenders increase the Margin as aforesaid, the Lenders shall notify the Borrower in writing of the Increased Margin by no later than the expiry of the Margin Increase Period by delivery of the Increased Margin Notice;
- 7.7.1.2.2. within 10 (ten) Business Days of receipt of the Increased Margin Notice, the Borrower shall either (i) voluntarily prepay the Loans plus accrued unpaid interest thereon (calculated on the basis of JIBAR plus the Margin contemplated in clause 1.1.66.1) together with all other amounts outstanding under the Finance Documents; or (ii) notify the Lenders, in writing, of its acceptance of the Increased Margin by the delivery of the Increased Margin Acceptance Notice. The failure by the Borrower to voluntarily prepay the Loans or deliver the Increased Margin Acceptance Notice to the Lenders constitutes an Event of Default;
- 7.7.1.3. to an S&P Rating below BBB- or a Moody's Rating below Baa3, the Borrower shall in accordance with the terms of the Lender Instruction:
- 7.7.1.3.1. at the cost of the Borrower and within 45 (forty five) days of receipt of the Lender Instruction, deliver to the Lenders:
- 7.7.1.3.1.1. an independent, irrevocable and unconditional guarantee in favour of Finance Parties, guaranteeing repayment of the Loans together with interest thereon and all other amounts accrued or which may accrue under the Finance Documents, issued and executed by the Qualifying Guarantor, which guarantee must, in all respects, be in form and substance acceptable to the Lenders (acting reasonably) (the "Qualifying Guarantee"), subject to the provisions of clause 7.9; and
- 7.7.1.3.1.2. a legal opinion by legal counsel satisfactory to the Finance Parties dealing with, *inter alia*, the legality, validity and enforceability of the Qualifying Guarantee; or
- 7.7.1.3.2. within 5 (five) Business Days of receipt of the Lender Instruction, prepay the Loans then outstanding in full, together with accrued unpaid interest thereon, and all other amounts accrued and owing under the Finance Documents, and upon such prepayment being made all of the Commitments of the Lenders shall immediately be cancelled. The failure by the Borrower to prepay the Loans or deliver the Qualifying Guarantee to the Lenders in accordance with the Lender Instruction constitutes an Event of Default.
- 7.7.2. If the Borrower's Initial Credit Rating falls directly from such Initial Credit Rating to an S&P Rating below BBB- or a Moody's Rating below Baa3 and, pursuant to the Lender

Instruction, the Lenders request the Borrower to provide them with a Qualifying Guarantee, the provisions of clause 7.7.1.2 shall apply *mutatis mutandis*.

7.7.3. If -

7.7.3.1. following the occurrence of the Negative Rating Event contemplated in Clause 7.7.1.3, the Borrower's credit rating is subsequently reinstated to an S&P rating of BBB- (or better) and a Moody's rating of Baa3 (or better) (each a "**B Positive Rating Event**") but below the Initial Credit Rating and such credit rating is maintained for a period of 30 (thirty) days (the "**B Relevant Period**"), the Finance Parties shall, provided that neither a Default nor Event of Default has occurred, upon the Borrower's written request (addressed to the Lenders) at any time following the expiry of the B Relevant Period, relinquish the Qualifying Guarantee, provided that the Increased Margin shall continue to apply to the Facility;

7.7.3.2. following the occurrence of any Negative Rating Event, the Borrower's credit rating is subsequently reinstated to the Initial Credit Rating (or better) (each an "**A Positive Rating Event**") and such credit rating is maintained for a period of 30 (thirty) days (the "**A Relevant Period**") -

7.7.3.2.1. the Increased Margin shall reduce to the Margin contemplated in clause 1.1.66.1 with effect from the expiry of the A Relevant Period; and

7.7.3.2.2. if applicable, the Lenders shall, provided that neither a Default nor Event of Default has occurred, upon the Borrower's written request (addressed to the Lenders) at any time following the expiry of the A Relevant Period, relinquish the Qualifying Guarantee.

7.7.4. If a Negative Rating Event occurs following an A Positive Rating Event or a B Positive Rating Event, the provisions of clause 7.7.1 shall once again apply.

#### 7.8. Rating Withdrawal

If, at any time during the Term, the Borrower ceases to be rated by any Rating Agencies (the "**Withdrawal Event**"):

7.8.1. the Borrower shall promptly notify the Lenders upon becoming aware of that Withdrawal Event;

7.8.2. the Lenders shall not be obliged to fund a Utilisation;

7.8.3. if any Lender so requires and notifies the Borrower within 20 Business Days' of the Withdrawal Event or of such Lender becoming aware of the Withdrawal Event, such Lender shall, by not less than 30 days' notice to the Borrower, cancel its Commitment (if applicable) and declare the participation in the portion of the Loans owed to such Lender, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Commitment of such Lender will be cancelled and all such outstanding amounts owing to such Lender will become immediately due and payable.



### 7.9. **Qualifying Guarantor**

In the event that the Qualifying Guarantor ceases to be acceptable to the Lenders, acting reasonably (a "Qualifying Guarantor Adverse Event"):

- 7.9.1. the Lenders shall promptly notify the Borrower of that Qualifying Guarantor Adverse Event;
- 7.9.2. the Lenders shall not be obliged to fund a Utilisation;
- 7.9.3. if any Lender so requires and notifies the Borrower within 20 Business Days' of the Qualifying Guarantor Adverse Event, such Lender shall, by not less than 30 days' notice to the Borrower, cancel its Commitment (if applicable) and declare the participation in the portion of the Loans owed to such Lender, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Commitment of such Lender will be cancelled and all such outstanding amounts owing to such Lender will become immediately due and payable.

### 7.10. **Change of Principal Business and Permitted Corporatization**

- 7.10.1. Upon the occurrence of a Change of Principal Business and/or a Permitted Corporatization the Borrower shall immediately notify the Lenders, in writing, of same (the "Change in Business Notice").
- 7.10.2. For a period of 20 (twenty) Business Days from the earlier of (a) date of receipt by the Lenders of the Change in Business Notice; and (b) the Lenders becoming aware of a Change of Principal Business and/or a Permitted Corporatization, the Lenders shall be entitled to require the Borrower to prepay the Loans, all accrued unpaid interest thereon and all other amounts owing under Finance Documents by delivering a written notice to such effect to the Borrower (the "Prepayment Request Notice").
- 7.10.3. Within 5 (five) Business Days of receipt by the Borrower of the Prepayment Request Notice, the Borrower shall prepay the Loans, all accrued unpaid interest thereon and all other amounts owing under Finance Documents. The failure by the Borrower to prepay the Loans as aforesaid constitutes an Event of Default.

### 7.11. **Restrictions**

- 7.11.1. Any notice of prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant prepayment is to be made and the amount of that prepayment. The Borrower shall prepay the amount specified to be prepaid in the applicable notice on the date contemplated in such notice.
- 7.11.2. Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- 7.11.3. All prepayments under this Agreement shall be made together with all applicable Break Costs.

- 7.11.4. The Loans or any portion thereof repaid or prepaid by the Borrower shall not be available to be re-advanced by the Lender(s) to the Borrower.
- 7.11.5. The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitment except at the times and in the manner expressly provided for in this Agreement.

## SECTION 5 COSTS OF UTILISATION

### 8. INTEREST

#### 8.1. Calculation of interest

The rate of interest on each Loan for each Interest Period is the percentage rate per Quarter which is the aggregate of the applicable:

8.1.1. Margin; and

8.1.2. JIBAR.

#### 8.2. Payment of interest

The Borrower shall pay all accrued interest on each Loan on each Interest Payment Date.

#### 8.3. Default interest

8.3.1. If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject Clause 8.3.2 below, is 2% higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the relevant Lender (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower on demand by the Lenders.

8.3.2. If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:

8.3.2.1. the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and

8.3.2.2. the rate of interest applying to the overdue amount during that first Interest Period shall be 2% higher than the rate which would have applied if the overdue amount had not become due.

8.3.3. Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

#### 8.4. Notification of rates of interest

The Lenders shall promptly notify the Borrower of the determination of a rate of interest under this Agreement.

## 9. INTEREST PERIODS

### 9.1. Determination of Interest Periods

9.1.1. Each Interest Period will be 3 (three) Months, provided that:

9.1.1.1. the first Interest Period in respect of a Loan shall commence on its Utilisation Date and end on the Interest Payment Date which occurs first thereafter; and

9.1.1.2. each subsequent Interest Period shall commence on the day immediately succeeding the expiry of the previous one and shall end on, in respect of (i) each Interest Period other than the last Interest Period, the Interest Payment Date which occurs first thereafter; and (ii) the last Interest Period, the Maturity Date.

9.1.2. An Interest Period for the Loan shall not extend beyond the Maturity Date.

### 9.2. Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

### 9.3. Consolidation of Loans

All outstanding Loans shall be consolidated into, and treated as, a single Loan on the last day of each Interest Period.

## 10. CHANGES TO THE CALCULATION OF INTEREST

### 10.1. Absence of quotations

Subject to Clause 10.2 (*Market disruption*), if JIBAR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, JIBAR shall be determined on the basis of the quotations of the remaining Reference Banks.

### 10.2. Market disruption

10.2.1. If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest for that Interest Period shall be the percentage rate which is the sum of:

10.2.1.1. the Margin; and

10.2.1.2. the rate notified to the Borrower by the Lenders as soon as is reasonably practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate the cost to the Lenders of funding their participation in that Loan from whatever source the Lenders may reasonably select.

10.2.2. In this Agreement **Market Disruption Event** means:

10.2.2.1. at or about noon on the Quotation Day for the relevant Interest Period JIBAR is to be determined by reference to the Reference Banks and none or only one of the Reference

Banks supplies a rate to the Lenders to determine JIBAR for the relevant Interest Period;  
or

10.2.2.2. before close of business in Johannesburg on the Quotation Day for the relevant Interest Period, the Borrower receives notifications from a Lender or Lenders that:

10.2.2.2.1. the cost to it or them of funding its or their participation in that Loan from whatever source(s) it or they may reasonably select would be in excess of JIBAR; or

10.2.2.2.2. the cost to it or them of obtaining matching deposits in the Relevant Interbank Market would be in excess of JIBAR for the relevant Interest Period; or

10.2.2.2.3. matching deposits will not be available to them in the Relevant Interbank Market in the ordinary course of business to fund their participation in that Loan for the relevant Interest Period.

### 10.3. Alternative basis of interest or funding

10.3.1. If a Market Disruption Event occurs and the Lenders or the Borrower so requires, the Lenders and the Borrower shall enter into negotiations (for a period of not more than 30 (thirty) days) with a view to agreeing a substitute basis for determining the rate of interest.

10.3.2. Any alternative basis agreed pursuant to Clause 10.3.1 above shall, with the prior consent of the Lenders and the Borrower, be binding on all Parties. If the Parties cannot agree a substitute basis for determining the rate of interest within the 30 (thirty) day period contemplated in Clause 10.3.1, the Loans together with all accrued and unpaid interest thereon and all other amounts due and owing in terms of the Finance Documents shall become immediately due and payable and the Borrower shall pay such amounts to the Lender.

### 10.4. Break Costs

10.4.1. The Borrower shall, within five Business Days of demand by a Lender, pay to such Lender its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the Interest Payment Date, as applicable, for that Loan or Unpaid Sum.

10.4.2. Each Lender shall, as soon as reasonably practicable after demand to the Borrower, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue, such certificate to be final, conclusive and binding on the Borrower unless shown by the Borrower to the satisfaction of the Lenders to contain a manifest error.

## 11. RAISING FEE

11.1. The Borrower shall pay to the Original Lenders a raising fee in the amount of R7 500 000, exclusive of VAT (calculated as an amount equal to 0.3% of the Loan Amount). The foregoing raising fee is due on the Effective Date and shall be paid by the Borrower by not later than the earlier of:

11.1.1. the 21<sup>st</sup> day after the Effective Date; and

11.1.2. the first Utilisation Date.

11.2. Pursuant to an increase in the Loan Amount contemplated in clause 2.1.2, the Borrower shall pay to the Original Lenders a raising fee in the amount of R1 500 000, exclusive of VAT (calculated as an amount equal to 0.3% of the increase in the Loan Amount pursuant to clause 2.1.2). The foregoing raising fee is due on the date of delivery of such letter and shall be paid by the Borrower by not later than the earlier of:

11.2.1. the 21<sup>st</sup> day after delivery of the letter contemplated in in clause 2.1.2; and

11.2.2. the first Utilisation Date after delivery of the letter contemplated in in clause 2.1.2.

## 12. COMMITMENT FEE

12.1.1. The Borrower shall pay a Commitment Fee to the Lenders on each Lender's Available Commitment for the Availability Period.

12.1.2. The accrued Commitment Fee is payable on the last day of each successive period of 3 Months which ends during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the Commitment at the time the cancellation is effective. If the Borrower maintains current accounts with a Lender, that Lender may debit any of those current accounts with the amount of an accrued Commitment Fee.

**SECTION 6**  
**ADDITIONAL PAYMENT OBLIGATIONS**

**13. TAX GROSS UP AND INDEMNITIES**

**13.1. Definitions**

**13.1.1. In this Agreement:**

**13.1.1.1.** Income Tax Act means the South African Income Tax Act, 58 of 1962, as amended.

**13.1.1.2.** **Protected Party** means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of a Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

**13.1.1.3.** **Tax Credit** means a credit against, relief or remission for, or repayment of any Tax.

**13.1.1.4.** **Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

**13.1.1.5.** **Tax Payment** means either the increase in a payment made by the Borrower to a Finance Party under Clause 13.2 (Tax gross-up) or a payment under Clause 13.3 (*Tax indemnity*).

**13.1.2.** Unless a contrary indication appears, in this Clause 13 a reference to “**determines**” or “**determined**” means a determination made in the absolute discretion of the person making the determination.

**13.2. Tax gross-up**

**13.2.1.** The Borrower shall make all payments to be made by it free and clear of and without any Tax Deduction, unless a Tax Deduction is required by law.

**13.2.2.** The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Finance Parties accordingly. Similarly, the Finance Parties shall notify the Borrower on becoming so aware of such a payment.

**13.2.3.** If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from the Borrower to the Finance Parties shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

**13.2.4.** If the Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

**13.2.5.** Within 30 (thirty) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Lenders evidence reasonably satisfactory to the Finance Parties that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

13.2.6. The Finance Parties shall reasonably co-operate with the Borrower in completing any procedural formalities necessary for the Borrower to make payment without a (or with a reduced) Tax Deduction pursuant to the Income Tax Act.

13.2.7. Should the Finance Parties be entitled to an exemption from or reduction of a Tax Deduction under the law of South Africa or any treaty to which South Africa is a party, with respect to payments under this Agreement, the Finance Parties shall (to the extent that they are able to do so in accordance with all laws and regulations) deliver to the Borrower at the time or times prescribed by applicable law, such properly contemplated and executed documentation prescribed by applicable law or reasonably requested by the Borrower as are necessary to permit such payments to be made without a Tax Deduction or at a reduced rate of Tax Deduction. If the Finance Parties receive such documentation, the Finance Parties shall deliver the documentation to the Borrower promptly.

### 13.3. Tax indemnity

13.3.1. The Borrower shall (within 5 (five)) Business Days of demand by a Lender) indemnify each Protected Party against, and shall pay to a Protected Party an amount equal to the loss, liability or cost (excluding any consequential loss, liability or cost) which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

13.3.2. Clause 13.3.1 above shall not apply:

13.3.2.1. with respect to any Tax assessed on a Finance Party:

13.3.2.1.1. under the law of the jurisdiction in which such Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which such Finance Party is treated as resident for tax purposes; or

13.3.2.1.2. under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Lender; or

13.3.2.2. to the extent a loss, liability or cost is compensated for by an increased payment under Clause 13.2 (*Tax gross-up*).

13.3.3. A Finance Party making, or intending to make a claim under Clause 13.3.1 above shall promptly notify the Borrower of the event which will give, or has given, rise to the claim.

### 13.4. Tax Credit

If the Borrower makes a Tax Payment and a Finance Party determines that:

13.4.1. a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and

13.4.2. such Finance Party has obtained, utilised and retained that Tax Credit,



such Finance Party, following consultation with the Borrower, shall pay an amount to the Borrower which such Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

### 13.5. Tax gross-up and indemnity claims

- 13.5.1. A Finance Party intending to make a claim pursuant to Clause 13.2 (*Tax gross-up*) above or Clause 13.3 (*Tax indemnity*) above shall give reasonable written notice to the Borrower of the event giving rise to the claim.
- 13.5.2. A Finance Party shall, as soon as is reasonably practicable after a demand by the Borrower, provide a certificate confirming the amount of its claim pursuant to Clause 13.2 (*Tax gross-up*) above or Clause 13.3 (*Tax indemnity*) above, as the case may be.

### 13.6. Stamp taxes

The Borrower shall pay and, within five Business Days of demand, indemnify each Finance Party against any cost, loss or liability such Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

### 13.7. VAT

- 13.7.1. All amounts expressed to be payable under a Finance Document to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply and, accordingly, subject to Clause 13.7.2 below, if VAT is or becomes chargeable on any supply made by a Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- 13.7.2. If VAT is or becomes chargeable on any supply made by any Finance Party (the **Supplier**) to any other Finance Party (the **Recipient**) under a Finance Document, and any Party other than the Recipient (the **Relevant Party**) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
- 13.7.2.1. (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this Clause 13.7.2.1 applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
- 13.7.2.2. (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only

to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.

13.7.3. Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

13.7.4. In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

13.7.5. Notwithstanding anything to the contrary contained in this Clause 13.7, for the purposes of section 54(2) of the Value-Added Tax Act, 89 of 1991, the Borrower irrevocably and unconditionally appoints each Finance Party as its representative and agent to, in its name, place and stead, and for and on its behalf, make payment of all expenses referred to in Clause 13.7.3 directly to such third parties as is contemplated in Clause 13.7.3, which amounts shall be immediately due and recoverable from the Borrower on demand.

#### 14. INCREASED COSTS

##### 14.1. Increased costs

14.1.1. Subject to Clause 14.3 (*Exceptions*) the Borrower shall, within 10 (ten) Business Days of a written demand by a Finance Party, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:

14.1.1.1. the:

14.1.1.1.1. introduction of;

14.1.1.1.2. any change in; or

14.1.1.1.3. interpretation, administration or application of,  
any law or regulation; and/or

14.1.1.2. compliance with any law or regulation; and/or

14.1.1.3. compliance with any requirement of Basel III introduced (whether by amendment, proclamation or otherwise) into or by any law, regulation or directive after the date of this Agreement (whether or not having the force of law); and/or

14.1.1.4. compliance with any requirement of any law, regulation or directive relating to the composition of capital or capital adequacy of registered insurance companies including the proposed solvency assessment and management regime and any iterations or alterations thereof, introduced (whether by amendment, proclamation or otherwise)

into or by any law, regulation or directive after the date of this Agreement (whether or not having the force of law); and/or

14.1.1.5. the phased in or other implementation, after the date of this Agreement, of any requirements of Basel III or any law or regulation implementing Basel III (including the phased in implementation of the Net Stable Funding Ratio and the Liquidity Coverage Ratio).

14.1.2. In this Agreement:

14.1.2.1. Increased Costs means:

14.1.2.1.1. a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;

14.1.2.1.2. an additional or increased cost; or

14.1.2.1.3. a reduction of any amount due and payable under any Finance Document, which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

14.1.2.2. Basel III means:

14.1.2.2.1. the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;

14.1.2.2.2. the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement - Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and

14.1.2.2.3. any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

14.1.3. The terms **law** and **regulation** in Clause 14.1.1 above shall include, without limitation, any law or regulation concerning capital adequacy, solvency, prudential limits, liquidity, reserve assets or Tax.

#### 14.2. Increased cost claims

14.2.1. A Finance Party intending to make a claim pursuant to Clause 14.1 (*Increased costs*) shall promptly notify the Borrower of the event giving rise to the claim.

- 14.2.2. The relevant Finance Party shall, as soon as is reasonably practicable after a demand by the Borrower, provide a certificate confirming the amount of its Increased Costs.

#### 14.3. Exceptions

- 14.3.1. Clause 14.1 (*Increased costs*) does not apply to the extent that any Increased Cost is:

- 14.3.1.1. attributable to a Tax Deduction required by law to be made by the Borrower;
- 14.3.1.2. compensated for by Clause 13.3 (*Tax indemnity*) (or would have been compensated for under Clause 13.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in Clause 13.3.2 applied);
- 14.3.1.3. attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

- 14.3.2. In this Clause 14.3, a reference to a **Tax Deduction** has the same meaning given to the term in Clause 13.1 (*Definitions*).

#### 15. OTHER INDEMNITIES

##### 15.1. Other indemnities

The Borrower shall, within five Business Days of demand, indemnify the Finance Parties against any cost, loss or liability incurred by the Finance Party as a result of:

- 15.1.1. the occurrence of any Default;
- 15.1.2. a failure by an Obligor to pay any amount due under a Finance Document on its due date;
- 15.1.3. the information produced or approved by the Borrower under or in connection with the Finance Documents being misleading and/or deceptive in any respect;
- 15.1.4. funding, or making arrangements to fund, its participation in a Utilisation requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Finance Party alone); or
- 15.1.5. a Loan (or part of that Loan) not being prepaid in accordance with a notice of prepayment given to the Borrower

##### 15.2. Environmental Indemnity

The Borrower agrees to indemnify each Finance Party, each Affiliate of a Finance Party and their respective directors, officers and employees (together, the **Indemnified Parties**) against any cost, loss or liability suffered or incurred by that Indemnified Party (except to the extent solely caused by such Indemnified Party's own gross negligence or willful default) which:

- 15.2.1. arises by virtue of any breach of any Environmental Law (whether by the Borrower or any other member of the Group);
- 15.2.2. arises in connection with an Environmental Claim; or

- 15.2.3. any enquiry, investigation, subpoena (or similar order) or litigation with respect to any Environmental Claim and any other enquiry, investigation, subpoena (or similar order) or litigation in respect of any breach of any Environmental Law that has or is reasonably likely to give rise to a liability for any Finance Party,

which relates to the Group, any assets of the Group or the operation of all or part of the business of the Group (or, in each case, any member of the Group) and which would not have arisen if the Finance Documents or any of them had not been executed by that Finance Party. Any Affiliate or any director, officer or employee of a Finance Party or its Affiliate may rely on this Clause 15.2 as a stipulation for its or his benefit.

## 16. MITIGATION BY THE FINANCE PARTIES

### 16.1. Mitigation

- 16.1.1. The Finance Parties shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any provision of Clause 7.1 (*Illegality*), Clause 13 (*Tax gross-up and indemnities*) or Clause 14 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

- 16.1.2. Clause 16.1.1 does not in any way limit the obligations of the Borrower under the Finance Documents.

### 16.2. Limitation of liability

- 16.2.1. The Borrower shall within 5 (five) Business Days of demand by any Finance Party indemnify such Finance Party for all properly evidenced costs and expenses reasonably incurred by such Finance Party as a result of steps taken by it under Clause 16.1 (*Mitigation*).
- 16.2.2. No Finance Party is obliged to take any steps under Clause 16.1 (*Mitigation*) if, in its opinion (acting reasonably), to do so might be prejudicial to it or any law or regulation would not allow or permit the taking of such steps.

## 17. COSTS AND EXPENSES

### 17.1. Transaction expenses

The Borrower shall within five Business Days of demand by the Finance Parties pay the Finance Parties the amount of all costs and expenses (including legal fees) reasonably incurred by the Finance Parties and properly evidenced in connection with the negotiation, preparation, printing, execution, implementation and/or syndication of:

- 17.1.1. this Agreement and any other documents referred to in this Agreement; and
- 17.1.2. any other Finance Documents executed after the date of this Agreement.

### 17.2. Amendment costs

- 17.2.1. If the Borrower requests an amendment, waiver or consent the Borrower shall, within 5 (five) Business Days of demand, reimburse each Finance Party for the amount of all costs and expenses (including legal fees) reasonably incurred by such Finance Party in responding to, evaluating, negotiating or complying with that request.
- 17.2.2. If there is any change in law or any regulation which requires an amendment, waiver or consent under the Finance Documents, the Borrower shall, within 5 (five) Business Days of demand, reimburse each Finance Party for the amount of all costs and expenses (including legal fees) reasonably incurred and properly evidenced by that Finance Party in connection with evaluating, negotiating or complying with any such requirement.

17.3. **Enforcement costs**

The Borrower shall, within 5 (five) Business Days of demand by a Finance Party, pay to each Finance Party the amount of all properly evidenced costs and expenses (including legal fees (which in South Africa shall be on the scale as between attorney and own client) incurred by that Finance Party (whether before or after judgment) in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

**SECTION 7**  
**REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

**18. REPRESENTATIONS**

The Borrower makes the representations and warranties set out in this Clause 18 to each Finance Party on the date of this Agreement.

**18.1. Status**

18.1.1. It, and each of its Subsidiaries, is a company, duly incorporated and validly existing and registered under the laws of South Africa.

18.1.2. It, and each of its Subsidiaries, has the power to own its assets and carry on its business as it is being conducted.

**18.2. Binding obligations**

The obligations expressed to be assumed by it in each Finance Document are legal, valid, binding and enforceable obligations.

**18.3. Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

18.3.1. any law (including the PFMA) or regulation applicable to it;

18.3.2. its or any of its Subsidiaries' constitutional documents; or

18.3.3. any agreement or instrument binding upon it or any of its Subsidiaries or any of its or any of its Subsidiaries' assets.

**18.4. Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

**18.5. Validity and admissibility in evidence**

All Authorisations required:

18.5.1. to enable it lawfully to enter into, exercise its rights and comply with its obligations under the Finance Documents to which it is a party and to ensure that the obligations expressed to be assumed by it thereunder are legal, valid, binding and enforceable; and

18.5.2. to make the Finance Documents to which it is a party admissible in evidence in the Relevant Jurisdiction; and

18.5.3. for the conduct of the business, trade and ordinary activities by each member of the Group, have been obtained or effected and are in full force and effect.

**18.6. Insolvency****18.6.1. No:**

18.6.1.1. corporate action, legal proceeding or other procedure or step contemplated by the definition of Insolvency Event; or

18.6.1.2. creditors' process contemplated by the definition of Insolvency Event, has been taken or, to the knowledge of the Borrower, threatened in relation to a member of the Group; and none of the circumstances described in Clause 22.6 (*Insolvency*) applies to a member of the Group.

18.6.2. To the best of its knowledge and belief, neither it, nor any member of the Group, is "*financially distressed*" (as defined in the Companies Act) and there is no reasonable likelihood of any Obligor (if applicable) or any other member of the Group becoming "*financially distressed*" (as defined in the Companies Act).

**18.7. Governing Law and Enforcement**

18.7.1. The choice of South African law as the governing law of this Agreement will be recognised and enforced in the Relevant Jurisdiction.

18.7.2. Any judgment obtained in South Africa in relation to this Agreement will be recognised and enforced in the Relevant Jurisdiction.

**18.8. Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.

**18.9. No filing or stamp taxes**

Under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

**18.10. No default**

18.10.1. As of the Signature Date, no Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation or the entry into of, or the performance of any transaction contemplated by the Finance Documents.

18.10.2. No other event or circumstance, to the Borrower's knowledge and belief (having made due and careful enquiry), is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which is reasonably likely to have a Material Adverse Effect.



**18.11. No misleading information**

- 18.11.1. Any and all information provided by the Borrower to the Lender is true, complete and accurate in all material respects as at the date on which it is given and all information provided by the Borrower to the Finance Parties is not misleading in any respect.
- 18.11.2. Nothing has occurred and no information has been given or withheld that results in any factual information referred to in Clause 18.11.1 above provided by the Borrower for the purposes of the Finance Documents being untrue or misleading in any material respect.
- 18.11.3. All information referred to in clause 18.11 has been disclosed without breaching any confidentiality obligations binding on the Borrower.
- 18.11.4. The Borrower has not knowingly withheld any information which, if disclosed, would reasonably be expected to materially and adversely affect the decision of any Finance Party to provide finance to the Borrower.

**18.12. Financial statements**

- 18.12.1. Its Original Financial Statements were prepared in accordance with IFRS consistently applied.
- 18.12.2. Its Original Financial Statements fairly represent its financial condition and operations (consolidated) during the relevant financial year.
- 18.12.3. There has been no material adverse change in its assets, business or financial condition (or the business or consolidated financial condition of the Group) since 31 March 2015.
- 18.12.4. Its most recent financial statements delivered pursuant to Clause 19.1 (*Financial statements*):
  - 18.12.4.1. have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements; and
  - 18.12.4.2. give a true and fair view of (if audited) or fairly represent (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.
- 18.12.5. Since the date of the most recent financial statements delivered pursuant to Clause 19.1 (*Financial statements*) there has been no material adverse change in the business, assets or financial condition of the Group.

**18.13. Pari passu ranking**

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

**18.14. No proceedings pending or threatened**

Save as contemplated in Schedule 12 hereto, no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined,

might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against it or any of its Subsidiaries.

**18.15. No breach of laws**

- 18.15.1. It has not, to its knowledge and belief (having made due and careful enquiry), (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
- 18.15.2. No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any member of the Group which have or are reasonably likely to have a Material Adverse Effect.

**18.16. Environmental laws**

- 18.16.1. Each member of the Group is in compliance with Clause 21.3 (*Environmental compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- 18.16.2. No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.
- 18.16.3. The cost to the Group of compliance with Environmental Laws (including Environmental Permits) is (to the best of its knowledge and belief, having made due and careful enquiry) adequately provided for.

**18.17. Taxation**

- 18.17.1. It is not (and no member of the Group is) overdue in the filing of any Tax returns and it is not (and no member of the Group is) overdue in the payment of any amount in respect of Tax in an amount equal to 0,3% of the Consolidated Total Assets (or its equivalent in any other currency) or more.
- 18.17.2. No claims have been made and, to the best of its knowledge and belief (having made due and careful enquiries) no claims are reasonably likely to be made, and no investigations are being, or are reasonably likely to be, conducted against it (or any member of the Group) with respect to Taxes such that a liability of, or claim against it or any member of the Group in an amount equal to 0,3% of the Consolidated Total Assets (or its equivalent in any other currency) or more is reasonably likely to arise.
- 18.17.3. It and each member of the Group is resident for Tax purposes only in the jurisdiction of its incorporation.

**18.18. Good Title to Assets**

It and each member of the Group has good and valid title to its assets and licenses required in connection with the conduct of its business, and has all appropriate Authorisations to use, all of the assets necessary to carry on its business.

**18.19. No Material Industrial Action**

No industrial or similar action has commenced, as at the Signature Date, against it or any member of the Group which is likely to result in a Material Adverse Effect.

**18.20. Authorised Signatories**

Any person specified as its authorised signatory under Schedule 1 (*Conditions Precedent*) is authorised to sign Utilisation Requests on its behalf.

**18.21. No immunity**

In any proceedings taken in South Africa or in any other jurisdiction, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process in relation to this Agreement or any other Finance Document.

**18.22. Accounting Reference Date**

The financial year end of the Group is 31 March each year.

**18.23. No adverse consequences**

18.23.1. It is not necessary under the laws of the Relevant Jurisdiction:

18.23.1.1. in order to enable any Finance Party to enforce its rights under any Finance Document;  
or

18.23.1.2. by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document,

that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in any of the Relevant Jurisdiction.

18.23.2. No Finance Party is or will be deemed to be resident, domiciled or carrying on business in the Relevant Jurisdiction by reason only of the execution, performance and/or enforcement of any Finance Document.

**18.24. Repetition**

The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of the Utilisation Request, on the Utilisation Date and the first day of each Interest Period.

**19. INFORMATION UNDERTAKINGS**

The undertakings in this Clause 19 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

### 19.1. Financial statements

- 19.1.1. The Borrower shall supply to the Finance Parties as soon as the same become available but in any event:
- 19.1.1.1. within 180 (one hundred and eighty) days after the end of each of its financial years its audited consolidated financial statements for that financial year; and
- 19.1.1.2. within 90 (ninety) days after the end of each half of each of its financial years its consolidated financial statements for that financial half year.
- 19.1.2. The Borrower shall supply to the Lenders, with each set of financial statements delivered pursuant to this Clause 19.1, its cash flow projections for a period commencing on the day immediately succeeding the last day in respect of which such financial statements were prepared and terminating 7 years thereafter.

### 19.2. Covenant Compliance Certificate

- 19.2.1. The Borrower shall supply to the Lenders, with each set of financial statements delivered pursuant to Clause 19.1, a Covenant Compliance Certificate setting out (in reasonable detail) computations as to compliance with clause 20 as at the date as at which those financial statements were drawn up.
- 19.2.2. Each Covenant Compliance Certificate shall be signed by the Borrower's Chief Financial Officer and another director of the Borrower and, if required to be delivered with the financial statements delivered pursuant to Clause 19.1, shall be reported on by the Borrower's auditors.

### 19.3. Requirements as to financial statements

- 19.3.1. Each set of financial statements delivered by the Borrower pursuant to Clause 19.1 (*Financial statements*) shall be certified by a director of the relevant company as fairly representing the relevant company's financial condition as at the date as at which those financial statements were drawn up.
- 19.3.2. The Borrower shall procure that each set of financial statements delivered pursuant to Clause 19.1 (*Financial statements*) is prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for the relevant company unless, in relation to any set of financial statements, it notifies the Finance Parties that there has been a change in the Accounting Principles, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of a Subsidiary of it) deliver to the Lender:
- 19.3.2.1. a description of any change necessary for those financial statements to reflect the Accounting Principles, accounting practices and reference periods upon which the relevant company's Original Financial Statements were prepared; and
- 19.3.2.2. sufficient information, in form and substance as may be reasonably required by the Finance Parties, to enable the Finance Parties to make an accurate comparison between

the financial position indicated in those financial statements and that company's Original Financial Statements.

- 19.3.3. Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

**19.4. Year-end**

The Borrower shall not change its year end.

**19.5. Information: miscellaneous**

- 19.5.1. The Borrower shall supply to the Finance Parties:

19.5.1.1. all documents dispatched by the Borrower to its creditors generally (or any class of them) at the same time as they are dispatched;

19.5.1.2. promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which, if adversely determined, is reasonably likely to have a Material Adverse Effect;

19.5.1.3. promptly upon becoming aware of them, the details of any labour dispute or industrial action which occurs or which is threatened against any member of the Group which has or is reasonably likely to have a Material Adverse Effect;

19.5.1.4. promptly upon becoming aware of them, details and copies of any material changes proposed to or made to its constitutional documents or the constitutional documents of it or any other member of the Group, including the filing of any memorandum of incorporation under the Companies Act;

19.5.1.5. promptly, such further information regarding the financial condition, business and operations of any member of the Group as any Finance Party may reasonably request; and

19.5.1.6. the Borrowing Programme and any amendments thereto as soon as same is available for distribution to the Minister of Finance and to all other applicable creditors in respect of the Borrower;

19.5.1.7. promptly, copies of all Authorisations required to ensure compliance with the provisions of the PFMA, in respect of its entry into of the Finance Documents to which it is a party and the performance of its obligations thereunder;

19.5.1.8. not less than once per year and promptly following its completion or any amendments thereto, its corporate plan and shall, on reasonable notice and at such reasonable times as are mutually convenient to the Parties (provided that the Borrower shall meet with the Finance Parties not more than 1 month after receipt of such notice for a period of not less than 2 Business Days) meet with the Finance Parties and shall, at that meeting, supply to the Finance Parties such information as may reasonably be requested by the Finance Parties concerning its corporate plan.

**19.6. Credit rating**

19.6.1. The Borrower undertakes to notify the Lenders in writing of:

19.6.1.1. any event or circumstance which may give rise to a Negative Rating Event or a Qualifying Guarantor Adverse Event (as the case may be) within 5 (five) Business Days of such event or circumstance having occurred;

19.6.1.2. the occurrence of a Negative Rating Event within 5 (five) Business Days of such Negative Rating Event having occurred;

19.6.1.3. any Withdrawal Event within 5 (five) Business Days of such Withdrawal Event having occurred.

19.6.2. The Borrower shall provide the Finance Parties with a copy of each Credit Rating on the date on which such Credit Rating is issued.

**19.7. Notification of default and other matters**

19.7.1. The Borrower shall notify the Finance Parties of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

19.7.2. The Borrower shall promptly upon a request by a Finance Party supply to that Finance Party a certificate signed by a director or senior officer on its behalf:

19.7.2.1. certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it) and that no Default is expected to occur over the three Month period from such date;

19.7.2.2. certifying that no Change of Control Event has occurred as at the date of such certificate and that no Change of Control Event is expected to occur over the 3 (three) Month period from such date;

19.7.2.3. certifying that no Negative Rating Event has occurred as at the date of such certificate and that no Negative Rating Event is expected to occur over the 3 (three) Month period from such date;

19.7.2.4. certifying that no Qualifying Guarantor Adverse Event is expected to occur over the three Month period from such date;

19.7.2.5. setting out the shareholders of the Borrower as at the date of such certificate; and

19.7.2.6. certifying that the Borrower is in compliance with the requirements of Clause 21.10 (*Insurance*) as at the date of such certificate.

19.7.3. The Borrower shall notify the Finance Parties of any change to its auditor.

**19.8. Business rescue proceedings**

The Borrower shall deliver written notice to the Finance Parties no later than 5 (five) Business Days prior to the date upon which a board meeting to consider a resolution contemplated in section 129 of the Companies Act is to be held, or if such meeting is to be held at less than 5

Business Days' notice, then as soon as reasonably possible. The Finance Parties shall have the right to be consulted in respect of the appointment of an appropriate business rescue practitioner.

**19.9. "Know your customer" checks**

**19.9.1. If:**

- 19.9.1.1. the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- 19.9.1.2. any change in the status of the Borrower or the shareholding of the Borrower after the date of this Agreement; or
- 19.9.1.3. a proposed assignment or transfer by a Finance Party of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges any Finance Party (or, in the case of Clause 19.9.1.3, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of any Finance Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by any Finance Party (for itself or, in the case of the event described in Clause 19.9.1.3, on behalf of any prospective new Finance Party) in order for such Finance Party, or, in the case of the event described in Clause 19.9.1.3, any prospective new Finance Party to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

**20. FINANCIAL COVENANTS**

**20.1. Financial definitions**

In this Agreement:

- 20.1.1. **Cash interest cover** means cash generated from operations after working capital changes, divided by net finance costs (net finance costs includes finance costs, finance income and capitalised borrowing costs from the cash flow statement).
- 20.1.2. **Financial Half Year** means the period commencing on the day after one Half Year Date and ending on the next Half Year Date.
- 20.1.3. **Financial Year** means the annual accounting period of the Borrower ending on or about 31 March in each year.
- 20.1.4. **Gearing** means the Borrower's debt expressed as a percentage of the sum of debt and the Borrower's shareholder's equity (as set out in the financial statements delivered pursuant to Clause 19.1 and/or each Covenant Compliance Certificate delivered pursuant to Clause 19.2).

20.1.5. **Half Year Date** means each of 30 September in each year.

20.1.6. **Relevant Period** means each period of twelve months ending on or about the last day of the Financial Year and each period of twelve months ending on or about the last day of each Financial Half Year.

20.2. **Financial condition**

The Borrower shall ensure that:

20.2.1. **Cash interest cover:** Cash interest cover in respect of any Relevant Period specified in column 1 below shall not be less than the ratio set out in column 2 below opposite that Relevant Period.

Column 1 - Relevant Period	Column 2 - Ratio
Each Relevant Period	2.5 :1

20.2.2. **Gearing:** Gearing in respect of any Relevant Period specified in column 1 below shall not be more than the percentage set out in column 2 below opposite that Relevant Period.

Column 1 - Relevant Period	Column 2 - Ratio
Each Relevant Period	60%

20.3. **Financial testing**

The financial covenants set out in Clause 20.2 shall be calculated in accordance with IFRS and tested by reference to each of the financial statements delivered pursuant to Clause 19.1 and/or each Covenant Compliance Certificate delivered pursuant to Clause 19.2.

20.4. **Discussion events**

Whenever either the Cash interest cover ratio is less than 3 : 1 and/or the Gearing is more than 50% the Borrower shall enter into discussions with or shall provide information to the Lenders advising the Lenders of the steps (and, periodically, the progress made in achieving such steps) taken or to be taken by the Borrower in order to restore the Cash interest cover ratio to at least 3 : 1 and/or the Gearing to no more than 50%. Such information shall be provided to the Lenders for as long as, and/or the discussions shall occur on such dates and shall endure for such periods as, the Lenders consider to be reasonable in the circumstances.

21. **GENERAL UNDERTAKINGS**

The undertakings in this Clause 21 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

21.1. **Authorisations**



The Borrower shall promptly:

21.1.1. obtain, comply with and do all that is necessary to maintain in full force and effect; and

21.1.2. supply certified copies to the Finance Parties of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

**21.2. Compliance with laws**

The Borrower shall (and the Borrower shall ensure that each member of the Group will) comply in all respects with all laws to which it may be subject.

**21.3. Environmental compliance**

The Borrower shall (and the Borrower shall ensure that each member of the Group will):

21.3.1. comply with all Environmental Law;

21.3.2. obtain, maintain and ensure compliance with all requisite Environmental Permits;

21.3.3. implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

**21.4. Environmental claims**

The Borrower shall, promptly upon becoming aware of the same, inform the Finance Parties in writing of:

21.4.1. any Environmental Claim against any member of the Group which is current, pending or threatened; and

21.4.2. any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

where the claim, if determined against that member of the Group, has or is reasonably likely to result in a Material Adverse Effect.

**21.5. Negative pledge**

In this Clause 21.5, **Quasi-Security** means an arrangement or transaction described in Clause 21.5.2.

21.5.1. The Borrower shall not (and the Borrower shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.

- 21.5.2. The Borrower shall not (and the Borrower shall ensure that no other member of the Group will):
- 21.5.2.1. sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Borrower or any other member of the Group;
  - 21.5.2.2. sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - 21.5.2.3. enter into or permit to subsist any title retention arrangement;
  - 21.5.2.4. enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - 21.5.2.5. enter into any other preferential arrangement having a similar effect,
- in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- 21.5.3. Clauses 21.5.1 and 21.5.2 do not apply to any Security or (as the case may be) Quasi-Security, listed below:
- 21.5.3.1. any Security or Quasi Security listed in Schedule 14, except to the extent the principal amount secured by that Security or Quasi Security exceeds the amount stated in that Schedule;
  - 21.5.3.2. any cash management, netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
  - 21.5.3.3. any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:
    - 21.5.3.3.1. hedging any risk to which any member of the Group is exposed in its ordinary course of business; or
    - 21.5.3.3.2. its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,

excluding, in each case, any Security or Quasi-Security under a credit support arrangement in relation to a hedging transaction;
  - 21.5.3.4. any lien arising by operation of law and in the ordinary course of business provided that the debt which is secured thereby is paid when due or contested in good faith by appropriate proceedings and properly provisioned;
  - 21.5.3.5. any short term funding raised by the Borrower in the ordinary course of business pursuant to the sale or discounting of receivables on recourse terms;
  - 21.5.3.6. any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the date of this Agreement to the extent that:

- 21.5.3.6.1. the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
- 21.5.3.6.2. the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
- 21.5.3.6.3. the Security or Quasi-Security is removed or discharged within 90 days of the date of acquisition of such asset;
- 21.5.3.7. any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group, to the extent that:
  - 21.5.3.7.1. the Security or Quasi-Security was not created in contemplation of the acquisition of that company;
  - 21.5.3.7.2. the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
  - 21.5.3.7.3. the Security or Quasi-Security is removed or discharged within 90 days of that company becoming a member of the Group;
- 21.5.3.8. any Security or Quasi-Security entered into pursuant to any Finance Document;
- 21.5.3.9. any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of business and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;
- 21.5.3.10. any Security or Quasi-Security that secures indebtedness having an outstanding principal amount that (when aggregated with the outstanding principal amount of any other indebtedness which has the benefit of Security or Quasi-Security given by any member of the Group other than any Security or Quasi-Security permitted under Clauses 21.5.3.2 to 21.5.3.9 above) does not exceed 10 per cent. of the Consolidated Total Assets of the Borrower (or its equivalent in other currencies) in total during the term of this Agreement; or
- 21.5.3.11. any Security or Quasi-Security created with the prior written approval of the Lenders, which approval may not be unreasonably delayed.

## 21.6. Disposals

- 21.6.1. The Borrower shall not (and the Borrower shall ensure that no other member of the Group will), enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- 21.6.2. Clause 21.6.1 above does not apply to any sale, lease, transfer or other disposal:
  - 21.6.2.1. made on arm's length terms in the ordinary course of business of the disposing entity;

- 21.6.2.2. of any assets in exchange for or to be replaced by other assets comparable or superior as to type, value and quality;
- 21.6.2.3. of obsolete or redundant vehicles, plant and equipment for cash;
- 21.6.2.4. of assets for cash where the higher of the market value and net consideration receivable (when aggregated with the higher of the market value and net consideration receivable for any other sale, lease, licence, transfer or other disposal not allowed under the preceding sub-Clauses) does not exceed 10 per cent. of the Consolidated Total Assets of the Borrower (or its equivalent in other currencies) in total during the term of this Agreement; or
- 21.6.2.5. made with the prior written approval of the Lenders, which approval may not be unreasonably withheld or delayed.

#### 21.7. Merger

The Borrower shall not (and the Borrower shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger or corporate reconstruction other than a Permitted Transaction.

#### 21.8. Change of business

The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower or the Group from that carried on at the Signature Date.

#### 21.9. Preservation of assets

The Borrower shall (and the Borrower shall ensure that each other member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its business.

#### 21.10. Insurance

21.10.1. The Borrower shall (and the Borrower shall ensure that each other member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

21.10.2. All insurances must be with reputable independent insurance companies or underwriters.

#### 21.11. Sanctions

21.11.1. No member of the Group is party to or participates in any Sanctioned Transaction, has contravened any Sanctions or is targeted under any Sanctions.

21.11.2. The Borrower shall not (and the Borrower shall ensure that no other member of the Group will) at any time participate in a Sanctioned Transaction in any manner.

21.11.3. The Borrower shall take all reasonable steps to ensure that appropriate controls and safeguards are in place, designed to prevent it or any other member of the Group from being or becoming involved in a Sanctioned Transaction.

- 21.11.4. The provisions of this clause 21.11 shall not apply in respect of the transactions relating to the operations specified in the Operations Disclosure Schedule.

**21.12. Distributions**

Following the occurrence of an Event of Default, the Borrower shall not be entitled to make any Distributions.

**21.13. Financial Indebtedness**

Following the occurrence of an Event of Default, the Borrower shall not be entitled to incur any Financial Indebtedness.

**21.14. Investments**

The Borrower shall not enter into any investment and shall not:

- 21.14.1. acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or

- 21.14.2. incorporate a company,

following the occurrence of an Event of Default.

**21.15. Joint Ventures**

- 21.15.1. The Borrower shall not:

- 21.15.1.1. enter into, invest in or acquire (or agree to acquire) any securities or other interest in any Joint Venture; or

- 21.15.1.2. transfer any assets or lend to or guarantee or give an indemnity for or grant any security interest for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing),

following the occurrence of an Event of Default or if, in the case of the guarantee or indemnity contemplated in Clause 21.15.1.2., such guarantee (together with the other guarantees issued as of the Signature Date) guarantees an amount equal to or greater than the Designated Amount or such indemnity (together with the other indemnities issued as of the Signature Date) indemnifies the applicable party against a claim equal to or greater than the Designated Amount.

**21.16. Loans or Credit**

The Borrower shall not make any loans or be a creditor in respect of any Financial Indebtedness following the occurrence of an Event of Default or if such loans (in aggregate as of the Signature Date) or Financial Indebtedness (in aggregate as of the Signature Date) are for an amount equal to or greater than (in either case), the Designated Amount.

**21.17. No Guarantees or Indemnities**

The Borrower shall not incur or allow to remain outstanding any guarantee or indemnity in respect of the obligation of any person following the occurrence of an Event of Default or if

such guarantee (together with the other guarantees issued as of the Signature Date) guarantees the payment of an amount equal to or greater than the Designated Amount or such indemnity indemnifies the applicable party against a claim (which, when aggregated with the other indemnified claims as of the Signature Date) is equal to or greater than the Designated Amount.

**21.18. Access**

If a Default is continuing or a Finance Party reasonably suspects a Default is continuing or may occur, the Borrower shall, and the Borrower shall ensure that each member of the Group will permit the Finance Parties and/or accountants or other professional advisers and contractors of the Finance Parties to meet and discuss such matters with the senior management of the Group.

**21.19. Constitutional Documents**

The Borrower shall not amend its constitutional documents, without the prior written consent from the Finance Parties, and shall procure that no amendment is made to its constitutional documents if such amendment would adversely affect the rights of the Finance Parties under the Finance Documents.

**21.20. Listing**

The Borrower shall not list bonds on any exchange other than an Approved Exchange.

**21.21. Equal treatment of facilities and creditors**

21.21.1. If under the terms (whether the original terms or the terms as amended, substituted or restated) of any loan facility, bonds, notes or other debt instruments entered into or issued by the Borrower (or any refinancing thereof), the Borrower grants the creditors thereunder (or any agent, trustee or other representative thereof) any term and/or security (if any) that is more favourable to such creditors than the terms and/or security (if any) contained in (or incorporated by reference in) the Finance Documents (such improved term being a **Relevant Benefit**), the Borrower shall:

21.21.1.1. provide a copy of such representation, warranty, undertaking, covenant or event of default to the Lenders; and

21.21.1.2. be deemed to have thereby have made an unconditional offer to the Finance Parties, which offer shall remain open for acceptance for 20 Business Days following receipt of such copies (the **Offer**) to amend the terms (including all related provisions and definitions) of the relevant Finance Documents to include each Relevant Benefit in favour of the Finance Parties on terms which are no less favourable to the Finance Parties.

21.21.2. If, within 20 Business Days following receipt of the Offer, the Lenders notify the Borrower that the Finance Parties wish to amend the relevant Finance Documents to incorporate the Relevant Benefit, the Borrower and the Finance Parties shall negotiate in good faith to so amend the relevant Finance Document.

21.21.3. If, within 20 Business Days after receipt by the Borrower of the Lenders' acceptance of the Offer, the Borrower and the Finance Parties have not reached agreement on the contemplated amendment(s), upon notice to that effect delivered within a further 20 Business Day period, the Relevant Benefit shall automatically be incorporated by reference into the relevant Finance Documents as if expressly set out therein, provided that:

21.21.3.1. the Relevant Benefit shall govern and supersede any contrary or contradictory terms or provisions set out in the relevant Finance Document; and

21.21.3.2. to the extent necessary, defined terms, section references, etc. set out in the Relevant Benefit shall be deemed to be modified for such purposes to be consistent with such terms, section references, etc. set out in the relevant Finance Document.

## 21.22. PFMA

The Borrower has complied, and shall comply, with the provisions of the PFMA, including, without limitation, obtaining all requisite authorisations in respect thereof, in respect of its entry into of the Finance Documents to which it is a party and the performance of its obligations thereunder.

## 22. EVENTS OF DEFAULT

Each of the events or circumstances set out in Clause 22 is an Event of Default (save for Clause 22.18 (*Acceleration*)).

### 22.1. Non-payment

Any Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the agreed place unless its failure to pay is caused by:

22.1.1. administrative or technical error; or

22.1.2. a Disruption Event,

and payment is made within 5 (five) Business Days of its due date.

### 22.2. Financial covenants

Any requirement of clause 20 is not satisfied.

### 22.3. Other obligations

22.3.1. Any Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 22.1 (*Non-payment*) and Clause 22.2 (*Financial Covenants*)).

22.3.2. No Event of Default under Clause 22.3.1 above will occur if the failure to comply is capable of remedy and is remedied within 10 (ten) Business Days of the Lenders giving notice to the Borrower or the Borrower becoming aware of the failure to comply.

### 22.4. Misrepresentation

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of such Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made unless the underlying circumstances (if capable of remedy) are remedied to the extent that the representation or statement is no longer incorrect or misleading in any material respect within 10 (ten) Business Days of the Lenders giving notice to the Borrower or the Borrower becoming aware of the failure to comply.

## 22.5. Cross default

- 22.5.1. Any Financial Indebtedness of any member of the Group and/or an Obligor is not paid when due nor within any originally applicable grace period.
- 22.5.2. Any Financial Indebtedness of any member of the Group and/or an Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- 22.5.3. Any commitment for any Financial Indebtedness of any member of the Group and/or an Obligor is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).
- 22.5.4. Any creditor of any member of the Group and/or an Obligor becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- 22.5.5. No Event of Default will occur under this Clause 22.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within Clauses 22.5.1 to 22.5.4 is in respect of the Borrower or applicable member of the Group, is less than the Designated Amount (or its equivalent in other currencies).

## 22.6. Insolvency

- 22.6.1. A member of the Group is or is deemed by any authority or legislation to be unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- 22.6.2. The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).
- 22.6.3. A moratorium is declared in respect of any indebtedness of any member of the Group.
- 22.6.4. A member of the Group is or is deemed by any authority or legislation to be Financially Distressed (as defined in the Companies Act).
- 22.6.5. Insolvency Event occurs.



**22.7. Insolvency proceedings**

22.7.1. Any corporate action, legal proceedings or other procedure or step is taken in relation to:

22.7.1.1. the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group other than a solvent liquidation or reorganisation of any member of the Group other than the Borrower;

22.7.1.2. a composition, compromise, assignment or arrangement with any creditor of any member of the Group;

22.7.1.3. the appointment of a liquidator (other than in respect of a solvent liquidation of a member of the Group other than the Borrower), receiver, administrative receiver, administrator, compulsory manager, business rescue practitioner or other similar officer in respect of any member of the Group or any of its assets;

22.7.1.4. the placing of any member of the Group under supervision and the commencing of business rescue proceedings under section 129(1) or section 131 (1) of the Companies Act; or

22.7.1.5. enforcement of any Security over any assets of any member of the Group,  
or any analogous procedure or step is taken in any jurisdiction.

22.7.2. This Clause 22.7 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 90 (ninety) days of commencement.

**22.8. Unlawfulness**

It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents.

**22.9. Repudiation**

An Obligor rescinds or repudiates a Finance Document or evidences an intention to rescind or repudiate a Finance Document.

**22.10. Material Adverse Effect**

Any event or series of events occurs which the Lenders reasonably believe will have a Material Adverse Effect.

**22.11. Failure to comply with Final Judgment**

22.11.1. Any Obligor fails within 5 (five) Business Days of the due date to comply with or pay any sum due from it under any final judgment or any final order (being a judgment or order which is not subject to any rescission or appeal and/or capable of being subject to any such rescission or appeal) made or given by any court of competent jurisdiction.

- 22.11.2. No Event of Default will occur under this Clause 22.11, if the amount the relevant Obligor fails to pay pursuant to any final judgment or any final order is less than the Designated Amount (or its equivalent in any other currency or currencies).

**22.12. Creditors' Process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of an Obligor having an aggregate value of an amount equal to the Designated Amount (or its equivalent in any other currency or currencies) and is not discharged within 10 (ten) Business Days of the applicable Obligor becoming aware thereof.

**22.13. Litigation**

- 22.13.1. Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Finance Documents or the transactions contemplated in the Finance Documents or against any Obligor or its assets which has or is reasonably likely to result in a Material Adverse Effect.
- 22.13.2. The Lenders, acting reasonably, have determined (and have notified the Borrower of such determination), that the litigation contemplated in Schedule 12 and commenced by pensioner members of the Transport Pension Fund ("the TPF") and the Transnet Second Defined Benefit Fund ("the TSDBF") against the Borrower, the TPF and the TSDBF will result in liability on the part of the Borrower in an amount exceeding the Designated Amount.

**22.14. Expropriation**

- 22.14.1. The authority or ability of any Obligor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Obligor, as the case may be, or any of its assets.
- 22.14.2. By the authority of any governmental, regulatory or other authority or other person the whole or any part of its assets or revenues is seized, expropriated or compulsorily acquired.

**22.15. Cessation of Business**

Any Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business, for any reason whatsoever, including its assets being expropriated or any licences being revoked.

**22.16. Audit Qualification**

The auditors of the Borrower qualify the financial statements delivered under Clause 19 in any respect.

**22.17. Listings Committee and Suspension of Trading**

- 22.17.1. The listings committee of the applicable Approved Exchange publishes any notice of its intention to suspend or discontinue the listing of any bonds issued by the Borrower.
- 22.17.2. Trading in bonds issued by the Borrower which are listed on any Approved Exchange is suspended for any reason (other than a general suspension of trading of all securities on the relevant exchange) for a period of 3 trading days or more.

**22.18. Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing any Lender may by notice to the Borrower:

- 22.18.1. cancel its participation in the Commitment whereupon it shall immediately be cancelled; and/or
- 22.18.2. declare that all or part of its participation in the Loans, together with accrued interest, and all other amounts accrued or outstanding to that Lender under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable together with all and any Break Costs; and/or
- 22.18.3. demand and be entitled to receive specific performance of the relevant obligation of the Finance Documents (if any) breached by the Borrower or the Obligors (as applicable); and/or
- 22.18.4. claim payment from the Borrower of any and all damages, costs and other amounts incurred directly as a result of such Event of Default.

## SECTION 8 CHANGES TO PARTIES

### 23. CHANGES TO THE LENDER

#### 23.1. Assignments and transfers by the Lender

Subject to this Clause 23, a Lender (the Existing Lender) may:

23.1.1. cede any of its rights or delegate its obligations; or

23.1.2. transfer by assignment any of its rights and obligations,

to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the New Lender).

#### 23.2. Conditions of assignment or transfer

23.2.1. The consent of the Borrower is required for an assignment, cession or delegation by an Existing Lender, unless the assignment, cession or delegation is:

23.2.1.1. to another Lender or an Affiliate of a Lender;

23.2.1.2. to a Permitted Transferee; or

23.2.1.3. made at a time when a Default has occurred.

23.2.2. The consent of the Borrower to an assignment, cession or delegation must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent 5 Business Days after the Existing Lender has requested it unless consent is expressly refused by the Borrower on reasonable grounds within that time.

23.2.3. An assignment, cession or delegation will only be effective on:

23.2.3.1. receipt by the Borrower (whether in the Transfer Certificate or otherwise) of written confirmation from the New Lender that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and

23.2.3.2. performance by each Finance Party (to the extent applicable) of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment, cession or delegation to a New Lender.

23.2.4. A transfer will only be effective if the procedure set out in Clause 23.4 (*Procedure for transfer*) is complied with.

23.2.5. If:

23.2.5.1. the Lender assigns its rights and obligations or cedes its rights or delegates its obligations under the Finance Documents or changes its Facility Office; and

- 23.2.5.2. as a result of circumstances existing at the date the assignment, cession, delegation or change occurs, the Borrower would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 13 (*Tax gross-up and indemnities*) or Clause 14 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

- 23.2.6. Each New Lender, by executing the relevant Transfer Certificate, confirms that the Lender has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the assignment, cession or delegation becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

### 23.3. Limitation of responsibility of Existing Lender

- 23.3.1. Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

- 23.3.1.1. the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
- 23.3.1.2. the financial condition of the Borrower;
- 23.3.1.3. the performance and observance by any Borrower of its obligations under the Finance Documents or any other documents; or
- 23.3.1.4. the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

- 23.3.2. Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

- 23.3.2.1. has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and
- 23.3.2.2. will continue to make its own independent appraisal of the creditworthiness of the Borrower and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

- 23.3.3. Nothing in any Finance Document obliges an Existing Lender to:

- 23.3.3.1. accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 23; or

- 23.3.3.2. support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under the Finance Documents or otherwise.

**23.4. Procedure for transfer**

- 23.4.1. Subject to the conditions set out in Clause 23.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with Clause 23.4.3 below when a duly completed Transfer Certificate is delivered by the Existing Lender and/or the New Lender to the Borrower.
- 23.4.2. The existing Lender is only obliged to execute a Transfer Certificate if it has received confirmation by the New Lender that the Borrower has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.
- 23.4.3. Subject to Clause 23.6 (*Pro rata interest settlement*), on the Transfer Date:
- 23.4.3.1. to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by assignment its rights and obligations under the Finance Documents the Borrower and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the Discharged Rights and Obligations);
- 23.4.3.2. the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender;
- 23.4.3.3. the New Lender shall acquire the same rights and assume the same obligations as it would have acquired and assumed had the New Lender been an Existing Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Existing Lender shall be released from further obligations under the Finance Documents; and
- 23.4.3.4. the New Lender shall become a Party as a "Lender".

**23.5. Copy of Transfer Certificate to Borrower**

The Lender shall, as soon as reasonably practicable after it has executed a Transfer Certificate send to the Borrower a copy of that Transfer Certificate.

**23.6. Pro rata interest settlement**

If the Existing Lender or Finance Party has notified the New Lender that it is able to distribute interest payments on a "pro rata basis" to the Existing Lender and the New Lenders then (in respect of any transfer pursuant to Clause 23.4 (*Procedure for transfer*) the Transfer Date of

which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- 23.6.1. any interest or fees in respect of the Loans which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (**Accrued Amounts**) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than three Months, on the next of the dates which falls at three Monthly intervals after the first day of that Interest Period); and
- 23.6.2. the rights assigned or transferred by the Existing Lender will not include the right to the **Accrued Amounts**, so that:
  - 23.6.2.1. when the **Accrued Amounts** become payable, those **Accrued Amounts** will be payable to the Existing Lender; and
  - 23.6.2.2. the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 23.6, have been payable to it on that date, but after deduction of the **Accrued Amounts**.

#### 24. CHANGES TO THE BORROWER

The Borrower may not cede any of its rights, delegate any of its obligations or assign any of its rights and obligations under the Finance Documents without the prior written approval of the Lenders which approval shall not be unreasonably withheld having regard to the circumstances resulting in such transfer of rights and/or obligations.

## SECTION 9 ADMINISTRATION

### 25. PAYMENT MECHANICS

#### 25.1. Place of Payment

25.1.1. Except to the extent otherwise provided in this Agreement, all payments of principal, interest and other amounts to be made by the Borrower under this Agreement shall be made:

25.1.1.1. if to the Original Lender, to the following account (*Lender to insert account details*):  
or to such other account as the Original Lender may notify to the Borrower from time to time by not less than 10 Business Days' prior notice; and

25.1.1.2. if to any other Finance Party, to such account as that Finance Party may notify to the Borrower from time to time by not less than 10 Business Days' prior notice.

25.1.2. On each date on which the Borrower or any Lender is required to make a payment under a Finance Document, the Borrower or that Lender shall make the same available for value on the due date at the time and in such funds specified by the party entitled to such payment as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

#### 25.2. No set-off by the Borrower

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

#### 25.3. Business Days

25.3.1. Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

25.3.2. During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

#### 25.4. Set-off

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.



## 25.5. Partial payments

25.5.1. If the Lenders receive a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Lenders shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:

- 25.5.1.1. first, in or towards payment pro rata of any unpaid fees, costs and expenses of the Finance Parties under the Finance Documents;
- 25.5.1.2. secondly, in or towards payment pro rata of any accrued interest, fees, Breakage Costs or commission due but unpaid under this Agreement;
- 25.5.1.3. thirdly, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
- 25.5.1.4. fourthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

25.5.2. Clause 25.5.1 will override any appropriation made by an Obligor.

## 26. NOTICES

### 26.1. Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### 26.2. Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

- 26.2.1. in the case of the Borrower, that identified with its name below;
- 26.2.2. in the case of the Original Lender that identified with its name below;
- 26.2.3. in the case of a New Lender, that identified in the Transfer Certificate,

or any substitute address or fax number or department or officer as the Party may notify to the other Party by not less than five Business Days' notice.

### 26.3. Delivery

26.3.1. Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

- 26.3.1.1. if by way of fax, when received in legible form; or
- 26.3.1.2. if by way of letter, when it has been left with a responsible person at the relevant address or five Business Days (or, if posted from South Africa to another country and

*vice versa*, 20 (twenty) Business Days) after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under Clause 26.2 (*Addresses*), if addressed to that department or officer.

- 26.3.2. Any communication or document which becomes effective, in accordance with Clause 26.3.1 after 5.00 p.m. (Johannesburg time) in the place of receipt shall be deemed only to become effective on the following Business Day.

#### 26.4. Electronic communication

- 26.4.1. Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:

- 26.4.1.1. notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

- 26.4.1.2. notify each other of any change to their address or any other such information supplied by them by not less than 5 (five) Business Days' notice.

- 26.4.2. Any electronic communication which becomes effective after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following Business Day.

#### 26.5. English language

- 26.5.1. Any notice given under or in connection with any Finance Document must be in English.

- 26.5.2. All other documents provided under or in connection with any Finance Document must be:

- 26.5.2.1. in English; or

- 26.5.2.2. if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

### 27. CALCULATIONS AND CERTIFICATES

#### 27.1. Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

## 27.2. Certificates and Determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## 27.3. Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and, in relation to a Loan, year of 365 days (irrespective of whether the year in question is a leap year), or in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

## 28. PARTIAL INVALIDITY

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## 29. REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any of the Finance Documents on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## 30. AMENDMENTS AND WAIVERS

### 30.1. Required consents

No addition to, variation, amendment or consensual cancellation of any Finance Document and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of any Finance Document shall be of any force or effect unless the prior written consent of the Lenders has been obtained and it is reduced to writing and signed by or on behalf of all the parties to such Finance Document.

### 30.2. Exceptions

An amendment or waiver that has the effect of changing or which relates to:

- 30.2.1. the definition "Change of Control Event" in Clause 1.1 (*Definitions*);
- 30.2.2. the definition "Change of Principal Business" in Clause 1.1 (*Definitions*);
- 30.2.3. an extension to the date of payment of any amount under the Finance Documents;

- 30.2.4. a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
  - 30.2.5. an increase in or an extension of any Commitment or any requirement that a cancellation of Commitments reduces the Commitments of the Lender rateably under the relevant Facility;
  - 30.2.6. a change to the Borrower;
  - 30.2.7. any provision which expressly requires the consent of the Lender;
  - 30.2.8. release of a Qualifying Guarantee; or
  - 30.2.9. Clause 3 (*Purpose*), Clause 4 (*Conditions of Utilisation*), Clause 7 (*Repayment and Cancellation*), Clause 13.3 (*Tax indemnity*), Clause 14 (*Increased Costs*), Clause 21.5 (*Negative Pledge*), Clause 23 (*Changes to the Lender*), this Clause 30.2,
  - 30.2.10. Clause 38 (*Governing Law*), Clause 39 (*Jurisdiction*) or Schedule 1 (*Conditions Precedent*),
- shall not be made without the prior consent of the Lenders.

## 31. CONFIDENTIALITY

### 31.1. Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 31.2 (*Disclosure of Confidential Information*) and Clause 31.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

### 31.2. Disclosure of Confidential Information

Any Finance Party may disclose:

- 31.2.1. to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this Clause 31.2.1 is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- 31.2.2. to any person:
  - 31.2.2.1. to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

- 31.2.2.2. with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or the Borrower and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- 31.2.2.3. appointed by any Finance Party or by a person to whom Clauses 31.2.2.1 or 31.2.2.2 applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
- 31.2.2.4. who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in Clauses 31.2.2.1 or 31.2.2.2;
- 31.2.2.5. to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- 31.2.2.6. to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- 31.2.2.7. to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so);
- 31.2.2.8. who is a Party; or
- 31.2.2.9. with the consent of the Borrower;
- in each case, such Confidential Information as that Finance Party shall consider appropriate if:
- 31.2.2.10. in relation to Clauses 31.2.2.1, 31.2.2.2 and 31.2.2.3, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- 31.2.2.11. in relation to Clause 31.2.2.4, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- 31.2.2.12. in relation to Clauses 31.2.2.5, 31.2.2.6 and 31.2.2.7, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

- 31.2.3. to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Borrower if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

### 31.3. Disclosure to numbering service providers

- 31.3.1. Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, any Facility and/or the Borrower the following information:
- 31.3.1.1. name of the Borrower;
  - 31.3.1.2. country of domicile of the Borrower;
  - 31.3.1.3. place of incorporation of the Borrower;
  - 31.3.1.4. date of this Agreement;
  - 31.3.1.5. date of each amendment and restatement of this Agreement;
  - 31.3.1.6. amount of the Commitments;
  - 31.3.1.7. currencies of each Facility;
  - 31.3.1.8. type of each Facility;
  - 31.3.1.9. ranking of each Facility;
  - 31.3.1.10. the Maturity Date;
  - 31.3.1.11. changes to any of the information previously supplied pursuant to Clauses 31.3.1.1 to 31.3.1.10; and
  - 31.3.1.12. such other information agreed between such Finance Party and the Borrower,  
to enable such numbering service provider to provide its usual syndicated loan numbering identification services.
- 31.3.2. The Parties acknowledge and agree that each identification number assigned to this Agreement, any Facility and/or the Borrower by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- 31.3.3. The Borrower represents that none of the information set out in Clauses 31.3.1.1 to 31.3.1.10 is, nor will at any time be, unpublished price-sensitive information.

### 31.4. Entire agreement

This Clause 31 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential

Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

**31.5. Inside information**

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

**31.6. Notification of disclosure**

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

- 31.6.1. of the circumstances of any disclosure of Confidential Information made pursuant to Clause 31.2.2.5 except where such disclosure is made to any of the persons referred to in that Clause during the ordinary course of its supervisory or regulatory function; and
- 31.6.2. upon becoming aware that Confidential Information has been disclosed in breach of this Clause 31(*Confidentiality*).

**31.7. Continuing obligations**

The obligations in this Clause 31(*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- 31.7.1. the date on which all amounts payable by the Borrower under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- 31.7.2. the date on which such Finance Party otherwise ceases to be a Finance Party.

**32. PRESS RELEASES AND PUBLIC ANNOUNCEMENTS**

- 32.1. No Party shall issue any press release or make any public announcement relating to the existence or subject matter of this Agreement without the prior written approval of the other Party; provided, however, that any Party may make any public disclosure it believes in good faith is required by applicable law or any listing or trading agreement concerning its publicly-traded securities (in which case the disclosing Party will use its reasonable best efforts to advise the other Party prior to making the disclosure to the extent practicable and permissible under applicable law); and provided, further, that each of the Parties may make internal announcements to their respective employees that are not inconsistent in any material respects with the Parties' prior public disclosures regarding the transactions contemplated by this Agreement.
- 32.2. The Borrower specifically consents to the Lenders making public and private announcements relating to the existence or subject matter of this Agreement with the prior written approval of the Borrower of a specific announcement, which approval may not be unreasonably withheld or delayed.

**33. WAIVER OF IMMUNITY**

The Borrower irrevocably and unconditionally waives any right it may have to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

**34. COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

**35. SOLE AGREEMENT**

The Finance Documents constitute the sole record of the agreement between the Parties in regard to the subject matter thereof.

**36. NO IMPLIED TERMS**

No Party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded in any Finance Document in regard to the subject matter thereof.

**37. INDEPENDENT ADVICE**

Each Obligor acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all of the provisions of the Finance Documents and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, each of the Obligors acknowledges that all of the provisions of each Finance Document and the restrictions therein contained are part of the overall intention of the Parties in connection with the Finance Documents.



**SECTION 10**  
**GOVERNING LAW AND ENFORCEMENT**

**38. GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by South African law.

**39. JURISDICTION**

39.1. Save as may be otherwise specified in any Finance Document to the contrary, the Borrower hereby irrevocably and unconditionally consents and submits to the jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg), (or any successor to that division) in regard to all matters arising from the Finance Documents (including a dispute relating to the existence, validity or termination of any Finance Document or any non-contractual obligation arising out of or in connection with any Finance Document) (a **Dispute**).

39.2. The Borrower agrees that the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that division) is the most appropriate and convenient court to settle Disputes and accordingly:

39.2.1. the Borrower will not argue to the contrary;

39.2.2. the Borrower hereby waives any objection to the jurisdiction of that court on the grounds of venue or *forum non conveniens* or any similar grounds; and

39.2.3. the Borrower consents to service of process in any manner permitted by applicable law.

39.3. This Clause 39 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction as it sees fit. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

**SECTION 11  
RIGHT TO QUOTE**

[Note: This clause will not form part of the OMSFIN or the FG version]

**40. RIGHT TO QUOTE**

40.1. If the Borrower wishes to hedge its interest rate risk in respect of the Facility and/or:

40.1.1. the facility in an amount of approximately R1 500 000 000 to be made available by Old Mutual Specialised Finance Proprietary Limited on or about the Signature Date; and/or

40.1.2. the facility in an amount of approximately R1 500 000 000 to be made available by Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) on or about the Signature Date,

the Borrower shall advise the Original Lender of such intention and shall afford the Original Lender an opportunity to quote for such hedging arrangements.

40.2. The Borrower undertakes to afford the Original Lender an opportunity to match the rates and terms offered to the Borrower by other financial institutions in respect of the hedging arrangements contemplated in clause 40.1 before it enters into an agreement with such financial institution(s) and shall not enter into such agreement before the expiry of the 20 Business Day period contemplated in this clause 40.2. If the Original Lender has, within 20 Business Days of the Borrower affording the Original Lender such opportunity to match the rates and terms offered to the Borrower by other financial institutions in respect of the hedging arrangements contemplated in clause 40.1, offered to enter into such hedging arrangements on the same rates and terms, the Borrower shall enter into such hedging arrangements with the Original Lender.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

**SCHEDULE 1**  
**CONDITIONS PRECEDENT**

1. Borrower
  - 1.1 A copy of the constitutional documents of the Borrower.
  - 1.2 A certified excerpt of the minutes of the board of directors of the Borrower containing the resolution passed by the board of directors of the Borrower
    - 1.2.1 resolving that the Borrower enter into this Agreement; and
    - 1.2.2 approving the Borrowing Programme and Corporate Plan and confirming that this Facility is approved in terms of the Borrowing Programme and the Corporate Plan.
  - 1.3 A specimen of the signature of each person authorised to bind the Borrower to obligations in respect of borrowing by the Borrower by the resolution referred to in paragraph 1.2.
  - 1.4 The Compliance Certificate duly executed by the Group Chief Executive of the Borrower.
2. Finance Documents
 

A duly executed original of this Agreement.
3. "Know your customer" requirements
 

All information and documentation required by the Original Lender in relation to the Borrower to enable it to comply with its obligations under, and the requirements of, law and its own "know your customer" procedures and confirmation from the Original Lender that the Borrower has complied with such requirements.
4. Legal opinions
 

A legal opinion of Edward Nathan Sonnenbergs Inc confirming, inter alia:

  - 4.1 the validity and enforceability of this Agreement; and
  - 4.2 the Borrower's capacity and authority to enter into this Agreement, (in terms of the PFMA and any other relevant law).
5. Other documents, evidence and events
  - 5.1 A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
  - 5.2 The financial statements in respect of the end of the Borrower's financial year ending on 31 March 2015.
  - 5.3 Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 11 (Raising Fee), Clause 17 (Costs and expenses) and any other provision of this

- Agreement have been paid or will be paid by the date set out in Clause 11.
- 5.4 Confirmation from the Borrower or the Lenders have received evidence to their satisfaction that the locomotives acquired or to be acquired by it from China North Rail and China South Rail, utilising the proceeds of the Facility, under the Borrower's capital investment programme, are fit for the purpose for which they were or are to be acquired.
- 5.5 The Lenders have received evidence to their satisfaction that the Borrower has, on or about the Signature Date, entered into:
- 5.5.1 a credit facility agreement with Old Mutual Specialised Finance Proprietary Limited in terms of which an amount of R1 500 000 000 was made available by Old Mutual Specialised Finance Proprietary Limited for utilisation by the Borrower; and
- 5.5.2 a credit facility agreement with Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) in terms of which an amount of R1 500 000 000 was made available by Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) for utilisation by the Borrower.
6. Lender
- Approval by the Lender's Investment, Executive and/or Credit Committee of the Facility (in the form of a letter or email to that effect).

**SCHEDULE 2**  
**FORM OF UTILISATION REQUEST**

From: Transnet SOC Ltd

To: Lender

Dated: [•]

Dear Sirs

**Transnet SOC Ltd – ZAR 2 500 000 000 Term Facilities Agreement dated [•] (the Agreement)**

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Utilisation on the following terms:  
  

Proposed Utilisation Date: [•] (or, if that is not a Business Day, the next Business Day)

Amount: ZAR[•] ([•])
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
4. The proceeds of this Utilisation should be credited to [•].
5. This Utilisation Request is irrevocable.

Yours faithfully

.....  
authorised signatory for  
Transnet SOC Ltd

**SCHEDULE 3**  
**FORM OF TRANSFER CERTIFICATE**

To: Transnet SOC Ltd as Borrower

From: [The Existing Lender] (the Existing Lender) and [The New Lender] (the New Lender)

Dated:

**Transnet SOC Ltd - ZAR2 500 000 000,00 - ZAR3 000 000 000,00 Term Facilities Agreement dated [•] (the Agreement)**

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 23.4 (*Procedure for transfer*):
  - 2.1. The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by cession and delegation, and in accordance with Clause 23.4 (*Procedure for transfer*), all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participations in the Loans under the Agreement as specified in the Schedule.
  - 2.2. The proposed Transfer Date is [•].
  - 2.3. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 26.2 (*Addresses*) are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 23.3.3.
4. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
5. This Transfer Certificate [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by South African law.
6. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

**THE SCHEDULE**

**Commitment/rights and obligations to be transferred**

*[insert relevant details]*

*[Facility Office address, fax number and attention details for notices and account details for payments,]*

[Existing Lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Borrower and the Transfer Date is confirmed as [•].

By:

**SCHEDULE 4**  
**FORM OF CONFIDENTIALITY UNDERTAKING**

Transnet SOC Ltd - ZAR2 500 000 000,00 - ZAR3 000 000 000,00 Term Facilities Agreement dated  
 [•] (the Agreement)

THIS CONFIDENTIALITY UNDERTAKING is dated [ ] and made between:

(1) [ ]; and

(2) [ ].

Either party (in this capacity the "Purchaser") may from time to time consider acquiring an interest from the other party (in this capacity the "Seller") in the Agreement which, subject to the Agreement, may be by way of novation, assignment, the entering into, whether directly or indirectly, of a sub-participation or any other transaction under which payments are to be made or may be made by reference to one or more relevant Finance Documents and/or the Company or by way of investing in or otherwise financing, directly or indirectly, any such novation, assignment, sub-participation or other transaction (each an "Acquisition"). In consideration of the Seller agreeing to make available to the Purchaser certain information in relation to each Acquisition it is agreed as follows:

**1. CONFIDENTIALITY UNDERTAKING**

The Purchaser undertakes in relation to each Acquisition made or which may be made by it (a) to keep all Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 (*Permitted Disclosure*) below and to ensure that all Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition is protected with security measures and a degree of care that would apply to the Purchaser's own confidential information and (b) until that Acquisition is completed, to use the Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition only for the Permitted Purpose.<sup>2</sup>

**2. PERMITTED DISCLOSURE**

The Purchaser may disclose in relation to each Acquisition made or which may be made by it:

- 2.1. to any of its Affiliates and any of its or their officers, directors, employees, professional advisers and auditors such Confidential Information as the Purchaser shall consider appropriate if any person to whom such Confidential Information is to be given pursuant to this paragraph 2.1 is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no

---

<sup>2</sup> Please note that the Permitted Purpose ceases to apply to Confidential Information supplied to the Purchaser in relation to an Acquisition on completion of that Acquisition however if that Acquisition does not complete, the prospective purchaser is not permitted to use such Confidential Information for any purpose other than the Permitted Purpose.



such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to such Confidential Information;

2.2. subject to the requirements of the Agreement, to any person:

- (a) to (or through) whom the Purchaser assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations which it may acquire under the Agreement such Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition as the Purchaser shall consider appropriate if the person to whom such Confidential Information is to be given pursuant to this sub-paragraph (a) of paragraph 2.2 has delivered a letter to the Purchaser in equivalent form to this undertaking;
- (b) with (or through) whom the Purchaser enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to the Agreement or the Company such Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition as the Purchaser shall consider appropriate if the person to whom such Confidential Information is to be given pursuant to this sub-paragraph (b) of paragraph 2.2 has delivered a letter to the Purchaser in equivalent form to this undertaking;
- (c) to whom information is required or requested to be disclosed by any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation such Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition as the Purchaser shall consider appropriate; and

2.3. notwithstanding paragraphs 2.1 and 2.2 above, Confidential Information to such persons to whom, and on the same terms as, a Finance Party is permitted to disclose such Confidential Information under the Agreement to which that Acquisition relates, as if such permissions were set out in full in this undertaking for the purposes of that Acquisition and as if references in those permissions to Finance Party were references to the Purchaser for the purposes of that Acquisition.

### 3. NOTIFICATION OF DISCLOSURE

The Purchaser agrees in relation to each Acquisition made or which may be made by it (to the extent permitted by law and regulation) to inform the Seller:

- 3.1. of the circumstances of any disclosure of Confidential Information made pursuant to sub-paragraph (c) of paragraph 2.2 above except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- 3.2. upon becoming aware that Confidential Information relating to that Acquisition has been disclosed in breach of this undertaking.

#### 4. RETURN OF COPIES

If the Purchaser does not enter into an Acquisition and the Seller so requests in writing, the Purchaser shall return all Confidential Information supplied to the Purchaser by the Seller in relation to that Acquisition and destroy or permanently erase (to the extent technically practicable) all copies of such Confidential Information made by the Purchaser and use all reasonable endeavours to ensure that anyone to whom the Purchaser has supplied any such Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that the Purchaser or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under sub-paragraph (c) of paragraph 2.2 above.

#### 5. CONTINUING OBLIGATIONS

The obligations in this undertaking are continuing and, in particular, shall survive and remain binding on the Purchaser in relation to each Acquisition made or which may be made by it until (a) if the Purchaser acquires an interest in the Agreement to which that Acquisition relates by way of novation, the date on which the Purchaser acquires such an interest; (b) if the Purchaser enters into that Acquisition other than by way of novation, the date falling [twelve] months after termination of that Acquisition; or (c) in any other case [twelve] months after the date on which Confidential Information in relation to that Acquisition was supplied to the Purchaser by the Seller.

#### 6. NO REPRESENTATION; CONSEQUENCES OF BREACH, ETC

The Purchaser acknowledges and agrees that, in relation to each Acquisition made or which may be made by it:

- 6.1. neither the Seller, nor any member of the relevant Group nor any of the Seller's or the relevant Group's respective officers, employees or advisers (each a "**Relevant Person**") (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information supplied by the Seller to the Purchaser in relation to that Acquisition or any other information supplied by the Seller to the Purchaser in relation to that Acquisition or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information supplied by the Seller to the Purchaser in relation to that Acquisition or any other information supplied by the Seller to the Purchaser in relation to that Acquisition or be otherwise liable to the Purchaser or any other person in respect of the Confidential Information supplied by the Seller to the Purchaser in relation to that Acquisition or any such information; and
- 6.2. the Seller or members of the relevant Group may be irreparably harmed by the breach of the terms of this undertaking and damages may not be an adequate remedy; each Relevant Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this undertaking by the Purchaser.

## 7. ENTIRE AGREEMENT: NO WAIVER; AMENDMENTS, ETC

- 7.1. This undertaking constitutes the entire agreement between the Seller and the Purchaser in relation to the Purchaser's obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- 7.2. No failure or delay in exercising any right or remedy under this undertaking will operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any further exercise thereof or the exercise of any other right or remedy under this undertaking.
- 7.3. The terms of this undertaking and the Purchaser's obligations under this undertaking may only be amended or modified by written agreement between the parties.

## 8. INSIDE INFORMATION

The Purchaser acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Purchaser undertakes not to use any Confidential Information for any unlawful purpose.

## 9. NATURE OF UNDERTAKINGS

The undertakings given by the Purchaser in this undertaking are given to the Seller and are also given for the benefit of the Company and each other member of the Group.

## 10. GOVERNING LAW AND JURISDICTION

- 10.1. This undertaking and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of any Acquisition) are governed by South African law.
- 10.2. The courts of South Africa have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this undertaking (including a dispute relating to any non-contractual obligation arising out of or in connection with either this undertaking or the negotiation of any Acquisition).

## 11. DEFINITIONS

In this undertaking terms defined in the relevant Agreement (as defined below) shall, unless the context otherwise requires, have the same meaning and:

**"Company"** means Transnet SOC Ltd, a company incorporated in South Africa with registration number 1990/000900/30.

**"Confidential Information"** means, in relation to each Acquisition, all information relating to the Company, the Group, the relevant Finance Documents, the relevant Facility and/or that Acquisition which is received by the Purchaser in relation to the relevant Finance Documents or the relevant Facility from the Seller or any of its affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (d) is or becomes public information other than as a direct or indirect result of any breach by the Purchaser of this undertaking; or
- (e) is identified in writing at the time of delivery as non-confidential by the Seller or its advisers; or
- (f) is known by the Purchaser before the date the information is disclosed to the Purchaser by the Seller or any of its affiliates or advisers or is lawfully obtained by the Purchaser after that date, from a source which is, as far as the Purchaser is aware, unconnected with the relevant Group and which, in either case, as far as the Purchaser is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

**"Group"** means, in relation to each Acquisition, the Company and its subsidiaries for the time being (as such term is defined in the Companies Act).

**"Permitted Purpose"** means, in relation to each Acquisition, considering and evaluating whether to enter into that Acquisition.

This undertaking has been entered into on the date stated at the beginning of this undertaking.

## SCHEDULE 5 TIMETABLES

Delivery of a duly completed Utilisation Request (Clause 5.1 <i>(Delivery of a Utilisation Request)</i> )	11.00 a.m. (Johannesburg time) 5 Business Days before the proposed Utilisation Date
JIBAR is set	Quotation Day as of 11:00 a.m. Johannesburg time in respect of JIBAR

**SCHEDULE 6**  
**PERMITTED TRANSFEREES**

**1. Local Banks**

- Absa Bank Limited
- FirstRand Bank Limited
- Investec Bank Limited
- Nedbank Limited
- The Standard Bank of South Africa Limited

**2. Foreign Banks**

- Bank of China Limited
- Banco Unico
- Ecobank
- China Construction Bank Corporation
- China Development Bank Limited
- Standard Chartered Bank Limited
- State Bank of India
- KfW IPEX-Bank GmbH
- ABN Amro Bank N.V.
- Allied Irish Bank
- Barclays Bank plc
- BNP Paribas S.A.
- Citibank, N.A.
- Credit Agricole
- Deutsche Bank Group AG
- Goldman Sachs International
- HSBC Bank PLC
- JPMorgan Chase Bank, N.A.
- Société Générale

- Sumitomo Mitsui Banking Corporation
- The Royal Bank of Scotland N.V.
- UBS AG

### 3. Financial Institutions

- Absa Fund Managers Limited
- Allan Gray Proprietary Limited
- Ashburton Fund Managers (Pty) Ltd
- Atlantic Asset Management
- Cadiz Asset Management (Pty) Ltd
- Coronation Fund Managers Limited
- Element Fund Management Proprietary Limited
- Futuregrowth Asset Management Proprietary Limited, in its capacity as agent for and on behalf of its clients
- Grindrod Asset Management Proprietary Limited
- Investec Asset Management Proprietary Limited
- Liberty Group Limited
- Marriott Asset Management (Proprietary) Limited
- MMI Holdings Limited
- Old Mutual Investment Group Proprietary Limited, in its capacity as agent for and on behalf of its clients
- Old Mutual Life Assurance Company (South Africa) Limited
- Old Mutual Specialised Finance Proprietary Limited
- Prescient Investment Management (Pty) Ltd
- Prudential Portfolio Managers South Africa (Proprietary) Limited
- Public Investment Corporation Limited
- Sanlam Capital Markets Limited
- Sanlam Life Insurance Limited
- Stanlib Limited

- Taquanta Investment Holdings (Proprietary) Limited
- Vantage Capital

4. **Affiliates**

Any Affiliates, Subsidiaries, Holding Companies or Related Funds of the banks or financial institutions listed in this Schedule 6 and any fund or entity managed by any of them or any of their Affiliates.



**SCHEDULE 7  
LENDER INSTRUCTION**

**From:** [INSERT DETAILS OF LENDERS] (the "Lenders")

**To:** Transnet SOC Ltd (the "Borrower").

Dated [ ]

Dear sirs,

Term facility agreement dated [ ] between the Borrower and the Lenders in terms of which the Lenders made a facility available to the Borrower for an amount of R2 500 000 000 (the "Term Facility Agreement")

1. Reference is made to the Term Facility Agreement. Capitalised terms used but not defined herein shall bear the meaning ascribed thereto in the Term Facility Agreement.
2. This is a Lender Instruction issued pursuant to clause 7.7.1.3 of the Term Facility Agreement.
3. We hereby notify you that a Negative Rating Event contemplated in clause 7.7.1.3 of the Term Facility Agreement has occurred.
4. You are hereby instructed to [provide us with a Qualifying Guarantee duly executed by a Qualifying Guarantor by no later than the date which is 45 (forty five) days calculated from the date on which you receive this Lender Instruction] / [prepay the Loans in full, together with accrued unpaid interest thereon, and all other amounts accrued and owing under the Finance Documents by no later than the date which is 5 (five) Business Days calculated from the date on which you receive this Lender Instruction.] [Note: Delete whichever is inapplicable]
5. The failure by you to [prepay the Loans] / [deliver the Qualifying Guarantee to the Lenders] [Note: Delete whichever is inapplicable] in accordance with this Lender Instruction as read with the Term Facility Agreement constitutes an Event of Default.

Yours faithfully

Signed for and on behalf of:

\_\_\_\_\_  
[Insert names of applicable Lenders]

**SCHEDULE 8  
INCREASED MARGIN NOTICE**

**From:** [INSERT DETAILS OF LENDERS] (the "Lenders")

**To:** Transnet SOC Ltd (the "Borrower").

Dated [ ]

Dear sirs,

**Term facility agreement dated [ ] between the Borrower and the Lenders in terms of which the Lenders made a facility available to the Borrower for an amount of R2 500 000 000 (the "Term Facility Agreement")**

1. Reference is made to the Term Facility Agreement. Capitalised terms used but not defined herein shall bear the meaning ascribed thereto in the Term Facility Agreement.
2. This is an Increased Margin Notice issued pursuant to clause 7.7.1.2 of the Term Facility Agreement.
3. We hereby notify you that a Negative Rating Event contemplated in clause 7.7.1.2 of the Term Facility Agreement has occurred.
4. You are hereby notified that the Lenders have exercised their right to increase the Margin contemplated in clause 1.1.66.1 of the Term Facility Agreement and, accordingly, the Increased Margin for all purposes in terms of the Term Facility agreement is [ ]% with effect from the date on which the Negative Rating Event contemplated in paragraph 3 occurred.
5. Kindly confirm your acceptance of the Increased Margin by no later than the date which is 5 (five) Business Days calculated from the date of receipt by you of this Increased Margin Notice.

Yours faithfully

Signed for and on behalf of:

---

**[Insert names of applicable Lenders]**

**SCHEDULE 9**  
**INCREASED MARGIN ACCEPTANCE NOTICE**

**From:** Transnet SOC Ltd (the "Borrower");

**To:** [INSERT DETAILS OF LENDERS] (the "Lenders").

Dear sirs,

Dated [ ]

Term facility agreement dated [ ] between the Borrower and the Lenders in terms of which the Lenders made a facility available to the Borrower for an amount of R2 500 000 000 (the "Term Facility Agreement")

1. Reference is made to the Term Facility Agreement. Capitalised terms used but not defined herein shall bear the meaning ascribed thereto in the Term Facility Agreement.
2. This is an Increased Margin Acceptance Notice issued pursuant to clause 7.7.1.2 of the Term Facility Agreement.
3. We hereby notify you that we have received your Increased Margin Notice dated [ ]. The Increased Margin contemplated in such Increased Margin Notice is acceptable to us and we hereby irrevocably and unconditionally confirm our acceptance of the Increased Margin contemplated therein.
4. We represent and warrant that the signatory of this Increased Margin Acceptance Notice is duly authorised to execute same.

Yours faithfully

Signed for and on behalf of:

---

**Transnet SOC Ltd**

**SCHEDULE 10  
COMPLIANCE CERTIFICATE**

**From:** Transnet SOC Ltd (the "Borrower");

**To:** [INSERT DETAILS OF LENDERS] (the "Lenders").

Dear sirs,

Dated [ ] [To be dated as of the Utilisation Date]

Term facility agreement dated [ ] between the Borrower and the Lenders in terms of which the Lenders made a facility available to the Borrower for an amount of R2 500 000 000 (the "Term Facility Agreement")

1. Reference is made to the Term Facility Agreement. Capitalised terms used but not defined herein shall bear the meaning ascribed thereto in the Term Facility Agreement.
2. This is the Compliance Certificate required to be delivered pursuant to the provisions of clause 1.4 of Schedule 1 to the Term Facility Agreement.
3. I (in my capacity as Group Chief Executive of the Borrower) hereby certify that as of the first Utilisation Date -
  - 3.1.1. borrowing the Commitment would not cause any borrowing or similar limit binding on the Borrower to be exceeded;
  - 3.1.2. the documents delivered under paragraph 1 of Schedule 1 to the Term Facility Agreement are a true copy of the original, correct, complete and in full force and effect as at the date of this Agreement;
  - 3.1.3. no Default has occurred or is continuing;
  - 3.1.4. no event or circumstance has to the best of the Borrower's knowledge and belief (having made reasonable enquiry), occurred that, individually or when taken into consideration with any other facts or circumstances then in existence, has had or is likely to have a Material Adverse Effect;
  - 3.1.5. all of the representations and warranties given in Clause 18 (*Representations*) are true, accurate and complete in all material respects;
  - 3.1.6. the Borrower has complied with all legislation which is binding on it and which governs the conclusion of this Agreement, including the South African Public Finance Management Act, 1999 (PFMA);
  - 3.1.7. the person who has executed the Term Facility Agreement on behalf of the Borrower has been duly authorised to do so in terms of the PFMA and in terms of all other Authorisation requirements which bind the Borrower;

- 3.1.8. the credit rating in respect of the Borrower, is a Moody's Global Scale Long Term Local Currency Rating of Baa2 and a S&P International Scale Long Term Local Currency Issuer Credit rating of BBB+;
- 3.1.9. the Borrower has submitted its Borrowing Programme to the Minister of Finance in respect of its current financial period;
- 3.1.10. the final printers template for the Corporate Plan of the Borrower provided by the Borrower to the Lenders on [insert date] outlining the Borrower's forecast financial position as at [insert date] accurately represents the Borrower's financial position as at the date same was given to the Lender; and
- 3.1.11. there have been no amendments to the constitutional documents of the Borrower and the Borrower's constitutional documents are in full force and effect and have not been superseded, amended or repealed in any respect by any subsequent resolution.

Signed for and on behalf of:

---

Transnet SOC Ltd

Name:

(who warrants his authority to execute this Compliance Certificate)

Title: Group Chief Executive

**SCHEDULE 11**  
**OPERATIONS DISCLOSURE SCHEDULE**

**[To be updated by the Borrower]**

Transnet SOC Ltd ("Transnet") has small operations outside of South Africa in Swaziland, Botswana, Namibia, Mozambique and Zimbabwe. Transnet has direct operations in Zimbabwe Freight Logistics particularly rail operations. Offices are maintained in Zimbabwe solely for the administrative purposes.

The following are the cash flow activities generated from operations between Transnet and Zimbabwe (all figures relate to the actual cash flows for the year up to [2015]):

1. Wagon hire – paid to Zimbabwe R4 738 000,00
2. Wagon Hire – revenue received R24 556 000,00
3. Haulage collected – R676 000,00
4. Shunting services – R900 000,00
5. Office hire – R153 000,00
6. Revenue from export services – R140 986 000,00
7. Revenue for imports services – R24 405,00

Wagons move in and out of the country regularly, they are not held in Zimbabwe but are constantly roaming.

**SCHEDULE 12**  
**LITIGATION DISCLOSURE SCHEDULE**

**[To be updated by the Borrower]**

**Litigation Disclosure in the matter between Pretorius and Another v Transnet SOC Ltd ("Transnet") and Others**

***[Signature Pages to Follow]***

**SCHEDULE 13**  
**COVENANT COMPLIANCE CERTIFICATE**

From: Transnet SOC Ltd

To: Lender

Dated: [•]

Dear Sirs

**Transnet SOC Ltd - ZAR 2 500 000 000 Term Facilities Agreement dated [•] (the Agreement)**

1. We refer to the Agreement. This is a Covenant Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Covenant Compliance Certificate unless given a different meaning in this Covenant Compliance Certificate.
2. We confirm that: [insert details of covenants to be certified].
3. [We confirm that no Default is continuing].

Yours faithfully

.....  
 authorised signatory for  
 Transnet SOC Ltd

.....  
 for and on behalf of  
 [name of auditors of the Borrower]



**SCHEDULE 14**  
**EXISTING SECURITY**

**SIGNATORIES**

**THE BORROWER**

Signed by: \_\_\_\_\_

Designation: \_\_\_\_\_

\_\_\_\_\_

for and on behalf of

**TRANSNET SOC Ltd**

Address: 43<sup>rd</sup> Floor, Carlton Centre  
150 Commissioner Street  
Johannesburg  
2001

Telephone number: +27 11 308 2627

Fax number: +27 11 308 2699

Attention: The Group Treasurer

**THE LENDER**

Signed by: \_\_\_\_\_

Designation: \_\_\_\_\_

\_\_\_\_\_

For and on behalf of

Signed by: \_\_\_\_\_

Designation: \_\_\_\_\_

\_\_\_\_\_

For and on behalf of

Address:

Telephone number:

Fax number:

Attention:



EXECUTION VERSION

---

ZAR 1-0002 500 000 000,00000 - ZAR 3 000 000 000 TERM FACILITY AGREEMENT

---

for

TRANSNET SOC LTD  
(Registration No. 1990/000900/30)  
as Borrower

with

NEDBANK LIMITED  
(Registration No. 1951/000009/06)  
as Original Lender

## CONTENTS

1.	DEFINITIONS AND INTERPRETATION .....	1
2.	THE FACILITY	<del>17</del> 19
3.	PURPOSE	<del>17</del> 19
4.	CONDITIONS OF UTILISATION	<del>17</del> 19
5.	UTILISATION	<del>18</del> 21
6.	REPAYMENT	<del>19</del> 22
7.	PREPAYMENT AND CANCELLATION	<del>19</del> 22
8.	INTEREST	<del>24</del> 29
9.	INTEREST PERIODS	<del>24</del> 30
10.	CHANGES TO THE CALCULATION OF INTEREST	<del>25</del> 30
11.	RAISING FEE	<del>31</del>
12.	COMMITMENT FEE	<del>32</del>
13.	<del>11.</del> TAX GROSS UP AND INDEMNITIES	<del>27</del> 33
14.	<del>12.</del> INCREASED COSTS	<del>30</del> 36
15.	<del>13.</del> OTHER INDEMNITIES	<del>32</del> 38
16.	<del>14.</del> MITIGATION BY THE FINANCE PARTIES	<del>33</del> 39
17.	<del>15.</del> COSTS AND EXPENSES	<del>33</del> 39
18.	<del>16.</del> REPRESENTATIONS	<del>35</del> 41
19.	<del>17.</del> INFORMATION UNDERTAKINGS	<del>39</del> 45
20.	FINANCIAL COVENANTS	<del>49</del>
21.	<del>18.</del> GENERAL UNDERTAKINGS	<del>42</del> 50
22.	<del>19.</del> EVENTS OF DEFAULT	<del>48</del> 57
23.	<del>20.</del> CHANGES TO THE LENDER	<del>53</del> 62
24.	<del>21.</del> CHANGES TO THE BORROWER	<del>56</del> 65
25.	<del>22.</del> PAYMENT MECHANICS	<del>57</del> 66
26.	<del>23.</del> NOTICES	<del>58</del> 67
27.	<del>24.</del> CALCULATIONS AND CERTIFICATES	<del>59</del> 68
28.	<del>25.</del> PARTIAL INVALIDITY	<del>60</del> 69
29.	<del>26.</del> REMEDIES AND WAIVERS	<del>60</del> 69
30.	<del>27.</del> AMENDMENTS AND WAIVERS	<del>60</del> 69
31.	<del>28.</del> CONFIDENTIALITY	<del>61</del> 70
32.	PRESS RELEASES AND PUBLIC ANNOUNCEMENTS	<del>73</del>
33.	<del>29.</del> WAIVER OF IMMUNITY	<del>64</del> 74
34.	<del>30.</del> COUNTERPARTS	<del>64</del> 74
35.	SOLE AGREEMENT	<del>74</del>
36.	NO IMPLIED TERMS	<del>74</del>
37.	INDEPENDENT ADVICE	<del>74</del>
38.	<del>31.</del> GOVERNING LAW	<del>65</del> 75
39.	<del>32.</del> JURISDICTION	<del>65</del> 75
40.	RIGHT TO QUOTE	<del>76</del>
	SCHEDULE 1 CONDITIONS PRECEDENT	<del>66</del> 77
	SCHEDULE 2 FORM OF UTILISATION REQUEST	<del>68</del> 79
	SCHEDULE 3 FORM OF TRANSFER CERTIFICATE	<del>69</del> 81
	SCHEDULE 4 FORM OF CONFIDENTIALITY UNDERTAKING	<del>71</del> 83
	SCHEDULE 5 TIMETABLES	<del>76</del> 88
	SCHEDULE 6 PERMITTED TRANSFEREES	<del>77</del> 89

SCHEDULE 7 LENDER INSTRUCTION.....	80
SCHEDULE 8 INCREASED MARGIN NOTICE.....	81
SCHEDULE 9 INCREASED MARGIN ACCEPTANCE NOTICE.....	82
SCHEDULE 10 COMPLIANCE CERTIFICATE.....	83
SCHEDULE 11 OPERATIONS DISCLOSURE SCHEDULE.....	85
SCHEDULE 12 AMORTISATION SCHEDULE.....	86
SCHEDULE 13 LITIGATION DISCLOSURE SCHEDULE.....	87
SCHEDULE 7 LENDER INSTRUCTION.....	92
SCHEDULE 8 INCREASED MARGIN NOTICE.....	93
SCHEDULE 9 INCREASED MARGIN ACCEPTANCE NOTICE.....	94
SCHEDULE 10 COMPLIANCE CERTIFICATE.....	95
SCHEDULE 11 OPERATIONS DISCLOSURE SCHEDULE.....	97
SCHEDULE 12 LITIGATION DISCLOSURE SCHEDULE.....	98
SCHEDULE 13 COVENANT COMPLIANCE CERTIFICATE.....	99
SCHEDULE 14 EXISTING SECURITY.....	100

**PARTIES:**

THIS AGREEMENT is dated     May     ~~September~~ 2015 and made between:

- (1) TRANSNET SOC LTD, a company registered in accordance with the laws of South Africa under registration number 1990/000900/30 (the **Borrower**); and
- (2) NEDBANK LIMITED, a company registered in accordance with the laws of South Africa under registration number 1951/000009/06 (the "**Original Lender**").

IT IS AGREED as follows:

## SECTION 1 INTERPRETATION

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1. ~~1.1.~~ Definitions

In this Agreement the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and cognate words shall bear corresponding meanings:

- 1.1.1. A Positive Rating Event shall bear the meaning ascribed thereto in clause ~~7.5.3.27.7.3.2.~~
- 1.1.2. A Relevant Period shall bear the meaning ascribed thereto in clause ~~7.5.3.27.7.3.2.~~
- 1.1.3. Accounting Principles means the generally accepted accounting principles in South Africa, including IFRS.
- 1.1.4. Affiliate means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.
- 1.1.5. Agreement means this term facility agreement.
- ~~1.1.6. Amortisation Schedule means an amortisation schedule provided by the Lenders to the Borrower annexed to this Agreement as Schedule 12.~~
- 1.1.6. ~~1.1.7. Approved Exchange~~ means the Interest Rate Market of the JSE or a recognised exchange as defined in the Income Tax Act, 1962 or any other stock or bond exchange approved by the Lenders.
- 1.1.7. ~~1.1.8. Authorisation~~ means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration by, with or from any authority.
- 1.1.8. ~~1.1.9. Availability Period~~ means the period from, and including, the Effective Date until ~~30 September 2015; the second anniversary thereof.~~



- 1.1.9. ~~1.1.10.~~ **Available Commitment** means, ~~in relation to the Facility, each a~~ Lender's Commitment ~~under that Facility~~ minus:
- 1.1.9.1. ~~1.1.10.1.~~ the amount of its participation in the outstanding ~~Loan~~ Loans under the Facility; and
- 1.1.9.2. ~~1.1.10.2.~~ in relation to the proposed Utilisation, the amount of its participation in the ~~Loan~~ Utilisation that is due to be made ~~under the Facility~~ on or before the proposed Utilisation Date.
- 1.1.10. **Available Facility** means the aggregate for the time being of each Lender's Available Commitment;
- 1.1.11. **B Positive Rating Event** shall bear the meaning ascribed thereto in clause ~~7.5.3.1~~ 7.7.3.1.
- 1.1.12. **B Relevant Period** shall bear the meaning ascribed thereto in clause ~~7.5.3.1~~ 7.7.3.1.
- 1.1.13. **Borrowing Programme** means the borrowing programme of the Borrower in relation to its current financial year required to be submitted to the Minister of Finance as prescribed in terms of Section 66(7)(a) of the PFMA.
- 1.1.14. **Break Costs** means the amount (if any) by which:
- 1.1.14.1. the interest (excluding the Margin) which a Lender should have received for the period from the date of receipt of all or any part of its participation in ~~the~~ a Loan or Unpaid Sum to the last day of the current Interest Period in respect of ~~the~~ that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;
- exceeds:
- 1.1.14.2. the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.
- 1.1.15. **Business Day** means a day other than a Saturday or Sunday or public holiday designated as such by the applicable laws of South Africa.
- 1.1.16. **Change of Principal Business** means any of the following events or circumstances –
- 1.1.16.1. the Borrower ceases to carry on any of the Principal Businesses; or
- 1.1.16.2. the Borrower enters into any agreement which has the effect of disposing of the whole or a substantial part of any of the Principal Businesses,
- 1.1.17. **Change of Control Event** means the Government of South Africa ceases to (a) own, directly or indirectly, more than 50 per cent of the issued share capital of the Borrower; or (b) control, directly or indirectly, the Borrower; or (c) have the right to unilaterally veto any of the special resolution items contained in section 65(11) of the Companies Act. For the purpose of this definition, the Government of South Africa will be deemed to “control” the Borrower if (whether directly or indirectly and whether by the ownership of share

capital, the possession of voting power, contract, trust or otherwise) it has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of the Borrower or otherwise controls, or has the power to control, the affairs and policies of the Borrower.

1.1.18. **Change in Business Notice** shall bear the meaning ascribed thereto in clause 7.8.1.17.10.1.

1.1.19. **Commitment** means, in relation to:

1.1.19.1. the Original Lender, the Loan Amount and the amount of any other Commitment transferred to it under this Agreement; and

1.1.19.2. any other Lender, the amount of any Commitment transferred to it under this Agreement,

to the extent not cancelled or reduced pursuant to this Agreement.

1.1.20. **Commitment Fee** means 0,400,35% (zero comma fortythree five per cent), exclusive of the undrawn portion of the Total VAT, of each Lender's Available Commitment.

1.1.21. **Companies Act** means the ~~South African Companies Act, 2008~~ 2008 (Act No. 71 of 2008).

1.1.22. **Compliance Certificate** means the compliance certificate contemplated in Schedule 10 hereto.

1.1.23. **Confidential Information** means all information relating to the Borrower, or the Group, the Finance Documents or the Facilities of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the ~~Facilities~~ Facility from either:

1.1.23.1. any member of the Group or any of its advisers; or

1.1.23.2. another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

1.1.23.2.1. is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 2831 (Confidentiality); or

1.1.23.2.2. is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or

1.1.23.2.3. is known by that Finance Party before the date the information is disclosed to it in accordance with Clause 1.1.23.1 or 1.1.23.2 or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

- 1.1.24. **Confidentiality Undertaking** means a confidentiality undertaking substantially in the form set out in Schedule 4 (*Form of Confidentiality Undertaking*) or in any other form agreed between the Borrower and the Lenders.
- 1.1.25. **Consolidated Total Assets** means, at any time, the amount of the total assets of the Borrower, as appearing in the latest audited consolidated annual financial statements of the Borrower delivered pursuant to Clause ~~17.1~~19.1 (*Financial statements*).
- 1.1.26. **Corporate Plan** means the corporate plan of the Borrower which details, *inter alia*, the projections of its revenue and expenditure and the Borrowing Programme in respect of the Borrower.
- ~~1.1.27.~~ **Covenant Compliance Certificate** means the covenant compliance certificate substantially in the form set out in Schedule 13 (*Form of Covenant Compliance Certificate*) hereto;
- ~~1.1.28.~~ ~~1.1.27.~~ **Credit Rating** means the credit rating issued by each Rating Agency, from time to time, in respect of the Borrower detailing the credit rating of the Borrower as determined by such Rating Agency.
- ~~1.1.29.~~ ~~1.1.28.~~ **Default** means an Event of Default or any event or circumstance specified in Clause ~~19~~22 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.
- ~~1.1.30.~~ ~~1.1.29.~~ **Designated Amount** means an amount equal to 0.5 per cent. of the Consolidated Total Assets of the Borrower from time to time.
- ~~1.1.31.~~ ~~1.1.30.~~ **Disruption Event** means either or both of:
- ~~1.1.31.1.~~ ~~1.1.30.1.~~ a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the ~~Facilities~~Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- ~~1.1.31.2.~~ ~~1.1.30.2.~~ the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
- ~~1.1.31.2.1.~~ ~~1.1.30.2.1.~~ from performing its payment obligations under the Finance Documents; or
- ~~1.1.31.2.2.~~ ~~1.1.30.2.2.~~ from communicating with other Parties in accordance with the terms of the Finance Documents,
- and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.
- ~~1.1.32.~~ ~~1.1.31.~~ **Distribution** means any payment by way of interest, principal, dividend, capital reduction, return of capital, fee, royalty or other distribution of whatsoever nature and howsoever described (including a repurchase or redemption of shares) by or on behalf of

a company to or for the account of any member or shareholder of that company, in its capacity as member or shareholder of that company, or in relation to a loan made by such shareholder to the company, in each case whether paid or payable and whether paid or payable in cash or *in specie*.

1.1.33. ~~1.1.32.~~ **Economic Failure** means, at any time after the Signature Date and on or before a Utilisation Date, the occurrence of any event in the local or international financial markets which, banking, financial, monetary, economic, political or financial market conditions and/or any other calamity or event which, in the opinion of the Lenders, makes it unlawful or impossible for the Lenders to fund their participations in the Loan~~Loans~~.

1.1.34. ~~Effective Date~~ means the date on which the Original Lender notifies the Borrower that it has received all documents and other evidence listed in Schedule 1 (Conditions precedent), as contemplated in clause 4.1.1 (Initial conditions precedent).

1.1.35. ~~1.1.33.~~ **Environment** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

1.1.35.1. ~~1.1.33.1.~~ air (including, without limitation, air within natural or man-made structures, whether above or below ground);

1.1.35.2. ~~1.1.33.2.~~ water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and

1.1.35.3. ~~1.1.33.3.~~ land (including, without limitation, land under water).

1.1.36. ~~1.1.34.~~ **Environmental Claim** means any claim, proceeding, demand, investigation or similar communication by any person in respect of any Environmental Law or alleging potential liability for investigatory costs, clean-up costs, governmental response costs, natural resource damages, property damages, personal injuries, fines or penalties arising out of, based on or resulting from or in connection with Environmental Matters.

1.1.37. ~~1.1.35.~~ **Environmental Law** means any applicable law, rule or regulation of South Africa with regard to Environmental Matters and any orders, notices, demands, codes of practice, circulars, guidance notes or injunctions pursuant to the same made or issued by the Government of South Africa or any agency or authority thereof which are binding on and enforceable against the Borrower and any specific agreements entered into by any member of the Group with any competent authorities of South Africa related to Environmental Matters.

1.1.38. ~~1.1.36.~~ **Environmental Matters** means any of the following:

1.1.38.1. ~~1.1.36.1.~~ any release, emission, entry or introduction into the air of any contaminants including the air within buildings and other natural or man-made structures above or below ground;

1.1.38.2. ~~1.1.36.2.~~ any discharge, release or entry into water of any contaminants including into any river, watercourse, lake or pond (whether natural or artificial or above or below ground) or reservoir, or the surface of the riverbed or of other land supporting such waters, ground waters, sewer or the sea;

- ~~1.1.38.3.1.1.36.3.~~ any release, deposit, keeping or disposal in land or on land whether or not covered by the sea or other waters, of any contaminants;
- ~~1.1.38.4.1.1.36.4.~~ any deposit, disposal, keeping, treatment, importation, production or carrying of any waste, including any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process or activity (including making it re-usable or reclaiming substances from it) and any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoiled;
- ~~1.1.38.5.1.1.36.5.~~ nuisance, noise, defective premises, health and safety at work, preservation or protection of the Environment; and
- ~~1.1.38.6.1.1.36.6.~~ any other matter whatsoever directly or indirectly affecting the Environment or any part of it.
- 1.1.39. ~~1.1.37.~~ **Environmental Permit** means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by any member of the Group.
- 1.1.40. ~~1.1.38.~~ **Event of Default** means any event or circumstance specified as such in Clause ~~19~~22 (*Events of Default*) (other than Clause 22.18 (Acceleration)).
- 1.1.41. ~~1.1.39.~~ **Facility** means the facility made available to the Borrower up to the Loan Amount contemplated in clause 2 hereof.
- 1.1.42. ~~1.1.40.~~ **Facility Office** means, if applicable, the office or offices notified by any Lender to the Borrower in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days written notice) as the office or offices through which it will perform its obligations under this Agreement.
- 1.1.43. ~~1.1.41.~~ **Finance Document** means this Agreement, ~~the~~each Qualifying Guarantee, ~~the~~each Utilisation Request and any other document designated as such by the Finance Parties and the Borrower.
- 1.1.44. ~~1.1.42.~~ **Finance Party** means each Lender and any facility agent appointed under or pursuant to any Finance Document.
- 1.1.45. ~~1.1.43.~~ **Financial Indebtedness** means any indebtedness for or in respect of:
- 1.1.45.1.1.1.43.1. moneys borrowed or credit granted;
- 1.1.45.2.1.1.43.2. any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- 1.1.45.3.1.1.43.3. any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

- ~~1.1.45.4.1.1.43.4.~~ the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with Accounting Principles, be treated as a finance or capital lease;
- ~~1.1.45.5.1.1.43.5.~~ receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- ~~1.1.45.6.1.1.43.6.~~ any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- ~~1.1.45.7.1.1.43.7.~~ any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value or close-out amount under that derivative transaction shall be taken into account);
- ~~1.1.45.8.~~ any amount raised by the issue of shares which are redeemable;
- ~~1.1.45.9.1.1.43.8.~~ any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- ~~1.1.45.10.~~ ~~1.1.43.9.~~ the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in Clauses ~~1.1.43.11.1.45.1~~ to ~~1.1.43.81.1.45.9~~ above.
- ~~1.1.46.~~ ~~1.1.44.~~ Group means the Borrower and its Subsidiaries, if any, for the time being.
- ~~1.1.47.~~ ~~1.1.45.~~ Holding Company means, in relation to a person, any other person in respect of which it is a Subsidiary.
- ~~1.1.48.~~ ~~1.1.46.~~ IFRS means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.
- ~~1.1.49.~~ ~~1.1.47.~~ Increased Margin shall bear the meaning ascribed thereto in clause ~~7.5.1.2.17.7.1.2.1.~~
- ~~1.1.50.~~ ~~1.1.48.~~ Increased Margin Acceptance Notice means the notice substantially in the form contemplated in Schedule 9 hereto.
- ~~1.1.51.~~ ~~1.1.49.~~ Increased Margin Notice means the notice substantially in the form contemplated in Schedule 8 hereto.
- ~~1.1.52.~~ ~~1.1.50.~~ Initial Credit Rating means the credit rating in respect of the Borrower as of the Signature Date, being a Moody's Long Term Local Currency Rating of Baa2 and a S&P Long Term Local Currency Issuer Credit rating of BBB+. Unless otherwise noted, the ratings refer to global scale ratings.
- ~~1.1.53.~~ ~~1.1.51.~~ Insolvency Event means in relation to any Obligor:
- ~~1.1.53.1.1.1.51.1.~~ such Obligor is dissolved (other than pursuant to a solvent consolidation, amalgamation or merger effected with the consent of the Lenders);

- ~~1.1.53.2, 1.1.51.2~~ such Obligor becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- ~~1.1.53.3, 1.1.51.3~~ such Obligor makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- ~~1.1.53.4, 1.1.51.4~~ such Obligor institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- ~~1.1.53.5, 1.1.51.5~~ such Obligor has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in Clause ~~1.1.51.4, 1.1.53.4~~ above and:
- ~~1.1.53.5.1, 1.1.51.5.1~~ results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
- ~~1.1.53.5.2, 1.1.51.5.2~~ is not dismissed, discharged, stayed or restrained in each case within 30 (thirty) days of the institution or presentation thereof;
- ~~1.1.53.6, 1.1.51.6~~ such Obligor has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a solvent consolidation, amalgamation or merger effected with the consent of the Lenders);
- ~~1.1.53.7, 1.1.51.7~~ such Obligor seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, business rescue practitioner, custodian or other similar official for it or for all or substantially all its assets;
- ~~1.1.53.8, 1.1.51.8~~ such Obligor has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 (thirty) days thereafter;
- ~~1.1.53.9, 1.1.51.9~~ such Obligor causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in Clauses ~~1.1.51.1, 1.1.53.1~~ to ~~1.1.51.8, 1.1.53.8~~ above; or
- ~~1.1.53.10, 1.1.51.10~~ such Obligor takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.
- ~~1.1.54, 1.1.52~~ **Instalments** means ~~[43] equal instalments comprised of capital payments on account of the Loan (as specified in the Amortisation Schedule), payable by the Borrower~~

to the Lenders on each Payment Date such that the Loan is scheduled to amortise over the Term and be repaid in full on the Maturity Date. *[This assumes that the Effective Date will occur before 15 October 2015]*

1.1.55. ~~1.1.53.~~ **Interest Payment Date** means each date specified in the Amortisation Schedule commencing ~~30 September 2015~~ 15 October, 15 January, 15 April and 15 July of each year.

1.1.56. ~~1.1.54.~~ **Interest Period** means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

1.1.57. ~~1.1.55.~~ **Interpolated Screen Rate** means, in relation to JIBAR for any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

1.1.57.1 ~~1.1.55.1.~~ the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and

1.1.57.2 ~~1.1.55.2.~~ the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each as of the Specified Time on the Quotation Day for the currency of that Loan.

1.1.58. ~~1.1.56.~~ **Issuer Credit Rating** means the rating assigned to the Borrower by the Rating Agencies.

1.1.59. ~~1.1.57.~~ **JIBAR** means, in relation to any Loan:

1.1.59.1 ~~1.1.57.1.~~ the applicable Screen Rate;

1.1.59.2 ~~1.1.57.2.~~ if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or

1.1.59.3 ~~1.1.57.3.~~ if:

1.1.59.3.1. ~~1.1.57.3.1.~~ no Screen Rate is available for the currency of that Loan; or

1.1.59.3.2. ~~1.1.57.3.2.~~ no Screen Rate is available for the Interest Period of that Loan and it is not possible to calculate an Interpolated Screen Rate for that Loan,

the Reference Bank Rate,

as of, in the case of Clauses ~~1.1.57.1~~ 1.1.59.1 and ~~1.1.57.3~~ 1.1.59.3 above, the Specified Time on the Quotation Day for the currency of that Loan and for a period equal in length to the Interest Period of that Loan.

1.1.60. ~~1.1.58.~~ **Joint Venture** means an association of 2 (two) or more persons combining assets and/or expertise to carry out a business enterprise and having a joint proprietary interest and a sharing of profits and losses and whether undertaken, without limitation, in the form of a partnership, unincorporated association, trust or incorporated entity.

1.1.61. ~~1.1.59.~~ **JSE** means the Johannesburg Stock Exchange, a licensed financial exchange in



~~terms of the Financial Markets Act 2012, or any other financial exchange which operates as a successor exchange to the Johannesburg Stock Exchange, as managed and operated by the JSE Limited, a public company duly incorporated in accordance with the laws of South Africa with registration number 2005/022939/06, which manages and operates the Johannesburg Stock Exchange, a licensed financial exchange in terms of the Financial Markets Act 2012, or any other financial exchange which operates as a successor exchange to the Johannesburg Stock Exchange-06.~~

1.1.62. ~~1.1.60.~~ **Lender Instruction** means a written instruction from the Lenders addressed to the Borrower, instructing the Borrower to comply with one of the following instructions -

1.1.62.1 ~~1.1.60.1.~~ providing to provide the Lenders with a Qualifying Guarantee; or

1.1.62.2 ~~1.1.60.2.~~ to prepay the prepayment of the ~~Loan~~ Loans, all accrued unpaid interest thereon and all other amounts outstanding under the Finance Documents,

in each case, following the occurrence of the Negative Rating Event contemplated in clause ~~7.5.1.37~~ 7.1.3 (in the form contemplated in Schedule 7).

1.1.63. ~~1.1.61.~~ **Lenders** means:

1.1.63.1 ~~1.1.61.1.~~ the Original Lender; and

1.1.63.2 ~~1.1.61.2.~~ any other person which has become a Party as Lender in accordance with Clause ~~2023~~ (Changes to the Lender),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement and **Lender** means any one of them.

1.1.64. ~~1.1.62.~~ **Loan** means ~~the~~ a loan made or to be made under the Facility or the principal amount outstanding for the time being of such loan.

1.1.65. ~~1.1.63.~~ **Loan Amount** has the meaning given to it in Clause 2.

1.1.66. ~~1.1.64.~~ **Margin** means -

1.1.66.1. at any time other than the circumstances contemplated in Clause 1.1.66.2:

1.1.66.1.1. ~~1.1.64.1.~~ \_\_\_\_\_ % ( \_\_\_\_\_ ) 2.70<sup>1</sup>% Nacq; or

1.1.66.1.2. ~~1.1.64.2.~~ the Increased Margin Nacq,  
as applicable; and

<sup>1</sup> The Lenders assume that this price to be the clearing price in the current round of fund raising by Transnet. If there are lenders with a higher final clearing price, this margin is to be increased accordingly.

~~1.1.66.2. notwithstanding anything to the contrary in the Agreement, at any time while an Event of Default is continuing, the rate in Clause 1.1.66.1 plus 2%.~~

~~1.1.67. 1.1.65. Margin Increase Period shall bear the meaning ascribed thereto in Clause 7.5.1.2.1 7.7.1.2.1.~~

~~1.1.68. 1.1.66. Material Adverse Effect means a material adverse effect on:~~

~~1.1.68.1. 1.1.66.1. the business, operations, property or, condition (financial condition or otherwise) or prospects of any Obligor or the Group taken as a whole; or~~

~~1.1.68.2. 1.1.66.2. the ability of any Obligor to perform its obligations under the Finance Documents; or~~

~~1.1.68.3. 1.1.66.3. the validity or enforceability of the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.~~

~~1.1.69. 1.1.67. Maturity Date means \_\_\_\_\_ the 15<sup>th</sup> anniversary of the Effective Date.~~

~~1.1.70. 1.1.68. Month means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:~~

~~1.1.70.1. 1.1.68.1. (subject to Clause 1.1.68.3. 1.1.70 below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;~~

~~1.1.70.2. 1.1.68.2. if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and~~

~~1.1.70.3. 1.1.68.3. if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.~~

The above rules will only apply to the last Month of any period.

~~1.1.71. 1.1.69. Moody's means Moody's Investors Service, Inc.~~

~~1.1.72. 1.1.70. Moody's Rating shall bear the meaning ascribed thereto in clause 7.5.1.17.7.1.1.~~

~~1.1.73. 1.1.71. Nacq means nominal annual compounded Quarterly.~~

~~1.1.74. 1.1.72. Negative Rating Event has the meaning given to that term in Clause 7.5.7.7 (Changes in rating).~~

~~1.1.75. 1.1.73. New Lender has the meaning given to that term in Clause 2023 (Changes to the Lender).~~

~~1.1.76. 1.1.74. Obligors mean the Borrower and any Qualifying Guarantor and Obligor means any one of them.~~

- 1.1.77. ~~1.1.75.~~ **OFAC Sanctions** means sanctions imposed from time to time by the Office of Foreign Assets Control of the Department of Treasury of the United States of America.
- 1.1.78. ~~1.1.76.~~ **Operations Disclosure Schedule** means the disclosure schedule contemplated in Schedule 11 hereto detailing certain of the Borrower's operations in Zimbabwe.
- 1.1.79. ~~1.1.77.~~ **Original Financial Statements** means the audited consolidated financial statements of the Group for the financial year ended 31 March 2014, 2015.
- 1.1.80. ~~1.1.78.~~ **Party** means a party to this Agreement.
- 1.1.81. ~~1.1.79.~~ **Payment Date** means each of the dates set out in the Amortisation Schedule on which capital payments are payable by the Borrower Interest Payment Date following the date which falls 54 (fifty four) Months after the Effective Date.
- 1.1.82. ~~1.1.80.~~ **Permitted Corporatization** means a corporatization, hive-down, subsidiarization, demerger, merger or other corporate reconstruction (by whatever name called) of any of the Principal Divisions required to be implemented by an executive or legislative act of the Government.
- 1.1.83. ~~1.1.81.~~ **Permitted Transaction** means:
- 1.1.83.1. ~~1.1.81.1.~~ a Permitted Corporatization;
- 1.1.83.2. ~~1.1.81.2.~~ any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security given, or other transaction arising, under the Finance Documents;
- 1.1.83.3. ~~1.1.81.3.~~ the solvent liquidation or reorganisation of any member of the Group (other than the Borrower) so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group;
- 1.1.83.4. ~~1.1.81.4.~~ transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading on arm's length terms; or
- 1.1.83.5. ~~1.1.81.5.~~ transactions other than any permitted under the foregoing sub-paragraphs entered into with the prior written consent of the Lenders.
- 1.1.84. ~~1.1.82.~~ **Permitted Transferee** means each of the persons listed in Schedule 6 hereto.
- 1.1.85. ~~1.1.83.~~ **PFMA** means the Public Finance Management Act, 1 of 1999.
- 1.1.86. ~~1.1.84.~~ **Principal Businesses** means the businesses of the Borrower operated under each Principal Division as of the Signature Date and **Principal Business** means any one of them.
- 1.1.87. ~~1.1.85.~~ **Principal Divisions** means the Borrower's operations which are, as of the Signature Date, grouped into the following five divisions providing major transport modes, with central support services unified under one brand, which for operational IFRS reporting purposes, are comprised by the following five core business divisions: Transnet

Freight Rail, Transnet Engineering, the Transnet National Ports Authority, Transnet Port Terminals and Transnet Pipelines and **Principal Division** means any one of them.

- 1.1.88.     ~~1.1.86.~~ **Qualifying Guarantee** shall bear the meaning ascribed thereto in clause ~~7.5.1.3.1~~ 7.7.1.3.1.
- 1.1.89.     ~~1.1.87.~~ **Qualifying Guarantor** means a third party, the identity and financial standing of which must be acceptable to the Lenders at their absolute discretion, which guarantees the performance by the Borrower of its obligations under the Finance Documents following the occurrence of the Negative Rating Event contemplated in Clause ~~7.5.1.3.1~~ 7.7.1.3.1.
- 1.1.90.     ~~1.1.88.~~ **Qualifying Guarantor Adverse Event** shall bear the meaning ascribed thereto in clause ~~7.7.9.~~
- 1.1.91.     ~~1.1.89.~~ **Quarter** means a period of 3 (three) consecutive Months and the term **Quarterly** shall be construed accordingly.
- 1.1.92.     ~~1.1.90.~~ **Quotation Day** means, in relation to any period for which an interest rate is to be determined, the first day of that period Interest Period unless market practise differs in the Relevant Interbank Market, in which case the Quotation Day will be determined by the Lenders in accordance with market practise in the Relevant Interbank Market (and if quotations would normally be given on more than one day, the Quotation Day would be the last of those days).
- 1.1.93.     ~~1.1.91.~~ **Rating Agencies** means S&P and Moody's and their successors or any other rating agency of equivalent international standing as agreed between the Borrower and the Lenders, from time to time (including successors of such rating agency) and **Rating Agency** means any one of them.
- 1.1.94.     ~~1.1.92.~~ **Reference Bank Rate** means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Lender ~~Lenders~~ at its ~~their~~ request by the Reference Banks in relation to JIBAR, as the rate at which the relevant Reference Bank could borrow funds in the Johannesburg interbank market;  $\frac{1}{2}$  in the relevant currency and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.
- 1.1.95.     ~~1.1.93.~~ **Reference Banks** means, in relation to JIBAR, the principal offices in Johannesburg of Absa Bank Limited, FirstRand Bank Limited, Nedbank Limited and The Standard Bank of South Africa Limited or such other banks as may be appointed by the Lenders in consultation with the Borrower.
- 1.1.96.     ~~1.1.94.~~ **Related Fund** in relation to a fund (the first fund), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.
- 1.1.97.     ~~1.1.95.~~ **Relevant Interbank Market** means the Johannesburg interbank market.

- 1.1.98. ~~1.1.96.~~ **Relevant Jurisdiction** means the jurisdiction under whose laws the Borrower is incorporated as at the date of this Agreement.
- 1.1.99. ~~1.1.97.~~ **Relevant Period** shall bear the meaning ascribed thereto in clause ~~7.1.120.1.6.~~
- 1.1.100. ~~1.1.98.~~ **Repeating Representations** means each of the representations set out in Clauses ~~16.118.1~~ (Status) to Clause ~~16.6~~ ~~(Insolvency)~~ ~~18.7~~ (Governing Law and Enforcement), Clause ~~16.918.10~~ (No default), Clause ~~16.1018.11~~ (No misleading information), sub-Clauses ~~16.11.418.12.4~~ and ~~16.11.518.12.5~~ of Clause ~~16.1118.12~~ (Financial statements), Clause ~~16.1218.13~~ (Pari passu ranking), Clause ~~16.1718.18~~ (Good title to assets), Clause ~~18.20~~ (Authorised Signatories), Clause ~~18.22~~ (No Immunity) and Clause ~~16.2018.22~~ (No adverse consequences).
- 1.1.101. ~~1.1.99.~~ **Representative** means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.
- 1.1.102. ~~1.1.100.~~ **Sanctions Authority** means:
- 1.1.102.1. ~~1.1.100.1.~~ the United Nations;
- 1.1.102.2. ~~1.1.100.2.~~ the European Union;
- 1.1.102.3. ~~1.1.100.3.~~ the Council of Europe (founded under the Treaty of London, 1946);
- 1.1.102.4. ~~1.1.100.4.~~ the government of the United States of America;
- 1.1.102.5. ~~1.1.100.5.~~ the government of the United Kingdom;
- 1.1.102.6. ~~1.1.100.6.~~ the government of the Republic of France;
- 1.1.102.7. ~~1.1.100.7.~~ the Government of the Commonwealth of Australia,
- and any of their governmental authorities, including, without limitation, the Office of Foreign Assets Control for the US Department of Treasury (OFAC), the US Department of Commerce, the US State Department or the US Department of the Treasury, Her Majesty's Treasury (HMT) and the French Ministry of Finance (MINEFI);
- 1.1.103. ~~1.1.101.~~ **Sanctioned Entity** means:
- 1.1.103.1. ~~1.1.101.1.~~ a person, country or territory which is listed on a Sanctions List or is subject to Sanctions;
- 1.1.103.2. ~~1.1.101.2.~~ a person which is ordinarily resident in a country or territory which is listed on a Sanctions List or is subject to Sanctions.
- 1.1.104. ~~1.1.102.~~ **Sanctioned Transaction** means the use of the proceeds of the ~~Facilities~~ Facility for the purpose of financing or providing any credit, directly or indirectly, to:
- 1.1.104.1. ~~1.1.102.1.~~ a Sanctioned Entity; or
- 1.1.104.2. ~~1.1.102.2.~~ any other person or entity, if a member of the Group has actual knowledge that the person or entity proposes to use the proceeds of the financing or credit for the

purpose of financing or providing any credit, directly or indirectly, to a Sanctioned Entity,

in each case to the extent that to do so is prohibited by, or would cause any breach of, Sanctions if conducted by a person who is subject to or obliged to comply with the laws or regulations of a Sanctions Authority.

1.1.105. ~~1.1.103.~~ **Sanctions** means trade, economic or financial sanctions, laws, regulations, embargoes or restrictive measures imposed, administered or enforced from time to time by any Sanctions Authority.

1.1.106. ~~1.1.104.~~ **Sanctions List** means:

1.1.106.1. ~~1.1.104.1.~~ the Specially Designated Nationals and Blocked Persons List maintained by OFAC;

1.1.106.2. ~~1.1.104.2.~~ the Consolidated List of Financial Sanctions Targets and the Investments Ban List maintained by HMT,

and any similar list maintained, or a public announcement of a Sanctions designation made, by any Sanctions Authority, in each case as amended, supplemented or substituted from time to time.

1.1.107. ~~1.1.105.~~ **S&P** means Standard and Poor's Rating Group Financial Services LLC, a division of McGraw Hill.

1.1.108. ~~1.1.106.~~ **S&P Rating** shall bear the meaning ascribed thereto in clause ~~7.5.1.17.7.1.1.~~

~~1.1.107.~~ **Screen Rate** means:

~~1.1.107.1.~~ in relation to JIBAR, the mid market rate for deposits in ZAR for the relevant period displayed on the SAFEY page alongside the caption "YLD" on the Reuters screen (or any replacement Reuters page which displays that rate); or

1.1.109. ~~1.1.107.2.~~ **Screen Rate** means in relation to JIBAR, the mid market rate for deposits in ZAR for the relevant period displayed on the SAFEY page alongside the caption "YIELD" on the Reuters screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Lenders may specify another page or service displaying the relevant rate after consultation with the Borrower.

1.1.110. ~~1.1.108.~~ **Security** means a mortgage bond, notarial bond, cession in security, charge, pledge, lien, hypothec or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

1.1.111. ~~1.1.109.~~ **Signature Date** means the date on which this Agreement is signed by the Party signing last in time.

1.1.112. ~~1.1.110.~~ **South Africa** means the Republic of South Africa (as constituted from time to time).

- 1.1.113. ~~1.1.111. Specified Time~~ means a day or time determined in accordance with Schedule 5 (*Timetables*).
- 1.1.114. ~~1.1.112. Subsidiary~~ means, ~~in relation to any company or corporation, a company or corporation; a "subsidiary" as defined in the Companies Act and shall include an person who would, but for not being a "company" under the Companies Act, qualify as a "subsidiary" as defined in the Companies Act.~~
- ~~1.1.112.1. which is controlled, directly or indirectly, by the first mentioned company or corporation;~~
- ~~1.1.112.2. more than half the issued equity share capital of which is beneficially owned, directly or indirectly, by the first mentioned company or corporation; or~~
- ~~1.1.112.3. which is a Subsidiary of another Subsidiary of the first mentioned company or corporation.~~
- 1.1.115. ~~1.1.113. Tax~~ means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).
- 1.1.116. ~~1.1.114. Term~~ means the period commencing on the ~~Utilisation~~Effective Date and ending on the Maturity Date.
- 1.1.117. ~~1.1.115. Trading Day~~ means, to the extent that any bonds issued by the Borrower are listed on an Approved Exchange, any day that is a trading day on such Approved Exchange and does not include a day on which trading on such Approved Exchange is scheduled to close or does close or is suspended prior to its regular weekday closing time.
- 1.1.118. ~~1.1.116. Transfer Certificate~~ means a certificate substantially in the form set out in Schedule 3 (*Form of Transfer Certificate*) or any other form agreed between the Lenders and the Borrower.
- 1.1.119. ~~1.1.117. Transfer Date~~ means, in relation to an assignment or a transfer, the later of:
- 1.1.119.1. ~~1.1.117.1.~~ the proposed Transfer Date specified in the relevant Transfer Certificate; and
- 1.1.119.2. ~~1.1.117.2.~~ the date on which the applicable Lender executes the relevant Transfer Certificate.
- 1.1.120. ~~1.1.118. Unpaid Sum~~ means any sum due and payable but unpaid by the Borrower under the Finance Documents.
- 1.1.121. ~~1.1.119. Utilisation~~ means ~~the~~a utilisation of the Facility.
- 1.1.122. ~~1.1.120. Utilisation Date~~ means the date of ~~the~~a Utilisation, being the date on which the relevant Loan is to be made, provided that such date shall be a date no later than 3 (three) Business Days prior to the expiry of the Availability Period.
- 1.1.123. ~~1.1.121. Utilisation Request~~ means a notice substantially in the form set out in Schedule 2 (*Form of Utilisation Request*).

1.1.124. ~~1.1.122.~~ VAT means (i) value added tax (or equivalent sales tax on goods and services) in the Relevant Jurisdiction as provided for in the VAT Act; or (ii) any general service tax; or (iii) any other tax of a similar nature.

1.1.125. ~~1.1.123.~~ Withdrawal Event shall bear the meaning ascribed thereto in Clause ~~7.6~~7.8.

1.1.126. ~~1.1.124.~~ ZAR, R and Rand each mean the lawful currency of South Africa.

## 1.2. Construction

1.2.1. Unless a contrary indication appears, any reference in this Agreement to:

1.2.1.1. the Borrower, any Finance Party, any Lender, or any Party shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

1.2.1.2. assets includes present and future properties, revenues and rights of every description;

1.2.1.3. ~~an authority includes any court or governmental, intergovernmental or supranational body, agency, department or any regulatory, self-regulatory or other authority;~~

1.2.1.4. ~~1.2.1.3.~~ a Finance Document or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;

1.2.1.5. ~~the use of the word "including" followed by specific examples will not be construed as limiting the meaning of the general wording preceding it, and the *eiusdem generis* rule must not be applied in the interpretation of such general wording or specific examples;~~

1.2.1.6. ~~1.2.1.4.~~ indebtedness includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

1.2.1.7. ~~1.2.1.5.~~ a person includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, Joint Venture, consortium or partnership (whether or not having separate legal personality);

1.2.1.8. ~~1.2.1.6.~~ a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

1.2.1.9. ~~1.2.1.7.~~ a provision of law is a reference to that provision as amended or re-enacted; and

1.2.1.10. ~~1.2.1.8.~~ a time of day is a reference to Johannesburg time.

1.2.2. Section, Clause and Schedule headings are for ease of reference only.

1.2.3. Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.



- 1.2.4. A Default (other than an Event of Default) is “**continuing**” if it has not been remedied or waived (in writing) and an Event of Default is “**continuing**” if it has not been waived (in writing).
- 1.2.5. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in an interpretation clause, effect shall be given to it as if it were a substantive provision of the relevant Finance Document.
- 1.2.6. Unless inconsistent with the context, an expression in any Finance Document which denotes the singular includes the plural and *vice versa*.
- 1.2.7. The Schedules to any Finance Document form an integral part thereof and a reference to a "Clause" or a "Schedule" is a reference to a clause of, or a schedule to, this Agreement.
- 1.2.8. The rule of construction that, in the event of ambiguity, a contract shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of the Finance Documents.
- 1.2.9. The expiry or termination of any Finance Documents shall not affect those provisions of the Finance Documents that expressly provide that they will operate after any such expiry or termination or which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.2.10. The Finance Documents shall to the extent permitted by applicable law be binding on and enforceable by the administrators, trustees, permitted cessionaries, business rescue practitioners or liquidators of the Parties as fully and effectually as if they had signed the Finance Documents in the first instance and reference to any Party shall be deemed to include such Party's administrators, trustees, permitted cessionaries, business rescue practitioners or liquidators, as the case may be.
- 1.2.11. Unless a contrary indication appears, where any number of days is to be calculated from a particular day, such number shall be calculated as including that particular day and excluding the last day of such period.
- 1.3. Third party rights**
- 1.3.1. Except as expressly provided for in this Agreement or in any other Finance Document, no provision of any Finance Document constitutes a stipulation for the benefit of any person who is not a party to that Finance Document.
- 1.3.2. Notwithstanding any term of any Finance Document, the consent of any person who is not a party to that Finance Document is not required to rescind or vary that Finance Document at any time except to the extent that the relevant variation or rescission (as the case may be) relates directly to the right conferred upon any applicable third party under a stipulation for the benefit of that party that has been accepted by that third party.

## SECTION 2 THE FACILITY

### 2. THE FACILITY

#### 2.1. The Facility

Subject to the provisions of this Agreement, the Lenders agree to make a term loan facility available to the Borrower in an amount of ZAR \_\_\_\_\_ (\_\_\_\_\_ Rand) (the "Loan Amount");

2.1.1. \_\_\_\_\_ until such time as the Original Lender has delivered to the Borrower a letter stating that the board of directors of the Original Lender has approved an increase in the Facility, (as contemplated in clause 2.1.2), ZAR2 500 000 000; and

2.1.2. \_\_\_\_\_ on receipt by the Borrower of a letter from the Original Lender stating that (i) the board of directors of the Original Lender has approved an increase in the Facility to that amount; and (ii) the Original Lender is satisfied that that the Borrower has complied with all terms and conditions imposed by the Lender's board of directors in respect of such increase, ZAR3 000 000 000,

(the "Loan Amount").

#### 2.2. Finance Parties' rights and obligations

2.2.1. \_\_\_\_\_ The obligations of each Finance Party under the Finance Documents are separate and independent. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.

2.2.2. \_\_\_\_\_ The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.

2.2.3. \_\_\_\_\_ A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

### 3. PURPOSE

#### 3.1. Purpose

The Borrower shall apply all amounts borrowed by it under the Loan Facility towards the general corporate purposes of the Group.

#### 3.2. Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

### 4. CONDITIONS OF UTILISATION

#### 4.1. Initial conditions precedent

4.1.1. The Borrower may not deliver a Utilisation Request unless the Lenders have (a) received all of the documents and other evidence listed in Schedule 1 (*Conditions precedent*) ~~and received the evidence and/or confirmation referred to in paragraph 5.1.3 of Schedule 1~~ (*Conditions precedent*) in form and substance satisfactory to the Lenders; or (b) waived the requirement to receive all or any of such documents or evidence. The Lenders shall notify the Borrower promptly upon being so satisfied or upon making any such waiver.

4.1.2. ~~Unless the conditions precedent contemplated in clause 4.1.1 are fulfilled or waived by no later than \_\_\_\_\_ this Agreement shall be of no further force or effect. If the Effective Date has not occurred by the date which falls 30 days after the Signature Date, the Lenders may, on not less than 5 Business Days' notice to the Borrower, cancel the Commitment.~~

#### 4.2. Further conditions precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

4.2.1. no Default is continuing or would result from the proposed ~~Loan~~Utilisation;

4.2.2. no Economic Failure has occurred;

4.2.3. the Borrower's Issuer Credit Rating is a Moody's Long Term Local Currency Rating of Baa1~~2~~ or better and an S&P Long Term Local Currency Issuer Credit rating of BBB+ or better;

~~4.2.4. the Lenders and the Borrower have confirmed (in writing) to each other that the Amortisation Schedule is in agreed form; and~~

~~4.2.4.~~ 4.2.5. the Repeating Representations to be made by the Borrower are true in all material respects;

#### ~~4.3. Maximum number of Loans~~

~~4.2.5.~~ the Lenders have received evidence to their satisfaction that the Borrower has delivered utilisation requests to each of:

4.2.5.1. Old Mutual Specialised Finance Proprietary Limited pursuant to the facility in an amount of approximately R1 500 000 000 to be made available by Old Mutual Specialised Finance Proprietary Limited on or about the Signature Date; and/or

4.2.5.2. Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) pursuant to the facility in an amount of approximately R1 500 000 000 to be made available by Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) on or about the Signature Date,

~~Only 1 (one) Loan shall be made in respect of the Facility.~~

pursuant to which the Borrower requested utilisations of such facilities in an amount which bears the same proportion of such facilities as the proportion which the Utilisation Request bears to the Facility.

### SECTION 3 UTILISATION

#### 5. UTILISATION

##### 5.1. Delivery of a Utilisation Request

5.1.1. The Borrower may utilise the Facility by delivery to the Lenders of a duly completed Utilisation Request by no later than the Specified Time.

5.1.2. The Borrower may not deliver more than one Utilisation Request per calendar Month during the Availability Period.

5.1.3. The Borrower may not deliver a Utilisation Request less than 5 (five) Business Days prior to the expiry of the Availability Period.

##### 5.2. Completion of a Utilisation Request

The A Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

5.2.1. the proposed Utilisation Date is a Business Day within the Availability Period; and

5.2.2. the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*).

##### 5.3. Currency and amount

5.3.1. The currency specified in a Utilisation Request must be Rand.

5.3.2. The amount of the proposed Loan Utilisation must not be equal to more than the Total Commitment. lesser of:

5.3.2.1. R250 000 000; and

5.3.2.2. the Available Facility.

##### 5.4. Lender's participation

If the conditions set out in this Agreement have been met, the Lenders shall make their participation in the Loan Utilisation available by the Utilisation Date.

##### ~~5.5. Commitment Fee~~

~~The Borrower shall, when applicable, pay to the Lender a Commitment Fee quarterly in arrears on each Interest Payment Date during the Availability Period.~~

##### 5.5. ~~5.6. Cancellation of Commitment~~

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

## SECTION 4 REPAYMENT, PREPAYMENT AND CANCELLATION

### 6. REPAYMENT

#### 6.1. Repayment of the Loan

The Borrower shall repay the Loan by paying ~~the Instalments~~ each Instalment to the Lenders on each ~~Interest Payment~~ Date.

#### 6.2. ~~Re-advancing~~ borrowing

~~The~~ A Loan or any portion thereof repaid or prepaid by the Borrower in accordance with the provisions of this Agreement shall not be available to be re-advanced ~~by the Lender(s)~~ to be borrowed by the Borrower.

### 7. PREPAYMENT AND CANCELLATION

#### 7.1. Voluntary prepayment of ~~Loan~~ the Loan

~~7.1.1.~~ 7.1.1. Save as contemplated in Clause ~~7.5.1.2.27.7.1.3.2~~ 7.1.3.2 hereof, the Borrower shall not be entitled to voluntarily prepay ~~the~~ a Loan ~~or any portion thereof~~.

#### 7.2. Voluntary Cancellation

The Borrower shall not be entitled to voluntarily cancel the whole or any part of any Lender's Available Commitment.

#### 7.3. ~~7.2.~~ Illegality

If, in any applicable jurisdiction, it becomes unlawful for any Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in ~~the~~ a Loan:

7.3.1. ~~7.2.1.~~ such Lender shall promptly notify the Borrower upon becoming aware of that event;

7.3.2. ~~7.2.2.~~ upon such Lender notifying the Borrower, the Commitment of such Lender will be immediately cancelled; and

7.3.3. ~~7.2.3.~~ the Borrower shall repay such Lender's participation in the ~~Loan~~ Loans made to the Borrower on the last day of the Interest Period for ~~the~~ each Loan occurring after such Lender has notified the Borrower or, if earlier, the date specified by such Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

#### 7.4. ~~7.3.~~ Change of control

If a Change of Control Event occurs:

7.4.1. ~~7.3.1.~~ the Borrower shall promptly notify the Lenders upon becoming aware of that event;

7.4.2. ~~7.3.2.~~ the Lenders shall not be obliged to fund ~~the~~ a Utilisation;

7.4.3. ~~7.3.3.~~ if any Lender so requires and notifies the Borrower within 30 days' of the Change of Control Event or of such Lender becoming aware of the Change of Control Event, such Lender shall, by not less than 30 days' notice to the Borrower, cancel its Commitment (if applicable) and declare the participation ~~in the portion of the Loan~~ of that Lender in all outstanding Loans owed to such Lender, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Commitment of such Lender will be cancelled and all such outstanding amounts owing to such Lender will become immediately due and payable.

7.5. Disposal and insurance proceeds

7.5.1. The Borrower shall be obliged to apply a portion of the following proceeds received by the Borrower or any other member of the Group in the prepayment of the Loans:

7.5.1.1. The proceeds arising from the sale of assets which, in aggregate during a financial year of the Borrower, exceed the Designated Amount, if:

7.5.1.1.1. such proceeds:

7.5.1.1.1.1. were not used within 90 days; or

7.5.1.1.1.2. were committed (as evidenced by a resolution of the board of directors of the recipient) to be used within 90 days of receipt thereof but were not in fact used within a period of 90 days of the date of adoption of such resolution.

in the replacement of the assets disposed of; or

7.5.1.1.2. the replacement assets were not of the same type and at least of the same quality as the assets disposed of.

7.5.1.2. The proceeds arising from a claim on an insurance policy which, in aggregate during a financial year of the Borrower, exceed the Designated Amount, if:

7.5.1.2.1. such proceeds:

7.5.1.2.1.1. were not used within 90 days; or

7.5.1.2.1.2. were committed (as evidenced by a resolution of the board of directors of the recipient) to be used within 90 days of receipt thereof but were not in fact used within a period of 90 days of the date of adoption of such resolution.

in the replacement of the assets which were damaged or destroyed (as the case may be); or

7.5.1.2.2. the replacement assets were not of the same type and at least of the same quality as the assets which were damaged or destroyed (as the case may be).

7.5.1.3. The proceeds arising from the sale by the Borrower or any other member of the Group of all of its assets or a substantial portion of its assets.

7.5.2. ~~The amount of the Loans required to be prepaid (which shall be pre-paid pro-rata amongst themselves) shall be equal to the proceeds contemplated in clause 7.5.1 multiplied by the ratio which the Loans bear to the aggregate of the Loans and all other loans under any other agreement which are obliged to be prepaid before their originally scheduled repayment date as a result of the occurrence of the events set out in clause 7.5.1. Any prepayment required to be made by the Borrower shall be made by no later than the 15<sup>th</sup> Business Day after the occurrence of the event which gave rise to the obligation to make such prepayment and on receipt thereof the Commitment shall be reduced by an amount equal to such prepayment.~~

7.6. ~~7.4.~~ **Right of replacement or repayment and cancellation in relation to a single Lender**

7.6.1. ~~7.4.1.~~ If:

7.6.1.1. ~~7.4.1.1.~~ any sum payable to a Lender by the Borrower is required to be increased under Clause ~~11.213.2~~ (Tax gross-up); or

7.6.1.2. ~~7.4.1.2.~~ a Lender claims indemnification from the Borrower under Clause ~~11.313.3~~ (Tax indemnity) or Clause ~~12.114.1~~ (Increased costs),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues and provided that no Default is then continuing, give such Lender notice of cancellation of the Commitment of such Lender and its intention to procure the repayment of such Lender's participation in the ~~Loan~~ Loans.

7.6.2. ~~7.4.2.~~ On receipt of a notice of cancellation referred to in Clause ~~7.4.17.6.1~~ above, the Commitment of the relevant Lender shall immediately be reduced to zero.

7.6.3. ~~7.4.3.~~ On the last day of each ~~the~~ Interest Period which ends after the Borrower has given notice of cancellation under Clause ~~7.4.17.6.1~~ above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay the applicable Lender's participation in the outstanding ~~Loan~~ Loans together with all interest and other amounts accrued under the Finance Documents.

7.7. ~~7.5.~~ **Changes in rating**

7.7.1. ~~7.5.1.~~ If the Borrower's Initial Credit Rating or the rating after the expiration of the B Relevant Period or the A Relevant Period, as the case may be, falls (each, a Negative Rating Event) -

7.7.1.1. ~~7.5.1.1.~~ to a S&P Long Term Local Currency Issuer Credit rating (each an "S&P Rating") of BBB or a Moody's Long Term Local Currency rating (each a "Moody's Rating") of Baa2, the Borrower shall, upon written request by the Lenders, promptly confer with the Lenders on the occurrence of such Negative Rating Event and for a period of no more than 10 (ten) Business Days calculated from the date on which such Negative Rating Event occurred, discuss the reason for such decline in the Borrower's credit rating and the most reasonable commercial manner in which the Borrower intends to improve its credit rating, provided that the Borrower and the Lenders shall not be obliged to effect any amendments to the provisions of the Finance Documents by reason only of such Negative Rating Event;



7.7.1.2. ~~7.5.1.2.~~ to a S&P Rating of BBB- or a Moody's Rating of Baa3 -

7.7.1.2.1. ~~7.5.1.2.1.~~ the Lenders shall be entitled, for a period of ~~10~~20 (~~ten~~twenty) Business Days from the earlier of the date on which any Lender becomes aware of such Negative Rating Event or the date on which any Lender is notified of same in accordance with Clause ~~17.4.1.2~~19.6.1.2 hereof (the "**Margin Increase Period**"), to increase the Margin, with effect from the date on which such Negative Rating Event occurred (the "**Increased Margin**"). In the event that the Lenders increase the Margin as aforesaid, the Lenders shall notify the Borrower in writing of the Increased Margin by no later than the expiry of the Margin Increase Period by delivery of the Increased Margin Notice;

7.7.1.2.2. ~~7.5.1.2.2.~~ within 10 (ten) Business Days of receipt of the Increased Margin Notice, the Borrower shall either (i) voluntarily prepay the ~~Loan~~Loans plus accrued unpaid interest thereon (calculated on the basis of JIBAR plus the Margin contemplated in clause ~~1.1.64.1~~1.1.66.1) together with all other amounts outstanding under the Finance Documents; or (ii) notify the Lenders, in writing, of its acceptance of the Increased Margin by the delivery of the Increased Margin Acceptance Notice. The failure by the Borrower to voluntarily prepay the ~~Loan~~Loans or deliver the Increased Margin Acceptance Notice to the Lenders constitutes an Event of Default;

7.7.1.3. ~~7.5.1.3.~~ to an S&P Rating below BBB- or a Moody's Rating below Baa3, the Borrower shall in accordance with the terms of the Lender Instruction:

7.7.1.3.1. ~~at the cost of the Borrower and within 45 (forty five) days of receipt of the Lender Instruction, deliver to the Lenders:~~

7.7.1.3.1.1. ~~7.5.1.3.1. at the cost of the Borrower and within 45 (forty five) days of receipt of the Lender Instruction, deliver to the Lenders an independent, irrevocable and unconditional guarantee in favour of Finance Parties, guaranteeing repayment of the ~~Loan~~Loans together with interest thereon and all other amounts accrued or which may accrue under the Finance Documents, issued and executed by a ~~the~~Qualifying Guarantor, which guarantee must, in all respects, be in form and substance acceptable to the Lenders (acting reasonably) (the "**Qualifying Guarantee**"), subject to the provisions of clause ~~7.7~~7.9:  
~~or and~~~~

7.7.1.3.1.2. ~~a legal opinion by legal counsel satisfactory to the Finance Parties dealing with, *inter alia*, the legality, validity and enforceability of the **Qualifying Guarantee**; or~~

7.7.1.3.2. ~~7.5.1.3.2.~~ within 5 (five) Business Days of receipt of the Lender Instruction, prepay the ~~Loan~~Loans then outstanding in full, together with accrued unpaid interest thereon, and all other amounts accrued and owing under the Finance Documents, and upon such prepayment being made all of the Commitments of the Lenders shall immediately be cancelled. The failure by the Borrower to prepay the ~~Loan~~Loans or

deliver the Qualifying Guarantee to the Lenders in accordance with the Lender Instruction constitutes an Event of Default;

7.7.2. ~~7.5.2.~~ If the Borrower's Initial Credit Rating falls directly from such Initial Credit Rating to ~~aan~~ S&P Rating below BBB- or a Moody's Rating below Baa3 and, pursuant to the Lender Instruction, the Lenders request the Borrower to provide them with a Qualifying Guarantee, the provisions of clause ~~7.5.1.27.7.1.2~~ shall apply *mutatis mutandis*.

7.7.3. ~~7.5.3.~~ If -

7.7.3.1. ~~7.5.3.1.~~ following the occurrence of the Negative Rating Event contemplated in Clause ~~7.5.1.37.7.1.3~~, the Borrower's credit rating is subsequently reinstated to an S&P rating of BBB- (or better) and a Moody's rating of Baa3 (or better) (each a "B Positive Rating Event") but below the Initial Credit Rating and such credit rating is maintained for a period of 30 (thirty) days (the "B Relevant Period"), the Finance Parties shall, provided that neither a Default nor Event of Default has occurred, upon the Borrower's written request (addressed to the Lenders) at any time following the expiry of the B Relevant Period, relinquish the Qualifying Guarantee, provided that the Increased Margin shall continue to apply to the Facility;

7.7.3.2. ~~7.5.3.2.~~ following the occurrence of any Negative Rating Event, the Borrower's credit rating is subsequently reinstated to the Initial Credit Rating (or better) (each an "A Positive Rating Event") and such credit rating is maintained for a period of 30 (thirty) days (the "A Relevant Period") -

7.7.3.2.1. ~~7.5.3.2.1.~~ the Increased Margin shall reduce to the Margin contemplated in clause ~~1.1.64.11.1.66.1~~ with effect from the expiry of the A Relevant Period; and

7.7.3.2.2. ~~7.5.3.2.2.~~ if applicable, the Lenders shall, provided that neither a Default nor Event of Default has occurred, upon the Borrower's written request (addressed to the Lenders) at any time following the expiry of the A Relevant Period, relinquish the Qualifying Guarantee, ~~provided that, if a Negative Rating Event occurs following an A Positive Rating Event or a B Positive Rating Event, the provisions of clause 7.5.1 shall apply.~~

7.7.4. ~~If a Negative Rating Event occurs following an A Positive Rating Event or a B Positive Rating Event, the provisions of clause 7.7.1 shall once again apply.~~

## 7.8. ~~7.6.~~ Rating Withdrawal

If, at any time during the Term, the Borrower ceases to be rated by ~~the~~any Rating Agencies (the "Withdrawal Event"), ~~it shall prepay the Loan together with all;~~

7.8.1. ~~the Borrower shall promptly notify the Lenders upon becoming aware of that~~  
Withdrawal Event;

7.8.2. ~~the Lenders shall not be obliged to fund a Utilisation;~~

7.8.3. ~~if any Lender so requires and notifies the Borrower within 20 Business Days' of the~~  
Withdrawal Event or of such Lender becoming aware of the Withdrawal Event, such

Lender shall, by not less than 30 days' notice to the Borrower, cancel its Commitment (if applicable) and declare the participation in the portion of the Loans owed to such Lender, together with accrued unpaid interest thereon, and all other amounts outstanding accrued under the Finance Documents within 10 (ten) Business Days of such Rating Agencies withdrawing from supplying the credit rating of the Borrower. Upon such prepayment being made all of the Commitments of the Lenders shall immediately be cancelled. The failure by the Borrower to prepay the Loan as aforesaid constitutes an Event of Default immediately due and payable, whereupon the Commitment of such Lender will be cancelled and all such outstanding amounts owing to such Lender will become immediately due and payable.

#### 7.9. ~~7.7.~~ **Qualifying Guarantor**

A guarantee delivered pursuant to clause 7.5.1.3.1, shall only become a Qualifying Guarantee if at the time of the provision of same to the Lenders as contemplated in clause 7.5.1.3.1, the Borrower and the Lenders have agreed to terms and conditions which require the Borrower to prepay the Loan and all other amounts outstanding under the Finance Documents in the event that the Qualifying Guarantor ceases to be acceptable to the Lenders (a "Qualifying Guarantor Adverse Event") and this Agreement is amended to reflect such terms and conditions. In the event that the Qualifying Guarantor ceases to be acceptable to the Lenders, acting reasonably (a "Qualifying Guarantor Adverse Event"):

7.9.1. the Lenders shall promptly notify the Borrower of that Qualifying Guarantor Adverse Event;

7.9.2. the Lenders shall not be obliged to fund a Utilisation;

7.9.3. if any Lender so requires and notifies the Borrower within 20 Business Days' of the Qualifying Guarantor Adverse Event, such Lender shall, by not less than 30 days' notice to the Borrower, cancel its Commitment (if applicable) and declare the participation in the portion of the Loans owed to such Lender, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Commitment of such Lender will be cancelled and all such outstanding amounts owing to such Lender will become immediately due and payable.

#### 7.10. ~~7.8.~~ **Change of Principal Business and Permitted Corporatization**

7.10.1. 7.8.1.1. Upon the occurrence of a Change of Principal Business and/or a Permitted Corporatization the Borrower shall immediately notify the Lenders, in writing, of same (the "Change in Business Notice").

7.10.2. 7.8.1.2. For a period of 20 (twenty) Business Days from the earlier of (a) date of receipt by the Lenders of the Change in Business Notice; and (b) the Lenders becoming aware of a Change of Principal Business and/or a Permitted Corporatization, the Lenders shall be entitled to require the Borrower to prepay the Loan~~Loans~~, all accrued unpaid interest thereon and all other amounts owing under Finance Documents by delivering a written notice to such effect to the Borrower (the "Prepayment Request Notice").

7.10.3. ~~7.8.1.3.~~ Within 5 (five) Business Days of receipt by the Borrower of the Prepayment Request Notice, the Borrower shall prepay ~~Loan~~the Loans, all accrued unpaid interest thereon and all other amounts owing under Finance Documents. The failure by the Borrower to prepay the ~~Loan~~Loans as aforesaid constitutes an Event of Default.

7.11. ~~7.9.~~ Restrictions

7.11.1. ~~7.9.1.~~ Any notice of prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant prepayment is to be made and the amount of that prepayment. The Borrower shall prepay the amount specified to be prepaid in the applicable notice on the date contemplated in such notice.

7.11.2. ~~7.9.2.~~ Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.

7.11.3. ~~All prepayments under this Agreement shall be made together with all applicable Break Costs.~~

7.11.4. ~~7.9.3.~~ The ~~Loan~~Loans or any portion thereof repaid or prepaid by the Borrower shall not be available to be re-advanced by the Lender(s) to the Borrower.

7.11.5. ~~The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitment except at the times and in the manner expressly provided for in this Agreement.~~

## SECTION 5 COSTS OF UTILISATION

### 8. INTEREST

#### 8.1. Calculation of interest

The rate of interest on ~~the~~each Loan for each Interest Period is the percentage rate per Quarter which is the aggregate of the applicable:

8.1.1. Margin; and

8.1.2. JIBAR.

#### 8.2. Payment of interest

The Borrower shall pay all accrued interest on ~~the~~each Loan on each Interest Payment Date.

#### 8.3. Default interest

8.3.1. If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject Clause 8.3.2 below, is ~~2,00% (two per cent)~~2% higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted ~~the~~a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the relevant Lender (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower on demand by the Lenders.

8.3.2. If any overdue amount consists of all or part of ~~the~~a Loan which became due on a day which was not the last day of an Interest Period relating to ~~the~~that Loan:

8.3.2.1. the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to ~~the~~that Loan; and

8.3.2.2. the rate of interest applying to the overdue amount during that first Interest Period shall be ~~2,00% (two per cent)~~2% higher than the rate which would have applied if the overdue amount had not become due.

8.3.3. Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

#### 8.4. Notification of rates of interest

The Lenders shall promptly notify the Borrower of the determination of a rate of interest under this Agreement.

## 9. INTEREST PERIODS

### 9.1. Determination of Interest Periods

9.1.1. Each Interest Period will be 3 (three) Months, provided that:

9.1.1.1. the first Interest Period in respect of ~~the~~a Loan shall commence on ~~the~~its Utilisation Date and end on ~~30 September 2015;~~the Interest Payment Date which occurs first thereafter; and

9.1.1.2. each subsequent Interest Period shall commence on the day immediately succeeding the expiry of the previous one and shall end on, in respect of (i) each Interest Period other than the last Interest Period, the Interest Payment Date which occurs first thereafter; and (ii) the last Interest Period, the Maturity Date.

9.1.2. An Interest Period for the Loan shall not extend beyond the Maturity Date.

### 9.2. Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

### 9.3. Consolidation of Loans

All outstanding Loans shall be consolidated into, and treated as, a single Loan on the last day of each Interest Period.

## 10. CHANGES TO THE CALCULATION OF INTEREST

### 10.1. Absence of quotations

Subject to Clause 10.2 (*Market disruption*), if JIBAR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, JIBAR shall be determined on the basis of the quotations of the remaining Reference Banks.

### 10.2. Market disruption

10.2.1. If a Market Disruption Event occurs in relation to ~~the~~a Loan for any Interest Period, then the rate of interest for that Interest Period shall be the percentage rate per Quarter which is the sum of:

10.2.1.1. the Margin; and

10.2.1.2. the rate notified to the Borrower by the Lenders as soon as is reasonably practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per Quarter the cost to the Lenders of funding their participation in ~~the~~that Loan from whatever source the Lenders may reasonably select.

10.2.2. In this Agreement **Market Disruption Event** means:

10.2.2.1. at or about noon on the Quotation Day for the relevant Interest Period JIBAR is to be determined by reference to the Reference Banks and none or only one of the Reference Banks supplies a rate to the Lenders to determine JIBAR for the relevant Interest Period; or

10.2.2.2. before close of business in Johannesburg on the Quotation Day for the relevant Interest Period, the Borrower receives notifications from a Lender or Lenders that:

10.2.2.2.1. the cost to it or them of funding its or their participation in ~~the~~that Loan from whatever source(s) it or they may reasonably select would be in excess of JIBAR; or

10.2.2.2.2. the cost to it or them of obtaining matching deposits in the Relevant Interbank Market would be in excess of JIBAR for the relevant Interest Period; or

10.2.2.2.3. matching deposits will not be available to them in the Relevant Interbank Market in the ordinary course of business to fund their participation in ~~that~~the Loan for the relevant Interest Period.

### 10.3. Alternative basis of interest or funding

10.3.1. If a Market Disruption Event occurs and the Lenders or the Borrower so requires, the Lenders and the Borrower shall enter into negotiations (for a period of not more than 30 (thirty) days) with a view to agreeing a substitute basis for determining the rate of interest.

10.3.2. Any alternative basis agreed pursuant to Clause 10.3.1 above shall, with the prior consent of the Lenders and the Borrower, be binding on all Parties. If the Parties cannot agree a substitute basis for determining the rate of interest within the 30 (thirty) day period contemplated in Clause 10.3.1, the ~~Loan~~Loans together with all accrued and unpaid interest thereon and all other amounts due and owing in terms of the Finance Documents shall become immediately due and payable and the Borrower shall pay such amounts to the Lender.

### 10.4. Break Costs

10.4.1. The Borrower shall, within five Business Days of demand by a Lender, pay to such Lender its Break Costs attributable to all or any part of ~~the~~the Loan or Unpaid Sum being paid by the Borrower on a day other than the Interest Payment Date, as applicable, for ~~the~~that Loan or Unpaid Sum.

10.4.2. Each Lender shall, as soon as reasonably practicable after demand to the Borrower, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue, such certificate to be final, conclusive and binding on the Borrower unless shown by the Borrower to the satisfaction of the Lenders to contain a manifest error.

## 11. RAISING FEE

11.1. The Borrower shall pay to the Original Lenders a raising fee in the amount of R7 500 000, exclusive of VAT (calculated as an amount equal to 0.3% of the Loan Amount). The foregoing raising fee is due on the Effective Date and shall be paid by the Borrower by not later than the earlier of:

11.1.1. the 21<sup>st</sup> day after the Effective Date; and

11.1.2. the first Utilisation Date.

11.2. Pursuant to an increase in the Loan Amount contemplated in clause 2.1.2, the Borrower shall pay to the Original Lenders a raising fee in the amount of R1 500 000, exclusive of VAT (calculated as an amount equal to 0.3% of the increase in the Loan Amount pursuant to clause 2.1.2). The foregoing raising fee is due on the date of delivery of such letter and shall be paid by the Borrower by not later than the earlier of:

11.2.1. the 21<sup>st</sup> day after delivery of the letter contemplated in in clause 2.1.2; and

11.2.2. the first Utilisation Date after delivery of the letter contemplated in in clause 2.1.2.

## 12. COMMITMENT FEE

12.1.1. The Borrower shall pay a Commitment Fee to the Lenders on each Lender's Available Commitment for the Availability Period.

12.1.2. The accrued Commitment Fee is payable on the last day of each successive period of 3 Months which ends during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the Commitment at the time the cancellation is effective. If the Borrower maintains current accounts with a Lender, that Lender may debit any of those current accounts with the amount of an accrued Commitment Fee.



## SECTION 6 ADDITIONAL PAYMENT OBLIGATIONS

### 13. ~~11.~~ TAX GROSS UP AND INDEMNITIES

#### 13.1. ~~11.1.~~ Definitions

##### 13.1.1. ~~11.1.1.~~ In this Agreement:

13.1.1.1. ~~11.1.1.1.~~ Income Tax Act means the South African Income Tax Act, 58 of 1962, 1962, as amended.

13.1.1.2. ~~11.1.1.2.~~ Protected Party means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of a Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

13.1.1.3. ~~11.1.1.3.~~ Tax Credit means a credit against, relief or remission for, or repayment of any Tax.

13.1.1.4. ~~11.1.1.4.~~ Tax Deduction means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

13.1.1.5. ~~11.1.1.5.~~ Tax Payment means either the increase in a payment made by the Borrower to a Finance Party under Clause ~~11.2~~13.2 (Tax gross-up) or a payment under Clause ~~11.3~~13.3 (Tax indemnity).

13.1.2. ~~11.1.2.~~ Unless a contrary indication appears, in this Clause ~~11.13~~ a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

#### 13.2. ~~11.2.~~ Tax gross-up

13.2.1. ~~11.2.1.~~ The Borrower shall make all payments to be made by it free and clear of and without any Tax Deduction, unless a Tax Deduction is required by law.

13.2.2. ~~The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Finance Parties accordingly. Similarly, the Finance Parties shall notify the Borrower on becoming so aware of such a payment.~~

13.2.3. ~~11.2.2. The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Finance Parties accordingly. Similarly, the Finance Parties shall notify the Borrower on becoming so aware of such a payment. If a Tax Deduction is required by law to be made by the Borrower an Obligor, the amount of the payment due from the Borrower to the Finance Parties shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.~~

- 13.2.4. ~~11.2.3.~~ If the Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- 13.2.5. ~~11.2.4.~~ Within 30 (thirty) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Lenders evidence reasonably satisfactory to the Finance Parties that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- 13.2.6. ~~11.2.5.~~ The Finance Parties shall reasonably co-operate with the Borrower in completing any procedural formalities necessary for the Borrower to make payment without a (or with a reduced) Tax Deduction pursuant to the Income Tax Act.
- 13.2.7. ~~11.2.6.~~ Should the Finance Parties be entitled to an exemption from or reduction of a Tax Deduction under the law of South Africa, ~~for or~~ any treaty to which South Africa is a party, with respect to payments under this Agreement, the Finance Parties shall (to the extent that ~~it is~~ they are able to do so in accordance with all laws and regulations) deliver to the Borrower at the time or times prescribed by applicable law, such properly contemplated and executed documentation prescribed by applicable law or reasonably requested by the Borrower as are necessary to permit such payments to be made without a Tax Deduction or at a reduced rate of Tax Deduction. If the Finance Parties receive such documentation, the Finance Parties shall deliver the documentation to the Borrower promptly.
- 13.3. ~~11.3.~~ Tax indemnity
- 13.3.1. ~~11.3.1.~~ The Borrower shall (within 5 (five)) Business Days of demand by a Lender) indemnify each Protected Party against, and shall pay to a Protected Party an amount equal to the loss, liability or cost (excluding any consequential loss, liability or cost) which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- 13.3.2. ~~11.3.2.~~ Clause ~~11.3.1~~ 13.3.1 above shall not apply:
- 13.3.2.1. ~~11.3.2.1.~~ with respect to any Tax assessed on a Finance Party:
- 13.3.2.1.1. ~~11.3.2.1.1.~~ under the law of the jurisdiction in which such Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which such Finance Party is treated as resident for tax purposes; or
- 13.3.2.1.2. ~~11.3.2.1.2.~~ under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,
- if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Lender; or
- 13.3.2.2. ~~11.3.2.2.~~ to the extent a loss, liability or cost is compensated for by an increased payment under Clause ~~11.2~~ 13.2 (Tax gross-up).

13.3.3. ~~11.3.3.~~ A Finance Party making, or intending to make a claim under Clause ~~11.3.~~13.3.1 above shall promptly notify the Borrower of the event which will give, or has given, rise to the claim.

13.4. ~~11.4.~~ Tax Credit

If the Borrower makes a Tax Payment and a Finance Party determines that:

13.4.1. ~~11.4.1.~~ a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and

13.4.2. ~~11.4.2.~~ such Finance Party has obtained, utilised and retained that Tax Credit,

such Finance Party, following consultation with the Borrower, shall pay an amount to the Borrower which such Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

13.5. ~~11.5.~~ Tax gross-up and indemnity claims

13.5.1. ~~11.5.1.~~ A Finance Party intending to make a claim pursuant to Clause ~~11.2~~13.2 (*Tax gross-up*) above or Clause ~~11.3~~13.3 (*Tax indemnity*) above shall give reasonable written notice to the Borrower of the event giving rise to the claim.

13.5.2. ~~11.5.2.~~ A Finance Party shall, as soon as is reasonably practicable after a demand by the Borrower, provide a certificate confirming the amount of its claim pursuant to Clause ~~11.2~~13.2 (*Tax gross-up*) above or Clause ~~11.3~~13.3 (*Tax indemnity*) above, as the case may be.

13.6. ~~11.6.~~ Stamp taxes

The Borrower shall pay and, within five Business Days of demand, indemnify each Finance Party against any cost, loss or liability such Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

13.7. ~~11.7.~~ VAT

13.7.1. ~~11.7.1.~~ All amounts expressed to be payable under a Finance Document to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply and, accordingly, subject to Clause ~~11.7.2~~13.7.2 below, if VAT is or becomes chargeable on any supply made by a Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).

13.7.2. ~~11.7.2.~~ If VAT is or becomes chargeable on any supply made by any Finance Party (the **Supplier**) to any other Finance Party (the **Recipient**) under a Finance Document, and any Party other than the Recipient (the **Relevant Party**) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the

Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):

13.7.2.1, ~~11.7.2.1~~ (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this Clause ~~11.7.2.1~~13.7.2.1 applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and

13.7.2.2, ~~11.7.2.2~~ (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.

13.7.3, ~~11.7.3~~ Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

13.7.4, ~~11.7.4~~ In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

13.7.5, ~~11.7.5~~ Notwithstanding anything to the contrary contained in this Clause ~~11.7~~13.7, for the purposes of section 54(2) of the Value-Added Tax Act, 89 of 1991, the Borrower irrevocably and unconditionally appoints each Finance Party as its representative and agent to, in its name, place and stead, and for and on its behalf, make payment of all expenses referred to in Clause ~~11.7.3~~13.7.3 directly to such third parties as is contemplated in Clause ~~11.7.3~~13.7.3, which amounts shall be immediately due and recoverable from the Borrower on demand.

## 14, ~~12~~-INCREASED COSTS

### 14.1, ~~12.1~~-Increased costs

14.1.1, ~~12.1.1~~ Subject to Clause ~~14.3~~ (*Exceptions*) the Borrower shall, within 10 (ten) Business Days of a written demand by a Finance Party, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:

14.1.1.1, ~~12.1.1.1~~ the:

14.1.1.1.1, ~~12.1.1.1.1~~ introduction of:

14.1.1.1.2. any change in; or

14.1.1.1.3. interpretation, administration or application of  
any law or regulation; and/or

14.1.1.2. compliance with any law or regulation; and/or

14.1.1.3. compliance with any requirement of Basel III introduced (whether by amendment, proclamation or otherwise) into or by any law, regulation or directive after the date of this Agreement (whether or not having the force of law); and/or

14.1.1.4. ~~12.1.1.~~ ~~Subject to Clause 12.3 (Exceptions) the Borrower shall, within 10 (ten) Business Days of a written demand by a Finance Party, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation after the date of this Agreement; (ii) compliance with any law or regulation made after the date of this Agreement; (iii) compliance with any requirement of Basel III introduced (whether by amendment, proclamation or otherwise) into or by any law, regulation or directive after the date of this Agreement (whether or not having the force of law); or (iv) compliance with any requirement of any law, regulation or directive relating to the composition of capital or capital adequacy of registered insurance companies including the proposed solvency assessment and management regime and any iterations or alterations thereof, introduced (whether by amendment, proclamation or otherwise) into or by any law, regulation or directive after the date of this Agreement (whether or not having the force of law); and/or~~

14.1.1.5. the phased in or other implementation, after the date of this Agreement, of any requirements of Basel III or any law or regulation implementing Basel III (including the phased in implementation of the Net Stable Funding Ratio and the Liquidity Coverage Ratio).

14.1.2. ~~12.1.2.~~ In this Agreement:

14.1.2.1. ~~12.1.2.1.~~ Increased Costs means:

14.1.2.1.1. ~~12.1.2.1.1.~~ a reduction in the rate of return from ~~at~~the Facility or on a Finance Party's (or its Affiliate's) overall capital;

14.1.2.1.2. ~~12.1.2.1.2.~~ an additional or increased cost; or

14.1.2.1.3. ~~12.1.2.1.3.~~ a reduction of any amount due and payable under any Finance Document, which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

14.1.2.2. ~~12.1.2.2.~~ Basel III means:

14.1.2.2.1. ~~12.1.2.2.1.~~ the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient

banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;

14.1.2.2.2. ~~12.1.2.2.2.~~ the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement - Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and

14.1.2.2.3. ~~12.1.2.2.3.~~ any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

14.1.3. ~~12.1.3.~~ The terms **law** and **regulation** in Clause ~~12.1.1~~14.1.1 above shall include, without limitation, any law or regulation concerning capital adequacy, solvency, prudential limits, liquidity, reserve assets or Tax.

14.2. ~~12.2.~~ **Increased cost claims**

14.2.1. ~~12.2.1.~~ A Finance Party intending to make a claim pursuant to Clause ~~12.1.1~~14.1 (*Increased costs*) shall promptly notify the Borrower of the event giving rise to the claim.

14.2.2. ~~12.2.2.~~ The relevant Finance Party shall, as soon as is reasonably practicable after a demand by the Borrower, provide a certificate confirming the amount of its Increased Costs.

14.3. ~~12.3.~~ **Exceptions**

14.3.1. ~~12.3.1.~~ Clause ~~12.1.1~~14.1 (*Increased costs*) does not apply to the extent that any Increased Cost is:

14.3.1.1. ~~12.3.1.1.~~ attributable to a Tax Deduction required by law to be made by the Borrower;

14.3.1.2. ~~12.3.1.2.~~ compensated for by Clause ~~11.3.1~~13.3 (*Tax indemnity*) (or would have been compensated for under Clause ~~11.3.1~~13.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in Clause ~~11.3.2~~13.3.2 applied);

14.3.1.3. ~~12.3.1.3.~~ attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

14.3.2. ~~12.3.2.~~ In this Clause ~~12.3.1~~14.3, a reference to a **Tax Deduction** has the same meaning given to the term in Clause ~~11.1~~13.1 (*Definitions*).

15. ~~13.~~ **OTHER INDEMNITIES**

15.1. ~~13.1.~~ **Other indemnities**

The Borrower shall, within five Business Days of demand, indemnify the Finance ~~Party~~Parties against any cost, loss or liability incurred by the Finance Party as a result of:

- 15.1.1. ~~13.1.1.~~ the occurrence of any Default;
- 15.1.2. ~~13.1.2.~~ a failure by the Borrower an Obligor to pay any amount due under a Finance Document on its due date;
- 15.1.3. ~~13.1.3.~~ the information produced or approved by the Borrower under or in connection with the Finance Documents being misleading and/or deceptive in any respect;
- 15.1.4. ~~13.1.4.~~ funding, or making arrangements to fund, its participation in the Loana Utilisation requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Finance Party alone); or
- 15.1.5. ~~13.1.5.~~ the Loan (or part of the that Loan) not being prepaid in accordance with a notice of prepayment given to the Borrower.

15.2. ~~13.2.~~ **Environmental Indemnity**

The Borrower agrees to indemnify each Finance Party, each Affiliate of a Finance Party and their respective directors, officers and employees (together, the Indemnified Parties) against any cost, loss or liability suffered or incurred by that Indemnified Party (except to the extent solely caused by such Indemnified Party's own gross negligence or willful default) which:

- 15.2.1. ~~13.2.1.~~ arises by virtue of any breach of any Environmental Law (whether by the Borrower or any other member of the Group);
- 15.2.2. ~~13.2.2.~~ arises in connection with an Environmental Claim; or
- 15.2.3. ~~13.2.3.~~ any enquiry, investigation, subpoena (or similar order) or litigation with respect to any Environmental Claim and any other enquiry, investigation, subpoena (or similar order) or litigation in respect of any breach of any Environmental Law that has or is reasonably likely to give rise to a liability for any Finance Party,

which relates to the Group, any assets of the Group or the operation of all or part of the business of the Group (or, in each case, any member of the Group) and which would not have arisen if the Finance Documents or any of them had not been executed by that Finance Party. Any Affiliate or any director, officer or employee of a Finance Party or its Affiliate may rely on this Clause ~~13.2~~15.2 as a stipulation for its or his benefit.

16. ~~14.~~ **MITIGATION BY THE FINANCE PARTIES**

16.1. ~~14.1.~~ **Mitigation**

- 16.1.1. ~~14.1.1.~~ The Finance Parties shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any provision of Clause 7.1 (*Illegality*), Clause ~~11~~13 (*Tax gross-up and indemnities*) or Clause ~~12~~14 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

16.1.2. ~~14.1.2.~~ Clause ~~14.1.1~~16.1.1 does not in any way limit the obligations of the Borrower under the Finance Documents.

16.2. ~~14.2.~~ **Limitation of liability**

16.2.1. ~~14.2.1.~~ The Borrower shall within 5 (five) Business Days of demand by any Finance Party indemnify such Finance Party for all properly evidenced costs and expenses reasonably incurred by such Finance Party as a result of steps taken by it under Clause ~~14.1~~16.1 (*Mitigation*).

16.2.2. ~~14.2.2.~~ No Finance Party is obliged to take any steps under Clause ~~14.1~~16.1 (*Mitigation*) if, in its opinion (acting reasonably), to do so might be prejudicial to it or any law or regulation would not allow or permit the taking of such steps.

17. ~~15.~~ **COSTS AND EXPENSES**

17.1. ~~15.1.~~ **Transaction expenses**

The Borrower shall within five Business Days of demand by the Finance Parties pay the Finance Parties the amount of all costs and expenses (including legal fees) reasonably incurred by the Finance Parties and properly evidenced in connection with the negotiation, preparation, printing, execution, implementation and/or syndication of:

17.1.1. ~~15.1.1.~~ this Agreement and any other documents referred to in this Agreement; and

17.1.2. ~~15.1.2.~~ any other Finance Documents executed after the date of this Agreement.

17.2. ~~15.2.~~ **Amendment costs**

17.2.1. ~~15.2.1.~~ If (a) the Borrower requests an amendment, waiver or consent the Borrower shall, within 5 (five) Business Days of demand, reimburse each Finance Party for the amount of all costs and expenses (including legal fees) reasonably incurred by such Finance Party in responding to, evaluating, negotiating or complying with that request or requirement.

17.2.2. ~~15.2.2.~~ If there is any change in law or any regulation which requires an amendment, waiver or consent under the Finance Documents, the Borrower shall, within 5 (five) Business Days of demand, reimburse each Finance Party for the amount of all costs and expenses (including legal fees) reasonably incurred and properly evidenced by that Finance Party in connection with evaluating, negotiating or complying with any such requirement.

17.3. ~~15.3.~~ **Enforcement costs**

The Borrower shall, within 5 (five) Business Days of demand by a Finance Party, pay to each Finance Party the amount of all properly evidenced costs and expenses (including legal fees (which in South Africa shall be on the scale as between attorney and own client) incurred by that Finance Party (whether before or after judgment) in connection with the enforcement of, or the preservation of any rights under, any Finance Document.



**SECTION 7**  
**REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

**18.    ~~16.~~REPRESENTATIONS**

The Borrower makes the representations and warranties set out in this Clause ~~16~~18 to each Finance Party on the date of this Agreement.

**18.1.    ~~16.1.~~Status**

**18.1.1.**      ~~16.1.1.~~It, and each of its Subsidiaries, is a company, duly incorporated and validly existing and registered under the laws of South Africa.

**18.1.2.**      ~~16.1.2.~~It, and each of its Subsidiaries, has the power to own its assets and carry on its business as it is being conducted.

**18.2.    ~~16.2.~~Binding obligations**

The obligations expressed to be assumed by it in each Finance Document are legal, valid, binding and enforceable obligations.

**18.3.    ~~16.3.~~Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

**18.3.1.**      ~~16.3.1.~~any law (including the PFMA) or regulation applicable to it;

**18.3.2.**      ~~16.3.2.~~its or any of its Subsidiaries' constitutional documents; or

**18.3.3.**      ~~16.3.3.~~any agreement or instrument binding upon it or any of its Subsidiaries or any of its or any of its Subsidiaries' assets, ~~the breach of which is reasonably likely to have a Material Adverse Effect.~~

**18.4.    ~~16.4.~~Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

**18.5.    ~~16.5.~~Validity and admissibility in evidence**

All Authorisations required:

**18.5.1.**      ~~16.5.1.~~to enable it lawfully to enter into, exercise its rights and comply with its obligations under the Finance Documents to which it is a party and to ensure that the obligations expressed to be assumed by it thereunder are legal, valid, binding and enforceable; and

18.5.2. ~~16.5.2.~~ to make the Finance Documents to which it is a party admissible in evidence in the Relevant Jurisdiction; and

18.5.3. ~~for the conduct of the business, trade and ordinary activities by each member of the Group,~~

have been obtained or effected and are in full force and effect ~~(or, in each case, will be when required).~~

18.6. ~~16.6.~~ **Insolvency**

18.6.1. ~~16.6.1.~~ No:

18.6.1.1. ~~16.6.1.1.~~ corporate action, legal proceeding or other procedure or step contemplated by the definition of Insolvency Event; or

18.6.1.2. ~~16.6.1.2.~~ creditors' process contemplated by the definition of Insolvency Event,

has been taken or, to the knowledge of the Borrower, threatened in relation to a member of the Group; and none of the circumstances described in Clause ~~19.5~~22.6 (*Insolvency*) applies to a member of the Group.

18.6.2. ~~16.6.2.~~ To the best of its knowledge and belief, neither it, nor any member of the Group, is "*financially distressed*" (as defined in the Companies Act) and there is no reasonable likelihood of any Obligor (if applicable) or any other member of the Group becoming "*financially distressed*" (as defined in the Companies Act) ~~within the next 6 (six) Months from the Signature Date.~~

18.7. **Governing Law and Enforcement**

18.7.1. ~~The choice of South African law as the governing law of this Agreement will be recognised and enforced in the Relevant Jurisdiction.~~

18.7.2. ~~Any judgment obtained in South Africa in relation to this Agreement will be recognised and enforced in the Relevant Jurisdiction.~~

18.8. ~~16.7.~~ **Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.

18.9. ~~16.8.~~ **No filing or stamp taxes**

Under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

18.10. ~~16.9.~~ **No default**

- 18.10.1. ~~16.9.1.~~ As of the Signature Date, no Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation or the entry into of, or the performance of any transaction contemplated by the Finance Documents.
- 18.10.2. ~~16.9.2.~~ No other event or circumstance, to the Borrower's knowledge and belief (having made due and careful enquiry), is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which is reasonably likely to have a Material Adverse Effect.
- 18.11. ~~16.10.~~ **No misleading information**
- 18.11.1. ~~16.10.1.~~ Any and all information provided by the Borrower to the Lender is true, complete and accurate in all material respects as at the date on which it is given and all information provided by the Borrower to the Lender Finance Parties is not misleading ~~to the Lender~~ in any respect.
- 18.11.2. ~~16.10.2.~~ Nothing has occurred and no information has been given or withheld that results in any factual information referred to in Clause ~~16.10.1~~ 18.11.1 above provided by the Borrower for the purposes of the Finance Documents being untrue or misleading in any material respect.
- 18.11.3. ~~16.10.3.~~ All information referred to in clause ~~16.10~~ 18.11 has been disclosed without breaching any confidentiality obligations binding on the Borrower.
- 18.11.4. ~~16.10.4.~~ The Borrower has not knowingly withheld any information which, if disclosed, would reasonably be expected to materially and adversely affect the decision of any Finance Party to provide finance to the Borrower.
- 18.12. ~~16.11.~~ **Financial statements**
- 18.12.1. ~~16.11.1.~~ Its Original Financial Statements were prepared in accordance with IFRS consistently applied.
- 18.12.2. ~~16.11.2.~~ Its Original Financial Statements fairly represent its financial condition and operations (consolidated) during the relevant financial year.
- 18.12.3. ~~16.11.3.~~ There has been no material adverse change in its assets, business or financial condition (or the business or consolidated financial condition of the Group) since 31 March 2013 2015.
- 18.12.4. ~~16.11.4.~~ Its most recent financial statements delivered pursuant to Clause ~~17.11~~ 19.1 (Financial statements):
- 18.12.4.1. ~~16.11.4.1.~~ have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements; and
- 18.12.4.2. ~~16.11.4.2.~~ give a true and fair view of (if audited) or fairly represent (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.

18.12.5. ~~16.11.5.~~ Since the date of the most recent financial statements delivered pursuant to Clause ~~17.119.1~~ 119.1 (*Financial statements*) there has been no material adverse change in the business, assets or financial condition of the Group.

18.13. ~~16.12.~~ **Pari passu ranking**

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

18.14. ~~16.13.~~ **No proceedings pending or threatened**

Save as contemplated in Schedule ~~13~~ 12 hereto, no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against it or any of its Subsidiaries.

18.15. ~~16.14.~~ **No breach of laws**

18.15.1. ~~16.14.1.~~ It has not, to its knowledge and belief (having made due and careful enquiry), (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

18.15.2. ~~16.14.2.~~ No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any member of the Group which have or are reasonably likely to have a Material Adverse Effect.

18.16. ~~16.15.~~ **Environmental laws**

18.16.1. ~~16.15.1.~~ Each member of the Group is in compliance with Clause ~~18.321.3~~ 321.3 (*Environmental compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.

18.16.2. ~~16.15.2.~~ No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.

18.16.3. ~~16.15.3.~~ The cost to the Group of compliance with Environmental Laws (including Environmental Permits) is (to the best of its knowledge and belief, having made due and careful enquiry) adequately provided for.

18.17. ~~16.16.~~ **Taxation**

18.17.1. ~~16.16.1.~~ It is not (and no member of the Group is) overdue in the filing of any Tax returns and it is not (and no member of the Group is) overdue in the payment of any amount in respect of Tax in an amount equal to 0,3% of the Consolidated Total Assets (or its equivalent in any other currency) or more.

18.17.2. ~~16.16.2.~~ No claims have been made and, to the best of its knowledge and belief (having made due and careful enquiries) no claims are reasonably likely to be made, and no investigations are being, or are reasonably likely to be, conducted against it (or any member of the Group) with respect to Taxes such that a liability of, or claim against it or any member of the Group in an amount equal to 0,3% of the Consolidated Total Assets (or its equivalent in any other currency) or more is reasonably likely to arise.

18.17.3. ~~16.16.3.~~ It and each member of the Group is resident for Tax purposes only in the jurisdiction of its incorporation.

18.18. ~~16.17.~~ Good Title to Assets

It and each member of the Group has good and valid title to its assets and licenses required in connection with the conduct of its business, and has all appropriate Authorisations to use, all of the assets necessary to carry on its business.

18.19. ~~16.18.~~ No Material Industrial Action

No industrial or similar action has commenced, as at the Signature Date, against it or any member of the Group which is likely to result in a Material Adverse Effect.

18.20. Authorised Signatories

Any person specified as its authorised signatory under Schedule 1 (Conditions Precedent) is authorised to sign Utilisation Requests on its behalf.

18.21. ~~16.19.~~ No immunity

In any proceedings taken in South Africa or in any other jurisdiction, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process in relation to this Agreement or any other Finance Document.

18.22. Accounting Reference Date

The financial year end of the Group is 31 March each year.

18.23. ~~16.20.~~ No adverse consequences

18.23.1. ~~16.20.1.~~ It is not necessary under the laws of the Relevant Jurisdiction:

18.23.1.1. ~~16.20.1.1.~~ in order to enable any Finance Party to enforce its rights under any Finance Document; or

18.23.1.2. ~~16.20.1.2.~~ by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document,

that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in any of the Relevant Jurisdiction.

18.23.2. ~~16.20.2.~~ No Finance Party is or will be deemed to be resident, domiciled or carrying on business in the Relevant Jurisdiction by reason only of the execution, performance and/or enforcement of any Finance Document.

18.24. ~~16.21.~~ **Repetition**

The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of the Utilisation Request, on the Utilisation Date and the first day of each Interest Period.

19. ~~17.~~ **INFORMATION UNDERTAKINGS**

The undertakings in this Clause ~~17~~<sup>19</sup> remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

19.1. ~~17.1.~~ **Financial statements**

19.1.1. The Borrower shall supply to the Finance Parties as soon as the same become available but in any event:

19.1.1.1. ~~17.1.1.~~ within 180 (one hundred and eighty) days after the end of each of its financial years its audited consolidated financial statements for that financial year; and

19.1.1.2. ~~17.1.2.~~ within 90 (ninety) days after the end of each half of each of its financial years its consolidated financial statements for that financial half year.

19.1.2. The Borrower shall supply to the Lenders, with each set of financial statements delivered pursuant to this Clause 19.1, its cash flow projections for a period commencing on the day immediately succeeding the last day in respect of which such financial statements were prepared and terminating 7 years thereafter.

19.2. **Covenant Compliance Certificate**

19.2.1. The Borrower shall supply to the Lenders, with each set of financial statements delivered pursuant to Clause 19.1, a Covenant Compliance Certificate setting out (in reasonable detail) computations as to compliance with clause 20 as at the date as at which those financial statements were drawn up.

19.2.2. Each Covenant Compliance Certificate shall be signed by the Borrower's Chief Financial Officer and another director of the Borrower and, if required to be delivered with the financial statements delivered pursuant to Clause 19.1, shall be reported on by the Borrower's auditors.

19.3. ~~17.2.~~ **Requirements as to financial statements**

19.3.1. ~~17.2.1.~~ Each set of financial statements delivered by the Borrower pursuant to Clause ~~17.1~~<sup>19.1</sup> (*Financial statements*) shall be certified by a director of the relevant company as fairly representing the relevant company's financial condition as at the date as at which those financial statements were drawn up.

19.3.2. ~~17.2.2.~~ The Borrower shall procure that each set of financial statements delivered pursuant to Clause ~~17.1~~<sup>19.1</sup> (*Financial statements*) is prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for the relevant company unless, in relation to any set of financial statements, it notifies the Finance Parties that

there has been a change in the Accounting Principles, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of a Subsidiary of it) deliver to the Lender:

~~19.3.2.1.17.2.2.1.~~ a description of any change necessary for those financial statements to reflect the Accounting Principles, accounting practices and reference periods upon which the relevant company's Original Financial Statements were prepared; and

~~19.3.2.2.17.2.2.2.~~ sufficient information, in form and substance as may be reasonably required by the Finance Parties, to enable the Finance Parties to make an accurate comparison between the financial position indicated in those financial statements and that company's Original Financial Statements.

~~19.3.3.~~ ~~17.2.3.~~ Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

#### 19.4. Year-end

The Borrower shall not change its year end.

#### 19.5. 17.3. Information: miscellaneous

~~19.5.1.~~ ~~17.3.1.~~ The Borrower shall supply to the Finance Parties:

~~19.5.1.1.17.3.1.1.~~ all documents dispatched by the Borrower to its creditors generally (or any class of them) at the same time as they are dispatched;

~~19.5.1.2.17.3.1.2.~~ promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which, if adversely determined, is reasonably likely to have a Material Adverse Effect;

~~19.5.1.3.17.3.1.3.~~ promptly upon becoming aware of them, the details of any labour dispute or industrial action which occurs or which is threatened against any member of the Group which has or is reasonably likely to have a Material Adverse Effect;

~~19.5.1.4.17.3.1.4.~~ promptly upon becoming aware of them, details and copies of any material changes proposed to or made to its constitutional documents or the constitutional documents of it or any other member of the Group, including the filing of any memorandum of incorporation under the Companies Act;

~~19.5.1.5.17.3.1.5.~~ promptly, such further information regarding the financial condition, business and operations of any member of the Group as any Finance Party may reasonably request; and

~~19.5.1.6.17.3.1.6.~~ deliver the Borrowing Programme to the Finance Parties and any amendments thereto as soon as same is available for distribution to the Minister of Finance and to all other applicable creditors in respect of the Borrower;

19.5.1.7. promptly, copies of all Authorisations required to ensure compliance with the provisions of the PFMA, in respect of its entry into of the Finance Documents to which it is a party and the performance of its obligations thereunder;

19.5.1.8. not less than once per year and promptly following its completion or any amendments thereto, its corporate plan and shall, on reasonable notice and at such reasonable times as are mutually convenient to the Parties (provided that the Borrower shall meet with the Finance Parties not more than 1 month after receipt of such notice for a period of not less than 2 Business Days) meet with the Finance Parties and shall, at that meeting, supply to the Finance Parties such information as may reasonably be requested by the Finance Parties concerning its corporate plan.

19.6. ~~17.4.~~ Credit rating

19.6.1. ~~17.4.1.~~ The Borrower undertakes to notify the Lenders in writing of—;

19.6.1.1. ~~17.4.1.1.~~ any event or circumstance which may give rise to a Negative Rating Event or a Qualifying Guarantor Adverse Event (as the case may be) within 5 (five) Business Days of such event or circumstance having occurred;

19.6.1.2. ~~17.4.1.2.~~ the occurrence of a Negative Rating Event within 5 (five) Business Days of such Negative Rating Event having occurred;

~~17.4.1.3.~~ the occurrence of a Qualifying Guarantor Adverse Event within 5 (five) Business Days of such Qualifying Guarantor Adverse Event having occurred; and

19.6.1.3. ~~17.4.1.4.~~ any Withdrawal Event within 5 (five) Business Days of such Withdrawal Event having occurred.

19.6.2. ~~17.4.2.~~ The Borrower shall provide the Finance Parties with a copy of each Credit Rating on the date on which such Credit Rating is issued.

19.7. ~~17.5.~~ Notification of default and other matters

19.7.1. ~~17.5.1.~~ The Borrower shall notify the Finance Parties of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

19.7.2. ~~17.5.2.~~ The Borrower shall promptly upon a request by a Finance Party supply to that Finance Party a certificate signed by a director or senior officer on its behalf:

19.7.2.1. ~~17.5.2.1.~~ certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it) and that no Default is expected to occur over the three Month period from such date;

19.7.2.2. ~~17.5.2.2.~~ certifying that no Change of Control Event has occurred as at the date of such certificate and that no Change of Control Event is expected to occur over the 3 (three) Month period from such date;

19.7.2.3. ~~17.5.2.3.~~ certifying that no Negative Rating Event has occurred as at the date of such certificate and that no Negative Rating Event is expected to occur over the 3 (three) Month period from such date;



~~19.7.2.4, 17.5.2.4~~ certifying that no Qualifying Guarantor Adverse Event has occurred as at the date of such certificate and that no Qualifying Guarantor Adverse Event is expected to occur over the three Month period from such date;

~~19.7.2.5, 17.5.2.5~~ setting out the shareholders of the Borrower as at the date of such certificate; and

~~19.7.2.6, 17.5.2.6~~ certifying that the Borrower is in compliance with the requirements of Clause ~~18.10~~21.10 (*Insurance*) as at the date of such certificate.

~~19.7.3, 17.5.3~~ The Borrower shall notify the Finance Parties of any change to its auditor.

#### 19.8. ~~17.6~~-Business rescue proceedings

The Borrower shall deliver written notice to the Finance Parties no later than 5 (five) Business Days prior to the date upon which a board meeting to consider a resolution contemplated in section 129 of the Companies Act is to be held, or if such meeting is to be held at less than 5 Business Days' notice, then as soon as reasonably possible. The Finance Parties shall have the right to be consulted in respect of the appointment of an appropriate business rescue practitioner.

#### 19.9. ~~17.7~~-"Know your customer" checks

##### 19.9.1. ~~17.7.1~~-If:

~~19.9.1.1, 17.7.1.1~~ the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;

~~19.9.1.2, 17.7.1.2~~ any change in the status of the Borrower or the shareholding of the Borrower after the date of this Agreement; or

~~19.9.1.3, 17.7.1.3~~ a proposed assignment or transfer by a Finance Party of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges any Finance Party (or, in the case of Clause ~~17.7.1.3~~19.9.1.3, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of any Finance Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by any Finance Party (for itself or, in the case of the event described in Clause ~~17.7.1.3~~19.9.1.3, on behalf of any prospective new Finance Party) in order for such Finance Party, or, in the case of the event described in Clause ~~17.7.1.3~~19.9.1.3, any prospective new Finance Party to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

## 20. FINANCIAL COVENANTS

### 20.1. Financial definitions

In this Agreement:

- 20.1.1. Cash interest cover means cash generated from operations after working capital changes, divided by net finance costs (net finance costs includes finance costs, finance income and capitalised borrowing costs from the cash flow statement).
- 20.1.2. Financial Half Year means the period commencing on the day after one Half Year Date and ending on the next Half Year Date.
- 20.1.3. Financial Year means the annual accounting period of the Borrower ending on or about 31 March in each year.
- 20.1.4. Gearing means the Borrower's debt expressed as a percentage of the sum of debt and the Borrower's shareholder's equity (as set out in the financial statements delivered pursuant to Clause 19.1 and/or each Covenant Compliance Certificate delivered pursuant to Clause 19.2).
- 20.1.5. Half Year Date means each of 30 September in each year.
- 20.1.6. Relevant Period means each period of twelve months ending on or about the last day of the Financial Year and each period of twelve months ending on or about the last day of each Financial Half Year.

20.2. Financial condition

The Borrower shall ensure that:

- 20.2.1. Cash interest cover: Cash interest cover in respect of any Relevant Period specified in column 1 below shall not be less than the ratio set out in column 2 below opposite that Relevant Period.

<u>Column 1 - Relevant Period</u>	<u>Column 2 - Ratio</u>
<u>Each Relevant Period</u>	<u>2.5:1</u>

- 20.2.2. Gearing: Gearing in respect of any Relevant Period specified in column 1 below shall not be more than the percentage set out in column 2 below opposite that Relevant Period.

<u>Column 1 - Relevant Period</u>	<u>Column 2 - Ratio</u>
<u>Each Relevant Period</u>	<u>60%</u>

20.3. Financial testing

The financial covenants set out in Clause 20.2 shall be calculated in accordance with IFRS and tested by reference to each of the financial statements delivered pursuant to Clause 19.1 and/or each Covenant Compliance Certificate delivered pursuant to Clause 19.2.

20.4. Discussion events

Whenever either the Cash interest cover ratio is less than 3 : 1 and/or the Gearing is more than 50% the Borrower shall enter into discussions with or shall provide information to the Lenders advising the Lenders of the steps (and, periodically, the progress made in achieving such steps) taken or to be taken by the Borrower in order to restore the Cash interest cover ratio to at least 3 : 1 and/or the Gearing to no more than 50%. Such information shall be provided to the Lenders for as long as, and/or the discussions shall occur on such dates and shall endure for such periods as, the Lenders consider to be reasonable in the circumstances.

21. 18. GENERAL UNDERTAKINGS

The undertakings in this Clause ~~18~~21 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

21.1. 18.1. Authorisations

The Borrower shall promptly:

21.1.1. ~~18.1.1.~~ obtain, comply with and do all that is necessary to maintain in full force and effect; and

21.1.2. ~~18.1.2.~~ supply certified copies to the Finance Parties of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

21.2. 18.2. Compliance with laws

The Borrower shall (and the Borrower shall ensure that each member of the Group will) comply in all respects with all laws to which it may be subject, ~~if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents.~~

21.3. 18.3. Environmental compliance

The Borrower shall (and the Borrower shall ensure that each member of the Group will):

21.3.1. ~~18.3.1.~~ comply with all Environmental Law;

21.3.2. ~~18.3.2.~~ obtain, maintain and ensure compliance with all requisite Environmental Permits;

21.3.3. ~~18.3.3.~~ implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

21.4. 18.4. Environmental claims

The Borrower shall, promptly upon becoming aware of the same, inform the Finance Parties in writing of:

21.4.1. ~~18.4.1.~~ any Environmental Claim against any member of the Group which is current, pending or threatened; and

21.4.2. ~~18.4.2.~~ any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group, where the claim, if determined against that member of the Group, has or is reasonably likely to result in a Material Adverse Effect.

21.5. ~~18.5.~~ **Negative pledge**

In this Clause ~~18.5~~21.5, **Quasi-Security** means an arrangement or transaction described in Clause ~~18.5.2~~21.5.2.

21.5.1. ~~18.5.1.~~ The Borrower shall not (and the Borrower shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.

21.5.2. ~~18.5.2.~~ The Borrower shall not (and the Borrower shall ensure that no other member of the Group will):

21.5.2.1. ~~18.5.2.1.~~ sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Borrower or any other member of the Group;

21.5.2.2. ~~18.5.2.2.~~ sell, transfer or otherwise dispose of any of its receivables on recourse terms;

21.5.2.3. ~~enter into or permit to subsist any title retention arrangement;~~

21.5.2.4. ~~18.5.2.3.~~ enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

21.5.2.5. ~~18.5.2.4.~~ enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

21.5.3. ~~18.5.3.~~ Clauses ~~18.5.1~~21.5.1 and ~~18.5.2~~21.5.2 do not apply to any Security or (as the case may be) Quasi-Security, listed below:

21.5.3.1. ~~any Security or Quasi Security listed in Schedule 14, except to the extent the principal amount secured by that Security or Quasi Security exceeds the amount stated in that Schedule;~~

21.5.3.2. ~~18.5.3.1.~~ any cash management, netting or set-off arrangement entered into by any member of the Group in the ordinary course of its ~~business~~banking arrangements for the purpose of netting debit and credit balances;

21.5.3.3. ~~18.5.3.2.~~ any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:

21.5.3.3.1. ~~18.5.3.2.1.~~ hedging any risk to which any member of the Group is exposed in its ordinary course of business; or

- 21.5.3.3.2. ~~18.5.3.2.2.~~ its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only, excluding, in each case, any Security or Quasi-Security under a credit support arrangement in relation to a hedging transaction;
- 21.5.3.4. ~~18.5.3.3.~~ any lien arising by operation of law and in the ordinary course of business provided that the debt which is secured thereby is paid when due or contested in good faith by appropriate proceedings and properly provisioned;
- 21.5.3.5. ~~18.5.3.4.~~ any short term funding raised by the Borrower in the ordinary course of business pursuant to the sale or discounting of receivables on recourse terms;
- 21.5.3.6. ~~18.5.3.5.~~ any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the date of this Agreement to the extent that:
- 21.5.3.6.1. ~~18.5.3.5.1.~~ the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
- 21.5.3.6.2. ~~18.5.3.5.2.~~ the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
- 21.5.3.6.3. ~~18.5.3.5.3.~~ the Security or Quasi-Security is removed or discharged within 90 days of the date of acquisition of such asset;
- 21.5.3.7. ~~18.5.3.6.~~ any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group, to the extent that:
- 21.5.3.7.1. ~~18.5.3.6.1.~~ the Security or Quasi-Security was not created in contemplation of the acquisition of that company;
- 21.5.3.7.2. ~~18.5.3.6.2.~~ the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
- 21.5.3.7.3. ~~18.5.3.6.3.~~ the Security or Quasi-Security is removed or discharged within 90 days of that company becoming a member of the Group;
- 21.5.3.8. ~~18.5.3.7.~~ any Security or Quasi-Security entered into pursuant to any Finance Document;
- 21.5.3.9. ~~18.5.3.8.~~ any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of business and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;
- 21.5.3.10. ~~18.5.3.9.~~ any Security or Quasi-Security that secures indebtedness having an outstanding principal amount that (when aggregated with the outstanding principal amount of any other indebtedness which has the benefit of Security or Quasi-Security given by any member of the Group other than any Security or Quasi-Security

permitted under Clauses ~~18.5.3.1~~21.5.3.2 to ~~18.5.3.8~~21.5.3.9 above) does not exceed 10 per cent. of the Consolidated Total Assets of the Borrower (or its equivalent in other currencies) in total during the term of this Agreement; or

21.5.3.11. ~~18.5.3.10.~~ any Security or Quasi-Security created with the prior written approval of the Lenders, which approval may not be unreasonably delayed.

#### 21.6. ~~18.6.~~ Disposals

21.6.1. ~~18.6.1.~~ The Borrower shall not (and the Borrower shall ensure that no other member of the Group will), enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.

21.6.2. ~~18.6.2.~~ Clause ~~18.6.1~~21.6.1 above does not apply to any sale, lease, transfer or other disposal:

21.6.2.1. ~~18.6.2.1.~~ made on arm's length terms in the ordinary course of business of the disposing entity;

21.6.2.2. ~~18.6.2.2.~~ of any assets in exchange for or to be replaced by other assets comparable or superior as to type, value and quality;

21.6.2.3. ~~18.6.2.3.~~ of obsolete or redundant vehicles, plant and equipment for cash;

21.6.2.4. ~~18.6.2.4.~~ of assets for cash where the higher of the market value and net consideration receivable (when aggregated with the higher of the market value and net consideration receivable for any other sale, lease, licence, transfer or other disposal not allowed under the preceding sub-Clauses) does not exceed 10 per cent. of the Consolidated Total Assets of the Borrower (or its equivalent in other currencies) in total during the term of this Agreement; or

21.6.2.5. ~~18.6.2.5.~~ made with the prior written approval of the Lenders, which approval may not be unreasonably withheld or delayed.

#### 21.7. ~~18.7.~~ Merger

The Borrower shall not (and the Borrower shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger or corporate reconstruction other than a Permitted Transaction.

#### 21.8. ~~18.8.~~ Change of business

The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower or the Group from that carried on at the Signature Date.

#### 21.9. ~~18.9.~~ Preservation of assets

The Borrower shall (and the Borrower shall ensure that each other member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its business.

#### 21.10. ~~18.10.~~ Insurance

21.10.1. ~~18.10.1.~~ The Borrower shall (and the Borrower shall ensure that each other member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

21.10.2. ~~18.10.2.~~ All insurances must be with reputable independent insurance companies or underwriters.

21.11. ~~18.11.~~ **Sanctions**

21.11.1. ~~18.11.1.~~ No member of the Group is party to or participates in any Sanctioned Transaction, has contravened any Sanctions or is targeted under any Sanctions.

21.11.2. ~~18.11.2.~~ The Borrower shall not (and the Borrower shall ensure that no other member of the Group will) at any time participate in a Sanctioned Transaction in any manner.

21.11.3. ~~18.11.3.~~ The Borrower shall take all reasonable steps to ensure that appropriate controls and safeguards are in place, designed to prevent it or any other member of the Group from being or becoming involved in a Sanctioned Transaction.

21.11.4. ~~18.11.4.~~ The provisions of this clause ~~18.11~~21.11 shall not apply in respect of the transactions relating to the operations specified in the Operations Disclosure Schedule.

21.12. ~~18.12.~~ **Distributions**

Following the occurrence of an Event of Default, the Borrower shall not be entitled to make any Distributions.

21.13. ~~18.13.~~ **Financial Indebtedness**

Following the occurrence of an Event of Default, the Borrower shall not be entitled to incur any Financial Indebtedness.

21.14. ~~18.14.~~ **Investments**

The Borrower shall not enter into any investment and shall not:

21.14.1. ~~18.14.1.~~ acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or

21.14.2. ~~18.14.2.~~ incorporate a company,

following the occurrence of an Event of Default.

~~18.15.~~ **Change of Business**

~~The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower or the Group taken as a whole from that carried on by the Group at the Signature Date.~~

21.15. ~~18.16.~~ **Joint Ventures**

21.15.1. ~~18.16.1.~~ The Borrower shall not:

21.15.1.1. ~~18.16.1.1.~~ enter into, invest in or acquire (or agree to acquire) any securities or other interest in any Joint Venture; or

21.15.1.2. ~~18.16.1.2.~~ transfer any assets or lend to or guarantee or give an indemnity for or grant any security interest for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing),

following the occurrence of an Event of Default or if, in the case of the guarantee or indemnity contemplated in Clause ~~18.16.1.~~21.15.1.2., such guarantee (together with the other guarantees the payment of issued as of the Signature Date) guarantees an amount equal to or greater than the Designated Amount or such indemnity (together with the other indemnities issued as of the Signature Date) indemnifies the applicable party against a claim equal to or greater than the Designated Amount.

21.16. ~~18.17.~~ **Loans or Credit**

The Borrower shall not make any loans or be a creditor in respect of any Financial Indebtedness following the occurrence of an Event of Default or if such loans (in aggregate as of the Signature Date) or Financial Indebtedness is (in aggregate as of the Signature Date) are for an amount equal to or greater than (in either case), the Designated Amount.

21.17. ~~18.18.~~ **No Guarantees or Indemnities**

The Borrower shall not incur or allow to remain outstanding any guarantee or indemnity in respect of the obligation of any person following the occurrence of an Event of Default or if such guarantee (together with the other guarantees issued as of the Signature Date) guarantees the payment of an amount equal to or greater than the Designated Amount or such indemnity indemnifies the applicable party against a claim (which, when aggregated with the other indemnified claims as of the Signature Date) is equal to or greater than the Designated Amount.

21.18. ~~18.19.~~ **Access**

If a Default is continuing or a Finance Party reasonably suspects a Default is continuing or may occur, the Borrower shall, and the Borrower shall ensure that each member of the Group will permit the Finance Parties and/or accountants or other professional advisers and contractors of the Finance Parties to meet and discuss such matters with the senior management of the Group.

21.19. ~~18.20.~~ **Constitutional Documents**

The Borrower shall not amend its constitutional documents, without the prior written consent from the Finance Parties, and shall procure that no amendment is made to its constitutional documents if such amendment would adversely affect the rights of the Finance Parties under the Finance Documents.

21.20. ~~18.21.~~ **Listing**

The Borrower shall not list bonds on any exchange other than an Approved Exchange.



21.21. Equal treatment of facilities and creditors

21.21.1. If under the terms (whether the original terms or the terms as amended, substituted or restated) of any loan facility, bonds, notes or other debt instruments entered into or issued by the Borrower (or any refinancing thereof), the Borrower grants the creditors thereunder (or any agent, trustee or other representative thereof) any term and/or security (if any) that is more favourable to such creditors than the terms and/or security (if any) contained in (or incorporated by reference in) the Finance Documents (such improved term being a Relevant Benefit), the Borrower shall:

21.21.1.1. provide a copy of such representation, warranty, undertaking, covenant or event of default to the Lenders; and

21.21.1.2. be deemed to have thereby have made an unconditional offer to the Finance Parties, which offer shall remain open for acceptance for 20 Business Days following receipt of such copies (the Offer) to amend the terms (including all related provisions and definitions) of the relevant Finance Documents to include each Relevant Benefit in favour of the Finance Parties on terms which are no less favourable to the Finance Parties.

21.21.2. If, within 20 Business Days following receipt of the Offer, the Lenders notify the Borrower that the Finance Parties wish to amend the relevant Finance Documents to incorporate the Relevant Benefit, the Borrower and the Finance Parties shall negotiate in good faith to so amend the relevant Finance Document.

21.21.3. If, within 20 Business Days after receipt by the Borrower of the Lenders' acceptance of the Offer, the Borrower and the Finance Parties have not reached agreement on the contemplated amendment(s), upon notice to that effect delivered within a further 20 Business Day period, the Relevant Benefit shall automatically be incorporated by reference into the relevant Finance Documents as if expressly set out therein, provided that:

21.21.3.1. the Relevant Benefit shall govern and supersede any contrary or contradictory terms or provisions set out in the relevant Finance Document; and

21.21.3.2. to the extent necessary, defined terms, section references, etc. set out in the Relevant Benefit shall be deemed to be modified for such purposes to be consistent with such terms, section references, etc. set out in the relevant Finance Document.

21.22. PFMA

The Borrower has complied, and shall comply, with the provisions of the PFMA, including, without limitation, obtaining all requisite authorisations in respect thereof, in respect of its entry into of the Finance Documents to which it is a party and the performance of its obligations thereunder.

22. 19. EVENTS OF DEFAULT

Each of the events or circumstances set out in Clause ~~19~~22 is an Event of Default (save for Clause ~~19.10~~22.18 (*Acceleration*)).

22.1. 19.1. Non-payment

Any Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the agreed place unless its failure to pay is caused by:

22.1.1. 19.1.1. administrative or technical error; or

22.1.2. 19.1.2. a Disruption Event,

and payment is made within 5 (five) Business Days of its due date.

22.2. Financial covenants

Any requirement of clause 20 is not satisfied.

22.3. 19.2. Other obligations

22.3.1. 19.2.1. Any Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause ~~19.1~~22.1 (*Non-payment*) and Clause ~~22.2~~ (*Financial Covenants*)).

22.3.2. 19.2.2. No Event of Default under Clause ~~19.2~~22.3.1 above will occur if the failure to comply is capable of remedy and is remedied within ~~15~~10 (~~fifteen~~ten) Business Days of the Lenders giving notice to the Borrower or the Borrower becoming aware of the failure to comply.

22.4. 19.3. Misrepresentation

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of such Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made unless the underlying circumstances (if capable of remedy) are remedied within 15 to the extent that the representation or statement is no longer incorrect or misleading in any material respect within 10 (~~fifteen~~ten) Business Days of the Lenders giving notice to the Borrower or the Borrower becoming aware of the failure to comply.

~~22.5.~~ 19.4.-Cross default

- ~~22.5.1.~~ 19.4.1.-Any Financial Indebtedness of any member of the Group and/or an Obligor is not paid when due nor within any originally applicable grace period.
- ~~22.5.2.~~ 19.4.2.-Any Financial Indebtedness of any member of the Group and/or an Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- ~~22.5.3.~~ 19.4.3.-Any commitment for any Financial Indebtedness of any member of the Group and/or an Obligor is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).
- ~~22.5.4.~~ 19.4.4.-Any creditor of any member of the Group and/or an Obligor becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- ~~22.5.5.~~ 19.4.5.-No Event of Default will occur under this Clause ~~19.4~~22.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within Clauses ~~19.4.1~~22.5.1 to ~~19.4.4~~22.5.4 is in respect of the Borrower or applicable member of the Group, is less than the Designated Amount (or its equivalent in other currencies).

~~22.6.~~ 19.5.-Insolvency

- ~~22.6.1.~~ 19.5.1.-A member of the Group is or is deemed by any authority or legislation to be unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- ~~22.6.2.~~ 19.5.2.-The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).
- ~~22.6.3.~~ 19.5.3.-A moratorium is declared in respect of any indebtedness of any member of the Group.
- ~~22.6.4.~~ A member of the Group is or is deemed by any authority or legislation to be Financially Distressed (as defined in the Companies Act).
- ~~22.6.5.~~ 19.5.4.-Any Insolvency Event occurs.

~~22.7.~~ 19.6.-Insolvency proceedings

- ~~22.7.1.~~ 19.6.1.-Any corporate action, legal proceedings or other procedure or step is taken in relation to:
- ~~22.7.1.1~~ 19.6.1.1.-the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group other than a solvent liquidation or reorganisation of any member of the Group other than the Borrower;

~~22.7.1.2. 19.6.1.2.~~ a composition, compromise, assignment or arrangement with any creditor of any member of the Group;

~~22.7.1.3. 19.6.1.3.~~ the appointment of a liquidator (other than in respect of a solvent liquidation of a member of the Group other than the Borrower), receiver, administrative receiver, administrator, compulsory manager, business rescue practitioner or other similar officer in respect of any member of the Group or any of its assets;

~~22.7.1.4. 19.6.1.4.~~ the placing of any member of the Group under supervision and the commencing of business rescue proceedings under section 129(1) or section 131 (1) of the Companies Act; or

~~22.7.1.5. 19.6.1.5.~~ enforcement of any Security over any assets of any member of the Group, or any analogous procedure or step is taken in any jurisdiction.

~~22.7.2. 19.6.2.~~ This Clause ~~19.6~~~~22.7~~ shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 90 (ninety) days of commencement.

## 22.8. ~~19.7.~~ **Unlawfulness**

It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents.

## 22.9. ~~19.8.~~ **Repudiation**

An Obligor rescinds or repudiates a Finance Document or evidences an intention to rescind or repudiate a Finance Document.

## 22.10. ~~19.9.~~ **Material Adverse Effect**

Any event or series of events occurs which the Lenders reasonably believe will have a Material Adverse Effect, ~~including but not limited to the following:~~

## 22.11. ~~19.9.1.~~ **Failure to comply with Final Judgement**Judgment

22.11.1. ~~19.9.1.1.~~ Any Obligor fails within 5 (five) Business Days of the due date to comply with or pay any sum due from it under any final judgementjudgment or any final order (being a judgment or order which is not subject to any rescission or appeal and/or capable of being subject to any such rescission or appeal) made or given by any court of competent jurisdiction.

22.11.2. ~~19.9.1.2.~~ No Event of Default will occur under this Clause ~~19.9.1~~~~22.11~~, if the amount the relevant Obligor fails to pay pursuant to any final judgementjudgment or any final order is less than the Designated Amount (or its equivalent in any other currency or currencies).

## 22.12. ~~19.9.2.~~ **Creditors' Process**

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of an Obligor having an aggregate value of an amount equal to the Designated Amount (or its equivalent in any other

currency or currencies) and is not discharged within 10 (ten) Business Days of the applicable Obligor becoming aware thereof.

22.13. ~~19.9.3.-Litigation~~

22.13.1. Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Finance Documents or the transactions contemplated in the Finance Documents or against any Obligor or its assets which has or is reasonably likely to result in a Material Adverse Effect.

22.13.2. The Lenders, acting reasonably, have determined (and have notified the Borrower of such determination), that the litigation contemplated in Schedule 12 and commenced by pensioner members of the Transport Pension Fund ("the TPF") and the Transnet Second Defined Benefit Fund ("the TSDBF") against the Borrower, the TPF and the TSDBF will result in liability on the part of the Borrower in an amount exceeding the Designated Amount.

22.14. ~~19.9.4.-Expropriation~~

22.14.1. The authority or ability of any Obligor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Obligor, as the case may be, or any of its assets.

22.14.2. By the authority of any governmental, regulatory or other authority or other person the whole or any part of its assets or revenues is seized, expropriated or compulsorily acquired.

22.15. ~~19.9.5.-Cessation of Business~~

Any Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business, for any reason whatsoever, including its assets being expropriated or any licences being revoked.

22.16. ~~19.9.6.-Audit Qualification~~

The auditors of the Borrower qualify the financial statements delivered under Clause 1719 in any respect.

22.17. ~~19.9.7.-Listings Committee and Suspension of Trading~~

22.17.1. ~~19.9.7.1.-The listings committee of the applicable Approved Exchange publishes any notice of its intention to suspend or discontinue the listing of any bonds issued by the Borrower.~~

22.17.2. ~~19.9.7.2.-Trading in bonds issued by the Borrower which are listed on any Approved Exchange is suspended for any reason (other than a general suspension of trading of all securities on the relevant exchange) for a period of 10 (ten) trading days or more.~~

22.18. ~~19.10.~~ Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the ~~Lenders~~any Lender may by notice to the Borrower:

- 22.18.1. ~~19.10.1.~~ cancel the ~~Total Commitments~~its participation in the Commitment whereupon ~~they~~it shall immediately be cancelled; and/or
- 22.18.2. ~~19.10.2.~~ declare that all or part of ~~its participation in the Loan~~Loans, together with accrued interest, and all other amounts accrued or outstanding ~~to that Lender~~ under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable together with all and any Break Costs; and/or
- 22.18.3. ~~19.10.3.~~ demand and be entitled to receive specific performance of the relevant obligation of the Finance Documents (if any) breached by the Borrower or the Obligors (as applicable); and/or
- 22.18.4. ~~19.10.4.~~ claim payment from the Borrower of any and all damages, costs and other amounts incurred directly as a result of such Event of Default.

SECTION 8  
CHANGES TO PARTIES

23. ~~20.~~ CHANGES TO THE LENDER

23.1. ~~20.1.~~ Assignments and transfers by the Lender

Subject to this Clause ~~20.1.~~ 23.1. a Lender (the Existing Lender) may:

23.1.1. ~~20.1.1.~~ cede any of its rights or delegate its obligations; or

23.1.2. ~~20.1.2.~~ transfer by assignment any of its rights and obligations,

to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the New Lender).

23.2. ~~20.2.~~ Conditions of assignment or transfer

23.2.1. ~~20.2.1.~~ The consent of the Borrower is required for an assignment, cession or delegation by an Existing Lender, unless the assignment, cession or delegation is:

23.2.1.1. ~~20.2.1.1.~~ to another Lender or an Affiliate of a Lender;

23.2.1.2. ~~20.2.1.2.~~ to a Permitted Transferee; or

23.2.1.3. ~~20.2.1.3.~~ made at a time when an Event of a Default is continuing has occurred.

23.2.2. ~~20.2.2.~~ The consent of the Borrower to an assignment, cession or delegation must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent 5 Business Days after the Existing Lender has requested it unless consent is expressly refused by the Borrower on reasonable grounds within that time.

23.2.3. ~~20.2.3.~~ An assignment, cession or delegation will only be effective on:

23.2.3.1. ~~20.2.3.1.~~ receipt by the Borrower (whether in the Transfer Certificate or otherwise) of written confirmation from the New Lender that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and

23.2.3.2. ~~20.2.3.2.~~ performance by each Finance Party (to the extent applicable) of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment, cession or delegation to a New Lender.

23.2.4. ~~20.2.4.~~ A transfer will only be effective if the procedure set out in Clause ~~20.4~~ 23.4 (*Procedure for transfer*) is complied with.

23.2.5. ~~20.2.5.~~ If:

23.2.5.1. ~~20.2.5.1.~~ the Lender assigns its rights and obligations or cedes its rights or delegates its obligations under the Finance Documents or changes its Facility Office; and

~~23.2.5.2, 20.2.5.2~~ as a result of circumstances existing at the date the assignment, cession, delegation or change occurs, the Borrower would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause ~~11~~13 (*Tax gross-up and indemnities*) or Clause ~~12~~14 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

~~23.2.6.~~ ~~20.2.6.~~ Each New Lender, by executing the relevant Transfer Certificate, confirms, ~~for the avoidance of doubt,~~ that the Lender has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the assignment, cession or delegation becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

### ~~23.3.~~ ~~20.3.~~ Limitation of responsibility of Existing Lender

~~23.3.1.~~ ~~20.3.1.~~ Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

~~23.3.1.1.~~ ~~20.3.1.1.~~ the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;

~~23.3.1.2.~~ ~~20.3.1.2.~~ the financial condition of the Borrower;

~~23.3.1.3.~~ ~~20.3.1.3.~~ the performance and observance by any Borrower of its obligations under the Finance Documents or any other documents; or

~~23.3.1.4.~~ ~~20.3.1.4.~~ the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

~~23.3.2.~~ ~~20.3.2.~~ Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

~~23.3.2.1.~~ ~~20.3.2.1.~~ has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and

~~23.3.2.2.~~ ~~20.3.2.2.~~ will continue to make its own independent appraisal of the creditworthiness of the Borrower and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.



23.3.3. ~~20.3.3.~~ Nothing in any Finance Document obliges an Existing Lender to:

23.3.3.1. ~~20.3.3.1.~~ accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause ~~20.3.~~ 23.3; or

23.3.3.2. ~~20.3.3.2.~~ support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under the Finance Documents or otherwise.

#### 23.4. ~~20.4.~~ Procedure for transfer

23.4.1. ~~20.4.1.~~ Subject to the conditions set out in Clause ~~20.2~~ 23.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with Clause ~~20.4.3~~ 23.4.3 below when a duly completed Transfer Certificate is delivered by the Existing Lender and/or the New Lender to the Borrower.

23.4.2. ~~20.4.2.~~ The existing Lender is only obliged to execute a Transfer Certificate if it has received confirmation by the New Lender to that the Borrower once it is satisfied that it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.

23.4.3. ~~20.4.3.~~ Subject to Clause ~~20.6~~ 23.6 (*Pro rata interest settlement*), on the Transfer Date:

23.4.3.1. ~~20.4.3.1.~~ to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by assignment its rights and obligations under the Finance Documents the Borrower and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the Discharged Rights and Obligations);

23.4.3.2. ~~20.4.3.2.~~ the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender;

23.4.3.3. ~~20.4.3.3.~~ the New Lender shall acquire the same rights and assume the same obligations as it would have acquired and assumed had the New Lender been an Existing Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Existing Lender shall be released from further obligations under the Finance Documents; and

23.4.3.4. ~~20.4.3.4.~~ the New Lender shall become a Party as a "Lender".

#### 23.5. ~~20.5.~~ Copy of Transfer Certificate to Borrower

The Lender shall, as soon as reasonably practicable after it has executed a Transfer Certificate send to the Borrower a copy of that Transfer Certificate.

23.6. ~~20.6.~~ **Pro rata interest settlement**

If the Existing Lender or Finance Party has notified the New Lender that it is able to distribute interest payments on a "pro rata basis" to the Existing Lender and the New Lenders then (in respect of any transfer pursuant to Clause ~~20.4~~23.4 (*Procedure for transfer*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

23.6.1. ~~20.6.1.~~ any interest or fees in respect of the relevant ~~participation~~Loans which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (**Accrued Amounts**) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than three Months, on the next of the dates which falls at three Monthly intervals after the first day of that Interest Period); and

23.6.2. ~~20.6.2.~~ the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, ~~for the avoidance of doubt:~~

23.6.2.1. ~~20.6.2.1.~~ when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and

23.6.2.2. ~~20.6.2.2.~~ the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause ~~20.6~~23.6, have been payable to it on that date, but after deduction of the Accrued Amounts.

24. ~~21.~~ **CHANGES TO THE BORROWER**

The Borrower may not cede any of its rights, delegate any of its obligations or assign any of its rights and obligations under the Finance Documents without the prior written approval of the Lenders which approval shall not be unreasonably withheld having regard to the circumstances resulting in such transfer of rights and/or obligations.

## SECTION 9 ADMINISTRATION

### 25. ~~22.~~-PAYMENT MECHANICS

#### 25.1. ~~22.1.~~Place of Payment

25.1.1. ~~22.1.1.~~ Except to the extent otherwise provided in this Agreement, all payments of principal, interest and other amounts to be made by the Borrower under this Agreement shall be made:

25.1.1.1. ~~22.1.1.1.~~ if to the Original Lender, to the following account (*Lender to insert account details*):

or to such other account as the Original Lender may notify to the Borrower from time to time by not less than 10 Business Days' prior notice; and

25.1.1.2. ~~22.1.1.2.~~ if to any other Finance Party, to such account as that Finance Party may notify to the Borrower from time to time by not less than 10 Business Days' prior notice.

25.1.2. ~~22.1.2.~~ On each date on which the Borrower or any Lender is required to make a payment under a Finance Document, the Borrower or that Lender shall make the same available for value on the due date at the time and in such funds specified by the party entitled to such payment as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

#### 25.2. ~~22.2.~~ No set-off by the Borrower

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

#### 25.3. ~~22.3.~~ Business Days

25.3.1. ~~22.3.1.~~ Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

25.3.2. ~~22.3.2.~~ During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

#### 25.4. ~~22.4.~~ Set-off

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

25.5. ~~22.5.~~ Partial payments

25.5.1. ~~22.5.1.~~ If the Lenders receive a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Lenders shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:

25.5.1.1. ~~22.5.1.1.~~ first, in or towards payment pro rata of any unpaid fees, costs and expenses of the Finance Parties under the Finance Documents;

25.5.1.2. ~~22.5.1.2.~~ secondly, in or towards payment pro rata of any accrued interest, fees, Breakage Costs or commission due but unpaid under this Agreement;

25.5.1.3. ~~22.5.1.3.~~ thirdly, in or towards payment pro rata of any principal due but unpaid under this Agreement; and

25.5.1.4. ~~22.5.1.4.~~ fourthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

25.5.2. ~~22.5.2.~~ Clause ~~22.5.1~~25.5.1 will override any appropriation made by an Obligor.

26. ~~23.~~ NOTICES26.1. ~~23.1.~~ Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

26.2. ~~23.2.~~ Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

26.2.1. ~~23.2.1.~~ in the case of the Borrower, that identified with its name below;

26.2.2. ~~23.2.2.~~ in the case of the Original Lender that identified with its name below;

26.2.3. ~~23.2.3.~~ in the case of a New Lender, that identified in the Transfer Certificate; and,

or any substitute address or fax number or department or officer as the Party may notify to the other Party by not less than five Business Days' notice.

26.3. ~~23.3.~~ Delivery

26.3.1. ~~23.3.1.~~ Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

26.3.1.1. ~~23.3.1.1.~~ if by way of fax, when received in legible form; or

26.3.1.2. ~~23.3.1.2.~~ if by way of letter, when it has been left with a responsible person at the relevant address or five Business Days (or, if posted from South Africa to another country and

*vice versa*, 20 (twenty) Business Days) after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under Clause ~~23.226.2~~ (*Addresses*), if addressed to that department or officer.

~~26.3.2.~~ ~~23.3.2.~~ Any communication or document which becomes effective, in accordance with Clause ~~23.3.126.3.1~~ after 5.00 p.m. (Johannesburg time) in the place of receipt shall be deemed only to become effective on the following Business Day.

#### ~~26.4.~~ ~~23.4.~~ **Electronic communication**

~~26.4.1.~~ ~~23.4.1.~~ Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:

~~26.4.1.1.~~ ~~23.4.1.1.~~ notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

~~26.4.1.2.~~ ~~23.4.1.2.~~ notify each other of any change to their address or any other such information supplied by them by not less than 5 (five) Business Days' notice.

~~26.4.2.~~ ~~23.4.2.~~ Any electronic communication which becomes effective after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following Business Day.

#### ~~26.5.~~ ~~23.5.~~ **English language**

~~26.5.1.~~ ~~23.5.1.~~ Any notice given under or in connection with any Finance Document must be in English.

~~26.5.2.~~ ~~23.5.2.~~ All other documents provided under or in connection with any Finance Document must be:

~~26.5.2.1.~~ ~~23.5.2.1.~~ in English; or

~~26.5.2.2.~~ ~~23.5.2.2.~~ if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

### ~~27.~~ ~~24.~~ **CALCULATIONS AND CERTIFICATES**

#### ~~27.1.~~ ~~24.1.~~ **Accounts**

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

27.2. ~~24.2.~~ **Certificates and Determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

27.3. ~~24.3.~~ **Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and, in relation to ~~the~~ Loan, year of 365 days (irrespective of whether the year in question is a leap year), or in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

28. ~~25.~~ **PARTIAL INVALIDITY**

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

29. ~~26.~~ **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any of the Finance Documents on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

30. ~~27.~~ **AMENDMENTS AND WAIVERS**30.1. ~~27.1.~~ **Required consents**

No addition to, variation, amendment or consensual cancellation of any Finance Document and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of any Finance Document shall be of any force or effect unless the prior written consent of the Lenders has been obtained and it is reduced to writing and signed by or on behalf of all the parties to such Finance Document.

30.2. ~~27.2.~~ **Exceptions**

~~27.2.1.~~—An amendment or waiver that has the effect of changing or which relates to:

30.2.1. ~~27.2.2.~~ the definition "Change of Control Event" in Clause 1.1 (*Definitions*);

30.2.2. ~~27.2.3.~~ the definition "Change of Principal Business" in Clause 1.1 (*Definitions*);

30.2.3. ~~27.2.4.~~ an extension to the date of payment of any amount under the Finance Documents;

- 30.2.4. ~~27.2.5.~~ a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
- 30.2.5. ~~27.2.6.~~ an increase in or an extension of any Commitment or any requirement that a cancellation of Commitments reduces the Commitments of the Lender rateably under the relevant Facility;
- 30.2.6. ~~27.2.7.~~ a change to the Borrower;
- 30.2.7. ~~27.2.8.~~ any provision which expressly requires the consent of the Lender;
- 30.2.8. ~~27.2.9.~~ release of a Qualifying Guarantee; or
- 30.2.9. ~~27.2.10.~~ Clause 3 (*Purpose*), Clause 4 (*Conditions of Utilisation*), Clause 7 (*Repayment and Cancellation*), Clause ~~11.3~~13.3 (*Tax indemnity*), Clause ~~12~~14 (*Increased Costs*), Clause ~~18.5~~21.5 (*Negative Pledge*), Clause ~~20~~23 (*Changes to the Lender*), this Clause ~~27.2.~~, Clause 31 (*Governing Law*), Clause ~~32~~ (*Jurisdiction*) or Schedule 1 (*Conditions Precedent*), shall not be made without the prior consent of the Lenders ~~30.2.~~
- 30.2.10. Clause 38 (*Governing Law*), Clause 39 (*Jurisdiction*) or Schedule 1 (*Conditions Precedent*),  
shall not be made without the prior consent of the Lenders.

## 31. ~~28.~~ CONFIDENTIALITY

### 31.1. ~~28.1.~~ Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause ~~28.2~~31.2 (*Disclosure of Confidential Information*) and Clause ~~28.3~~31.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

### 31.2. ~~28.2.~~ Disclosure of Confidential Information

Any Finance Party may disclose:

- 31.2.1. ~~28.2.1.~~ to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this Clause ~~28.2.1~~31.2.1 is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- 31.2.2. ~~28.2.2.~~ to any person:
- 31.2.2.1. ~~28.2.2.1.~~ to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to

any of that person's Affiliates, Related Funds, Representatives and professional advisers;

~~31.2.2.2, 28.2.2.2~~ with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or the Borrower and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

~~31.2.2.3, 28.2.2.3~~ appointed by any Finance Party or by a person to whom Clauses ~~28.2.2.1~~ ~~31.2.2.1~~ or ~~28.2.2.2~~ ~~31.2.2.2~~ applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;

~~31.2.2.4, 28.2.2.4~~ who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in Clauses ~~28.2.2.1~~ ~~31.2.2.1~~ or ~~28.2.2.2~~ ~~31.2.2.2~~;

~~31.2.2.5, 28.2.2.5~~ to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

~~31.2.2.6, 28.2.2.6~~ to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;

~~31.2.2.7, 28.2.2.7~~ to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so);

~~31.2.2.8, 28.2.2.8~~ who is a Party; or

~~31.2.2.9, 28.2.2.9~~ with the consent of the Borrower;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

~~31.2.2.10, 28.2.2.10~~ in relation to Clauses ~~28.2.2.1, 28.2.2.2 and 28.2.2.3~~ ~~31.2.2.1, 31.2.2.2 and 31.2.2.3~~, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

~~31.2.2.11, 28.2.2.11~~ in relation to Clause ~~28.2.2.4~~ ~~31.2.2.4~~, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;



31.2.2.12. ~~28.2.2.12.~~ in relation to Clauses ~~28.2.2.5, 28.2.2.6 and 28.2.2.7~~31.2.2.5, 31.2.2.6 and 31.2.2.7, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

31.2.3. ~~28.2.3.~~ to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Borrower if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

31.3. ~~28.3.~~ **Disclosure to numbering service providers**

31.3.1. ~~28.3.1.~~ Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, any Facility and/or the Borrower the following information:

31.3.1.1. ~~28.3.1.1.~~ name of the Borrower;

31.3.1.2. ~~28.3.1.2.~~ country of domicile of the Borrower;

31.3.1.3. ~~28.3.1.3.~~ place of incorporation of the Borrower;

31.3.1.4. ~~28.3.1.4.~~ date of this Agreement;

31.3.1.5. ~~28.3.1.5.~~ date of each amendment and restatement of this Agreement;

31.3.1.6. ~~28.3.1.6.~~ amount of Totalthe Commitments;

31.3.1.7. ~~28.3.1.7.~~ currencies of each Facility;

31.3.1.8. ~~28.3.1.8.~~ type of each Facility;

31.3.1.9. ~~28.3.1.9.~~ ranking of each Facility;

31.3.1.10. ~~28.3.1.10.~~ the Maturity Date;

31.3.1.11. ~~28.3.1.11.~~ changes to any of the information previously supplied pursuant to Clauses ~~28.3.1.13~~31.3.1.1 to ~~28.3.1.10~~31.3.1.10; and

31.3.1.12. ~~28.3.1.12.~~ such other information agreed between such Finance Party and the Borrower,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

31.3.2. ~~28.3.2.~~ The Parties acknowledge and agree that each identification number assigned to this Agreement, any Facility and/or the Borrower by a numbering service provider and the information associated with each such number may be disclosed to users of its

services in accordance with the standard terms and conditions of that numbering service provider.

31.3.3. ~~28.3.3.~~ The Borrower represents that none of the information set out in Clauses ~~28.3.1.1~~31.3.1.1 to ~~28.3.1.10~~31.3.1.10 is, nor will at any time be, unpublished price-sensitive information.

31.4. ~~28.4.~~ Entire agreement

This Clause ~~28~~31 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

31.5. ~~28.5.~~ Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

31.6. ~~28.6.~~ Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

31.6.1. ~~28.6.1.~~ of the circumstances of any disclosure of Confidential Information made pursuant to Clause ~~28.2.2.5~~31.2.2.5 except where such disclosure is made to any of the persons referred to in that Clause during the ordinary course of its supervisory or regulatory function; and

31.6.2. ~~28.6.2.~~ upon becoming aware that Confidential Information has been disclosed in breach of this Clause ~~28~~31(*Confidentiality*).

31.7. ~~28.7.~~ Continuing obligations

The obligations in this Clause ~~28~~31(*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

31.7.1. ~~28.7.1.~~ the date on which all amounts payable by the Borrower under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

31.7.2. ~~28.7.2.~~ the date on which such Finance Party otherwise ceases to be a Finance Party.

## 32. PRESS RELEASES AND PUBLIC ANNOUNCEMENTS

32.1. No Party shall issue any press release or make any public announcement relating to the existence or subject matter of this Agreement without the prior written approval of the other

Party; provided, however, that any Party may make any public disclosure it believes in good faith is required by applicable law or any listing or trading agreement concerning its publicly-traded securities (in which case the disclosing Party will use its reasonable best efforts to advise the other Party prior to making the disclosure to the extent practicable and permissible under applicable law); and provided, further, that each of the Parties may make internal announcements to their respective employees that are not inconsistent in any material respects with the Parties' prior public disclosures regarding the transactions contemplated by this Agreement.

32.2. The Borrower specifically consents to the Lenders making public and private announcements relating to the existence or subject matter of this Agreement with the prior written approval of the Borrower of a specific announcement, which approval may not be unreasonably withheld or delayed.

33.    **29.-WAIVER OF IMMUNITY**

The Borrower irrevocably and unconditionally waives any right it may have to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

34.    **30.-COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

35. SOLE AGREEMENT

The Finance Documents constitute the sole record of the agreement between the Parties in regard to the subject matter thereof.

36. NO IMPLIED TERMS

No Party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded in any Finance Document in regard to the subject matter thereof.

37. INDEPENDENT ADVICE

Each Obligor acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all of the provisions of the Finance Documents and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, each of the Obligors acknowledges that all of the provisions of each Finance Document and the restrictions therein contained are part of the overall intention of the Parties in connection with the Finance Documents.

**SECTION 10**  
**GOVERNING LAW AND ENFORCEMENT**

38. ~~31.~~ **GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by South African law.

39. ~~32.~~ **JURISDICTION**

39.1. ~~32.1.~~ Save as may be otherwise specified in any Finance Document to the contrary, the Borrower hereby irrevocably and unconditionally consents and submits to the jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg), (or any successor to that division) in regard to all matters arising from the Finance Documents (including a dispute relating to the existence, validity or termination of any Finance Document or any non-contractual obligation arising out of or in connection with any Finance Document) (a Dispute).

39.2. ~~32.2.~~ The Borrower agrees that the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that division) is the most appropriate and convenient court to settle Disputes and accordingly:

39.2.1. ~~32.2.1.~~ the Borrower will ~~not~~ argue to the contrary;

39.2.2. ~~32.2.2.~~ the Borrower hereby waives any objection to the jurisdiction of that court on the grounds of venue or *forum non conveniens* or any similar grounds; and

39.2.3. ~~32.2.3.~~ the Borrower consents to service of process in any manner permitted by applicable law.

39.3. This Clause ~~32.3~~ is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction as it sees fit. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

**SECTION 11**  
**RIGHT TO QUOTE**

[Note: This clause will not form part of the OMSFIN or the FG version]

**40. RIGHT TO QUOTE**

40.1. If the Borrower wishes to hedge its interest rate risk in respect of the Facility and/or:

40.1.1. the facility in an amount of approximately R1 500 000 000 to be made available by Old Mutual Specialised Finance Proprietary Limited on or about the Signature Date; and/or

40.1.2. the facility in an amount of approximately R1 500 000 000 to be made available by Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) on or about the Signature Date.

the Borrower shall advise the Original Lender of such intention and shall afford the Original Lender an opportunity to quote for such hedging arrangements.

40.2. The Borrower undertakes to afford the Original Lender an opportunity to match the rates and terms offered to the Borrower by other financial institutions in respect of the hedging arrangements contemplated in clause 40.1 before it enters into an agreement with such financial institution(s) and shall not enter into such agreement before the expiry of the 20 Business Day period contemplated in this clause 40.2. If the Original Lender has, within 20 Business Days of the Borrower affording the Original Lender such opportunity to match the rates and terms offered to the Borrower by other financial institutions in respect of the hedging arrangements contemplated in clause 40.1, offered to enter into such hedging arrangements on the same rates and terms, the Borrower shall enter into such hedging arrangements with the Original Lender.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

## SCHEDULE 1 CONDITIONS PRECEDENT

1. Borrower
  - 1.1 ~~1.1.-~~ A copy of the constitutional documents of the Borrower.
  - 1.2 ~~1.2.-~~ A certified excerpt of the minutes of the board of directors of the Borrower containing the resolution passed by the board of directors of the Borrower ~~approving the Borrowing Programme and Corporate Plan.~~
    - 1.2.1 ~~resolving that the Borrower enter into this Agreement; and~~
    - 1.2.2 ~~approving the Borrowing Programme and Corporate Plan and confirming that this Facility is approved in terms of the Borrowing Programme and the Corporate Plan.~~
  - 1.3 ~~1.3.-~~ A specimen of the signature of each person authorised to bind the Borrower to obligations in respect of borrowing by the Borrower by the resolution referred to in paragraph 1.2.
  - 1.4 ~~1.4.-~~ The Compliance Certificate duly executed by the Group Chief Executive of the Borrower.
2. Finance Documents
 

A duly executed original of each of this Agreement and the Utilisation Request.
3. "Know your customer" requirements
 

All information and documentation required by ~~an~~the Original Lender in relation to the Borrower to enable it to comply with its obligations under, and the requirements of, law and its own "know your customer" procedures and confirmation from the Original Lender that the Borrower has complied with such requirements.
4. Legal opinions
 

A legal opinion of Edward Nathan Sonnenbergs Inc confirming, inter alia:

  - 4.1 ~~the validity and enforceability of this Agreement; and~~
  - 4.2 ~~A legal opinion of Poswa Incorporated, confirming, inter alia, the validity and enforceability of this Agreement as well as the Borrower's capacity and authority to enter into this Agreement;~~  
(in terms of the PFMA and any other relevant law).
5. Other documents, evidence and events
  - 5.1 ~~5.1.1.-~~ A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.

5.2            5.1.2. The financial statements in respect of the end of the Borrower's financial-half year ending on 30 September 2014-31 March 2015.

5.1.3.        ~~Poswa Incorporated have inspected a copy of the Borrower's Corporate Plan and Borrowing Programme for the purposes of the provision of the legal opinion contemplated in paragraph 4 hereof.~~

5.3            5.1.4. Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 1511 (Raising Fee), Clause 17 (Costs and expenses) and any other provision of this Agreement have been paid or will be paid by the first Utilisation date, set out in Clause 11.

5.1.5.        ~~No material change in the credit market conditions has occurred.~~

5.4            Confirmation from the Borrower or the Lenders have received evidence to their satisfaction that the locomotives acquired or to be acquired by it from China North Rail and China South Rail, utilising the proceeds of the Facility, under the Borrower's capital investment programme, are fit for the purpose for which they were or are to be acquired.

5.5            The Lenders have received evidence to their satisfaction that the Borrower has, on or about the Signature Date, entered into:

5.5.1        a credit facility agreement with Old Mutual Specialised Finance Proprietary Limited in terms of which an amount of R1 500 000 000 was made available by Old Mutual Specialised Finance Proprietary Limited for utilisation by the Borrower; and

5.5.2        5.1.6. No event of default has occurred on the part of the Borrower prior to Utilisation. a credit facility agreement with Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) in terms of which an amount of R1 500 000 000 was made available by Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) for utilisation by the Borrower.

6.            Lender

Approval by the Lender's Investment, Executive and/or Credit Committee of the Facility (in the form of a letter or email to that effect).



**SCHEDULE 2**  
**FORM OF UTILISATION REQUEST**

From: Transnet SOC Ltd

To: Lender

Dated: [•]

Dear Sirs

**Transnet SOC Ltd - ZAR ~~1 000 2 500 000 000,00~~000 000,00 Term Facilities Agreement dated [•] (the Agreement)**

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a ~~Loan~~Utilisation on the following terms:  
  
 Proposed Utilisation Date: [•] (or, if that is not a Business Day, the next Business Day)  
  
 Amount: ZAR~~1 000 000 000,00~~000 000,00 (~~one billion rand~~[•] ([•]))
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
4. The proceeds of this ~~Loan~~Utilisation should be credited to [•].
5. This Utilisation Request is irrevocable.

Yours faithfully

.....  
authorised signatory for  
Transnet SOC Ltd

**SCHEDULE 3**  
**FORM OF TRANSFER CERTIFICATE**

To: Transnet SOC Ltd as Borrower

From: [The Existing Lender] (the Existing Lender) and [The New Lender] (the New Lender)

Dated:

Transnet SOC Ltd - ZAR12 500 000 000,00 - ZAR3 000 000 000,00 Term Facilities Agreement dated  
[•] (the Agreement)

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause ~~20.44~~23.4 (*Procedure for transfer*):
  - 2.1. The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by cession and delegation, and in accordance with Clause ~~20.4~~23.4 (*Procedure for transfer*), all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participations in the ~~Loan~~Loans under the Agreement as specified in the Schedule.
  - 2.2. The proposed Transfer Date is [•].
  - 2.3. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause ~~23.22~~26.2 (*Addresses*) are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause~~20.3.3~~ 23.3.3.
4. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
5. This Transfer Certificate [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by South African law.
6. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

**THE SCHEDULE**

**Commitment/rights and obligations to be transferred**

*[insert relevant details]*

*[Facility Office address, fax number and attention details for notices and account details for payments,]*

[Existing Lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Borrower and the Transfer Date is confirmed as [•].

By:

**SCHEDULE 4**  
**FORM OF CONFIDENTIALITY UNDERTAKING**

Transnet SOC Ltd - ZAR12 500 000 000,00 - ZAR3 000 000 000,00 Term Facilities Agreement dated  
 [•] (the Agreement)

THIS CONFIDENTIALITY UNDERTAKING is dated [ ] and made between:

(1) [ ]; and

(2) [ ].

Either party (in this capacity the "Purchaser") may from time to time consider acquiring an interest from the other party (in this capacity the "Seller") in the Agreement which, subject to the Agreement, may be by way of novation, assignment, the entering into, whether directly or indirectly, of a sub-participation or any other transaction under which payments are to be made or may be made by reference to one or more relevant Finance Documents and/or the Company or by way of investing in or otherwise financing, directly or indirectly, any such novation, assignment, sub-participation or other transaction (each an "Acquisition"). In consideration of the Seller agreeing to make available to the Purchaser certain information in relation to each Acquisition it is agreed as follows:

**1. CONFIDENTIALITY UNDERTAKING**

The Purchaser undertakes in relation to each Acquisition made or which may be made by it (a) to keep all Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 (*Permitted Disclosure*) below and to ensure that all Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition is protected with security measures and a degree of care that would apply to the Purchaser's own confidential information and (b) until that Acquisition is completed, to use the Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition only for the Permitted Purpose.<sup>12</sup>

**2. PERMITTED DISCLOSURE**

The Purchaser may disclose in relation to each Acquisition made or which may be made by it:

- 2.1. to any of its Affiliates and any of its or their officers, directors, employees, professional advisers and auditors such Confidential Information as the Purchaser shall consider appropriate if any person to whom such Confidential Information is to be given pursuant to

---

<sup>12</sup> Please note that the Permitted Purpose ceases to apply to Confidential Information supplied to the Purchaser in relation to an Acquisition on completion of that Acquisition however if that Acquisition does not complete, the prospective purchaser is not permitted to use such Confidential Information for any purpose other than the Permitted Purpose.

this paragraph 2.1 is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to such Confidential Information;

2.2. subject to the requirements of the Agreement, to any person:

- (a) to (or through) whom the Purchaser assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations which it may acquire under the Agreement such Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition as the Purchaser shall consider appropriate if the person to whom such Confidential Information is to be given pursuant to this sub-paragraph (a) of paragraph 2.2 has delivered a letter to the Purchaser in equivalent form to this undertaking;
- (b) with (or through) whom the Purchaser enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to the Agreement or the Company such Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition as the Purchaser shall consider appropriate if the person to whom such Confidential Information is to be given pursuant to this sub-paragraph (b) of paragraph 2.2 has delivered a letter to the Purchaser in equivalent form to this undertaking;
- (c) to whom information is required or requested to be disclosed by any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation such Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition as the Purchaser shall consider appropriate; and

2.3. notwithstanding paragraphs 2.1 and 2.2 above, Confidential Information to such persons to whom, and on the same terms as, a Finance Party is permitted to disclose such Confidential Information under the Agreement to which that Acquisition relates, as if such permissions were set out in full in this undertaking for the purposes of that Acquisition and as if references in those permissions to Finance Party were references to the Purchaser for the purposes of that Acquisition.

### 3. NOTIFICATION OF DISCLOSURE

The Purchaser agrees in relation to each Acquisition made or which may be made by it (to the extent permitted by law and regulation) to inform the Seller:

- 3.1. of the circumstances of any disclosure of Confidential Information made pursuant to sub-paragraph (c) of paragraph 2.2 above except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

- 3.2. upon becoming aware that Confidential Information relating to that Acquisition has been disclosed in breach of this undertaking.

#### 4. RETURN OF COPIES

If the Purchaser does not enter into an Acquisition and the Seller so requests in writing, the Purchaser shall return all Confidential Information supplied to the Purchaser by the Seller in relation to that Acquisition and destroy or permanently erase (to the extent technically practicable) all copies of such Confidential Information made by the Purchaser and use all reasonable endeavours to ensure that anyone to whom the Purchaser has supplied any such Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that the Purchaser or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under sub-paragraph (c) of paragraph 2.2 above.

#### 5. CONTINUING OBLIGATIONS

The obligations in this undertaking are continuing and, in particular, shall survive and remain binding on the Purchaser in relation to each Acquisition made or which may be made by it until (a) if the Purchaser acquires an interest in the Agreement to which that Acquisition relates by way of novation, the date on which the Purchaser acquires such an interest; (b) if the Purchaser enters into that Acquisition other than by way of novation, the date falling [twelve] months after termination of that Acquisition; or (c) in any other case [twelve] months after the date on which Confidential Information in relation to that Acquisition was supplied to the Purchaser by the Seller.

#### 6. NO REPRESENTATION; CONSEQUENCES OF BREACH, ETC

The Purchaser acknowledges and agrees that, in relation to each Acquisition made or which may be made by it:

- 6.1. neither the Seller, nor any member of the relevant Group nor any of the Seller's or the relevant Group's respective officers, employees or advisers (each a "**Relevant Person**") (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information supplied by the Seller to the Purchaser in relation to that Acquisition or any other information supplied by the Seller to the Purchaser in relation to that Acquisition or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information supplied by the Seller to the Purchaser in relation to that Acquisition or any other information supplied by the Seller to the Purchaser in relation to that Acquisition or be otherwise liable to the Purchaser or any other person in respect of the Confidential Information supplied by the Seller to the Purchaser in relation to that Acquisition or any such information; and
- 6.2. the Seller or members of the relevant Group may be irreparably harmed by the breach of the terms of this undertaking and damages may not be an adequate remedy; each Relevant

Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this undertaking by the Purchaser.

## 7. ENTIRE AGREEMENT: NO WAIVER; AMENDMENTS, ETC

- 7.1. This undertaking constitutes the entire agreement between the Seller and the Purchaser in relation to the Purchaser's obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- 7.2. No failure or delay in exercising any right or remedy under this undertaking will operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any further exercise thereof or the exercise of any other right or remedy under this undertaking.
- 7.3. The terms of this undertaking and the Purchaser's obligations under this undertaking may only be amended or modified by written agreement between the parties.

## 8. INSIDE INFORMATION

The Purchaser acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Purchaser undertakes not to use any Confidential Information for any unlawful purpose.

## 9. NATURE OF UNDERTAKINGS

The undertakings given by the Purchaser in this undertaking are given to the Seller and are also given for the benefit of the Company and each other member of the Group.

## 10. GOVERNING LAW AND JURISDICTION

- 10.1. This undertaking and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of any Acquisition) are governed by South African law.
- 10.2. The courts of South Africa have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this undertaking (including a dispute relating to any non-contractual obligation arising out of or in connection with either this undertaking or the negotiation of any Acquisition)

## 11. DEFINITIONS

In this undertaking terms defined in the relevant Agreement (as defined below) shall, unless the context otherwise requires, have the same meaning and:

"Company" means Transnet SOC Ltd, a company incorporated in South Africa with registration number 1990/000900/30.

"Confidential Information" means, in relation to each Acquisition, all information relating to the Company, the Group, the relevant Finance Documents, the relevant Facility and/or that Acquisition which is received by the Purchaser in relation to the relevant Finance Documents or

the relevant Facility from the Seller or any of its affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (d) is or becomes public information other than as a direct or indirect result of any breach by the Purchaser of this undertaking; or
- (e) is identified in writing at the time of delivery as non-confidential by the Seller or its advisers; or
- (f) is known by the Purchaser before the date the information is disclosed to the Purchaser by the Seller or any of its affiliates or advisers or is lawfully obtained by the Purchaser after that date, from a source which is, as far as the Purchaser is aware, unconnected with the relevant Group and which, in either case, as far as the Purchaser is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"Group" means, in relation to each Acquisition, the Company and its subsidiaries for the time being (as such term is defined in the Companies Act-2006).

"Permitted Purpose" means, in relation to each Acquisition, considering and evaluating whether to enter into that Acquisition.

This undertaking has been entered into on the date stated at the beginning of this undertaking.



## SCHEDULE 5 TIMETABLES

Delivery of a duly completed  
Utilisation Request (Clause 5.1  
*(Delivery of a Utilisation Request)*

11.0 a.m. (Johannesburg time) 35  
Business Days before the proposed  
Utilisation Date

JIBAR is ~~fixed~~set

Quotation Day as of 11:00 a.m.  
Johannesburg time in respect of JIBAR

**SCHEDULE 6**  
**PERMITTED TRANSFEREES**

**1. Local Banks**

- Absa Bank Limited
- FirstRand Bank Limited
- Investec Bank Limited
- Nedbank Limited
- The Standard Bank of South Africa Limited

**2. Foreign Banks**

- Bank of China Limited
- Banco Unico
- Ecobank
- China Construction Bank Corporation
- China Development Bank Limited
- Standard Chartered Bank Limited
- State Bank of India
- KfW IPEX-Bank GmbH
- ABN Amro Bank N.V.
- Allied Irish Bank
- Barclays Bank plc
- BNP Paribas S.A.
- Citibank, N.A.
- Credit Agricole
- Deutsche Bank Group AG
- Goldman Sachs International
- HSBC Bank PLC
- JPMorgan Chase Bank, N.A.

- Société Générale
- Sumitomo Mitsui Banking Corporation
- The Royal Bank of Scotland N.V.
- UBS AG

### 3. Financial Institutions

- Absa Fund Managers Limited
- Allan Gray Proprietary Limited
- Ashburton Fund Managers (Pty) Ltd
- Atlantic Asset Management
- Cadiz Asset Management (Pty) Ltd
- Coronation Fund Managers Limited
- Element Fund Management Proprietary Limited
- Futuregrowth Limited Asset Management Proprietary Limited, in its capacity as agent for and on behalf of its clients
- Grindrod Asset Management Proprietary Limited
- Investec Asset Management Proprietary Limited
- Liberty Group Limited
- Marriott Asset Management (Proprietary) Limited
- MMI Holdings Limited
- Old Mutual Investment Group (South Africa) Proprietary Limited, in its capacity as agent for and on behalf of its clients
- Old Mutual Life Assurance Company (South Africa) Limited
- Old Mutual Specialised Finance Proprietary Limited
- Prescient Investment Management (Pty) Ltd
- Prudential Portfolio Managers South Africa (Proprietary) Limited
- Public Investment Corporation Limited
- Sanlam Capital Markets Limited
- Sanlam Life Insurance Limited

- Stanlib Limited
- Taquanta Investment Holdings (Proprietary) Limited
- Vantage Capital

4. **Affiliates**

Any Affiliates, Subsidiaries, Holding Companies or Related Funds of the banks or financial institutions listed in this Schedule 6 and any fund or entity managed by any of them or any of their Affiliates.

**SCHEDULE 7  
LENDER INSTRUCTION**

**From:** [INSERT DETAILS OF LENDERS] (the "Lenders")

**To:** Transnet SOC Ltd (the "Borrower").

Dated [ ]

Dear sirs,

Term facility agreement dated [ ] between the Borrower and the Lenders in terms of which the Lenders made a facility available to the Borrower for an amount of R1-0002 500 000 000 (one billion Rand) (the "Term Facility Agreement")

1. Reference is made to the Term Facility Agreement. Capitalised terms used but not defined herein shall bear the meaning ascribed thereto in the Term Facility Agreement.
2. This is a Lender Instruction issued pursuant to clause ~~7.5.1.3~~7.7.1.3 of the Term Facility Agreement.
3. We hereby notify you that a Negative Rating Event contemplated in clause ~~7.5.1.3~~7.7.1.3 of the Term Facility Agreement has occurred.
4. You are hereby instructed to [provide us with a Qualifying Guarantee duly executed by a Qualifying Guarantor by no later than the date which is 45 (forty five) days calculated from the date on which you receive this Lender Instruction] / [prepay the ~~Loan~~Loans in full, together with accrued unpaid interest thereon, and all other amounts accrued and owing under the Finance Documents by no later than the date which is 5 (five) Business Days calculated from the date on which you receive this Lender Instruction.] [Note: Delete whichever is inapplicable]
- ~~5. Your obligation to deliver the Qualifying Guarantee shall be deemed to be fulfilled against satisfaction of the conditions contemplated in clause 7.7 of the Term Facility Agreement.~~
5. ~~6.~~ The failure by you to [prepay the ~~Loan~~Loans] / [deliver the Qualifying Guarantee to the Lenders] [Note: Delete whichever is inapplicable] in accordance with this Lender Instruction as read with the Term Facility Agreement constitutes an Event of Default.

Yours faithfully

Signed for and on behalf of:

\_\_\_\_\_  
[Insert names of applicable Lenders]

**SCHEDULE 8  
INCREASED MARGIN NOTICE**

**From:** [INSERT DETAILS OF LENDERS] (the "Lenders")

**To:** Transnet SOC Ltd (the "Borrower").

Dated [ ]

Dear sirs,

Term facility agreement dated [ ] between the Borrower and the Lenders in terms of which the Lenders made a facility available to the Borrower for an amount of R1-0002 500 000 000 (~~one billion Rand~~) (the "Term Facility Agreement")

1. Reference is made to the Term Facility Agreement. Capitalised terms used but not defined herein shall bear the meaning ascribed thereto in the Term Facility Agreement.
2. This is an Increased Margin Notice issued pursuant to clause ~~7.5.1.2~~7.7.1.2 of the Term Facility Agreement.
3. We hereby notify you that a Negative Rating Event contemplated in clause ~~7.5.1.2~~7.7.1.2 of the Term Facility Agreement has occurred.
4. You are hereby notified that the Lenders have exercised their right to increase the Margin contemplated in clause ~~1.1.64.11~~1.1.66.1 of the Term Facility Agreement and, accordingly, the Increased Margin for all purposes in terms of the Term Facility agreement is [ ]% with effect from the date on which the Negative Rating Event contemplated in paragraph 3 occurred.
5. Kindly confirm your acceptance of the Increased Margin by no later than the date which is 5 (five) Business Days calculated from the date of receipt by you of this Increased Margin Notice.

Yours faithfully

Signed for and on behalf of:

\_\_\_\_\_  
[Insert names of applicable Lenders]

**SCHEDULE 9**  
**INCREASED MARGIN ACCEPTANCE NOTICE**

**From:** Transnet SOC Ltd (the "Borrower");

**To:** [INSERT DETAILS OF LENDERS] (the "Lenders").

Dear sirs,

Dated [ ]

Term facility agreement dated [ ] between the Borrower and the Lenders in terms of which the Lenders made a facility available to the Borrower for an amount of R1-0002 500 000 000 (~~one billion~~ Rand) (the "Term Facility Agreement")

1. Reference is made to the Term Facility Agreement. Capitalised terms used but not defined herein shall bear the meaning ascribed thereto in the Term Facility Agreement.
2. This is an Increased Margin Acceptance Notice issued pursuant to clause 7.5.1.27.7.1.2 of the Term Facility Agreement.
3. We hereby notify you that we have received your Increased Margin Notice dated [ ]. The Increased Margin contemplated in such Increased Margin Notice is acceptable to us and we hereby irrevocably and unconditionally confirm our acceptance of the Increased Margin contemplated therein.
4. We represent and warrant that the signatory of this Increased Margin Acceptance Notice is duly authorised to execute same.

Yours faithfully

Signed for and on behalf of:

---

Transnet SOC Ltd

**SCHEDULE 10  
COMPLIANCE CERTIFICATE**

**From:** Transnet SOC Ltd (the "Borrower");

**To:** [INSERT DETAILS OF LENDERS] (the "Lenders").

Dated [ ] [To be dated as of the Utilisation Date]

Dear sirs,

Term facility agreement dated [ ] between the Borrower and the Lenders in terms of which the Lenders made a facility available to the Borrower for an amount of R1-0002 500 000 000 (~~one billion Rand~~) (the "Term Facility Agreement")

1. Reference is made to the Term Facility Agreement. Capitalised terms used but not defined herein shall bear the meaning ascribed thereto in the Term Facility Agreement.
2. This is the Compliance Certificate required to be delivered pursuant to the provisions of clause 1.4 of Schedule 1 to the Term Facility Agreement.
3. I (in my capacity as Group Chief Executive of the Borrower) hereby certify that as of the first Utilisation Date -
  - 3.1.1. borrowing the ~~Total Commitments~~ Commitment would not cause any borrowing or similar limit binding on the Borrower to be exceeded;
  - 3.1.2. the documents delivered under paragraph 1 of Schedule 1 to the Term Facility Agreement are a true copy of the original, correct, complete and in full force and effect as at the date of this Agreement;
  - 3.1.3. no Default has occurred or is continuing;
  - 3.1.4. no event or circumstance has to the best of the Borrower's knowledge and belief (having made reasonable enquiry), occurred that, individually or when taken into consideration with any other facts or circumstances then in existence, has had or is likely to have a Material Adverse Effect;
  - 3.1.5. all of the representations and warranties given in Clause ~~16~~18 (*Representations*) are true, accurate and complete in all material respects;
  - 3.1.6. the Borrower has complied with all legislation which is binding on it and which governs the conclusion of this Agreement, including the South African Public Finance Management Act, 1999 (PFMA);
  - 3.1.7. the person who has executed the Term Facility Agreement on behalf of the Borrower has been duly authorised to do so in terms of the PFMA and in terms of all other Authorisation requirements which bind the Borrower;



- 3.1.8. the credit rating in respect of the Borrower, is a Moody's Global Scale Long Term Local Currency Rating of Baa1~~2~~ and a S&P International Scale Long Term Local Currency Issuer Credit rating of BBB+;
- 3.1.9. the Borrower has submitted its Borrowing Programme to the Minister of Finance in respect of its current financial period;
- 3.1.10. the final printers template for the Corporate Plan of the Borrower provided by the Borrower to the Lenders on [insert date] outlining the Borrower's forecast financial position as at [insert date] accurately represents the Borrower's financial position as at the date same was given to the Lender; and
- 3.1.11. there have been no amendments to the constitutional documents of the Borrower and the Borrower's constitutional documents are in full force and effect and have not been superseded, amended or repealed in any respect by any subsequent resolution.

Signed for and on behalf of:

---

Transnet SOC Ltd

Name:

(who warrants his authority to execute this Compliance Certificate)

Title: Group Chief Executive

**SCHEDULE 11**  
**OPERATIONS DISCLOSURE SCHEDULE**

[To be updated by the Borrower]

Transnet SOC Ltd ("Transnet") has small operations outside of South Africa in Swaziland, Botswana, Namibia, Mozambique and Zimbabwe. Transnet has direct operations in Zimbabwe Freight Logistics particularly rail operations. Offices are maintained in Zimbabwe solely for the administrative purposes.

The following are the cash flow activities generated from operations between Transnet and Zimbabwe (all figures relate to the actual cash flows for the year up to 2014[2015]):

1. Wagon hire – paid to Zimbabwe R4 738 000,00
2. Wagon Hire – revenue received R24 556 000,00
3. Haulage collected – R676 000,00
4. Shunting services – R900 000,00
5. Office hire – R153 000,00
6. Revenue from export services – R140 986 000,00
7. Revenue for imports services – R24 405,00

Wagons move in and out of the country regularly, they are not held in Zimbabwe but are constantly roaming.

**SCHEDULE 12**  
**AMORTISATION SCHEDULE**

Date	Capital Payments
30/09/2015	-
31/03/2016	-
30/09/2016	-
31/03/2017	-
30/09/2017	-
31/03/2018	-
30/09/2018	-
31/03/2019	-
30/09/2019	-
31/03/2020	-
30/09/2020	75,000,000
31/03/2021	75,000,000
30/09/2021	75,000,000
31/03/2022	75,000,000
30/09/2022	75,000,000
31/03/2023	75,000,000
30/09/2023	27,500,000
31/03/2024	27,500,000
30/09/2024	27,500,000
31/03/2025	27,500,000
30/09/2025	27,500,000
31/03/2026	27,500,000
30/09/2026	27,500,000
31/03/2027	27,500,000
30/09/2027	27,500,000
31/03/2028	27,500,000
30/09/2028	27,500,000
31/03/2029	27,500,000
30/09/2029	27,500,000
31/03/2030	27,500,000
30/09/2030	27,500,000
31/03/2031	27,500,000
30/09/2031	27,500,000
31/03/2032	27,500,000
30/09/2032	27,500,000
31/03/2033	27,500,000

**SCHEDULE 13-12**  
**LITIGATION DISCLOSURE SCHEDULE**

[To be updated by the Borrower]

**Litigation Disclosure in the matter between Pretorius and Another v Transnet SOC Ltd ("Transnet") and Others –Certification of Class Action**

1. ~~The applicants are, respectively, pensioner members of the Transport Pension Fund ("the TPF") and the Transnet Second Defined Benefit Fund ("the TSDBF") (collectively referred to as "the Funds").~~
2. ~~The applicants have brought an application for, inter alia, the following relief:~~
  - 2.1. ~~That they be granted leave to institute a class action in terms of section 38(c) of the Constitution as representatives of the Funds against one or more or all of the TPF, the TSDBF, Transnet, the Minister of Public Enterprises, the Minister of Finance and the President of the Republic of South Africa;~~
  - 2.2. ~~Save for those members of the TSDBF who elect to opt out, Kruger be permitted to act as representatives of all members of the TSDBF and to institute class action; and~~
  - 2.3. ~~Save for the members of the TPF who elect to opt out, Pretorius be permitted to act as representatives of all members of that Fund and to institute class action.~~
3. ~~The matter involves two phases. The first is the application by Messrs Pretorius and Kruger to constitute a class and for the court to recognize them as the correct representatives to bring an action on behalf of that class as aforementioned. The second phase is, once the class has been established and Pretorius and Kruger have been vested with the authority to litigate on behalf of the class, the actual bringing of the claim against Transnet and the other defendants by way of an action.~~
4. ~~The claim, if the class action is constituted, would be for a total amount of approximately R80 billion allegedly owed by Transnet to the members of the Funds as a "legacy debt".~~
5. ~~The essence of relief sought by the applicants in their draft particulars of claim (considered as a whole) is an order which directly or indirectly seeks to compel Transnet to fund the "legacy debt" in respect of the Funds based upon an (incorrect) assumption that section 16 of the Succession Act read with section 12 of the Transnet Pension Fund Act created a legal duty on the part of Transnet to pay the "legacy debt". Counsel's opinion in relation to the question of the legacy debt is that Section 16(2) of the Succession Act does not purport to create liability on the part of Transnet to either of the funds. Instead, it creates a guarantee on the part of the State for the obligations of Transnet to those funds, and provides the mechanisms to quantify the limits of that guarantee. Simply put, according to counsel the so-called "legacy debt" is no debt at all but simply an amount determined in terms of section 16(2) of the Succession Act in order to fix the limit of the State guarantee.~~
6. ~~The certification application was heard on 21 and 22 July 2014. On 31 July 2014 the Pretoria high court granted the order certifying the class action against Transnet, the TSDBF, and the TPF.~~

~~Transnet and the Funds unsuccessfully applied for leave to appeal. They then petitioned the Supreme Court of Appeals (SCA) for a special leave to appeal.~~

- ~~7. On 17 December 2014 the SCA dismissed the petition on the grounds that Transnet and the Funds had no prospects of success on appeal.~~
- ~~8. Transnet (as well as the Funds) took a decision not to appeal the certification any further, but to defend the class action on the merits when it is constituted.~~
- ~~9. At this time, no action is pending as summons is yet to be issued against Transnet and the Funds.~~

*[Signature Pages to Follow]*

SCHEDULE 13  
COVENANT COMPLIANCE CERTIFICATE

From: Transnet SOC Ltd

To: Lender

Dated: [•]

Dear Sirs

Transnet SOC Ltd - ZAR 2 500 000 000 Term Facilities Agreement dated [•] (the Agreement)

1. We refer to the Agreement. This is a Covenant Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Covenant Compliance Certificate unless given a different meaning in this Covenant Compliance Certificate.
2. We confirm that: [insert details of covenants to be certified].
3. [We confirm that no Default is continuing].

Yours faithfully

.....  
authorised signatory for  
Transnet SOC Ltd

.....  
for and on behalf of  
[name of auditors of the Borrower]

SCHEDULE 14  
EXISTING SECURITY

**SIGNATORIES**

**THE BORROWER**

Signed by: \_\_\_\_\_

Designation: \_\_\_\_\_

\_\_\_\_\_  
for and on behalf of

**TRANSNET SOC Ltd**

Address: 43<sup>rd</sup> Floor, Carlton Centre  
150 Commissioner Street  
Johannesburg  
2001

Telephone number: +27 11 308 2627

Fax number: +27 11 308 2699

Attention: The Group Treasurer



**THE LENDER**

Signed by: \_\_\_\_\_

Designation: \_\_\_\_\_

\_\_\_\_\_

For and on behalf of

Signed by: \_\_\_\_\_

Designation: \_\_\_\_\_

\_\_\_\_\_

For and on behalf of

Address:

Telephone number:

Fax number:

Attention:

Document comparison by Workshare Compare on 02 September 2015  
05:17:26 PM

Input:	
Document 1 ID	file:///K:/Fin/SL003/Nedbank/Transnet/DV/Original Draft from Transnet SOC Ltd (Term Facility Agreement).docx
Description	Original Draft from Transnet SOC Ltd (Term Facility Agreement)
Document 2 ID	file:///K:/Fin/SL003/Nedbank/Transnet/DV/Transnet SOC Ltd Term Facility Agreement (New).docx
Description	Transnet SOC Ltd Term Facility Agreement (New)
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved-deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	851
Deletions	1274
Moved from	22
Moved to	22
Style change	0
Format changed	0
Total changes	2169



**CLOSING CHECKLIST – TERM FACILITY AGREEMENT**

**entered into between**

**NEDBANK LIMITED**

**and**

**TRANSNET SOC LTD**

**as at**

**2 September 2015**

**DEFINED TERMS<sup>1</sup>**

"**Borrower**" means Transnet Soc Ltd;

"**ENS**" means Edward Nathan Sonnenbors Inc.; and

"**Original Lender**" means Nedbank Limited Registration No. 1951/000009/06.

KEY	
	Outstanding
	In agreed form
	Complete
	Factual determination

<sup>1</sup> Please note that all terms used herein shall bear the meanings ascribed thereto (directly or incorporated by reference) in the Term Facility Agreement.

CLAUSE NO.	FINANCE DOCUMENT'S	PARTIES	COMMENT / STATUS	RESPONSIBILITY
1.	Term Facility Agreement	<ul style="list-style-type: none"><li>• Borrower</li><li>• Original Lender</li></ul>	Outstanding	ENS

CLAUSE NO.	CLOSING DOCUMENTS	PARTIES		COMMENT / STATUS	RESPONSIBILITY
1.	Borrower excerpt of minutes	Borrower		Outstanding	Borrower
2.	Borrower compliance certificate	Borrower		Outstanding	ENS

CLAUSE NO.	DOCUMENT	CONDITIONS PRECEDENT	COMMENT / STATUS	RESPONSIBILITY
<b>Schedule 1 INITIAL CONDITIONS PRECEDENT</b>				
<b>1.</b>	<b>Borrower</b>			
1.1.	Term Facility Agreement	A copy of the constitutional documents of Borrower	Outstanding	• Borrower
1.2.	Term Facility Agreement	A certified excerpt of the minutes of the board of directors of the Borrower (i) resolving that the Borrower enter into the Term Facility Agreement; and (ii) approving the Borrowing Programme and Corporate Plan and confirming that the Facility is approved in terms of the Borrowing Programme and Corporate Plan	Outstanding – see "Closing Documents" section above	• Borrower
1.3.	Term Facility Agreement	A specimen of the signature of each person authorised to bind the Borrower pursuant to the resolution referred to in 1.2 above	Outstanding above	• Borrower
1.4.	Term Facility Agreement	A duly executed Compliance Certificate by the Group Chief Executive of the Borrower	Outstanding	• Borrower
<b>2.</b>	<b>Finance Documents</b>			
	Term Facility Agreement	A duly executed original of the Term Facility Agreement	Outstanding – see "Finance Documents" section above	• Borrower • Original Lender



CLAUSE NO.	DOCUMENT	CONDITIONS PRECEDENT	COMMENT / STATUS	RESPONSIBILITY
Schedule 1	INITIAL CONDITIONS PRECEDENT			
3.	KYC			
	Term Facility Agreement	Such documentation and other evidence as is reasonably requested by the Original Lender for FICA purposes	Outstanding	<ul style="list-style-type: none"> <li>Original Lender</li> </ul>
4.	Legal Opinion			
	Term Facility Agreement	ENS Legal Opinion	Outstanding	<ul style="list-style-type: none"> <li>ENS</li> </ul>
5.	Other documents, evidence and events			
5.1.	Term Facility Agreement	A copy of each other Authorisation or other document, opinion or assurance which the Original Lender considers to be necessary	Outstanding	<ul style="list-style-type: none"> <li>Borrower</li> </ul>
5.2.	Term Facility Agreement	Financial statement in respect of the end of the Borrower's financial year ending 31 March 2015	Outstanding	<ul style="list-style-type: none"> <li>Original Lender</li> </ul>
5.3.	Term Facility Agreement	Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 11 ( <i>Raising Fee</i> ), Clause 17 (Costs and Expenses) and any other provision of the Term Facility Agreement have been paid or will be paid by the date set out in Clause 11	Outstanding	<ul style="list-style-type: none"> <li>Borrower</li> </ul>

CLAUSE NO.	DOCUMENT	CONDITIONS PRECEDENT	COMMENT / STATUS	RESPONSIBILITY
<b>Schedule 1</b>				
5.4.	Term Facility Agreement	Confirmation from the Borrower or the Lenders have received evidence to their satisfaction that the locomotives acquired or to be acquired by it from [China North Rail] and [China South Rail], utilising the proceeds of the Facility, under the Borrower's capital investment programme, are fit for the purpose for which they were or are to be acquired	Outstanding	<ul style="list-style-type: none"> <li>Borrower</li> </ul>
5.5.	Term Facility Agreement	<p>The Lenders have received evidence to their satisfaction that the Borrower has, on or about the Signature Date, entered into;</p> <ol style="list-style-type: none"> <li>a credit facility agreement with Old Mutual Specialised Finance Proprietary Limited in terms of which an amount of R1 500 000 000 was made available by Old Mutual Specialised Finance Proprietary Limited for utilisation by the Borrower; and</li> <li>a credit facility agreement with Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) in terms of which an amount of R1 500 000 000 was made available by Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) for utilisation by the Borrower</li> </ol>	Outstanding	<ul style="list-style-type: none"> <li>Borrower</li> </ul>
6.	<b>Lender</b>			
	Term Facility Agreement	Approval by the Lender's Investment, Executive and/or Credit Committee of the Facility, in the form of a letter or email	Outstanding	<ul style="list-style-type: none"> <li>Borrower</li> <li>Original Lender</li> </ul>

CLAUSE NO.	DOCUMENT	CONDITIONS PRECEDENT	COMMENT / STATUS	RESPONSIBILITY
<b>FURTHER CONDITIONS PRECEDENT</b>				
4.2.1.	Term Facility Agreement	No Default is continuing or would result from the proposed Utilisation	Facility determination	Original Lender
4.2.2.	Term Facility Agreement	No Economic Failure has occurred	Facility determination	Original Lender
4.2.3.	Term Facility Agreement	The Borrower's Issuer Credit Rating is a Moody's Long Term Local Currency Rating of Baa2 or better and an S&P Long Term Local Currency Issuer Credit rating of BBB+ or better	Facility determination	Original Lender
4.2.4.	Term Facility Agreement	The Repeating Representations to be made by the Borrower are true in all material respects	Facility determination	Original Lender
4.2.5.	Term Facility Agreement	<p>The Lenders have received evidence to their satisfaction that the Borrower has delivered utilisation requests to each of:</p> <ol style="list-style-type: none"> <li>1. Old Mutual Specialised Finance Proprietary Limited pursuant to the facility</li> <li>2. Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) pursuant to the facility,</li> </ol> <p>pursuant to which the Borrower requested utilisations of such facilities in an amount which bears the same proportion of such facilities as the proportion which the Utilisation Request bears to the Facility</p>	Facility determination	Original Lender







**Noluthando Masondo**


---

**From:** Edward Thomas Transnet Corporate JHB  
**Sent:** 27 January 2014 17:58  
**To:** nivenp@regiments.co.za  
**Cc:** Anoj Singh Corporate JHB  
**Subject:** Fwd: Letter of Intent - Transnet Second Defined Benefit Fund  
**Attachments:** LOI Advisory Services related to the designing and implementation of a new best practice framework for the TSDBF.pdf; ATT00001.htm; image001.gif; ATT00002.htm; image002.gif; ATT00003.htm; image003.gif; ATT00004.htm; image004.gif; ATT00005.htm

Dear Niven,

Please find the LOI for the TSDBF.

Kind regards,

 Edward Thomas

Sent from my iPhone

Begin forwarded message:

From: "Duran Balbathur Transnet Corporate JHB" <Duran.Balbathur@transnet.net>  
 To: "npillay@regiments.co.za" <npillay@regiments.co.za>  
 Cc: "Edward Thomas Transnet Corporate JHB" <Edward.Thomas@transnet.net>  
 Subject: Letter of Intent - Transnet Second Defined Benefit Fund

Good Day Niven,

I trust that all is well.

Please find attached the LOI related to the Transnet Second Defined Benefit Fund. Please can this be signed and sent back .

Thanks,

Regards

Duran

[Description: cid:image001.gif@01CD68E3.2371AE10]

Duran Balbathur  
 Group Procurement

Transnet SOC Ltd [www.transnet.net](http://www.transnet.net)<<http://www.transnet.net/>>

[Description: C:\Users\Thulani.Mtshwene\AppData\Program Files\Common Files\Microsoft  
 Shared\Stationery\transnetTel.gif] 011 308 1284

[Description: C:\Users\Thulani.Mtshwene\AppData\Program Files\Common Files\Microsoft Shared\Stationery\transnetCell.gif]072 241 8058

[Description: C:\Users\Thulani.Mtshwene\AppData\Program Files\Common Files\Microsoft Shared\Stationery\transnetEmail.gif]Duran.Balbathur@trasnet.net<mailto:Duran.Balbathur@trasnet.net>



[Logo]

DISCLAIMER: The information contained in this email and its attachments is both confidential and subject to copyright. If you are not the intended recipient, you are hereby notified not to read, disclose copy or use the contents thereof in any manner whatsoever, but are kindly requested to notify the sender and delete it immediately. This e-mail message does not create any legally binding contract between Transnet SOC LTD and the recipient, unless the contrary is specifically stated. Statements and opinions expressed in e-mails may not represent those of Transnet SOC LTD. While Transnet will take reasonable precautions, it cannot give any guarantee or warrant that this email will be free of virus infections, errors, interception and, therefore, cannot be held liable for any loss or damages incurred by the recipient, as a result of any of the above-mentioned factors.

## **REPORT 2(B) – EXHIBIT 11**

Letter of Intent between Transnet and Regiments Capital For the provision of services in respect to the Appointment of a Service Provider to Design and Implement a New Best Practice Framework for the Transnet Second Defined Benefit Fund **TRANSNET**



Regiments Capital Pty (Ltd)  
91 Central Street  
Houghton  
Johannesburg  
2148

**Date:** 23 January 2014

**Reference:** LOI/ GSM/14/01/0979

**Attention:** Niven Pillay  
**Email :** nivenp@regiments.co.za

Dear Niven Pillay

**RE : LETTER OF INTENT**

**FOR THE PROVISION OF SERVICES RELATED TO THE APPOINTMENT OF A SERVICE PROVIDER TO DESIGN AND IMPLEMENT A NEW BEST PRACTICE FRAMEWORK FOR THE TRANSNET SECOND DEFINED BENEFIT FUND.**

We wish to inform you that we are pleased to confirm that your company has been identified as the bidder. **For the provision of services in respect to the appointment of a service provider to design and implement a new best practice framework for Transnet's second defined benefit fund for a period of Thirteen (13) months [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) **Regiments Capital Pty Ltd [the Service Provider]** [Registration Number 2004/023761/07].

Transnet wishes to contract with the Service Provider for the provision of the Services which, if mutually agreed by the Parties, will be documented and effected in accordance with Thirteen [13] Month contract **[the Agreement]** between the Parties.

The Parties are desirous of successfully concluding negotiations and thereafter executing the Agreement to enable the Service Provider to provide the Services detailed in Annexure A hereto.

In the interim, the Parties have identified the Services which Transnet would wish the Service Provider to provide prior to finalisation and execution of the Agreement between the Parties. Conditions of the current requirement are specified in sections 2 and 3 below.

<b>Transnet SOC Ltd</b>	Carlton Centre	P.O. Box 72501
Registration Number	150 Commissioner	Parkview, Johannesburg
1990/000900/30	Street	South Africa, 2122
	Johannesburg	T +27 11 308 3001
	2001	F +27 11 308 2638

**Directors:** ME Mkwana (Chairman) B Molefe\* (Group Chief Executive) MA Fanucchi Y Forbes HD Gazendam NP Mnxasana N Moola NR Njeke TH Shamba IB Skosana  
E Tshabalala DJ Tshepe A Singh\* (Group Chief Financial Officer)  
\*Executive

Group Company Secretary: ANC Cebo

LOI Reference No GSM 13/05/0769

www.transnet.net



Letter of Intent between Transnet and Regiments Capital For the provision of services in respect to the Appointment of a Service Provider to Design and Implement a New Best Practice Framework for the Transnet Second Defined Benefit Fund.

**The purpose of this Letter of Intent [LOI] is to document the intentions of the Parties in respect of the required Services and it will remain in effect until the Agreement is signed by both Parties, or until 90 [Sixty] 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 Service Provider's offer GSM/14/01/0979, Transnet wishes to finalise pricing, the details of the Services to be provided and other matters in order to conclude the Agreement with the Service Provider. In the interim, the under-mentioned conditions precedent will apply:

- 1.1 The Parties agree to work towards concluding an Agreement to provide the Services over a period of Thirteen [13] months commencing 23 January 2014 and expiring on 31 January 2015.
- 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 Service Provider commences the provision of such Services as required in the interim, 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 the service levels associated with the provision of the Services by the Service Provider.
- 1.4 Transnet will discuss with the Service Provider and agree the terms and conditions of the Agreement.

**2. Interim Service Requirement**

- 2.1. The Service Provider agrees to promptly and immediately commence with the provision of the Service(s) as detailed in this LOI.
- 2.2. Should negotiations between the Parties break down for any reason, the Service Provider may immediately invoice Transnet Corporate Centre for all reasonable, actual costs incurred prior to that date and such amount shall become due and payable by Transnet.

**3. Contract Fees and Deliverables [inclusive of 2.1 above]**

The contract Fees for provision of the Services, which the Parties in the interim accept, are understood by both Parties. [subject to signing of the Agreement based on the terms and conditions] . As per the proposal supplied by Regiments Capital Pty (Ltd) payments will be made against milestone achievements as indicated by the work order with reference to Annexure A.



### 3.1. Contract Fees

Contract Fees for the design scope are fixed at R15 217 176 and payable on delivery of each milestone. The contract fees for the implementation scope is fixed at R20 000 000. Disbursements will be capped at 10% (Three Million, Five hundred and twenty one thousand seven hundred and seventeen Rands only). However, payments on disbursements will be based on the actual invoices received by Transnet as outlined in our terms and conditions. Contract Fees and related costs are quoted in South African currency and are exclusive of Value-Added Tax [VAT].

### 3.2. Payment terms

Payment will be effected by Transnet within 30 [thirty] days from date of month-end statement for deliverables effected during that month.

### 3.3. Deliverables

3.3.1. To design a new best-practice framework to reduce risk and boost the performance of the TSDBF, which will lead to increased benefits to TSDBF members, with reduced risk to the TSDBF and ultimately Transnet. The detailed breakdown for the deliverables with relevant milestones as attached in Annexure A.


3.3.2. To implement the new best-practice framework that was designed. The detailed breakdown for the deliverables with relevant milestones will be negotiated further once approval to commence this part of the scope has been approved by Transnet. The delivery of this deliverable is subject to Transnet approval and Transnet reserves its right not to continue with this deliverable and Transnet reserves its right not to use Regiments Capital (Pty) Ltd to deliver this deliverable.

### 3.4 Miscellaneous

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. Supplier Development Commitments

Supplier Development is part of the qualifying criteria. The Service Provider has committed that 42% of the contract value will be utilised against Supplier Development initiatives. The Service Provider is required to provide Transnet with a comprehensive Supplier Development plan within 45 days from the LOI confirmation date. This Supplier Development Plan is subject to Transnet approval and will form part of the Master Agreement.



Letter of Intent between Transnet and Regiments Capital For the provision of services in respect to the Appointment of a Service Provider to Design and Implement a New Best Practice Framework for the Transnet Second Defined Benefit Fund.

The contract documents will be drafted by Transnet and be subject thereafter to final agreement between both Parties. Pending the final approval of the Agreement by both Parties, the Parties hereby attest to the speedy resolution of all outstanding matters in order to finalise the Agreement within 90 [Ninety] days from date of signature hereof.

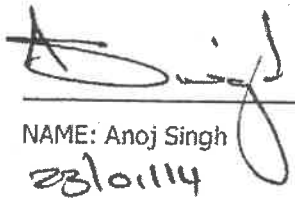
Thus duly signed at ..... JHB ..... South Africa on this ..... 23<sup>rd</sup> ..... day of  
January ..... 2014 on behalf of:

**Transnet SOC Ltd**

**WITNESSES**

1. 

2. ....

  
NAME: Anoj Singh  
23/01/14

Thus duly signed at ..... South Africa on this ..... day of  
..... 20..... on behalf of:

**Regiments Capital Pty (Ltd)**

**WITNESSES**

1. ....

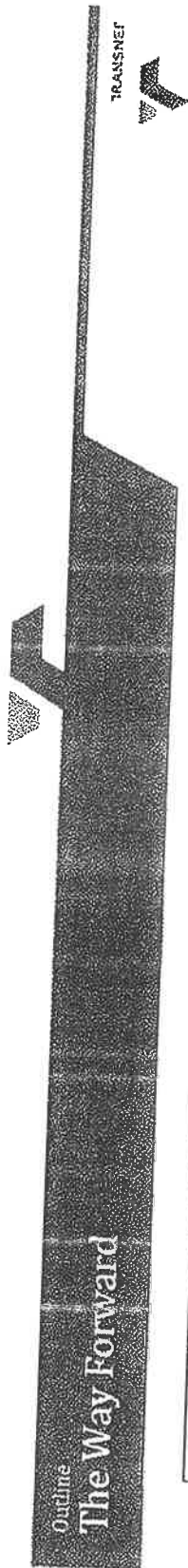
2. ....

NAME:



Letter of Intent between Transnet and Regiments Capital For the provision of services in respect to the Appointment of a Service Provider to Design and Implement a New Best Practice Framework for the Transnet Second Defined Benefit Fund.

**ANNEXURE A - SERVICE DELIVERABLES & ASSOCIATED FEES/COSTS**



**The Liability-Plus road map**

**Design**

- The design phase consists of three parts: Conceptual Design, Operational Design and Systems Design.

**Operational Implementation**

- The solution is implemented according to the design and the processes, staff and systems are put in place.

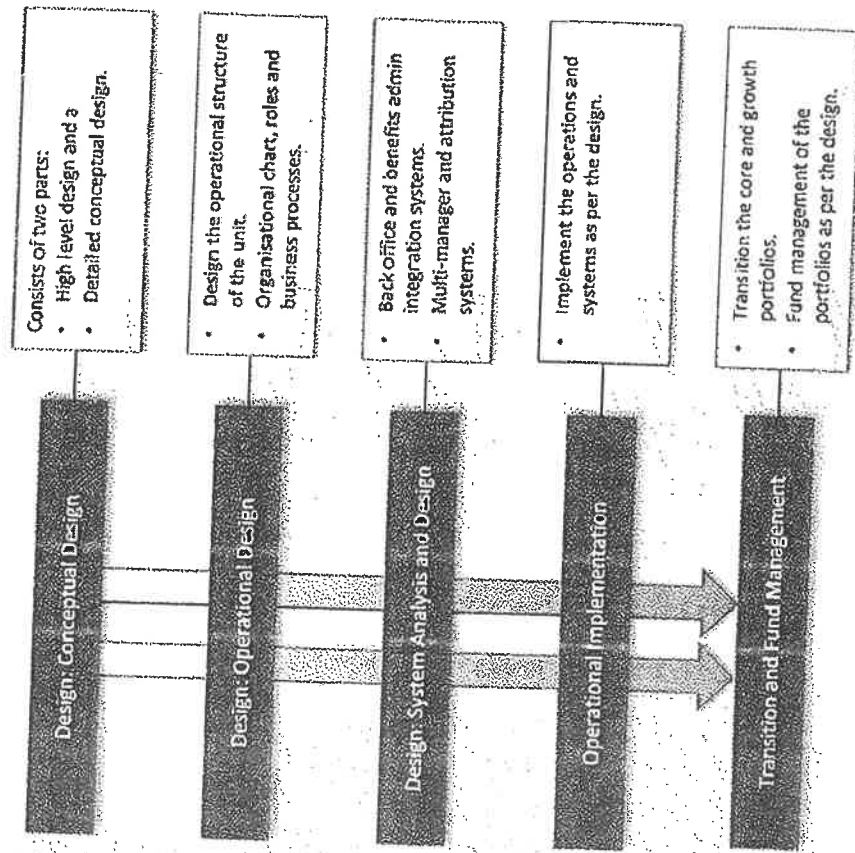
**Transition and Fund Management**

- After the fund is transitioned, fund management will commence.

This proposal focuses on **Design Phase** of the overall project. This comprise:

- High-level conceptual design
- Detailed conceptual design
- Operational Design
- System Analysis and Design

The specific details of the **Operational Implementation** will be determined from the design phase.



Transnet SOC Ltd  
Registration Number  
1990/000900/30

Directors: ME Mwanazi (Chairman)  
E Tshabalala DLJ Tshope A Singh  
Executive

Group Company Secretary: ANC Ceba

LOI Reference No GSM 13/05/0769

Design

## Conceptual Design

### High Level Conceptual Design

High level design of the LDI solution including :

- Core and Growth Portfolios
  - Definition and explanation of the purposes of the core and growth portfolios
  - Anticipated asset allocation between core and growth based on the fund liability profile.
  - Anticipated asset allocation and tenor in core and growth portfolios.
- Risk Budgeting and Attribution
  - High-level design of risk budgeting and attribution framework.
  - Discussion of anticipated factors for *on-benchmark* and *off-benchmark* risks.
- Multi-manager Framework
  - High level design of the methodology used for managing satellite portfolios run by third party managers.
- Integration Framework
  - High level design of roles and responsibilities between the core LDI manager and the satellite managers.
  - Integration design between core and satellite portfolios discussed.
- Next Steps
  - High level design and full mandate outline will be submitted to the board for approval before moving to the *Detailed Conceptual Design*.

TRANSNET



### Detailed Conceptual Design

Detailed design of the solution based on the high-level design.

- Core Portfolio
  - Initial optimal hedge design detailing exact bonds and swaps to be used. Overall asset allocation to the core portfolio determined. Overall credit limits and leverage levels determined for optimum hedge efficiency determined. When designing the portfolio, cognizance is taken of the current state of the fund in order to optimise transition.
  - Valuation methodology and curves to be used. Risk budgeting framework for *on-benchmark* risk factors such as: interest rate, inflation, liquidity, credit etc.
  - Online actuarial model designed and liability rebalance period determined.
- Growth Portfolio
  - Detailed design of growth portfolio and asset allocation. The current position is analysed to ensure optimal transition.
  - Risk budgeting framework for *off-benchmark* risk factors such as: FX, inflation, liquidity, credit etc.
- Multi-manager Framework and Integration
  - Detailed design of multi-manager framework. Detailed design of integration between LDI core and satellite managers.
- Performance Attribution and Reporting Design
  - Design the attribution methodology and reports. Design the reporting requirements and frequency.

## Implementation

### Operational and Systems Implementation

#### Operational and Systems Implementation

Once the design is finalised the process moves on to implementation.

The Implementation Phase involves:

- Setting up the operational structures.
- Staffing the respective roles.
- Implementing the systems to manage the fund.
- Implementing the reports as per the design.
- Fund manager selection for the growth portfolio via an RFP process in conjunction with the Fund.

The some of the above steps can be performed in parallel.

TRANSNET



#### Next Step: Fund Transitioning and Fund Management

Once implementation has completed the fund can be transitioned to the new LDI framework.

- **Core:** The core portfolio is transitioned and core management can then commence.
- **Growth Portfolio:** Satellite managers will have been appointed as per the Conceptual Design during the implementation phase. The growth portfolio will be transitioned and management can then commence.

Design

## Design Project Plan and Milestones

TRANSNET



Start Date	13-Jan	20-Jan	27-Jan	03-Feb	10-Feb	17-Feb	24-Feb	03-Mar	10-Mar	17-Mar	24-Mar	31-Mar
Week	1	2	3	4	5	6	7	8	9	10	11	12
Conceptual Design - High Level												
Conceptual Design - Detailed												
Operational Design												
System Analysis and Design												

Start Date	07-Apr	14-Apr	21-Apr	28-Apr	05-May	12-May	19-May	26-May	02-Jun	09-Jun	16-Jun	23-Jun
Week	13	14	15	16	17	18	19	20	21	22	23	
Conceptual Design - High Level												
Conceptual Design - Detailed												
Operational Design												
System Analysis and Design												

Milestones	
03-Feb	High Level Conceptual Design Complete Report for Approval
10-Feb	Detailed Conceptual Design Begins
21-Apr	Detailed Conceptual Design Complete for Approval
28-Apr	Operational and System Design Begins
23-Jun	Design Complete

*[Handwritten signature]*





# Design Pricing

Fee Schedule	Hourly Rate (Rands)
--------------	---------------------

Executive Management	3500
Actuaries	3370
Senior Consultants	2200
Associates	1200

Design Pricing	Total Weeks	Total (Rands)
Conceptual Design - High Level	2.8	2,703,176
Conceptual Design - Detailed	10.0	6,257,000
Operational Design	5.0	3,128,500
System Analysis and Design	5.0	3,128,500
		15,217,176

**Design**  
The design consists of four parts. The bulk of the design takes place in the first two steps.  
In order to complete the *high-level conceptual design* step in the given time frame, a large team is assigned to this task.

**Operational Implementation**  
After the completion of the design, implementation can commence. The exact details of implementation will take direction from the recommendations made in the design phase.  
The table on the right shows the indicative pricing for the *Implementation phase*.

**Indicative Pricing for Operational Implementation**  
Setting up the operational structures  
Staffing the respective roles  
Implementing software systems to manage the fund  
Implementing the reports as per the design  
Fund manager selection for the growth portfolio  
Transition strategy document  
Indicative Price (Rands) 20,000,000

## Contact Details

TRANSNET



Niven Pillay

Regiments Capital

Tel: +27 11 715 0300

nivenp@regiments.co.za

Sybil Kekana

Regiments Capital

Tel: +27 11 715 0300

sybilk@regiments.co.za

Brett Mahon

Regiments Capital

Tel: +27 11 715 0300

brettm@regiments.co.za

Michael Barber

Regiments Capital

Tel: +27 11 715 0300

michaelb@regiments.co.za

## Pension Fund Review of TSDPF and TPF

Regiments Capital was appointed to perform a review of the asset management framework and performance of the TSDPF and TPF. A summary of our key findings and recommendations are presented below:

A best-practice LDI strategy would reduce risk and have better outcomes for all stakeholders than the current framework.

- Best-practice liability-driven investment takes the state of the art beyond the limitations of the past.
- We used to talk about "de-risking" a fund by matching the liabilities. Now, we talk about finding an optimal risk and return balance, taking assets and liabilities into account.
- Excessive precision can be reduced, and low yields improved.
- Capital efficiency can be improved.
- Large unhedged interest rate risk can be immunised to within risk tolerances.
- A risk budgeting framework can be implemented to optimise risk management.
- An holistic solution can replace the existing fragmentary approach.
- Active management can reduce costs and improve flexibility and efficiency. Passive solutions are too inefficient for highly customised applications.

The actuarial model is sound.

- The actuarial models used for the TSDPF and TPF are sound.
- Different discounting is used for each fund. We would recommend looking at using market curves for both, where possible.
- Mortality tables and marriage assumptions are important, and should be verified for accuracy.

The current matched portfolio represents only a partial risk hedge, and its performance can be significantly enhanced.

- In the TSDPF, the current matching portfolio has a low yield, uses substantial capital, and only protects against some of the interest rate risk. It has a substantial unhedged exposure of around R3.4m per basis point after 2021.
- In the TPF, a similar approach is used, with around R3.7m per basis point of remaining exposure.
- There is potential to unlock significant value by migrating to an integrated framework. Overall yields can be improved, risk can be reduced, and more assets should be available for growth.

The current unmatched portfolio asset managers have performed well against their mandates, but these mandates are grounded in a sub-optimal framework.

- Asset managers currently employed by both funds have performed well against their benchmarks, registering an overall outperformance.
- However, the overall framework of each fund is suboptimal.
  - The framework is not holistic, and matching and growth are considered in isolation.
  - Surplus is the ultimate measure of a fund, so risk and return on the full asset-liability portfolio need to be optimised to manage it effectively.
  - The funds are taking unintended risks due to unhedged interest rate risks, and mismatches between fund objectives and manager benchmarks.

A new overarching LDI framework in line with best-practices needs to be designed

- The new framework will focus on the full asset-liability performance. It will also integrate tightly with actuarial modelling, ensuring that results do indeed increase the fund surplus without any valuation surprises.
- Capital freed from matching can be employed for growth, and the remaining assets employed for matching can also generate a positive return themselves.

### Immediate Next Steps

1. Design and implement an overarching LDI framework in line with best practices, to meet each fund's goals more effectively. It is quite possible to simultaneously reduce risk as well as boost performance significantly.
2. Optimise and transition the matched portfolio. The existing matching portfolios would be absorbed into the framework and transitioned optimally to meet the desired risk, return and capital requirements.
3. Implement a risk-budgeting framework with performance attribution. Risk and return opportunities are analysed, and risk budgets assigned to managers in a self-correcting framework, ensuring continued optimality. Existing manager performance and mandates will be taken into account.

Our models show that the TSDPF should be able to support increases (actual or discretionary) of 75% of CPI, along with 13<sup>th</sup> cheques, provided that the fund performs at a level of CPI+6%.

We believe that it is possible for a well-designed, best-practice LDI framework to deliver this level of performance consistently.

## **REPORT 2(B) – EXHIBIT 12**

**Noluthando Masondo**

---

**From:** Edward Thomas Transnet Corporate JHB <Edward.Thomas@transnet.net>  
**Sent:** 27 January 2014 17:54  
**To:** nivenp@regiments.co.za  
**Cc:** Anoj Singh Corporate JHB  
**Subject:** Fwd: Signed Copy Loco Advisory - Transnet  
**Attachments:** image001.gif; ATT00001.htm; image002.gif; ATT00002.htm; image003.gif; ATT00003.htm; image004.gif; ATT00004.htm; Loco Advisory Signed Copy.pdf; ATT00005.htm

Dear Niven,

Please find the Loco advisory LOI.

Please note the comments from Anoj on the last page.

Kind regards

Edward Thomas

Sent from my iPhone

Begin forwarded message:

**From:** "Duran Balbathur Transnet Corporate JHB" <Duran.Balbathur@transnet.net>  
**To:** "npillay@regiments.co.za" <npillay@regiments.co.za>  
**Cc:** "Cindy Felix Transnet Corporate" <Cindy.Felix@transnet.net>, "Edward Thomas Transnet Corporate JHB" <Edward.Thomas@transnet.net>  
**Subject:** Signed Copy Loco Advisory - Transnet

Good Day Niven,

I trust that you are well.

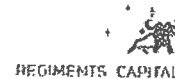
Please find attached the signed copy. Please take note of the "subject too" items included as written text on the signed copy.

Thanks

Regards,

Duran





**Transnet (SOC) Limited**  
**Carlton Centre**  
**150 Commissioner Street**  
**Johannesburg**  
**2001**

**Date: 20 January 2014**  
**Reference: GSM/12/05/0447**

Dear Anoj Singh,

**RE: Transaction advisory services related to the acquisition of the 1064 locomotives over a period of 12 (twelve) months**

Transnet had expressed its intent to procure transaction advisory services from a consortium of firms (namely, McKinsey Incorporated, Regiments Capital, Advanced Rail Technologies, Nedbank Capital and Utho Capital) pursuant to its letter of intent dated 30 November 2012. The various services that were foreseen at the time are grouped under four categories (contracting strategy, business case validation, technical evaluation and execution, and PMO, integration and stakeholder management). Subsequent to the issuance of the original letter of intent, the realisation for a conflict of interest arising from engaging Nedbank Capital has made the reallocation of the tasks that were originally thought to be handled by Nedbank to other members of the consortium.

This document is therefore intended to clarify the updated scope of transaction advisory work that Regiments Capital will perform in relation to the acquisition of the 1064 locomotives.

The Parties to this agreement are:

- (1) Transnet SOC Limited (Transnet), a State Owned Company and the procurer of the transaction advisory services (Registration Number 1990/000900/30); together with
- (2) Regiments Capital (Regiments).

Transnet wishes to contract with Regiments for the provision of the following transaction advisory services. The services will be offered over a period of 12 (twelve) months.

#### **NOW THEREFORE IT IS AGREED**

##### **1. Conditions Precedent**

In line with the original LOI dated 30 November 2012 and the subsequent changes in reallocation of tasks, Transnet wishes to finalize the details of the services to be provided by Regiments. The undermentioned conditions precedent will apply:

- 1.1. The Parties agree to work towards concluding the Agreement for the Provision of Transaction Advisory services for a period of 12 (twelve) months, commencing 22 January 2014, in relation to the structuring and efficiency of the funding required for the acquisition of the 1064 locomotives. The work may extend beyond the 12 (twelve)



month period, at no additional cost to Transnet if the deliverables are not achieved for whatever reason, as this engagement is output-based as opposed to time based.

- 1.2. Regiments agrees to promptly commence with the provision of the services as detailed in section 2 below.

## 2. Contract Fees and Deliverables

The proposed fee structure for the services to be rendered is understood by both parties to involve a retainer applicable every month and a performance fee on the funding raised at interest rates below the benchmark.

- 2.1. 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 total retainer.

- 2.1.1. Deliverables (except the actual fund raising) must be executed for a fee of R15 million over a period of 12 (twelve) months.

- 2.1.2. A performance fee equal to 20% of the savings achieved against the benchmark interest rate. The benchmark interest rate is the interest rate at which Transnet was able to raise its most recent funding prior to 1 January 2014.

- 2.2. Payment will be effected at equal monthly instalments by Transnet, against presentation by Regiments of undisputed Tax Invoices.

- 2.3. Key deliverables and project timeframe.

The key project deliverables over the 12 (twelve) month period include the activities and deliverables described below that enhance the cost and structuring of the funding for the acquisition of the 1064 locomotives.

The objective of this 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:

- 2.3.1. Determining the development and sustainability impact of the acquisition by:

- 2.3.1.1. Conducting socio-economic impact studies

- 2.3.1.2. Determining the acquisition's impact on the environment

- 2.3.1.3. Examining the project's contribution to regional integration

- 2.3.2. Conducting a collateral assessment

- 2.3.2.1. Conduct collateral assessment to the component level to determine the potential for securing concessionary funding through export credit agencies, investment promotion funds/agencies and in the form of vendor finance.

- 2.3.2.2. Present a detailed analysis with specific recommendations to be pursued and executed.



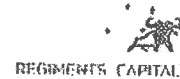


- 2.3.2.3. Investigate how asset/component can be secured in order to optimise balance sheet impact and cost of financing within the context of Transnet policy with respect to asset ownership and control.
- 2.3.3. Developing and implementing a best practice risk management framework to the transaction
  - 2.3.3.1. 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.
  - 2.3.3.2. Cost escalation risk management
  - 2.3.3.3. Legal and regulatory risks
  - 2.3.3.4. Balance sheet impact – The balance sheet post acquisition and post financing will be evaluated and any necessary responses will be detailed and executed.
- 2.3.4. Developing an optimal risk management solution by examining solutions that are embedded in the acquisition agreement, funding agreement and separate risk overlays.
- 2.3.5. 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:
  - 2.3.5.1. Local and international banks
  - 2.3.5.2. Local and international development finance institutions
  - 2.3.5.3. Export credit agencies
  - 2.3.5.4. Vendor financing
- 2.3.6. Providing execution programme management and support in respect to funding:
  - 2.3.6.1. Assist in the preparation and management of capital raising related tenders/RFPs and RFIs.
  - 2.3.6.2. Participate in road shows and assisting with the preparation of information memorandums.
  - 2.3.6.3. Participate in the negotiation of the commercial terms of funding from the shortlisted funders.
  - 2.3.6.4. Participate in the fulfilment of conditions precedent required by the funders.
  - 2.3.6.5. Participate in the due diligence exercise and responding to all credit queries raised by the funders.

### 3. Miscellaneous

- 3.1. Neither Party shall reveal the content of this agreement 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 start-up procedures.

- 3.2. This agreement may only be amended or modified in writing by the authorised signatories of the Agreement.

Thus duly signed at ....., South Africa on this ..... day of ..... 20..... on behalf of:

#### TRANSNET SOC LIMITED

NAME: Anoj Singh

DESIGNATION: Group Chief Financial Officer

23/01/14.

#### WITNESSES

1.

2. ....

Subject to items listed below:

Thus duly signed at HOWARTH TON, South Africa on this 20th day of JAN 2014 on behalf of:

#### REGIMENTS CAPITAL

NAME: Niven Pillay

DESIGNATION: Executive Director

#### WITNESSES

3.

4.

- The contract for the supply of these services is with McKinsey and Regiments Capital is contracted to them.
- In terms of section 2 there will not be a performance fee for fundraising thus 2.12 will be removed as well.
- Expenses will be capped at 10% and paid on approved actual costs in terms of Transnets policies & procedures
- Payment will be made to McKinsey
- Costs and payment against this scope may not be made above R9 million without specific approval by Transnet

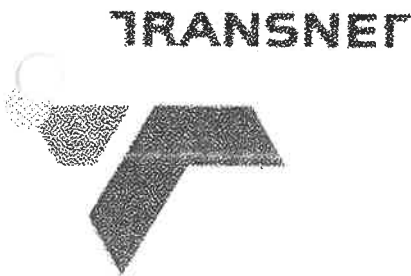
**Ramouna Vermeulen      Corporate   JHB**

---



**From:** Edward Thomas Transnet Corporate JHB  
**Sent:** 22 January 2014 08:25 AM  
**To:** Ramouna Vermeulen      Corporate JHB  
**Subject:** FW: Loco Tender Contract split  
**Attachments:** Letter Confirming Conflict of Interest.pdf; LOI Mckinsey Incorporated - Acquisition of 1064 Locos.pdf



Please print

R 38,72




Edward Thomas  
 Executive Manager  
 Group ISCM  
 Transnet SOC Ltd

 (011) 308 2251  
 (086) 758 3630  
[www.transnet.net](http://www.transnet.net)

 083 400 4295  
 [edward.thomas@transnet.net](mailto:edward.thomas@transnet.net)

**From:** Duran Balbathur Transnet Corporate JHB  
**Sent:** 21 January 2014 03:13 PM  
**To:** Edward Thomas Transnet Corporate JHB  
**Subject:** Loco Tender Contract split

 Hi Eddie,

The breakdown in terms of the split per company and relevant phases they responsible for can be found on the "Annexure Fees/Costs" section of the attached LOI

TRANSNET



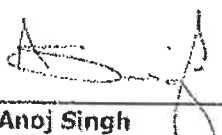
McKinsey Incorporated  
88 Stella Street  
Sandown Mews East  
Sandton  
2196

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

Dear Mr. Michael Kloss

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

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

  
**Anoj Singh**  
Group Chief Financial Officer  
Date 10/11/13.

Transnet SOC Ltd  
Registration Number  
1990/000900/30

Carlton Centre  
150 Commissioner  
Street  
Johannesburg  
2001

P.O. Box 72501  
Parkview, Johannesburg  
South Africa, 2122  
T +27 11 308 3001  
F +27 11 308 2630

Directors: ME Mkwana (Chairman) B Molefe (Group Chief Executive) NK Choubey MA Fanucchi Y Forbes HD Gatzertant N Mofa HR Mshinga IM Shamba  
IB Skosana J Tshabalala DJ Tshabe A Singh (Chief Financial Officer)  
Executive Indian

www.transnet.net

Group Company Secretary: ANC Ceba

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

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 12/05/0447

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 .....SAES....., South Africa on this .....04..... day of

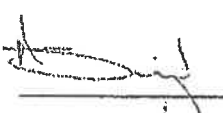
.....December..... 2017.. on behalf of:

**Transnet SOC Ltd**

**WITNESSES**

**1** .....

**2** .....

  
NAME: Anoj Singh

Designation: Group Chief Financial Officer



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

#### 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  
Business case validation  
Technical evaluation and execution  
PMO, integration and stakeholder management  
**Total Loco**

MO/J&P  
Regiments/Burlington  
McK  
McK + ART  
Regiments/Burlington + McK

R1.4m  
R8.7m  
R6.6m  
R13.5m  
R7.6m  
**R35.2m**

→ 2.9m

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

<p><b>Business case integration and re-write</b></p>	<p><b>Led by McK</b>  <b>Re-write of the business case, approved by Board and DPE</b></p> <ul style="list-style-type: none"> <li>• Integrate 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</li> <li>• 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</li> <li>• Adequately address DPE queries.</li> </ul>	<p>Rewritten business case that is approved of by the Transnet Board and DPE</p>
<p><b>PMO</b></p>	<p><b>Led by Regiments/Burlington with McK leadership oversight</b></p> <ul style="list-style-type: none"> <li>• Monitor overall process timelines against milestones</li> <li>• Setting up and preparing documentation for steering committees and formal reviews</li> <li>• Escalate issues through regular project steering</li> <li>• Prepare external stakeholder communications</li> </ul>	<p>Detailed project plan with milestones  Clear governance structure that creates an integrated view of the entire process across all advisors  Effective steering committee meetings - clear agenda with decisions to be made, all information required for decisions circulated beforehand, issues logged and resolved  Aligned external stakeholders</p>

LOI Reference No: GSM 12/05/0447

## **REPORT 2(B) – EXHIBIT 13**



## TO WHOM IT MAY CONCERN

CERTIFIED EXCERPT OF THE DRAFT MINUTES OF THE CLOSED SESSION BOARD OF DIRECTORS OF TRANSNET SOC LTD MEETING NO. 14/6 HELD ON 21 OCTOBER 2014 AT 10:15 IN BOARDROOM 4901, 49<sup>TH</sup> FLOOR, CARLTON CENTRE, 150 COMMISSIONER STREET, JOHANNESBURG

**"6.2 Amended Borrowing Plan for the 2013/14FY**

**RESOLVED** that the Board approved the proposed amendment of the Funding Requirement in the Borrowing Plan from R15.1bn to R23.8bn for the 2014/15FY.

14/6/5

**6.6 Funding Initiatives**

**RESOLVED** that the Board approved the following:

- The proposed USD600m 15 years loan facility from the *Export Development Canada and Investec*.
- The proposed R6bn 15 years funding facility from the *Industrial and Commercial Bank of China*.
- Authorised the GCE and GCFO to negotiate, and conduct necessary activities to give effect to the loan facilities including the giving of locomotives as security.

14/6/9"

Certified a true excerpt.

Kind regards

**AYANDA CEBE**

Group Company Secretary

Transnet SOC Ltd

Date: 6 October 2015

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:** LC Mabaso (Chairperson) B Molefe\* (Group Chief Executive) Y Forbes GJ Mahlalela PEB Mathekga ZA Nagdee VM Nkonyane MR Seleke SD Shane BG Stagman PG Williams A Singh\* (Group Chief Financial Officer)

\*Executive

Group Company Secretary: ANC Ceba

[www.transnet.ni](http://www.transnet.ni)

## **REPORT 2(B) – EXHIBIT 14**

**Noluthando Masondo**

**From:** Phetolo Ramosebudi Transnet Corporate JHB  
**Sent:** 11 September 2015 10:25  
**To:** Daniel.roy@trillianam.co.za  
**Subject:** Fwd: Transnet - Term Facility Agreement #0398485#  
**Attachments:** ATT00001.htm; ATT00002.htm; ATT00003.htm; ATT00004.htm; Transnet SOC Ltd Term Facility Agreement.docx; ATT00005.htm; Term Facility Agreement (Compare).docx; ATT00006.htm

Sent from my iPad

Begin forwarded message:

**From:** "Baron, E. (Efi)" <EfiB@Nedbank.co.za>  
**To:** "Eric Wood" <EricW@regiments.co.za>, "Niven Pillay" <NivenP@regiments.co.za>, "Tewodros Gebreselasie" <TewodrosG@regiments.co.za>, "Phetolo Ramosebudi Transnet Corporate JHB" <Phetolo.Ramosebudi@transnet.net>, "Moleboge Lekwane Transnet Corporate JHB" <Moleboge.Lekwane@transnet.net>, "Rhulani Madale Transnet Corporate JHB" <Rhulani.Madale@transnet.net>  
**Cc:** "Jonathan Muller" <JMuller@omsfin.com>, "Joseph Njoroge" <JNjoroge@omsfin.com>, "Lightfoot Jason" <jasonl@futuregrowth.co.za>, "Barnes, C. (Charles)" <CharlesBa@Nedbank.co.za>, "Pietersen, D. (Darryl) (Corporate Banking)" <DarrylP@Nedbank.co.za>, "Juta, D. (Darshak)" <DarshakJ@Nedbank.co.za>, "Dawid Chifa (OMInvest)" <DChifa@oldmutualinvest.com>, "Dube, G. (Gertrude)" <GertrudeD@Nedbank.co.za>, "Gershwin Long" <GLong@futuregrowth.co.za>, "Bierman, L. (Leon)" <LeonB@Nedbank.co.za>, "Brickman, M. (Moss)" <MossB@Nedbank.co.za>, "Moodliar, P. (Pooven)" <PoovenM@Nedbank.co.za>, "Pieter Wolmarans" <PWolmarans@omsfin.com>, "Mistry, R. (Rajshree)" <RajshreeM@Nedbank.co.za>, "Rolf Canto" <RCanto@omsfin.com>, "Shaun Harris" <SHarris@omsfin.com>, "Mangazi, S. (Sidlo)" <SidloM@Nedbank.co.za>, "Tarryn Mentoor" <tarrynm@futuregrowth.co.za>, "Hayne, R. (Richard)" <rhayne@nedbank.co.za>, "Mngadi, M. (Masotsha)" <MMngadi@nedbank.co.za>, "Moyo, R. (Remo)" <RemoMoyo@Nedbank.co.za>  
**Subject:** RE: Transnet - Term Facility Agreement #0398485#

Hi all

Enclosed please find comments received from Transnet yesterday. The original version received from Transnet is the document called 'Term Facility Agreement (Compare).docx'. I've copied all the comments (in track) across into the clean version of the agreement circulated to all parties (the document called 'Transnet SOC Ltd Term Facility Agreement.docx'). I hope this makes the comments a little easier to go through.

Phetolo and Rhulani, please could you confirm that the mark-ups I've made to the clean version correctly reflect your comments?

Regards – efi

**From:** Baron, E. (Efi)  
**Sent:** 02 September 2015 05:56 PM  
**To:** Eric Wood; Niven Pillay; Tewodros Gebreselasie; Phetolo Ramosebudi Transnet Corporate JHB; Moleboge Lekwane Transnet Corporate JHB

**Cc:** Jonathan Muller; Joseph Njoroge; Lightfoot Jason; Barnes, C. (Charles); Pietersen, D. (Darryl) (Corporate Banking); Juta, D. (Darshak); Dawid Chifa (OMInvest); Dube, G. (Gertrude); Gershwin Long; Bierman, L. (Leon); Brickman, M. (Moss); Moodliar, P. (Pooven); Pieter Wolmarans; Mistry, R. (Rajshree); Rolf Canto; Shaun Harris; Mangazi, S. (Sidlo); Tarryn Mentoor; Hayne, R. (Richard); Sean Lederman; Daniella Lupini; Mngadi, M. (Masotsha); Moyo, R. (Remo)

**Subject:** RE: Transnet - Term Facility Agreement #0398485#

Dear all

Enclosed please find the first draft of the legal agreement. Enclosed also please find a compare (this is explained in the mail from Lauren (from ENS) below). This version will form the basis of the agreements to be concluded with each of OMSFIN and Futuregrowth (save for minor differences).

For the purposes of outlining what is required in order for the Effective Date (financial close) to occur, ENS has also kindly provided a CP checklist.

We have asked ENS to make a 4 hour slot available for an 'all party' meeting at ENS's office with a view to finalising this agreement, given the intention to draw down on 1 October 2015. ENS have scheduled this for 9 September 2015 at 9:00 to 13:00 and this time suits the Original Lenders.

We trust and hope that the time suits Transnet and Regiments. ENS will send a meeting invite shortly after this email.

ENS, please note that we have added Remo and Masotsha to the distribution list. Please could everyone keep them copied going forward.

We look forward to hearing from you.

Regards – efi



---

**ZAR 2 500 000 000 - ZAR 3 000 000 000 TERM FACILITY AGREEMENT**

---

for

**TRANSNET SOC LTD**  
(Registration No. 1990/000900/30)  
as Borrower

with

**NEDBANK LIMITED**  
(Registration No. 1951/000009/06)  
as Original Lender



## CONTENTS

1.	DEFINITIONS AND INTERPRETATION .....	1
2.	THE FACILITY .....	19
3.	PURPOSE.....	19
4.	CONDITIONS OF UTILISATION .....	19
5.	UTILISATION .....	21
6.	REPAYMENT.....	22
7.	PREPAYMENT AND CANCELLATION .....	22
8.	INTEREST .....	29
9.	INTEREST PERIODS .....	30
10.	CHANGES TO THE CALCULATION OF INTEREST .....	30
11.	RAISING FEE.....	31
12.	COMMITMENT FEE .....	32
13.	TAX GROSS UP AND INDEMNITIES .....	33
14.	INCREASED COSTS.....	36
15.	OTHER INDEMNITIES.....	38
16.	MITIGATION BY THE FINANCE PARTIES .....	39
17.	COSTS AND EXPENSES.....	39
18.	REPRESENTATIONS.....	41
19.	INFORMATION UNDERTAKINGS .....	45
20.	FINANCIAL COVENANTS.....	49
21.	GENERAL UNDERTAKINGS .....	50
22.	EVENTS OF DEFAULT.....	57
23.	CHANGES TO THE LENDER.....	62
24.	CHANGES TO THE BORROWER .....	65
25.	PAYMENT MECHANICS .....	66
26.	NOTICES .....	67
27.	CALCULATIONS AND CERTIFICATES .....	68
28.	PARTIAL INVALIDITY .....	69
29.	REMEDIES AND WAIVERS .....	69
30.	AMENDMENTS AND WAIVERS.....	69
31.	CONFIDENTIALITY.....	70
32.	PRESS RELEASES AND PUBLIC ANNOUNCEMENTS.....	73
33.	WAIVER OF IMMUNITY .....	74
34.	COUNTERPARTS.....	74
35.	SOLE AGREEMENT.....	74
36.	NO IMPLIED TERMS .....	74
37.	INDEPENDENT ADVICE.....	74
38.	GOVERNING LAW.....	75
39.	JURISDICTION.....	75
40.	RIGHT TO QUOTE .....	76
	SCHEDULE 1 CONDITIONS PRECEDENT .....	77
	SCHEDULE 2 FORM OF UTILISATION REQUEST.....	79
	SCHEDULE 3 FORM OF TRANSFER CERTIFICATE.....	80
	SCHEDULE 4 FORM OF CONFIDENTIALITY UNDERTAKING.....	82
	SCHEDULE 5 TIMETABLES .....	87
	SCHEDULE 6 PERMITTED TRANSFEREES .....	88
	SCHEDULE 7 LENDER INSTRUCTION .....	91
	SCHEDULE 8 INCREASED MARGIN NOTICE.....	92
	SCHEDULE 9 INCREASED MARGIN ACCEPTANCE NOTICE.....	93
	SCHEDULE 10 COMPLIANCE CERTIFICATE.....	94
	SCHEDULE 11 OPERATIONS DISCLOSURE SCHEDULE.....	96

**SCHEDULE 12 LITIGATION DISCLOSURE SCHEDULE .....97**  
**SCHEDULE 13 COVENANT COMPLIANCE CERTIFICATE .....98**  
**SCHEDULE 14 EXISTING SECURITY .....99**

**PARTIES:**

THIS AGREEMENT is dated \_\_\_\_ March 2019 and made between:

- (1) **TRANSNET SOC LTD**, a company registered in accordance with the laws of South Africa under registration number 1990/000900/30 (the **Borrower**); and
- (2) **NEDBANK LIMITED**, a company registered in accordance with the laws of South Africa under registration number 1951/000009/06 (the "**Original Lender**").

IT IS AGREED as follows:

## SECTION 1 INTERPRETATION

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1. Definitions

In this Agreement the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and cognate words shall bear corresponding meanings:

- 1.1.1. **A Positive Rating Event** shall bear the meaning ascribed thereto in clause 7.7.3.2.
- 1.1.2. **A Relevant Period** shall bear the meaning ascribed thereto in clause 7.7.3.2.
- 1.1.3. **Accounting Principles** means the generally accepted accounting principles in South Africa, including IFRS.
- 1.1.4. **Affiliate** means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.
- 1.1.5. **Agreement** means this term facility agreement.
- 1.1.6. **Approved Exchange** means the Interest Rate Market of the JSE or a recognised exchange as defined in the Income Tax Act, 1962 or any other stock or bond exchange approved by the Lenders.
- 1.1.7. **Authorisation** means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration by, with or from any authority.
- 1.1.8. **Availability Period** means the period from, and including, the Effective Date until the second anniversary thereof.
- 1.1.9. **Available Commitment** means a Lender's Commitment minus:
  - 1.1.9.1. the amount of its participation in the outstanding Loans under the Facility; and
  - 1.1.9.2. in relation to the proposed Utilisation, the amount of its participation in the Utilisation that is due to be made on or before the proposed Utilisation Date.

- 1.1.10. **Available Facility** means the aggregate for the time being of each Lender's Available Commitment;
- 1.1.11. **B Positive Rating Event** shall bear the meaning ascribed thereto in clause 7.7.3.1.
- 1.1.12. **B Relevant Period** shall bear the meaning ascribed thereto in clause 7.7.3.1.
- 1.1.13. **Borrowing Programme** means the borrowing programme of the Borrower in relation to its current financial year required to be submitted to the Minister of Finance as prescribed in terms of Section 66(7)(a) of the PFMA.
- 1.1.14. **Break Costs** means the amount (if any) by which:
- 1.1.14.1. the interest (excluding the Margin) which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;
- exceeds:
- 1.1.14.2. the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.
- 1.1.15. **Business Day** means a day other than a Saturday or Sunday or public holiday designated as such by the applicable laws of South Africa.
- 1.1.16. **Change of Principal Business** means any of the following events or circumstances -
- 1.1.16.1. the Borrower ceases to carry on any of the Principal Businesses; or
- 1.1.16.2. the Borrower enters into any agreement which has the effect of disposing of the whole or a substantial part of any of the Principal Businesses,
- 1.1.17. **Change of Control Event** means the Government of South Africa ceases to (a) own, directly or indirectly, more than 50 per cent of the issued share capital of the Borrower; or (b) control, directly or indirectly, the Borrower; or (c) have the right to unilaterally veto any of the special resolution items contained in section 65(11) of the Companies Act. For the purpose of this definition, the Government of South Africa will be deemed to "control" the Borrower if (whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract, trust or otherwise) it has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of the Borrower or otherwise controls, or has the power to control, the affairs and policies of the Borrower.
- 1.1.18. **Change in Business Notice** shall bear the meaning ascribed thereto in clause 7.9.1.

- 1.1.19. **Commitment** means, in relation to:
- 1.1.19.1. the Original Lender, the Loan Amount and the amount of any other Commitment transferred to it under this Agreement; and
- 1.1.19.2. any other Lender, the amount of any Commitment transferred to it under this Agreement,
- to the extent not cancelled or reduced pursuant to this Agreement.
- 1.1.20. **Commitment Fee** means 0,35% (zero comma thirty five per cent), exclusive of VAT, of each Lender's Available Commitment.
- 1.1.21. **Companies Act** means the Companies Act, 2008 (Act No. 71 of 2008).
- 1.1.22. **Compliance Certificate** means the compliance certificate contemplated in Schedule 10 hereto.
- 1.1.23. **Confidential Information** means all information relating to the Borrower or the Group of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under the Finance Documents or the Facility from either:
- 1.1.23.1. any member of the Group or any of its advisers; or
- 1.1.23.2. another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,
- in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:
- 1.1.23.2.1. is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause 31 (*Confidentiality*); or
- 1.1.23.2.2. is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or
- 1.1.23.2.3. is known by that Finance Party before the date the information is disclosed to it in accordance with Clause 1.1.23.1 or 1.1.23.2 or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.
- 1.1.24. **Confidentiality Undertaking** means a confidentiality undertaking substantially in the form set out in Schedule 4 (*Form of Confidentiality Undertaking*) or in any other form agreed between the Borrower and the Lenders.

- 1.1.25. **Consolidated Total Assets** means, at any time, the amount of the total assets of the Borrower, as appearing in the latest audited consolidated annual financial statements of the Borrower delivered pursuant to Clause 19.1 (*Financial statements*).
- 1.1.26. **Corporate Plan** means the corporate plan of the Borrower which details, *inter alia*, the projections of its revenue and expenditure and the Borrowing Programme in respect of the Borrower.
- 1.1.27. **Covenant Compliance Certificate** means the covenant compliance certificate substantially in the form set out in Schedule 13 (*Form of Covenant Compliance Certificate*) hereto;
- 1.1.28. **Credit Rating** means the credit rating issued by each Rating Agency, from time to time, in respect of the Borrower detailing the credit rating of the Borrower as determined by such Rating Agency.
- 1.1.29. **Default** means an Event of Default or any event or circumstance specified in Clause 22 (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.
- 1.1.30. **Designated Amount** means an amount equal to 0.5 per cent. of the Consolidated Total Assets of the Borrower from time to time.
- 1.1.31. **Disruption Event** means either or both of:
- 1.1.31.1. a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or
- 1.1.31.2. the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:
- 1.1.31.2.1. from performing its payment obligations under the Finance Documents; or
- 1.1.31.2.2. from communicating with other Parties in accordance with the terms of the Finance Documents,
- and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.
- 1.1.32. **Distribution** means any payment by way of interest, principal, dividend, capital reduction, return of capital, fee, royalty or other distribution of whatsoever nature and howsoever described (including a repurchase or redemption of shares) by or on behalf of a company to or for the account of any member or shareholder of that company, in its capacity as member or shareholder of that company, or in relation to a loan made by such

shareholder to the company, in each case whether paid or payable and whether paid or payable in cash or *in specie*.

- 1.1.33. **Economic Failure** means, at any time after the Signature Date and on or before a Utilisation Date, the occurrence of any event in the local or international financial markets, banking, financial, monetary, economic, political or financial market conditions and/or any other calamity or event which, in the opinion of the Lenders, makes it unlawful or impossible for the Lenders to fund their participations in the Loans.
- 1.1.34. **Effective Date** means the date on which the Original Lender notifies the Borrower that it has received all documents and other evidence listed in Schedule 1 (*Conditions precedent*), as contemplated in clause 4.1.1 (*Initial conditions precedent*).
- 1.1.35. **Environment** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:
- 1.1.35.1. air (including, without limitation, air within natural or man-made structures, whether above or below ground);
- 1.1.35.2. water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and
- 1.1.35.3. land (including, without limitation, land under water).
- 1.1.36. **Environmental Claim** means any claim, proceeding, demand, investigation or similar communication by any person in respect of any Environmental Law or alleging potential liability for investigatory costs, clean-up costs, governmental response costs, natural resource damages, property damages, personal injuries, fines or penalties arising out of, based on or resulting from or in connection with Environmental Matters.
- 1.1.37. **Environmental Law** means any applicable law, rule or regulation of South Africa with regard to Environmental Matters and any orders, notices, demands, codes of practice, circulars, guidance notes or injunctions pursuant to the same made or issued by the Government of South Africa or any agency or authority thereof which are binding on and enforceable against the Borrower and any specific agreements entered into by any member of the Group with any competent authorities of South Africa related to Environmental Matters.
- 1.1.38. **Environmental Matters** means any of the following:
- 1.1.38.1. any release, emission, entry or introduction into the air of any contaminants including the air within buildings and other natural or man-made structures above or below ground;
- 1.1.38.2. any discharge, release or entry into water of any contaminants including into any river, watercourse, lake or pond (whether natural or artificial or above or below ground) or reservoir, or the surface of the riverbed or of other land supporting such waters, ground waters, sewer or the sea;

- 1.1.38.3. any release, deposit, keeping or disposal in land or on land whether or not covered by the sea or other waters, of any contaminants;
- 1.1.38.4. any deposit, disposal, keeping, treatment, importation, production or carrying of any waste, including any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process or activity (including making it re-usable or reclaiming substances from it) and any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoiled;
- 1.1.38.5. nuisance, noise, defective premises, health and safety at work, preservation or protection of the Environment; and
- 1.1.38.6. any other matter whatsoever directly or indirectly affecting the Environment or any part of it.
- 1.1.39. **Environmental Permit** means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by any member of the Group.
- 1.1.40. **Event of Default** means any event or circumstance specified as such in Clause 22 (*Events of Default*) (other than Clause 22.18 (*Acceleration*)).
- 1.1.41. **Facility** means the facility made available to the Borrower up to the Loan Amount contemplated in clause 2 hereof.
- 1.1.42. **Facility Office** means, if applicable, the office or offices notified by any Lender to the Borrower in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days written notice) as the office or offices through which it will perform its obligations under this Agreement.
- 1.1.43. **Finance Document** means this Agreement, ~~each Qualifying Guarantee~~, each Utilisation Request and any other document designated as such by the Finance Parties and the Borrower.
- 1.1.44. **Finance Party** means each Lender and any facility agent appointed under or pursuant to any Finance Document.
- 1.1.45. **Financial Indebtedness** means any indebtedness for or in respect of:
- 1.1.45.1. moneys borrowed or credit granted;
- 1.1.45.2. any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- 1.1.45.3. any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;



- 1.1.45.4. the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with Accounting Principles, be treated as a finance or capital lease;
- 1.1.45.5. receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- 1.1.45.6. any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- 1.1.45.7. any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value or close-out amount under that derivative transaction shall be taken into account);
- 1.1.45.8. any amount raised by the issue of shares which are redeemable;
- 1.1.45.9. any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- 1.1.45.10. the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in Clauses 1.1.45.1 to 1.1.45.9 above.
- 1.1.46. **Group** means the Borrower and its Subsidiaries, if any, for the time being.
- 1.1.47. **Holding Company** means, in relation to a person, any other person in respect of which it is a Subsidiary.
- 1.1.48. **IFRS** means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.
- 1.1.49. **Increased Margin** shall bear the meaning ascribed thereto in clause 7.7.1.1.1.
- 1.1.50. **Increased Margin Acceptance Notice** means the notice substantially in the form contemplated in Schedule 9 hereto.
- 1.1.51. **Increased Margin Notice** means the notice substantially in the form contemplated in Schedule 8 hereto.
- 1.1.52. **Initial Credit Rating** means the credit rating in respect of the Borrower as of the Signature Date, being a Moody's Long Term Local Currency Rating of Baa2 and a S&P Long Term Local Currency Issuer Credit rating of BBB+. Unless otherwise noted, the ratings refer to global scale ratings.
- 1.1.53. **Insolvency Event** means in relation to any Obligor:
  - 1.1.53.1. such Obligor is dissolved (other than pursuant to a solvent consolidation, amalgamation or merger effected *with* the consent of the Lenders);
  - 1.1.53.2. such Obligor becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;

- 1.1.53.3. such Obligor makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- 1.1.53.4. such Obligor institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;
- 1.1.53.5. such Obligor has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in Clause 1.1.53.4 above and:
  - 1.1.53.5.1. results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or
  - 1.1.53.5.2. is not dismissed, discharged, stayed or restrained in each case within 30 (thirty) days of the institution or presentation thereof;
- 1.1.53.6. such Obligor has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a solvent consolidation, amalgamation or merger effected with the consent of the Lenders);
- 1.1.53.7. such Obligor seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, business rescue practitioner, custodian or other similar official for it or for all or substantially all its assets;
- 1.1.53.8. such Obligor has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 (thirty) days thereafter;
- 1.1.53.9. such Obligor causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in Clauses 1.1.53.1 to 1.1.53.8 above; or
- 1.1.53.10. such Obligor takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.
- 1.1.54. **Instalments** means [43] equal instalments of capital on account of the Loan, payable by the Borrower to the Lenders on each Payment Date such that the Loan is scheduled to amortise over the Term and be repaid in full on the Maturity Date. *[This assumes that the Effective Date will occur before 15 October 2015]*

- 1.1.55. **Interest Payment Date** means 15 October, 15 January, 15 April and 15 July of each year.
- 1.1.56. **Interest Period** means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).
- 1.1.57. **Interpolated Screen Rate** means, in relation to any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:
- 1.1.57.1. the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and
- 1.1.57.2. the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,
- each as of the Specified Time on the Quotation Day for the currency of that Loan.
- 1.1.58. **Issuer Credit Rating** means the rating assigned to the Borrower by the Rating Agencies.
- 1.1.59. **JIBAR** means, in relation to any Loan:
- 1.1.59.1. the applicable Screen Rate;
- 1.1.59.2. if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or
- 1.1.59.3. if:
- 1.1.59.3.1. no Screen Rate is available for the currency of that Loan; or
- 1.1.59.3.2. no Screen Rate is available for the Interest Period of that Loan and it is not possible to calculate an Interpolated Screen Rate for that Loan,
- the Reference Bank Rate,
- as of, in the case of Clauses 1.1.59.1 and 1.1.59.3 above, the Specified Time on the Quotation Day for the currency of that Loan and for a period equal in length to the Interest Period of that Loan.
- 1.1.60. **Joint Venture** means an association of 2 (two) or more persons combining assets and/or expertise to carry out a business enterprise and having a joint proprietary interest and a sharing of profits and losses and whether undertaken, without limitation, in the form of a partnership, unincorporated association, trust or incorporated entity.
- 1.1.61. **JSE** means the Johannesburg Stock Exchange, a licensed financial exchange in terms of the Financial Markets Act 2012, or any other financial exchange which operates as a successor exchange to the Johannesburg Stock Exchange, as managed and operated by the JSE Limited, a public company duly incorporated in accordance with the laws of South Africa with registration number 2005/022939/06.

1.1.62. **Lender Instruction** means a written instruction from the Lenders addressed to the Borrower, instructing the Borrower to comply with one of the following instructions or—

~~1.1.62.1. —to provide the Lenders with a Qualifying Guarantee; or~~

~~1.1.62.2.~~ 1.1.62.1. to prepay the Loans, all accrued unpaid interest thereon and all other amounts outstanding under the Finance Documents,

in each case, following the occurrence of the Negative Rating Event contemplated in clause 7.7.1.2 (in the form contemplated in Schedule 7).

1.1.63. **Lenders** means:

1.1.63.1. the Original Lender; and

1.1.63.2. any other person which has become a Party as Lender in accordance with Clause 23 (*Changes to the Lender*),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement and **Lender** means any one of them.

1.1.64. **Loan** means a loan made or to be made under the Facility or the principal amount outstanding for the time being of such loan.

1.1.65. **Loan Amount** has the meaning given to it in Clause 2.

1.1.66. **Margin** means -

1.1.66.1. at any time other than the circumstances contemplated in Clause 1.1.66.2:

1.1.66.1.1. 2.70<sup>1</sup>% Nacq; or

1.1.66.1.2. the Increased Margin Nacq,

as applicable; and

1.1.66.2. notwithstanding anything to the contrary in the Agreement, at any time while an Event of Default is continuing, the rate in Clause 1.1.66.1 plus 2%.

1.1.67. **Margin Increase Period** shall bear the meaning ascribed thereto in Clause 7.7.1.1.1.

1.1.68. **Material Adverse Effect** means a material adverse effect on:

1.1.68.1. the business, operations, property, condition (financial or otherwise) or prospects of any Obligor or the Group taken as a whole; or

<sup>1</sup> The Lenders assume that this price to be the clearing price in the current round of fund raising by Transnet. If there are lenders with a higher final clearing price, this margin is to be increased accordingly.

- 1.1.68.2. the ability of any Obligor to perform its obligations under the Finance Documents; or
- 1.1.68.3. the validity or enforceability of the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.
- 1.1.69. **Maturity Date** means the 15<sup>th</sup> anniversary of the Effective Date.
- 1.1.70. **Month** means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:
- 1.1.70.1. (subject to Clause 1.1.70 below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;
- 1.1.70.2. if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and
- 1.1.70.3. if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.
- The above rules will only apply to the last Month of any period.
- 1.1.71. **Moody's** means Moody's Investors Service, Inc.
- 1.1.72. **Moody's Rating** shall bear the meaning ascribed thereto in clause 0.
- 1.1.73. **Nacq** means nominal annual compounded Quarterly.
- 1.1.74. **Negative Rating Event** has the meaning given to that term in Clause 7.7 (*Changes in rating*).
- 1.1.75. **New Lender** has the meaning given to that term in Clause 23 (*Changes to the Lender*).
- 1.1.76. **Obligors** means the Borrower and any Qualifying Guarantor and ~~Obligor means any one of them.~~
- 1.1.77. **OFAC Sanctions** means sanctions imposed from time to time by the Office of Foreign Assets Control of the Department of Treasury of the United States of America.
- 1.1.78. **Operations Disclosure Schedule** means the disclosure schedule contemplated in Schedule 11 hereto detailing certain of the Borrower's operations in Zimbabwe.
- 1.1.79. **Original Financial Statements** means the audited consolidated financial statements of the Group for the financial year ended 31 March 2015.
- 1.1.80. **Party** means a party to this Agreement.
- 1.1.81. **Payment Date** means each Interest Payment Date following the date which falls 54 (fifty four) Months after the Effective Date.
- 1.1.82. **Permitted Corporatization** means a corporatization, hive-down, subsidiarization, demerger, merger or other corporate reconstruction (by whatever name called) of any of

the Principal Divisions required to be implemented by an executive or legislative act of the Government.

1.1.83. **Permitted Transaction** means:

1.1.83.1. a Permitted Corporatization;

1.1.83.2. any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security given, or other transaction arising, under the Finance Documents;

1.1.83.3. the solvent liquidation or reorganisation of any member of the Group (other than the Borrower) so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group;

1.1.83.4. transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading on arm's length terms; or

1.1.83.5. transactions other than any permitted under the foregoing sub-paragraphs entered into with the prior written consent of the Lenders.

1.1.84. **Permitted Transferee** means each of the persons listed in Schedule 6 hereto.

1.1.85. **PFMA** means the Public Finance Management Act, 1 of 1999.

1.1.86. **Principal Businesses** means the businesses of the Borrower operated under each Principal Division as of the Signature Date and **Principal Business** means any one of them.

1.1.87. **Principal Divisions** means the Borrower's operations which are, as of the Signature Date, grouped into the following five divisions providing major transport modes, with central support services unified under one brand, which for operational IFRS reporting purposes, are comprised by the following five core business divisions: Transnet Freight Rail, Transnet Engineering, the Transnet National Ports Authority, Transnet Port Terminals and Transnet Pipelines and **Principal Division** means any one of them.

~~Qualifying Guarantee shall bear the meaning ascribed thereto in clause 7.7.1.3.1.~~

~~Qualifying Guarantor means a third party, the identity and financial standing of which must be acceptable to the Lenders at their absolute discretion, which guarantees the performance by the Borrower of its obligations under the Finance Documents following the occurrence of the Negative Rating Event contemplated in Clause 7.7.1.3.1.~~

~~Qualifying Guarantor Adverse Event shall bear the meaning ascribed thereto in clause 7.9.~~

1.1.88. **Quarter** means a period of 3 (three) consecutive Months and the term **Quarterly** shall be construed accordingly.

1.1.89. **Quotation Day** means, in relation to any period for which an interest rate is to be determined, the first day of that Interest Period unless market practise differs in the Relevant Interbank Market, in which case the Quotation Day will be determined by the

Lenders in accordance with market practise in the Relevant Interbank Market (and if quotations would normally be given on more than one day, the Quotation Day would be the last of those days).

- 1.1.90. **Rating Agencies** means S&P and Moody's and their successors or any other rating agency of equivalent international standing as agreed between the Borrower and the Lenders, from time to time (including successors of such rating agency) and **Rating Agency** means any one of them.
- 1.1.91. **Reference Bank Rate** means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Lenders at their request by the Reference Banks in relation to JIBAR, as the rate at which the relevant Reference Bank could borrow funds in the Johannesburg interbank market, in the relevant currency and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.
- 1.1.92. **Reference Banks** means, in relation to JIBAR, the principal offices in Johannesburg of Absa Bank Limited, FirstRand Bank Limited, Nedbank Limited and The Standard Bank of South Africa Limited or such other banks as may be appointed by the Lenders in consultation with the Borrower.
- 1.1.93. **Related Fund** in relation to a fund (the **first fund**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.
- 1.1.94. **Relevant Interbank Market** means the Johannesburg interbank market.
- 1.1.95. **Relevant Jurisdiction** means the jurisdiction under whose laws the Borrower is incorporated as at the date of this Agreement.
- 1.1.96. **Relevant Period** shall bear the meaning ascribed thereto in clause 20.1.6.
- 1.1.97. **Repeating Representations** means each of the representations set out in Clauses 18.1 (*Status*) to Clause 18.7 (*Governing Law and Enforcement*), Clause 18.10 (*No default*), Clause 18.11 (*No misleading information*), sub-Clauses 18.12.4 and 18.12.5 of Clause 18.12 (*Financial statements*), Clause 18.13 (*Pari passu ranking*), Clause 18.18 (*Good title to assets*), Clause 18.20 (*Authorised Signatories*), Clause 18.22 (*No Immunity*) and Clause 18.22 (*No adverse consequences*).
- 1.1.98. **Representative** means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.
- 1.1.99. **Sanctions Authority** means:
  - 1.1.99.1. the United Nations;
  - 1.1.99.2. the European Union;
  - 1.1.99.3. the Council of Europe (founded under the Treaty of London, 1946);

- 1.1.99.4. the government of the United States of America;
  - 1.1.99.5. the government of the United Kingdom;
  - 1.1.99.6. the government of the Republic of France;
  - 1.1.99.7. the Government of the Commonwealth of Australia,
- and any of their governmental authorities, including, without limitation, the Office of Foreign Assets Control for the US Department of Treasury (OFAC), the US Department of Commerce, the US State Department or the US Department of the Treasury, Her Majesty's Treasury (HMT) and the French Ministry of Finance (MINEFI).
- 1.1.100. **Sanctioned Entity** means:
    - 1.1.100.1. a person, country or territory which is listed on a Sanctions List or is subject to Sanctions;
    - 1.1.100.2. a person which is ordinarily resident in a country or territory which is listed on a Sanctions List or is subject to Sanctions.
  - 1.1.101. **Sanctioned Transaction** means the use of the proceeds of the Facility for the purpose of financing or providing any credit, directly or indirectly, to:
    - 1.1.101.1. a Sanctioned Entity; or
    - 1.1.101.2. any other person or entity, if a member of the Group has actual knowledge that the person or entity proposes to use the proceeds of the financing or credit for the purpose of financing or providing any credit, directly or indirectly, to a Sanctioned Entity,

in each case to the extent that to do so is prohibited by, or would cause any breach of, Sanctions if conducted by a person who is subject to or obliged to comply with the laws or regulations of a Sanctions Authority.
  - 1.1.102. **Sanctions** means trade, economic or financial sanctions, laws, regulations, embargoes or restrictive measures imposed, administered or enforced from time to time by any Sanctions Authority.
  - 1.1.103. **Sanctions List** means:
    - 1.1.103.1. the Specially Designated Nationals and Blocked Persons List maintained by OFAC;
    - 1.1.103.2. the Consolidated List of Financial Sanctions Targets and the Investments Ban List maintained by HMT,

and any similar list maintained, or a public announcement of a Sanctions designation made, by any Sanctions Authority, in each case as amended, supplemented or substituted from time to time.
  - 1.1.104. **S&P** means Standard and Poor's Financial Services LLC, a division of McGraw Hill.
  - 1.1.105. **S&P Rating** shall bear the meaning ascribed thereto in clause 0.



- 1.1.106. **Screen Rate** means in relation to JIBAR, the mid market rate for deposits in ZAR for the relevant period displayed on the SAFEY page alongside the caption "YIELD" on the Reuters screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Lenders may specify another page or service displaying the relevant rate after consultation with the Borrower.
- 1.1.107. **Security** means a mortgage bond, notarial bond, cession in security, charge, pledge, lien, hypothec or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.
- 1.1.108. **Signature Date** means the date on which this Agreement is signed by the Party signing last in time.
- 1.1.109. **South Africa** means the Republic of South Africa (as constituted from time to time).
- 1.1.110. **Specified Time** means a day or time determined in accordance with Schedule 5 (*Timetables*).
- 1.1.111. **Subsidiary** means a "subsidiary" as defined in the Companies Act and shall include an person who would, but for not being a "company" under the Companies Act, qualify as a "subsidiary" as defined in the Companies Act.
- 1.1.112. **Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).
- 1.1.113. **Term** means the period commencing on the Effective Date and ending on the Maturity Date.
- 1.1.114. **Trading Day** means, to the extent that any bonds issued by the Borrower are listed on an Approved Exchange, any day that is a trading day on such Approved Exchange and does not include a day on which trading on such Approved Exchange is scheduled to close or does close or is suspended prior to its regular weekday closing time.
- 1.1.115. **Transfer Certificate** means a certificate substantially in the form set out in Schedule 3 (*Form of Transfer Certificate*) or any other form agreed between the Lenders and the Borrower.
- 1.1.116. **Transfer Date** means, in relation to an assignment or a transfer, the later of:
- 1.1.116.1. the proposed Transfer Date specified in the relevant Transfer Certificate; and
- 1.1.116.2. the date on which the applicable Lender executes the relevant Transfer Certificate.
- 1.1.117. **Unpaid Sum** means any sum due and payable but unpaid by the Borrower under the Finance Documents.
- 1.1.118. **Utilisation** means a utilisation of the Facility.

- 1.1.119. **Utilisation Date** means the date of a Utilisation, being the date on which the relevant Loan is to be made.
- 1.1.120. **Utilisation Request** means a notice substantially in the form set out in Schedule 2 (*Form of Utilisation Request*).
- 1.1.121. **VAT** means (i) value added tax as provided for in the VAT Act; or (ii) any general service tax; or (iii) any other tax of a similar nature.
- 1.1.122. **Withdrawal Event** shall bear the meaning ascribed thereto in Clause 7.8.
- 1.1.123. **ZAR, R and Rand** each mean the lawful currency of South Africa.

## 1.2. Construction

- 1.2.1. Unless a contrary indication appears, any reference in this Agreement to:
- 1.2.1.1. the Borrower, any Finance Party, any Lender, or any Party shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - 1.2.1.2. assets includes present and future properties, revenues and rights of every description;
  - 1.2.1.3. an authority includes any court or governmental, intergovernmental or supranational body, agency, department or any regulatory, self-regulatory or other authority;
  - 1.2.1.4. a Finance Document or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
  - 1.2.1.5. the use of the word "including" followed by specific examples will not be construed as limiting the meaning of the general wording preceding it, and the *eiusdem generis* rule must not be applied in the interpretation of such general wording or specific examples;
  - 1.2.1.6. indebtedness includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
  - 1.2.1.7. a person includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, Joint Venture, consortium or partnership (whether or not having separate legal personality);
  - 1.2.1.8. a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
  - 1.2.1.9. a provision of law is a reference to that provision as amended or re-enacted; and
  - 1.2.1.10. a time of day is a reference to Johannesburg time.
- 1.2.2. Section, Clause and Schedule headings are for ease of reference only.

- 1.2.3. Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.
- 1.2.4. A Default (other than an Event of Default) is "**continuing**" if it has not been remedied or waived (in writing) and an Event of Default is "**continuing**" if it has not been waived (in writing).
- 1.2.5. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in an interpretation clause, effect shall be given to it as if it were a substantive provision of the relevant Finance Document.
- 1.2.6. Unless inconsistent with the context, an expression in any Finance Document which denotes the singular includes the plural and *vice versa*.
- 1.2.7. The Schedules to any Finance Document form an integral part thereof and a reference to a "**Clause**" or a "**Schedule**" is a reference to a clause of, or a schedule to, this Agreement.
- 1.2.8. The rule of construction that, in the event of ambiguity, a contract shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of the Finance Documents.
- 1.2.9. The expiry or termination of any Finance Documents shall not affect those provisions of the Finance Documents that expressly provide that they will operate after any such expiry or termination or which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.2.10. The Finance Documents shall to the extent permitted by applicable law be binding on and enforceable by the administrators, trustees, permitted cessionaries, business rescue practitioners or liquidators of the Parties as fully and effectually as if they had signed the Finance Documents in the first instance and reference to any Party shall be deemed to include such Party's administrators, trustees, permitted cessionaries, business rescue practitioners or liquidators, as the case may be.
- 1.2.11. Unless a contrary indication appears, where any number of days is to be calculated from a particular day, such number shall be calculated as including that particular day and excluding the last day of such period.
- 1.3. **Third party rights**
  - 1.3.1. Except as expressly provided for in this Agreement or in any other Finance Document, no provision of any Finance Document constitutes a stipulation for the benefit of any person who is not a party to that Finance Document.
  - 1.3.2. Notwithstanding any term of any Finance Document, the consent of any person who is not a party to that Finance Document is not required to rescind or vary that Finance Document at any time except to the extent that the relevant variation or rescission (as the

case may be) relates directly to the right conferred upon any applicable third party under a stipulation for the benefit of that party that has been accepted by that third party.

## SECTION 2 THE FACILITY

### 2. THE FACILITY

#### 2.1. The Facility

Subject to the provisions of this Agreement, the Lenders agree to make a term loan facility available to the Borrower in an amount of:

- 2.1.1. until such time as the Original Lender has delivered to the Borrower a letter stating that the board of directors of the Original Lender has approved an increase in the Facility, (as contemplated in clause 2.1.2), ZAR2 500 000 000; and
- 2.1.2. on receipt by the Borrower of a letter from the Original Lender stating that (i) the board of directors of the Original Lender has approved an increase in the Facility to that amount; and (ii) the Original Lender is satisfied that that the Borrower has complied with all terms and conditions imposed by the Lender's board of directors in respect of such increase, ZAR3 000 000 000,

(the "Loan Amount").

#### 2.2. Finance Parties' rights and obligations

- 2.2.1. The obligations of each Finance Party under the Finance Documents are separate and independent. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- 2.2.2. The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.
- 2.2.3. A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

### 3. PURPOSE

#### 3.1. Purpose

The Borrower shall apply all amounts borrowed by it under the Facility towards the general corporate purposes of the Group.

#### 3.2. Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

### 4. CONDITIONS OF UTILISATION

#### 4.1. Initial conditions precedent

4.1.1. The Borrower may not deliver a Utilisation Request unless the Lenders have (a) received all of the documents and other evidence listed in Schedule 1 (*Conditions precedent*); or (b) waived the requirement to receive all or any of such documents or evidence. The Lenders shall notify the Borrower promptly upon being so satisfied or upon making any such waiver.

4.1.2. If the Effective Date has not occurred by the date which falls 30 days after the Signature Date, the Lenders may, on not less than 5 Business Days' notice to the Borrower, cancel the Commitment.

#### 4.2. Further conditions precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

4.2.1. no Default is continuing or would result from the proposed Utilisation;

4.2.2. no Economic Failure has occurred;

4.2.3. the Borrower's Issuer Credit Rating is a Moody's Long Term Local Currency Rating of Baa2 or better and an S&P Long Term Local Currency Issuer Credit rating of BBB+ or better;

4.2.4. the Repeating Representations to be made by the Borrower are true in all material respects;

4.2.5. the Lenders have received evidence to their satisfaction that the Borrower has delivered utilisation requests to each of:

4.2.5.1. Old Mutual Specialised Finance Proprietary Limited pursuant to the facility in an amount of approximately R1 500 000 000 to be made available by Old Mutual Specialised Finance Proprietary Limited on or about the Signature Date; and/or

4.2.5.2. Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) pursuant to the facility in an amount of approximately R1 500 000 000 to be made available by Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) on or about the Signature Date,

pursuant to which the Borrower requested utilisations of such facilities in an amount which bears the same proportion of such facilities as the proportion which the Utilisation Request bears to the Facility.

### SECTION 3 UTILISATION

#### 5. UTILISATION

##### 5.1. Delivery of a Utilisation Request

- 5.1.1. The Borrower may utilise the Facility by delivery to the Lenders of a duly completed Utilisation Request by no later than the Specified Time.
- 5.1.2. The Borrower may not deliver more than one Utilisation Request per calendar Month during the Availability Period.
- 5.1.3. The Borrower may not deliver a Utilisation Request less than 5 (five) Business Days prior to the expiry of the Availability Period.

##### 5.2. Completion of a Utilisation Request

A Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

- 5.2.1. the proposed Utilisation Date is a Business Day within the Availability Period; and
- 5.2.2. the currency and amount of the Utilisation comply with Clause 5.3 (*Currency and amount*).

##### 5.3. Currency and amount

- 5.3.1. The currency specified in a Utilisation Request must be Rand.
- 5.3.2. The amount of the proposed Utilisation must not be more than the lesser of:
  - 5.3.2.1. R250 000 000; and
  - 5.3.2.2. the Available Facility.

##### 5.4. Lender's participation

If the conditions set out in this Agreement have been met, the Lenders shall make their participation in the Utilisation available by the Utilisation Date.

##### 5.5. Cancellation of Commitment

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

**SECTION 4**  
**REPAYMENT, PREPAYMENT AND CANCELLATION**

**6. REPAYMENT**

**6.1. Repayment of the Loan**

The Borrower shall repay the Loan by paying each Instalment to the Lenders on each Payment Date.

**6.2. Re-borrowing**

A Loan or any portion thereof repaid or prepaid by the Borrower in accordance with the provisions of this Agreement shall not be available to be re-borrowed by the Borrower.

**7. PREPAYMENT AND CANCELLATION**

**7.1. Voluntary prepayment of the Loan**

Save as contemplated in Clause 7.7.1.2.2 hereof, the Borrower shall not be entitled to voluntarily prepay a Loan or any portion thereof.

**7.2. Voluntary Cancellation**

The Borrower shall not be entitled to voluntarily cancel the whole or any part of any Lender's Available Commitment.

**7.3. Illegality**

If, in any applicable jurisdiction, it becomes unlawful for any Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in a Loan:

7.3.1. such Lender shall promptly notify the Borrower upon becoming aware of that event;

7.3.2. upon such Lender notifying the Borrower, the Commitment of such Lender will be immediately cancelled; and

7.3.3. the Borrower shall repay such Lender's participation in the Loans made to the Borrower on the last day of the Interest Period for each Loan occurring after such Lender has notified the Borrower or, if earlier, the date specified by such Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

**7.4. Change of control**

If a Change of Control Event occurs:

7.4.1. the Borrower shall promptly notify the Lenders upon becoming aware of that event;

7.4.2. the Lenders shall not be obliged to fund a Utilisation;



- 7.4.3. if any Lender so requires and notifies the Borrower within 30 days' of the Change of Control Event or of such Lender becoming aware of the Change of Control Event, such Lender shall, by not less than 30 days' notice to the Borrower, cancel its Commitment (if applicable) and declare the participation of that Lender in all outstanding Loans owed to such Lender, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Commitment of such Lender will be cancelled and all such outstanding amounts owing to such Lender will become immediately due and payable.

**7.5. Disposal and insurance proceeds**

- 7.5.1. The Borrower shall be obliged to apply a portion of the following proceeds received by the Borrower or any other member of the Group in the prepayment of the Loans:

- 7.5.1.1. The proceeds arising from the sale of assets which, in aggregate during a financial year of the Borrower, exceed the Designated Amount, if:

- 7.5.1.1.1. such proceeds:

- 7.5.1.1.1.1. were not used within 90 days; or

- 7.5.1.1.1.2. were committed (as evidenced by a resolution of the board of directors of the recipient) to be used within 90 days of receipt thereof but were not in fact used within a period of 90 days of the date of adoption of such resolution,

in the replacement of the assets disposed of; or

- 7.5.1.1.2. the replacement assets were not of the same type and at least of the same quality as the assets disposed of.

- 7.5.1.2. The proceeds arising from a claim on an insurance policy which, in aggregate during a financial year of the Borrower, exceed the Designated Amount, if:

- 7.5.1.2.1. such proceeds:

- 7.5.1.2.1.1. were not used within 90 days; or

- 7.5.1.2.1.2. were committed (as evidenced by a resolution of the board of directors of the recipient) to be used within 90 days of receipt thereof but were not in fact used within a period of 90 days of the date of adoption of such resolution,

in the replacement of the assets which were damaged or destroyed (as the case may be); or

- 7.5.1.2.2. the replacement assets were not of the same type and at least of the same quality as the assets which were damaged or destroyed (as the case may be).

- 7.5.1.3. The proceeds arising from the sale by the Borrower or any other member of the Group of all of its assets or a substantial portion of its assets.

7.5.2. The amount of the Loans required to be prepaid (which shall be pre-paid pro-rata amongst themselves) shall be equal to the proceeds contemplated in clause 7.5.1 multiplied by the ratio which the Loans bear to the aggregate of the Loans and all other loans under any other agreement which are obliged to be prepaid before their originally scheduled repayment date as a result of the occurrence of the events set out in clause 7.5.1. Any prepayment required to be made by the Borrower shall be made by no later than the 15<sup>th</sup> Business Day after the occurrence of the event which gave rise to the obligation to make such prepayment and on receipt thereof the Commitment shall be reduced by an amount equal to such prepayment.

#### 7.6. Right of replacement or repayment and cancellation in relation to a single Lender

7.6.1. If:

7.6.1.1. any sum payable to a Lender by the Borrower is required to be increased under Clause 13.2 (*Tax gross-up*); or

7.6.1.2. a Lender claims indemnification from the Borrower under Clause 13.3 (*Tax indemnity*) or Clause 14.1 (*Increased costs*),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues and provided that no Default is then continuing, give such Lender notice of cancellation of the Commitment of such Lender and its intention to procure the repayment of such Lender's participation in the Loans.

7.6.2. On receipt of a notice of cancellation referred to in Clause 7.6.1 above, the Commitment of the relevant Lender shall immediately be reduced to zero.

7.6.3. On the last day of the Interest Period which ends after the Borrower has given notice of cancellation under Clause 7.6.1 above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay the applicable Lender's participation in the outstanding Loans together with all interest and other amounts accrued under the Finance Documents.

#### 7.7. Changes in rating

7.7.1. If the Borrower's Initial Credit Rating or the rating after the expiration of the B-~~Relevant Period~~ or the A-~~Relevant Period~~, as the case may be, falls (each, a **Negative Rating Event**) -

~~to a S&P Long Term Local Currency Issuer Credit rating (each an "S&P Rating") of BBB or a Moody's Long Term Local Currency rating (each a "Moody's Rating") of Baa2, the Borrower shall, upon written request by the Lenders, promptly confer with the Lenders on the occurrence of such Negative Rating Event and for a period of no more than 10 (ten) Business Days calculated from the date on which such Negative Rating Event occurred, discuss the reason for such decline in the Borrower's credit rating and the most reasonable commercial manner in which the Borrower intends to improve its credit rating, provided that the Borrower and the Lenders shall not be obliged to effect any amendments to the provisions of the Finance Documents by reason only of such Negative Rating Event;~~

- 7.7.1.1. to a S&P Rating of BBB- or a Moody's Rating of Baa3 -
- 7.7.1.1.1. the Lenders shall be entitled, for a period of 20 (Twenty) Business Days from the earlier of the date on which any Lender becomes aware of such Negative Rating Event or the date on which any Lender is notified of same in accordance with Clause 19.6.1.2 hereof (the "Margin Increase Period"), to increase the Margin, with effect from the date on which such Negative Rating Event occurred (the "Increased Margin"). In the event that the Lenders increase the Margin as aforesaid, the Lenders shall notify the Borrower in writing of the Increased Margin by no later than the expiry of the Margin Increase Period by delivery of the Increased Margin Notice;
- 7.7.1.1.2. within 10 (ten) Business Days of receipt of the Increased Margin Notice, the Borrower shall either (i) voluntarily prepay the Loans plus accrued unpaid interest thereon (calculated on the basis of JIBAR plus the Margin contemplated in clause 1.1.66.1) together with all other amounts outstanding under the Finance Documents; or (ii) notify the Lenders, in writing, of its acceptance of the Increased Margin by the delivery of the Increased Margin Acceptance Notice. The failure by the Borrower to voluntarily prepay the Loans or deliver the Increased Margin Acceptance Notice to the Lenders constitutes an Event of Default;
- 7.7.1.2. to an S&P Rating below BBB- or a Moody's Rating below Baa3, the Borrower shall in accordance with the terms of the Lender Instruction:
- 7.7.1.2.1. the Lenders shall be entitled, for a period of 20 (Twenty) Business Days from the earlier of the date on which any Lender becomes aware of such Negative Rating Event or the date on which any Lender is notified of same in accordance with clause 19.6.1.2 hereof (the "Margin Increase Period"), to increase the Margin, with effect from the date on which such Negative Rating Event occurred (the "Increased Margin"). In the event that the Lenders increase the Margin as aforesaid, the Lenders shall notify the Borrower in writing of the Increased Margin by no later than the expiry of the Margin Increase Period by delivery of the Increased Margin Notice ; or
- 7.7.1.2.1. within 10 (ten) Business Days of receipt of the Increased Margin Notice, the Borrower shall either (i) voluntarily prepay the Loans plus accrued unpaid interest thereon (calculated on the basis of JIBAR plus the Margin contemplated in clause 1.1.66.1) together with all other amounts outstanding under the Finance Documents; or (ii) notify the Lenders, in writing, of its acceptance of the Increased Margin by the delivery of the Increased Margin Acceptance Notice. The failure by the Borrower to voluntarily prepay the Loan or deliver the Increased Margin Acceptance Notice to the Lenders constitutes an Event of Default;
- 7.7.1.2.2. at the cost of the Borrower and within 45 (forty five) days of receipt of the Lender Instruction, deliver to the Lenders:
- 7.7.1.2.3. an independent, irrevocable and unconditional guarantee in favour of Finance Parties, guaranteeing repayment of the Loans together with interest thereon and all other amounts accrued or which may accrue under the Finance Documents, issued

~~and executed by the Qualifying Guarantor, which guarantee must, in all respects, be in form and substance acceptable to the Lenders (acting reasonably) (the "Qualifying Guarantee"), subject to the provisions of clause 7.9; and~~

~~7.7.1.2.4. a legal opinion by legal counsel satisfactory to the Finance Parties dealing with, *inter alia*, the legality, validity and enforceability of the Qualifying Guarantee; or~~

~~7.7.1.2.5; 7.7.1.2.2. within 5 (five) Business Days of receipt of the Lender Instruction, prepay the Loans then outstanding in full, together with accrued unpaid interest thereon, and all other amounts accrued and owing under the Finance Documents, and upon such prepayment being made all of the Commitments of the Lenders shall immediately be cancelled. The failure by the Borrower to prepay the Loans or deliver the Qualifying Guarantee to the Lenders in accordance with the Lender Instruction constitutes an Event of Default.~~

7.7.2. If the Borrower's Initial Credit Rating falls directly from such Initial Credit Rating to an S&P Rating below BBB- or a Moody's Rating below Baa3 and, pursuant to the Lender Instruction, the Lenders request the Borrower to provide them with a Qualifying Guarantee Increased Margin notice, the provisions of clause 7.7.1.1 shall apply *mutatis mutandis*.

7.7.3. If -

7.7.3.1. following the occurrence of the Negative Rating Event contemplated in Clause 7.7.1.2, the Borrower's credit rating is subsequently reinstated to an S&P rating of BBB- (or better) and a Moody's rating of Baa3 (or better) (each a "**B Positive Rating Event**") but below the Initial Credit Rating and such credit rating is maintained for a period of 30 (thirty) days (the "**B Relevant Period**"), the Finance Parties shall, provided that neither a Default nor Event of Default has occurred, upon the Borrower's written request (addressed to the Lenders) at any time following the expiry of the B Relevant Period, relinquish the Qualifying Guarantee, provided that the, the Increased Margin shall reduce to the Margin contemplated in clause 1.1.66.1 with effect from the expiry of the B Relevant Period, provided that the first Increased Margin shall continue to apply to the Facility;

7.7.3.2. following the occurrence of any Negative Rating Event, the Borrower's credit rating is subsequently reinstated to the Initial Credit Rating (or better) (each an "**A Positive Rating Event**") and such credit rating is maintained for a period of 30 (thirty) days (the "**A Relevant Period**") -

7.7.3.2.1. the Increased Margin shall reduce to the Margin contemplated in clause 1.1.66.1 with effect from the expiry of the A Relevant Period; and

~~7.7.3.2.2. if applicable, the Lenders shall, provided that neither a Default nor Event of Default has occurred, upon the Borrower's written request (addressed to the Lenders) at any time following the expiry of the A Relevant Period, relinquish the Qualifying Guarantee.~~

- 7.7.4. If a Negative Rating Event occurs following an A Positive Rating Event or a B Positive Rating Event, the provisions of clause 7.7.1 shall once again apply.

**7.8. Rating Withdrawal**

If, at any time during the Term, the Borrower ceases to be rated by any Rating Agencies (the "Withdrawal Event"):

- 7.8.1. the Borrower shall promptly notify the Lenders upon becoming aware of that Withdrawal Event;
- 7.8.2. the Lenders shall not be obliged to fund a Utilisation;
- 7.8.3. if any Lender so requires and notifies the Borrower within 20 Business Days' of the Withdrawal Event or of such Lender becoming aware of the Withdrawal Event, such Lender shall, by not less than 30 days' notice to the Borrower, cancel its Commitment (if applicable) and declare the participation in the portion of the Loans owed to such Lender, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Commitment of such Lender will be cancelled and all such outstanding amounts owing to such Lender will become immediately due and payable.

**Qualifying Guarantor**

~~In the event that the Qualifying Guarantor ceases to be acceptable to the Lenders, acting reasonably (a "Qualifying Guarantor Adverse Event"):~~

~~the Lenders shall promptly notify the Borrower of that Qualifying Guarantor Adverse Event;~~

~~the Lenders shall not be obliged to fund a Utilisation;~~

~~if any Lender so requires and notifies the Borrower within 20 Business Days' of the Qualifying Guarantor Adverse Event, such Lender shall, by not less than 30 days' notice to the Borrower, cancel its Commitment (if applicable) and declare the participation in the portion of the Loans owed to such Lender, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Commitment of such Lender will be cancelled and all such outstanding amounts owing to such Lender will become immediately due and payable.~~

**7.9. Change of Principal Business and Permitted Corporatization**

- 7.9.1. Upon the occurrence of a Change of Principal Business and/or a Permitted Corporatization the Borrower shall immediately notify the Lenders, in writing, of same (the "Change in Business Notice").
- 7.9.2. For a period of 20 (twenty) Business Days from the earlier of (a) date of receipt by the Lenders of the Change in Business Notice; and (b) the Lenders becoming aware of a Change of Principal Business and/or a Permitted Corporatization, the Lenders shall be entitled to require the Borrower to prepay the Loans, all accrued unpaid interest thereon

and all other amounts owing under Finance Documents by delivering a written notice to such effect to the Borrower (the "Prepayment Request Notice").

- 7.9.3. Within 5 (five) Business Days of receipt by the Borrower of the Prepayment Request Notice, the Borrower shall prepay the Loans, all accrued unpaid interest thereon and all other amounts owing under Finance Documents. The failure by the Borrower to prepay the Loans as aforesaid constitutes an Event of Default.

7.10. **Restrictions**

- 7.10.1. Any notice of prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant prepayment is to be made and the amount of that prepayment. The Borrower shall prepay the amount specified to be prepaid in the applicable notice on the date contemplated in such notice.
- 7.10.2. Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- 7.10.3. All prepayments under this Agreement shall be made together with all applicable Break Costs.
- 7.10.4. The Loans or any portion thereof repaid or prepaid by the Borrower shall not be available to be re-advanced by the Lender(s) to the Borrower.
- 7.10.5. The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitment except at the times and in the manner expressly provided for in this Agreement.

## SECTION 5 COSTS OF UTILISATION

### 8. INTEREST

#### 8.1. Calculation of interest

The rate of interest on each Loan for each Interest Period is the percentage rate per Quarter which is the aggregate of the applicable:

8.1.1. Margin; and

8.1.2. JIBAR.

#### 8.2. Payment of interest

The Borrower shall pay all accrued interest on each Loan on each Interest Payment Date.

#### 8.3. Default interest

8.3.1. If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject Clause 8.3.2 below, is 2% higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the relevant Lender (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower on demand by the Lenders.

8.3.2. If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period relating to that Loan:

8.3.2.1. the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and

8.3.2.2. the rate of interest applying to the overdue amount during that first Interest Period shall be 2% higher than the rate which would have applied if the overdue amount had not become due.

8.3.3. Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

#### 8.4. Notification of rates of interest

The Lenders shall promptly notify the Borrower of the determination of a rate of interest under this Agreement.

## 9. INTEREST PERIODS

### 9.1. Determination of Interest Periods

9.1.1. Each Interest Period will be 3 (three) Months, provided that:

9.1.1.1. the first Interest Period in respect of a Loan shall commence on its Utilisation Date and end on the Interest Payment Date which occurs first thereafter; and

9.1.1.2. each subsequent Interest Period shall commence on the day immediately succeeding the expiry of the previous one and shall end on, in respect of (i) each Interest Period other than the last Interest Period, the Interest Payment Date which occurs first thereafter; and (ii) the last Interest Period, the Maturity Date.

9.1.2. An Interest Period for the Loan shall not extend beyond the Maturity Date.

### 9.2. Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

### 9.3. Consolidation of Loans

All outstanding Loans shall be consolidated into, and treated as, a single Loan on the last day of each Interest Period.

## 10. CHANGES TO THE CALCULATION OF INTEREST

### 10.1. Absence of quotations

Subject to Clause 10.2 (*Market disruption*), if JIBAR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, JIBAR shall be determined on the basis of the quotations of the remaining Reference Banks.

### 10.2. Market disruption

10.2.1. If a Market Disruption Event occurs in relation to a Loan for any Interest Period, then the rate of interest for that Interest Period shall be the percentage rate which is the sum of

10.2.1.1. the Margin; and

10.2.1.2. the rate notified to the Borrower by the Lenders as soon as is reasonably practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate the cost to the Lenders of funding their participation in that Loan from whatever source the Lenders may reasonably select.

10.2.2. In this Agreement **Market Disruption Event** means:

10.2.2.1. at or about noon on the Quotation Day for the relevant Interest Period JIBAR is to be determined by reference to the Reference Banks and none or only one of the Reference



Banks supplies a rate to the Lenders to determine JIBAR for the relevant Interest Period;  
or

10.2.2.2. before close of business in Johannesburg on the Quotation Day for the relevant Interest Period, the Borrower receives notifications from a Lender or Lenders that:

10.2.2.2.1. the cost to it or them of funding its or their participation in that Loan from whatever source(s) it or they may reasonably select would be in excess of JIBAR; or

10.2.2.2.2. the cost to it or them of obtaining matching deposits in the Relevant Interbank Market would be in excess of JIBAR for the relevant Interest Period; or

10.2.2.2.3. matching deposits will not be available to them in the Relevant Interbank Market in the ordinary course of business to fund their participation in that Loan for the relevant Interest Period.

### 10.3. Alternative basis of interest or funding

10.3.1. If a Market Disruption Event occurs and the Lenders or the Borrower so requires, the Lenders and the Borrower shall enter into negotiations (for a period of not more than 30 (thirty) days) with a view to agreeing a substitute basis for determining the rate of interest.

10.3.2. Any alternative basis agreed pursuant to Clause 10.3.1 above shall, with the prior consent of the Lenders and the Borrower, be binding on all Parties. If the Parties cannot agree a substitute basis for determining the rate of interest within the 30 (thirty) day period contemplated in Clause 10.3.1, the Loans together with all accrued and unpaid interest thereon and all other amounts due and owing in terms of the Finance Documents shall become immediately due and payable and the Borrower shall pay such amounts to the Lender.

### 10.4. Break Costs

10.4.1. The Borrower shall, within five Business Days of demand by a Lender, pay to such Lender its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the Interest Payment Date, as applicable, for that Loan or Unpaid Sum.

10.4.2. Each Lender shall, as soon as reasonably practicable after demand to the Borrower, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue, such certificate to be final, conclusive and binding on the Borrower unless shown by the Borrower to the satisfaction of the Lenders to contain a manifest error.

## 11. RAISING FEE

11.1. The Borrower shall pay to the Original Lenders a raising fee in the amount of R7 500 000, exclusive of VAT (calculated as an amount equal to 0.3% of the Loan Amount). The foregoing raising fee is due on the Effective Date and shall be paid by the Borrower by not later than the earlier of:

11.1.1. the 21<sup>st</sup> day after the Effective Date; and

11.1.2. the first Utilisation Date.

11.2. Pursuant to an increase in the Loan Amount contemplated in clause 2.1.2, the Borrower shall pay to the Original Lenders a raising fee in the amount of R1 500 000, exclusive of VAT (calculated as an amount equal to 0.3% of the increase in the Loan Amount pursuant to clause 2.1.2). The foregoing raising fee is due on the date of delivery of such letter and shall be paid by the Borrower by not later than the earlier of:

11.2.1. the 21<sup>st</sup> day after delivery of the letter contemplated in in clause 2.1.2; and

11.2.2. the first Utilisation Date after delivery of the letter contemplated in in clause 2.1.2.

## 12. COMMITMENT FEE

12.1.1. The Borrower shall pay a Commitment Fee to the Lenders on each Lender's Available Commitment for the Availability Period.

12.1.2. The accrued Commitment Fee is payable on the last day of each successive period of 3 Months which ends during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the Commitment at the time the cancellation is effective. ~~If the Borrower maintains current accounts with a Lender, that Lender may debit any of those current accounts with the amount of an accrued Commitment Fee.~~

**SECTION 6**  
**ADDITIONAL PAYMENT OBLIGATIONS**

**13. TAX GROSS UP AND INDEMNITIES**

**13.1. Definitions**

13.1.1. In this Agreement:

13.1.1.1. **Income Tax Act** means the South African Income Tax Act, 58 of 1962, as amended.

13.1.1.2. **Protected Party** means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of a Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

13.1.1.3. **Tax Credit** means a credit against, relief or remission for, or repayment of any Tax.

13.1.1.4. **Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

13.1.1.5. **Tax Payment** means either the increase in a payment made by the Borrower to a Finance Party under Clause 13.2 (Tax gross-up) or a payment under Clause 13.3 (*Tax indemnity*).

13.1.2. Unless a contrary indication appears, in this Clause 13 a reference to "**determines**" or "**determined**" means a determination made in the absolute discretion of the person making the determination.

**13.2. Tax gross-up**

13.2.1. The Borrower shall make all payments to be made by it free and clear of and without any Tax Deduction, unless a Tax Deduction is required by law.

13.2.2. The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Finance Parties accordingly. Similarly, the Finance Parties shall notify the Borrower on becoming so aware of such a payment.

13.2.3. If a Tax Deduction is required by law to be made by an Obligor, the amount of the payment due from the Borrower to the Finance Parties shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

13.2.4. If the Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.

13.2.5. Within 30 (thirty) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Lenders evidence reasonably satisfactory to the Finance Parties that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

13.2.6. The Finance Parties shall reasonably co-operate with the Borrower in completing any procedural formalities necessary for the Borrower to make payment without a (or with a reduced) Tax Deduction pursuant to the Income Tax Act.

13.2.7. Should the Finance Parties be entitled to an exemption from or reduction of a Tax Deduction under the law of South Africa or any treaty to which South Africa is a party, with respect to payments under this Agreement, the Finance Parties shall (to the extent that they are able to do so in accordance with all laws and regulations) deliver to the Borrower at the time or times prescribed by applicable law, such properly contemplated and executed documentation prescribed by applicable law or reasonably requested by the Borrower as are necessary to permit such payments to be made without a Tax Deduction or at a reduced rate of Tax Deduction. If the Finance Parties receive such documentation, the Finance Parties shall deliver the documentation to the Borrower promptly.

### 13.3. Tax indemnity

13.3.1. The Borrower shall (within 5 (five)) Business Days of demand by a Lender) indemnify each Protected Party against, and shall pay to a Protected Party an amount equal to the loss, liability or cost (excluding any consequential loss, liability or cost) which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.

13.3.2. Clause 13.3.1 above shall not apply:

13.3.2.1. with respect to any Tax assessed on a Finance Party:

13.3.2.1.1. under the law of the jurisdiction in which such Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which such Finance Party is treated as resident for tax purposes; or

13.3.2.1.2. under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,

if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Lender; or

13.3.2.2. to the extent a loss, liability or cost is compensated for by an increased payment under Clause 13.2 (*Tax gross-up*).

13.3.3. A Finance Party making, or intending to make a claim under Clause 13.3.1 above shall promptly notify the Borrower of the event which will give, or has given, rise to the claim.

### 13.4. Tax Credit

If the Borrower makes a Tax Payment and a Finance Party determines that:

13.4.1. a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and

13.4.2. such Finance Party has obtained, utilised and retained that Tax Credit,

such Finance Party, following consultation with the Borrower, shall pay an amount to the Borrower which such Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

### 13.5. Tax gross-up and indemnity claims

13.5.1. A Finance Party intending to make a claim pursuant to Clause 13.2 (*Tax gross-up*) above or Clause 13.3 (*Tax indemnity*) above shall give reasonable written notice to the Borrower of the event giving rise to the claim.

13.5.2. A Finance Party shall, as soon as is reasonably practicable after a demand by the Borrower, provide a certificate confirming the amount of its claim pursuant to Clause 13.2 (*Tax gross-up*) above or Clause 13.3 (*Tax indemnity*) above, as the case may be.

### 13.6. Stamp taxes

The Borrower shall pay and, within five Business Days of demand, indemnify each Finance Party against any cost, loss or liability such Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

### 13.7. VAT

13.7.1. All amounts expressed to be payable under a Finance Document to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply and, accordingly, subject to Clause 13.7.2 below, if VAT is or becomes chargeable on any supply made by a Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).

13.7.2. If VAT is or becomes chargeable on any supply made by any Finance Party (the **Supplier**) to any other Finance Party (the **Recipient**) under a Finance Document, and any Party other than the Recipient (the **Relevant Party**) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):

13.7.2.1. (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this Clause 13.7.2.1 applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and

13.7.2.2. (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only

to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.

- 13.7.3. Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- 13.7.4. In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.
- 13.7.5. Notwithstanding anything to the contrary contained in this Clause 13.7, for the purposes of section 54(2) of the Value-Added Tax Act, 89 of 1991, the Borrower irrevocably and unconditionally appoints each Finance Party as its representative and agent to, in its name, place and stead, and for and on its behalf, make payment of all expenses referred to in Clause 13.7.3 directly to such third parties as is contemplated in Clause 13.7.3, which amounts shall be immediately due and recoverable from the Borrower on demand.

#### 14. INCREASED COSTS

##### 14.1. Increased costs

- 14.1.1. Subject to Clause 14.3 (*Exceptions*) the Borrower shall, within 10 (ten) Business Days of a written demand by a Finance Party, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:
- 14.1.1.1. the:
- 14.1.1.1.1. introduction of;
- 14.1.1.1.2. any change in; or
- 14.1.1.1.3. interpretation, administration or application of,  
any law or regulation; and/or
- 14.1.1.2. compliance with any law or regulation; and/or
- 14.1.1.3. compliance with any requirement of Basel III introduced (whether by amendment, proclamation or otherwise) into or by any law, regulation or directive after the date of this Agreement (whether or not having the force of law); and/or
- 14.1.1.4. compliance with any requirement of any law, regulation or directive relating to the composition of capital or capital adequacy of registered insurance companies including the proposed solvency assessment and management regime and any iterations or alterations thereof, introduced (whether by amendment, proclamation or otherwise)

into or by any law, regulation or directive after the date of this Agreement (whether or not having the force of law); and/or

- 14.1.1.5. the phased in or other implementation, after the date of this Agreement, of any requirements of Basel III or any law or regulation implementing Basel III (including the phased in implementation of the Net Stable Funding Ratio and the Liquidity Coverage Ratio).

14.1.2. In this Agreement:

14.1.2.1. Increased Costs means:

14.1.2.1.1. a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;

14.1.2.1.2. an additional or increased cost; or

14.1.2.1.3. a reduction of any amount due and payable under any Finance Document, which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

14.1.2.2. Basel III means:

14.1.2.2.1. the agreements on capital requirements, a leverage ratio and liquidity standards contained in "Basel III: A global regulatory framework for more resilient banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;

14.1.2.2.2. the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement - Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and

14.1.2.2.3. any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

14.1.3. The terms **law and regulation** in Clause 14.1.1 above shall include, without limitation, any law or regulation concerning capital adequacy, solvency, prudential limits, liquidity, reserve assets or Tax.

14.2. **Increased cost claims**

14.2.1. A Finance Party intending to make a claim pursuant to Clause 14.1 (*Increased costs*) shall promptly notify the Borrower of the event giving rise to the claim.

- 14.2.2. The relevant Finance Party shall, as soon as is reasonably practicable after a demand by the Borrower, provide a certificate confirming the amount of its Increased Costs.

14.3. **Exceptions**

- 14.3.1. Clause 14.1 (*Increased costs*) does not apply to the extent that any Increased Cost is:
- 14.3.1.1. attributable to a Tax Deduction required by law to be made by the Borrower;
  - 14.3.1.2. compensated for by Clause 13.3 (*Tax indemnity*) (or would have been compensated for under Clause 13.3 (*Tax indemnity*) but was not so compensated solely because any of the exclusions in Clause 13.3.2 applied);
  - 14.3.1.3. attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.
- 14.3.2. In this Clause 14.3, a reference to a **Tax Deduction** has the same meaning given to the term in Clause 13.1 (*Definitions*).

15. **OTHER INDEMNITIES**

15.1. **Other indemnities**

The Borrower shall, within five Business Days of demand, indemnify the Finance Parties against any cost, loss or liability incurred by the Finance Party as a result of:

- 15.1.1. the occurrence of any Default;
- 15.1.2. a failure by an Obligor to pay any amount due under a Finance Document on its due date;
- 15.1.3. the information produced or approved by the Borrower under or in connection with the Finance Documents being misleading and/or deceptive in any respect;
- 15.1.4. funding, or making arrangements to fund, its participation in a Utilisation requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Finance Party alone); or
- 15.1.5. a Loan (or part of that Loan) not being prepaid in accordance with a notice of prepayment given to the Borrower.

15.2. **Environmental Indemnity**

The Borrower agrees to indemnify each Finance Party, each Affiliate of a Finance Party and their respective directors, officers and employees (together, the **Indemnified Parties**) against any cost, loss or liability suffered or incurred by that Indemnified Party (except to the extent solely caused by such Indemnified Party's own gross negligence or willful default) which:

- 15.2.1. arises by virtue of any breach of any Environmental Law (whether by the Borrower or any other member of the Group);
- 15.2.2. arises in connection with an Environmental Claim; or



- 15.2.3. any enquiry, investigation, subpoena (or similar order) or litigation with respect to any Environmental Claim and any other enquiry, investigation, subpoena (or similar order) or litigation in respect of any breach of any Environmental Law that has or is reasonably likely to give rise to a liability for any Finance Party,

which relates to the Group, any assets of the Group or the operation of all or part of the business of the Group (or, in each case, any member of the Group) and which would not have arisen if the Finance Documents or any of them had not been executed by that Finance Party. Any Affiliate or any director, officer or employee of a Finance Party or its Affiliate may rely on this Clause 15.2 as a stipulation for its or his benefit.

## 16. MITIGATION BY THE FINANCE PARTIES

### 16.1. Mitigation

- 16.1.1. The Finance Parties shall, in consultation with the Borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any provision of Clause 7.1 (*Illegality*), Clause 13 (*Tax gross-up and indemnities*) or Clause 14 (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.
- 16.1.2. Clause 16.1.1 does not in any way limit the obligations of the Borrower under the Finance Documents.

### 16.2. Limitation of liability

- 16.2.1. The Borrower shall within 5 (five) Business Days of demand by any Finance Party indemnify such Finance Party for all properly evidenced costs and expenses reasonably incurred by such Finance Party as a result of steps taken by it under Clause 16.1 (*Mitigation*).
- 16.2.2. No Finance Party is obliged to take any steps under Clause 16.1 (*Mitigation*) if, in its opinion (acting reasonably), to do so might be prejudicial to it or any law or regulation would not allow or permit the taking of such steps.

## 17. COSTS AND EXPENSES

### 17.1. Transaction expenses

The Borrower shall within five Business Days of demand by the Finance Parties pay the Finance Parties the amount of all costs and expenses (including legal fees) reasonably incurred by the Finance Parties and properly evidenced in connection with the negotiation, preparation, printing, execution, implementation and/or syndication of:

- 17.1.1. this Agreement and any other documents referred to in this Agreement; and
- 17.1.2. any other Finance Documents executed after the date of this Agreement.

### 17.2. Amendment costs

- 17.2.1. If the Borrower requests an amendment, waiver or consent the Borrower shall, within 5 (five) Business Days of demand, reimburse each Finance Party for the amount of all costs and expenses (including legal fees) reasonably incurred by such Finance Party in responding to, evaluating, negotiating or complying with that request.
- 17.2.2. If there is any change in law or any regulation which requires an amendment, waiver or consent under the Finance Documents, the Borrower shall, within 5 (five) Business Days of demand, reimburse each Finance Party for the amount of all costs and expenses (including legal fees) reasonably incurred and properly evidenced by that Finance Party in connection with evaluating, negotiating or complying with any such requirement.

17.3. **Enforcement costs**

The Borrower shall, within 5 (five) Business Days of demand by a Finance Party, pay to each Finance Party the amount of all properly evidenced costs and expenses (including legal fees (which in South Africa shall be on the scale as between attorney and own client) incurred by that Finance Party (whether before or after judgment) in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

**SECTION 7**  
**REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

**18. REPRESENTATIONS**

The Borrower makes the representations and warranties set out in this Clause 18 to each Finance Party on the date of this Agreement.

**18.1. Status**

18.1.1. It, and each of its Subsidiaries, is a company, duly incorporated and validly existing and registered under the laws of South Africa.

18.1.2. It, and each of its Subsidiaries, has the power to own its assets and carry on its business as it is being conducted.

**18.2. Binding obligations**

The obligations expressed to be assumed by it in each Finance Document are legal, valid, binding and enforceable obligations.

**18.3. Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

18.3.1. any law (including the PFMA) or regulation applicable to it;

18.3.2. its or any of its Subsidiaries' constitutional documents; or

18.3.3. any agreement or instrument binding upon it or any of its Subsidiaries or any of its or any of its Subsidiaries' assets.

**18.4. Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

**18.5. Validity and admissibility in evidence**

All Authorisations required:

18.5.1. to enable it lawfully to enter into, exercise its rights and comply with its obligations under the Finance Documents to which it is a party and to ensure that the obligations expressed to be assumed by it thereunder are legal, valid, binding and enforceable; and

18.5.2. to make the Finance Documents to which it is a party admissible in evidence in the Relevant Jurisdiction; and

18.5.3. for the conduct of the business, trade and ordinary activities by each member of the Group, have been obtained or effected and are in full force and effect.

**18.6. Insolvency****18.6.1. No:**

18.6.1.1. corporate action, legal proceeding or other procedure or step contemplated by the definition of Insolvency Event; or

18.6.1.2. creditors' process contemplated by the definition of Insolvency Event, has been taken or, to the knowledge of the Borrower, threatened in relation to a member of the Group; and none of the circumstances described in Clause 22.6 (*Insolvency*) applies to a member of the Group.

18.6.2. To the best of its knowledge and belief, neither it, nor any member of the Group, is "*financially distressed*" (as defined in the Companies Act) and there is no reasonable likelihood of any Obligor (if applicable) or any other member of the Group becoming "*financially distressed*" (as defined in the Companies Act).

**18.7. Governing Law and Enforcement**

18.7.1. The choice of South African law as the governing law of this Agreement will be recognised and enforced in the Relevant Jurisdiction.

18.7.2. Any judgment obtained in South Africa in relation to this Agreement will be recognised and enforced in the Relevant Jurisdiction.

**18.8. Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.

**18.9. No filing or stamp taxes**

Under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

**18.10. No default**

18.10.1. As of the Signature Date, no Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation or the entry into of, or the performance of any transaction contemplated by the Finance Documents.

18.10.2. No other event or circumstance, to the Borrower's knowledge and belief (having made due and careful enquiry), is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which is reasonably likely to have a Material Adverse Effect.

**18.11. No misleading information**

- 18.11.1. Any and all information provided by the Borrower to the Lender is true, complete and accurate in all material respects as at the date on which it is given and all information provided by the Borrower to the Finance Parties is not misleading in any respect.
- 18.11.2. Nothing has occurred and no information has been given or withheld that results in any factual information referred to in Clause 18.11.1 above provided by the Borrower for the purposes of the Finance Documents being untrue or misleading in any material respect.
- 18.11.3. All information referred to in clause 18.11 has been disclosed without breaching any confidentiality obligations binding on the Borrower.
- 18.11.4. The Borrower has not knowingly withheld any information which, if disclosed, would reasonably be expected to materially and adversely affect the decision of any Finance Party to provide finance to the Borrower.

**18.12. Financial statements**

- 18.12.1. Its Original Financial Statements were prepared in accordance with IFRS consistently applied.
- 18.12.2. Its Original Financial Statements fairly represent its financial condition and operations (consolidated) during the relevant financial year.
- 18.12.3. There has been no material adverse change in its assets, business or financial condition (or the business or consolidated financial condition of the Group) since 31 March 2015.
- 18.12.4. Its most recent financial statements delivered pursuant to Clause 19.1 (*Financial statements*):
  - 18.12.4.1. have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements; and
  - 18.12.4.2. give a true and fair view of (if audited) or fairly represent (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.
- 18.12.5. Since the date of the most recent financial statements delivered pursuant to Clause 19.1 (*Financial statements*) there has been no material adverse change in the business, assets or financial condition of the Group.

**18.13. Pari passu ranking**

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

**18.14. No proceedings pending or threatened**

Save as contemplated in Schedule 12 hereto, no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined,

might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against it or any of its Subsidiaries.

**18.15. No breach of laws**

- 18.15.1. It has not, to its knowledge and belief (having made due and careful enquiry), (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.
- 18.15.2. No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any member of the Group which have or are reasonably likely to have a Material Adverse Effect.

**18.16. Environmental laws**

- 18.16.1. Each member of the Group is in compliance with Clause 21.3 (*Environmental compliance*) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.
- 18.16.2. No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.
- 18.16.3. The cost to the Group of compliance with Environmental Laws (including Environmental Permits) is (to the best of its knowledge and belief, having made due and careful enquiry) adequately provided for.

**18.17. Taxation**

- 18.17.1. It is not (and no member of the Group is) overdue in the filing of any Tax returns and it is not (and no member of the Group is) overdue in the payment of any amount in respect of Tax in an amount equal to 0,3% of the Consolidated Total Assets (or its equivalent in any other currency) or more.
- 18.17.2. No claims have been made and, to the best of its knowledge and belief (having made due and careful enquiries) no claims are reasonably likely to be made, and no investigations are being, or are reasonably likely to be, conducted against it (or any member of the Group) with respect to Taxes such that a liability of, or claim against it or any member of the Group in an amount equal to 0,3% of the Consolidated Total Assets (or its equivalent in any other currency) or more is reasonably likely to arise.
- 18.17.3. It and each member of the Group is resident for Tax purposes only in the jurisdiction of its incorporation.

**18.18. Good Title to Assets**

It and each member of the Group has good and valid title to its assets and licenses required in connection with the conduct of its business, and has all appropriate Authorisations to use, all of the assets necessary to carry on its business.

**18.19. No Material Industrial Action**

No industrial or similar action has commenced, as at the Signature Date, against it or any member of the Group which is likely to result in a Material Adverse Effect.

**18.20. Authorised Signatories**

Any person specified as its authorised signatory under Schedule 1 (*Conditions Precedent*) is authorised to sign Utilisation Requests on its behalf.

**18.21. No immunity**

In any proceedings taken in South Africa or in any other jurisdiction, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process in relation to this Agreement or any other Finance Document.

**18.22. Accounting Reference Date**

The financial year end of the Group is 31 March each year.

**18.23. No adverse consequences**

18.23.1. It is not necessary under the laws of the Relevant Jurisdiction:

18.23.1.1. in order to enable any Finance Party to enforce its rights under any Finance Document;  
or

18.23.1.2. by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document,

that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in any of the Relevant Jurisdiction.

18.23.2. No Finance Party is or will be deemed to be resident, domiciled or carrying on business in the Relevant Jurisdiction by reason only of the execution, performance and/or enforcement of any Finance Document.

**18.24. Repetition**

The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of the Utilisation Request, on the Utilisation Date and the first day of each Interest Period.

**19. INFORMATION UNDERTAKINGS**

The undertakings in this Clause 19 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

## 19.1. Financial statements

- 19.1.1. The Borrower shall supply to the Finance Parties as soon as the same become available but in any event:
- 19.1.1.1. within 180 (one hundred and eighty) days after the end of each of its financial years its audited consolidated financial statements for that financial year; and
- 19.1.1.2. within 90 (ninety) days after the end of each half of each of its financial years its consolidated financial statements for that financial half year.
- 19.1.2. The Borrower shall supply to the Lenders, with each set of financial statements delivered pursuant to this Clause 19.1, its cash flow projections for a period commencing on the day immediately succeeding the last day in respect of which such financial statements were prepared and terminating 7 years thereafter.

## 19.2. Covenant Compliance Certificate

- 19.2.1. The Borrower shall supply to the Lenders, with each set of financial statements delivered pursuant to Clause 19.1, a Covenant Compliance Certificate setting out (in reasonable detail) computations as to compliance with clause 20 as at the date as at which those financial statements were drawn up.
- 19.2.2. Each Covenant Compliance Certificate shall be signed by the Borrower's Chief Financial Officer and another director of the Borrower and, if required to be delivered with the financial statements delivered pursuant to Clause 19.1, shall be reported on by the Borrower's auditors.

## 19.3. Requirements as to financial statements

- 19.3.1. Each set of financial statements delivered by the Borrower pursuant to Clause 19.1 (*Financial statements*) shall be certified by a director of the relevant company as fairly representing the relevant company's financial condition as at the date as at which those financial statements were drawn up.
- 19.3.2. The Borrower shall procure that each set of financial statements delivered pursuant to Clause 19.1 (*Financial statements*) is prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for the relevant company unless, in relation to any set of financial statements, it notifies the Finance Parties that there has been a change in the Accounting Principles, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of a Subsidiary of it) deliver to the Lender:
- 19.3.2.1. a description of any change necessary for those financial statements to reflect the Accounting Principles, accounting practices and reference periods upon which the relevant company's Original Financial Statements were prepared; and
- 19.3.2.2. sufficient information, in form and substance as may be reasonably required by the Finance Parties, to enable the Finance Parties to make an accurate comparison between



the financial position indicated in those financial statements and that company's Original Financial Statements.

- 19.3.3. Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

**19.4. Year-end**

The Borrower shall not change its year end.

**19.5. Information: miscellaneous**

- 19.5.1. The Borrower shall supply to the Finance Parties:

- 19.5.1.1. all documents dispatched by the Borrower to its creditors generally (or any class of them) at the same time as they are dispatched;
- 19.5.1.2. promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which, if adversely determined, is reasonably likely to have a Material Adverse Effect;
- 19.5.1.3. promptly upon becoming aware of them, the details of any labour dispute or industrial action which occurs or which is threatened against any member of the Group which has or is reasonably likely to have a Material Adverse Effect;
- 19.5.1.4. promptly upon becoming aware of them, details and copies of any material changes proposed to or made to its constitutional documents or the constitutional documents of it or any other member of the Group, including the filing of any memorandum of incorporation under the Companies Act;
- 19.5.1.5. promptly, such further information regarding the financial condition, business and operations of any member of the Group as any Finance Party may reasonably request; and
- 19.5.1.6. the Borrowing Programme and any amendments thereto as soon as same is available for distribution to the Minister of Finance and to all other applicable creditors in respect of the Borrower;
- 19.5.1.7. promptly, copies of all Authorisations required to ensure compliance with the provisions of the PFMA, in respect of its entry into of the Finance Documents to which it is a party and the performance of its obligations thereunder;
- 19.5.1.8. not less than once per year and promptly following its completion or any amendments thereto, its corporate plan and shall, on reasonable notice and at such reasonable times as are mutually convenient to the Parties (provided that the Borrower shall meet with the Finance Parties not more than 1 month after receipt of such notice for a period of not less than 2 Business Days) meet with the Finance Parties and shall, at that meeting, supply to the Finance Parties such information as may reasonably be requested by the Finance Parties concerning its corporate plan.

**19.6. Credit rating**

19.6.1. The Borrower undertakes to notify the Lenders in writing of:

- 19.6.1.1. any event or circumstance which may give rise to a Negative Rating Event or a ~~Qualifying Guarantor Adverse Event (as the case may be)~~ within 5 (five) Business Days of such event or circumstance having occurred;
- 19.6.1.2. the occurrence of a Negative Rating Event within 5 (five) Business Days of such Negative Rating Event having occurred;
- 19.6.1.3. any Withdrawal Event within 5 (five) Business Days of such Withdrawal Event having occurred.

19.6.2. The Borrower shall provide the Finance Parties with a copy of each Credit Rating on the date on which such Credit Rating is issued.

**19.7. Notification of default and other matters**

19.7.1. The Borrower shall notify the Finance Parties of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

19.7.2. The Borrower shall promptly upon a request by a Finance Party supply to that Finance Party a certificate signed by a director or senior officer on its behalf:

19.7.2.1. certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it) and that no Default is expected to occur over the three Month period from such date;

19.7.2.2. certifying that no Change of Control Event has occurred as at the date of such certificate and that no Change of Control Event is expected to occur over the 3 (three) Month period from such date;

19.7.2.3. certifying that no Negative Rating Event has occurred as at the date of such certificate and that no Negative Rating Event is expected to occur over the 3 (three) Month period from such date;

~~certifying that no Qualifying Guarantor Adverse Event is expected to occur over the three Month period from such date;~~

19.7.2.4. setting out the shareholders of the Borrower as at the date of such certificate; and

19.7.2.5. certifying that the Borrower is in compliance with the requirements of Clause 21.10 (*Insurance*) as at the date of such certificate.

19.7.3. The Borrower shall notify the Finance Parties of any change to its auditor.

**19.8. Business rescue proceedings**

The Borrower shall deliver written notice to the Finance Parties no later than 5 (five) Business Days prior to the date upon which a board meeting to consider a resolution contemplated in section 129 of the Companies Act is to be held, or if such meeting is to be held at less than 5

Business Days' notice, then as soon as reasonably possible. The Finance Parties shall have the right to be consulted in respect of the appointment of an appropriate business rescue practitioner.

**19.9. "Know your customer" checks**

**19.9.1. If:**

- 19.9.1.1. the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- 19.9.1.2. any change in the status of the Borrower or the shareholding of the Borrower after the date of this Agreement; or
- 19.9.1.3. a proposed assignment or transfer by a Finance Party of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges any Finance Party (or, in the case of Clause 19.9.1.3, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of any Finance Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by any Finance Party (for itself or, in the case of the event described in Clause 19.9.1.3, on behalf of any prospective new Finance Party) in order for such Finance Party, or, in the case of the event described in Clause 19.9.1.3, any prospective new Finance Party to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

**20. FINANCIAL COVENANTS**

**20.1. Financial definitions**

In this Agreement:

- 20.1.1. **Cash interest cover** means cash generated from operations after working capital changes, divided by net finance costs (net finance costs includes finance costs, finance income and capitalised borrowing costs from the cash flow statement).
- 20.1.2. **Financial Half Year** means the period commencing on the day after one Half Year Date and ending on the next Half Year Date.
- 20.1.3. **Financial Year** means the annual accounting period of the Borrower ending on or about 31 March in each year.
- 20.1.4. **Gearing** means the Borrower's debt expressed as a percentage of the sum of debt and the Borrower's shareholder's equity (as set out in the financial statements delivered pursuant to Clause 19.1 and/or each Covenant Compliance Certificate delivered pursuant to Clause 19.2).

20.1.5. **Half Year Date** means each of 30 September in each year.

20.1.6. **Relevant Period** means each period of twelve months ending on or about the last day of the Financial Year and each period of twelve months ending on or about the last day of each Financial Half Year.

20.2. **Financial condition**

The Borrower shall ensure that:

20.2.1. **Cash interest cover:** Cash interest cover in respect of any Relevant Period specified in column 1 below shall not be less than the ratio set out in column 2 below opposite that Relevant Period.

Column 1 - Relevant Period	Column 2 - Ratio
Each Relevant Period	2.5 :1

20.2.2. **Gearing:** Gearing in respect of any Relevant Period specified in column 1 below shall not be more than the percentage set out in column 2 below opposite that Relevant Period.

Column 1 - Relevant Period	Column 2 - Ratio
Each Relevant Period	60%

20.3. **Financial testing**

The financial covenants set out in Clause 20.2 shall be calculated in accordance with IFRS and tested by reference to each of the financial statements delivered pursuant to Clause 19.1 and/or each Covenant Compliance Certificate delivered pursuant to Clause 19.2.

20.4. **Discussion events**

Whenever either the Cash interest cover ratio is less than 3 : 1 and/or the Gearing is more than 50% the Borrower shall enter into discussions with or shall provide information to the Lenders advising the Lenders of the steps (and, periodically, the progress made in achieving such steps) taken or to be taken by the Borrower in order to restore the Cash interest cover ratio to at least 3 : 1 and/or the Gearing to no more than 50%. Such information shall be provided to the Lenders for as long as, and/or the discussions shall occur on such dates and shall endure for such periods as, the Lenders consider to be reasonable in the circumstances.

21. **GENERAL UNDERTAKINGS**

The undertakings in this Clause 21 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

21.1. **Authorisations**

The Borrower shall promptly:

21.1.1. obtain, comply with and do all that is necessary to maintain in full force and effect; and

21.1.2. supply certified copies to the Finance Parties of,

any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

**21.2. Compliance with laws**

The Borrower shall (and the Borrower shall ensure that each member of the Group will) comply in all respects with all laws to which it may be subject.

**21.3. Environmental compliance**

The Borrower shall (and the Borrower shall ensure that each member of the Group will):

21.3.1. comply with all Environmental Law;

21.3.2. obtain, maintain and ensure compliance with all requisite Environmental Permits;

21.3.3. implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

**21.4. Environmental claims**

The Borrower shall, promptly upon becoming aware of the same, inform the Finance Parties in writing of:

21.4.1. any Environmental Claim against any member of the Group which is current, pending or threatened; and

21.4.2. any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

where the claim, if determined against that member of the Group, has or is reasonably likely to result in a Material Adverse Effect.

**21.5. Negative pledge**

In this Clause 21.5, **Quasi-Security** means an arrangement or transaction described in Clause 21.5.2.

21.5.1. The Borrower shall not (and the Borrower shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.

- 21.5.2. The Borrower shall not (and the Borrower shall ensure that no other member of the Group will):
- 21.5.2.1. sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Borrower or any other member of the Group;
  - 21.5.2.2. sell, transfer or otherwise dispose of any of its receivables on recourse terms;
  - 21.5.2.3. enter into or permit to subsist any title retention arrangement;
  - 21.5.2.4. enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or
  - 21.5.2.5. enter into any other preferential arrangement having a similar effect,
- in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.
- 21.5.3. Clauses 21.5.1 and 21.5.2 do not apply to any Security or (as the case may be) Quasi-Security, listed below:
- 21.5.3.1. any Security or Quasi Security listed in Schedule 14, except to the extent the principal amount secured by that Security or Quasi Security exceeds the amount stated in that Schedule;
  - 21.5.3.2. any cash management, netting or set-off arrangement entered into by any member of the Group in the ordinary course of its banking arrangements for the purpose of netting debit and credit balances;
  - 21.5.3.3. any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:
    - 21.5.3.3.1. hedging any risk to which any member of the Group is exposed in its ordinary course of business; or
    - 21.5.3.3.2. its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,

excluding, in each case, any Security or Quasi-Security under a credit support arrangement in relation to a hedging transaction;
  - 21.5.3.4. any lien arising by operation of law and in the ordinary course of business provided that the debt which is secured thereby is paid when due or contested in good faith by appropriate proceedings and properly provisioned;
  - 21.5.3.5. any short term funding raised by the Borrower in the ordinary course of business pursuant to the sale or discounting of receivables on recourse terms;
  - 21.5.3.6. any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the date of this Agreement to the extent that:

- 21.5.3.6.1. the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
- 21.5.3.6.2. the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
- 21.5.3.6.3. the Security or Quasi-Security is removed or discharged within 90 days of the date of acquisition of such asset;
- 21.5.3.7. any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group, to the extent that:
  - 21.5.3.7.1. the Security or Quasi-Security was not created in contemplation of the acquisition of that company;
  - 21.5.3.7.2. the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
  - 21.5.3.7.3. the Security or Quasi-Security is removed or discharged within 90 days of that company becoming a member of the Group;
- 21.5.3.8. any Security or Quasi-Security entered into pursuant to any Finance Document;
- 21.5.3.9. any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of business and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;
- 21.5.3.10. any Security or Quasi-Security that secures indebtedness having an outstanding principal amount that (when aggregated with the outstanding principal amount of any other indebtedness which has the benefit of Security or Quasi-Security given by any member of the Group other than any Security or Quasi-Security permitted under Clauses 21.5.3.2 to 21.5.3.9 above) does not exceed 10 per cent. of the Consolidated Total Assets of the Borrower (or its equivalent in other currencies) in total during the term of this Agreement; or
- 21.5.3.11. any Security or Quasi-Security created with the prior written approval of the Lenders, which approval may not be unreasonably delayed.

## 21.6. Disposals

- 21.6.1. The Borrower shall not (and the Borrower shall ensure that no other member of the Group will), enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.
- 21.6.2. Clause 21.6.1 above does not apply to any sale, lease, transfer or other disposal:
  - 21.6.2.1. made on arm's length terms in the ordinary course of business of the disposing entity;

- 21.6.2.2. of any assets in exchange for or to be replaced by other assets comparable or superior as to type, value and quality;
- 21.6.2.3. of obsolete or redundant vehicles, plant and equipment for cash;
- 21.6.2.4. of assets for cash where the higher of the market value and net consideration receivable (when aggregated with the higher of the market value and net consideration receivable for any other sale, lease, licence, transfer or other disposal not allowed under the preceding sub-Clauses) does not exceed 10 per cent. of the Consolidated Total Assets of the Borrower (or its equivalent in other currencies) in total during the term of this Agreement; or
- 21.6.2.5. made with the prior written approval of the Lenders, which approval may not be unreasonably withheld or delayed.

#### 21.7. Merger

The Borrower shall not (and the Borrower shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger or corporate reconstruction other than a Permitted Transaction.

#### 21.8. Change of business

The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower or the Group from that carried on at the Signature Date.

#### 21.9. Preservation of assets

The Borrower shall (and the Borrower shall ensure that each other member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its business.

#### 21.10. Insurance

21.10.1. The Borrower shall (and the Borrower shall ensure that each other member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

21.10.2. All insurances must be with reputable independent insurance companies or underwriters.

#### 21.11. Sanctions

21.11.1. No member of the Group is party to or participates in any Sanctioned Transaction, has contravened any Sanctions or is targeted under any Sanctions.

21.11.2. The Borrower shall not (and the Borrower shall ensure that no other member of the Group will) at any time participate in a Sanctioned Transaction in any manner.

21.11.3. The Borrower shall take all reasonable steps to ensure that appropriate controls and safeguards are in place, designed to prevent it or any other member of the Group from being or becoming involved in a Sanctioned Transaction.



- 21.11.4. The provisions of this clause 21.11 shall not apply in respect of the transactions relating to the operations specified in the Operations Disclosure Schedule.

**21.12. Distributions**

Following the occurrence of an Event of Default, the Borrower shall not be entitled to make any Distributions.

**21.13. Financial Indebtedness**

Following the occurrence of an Event of Default, the Borrower shall not be entitled to incur any Financial Indebtedness.

**21.14. Investments**

The Borrower shall not enter into any investment and shall not:

- 21.14.1. acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or
- 21.14.2. incorporate a company,

following the occurrence of an Event of Default.

**21.15. Joint Ventures**

- 21.15.1. The Borrower shall not:

- 21.15.1.1. enter into, invest in or acquire (or agree to acquire) any securities or other interest in any Joint Venture; or
- 21.15.1.2. transfer any assets or lend to or guarantee or give an indemnity for or grant any security interest for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing),

following the occurrence of an Event of Default or if, in the case of the guarantee or indemnity contemplated in Clause 21.15.1.2., such guarantee (together with the other guarantees issued as of the Signature Date) guarantees an amount equal to or greater than the Designated Amount or such indemnity (together with the other indemnities issued as of the Signature Date) indemnifies the applicable party against a claim equal to or greater than the Designated Amount.

**21.16. Loans or Credit**

The Borrower shall not make any loans or be a creditor in respect of any Financial Indebtedness following the occurrence of an Event of Default or if such loans (in aggregate as of the Signature Date) or Financial Indebtedness (in aggregate as of the Signature Date) are for an amount equal to or greater than (in either case), the Designated Amount.

**21.17. No Guarantees or Indemnities**

The Borrower shall not incur or allow to remain outstanding any guarantee or indemnity in respect of the obligation of any person following the occurrence of an Event of Default or if

such guarantee (together with the other guarantees issued as of the Signature Date) guarantees the payment of an amount equal to or greater than the Designated Amount or such indemnity indemnifies the applicable party against a claim (which, when aggregated with the other indemnified claims as of the Signature Date) is equal to or greater than the Designated Amount.

**21.18. Access**

If a Default is continuing or a Finance Party reasonably suspects a Default is continuing or may occur, the Borrower shall, and the Borrower shall ensure that each member of the Group will permit the Finance Parties and/or accountants or other professional advisers and contractors of the Finance Parties to meet and discuss such matters with the senior management of the Group.

**21.19. Constitutional Documents**

The Borrower shall not amend its constitutional documents, without the prior written consent from the Finance Parties, and shall procure that no amendment is made to its constitutional documents if such amendment would adversely affect the rights of the Finance Parties under the Finance Documents.

**21.20. Listing**

The Borrower shall not list bonds on any exchange other than an Approved Exchange.

**21.21. Equal treatment of facilities and creditors**

21.21.1. If under the terms (whether the original terms or the terms as amended, substituted or restated) of any loan facility, bonds, notes or other debt instruments entered into or issued by the Borrower (or any refinancing thereof), the Borrower grants the creditors thereunder (or any agent, trustee or other representative thereof) any term and/or security (if any) that is more favourable to such creditors than the terms and/or security (if any) contained in (or incorporated by reference in) the Finance Documents (such improved term being a **Relevant Benefit**), the Borrower shall:

21.21.1.1. provide a copy of such representation, warranty, undertaking, covenant or event of default to the Lenders; and

21.21.1.2. be deemed to have thereby have made an unconditional offer to the Finance Parties, which offer shall remain open for acceptance for 20 Business Days following receipt of such copies (the **Offer**) to amend the terms (including all related provisions and definitions) of the relevant Finance Documents to include each Relevant Benefit in favour of the Finance Parties on terms which are no less favourable to the Finance Parties.

21.21.2. If, within 20 Business Days following receipt of the Offer, the Lenders notify the Borrower that the Finance Parties wish to amend the relevant Finance Documents to incorporate the Relevant Benefit, the Borrower and the Finance Parties shall negotiate in good faith to so amend the relevant Finance Document.

21.21.3. If, within 20 Business Days after receipt by the Borrower of the Lenders' acceptance of the Offer, the Borrower and the Finance Parties have not reached agreement on the contemplated amendment(s), upon notice to that effect delivered within a further 20 Business Day period, the Relevant Benefit shall automatically be incorporated by reference into the relevant Finance Documents as if expressly set out therein, provided that:

21.21.3.1. the Relevant Benefit shall govern and supersede any contrary or contradictory terms or provisions set out in the relevant Finance Document; and

21.21.3.2. to the extent necessary, defined terms, section references, etc. set out in the Relevant Benefit shall be deemed to be modified for such purposes to be consistent with such terms, section references, etc. set out in the relevant Finance Document.

## 21.22. PFMA

The Borrower has complied, and shall comply, with the provisions of the PFMA, including, without limitation, obtaining all requisite authorisations in respect thereof, in respect of its entry into of the Finance Documents to which it is a party and the performance of its obligations thereunder.

## 22. EVENTS OF DEFAULT

Each of the events or circumstances set out in Clause 22 is an Event of Default (save for Clause 22.18 (*Acceleration*)).

### 22.1. Non-payment

Any Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the agreed place unless its failure to pay is caused by:

22.1.1. administrative or technical error; or

22.1.2. a Disruption Event,

and payment is made within 5 (five) Business Days of its due date.

### 22.2. Financial covenants

Any requirement of clause 20 is not satisfied.

### 22.3. Other obligations

22.3.1. Any Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause 22.1 (*Non-payment*) and Clause 22.2 (*Financial Covenants*)).

22.3.2. No Event of Default under Clause 22.3.1 above will occur if the failure to comply is capable of remedy and is remedied within 10 (ten) Business Days of the Lenders giving notice to the Borrower or the Borrower becoming aware of the failure to comply.

### 22.4. Misrepresentation

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of such Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made unless the underlying circumstances (if capable of remedy) are remedied to the extent that the representation or statement is no longer incorrect or misleading in any material respect within 10 (ten) Business Days of the Lenders giving notice to the Borrower or the Borrower becoming aware of the failure to comply.

## 22.5. Cross default

- 22.5.1. Any Financial Indebtedness of any member of the Group and/or an Obligor is not paid when due nor within any originally applicable grace period.
- 22.5.2. Any Financial Indebtedness of any member of the Group and/or an Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).
- 22.5.3. Any commitment for any Financial Indebtedness of any member of the Group and/or an Obligor is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).
- 22.5.4. Any creditor of any member of the Group and/or an Obligor becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).
- 22.5.5. No Event of Default will occur under this Clause 22.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within Clauses 22.5.1 to 22.5.4 is in respect of the Borrower or applicable member of the Group, is less than the Designated Amount (or its equivalent in other currencies).

## 22.6. Insolvency

- 22.6.1. A member of the Group is or is deemed by any authority or legislation to be unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- 22.6.2. The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).
- 22.6.3. A moratorium is declared in respect of any indebtedness of any member of the Group.
- 22.6.4. A member of the Group is or is deemed by any authority or legislation to be Financially Distressed (as defined in the Companies Act).
- 22.6.5. Insolvency Event occurs.

**22.7. Insolvency proceedings**

22.7.1. Any corporate action, legal proceedings or other procedure or step is taken in relation to:

22.7.1.1. the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group other than a solvent liquidation or reorganisation of any member of the Group other than the Borrower;

22.7.1.2. a composition, compromise, assignment or arrangement with any creditor of any member of the Group;

22.7.1.3. the appointment of a liquidator (other than in respect of a solvent liquidation of a member of the Group other than the Borrower), receiver, administrative receiver, administrator, compulsory manager, business rescue practitioner or other similar officer in respect of any member of the Group or any of its assets;

22.7.1.4. the placing of any member of the Group under supervision and the commencing of business rescue proceedings under section 129(1) or section 131 (1) of the Companies Act; or

22.7.1.5. enforcement of any Security over any assets of any member of the Group,  
or any analogous procedure or step is taken in any jurisdiction.

22.7.2. This Clause 22.7 shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 90 (ninety) days of commencement.

**22.8. Unlawfulness**

It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents.

**22.9. Repudiation**

An Obligor rescinds or repudiates a Finance Document or evidences an intention to rescind or repudiate a Finance Document.

**22.10. Material Adverse Effect**

Any event or series of events occurs which the Lenders reasonably believe will have a Material Adverse Effect.

**22.11. Failure to comply with Final Judgment**

22.11.1. Any Obligor fails within 5 (five) Business Days of the due date to comply with or pay any sum due from it under any final judgment or any final order (being a judgment or order which is not subject to any rescission or appeal and/or capable of being subject to any such rescission or appeal) made or given by any court of competent jurisdiction.

- 22.11.2. No Event of Default will occur under this Clause 22.11, if the amount the relevant Obligor fails to pay pursuant to any final judgment or any final order is less than the Designated Amount (or its equivalent in any other currency or currencies).

#### 22.12. Creditors' Process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of an Obligor having an aggregate value of an amount equal to the Designated Amount (or its equivalent in any other currency or currencies) and is not discharged within 10 (ten) Business Days of the applicable Obligor becoming aware thereof.

#### 22.13. Litigation

- 22.13.1. Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Finance Documents or the transactions contemplated in the Finance Documents or against any Obligor or its assets which has or is reasonably likely to result in a Material Adverse Effect.
- 22.13.2. The Lenders, acting reasonably, have determined (and have notified the Borrower of such determination), that the litigation contemplated in Schedule 12 and commenced by pensioner members of the Transport Pension Fund ("the TPF") and the Transnet Second Defined Benefit Fund ("the TSDBF") against the Borrower, the TPF and the TSDBF will result in liability on the part of the Borrower in an amount exceeding the Designated Amount.

#### 22.14. Expropriation

- 22.14.1. The authority or ability of any Obligor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Obligor, as the case may be, or any of its assets.
- 22.14.2. By the authority of any governmental, regulatory or other authority or other person the whole or any part of its assets or revenues is seized, expropriated or compulsorily acquired.

#### 22.15. Cessation of Business

Any Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business, for any reason whatsoever, including its assets being expropriated or any licences being revoked.

#### 22.16. Audit Qualification

The auditors of the Borrower qualify the financial statements delivered under Clause 19 in any respect.

**22.17. Listings Committee and Suspension of Trading**

- 22.17.1. The listings committee of the applicable Approved Exchange publishes any notice of its intention to suspend or discontinue the listing of any bonds issued by the Borrower.
- 22.17.2. Trading in bonds issued by the Borrower which are listed on any Approved Exchange is suspended for any reason (other than a general suspension of trading of all securities on the relevant exchange) for a period of 3 trading days or more.

**22.18. Acceleration**

On and at any time after the occurrence of an Event of Default which is continuing any Lender may by notice to the Borrower:

- 22.18.1. cancel its participation in the Commitment whereupon it shall immediately be cancelled; and/or
- 22.18.2. declare that all or part of its participation in the Loans, together with accrued interest, and all other amounts accrued or outstanding to that Lender under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable together with all and any Break Costs; and/or
- 22.18.3. demand and be entitled to receive specific performance of the relevant obligation of the Finance Documents (if any) breached by the Borrower or the Obligors (as applicable); and/or
- 22.18.4. claim payment from the Borrower of any and all damages, costs and other amounts incurred directly as a result of such Event of Default.

## SECTION 8 CHANGES TO PARTIES

### 23. CHANGES TO THE LENDER

#### 23.1. Assignments and transfers by the Lender

Subject to this Clause 23, a Lender (the Existing Lender) may:

23.1.1. cede any of its rights or delegate its obligations; or

23.1.2. transfer by assignment any of its rights and obligations,

to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the New Lender).

#### 23.2. Conditions of assignment or transfer

23.2.1. The consent of the Borrower is required for an assignment, cession or delegation by an Existing Lender, unless the assignment, cession or delegation is:

23.2.1.1. to another Lender or an Affiliate of a Lender;

23.2.1.2. to a Permitted Transferee; or

23.2.1.3. made at a time when a Default has occurred.

23.2.2. The consent of the Borrower to an assignment, cession or delegation must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent 5 Business Days after the Existing Lender has requested it unless consent is expressly refused by the Borrower on reasonable grounds within that time.

23.2.3. An assignment, cession or delegation will only be effective on:

23.2.3.1. receipt by the Borrower (whether in the Transfer Certificate or otherwise) of written confirmation from the New Lender that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and

23.2.3.2. performance by each Finance Party (to the extent applicable) of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment, cession or delegation to a New Lender.

23.2.4. A transfer will only be effective if the procedure set out in Clause 23.4 (*Procedure for transfer*) is complied with.

23.2.5. If:

23.2.5.1. the Lender assigns its rights and obligations or cedes its rights or delegates its obligations under the Finance Documents or changes its Facility Office; and



- 23.2.5.2. as a result of circumstances existing at the date the assignment, cession, delegation or change occurs, the Borrower would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause 13 (*Tax gross-up and indemnities*) or Clause 14 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

- 23.2.6. Each New Lender, by executing the relevant Transfer Certificate, confirms that the Lender has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the assignment, cession or delegation becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

### 23.3. Limitation of responsibility of Existing Lender

- 23.3.1. Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

- 23.3.1.1. the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;
- 23.3.1.2. the financial condition of the Borrower;
- 23.3.1.3. the performance and observance by any Borrower of its obligations under the Finance Documents or any other documents; or
- 23.3.1.4. the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

- 23.3.2. Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

- 23.3.2.1. has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and

- 23.3.2.2. will continue to make its own independent appraisal of the creditworthiness of the Borrower and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

- 23.3.3. Nothing in any Finance Document obliges an Existing Lender to:

- 23.3.3.1. accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause 23; or

- 23.3.3.2. support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under the Finance Documents or otherwise.

**23.4. Procedure for transfer**

- 23.4.1. Subject to the conditions set out in Clause 23.2 (*Conditions of assignment or transfer*) a transfer is effected in accordance with Clause 23.4.3 below when a duly completed Transfer Certificate is delivered by the Existing Lender and/or the New Lender to the Borrower.

- 23.4.2. The existing Lender is only obliged to execute a Transfer Certificate if it has received confirmation by the New Lender that the Borrower has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.

- 23.4.3. Subject to Clause 23.6 (*Pro rata interest settlement*), on the Transfer Date:

- 23.4.3.1. to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by assignment its rights and obligations under the Finance Documents the Borrower and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the Discharged Rights and Obligations);

- 23.4.3.2. the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender;

- 23.4.3.3. the New Lender shall acquire the same rights and assume the same obligations as it would have acquired and assumed had the New Lender been an Existing Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Existing Lender shall be released from further obligations under the Finance Documents; and

- 23.4.3.4. the New Lender shall become a Party as a "Lender".

**23.5. Copy of Transfer Certificate to Borrower**

The Lender shall, as soon as reasonably practicable after it has executed a Transfer Certificate send to the Borrower a copy of that Transfer Certificate.

**23.6. Pro rata interest settlement**

If the Existing Lender or Finance Party has notified the New Lender that it is able to distribute interest payments on a "pro rata basis" to the Existing Lender and the New Lenders then (in respect of any transfer pursuant to Clause 23.4 (*Procedure for transfer*) the Transfer Date of

which, in each case, is after the date of such notification and is not on the last day of an Interest Period):

- 23.6.1. any interest or fees in respect of the Loans which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (**Accrued Amounts**) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than three Months, on the next of the dates which falls at three Monthly intervals after the first day of that Interest Period); and
- 23.6.2. the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that:
  - 23.6.2.1. when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and
  - 23.6.2.2. the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause 23.6, have been payable to it on that date, but after deduction of the Accrued Amounts.

#### 24. CHANGES TO THE BORROWER

The Borrower may not cede any of its rights, delegate any of its obligations or assign any of its rights and obligations under the Finance Documents without the prior written approval of the Lenders which approval shall not be unreasonably withheld having regard to the circumstances resulting in such transfer of rights and/or obligations.

## SECTION 9 ADMINISTRATION

### 25. PAYMENT MECHANICS

#### 25.1. Place of Payment

25.1.1. Except to the extent otherwise provided in this Agreement, all payments of principal, interest and other amounts to be made by the Borrower under this Agreement shall be made:

25.1.1.1. if to the Original Lender, to the following account (*Lender to insert account details*):  
or to such other account as the Original Lender may notify to the Borrower from time to time by not less than 10 Business Days' prior notice; and

25.1.1.2. if to any other Finance Party, to such account as that Finance Party may notify to the Borrower from time to time by not less than 10 Business Days' prior notice.

25.1.2. On each date on which the Borrower or any Lender is required to make a payment under a Finance Document, the Borrower or that Lender shall make the same available for value on the due date at the time and in such funds specified by the party entitled to such payment as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

#### 25.2. No set-off by the Borrower

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

#### 25.3. Business Days

25.3.1. Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

25.3.2. During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

#### 25.4. Set-off

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

## 25.5. Partial payments

25.5.1. If the Lenders receive a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Lenders shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:

25.5.1.1. first, in or towards payment pro rata of any unpaid fees, costs and expenses of the Finance Parties under the Finance Documents;

25.5.1.2. secondly, in or towards payment pro rata of any accrued interest, fees, Breakage Costs or commission due but unpaid under this Agreement;

25.5.1.3. thirdly, in or towards payment pro rata of any principal due but unpaid under this Agreement; and

25.5.1.4. fourthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

25.5.2. Clause 25.5.1 will override any appropriation made by an Obligor.

## 26. NOTICES

### 26.1. Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### 26.2. Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

26.2.1. in the case of the Borrower, that identified with its name below;

26.2.2. in the case of the Original Lender that identified with its name below;

26.2.3. in the case of a New Lender, that identified in the Transfer Certificate,

or any substitute address or fax number or department or officer as the Party may notify to the other Party by not less than five Business Days' notice.

### 26.3. Delivery

26.3.1. Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

26.3.1.1. if by way of fax, when received in legible form; or

26.3.1.2. if by way of letter, when it has been left with a responsible person at the relevant address or five Business Days (or, if posted from South Africa to another country and

*vice versa*, 20 (twenty) Business Days) after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under Clause 26.2 (*Addresses*), if addressed to that department or officer.

- 26.3.2. Any communication or document which becomes effective, in accordance with Clause 26.3.1 after 5.00 p.m. (Johannesburg time) in the place of receipt shall be deemed only to become effective on the following Business Day.

#### 26.4. Electronic communication

- 26.4.1. Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:

26.4.1.1. notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

26.4.1.2. notify each other of any change to their address or any other such information supplied by them by not less than 5 (five) Business Days' notice.

26.4.2. Any electronic communication which becomes effective after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following Business Day.

#### 26.5. English language

26.5.1. Any notice given under or in connection with any Finance Document must be in English.

26.5.2. All other documents provided under or in connection with any Finance Document must be:

26.5.2.1. in English; or

26.5.2.2. if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

### 27. CALCULATIONS AND CERTIFICATES

#### 27.1. Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

## 27.2. **Certificates and Determinations**

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## 27.3. **Day count convention**

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and, in relation to a Loan, year of 365 days (irrespective of whether the year in question is a leap year), or in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

## 28. **PARTIAL INVALIDITY**

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## 29. **REMEDIES AND WAIVERS**

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any of the Finance Documents on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

## 30. **AMENDMENTS AND WAIVERS**

### 30.1. **Required consents**

No addition to, variation, amendment or consensual cancellation of any Finance Document and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of any Finance Document shall be of any force or effect unless the prior written consent of the Lenders has been obtained and it is reduced to writing and signed by or on behalf of all the parties to such Finance Document.

### 30.2. **Exceptions**

An amendment or waiver that has the effect of changing or which relates to:

- 30.2.1. the definition "Change of Control Event" in Clause 1.1 (*Definitions*);
- 30.2.2. the definition "Change of Principal Business" in Clause 1.1 (*Definitions*);
- 30.2.3. an extension to the date of payment of any amount under the Finance Documents;

- 30.2.4. a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;
  - 30.2.5. an increase in or an extension of any Commitment or any requirement that a cancellation of Commitments reduces the Commitments of the Lender rateably under the relevant Facility;
  - 30.2.6. a change to the Borrower;
  - 30.2.7. any provision which expressly requires the consent of the Lender; or  
~~release of a Qualifying Guarantee; or~~
  - 30.2.8. Clause 3 (*Purpose*), Clause 4 (*Conditions of Utilisation*), Clause 7 (*Repayment and Cancellation*), Clause 13.3 (*Tax indemnity*), Clause 14 (*Increased Costs*), Clause 21.5 (*Negative Pledge*), Clause 23 (*Changes to the Lender*), this Clause 30.2,
  - 30.2.9. Clause 38 (*Governing Law*), Clause 39 (*Jurisdiction*) or Schedule 1 (*Conditions Precedent*),
- shall not be made without the prior consent of the Lenders.

## 31. CONFIDENTIALITY

### 31.1. Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause 31.2 (*Disclosure of Confidential Information*) and Clause 31.3 (*Disclosure to numbering service providers*), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

### 31.2. Disclosure of Confidential Information

Any Finance Party may disclose:

- 31.2.1. to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this Clause 31.2.1 is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;
- 31.2.2. to any person:
  - 31.2.2.1. to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;



- 31.2.2.2. with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or the Borrower and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;
- 31.2.2.3. appointed by any Finance Party or by a person to whom Clauses 31.2.2.1 or 31.2.2.2 applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;
- 31.2.2.4. who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in Clauses 31.2.2.1 or 31.2.2.2;
- 31.2.2.5. to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;
- 31.2.2.6. to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;
- 31.2.2.7. to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so);
- 31.2.2.8. who is a Party; or
- 31.2.2.9. with the consent of the Borrower;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

- 31.2.2.10. in relation to Clauses 31.2.2.1, 31.2.2.2 and 31.2.2.3, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;
- 31.2.2.11. in relation to Clause 31.2.2.4, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;
- 31.2.2.12. in relation to Clauses 31.2.2.5, 31.2.2.6 and 31.2.2.7, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

- 31.2.3. to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Borrower if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

**31.3. Disclosure to numbering service providers**

- 31.3.1. Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, any Facility and/or the Borrower the following information:

- 31.3.1.1. name of the Borrower;
- 31.3.1.2. country of domicile of the Borrower;
- 31.3.1.3. place of incorporation of the Borrower;
- 31.3.1.4. date of this Agreement;
- 31.3.1.5. date of each amendment and restatement of this Agreement;
- 31.3.1.6. amount of the Commitments;
- 31.3.1.7. currencies of each Facility;
- 31.3.1.8. type of each Facility;
- 31.3.1.9. ranking of each Facility;
- 31.3.1.10. the Maturity Date;
- 31.3.1.11. changes to any of the information previously supplied pursuant to Clauses 31.3.1.1 to 31.3.1.10; and
- 31.3.1.12. such other information agreed between such Finance Party and the Borrower,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

- 31.3.2. The Parties acknowledge and agree that each identification number assigned to this Agreement, any Facility and/or the Borrower by a numbering service provider and the information associated with each such number may be disclosed to users of its services in accordance with the standard terms and conditions of that numbering service provider.
- 31.3.3. The Borrower represents that none of the information set out in Clauses 31.3.1.1 to 31.3.1.10 is, nor will at any time be, unpublished price-sensitive information.

**31.4. Entire agreement**

This Clause 31 (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential

Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

### 31.5. Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

### 31.6. Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

- 31.6.1. of the circumstances of any disclosure of Confidential Information made pursuant to Clause 31.2.2.5 except where such disclosure is made to any of the persons referred to in that Clause during the ordinary course of its supervisory or regulatory function; and
- 31.6.2. upon becoming aware that Confidential Information has been disclosed in breach of this Clause 31(*Confidentiality*).

### 31.7. Continuing obligations

The obligations in this Clause 31(*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

- 31.7.1. the date on which all amounts payable by the Borrower under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- 31.7.2. the date on which such Finance Party otherwise ceases to be a Finance Party.

## 32. PRESS RELEASES AND PUBLIC ANNOUNCEMENTS

- 32.1. No Party shall issue any press release or make any public announcement relating to the existence or subject matter of this Agreement without the prior written approval of the other Party; provided, however, that any Party may make any public disclosure it believes in good faith is required by applicable law or any listing or trading agreement concerning its publicly-traded securities (in which case the disclosing Party will use its reasonable best efforts to advise the other Party prior to making the disclosure to the extent practicable and permissible under applicable law); and provided, further, that each of the Parties may make internal announcements to their respective employees that are not inconsistent in any material respects with the Parties' prior public disclosures regarding the transactions contemplated by this Agreement.
- 32.2. The Borrower specifically consents to the Lenders making public and private announcements relating to the existence or subject matter of this Agreement with the prior written approval of the Borrower of a specific announcement, which approval may not be unreasonably withheld or delayed.

33. **WAIVER OF IMMUNITY**

The Borrower irrevocably and unconditionally waives any right it may have to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

34. **COUNTERPARTS**

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

35. **SOLE AGREEMENT**

The Finance Documents constitute the sole record of the agreement between the Parties in regard to the subject matter thereof.

36. **NO IMPLIED TERMS**

No Party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded in any Finance Document in regard to the subject matter thereof.

37. **INDEPENDENT ADVICE**

Each Obligor acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all of the provisions of the Finance Documents and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, each of the Obligors acknowledges that all of the provisions of each Finance Document and the restrictions therein contained are part of the overall intention of the Parties in connection with the Finance Documents.

**SECTION 10**  
**GOVERNING LAW AND ENFORCEMENT**

**38. GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by South African law.

**39. JURISDICTION**

- 39.1. Save as may be otherwise specified in any Finance Document to the contrary, the Borrower hereby irrevocably and unconditionally consents and submits to the jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg), (or any successor to that division) in regard to all matters arising from the Finance Documents (including a dispute relating to the existence, validity or termination of any Finance Document or any non-contractual obligation arising out of or in connection with any Finance Document) (a **Dispute**).
- 39.2. The Borrower agrees that the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that division) is the most appropriate and convenient court to settle Disputes and accordingly:
- 39.2.1. the Borrower will not argue to the contrary;
  - 39.2.2. the Borrower hereby waives any objection to the jurisdiction of that court on the grounds of venue or *forum non conveniens* or any similar grounds; and
  - 39.2.3. the Borrower consents to service of process in any manner permitted by applicable law.
- 39.3. This Clause 39 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction as it sees fit. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

**SECTION 11  
RIGHT TO QUOTE**

[Note: This clause will not form part of the OMSFIN or the FG version]

**40. RIGHT TO QUOTE**

40.1. If the Borrower wishes to hedge its interest rate risk in respect of the Facility and/or:

40.1.1. the facility in an amount of approximately R1 500 000 000 to be made available by Old Mutual Specialised Finance Proprietary Limited on or about the Signature Date; and/or

40.1.2. the facility in an amount of approximately R1 500 000 000 to be made available by Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) on or about the Signature Date,

the Borrower shall advise the Original Lender of such intention and shall afford the Original Lender an opportunity to quote for such hedging arrangements.

40.2. The Borrower undertakes to afford the Original Lender an opportunity to match the rates and terms offered to the Borrower by other financial institutions in respect of the hedging arrangements contemplated in clause 40.1 before it enters into an agreement with such financial institution(s) and shall not enter into such agreement before the expiry of the 20 Business Day period contemplated in this clause 40.2. If the Original Lender has, within 20 Business Days of the Borrower affording the Original Lender such opportunity to match the rates and terms offered to the Borrower by other financial institutions in respect of the hedging arrangements contemplated in clause 40.1, offered to enter into such hedging arrangements on the same rates and terms, the Borrower shall enter into such hedging arrangements with the Original Lender.

This Agreement has been entered into on the date stated at the beginning of this Agreement.

# **SCHEDULE 1** **CONDITIONS PRECEDENT**

1. Borrower
  - 1.1 A copy of the constitutional documents of the Borrower.
  - 1.2 A certified excerpt of the minutes of the board of directors of the Borrower containing the resolution passed by the board of directors of the Borrower
    - 1.2.1 resolving that the Borrower enter into this Agreement; and
    - 1.2.2 approving the Borrowing Programme and Corporate Plan and confirming that this Facility is approved in terms of the Borrowing Programme and the Corporate Plan.
  - 1.3 A specimen of the signature of each person authorised to bind the Borrower to obligations in respect of borrowing by the Borrower by the resolution referred to in paragraph 1.2.
  - 1.4 The Compliance Certificate duly executed by the Group Chief Executive of the Borrower.
2. Finance Documents
 

A duly executed original of this Agreement.
3. "Know your customer" requirements
 

All information and documentation required by the Original Lender in relation to the Borrower to enable it to comply with its obligations under, and the requirements of, law and its own "know your customer" procedures and confirmation from the Original Lender that the Borrower has complied with such requirements.
4. Legal opinions
 

A legal opinion of Edward Nathan Sonnenbergs Inc confirming, inter alia:

  - 4.1 the validity and enforceability of this Agreement; and
  - 4.2 the Borrower's capacity and authority to enter into this Agreement, (in terms of the PFMA and any other relevant law).
5. Other documents, evidence and events
  - 5.1 A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.
  - 5.2 The financial statements in respect of the end of the Borrower's financial year ending on 31 March 2015.
  - 5.3 Evidence that the fees, costs and expenses then due from the Borrower pursuant to Clause 11 (Raising Fee), Clause 17 (Costs and expenses) and any other provision of this

Agreement have been paid or will be paid by the date set out in Clause 11.

5.4 Confirmation from the Borrower or the Lenders have received evidence to their satisfaction that the locomotives acquired or to be acquired by it from China North Rail and China South Rail, utilising the proceeds of the Facility, under the Borrower's capital investment programme, are fit for the purpose for which they were or are to be acquired.

5.5 The Lenders have received evidence to their satisfaction that the Borrower has, on or about the Signature Date, entered into:

5.5.1 a credit facility agreement with Old Mutual Specialised Finance Proprietary Limited in terms of which an amount of R1 500 000 000 was made available by Old Mutual Specialised Finance Proprietary Limited for utilisation by the Borrower; and

5.5.2 a credit facility agreement with Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) in terms of which an amount of R1 500 000 000 was made available by Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) for utilisation by the Borrower.

6. Lender

Approval by the Lender's Investment, Executive and/or Credit Committee of the Facility (in the form of a letter or email to that effect).



**SCHEDULE 2**  
**FORM OF UTILISATION REQUEST**

From: Transnet SOC Ltd

To: Lender

Dated: [•]

Dear Sirs

**Transnet SOC Ltd – ZAR 2 500 000 000 Term Facilities Agreement dated [•] (the Agreement)**

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a Utilisation on the following terms:  

Proposed Utilisation Date: [•] (or, if that is not a Business Day, the next Business Day)

Amount: ZAR[•] ([•])
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
4. The proceeds of this Utilisation should be credited to [•].
5. This Utilisation Request is irrevocable.

Yours faithfully

.....  
 authorised signatory for  
**Transnet SOC Ltd**

**SCHEDULE 3**  
**FORM OF TRANSFER CERTIFICATE**

To: Transnet SOC Ltd as Borrower

From: [The Existing Lender] (the Existing Lender) and [The New Lender] (the New Lender)

Dated:

Transnet SOC Ltd – ZAR2 500 000 000,00 – ZAR3 000 000 000,00 Term Facilities Agreement dated  
[•] (the Agreement)

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 23.4 (*Procedure for transfer*):
  - 2.1. The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by cession and delegation, and in accordance with Clause 23.4 (*Procedure for transfer*), all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participations in the Loans under the Agreement as specified in the Schedule.
  - 2.2. The proposed Transfer Date is [•].
  - 2.3. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 26.2 (*Addresses*) are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause 23.3.3.
4. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
5. This Transfer Certificate [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by South African law.
6. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.

**THE SCHEDULE**

**Commitment/rights and obligations to be transferred**

*[insert relevant details]*

*[Facility Office address, fax number and attention details for notices and account details for payments,]*

[Existing Lender]

By:

[New Lender]

By:

This Transfer Certificate is accepted by the Borrower and the Transfer Date is confirmed as [•].

By:

**SCHEDULE 4**  
**FORM OF CONFIDENTIALITY UNDERTAKING**

Transnet SOC Ltd – ZAR2 500 000 000,00 – ZAR3 000 000 000,00 Term Facilities Agreement dated  
 [•] (the Agreement)

THIS CONFIDENTIALITY UNDERTAKING is dated [ ] and made between:

(1) [ ]; and

(2) [ ].

Either party (in this capacity the "Purchaser") may from time to time consider acquiring an interest from the other party (in this capacity the "Seller") in the Agreement which, subject to the Agreement, may be by way of novation, assignment, the entering into, whether directly or indirectly, of a sub-participation or any other transaction under which payments are to be made or may be made by reference to one or more relevant Finance Documents and/or the Company or by way of investing in or otherwise financing, directly or indirectly, any such novation, assignment, sub-participation or other transaction (each an "Acquisition"). In consideration of the Seller agreeing to make available to the Purchaser certain information in relation to each Acquisition it is agreed as follows:

**1. CONFIDENTIALITY UNDERTAKING**

The Purchaser undertakes in relation to each Acquisition made or which may be made by it (a) to keep all Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 (*Permitted Disclosure*) below and to ensure that all Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition is protected with security measures and a degree of care that would apply to the Purchaser's own confidential information and (b) until that Acquisition is completed, to use the Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition only for the Permitted Purpose.<sup>2</sup>

**2. PERMITTED DISCLOSURE**

The Purchaser may disclose in relation to each Acquisition made or which may be made by it:

- 2.1. to any of its Affiliates and any of its or their officers, directors, employees, professional advisers and auditors such Confidential Information as the Purchaser shall consider appropriate if any person to whom such Confidential Information is to be given pursuant to this paragraph 2.1 is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no

---

<sup>2</sup> Please note that the Permitted Purpose ceases to apply to Confidential Information supplied to the Purchaser in relation to an Acquisition on completion of that Acquisition however if that Acquisition does not complete, the prospective purchaser is not permitted to use such Confidential Information for any purpose other than the Permitted Purpose.

such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to such Confidential Information;

2.2. subject to the requirements of the Agreement, to any person:

- (a) to (or through) whom the Purchaser assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations which it may acquire under the Agreement such Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition as the Purchaser shall consider appropriate if the person to whom such Confidential Information is to be given pursuant to this sub-paragraph (a) of paragraph 2.2 has delivered a letter to the Purchaser in equivalent form to this undertaking;
- (b) with (or through) whom the Purchaser enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to the Agreement or the Company such Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition as the Purchaser shall consider appropriate if the person to whom such Confidential Information is to be given pursuant to this sub-paragraph (b) of paragraph 2.2 has delivered a letter to the Purchaser in equivalent form to this undertaking;
- (c) to whom information is required or requested to be disclosed by any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation such Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition as the Purchaser shall consider appropriate; and

2.3. notwithstanding paragraphs 2.1 and 2.2 above, Confidential Information to such persons to whom, and on the same terms as, a Finance Party is permitted to disclose such Confidential Information under the Agreement to which that Acquisition relates, as if such permissions were set out in full in this undertaking for the purposes of that Acquisition and as if references in those permissions to Finance Party were references to the Purchaser for the purposes of that Acquisition.

### 3. NOTIFICATION OF DISCLOSURE

The Purchaser agrees in relation to each Acquisition made or which may be made by it (to the extent permitted by law and regulation) to inform the Seller:

- 3.1. of the circumstances of any disclosure of Confidential Information made pursuant to sub-paragraph (c) of paragraph 2.2 above except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and
- 3.2. upon becoming aware that Confidential Information relating to that Acquisition has been disclosed in breach of this undertaking.

#### 4. RETURN OF COPIES

If the Purchaser does not enter into an Acquisition and the Seller so requests in writing, the Purchaser shall return all Confidential Information supplied to the Purchaser by the Seller in relation to that Acquisition and destroy or permanently erase (to the extent technically practicable) all copies of such Confidential Information made by the Purchaser and use all reasonable endeavours to ensure that anyone to whom the Purchaser has supplied any such Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that the Purchaser or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under sub-paragraph (c) of paragraph 2.2 above.

#### 5. CONTINUING OBLIGATIONS

The obligations in this undertaking are continuing and, in particular, shall survive and remain binding on the Purchaser in relation to each Acquisition made or which may be made by it until (a) if the Purchaser acquires an interest in the Agreement to which that Acquisition relates by way of novation, the date on which the Purchaser acquires such an interest; (b) if the Purchaser enters into that Acquisition other than by way of novation, the date falling [twelve] months after termination of that Acquisition; or (c) in any other case [twelve] months after the date on which Confidential Information in relation to that Acquisition was supplied to the Purchaser by the Seller.

#### 6. NO REPRESENTATION; CONSEQUENCES OF BREACH, ETC

The Purchaser acknowledges and agrees that, in relation to each Acquisition made or which may be made by it:

- 6.1. neither the Seller, nor any member of the relevant Group nor any of the Seller's or the relevant Group's respective officers, employees or advisers (each a "Relevant Person") (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information supplied by the Seller to the Purchaser in relation to that Acquisition or any other information supplied by the Seller to the Purchaser in relation to that Acquisition or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information supplied by the Seller to the Purchaser in relation to that Acquisition or any other information supplied by the Seller to the Purchaser in relation to that Acquisition or be otherwise liable to the Purchaser or any other person in respect of the Confidential Information supplied by the Seller to the Purchaser in relation to that Acquisition or any such information; and
- 6.2. the Seller or members of the relevant Group may be irreparably harmed by the breach of the terms of this undertaking and damages may not be an adequate remedy; each Relevant Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this undertaking by the Purchaser.

## 7. ENTIRE AGREEMENT: NO WAIVER; AMENDMENTS, ETC

- 7.1. This undertaking constitutes the entire agreement between the Seller and the Purchaser in relation to the Purchaser's obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- 7.2. No failure or delay in exercising any right or remedy under this undertaking will operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any further exercise thereof or the exercise of any other right or remedy under this undertaking.
- 7.3. The terms of this undertaking and the Purchaser's obligations under this undertaking may only be amended or modified by written agreement between the parties.

## 8. INSIDE INFORMATION

The Purchaser acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Purchaser undertakes not to use any Confidential Information for any unlawful purpose.

## 9. NATURE OF UNDERTAKINGS

The undertakings given by the Purchaser in this undertaking are given to the Seller and are also given for the benefit of the Company and each other member of the Group.

## 10. GOVERNING LAW AND JURISDICTION

- 10.1. This undertaking and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of any Acquisition) are governed by South African law.
- 10.2. The courts of South Africa have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this undertaking (including a dispute relating to any non-contractual obligation arising out of or in connection with either this undertaking or the negotiation of any Acquisition).

## 11. DEFINITIONS

In this undertaking terms defined in the relevant Agreement (as defined below) shall, unless the context otherwise requires, have the same meaning and:

"Company" means Transnet SOC Ltd, a company incorporated in South Africa with registration number 1990/000900/30.

"Confidential Information" means, in relation to each Acquisition, all information relating to the Company, the Group, the relevant Finance Documents, the relevant Facility and/or that Acquisition which is received by the Purchaser in relation to the relevant Finance Documents or the relevant Facility from the Seller or any of its affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (d) is or becomes public information other than as a direct or indirect result of any breach by the Purchaser of this undertaking; or
- (e) is identified in writing at the time of delivery as non-confidential by the Seller or its advisers; or
- (f) is known by the Purchaser before the date the information is disclosed to the Purchaser by the Seller or any of its affiliates or advisers or is lawfully obtained by the Purchaser after that date, from a source which is, as far as the Purchaser is aware, unconnected with the relevant Group and which, in either case, as far as the Purchaser is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"Group" means, in relation to each Acquisition, the Company and its subsidiaries for the time being (as such term is defined in the Companies Act).

"Permitted Purpose" means, in relation to each Acquisition, considering and evaluating whether to enter into that Acquisition.

This undertaking has been entered into on the date stated at the beginning of this undertaking.



## SCHEDULE 5 TIMETABLES

Delivery of a duly completed Utilisation Request (Clause 5.1 <i>(Delivery of a Utilisation Request)</i>	11.00 a.m. (Johannesburg time) 5 Business Days before the proposed Utilisation Date
JIBAR is set	Quotation Day as of 11:00 a.m. Johannesburg time in respect of JIBAR

**SCHEDULE 6**  
**PERMITTED TRANSFEREES**

**1. Local Banks**

- Absa Bank Limited
- FirstRand Bank Limited
- Investec Bank Limited
- Nedbank Limited
- The Standard Bank of South Africa Limited

**2. Foreign Banks**

- Bank of China Limited
- Banco Unico
- Ecobank
- China Construction Bank Corporation
- China Development Bank Limited
- Standard Chartered Bank Limited
- State Bank of India
- KfW IPEX-Bank GmbH
- ABN Amro Bank N.V.
- Allied Irish Bank
- Barclays Bank plc
- BNP Paribas S.A.
- Citibank, N.A.
- Credit Agricole
- Deutsche Bank Group AG
- Goldman Sachs International
- HSBC Bank PLC
- JPMorgan Chase Bank, N.A.
- Société Générale

- Sumitomo Mitsui Banking Corporation
- The Royal Bank of Scotland N.V.
- UBS AG

### 3. Financial Institutions

- Absa Fund Managers Limited
- Allan Gray Proprietary Limited
- Ashburton Fund Managers (Pty) Ltd
- Atlantic Asset Management
- Cadiz Asset Management (Pty) Ltd
- Coronation Fund Managers Limited
- Element Fund Management Proprietary Limited
- Futuregrowth Asset Management Proprietary Limited, in its capacity as agent for and on behalf of its clients
- Grindrod Asset Management Proprietary Limited
- Investec Asset Management Proprietary Limited
- Liberty Group Limited
- Marriott Asset Management (Proprietary) Limited
- MMI Holdings Limited
- Old Mutual Investment Group Proprietary Limited, in its capacity as agent for and on behalf of its clients
- Old Mutual Life Assurance Company (South Africa) Limited
- Old Mutual Specialised Finance Proprietary Limited
- Prescient Investment Management (Pty) Ltd
- Prudential Portfolio Managers South Africa (Proprietary) Limited
- Public Investment Corporation Limited
- Sanlam Capital Markets Limited
- Sanlam Life Insurance Limited
- Stanlib Limited

- Taquanta Investment Holdings (Proprietary) Limited
- Vantage Capital

**4. Affiliates**

Any Affiliates, Subsidiaries, Holding Companies or Related Funds of the banks or financial institutions listed in this Schedule 6 and any fund or entity managed by any of them or any of their Affiliates.



**SCHEDULE 8  
INCREASED MARGIN NOTICE**

**From:** [INSERT DETAILS OF LENDERS] (the "Lenders")

**To:** Transnet SOC Ltd (the "Borrower").

Dated [ ]

Dear sirs,

Term facility agreement dated [ ] between the Borrower and the Lenders in terms of which the Lenders made a facility available to the Borrower for an amount of R2 500 000 000 (the "Term Facility Agreement")

1. Reference is made to the Term Facility Agreement. Capitalised terms used but not defined herein shall bear the meaning ascribed thereto in the Term Facility Agreement.
2. This is an Increased Margin Notice issued pursuant to clause 7.7.1.1 of the Term Facility Agreement.
3. We hereby notify you that a Negative Rating Event contemplated in clause 7.7.1.1 of the Term Facility Agreement has occurred.
4. You are hereby notified that the Lenders have exercised their right to increase the Margin contemplated in clause 1.1.66.1 of the Term Facility Agreement and, accordingly, the Increased Margin for all purposes in terms of the Term Facility agreement is [ ]% with effect from the date on which the Negative Rating Event contemplated in paragraph 3 occurred.
5. Kindly confirm your acceptance of the Increased Margin by no later than the date which is 5 (five) Business Days calculated from the date of receipt by you of this Increased Margin Notice.

Yours faithfully

Signed for and on behalf of:

---

[Insert names of applicable Lenders]

**SCHEDULE 9**  
**INCREASED MARGIN ACCEPTANCE NOTICE**

**From:** Transnet SOC Ltd (the "Borrower");

**To:** [INSERT DETAILS OF LENDERS] (the "Lenders").

Dear sirs,

Dated [ ]

Term facility agreement dated [ ] between the Borrower and the Lenders in terms of which the Lenders made a facility available to the Borrower for an amount of R2 500 000 000 (the "Term Facility Agreement")

1. Reference is made to the Term Facility Agreement. Capitalised terms used but not defined herein shall bear the meaning ascribed thereto in the Term Facility Agreement.
2. This is an Increased Margin Acceptance Notice issued pursuant to clause 7.7.1.1 of the Term Facility Agreement.
3. We hereby notify you that we have received your Increased Margin Notice dated [ ]. The Increased Margin contemplated in such Increased Margin Notice is acceptable to us and we hereby irrevocably and unconditionally confirm our acceptance of the Increased Margin contemplated therein.
4. We represent and warrant that the signatory of this Increased Margin Acceptance Notice is duly authorised to execute same.

Yours faithfully

Signed for and on behalf of:

---

**Transnet SOC Ltd**

**SCHEDULE 10  
COMPLIANCE CERTIFICATE**

**From:** Transnet SOC Ltd (the "Borrower");

**To:** [INSERT DETAILS OF LENDERS] (the "Lenders").

Dated [ ] [To be dated as of the Utilisation Date]

Dear sirs,

**Term facility agreement dated [ ] between the Borrower and the Lenders in terms of which the Lenders made a facility available to the Borrower for an amount of R2 500 000 000 (the "Term Facility Agreement")**

1. Reference is made to the Term Facility Agreement. Capitalised terms used but not defined herein shall bear the meaning ascribed thereto in the Term Facility Agreement.
2. This is the Compliance Certificate required to be delivered pursuant to the provisions of clause 1.4 of Schedule 1 to the Term Facility Agreement.
3. I (in my capacity as Group Chief Executive of the Borrower) hereby certify that as of the first Utilisation Date -
  - 3.1.1. borrowing the Commitment would not cause any borrowing or similar limit binding on the Borrower to be exceeded;
  - 3.1.2. the documents delivered under paragraph 1 of Schedule 1 to the Term Facility Agreement are a true copy of the original, correct, complete and in full force and effect as at the date of this Agreement;
  - 3.1.3. no Default has occurred or is continuing;
  - 3.1.4. no event or circumstance has to the best of the Borrower's knowledge and belief (having made reasonable enquiry), occurred that, individually or when taken into consideration with any other facts or circumstances then in existence, has had or is likely to have a Material Adverse Effect;
  - 3.1.5. all of the representations and warranties given in Clause 18 (*Representations*) are true, accurate and complete in all material respects;
  - 3.1.6. the Borrower has complied with all legislation which is binding on it and which governs the conclusion of this Agreement, including the South African Public Finance Management Act, 1999 (PFMA);
  - 3.1.7. the person who has executed the Term Facility Agreement on behalf of the Borrower has been duly authorised to do so in terms of the PFMA and in terms of all other Authorisation requirements which bind the Borrower;



- 3.1.8. the credit rating in respect of the Borrower, is a Moody's Global Scale Long Term Local Currency Rating of Baa2 and a S&P International Scale Long Term Local Currency Issuer Credit rating of BBB+;
- 3.1.9. the Borrower has submitted its Borrowing Programme to the Minister of Finance in respect of its current financial period;
- 3.1.10. the final printers template for the Corporate Plan of the Borrower provided by the Borrower to the Lenders on [insert date] outlining the Borrower's forecast financial position as at [insert date] accurately represents the Borrower's financial position as at the date same was given to the Lender; and
- 3.1.11. there have been no amendments to the constitutional documents of the Borrower and the Borrower's constitutional documents are in full force and effect and have not been superseded, amended or repealed in any respect by any subsequent resolution.

Signed for and on behalf of:

---

Transnet SOC Ltd

Name:

(who warrants his authority to execute this Compliance Certificate)

Title: Group Chief Executive

**SCHEDULE 11**  
**OPERATIONS DISCLOSURE SCHEDULE**

[To be updated by the Borrower]

Transnet SOC Ltd ("Transnet") has small operations outside of South Africa in Swaziland, Botswana, Namibia, Mozambique and Zimbabwe. Transnet has direct operations in Zimbabwe Freight Logistics particularly rail operations. Offices are maintained in Zimbabwe solely for the administrative purposes.

The following are the cash flow activities generated from operations between Transnet and Zimbabwe (all figures relate to the actual cash flows for the year up to [2015]):

1. Wagon hire – paid to Zimbabwe R4 738 000,00
2. Wagon Hire – revenue received R24 556 000,00
3. Haulage collected – R676 000,00
4. Shunting services – R900 000,00
5. Office hire – R153 000,00
6. Revenue from export services – R140 986 000,00
7. Revenue for imports services – R24 405,00

Wagons move in and out of the country regularly, they are not held in Zimbabwe but are constantly roaming.

**SCHEDULE 12**  
**LITIGATION DISCLOSURE SCHEDULE**

**[To be updated by the Borrower]**

**Litigation Disclosure in the matter between Pretorius and Another v Transnet SOC Ltd ("Transnet") and Others**

***[Signature Pages to Follow]***

**SCHEDULE 13**  
**COVENANT COMPLIANCE CERTIFICATE**

From: Transnet SOC Ltd

To: Lender

Dated: [•]

Dear Sirs

**Transnet SOC Ltd – ZAR 2 500 000 000 Term Facilities Agreement dated [•] (the Agreement)**

1. We refer to the Agreement. This is a Covenant Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Covenant Compliance Certificate unless given a different meaning in this Covenant Compliance Certificate.
2. We confirm that: [insert details of covenants to be certified].
3. [We confirm that no Default is continuing].

Yours faithfully

.....  
 authorised signatory for  
 Transnet SOC Ltd

.....  
 for and on behalf of  
 [name of auditors of the Borrower]

**SCHEDULE 14**  
**EXISTING SECURITY**

**SIGNATORIES**

**THE BORROWER**

Signed by: \_\_\_\_\_

Designation: \_\_\_\_\_

\_\_\_\_\_  
for and on behalf of

**TRANSNET SOC Ltd**

Address: 43<sup>rd</sup> Floor, Carlton Centre  
150 Commissioner Street  
Johannesburg  
2001

Telephone number: +27 11 308 2627

Fax number: +27 11 308 2699

Attention: The Group Treasurer

**THE LENDER**

Signed by: \_\_\_\_\_

Designation: \_\_\_\_\_

\_\_\_\_\_

For and on behalf of

Signed by: \_\_\_\_\_

Designation: \_\_\_\_\_

\_\_\_\_\_

For and on behalf of

Address:

Telephone number:

Fax number:

Attention:





EXECUTION VERSION

---

ZAR 1 000 500 000 000,000000 - ZAR 3 000 000 000 TERM FACILITY AGREEMENT

---

for

TRANSNET SOC LTD  
(Registration No. 1990/000900/30)  
as Borrower

with

NEDBANK LIMITED  
(Registration No. 1951/000009/06)  
as Original Lender

## CONTENTS

1.	DEFINITIONS AND INTERPRETATION .....	1
2.	THE FACILITY <u>1719</u>	
3.	PURPOSE <u>1719</u>	
4.	CONDITIONS OF UTILISATION <u>1719</u>	
5.	UTILISATION <u>1821</u>	
6.	REPAYMENT <u>1922</u>	
7.	PREPAYMENT AND CANCELLATION <u>1922</u>	
8.	INTEREST <u>2429</u>	
9.	INTEREST PERIODS <u>2430</u>	
10.	CHANGES TO THE CALCULATION OF INTEREST <u>2530</u>	
11.	RAISING FEE <u>31</u>	
12.	COMMITMENT FEE <u>32</u>	
13.	11-TAX GROSS UP AND INDEMNITIES <u>2733</u>	
14.	12-INCREASED COSTS <u>3036</u>	
15.	13-OTHER INDEMNITIES <u>3238</u>	
16.	14-MITIGATION BY THE FINANCE PARTIES <u>3339</u>	
17.	15-COSTS AND EXPENSES <u>3339</u>	
18.	16-REPRESENTATIONS <u>3541</u>	
19.	17-INFORMATION UNDERTAKINGS <u>3945</u>	
20.	FINANCIAL COVENANTS <u>49</u>	
21.	18-GENERAL UNDERTAKINGS <u>4250</u>	
22.	19-EVENTS OF DEFAULT <u>4857</u>	
23.	20-CHANGES TO THE LENDER <u>5362</u>	
24.	21-CHANGES TO THE BORROWER <u>5665</u>	
25.	22-PAYMENT MECHANICS <u>5766</u>	
26.	23-NOTICES <u>5867</u>	
27.	24-CALCULATIONS AND CERTIFICATES <u>5968</u>	
28.	25-PARTIAL INVALIDITY <u>6069</u>	
29.	26-REMEDIES AND WAIVERS <u>6069</u>	
30.	27-AMENDMENTS AND WAIVERS <u>6069</u>	
31.	28-CONFIDENTIALITY <u>6470</u>	
32.	PRESS RELEASES AND PUBLIC ANNOUNCEMENTS <u>73</u>	
33.	29-WAIVER OF IMMUNITY <u>6474</u>	
34.	30-COUNTERPARTS <u>6474</u>	
35.	SOLE AGREEMENT <u>74</u>	
36.	NO IMPLIED TERMS <u>74</u>	
37.	INDEPENDENT ADVICE <u>74</u>	
38.	31-GOVERNING LAW <u>6575</u>	
39.	32-JURISDICTION <u>6575</u>	
40.	RIGHT TO QUOTE <u>76</u>	
	SCHEDULE 1 CONDITIONS PRECEDENT <u>6677</u>	
	SCHEDULE 2 FORM OF UTILISATION REQUEST <u>6879</u>	
	SCHEDULE 3 FORM OF TRANSFER CERTIFICATE <u>6981</u>	
	SCHEDULE 4 FORM OF CONFIDENTIALITY UNDERTAKING <u>7483</u>	
	SCHEDULE 5 TIMETABLES <u>7688</u>	
	SCHEDULE 6 PERMITTED TRANSFEREES <u>7789</u>	

SCHEDULE 7 LENDER INSTRUCTION .....	80
SCHEDULE 8 INCREASED MARGIN NOTICE .....	81
SCHEDULE 9 INCREASED MARGIN ACCEPTANCE NOTICE .....	82
SCHEDULE 10 COMPLIANCE CERTIFICATE .....	83
SCHEDULE 11 OPERATIONS DISCLOSURE SCHEDULE .....	85
SCHEDULE 12 AMORTISATION SCHEDULE .....	86
SCHEDULE 13 LITIGATION DISCLOSURE SCHEDULE .....	87
SCHEDULE 7 LENDER INSTRUCTION .....	92
SCHEDULE 8 INCREASED MARGIN NOTICE .....	93
SCHEDULE 9 INCREASED MARGIN ACCEPTANCE NOTICE .....	94
SCHEDULE 10 COMPLIANCE CERTIFICATE .....	95
SCHEDULE 11 OPERATIONS DISCLOSURE SCHEDULE .....	97
SCHEDULE 12 LITIGATION DISCLOSURE SCHEDULE .....	98
SCHEDULE 13 COVENANT COMPLIANCE CERTIFICATE .....	99
SCHEDULE 14 EXISTING SECURITY .....	100

**PARTIES:**

THIS AGREEMENT is dated     May ~~September~~ 2015 and made between:

- (1) TRANSNET SOC LTD, a company registered in accordance with the laws of South Africa under registration number 1990/000900/30 (the Borrower); and
- (2) NEDBANK LIMITED a company registered in accordance with the laws of South Africa under registration number 1951/000009/06 (the "Original Lender").

IT IS AGREED as follows:

**SECTION 1  
INTERPRETATION**

**1. DEFINITIONS AND INTERPRETATION**

**1.1.    ~~1.1.~~    Definitions**

In this Agreement the following words shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and cognate words shall bear corresponding meanings:

- 1.1.1.    A Positive Rating Event shall bear the meaning ascribed thereto in clause ~~7.5.3.27.7.3.2.~~
- 1.1.2.    A Relevant Period shall bear the meaning ascribed thereto in clause ~~7.5.3.27.7.3.2.~~
- 1.1.3.    Accounting Principles means the generally accepted accounting principles in South Africa, including IFRS.
- 1.1.4.    Affiliate means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.
- 1.1.5.    Agreement means this term facility agreement.
- ~~1.1.6.    Amortisation Schedule means an amortisation schedule provided by the Lenders to the Borrower annexed to this Agreement as Schedule 12.~~
- 1.1.6.    ~~1.1.7.~~ Approved Exchange means the Interest Rate Market of the JSE or a recognised exchange as defined in the Income Tax Act, 1962 or any other stock or bond exchange approved by the Lenders.
- 1.1.7.    ~~1.1.8.~~ Authorisation means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration by, with or from any authority.
- 1.1.8.    ~~1.1.9.~~ Availability Period means the period from, and including, the Effective Date until 30 September 2015, the second anniversary thereof.

- 1.1.9. ~~1.1.10.~~ **Available Commitment** means, in relation to the Facility, each a Lender's Commitment under that Facility minus:
- 1.1.9.1. ~~1.1.10.1.~~ the amount of its participation in the outstanding LoanLoans under the Facility; and
- 1.1.9.2. ~~1.1.10.2.~~ in relation to the proposed Utilisation, the amount of its participation in the LoanUtilisation that is due to be made ~~under the Facility~~ on or before the proposed Utilisation Date.
- 1.1.10. **Available Facility** means the aggregate for the time being of each Lender's Available Commitment:
- 1.1.11. **B Positive Rating Event** shall bear the meaning ascribed thereto in clause ~~7.5.3.17~~ 7.3.1.
- 1.1.12. **B Relevant Period** shall bear the meaning ascribed thereto in clause ~~7.5.3.17~~ 7.3.1.
- 1.1.13. **Borrowing Programme** means the borrowing programme of the Borrower in relation to its current financial year required to be submitted to the Minister of Finance as prescribed in terms of Section 66(7)(a) of the PFMA.
- 1.1.14. **Break Costs** means the amount (if any) by which:
- 1.1.14.1. the interest (excluding the Margin) which a Lender should have received for the period from the date of receipt of all or any part of its participation in ~~thea~~ the Loan or Unpaid Sum to the last day of the current Interest Period in respect of ~~the~~ that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period;
- exceeds:
- 1.1.14.2. the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank in the Relevant Interbank Market for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period.
- 1.1.15. **Business Day** means a day other than a Saturday or Sunday or public holiday designated as such by the applicable laws of South Africa.
- 1.1.16. **Change of Principal Business** means any of the following events or circumstances -
- 1.1.16.1. the Borrower ceases to carry on any of the Principal Businesses; or
- 1.1.16.2. the Borrower enters into any agreement which has the effect of disposing of the whole or a substantial part of any of the Principal Businesses;
- 1.1.17. **Change of Control Event** means the Government of South Africa ceases to (a) own, directly or indirectly, more than 50 per cent of the issued share capital of the Borrower; or (b) control, directly or indirectly, the Borrower; or (c) have the right to unilaterally veto any of the special resolution items contained in section 65(11) of the Companies Act. For the purpose of this definition, the Government of South Africa will be deemed to "control" the Borrower if (whether directly or indirectly and whether by the ownership of share

capital, the possession of voting power, contract, trust or otherwise) it has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of the Borrower or otherwise controls, or has the power to control, the affairs and policies of the Borrower.

1.1.18. **Change in Business Notice** shall bear the meaning ascribed thereto in clause ~~7.8.1.17.10.1~~.

1.1.19. **Commitment** means in relation to:

1.1.19.1. the Original Lender, the Loan Amount and the amount of any other Commitment transferred to it under this Agreement; and

1.1.19.2. any other Lender, the amount of any Commitment transferred to it under this Agreement,

to the extent not cancelled or reduced pursuant to this Agreement.

1.1.20. **Commitment Fee** means ~~0,400,35%~~ (zero comma ~~forty thirty five~~ per cent), exclusive of the undrawn portion of the Total VAT of each Lender's Available Commitment.

1.1.21. **Companies Act** means the ~~South African Companies Act, 2008~~ 2008 (Act No. 71 of 2008).

1.1.22. **Compliance Certificate** means the compliance certificate contemplated in Schedule 10 hereto.

1.1.23. **Confidential Information** means all information relating to the Borrower, or the Group, the Finance Documents or the Facilities of which a Finance Party becomes aware in its capacity as, or for the purpose of becoming, a Finance Party or which is received by a Finance Party in relation to, or for the purpose of becoming a Finance Party under, the Finance Documents or the ~~Facilities~~ Facility from either:

1.1.23.1. any member of the Group or any of its advisers; or

1.1.23.2. another Finance Party, if the information was obtained by that Finance Party directly or indirectly from any member of the Group or any of its advisers,

in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

is or becomes public information other than as a direct or indirect result of any breach by that Finance Party of Clause ~~28~~ 31 (*Confidentiality*); or

is identified in writing at the time of delivery as non-confidential by any member of the Group or any of its advisers; or

is known by that Finance Party before the date the information is disclosed to it in accordance with Clause 1.1.23.1 or 1.1.23.2 or is lawfully obtained by that Finance Party after that date, from a source which is, as far as that Finance Party is aware, unconnected with the Group and which, in either case, as far as that Finance Party is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

- 1.1.24. **Confidentiality Undertaking** means a confidentiality undertaking substantially in the form set out in Schedule 4 (*Form of Confidentiality Undertaking*) or in any other form agreed between the Borrower and the Lenders.
- 1.1.25. **Consolidated Total Assets** means, at any time, the amount of the total assets of the Borrower, as appearing in the latest audited consolidated annual financial statements of the Borrower delivered pursuant to Clause ~~17-119.1~~ (*Financial statements*).
- 1.1.26. **Corporate Plan** means the corporate plan of the Borrower which details, *inter alia*, the projections of its revenue and expenditure and the Borrowing Programme in respect of the Borrower.
- ~~1.1.27. **Covenant Compliance Certificate** means the covenant compliance certificate substantially in the form set out in Schedule 13 (*Form of Covenant Compliance Certificate*) hereto;~~
- ~~1.1.28. **1.1.27-Credit Rating** means the credit rating issued by each Rating Agency, from time to time, in respect of the Borrower detailing the credit rating of the Borrower as determined by such Rating Agency.~~
- ~~1.1.29. **1.1.28-Default** means an Event of Default or any event or circumstance specified in Clause ~~1922~~ (*Events of Default*) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Event of Default.~~
- ~~1.1.30. **1.1.29-Designated Amount** means an amount equal to 0.5 per cent. of the Consolidated Total Assets of the Borrower from time to time.~~
- ~~1.1.31. **1.1.30-Disruption Event** means either or both of:~~
- ~~1.1.31.1 **1.1.30.1**-a material disruption to those payment or communications systems or to those financial markets which are, in each case, required to operate in order for payments to be made in connection with the ~~Facilities~~ Facility (or otherwise in order for the transactions contemplated by the Finance Documents to be carried out) which disruption is not caused by, and is beyond the control of, any of the Parties; or~~
- ~~1.1.31.2 **1.1.30.2**-the occurrence of any other event which results in a disruption (of a technical or systems-related nature) to the treasury or payments operations of a Party preventing that, or any other Party:~~
- ~~1.1.31.2.1 **1.1.30.2.1**-from performing its payment obligations under the Finance Documents; or~~
- ~~1.1.31.2.2 **1.1.30.2.2**-from communicating with other Parties in accordance with the terms of the Finance Documents,~~
- ~~and which (in either such case) is not caused by, and is beyond the control of, the Party whose operations are disrupted.~~
- 1.1.32. **1.1.31-Distribution** means any payment by way of interest, principal, dividend, capital reduction, return of capital, fee, royalty or other distribution of whatsoever nature and howsoever described (including a repurchase or redemption of shares) by or on behalf of

a company to or for the account of any member or shareholder of that company, in its capacity as member or shareholder of that company, or in relation to a loan made by such shareholder to the company, in each case whether paid or payable and whether paid or payable in cash or *in specie*.

1.1.33. ~~1.1.32.~~ **Economic Failure** means, at any time after the Signature Date and on or before a Utilisation Date, the occurrence of any event in the local or international financial markets which, banking, financial, monetary, economic, political or financial market conditions and/or any other calamity or event which, in the opinion of the Lenders, makes it unlawful or impossible for the Lenders to fund their participations in the LoanLoans.

1.1.34. **Effective Date** means the date on which the Original Lender notifies the Borrower that it has received all documents and other evidence listed in Schedule 1 (*Conditions precedent*), as contemplated in clause 4.1.1 (*Initial conditions precedent*).

1.1.35. ~~1.1.33.~~ **Environment** means humans, animals, plants and all other living organisms including the ecological systems of which they form part and the following media:

1.1.35.1. ~~1.1.33.1.~~ air (including, without limitation, air within natural or man-made structures, whether above or below ground);

1.1.35.2. ~~1.1.33.2.~~ water (including, without limitation, territorial, coastal and inland waters, water under or within land and water in drains and sewers); and

1.1.35.3. ~~1.1.33.3.~~ land (including, without limitation, land under water).

1.1.36. ~~1.1.34.~~ **Environmental Claim** means any claim, proceeding, demand, investigation or similar communication by any person in respect of any Environmental Law or alleging potential liability for investigatory costs, clean-up costs, governmental response costs, natural resource damages, property damages, personal injuries, fines or penalties arising out of, based on or resulting from or in connection with Environmental Matters.

1.1.37. ~~1.1.35.~~ **Environmental Law** means any applicable law, rule or regulation of South Africa with regard to Environmental Matters and any orders, notices, demands, codes of practice, circulars, guidance notes or injunctions pursuant to the same made or issued by the Government of South Africa or any agency or authority thereof which are binding on and enforceable against the Borrower and any specific agreements entered into by any member of the Group with any competent authorities of South Africa related to Environmental Matters.

1.1.38. ~~1.1.36.~~ **Environmental Matters** means any of the following:

1.1.38.1. ~~1.1.36.1.~~ any release, emission, entry or introduction into the air of any contaminants including the air within buildings and other natural or man-made structures above or below ground;

1.1.38.2. ~~1.1.36.2.~~ any discharge, release or entry into water of any contaminants including into any river, watercourse, lake or pond (whether natural or artificial or above or below ground) or reservoir, or the surface of the riverbed or of other land supporting such waters, ground waters, sewer or the sea;



~~1.1.38.3, 1.1.36.3~~—any release, deposit, keeping or disposal in land or on land whether or not covered by the sea or other waters, of any contaminants;

~~1.1.38.4, 1.1.36.4~~—any deposit, disposal, keeping, treatment, importation, production or carrying of any waste, including any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process or activity (including making it re-usable or reclaiming substances from it) and any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoiled;

~~1.1.38.5, 1.1.36.5~~—nuisance, noise, defective premises, health and safety at work, preservation or protection of the Environment; and

~~1.1.38.6, 1.1.36.6~~—any other matter whatsoever directly or indirectly affecting the Environment or any part of it.

~~1.1.39~~      ~~1.1.37~~—**Environmental Permit** means any permit and other Authorisation and the filing of any notification, report or assessment required under any Environmental Law for the operation of the business of any member of the Group conducted on or from the properties owned or used by any member of the Group.

~~1.1.40~~      ~~1.1.38~~—**Event of Default** means any event or circumstance specified as such in Clause ~~19.22~~ (*Events of Default*) (other than Clause 22.18 (Acceleration)).

~~1.1.41~~      ~~1.1.39~~—**Facility** means the facility made available to the Borrower up to the Loan Amount contemplated in clause 2 hereof.

~~1.1.42~~      ~~1.1.40~~—**Facility Office** means, if applicable, the office or offices notified by any Lender to the Borrower in writing on or before the date it becomes a Lender (or, following that date, by not less than five Business Days written notice) as the office or offices through which it will perform its obligations under this Agreement.

~~1.1.43~~      ~~1.1.41~~—**Finance Document** means this Agreement, ~~the each Qualifying Guarantee, the each~~ Utilisation Request and any other document designated as such by the Finance Parties and the Borrower.

~~1.1.44~~      ~~1.1.42~~—**Finance Party** means each Lender and any facility agent appointed under or pursuant to any Finance Document.

~~1.1.45~~      ~~1.1.43~~—**Financial Indebtedness** means any indebtedness for or in respect of:

~~1.1.45.1, 1.1.43.1~~—moneys borrowed or credit granted;

~~1.1.45.2, 1.1.43.2~~—any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;

~~1.1.45.3, 1.1.43.3~~—any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

- ~~1.1.45.4, 1.1.43.4~~ the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with Accounting Principles, be treated as a finance or capital lease;
- ~~1.1.45.5, 1.1.43.5~~ receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- ~~1.1.45.6, 1.1.43.6~~ any amount raised under any other transaction (including any forward sale or purchase agreement) having the commercial effect of a borrowing;
- ~~1.1.45.7, 1.1.43.7~~ any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value or close-out amount under that derivative transaction shall be taken into account);
- ~~1.1.45.8, any~~ amount raised by the issue of shares which are redeemable;
- ~~1.1.45.9, 1.1.43.8~~ any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- ~~1.1.45.10, 1.1.43.9~~ the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in Clauses ~~1.1.43.11, 1.1.45.1~~ to ~~1.1.43.81, 1.1.45.9~~ above.
- ~~1.1.46, 1.1.44~~ Group means the Borrower and its Subsidiaries, if any, for the time being.
- ~~1.1.47, 1.1.45~~ Holding Company means, in relation to a person, any other person in respect of which it is a Subsidiary.
- ~~1.1.48, 1.1.46~~ IFRS means international accounting standards within the meaning of the IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements.
- ~~1.1.49, 1.1.47~~ Increased Margin shall bear the meaning ascribed thereto in clause ~~7.5.1.2.17, 7.1.2.1~~.
- ~~1.1.50, 1.1.48~~ Increased Margin Acceptance Notice means the notice substantially in the form contemplated in Schedule 9 hereto.
- ~~1.1.51, 1.1.49~~ Increased Margin Notice means the notice substantially in the form contemplated in Schedule 8 hereto.
- ~~1.1.52, 1.1.50~~ Initial Credit Rating means the credit rating in respect of the Borrower as of the Signature Date, being a Moody's Long Term Local Currency Rating of Baa2 and a S&P Long term Local Currency Issuer Credit rating of BBB+. Unless otherwise noted, the ratings refer to global scale ratings.
- ~~1.1.53, 1.1.51~~ Insolvency Event means in relation to any Obligor:
- ~~1.1.53.1, 1.1.51.1~~ such Obligor is dissolved (other than pursuant to a solvent consolidation, amalgamation or merger effected with the consent of the Lenders);

~~1.1.53.2, 1.1.51.2-~~ such Obligor becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;

~~1.1.53.3, 1.1.51.3-~~ such Obligor makes a general assignment, arrangement or composition with or for the benefit of its creditors;

~~1.1.53.4, 1.1.51.4-~~ such Obligor institutes or has instituted against it, by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation by it or such regulator, supervisor or similar official;

~~1.1.53.5, 1.1.51.5-~~ such Obligor has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition is instituted or presented by a person or entity not described in Clause ~~1.1.51.4~~ 1.1.53.4 above and:

~~1.1.53.5.1~~ 1.1.51.5.1- results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation; or

~~1.1.53.5.2~~ 1.1.51.5.2- is not dismissed, discharged, stayed or restrained in each case within 30 (thirty) days of the institution or presentation thereof;

~~1.1.53.6, 1.1.51.6-~~ such Obligor has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a solvent consolidation, amalgamation or merger effected with the consent of the Lenders);

~~1.1.53.7, 1.1.51.7-~~ such Obligor seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, business rescue practitioner, custodian or other similar official for it or for all or substantially all its assets;

~~1.1.53.8, 1.1.51.8-~~ such Obligor has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 (thirty) days thereafter;

~~1.1.53.9, 1.1.51.9-~~ such Obligor causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in Clauses ~~1.1.51.11~~ 1.1.53.1 to ~~1.1.51.8~~ 1.1.53.8 above; or

~~1.1.53.10~~ 1.1.51.10- such Obligor takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

1.1.54 ~~1.1.52-~~ Instalments means [43] equal instalments comprised of capital payments on account of the Loan (as specified in the Amortisation Schedule), payable by the Borrower

to the Lenders on each Payment Date such that the Loan is scheduled to amortise over the Term and be repaid in full on the Maturity Date. [This assumes that the Effective Date will occur before 15 October 2015]

1.1.55. ~~1.1.53-~~ **Interest Payment Date** means ~~each date specified in the Amortisation Schedule commencing 30 September 2015, 15 October, 15 January, 15 April and 15 July of each year.~~

1.1.56. ~~1.1.54-~~ **Interest Period** means, in relation to a Loan, each period determined in accordance with Clause 9 (*Interest Periods*) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (*Default interest*).

1.1.57. ~~1.1.55-~~ **Interpolated Screen Rate** means, in relation to ~~JIBAR~~ for any Loan, the rate (rounded to the same number of decimal places as the two relevant Screen Rates) which results from interpolating on a linear basis between:

1.1.57.1 ~~1.1.55.1-~~ the applicable Screen Rate for the longest period (for which that Screen Rate is available) which is less than the Interest Period of that Loan; and

1.1.57.2 ~~1.1.55.2-~~ the applicable Screen Rate for the shortest period (for which that Screen Rate is available) which exceeds the Interest Period of that Loan,

each as of the Specified Time on the Quotation Day for the currency of that Loan.

1.1.58. ~~1.1.56-~~ **Issuer Credit Rating** means the rating assigned to the Borrower by the Rating Agencies.

1.1.59. ~~1.1.57-~~ **JIBAR** means, in relation to any Loan:

1.1.59.1 ~~1.1.57.1-~~ the applicable Screen Rate;

1.1.59.2 ~~1.1.57.2-~~ if no Screen Rate is available for the Interest Period of that Loan) the Interpolated Screen Rate for that Loan; or

1.1.59.3 ~~1.1.57.3-~~ if:

1.1.59.3.1. ~~1.1.57.3.1-~~ no Screen Rate is available for the currency of that Loan; or

1.1.59.3.2. ~~1.1.57.3.2-~~ no Screen Rate is available for the Interest Period of that Loan and it is not possible to calculate an Interpolated Screen Rate for that Loan,

the Reference Bank Rate,

as of, in the case of Clauses ~~1.1.57.1~~ 1.1.59.1 and ~~1.1.57.3.1~~ 1.1.59.3 above, the Specified Time on the Quotation Day for the currency of that Loan and for a period equal in length to the Interest Period of that Loan.

1.1.60. ~~1.1.58-~~ **Joint Venture** means an association of 2 (two) or more persons combining assets and/or expertise to carry out a business enterprise and having a joint proprietary interest and a sharing of profits and losses and whether undertaken, without limitation, in the form of a partnership, unincorporated association, trust or incorporated entity.

1.1.61. ~~1.1.59-~~ **JSE** means the Johannesburg Stock Exchange, a licensed financial exchange in

~~terms of the Financial Markets Act 2012, or any other financial exchange which operates as a successor exchange to the Johannesburg Stock Exchange, as managed and operated by the JSE Limited, a public company duly incorporated in accordance with the laws of South Africa with registration number 2005/022939/06, which manages and operates the Johannesburg Stock Exchange, a licensed financial exchange in terms of the Financial Markets Act 2012, or any other financial exchange which operates as a successor exchange to the Johannesburg Stock Exchange.~~<sup>06</sup>

1.1.62 ~~1.1.60~~-Lender Instruction means a written instruction from the Lenders addressed to the Borrower, instructing the Borrower to comply with one of the following instructions or-

Formatted: Highlight

1.1.62.1 ~~1.1.60.1~~ providing to provide the Lenders with a Qualifying Guarantee; or

Formatted: Highlight

1.1.62.2 ~~1.1.60.2~~ to prepay the prepayment of the Loan~~Loans~~, all accrued unpaid interest thereon and all other amounts outstanding under the Finance Documents,

in each case, following the occurrence of the Negative Rating Event contemplated in clause ~~7.5.1.3~~<sup>7.1.3</sup> (in the form contemplated in Schedule 7).

1.1.63 ~~1.1.61~~-Lenders means:

1.1.63.1 ~~1.1.61.1~~ the Original Lender; and

1.1.63.2 ~~1.1.61.2~~ any other person which has become a Party as Lender in accordance with Clause ~~20~~<sup>23</sup> (Changes to the Lender),

which in each case has not ceased to be a Party in accordance with the terms of this Agreement and Lender means any one of them.

1.1.64 ~~1.1.62~~-Loan means ~~the~~ loan made or to be made under the Facility or the principal amount outstanding for the time being of such loan.

1.1.65 ~~1.1.63~~-Loan Amount has the meaning given to it in Clause 2.

1.1.66 ~~1.1.64~~-Margin means -

1.1.66.1 at any time other than the circumstances contemplated in Clause 1.1.66.2;

1.1.66.1.1 ~~1.1.64.1~~ \_\_\_\_\_ % ( \_\_\_\_\_ ) ~~2.70~~<sup>2.70</sup> % Nacq; or

1.1.66.1.2 ~~1.1.64.2~~ the Increased Margin Nacq,  
as applicable; and

<sup>1</sup> The Lenders assume that this price to be the clearing price in the current round of fund raising by Transnet. If there are lenders with a higher final clearing price, this margin is to be increased accordingly.

~~1.1.66.2. notwithstanding anything to the contrary in the Agreement, at any time while an Event of Default is continuing, the rate in Clause 1.1.66.1 plus 2%.~~

~~1.1.67. 1.1.65-Margin Increase Period~~ shall bear the meaning ascribed thereto in Clause ~~7.5.1.2.1~~ ~~7.7.1.2.1.~~

~~1.1.68. 1.1.66-Material Adverse Effect~~ means a material adverse effect on:

~~1.1.68.1. 1.1.66.1.~~ the business, operations, property or ~~condition (financial condition or otherwise)~~ or ~~prospects~~ of any Obligor or the Group taken as a whole; or

~~1.1.68.2. 1.1.66.2.~~ the ability of any Obligor to perform its obligations under the Finance Documents; or

~~1.1.68.3. 1.1.66.3.~~ the validity or enforceability of the Finance Documents or the rights or remedies of any Finance Party under any of the Finance Documents.

~~1.1.69. 1.1.67-Maturity Date~~ means ~~the 15<sup>th</sup> anniversary of the Effective Date.~~

~~1.1.70. 1.1.68-Month~~ means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

~~1.1.70.1. 1.1.68.1.~~ (subject to Clause ~~1.1.68.3.1.1.70~~ below) if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;

~~1.1.70.2. 1.1.68.2.~~ if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and

~~1.1.70.3. 1.1.68.3.~~ if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will only apply to the last Month of any period.

~~1.1.71. 1.1.69-Moody's~~ means Moody's Investors Service, Inc.

~~1.1.72. 1.1.70-Moody's Rating~~ shall bear the meaning ascribed thereto in clause ~~7.5.1.17.7.1.1.~~

~~1.1.73. 1.1.71-Nacq~~ means nominal annual compounded Quarterly.

~~1.1.74. 1.1.72-Negative Rating Event~~ has the meaning given to that term in Clause ~~7.5.7.7~~ (Changes in rating).

~~1.1.75. 1.1.73-New Lender~~ has the meaning given to that term in Clause ~~2023~~ (Changes to the Lender).

~~1.1.76. 1.1.74-Obligors~~ means the Borrower and any Qualifying Guarantor and ~~Obligor~~ means any one of them.

Formatted: Highlight

- 1.1.77. ~~1.1.75.~~ **OFAC Sanctions** means sanctions imposed from time to time by the Office of Foreign Assets Control of the Department of Treasury of the United States of America.
- 1.1.78. ~~1.1.76.~~ **Operations Disclosure Schedule** means the disclosure schedule contemplated in Schedule 11 hereto detailing certain of the Borrower's operations in Zimbabwe.
- 1.1.79. ~~1.1.77.~~ **Original Financial Statements** means the audited consolidated financial statements of the Group for the financial year ended 31 March ~~2014~~2015.
- 1.1.80. ~~1.1.78.~~ **Party** means a party to this Agreement.
- 1.1.81. ~~1.1.79.~~ **Payment Date** means each of the dates set out in the ~~Amortisation Schedule on which capital payments are payable by the Borrower~~Interest Payment Date following the date which falls 54 (fifty four) Months after the Effective Date.
- 1.1.82. ~~1.1.80.~~ **Permitted Corporatization** means a corporatization, hive-down, subsidiarization, demerger, merger or other corporate reconstruction (by whatever name called) of any of the Principal Divisions required to be implemented by an executive or legislative act of the Government.
- 1.1.83. ~~1.1.81.~~ **Permitted Transaction** means:
- 1.1.83.1. ~~1.1.81.1.~~ a Permitted Corporatization;
- 1.1.83.2. ~~1.1.81.2.~~ any disposal required, Financial Indebtedness incurred, guarantee, indemnity or Security given, or other transaction arising, under the Finance Documents;
- 1.1.83.3. ~~1.1.81.3.~~ the solvent liquidation or reorganisation of any member of the Group (other than the Borrower) so long as any payments or assets distributed as a result of such liquidation or reorganisation are distributed to other members of the Group;
- 1.1.83.4. ~~1.1.81.4.~~ transactions (other than (i) any sale, lease, license, transfer or other disposal and (ii) the granting or creation of Security or the incurring or permitting to subsist of Financial Indebtedness) conducted in the ordinary course of trading on arm's length terms; or
- 1.1.83.5. ~~1.1.81.5.~~ transactions other than any permitted under the foregoing sub-paragraphs entered into with the prior written consent of the Lenders.
- 1.1.84. ~~1.1.82.~~ **Permitted Transferee** means each of the persons listed in Schedule 6 hereto.
- 1.1.85. ~~1.1.83.~~ **PFMA** means the Public Finance Management Act, 1 of 1999.
- 1.1.86. ~~1.1.84.~~ **Principal Businesses** means the businesses of the Borrower operated under each Principal Division as of the Signature Date and **Principal Business** means any one of them.
- 1.1.87. ~~1.1.85.~~ **Principal Divisions** means the Borrower's operations which are, as of the Signature Date, grouped into the following five divisions providing major transport modes, with central support services unified under one brand, which for operational IFRS reporting purposes, are comprised by the following five core business divisions: Transnet

Freight Rail, Transnet Engineering, the Transnet National Ports Authority, Transnet Port Terminals and Transnet Pipelines and **Principal Division** means any one of them.

~~1.1.88.~~ ~~1.1.86.~~ ~~Qualifying Guarantee shall bear the meaning ascribed thereto in clause 7.5.1.3.17.7.1.3.1.~~

Formatted: Highlight

~~1.1.89.~~ ~~1.1.87. Qualifying Guarantor means a third party, the identity and financial standing of which must be acceptable to the Lenders at their absolute discretion, which guarantees the performance by the Borrower of its obligations under the Finance Documents following the occurrence of the Negative Rating Event contemplated in Clause 7.5.1.3.17.7.1.3.1.~~

~~1.1.90.~~ ~~1.1.88. Qualifying Guarantor Adverse Event shall bear the meaning ascribed thereto in clause 7.7.9.~~

~~1.1.91.~~ ~~1.1.88.~~ ~~1.1.89.~~ **Quarter** means a period of 3 (three) consecutive Months and the term **Quarterly** shall be construed accordingly.

~~1.1.92.~~ ~~1.1.89.~~ ~~1.1.90.~~ **Quotation Day** means, in relation to any period for which an interest rate is to be determined, the first day of that period ~~Interest Period unless market practise differs in the Relevant Interbank Market, in which case the Quotation Day will be determined by the Lenders in accordance with market practise in the Relevant Interbank Market (and if quotations would normally be given on more than one day, the Quotation Day would be the last of those days).~~

~~1.1.93.~~ ~~1.1.90.~~ ~~1.1.91.~~ **Rating Agencies** means S&P and Moody's and their successors or any other rating agency of equivalent international standing as agreed between the Borrower and the Lenders, from time to time (including successors of such rating agency) and **Rating Agency** means any one of them.

~~1.1.94.~~ ~~1.1.91.~~ ~~1.1.92.~~ **Reference Bank Rate** means the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Lender ~~Lenders~~ at its ~~their~~ request by the Reference Banks in relation to JIBAR, as the rate at which the relevant Reference Bank could borrow funds in the Johannesburg interbank market, in the relevant currency and for the relevant period, were it to do so by asking for and then accepting interbank offers for deposits in reasonable market size in that currency and for that period.

~~1.1.95.~~ ~~1.1.92.~~ ~~1.1.93.~~ **Reference Banks** means, in relation to JIBAR, the principal offices in Johannesburg of Absa Bank Limited, FirstRand Bank Limited, Nedbank Limited and The Standard Bank of South Africa Limited or such other banks as may be appointed by the Lenders in consultation with the Borrower.

~~1.1.96.~~ ~~1.1.93.~~ ~~1.1.94.~~ **Related Fund** in relation to a fund (the **first fund**), means a fund which is managed or advised by the same investment manager or investment adviser as the first fund or, if it is managed by a different investment manager or investment adviser, a fund whose investment manager or investment adviser is an Affiliate of the investment manager or investment adviser of the first fund.

~~1.1.97.~~ ~~1.1.94.~~ ~~1.1.95.~~ **Relevant Interbank Market** means the Johannesburg interbank market.



~~1.1.98.1.1.95.~~ ~~1.1.96.~~ **Relevant Jurisdiction** means the jurisdiction under whose laws the Borrower is incorporated as at the date of this Agreement.

~~1.1.99.1.1.96.~~ ~~1.1.97.~~ **Relevant Period** shall bear the meaning ascribed thereto in clause ~~7.1.120.1.6.~~

~~1.1.100.1.1.97.~~ ~~1.1.98.~~ **Repeating Representations** means each of the representations set out in Clauses ~~16.11~~~~18.1~~ (Status) to Clause ~~16.6~~ ~~(Insolvency)~~~~18.7~~ (Governing Law and Enforcement), Clause ~~16.9~~~~18.10~~ (No default), Clause ~~16.10~~~~18.11~~ (No misleading information), sub-Clauses ~~16.11.4~~~~18.12.4~~ and ~~16.11.5~~~~18.12.5~~ of Clause ~~16.11~~~~18.12~~ (Financial statements), Clause ~~16.12~~~~18.13~~ (Pari passu ranking), Clause ~~16.17~~~~18.18~~ (Good title to assets), Clause ~~18.20~~ (Authorised Signatories), Clause ~~18.22~~ (No Immunity) and Clause ~~16.20~~~~18.22~~ (No adverse consequences).

~~1.1.101.1.1.98.~~ ~~1.1.99.~~ **Representative** means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.

~~1.1.102.1.1.99.~~ ~~1.1.100.~~ **Sanctions Authority** means:

~~1.1.102.1.1.99.1.~~ ~~1.1.100.1.~~ the United Nations;

~~1.1.102.2.1.1.99.2.~~ ~~1.1.100.2.~~ the European Union;

~~1.1.102.3.1.1.99.3.~~ ~~1.1.100.3.~~ the Council of Europe (founded under the Treaty of London, 1946);

~~1.1.102.4.1.1.99.4.~~ ~~1.1.100.4.~~ the government of the United States of America;

~~1.1.102.5.1.1.99.5.~~ ~~1.1.100.5.~~ the government of the United Kingdom;

~~1.1.102.6.1.1.99.6.~~ ~~1.1.100.6.~~ the government of the Republic of France;

~~1.1.102.7.1.1.99.7.~~ ~~1.1.100.7.~~ the Government of the Commonwealth of Australia,

and any of their governmental authorities, including, without limitation, the Office of Foreign Assets Control for the US Department of Treasury (OFAC), the US Department of Commerce, the US State Department or the US Department of the Treasury, Her Majesty's Treasury (HMT) and the French Ministry of Finance (MINEFI);

~~1.1.103.1.1.100.~~ ~~1.1.101.~~ **Sanctioned Entity** means:

~~1.1.103.1.1.100.1.~~ ~~1.1.101.1.~~ a person, country or territory which is listed on a Sanctions List or is subject to Sanctions;

~~1.1.103.2.1.1.100.2.~~ ~~1.1.101.2.~~ a person which is ordinarily resident in a country or territory which is listed on a Sanctions List or is subject to Sanctions.

~~1.1.104.1.1.101.~~ ~~1.1.102.~~ **Sanctioned Transaction** means the use of the proceeds of the ~~Facilities~~ Facility for the purpose of financing or providing any credit, directly or indirectly, to:

~~1.1.104.1.1.101.1.~~ ~~1.1.102.1.~~ a Sanctioned Entity; or

~~1.1.104.2.1.1.101.2.~~ ~~1.1.102.2.~~ any other person or entity, if a member of the Group has actual knowledge that the person or entity proposes to use the proceeds of the financing or

credit for the purpose of financing or providing any credit, directly or indirectly, to a Sanctioned Entity,

in each case to the extent that to do so is prohibited by, or would cause any breach of, Sanctions if conducted by a person who is subject to or obliged to comply with the laws or regulations of a Sanctions Authority.

~~1.1.105.1.1.102.~~ ~~1.1.103.~~ **Sanctions** means trade, economic or financial sanctions, laws, regulations, embargoes or restrictive measures imposed, administered or enforced from time to time by any Sanctions Authority.

~~1.1.106.1.1.103.~~ ~~1.1.104.~~ **Sanctions List** means:

~~1.1.106.1.1.103.1.~~ ~~1.1.104.1.~~ the Specially Designated Nationals and Blocked Persons List maintained by OFAC;

~~1.1.106.2.1.1.103.2.~~ ~~1.1.104.2.~~ the Consolidated List of Financial Sanctions Targets and the Investments Ban List maintained by HMT,

and any similar list maintained, or a public announcement of a Sanctions designation made, by any Sanctions Authority, in each case as amended, supplemented or substituted from time to time.

~~1.1.107.1.1.104.~~ ~~1.1.105.~~ **S&P** means Standard and Poor's Rating Group Financial Services LLC, a division of McGraw Hill.

~~1.1.108.1.1.105.~~ ~~1.1.106.~~ **S&P Rating** shall bear the meaning ascribed thereto in clause 7.5.1.17.7.1.1.

~~1.1.107.~~ **Screen Rate** means:

~~1.1.107.1.~~ in relation to JIBAR, the mid market rate for deposits in ZAR for the relevant period displayed on the SAFETY page alongside the caption "YLD" on the Reuters screen (or any replacement Reuters page which displays that rate); or

~~1.1.109.1.1.106.~~ ~~1.1.107.2.~~ **Screen Rate** means in relation to JIBAR the mid market rate for deposits in ZAR for the relevant period displayed on the SAFETY page alongside the caption "YIELD" on the Reuters screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters. If such page or service ceases to be available, the Lenders may specify another page or service displaying the relevant rate after consultation with the Borrower.

~~1.1.110.1.1.107.~~ ~~1.1.108.~~ **Security** means a mortgage bond, notarial bond, cession in security, charge, pledge, lien, hypothec or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.

~~1.1.111.1.1.108.~~ ~~1.1.109.~~ **Signature Date** means the date on which this Agreement is signed by the Party signing last in time.

~~1.1.112.1.1.109.~~ ~~1.1.110.~~ **South Africa** means the Republic of South Africa (as constituted from time to time).

~~1.1.113.1.1.110.~~ **1.1.111-Specified Time** means a day or time determined in accordance with Schedule 5 (*Timetables*).

~~1.1.114.1.1.111.~~ **1.1.112-Subsidiary** means, in relation to any company or corporation, a company or corporation; a "subsidiary" as defined in the Companies Act and shall include an person who would, but for not being a "company" under the Companies Act, qualify as a "subsidiary" as defined in the Companies Act.

~~1.1.112.1.~~ which is controlled, directly or indirectly, by the first mentioned company or corporation;

~~1.1.112.2.~~ more than half the issued equity share capital of which is beneficially owned, directly or indirectly, by the first mentioned company or corporation; or

~~1.1.112.3.~~ which is a Subsidiary of another Subsidiary of the first mentioned company or corporation.

~~1.1.115.1.1.112.~~ **1.1.113-Tax** means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

~~1.1.116.1.1.113.~~ **1.1.114-Term** means the period commencing on the ~~Utilisation~~Effective Date and ending on the Maturity Date.

~~1.1.117.1.1.114.~~ **1.1.115-Trading Day** means, to the extent that any bonds issued by the Borrower are listed on an Approved Exchange, any day that is a trading day on such Approved Exchange and does not include a day on which trading on such Approved Exchange is scheduled to close or does close or is suspended prior to its regular weekday closing time.

~~1.1.118.1.1.115.~~ **1.1.116-Transfer Certificate** means a certificate substantially in the form set out in Schedule 3 (*Form of Transfer Certificate*) or any other form agreed between the Lenders and the Borrower.

~~1.1.119.1.1.116.~~ **1.1.117-Transfer Date** means, in relation to an assignment or a transfer, the later of:

~~1.1.119.1.1.116.1.~~ **1.1.117.1-**the proposed Transfer Date specified in the relevant Transfer Certificate; and

~~1.1.119.2.1.1.116.2.~~ **1.1.117.2-**the date on which the applicable Lender executes the relevant Transfer Certificate.

~~1.1.120.1.1.117.~~ **1.1.118-Unpaid Sum** means any sum due and payable but unpaid by the Borrower under the Finance Documents.

~~1.1.121.1.1.118.~~ **1.1.119-Utilisation** means thea utilisation of the Facility.

~~1.1.122.1.1.119.~~ **1.1.120-Utilisation Date** means the date of thea Utilisation, being the date on which the relevant Loan is to be made, provided that such date shall be a date no later than 3 (three) Business Days prior to the expiry of the Availability Period.

~~1.1.123.1.1.120.~~ ~~1.1.121.~~ **Utilisation Request** means a notice substantially in the form set out in Schedule 2 (*Form of Utilisation Request*).

~~1.1.124.1.1.121.~~ ~~1.1.122.~~ **VAT** means (i) value added tax (or equivalent sales tax on goods and services) in the Relevant Jurisdiction as provided for in the VAT Act; or (ii) any general service tax; or (iii) any other tax of a similar nature.

~~1.1.125.1.1.122.~~ ~~1.1.123.~~ **Withdrawal Event** shall bear the meaning ascribed thereto in Clause ~~7.67.8.~~

~~1.1.126.1.1.123.~~ ~~1.1.124.~~ **ZAR, R and Rand** each mean the lawful currency of South Africa.

## 1.2. Construction

1.2.1. Unless a contrary indication appears, any reference in this Agreement to:

1.2.1.1. the Borrower, any Finance Party, any Lender, or any Party shall be construed so as to include its successors in title, permitted assigns and permitted transferees;

1.2.1.2. assets includes present and future properties, revenues and rights of every description;

~~1.2.1.3.~~ an authority includes any court or governmental, intergovernmental or supranational body, agency, department or any regulatory, self-regulatory or other authority;

~~1.2.1.4.~~ ~~1.2.1.3.~~ a Finance Document or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;

~~1.2.1.5.~~ the use of the word "including" followed by specific examples will not be construed as limiting the meaning of the general wording preceding it and the *ejusdem generis* rule must not be applied in the interpretation of such general wording or specific examples;

~~1.2.1.6.~~ ~~1.2.1.4.~~ indebtedness includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;

~~1.2.1.7.~~ ~~1.2.1.5.~~ a person includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, Joint Venture, consortium or partnership (whether or not having separate legal personality);

~~1.2.1.8.~~ ~~1.2.1.6.~~ a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;

~~1.2.1.9.~~ ~~1.2.1.7.~~ a provision of law is a reference to that provision as amended or re-enacted; and

~~1.2.1.10.~~ ~~1.2.1.8.~~ a time of day is a reference to Johannesburg time.

1.2.2. Section, Clause and Schedule headings are for ease of reference only.

1.2.3. Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.

- 1.2.4. A Default (other than an Event of Default) is "continuing" if it has not been remedied or waived (in writing) and an Event of Default is "continuing" if it has not been waived (in writing).
- 1.2.5. If any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it appears only in an interpretation clause, effect shall be given to it as if it were a substantive provision of the relevant Finance Document.
- 1.2.6. Unless inconsistent with the context, an expression in any Finance Document which denotes the singular includes the plural and vice versa.
- 1.2.7. The Schedules to any Finance Document form an integral part thereof and a reference to a "Clause" or a "Schedule" is a reference to a clause of, or a schedule to, this Agreement.
- 1.2.8. The rule of construction that, in the event of ambiguity, a contract shall be interpreted against the party responsible for the drafting thereof, shall not apply in the interpretation of the Finance Documents.
- 1.2.9. The expiry or termination of any Finance Documents shall not affect those provisions of the Finance Documents that expressly provide that they will operate after any such expiry or termination or which of necessity must continue to have effect after such expiry or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.2.10. The Finance Documents shall to the extent permitted by applicable law be binding on and enforceable by the administrators, trustees, permitted cessionaries, business rescue practitioners or liquidators of the Parties as fully and effectually as if they had signed the Finance Documents in the first instance and reference to any Party shall be deemed to include such Party's administrators, trustees, permitted cessionaries, business rescue practitioners or liquidators, as the case may be.
- 1.2.11. Unless a contrary indication appears, where any number of days is to be calculated from a particular day, such number shall be calculated as including that particular day and excluding the last day of such period.
- 1.3. Third party rights**
- 1.3.1. Except as expressly provided for in this Agreement or in any other Finance Document, no provision of any Finance Document constitutes a stipulation for the benefit of any person who is not a party to that Finance Document.
- 1.3.2. Notwithstanding any term of any Finance Document, the consent of any person who is not a party to that Finance Document is not required to rescind or vary that Finance Document at any time except to the extent that the relevant variation or rescission (as the case may be) relates directly to the right conferred upon any applicable third party under a stipulation for the benefit of that party that has been accepted by that third party.

## SECTION 2 THE FACILITY

### 2. THE FACILITY

#### 2.1. The Facility

Subject to the provisions of this Agreement, the Lenders agree to make a term loan facility available to the Borrower in an amount of ZAR \_\_\_\_\_ (\_\_\_\_\_ Rand) (the "Loan Amount"):

2.1.1. until such time as the Original Lender has delivered to the Borrower a letter stating that the board of directors of the Original Lender has approved an increase in the Facility, (as contemplated in clause 2.1.2), ZAR2 500 000 000; and

2.1.2. on receipt by the Borrower of a letter from the Original Lender stating that (i) the board of directors of the Original Lender has approved an increase in the Facility to that amount; and (ii) the Original Lender is satisfied that that the Borrower has complied with all terms and conditions imposed by the Lender's board of directors in respect of such increase, ZAR3 000 000 000,

(the "Loan Amount").

#### 2.2. Finance Parties' rights and obligations

2.2.1. The obligations of each Finance Party under the Finance Documents are separate and independent. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.

2.2.2. The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from an Obligor shall be a separate and independent debt.

2.2.3. A Finance Party may, except as otherwise stated in the Finance Documents, separately enforce its rights under the Finance Documents.

### 3. PURPOSE

#### 3.1. Purpose

The Borrower shall apply all amounts borrowed by it under the Loan Facility towards the general corporate purposes of the Group.

#### 3.2. Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

### 4. CONDITIONS OF UTILISATION

#### 4.1. Initial conditions precedent

4.1.1. The Borrower may not deliver a Utilisation Request unless the Lenders have (a) received all of the documents and other evidence listed in Schedule 1 (*Conditions precedent*) and received the evidence and/or confirmation referred to in paragraph 5.1.3 of Schedule 1 (*Conditions precedent*) in form and substance satisfactory to the Lenders; or (b) waived the requirement to receive all or any of such documents or evidence. The Lenders shall notify the Borrower promptly upon being so satisfied or upon making any such waiver.

4.1.2. ~~Unless the conditions precedent contemplated in clause 4.1.1 are fulfilled or waived by no later than \_\_\_\_\_ this Agreement shall be of no further force or effect. If the Effective Date has not occurred by the date which falls 30 days after the Signature Date, the Lenders may, on not less than 5 Business Days' notice to the Borrower, cancel the Commitment.~~

#### 4.2. Further conditions precedent

The Lenders will only be obliged to comply with Clause 5.4 (*Lenders' participation*) if on the date of the Utilisation Request and on the proposed Utilisation Date:

- 4.2.1. no Default is continuing or would result from the proposed ~~Loan~~ Utilisation;
- 4.2.2. no Economic Failure has occurred;
- 4.2.3. the Borrower's Issuer Credit Rating is a Moody's Long Term Local Currency Rating of Baa1 2 or better and an S&P Long Term Local Currency Issuer Credit rating of BBB+ or better;
- ~~4.2.4. the Lenders and the Borrower have confirmed (in writing) to each other that the Amortisation Schedule is in agreed form; and~~
- ~~4.2.4.~~ 4.2.5. the Repeating Representations to be made by the Borrower are true in all material respects;

#### 4.3. ~~Maximum number of Loans~~

~~4.2.5. the Lenders have received evidence to their satisfaction that the Borrower has delivered utilisation requests to each of:~~

~~4.2.5.1. Old Mutual Specialised Finance Proprietary Limited pursuant to the facility in an amount of approximately R1 500 000 000 to be made available by Old Mutual Specialised Finance Proprietary Limited on or about the Signature Date; and/or~~

~~4.2.5.2. Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) pursuant to the facility in an amount of approximately R1 500 000 000 to be made available by Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) on or about the Signature Date.~~

~~Only 1 (one) Loan shall be made in respect of the Facility.~~

pursuant to which the Borrower requested utilisations of such facilities in an amount which bears the same proportion of such facilities as the proportion which the Utilisation Request bears to the Facility.



### SECTION 3 UTILISATION

#### 5. UTILISATION

##### 5.1. Delivery of a Utilisation Request

- 5.1.1. The Borrower may utilise the Facility by delivery to the Lenders of a duly completed Utilisation Request by no later than the Specified Time.
- 5.1.2. ~~The Borrower may not deliver more than one Utilisation Request per calendar Month during the Availability Period.~~
- 5.1.3. ~~The Borrower may not deliver a Utilisation Request less than 5 (five) Business Days prior to the expiry of the Availability Period.~~

##### 5.2. Completion of a Utilisation Request

The A Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:

- 5.2.1. the proposed Utilisation Date is a Business Day within the Availability Period; and
- 5.2.2. the currency and amount of the Utilisation comply with Clause 5.3 (Currency and amount).

##### 5.3. Currency and amount

- 5.3.1. The currency specified in a Utilisation Request must be Rand.
- 5.3.2. The amount of the proposed ~~Loan~~ Utilisation must not be equal to ~~more than~~ the Total ~~Commitment~~ less of:
- 5.3.2.1. R250 000 000; and
- 5.3.2.2. the Available Facility.

##### 5.4. Lender's participation

If the conditions set out in this Agreement have been met, the Lenders shall make their participation in the ~~Loan~~ Utilisation available by the Utilisation Date.

##### ~~5.5. Commitment Fee~~

~~The Borrower shall, when applicable, pay to the Lender a Commitment Fee quarterly in arrears on each Interest Payment Date during the Availability Period.~~

##### 5.5. 5.6- Cancellation of Commitment

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period.

**SECTION 4**  
**REPAYMENT, PREPAYMENT AND CANCELLATION**

**6. REPAYMENT**

**6.1. Repayment of the Loan**

The Borrower shall repay the Loan by paying the ~~Installments~~ each Instalment to the Lenders on each ~~Interest Payment~~ Date.

**6.2. ~~Re-advancing borrowing~~**

~~The~~ A Loan or any portion thereof repaid or prepaid by the Borrower in accordance with the provisions of this Agreement shall not be available to be ~~re-advanced by the Lender(s)~~ to be borrowed by the Borrower.

**7. PREPAYMENT AND CANCELLATION**

**7.1. Voluntary prepayment of ~~Loans~~ the Loan**

~~7.1.1.~~—Save as contemplated in Clause ~~7.5.1.2.27~~ 7.1.3.2 hereof, the Borrower shall not be entitled to voluntarily prepay ~~the~~ a Loan ~~or any portion thereof~~.

**7.2. Voluntary Cancellation**

The Borrower shall not be entitled to voluntarily cancel the whole or any part of any Lender's Available Commitment.

**7.3. ~~7.2.~~ Illegality**

If, in any applicable jurisdiction, it becomes unlawful for any Lender to perform any of its obligations as contemplated by this Agreement or to fund or maintain its participation in ~~the~~ a Loan:

7.3.1. ~~7.2.1.~~—such Lender shall promptly notify the Borrower upon becoming aware of that event;

7.3.2. ~~7.2.2.~~—upon such Lender notifying the Borrower, the Commitment of such Lender will be immediately cancelled; and

7.3.3. ~~7.2.3.~~—the Borrower shall repay such Lender's participation in the ~~Loan~~ Loans made to the Borrower on the last day of the Interest Period for ~~the~~ each Loan occurring after such Lender has notified the Borrower or, if earlier, the date specified by such Lender in the notice delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

**7.4. ~~7.3.~~ Change of control**

If a Change of Control Event occurs:

7.4.1. ~~7.3.1.~~—the Borrower shall promptly notify the Lenders upon becoming aware of that event;

7.4.2. ~~7.3.2.~~—the Lenders shall not be obliged to fund ~~the~~ a Utilisation;

7.4.3. ~~7.3.3.~~ if any Lender so requires and notifies the Borrower within 30 days' of the Change of Control Event or of such Lender becoming aware of the Change of Control Event, such Lender shall, by not less than 30 days' notice to the Borrower, cancel its Commitment (if applicable) and declare the participation in the portion of the Loan of that Lender in all outstanding Loans owed to such Lender, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Commitment of such Lender will be cancelled and all such outstanding amounts owing to such Lender will become immediately due and payable.

7.5. Disposal and insurance proceeds

7.5.1. The Borrower shall be obliged to apply a portion of the following proceeds received by the Borrower or any other member of the Group in the prepayment of the Loans:

7.5.1.1. The proceeds arising from the sale of assets which, in aggregate during a financial year of the Borrower, exceed the Designated Amount, if:

7.5.1.1.1. such proceeds:

7.5.1.1.1.1. were not used within 90 days; or

7.5.1.1.1.2. were committed (as evidenced by a resolution of the board of directors of the recipient) to be used within 90 days of receipt thereof but were not in fact used within a period of 90 days of the date of adoption of such resolution,

in the replacement of the assets disposed of; or

7.5.1.1.2. the replacement assets were not of the same type and at least of the same quality as the assets disposed of.

7.5.1.2. The proceeds arising from a claim on an insurance policy which, in aggregate during a financial year of the Borrower, exceed the Designated Amount, if:

7.5.1.2.1. such proceeds:

7.5.1.2.1.1. were not used within 90 days; or

7.5.1.2.1.2. were committed (as evidenced by a resolution of the board of directors of the recipient) to be used within 90 days of receipt thereof but were not in fact used within a period of 90 days of the date of adoption of such resolution,

in the replacement of the assets which were damaged or destroyed (as the case may be); or

7.5.1.2.2. the replacement assets were not of the same type and at least of the same quality as the assets which were damaged or destroyed (as the case may be).

7.5.1.3. The proceeds arising from the sale by the Borrower or any other member of the Group of all of its assets or a substantial portion of its assets.

7.5.2. The amount of the Loans required to be prepaid (which shall be pre-paid pro-rata amongst themselves) shall be equal to the proceeds contemplated in clause 7.5.1 multiplied by the ratio which the Loans bear to the aggregate of the Loans and all other loans under any other agreement which are obliged to be prepaid before their originally scheduled repayment date as a result of the occurrence of the events set out in clause 7.5.1. Any prepayment required to be made by the Borrower shall be made by no later than the 15<sup>th</sup> Business Day after the occurrence of the event which gave rise to the obligation to make such prepayment and on receipt thereof the Commitment shall be reduced by an amount equal to such prepayment.

7.6. **7.4-Right of replacement or repayment and cancellation in relation to a single Lender**

7.6.1. **7.4.1-If:**

7.6.1.1. 7.4.1.1. any sum payable to a Lender by the Borrower is required to be increased under Clause ~~11.2~~13.2 (Tax gross-up); or

7.6.1.2. 7.4.1.2. a Lender claims indemnification from the Borrower under Clause ~~11.3~~13.3 (Tax indemnity) or Clause ~~12.4~~14.1 (Increased costs),

the Borrower may, whilst the circumstance giving rise to the requirement for that increase or indemnification continues and provided that no Default is then continuing, give such Lender notice of cancellation of the Commitment of such Lender and its intention to procure the repayment of such Lender's participation in the ~~Loan~~ Loans.

7.6.2. 7.4.2. On receipt of a notice of cancellation referred to in Clause ~~7.4.1~~7.6.1 above, the Commitment of the relevant Lender shall immediately be reduced to zero.

7.6.3. 7.4.3. On the last day of each the Interest Period which ends after the Borrower has given notice of cancellation under Clause ~~7.4.1~~7.6.1 above (or, if earlier, the date specified by the Borrower in that notice), the Borrower shall repay the applicable Lender's participation in the outstanding ~~Loan~~ Loans together with all interest and other amounts accrued under the Finance Documents.

7.7. **7.5-Changes in rating**

7.7.1. If the Borrower's Initial Credit Rating falls (each a Negative Rating Event) -

7.7.1.1. to a S&P Rating of BBB- or a Moody's Rating of Baa3 -

7.7.1.1.1. the Lenders shall be entitled, for a period of 20 (Twenty) Business Days from the earlier of the date on which any Lender becomes aware of such Negative Rating Event or the date on which any Lender is notified of same in accordance with clause ~~19.6.1.2~~19.6.1.2 hereof (the "Margin Increase Period"), to increase the Margin, with effect from the date on which such Negative Rating Event occurred (the "Increased Margin"). In the event that the Lenders increase the Margin as aforesaid, the Lenders shall notify the Borrower in writing of the Increased Margin by no later than the expiry of the Margin Increase Period by delivery of the Increased Margin Notice;

Formatted: Highlight

Formatted: BG2 Heading5 Ctrl+num 5, Indent: Left: 0 cm, Hanging: 4 cm, Outline numbered + Level: 5 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Indent at: 3 cm, Tab stops: 1 cm, Left

7.7.1.1.2. within 10 (ten) Business Days of receipt of the Increased Margin Notice, the Borrower shall either (i) voluntarily prepay the Loan plus accrued unpaid interest thereon (calculated on the basis of IIBAR plus the Margin contemplated in clause 1.1.66.11-1.66.1) together with all other amounts outstanding under the Finance Documents; or (ii) notify the Lenders, in writing, of its acceptance of the Increased Margin by the delivery of the Increased Margin Acceptance Notice. The failure by the Borrower to voluntarily prepay the Loan or deliver the Increased Margin Acceptance Notice to the Lenders constitutes an Event of Default;

7.7.1. ~~7.5.1. If the Borrower's Initial Credit Rating or the rating after the expiration of the B Relevant Period or the A Relevant Period, as the case may be, falls (each, a Negative Rating Event)-~~

7.7.1.2. ~~7.5.1.1. to an S&P Rating below BBB- or a Moody's Rating below Baa3, the Borrower shall in accordance with the terms of the Lender Instruction:~~

7.7.1.2.1. the Lenders shall be entitled, for a period of 20 (Twenty) Business Days from the earlier of the date on which any Lender becomes aware of such Negative Rating Event or the date on which any Lender is notified of same in accordance with clause ~~19.6.1.2~~19.6.1.2 hereof (the "Margin Increase Period"), to increase the Margin, with effect from the date on which such Negative Rating Event occurred (the "Increased Margin"). In the event that the Lenders increase the Margin as aforesaid, the Lenders shall notify the Borrower in writing of the Increased Margin by no later than the expiry of the Margin Increase Period by delivery of the Increased Margin Notice; or

Formatted: Highlight

Formatted: Highlight

7.7.1.2.2. within 10 (ten) Business Days of receipt of the Increased Margin Notice, the Borrower shall either (i) voluntarily prepay the Loans plus accrued unpaid interest thereon (calculated on the basis of IIBAR plus the Margin contemplated in clause ~~1.1.66.11-1.64.1~~1.1.66.11-1.64.1) together with all other amounts outstanding under the Finance Documents; or (ii) notify the Lenders, in writing, of its acceptance of the Increased Margin by the delivery of the Increased Margin Acceptance Notice. The failure by the Borrower to voluntarily prepay the Loans or deliver the Increased Margin Acceptance Notice to the Lenders constitutes an Event of Default;

Formatted: Highlight

Formatted: Highlight

7.7.1.1. ~~to a S&P Long Term Local Currency Issuer Credit rating (each an "S&P Rating") of BBB or a Moody's Long Term Local Currency rating (each a "Moody's Rating") of Baa2, the Borrower shall, upon written request by the Lenders, promptly confer with the Lenders on the occurrence of such Negative Rating Event and for a period of no more than 10 (ten) Business Days calculated from the date on which such Negative Rating Event occurred, discuss the reason for such decline in the Borrower's credit rating and the most reasonable commercial manner in which the Borrower intends to improve its credit rating, provided that the Borrower and the Lenders shall not be obliged to effect any amendments to the provisions of the Finance Documents by reason only of such Negative Rating Event;~~

Formatted: Highlight

~~7.7.1.2. 7.5.1.2. to a S&P Rating of BBB or a Moody's Rating of Baa3~~

~~7.7.1.2.1. 7.5.1.2.1. the Lenders shall be entitled, for a period of 1020 (tentwenty) Business Days from the earlier of the date on which any Lender becomes aware of such Negative Rating Event or the date on which any Lender is notified of same in accordance with Clause 17.4.1.219.6.1.2 hereof (the "Margin Increase Period"), to increase the Margin, with effect from the date on which such Negative Rating Event occurred (the "Increased Margin"). In the event that the Lenders increase the Margin as aforesaid, the Lenders shall notify the Borrower in writing of the Increased Margin by no later than the expiry of the Margin Increase Period by delivery of the Increased Margin Notice;~~

~~7.7.1.2.2. 7.5.1.2.2. within 10 (ten) Business Days of receipt of the Increased Margin Notice, the Borrower shall either (i) voluntarily prepay the LoanLoans plus accrued unpaid interest thereon (calculated on the basis of JIBAR plus the Margin contemplated in clause 11.64.111.66.1) together with all other amounts outstanding under the Finance Documents; or (ii) notify the Lenders, in writing, of its acceptance of the Increased Margin by the delivery of the Increased Margin Acceptance Notice. The failure by the Borrower to voluntarily prepay the LoanLoans or deliver the Increased Margin Acceptance Notice to the Lenders constitutes an Event of Default;~~

~~7.7.1.3. 7.5.1.3. to an S&P Rating below BBB or a Moody's Rating below Baa3, the Borrower shall in accordance with the terms of the Lender Instruction:~~

~~7.7.1.3.1. at the cost of the Borrower and within 45 (forty five) days of receipt of the Lender Instruction, deliver to the Lenders;~~

~~7.7.1.3.1.1. 7.5.1.3.1. at the cost of the Borrower and within 45 (forty five) days of receipt of the Lender Instruction, deliver to the Lenders an independent, irrevocable and unconditional guarantee in favour of Finance Parties, guaranteeing repayment of the LoanLoans together with interest thereon and all other amounts accrued or which may accrue under the Finance Documents, issued and executed by a the Qualifying Guarantor, which guarantee must, in all respects, be in form and substance acceptable to the Lenders (acting reasonably) (the "Qualifying Guarantee"), subject to the provisions of clause 7.7.7.9; or and~~

~~7.7.1.3.1.2. a legal opinion by legal counsel satisfactory to the Finance Parties dealing with, inter alia, the legality, validity and enforceability of the Qualifying Guarantee; or~~

~~7.7.1.3.2. 7.5.1.3.2. within 5 (five) Business Days of receipt of the Lender Instruction, prepay the LoanLoans then outstanding in full, together with accrued unpaid interest thereon, and all other amounts accrued and owing under the Finance Documents, and upon such prepayment being made all of the Commitments of the Lenders shall immediately be cancelled. The failure by the Borrower to prepay the LoanLoans or~~

deliver the Qualifying Guarantee to the Lenders in accordance with the Lender Instruction constitutes an Event of Default;

7.7.2. If the Borrower's Initial Credit Rating falls directly from such Initial Credit Rating to a S&P Rating below BBB- or a Moody's Rating below Baa3 and pursuant to the Lender Instruction, the Lenders request the Borrower to provide them with a Increased Margin notice, the provisions of clause 1.1.1.17.7.1.2 shall apply *mutatis mutandis*.

Formatted: Highlight

Formatted: Highlight

7.7.2. 7.5.2. If the Borrower's Initial Credit Rating falls directly from such Initial Credit Rating to an S&P Rating below BBB- or a Moody's Rating below Baa3 and, pursuant to the Lender Instruction, the Lenders request the Borrower to provide them with a Qualifying Guarantee, the provisions of clause 7.5.1.27.7.1.2 shall apply *mutatis mutandis*.

7.7.3. 7.5.3.-If -

7.7.3.1. 7.5.3.1. following the occurrence of the Negative Rating Event contemplated in Clause 7.5.1.37.7.1.23, the Borrower's credit rating is subsequently reinstated to an S&P rating of BBB- (or better) and a Moody's rating of Baa3 (or better) (each a "B Positive Rating Event") but below the Initial Credit Rating and such credit rating is maintained for a period of 30 (thirty) days (the "B Relevant Period"), the Finance Parties shall, provided that neither a Default nor Event of Default has occurred, upon the Borrower's written request (addressed to the Lenders) at any time following the expiry of the B Relevant Period, the Increased Margin shall reduce to the Margin contemplated in clause 1.1.66.11.1.66.1 with effect from the expiry of the B Relevant Period, provided that the first Increased Margin shall continue to apply to the Facility; relinquish the Qualifying Guarantee, provided that the Increased Margin shall continue to apply to the Facility;

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

7.7.3.2. 7.5.3.2. following the occurrence of any Negative Rating Event, the Borrower's credit rating is subsequently reinstated to the Initial Credit Rating (or better) (each an "A Positive Rating Event") and such credit rating is maintained for a period of 30 (thirty) days (the "A Relevant Period") -

7.7.3.2. the Increased Margin shall reduce to the Margin contemplated in clause 1.1.66.11.1.66.1 with effect from the expiry of the A Relevant Period following the occurrence of any Negative Rating Event, the Borrower's credit rating is subsequently reinstated to the Initial Credit Rating (or better) (each an "A Positive Rating Event") and such credit rating is maintained for a period of 30 (thirty) days (the "A Relevant Period") -

Formatted

Formatted: Highlight

Formatted: Highlight

7.7.3.2.1. 7.5.3.2.1. the Increased Margin shall reduce to the Margin contemplated in clause 1.1.64.11.1.66.1 with effect from the expiry of the A Relevant Period; and

Formatted: BG2 Heading4 Ctrl+num 4

7.7.3.2.2. 7.5.3.2.2. if applicable, the Lenders shall, provided that neither a Default nor Event of Default has occurred, upon the Borrower's written request (addressed to the Lenders) at any time following the expiry of the A Relevant Period, relinquish the Qualifying Guarantee, provided that, if a Negative Rating Event occurs following an A Positive Rating Event or a B Positive Rating Event, the provisions of clause 7.5.1 shall apply.

7.7.4. If a Negative Rating Event occurs following an A Positive Rating Event or a B Positive Rating Event, the provisions of clause 7.7.1 shall once again apply.

7.8. ~~7.6.~~ **Rating Withdrawal**

If, at any time during the Term, the Borrower ceases to be rated by ~~the~~any Rating Agencies (the "Withdrawal Event"), ~~it shall prepay the Loan together with all~~

7.8.1. the Borrower shall promptly notify the Lenders upon becoming aware of that Withdrawal Event.

7.8.2. the Lenders shall not be obliged to fund a Utilisation;

7.8.3. if any Lender so requires and notifies the Borrower within 20 Business Days' of the Withdrawal Event or of such Lender becoming aware of the Withdrawal Event, such Lender shall, by not less than 30 days' notice to the Borrower, cancel its Commitment (if applicable) and declare the participation in the portion of the Loans owed to such Lender, together with accrued unpaid interest thereon, and all other amounts outstanding accrued under the Finance Documents within 10 (ten) Business Days of such Rating Agencies withdrawing from supplying the credit rating of the Borrower. Upon such prepayment being made all of the Commitments of the Lenders shall immediately be cancelled. The failure by the Borrower to prepay the Loan as aforesaid constitutes an Event of Default immediately due and payable, whereupon the Commitment of such Lender will be cancelled and all such outstanding amounts owing to such Lender will become immediately due and payable.



7.9 ~~7.7~~ **Qualifying Guarantor**

Formatted: Highlight

~~A guarantee delivered pursuant to clause 7.5.1.3.1, shall only become a Qualifying Guarantee if at the time of the provision of same to the Lenders as contemplated in clause 7.5.1.3.1, the Borrower and the Lenders have agreed to terms and conditions which require the Borrower to prepay the Loan and all other amounts outstanding under the Finance Documents in the event that the Qualifying Guarantor ceases to be acceptable to the Lenders (a "Qualifying Guarantor Adverse Event") and this Agreement is amended to reflect such terms and conditions. In the event that the Qualifying Guarantor ceases to be acceptable to the Lenders, acting reasonably (a "Qualifying Guarantor Adverse Event"):~~

Formatted: BG2 Heading2 Ctrl+num2, Indent: Left: 0 cm, Hanging: 0.5 cm, Outline numbered + Level: 2 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 5.5 cm + Indent at: 7 cm, Keep with next

~~7.9.1. the Lenders shall promptly notify the Borrower of that Qualifying Guarantor Adverse Event;~~

~~7.9.2. the Lenders shall not be obliged to fund a Utilisation;~~

~~7.9.3. 7.9. if any Lender so requires and notifies the Borrower within 20 Business Days' of the Qualifying Guarantor Adverse Event, such Lender shall, by not less than 30 days' notice to the Borrower, cancel its Commitment (if applicable) and declare the participation in the portion of the Loans owed to such Lender, together with accrued interest, and all other amounts accrued under the Finance Documents immediately due and payable, whereupon the Commitment of such Lender will be cancelled and all such outstanding amounts owing to such Lender will become immediately due and payable.~~

7.10 **7.8-Change of Principal Business and Permitted Corporatization**

~~7.10.1. 7.8.1.1- Upon the occurrence of a Change of Principal Business and/or a Permitted Corporatization the Borrower shall immediately notify the Lenders, in writing, of same (the "Change in Business Notice").~~

~~7.10.2. 7.8.1.2- For a period of 20 (twenty) Business Days from the earlier of (a) date of receipt by the Lenders of the Change in Business Notice; and (b) the Lenders becoming aware of a Change of Principal Business and/or a Permitted Corporatization, the Lenders shall be entitled to require the Borrower to prepay the LoanLoans, all accrued unpaid interest thereon and all other amounts owing under Finance Documents by delivering a written notice to such effect to the Borrower (the "Prepayment Request Notice").~~

~~7.10.3. 7.8.1.3- Within 5 (five) Business Days of receipt by the Borrower of the Prepayment Request Notice, the Borrower shall prepay Loanthe Loans, all accrued unpaid interest thereon and all other amounts owing under Finance Documents. The failure by the Borrower to prepay the LoanLoans as aforesaid constitutes an Event of Default.~~

7.11 **7.9-Restrictions**

~~7.11.1. 7.9.1- Any notice of prepayment given by any Party under this Clause 7 shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant prepayment is to be made and the amount of that prepayment. The Borrower shall prepay the amount specified to be prepaid in the applicable notice on the date contemplated in such notice.~~

- 7.11.2.     ~~7.9.2.~~ Any prepayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.
- 7.11.3.     ~~All prepayments under this Agreement shall be made together with all applicable Break Costs.~~
- 7.11.4.     ~~7.9.3.~~ The ~~Loan~~ Loans or any portion thereof repaid or prepaid by the Borrower shall not be available to be re-advanced by the Lender(s) to the Borrower.
- 7.11.5.     ~~The Borrower shall not repay or prepay all or any part of the Loans or cancel all or any part of the Commitment except at the times and in the manner expressly provided for in this Agreement.~~

**SECTION 5  
COSTS OF UTILISATION**

**8. INTEREST**

**8.1. Calculation of interest**

The rate of interest on ~~the each~~ Loan for each Interest Period is the percentage rate per Quarter which is the aggregate of the applicable:

8.1.1. Margin; and

8.1.2. JIBAR.

**8.2. Payment of interest**

The Borrower shall pay all accrued interest on ~~the each~~ Loan on each Interest Payment Date.

**8.3. Default interest**

8.3.1. If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject Clause 8.3.2 below, is ~~2,00% (two per cent)~~ 2% higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted ~~the~~ the Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the relevant Lender (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower on demand by the Lenders.

8.3.2. If any overdue amount consists of all or part of ~~the~~ the Loan which became due on a day which was not the last day of an Interest Period relating to ~~the that~~ the Loan:

8.3.2.1. the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to ~~the that~~ the Loan; and

8.3.2.2. the rate of interest applying to the overdue amount during that first Interest Period shall be ~~2,00% (two per cent)~~ 2% higher than the rate which would have applied if the overdue amount had not become due.

8.3.3. Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

**8.4. Notification of rates of interest**

The Lenders shall promptly notify the Borrower of the determination of a rate of interest under this Agreement.

## 9. INTEREST PERIODS

### 9.1. Determination of Interest Periods

9.1.1. Each Interest Period will be 3 (three) Months, provided that:

9.1.1.1. the first Interest Period in respect of the Loan shall commence on the its Utilisation Date and end on 30 September 2015; the Interest Payment Date which occurs first thereafter; and

9.1.1.2. each subsequent Interest Period shall commence on the day immediately succeeding the expiry of the previous one and shall end on, in respect of (i) each Interest Period other than the last Interest Period, the Interest Payment Date which occurs first thereafter; and (ii) the last Interest Period, the Maturity Date.

9.1.2. An Interest Period for the Loan shall not extend beyond the Maturity Date.

### 9.2. Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the next Business Day in that calendar month (if there is one) or the preceding Business Day (if there is not).

### 9.3. Consolidation of Loans

All outstanding Loans shall be consolidated into, and treated as, a single Loan on the last day of each Interest Period.

## 10. CHANGES TO THE CALCULATION OF INTEREST

### 10.1. Absence of quotations

Subject to Clause 10.2 (*Market disruption*), if JIBAR is to be determined by reference to the Reference Banks but a Reference Bank does not supply a quotation by the Specified Time on the Quotation Day, JIBAR shall be determined on the basis of the quotations of the remaining Reference Banks.

### 10.2. Market disruption

10.2.1. If a Market Disruption Event occurs in relation to the Loan for any Interest Period, then the rate of interest for that Interest Period shall be the percentage rate per Quarter which is the sum of:

10.2.1.1. the Margin; and

10.2.1.2. the rate notified to the Borrower by the Lenders as soon as is reasonably practicable and in any event before interest is due to be paid in respect of that Interest Period, to be that which expresses as a percentage rate per Quarter the cost to the Lenders of funding their participation in the that Loan from whatever source the Lenders may reasonably select.

10.2.2. In this Agreement **Market Disruption Event** means:

10.2.2.1. at or about noon on the Quotation Day for the relevant Interest Period JIBAR is to be determined by reference to the Reference Banks and none or only one of the Reference Banks supplies a rate to the Lenders to determine JIBAR for the relevant Interest Period; or

10.2.2.2. before close of business in Johannesburg on the Quotation Day for the relevant Interest Period, the Borrower receives notifications from a Lender or Lenders that:

the cost to it or them of funding its or their participation in ~~the~~that Loan from whatever source(s) it or they may reasonably select would be in excess of JIBAR; or

the cost to it or them of obtaining matching deposits in the Relevant Interbank Market would be in excess of JIBAR for the relevant Interest Period; or

matching deposits will not be available to them in the Relevant Interbank Market in the ordinary course of business to fund their participation in ~~that~~the Loan for the relevant Interest Period.

#### 10.3. Alternative basis of interest or funding

10.3.1. If a Market Disruption Event occurs and the Lenders or the Borrower so requires, the Lenders and the Borrower shall enter into negotiations (for a period of not more than 30 (thirty) days) with a view to agreeing a substitute basis for determining the rate of interest.

10.3.2. Any alternative basis agreed pursuant to Clause 10.3.1 above shall, with the prior consent of the Lenders and the Borrower, be binding on all Parties. If the Parties cannot agree a substitute basis for determining the rate of interest within the 30 (thirty) day period contemplated in Clause 10.3.1, the ~~Loan~~Loans together with all accrued and unpaid interest thereon and all other amounts due and owing in terms of the Finance Documents shall become immediately due and payable and the Borrower shall pay such amounts to the Lender.

#### 10.4. Break Costs

10.4.1. The Borrower shall, within five Business Days of demand by a Lender, pay to such Lender its Break Costs attributable to all or any part of ~~the~~the Loan or Unpaid Sum being paid by the Borrower on a day other than the Interest Payment Date, as applicable, for ~~the~~that Loan or Unpaid Sum.

10.4.2. Each Lender shall, as soon as reasonably practicable after demand to the Borrower, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue, such certificate to be final, conclusive and binding on the Borrower unless shown by the Borrower to the satisfaction of the Lenders to contain a manifest error.

#### 11. RAISING FEE

11.1. The Borrower shall pay to the Original Lenders a raising fee in the amount of R7 500 000, exclusive of VAT (calculated as an amount equal to 0.3% of the Loan Amount). The

foregoing raising fee is due on the Effective Date and shall be paid by the Borrower by not later than the earlier of:

11.1.1. the 21<sup>st</sup> day after the Effective Date; and

11.1.2. the first Utilisation Date.

11.2. Pursuant to an increase in the Loan Amount contemplated in clause 2.1.2, the Borrower shall pay to the Original Lenders a raising fee in the amount of R1 500 000, exclusive of VAT (calculated as an amount equal to 0.3% of the increase in the Loan Amount pursuant to clause 2.1.2). The foregoing raising fee is due on the date of delivery of such letter and shall be paid by the Borrower by not later than the earlier of:

11.2.1. the 21<sup>st</sup> day after delivery of the letter contemplated in in clause 2.1.2; and

11.2.2. the first Utilisation Date after delivery of the letter contemplated in in clause 2.1.2.

## 12. COMMITMENT FEE

12.1.1. The Borrower shall pay a Commitment Fee to the Lenders on each Lender's Available Commitment for the Availability Period.

12.1.2. The accrued Commitment Fee is payable on the last day of each successive period of 3 Months which ends during the Availability Period, on the last day of the Availability Period and, if cancelled in full, on the cancelled amount of the Commitment at the time the cancellation is effective. If the Borrower maintains current accounts with a Lender, that Lender may debit any of those current accounts with the amount of an accrued Commitment Fee.

Formatted: Highlight

**SECTION 6**  
**ADDITIONAL PAYMENT OBLIGATIONS**

**13.   ~~11.~~ TAX GROSS UP AND INDEMNITIES**

**13.1.   ~~11.1.~~ Definitions**

**13.1.1.   ~~11.1.1.~~ In this Agreement:**

**13.1.1.1. ~~11.1.1.1.~~ Income Tax Act** means the South African Income Tax Act, 58 of 1962-1962, as amended.

**13.1.1.2. ~~11.1.1.2.~~ Protected Party** means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of a Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.

**13.1.1.3. ~~11.1.1.3.~~ Tax Credit** means a credit against, relief or remission for, or repayment of any Tax.

**13.1.1.4. ~~11.1.1.4.~~ Tax Deduction** means a deduction or withholding for or on account of Tax from a payment under a Finance Document.

**13.1.1.5. ~~11.1.1.5.~~ Tax Payment** means either the increase in a payment made by the Borrower to a Finance Party under Clause ~~11.213.2~~ (Tax gross-up) or a payment under Clause ~~11.313.3~~ (Tax indemnity).

**13.1.2.   ~~11.1.2.~~** Unless a contrary indication appears, in this Clause ~~11.13~~ a reference to "determines" or "determined" means a determination made in the absolute discretion of the person making the determination.

**13.2.   ~~11.2.~~ Tax gross-up**

**13.2.1.   ~~11.2.1.~~** The Borrower shall make all payments to be made by it free and clear of and without any Tax Deduction, unless a Tax Deduction is required by law.

**13.2.2.   ~~11.2.2.~~** The Borrower shall promptly upon becoming aware that an Obligor must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Finance Parties accordingly. Similarly, the Finance Parties shall notify the Borrower on becoming so aware of such a payment.

**13.2.3.   ~~11.2.2.~~** The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Finance Parties accordingly. Similarly, the Finance Parties shall notify the Borrower on becoming so aware of such a payment. If a Tax Deduction is required by law to be made by the Borrower an Obligor, the amount of the payment due from the Borrower to the Finance Parties shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.

- 13.2.4. ~~11.2.3.~~ If the Borrower is required to make a Tax Deduction, the Borrower shall make that Tax Deduction and any payment required in connection with that Tax Deduction within the time allowed and in the minimum amount required by law.
- 13.2.5. ~~11.2.4.~~ Within 30 (thirty) days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Lenders evidence reasonably satisfactory to the Finance Parties that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.
- 13.2.6. ~~11.2.5.~~ The Finance Parties shall reasonably co-operate with the Borrower in completing any procedural formalities necessary for the Borrower to make payment without a (or with a reduced) Tax Deduction pursuant to the Income Tax Act.
- 13.2.7. ~~11.2.6.~~ Should the Finance Parties be entitled to an exemption from or reduction of a Tax Deduction under the law of South Africa, ~~for or~~ any treaty to which South Africa is a party, with respect to payments under this Agreement, the Finance Parties shall (to the extent that ~~it is~~ they are able to do so in accordance with all laws and regulations) deliver to the Borrower at the time or times prescribed by applicable law, such properly contemplated and executed documentation prescribed by applicable law or reasonably requested by the Borrower as are necessary to permit such payments to be made without a Tax Deduction or at a reduced rate of Tax Deduction. If the Finance Parties receive such documentation, the Finance Parties shall deliver the documentation to the Borrower promptly.
- 13.3. ~~11.3.~~ Tax indemnity
- 13.3.1. ~~11.3.1.~~ The Borrower shall (within 5 (five) Business Days of demand by a Lender) indemnify each Protected Party against, and shall pay to a Protected Party an amount equal to the loss, liability or cost (excluding any consequential loss, liability or cost) which that Protected Party determines will be or has been (directly or indirectly) suffered for or on account of Tax by that Protected Party in respect of a Finance Document.
- 13.3.2. ~~11.3.2.~~ Clause ~~11.3.1~~ 13.3.1 above shall not apply:
- 13.3.2.1. ~~11.3.2.1.~~ with respect to any Tax assessed on a Finance Party:
- 13.3.2.1.1. ~~11.3.2.1.1.~~ under the law of the jurisdiction in which such Finance Party is incorporated or, if different, the jurisdiction (or jurisdictions) in which such Finance Party is treated as resident for tax purposes; or
- 13.3.2.1.2. ~~11.3.2.1.2.~~ under the law of the jurisdiction in which that Finance Party's Facility Office is located in respect of amounts received or receivable in that jurisdiction,
- if that Tax is imposed on or calculated by reference to the net income received or receivable (but not any sum deemed to be received or receivable) by that Lender; or
- 13.3.2.2. ~~11.3.2.2.~~ to the extent a loss, liability or cost is compensated for by an increased payment under Clause ~~11.2~~ 13.2 (Tax gross-up).



13.3.3. ~~11.3.3.~~ A Finance Party making, or intending to make a claim under Clause ~~11.3.4~~13.3.1 above shall promptly notify the Borrower of the event which will give, or has given, rise to the claim.

13.4. ~~11.4.~~ Tax Credit

If the Borrower makes a Tax Payment and a Finance Party determines that:

13.4.1. ~~11.4.1.~~ a Tax Credit is attributable either to an increased payment of which that Tax Payment forms part, or to that Tax Payment; and

13.4.2. ~~11.4.2.~~ such Finance Party has obtained, utilised and retained that Tax Credit,

such Finance Party, following consultation with the Borrower, shall pay an amount to the Borrower which such Finance Party determines will leave it (after that payment) in the same after-Tax position as it would have been in had the Tax Payment not been required to be made by the Borrower.

13.5. ~~11.5.~~ Tax gross-up and indemnity claims

13.5.1. ~~11.5.1.~~ A Finance Party intending to make a claim pursuant to Clause ~~11.2~~13.2 (Tax gross-up) above or Clause ~~11.3~~13.3 (Tax indemnity) above shall give reasonable written notice to the Borrower of the event giving rise to the claim.

13.5.2. ~~11.5.2.~~ A Finance Party shall, as soon as is reasonably practicable after a demand by the Borrower, provide a certificate confirming the amount of its claim pursuant to Clause ~~11.2~~13.2 (Tax gross-up) above or Clause ~~11.3~~13.3 (Tax indemnity) above, as the case may be.

13.6. ~~11.6.~~ Stamp taxes

The Borrower shall pay and, within five Business Days of demand, indemnify each Finance Party against any cost, loss or liability such Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.

13.7. ~~11.7.~~ VAT

13.7.1. ~~11.7.1.~~ All amounts expressed to be payable under a Finance Document to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply and, accordingly, subject to Clause ~~11.7.2~~13.7.2 below, if VAT is or becomes chargeable on any supply made by a Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).

13.7.2. ~~11.7.2.~~ If VAT is or becomes chargeable on any supply made by any Finance Party (the **Supplier**) to any other Finance Party (the **Recipient**) under a Finance Document, and any Party other than the Recipient (the **Relevant Party**) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the

Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):

13.7.2.1 ~~11.7.2.1~~ (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this Clause ~~11.7.2.1~~ 13.7.2.1 applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and

13.7.2.2 ~~11.7.2.2~~ (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.

13.7.3 ~~11.7.3~~—Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

13.7.4 ~~11.7.4~~—In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

13.7.5 ~~11.7.5~~—Notwithstanding anything to the contrary contained in this Clause ~~11.7~~ 13.7, for the purposes of section 54(2) of the Value-Added Tax Act, 89 of 1991, the Borrower irrevocably and unconditionally appoints each Finance Party as its representative and agent to, in its name, place and stead, and for and on its behalf, make payment of all expenses referred to in Clause ~~11.7.3~~ 13.7.3 directly to such third parties as is contemplated in Clause ~~11.7.3~~ 13.7.3, which amounts shall be immediately due and recoverable from the Borrower on demand.

## 14. ~~12~~-INCREASED COSTS

### 14.1. ~~12.1~~-Increased costs

14.1.1. ~~Subject to Clause 14.3 (Exceptions) the Borrower shall within 10 (ten) Business Days of a written demand by a Finance Party, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of:~~

14.1.1.1. ~~the:~~

14.1.1.1.1. ~~introduction of:~~

14.1.1.1.2. ~~any change in; or~~

14.1.1.1.3. ~~interpretation, administration or application of  
any law or regulation; and/or~~

14.1.1.2. ~~compliance with any law or regulation; and/or~~

14.1.1.3. ~~compliance with any requirement of Basel III introduced (whether by amendment  
proclamation or otherwise) into or by any law, regulation or directive after the date of  
this Agreement (whether or not having the force of law); and/or~~

14.1.1.4. ~~12.1.1. Subject to Clause 12.3 (Exceptions) the Borrower shall, within 10 (ten) Business Days of a  
written demand by a Finance Party, pay for the account of a Finance Party the amount  
of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result  
of (i) the introduction of or any change in (or in the interpretation, administration or  
application of) any law or regulation after the date of this Agreement; (ii) compliance  
with any law or regulation made after the date of this Agreement; (iii) compliance  
with any requirement of Basel III introduced (whether by amendment, proclamation  
or otherwise) into or by any law, regulation or directive after the date of this  
Agreement (whether or not having the force of law); or (iv) compliance with any  
requirement of any law, regulation or directive relating to the composition of capital  
or capital adequacy of registered insurance companies including the proposed  
solvency assessment and management regime and any iterations or alterations  
thereof, introduced (whether by amendment, proclamation or otherwise) into or by  
any law, regulation or directive after the date of this Agreement (whether or not  
having the force of law); and/or~~

14.1.1.5. ~~the phased in or other implementation, after the date of this Agreement, of any requirements  
of Basel III or any law or regulation implementing Basel III (including the phased in  
implementation of the Net Stable Funding Ratio and the Liquidity Coverage Ratio).~~

14.1.2. ~~12.1.2.~~ In this Agreement:

14.1.2.1. ~~12.1.2.1.~~ Increased Costs means:

14.1.2.1.1. ~~12.1.2.1.1.~~ a reduction in the rate of return from ~~at~~ the Facility or on a Finance Party's (or  
its Affiliate's) overall capital;

14.1.2.1.2. ~~12.1.2.1.2.~~ an additional or increased cost; or

14.1.2.1.3. ~~12.1.2.1.3.~~ a reduction of any amount due and payable under any Finance Document,  
which is incurred or suffered by a Finance Party or any of its Affiliates to the extent  
that it is attributable to that Finance Party having entered into its Commitment or  
funding or performing its obligations under any Finance Document.

14.1.2.2. ~~12.1.2.2.~~ Basel III means:

14.1.2.2.1. ~~12.1.2.2.1.~~ the agreements on capital requirements, a leverage ratio and liquidity  
standards contained in "Basel III: A global regulatory framework for more resilient

banks and banking systems", "Basel III: International framework for liquidity risk measurement, standards and monitoring" and "Guidance for national authorities operating the countercyclical capital buffer" published by the Basel Committee on Banking Supervision in December 2010, each as amended, supplemented or restated;

14.1.2.2.2. ~~12.1.2.2.2.~~ the rules for global systemically important banks contained in "Global systemically important banks: assessment methodology and the additional loss absorbency requirement - Rules text" published by the Basel Committee on Banking Supervision in November 2011, as amended, supplemented or restated; and

14.1.2.2.3. ~~12.1.2.2.3.~~ any further guidance or standards published by the Basel Committee on Banking Supervision relating to "Basel III".

14.1.3. ~~12.1.3.~~ The terms law and regulation in Clause ~~12.1.14.1.1~~ above shall include, without limitation, any law or regulation concerning capital adequacy, solvency, prudential limits, liquidity, reserve assets or Tax.

14.2. ~~12.2.~~ Increased cost claims

14.2.1. ~~12.2.1.~~ A Finance Party intending to make a claim pursuant to Clause ~~12.14.1~~ (*Increased costs*) shall promptly notify the Borrower of the event giving rise to the claim.

14.2.2. ~~12.2.2.~~ The relevant Finance Party shall, as soon as is reasonably practicable after a demand by the Borrower, provide a certificate confirming the amount of its Increased Costs.

14.3. ~~12.3.~~ Exceptions

14.3.1. ~~12.3.1.~~ Clause ~~12.14.1~~ (*Increased costs*) does not apply to the extent that any Increased Cost is:

14.3.1.1. ~~12.3.1.1.~~ attributable to a Tax Deduction required by law to be made by the Borrower;

14.3.1.2. ~~12.3.1.2.~~ compensated for by Clause ~~11.313.3~~ (*Tax indemnity*) (or would have been compensated for under Clause ~~11.313.3~~ (*Tax indemnity*) but was not so compensated solely because any of the exclusions in Clause ~~11.3.213.3.2~~ applied);

14.3.1.3. ~~12.3.1.3.~~ attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

14.3.2. ~~12.3.2.~~ In this Clause ~~12.314.3~~, a reference to a Tax Deduction has the same meaning given to the term in Clause ~~11.113.1~~ (*Definitions*).

15. ~~13.~~ OTHER INDEMNITIES

15.1. ~~13.1.~~ Other indemnities

The Borrower shall, within five Business Days of demand, indemnify the Finance Party ~~Parties~~ against any cost, loss or liability incurred by the Finance Party as a result of:

- 15.1.1. ~~13.1.1.~~ the occurrence of any Default;
- 15.1.2. ~~13.1.2.~~ a failure by the ~~Borrower~~ Obligor to pay any amount due under a Finance Document on its due date;
- 15.1.3. ~~13.1.3.~~ the information produced or approved by the Borrower under or in connection with the Finance Documents being misleading and/or deceptive in any respect;
- 15.1.4. ~~13.1.4.~~ funding, or making arrangements to fund, its participation in the ~~Loana~~ Utilisation requested by a Borrower in a Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by the Finance Party alone); or
- 15.1.5. ~~13.1.5.~~ the Loan (or part of the ~~that~~ Loan) not being prepaid in accordance with a notice of prepayment given to the Borrower.

15.2. ~~13.2.~~ Environmental Indemnity

The Borrower agrees to indemnify each Finance Party, each Affiliate of a Finance Party and their respective directors, officers and employees (together, the **Indemnified Parties**) against any cost, loss or liability suffered or incurred by that Indemnified Party (except to the extent solely caused by such Indemnified Party's own gross negligence or willful default) which:

- 15.2.1. ~~13.2.1.~~ arises by virtue of any breach of any Environmental Law (whether by the Borrower or any other member of the Group);
- 15.2.2. ~~13.2.2.~~ arises in connection with an Environmental Claim; or
- 15.2.3. ~~13.2.3.~~ any enquiry, investigation, subpoena (or similar order) or litigation with respect to any Environmental Claim and any other enquiry, investigation, subpoena (or similar order) or litigation in respect of any breach of any Environmental Law that has or is reasonably likely to give rise to a liability for any Finance Party,

which relates to the Group, any assets of the Group or the operation of all or part of the business of the Group (or, in each case, any member of the Group) and which would not have arisen if the Finance Documents or any of them had not been executed by that Finance Party. Any Affiliate or any director, officer or employee of a Finance Party or its Affiliate may rely on this Clause ~~13.2.15.2~~ as a stipulation for its or his benefit.

16. ~~14.~~ MITIGATION BY THE FINANCE PARTIES

16.1. ~~14.1.~~ Mitigation

- 16.1.1. ~~14.1.1.~~ the Finance Parties shall, in consultation with the borrower, take all reasonable steps to mitigate any circumstances which arise and which would result in any amount becoming payable under or pursuant to, or cancelled pursuant to, any provision of Clause 7.1 (*Illegality*), Clause ~~14.1.3~~ (*Tax gross-up and indemnities*) or Clause ~~12.14~~ (*Increased costs*) including (but not limited to) transferring its rights and obligations under the Finance Documents to another Affiliate or Facility Office.

16.1.2. ~~14.1.2.~~ Clause ~~14.1.1~~16.1.1 does not in any way limit the obligations of the Borrower under the Finance Documents.

16.2. ~~14.2.~~ **Limitation of liability**

16.2.1. ~~14.2.1.~~ The Borrower shall within 5 (five) Business Days of demand by any Finance Party indemnify such Finance Party for all properly evidenced costs and expenses reasonably incurred by such Finance Party as a result of steps taken by it under Clause ~~14.1~~16.1 (*Mitigation*).

16.2.2. ~~14.2.2.~~ No Finance Party is obliged to take any steps under Clause ~~14.1~~16.1 (*Mitigation*) if, in its opinion (acting reasonably), to do so might be prejudicial to it or any law or regulation would not allow or permit the taking of such steps.

17. ~~15.~~ **COSTS AND EXPENSES**

17.1. ~~15.1.~~ **Transaction expenses**

The Borrower shall within five Business Days of demand by the Finance Parties pay the Finance Parties the amount of all costs and expenses (including legal fees) reasonably incurred by the Finance Parties and properly evidenced in connection with the negotiation, preparation, printing, execution, implementation and/or syndication of:

17.1.1. ~~15.1.1.~~ this Agreement and any other documents referred to in this Agreement; and

17.1.2. ~~15.1.2.~~ any other Finance Documents executed after the date of this Agreement.

17.2. ~~15.2.~~ **Amendment costs**

17.2.1. ~~15.2.1.~~ If (a) the Borrower requests an amendment, waiver or consent the Borrower shall, within 5 (five) Business Days of demand, reimburse each Finance Party for the amount of all costs and expenses (including legal fees) reasonably incurred by such Finance Party in responding to, evaluating, negotiating or complying with that request or requirement.

17.2.2. ~~15.2.2.~~ If there is any change in law or any regulation which requires an amendment, waiver or consent under the Finance Documents, the Borrower shall, within 5 (five) Business Days of demand, reimburse each Finance Party for the amount of all costs and expenses (including legal fees) reasonably incurred and properly evidenced by that Finance Party in connection with evaluating, negotiating or complying with any such requirement.

17.3. ~~15.3.~~ **Enforcement costs**

The Borrower shall, within 5 (five) Business Days of demand by a Finance Party, pay to each Finance Party the amount of all properly evidenced costs and expenses (including legal fees (which in South Africa shall be on the scale as between attorney and own client) incurred by that Finance Party (whether before or after judgment) in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

**SECTION 7**  
**REPRESENTATIONS, UNDERTAKINGS AND EVENTS OF DEFAULT**

**18.   ~~16.~~ REPRESENTATIONS**

The Borrower makes the representations and warranties set out in this Clause ~~16~~18 to each Finance Party on the date of this Agreement.

**18.1.   ~~16.1.~~ Status**

**18.1.1.**   ~~16.1.1.~~ It, and each of its Subsidiaries, is a company, duly incorporated and validly existing and registered under the laws of South Africa.

**18.1.2.**   ~~16.1.2.~~ It, and each of its Subsidiaries, has the power to own its assets and carry on its business as it is being conducted.

**18.2.   ~~16.2.~~ Binding obligations**

The obligations expressed to be assumed by it in each Finance Document are legal, valid, binding and enforceable obligations.

**18.3.   ~~16.3.~~ Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents do not and will not conflict with:

**18.3.1.**   ~~16.3.1.~~ any law (including the PFMA) or regulation applicable to it;

**18.3.2.**   ~~16.3.2.~~ its or any of its Subsidiaries' constitutional documents; or

**18.3.3.**   ~~16.3.3.~~ any agreement or instrument binding upon it or any of its Subsidiaries or any of its or any of its Subsidiaries' assets, ~~the breach of which is reasonably likely to have a~~  
Material Adverse Effect.

**18.4.   ~~16.4.~~ Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party and the transactions contemplated by those Finance Documents.

**18.5.   ~~16.5.~~ Validity and admissibility in evidence**

All Authorisations required:

**18.5.1.**   ~~16.5.1.~~ to enable it lawfully to enter into, exercise its rights and comply with its obligations under the Finance Documents to which it is a party and to ensure that the obligations expressed to be assumed by it thereunder are legal, valid, binding and enforceable; and

18.5.2. ~~16.5.2.~~ to make the Finance Documents to which it is a party admissible in evidence in the Relevant Jurisdiction; and

18.5.3. ~~for the conduct of the business, trade and ordinary activities by each member of the Group,~~

have been obtained or effected and are in full force and effect ~~(or, in each case, will be when required).~~

18.6. ~~16.6.~~ **Insolvency**

18.6.1. ~~16.6.1.~~ No:

18.6.1.1. ~~16.6.1.1.~~ corporate action, legal proceeding or other procedure or step contemplated by the definition of Insolvency Event; or

18.6.1.2. ~~16.6.1.2.~~ creditors' process contemplated by the definition of Insolvency Event,

has been taken or, to the knowledge of the Borrower, threatened in relation to a member of the Group; and none of the circumstances described in Clause ~~19.5~~22.6 (*Insolvency*) applies to a member of the Group.

18.6.2. ~~16.6.2.~~ To the best of its knowledge and belief, neither it, nor any member of the Group, is "financially distressed" (as defined in the Companies Act) and there is no reasonable likelihood of any Obligor (if applicable) or any other member of the Group becoming "financially distressed" (as defined in the Companies Act) ~~within the next 6 (six) Months from the Signature Date.~~

18.7. **Governing Law and Enforcement**

18.7.1. ~~The choice of South African law as the governing law of this Agreement will be recognised and enforced in the Relevant Jurisdiction.~~

18.7.2. ~~Any judgment obtained in South Africa in relation to this Agreement will be recognised and enforced in the Relevant Jurisdiction.~~

18.8. ~~16.7.~~ **Deduction of Tax**

It is not required to make any deduction for or on account of Tax from any payment it may make under any Finance Document.

18.9. ~~16.8.~~ **No filing or stamp taxes**

Under the law of its jurisdiction of incorporation it is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority in that jurisdiction or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

18.10. ~~16.9.~~ **No default**



18.10.1. ~~16.9.1.~~ As of the Signature Date, no Event of Default is continuing or might reasonably be expected to result from the making of any Utilisation or the entry into of, or the performance of any transaction contemplated by the Finance Documents.

18.10.2. ~~16.9.2.~~ No other event or circumstance, to the Borrower's knowledge and belief (having made due and careful enquiry), is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which is reasonably likely to have a Material Adverse Effect.

18.11. ~~16.10.~~ No misleading information

18.11.1. ~~16.10.1.~~ Any and all information provided by the Borrower to the Lender is true, complete and accurate in all material respects as at the date on which it is given and all information provided by the Borrower to the Lender ~~Finance Parties~~ is not misleading to the Lender in any respect.

18.11.2. ~~16.10.2.~~ Nothing has occurred and no information has been given or withheld that results in any factual information referred to in Clause ~~16.10.1~~ 18.11.1 above provided by the Borrower for the purposes of the Finance Documents being untrue or misleading in any material respect.

18.11.3. ~~16.10.3.~~ All information referred to in clause ~~16.10.1~~ 18.11 has been disclosed without breaching any confidentiality obligations binding on the Borrower.

18.11.4. ~~16.10.4.~~ The Borrower has not knowingly withheld any information which, if disclosed, would reasonably be expected to materially and adversely affect the decision of any Finance Party to provide finance to the Borrower.

18.12. ~~16.11.~~ Financial statements

18.12.1. ~~16.11.1.~~ Its Original Financial Statements were prepared in accordance with IFRS consistently applied.

18.12.2. ~~16.11.2.~~ Its Original Financial Statements fairly represent its financial condition and operations (consolidated) during the relevant financial year.

18.12.3. ~~16.11.3.~~ There has been no material adverse change in its assets, business or financial condition (or the business or consolidated financial condition of the Group) since 31 March 2013 2015.

18.12.4. ~~16.11.4.~~ Its most recent financial statements delivered pursuant to Clause ~~17.11.1~~ 19.1 (Financial statements):

18.12.4.1. ~~16.11.4.1.~~ have been prepared in accordance with the Accounting Principles as applied to the Original Financial Statements; and

18.12.4.2. ~~16.11.4.2.~~ give a true and fair view of (if audited) or fairly represent (if unaudited) its consolidated financial condition as at the end of, and consolidated results of operations for, the period to which they relate.

18.12.5. ~~16.11.5.~~ Since the date of the most recent financial statements delivered pursuant to Clause ~~17.119.1~~ (Financial statements) there has been no material adverse change in the business, assets or financial condition of the Group.

18.13. ~~16.12.~~ **Pari passu ranking**

Its payment obligations under the Finance Documents rank at least *pari passu* with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to companies generally.

18.14. ~~16.13.~~ **No proceedings pending or threatened**

Save as contemplated in Schedule ~~13.12~~ hereto, no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have (to the best of its knowledge and belief) been started or threatened against it or any of its Subsidiaries.

18.15. ~~16.14.~~ **No breach of laws**

18.15.1. ~~16.14.1.~~ It has not, to its knowledge and belief (having made due and careful enquiry), (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

18.15.2. ~~16.14.2.~~ No labour disputes are current or, to the best of its knowledge and belief (having made due and careful enquiry), threatened against any member of the Group which have or are reasonably likely to have a Material Adverse Effect.

18.16. ~~16.15.~~ **Environmental laws**

18.16.1. ~~16.15.1.~~ Each member of the Group is in compliance with Clause ~~18.321.3~~ (Environmental compliance) and to the best of its knowledge and belief (having made due and careful enquiry) no circumstances have occurred which would prevent such compliance in a manner or to an extent which has or is reasonably likely to have a Material Adverse Effect.

18.16.2. ~~16.15.2.~~ No Environmental Claim has been commenced or (to the best of its knowledge and belief (having made due and careful enquiry)) is threatened against any member of the Group where that claim has or is reasonably likely, if determined against that member of the Group, to have a Material Adverse Effect.

18.16.3. ~~16.15.3.~~ The cost to the Group of compliance with Environmental Laws (including Environmental Permits) is (to the best of its knowledge and belief, having made due and careful enquiry) adequately provided for.

18.17. ~~16.16.~~ **Taxation**

18.17.1. ~~16.16.1.~~ It is not (and no member of the Group is) overdue in the filing of any Tax returns and it is not (and no member of the Group is) overdue in the payment of any amount in respect of Tax in an amount equal to 0,3% of the Consolidated Total Assets (or its equivalent in any other currency) or more.

18.17.2 ~~16.16.2~~—No claims have been made and, to the best of its knowledge and belief (having made due and careful enquiries) no claims are reasonably likely to be made, and no investigations are being, or are reasonably likely to be, conducted against it (or any member of the Group) with respect to Taxes such that a liability of, or claim against it or any member of the Group in an amount equal to 0,3% of the Consolidated Total Assets (or its equivalent in any other currency) or more is reasonably likely to arise.

18.17.3 ~~16.16.3~~—It and each member of the Group is resident for Tax purposes only in the jurisdiction of its incorporation.

18.18 ~~16.17~~—**Good Title to Assets**

It and each member of the Group has good and valid title to its assets and licenses required in connection with the conduct of its business, and has all appropriate Authorisations to use, all of the assets necessary to carry on its business.

18.19 ~~16.18~~—**No Material Industrial Action**

No industrial or similar action has commenced, as at the Signature Date, against it or any member of the Group which is likely to result in a Material Adverse Effect.

18.20 **Authorised Signatories**

Any person specified as its authorised signatory under Schedule 1 (Conditions Precedent) is authorised to sign Utilisation Requests on its behalf.

18.21 ~~16.19~~—**No immunity**

In any proceedings taken in South Africa or in any other jurisdiction, it will not be entitled to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process in relation to this Agreement or any other Finance Document.

18.22 **Accounting Reference Date**

The financial year end of the Group is 31 March each year.

18.23 ~~16.20~~—**No adverse consequences**

18.23.1 ~~16.20.1~~—It is not necessary under the laws of the Relevant Jurisdiction:

18.23.1.1 ~~16.20.1.1~~—in order to enable any Finance Party to enforce its rights under any Finance Document; or

18.23.1.2 ~~16.20.1.2~~—by reason of the execution of any Finance Document or the performance by it of its obligations under any Finance Document,

that any Finance Party should be licensed, qualified or otherwise entitled to carry on business in any of the Relevant Jurisdiction.

18.23.2 ~~16.20.2~~—No Finance Party is or will be deemed to be resident, domiciled or carrying on business in the Relevant Jurisdiction by reason only of the execution, performance and/or enforcement of any Finance Document.

~~18.24.~~ ~~16.21.~~ Repetition

The Repeating Representations are deemed to be made by the Borrower by reference to the facts and circumstances then existing on the date of the Utilisation Request, on the Utilisation Date and the first day of each Interest Period.

~~19.~~ ~~17.~~ INFORMATION UNDERTAKINGS

The undertakings in this Clause ~~17~~~~19~~ remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

~~19.1.~~ ~~17.1.~~ Financial statements

~~19.1.1.~~ The Borrower shall supply to the Finance Parties as soon as the same become available but in any event:

~~19.1.1.1.~~ ~~17.1.1.~~ within 180 (one hundred and eighty) days after the end of each of its financial years its audited consolidated financial statements for that financial year; and

~~19.1.1.2.~~ ~~17.1.2.~~ within 90 (ninety) days after the end of each half of each of its financial years its consolidated financial statements for that financial half year.

~~19.1.2.~~ The Borrower shall supply to the Lenders, with each set of financial statements delivered pursuant to this Clause 19.1, its cash flow projections for a period commencing on the day immediately succeeding the last day in respect of which such financial statements were prepared and terminating 7 years thereafter.

~~19.2.~~ Covenant Compliance Certificate

~~19.2.1.~~ The Borrower shall supply to the Lenders, with each set of financial statements delivered pursuant to Clause 19.1, a Covenant Compliance Certificate setting out (in reasonable detail) computations as to compliance with clause 20 as at the date as at which those financial statements were drawn up.

~~19.2.2.~~ Each Covenant Compliance Certificate shall be signed by the Borrower's Chief Financial Officer and another director of the Borrower and, if required to be delivered with the financial statements delivered pursuant to Clause 19.1, shall be reported on by the Borrower's auditors.

~~19.3.~~ ~~17.2.~~ Requirements as to financial statements

~~19.3.1.~~ ~~17.2.1.~~ Each set of financial statements delivered by the Borrower pursuant to Clause ~~17.1~~~~19.1~~ (Financial statements) shall be certified by a director of the relevant company as fairly representing the relevant company's financial condition as at the date as at which those financial statements were drawn up.

~~19.3.2.~~ ~~17.2.2.~~ The Borrower shall procure that each set of financial statements delivered pursuant to Clause ~~17.1~~~~19.1~~ (Financial statements) is prepared using the Accounting Principles, accounting practices and financial reference periods consistent with those applied in the preparation of the Original Financial Statements for the relevant company unless, in relation to any set of financial statements, it notifies the Finance Parties that

there has been a change in the Accounting Principles, the accounting practices or reference periods and its auditors (or, if appropriate, the auditors of a Subsidiary of it) deliver to the Lender:

19.3.2.1 ~~17.2.2.1~~ a description of any change necessary for those financial statements to reflect the Accounting Principles, accounting practices and reference periods upon which the relevant company's Original Financial Statements were prepared; and

19.3.2.2 ~~17.2.2.2~~ sufficient information, in form and substance as may be reasonably required by the Finance Parties, to enable the Finance Parties to make an accurate comparison between the financial position indicated in those financial statements and that company's Original Financial Statements.

19.3.3 ~~17.2.3~~ Any reference in this Agreement to those financial statements shall be construed as a reference to those financial statements as adjusted to reflect the basis upon which the Original Financial Statements were prepared.

#### 19.4. Year-end

The Borrower shall not change its year end.

#### 19.5. 17.3-Information: miscellaneous

19.5.1. ~~17.3.1~~ The Borrower shall supply to the Finance Parties:

19.5.1.1 ~~17.3.1.1~~ all documents dispatched by the Borrower to its creditors generally (or any class of them) at the same time as they are dispatched;

19.5.1.2 ~~17.3.1.2~~ promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which, if adversely determined, is reasonably likely to have a Material Adverse Effect;

19.5.1.3 ~~17.3.1.3~~ promptly upon becoming aware of them, the details of any labour dispute or industrial action which occurs or which is threatened against any member of the Group which has or is reasonably likely to have a Material Adverse Effect;

19.5.1.4 ~~17.3.1.4~~ promptly upon becoming aware of them, details and copies of any material changes proposed to or made to its constitutional documents or the constitutional documents of it or any other member of the Group, including the filing of any memorandum of incorporation under the Companies Act;

19.5.1.5 ~~17.3.1.5~~ promptly, such further information regarding the financial condition, business and operations of any member of the Group as any Finance Party may reasonably request; and

19.5.1.6 ~~17.3.1.6~~ deliver the Borrowing Programme to the Finance Parties and any amendments thereto as soon as same is available for distribution to the Minister of Finance and to all other applicable creditors in respect of the Borrower;

19.5.1.7. promptly, copies of all Authorisations required to ensure compliance with the provisions of the PFMA, in respect of its entry into of the Finance Documents to which it is a party and the performance of its obligations thereunder;

19.5.1.8. not less than once per year and promptly following its completion or any amendments thereto, its corporate plan and shall, on reasonable notice and at such reasonable times as are mutually convenient to the Parties (provided that the Borrower shall meet with the Finance Parties not more than 1 month after receipt of such notice for a period of not less than 2 Business Days) meet with the Finance Parties and shall, at that meeting, supply to the Finance Parties such information as may reasonably be requested by the Finance Parties concerning its corporate plan.

#### 19.6. 17.4.-Credit rating

19.6.1. 17.4.1.-The Borrower undertakes to notify the Lenders in writing of—:

19.6.1.1. 17.4.1.1.- any event or circumstance which may give rise to a Negative Rating Event or a Qualifying Guarantor Adverse Event (as the case may be) within 5 (five) Business Days of such event or circumstance having occurred;

Formatted: Highlight

19.6.1.2. 17.4.1.2.-the occurrence of a Negative Rating Event within 5 (five) Business Days of such Negative Rating Event having occurred;

17.4.1.3.— the occurrence of a Qualifying Guarantor Adverse Event within 5 (five) Business Days of such Qualifying Guarantor Adverse Event having occurred; and

19.6.1.3. 17.4.1.4.- any Withdrawal Event within 5 (five) Business Days of such Withdrawal Event having occurred.

19.6.2. 17.4.2.-The Borrower shall provide the Finance Parties with a copy of each Credit Rating on the date on which such Credit Rating is issued.

#### 19.7. 17.5.-Notification of default and other matters

19.7.1. 17.5.1.-The Borrower shall notify the Finance Parties of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.

19.7.2. 17.5.2.-The Borrower shall promptly upon a request by a Finance Party supply to that Finance Party a certificate signed by a director or senior officer on its behalf:

19.7.2.1. 17.5.2.1.- certifying that no Default is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it) and that no Default is expected to occur over the three Month period from such date;

19.7.2.2. 17.5.2.2.- certifying that no Change of Control Event has occurred as at the date of such certificate and that no Change of Control Event is expected to occur over the 3 (three) Month period from such date;

19.7.2.3. 17.5.2.3.- certifying that no Negative Rating Event has occurred as at the date of such certificate and that no Negative Rating Event is expected to occur over the 3 (three) Month period from such date;

~~19.7.2.4, 17.5.2.4, certifying that no Qualifying Guarantor Adverse Event has occurred as at the date of such certificate and that no Qualifying Guarantor Adverse Event is expected to occur over the three Month period from such date;~~

Formatted: Highlight

~~19.7.2.5, 17.5.2.5,~~ setting out the shareholders of the Borrower as at the date of such certificate; and

~~19.7.2.6, 17.5.2.6,~~ certifying that the Borrower is in compliance with the requirements of Clause ~~18.10~~21.10 (*Insurance*) as at the date of such certificate.

~~19.7.3, 17.5.3-~~The Borrower shall notify the Finance Parties of any change to its auditor.

#### 19.8. 17.6-Business rescue proceedings

The Borrower shall deliver written notice to the Finance Parties no later than 5 (five) Business Days prior to the date upon which a board meeting to consider a resolution contemplated in section 129 of the Companies Act is to be held, or if such meeting is to be held at less than 5 Business Days' notice, then as soon as reasonably possible. The Finance Parties shall have the right to be consulted in respect of the appointment of an appropriate business rescue practitioner.

#### 19.9. 17.7-"Know your customer" checks

19.9.1. 17.7.1-If:

19.9.1.1. 17.7.1.1-the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;

19.9.1.2. 17.7.1.2-any change in the status of the Borrower or the shareholding of the Borrower after the date of this Agreement; or

19.9.1.3. 17.7.1.3-a proposed assignment or transfer by a Finance Party of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges any Finance Party (or, in the case of Clause ~~17.7.1.3~~19.9.1.3, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of any Finance Party supply, or procure the supply of, such documentation and other evidence as is reasonably requested by any Finance Party (for itself or, in the case of the event described in Clause ~~17.7.1.3~~19.9.1.3, on behalf of any prospective new Finance Party) in order for such Finance Party, or, in the case of the event described in Clause ~~17.7.1.3~~19.9.1.3, any prospective new Finance Party to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

## 20. FINANCIAL COVENANTS

### 20.1. Financial definitions

In this Agreement:

- 20.1.1. Cash interest cover means cash generated from operations after working capital changes, divided by net finance costs (net finance costs includes finance costs, finance income and capitalised borrowing costs from the cash flow statement).
- 20.1.2. Financial Half Year means the period commencing on the day after one Half Year Date and ending on the next Half Year Date.
- 20.1.3. Financial Year means the annual accounting period of the Borrower ending on or about 31 March in each year.
- 20.1.4. Gearing means the Borrower's debt expressed as a percentage of the sum of debt and the Borrower's shareholder's equity (as set out in the financial statements delivered pursuant to Clause 19.1 and/or each Covenant Compliance Certificate delivered pursuant to Clause 19.2).
- 20.1.5. Half Year Date means each of 30 September in each year.
- 20.1.6. Relevant Period means each period of twelve months ending on or about the last day of the Financial Year and each period of twelve months ending on or about the last day of each Financial Half Year.

20.2. Financial condition

The Borrower shall ensure that:

- 20.2.1. Cash interest cover: Cash interest cover in respect of any Relevant Period specified in column 1 below shall not be less than the ratio set out in column 2 below opposite that Relevant Period.

<u>Column 1 - Relevant Period</u>	<u>Column 2 - Ratio</u>
<u>Each Relevant Period</u>	<u>2.5:1</u>

- 20.2.2. Gearing: Gearing in respect of any Relevant Period specified in column 1 below shall not be more than the percentage set out in column 2 below opposite that Relevant Period.

<u>Column 1 - Relevant Period</u>	<u>Column 2 - Ratio</u>
<u>Each Relevant Period</u>	<u>60%</u>

20.3. Financial testing

The financial covenants set out in Clause 20.2 shall be calculated in accordance with IFRS and tested by reference to each of the financial statements delivered pursuant to Clause 19.1 and/or each Covenant Compliance Certificate delivered pursuant to Clause 19.2.



20.4. Discussion events

Whenever either the Cash interest cover ratio is less than 3 : 1 and/or the Gearing is more than 50% the Borrower shall enter into discussions with or shall provide information to the Lenders advising the Lenders of the steps (and, periodically, the progress made in achieving such steps) taken or to be taken by the Borrower in order to restore the Cash interest cover ratio to at least 3 : 1 and/or the Gearing to no more than 50%. Such information shall be provided to the Lenders for as long as, and/or the discussions shall occur on such dates and shall endure for such periods as, the Lenders consider to be reasonable in the circumstances.

21. 18-GENERAL UNDERTAKINGS

The undertakings in this Clause ~~18~~21 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

21.1. 18.1-Authorisations

The Borrower shall promptly:

21.1.1. ~~18.1.1-~~obtain, comply with and do all that is necessary to maintain in full force and effect; and

21.1.2. ~~18.1.2-~~supply certified copies to the Finance Parties of, any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

21.2. 18.2-Compliance with laws

The Borrower shall (and the Borrower shall ensure that each member of the Group will) comply in all respects with all laws to which it may be subject, ~~if failure so to comply would materially impair its ability to perform its obligations under the Finance Documents.~~

21.3. 18.3-Environmental compliance

The Borrower shall (and the Borrower shall ensure that each member of the Group will):

21.3.1. ~~18.3.1-~~comply with all Environmental Law;

21.3.2. ~~18.3.2-~~obtain, maintain and ensure compliance with all requisite Environmental Permits;

21.3.3. ~~18.3.3-~~implement procedures to monitor compliance with and to prevent liability under any Environmental Law,

where failure to do so has or is reasonably likely to have a Material Adverse Effect.

21.4. 18.4-Environmental claims

The Borrower shall, promptly upon becoming aware of the same, inform the Finance Parties in writing of:

21.4.1. ~~18.4.1.~~ any Environmental Claim against any member of the Group which is current, pending or threatened; and

21.4.2. ~~18.4.2.~~ any facts or circumstances which are reasonably likely to result in any Environmental Claim being commenced or threatened against any member of the Group,

where the claim, if determined against that member of the Group, has or is reasonably likely to result in a Material Adverse Effect.

21.5. ~~18.5.~~ Negative pledge

In this Clause ~~18.5.2~~ 21.5 Quasi-Security means an arrangement or transaction described in Clause ~~18.5.2~~ 21.5.2.

21.5.1. ~~18.5.1.~~ The Borrower shall not (and the Borrower shall ensure that no other member of the Group will) create or permit to subsist any Security over any of its assets.

21.5.2. ~~18.5.2.~~ The Borrower shall not (and the Borrower shall ensure that no other member of the Group will):

21.5.2.1. ~~18.5.2.1.~~ sell, transfer or otherwise dispose of any of its assets on terms whereby they are or may be leased to or re-acquired by the Borrower or any other member of the Group;

21.5.2.2. ~~18.5.2.2.~~ sell, transfer or otherwise dispose of any of its receivables on recourse terms;

21.5.2.3. ~~enter into or permit to subsist any title retention arrangement~~

21.5.2.4. ~~18.5.2.3.~~ enter into any arrangement under which money or the benefit of a bank or other account may be applied, set-off or made subject to a combination of accounts; or

21.5.2.5. ~~18.5.2.4.~~ enter into any other preferential arrangement having a similar effect,

in circumstances where the arrangement or transaction is entered into primarily as a method of raising Financial Indebtedness or of financing the acquisition of an asset.

21.5.3. ~~18.5.3.~~ Clauses ~~18.5.1~~ 21.5.1 and ~~18.5.2~~ 21.5.2 do not apply to any Security or (as the case may be) Quasi-Security, listed below:

21.5.3.1. ~~any Security or Quasi Security listed in Schedule 14, except to the extent the principal amount secured by that Security or Quasi Security exceeds the amount stated in that Schedule;~~

21.5.3.2. ~~18.5.3.1.~~ any cash management, netting or set-off arrangement entered into by any member of the Group in the ordinary course of its ~~business~~ banking arrangements for the purpose of netting debit and credit balances;

21.5.3.3. ~~18.5.3.2.~~ any payment or close out netting or set-off arrangement pursuant to any hedging transaction entered into by a member of the Group for the purpose of:

21.5.3.3.1. ~~18.5.3.2.1.~~ hedging any risk to which any member of the Group is exposed in its ordinary course of business; or

- 21.5.3.3.2. ~~18.5.3.2.2.~~ its interest rate or currency management operations which are carried out in the ordinary course of business and for non-speculative purposes only,
- excluding, in each case, any Security or Quasi-Security under a credit support arrangement in relation to a hedging transaction;
- 21.5.3.4. ~~18.5.3.3.~~ any lien arising by operation of law and in the ordinary course of business provided that the debt which is secured thereby is paid when due or contested in good faith by appropriate proceedings and properly provisioned;
- 21.5.3.5. ~~18.5.3.4.~~ any short term funding raised by the Borrower in the ordinary course of business pursuant to the sale or discounting of receivables on recourse terms;
- 21.5.3.6. ~~18.5.3.5.~~ any Security or Quasi-Security over or affecting any asset acquired by a member of the Group after the date of this Agreement to the extent that:
- 21.5.3.6.1. ~~18.5.3.5.1.~~ the Security or Quasi-Security was not created in contemplation of the acquisition of that asset by a member of the Group;
- 21.5.3.6.2. ~~18.5.3.5.2.~~ the principal amount secured has not been increased in contemplation of or since the acquisition of that asset by a member of the Group; and
- 21.5.3.6.3. ~~18.5.3.5.3.~~ the Security or Quasi-Security is removed or discharged within 90 days of the date of acquisition of such asset;
- 21.5.3.7. ~~18.5.3.6.~~ any Security or Quasi-Security over or affecting any asset of any company which becomes a member of the Group after the date of this Agreement, where the Security or Quasi-Security is created prior to the date on which that company becomes a member of the Group, to the extent that:
- 21.5.3.7.1. ~~18.5.3.6.1.~~ the Security or Quasi-Security was not created in contemplation of the acquisition of that company;
- 21.5.3.7.2. ~~18.5.3.6.2.~~ the principal amount secured has not increased in contemplation of or since the acquisition of that company; and
- 21.5.3.7.3. ~~18.5.3.6.3.~~ the Security or Quasi-Security is removed or discharged within 90 days of that company becoming a member of the Group;
- 21.5.3.8. ~~18.5.3.7.~~ any Security or Quasi-Security entered into pursuant to any Finance Document;
- 21.5.3.9. ~~18.5.3.8.~~ any Security or Quasi-Security arising under any retention of title, hire purchase or conditional sale arrangement or arrangements having similar effect in respect of goods supplied to a member of the Group in the ordinary course of business and on the supplier's standard or usual terms and not arising as a result of any default or omission by any member of the Group;
- 21.5.3.10. ~~18.5.3.9.~~ any Security or Quasi-Security that secures indebtedness having an outstanding principal amount that (when aggregated with the outstanding principal amount of any other indebtedness which has the benefit of Security or Quasi-Security given by any member of the Group other than any Security or Quasi-Security

permitted under Clauses ~~18.5.3.4~~21.5.3.2 to ~~18.5.3.8~~21.5.3.9 above) does not exceed 10 per cent. of the Consolidated Total Assets of the Borrower (or its equivalent in other currencies) in total during the term of this Agreement; or

21.5.3.11. ~~18.5.3.10.~~ any Security or Quasi-Security created with the prior written approval of the Lenders, which approval may not be unreasonably delayed.

#### 21.6. ~~18.6.~~ Disposals

21.6.1. ~~18.6.1.~~ The Borrower shall not (and the Borrower shall ensure that no other member of the Group will), enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of any asset.

21.6.2. ~~18.6.2.~~ Clause ~~18.6.1~~21.6.1 above does not apply to any sale, lease, transfer or other disposal:

21.6.2.1. ~~18.6.2.1.~~ made on arm's length terms in the ordinary course of business of the disposing entity;

21.6.2.2. ~~18.6.2.2.~~ of any assets in exchange for or to be replaced by other assets comparable or superior as to type, value and quality;

21.6.2.3. ~~18.6.2.3.~~ of obsolete or redundant vehicles, plant and equipment for cash;

21.6.2.4. ~~18.6.2.4.~~ of assets for cash where the higher of the market value and net consideration receivable (when aggregated with the higher of the market value and net consideration receivable for any other sale, lease, licence, transfer or other disposal not allowed under the preceding sub-Clauses) does not exceed 10 per cent. of the Consolidated Total Assets of the Borrower (or its equivalent in other currencies) in total during the term of this Agreement; or

21.6.2.5. ~~18.6.2.5.~~ made with the prior written approval of the Lenders, which approval may not be unreasonably withheld or delayed.

#### 21.7. ~~18.7.~~ Merger

The Borrower shall not (and the Borrower shall ensure that no other member of the Group will) enter into any amalgamation, demerger, merger or corporate reconstruction other than a Permitted Transaction.

#### 21.8. ~~18.8.~~ Change of business

The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower or the Group from that carried on at the Signature Date.

#### 21.9. ~~18.9.~~ Preservation of assets

The Borrower shall (and the Borrower shall ensure that each other member of the Group will) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary in the conduct of its business.

#### 21.10. ~~18.10.~~ Insurance

21.10.1. ~~18.10.1.~~ The Borrower shall (and the Borrower shall ensure that each other member of the Group will) maintain insurances on and in relation to its business and assets against those risks and to the extent as is usual for companies carrying on the same or substantially similar business.

21.10.2. ~~18.10.2.~~ All insurances must be with reputable independent insurance companies or underwriters.

21.11. ~~18.11.~~ **Sanctions**

21.11.1. ~~18.11.1.~~ No member of the Group is party to or participates in any Sanctioned Transaction, has contravened any Sanctions or is targeted under any Sanctions.

21.11.2. ~~18.11.2.~~ The Borrower shall not (and the Borrower shall ensure that no other member of the Group will) at any time participate in a Sanctioned Transaction in any manner.

21.11.3. ~~18.11.3.~~ The Borrower shall take all reasonable steps to ensure that appropriate controls and safeguards are in place, designed to prevent it or any other member of the Group from being or becoming involved in a Sanctioned Transaction.

21.11.4. ~~18.11.4.~~ The provisions of this clause ~~18.11.2.1.1~~ shall not apply in respect of the transactions relating to the operations specified in the Operations Disclosure Schedule.

21.12. ~~18.12.~~ **Distributions**

Following the occurrence of an Event of Default, the Borrower shall not be entitled to make any Distributions.

21.13. ~~18.13.~~ **Financial Indebtedness**

Following the occurrence of an Event of Default, the Borrower shall not be entitled to incur any Financial Indebtedness.

21.14. ~~18.14.~~ **Investments**

The Borrower shall not enter into any investment and shall not:

21.14.1. ~~18.14.1.~~ acquire a company or any shares or securities or a business or undertaking (or, in each case, any interest in any of them); or

21.14.2. ~~18.14.2.~~ incorporate a company,

following the occurrence of an Event of Default.

~~18.15.~~ **Change of Business**

~~The Borrower shall procure that no substantial change is made to the general nature of the business of the Borrower or the Group taken as a whole from that carried on by the Group at the Signature Date.~~

21.15. ~~18.16.~~ **Joint Ventures**

21.15.1. ~~18.16.1.~~ The Borrower shall not:

21.15.1.1. ~~18.16.1.1.~~ enter into, invest in or acquire (or agree to acquire) any securities or other interest in any Joint Venture; or

21.15.1.2. ~~18.16.1.2.~~ transfer any assets or lend to or guarantee or give an indemnity for or grant any security interest for the obligations of a Joint Venture or maintain the solvency of or provide working capital to any Joint Venture (or agree to do any of the foregoing),

following the occurrence of an Event of Default or if, in the case of the guarantee or indemnity contemplated in Clause ~~18.16.1.2~~ 21.15.1.2., such guarantee ~~(together with the other guarantees the payment of issued as of the Signature Date)~~ guarantees an amount equal to or greater than the Designated Amount or such indemnity ~~(together with the other indemnities issued as of the Signature Date)~~ indemnifies the applicable party against a claim equal to or greater than the Designated Amount.

21.16. ~~18.17.~~ Loans or Credit

The Borrower shall not make any loans or be a creditor in respect of any Financial Indebtedness following the occurrence of an Event of Default or if such loans ~~(in aggregate as of the Signature Date)~~ or Financial Indebtedness ~~is~~ (in aggregate as of the Signature Date) are for an amount equal to or greater than (in either case), the Designated Amount.

21.17. ~~18.18.~~ No Guarantees or Indemnities

The Borrower shall not incur or allow to remain outstanding any guarantee or indemnity in respect of the obligation of any person following the occurrence of an Event of Default or if such guarantee ~~(together with the other guarantees issued as of the Signature Date)~~ guarantees the payment of an amount equal to or greater than the Designated Amount or such indemnity indemnifies the applicable party against a claim ~~(which, when aggregated with the other indemnified claims as of the Signature Date)~~ is equal to or greater than the Designated Amount.

21.18. ~~18.19.~~ Access

If a Default is continuing or a Finance Party reasonably suspects a Default is continuing or may occur, the Borrower shall, and the Borrower shall ensure that each member of the Group will permit the Finance Parties and/or accountants or other professional advisers and contractors of the Finance Parties to meet and discuss such matters with the senior management of the Group.

21.19. ~~18.20.~~ Constitutional Documents

The Borrower shall not amend its constitutional documents, without the prior written consent from the Finance Parties, and shall procure that no amendment is made to its constitutional documents if such amendment would adversely affect the rights of the Finance Parties under the Finance Documents.

21.20. ~~18.21.~~ Listing

The Borrower shall not list bonds on any exchange other than an Approved Exchange.

21.21. Equal treatment of facilities and creditors

21.21.1. If under the terms (whether the original terms or the terms as amended, substituted or restated) of any loan facility, bonds, notes or other debt instruments entered into or issued by the Borrower (or any refinancing thereof), the Borrower grants the creditors thereunder (or any agent, trustee or other representative thereof) any term and/or security (if any) that is more favourable to such creditors than the terms and/or security (if any) contained in (or incorporated by reference in) the Finance Documents (such improved term being a Relevant Benefit), the Borrower shall:

21.21.1.1. provide a copy of such representation, warranty, undertaking, covenant or event of default to the Lenders; and

21.21.1.2. be deemed to have thereby have made an unconditional offer to the Finance Parties, which offer shall remain open for acceptance for 20 Business Days following receipt of such copies (the Offer) to amend the terms (including all related provisions and definitions) of the relevant Finance Documents to include each Relevant Benefit in favour of the Finance Parties on terms which are no less favourable to the Finance Parties.

21.21.2. If, within 20 Business Days following receipt of the Offer, the Lenders notify the Borrower that the Finance Parties wish to amend the relevant Finance Documents to incorporate the Relevant Benefit, the Borrower and the Finance Parties shall negotiate in good faith to so amend the relevant Finance Document.

21.21.3. If, within 20 Business Days after receipt by the Borrower of the Lenders' acceptance of the Offer, the Borrower and the Finance Parties have not reached agreement on the contemplated amendment(s), upon notice to that effect delivered within a further 20 Business Day period, the Relevant Benefit shall automatically be incorporated by reference into the relevant Finance Documents as if expressly set out therein, provided that:

21.21.3.1. the Relevant Benefit shall govern and supersede any contrary or contradictory terms or provisions set out in the relevant Finance Document; and

21.21.3.2. to the extent necessary, defined terms, section references, etc. set out in the Relevant Benefit shall be deemed to be modified for such purposes to be consistent with such terms, section references, etc. set out in the relevant Finance Document.

21.22. PFMA

The Borrower has complied, and shall comply, with the provisions of the PFMA, including, without limitation, obtaining all requisite authorisations in respect thereof, in respect of its entry into of the Finance Documents to which it is a party and the performance of its obligations thereunder.

22. 19-EVENTS OF DEFAULT

Each of the events or circumstances set out in Clause ~~19~~22 is an Event of Default (save for Clause ~~19.10~~22.18 (Acceleration)).

22.1. 19.1.-Non-payment

Any Obligor does not pay on the due date any amount payable pursuant to a Finance Document at the agreed place unless its failure to pay is caused by:

22.1.1. 19.1.1.-administrative or technical error; or

22.1.2. 19.1.2.-a Disruption Event,

and payment is made within 5 (five) Business Days of its due date.

22.2. Financial covenants

Any requirement of clause 20 is not satisfied.

22.3. 19.2.-Other obligations

22.3.1. 19.2.1.-Any Obligor does not comply with any provision of the Finance Documents (other than those referred to in Clause ~~19.12~~22.1 (Non-payment) and Clause ~~22.2~~ (Financial Covenants)).

22.3.2. 19.2.2.-No Event of Default under Clause ~~19.2.12~~22.3.1 above will occur if the failure to comply is capable of remedy and is remedied within ~~15~~10 (fifteen) Business Days of the Lenders giving notice to the Borrower or the Borrower becoming aware of the failure to comply.

22.4. 19.3.-Misrepresentation

Any representation or statement made or deemed to be made by an Obligor in the Finance Documents or any other document delivered by or on behalf of such Obligor under or in connection with any Finance Document is or proves to have been incorrect or misleading in any material respect when made or deemed to be made unless the underlying circumstances (if capable of remedy) are remedied within 15 to the extent that the representation or statement is no longer incorrect or misleading in any material respect within 10 (fifteen) Business Days of the Lenders giving notice to the Borrower or the Borrower becoming aware of the failure to comply.



22.5. ~~19.4.-Cross default~~

22.5.1. ~~19.4.1.-Any Financial Indebtedness of any member of the Group and/or an Obligor is not paid when due nor within any originally applicable grace period.~~

22.5.2. ~~19.4.2.-Any Financial Indebtedness of any member of the Group and/or an Obligor is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an event of default (however described).~~

22.5.3. ~~19.4.3.-Any commitment for any Financial Indebtedness of any member of the Group and/or an Obligor is cancelled or suspended by a creditor of any member of the Group as a result of an event of default (however described).~~

22.5.4. ~~19.4.4.-Any creditor of any member of the Group and/or an Obligor becomes entitled to declare any Financial Indebtedness of any member of the Group due and payable prior to its specified maturity as a result of an event of default (however described).~~

22.5.5. ~~19.4.5.-No Event of Default will occur under this Clause 19.4.22.5 if the aggregate amount of Financial Indebtedness or commitment for Financial Indebtedness falling within Clauses 19.4.122.5.1 to 19.4.422.5.4 is in respect of the Borrower or applicable member of the Group, is less than the Designated Amount (or its equivalent in other currencies).~~

22.6. ~~19.5.-Insolvency~~

22.6.1. ~~19.5.1.-A member of the Group is or is deemed by any authority or legislation to be unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.~~

22.6.2. ~~19.5.2.-The value of the assets of any member of the Group is less than its liabilities (taking into account contingent and prospective liabilities).~~

22.6.3. ~~19.5.3.-A moratorium is declared in respect of any indebtedness of any member of the Group.~~

22.6.4. ~~A member of the Group is or is deemed by any authority or legislation to be Financially Distressed (as defined in the Companies Act).~~

22.6.5. ~~19.5.4.-Any-Insolvency Event occurs.~~

22.7. ~~19.6.-Insolvency proceedings~~

22.7.1. ~~19.6.1.-Any corporate action, legal proceedings or other procedure or step is taken in relation to:~~

22.7.1.1. ~~19.6.1.1.-the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group other than a solvent liquidation or reorganisation of any member of the Group other than the Borrower;~~

~~22.7.1.2~~ ~~19.6.1.2~~-a composition, compromise, assignment or arrangement with any creditor of any member of the Group;

~~22.7.1.3~~ ~~19.6.1.3~~-the appointment of a liquidator (other than in respect of a solvent liquidation of a member of the Group other than the Borrower), receiver, administrative receiver, administrator, compulsory manager, business rescue practitioner or other similar officer in respect of any member of the Group or any of its assets;

~~22.7.1.4~~ ~~19.6.1.4~~-the placing of any member of the Group under supervision and the commencing of business rescue proceedings under section 129(1) or section 131 (1) of the Companies Act; or

~~22.7.1.5~~ ~~19.6.1.5~~-enforcement of any Security over any assets of any member of the Group, or any analogous procedure or step is taken in any jurisdiction.

~~22.7.2~~ ~~19.6.2~~-This Clause ~~19.6.2.7~~ shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 90 (ninety) days of commencement.

#### ~~22.8~~ ~~19.7~~-Unlawfulness

It is or becomes unlawful for an Obligor to perform any of its obligations under the Finance Documents.

#### ~~22.9~~ ~~19.8~~-Repudiation

An Obligor rescinds or repudiates a Finance Document or evidences an intention to rescind or repudiate a Finance Document.

#### ~~22.10~~ ~~19.9~~-Material Adverse Effect

Any event or series of events occurs which the Lenders reasonably believe will have a Material Adverse Effect, ~~including but not limited to the following:~~

#### ~~22.11~~ ~~19.9.1~~-Failure to comply with Final ~~Judgement~~Judgment

~~22.11.1~~ ~~19.9.1.1~~-Any Obligor fails within 5 (five) Business Days of the due date to comply with or pay any sum due from it under any final ~~judgement~~judgment or any final order (being a judgment or order which is not subject to any rescission or appeal and/or capable of being subject to any such rescission or appeal) made or given by any court of competent jurisdiction.

~~22.11.2~~ ~~19.9.1.2~~-No Event of Default will occur under this Clause ~~19.9.1.2.11~~ ~~22.11~~ if the amount the relevant Obligor fails to pay pursuant to any final ~~judgement~~judgment or any final order is less than the Designated Amount (or its equivalent in any other currency or currencies).

#### ~~22.12~~ ~~19.9.2~~-Creditors' Process

Any expropriation, attachment, sequestration, distress or execution or any analogous process in any jurisdiction affects any asset or assets of an Obligor having an aggregate value of an amount equal to the Designated Amount (or its equivalent in any other

currency or currencies) and is not discharged within 10 (ten) Business Days of the applicable Obligor becoming aware thereof.

22.13. ~~19.9.3.-Litigation~~

22.13.1. Any litigation, arbitration, administrative, governmental, regulatory or other investigations, proceedings or disputes are commenced or threatened in relation to the Finance Documents or the transactions contemplated in the Finance Documents or against any Obligor or its assets which has or is reasonably likely to result in a Material Adverse Effect.

22.13.2. The Lenders, acting reasonably, have determined (and have notified the Borrower of such determination), that the litigation contemplated in Schedule 12 and commenced by pensioner members of the Transport Pension Fund ("the TPF") and the Transnet Second Defined Benefit Fund ("the TSDBF") against the Borrower, the TPF and the TSDBF will result in liability on the part of the Borrower in an amount exceeding the Designated Amount.

22.14. ~~19.9.4.-Expropriation~~

22.14.1. The authority or ability of any Obligor to conduct its business is limited or wholly or substantially curtailed by any seizure, expropriation, nationalisation, intervention, restriction or other action by or on behalf of any governmental, regulatory or other authority or other person in relation to any Obligor, as the case may be, or any of its assets.

22.14.2. By the authority of any governmental regulatory or other authority or other person the whole or any part of its assets or revenues is seized, expropriated or compulsorily acquired.

22.15. ~~19.9.5.-Cessation of Business~~

Any Obligor suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business, for any reason whatsoever, including its assets being expropriated or any licences being revoked.

22.16. ~~19.9.6.-Audit Qualification~~

The auditors of the Borrower qualify the financial statements delivered under Clause ~~1719~~ in any respect.

22.17. ~~19.9.7.-Listings Committee and Suspension of Trading~~

22.17.1. ~~19.9.7.1.-~~ The listings committee of the applicable Approved Exchange publishes any notice of its intention to suspend or discontinue the listing of any bonds issued by the Borrower.

22.17.2. ~~19.9.7.2.-~~ Trading in bonds issued by the Borrower which are listed on any Approved Exchange is suspended for any reason (other than a general suspension of trading of all securities on the relevant exchange) for a period of ~~10 (ten)~~<sup>3</sup> trading days or more.

22.18. ~~19.10.~~ Acceleration

On and at any time after the occurrence of an Event of Default which is continuing the ~~Lenders~~any Lender may by notice to the Borrower:

- 22.18.1. ~~19.10.1.~~ cancel the ~~Total Commitments~~its participation in the Commitment whereupon ~~they~~it shall immediately be cancelled; and/or
- 22.18.2. ~~19.10.2.~~ declare that all or part of ~~its participation in the Loan~~its participation in the Loans, together with accrued interest, and all other amounts accrued or outstanding ~~to that Lender~~to that Lender under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable together with all and any Break Costs; and/or
- 22.18.3. ~~19.10.3.~~ demand and be entitled to receive specific performance of the relevant obligation of the Finance Documents (if any) breached by the Borrower or the Obligors (as applicable); and/or
- 22.18.4. ~~19.10.4.~~ claim payment from the Borrower of any and all damages, costs and other amounts incurred directly as a result of such Event of Default.

SECTION 8  
CHANGES TO PARTIES

23. ~~20.~~ CHANGES TO THE LENDER

23.1. ~~20.1.~~ Assignments and transfers by the Lender

Subject to this Clause ~~20.1~~, a Lender (the Existing Lender) may:

23.1.1. ~~20.1.1.~~ cede any of its rights or delegate its obligations; or

23.1.2. ~~20.1.2.~~ transfer by assignment any of its rights and obligations,

to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets (the New Lender).

23.2. ~~20.2.~~ Conditions of assignment or transfer

23.2.1. ~~20.2.1.~~ The consent of the Borrower is required for an assignment, cession or delegation by an Existing Lender, unless the assignment, cession or delegation is:

23.2.1.1. ~~20.2.1.1.~~ to another Lender or an Affiliate of a Lender;

23.2.1.2. ~~20.2.1.2.~~ to a Permitted Transferee; or

23.2.1.3. ~~20.2.1.3.~~ made at a time when an Event of Default is continuing has occurred.

23.2.2. ~~20.2.2.~~ The consent of the Borrower to an assignment, cession or delegation must not be unreasonably withheld or delayed. The Borrower will be deemed to have given its consent 5 Business Days after the Existing Lender has requested it unless consent is expressly refused by the Borrower on reasonable grounds within that time.

23.2.3. ~~20.2.3.~~ An assignment, cession or delegation will only be effective on:

23.2.3.1. ~~20.2.3.1.~~ receipt by the Borrower (whether in the Transfer Certificate or otherwise) of written confirmation from the New Lender that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and

23.2.3.2. ~~20.2.3.2.~~ performance by each Finance Party (to the extent applicable) of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment, cession or delegation to a New Lender.

23.2.4. ~~20.2.4.~~ A transfer will only be effective if the procedure set out in Clause ~~20.4~~ 23.4 (Procedure for transfer) is complied with.

23.2.5. ~~20.2.5.~~ If:

23.2.5.1. ~~20.2.5.1.~~ the Lender assigns its rights and obligations or cedes its rights or delegates its obligations under the Finance Documents or changes its Facility Office; and

~~23.2.5.2, 20.2.5.2~~ as a result of circumstances existing at the date the assignment, cession, delegation or change occurs, the Borrower would be obliged to make a payment to the New Lender or Lender acting through its new Facility Office under Clause ~~11~~13 (*Tax gross-up and indemnities*) or Clause ~~12~~14 (*Increased Costs*),

then the New Lender or Lender acting through its new Facility Office is only entitled to receive payment under those Clauses to the same extent as the Existing Lender or Lender acting through its previous Facility Office would have been if the assignment, transfer or change had not occurred.

~~23.2.6.~~ ~~20.2.6.~~ Each New Lender, by executing the relevant Transfer Certificate, confirms, ~~for the avoidance of doubt,~~ that the Lender has authority to execute on its behalf any amendment or waiver that has been approved by or on behalf of the requisite Lender or Lenders in accordance with this Agreement on or prior to the date on which the assignment, cession or delegation becomes effective in accordance with this Agreement and that it is bound by that decision to the same extent as the Existing Lender would have been had it remained a Lender.

### ~~23.3.~~ ~~20.3.~~ Limitation of responsibility of Existing Lender

~~23.3.1.~~ ~~20.3.1.~~ Unless expressly agreed to the contrary, an Existing Lender makes no representation or warranty and assumes no responsibility to a New Lender for:

~~23.3.1.1.~~ ~~20.3.1.1.~~ the legality, validity, effectiveness, adequacy or enforceability of the Finance Documents or any other documents;

~~23.3.1.2.~~ ~~20.3.1.2.~~ the financial condition of the Borrower;

~~23.3.1.3.~~ ~~20.3.1.3.~~ the performance and observance by any Borrower of its obligations under the Finance Documents or any other documents; or

~~23.3.1.4.~~ ~~20.3.1.4.~~ the accuracy of any statements (whether written or oral) made in or in connection with any Finance Document or any other document,

and any representations or warranties implied by law are excluded.

~~23.3.2.~~ ~~20.3.2.~~ Each New Lender confirms to the Existing Lender and the other Finance Parties that it:

~~23.3.2.1.~~ ~~20.3.2.1.~~ has made (and shall continue to make) its own independent investigation and assessment of the financial condition and affairs of each Obligor and its related entities in connection with its participation in this Agreement and has not relied exclusively on any information provided to it by the Existing Lender in connection with any Finance Document; and

~~23.3.2.2.~~ ~~20.3.2.2.~~ will continue to make its own independent appraisal of the creditworthiness of the Borrower and its related entities whilst any amount is or may be outstanding under the Finance Documents or any Commitment is in force.

23.3.3. ~~20.3.3.~~ Nothing in any Finance Document obliges an Existing Lender to:

23.3.3.1. ~~20.3.3.1.~~ accept a re-transfer or re-assignment from a New Lender of any of the rights and obligations assigned or transferred under this Clause ~~20.3.~~ or

23.3.3.2. ~~20.3.3.2.~~ support any losses directly or indirectly incurred by the New Lender by reason of the non-performance by the Borrower of its obligations under the Finance Documents or otherwise.

23.4. ~~20.4.~~ **Procedure for transfer**

23.4.1. ~~20.4.1.~~ Subject to the conditions set out in Clause ~~20.2.2.2~~ 23.4.1 (*Conditions of assignment or transfer*) a transfer is effected in accordance with Clause ~~20.4.3.2.4.3~~ 23.4.3 below when a duly completed Transfer Certificate is delivered by the Existing Lender and/or the New Lender to the Borrower.

23.4.2. ~~20.4.2.~~ The existing Lender is only obliged to execute a Transfer Certificate if it has received confirmation by the New Lender ~~to that~~ that the Borrower ~~once it is satisfied that it~~ has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to the transfer to such New Lender.

23.4.3. ~~20.4.3.~~ Subject to Clause ~~20.6.2.3.6~~ 23.4.3 (*Pro rata interest settlement*), on the Transfer Date:

23.4.3.1. ~~20.4.3.1.~~ to the extent that in the Transfer Certificate the Existing Lender seeks to transfer by assignment its rights and obligations under the Finance Documents the Borrower and the Existing Lender shall be released from further obligations towards one another under the Finance Documents and their respective rights against one another under the Finance Documents shall be cancelled (being the Discharged Rights and Obligations);

23.4.3.2. ~~20.4.3.2.~~ the Borrower and the New Lender shall assume obligations towards one another and/or acquire rights against one another which differ from the Discharged Rights and Obligations only insofar as the Borrower and the New Lender have assumed and/or acquired the same in place of the Borrower and the Existing Lender;

23.4.3.3. ~~20.4.3.3.~~ the New Lender shall acquire the same rights and assume the same obligations as it would have acquired and assumed had the New Lender been an Existing Lender with the rights and/or obligations acquired or assumed by it as a result of the transfer and to that extent the Existing Lender shall be released from further obligations under the Finance Documents; and

23.4.3.4. ~~20.4.3.4.~~ the New Lender shall become a Party as a "Lender".

23.5. ~~20.5.~~ **Copy of Transfer Certificate to Borrower**

The Lender shall, as soon as reasonably practicable after it has executed a Transfer Certificate send to the Borrower a copy of that Transfer Certificate.

23.6. ~~20.6.~~ Pro rata interest settlement

If the Existing Lender or Finance Party has notified the New Lender that it is able to distribute interest payments on a "pro rata basis" to the Existing Lender and the New Lenders then (in respect of any transfer pursuant to Clause ~~20.4~~23.4 (*Procedure for transfer*) the Transfer Date of which, in each case, is after the date of such notification and is not on the last day of an Interest Period);

23.6.1. ~~20.6.1.~~ any interest or fees in respect of the relevant ~~participation loans~~ loans which are expressed to accrue by reference to the lapse of time shall continue to accrue in favour of the Existing Lender up to but excluding the Transfer Date (**Accrued Amounts**) and shall become due and payable to the Existing Lender (without further interest accruing on them) on the last day of the current Interest Period (or, if the Interest Period is longer than three Months, on the next of the dates which falls at three Monthly intervals after the first day of that Interest Period); and

23.6.2. ~~20.6.2.~~ the rights assigned or transferred by the Existing Lender will not include the right to the Accrued Amounts, so that, ~~for the avoidance of doubt:~~

23.6.2.1. ~~20.6.2.1.~~ when the Accrued Amounts become payable, those Accrued Amounts will be payable to the Existing Lender; and

23.6.2.2. ~~20.6.2.2.~~ the amount payable to the New Lender on that date will be the amount which would, but for the application of this Clause ~~20.6~~23.6, have been payable to it on that date, but after deduction of the Accrued Amounts.

24. ~~21.~~ CHANGES TO THE BORROWER

The Borrower may not cede any of its rights, delegate any of its obligations or assign any of its rights and obligations under the Finance Documents without the prior written approval of the Lenders which approval shall not be unreasonably withheld having regard to the circumstances resulting in such transfer of rights and/or obligations.



**SECTION 9  
ADMINISTRATION**

25. ~~22.~~PAYMENT MECHANICS

25.1. ~~22.1.~~Place of Payment

25.1.1. ~~22.1.1.~~ Except to the extent otherwise provided in this Agreement, all payments of principal, interest and other amounts to be made by the Borrower under this Agreement shall be made:

25.1.1.1. ~~22.1.1.1.~~ if to the Original Lender, to the following account (*Lender to insert account details*):

or to such other account as the Original Lender may notify to the Borrower from time to time by not less than 10 Business Days' prior notice; and

25.1.1.2. ~~22.1.1.2.~~ if to any other Finance Party, to such account as that Finance Party may notify to the Borrower from time to time by not less than 10 Business Days' prior notice.

25.1.2. ~~22.1.2.~~ On each date on which the Borrower or any Lender is required to make a payment under a Finance Document, the Borrower or that Lender shall make the same available for value on the due date at the time and in such funds specified by the party entitled to such payment as being customary at the time for settlement of transactions in the relevant currency in the place of payment.

25.2. ~~22.2.~~No set-off by the Borrower

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

25.3. ~~22.3.~~Business Days

25.3.1. ~~22.3.1.~~ Any payment which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

25.3.2. ~~22.3.2.~~ During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

25.4. ~~22.4.~~Set-off

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

25.5. ~~22.5.~~ Partial payments

25.5.1. ~~22.5.1.~~ If the Lenders receive a payment that is insufficient to discharge all the amounts then due and payable by an Obligor under the Finance Documents, the Lenders shall apply that payment towards the obligations of that Obligor under the Finance Documents in the following order:

25.5.1.1. ~~22.5.1.1.~~ first, in or towards payment pro rata of any unpaid fees, costs and expenses of the Finance Parties under the Finance Documents;

25.5.1.2. ~~22.5.1.2.~~ secondly, in or towards payment pro rata of any accrued interest, fees, Breakage Costs or commission due but unpaid under this Agreement;

25.5.1.3. ~~22.5.1.3.~~ thirdly, in or towards payment pro rata of any principal due but unpaid under this Agreement; and

25.5.1.4. ~~22.5.1.4.~~ fourthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

25.5.2. ~~22.5.2.~~ Clause ~~22.5.1~~25.5.1 will override any appropriation made by an Obligor.

26. ~~23.~~ NOTICES

26.1. ~~23.1.~~ Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

26.2. ~~23.2.~~ Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

26.2.1. ~~23.2.1.~~ in the case of the Borrower, that identified with its name below;

26.2.2. ~~23.2.2.~~ in the case of the Original Lender that identified with its name below;

26.2.3. ~~23.2.3.~~ in the case of a New Lender, that identified in the Transfer Certificate; and

or any substitute address or fax number or department or officer as the Party may notify to the other Party by not less than five Business Days' notice.

26.3. ~~23.3.~~ Delivery

26.3.1. ~~23.3.1.~~ Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

26.3.1.1. ~~23.3.1.1.~~ if by way of fax, when received in legible form; or

26.3.1.2. ~~23.3.1.2.~~ if by way of letter, when it has been left with a responsible person at the relevant address or five Business Days (or, if posted from South Africa to another country and

*vice versa*, 20 (twenty) Business Days) after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under Clause ~~23.3.1~~ 26.2 (*Addresses*), if addressed to that department or officer.

~~26.3.2.~~ 23.3.2. Any communication or document which becomes effective, in accordance with Clause ~~23.3.1~~ 26.3.1 after 5.00 p.m. (Johannesburg time) in the place of receipt shall be deemed only to become effective on the following Business Day.

#### ~~26.4.~~ 23.4. Electronic communication

~~26.4.1.~~ 23.4.1. Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication and if those two Parties:

~~26.4.1.1.~~ 23.4.1.1. notify each other in writing of their electronic mail address and/or any other information required to enable the sending and receipt of information by that means; and

~~26.4.1.2.~~ 23.4.1.2. notify each other of any change to their address or any other such information supplied by them by not less than 5 (five) Business Days' notice.

~~26.4.2.~~ 23.4.2. Any electronic communication which becomes effective after 5.00 p.m. in the place of receipt shall be deemed only to become effective on the following Business Day.

#### ~~26.5.~~ 23.5. English language

~~26.5.1.~~ 23.5.1. Any notice given under or in connection with any Finance Document must be in English.

~~26.5.2.~~ 23.5.2. All other documents provided under or in connection with any Finance Document must be:

~~26.5.2.1.~~ 23.5.2.1. in English; or

~~26.5.2.2.~~ 23.5.2.2. if not in English, and if so required by the Lender, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

#### ~~27.~~ 24. CALCULATIONS AND CERTIFICATES

##### ~~27.1.~~ 24.1. Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are *prima facie* evidence of the matters to which they relate.

27.2 ~~24.2~~-Certificates and Determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

27.3 ~~24.3~~-Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and, in relation to the Loan, year of 365 days (irrespective of whether the year in question is a leap year), or in any case where the practice in the Relevant Interbank Market differs, in accordance with that market practice.

28 ~~25~~-PARTIAL INVALIDITY

If, at any time, any provision of the Finance Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

29 ~~26~~-REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under the Finance Documents shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any of the Finance Documents on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

30 ~~27~~-AMENDMENTS AND WAIVERS30.1 ~~27.1~~-Required consents

No addition to, variation, amendment or consensual cancellation of any Finance Document and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of any Finance Document shall be of any force or effect unless the prior written consent of the Lenders has been obtained and it is reduced to writing and signed by or on behalf of all the parties to such Finance Document.

30.2 ~~27.2~~-Exceptions

~~27.2.1~~-An amendment or waiver that has the effect of changing or which relates to:

30.2.1 ~~27.2.2~~-the definition "Change of Control Event" in Clause 1.1 (*Definitions*);

30.2.2 ~~27.2.3~~-the definition "Change of Principal Business" in Clause 1.1 (*Definitions*);

30.2.3 ~~27.2.4~~-an extension to the date of payment of any amount under the Finance Documents;

30.2.4. ~~27.2.5.~~ a reduction in the Margin or a reduction in the amount of any payment of principal, interest, fees or commission payable;

30.2.5. ~~27.2.6.~~ an increase in or an extension of any Commitment or any requirement that a cancellation of Commitments reduces the Commitments of the Lender rateably under the relevant Facility;

30.2.6. ~~27.2.7.~~ a change to the Borrower;

30.2.7. ~~27.2.8.~~ any provision which expressly requires the consent of the Lender; or

Formatted: Highlight

30.2.8. ~~27.2.9.~~ release of a Qualifying Guarantee; or

~~30.2.9.~~ ~~30.2.8.~~ ~~27.2.10.~~ Clause 3 (Purpose), Clause 4 (Conditions of Utilisation), Clause 7 (Repayment and Cancellation), Clause ~~11.3~~ ~~13.3~~ (Tax indemnity), Clause ~~12~~ ~~14~~ (Increased Costs), Clause ~~18.5~~ ~~21.5~~ (Negative Pledge), Clause ~~20~~ ~~23~~ (Changes to the Lender), this Clause ~~27.2.~~, Clause ~~31~~ (Governing Law), Clause ~~32~~ (Jurisdiction) or Schedule ~~1~~ (Conditions Precedent), shall not be made without the prior consent of the Lenders. 30.2.

~~30.2.10.~~ ~~30.2.9.~~ Clause ~~38~~ (Governing Law), Clause ~~39~~ (Jurisdiction) or Schedule ~~1~~ (Conditions Precedent), shall not be made without the prior consent of the Lenders.

### 31. ~~28.~~ CONFIDENTIALITY

#### 31.1. ~~28.1.~~ Confidential Information

Each Finance Party agrees to keep all Confidential Information confidential and not to disclose it to anyone, save to the extent permitted by Clause ~~28.2~~ ~~31.2~~ (Disclosure of Confidential Information) and Clause ~~28.3~~ ~~31.3~~ (Disclosure to numbering service providers), and to ensure that all Confidential Information is protected with security measures and a degree of care that would apply to its own confidential information.

#### 31.2. ~~28.2.~~ Disclosure of Confidential Information

Any Finance Party may disclose:

31.2.1. ~~28.2.1.~~ to any of its Affiliates and Related Funds and any of its or their officers, directors, employees, professional advisers, auditors, partners and Representatives such Confidential Information as that Finance Party shall consider appropriate if any person to whom the Confidential Information is to be given pursuant to this Clause ~~28.2.1~~ ~~31.2.1~~ is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to the Confidential Information;

31.2.2. ~~28.2.2.~~ to any person:

31.2.2.1. ~~28.2.2.1.~~ to (or through) whom it assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations under one or more Finance Documents and to

any of that person's Affiliates, Related Funds, Representatives and professional advisers;

~~31.2.2.2, 28.2.2.2~~ with (or through) whom it enters into (or may potentially enter into), whether directly or indirectly, any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to, one or more Finance Documents and/or one or the Borrower and to any of that person's Affiliates, Related Funds, Representatives and professional advisers;

~~31.2.2.3, 28.2.2.3~~ appointed by any Finance Party or by a person to whom Clauses ~~28.2.2.4~~ ~~31.2.2.1~~ or ~~28.2.2.2~~ ~~31.2.2.2~~ applies to receive communications, notices, information or documents delivered pursuant to the Finance Documents on its behalf;

~~31.2.2.4, 28.2.2.4~~ who invests in or otherwise finances (or may potentially invest in or otherwise finance), directly or indirectly, any transaction referred to in Clauses ~~28.2.2.4~~ ~~31.2.2.1~~ or ~~28.2.2.2~~ ~~31.2.2.2~~;

~~31.2.2.5, 28.2.2.5~~ to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation;

~~31.2.2.6, 28.2.2.6~~ to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;

~~31.2.2.7, 28.2.2.7~~ to whom or for whose benefit that Finance Party charges, assigns or otherwise creates Security (or may do so);

~~31.2.2.8, 28.2.2.8~~ who is a Party; or

~~31.2.2.9, 28.2.2.9~~ with the consent of the Borrower;

in each case, such Confidential Information as that Finance Party shall consider appropriate if:

~~31.2.2.10, 28.2.2.10~~ in relation to Clauses ~~28.2.2.1, 28.2.2.2~~ and ~~28.2.2.3~~ ~~31.2.2.1, 31.2.2.2~~ and ~~31.2.2.3~~, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking except that there shall be no requirement for a Confidentiality Undertaking if the recipient is a professional adviser and is subject to professional obligations to maintain the confidentiality of the Confidential Information;

~~31.2.2.11, 28.2.2.11~~ in relation to Clause ~~28.2.2.4~~ ~~31.2.2.4~~, the person to whom the Confidential Information is to be given has entered into a Confidentiality Undertaking or is otherwise bound by requirements of confidentiality in relation to the Confidential Information they receive and is informed that some or all of such Confidential Information may be price-sensitive information;

31.2.2.12. ~~28.2.2.12.~~ in relation to Clauses ~~28.2.2.5, 28.2.2.6 and 28.2.2.7~~ 31.2.2.5, 31.2.2.6 and 31.2.2.7, the person to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no requirement to so inform if, in the opinion of that Finance Party, it is not practicable so to do in the circumstances;

31.2.3. ~~28.2.3.~~ to any rating agency (including its professional advisers) such Confidential Information as may be required to be disclosed to enable such rating agency to carry out its normal rating activities in relation to the Finance Documents and/or the Borrower if the rating agency to whom the Confidential Information is to be given is informed of its confidential nature and that some or all of such Confidential Information may be price-sensitive information.

31.3. ~~28.3.~~ Disclosure to numbering service providers

31.3.1. ~~28.3.1.~~ Any Finance Party may disclose to any national or international numbering service provider appointed by that Finance Party to provide identification numbering services in respect of this Agreement, any Facility and/or the Borrower the following information:

31.3.1.1. ~~28.3.1.1.~~ name of the Borrower;

31.3.1.2. ~~28.3.1.2.~~ country of domicile of the Borrower;

31.3.1.3. ~~28.3.1.3.~~ place of incorporation of the Borrower;

31.3.1.4. ~~28.3.1.4.~~ date of this Agreement;

31.3.1.5. ~~28.3.1.5.~~ date of each amendment and restatement of this Agreement;

31.3.1.6. ~~28.3.1.6.~~ amount of ~~Total~~ the Commitments;

31.3.1.7. ~~28.3.1.7.~~ currencies of each Facility;

31.3.1.8. ~~28.3.1.8.~~ type of each Facility;

31.3.1.9. ~~28.3.1.9.~~ ranking of each Facility;

31.3.1.10. ~~28.3.1.10.~~ the Maturity Date;

31.3.1.11. ~~28.3.1.11.~~ changes to any of the information previously supplied pursuant to Clauses ~~28.3.1.13~~ 31.3.1.1 to ~~28.3.1.10~~ 31.3.1.10; and

31.3.1.12. ~~28.3.1.12.~~ such other information agreed between such Finance Party and the Borrower,

to enable such numbering service provider to provide its usual syndicated loan numbering identification services.

31.3.2. ~~28.3.2.~~ The Parties acknowledge and agree that each identification number assigned to this Agreement, any Facility and/or the Borrower by a numbering service provider and the information associated with each such number may be disclosed to users of its

services in accordance with the standard terms and conditions of that numbering service provider.

31.3.3. ~~28.3.3.~~ The Borrower represents that none of the information set out in Clauses ~~28.3.1.1~~ 31.3.1.1 to ~~28.3.1.4~~ 31.3.1.10 is, nor will at any time be, unpublished price-sensitive information.

31.4. ~~28.4.~~ Entire agreement

This Clause ~~28.3.1~~ (*Confidentiality*) constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

31.5. ~~28.5.~~ Inside information

Each of the Finance Parties acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and each of the Finance Parties undertakes not to use any Confidential Information for any unlawful purpose.

31.6. ~~28.6.~~ Notification of disclosure

Each of the Finance Parties agrees (to the extent permitted by law and regulation) to inform the Borrower:

31.6.1. ~~28.6.1.~~ of the circumstances of any disclosure of Confidential Information made pursuant to Clause ~~28.2.2.5~~ 31.2.2.5 except where such disclosure is made to any of the persons referred to in that Clause during the ordinary course of its supervisory or regulatory function; and

31.6.2. ~~28.6.2.~~ upon becoming aware that Confidential Information has been disclosed in breach of this Clause ~~28.3.1~~ (*Confidentiality*).

31.7. ~~28.7.~~ Continuing obligations

The obligations in this Clause ~~28.3.1~~ (*Confidentiality*) are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of 12 months from the earlier of:

31.7.1. ~~28.7.1.~~ the date on which all amounts payable by the Borrower under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and

31.7.2. ~~28.7.2.~~ the date on which such Finance Party otherwise ceases to be a Finance Party.

32. PRESS RELEASES AND PUBLIC ANNOUNCEMENTS

32.1. No Party shall issue any press release or make any public announcement relating to the existence or subject matter of this Agreement without the prior written approval of the other



Party; provided, however, that any Party may make any public disclosure it believes in good faith is required by applicable law or any listing or trading agreement concerning its publicly-traded securities (in which case the disclosing Party will use its reasonable best efforts to advise the other Party prior to making the disclosure to the extent practicable and permissible under applicable law); and provided, further, that each of the Parties may make internal announcements to their respective employees that are not inconsistent in any material respects with the Parties' prior public disclosures regarding the transactions contemplated by this Agreement.

- 32.2. The Borrower specifically consents to the Lenders making public and private announcements relating to the existence or subject matter of this Agreement with the prior written approval of the Borrower of a specific announcement, which approval may not be unreasonably withheld or delayed.

33. 29-WAIVER OF IMMUNITY

The Borrower irrevocably and unconditionally waives any right it may have to claim for itself or any of its assets immunity from suit, execution, attachment or other legal process.

34. 30-COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

35. SOLE AGREEMENT

The Finance Documents constitute the sole record of the agreement between the Parties in regard to the subject matter thereof.

36. NO IMPLIED TERMS

No Party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded in any Finance Document in regard to the subject matter thereof.

37. INDEPENDENT ADVICE

Each Obligor acknowledges that it has been free to secure independent legal and other advice as to the nature and effect of all of the provisions of the Finance Documents and that it has either taken such independent legal and other advice or dispensed with the necessity of doing so. Further, each of the Obligors acknowledges that all of the provisions of each Finance Document and the restrictions therein contained are part of the overall intention of the Parties in connection with the Finance Documents.

SECTION 10  
GOVERNING LAW AND ENFORCEMENT

38. ~~31.~~ GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by South African law.

39. ~~32.~~ JURISDICTION

39.1. ~~32.1.~~ Save as may be otherwise specified in any Finance Document to the contrary, the Borrower hereby irrevocably and unconditionally consents and submits to the jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg), (or any successor to that division) in regard to all matters arising from the Finance Documents (including a dispute relating to the existence, validity or termination of any Finance Document or any non-contractual obligation arising out of or in connection with any Finance Document) (a Dispute).

39.2. ~~32.2.~~ The Borrower agrees that the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that division) is the most appropriate and convenient court to settle Disputes and accordingly:

39.2.1. ~~32.2.1.~~ the Borrower will ~~not~~ argue to the contrary;

39.2.2. ~~32.2.2.~~ the Borrower hereby waives any objection to the jurisdiction of that court on the grounds of venue or *forum non conveniens* or any similar grounds; and

39.2.3. ~~32.2.3.~~ the Borrower consents to service of process in any manner permitted by applicable law.

39.3. This Clause ~~32.3~~ is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction as it sees fit. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

**SECTION 11**  
**RIGHT TO QUOTE**

[Note: This clause will not form part of the OMSFIN or the FG version]

**40. RIGHT TO QUOTE**

40.1. If the Borrower wishes to hedge its interest rate risk in respect of the Facility and/or:

40.1.1. the facility in an amount of approximately R1 500 000 000 to be made available by Old Mutual Specialised Finance Proprietary Limited on or about the Signature Date; and/or

40.1.2. the facility in an amount of approximately R1 500 000 000 to be made available by Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) on or about the Signature Date.

the Borrower shall advise the Original Lender of such intention and shall afford the Original Lender an opportunity to quote for such hedging arrangements.

40.2. The Borrower undertakes to afford the Original Lender an opportunity to match the rates and terms offered to the Borrower by other financial institutions in respect of the hedging arrangements contemplated in clause 40.1 before it enters into an agreement with such financial institution(s) and shall not enter into such agreement before the expiry of the 20 Business Day period contemplated in this clause 40.2. If the Original Lender has, within 20 Business Days of the Borrower affording the Original Lender such opportunity to match the rates and terms offered to the Borrower by other financial institutions in respect of the hedging arrangements contemplated in clause 40.1, offered to enter into such hedging arrangements on the same rates and terms, the Borrower shall enter into such hedging arrangements with the Original Lender.

**This Agreement has been entered into on the date stated at the beginning of this Agreement.**

**SCHEDULE 1**  
**CONDITIONS PRECEDENT**

1. Borrower
  - 1.1 ~~1.1-~~ A copy of the constitutional documents of the Borrower.
  - 1.2 ~~1.2-~~ A certified excerpt of the minutes of the board of directors of the Borrower containing the resolution passed by the board of directors of the Borrower approving the Borrowing Programme and Corporate Plan.
  - 1.2.1 ~~resolving that the Borrower enter into this Agreement; and~~
  - 1.2.2 ~~approving the Borrowing Programme and Corporate Plan and confirming that this Facility is approved in terms of the Borrowing Programme and the Corporate Plan.~~
  - 1.3 ~~1.3-~~ A specimen of the signature of each person authorised to bind the Borrower to obligations in respect of borrowing by the Borrower by the resolution referred to in paragraph 1.2.
  - 1.4 ~~1.4-~~ The Compliance Certificate duly executed by the Group Chief Executive of the Borrower.
2. Finance Documents
 

A duly executed original of each of this Agreement and the Utilisation Request.
3. "Know your customer" requirements
 

All information and documentation required by ~~an~~the Original Lender in relation to the Borrower to enable it to comply with its obligations under, and the requirements of, law and its own "know your customer" procedures and confirmation from the Original Lender that the Borrower has complied with such requirements.
4. Legal opinions
 

A legal opinion of Edward Nathan Sonnenbergs Inc confirming, inter alia:

  - 4.1 ~~the validity and enforceability of this Agreement; and~~
  - 4.2 ~~A legal opinion of Poswa Incorporated, confirming, inter alia, the validity and enforceability of this Agreement as well as the Borrower's capacity and authority to enter into this Agreement;~~  
(in terms of the PFMA and any other relevant law).
5. Other documents, evidence and events
  - 5.1 ~~5.1.1-~~ A copy of any other Authorisation or other document, opinion or assurance which the Lender considers to be necessary (if it has notified the Borrower accordingly) in connection with the entry into and performance of the transactions contemplated by any Finance Document or for the validity and enforceability of any Finance Document.

- 5.2            ~~5.1.2-~~ The financial statements in respect of the end of the Borrower's financial half year ending on ~~30 September 2014~~ 31 March 2015.
- 5.1.3.        ~~Poswa Incorporated have inspected a copy of the Borrower's Corporate Plan and Borrowing Programme for the purposes of the provision of the legal opinion contemplated in paragraph 4 hereof.~~
- 5.3            ~~5.1.4-~~ Evidence that the fees, costs and expenses then due from the Borrower pursuant to ~~Clause 15~~ Clause 11 (Raising Fee), Clause 17 (Costs and expenses) and any other provision of this Agreement have been paid or will be paid by the ~~first Utilisation date~~ set out in Clause 11.
- 5.1.5.        ~~No material change in the credit market conditions has occurred.~~
- 5.4            ~~Confirmation from the Borrower or the Lenders have received evidence to their satisfaction that the locomotives acquired or to be acquired by it from China North Rail and China South Rail, utilising the proceeds of the Facility, under the Borrower's capital investment programme, are fit for the purpose for which they were or are to be acquired.~~
- 5.5            ~~The Lenders have received evidence to their satisfaction that the Borrower has, on or about the Signature Date, entered into:~~
- 5.5.1        ~~a credit facility agreement with Old Mutual Specialised Finance Proprietary Limited in terms of which an amount of R1 500 000 000 was made available by Old Mutual Specialised Finance Proprietary Limited for utilisation by the Borrower; and~~
- 5.5.2        ~~5.1.6. No event of default has occurred on the part of the Borrower prior to Utilisation; a credit facility agreement with Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) in terms of which an amount of R1 500 000 000 was made available by Futuregrowth Asset Management Proprietary Limited (in its capacity as agent acting for and on behalf of its clients) for utilisation by the Borrower.~~
6.            Lender
- Approval by the Lender's Investment, Executive and/or Credit Committee of the Facility (in the form of a letter or email to that effect).

**SCHEDULE 2  
FORM OF UTILISATION REQUEST**

From: Transnet SOC Ltd

To: Lender

Dated: [•]

Dear Sirs

Transnet SOC Ltd - ZAR 1-0002 500 000 000,00000 Term Facilities Agreement dated [•] (the Agreement)

1. We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.
2. We wish to borrow a ~~Loan~~ Utilisation on the following terms:  

Proposed Utilisation Date: [•] (or, if that is not a Business Day, the next Business Day)

Amount: ZAR1-000000-000,00 (~~one billion rand~~ [•] ([•]))
3. We confirm that each condition specified in Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request.
4. The proceeds of this ~~Loan~~ Utilisation should be credited to [•].
5. This Utilisation Request is irrevocable.

Yours faithfully

.....  
authorised signatory for  
Transnet SOC Ltd

**SCHEDULE 3**  
**FORM OF TRANSFER CERTIFICATE**

To: Transnet SOC Ltd as Borrower

From: [The Existing Lender] (the Existing Lender) and [The New Lender] (the New Lender)

Dated:

Transnet SOC Ltd – ZAR12 500 000 000,00 – ZAR3 000 000 000,00 Term Facilities Agreement dated  
[•] (the Agreement)

1. We refer to the Agreement. This is a Transfer Certificate. Terms defined in the Agreement have the same meaning in this Transfer Certificate unless given a different meaning in this Transfer Certificate.
2. We refer to Clause 20.4423.4 (Procedure for transfer):
  - 2.1. The Existing Lender and the New Lender agree to the Existing Lender transferring to the New Lender by cession and delegation, and in accordance with Clause 20.423.4 (Procedure for transfer), all of the Existing Lender's rights and obligations under the Agreement and the other Finance Documents which relate to that portion of the Existing Lender's Commitment and participations in the ~~Loan~~Loans under the Agreement as specified in the Schedule.
  - 2.2. The proposed Transfer Date is [•].
  - 2.3. The Facility Office and address, fax number and attention details for notices of the New Lender for the purposes of Clause 23.226.2 (Addresses) are set out in the Schedule.
3. The New Lender expressly acknowledges the limitations on the Existing Lender's obligations set out in Clause ~~20.3.3~~ 23.3.3.
4. This Transfer Certificate may be executed in any number of counterparts and this has the same effect as if the signatures on the counterparts were on a single copy of this Transfer Certificate.
5. This Transfer Certificate [and any non-contractual obligations arising out of or in connection with it] [is/are] governed by South African law.
6. This Transfer Certificate has been entered into on the date stated at the beginning of this Transfer Certificate.



**THE SCHEDULE**

**Commitment/rights and obligations to be transferred**

*[insert relevant details]*

*[Facility Office address, fax number and attention details for notices and account details for payments,]*

[Existing Lender]

[New Lender]

By:

By:

This Transfer Certificate is accepted by the Borrower and the Transfer Date is confirmed as [•].

By:

**SCHEDULE 4**  
**FORM OF CONFIDENTIALITY UNDERTAKING**

Transnet SOC Ltd - ZAR12 500 000 000,00 - ZAR3 000 000 000,00 Term Facilities Agreement dated  
[•] (the Agreement)

THIS CONFIDENTIALITY UNDERTAKING is dated [ ] and made between:

- (1) [ ]; and  
(2) [ ].

Either party (in this capacity the "Purchaser") may from time to time consider acquiring an interest from the other party (in this capacity the "Seller") in the Agreement which, subject to the Agreement, may be by way of novation, assignment, the entering into, whether directly or indirectly, of a sub-participation or any other transaction under which payments are to be made or may be made by reference to one or more relevant Finance Documents and/or the Company or by way of investing in or otherwise financing, directly or indirectly, any such novation, assignment, sub-participation or other transaction (each an "Acquisition"). In consideration of the Seller agreeing to make available to the Purchaser certain information in relation to each Acquisition it is agreed as follows:

**1. CONFIDENTIALITY UNDERTAKING**

The Purchaser undertakes in relation to each Acquisition made or which may be made by it (a) to keep all Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition confidential and not to disclose it to anyone, save to the extent permitted by paragraph 2 (*Permitted Disclosure*) below and to ensure that all Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition is protected with security measures and a degree of care that would apply to the Purchaser's own confidential information and (b) until that Acquisition is completed, to use the Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition only for the Permitted Purpose.<sup>12</sup>

**2. PERMITTED DISCLOSURE**

The Purchaser may disclose in relation to each Acquisition made or which may be made by it:

- 2.1. to any of its Affiliates and any of its or their officers, directors, employees, professional advisers and auditors such Confidential Information as the Purchaser shall consider appropriate if any person to whom such Confidential Information is to be given pursuant to

<sup>12</sup> Please note that the Permitted Purpose ceases to apply to Confidential Information supplied to the Purchaser in relation to an Acquisition on completion of that Acquisition however if that Acquisition does not complete, the prospective purchaser is not permitted to use such Confidential Information for any purpose other than the Permitted Purpose.

this paragraph 2.1 is informed in writing of its confidential nature and that some or all of such Confidential Information may be price-sensitive information except that there shall be no such requirement to so inform if the recipient is subject to professional obligations to maintain the confidentiality of the information or is otherwise bound by requirements of confidentiality in relation to such Confidential Information;

2.2. subject to the requirements of the Agreement, to any person:

- (a) to (or through) whom the Purchaser assigns or transfers (or may potentially assign or transfer) all or any of its rights and/or obligations which it may acquire under the Agreement such Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition as the Purchaser shall consider appropriate if the person to whom such Confidential Information is to be given pursuant to this sub-paragraph (a) of paragraph 2.2 has delivered a letter to the Purchaser in equivalent form to this undertaking;
- (b) with (or through) whom the Purchaser enters into (or may potentially enter into) any sub-participation in relation to, or any other transaction under which payments are to be made or may be made by reference to the Agreement or the Company such Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition as the Purchaser shall consider appropriate if the person to whom such Confidential Information is to be given pursuant to this sub-paragraph (b) of paragraph 2.2 has delivered a letter to the Purchaser in equivalent form to this undertaking;
- (c) to whom information is required or requested to be disclosed by any governmental, banking, taxation or other regulatory authority or similar body, the rules of any relevant stock exchange or pursuant to any applicable law or regulation such Confidential Information which the Seller supplies to the Purchaser in relation to that Acquisition as the Purchaser shall consider appropriate; and

2.3. notwithstanding paragraphs 2.1 and 2.2 above, Confidential Information to such persons to whom, and on the same terms as, a Finance Party is permitted to disclose such Confidential Information under the Agreement to which that Acquisition relates, as if such permissions were set out in full in this undertaking for the purposes of that Acquisition and as if references in those permissions to Finance Party were references to the Purchaser for the purposes of that Acquisition.

### 3. NOTIFICATION OF DISCLOSURE

The Purchaser agrees in relation to each Acquisition made or which may be made by it (to the extent permitted by law and regulation) to inform the Seller:

- 3.1. of the circumstances of any disclosure of Confidential Information made pursuant to sub-paragraph (c) of paragraph 2.2 above except where such disclosure is made to any of the persons referred to in that paragraph during the ordinary course of its supervisory or regulatory function; and

- 3.2. upon becoming aware that Confidential Information relating to that Acquisition has been disclosed in breach of this undertaking.

#### 4. RETURN OF COPIES

If the Purchaser does not enter into an Acquisition and the Seller so requests in writing, the Purchaser shall return all Confidential Information supplied to the Purchaser by the Seller in relation to that Acquisition and destroy or permanently erase (to the extent technically practicable) all copies of such Confidential Information made by the Purchaser and use all reasonable endeavours to ensure that anyone to whom the Purchaser has supplied any such Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them, in each case save to the extent that the Purchaser or the recipients are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with internal policy, or where the Confidential Information has been disclosed under sub-paragraph (c) of paragraph 2.2 above.

#### 5. CONTINUING OBLIGATIONS

The obligations in this undertaking are continuing and, in particular, shall survive and remain binding on the Purchaser in relation to each Acquisition made or which may be made by it until (a) if the Purchaser acquires an interest in the Agreement to which that Acquisition relates by way of novation, the date on which the Purchaser acquires such an interest; (b) if the Purchaser enters into that Acquisition other than by way of novation, the date falling [twelve] months after termination of that Acquisition; or (c) in any other case [twelve] months after the date on which Confidential Information in relation to that Acquisition was supplied to the Purchaser by the Seller.

#### 6. NO REPRESENTATION; CONSEQUENCES OF BREACH, ETC

The Purchaser acknowledges and agrees that, in relation to each Acquisition made or which may be made by it:

- 6.1. neither the Seller, nor any member of the relevant Group nor any of the Seller's or the relevant Group's respective officers, employees or advisers (each a "Relevant Person") (i) make any representation or warranty, express or implied, as to, or assume any responsibility for, the accuracy, reliability or completeness of any of the Confidential Information supplied by the Seller to the Purchaser in relation to that Acquisition or any other information supplied by the Seller to the Purchaser in relation to that Acquisition or the assumptions on which it is based or (ii) shall be under any obligation to update or correct any inaccuracy in the Confidential Information supplied by the Seller to the Purchaser in relation to that Acquisition or any other information supplied by the Seller to the Purchaser in relation to that Acquisition or be otherwise liable to the Purchaser or any other person in respect of the Confidential Information supplied by the Seller to the Purchaser in relation to that Acquisition or any such information; and
- 6.2. the Seller or members of the relevant Group may be irreparably harmed by the breach of the terms of this undertaking and damages may not be an adequate remedy; each Relevant

Person may be granted an injunction or specific performance for any threatened or actual breach of the provisions of this undertaking by the Purchaser.

#### 7. ENTIRE AGREEMENT: NO WAIVER; AMENDMENTS, ETC

- 7.1. This undertaking constitutes the entire agreement between the Seller and the Purchaser in relation to the Purchaser's obligations regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.
- 7.2. No failure or delay in exercising any right or remedy under this undertaking will operate as a waiver thereof nor will any single or partial exercise of any right or remedy preclude any further exercise thereof or the exercise of any other right or remedy under this undertaking.
- 7.3. The terms of this undertaking and the Purchaser's obligations under this undertaking may only be amended or modified by written agreement between the parties.

#### 8. INSIDE INFORMATION

The Purchaser acknowledges that some or all of the Confidential Information is or may be price-sensitive information and that the use of such information may be regulated or prohibited by applicable legislation including securities law relating to insider dealing and market abuse and the Purchaser undertakes not to use any Confidential Information for any unlawful purpose.

#### 9. NATURE OF UNDERTAKINGS

The undertakings given by the Purchaser in this undertaking are given to the Seller and are also given for the benefit of the Company and each other member of the Group.

#### 10. GOVERNING LAW AND JURISDICTION

- 10.1. This undertaking and any non-contractual obligations arising out of or in connection with it (including any non-contractual obligations arising out of the negotiation of any Acquisition) are governed by South African law.
- 10.2. The courts of South Africa have non-exclusive jurisdiction to settle any dispute arising out of or in connection with this undertaking (including a dispute relating to any non-contractual obligation arising out of or in connection with either this undertaking or the negotiation of any Acquisition).

#### 11. DEFINITIONS

In this undertaking terms defined in the relevant Agreement (as defined below) shall, unless the context otherwise requires, have the same meaning and:

"Company" means Transnet SOC Ltd, a company incorporated in South Africa with registration number 1990/000900/30.

"Confidential Information" means, in relation to each Acquisition, all information relating to the Company, the Group, the relevant Finance Documents, the relevant Facility and/or that Acquisition which is received by the Purchaser in relation to the relevant Finance Documents or

the relevant Facility from the Seller or any of its affiliates or advisers, in whatever form, and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information but excludes information that:

- (d) is or becomes public information other than as a direct or indirect result of any breach by the Purchaser of this undertaking; or
- (e) is identified in writing at the time of delivery as non-confidential by the Seller or its advisers; or
- (f) is known by the Purchaser before the date the information is disclosed to the Purchaser by the Seller or any of its affiliates or advisers or is lawfully obtained by the Purchaser after that date, from a source which is, as far as the Purchaser is aware, unconnected with the relevant Group and which, in either case, as far as the Purchaser is aware, has not been obtained in breach of, and is not otherwise subject to, any obligation of confidentiality.

"Group" means, in relation to each Acquisition, the Company and its subsidiaries for the time being (as such term is defined in the Companies Act-2006).

"Permitted Purpose" means, in relation to each Acquisition, considering and evaluating whether to enter into that Acquisition.

This undertaking has been entered into on the date stated at the beginning of this undertaking.

**SCHEDULE 5 TIMETABLES**

Delivery of a duly completed Utilisation Request (Clause 5.1 <i>(Delivery of a Utilisation Request)</i> )	11.0 a.m. (Johannesburg time) <del>35</del> Business Days before the proposed Utilisation Date
---	--

JIBAR is <del>fixed</del> <u>set</u>	Quotation Day as of 11:00 a.m. Johannesburg time in respect of JIBAR
--------------------------------------	---

**SCHEDULE 6**  
**PERMITTED TRANSFEREES**

**1. Local Banks**

- Absa Bank Limited
- FirstRand Bank Limited
- Investec Bank Limited
- Nedbank Limited
- The Standard Bank of South Africa Limited

**2. Foreign Banks**

- Bank of China Limited
- Banco Unico
- Ecobank
- China Construction Bank Corporation
- China Development Bank Limited
- Standard Chartered Bank Limited
- State Bank of India
- KfW IPEX-Bank GmbH
- ABN Amro Bank N.V.
- Allied Irish Bank
- Barclays Bank plc
- BNP Paribas S.A.
- Citibank, N.A.
- Credit Agricole
- Deutsche Bank Group AG
- Goldman Sachs International
- HSBC Bank PLC
- JPMorgan Chase Bank, N.A.



- Société Générale
- Sumitomo Mitsui Banking Corporation
- The Royal Bank of Scotland N.V.
- UBS AG

### 3. Financial Institutions

- Absa Fund Managers Limited
- Allan Gray Proprietary Limited
- Ashburton Fund Managers (Pty) Ltd
- Atlantic Asset Management
- Cadiz Asset Management (Pty) Ltd
- Coronation Fund Managers Limited
- Element Fund Management Proprietary Limited
- Futuregrowth ~~Limited~~ Asset Management Proprietary Limited, in its capacity as agent for and on behalf of its clients
- Grindrod Asset Management Proprietary Limited
- Investec Asset Management Proprietary Limited
- Liberty Group Limited
- Marriott Asset Management (Proprietary) Limited
- MMI Holdings Limited
- Old Mutual Investment Group ~~(South Africa)~~ Proprietary Limited, in its capacity as agent for and on behalf of its clients
- Old Mutual Life Assurance Company (South Africa) Limited
- Old Mutual Specialised Finance Proprietary Limited
- Prescient Investment Management (Pty) Ltd
- Prudential Portfolio Managers South Africa (Proprietary) Limited
- Public Investment Corporation Limited
- Sanlam Capital Markets Limited
- Sanlam Life Insurance Limited

- Stanlib Limited
- Taquanta Investment Holdings (Proprietary) Limited
- Vantage Capital

4. **Affiliates**

Any Affiliates, Subsidiaries, Holding Companies or Related Funds of the banks or financial institutions listed in this Schedule 6 and any fund or entity managed by any of them or any of their Affiliates.

~~From: [INSERT DETAILS OF LENDERS] (the "Lenders")~~

~~To: Transnet SOC Ltd (the "Borrower").~~

Dear sirs,

~~Dated~~ [ ]

Term facility agreement dated [ ] between the Borrower and the Lenders in terms of which the Lenders made a facility available to the Borrower for an amount of R1 000 500 000 000 (one billion Rand) (the "Term Facility Agreement")

- ~~1. Reference is made to the Term Facility Agreement. Capitalised terms used but not defined herein shall bear the meaning ascribed thereto in the Term Facility Agreement.~~
- ~~2. This is a Lender Instruction issued pursuant to clause 7.5.1.37.7.1.3 of the Term Facility Agreement.~~
- ~~3. We hereby notify you that a Negative Rating Event contemplated in clause 7.5.1.37.7.1.3 of the Term Facility Agreement has occurred.~~
- ~~4. You are hereby instructed to [provide us with a Qualifying Guarantee duly executed by a Qualifying Guarantor by no later than the date which is 45 (forty five) days calculated from the date on which you receive this Lender Instruction] / [prepay the Loan/Loans in full, together with accrued unpaid interest thereon, and all other amounts accrued and owing under the Finance Documents by no later than the date which is 5 (five) Business Days calculated from the date on which you receive this Lender Instruction.] [Note: Delete whichever is inapplicable]~~
- ~~5. Your obligation to deliver the Qualifying Guarantee shall be deemed to be fulfilled against satisfaction of the conditions contemplated in clause 7.7 of the Term Facility Agreement.~~
- ~~5. 6. The failure by you to [prepay the Loan/Loans] / [deliver the Qualifying Guarantee to the Lenders] [Note: Delete whichever is inapplicable] in accordance with this Lender Instruction as read with the Term Facility Agreement constitutes an Event of Default.~~

~~Yours faithfully~~

~~Signed for and on behalf of:~~

~~[Insert names of applicable Lenders]~~

**SCHEDULE 8  
INCREASED MARGIN NOTICE**

**From:** [INSERT DETAILS OF LENDERS] (the "Lenders")

**To:** Transnet SOC Ltd (the "Borrower").

Dated [ ]

Dear sirs,

Term facility agreement dated [ ] between the Borrower and the Lenders in terms of which the Lenders made a facility available to the Borrower for an amount of R1-0002 500 000 000 (~~one billion Rand~~) (the "Term Facility Agreement")

1. Reference is made to the Term Facility Agreement. Capitalised terms used but not defined herein shall bear the meaning ascribed thereto in the Term Facility Agreement.
2. This is an Increased Margin Notice issued pursuant to clause 7.5.1.27.7.1.2 of the Term Facility Agreement.
3. We hereby notify you that a Negative Rating Event contemplated in clause 7.5.1.27.7.1.2 of the Term Facility Agreement has occurred.
4. You are hereby notified that the Lenders have exercised their right to increase the Margin contemplated in clause 1.1.64.11.1.66.1 of the Term Facility Agreement and, accordingly, the Increased Margin for all purposes in terms of the Term Facility agreement is [ ]% with effect from the date on which the Negative Rating Event contemplated in paragraph 3 occurred.
5. Kindly confirm your acceptance of the Increased Margin by no later than the date which is 5 (five) Business Days calculated from the date of receipt by you of this Increased Margin Notice.

Yours faithfully

Signed for and on behalf of:

\_\_\_\_\_  
[Insert names of applicable Lenders]

**SCHEDULE 9  
INCREASED MARGIN ACCEPTANCE NOTICE**

**From:** Transnet SOC Ltd (the "Borrower");

**To:** [INSERT DETAILS OF LENDERS] (the "Lenders").

Dear sirs,

Dated [ ]

Term facility agreement dated [ ] between the Borrower and the Lenders in terms of which the Lenders made a facility available to the Borrower for an amount of R1-0002 500 000 000 ~~(one billion Rand)~~ (the "Term Facility Agreement")

1. Reference is made to the Term Facility Agreement. Capitalised terms used but not defined herein shall bear the meaning ascribed thereto in the Term Facility Agreement.
2. This is an Increased Margin Acceptance Notice issued pursuant to clause ~~7.5.1.2~~ 7.1.2 of the Term Facility Agreement.
3. We hereby notify you that we have received your Increased Margin Notice dated [ ]. The Increased Margin contemplated in such Increased Margin Notice is acceptable to us and we hereby irrevocably and unconditionally confirm our acceptance of the Increased Margin contemplated therein.
4. We represent and warrant that the signatory of this Increased Margin Acceptance Notice is duly authorised to execute same.

Yours faithfully

Signed for and on behalf of:

\_\_\_\_\_  
Transnet SOC Ltd

**SCHEDULE 10  
COMPLIANCE CERTIFICATE**

**From:** Transnet SOC Ltd (the "Borrower");

**To:** [INSERT DETAILS OF LENDERS] (the "Lenders").

Dated [ ] [To be dated as of the Utilisation Date]

Dear sirs,

Term facility agreement dated [ ] between the Borrower and the Lenders in terms of which the Lenders made a facility available to the Borrower for an amount of R1-000 500 000 000 (one billion Rand) (the "Term Facility Agreement")

1. Reference is made to the Term Facility Agreement. Capitalised terms used but not defined herein shall bear the meaning ascribed thereto in the Term Facility Agreement.
2. This is the Compliance Certificate required to be delivered pursuant to the provisions of clause 1.4 of Schedule 1 to the Term Facility Agreement.
3. I (in my capacity as Group Chief Executive of the Borrower) hereby certify that as of the first Utilisation Date -
  - 3.1.1. borrowing the ~~Total Commitments~~ Commitment would not cause any borrowing or similar limit binding on the Borrower to be exceeded;
  - 3.1.2. the documents delivered under paragraph 1 of Schedule 1 to the Term Facility Agreement are a true copy of the original, correct, complete and in full force and effect as at the date of this Agreement;
  - 3.1.3. no Default has occurred or is continuing;
  - 3.1.4. no event or circumstance has to the best of the Borrower's knowledge and belief (having made reasonable enquiry), occurred that, individually or when taken into consideration with any other facts or circumstances then in existence, has had or is likely to have a Material Adverse Effect;
  - 3.1.5. all of the representations and warranties given in Clause ~~16~~ 18 (*Representations*) are true, accurate and complete in all material respects;
  - 3.1.6. the Borrower has complied with all legislation which is binding on it and which governs the conclusion of this Agreement, including the South African Public Finance Management Act, 1999 (PFMA);
  - 3.1.7. the person who has executed the Term Facility Agreement on behalf of the Borrower has been duly authorised to do so in terms of the PFMA and in terms of all other Authorisation requirements which bind the Borrower;

- 3.1.8. the credit rating in respect of the Borrower, is a Moody's Global Scale Long Term Local Currency Rating of Baa1<sup>2</sup> and a S&P International Scale Long Term Local Currency Issuer Credit rating of BBB+;
- 3.1.9. the Borrower has submitted its Borrowing Programme to the Minister of Finance in respect of its current financial period;
- 3.1.10. the final printers template for the Corporate Plan of the Borrower provided by the Borrower to the Lenders on [insert date] outlining the Borrower's forecast financial position as at [insert date] accurately represents the Borrower's financial position as at the date same was given to the Lender; and
- 3.1.11. there have been no amendments to the constitutional documents of the Borrower and the Borrower's constitutional documents are in full force and effect and have not been superseded, amended or repealed in any respect by any subsequent resolution.

Signed for and on behalf of:

---

Transnet SOC Ltd

Name:

(who warrants his authority to execute this Compliance Certificate)

Title: Group Chief Executive

**SCHEDULE 11**  
**OPERATIONS DISCLOSURE SCHEDULE**

[To be updated by the Borrower]

Transnet SOC Ltd ("Transnet") has small operations outside of South Africa in Swaziland, Botswana, Namibia, Mozambique and Zimbabwe. Transnet has direct operations in Zimbabwe Freight Logistics particularly rail operations. Offices are maintained in Zimbabwe solely for the administrative purposes.

The following are the cash flow activities generated from operations between Transnet and Zimbabwe (all figures relate to the actual cash flows for the year up to 2014[2015]):

1. Wagon hire - paid to Zimbabwe R4 738 000,00
2. Wagon Hire - revenue received R24 556 000,00
3. Haulage collected - R676 000,00
4. Shunting services - R900 000,00
5. Office hire - R153 000,00
6. Revenue from export services - R140 986 000,00
7. Revenue for imports services - R24 405,00

Wagons move in and out of the country regularly, they are not held in Zimbabwe but are constantly roaming.



**SCHEDULE 12**  
**AMORTISATION SCHEDULE**

Date	Capital Payments
30/09/2015	-
31/03/2016	-
30/09/2016	-
31/03/2017	-
30/09/2017	-
31/03/2018	-
30/09/2018	-
31/03/2019	-
30/09/2019	-
31/03/2020	-
30/09/2020	75,000,000
31/03/2021	75,000,000
30/09/2021	75,000,000
31/03/2022	75,000,000
30/09/2022	75,000,000
31/03/2023	75,000,000
30/09/2023	27,500,000
31/03/2024	27,500,000
30/09/2024	27,500,000
31/03/2025	27,500,000
30/09/2025	27,500,000
31/03/2026	27,500,000
30/09/2026	27,500,000
31/03/2027	27,500,000
30/09/2027	27,500,000
31/03/2028	27,500,000
30/09/2028	27,500,000
31/03/2029	27,500,000
30/09/2029	27,500,000
31/03/2030	27,500,000
30/09/2030	27,500,000
31/03/2031	27,500,000
30/09/2031	27,500,000
31/03/2032	27,500,000
30/09/2032	27,500,000
31/03/2033	27,500,000

SCHEDULE 13-12  
LITIGATION DISCLOSURE SCHEDULE

[To be updated by the Borrower]

Litigation Disclosure in the matter between Pretorius and Another v Transnet SOC Ltd ("Transnet") and Others – Certification of Class Action

1. The applicants are, respectively, pensioner members of the Transport Pension Fund ("the TPF") and the Transnet Second Defined-Benefit Fund ("the TSDBF") (collectively referred to as "the Funds").
2. The applicants have brought an application for, inter alia, the following relief:
  - 2.1. That they be granted leave to institute a class action in terms of section 38(c) of the Constitution as representatives of the Funds against one or more or all of the TPF, the TSDBF, Transnet, the Minister of Public Enterprises, the Minister of Finance and the President of the Republic of South Africa;
  - 2.2. Save for those members of the TSDBF who elect to opt out, Kruger be permitted to act as representatives of all members of the TSDBF and to institute class action; and
  - 2.3. Save for the members of the TPF who elect to opt out, Pretorius be permitted to act as representatives of all members of that Fund and to institute class action.
3. The matter involves two phases. The first is the application by Messrs Pretorius and Kruger to constitute a class and for the court to recognize them as the correct representatives to bring an action on behalf of that class as aforementioned. The second phase is, once the class has been established and Pretorius and Kruger have been vested with the authority to litigate on behalf of the class, the actual bringing of the claim against Transnet and the other defendants by way of an action.
4. The claim, if the class action is constituted, would be for a total amount of approximately R80 billion allegedly owed by Transnet to the members of the Funds as a "legacy debt".
5. The essence of relief sought by the applicants in their draft particulars of claim (considered as a whole) is an order which directly or indirectly seeks to compel Transnet to fund the "legacy debt" in respect of the Funds based upon an (incorrect) assumption that section 16 of the Succession Act read with section 12 of the Transnet Pension Fund Act created a legal duty on the part of Transnet to pay the "legacy debt". Counsels' opinion in relation to the question of the legacy debt is that Section 16(2) of the Succession Act does not purport to create liability on the part of Transnet to either of the funds. Instead, it creates a guarantee on the part of the State for the obligations of Transnet to those funds, and provides the mechanisms to quantify the limits of that guarantee. Simply put, according to counsel the so-called "legacy debt" is no debt at all but simply an amount determined in terms of section 16(2) of the Succession Act in order to fix the limit of the State guarantee.
6. The certification application was heard on 21 and 22 July 2014. On 31 July 2014 the Pretoria high court granted the order certifying the class action against Transnet, the TSDBF, and the TPF.

~~Transnet and the Funds unsuccessfully applied for leave to appeal. They then petitioned the Supreme Court of Appeals (SCA) for a special leave to appeal.~~

- ~~7. On 17 December 2014 the SCA dismissed the petition on the grounds that Transnet and the Funds had no prospects of success on appeal.~~
- ~~8. Transnet (as well as the Funds) took a decision not to appeal the certification any further, but to defend the class action on the merits when it is constituted.~~
- ~~9. At this time, no action is pending as summons is yet to be issued against Transnet and the Funds.~~

*[Signature Pages to Follow]*

SCHEDULE 13  
COVENANT COMPLIANCE CERTIFICATE

From: Transnet SOC Ltd

To: Lender

Dated: [•]

Dear Sirs

Transnet SOC Ltd - ZAR 2 500 000 000 Term Facilities Agreement dated [•] (the Agreement)

1. We refer to the Agreement. This is a Covenant Compliance Certificate. Terms defined in the Agreement have the same meaning when used in this Covenant Compliance Certificate unless given a different meaning in this Covenant Compliance Certificate.
2. We confirm that: [insert details of covenants to be certified]
3. [We confirm that no Default is continuing]

Yours faithfully

.....  
authorised signatory for  
Transnet SOC Ltd

.....  
for and on behalf of  
[name of auditors of the Borrower]

SCHEDULE 14  
EXISTING SECURITY

**SIGNATORIES**

**THE BORROWER**

Signed by: \_\_\_\_\_

Designation: \_\_\_\_\_

\_\_\_\_\_

for and on behalf of

TRANSNET SOC Ltd

Address: 43<sup>rd</sup> Floor, Carlton Centre  
150 Commissioner Street  
Johannesburg  
2001

Telephone number: +27 11 308 2627

Fax number: +27 11 308 2699

Attention: The Group Treasurer

**THE LENDER**

Signed by: \_\_\_\_\_

Designation: \_\_\_\_\_

\_\_\_\_\_

For and on behalf of

Signed by: \_\_\_\_\_

Designation: \_\_\_\_\_

\_\_\_\_\_

For and on behalf of

Address:

Telephone number:

Fax number:

Attention:

Document comparison by Workshare Compare on 02 September 2015  
05:17:26 PM

Input:	
Document 1 ID	file:///K:/Fin/SL003/Nedbank/Transnet/DV/Original Draft from Transnet SOC Ltd (Term Facility Agreement).docx
Description	Original Draft from Transnet SOC Ltd (Term Facility Agreement)
Document 2 ID	file:///K:/Fin/SL003/Nedbank/Transnet/DV/Transnet SOC Ltd Term Facility Agreement (New).docx
Description	Transnet SOC Ltd Term Facility Agreement (New)
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
Moved to	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	851
Deletions	1274
Moved from	22
Moved to	22
Style change	0
Format changed	0
Total changes	2169



## **REPORT 2(B) – EXHIBIT 15**

**Noluthando Masondo**

**From:** Phetolo Ramosebudi Transnet Corporate JHB  
 <Phetolo.Ramosebudi@transnet.net>  
**Sent:** 27 August 2015 15:38  
**To:** 'Eric Wood'  
**Cc:** Tewodros Gebreselasie; Nswana Mwangu  
**Subject:** RE: 1064 club loan

Hi Eric,

I did respond to Nedbank on the R500. I guess in the interest of time, lets close what we have now. The 270 bps is a very rich, but let's finalise the 12 billion. I was not too keen with Sanlam, the volume is small.

Thanks

**From:** Eric Wood [mailto:EricW@regiments.co.za]  
**Sent:** 27 August 2015 03:18 PM  
**To:** Phetolo Ramosebudi Transnet Corporate JHB  
**Cc:** Tewodros Gebreselasie; Nswana Mwangu  
**Subject:** 1064 club loan

Hi Phetolo

As discussed we propose to close the club loan (at R12.365bn), however there remain a number of issues that need urgent response:

- BOC have sent us a final term sheet for R3bn – 270bp over Jibar, with a 30bp arrangement fee. They require acknowledgement and acceptance of the term sheet
- Nedbank have requested that they utilise R500m of their Transnet GFB facility in order to make up the Omsfin/Futuregrowth R500m shortfall on their initial total R6bn commitment. They require communication in this regard
- Sanlam have only received credit approval for R365m (As opposed to their initial R2bn indicative interest), for which they need a response

In the interest of closing the deal at a single rate we propose the following:

- Deal pricing should clear at 270bp over Jibar (I don't think we can get BOC and Nedbank to move down further)
- Arrangement fee should be 30bp for all lenders
- Commitment fee should be 35bp for all lenders

Please let us know if this is acceptable, as we would now wish to move to signing and draw down of the facility. The additional R5.6bn of funding can be closed in the next month or two (either by extension of the club loan, or the issuance of Transnet's first long dated inflation issue- for which have received a lot of potential interest)

Regards

Eric

Eric Wood  
Executive Director  
+27 83 626 0857



CAPITAL MARKETS | REAL ESTATE | INVESTMENTS



**REGIMENTS**

Enabling Progress

T +27 11 715 0300 D +27 11 715 0342 F +27 11 715 0303 E [erow@regiments.co.za](mailto:erow@regiments.co.za) W [www.regiments.co.za](http://www.regiments.co.za)  
91 Central Str, Houghton, 2198 Postnet Suite 25, Private Bag X11, Birnam Park, 2015

## **REPORT 2(B) – EXHIBIT 16**

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 2253  
F +27 11 308 1269

TRANSNET



## MEMORANDUM

www.transnet.net

**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;

- 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, Siyaya DB Engineers, Cliffe Dekker Hofmeyer Inc
  - 6.3. McKinsey consortium - McKinsey, Letsema, Utho, Koikanyang, 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
<b>1. Business Case</b>				
5. Experience	59.88%	75.60%	89.42%	N/A
<b>2. Technical Optimisation</b>				
5. Experience	63.96%	61.58%	90.74%	N/A
<b>3. Deal Structuring and Financing</b>				
5. Experience	61.32%	82.32%	77.44%	N/A
<b>4. Procurement and Legal</b>				
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
<b>1. Business Case</b>	68.20%	86.24%	Not evaluated
5. Experience			
<b>2. Technical Optimisation</b>	Not evaluated – threshold not met	86.24%	Not evaluated
5. Experience			
<b>3. Deal Structuring and Financing</b>	65.51%	86.24%	Not evaluated
5. Experience			
<b>4. Procurement and Legal</b>	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 Webbers scored 0 (as per PPM) for pricing as they are double the price compared to McKinsey. Scores shown are only for BBEE

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 tenderes. 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, Letsema, Utho, Koikanyang, 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 tranches and it is imperative that the RFP's be reviewed from all aspects by the transaction advisors before the supplementary RFPs 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 - (Letsema 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 Letsema, for the procurement elements, due to the potential conflict with Barloworld and Letsema.

**COMPILED BY:**


**Yusuf Mahomed**

Group Finance

Date: 14/8/12

**RECOMMENDED/NOT RECOMMENDED:**


**Garry Pita**

GM: Integrated Supply Chain Management

Date: 15/8/12

**RECOMMENDED/NOT RECOMMENDED:**


**Anoj Singh**

Chief Financial Officer

Date: 20/8/12

**APPROVED BY:**


**Brian Molefe**

Group Chief Executive

Date: 22.8.12



**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.



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.

  
**SECRETARY**

Date: 27 July 2012

  
**CHAIRPERSON**

Date: 27 July 2012

## **REPORT 2(B) – EXHIBIT 17**

**Noluthando Masondo**

---

**From:** Phetolo Ramosebudi Transnet Corporate JHB  
**Sent:** 19 June 2015 10:32  
**To:** Stephen Mamabolo Corporate JHB  
**Cc:** Jackie Borain Transnet Corporate JHB  
**Subject:** Re: 2015/05/08 TRANSNET SOC LTD Deposit settlements Interest Claim  
**Attachments:** image001.png; image002.png; image004.png

Morning Moruti

Let me check with Moss

Sent from my iPhone

On 19 Jun 2015, at 10:26, Stephen Mamabolo Corporate JHB <[Stephen.Mamabolo@transnet.net](mailto:Stephen.Mamabolo@transnet.net)> wrote:

Thobela Mr Rams,

It seems that they swapped the rates around on R650M and R700m. Instead of charging 7.55% on R650m they charged it on a higher balance of R700m.

So we are not sure if this was just a mistake...please would you kindly confirm with them.

In the mean time we will pay the correct amount based on the correct rates (if this is fine by you) and then top it up later upon receipt of confirmation

Rgds,

Steve

---

**From:** Jackie Borain Transnet Corporate JHB  
**Sent:** 19 June 2015 09:30 AM  
**To:** Stephen Mamabolo Corporate JHB  
**Subject:** RE: 2015/05/08 TRANSNET SOC LTD Deposit settlements Interest Claim

Hi Steve,

I checked the calculations and do not agree with Nedbank.....The attachment has the rates and amounts that we received from Nedbank.

Herewith my calculations below.....

Thank you and regards,

Jackie Borain Transnet Corporate JHB

## Interest claim for late settlement of deposit

from 08 May to 12 May 2015 = 4 days

Deposit amount	Rate	Interest
R 650 000 000.00	7.45%	R 530 684.93
R 650 000 000.00	7.55%	R 537 808.22
R 700 000 000.00	6.90%	R 529 315.07

## Interest claim for late settlement of interest claim

From 12 May - 18 June 2015 = 38 days

Deposit amount	Rate	Interest
R 530 684.93	7.45%	R 4 116.08
R 537 808.22	7.55%	R 4 227.32
R 529 315.07	6.90%	R 3 802.36

Total interest due on 19 June 2015      R 1 609 953.98

Interest claim for late settlement of Deposit Amount

From 08-May-15  
To 12-May-15  
Days 4

Deposit Amount	Deposit Rate	Interest
R 650 000 000.00	6.90%	R 491 506.85
R 650 000 000.00	7.45%	R 530 684.93
R 700 000 000.00	7.55%	R 579 178.08

Interest claim for late settlement of Interest Claim

From 12-May-15  
To 19-Jun-15  
Days 38

Interest Claim	Deposit Rate	Interest
R 491 506.85	6.90%	R 3 530.77
R 530 684.93	7.45%	R 4 116.08
R 579 178.08	7.55%	R 4 552.50

Total Interest Claim due 19-Jun-15 R 1 613 569.21

**From:** Stephen Mamabolo Corporate JHB  
**Sent:** 18 June 2015 02:25 PM  
**To:** Jackie Borain Transnet Corporate JHB  
**Subject:** RE: 2015/05/08 TRANSNET SOC LTD Deposit settlements Interest Claim

Please action

**From:** Phetolo Ramosebudi Transnet Corporate JHB  
**Sent:** 18 June 2015 02:13 PM  
**To:** Stephen Mamabolo Corporate JHB  
**Subject:** FW: 2015/05/08 TRANSNET SOC LTD Deposit settlements Interest Claim

fya

**From:** Brickman, M. (Moss) [<mailto:MossB@Nedbankcapital.co.za>]  
**Sent:** 18 June 2015 10:15 AM  
**To:** Regiments ([ericw@regiments.co.za](mailto:ericw@regiments.co.za))  
**Cc:** Phetolo Ramosebudi Transnet Corporate JHB; Dick, N. (Nadine); Visnenza, M. (Mario)  
**Subject:** FW: 2015/05/08 TRANSNET SOC LTD Deposit settlements Interest Claim

<image006.png>

Hi Eric

Following our discussion

I am able to reduce the interest claim substantially to an amount of R 1,613,569.21  
But this amount MUST be settled by close tomorrow

**Interest claim for late settlement of Deposit Amount**

From 08-May-15  
To 12-May-15  
Days 4

Deposit Amount	Deposit Rate	Interest
R 650 000 000.00	6.90%	R 491 506.85
R 650 000 000.00	7.45%	R 530 684.93
R 700 000 000.00	7.55%	R 579 178.08

**Interest claim for late settlement of Interest Claim**

From 12-May-15  
To 19-Jun-15  
Days 38

Interest Claim	Deposit Rate	Interest
R 491 506.85	6.90%	R 3 530.77
R 530 684.93	7.45%	R 4 116.08
R 579 178.08	7.55%	R 4 552.50

**Total Interest Claim due 19-Jun-15 R 1 613 569.21**

Please confirm and ensure payment as per the below instructions

Regards  
Moss

**From:** Brickman, M. (Moss)  
**Sent:** 18 June 2015 07:16 AM  
**To:** 'Phetolo.Ramosebudi@transnet.net'  
**Subject:** 2015/05/08 TRANSNET SOC LTD Deposit settlements Interest Claim

Hi Phetolo

Following the structured deposit investment that was concluded in May 2015

The deposit amount was only received some days after the original agreed settlement date  
As a result an interest claim arose (see email correspondence below)  
Nedbank have been seeking reimbursement of the interest forgone because of the late settlement of funds  
Transnet will derive the benefit for the investment from the original agreed investment date so this is a mismatch

Please would you intervene and assist in the process as the claim has been outstanding since the 8<sup>th</sup> May and is wa

Your assistance in sorting this matter is much appreciated

Regards  
Moss

**From:** NedCap Operations - Derivatives

**Sent:** 17 June 2015 03:09 PM

**To:** NedCap Operations - Derivatives; Stephen Mamabolo Corporate JHB; Jackie Borain Transnet Corporate JHB

**Cc:** Tshepo Matlamela Transnet Corporate JHB; Mokoena, S. (Sifiso); Griffin, P. (Paul)

**Subject:** RE: 2015/05/08 TRANSNET SOC LTD Deposit settlements Interest Claim

Hi, Stephen

Following our telecom last Friday , please provide an update .

Regards

Nadine

**From:** NedCap Operations - Derivatives

**Sent:** 10 June 2015 03:08 PM

**To:** NedCap Operations - Derivatives; Stephen Mamabolo Corporate JHB; Jackie Borain Transnet Corporate JHB

**Cc:** Tshepo Matlamela Transnet Corporate JHB; Mokoena, S. (Sifiso); Griffin, P. (Paul)

**Subject:** RE: 2015/05/08 TRANSNET SOC LTD Deposit settlements Interest Claim

Hi, Jackie

Please forward proof of payment .

Regards

Nadine

**From:** NedCap Operations - Derivatives

**Sent:** 03 June 2015 01:31 PM

**To:** Stephen Mamabolo Corporate JHB; NedCap Operations - Derivatives; Jackie Borain Transnet Corporate JHB

**Cc:** Tshepo Matlamela Transnet Corporate JHB; Mokoena, S. (Sifiso); Griffin, P. (Paul)

**Subject:** RE: 2015/05/08 TRANSNET SOC LTD Deposit settlements Interest Claim

Hi,

Do you have any feedback yet. Apologies for sitting on you , we however are receiving a lot of pressure to escalate

Regards

Nadine

**From:** Stephen Mamabolo Corporate JHB [<mailto:Stephen.Mamabolo@transnet.net>]

**Sent:** 01 June 2015 12:54 PM

**To:** NedCap Operations - Derivatives; Jackie Borain Transnet Corporate JHB

**Cc:** Tshepo Matlamela Transnet Corporate JHB; Mokoena, S. (Sifiso); Griffin, P. (Paul)

**Subject:** RE: 2015/05/08 TRANSNET SOC LTD Deposit settlements Interest Claim

Hi Nadine,

I will revert back to you shortly.

Rgds,

Steve

**From:** NedCap Operations - Derivatives [<mailto:TreasuryDerivatives@Nedbank.co.za>]

**Sent:** 01 June 2015 12:30 PM

**To:** NedCap Operations - Derivatives; Jackie Borain Transnet Corporate JHB; Stephen Mamabolo Corporate JHB



**Cc:** Tshepo Matlamela Transnet Corporate JHB; Mokoena, S. (Sifiso); Griffin, P. (Paul)  
**Subject:** RE: 2015/05/08 TRANSNET SOC LTD Deposit settlements Interest Claim

Hi, Jackie

We nearing a month , please advise when the interest will be remitted .

Your urgent response hereto will be appreciated

Regards

Nadine

**From:** NedCap Operations - Derivatives

**Sent:** 28 May 2015 10:03 AM

**To:** NedCap Operations - Derivatives; Jackie Borain Transnet Corporate JHB; Stephen Mamabolo Corporate JHB

**Cc:** Tshepo Matlamela Transnet Corporate JHB; Mokoena, S. (Sifiso); Griffin, P. (Paul)

**Subject:** RE: 2015/05/08 TRANSNET SOC LTD Deposit settlements Interest Claim

Hi, Jackie

Please forward proof of payment .

Regards

Nadine

**From:** NedCap Operations - Derivatives

**Sent:** 22 May 2015 11:52 AM

**To:** Jackie Borain Transnet Corporate JHB; NedCap Operations - Derivatives; Stephen Mamabolo Corporate JHB

**Cc:** Tshepo Matlamela Transnet Corporate JHB; Mokoena, S. (Sifiso); Griffin, P. (Paul)

**Subject:** RE: 2015/05/08 TRANSNET SOC LTD Deposit settlements Interest Claim

Hi, Jackie

We were overdrawn due to non-receipt of funds on value . the standard charge is Prime /+ , we have only enforced and debit rates differs .

Regards

Nadine

**From:** Jackie Borain Transnet Corporate JHB [<mailto:Jackie.Borain@transnet.net>]

**Sent:** 22 May 2015 10:14 AM

**To:** Dick, N. (Nadine); NedCap Operations - Derivatives; Stephen Mamabolo Corporate JHB

**Cc:** Tshepo Matlamela Transnet Corporate JHB; Mokoena, S. (Sifiso); Griffin, P. (Paul)

**Subject:** RE: 2015/05/08 TRANSNET SOC LTD Deposit settlements Interest Claim

Good Day Nadine,

Hope you are doing well.

Please advise why you are charging us a rate of 9.25% Prime?

As per the attached we are only earning the respective said rates from Nedbank for the 4 days when the funds were on the prime rate.

I await your reply and I hope that we will be able to resolve the matter swiftly.

Thank you and kind regards,

Jackie Borain Transnet Corporate JHB

**From:** Dick, N. (Nadine) [mailto:nadined@Nedbankcapital.co.za]  
**Sent:** 18 May 2015 02:45 PM  
**To:** Jackie Borain Transnet Corporate JHB; NedCap Operations - Derivatives  
**Cc:** Tshepo Matlamela Transnet Corporate JHB; Mokoena, S. (Sifiso); Griffin, P. (Paul)  
**Subject:** RE: 2015/05/08 TRANSNET SOC LTD Deposit settlements Interest Claim

Hi, Jackie

Please advise feedback on the below .

Regards  
 Nadine

**From:** Dick, N. (Nadine)  
**Sent:** 14 May 2015 04:18 PM  
**To:** 'Jackie Borain Transnet Corporate JHB'; NedCap Operations - Derivatives  
**Cc:** Tshepo Matlamela Transnet Corporate JHB; Mokoena, S. (Sifiso); Griffin, P. (Paul)  
**Subject:** RE: 2015/05/08 TRANSNET SOC LTD Deposit settlements Interest Claim

Hi, Jackie

We have received funds value 12.05.2015 . Thanks! Please note our interest claim below :

29 006 311	650 000 000.00	ZAR	2015/05/08	I_TREASURY_BSM_TRAD_NB	TRANSNET	658 904.11
				(R650 mil * 4days *9.25% Prime / 365 = 658 904.11)		
29 006 280	650 000 000.00	ZAR	2015/05/08	I_TREASURY_BSM_TRAD_NB	TRANSNET	658 904.11
				(R650 mil * 4days *9.25% Prime / 365 = 658 904.11)		
29 005 976	700 000 000.00	ZAR	2015/05/08	I_TREASURY_BSM_TRAD_NB	TRANSNET	709 589.05
				(R700 mil *4days*9.25%Prime / 365 = 709589.05)		

**Total**

**2 027 397.27**

Please  
 credit  
 interest  
 claim total  
 to our  
 account  
 1570000018  
 under  
 advice to  
 ourselves.

Regards  
 Nadine

**From:** Jackie Borain Transnet Corporate JHB [<mailto:Jackie.Borain@transnet.net>]  
**Sent:** 12 May 2015 03:56 PM  
**To:** Dick, N. (Nadine)  
**Cc:** Tshepo Matlamela Transnet Corporate JHB  
**Subject:** RE: 2015/05/08 TRANSNET Deposit settlements

Good day Nadine,

Herewith the reference numbers as requested.

R650m – 0512ZAPS05752TRAN SNET

R700M – 0512ZAPS05752T RANSNET

R650M – 0512ZAPS05753 TRANSNET

Thank you and regards,

Jackie Borain

**From:** Tshepo Matlamela Transnet Corporate JHB  
**Sent:** 12 May 2015 02:44 PM  
**To:** Jackie Borain Transnet Corporate JHB  
**Subject:** FW: 2015/05/08 TRANSNET Deposit settlements

Hi Jackie

Can you please forward proof of payment to Dick from Nedbank and cc me.

Regards,

Tshepo

**From:** Dick, N. (Nadine) [<mailto:nadined@Nedbankcapital.co.za>]  
**Sent:** Tuesday, May 12, 2015 2:34 PM  
**To:** Griffin, P. (Paul); Tshepo Matlamela Transnet Corporate JHB; NedCap Operations - Derivatives  
**Subject:** RE: 2015/05/08 TRANSNET Deposit settlements

Hi, Tshepo

Following our telecom , refer below allocation. Please remit proof of payment .

Regards

Nadine

**From:** Griffin, P. (Paul)  
**Sent:** 12 May 2015 02:28 PM  
**To:** Dick, N. (Nadine)  
**Subject:** FW: 2015/05/08 TRANSNET Deposit settlements

&lt;image005.jpg&gt;

**Paul Griffin****Assistant Manager, FICC Operations | Nedbank Limited**Second Floor Block F Nedbank 135 Rivonia Campus 135 Rivonia Road Sandown Sandton 2196 South Africa | PO  
t +27 (0)11 295 7232 f +27 (0)11 294 7232 @ [paulg@nedbank.co.za](mailto:paulg@nedbank.co.za)  
Website: [nedbank.co.za](http://nedbank.co.za)

&lt;image007.jpg&gt;

THINK BEFORE YOU PRINT - At Nedbank we are committed to minimising environmental impact and encourage the preservation of natural capital.

**From:** NedCap Operations - Derivatives**Sent:** 08 May 2015 04:03 PM**To:** [Jackie.borain@transnet.net](mailto:Jackie.borain@transnet.net)**Cc:** Visnenza, M. (Mario)**Subject:** 2015/05/08 TRANSNET Deposit settlements

Sirs,

According to our records the following new DEPO settlements are due today.

Please confirm your agreement.

Regards,

Paul

Instrument Type	Trade	Amount	Curr	Value Day	Counterparty
Deposit	29 006 311	650,000,000.00	ZAR	2015/05/08	TRANSNET
Deposit	29 006 280	650,000,000.00	ZAR	2015/05/08	TRANSNET
Deposit	29 005 976	700,000,000.00	ZAR	2015/05/08	TRANSNET

&lt;image005.jpg&gt;

**Paul Griffin****Assistant Manager, FICC Operations | Nedbank Limited**Second Floor Block F Nedbank 135 Rivonia Campus 135 Rivonia Road Sandown Sandton 2196 South Africa | PO  
t +27 (0)11 295 7232 f +27 (0)11 294 7232 @ [paulg@nedbank.co.za](mailto:paulg@nedbank.co.za)  
Website: [nedbank.co.za](http://nedbank.co.za)

[  
<http://www.nedbank.co.za/terms/DirectorsNedbank.htm>  
]

This email is confidential and is intended for the  
addressee only. The following link will take you to  
Nedbank's legal notice.

[ <http://www.nedbank.co.za/terms/EmailDisclaimer.htm>  
]

## **REPORT 2(B) – EXHIBIT 18**

## Interest claim for late settlement of deposit

from 08 May to 12 May 2015 = 4 days

Deposit amount	Rate	Interest
R 650 000 000.00	7.45%	R 530 684.93
R 650 000 000.00	7.55%	R 537 808.22
R 700 000 000.00	6.90%	R 529 315.07

## Interest claim for late settlement of interest claim

From 12 May - 18 June 2015 = 38 days

Deposit amount	Rate	Interest
R 530 684.93	7.45%	R 4 116.08
R 537 808.22	7.55%	R 4 227.32
R 529 315.07	6.90%	R 3 802.36

Total interest due on 18 June 2015

R 1 600 052.99

## **REPORT 2(B) – EXHIBIT 19**



**Interest claim for late settlement of Deposit Amount**

From 08-May-15  
 To 12-May-15  
 Days 4

Deposit Amount	Deposit Rate	Interest
R 650 000 000.00	6.90%	R 491 506.85
R 650 000 000.00	7.45%	R 530 684.93
R 700 000 000.00	7.55%	R 579 178.08

**Interest claim for late settlement of Interest Claim**

From 12-May-15  
 To 19-Jun-15  
 Days 38

Interest Claim	Deposit Rate	Interest
R 491 506.85	6.90%	R 3 530.77
R 530 684.93	7.45%	R 4 116.08
R 579 178.08	7.55%	R 4 552.50

**Total Interest Claim due 19-Jun-15** R 1 613 569.21

**Interest claim for late settlement of Deposit Amount**

From 08-May-15  
 To 12-May-15  
 Days 4

Deposit Amount	Deposit Rate	Interest
R 650 000 000.00	6.90%	R 491 506.85
R 650 000 000.00	7.45%	R 530 684.93
R 700 000 000.00	7.55%	R 579 178.08

**Interest claim for late settlement of Interest Claim**

From 12-May-15  
 To 19-Jun-15  
 Days 38

Interest Claim	Deposit Rate	Interest
R 491 506.85	6.90%	R 3 530.77
R 530 684.93	7.45%	R 4 116.08
R 579 178.08	7.55%	R 4 552.50

<b>Total Interest Claim due 19-Jun-15</b>	<b>R 1 613 569.21</b>
---	-----------------------

## **REPORT 2(B) – EXHIBIT 20**

**Noluthando Masondo**

---

**From:** Tewodros Gebreselasie <TewodrosG@regiments.co.za>  
**Sent:** 20 July 2015 14:05  
**To:** Phetolo Ramosebudi Transnet Corporate JHB  
**Cc:** Nswana Mwangu; Eric Wood  
**Subject:** Response to Nedbank  
**Attachments:** Response to Nedbank.docx; 16441-PUB Banking Finance Update AUGUST 2013 (WEB) (1).pdf

Hi Phetolo,

Please find attached the document prepared in response to Nedbank's two emails on the club loan (You can cut and paste the table to your email should you decide to send it to Nedbank).

Attached is also a primer on club loans, they just mention that sometimes one may find a favored nations clause but it does bias other lenders.

 Kind regards

TED

**Disclaimer**

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful. To read our detailed Email Legal Notice please visit: [www.regiments.co.za/EmailDisclaimer](http://www.regiments.co.za/EmailDisclaimer).

This email has been scanned for viruses and malware, and automatically archived by **Mimecast SA (Pty) Ltd**, an innovator in Software as a Service (SaaS) for business. **Mimecast Unified Email Management™ (UEM)** offers email continuity, security, archiving and compliance with all current legislation. To find out more, [contact Mimecast](#).



<b>Your Question 1</b>	Are payments to CSR and CNR on the locos required to be made in Rands or USD? If USD, what hedging has been done (this question comes in light of recent PRASA reports on not hedging and impact thereof)
<b>Our Response</b>	Per the signed locomotive supply agreements signed with all locomotive suppliers, Transnet will pay all suppliers in Rand.
<b>Your Question 2</b>	We need to understand how long it takes for the locos to come to SA (build period) and then from thereon, how long it takes for Transnet to commission it into use. Are any locos being built in SA and how will that work?
<b>Our Response</b>	CSR and CNR will be paid as they meet payment milestones (effective date, design freeze, acceptance, and retention). Transnet will receive delivery of all the locomotives in 3 years. This timeframe includes the work to be done by TE in Pretoria and Durban.
<b>Your question 3</b>	Please advise on process and timing plan for the entire transaction.
<b>Our Response</b>	Transnet would like to close this deal by 3 July 2015. This is of course dependent on getting the necessary approvals from all funders.
<b>Your question 4</b>	Please advise us the legal counsel for Transnet
<b>Our Response</b>	Ndiphiwe Silinga is the Group Legal and Compliance and Moleboge Lekwane legal Advisor
<b>Your question 5</b>	Please confirm what the mandate of the legal counsel is in terms of providing legal opinions ((1) capacity and authority and (2) validity and enforceability (including aspects relating to the PFMA)) to the funders
<b>Our Response</b>	Transnet's legal council is mandated to make sure that the legal and commercial terms are captured in the facility agreement and in ensuring compliance to all relevant legislations including the PFMA.
<b>Your question 6</b>	<p>In respect to External Legal Council:</p> <ul style="list-style-type: none"> <li>• Eric, you advised that Transnet would pay for the lenders' external legal counsel provided credit approval is obtained. We are at the stage though that credit approval and legal processes need to run parallel to attempt to meet the tight timelines set by yourselves. We will therefore provide legal comments based on our internal reviews, but this will be subject to external legal comments, to be provided in due course should we obtain credit approval.</li> <li>• We need to understand from Transnet what they require from us to approve the appointment of the lenders' external legal counsel.</li> </ul>
<b>Our Response</b>	<ul style="list-style-type: none"> <li>• Each party will be responsible for their legal costs, the draft facility agreement provided to all the lenders is what Transnet is comfortable with.</li> <li>• None (provided you bear the costs for the Lender's legal counsel)</li> </ul>
<b>Your question 7</b>	Loan profiles and pricing:

	<ol style="list-style-type: none"> <li>1) All our approvals are being based on the price of 270bps and the profile of 15 years, 54 month capital moratorium, 24 month drawdown. To the extent that the clearing price is lower, we will need to advise our committees accordingly. It is therefore imperative that you provide us with the clearing price soon.</li> <li>2) Please advise on the final profile of the loan that will be included in the loan agreement – the current profile shows monthly drawdowns, etc.</li> </ol>
<b>Our Response</b>	<ol style="list-style-type: none"> <li>1) It appears to us the club loan will be cleared at <u>3m</u> Jibar plus 260bps</li> <li>2) Loan profile: <ul style="list-style-type: none"> <li>• Quarterly repayment</li> <li>• Capital grace period of 54 month</li> <li>• Availability period of 24 months</li> <li>• Loan tenor of 15 years</li> </ul> </li> </ol>
<b>Your question 8</b>	The current draft of the loan agreement does not reflect the mechanics of this transaction and work still needs to take place to align it appropriately – an example is the fact that the loan profiles, multiple drawdowns, etc. are not catered for in the loan document. Please ensure that the loan drawdowns coincide in terms of interest rate periods and capital repayments so that we are not running 24 different loan profiles, but one consolidated loan profile.
<b>Our Response</b>	Please indicate how you would like this issue to be addressed in the facility agreement. We are happy to consider your proposal and discuss with you if we have any concerns
<b>Your question 9</b>	<p>Our other high level comments at this stage are (this will be followed by detailed comments on the loan agreement next week):</p> <ol style="list-style-type: none"> <li>1) Financial covenants – Transnet advised that they would provide us with the financial covenants on the loan, this is not included in the loan agreement; please advise.</li> <li>2) Prepayment penalties – we require prepayment penalties to be included in the loan agreement (we will propose the detail in our comments next week).</li> <li>3) Favoured Nations Clause – as we are signing bilateral agreements, we require this clause to ensure consistency across all loan agreements.</li> <li>4) Multiple loan drawdowns – we require confirmation of the loan profile and drawdowns – the lenders will require notice periods for drawdowns.</li> </ol>
<b>Our Response</b>	<ol style="list-style-type: none"> <li>1) See the facility agreement sent to you earlier, most of Transnet loans do not have financial covenants. However, to the extent that the participants of the Club loan require, we can include in the facility agreement a gearing ratio of 60% and interest cover at 2.5 x</li> <li>2) We will review once you send us your proposal in relation to the prepayment penalty</li> <li>3) Please remember the <i>pari passu</i> clause. We will give our inputs and comments on the Favoured Nations Clause that you would like us to consider.</li> <li>4) You can mark up the draft facility agreement we sent out with your proposed notice period for drawdowns. We will discuss with you once we receive the proposal.</li> </ol>







AUSTRALIA'S GLOBAL  
LAW FIRM

# Banking & Finance Update

August 2013

## Welcome

### Welcome to the August issue of the Banking & Finance Update

In this issue we discuss some of corporate Australia's most favoured funding options including syndicated and club facilities as well as the opportunities for Australian companies to raise US denominated debt via the Term Loan B and High Yield markets. Our team will explain key features of each and highlight some of the advantages and disadvantages that each financing approach presents.

Our tax group will also discuss the application of new laws that are designed to limit the extraction of profits from Australia at low tax costs.

We hope you enjoy this edition.



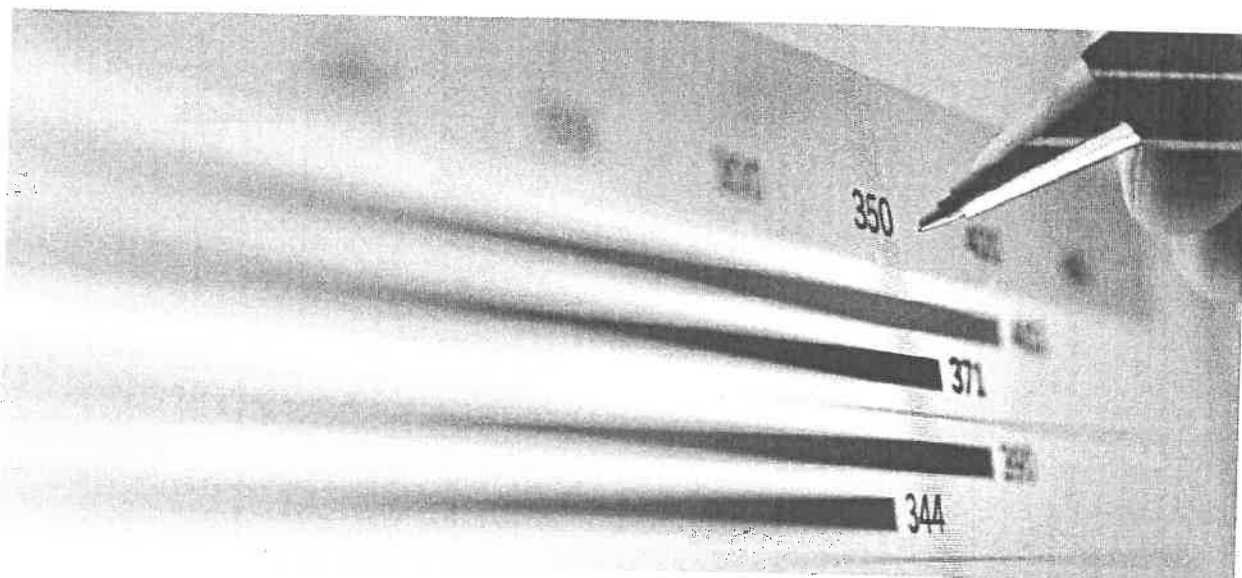
Paul Jenkins  
Partner  
paul.jenkins  
@ashurst.com



Martin Coleman  
Partner  
martin.coleman  
@ashurst.com

### Contents

Welcome	1
Most favoured arrangements: a trend towards club financings	2
Syndicated Finance – a primer	4
Transfer pricing	7
Accessing the US Capital Markets	9



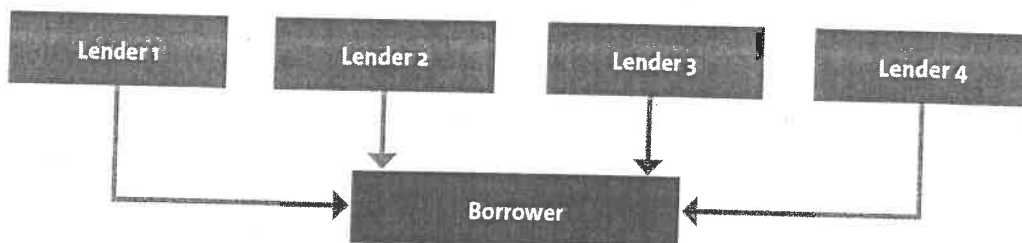


### What you need to know

With the uncertainty in the global economy continuing, many borrowers are using their relationships with banks to seek more competitive sources of funding by way of bilateral or club loans.

### What is a club loan?

A club loan is a form of multi-bank financing whereby several banks lend to the same borrower on materially the same terms (other than pricing), but there is no bank syndicate or facility agent, and the financing is usually self-arranged by the borrower.



A borrower may opt for a club structure where it considers that it can obtain cheaper pricing and/or more favourable terms by individually negotiating with each financier. As pricing is not uniform, there may be competitive pressures on the financiers to agree to more favourable terms for the borrower.

A key distinction between a syndicated financing and a club financing is that a club financing does not involve an agent acting as an intermediary between the borrower and the financiers. Instead, the borrower in a club deals directly and independently with each financier.

## Typical structure

While there are a few different ways in which a club loan can be structured, the most common structure we've seen recently is as follows:

- **Common Terms Deed:** All the financiers and the borrower (and any guarantors) enter into a Common Terms Deed, which contains the provisions that are common to all financiers, such as definitions, representations and warranties, undertakings, reporting obligations, financial covenants, events of default, review events etc. The document may contain a "most favoured nations" clause to prevent the borrower giving more favourable security and terms (other than in relation to pricing and the mechanics of the loan) to other financiers in the club.
- **Separate, bilateral agreements:** In addition, there will be separate, shorter facility agreements for each financier which deals with the mechanics of providing the loan and sensitive, commercial terms (eg fees and pricing).
- **Common security:** If the facilities are secured, common security is usually held by a security trustee for the benefit of all the financiers. Depending on the deal, the security may only be enforced by a decision of the majority of financiers or alternatively an individual lender may be able to trigger enforcement. Ordinarily, each club financier would rank *pari passu* in terms of payment rights under the security.

## Advantages and disadvantages of a club financing

from a borrower's perspective some advantages and disadvantages of a club financing structure are:

### Advantages

- **Pricing:** Pricing in a club financing should be better for the borrower. The margin in a syndicated loan usually ends up with the highest price of the syndicate members (ie the price required to get the last dollar in the door), whereas with a club loan the borrower can accept each bank's separate offer and take advantage of lower prices.
- **Terms and conditions:** Given the direct relationship between the borrower and the financiers, and the fact that the financiers act independently, a strong borrower may be able to seek more favourable terms and conditions (eg financial covenants and other undertakings) in a club financing.

- **Flexibility on drawings, repayments and exiting a financier:** A club financing may not require the borrower to drawdown from, and repay, each financier at the same time. As such, the borrower may have the flexibility to drawdown the cheapest debt first and fully repay, and cancel the commitment of, one financier earlier than another. This may be useful for a borrower where it no longer wishes for a particular financier to be involved going forward. From a financier's perspective, a club loan may provide more flexibility on the ability to offer different products.
- **Reduced administration costs:** As a club financing does not have a facility agent or, generally, an arranger appointed, the borrower will not incur additional administration fees which are paid to those finance parties (however, see "No agent" below).
- **Diversification:** A club facility (as opposed to a single bank deal) will allow a borrower to maintain relationships with multiple banks, which can provide competitive tension, but may also provide benefits in terms of maintaining diversity in bank relationships.

### Disadvantages

- **Approvals:** If the borrower needs to seek any consents or waivers, depending on the structure of the deal, it may not have the benefit of a "majority financier" regime and instead will need to seek individual consents and waivers from each financier.
- **Enforcement:** Unless the structure has been "dressed up" as a syndicated loan with a majority financier voting regime, each financier may have a veto right and may be able to individually take action upon the occurrence of an event of default.
- **No agent:** While the borrower may benefit from not paying any agency fees in a club financing, the borrower may incur additional costs in directly dealing with all the financiers (rather than dealing directly with an agent who would usually liaise with the financiers). This may include higher internal costs, and higher external legal costs for the financiers, because there is generally no agent or documentation bank to coordinate the dealings with the financiers' counsel.



Gaelan Cooney  
Partner  
gaelan.cooney  
@ashurst.com



Marina Tinning  
Senior Associate  
marina.tinning  
@ashurst.com

# Syndicated Finance – a primer

## What you need to know

Syndicated financing – a mechanism for multiple financial institutions (including more recently, credit funds) to provide financial accommodation to a borrower via a “facility agent” – is a technology rather akin to the internet. Its strength extends back barely past the 1990s, but it is now ubiquitous, a necessary utility, a novelty turned into the commonplace. Multi-lender corporate and property financings, leveraged and acquisition financings, project and infrastructure financings: all such transactions are commonly built upon the rock of a syndicated financing structure.

## The basics

Pressure points in the syndicated debt market evolve over time, but the basics remain constant. In a syndicated financing, the lenders will “participate” (through their “facility office”) in common loans made to the borrower via a facility agent (typically, a department of the same legal entity as one of the lenders). This is distinct from a club financing, where the club banks will provide separate bilateral loans directly to the borrower (see the separate article in relation to club financings in this Banking and Finance Update).

Where a syndicated financing is secured, the security will be held on trust for the relevant beneficiaries (typically, the lenders, hedge banks, transactional facility providers, and the facility agent and the security trustee themselves, in their personal capacities) by a security trustee (typically a related body corporate of one of the lenders) pursuant to a security trust deed.



## The chronology

A typical syndicated financing may walk the following path:

1. **Mandate letter:** A financial institution, or multiple financial institutions, may be mandated to arrange the facility for the borrower.
2. **Commitment letter:** The arranger may also offer to underwrite the facility – that is, committing to providing the entire facility to the extent that it is not able to sell down portions of that facility to other participants – on the terms set out in a term sheet. Those terms should represent a balance between the borrower and the syndications market. A fee will be paid for that underwrite.  
A commitment letter may include provisions relating to:
  - a. In an acquisition finance context, a “certain funds” provision will put the financier “on the hook” to provide its commitment, subject to a limited subset of the usual list of conditions precedent, so as to demonstrate (for example, to a vendor) the certain availability of funding.
  - b. Market flex: An arranger may seek the flexibility to change the structure, terms and pricing of the facility if necessary for the purposes of successful syndication of the facility.
  - c. Clear market: A borrower may be restricted from seeking or incurring debt in a particular debt market for a period, so as to increase the possibility of successful syndication of the facility.
3. **Information memorandum:** The arranger, together with the borrower, will prepare an information memorandum: a marketing document designed to provide prospective financiers with information about the borrower and the facility, including indicative or agreed terms. For larger sell-downs, there may be a roadshow.
4. **Formal documentation:** Once commitments have been sourced from syndicate financiers, a facility agreement and all necessary ancillary documentation will be prepared. In the Australian market, while most firms have their own syndicated facility precedent documents, the Asia-Pacific Loan Markets Association’s precedent documents – based on the London Loan Markets Association documentation – represent a quasi-market standard for investment grade borrowers. Indeed, negotiations for many syndication facilities these days, including sub-investment grade borrowers, will often be based on skeleton APLMA documents that have been tailored, or commonly invoke APLMA provisions in relation to a number of issues – including market disruption, increased costs clauses, and agency provisions – as a market standard.

## Pressure points in syndicated financings

### Financier decision-making

Through the course of a facility term, the financiers may need to make several decisions, ranging from ordinary-course confirmations that conditions precedent to first drawdown have been satisfied, through to providing consents and waivers to the borrower, right through to – where the borrower has defaulted – deciding whether to accelerate a loan and instruct the security trustee to enforce the securities.

Financiers and the borrower will need to agree those decisions that require the instructions of all lenders, and those decisions that require only the instructions of the “majority lenders”.

Typically, it is only fundamental decisions that will require the instructions of all lenders. These might include:

- approval of conditions precedent prior to first drawdown;
- reductions in pricing;
- increases in, or extensions to, a commitment.

Other decisions will require the instructions of only the “majority lenders”, whose instructions will bind the other lenders. The concept of “majority lenders” may be defined by reference to the lenders’ commitments or participation in outstanding loans, and the proportion of commitments or participation that will constitute the “majority” in any particular transaction – usually, 50%, 66 2/3% or 75% – will vary, depending on the make-up of the syndicate. Suffice to say, lenders with a large hold in a tight syndicate will customarily seek a definition of “majority lenders” which effectively provides them with a blocking vote (for example, a lender with a 35% hold may seek a “majority lenders” definition of 66 2/3%); lenders with a small hold will customarily seek the percentage of voting power which comprises the “majority lenders” to be higher, so as to maximise the possibility of their vote being required in any decision-making process. From a borrower’s perspective, a lower threshold for “majority lenders” is a knife that cuts both ways: that lower threshold may make it easier for consents and waivers to be obtained, but may also make it easier for sufficient instructions for acceleration of a facility or enforcement of security to be obtained.

A facility agreement may provide for a lender to be disenfranchised where it has not responded to a specific amendment or waiver request within a pre-defined period of time: this is known as “snooze-and-lose”. Such provisions can be helpful for facility agents in managing unwieldy or large syndicates.

Less commonly, a facility agreement might also allow the borrower to buy out a lender who does not accept a waiver or amendment request: this is known as “yank-the-bank”.

## Assignment

"Balance sheet management" became a mantra of many banks during the global financial crisis. To preserve their exits, financiers will commonly seek the ability to freely assign their rights and novate their obligations under a syndicated facility agreement without any consent of the obligors being required. Where obligors manage to negotiate a general consent requirement, a facility agreement may nevertheless provide that consent is not required in a number of circumstances, such as where:

- an event of default is continuing;
- the assignment or transfer is to another existing lender or an affiliate; or
- the assignment or transfer is to a securitisation vehicle where the transferring lender remains lender of record.

Borrowers and, on occasion, lenders may have sensitivity around certain categories of persons being able to join the lender syndicate. Borrowers, for example, may seek to limit syndicate membership to their "relationship" banks; lenders may wish to limit syndicate membership to those whose interests are more likely to be aligned to their own. Such drivers may be dealt by a number of different mechanisms, including:

- imposing a minimum-ratings or a regulatory status requirement on proposed new lenders;
- white-lists (of pre-approved new lenders); and
- black-lists (of persons who are prohibited from becoming lenders).

Care should also be taken as to whether the sub-participation provisions permit restrictions on assignment to be side-stepped. Financiers, including hedge funds and financiers fronting for them, will often look to use those provisions to transfer debt where possible.

## Administrative parties

### The Agent

The Agent is responsible for administering the syndicated facility on a daily basis. Notably, the Agent will serve as:

- **contact point between the borrower and the lenders:** for example, the Agent will be the party that receives drawdown notices from the Borrower;
- **calculation agent:** for example, the Agent will determine the amount in which each lender must participate in a loan, and the base rate for the interest period of a loan;

- **paying agent:** for example, lenders will make their participation available to the Agent, who will then advance the funds to the borrower. Similarly, interest and amortisation payments will be made by the borrower to the Agent, who will then distribute funds on a pro-rata basis to the lenders. One occasional exception to this role, especially in the case of smaller syndicates where the borrower or lenders wish to maintain confidentiality, relates to establishment fees, which may be documented by fee letters, and paid, pursuant to bilateral arrangements between the borrower and each lender.

## The Security Trustee

In a secured syndicated financing, the Security Trustee will hold securities on trust for the relevant beneficiaries pursuant to a Security Trust Deed.

While decision-making by the Agent will commonly be on the basis of the instructions of the "Majority Lenders", decision-making by the Security Trustee (including in relation to enforcement) will commonly be on the basis of the instructions of the "Majority Beneficiaries": a broader concept, which will involve consideration of the commitment, participation or other exposures of agreed beneficiaries other than the syndicated lenders, including secured transactional facility providers, hedge banks (in some instances), and the facility agent and the security trustee themselves, in their personal capacities. Careful consideration should be given by the lenders as to which parties are allowed, and by which process such parties are allowed, to become beneficiaries under the Security Trust Deed.

The Security Trustee will customarily be a related body corporate of one of the lenders; in Australia, each of the four major trading banks has a separate related body corporate which commonly plays such a role. In a sole underwriting context where, initially, the security will be held on trust for one lender, the use of a separate body corporate (distinct from that one lender) eliminates the risk of the trust failing where the security trustee and the sole beneficiary would otherwise be one and the same. (There are other structuring solutions that can also deal with this risk.) However, the use of a separate body corporate (which is not an ADI) as security trustee does raise other issues. Notably, under the *Personal Property Securities Act 2009* (Cth), any security interest granted in favour of the non-ADI security trustee over a bank account cannot be automatically perfected by control.



Martin Coleman  
Partner  
martin.coleman  
@ashurst.com



Kenneth Nguyen  
Senior Associate  
kenneth.nguyen  
@ashurst.com



# Transfer pricing

## What you need to know

Governments around the world are taking steps to defend their tax bases by introducing new measures to prevent the extraction of profits at low tax costs. Against that background, new tax transfer pricing rules in Subdivisions 815-B to 815-D of *Income Tax Assessment Act 1997* apply from 1 July 2013.

The Australian Taxation Office (ATO) is likely to focus on the effect of the new rules on entities with international dealings who consistently report losses or lower taxable income than might be expected, given the value of sales or economic contributions to scales made in Australia by the entity or associated entities.

In addition to covering transactions between legal entities, the new rules contain provisions for allocating income and deductions to a permanent establishment (PE) of an entity, including a branch. Those rules go some way towards recognising that "dealings" between a PE and other parts of the same entity are to be taken into account in allocating profits to the PE. But there are serious practical difficulties in determining the actual external income and expenses to allocate.

## What you need to do

All taxpayers will have to consider the potential effect of the new rules, especially as they apply automatically (ie on a self-assessment basis) and do not depend on the Commissioner making a transfer pricing determination.

## The new inter-entity rules

The new inter-entity rules apply if at least one of the entities is a non-resident not operating through an Australian PE or is an Australian resident operating through a foreign PE. No common control or ownership is required. The inter-entity rules also apply for the purpose of calculating the taxable income of an Australian branch of a foreign financial institution if "deemed separate entity" treatment of the branch applies under Part IIIB of *Income Tax Assessment Act 1936*.

The rules are modelled on, but are not identical to, the OECD's *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* published in 2010 (OECD TP Guidelines). Where the new rules do not produce the same result as the OECD TP Guidelines, the new rules will prevail unless overridden by a tax treaty.



In general, the pricing of actual transactions between entities will be tested by applying one or more of the accepted transfer pricing methodologies directly to those transactions. However, if the form of the arrangements between the parties does not reflect the substance of the arrangements, the "arm's length conditions" (essentially, appropriate market prices) are to be established by reference to the substance of the commercial and financial relations between the entities. Furthermore, if independent entities acting at arm's length would not have entered into the actual relations, the "arm's length conditions" are to be established by reference to:

- the commercial and financial relations that independent entities would have entered into, or
- if independent entities would not have entered into any commercial or financial arrangements, "an absence of commercial or financial relations". In this case, the relevant "arm's length conditions" (broadly, the appropriate prices) would self-evidently be nil.

These reconstruction provisions have the potential to result in radical adjustments in determining an entity's taxable income. We expect that many transfer pricing disputes in future will involve a question as to whether or not actual transactions are to be reconstructed or disregarded entirely, before the arm's length pricing test is applied. For example, if a taxpayer consistently reports losses the ATO might argue that independent entities would not have entered into the actual commercial and financial arrangements, and so the results of the actual arrangements should be compared with the results of not entering into any arrangements or entering into different arrangements.

There is also the potential for dispute over the transfer pricing method that should be used to determine the "arm's length conditions" (essentially, appropriate market prices). Unlike the OECD TP Guidelines, the new provisions do not give clear priority to transactional methods (for example, the comparable uncontrolled price, or CUP) method over profit-based methods (ie methods which aim to determine prices in a manner which appropriately splits the overall profits from an economic activity conducted by two or more related enterprises).

Nevertheless, there is a strong argument that the preference given by the OECD TP Guidelines to transactional methods should be respected in the application of the new rules. On that basis, it should be possible to justify the pricing of transactions in most cases by reference to a CUP if a reliable CUP can be found for the transaction, and reliable adjustments can be made to take account of differences between the circumstances surrounding the reference data and the circumstances in which the actual transaction was entered into.

## The new profit attribution rules for PEs

New rules for attributing profits to PEs (including branches) adopt the principles set out in the 2010 OECD Report *Attribution of Profits to Permanent Establishments (OECD PE Report)* but they specifically stop short of deeming internal "dealings" between a PE and other parts of the enterprise to be equivalent to legal transactions.

In broad terms, the rules require that intra-entity dealings be identified in accordance with the OECD PE Report and then priced in accordance with the OECD TP Guidelines, but the results must then be translated, in a manner not dealt with in the new rules, into allocations of actual income and actual expenses to the PE. In many cases, particularly in the context of banking operations, it will not be possible to identify specific items of income and expense to attribute to a branch as a result of an internal dealing.

The Board of Taxation recently reported to Government on the advantages and disadvantages of adopting the authorised OECD approach (AOA) to the attribution of profits to PEs. Under the AOA, dealings between PEs and other parts of the same enterprise are in general treated in the same way as transactions with third parties. The Government has not yet announced its response to the Board's report. Should the AOA be adopted, the financial results of internal dealings will generally be treated as items of income and expense. This will resolve many of the difficulties that arise in applying the new profit attribution rules.

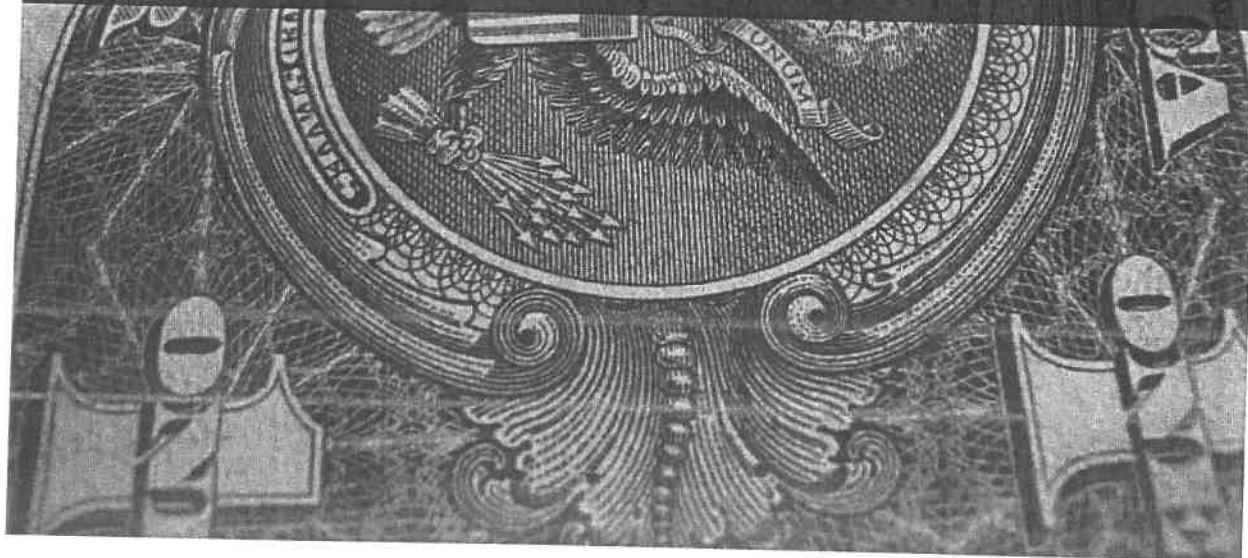


Ian Fullerton  
Consultant  
ian.fullerton  
@ashurst.com



# Accessing the US Capital Markets

## Term Loan B's and High Yield Bonds



### The Current Climate

The past eighteen months has seen a rally in the US "Term Loan B" ("TLB") and high yield bond ("HYB") markets driven by a combination of inter-related factors: US investors' search for yield in the face of declining interest rates, an increased focus by investors on TLB and HYB as an attractive investment, an increased allocation by traditional HYB investors of their portfolios in TLB's as a means to hedge against the prospect of rising interest rates, a revived CLO market looking for TLB assets to allocate to portfolios (\$55bn of new CLO issuances in 2012 and \$38bn in the first half of 2013) and increased competition and over-subscription among investors for TLB syndicate allocations, all squeezing pricing further in the borrower's favor.

The concern as to the impending 2013/14 wall of maturity for leveraged loans is waning (an average pace of \$30bn of refinancings per month during 2012) and borrowers are finding investors with a renewed appetite for more aggressive financings such as dividend recaps. Increased demand from investors has, as in prior cycles, lead to more issuer-friendly financings featuring higher leverage, lower spreads, less or no original issue discount and more flexible covenant packages, with a resurgence of TLB covenant-lite deals.

"Increased demand from investors has, as in prior cycles, lead to more issuer- friendly financings featuring higher leverage, lower spreads, less or no original issue discount and more flexible covenant packages, with a resurgence of TLB covenant-lite deals."

### Opportunities for Australian Corporates

The current climate has opened the door for Australian corporates seeking to raise US Dollar-denominated debt in the US markets in lieu of, or as a supplement to, a concurrent Australian Dollar financing in their home market. The past twelve months has seen a variety of US Dollar TLB and HYB deals including senior unsecured bond offerings from Nufarm Limited (US\$325mm), Ausdrill Limited (US\$300mm) and BlueScope Steel Limited (US\$300mm) and TLB's by Fortescue (US\$5bn) and Atlas Iron Ltd. (US\$325mm).

While there is a foreign currency exchange risk for a foreign issuer raising debt in another jurisdiction and the cost of hedging exposure may be significant, cheaper pricing on US TLB and HYB may off-set hedging costs. Additionally, a company may benefit from a natural hedge to the extent that it generates revenues in the US which may be sufficient to service the US Dollar debt.

So, assuming that a company is willing to explore this route, the next question is what do US TLB and HYB financings look like and how do they compare as alternative products?

## Term Loan B's and High Yield Bonds

There are various permutations of TLB and HYB financing structures in the US. An acquisition may be financed through a bank or bond issuance, or a combination of the two. A bond deal may take the form of senior secured or unsecured notes or senior subordinated notes. Such bonds may be issued with "registration rights" or "private for life". A bank financing may take the form of first and second lien facilities, include an amortizing term loan "A" tranche, or take the form of a "uni-tranche" facility. A borrower may need to opt for mezzanine financing or other form of junior debt to supplement its senior debt issuances. A company may have significant inventory and receivables to support an asset-based revolving facility versus a cash flow based alternative and its revolving facility may take priority as a "super senior" tranche. The appropriate structure for a particular issuer will be determined by a combination of factors including anticipated investor demand for specific tranches of debt, the intended use of proceeds, available collateral, the resulting leverage of the issuer, credit ratings and other deal-specific items.

For purposes of this article, we will focus on, non-investment grade financings for companies where a high-yield or term loan financing is a viable option.

### What are Term Loan B's and High Yield Bonds?

TLB is a term loan tranche of a bank financing held by institutional (versus traditional banks) with a maturity in the 5-7 year range and nominal amortization of 1% of principal per annum prior to a bullet repayment on final maturity, which as a result, is an attractive investment to investors seeking longer term paper. A TLB loan is often one tranche within senior secured credit facilities comprising term loan and revolving credit facilities. It differs to a term loan "A" tranche, which amortizes in full over the life of the loan and, traditionally held by bank (versus institutional investor) lenders.

HYB are non-investment grade debt securities, referred to as "notes", with a maturity of 5-10 years, issued to institutional investors in either a registered offering subject to the requirement of the *Securities Act 1933* (the "'33 Act") or a private placement in reliance upon available exemptions from registration (typically Rule 144A and Regulation S offerings) under the '33 Act (see "*Taking a Deal to Market*" below). Notes may take the form of senior secured, senior unsecured or senior subordinated (ie: subordinated to certain debt in the capital structure, such as existing bank facilities, but ranking senior to or pari passu with all other debt of the issuer).

The applicable market terms and process of execution differs significantly between a TLB and HYB financing, although there has been a recent convergence in covenant packages (see "*Covenants*" below). Such differences are important factors in a company's decision to undertake a financing comprising of either or both components.

## Some Key Differences Between TLB and HYB

	TLB	HYB
<b>Minimum Deal Size</b>	No minimum threshold for a syndicated bank loan – the smaller the size, the fewer number of lenders required to participate.	Threshold amount to undertake a 144A/Reg S offering is generally deemed to be \$100-150mm.
<b>Requirement to register with the Securities &amp; Exchange Commission</b>	Not applicable to TLB, since loans are not deemed to be “securities” for purposes of the <i>Securities Act 1933</i> .	HYB issued in a registered offering or private placements with registration rights, involve registration procedures required by the ‘33 Act. The process is generally more time consuming and costly than a TLB financing. See “Taking a Deal to the Market” below.
<b>Interest Rates and Pricing</b>	Floating rate based on LIBOR or the agent’s Base Rate (as elected by the margin is often determined by a pricing grid based on agreed leverage ratios offering the borrower a lower margin upon achieving a pre-agreed decreased leverage ratio. Interest is payable at the end of the relevant LIBOR period (ie: 30 days, 3, 6, 9 or 12 month as agreed) or calendar quarters for loans bearing interest at the Base Rate.	Fixed rate coupon payable semi-annually. Some deals may feature a “PIK” (payment-Borrower) plus an applicable margin. The in-kind) toggle feature allowing the issuer to elect to have a portion or all (depending on what portion of the interest rate is available to PIK) of the interest payment added to the outstanding principal balance of the note, instead of paying cash interest for the period.
<b>Voluntary Prepayments and Call Protection</b>	Lenders in bank financings did not traditionally receive the benefit of any protection against early repayment. However, “soft call” provisions began to appear for TLB (not TLA or revolving facilities) circa 2006 to compensate lenders for repricings or refinancings with new loans carrying an overall yield (based on margin and any original issue discount) that is less than the TLB loans being refinanced. The premium is typically 101-2%. Unlike HYB, a “soft-call” is only payable where yield is decreased as a result of a repricing or refinancing.	Note holders typically receive greater protection against repayment by way of call premiums. A note is usually non-callable for a period equal to the halfway point to maturity (ie: a 7 year note may have a 3 year non-call feature) with a premium payable on the principal repaid after expiry of the non-call period. The amount of the premium will decline towards maturity, for example a 7 year note may be non-callable prior to the 3rd anniversary of issuance and repayable at 103% in year 4, 102% in year 5, 101% in year 6 and at par thereafter. The non-call feature is subject to the issuer’s ability at any time to repay the principal subject to a “make-whole” payment, which is calculated based on the net present value of future payments owed to the holders through maturity. Electing to repay bonds under the make-whole option is costly and rarely invoked by issuers.
<b>Mandatory Prepayments</b>	A borrower would typically be required to use the net cash proceeds of an asset sale or insurance event, that are not otherwise reinvested within an agreed time frame, to prepay term loans. Term B lenders usually have the ability to refuse acceptance of their share of any payment, in which case, such amount would be retained by the borrower.  Term loans also typically include prepayments for excess cash flow, equity issuances and non-permitted debt issuances.	Issuers are required to make offers to holders with net cash proceeds of asset sales and insurance events in excess of an agreed threshold, to the extent not otherwise applied to repay other senior debt or be reinvested in new assets.  HYB deals do not include the concept of prepayments from excess cash flow or equity issuances.

	TLB	HYB
<b>Financial Covenants</b>	Typically include financial maintenance covenants (debt to EBITDA, interest or fixed charge coverage ratios) tested on a quarterly basis, unless a "Covenant Lite" loan (see "Covenants" below).	No maintenance covenants in a HYB, which instead includes covenants that are "incurrence-based", ie: a financial covenant (either a fixed charge coverage ratio or leverage ratio) is tested only when the issuer is seeking to incur debt, make an investment or restricted payment in excess of pre-agreed baskets.
<b>Change of Control</b>	A change of control is structured as an event of default, giving the majority lenders the ability to accelerate the loans and demand repayment. A change of control therefore typically triggers a refinancing of the existing credit facilities.	Different to a credit facility, in that a change of control is structured as a put right for the holders with a 1% premium. Therefore, upon a change of control, the HYB would remain in place unless a holder elects to be repaid at 101% of its outstanding principal.
<b>Events of Default</b>	<p>Generally more restrictive than compared to a HYB. Affirmative covenant breaches typically have the benefit of a 20-30 day grace period, with no grace periods for negative covenant breaches and agreed \$ thresholds for other categories of default including judgments, ERISA and environmental liabilities.</p> <p>Lenders may call a cross-default for other material debt upon (i) a payment default and (ii) other non-payment defaults with the expiration of applicable grace periods. Lenders do not have to wait for the other material debt to have been accelerated.</p>	<p>HYB default provisions are relatively more lenient than those for a TLB credit agreement. Breaches of significant covenants may have a 30 day grace period, extending to 60 days for less significant covenants.</p> <p>HYB contain cross-acceleration (versus cross default) giving the holders the ability to call a default only where a default under other material debt has resulted in the lenders of such material debt deciding to accelerate.</p>
<b>Acceleration</b>	Upon an Event of Default, lenders holding 50.1% of loans may instruct the agent to accelerate the loans.	Holders of at least 25% of the bonds may instruct the trustee to accelerate the bonds following an Event of Default.
<b>Amendments</b>	Amendments are possible and are managed through the administrative agent. The process and timing of gathering consents will depend on the size of the syndicate.	HYB deals are typically not amended after issuance since the procedure (a "consent solicitation") can be costly and time consuming involving the engagement of a solicitation agent (ie: there is no administrative agent to manage the noteholders) and payment of consent fees. This is one reason for why HYB covenants traditionally offered greater flexibility compared to bank financings.
<b>Replacement of Lenders/Holders</b>	A TLB would typically include a "yank-a-bank" provision giving the borrower the right to force individual lenders out of the syndicate (through a transfer of its loans to an existing or new lender) (i) if a lender is a hold-out lender in a vote requiring unanimous consent and a majority threshold has been reached and (ii) if a lender asserts its rights to compensation under the increased costs or tax gross-up provision.	No equivalent in a HYB deal giving the issuer the ability to force holders to sell their notes.

	TLB	HYB
<b>Debt Buy-Backs</b>	<p>Credit facilities typically include a restriction on the ability of the borrower or affiliates from acquiring loans from lenders on the basis that (i) the borrower should not be able to influence any voting within the syndicate and (ii) lenders should receive all payments from the borrower on a pro rata basis, without individual lenders being able to receive payment ahead of or disproportionately to other lenders (whether through a sale of the loans or otherwise).</p> <p>It is now common for credit agreements to include provisions permitting the borrower to purchase loans from lenders at a price less than par via modified dutch-auction procedures, as an alternative to prepaying loans at par under the optional prepayment provision. Loans purchased are deemed to be immediately cancelled. Affiliates of the borrower (such as the sponsor/equity investors) may also be permitted to become lenders, but subject to limitations as to voting rights and participation in lender meetings.</p>	<p>There are typically no documentary restrictions (other than applicable securities laws) around the ability of the issuer or its affiliates to purchase the issuer's notes in the open market from individual bondholders.</p>
<b>Inspection Rights for Lenders</b>	<p>A typical feature of a credit facility is to permit the lenders visitation and inspection rights of the borrower's properties, books and records. Usually limited outside of a default to a few visits per annum and acting through the Agent on behalf of the lenders.</p>	<p>No equivalent right for noteholders.</p>

## Taking a Deal to the Market

The process by which a company would raise debt through either a high yield issuance or a syndicated term loan differs significantly, in large part due to the fact that bonds are debt "securities" falling under the ambit of the '33 Act, while bank loans are not deemed to constitute securities.

## High Yield Bond issuances

Pursuant to the '33 Act, an offering of securities is required to either be conducted as a "registered offering" or rely on one of the available exemptions to registration, resulting in what is referred to as a "private placement".

Private placements are typically consummated under the exemptions available under Rule 144A or Regulation S. A Rule 144A offering permits the investment bank acting as the initial purchaser of the bonds to resell the bonds to an unlimited number of qualified institutional buyers ("QIB's") being large institutional investors with at least \$100 million of assets comprising securities. Regulation S provides an exemption for offerings of securities conducted outside of the US and is not limited to sales to sophisticated investors, such as QIB's. A company will often conduct a private placement under a combination of both 144A and Regulation S exemptions, which will result in the bonds being sold to QIB's within the US and other investors outside of the US.

## Registered offerings vs. private placements

- **Time & Cost:** the registration process takes additional time and cost to complete, since requires SEC review of the offering memorandum ("OM"). This is not necessary for a private placement.
- **SEC Reporting:** registration of bonds triggers an ongoing requirement that the issuer reports to the SEC, including disclosure of its financial statements, on a quarterly and annual basis.
- **Transferability:** securities issued in a private placement are restricted and subject (i) in the case of 144A bonds, minimum holding periods before they are freely transferable to the market and (ii) in the case of Regulation S bonds, resale only in reliance on Regulation S to non-US persons. This limitation is often addressed in providing purchasers with registration rights.

An issuer may be required (based on investor demand) to grant "registration rights" to holders, permitting holders (typically within an agreed period after issuance and subject to other conditions) to request that the issuer register bonds issued in a private placement with the SEC and thereby become freely transferrable. This is an important feature for investors since it provides the purchased bonds with enhanced liquidity, which can result in better pricing of the bonds for the issuer. However, registration results in the requirement for the issuer to report to the SEC.

## Term loan B financings

Since bank loans are not deemed to be securities for purposes of the '33 Act, they are not subject to the same requirements or limitations as to disclosure and transferability. The speed at which a bank financing may be consummated is dictated by the extent of the syndication required to find lenders to advance funds. In practice, this may require lender presentations similar to a road show conducted as part of a high yield offering together with a prospectus (a "bank book") that, due to disclosure requirements for a HYB offering, is less extensive than the OM in a HYB offering.

Year-to-date, 2013 has seen in excess of \$90 billion of covie-lite loan issuances, representing more than 50% of the overall US TLB market for 2013 (data according to S&P Capital IQ/LCD).

## Committed Financings

One of the key differences between a term loan and high yield financing is the fact that a term loan may, typically in the context of a financing supporting an acquisition, be "committed" or underwritten by the arranging bank(s), whereas a high yield deal would not. A committed bank financing would enable a corporate borrower to engage one or more banks to provide a financing commitment on pre-agreed pricing and terms, subject in the case of a syndicated financing, to the ability of those banks to "flex" the pricing and certain terms within agreed parameters, in order to ensure that the arranging banks can syndicate the deal into the market.

In the immediate aftermath of the credit crisis banks were cautious in providing commitments that could not be syndicated. However, as the market continues to improve and syndication confidence has returned (and currently oversubscribed), committed financings have returned to the arena.

In a high yield financing an investment bank is engaged to either place or underwrite (as an initial purchaser) the notes and the market "prices" the bonds, which takes place close to or contemporaneously with closing of the transaction. Where a high yield bond issuance forms part of a financing, and a committed financing is required (ie: an acquisition scenario), the company would seek a committed bridging loan that would be drawn in the event that it is not possible to consummate a high yield offering within the required time frame or at the desired price. Such bridge loans are typically set with a 365 day maturity and an increasing interest rate serving as an incentive to the company to attempt to issue the bonds and refinance the bridge loan, at the earliest possible time.

## Covenants

Covenant packages for bank facilities comprising term loans, versus those for high yield deals, traditionally differed in that the latter do not contain financial maintenance covenants. A term loan facility would include a quarterly compliance test of leverage (Debt: EBITDA), interest coverage (EBITDA: interest expense) and/or fixed charge coverage (EBITDA: fixed charges (including debt service, tax and other fixed expenses)), calculated using a 10-30% cushion to the financial model agreed with the banks. The restrictive covenants in a bank financing would limit the ability for the borrower to incur debt, make investments, pay dividends, etc., other than a prescribed set of baskets permitting certain actions to be taken and usually subject to \$ caps.

Conversely, high yield covenants are "incurrence-based" by nature, meaning that a financial covenant (typically either a 2:1 fixed charge coverage ratio or an agreed leverage ratio) would only be tested if the issuer wanted to consummate certain actions, such as incur additional debt. Provided that the issuer satisfied the covenant on a pro forma basis (ie: after giving effect to the intended action), it could incur the debt, etc. without restriction. In the event that the issuer could not satisfy the covenant test, it would need to rely upon an agreed set of baskets permitting certain limited actions to be taken irrespective of whether the covenant test could be met.

This differs to a bank financing in that while a borrower may have a debt covenant basket permitting it to incur additional debt up to, say \$5 million, the pending quarterly financial maintenance covenant test would dictate whether there was any room to incur additional debt under that \$5 million basket without tripping a default.

## Covenant lite

The past decade has seen an evolution in the TLB market, principally with the emergence of "covie-lite" deals. Such deals are "lite" in their absence of financial maintenance covenant testing and emerged in circa 2005, driven by private equity sponsors financing LBO activity and accepted by institutional investors who were competing for syndicate allocations and willing to accept a lesser degree of control over a borrower. From the viewpoint of a borrower, a large syndicate of lenders with a broad profile of investor-types, including banks, hedge funds, pension funds and vulture funds, may have divergent interests and prove to be a challenging group to coordinate in a covenant breach or work-out scenario. A covie-lite approach therefore works well from a borrower's perspective to reduce lender involvement when it is experiencing a period of financial strain.

An immediate effect of the credit crisis was to eliminate new covie-lite deals and in some cases, refinancings saw the addition of maintenance covenants. However, covie-lite deals re-appeared in 2012 as confidence in the credit markets improved and are enjoying a resurgence in 2013. Year-to-date, 2013 has seen in excess of \$90 billion of covie-lite loan issuances, representing more than 50% of the overall US TLB market for 2013 (data according to S&P Capital IQ/LCD). This, in turn, has been reflected in the CLO market, where newly issued CLOs in 2013 are allowing for a greater percentage of portfolios to be made up of covie-lite loans.

However, not all covie-lite deals are free of maintenance covenants. A variation frequently seen in recent years is to include a financial maintenance covenant, tested quarterly, but where a default may only be called by the revolving facility lenders. This formulation provides a means of appeasing banks as revolving lenders, who are naturally uncomfortable in funding a new advance into a scenario of deteriorating EBITDA, whilst also giving the borrower the benefit of a covie-lite approach for the TLB tranche and limiting the number of lenders it will need to negotiate with in a downside scenario.

## The convergence of covenants

Setting maintenance covenants aside, a covie-lite TLB and a HY deal may still differ in their approach to restricting activities of an issuer. For example, while a HY deal might test the ability to incur debt based on meeting a pro forma 2:1 fixed charge coverage ratio, a typical TLB might permit additional debt up to a specified \$ cap, or perhaps, a pro form a maximum leverage test.

Where a company's debt capital structure comprises both a senior secured TLB financing and existing (or the ability to issue future) HYB, that company may find itself with two different sets of covenants, different capacities to take certain action and different accounting definitions used in formulating Consolidated Net Income, EBITDA, etc. To the extent that the bank credit facility negative covenants are more restrictive than those of the HYB indenture, the company would not be able to fully access the flexibility offered by the HY bonds, while the bank credit facilities remain outstanding.

This, combined with the additional time and effort on the part of the company to monitor compliance with two covenant regimes, makes it important to attempt to align the covenant packages between a TLB credit agreement and a HYB indenture as closely as possible.

The past few years has seen a trend of convergence in negative covenant packages between TLB and HYB deals, in that borrowers of TLB have been obtaining covenant terms more similar to, and in some cases, identical to, those available in a HYB issuance. Again, the extent of this convergence for a particular deal will be dependant upon various factors including investor demand for the TLB, the issuer or debt credit rating and whether a HYB features as part of the capital structure. The presence of an asset-based revolving credit facility (an "ABL") in the capital structure may further constrain covenant flexibility offered by the HY and TLB tranches. The lenders of an ABL are, typically, commercial banks who adopt a more conservative approach and outlook than institutional investors in a HYB or TLB deal. A borrower will likely experience greater resistance from a syndicate of ABL lenders in its efforts to obtain one uniform set of covenants to apply across all facilities.

## Restricted subsidiaries

In a typical HY bond deal the Issuer and its Restricted Subsidiaries are subject to the covenants, while Unrestricted Subsidiaries are not. This concept is now frequently seen in TLB deals, where Borrowers are offered similar flexibility as in a HY deal.

An "Unrestricted Subsidiary" is a subsidiary designated as such by the Issuer and consequentially, (i) is not subject to the covenants and is thereby not limited in its ability to conduct business, including incurring debt, making investments and divesting of assets and (ii) is not required to guarantee the HY notes.

In exchange for this flexibility, (i) the net income and EBITDA generated by an Unrestricted Subsidiary is not counted in the Issuer's consolidated net income or EBITDA, which impacts ability to meet the fixed charge coverage and leverage ratio tests and (ii) the Issuer and its Restricted Subsidiaries are limited in their ability to make investments in, or make loans and payments to, Unrestricted Subsidiaries. Designating a subsidiary as "Unrestricted" equates to making an investment in that subsidiary, and is therefore subject to the Issuer having capacity under its Investments covenant to make the designation.

A covenant would typically include a specific basket for investments in Unrestricted Subsidiaries up to an amount determined by the greater of \$ and % of total assets. Investments through designating Unrestricted Subsidiaries over and above that basket amount, would be made in reliance on the "Building Basket" generally available to the Issuer for investments and restricted payments (see "Restricted Payments" below).

An Unrestricted Subsidiary can be re-designated as Restricted and brought back into the group, though this is often limited to one iteration in order to prevent abuses of the mechanism to bypass or satisfy the fixed charge coverage or leverage ratio tests.

"The past few years has seen a trend of convergence in negative covenant packages between TLB and HYB deals, in that borrowers of TLB have been obtaining covenant terms more similar to, and in some cases, identical to, those available in a HYB issuance."

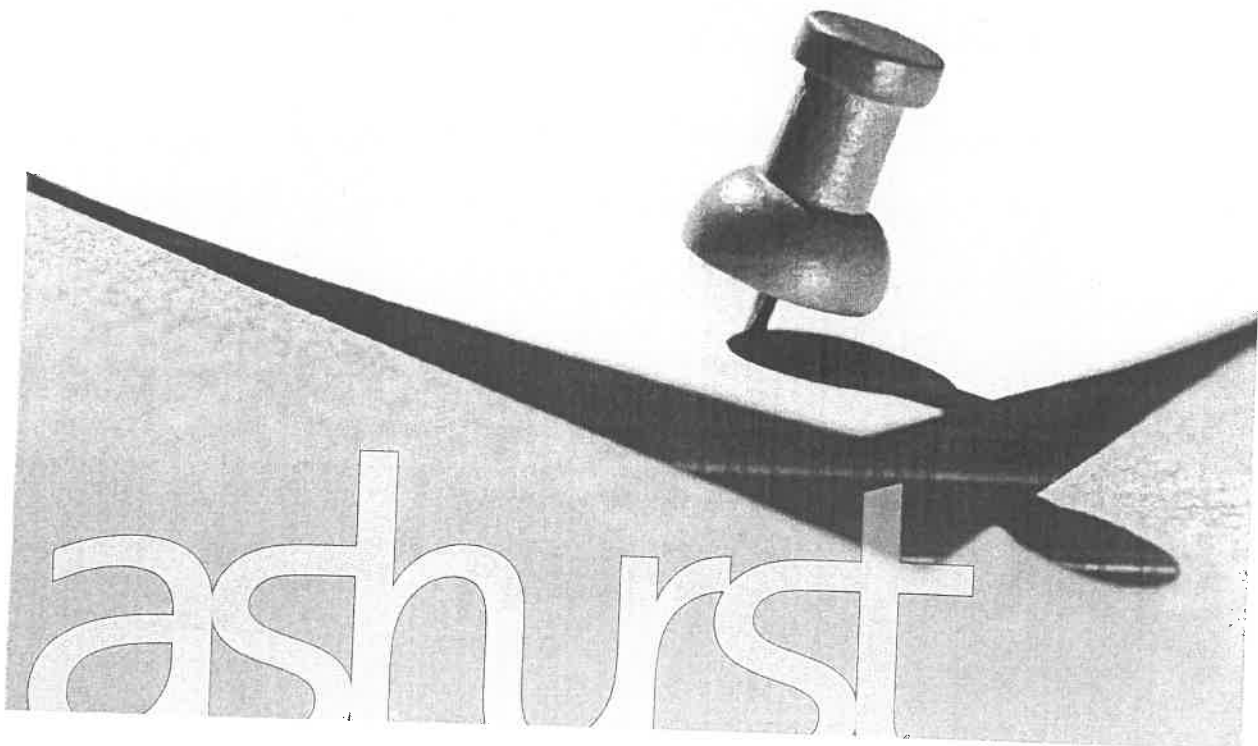


## Covenant Comparison

The table below summarizes certain key covenants in HYB and TLB financings. While the nature of a covenant package for a particular financing will be determined by various deal-specific factors, this illustrates the type of flexibility that is currently being seen in the market and how the prevalence of covie-lite TLB's is resulting in a convergence with HYB deals.

Covenant	HYB	TLB
<b>Debt</b>	<p>Issuer will have the ability to incur additional debt subject to meeting a pro forma 2.00:1.00 fixed charge coverage ratio test or a specified leverage ratio test (ie: the "incurrence test").</p> <p>Additionally there will be agreed carve-outs ("baskets") for specific categories of debt (capital leases, etc.) available to the issuer irrespective of whether the incurrence test can be met at such time.</p>	<p>Traditionally, additional debt was subject to a \$ cap, but has evolved to offer greater flexibility. For example, a borrower may incur additional debt subject to pro form a compliance with a leverage test based on any of total debt, senior debt (ie: not limiting the borrower's ability to incur additional junior debt) or senior secured debt (ie: not limiting the borrower's ability to incur additional senior unsecured or junior debt).</p> <p>If the TLB is issued as part of a financing comprising a HYB deal, it may obtain the ability to incur debt based on the same 2.00:1.00 fixed charge coverage test.</p> <p>TLB lenders may require that additional debt is issued with a maturity outside of the TLB (and control the borrower's ability to prepay such debt, to the extent issued as junior debt, through the Restricted Payments covenant – see below).</p>
<b>Liens</b>	<p>The extent to which the granting of liens over assets is restricted depends upon whether the HYB are senior secured, senior unsecured or senior subordinated.</p> <p>Senior subordinated HYB typically permit liens, provided that the issuer does not grant liens to secure other subordinated debt.</p> <p>Senior unsecured HYB would permit other debt to be secured by liens to the extent that the issuer secure the HYB on an "equal and ratable" basis.</p> <p>Senior secured notes would have a more restrictive covenant limiting the issuer's ability to grant additional liens, subject to a pro forma secured leverage test.</p>	<p>TLB lenders are always focused on the issue of sharing collateral with other creditors of the Borrower and the ability to incur additional secured debt is typically restrictive.</p> <p>Traditionally a \$ cap, but a movement towards permitting liens based on a senior secured leverage test (but a tighter test than that for incurring debt) or permitting the Borrower to secure additional debt but only in the form of 2nd liens on the TLB lenders' collateral. Permitted 2nd lien financings would be subject to a pre-agreed form of intercreditor agreement that would be attached to the TLB credit agreement.</p> <p>Permitted 2nd lien financings are generally formulated as "silent seconds" ie: subordinated with as few rights as possible.</p>

Covenant	HYB	TLB
<b>Restricted payments (ability to make dividends, redeem equity, prepay other debt or make investments)</b>	<p>An Issuer may make Restricted Payments using either (i) its "Building Basket" or (ii) prescribed permitted baskets.</p> <p>The Building Basket concept is a basket amount available to the Issuer to consummate certain actions, including Restricted Payments and investments, that grows over time based on 50% of Consolidated Net Income accumulated from the closing date through the relevant date, plus other items such as additional equity contributed to the Issuer.</p> <p>The other prescribed permitted baskets, may for example, include a general basket based on either a \$ cap or the greater of a \$ cap and a % of total assets (to allow the \$ cap to grow commensurate with the size of the Issuer group).</p>	<p>Lenders are always focused on the ability of a Borrower to leak cash out of the credit group via dividends or repayments of junior debt, etc. A Borrower would traditionally have limited capacity to make such Restricted Payments (and may be limited to a nominal \$ cap general basket).</p> <p>TLB deals have evolved towards a HY approach in (i) permitting the Borrower to use "Retained Excess Cash Flow" (ie: the portion of Excess Cash Flow in any fiscal year that is not required to be applied by the Borrower to prepay loans under the excess cash flow mandatory prepayment provision) or (ii) a similar building basket, typically called the "Available Amount" based on 50% of accumulated Consolidated Net Income and other items as per a HY formulation.</p> <p>One difference here to a HY approach is that a Borrower's ability to use the Available Amount may also be subject to meeting a pro forma leverage ratio test and/or liquidity test (ie: minimum cash and revolving facility availability).</p>
<b>Asset sales</b>	<p>Rather than restrict the issuer's ability to dispose of assets, the covenant is intended to direct what the issuer does with the proceeds. Issuer would be permitted to dispose of assets (in addition to other specific baskets) provided that the sale is at fair market value and at least 75% of sale proceeds comprise of cash.</p> <p>Net cash proceeds not applied by the Issuer to other senior debt (ie: mandatory prepayments under a bank facility) or reinvested in other assets, are deemed "Excess Proceeds". When Excess Proceeds exceed a specified threshold amount, the Issuer is required to make an offer to the holders to repurchase HY Notes using such Excess Proceeds. The Issuer would retain Excess Proceeds where holders elect not to accept the offer.</p>	<p>Traditionally, Borrowers would only be permitted to dispose of assets in sales outside of the ordinary course of business up to a limited \$ amount per fiscal year or over the life of the loan.</p> <p>Net cash proceeds of those sales would be subject to a mandatory prepayment, subject to the Borrower's ability to re-invest the proceeds within a specified period of time (typically 180-365 days).</p> <p>Some recent TLB deals have seen a movement towards a HY approach permitting unlimited asset sales subject to fair market value and 75% cash proceeds conditions. Lenders may be comfortable with this approach where the proceeds are applied to de-lever and pay down the loans.</p>



## Conclusion

The recent slate of Australian corporates looking to the US to raise debt financing was initiated as a result of constrained regional demand and more competitive pricing terms offered by US investors. However, we may be seeing the emergence of a permanent feature in the global capital markets landscape, where non-US companies might routinely consider a US financing among its range of financing options. The US possesses a deep bench of institutional investors that has recently demonstrated an appetite for term loan B and high yield bond issuances by both Australian and European companies and the trend appears to be continuing. Of course, a variety of deal and company-specific factors will determine whether a US syndicated loan or private placement is feasible for a particular transaction. We are always happy to work with our clients and answer any questions related to a potential US financing.

## Key Contacts



Damian Ridealgh  
Partner, New York  
damien.ridealgh  
@ashurst.com



Rich Davis  
Partner, Washington, DC  
rich.davis  
@ashurst.com

**Ashurst Australia  
contact details**

Adelaide	Tanya Denning	+61 8 8112 1009
	David Mason	+61 7 3259 7430
	Jock O'Shea	+61 7 3259 7309
Brisbane	John Clark	+61 2 6234 4060
	Martin Coleman	+61 3 9679 3538
	John Field	+61 3 9679 3312
Canberra	Jamie Ng	+61 3 9679 3753
	Bruce Whittaker	+61 3 9679 3212
	Gaelan Cooney	+61 8 9366 8000
Melbourne	Rebecca Field	+61 8 9366 8017
	Andrea Rezos	+61 8 9366 8043
	Paul Jenkins	+61 2 9258 6336
Perth	Doo-Soon Choi	+61 2 9258 6681
	Simon Irvine	+61 2 9258 5869
	Brenton Key	+61 2 9258 6776
Sydney	Timothy Lipscombe	+61 2 9258 6145
	David Mason	+61 2 9258 6104
	Robert Ritchie	+61 2 9258 6036
	Steve Smith	+61 2 9258 6182
	Graeme Tucker	+61 2 9258 6773
	Shawn Wytenburg	+61 2 9258 6046

This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions. For more information please contact us at [aus.marketing@ashurst.com](mailto:aus.marketing@ashurst.com).

Ashurst Australia (ABN 75 304 286 095) is a general partnership constituted under the laws of the Australian Capital Territory carrying on practice under the name "Ashurst" under licence from Ashurst LLP, a limited liability partnership registered in England and Wales. Further details about the Ashurst group can be found at [www.ashurst.com](http://www.ashurst.com).

No part of this publication may be reproduced by any process without prior written permission from Ashurst. Enquiries may be emailed to [aus.marketing@ashurst.com](mailto:aus.marketing@ashurst.com).

## **REPORT 2(B) – EXHIBIT 21**

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 2250  
F +27 11 308 1269

TRANSNET



## MEMORANDUM

www.transnet.net

**To** : **Siyabonga Gama**, Acting Group Chief Executive  
: **Garry Pita**, Group Chief Financial Officer

**From** : **Phetolo Ramosebudi**, Group Treasurer

**SUBJECT** : **NOVATION OF R6.992 BILLION EDC/INVESTEC LOAN TO CPI**

### PURPOSE:

1. To obtain approval from the Acting Group Chief Executive and the Group Chief Financial Officer to:
  - 1.1. Swap floating rate profile to fixed;
  - 1.2. Novate the fixed rate debt structure with EDC/Investec for the amount of R6.992 billion to CPI linked debt structure after the 31 March 2016 with proper election of the accounting option; and
  - 1.3. Instruct Regiments Capital as per the 1064 Locomotives mandate to execute the novation with financial institutions that have capacity to do such structure with Transnet.

### BACKGROUND:

2. An EDC/Investec Loan for the amount of R6.992 billion was recently entered into to fund the locomotive payments to Bombardier.
3. The loan was done on a floating rate basis at a cost of 6 month Jibar plus 200 basis points with a maturity date of 22 February 2028.

### DISCUSSION:

4. The Group's cash interest cover will be under severe pressure over the next few years and Group Treasury in collaboration with Regiments Capital are proposing a structure

whereby the EDC/Investec loan of R6.992 billion is swapped to fixed interest rate and novate (*Novation is the act of replacing one party in a contract with another, or of replacing one debt or obligation with another. It extinguishes (cancels) the original contract and replaces it with another, requiring the consent of all parties involved*) to a financial institution who is able to swap for a CPI linked debt structure.

5. A derivative swap to swap floating interest yield debt to CPI linked debt was also considered, but the solution does not seem viable due to accounting considerations of the non-application of hedge accounting on such swap structure and the accompanied volatility in the Group's income statement.
6. This exercise is part of the progression to relieve pressure on the CIC ratio, thereby managing the cost of interest expense and short to medium term liquidity.
7. The net savings on interest achieved from converting the floating EDC/Investec loan to CPI linked debt will be positive at the NPV of R1.1 billion, but will result in bigger coupon outflows closer to maturity with an increased redemption amount at maturity. The table below summarises the impact of coupon and capital flows, should this structure be implemented.

Year	0 Rm	1 Rm	2 Rm	3 Rm	4 Rm	5 Rm	6 Rm	7 Rm	8 Rm	9 Rm	10 Rm	11 Rm	12 Rm	13 Rm
EDC/Investec Coupon flows	375	747	749	749	693	623	542	467	393	319	244	170	93	20
CPI structure coupon flows	-	259	279	300	324	348	375	404	436	469	506	545	587	91
Coupon impact	(375)	488	470	449	369	275	167	63	(43)	(150)	(262)	(375)	(494)	(71)
Net cash impact on capital flows	350	699	699	699	699	699	699	699	699	699	699	699	699	(10,378)

8. The above action will furthermore increase the duration of the debt portfolio to manage assets and liabilities.
9. Transnet Treasury will implement the redemption fund to manage the increasing capital of the CPI debt portfolio through to February 2028 when the debt matures.

## MOTIVATION

10. Regiments Capital was appointed as a 1064 locomotive funding advisor and had SD obligations to Transnet on their contract.

11. Post the successful completion of the 1064 locomotive transaction, Transnet developed detailed funding plan to secure the necessary funding for the locomotives together with the general purpose funding requirement.
12. One of the salient transactions was the approval of the US\$2.5 billion credit facility to finance the purchase of the Chinese locomotives.
13. In order to achieve a reduced blended rate in the funding of the Chinese portion of the locomotives, Regiments Capital recommended that Transnet only utilise \$1.5bn of the CDB facility, and blend that with a \$1.5bn ZAR club loan. The ZAR club loan would allow for a reduction in the blended rate paid by Transnet of approximately 37bp ( a net present value saving of approx. R666m- as opposed to utilising the full CDB facility of \$2.5bn with the full cost of the CCS).
14. Following the decision to use only USD 1.5 billion out of the total USD 2.5 billion proposed by CDB, Regiments Capital has insisted and an agreement has been reached during the negotiations to have the unutilised USD 1.0 billion available for Transnet with no commitment fee until September 2015. Besides the financial benefit at least in terms of the commitment fee that would have otherwise been paid, the availability of such committed funding facility from CDB would provide an additional ratings benefit to Transnet.
15. Regiments Capital have advised Transnet to achieve a mix of float and fixed rate in this transaction in order to best manage the interest rate risk with regard to Transnet's Financial Risk Framework (FRM).
16. Regiments Capital has assisted Transnet in negotiating with a number of potential funding sources of ZAR funding, including the following firm commitments:
  - 16.1. Nedbank group(R6 billion);
  - 16.2. Bank Of China (R3 billion);
  - 16.3. ABSA Bank (R3 billion); *and*
  - 16.4. Libfin (R1 billion).
17. Regiments Capital' advice and the subsequent conscious decision taken by Transnet to utilise foreign sources of funding for both the USD portion and the significant portion of the ZAR syndicated issue have a desirable impact of leaving Transnet's credit lines intact in the domestic market.





18. The savings achieved via the blending of the ZAR club loan, and the change in the applicable reference rate (3 month as opposed to the 6 month Jibar) have allowed Transnet the ability to fix the required portion of the loan without placing undue pressure on the interest cover ratio or the company cash flows. The total financial benefits that accrued to Transnet from the negotiating strategy (comprising of the achievements specified above) pioneered by Regiments Capital is calculated to be R820 million
19. In this regard, with Regiments Capital assistance the average cost of the Club Loan is around is 9.008% (nominal annual compounded semi-annually) nacs as compared to the cost of the CDB Loan converted to ZAR at 9.538% nacs with 3 month Jibar at 6.308%.
20. Transnet was able to achieve the 15 year at 3 month Jibar +270bps tenor as compared to the JP Morgan advice of 10 Year at 370bps over 3 month Jibar.
21. The financial advice and negotiation support that Regiments Capital provided through this entire process which took in excess of 5 months was done at risk with an expectation of compensation only on successful completion of the transaction.
22. Therefore the involvement of Regiments Capital from the SD requirements enabled them to offer the risk management solutions under the 1064 Locomotives mandate.

#### **ACCOUNTING:**

##### *Swapping a floating rate loan to fixed and novation*

23. The act of swapping the existing floating rate loan to a fixed rate loan meets the requirements in IAS 39 *Financial Instruments: Recognition and Measurement* for de-recognition of a financial liability. Novation, replacing one party in a contract with another thereby extinguishing the original contract and replacing it with another will also meet the de-recognition requirements in IAS 39. A new liability, being the new CPI linked debt structure (after novation) shall be recognised on the balance sheet.
24. Any difference between the carrying amount of the existing liability that is extinguished and the new liability recognised, including any payments made to original counter parties or breakage costs shall be recognised as a gain or loss in the income statement. In accordance with Transnet accounting policy, these gains

or losses shall be included under finance costs. These amounts will be quantified before execution for decision making.

*CPI Linked Debt Structure*

25. The CPI linked debt structure is a financial liability within the scope of IAS 39 and shall be recognised initially at fair value.
26. Provided the underlying CPI link feature references the CPI rate in South Africa and is not leveraged, it would be considered closely related to the host debt contract and as such, there is no requirement to account for it separately as a derivative at fair value through profit or loss.
27. Subsequent to initial recognition, the entire debt structure may be accounted for either at fair value through profit or loss or at amortised cost. Due to the high volatility that accounting for the structure at fair value would create in the income statement, especially due the Transnet credit risk element of the fair value which would be difficult to hedge and apply hedge accounting to, it is recommended that Transnet accounts for the debt structure at amortised cost subsequent to initial recognition.
28. Periodic re-estimation of cash flows, both interest and capital, will be required through the life of the debt structure to reflect the effect of changes in CPI. There are two possible ways to account for the changes in estimated cash flows.
  - a) Applying guidance in paragraph AG7 of IAS 39, the effective interest rate at initial recognition is determined as the rate that sets the estimated future cash flows payable under the debt structure based on the expected inflation index (CPI) over the term of the debt to equal the fair value of the debt structure at that date. If in subsequent periods there is a change in inflation expectations (i.e. actual and expected CPI differs from original estimates), both the expected future cash flows and the effective interest rate are adjusted accordingly. While this alters the amount of interest expense recognised in subsequent periods, there will be no change in the carrying amount of the debt structure and no gains or losses recognised in the income statement at the time of re-estimation.
  - b) Applying guidance in paragraph AG8 of IAS 39, the effective interest rate is determined in the same way as above. However, if in subsequent periods there is a change in inflation expectations, the future cash flows shall be revised accordingly and discounted at the original effective interest rate determined at inception. The carrying amount of the debt structure is adjusted, with the change in the carrying amount recognised immediately as interest income or expense on the finance cost

**RECOMMENDATION:**

35. It is recommended that the GCFO and AGCE approve the:

35.1. Swap the floating rate profile to fixed rate;

35.2. Novate the fixed rate debt structure with EDC/Investec for the amount of R6.992 billion to CPI linked debt structure after 31 March 2016 with proper election of the accounting option; and

35.3. Instruct Regiments Capital as per the 1064 Locomotives mandate to execute the novation with financial institutions that have capacity to do such structure with Transnet.

**Compiled by:**

**Supported/Not supported:**



**Phetolo Ramosebudi**

Group Treasurer

Date: 11/03/2016



**Nombuyiselo Tsukudu**

GM: Finance

Date: 11/3/2016

**Approved/Not Approved**

*→ Floating to fixed 1st then novate only if accounting treatment is desirable at the time of novation.*



**Garry Pita**

Group Chief Financial Officer

Date: 13/03/16

**Approved/Not Approved**



**Siyabonga Gama**

Acting Group Chief Executive

Date: 2016.03.14

*I take it there is no cost to Transnet by Regiments as it falls under the SD obligations of 1064 locos.*

## REPORT 2(B) – EXHIBIT 22

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 2250  
F +27 11 308 1269

TRANSNET

## MEMORANDUM

www.transnet.net

**To : Garry Pita, Acting Group Chief Financial Officer**

**From : Phetolo Ramosebudi, Group Treasurer**

**SUBJECT : R12 BILLION CLUB LOAN INTEREST RATE RISK EXPLANATION**

### PURPOSE:

1. The purpose of this memorandum is to obtain approval from the Acting Group Chief Financial Officer to:
  - 1.1. Hedge the interest rate risk exposures from a float for fixed basis for the amount of R12 billion.
  - 1.2. Instruct Regiments Capital as per the 1064 Locomotives mandate to execute the hedges with Transnet approved counterparts.
  - 1.3. The execution cost of hedges by Regiments Capital will be all inclusive in the rate of the interest rate swap.

### BACKGROUND:

2. A club loan to the amount of R12 billion was recently entered into to fund the locomotive payments to CSR and CNR as well as redemption of loan maturities in February 2016.
3. The club loan was done on a floating rate basis at a cost of 3 month Jibar plus 270 basis points to manage the pricing divergence from all parts.

### DISCUSSION:

4. The current floating rate risk exposure of the total debt portfolio is 29% after the inclusion of the hedges and 71% fixed.
5. If the full amount of the club loan is included as fixed, the floating rate portion will decrease from 29% to 26%, which is still within Board approved limit in FRMF. This is

14. The implementation of the identified financial risk initiatives such as Float for fixed swaps, CPI bond and Swaps will result in the 50% proportion of fixed for floating as illustrated in the figure below.

#### **CPI LINKED SWAPS:**

15. As part of the progression to relieve pressure on the CIC ratio, thereby managing the cost of interest expense and short to medium term liquidity, a conversion of R15 billion fixed rate debt (bonds) need be swapped to CPI linked debt early in the new-year. This should be in line with the appropriate accounting treatment.
16. The net savings achieved from converting fixed bullet bonds to CPI linked will be positive initially, but will result in large cash outflows at redemption of each bond and Transnet will need to meet liquidity demands as the redemptions of the bonds fall due. The Treasury is developing a solution related to the redemption portfolio to cater for the balloon payments of the CPI bond and swaps.
17. The above will result in lower interest payments over the majority of the life of the bond, but will increase closer to the bond redemption dates.
18. The above action will furthermore increase the duration of the debt portfolio to manage assets and liabilities.

#### **ACCOUNTING:**

19. Any interest rate swap entered into will have to be hedge accounted for to minimise volatility of fair value movements in the Group's income statement.
20. PWC has been appointed a while ago to test system capability to apply either cash flow and or fair value hedge accounting on interest rate swaps and the cash flow hedge accounting process is almost completed.

#### **BUDGET AND FINANCIAL IMPLICATIONS:**

21. Interest is budgeted for in corporate plan for 15/16 financial year.

#### **DELEGATION OF AUTHORITY (DOA):**

22. The DOA makes provision for the acting GCFO to approve interest rate risk hedging with an unlimited amount and tenors exceeding 5 years.

CLUB LOAN INTEREST RATE RISK

### 5.2.6 Foreign Exchange Hedging Transactions: Extensions, early take up (expressed in USD equivalent)

Approval Authority	Traders	Chief Trader	Deputy Treasurer: Front Office	Group Treasurer
Group	Not exceeding an aggregate equivalent of \$20m per day (desk total)	Not exceeding an aggregate equivalent of \$50m per day (desk total)	Not exceeding an aggregate equivalent of \$100m per day (desk total)	Exceeding an aggregate of \$100m per day (desk total)

All breaches of the above limits to be reported to the Audit Committee.

Note: Where no specific limit is mentioned, the FRMF policy on foreign exchange rate risk will apply.

### 5.2.7 Approval of FX hedges to be hedged by external suppliers on their balance sheet for goods/services to be delivered to Transnet in respect of Rand agreements involving foreign content

Approval Authority	Traders	Chief Trader	Deputy Treasurer: Front Office	Group Treasurer
Group	Not exceeding \$10m	Not exceeding \$25m	Not exceeding \$50m	Exceeding \$50m

All breaches of the above limits to be reported to the Audit Committee for noting.

The above limits are applicable per agreement.

Note: The Business Units must always obtain quotes on FX forward rates and liaise with the Treasury Trading desk that will verify the rates to ensure it is market related. The Business Units can only enter into the FX hedges with the supplier once the rates are accepted by the Treasury trading desk via e mail. Once the above approvals are obtained, the Treasury Traders will provide sign off on the hedging submission.

### 5.2.8 Interest Rate Risk Hedging

Approval Authority	Notional Amounts	Group Treasurer	GCFO
Group	Notional amount of hedge expressed in USD or equivalent in RAND (FX loans and leases)	Up to but not exceeding \$100m or equivalent in RAND	Exceeding \$100m or equivalent in RAND
Tenure		Not exceeding 5 years	Exceeding 5 years

All breaches of the above limits to be reported to the Audit Committee.

Note: Where no specific limit is mentioned, the FRMF policy on interest rate risk will apply.

The above limits are applicable per hedging submission.

### 5.2.9 Hedging of fuel risk exposures (RAND and USD)

Approval Authority	Group Treasurer	GCFO
Tenure	Not exceeding 5 years	Exceeding 5 years
Notional hedge expressed in USD or equivalent in RAND	Not exceeding \$25m or equivalent in RAND	Exceeding \$25m or equivalent in RAND

All breaches of the above limits to be reported to the Audit Committee.

Note: The maximum hedge should not exceed 75% of annual budgeted consumption inclusive of energy levy income. The first priority will be to fix the contract through ZAR based agreement. If not then exposure to be taken on Balance Sheet, subject to hedged accounting. This will limit volatility and bring certainty in terms of the Rand.

The above limits are applicable per hedging submission.

Note: Where no specific limit is mentioned, the FRMF policy on commodity (fuel) risk will apply.

### 5.2.10 Hedging of commodity risk exposures in supply agreements, including escalation (other than fuel) in FX or RAND

Approval Authority	Group Treasurer	GCFO
Tenure	Not exceeding 24 months	Exceeding 24 months
Notional hedge expressed in RAND	Not exceeding \$10m	Exceeding \$10m
Notional hedge expressed in USD	Not exceeding \$10m	Exceeding \$10m

All breaches of the above limits to be reported to the Audit Committee.

The above limits are applicable per hedging submission.

Note: Where no specific limit is mentioned, the FRMF policy on commodity risk will apply.

## **REPORT 2(B) – EXHIBIT 23**



**Noluthando Masondo**

---

**From:** Phetolo Ramosebudi Transnet Corporate JHB  
**Sent:** <Phetolo.Ramosebudi@transnet.net>  
**To:** 15 March 2016 08:51  
**Subject:** eric@tcp.co.za  
**Attachments:** Fwd: interest swap club loan  
 image001.gif

See the analysis below

Regards  
 Phetolo

Begin forwarded message:

**From:** "Reon Louw Transnet Corporate JHB" <Reon.Louw@transnet.net>  
**Date:** 15 March 2016 at 08:09:21 SAST  
**To:** "Phetolo Ramosebudi Transnet Corporate JHB" <Phetolo.Ramosebudi@transnet.net>, "Tshepo Matlamela Transnet Corporate JHB" <Tshepo.Matlamela@transnet.net>  
**Cc:** "Mark Tannous Transnet Corporate JHB" <Mark.Tannous@transnet.net>, "Deva Sathee Transnet Corporate JHB" <Deva.Sathee@transnet.net>  
**Subject:** FW: interest swap club loan

Phetolo,

Following on from your conversation with Deva and Mark on Friday, please find the requested swap analysis below.

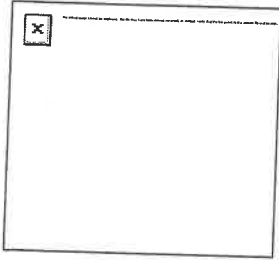
We were not involved in the pricing and execution of the first tranche of this transaction, so cannot comment around the consistent application of pricing methodology and fee application across the two tranches.

Deva also included some comment around the charging of fees.

We are still awaiting your approval for the capturing of the discussed transactions.

We are happy to discuss further if need be

Regards



Reon Louw  
Chief Trader  
Transnet Treasury  
Transnet SOC Ltd.

Cell: 083 387 9965

Work: 011 220 3200

Fax: 011 308 2639

Mail: [reon.louw@transnet.net](mailto:reon.louw@transnet.net)

**[www.transnet.net](http://www.transnet.net)**

---

**From:** Deva Sathee Transnet Corporate JHB

**Sent:** 14 March 2016 04:11 PM

**To:** Reon Louw Transnet Corporate JHB

**Subject:** interest swap club loan

Hi Phetolo,

**Please see below the interest rate swap analysis for the deal executed by Nedbank**  
Table 1, 2 and 3 below outline the possible trading level.

- Table 1 analyses the fixed rate as traded with Nedbank
- Table 2 analyses the potential fixed rate with other banks
- Table 3 analyses the potential fixed rate with other bank and with reduced Regiment fee.
- The norm for advisory fees/execution fees are **basis points on the notional amount** and **not basis points on the fix rate**. The market fees are generally between 20bps and 50bps of notional.

- The 20bps fee charged by Regiments are based on the fixed rate and this implies an equivalent 121bps on notional. It is substantially more than the range of 20 to 50 bps of notional. Assuming the fees to be on the top side of the range, ie 50bps on notional, the fee amount therefore should be R37 500 000 (ie 8.5 bps on the fixed rate).
- I received indicative pricing from **both Absa and HSBC** as below
- Please also note the potential for a lower Nedbank fix rate could have being achieved if Regiment executed smaller tranches with Nedbank instead of the full notional.

**HSBC****TABLE 1**

mid -swap	11.500
Nedbank cva	0.200
Regiment fees	0.200
Nedbank market execution fees	0.470
	<u>12.370</u>

Valuation Loss to Transnet: based on  
PV01 of R4 560 000

R 396 720 000

**TABLE 2**

mid -swap
HSBC indicative CVA
Regiment fees
HSBC market execution fees

Potential valuation loss to Transnet:  
based on PV01 of R4 560 000

R

**ABSA****TABLE 1**

mid -swap	11.500
Nedbank cva	0.200
Regiment fees	0.200
Nedbank market execution fees	0.470
	<u>12.370</u>

Valuation Loss to Transnet: based on  
PV01 of R4 560 000

R 396 720 000

**TABLE 2**

mid -swap
Absa indicative CVA
Regiment fees
Absa market execution fees

Potential valuation loss to Transnet:  
based on PV01 of R4 560 000

R



## **REPORT 2(B) – EXHIBIT 24**

**Noluthando Masondo**

**From:** Lippiatt, C. (Chantal) <ChantalLi@Nedbank.co.za>  
**Sent:** 04 December 2015 13:14  
**To:** Brickman, M. (Moss); Danie Smit Transnet JHB  
**Cc:** Visnena, M. (Mario); Regiments (ericw@regiments.co.za); Phetolo Ramosebudi  
 Transnet Corporate JHB; Etsane, M. (Mak)  
**Subject:** Interest Rate Swaps : Traded

Dear Danie

I confirm that we have traded the following with Transnet:

Start date	2015/12/04
End date	02-Dec-30
Transnet Pays	11.83% nacq
Transnet receives	3m Jibar +2.7%
Reset and Payment Frequency	Quarterly
Daycount	Act/365 Mod following
Swap1	
04-Dec-15	1 500 000 000.00
01-Mar-16	1 500 000 000.00
01-Jun-16	1 500 000 000.00
01-Sep-16	1 500 000 000.00
01-Dec-16	1 500 000 000.00
01-Mar-17	1 500 000 000.00
01-Jun-17	1 500 000 000.00
01-Sep-17	1 500 000 000.00
01-Dec-17	1 500 000 000.00
01-Mar-18	1 500 000 000.00
01-Jun-18	1 500 000 000.00
03-Sep-18	1 500 000 000.00
03-Dec-18	1 500 000 000.00
01-Mar-19	1 500 000 000.00
03-Jun-19	1 500 000 000.00
02-Sep-19	1 500 000 000.00
02-Dec-19	1 500 000 000.00
02-Mar-20	1 500 000 000.00
01-Jun-20	1 500 000 000.00
01-Sep-20	1 464 285 714.29
01-Dec-20	1 428 571 428.57
01-Mar-21	1 392 857 142.86
01-Jun-21	1 357 142 857.14
01-Sep-21	1 321 428 571.43
01-Dec-21	1 285 714 285.71
01-Mar-22	1 250 000 000.00
01-Jun-22	1 214 285 714.29
01-Sep-22	1 178 571 428.57
01-Dec-22	1 142 857 142.86

Start date	2015/12/04
End date	02-Dec-30
Transnet Pays	11.83% nacq
Transnet receives	3m Jibar +2.7%
Reset and Payment Frequency	Quarterly
Daycount	Act/365 Mod following
Swap2	
04-Dec-15	1 500 000 00
01-Mar-16	1 500 000 00
01-Jun-16	1 500 000 00
01-Sep-16	1 500 000 00
01-Dec-16	1 500 000 00
01-Mar-17	1 500 000 00
01-Jun-17	1 500 000 00
01-Sep-17	1 500 000 00
01-Dec-17	1 500 000 00
01-Mar-18	1 500 000 00
01-Jun-18	1 500 000 00
03-Sep-18	1 500 000 00
03-Dec-18	1 500 000 00
01-Mar-19	1 500 000 00
03-Jun-19	1 500 000 00
02-Sep-19	1 500 000 00
02-Dec-19	1 500 000 00
02-Mar-20	1 500 000 00
01-Jun-20	1 500 000 00
01-Sep-20	1 464 285 71
01-Dec-20	1 428 571 42
01-Mar-21	1 392 857 14
01-Jun-21	1 357 142 85
01-Sep-21	1 321 428 57
01-Dec-21	1 285 714 28
01-Mar-22	1 250 000 00
01-Jun-22	1 214 285 71
01-Sep-22	1 178 571 42
01-Dec-22	1 142 857 14

01-Mar-23	1 107 142 857.14
01-Jun-23	1 071 428 571.43
01-Sep-23	1 035 714 285.71
01-Dec-23	1 000 000 000.00
01-Mar-24	964 285 714.29
03-Jun-24	928 571 428.57
02-Sep-24	892 857 142.86
02-Dec-24	857 142 857.14
03-Mar-25	821 428 571.43
02-Jun-25	785 714 285.71
01-Sep-25	750 000 000.00
01-Dec-25	714 285 714.29
02-Mar-26	678 571 428.57
01-Jun-26	642 857 142.86
01-Sep-26	607 142 857.14
01-Dec-26	571 428 571.43
01-Mar-27	535 714 285.71
01-Jun-27	500 000 000.00
01-Sep-27	464 285 714.29
01-Dec-27	428 571 428.57
01-Mar-28	392 857 142.86
01-Jun-28	357 142 857.14
01-Sep-28	321 428 571.43
01-Dec-28	285 714 285.71
01-Mar-29	250 000 000.00
01-Jun-29	214 285 714.29
03-Sep-29	178 571 428.57
03-Dec-29	142 857 142.86
01-Mar-30	107 142 857.14
03-Jun-30	71 428 571.43
02-Sep-30	35 714 285.71
02-Dec-30	0.00

01-Mar-23	1 107 142 85
01-Jun-23	1 071 428 57
01-Sep-23	1 035 714 28
01-Dec-23	1 000 000 00
01-Mar-24	964 285 71
03-Jun-24	928 571 42
02-Sep-24	892 857 14
02-Dec-24	857 142 85
03-Mar-25	821 428 57
02-Jun-25	785 714 28
01-Sep-25	750 000 00
01-Dec-25	714 285 71
02-Mar-26	678 571 42
01-Jun-26	642 857 14
01-Sep-26	607 142 85
01-Dec-26	571 428 57
01-Mar-27	535 714 28
01-Jun-27	500 000 00
01-Sep-27	464 285 71
01-Dec-27	428 571 42
01-Mar-28	392 857 14
01-Jun-28	357 142 85
01-Sep-28	321 428 57
01-Dec-28	285 714 28
01-Mar-29	250 000 00
01-Jun-29	214 285 71
03-Sep-29	178 571 42
03-Dec-29	142 857 14
01-Mar-30	107 142 85
03-Jun-30	71 428 57
02-Sep-30	35 714 28
02-Dec-30	

Formal confirmations to follow. Please do not hesitate to contact us if you have any queries or concerns in this regard.

Kind regards  
Chantal



**Chantal Lippiatt**

**Corporate Sales & Structuring | Markets | Nedbank Corporate and Investment Banking**

Sixth Floor Block F Nedbank 135 Rivonia Campus 135 Rivonia Road Sandown Sandton 2196 South Africa | PO Box 1144 Johannesburg 2000 South Africa  
t +27 (0)11 294 4661 f +27 (0)86 505 7902 c +27 (0)82 670 5396 @ [ChantalLi@nedbank.co.za](mailto:ChantalLi@nedbank.co.za)  
Website: [nedbank.co.za](http://nedbank.co.za)



THINK BEFORE YOU PRINT – At Nedbank we are committed to minimising environmental impact and encourage the preservation of natural capital.

**Disclaimer**

Your attention is drawn to the following terms, which you will be deemed to have read and understood. All information contained herein that relates to tax, accounting, regulatory, legal and financial matters including but not limited to indicative rates, terms, and price quotations, if contained in this e-mail ("Information"), is subject to change, and if relevant, subject to market fluctuations. Information is disclosed herein for informational purposes only and may not be considered as "advice", a "recommendation" or an offer to enter into or conclude any transactions. No guarantee is given as to the accuracy, completeness or reasonableness of the Information.

Nedbank is neither your financial adviser nor does it owe you any fiduciary duties. You are cautioned to ensure that you have made an independent decision in accordance with your own objectives, experience, operational and financial resources and any other appropriate factors including seeking independent professional advice. No guarantee, warranty, or representation is made in respect of the performance or return on any transaction. All trademarks, service marks and logos used in this report are trademarks or service marks or registered trademarks or service marks of Nedbank or its affiliates.

**From:** Brickman, M. (Moss)

**Sent:** 04 December 2015 01:01 PM

**To:** danie.smit@transnet.net

**Cc:** Visnena, M. (Mario); Lippiatt, C. (Chantal); Regiments (ericw@regiments.co.za); Phetolo Ramosebudi Transnet Corporate JHB (Phetolo.Ramosebudi@transnet.net)

**Subject:** Interest Rate Swaps

Hi Danie

As discussed please provide the emails for the persons that the confirmations need to be forwarded to so as to ensure the booking alignment of the 3 swaps for the 3 profiles of R1.5 billion each at a fixed rate of 11.83% NACQ on each

Thanks

Moss



**Moss Brickman**

**Head: Balance Sheet Management – Treasury**

**Nedbank Corporate and Investment Banking**

Sixth Floor Block F Nedbank 135 Rivonia Campus 135 Rivonia Road Sandown Sandton 2196 South Africa | PO Box 1144 Johannesburg 2000 South Africa  
t +27 (0)11 294 4488 f +27 (0)86-528-0970 c +27 (0)82 900 0276 @ [mossb@nedbank.co.za](mailto:mossb@nedbank.co.za) Website: [nedbank.co.za](http://nedbank.co.za)

"Promise only what you can deliver. then deliver more than you promise"



## **REPORT 2(B) – EXHIBIT 25**

**Noluthando Masondo**

**From:** Mailula, T. (Thabo ) <ThaboMai@Nedbank.co.za>  
**Sent:** 08 March 2016 15:27  
**To:** Busani Mataboge; Danie Smit; Nhlanhla Hlophe; Reon Louw; Rosa Moleko; Zander Grobler  
**Cc:** NedCap Operations - Derivatives; Bailey, M. (Melinda)  
**Subject:** New TRade SWap \_ TSDBF \_ Regiments \_ Trade Ref 32530880  
**Attachments:** SA\_2016-03-07\_New\_Trade\_Swap\_TSDBF\_C-O\_REGIMENTS\_32530880\_264944v1.pdf

Dear Sir/Madam

We wish to advise that you have entered into a Transaction with us under and in terms of the ISDA Master Agreement. Please see attached our **Confirmation No 32530880** setting forth the terms of such Transaction. Please review this Confirmation immediately and if there are no errors or discrepancies thereon, execute and return the Confirmation to us within three business days from date hereof or alternatively, advise us of such errors or discrepancies within the aforementioned time period. Failure to respond within such period shall not affect the validity or enforceability of such Transaction and shall be deemed to be an affirmation and acceptance of such terms.

Kindly reply to **TreasuryDerivatives@Nedbank.co.za** email address and quote your reference number: 32530880

Should you have any queries, please do not hesitate to contact us.

Regards



**Thabo Mailula**

**Senior Administrator | Finance : FICC Operations | Nedbank Corporate and Investment Banking**

Second Floor Block F, Nedbank 135 Rivonia Campus 135 Rivonia Road Sandown Sandton 2196 South Africa | PO Box 1144 Johannesburg 2000 South Africa  
 t +27 (0)11 295 8843 f +27 (0)11 295 8843 c +27 (0) 000 0000 email: [thabomai@nedbank.co.za](mailto:thabomai@nedbank.co.za)  
 Website: [nedbank.co.za](http://nedbank.co.za)



THINK BEFORE YOU PRINT - At Nedbank we are committed to minimising our environmental impact and encourage the preservation of natural capital.

\*\*\*\*\*

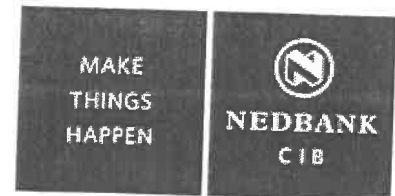
Nedbank Limited Reg No 1951/000009/06. The following link displays the names of the Nedbank Board of Directors and Company Secretary.  
 [ <http://www.nedbank.co.za/terms/DirectorsNedbank.htm> ]

This email is confidential and is intended for the addressee only.  
 The following link will take you to Nedbank's legal notice.

[ <http://www.nedbank.co.za/terms/EmailDisclaimer.htm> ]

\*\*\*\*\*





Counterparty TRANSNET SECOND DEFINED BENEFIT FUND C/O REGIMENTS FUND MANAGERS  
PTY LTD  
From Nedbank Limited  
Date Mar 07, 2016  
Ref No. 32530880  
Confirmation ZAR Interest Rate Swap Transaction

1. The purpose of this communication is to set forth the terms and conditions of the transaction(s) referred to above and entered into on the Trade Date specified below (the "Transaction(s)") between Nedbank Limited, Johannesburg Office ("Nedbank") and TRANSNET SECOND DEFINED BENEFIT FUND C/O REGIMENTS FUND MANAGERS PTY LTD ("Counterparty"). This communication constitutes a Confirmation as referred to in the Agreement specified below.
2. Nedbank and Counterparty agree that with effect from the date of signature of this Confirmation by the party signing last in time, this Confirmation shall supersede all prior verbal and written agreements or confirmations or understandings or representations by or between Nedbank and Counterparty regarding the subject matter of this Confirmation and neither Nedbank nor Counterparty shall be entitled to rely, in any dispute or otherwise regarding this Confirmation on any terms, conditions or representations not expressly contained in this Confirmation.
3. This Confirmation is subject to, and incorporates, the 2006 ISDA Definitions (the 'Definitions') as published by the International Swaps and Derivatives Association, Inc. ('ISDA'). In the event of any inconsistency between the Definitions and this Confirmation, this Confirmation will prevail.
4. This Confirmation evidences a complete and binding agreement between the parties as to the terms of the Transaction to which this Confirmation relates. If Nedbank and Counterparty are parties to the 1992 or 2002 ISDA Master Agreement, (the "Agreement"), this Transaction and Confirmation supplements, forms part of and is subject to such Agreement. If Nedbank and Counterparty are not yet parties to the Agreement, both parties agree to use all reasonable efforts promptly to negotiate, execute and deliver an agreement in the form of the ISDA 2002 Master Agreement with such modifications as both parties will in good faith agree from time to time (the "ISDA Form" or the "Agreement"). Upon execution by the parties of such Agreement, this Confirmation will supplement, form part of, and be subject to the Agreement. All provisions contained or incorporated by reference in the Agreement upon its execution will govern this Confirmation.

Until we execute and deliver the Agreement, this Confirmation, together with all other documents referring to the ISDA Form (each a "Confirmation") confirming transactions (each a "Transaction") entered into between the parties (notwithstanding anything to the contrary in a Confirmation) shall supplement, form a part of, and be subject to an agreement in the form of the ISDA Form as if the parties had executed an agreement on the Trade Date of the first such Transaction between the parties in such form with the Schedule thereto (i) specifying only that (a) the governing law is South African law and (b) the Termination Currency is South African Rand; and (ii) the Cross Default provisions will apply to both parties; and (iii) that the Threshold Amount will be 3 percent of each Party's Shareholders Equity as disclosed in their latest published annual audited financial statements (but shall exclude all bank deposits in relation to Nedbank); and (v) the Credit Event Upon Merger provisions will apply to both parties; and (vi) the Automatic Early Termination provisions will not apply to either party; and (vii) the following additional termination events shall apply in respect of the Counterparty, (a) a copy of any such application is served on the Counterparty (section 131(2)(a) of the Companies Act 2008 as amended); (b) the Counterparty delivers a written notice to an affected person as contemplated by section 129(7) of the Companies Act 2008 as amended; (c) the Counterparty is or becomes "financially distressed" as defined in section 128(f) of the Companies Act 2008 as amended; (d) the Counterparty fails to pay over any amount in terms of an obligation under or in terms of a public regulation, or contract, with respect to employment related matters.

5. Nedbank and Counterparty represent to each other that it has entered into this Transaction in reliance upon such tax, accounting, regulatory, legal and financial advice as it deemed necessary and not upon any view expressed by the other party. Nedbank does not hold itself out as any form of advisor and is not aware of all the financial circumstances of Counterparty, Counterparty is therefore advised to seek independent advice.
6. Counterparty represents to Nedbank that it is entering into this Transaction for the purpose of hedging and not for speculative reasons of any kind.
7. The terms of the particular Transaction to which this Confirmation relates are as follows:

Nedbank 135 Rivonia Campus 135 Rivonia Road Sandown Sandton 2196 Private Bag X25 Benmore 2010 South Africa  
Tel 011 294 4444 Fax 011 295 1111 www.nedbankcapital.co.za

Nedbank Limited Reg No 1951/000009/06, 135 Rivonia Road, Sandown, Sandton 2196, South Africa

Directors: V Naidoo (Chairman) MWT Brown (Chief Executive) DKT Adomakoh (Ghanaian) TA Boardman BA Dames ID Gladman\* PB Hanratty (Irish) JB Hemphill PM Makwana Dr MA Matooane NP Mxasana RK Morathi (Chief Financial Officer) JK Netshitenzhe MC Nkulu (Chief Operating Officer) MI Wyman\*  
(\*British) Company Secretary: TSB Jali 25.11.2015

We subscribe to the Code of Banking Practice of The Banking Association South Africa and, for unresolved disputes, support resolution through the Ombudsman for Banking Services. We are an authorised financial services provider. We are a registered credit provider in terms of the National Credit Act (NCR Reg No NCRCP16).

A Member of the OLD MUTUAL Group



Ref No: 32530880

**General Terms**

Notional Amount	ZAR 2800000000.0
Trade Date	Mar 07, 2016
Effective Date	Mar 07, 2016
Termination Date	Mar 09, 2026, subject to adjustment in accordance with the Following Business Day Convention

**Fixed Amounts**

Fixed Rate Payer	Counterparty
Fixed Rate Payer Payment Date(s)	Quarterly on each Jun 07, Sep 07, Dec 07 and Mar 07 commencing 07 June 2016, ending on the Termination Date, subject to adjustment in accordance with the Following Business Day Convention
Fixed Rate	8.88 %
Fixed Rate Day Count Fraction	Act/365 (Fixed)
Business Days	Johannesburg
Business Day Convention	Following

**Floating Amounts**

Floating Rate Payer	Nedbank
Floating Rate Payer Payment Date(s)	Quarterly on each Jun 07, Sep 07, Dec 07 and Mar 07 commencing 07 June 2016, ending on the Termination Date, subject to adjustment in accordance with the Following Business Day Convention
Floating Rate Option	ZAR-JIBAR-SAFEX
Designated Maturity	3 Months
Compounding	Not Applicable
Averaging	Not Applicable
Floating Rate Day Count Fraction	Act/365 (Fixed)
Floating Rate Spread	0.0 %
Discounting	Not Applicable
Fixing Dates	The first Business Day of each Calculation Period
Business Days	Johannesburg
Business Day Convention	Following
Calculation Agent	Nedbank, unless otherwise specified in the Agreement
Governing Law	This Agreement will be governed by and construed in accordance with the laws of South Africa and each party submits to the non-exclusive jurisdiction of The High Court of South Africa, Gauteng Local Division, Johannesburg, or any other division of such court which may have jurisdiction.

**6. Additional Representations**

Additional Representations, as defined and contemplated in the Agreement, will apply and for the purpose of Section 3 of the Agreement, each of the following will constitute an Additional Representation in respect of this Transaction. In respect of each Additional Representation each of us as a party to the Transaction represents to the other on the date on which this Transaction is entered into and will be deemed to represent continuously for the duration of the term of this Transaction and at all times until the termination of this Transaction that:

- 8.1 Each party represents, warrants and undertakes to the other that its obligations herein constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)), and it has full legal capacity and power (whether under its rules or any applicable law, statute or regulation or otherwise) to enter into, and perform its obligations under, this Transaction.
- 8.2 Each party represents, warrants and undertakes to the other that each of the signatories (and the agent, if applicable) acting for and/or on behalf of such party has the corporate power and authority (a) to execute and deliver the relevant



Ref No: 32530880

documents required in respect of the Transaction and to bind the party for which it acts thereto; and (b) to transact derivative transactions to which such party will be bound.

### 8.3 Exchange Control:

All exchange control approvals or authorisations needed by either party to conduct its business and execute, perform and comply with its obligations under the Agreements have been obtained, and are in full force and effect.

### 8.4 Non Reliance

8.4.1 Each of us is acting for its own account;

8.4.2 Each of us has made its own independent decisions based upon its own judgment and upon advice from such advisors as it has deemed necessary to obtain as to whether or not:

8.4.2.1 to enter into this Transaction;

8.4.2.2 it is suitable, appropriate or proper to enter in this Transaction;

8.4.2.3 it has the capacity to enter into this Transaction,

8.4.3 Each of us has entered into this Transaction:

8.4.3.1 in reliance upon such investment, financial, legal, regulatory, tax, accounting, actuarial and other advice as it deemed necessary;

8.4.3.2 not relying in any manner on any view, proposal, guidance, advice or opinion expressed by the other one of us;

8.4.3.3 not relying in any manner on any communication (written or oral) of the other one of us as investment, financial, legal, regulatory, tax, accounting, actuarial and other advice, it being understood that any information and explanations relating to the terms and conditions of this Transaction shall not be considered or construed as investment, financial, legal, regulatory, tax, accounting, actuarial and other advice or as a proposal, guidance or recommendation to enter into this Transaction,

8.4.4 None of us has received from the other one any assurance, warranty or guarantee as to the expected results or financial or investment returns of or related to this Transaction.

### 8.5 Assessment and Understanding

8.5.1 Each of us is capable of assessing the merits of and understanding, and in fact understands and accepts the terms, conditions of, associated with and related to this Transaction; and

8.5.2 Each of us is capable of assessing and assuming the risks of whatsoever nature, and in fact accepts and assumes all the risks of, associated with and related to this Transaction.

### 8.6 Status of Parties

8.6.1 None of us is acting as a fiduciary for or as an advisor of whatsoever nature or kind to the other one of us in respect of this Transaction; and

8.6.2 Each of us will be liable as principal for its own obligations under this Transaction read with the Agreement and schedule elections incorporated by reference in this Confirmation.

### 8.7 Purpose

Each of us has entered into this Transaction:

8.7.1 for the purpose of managing its borrowings or investments; and/or

8.7.2 for the purpose of hedging its assets or liabilities; and/or

8.7.3 in connection with a line of its business.

## 9. Additional Provisions

9.1 Recording of Conversations



Ref No: 32530880

Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings

9.2.1 The Counterparty acknowledge and agree that certain payments may, through the operation of:

9.2.1.1 international law; and/or

9.2.1.2 the laws and regulations of other jurisdictions; and/or

9.2.1.3 international or governmental practice, whether or not having the force of law,

be prohibited, confiscated, embargoed, withheld or otherwise prevented from being made before such payments have reached the intended recipient(s).

9.2.2 The Counterparty accordingly waives any rights that it may have to claim against Nedbank which it may suffer or incur, directly or indirectly, as a consequence of any of the aforesaid.

9.2.3 Nedbank may, to the extent legally permissible, notify the Counterparty if any payment is prohibited, confiscated, embargoed, withheld or otherwise prevented from being made as soon as Nedbank becomes aware thereof.

#### 10. Settlement Instructions

Nedbank	ZAR	NEDBANK 1570000018 NEDSZAJJ
Counterparty	ZAR	NEDBANK 1118817079 NEDSZAJJ

#### 11. Offices

The offices of Nedbank Johannesburg, South Africa

The offices of Counterparty SOUTH AFRICA

12. Upon receipt hereof, Counterparty hereby agrees to review this Confirmation (Ref No. 32530880) and to either (i) notify Nedbank of any errors or discrepancies or (ii) to confirm that the foregoing correctly sets forth the terms of the agreement with respect to the particular Transaction to which this Confirmation relates by signing this Confirmation and returning to facsimile +27 11 294 6569, Attention: Derivative Department, Treasury Operations or (iii) to achieve an exchange of Confirmations as intended by section 9(e)(ii) of the ISDA Master Agreement by sending an authorised Confirmation in ISDA format to facsimile +27 11 294 6569, Attention: Derivative Department, Treasury Operations.

Yours,

Nedbank Limited

This Confirmation is electronically generated and requires no signature by Nedbank.

Agreed and Accepted by:

TRANSNET SECOND DEFINED BENEFIT FUND C/O REGIMENTS FUND MANAGERS PTY LTD

Ref No: 32530880



Signed

\_\_\_\_\_

Title

\_\_\_\_\_

Dated

\_\_\_\_\_

Signed

\_\_\_\_\_

Title

\_\_\_\_\_

Dated

\_\_\_\_\_



## **REPORT 2(B) – EXHIBIT 26**

**Noluthando Masondo**

**From:** Mailula, T. (Thabo ) <ThaboMai@Nedbank.co.za>  
**Sent:** 09 March 2016 15:42  
**To:** Jackie Borain Transnet Corporate JHB; Phetolo Ramosebudi Transnet Corporate JHB; Tshepo Matlamela Transnet Corporate JHB  
**Cc:** NedCap Operations - Derivatives; Bailey, M. (Melinda)  
**Subject:** New Trade Swap \_ TRANSNET SOC \_ Trade Ref 32538332\_32539903\_32538073\_32539770\_32537127  
**Attachments:** SA\_2016-03-08\_New\_Trade\_Swap\_TRANSNET\_32538332\_265260v1.pdf; SA\_2016-03-08\_New\_Trade\_Swap\_TRANSNET\_32539770\_265258v1.pdf; SA\_2016-03-08\_New\_Trade\_Swap\_TRANSNET\_32539903\_265256v1.pdf; SA\_2016-03-08\_New\_Trade\_Swap\_TRANSNET\_32537127\_265248v1.pdf; SA\_2016-03-08\_New\_Trade\_Swap\_TRANSNET\_32538073\_265254v1.pdf

Dear Sir/Madam

We wish to advise that you have entered into a Transaction with us under and in terms of the ISDA Master Agreement. Please see attached our **Confirmation No 32538332\_32539903\_32538073\_32539770\_32537127** setting forth the terms of such Transaction. Please review this Confirmation immediately and if there are no errors or discrepancies thereon, execute and return the Confirmation to us within three business days from date hereof or alternatively, advise us of such errors or discrepancies within the aforementioned time period. Failure to respond within such period shall not affect the validity or enforceability of such Transaction and shall be deemed to be an affirmation and acceptance of such terms.

Kindly reply to **TreasuryDerivatives@Nedbank.co.za** email address and quote your reference number: 32538332\_32539903\_32538073\_32539770\_32537127

Should you have any queries, please do not hesitate to contact us.

Regards



**Thabo Mailula**

**Senior Administrator | Finance : FICC Operations | Nedbank Corporate and Investment Banking**

Second Floor Block F, Nedbank 135 Rivonia Campus 135 Rivonia Road Sandown Sandton 2196 South Africa | PO Box 1144 Johannesburg 2000 South Africa  
 t +27 (0)11 295 8843 f +27 (0)11 295 8843 c +27 (0) 000 0000 email: [thabomai@nedbank.co.za](mailto:thabomai@nedbank.co.za)  
 Website: [nedbank.co.za](http://nedbank.co.za)



THINK BEFORE YOU PRINT – At Nedbank we are committed to minimising environmental impact and encourage the preservation of natural capital

\*\*\*\*\*

Nedbank Limited Reg No 1951/000009/06. The following link displays the names of the Nedbank Board of Directors and Company Secretary.

[ <http://www.nedbank.co.za/terms/DirectorsNedbank.htm> ]

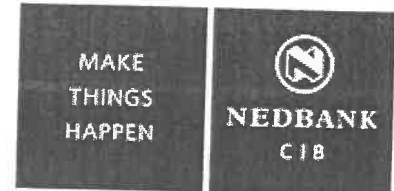
This email is confidential and is intended for the addressee only.

The following link will take you to Nedbank's legal notice.

[ <http://www.nedbank.co.za/terms/EmailDisclaimer.htm> ]

\*\*\*\*\*





Counterparty TRANSNET SOC LTD  
 From Nedbank Limited  
 Date Mar 08, 2016  
 Ref No. 32538332  
 Confirmation ZAR Interest Rate Swap Transaction

1. The purpose of this communication is to set forth the terms and conditions of the transaction(s) referred to above and entered into on the Trade Date specified below (the "Transaction(s)") between Nedbank Limited, Johannesburg Office ("Nedbank") and TRANSNET SOC LTD ("Counterparty"). This communication constitutes a Confirmation as referred to in the Agreement specified below.
2. Nedbank and Counterparty agree that with effect from the date of signature of this Confirmation by the party signing last in time, this Confirmation shall supersede all prior verbal and written agreements or confirmations or understandings or representations by or between Nedbank and Counterparty regarding the subject matter of this Confirmation and neither Nedbank nor Counterparty shall be entitled to rely, in any dispute or otherwise regarding this Confirmation on any terms, conditions or representations not expressly contained in this Confirmation.
3. This Confirmation is subject to, and incorporates, the 2006 ISDA Definitions (the 'Definitions') as published by the International Swaps and Derivatives Association, Inc. ('ISDA'). In the event of any inconsistency between the Definitions and this Confirmation, this Confirmation will prevail.
4. This Confirmation supplements, forms a part of and is subject to the ISDA Master Agreement entered into by Nedbank and the Counterparty and dated as of October 13, 2009, as amended and supplemented from time to time (the "Agreement"). All provisions contained in the Agreement will govern this Confirmation except as expressly modified below.
5. Nedbank and Counterparty represent to each other that it has entered into this Transaction in reliance upon such tax, accounting, regulatory, legal and financial advice as it deemed necessary and not upon any view expressed by the other party. Nedbank does not hold itself out as any form of advisor and is not aware of all the financial circumstances of Counterparty. Counterparty is therefore advised to seek independent advice.
6. Counterparty represents to Nedbank that it is entering into this Transaction for the purpose of hedging and not for speculative reasons of any kind.
7. The terms of the particular Transaction to which this Confirmation relates are as follows:

#### General Terms

Notional Amount	See Annexure A
Trade Date	Mar 08, 2016
Effective Date	Mar 07, 2016
Termination Date	Dec 02, 2030, subject to adjustment in accordance with the Modified Following Business Day Convention

#### Fixed Amounts

Fixed Rate Payer	Counterparty
Fixed Rate Payer Payment Date(s)	See Annexure A
Fixed Rate	12.37 %
Fixed Rate Day Count Fraction	Act/365 (Fixed)
Business Days	Johannesburg
Business Day Convention	Modified Following

#### Floating Amounts

Nedbank 135 Rivonia Campus 135 Rivonia Road Sandown Sandton 2196 Private Bag X25 Benmore 2010 South Africa  
 Tel 011 294 4444 Fax 011 295 1111 www.nedbankcapital.co.za

Nedbank Limited Reg No 1951/00009/06, 135 Rivonia Road, Sandown, Sandton 2196, South Africa

Directors: V Naidoo (Chairman) MWT Brown (Chief Executive) DKT Adomakoh (Ghanaian) TA Boardman BA Dames ID Gladman\* PB Hanratty (Irish) JB Hemphill PM Makwana Dr MA Matoane NP Mnxasana RK Morathi (Chief Financial Officer) JK Netshitenzhe MC Nkulu (Chief Operating Officer) MI Wyman\* (\*British) Company Secretary: TSB Jali 25.11.2015

We subscribe to the Code of Banking Practice of The Banking Association South Africa and, for unresolved disputes, support resolution through the Ombudsman for Banking Services. We are an authorised financial services provider. We are a registered credit provider in terms of the National Credit Act (NCR Reg No NCRCP16).

A Member of the OLD MUTUAL Group



Ref No: 32538332

Floating Rate Payer	Nedbank
Floating Rate Payer Payment Date(s)	See Annexure A
Floating Rate Option	ZAR-JIBAR-SAFEX
Designated Maturity	3 Months
Compounding	Not Applicable
Averaging	Not Applicable
Floating Rate Day Count Fraction	Act/365 (Fixed)
Floating Rate Spread	2.7 %
Discounting	Not Applicable
Fixing Dates	The first Business Day of each Calculation Period
Business Days	Johannesburg
Business Day Convention	Modified Following
Calculation Agent	Nedbank, unless otherwise specified in the Agreement
Governing Law	This Agreement will be governed by and construed in accordance with the laws of South Africa and each party submits to the non-exclusive jurisdiction of The High Court of South Africa, Gauteng Local Division, Johannesburg, or any other division of such court which may have jurisdiction.

## 8. Additional Representations

Additional Representations, as defined and contemplated in the Agreement, will apply and for the purpose of Section 3 of the Agreement, each of the following will constitute an Additional Representation in respect of this Transaction. In respect of each Additional Representation each of us as a party to the Transaction represents to the other on the date on which this Transaction is entered into and will be deemed to represent continuously for the duration of the term of this Transaction and at all times until the termination of this Transaction that:

- 8.1 Each party represents, warrants and undertakes to the other that its obligations herein constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)), and it has full legal capacity and power (whether under its rules or any applicable law, statute or regulation or otherwise) to enter into, and perform its obligations under, this Transaction.
- 8.2 Each party represents, warrants and undertakes to the other that each of the signatories (and the agent, if applicable) acting for and/or on behalf of such party has the corporate power and authority (a) to execute and deliver the relevant documents required in respect of the Transaction and to bind the party for which it acts thereto; and (b) to transact derivative transactions to which such party will be bound.
- 8.3 Exchange Control:
 

All exchange control approvals or authorisations needed by either party to conduct its business and execute, perform and comply with its obligations under the Agreements have been obtained, and are in full force and effect.
- 8.4 Non Reliance
  - 8.4.1 Each of us is acting for its own account;
  - 8.4.2 Each of us has made its own independent decisions based upon its own judgment and upon advice from such advisors as it has deemed necessary to obtain as to whether or not:
    - 8.4.2.1 to enter into this Transaction;
    - 8.4.2.2 it is suitable, appropriate or proper to enter in this Transaction;
    - 8.4.2.3 it has the capacity to enter into this Transaction,
  - 8.4.3 Each of us has entered into this Transaction:
    - 8.4.3.1 in reliance upon such investment, financial, legal, regulatory, tax, accounting, actuarial and other advice as it deemed necessary;
    - 8.4.3.2 not relying in any manner on any view, proposal, guidance, advice or opinion expressed by the other one of us;



Ref No: 32538332

8.4.3.3 not relying in any manner on any communication (written or oral) of the other one of us as investment, financial, legal, regulatory, tax, accounting, actuarial and other advice, it being understood that any information and explanations relating to the terms and conditions of this Transaction shall not be considered or construed as investment, financial, legal, regulatory, tax, accounting, actuarial and other advice or as a proposal, guidance or recommendation to enter into this Transaction,

8.4.4 None of us has received from the other one any assurance, warranty or guarantee as to the expected results or financial or investment returns of or related to this Transaction.

#### 8.5 Assessment and Understanding

8.5.1 Each of us is capable of assessing the merits of and understanding, and in fact understands and accepts the terms, conditions of, associated with and related to this Transaction; and

8.5.2 Each of us is capable of assessing and assuming the risks of whatsoever nature, and in fact accepts and assumes all the risks of, associated with and related to this Transaction.

#### 8.6 Status of Parties

8.6.1 None of us is acting as a fiduciary for or as an advisor of whatsoever nature or kind to the other one of us in respect of this Transaction; and

8.6.2 Each of us will be liable as principal for its own obligations under this Transaction read with the Agreement and schedule elections incorporated by reference in this Confirmation.

#### 8.7 Purpose

Each of us has entered into this Transaction:

8.7.1 for the purpose of managing its borrowings or investments; and/or

8.7.2 for the purpose of hedging its assets or liabilities; and/or

8.7.3 in connection with a line of its business.

#### 9. Additional Provisions

##### 9.1 Recording of Conversations

Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings

9.2.1 The Counterparty acknowledge and agree that certain payments may, through the operation of:

9.2.1.1 international law; and/or

9.2.1.2 the laws and regulations of other jurisdictions; and/or

9.2.1.3 international or governmental practice, whether or not having the force of law,

be prohibited, confiscated, embargoed, withheld or otherwise prevented from being made before such payments have reached the intended recipient(s).

9.2.2 The Counterparty accordingly waives any rights that it may have to claim against Nedbank which it may suffer or incur, directly or indirectly, as a consequence of any of the aforesaid.

9.2.3 Nedbank may, to the extent legally permissible, notify the Counterparty if any payment is prohibited, confiscated, embargoed, withheld or otherwise prevented from being made as soon as Nedbank becomes aware thereof.

#### 10. Settlement Instructions

Nedbank	ZAR	NEDBANK
		1570000018

Ref No: 32538332



Counterparty                      ZAR                      NEDSZAJJ  
STANDARD BANK SA  
002372819  
SBZAZAJJ

**11. Offices**

The offices of Nedbank                      Johannesburg, South Africa

The offices of Counterparty                      JOHANNESBURG, SOUTH AFRICA

12. Upon receipt hereof, Counterparty hereby agrees to review this Confirmation (Ref No. 32538332) and to either (i) notify Nedbank of any errors or discrepancies or (ii) to confirm that the foregoing correctly sets forth the terms of the agreement with respect to the particular Transaction to which this Confirmation relates by signing this Confirmation and returning to facsimile +27 11 294 6569, Attention: Derivative Department, Treasury Operations or (iii) to achieve an exchange of Confirmations as intended by section 9(e)(ii) of the ISDA Master Agreement by sending an authorised Confirmation in ISDA format to facsimile +27 11 294 6569, Attention: Derivative Department, Treasury Operations.

Yours,

Nedbank Limited

This Confirmation is electronically generated and requires no signature by Nedbank.

Agreed and Accepted by:

TRANSNET SOC LTD

Signed \_\_\_\_\_

Signed \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Dated \_\_\_\_\_

Dated \_\_\_\_\_

**Addendum to Confirmation: Annexure A****Calculation Periods for ZAR Interest Rate Swap Transaction : 32538332****Payer: Nedbank**

Payment Date	Start Date	End Date	Type	Currency	Notional Amount
2016-04-15	2016-03-07	2016-04-15	Float Rate Nominal	ZAR	1,500,000,000.00
2016-07-15	2016-04-15	2016-07-15	Float Rate Nominal	ZAR	1,500,000,000.00
2016-10-17	2016-07-15	2016-10-17	Float Rate Nominal	ZAR	1,500,000,000.00
2017-01-16	2016-10-17	2017-01-16	Float Rate Nominal	ZAR	1,500,000,000.00
2017-04-18	2017-01-16	2017-04-18	Float Rate Nominal	ZAR	1,500,000,000.00
2017-07-17	2017-04-18	2017-07-17	Float Rate Nominal	ZAR	1,500,000,000.00
2017-10-16	2017-07-17	2017-10-16	Float Rate Nominal	ZAR	1,500,000,000.00
2018-01-15	2017-10-16	2018-01-15	Float Rate Nominal	ZAR	1,500,000,000.00
2018-04-16	2018-01-15	2018-04-16	Float Rate Nominal	ZAR	1,500,000,000.00
2018-07-16	2018-04-16	2018-07-16	Float Rate Nominal	ZAR	1,500,000,000.00
2018-10-15	2018-07-16	2018-10-15	Float Rate Nominal	ZAR	1,500,000,000.00
2019-01-15	2018-10-15	2019-01-15	Float Rate Nominal	ZAR	1,500,000,000.00
2019-04-15	2019-01-15	2019-04-15	Float Rate Nominal	ZAR	1,500,000,000.00
2019-07-15	2019-04-15	2019-07-15	Float Rate Nominal	ZAR	1,500,000,000.00
2019-10-15	2019-07-15	2019-10-15	Float Rate Nominal	ZAR	1,500,000,000.00
2020-01-15	2019-10-15	2020-01-15	Float Rate Nominal	ZAR	1,500,000,000.00
2020-04-15	2020-01-15	2020-04-15	Float Rate Nominal	ZAR	1,500,000,000.00
2020-07-15	2020-04-15	2020-07-15	Float Rate Nominal	ZAR	1,500,000,000.00



Ref No: 32538332

2020-10-15	2020-07-15	2020-10-15	Float Rate Nominal	ZAR	1,465,116,279.07
2021-01-15	2020-10-15	2021-01-15	Float Rate Nominal	ZAR	1,430,232,558.14
2021-04-15	2021-01-15	2021-04-15	Float Rate Nominal	ZAR	1,395,348,837.21
2021-07-15	2021-04-15	2021-07-15	Float Rate Nominal	ZAR	1,360,465,116.28
2021-10-15	2021-07-15	2021-10-15	Float Rate Nominal	ZAR	1,325,581,395.35
2022-01-17	2021-10-15	2022-01-17	Float Rate Nominal	ZAR	1,290,697,674.42
2022-04-19	2022-01-17	2022-04-19	Float Rate Nominal	ZAR	1,255,813,953.49
2022-07-15	2022-04-19	2022-07-15	Float Rate Nominal	ZAR	1,220,930,232.56
2022-10-17	2022-07-15	2022-10-17	Float Rate Nominal	ZAR	1,186,046,511.63
2023-01-16	2022-10-17	2023-01-16	Float Rate Nominal	ZAR	1,151,162,790.70
2023-04-17	2023-01-16	2023-04-17	Float Rate Nominal	ZAR	1,116,279,069.77
2023-07-17	2023-04-17	2023-07-17	Float Rate Nominal	ZAR	1,081,395,348.84
2023-10-16	2023-07-17	2023-10-16	Float Rate Nominal	ZAR	1,046,511,627.91
2024-01-15	2023-10-16	2024-01-15	Float Rate Nominal	ZAR	1,011,627,906.98
2024-04-15	2024-01-15	2024-04-15	Float Rate Nominal	ZAR	976,744,186.05
2024-07-15	2024-04-15	2024-07-15	Float Rate Nominal	ZAR	941,860,465.12
2024-10-15	2024-07-15	2024-10-15	Float Rate Nominal	ZAR	906,976,744.19
2025-01-15	2024-10-15	2025-01-15	Float Rate Nominal	ZAR	872,093,023.26
2025-04-15	2025-01-15	2025-04-15	Float Rate Nominal	ZAR	837,209,302.33
2025-07-15	2025-04-15	2025-07-15	Float Rate Nominal	ZAR	802,325,581.40
2025-10-15	2025-07-15	2025-10-15	Float Rate Nominal	ZAR	767,441,860.47
2026-01-15	2025-10-15	2026-01-15	Float Rate Nominal	ZAR	732,558,139.53
2026-04-15	2026-01-15	2026-04-15	Float Rate Nominal	ZAR	697,674,418.60
2026-07-15	2026-04-15	2026-07-15	Float Rate Nominal	ZAR	662,790,697.67
2026-10-15	2026-07-15	2026-10-15	Float Rate Nominal	ZAR	627,906,976.74
2027-01-15	2026-10-15	2027-01-15	Float Rate Nominal	ZAR	593,023,255.81
2027-04-15	2027-01-15	2027-04-15	Float Rate Nominal	ZAR	558,139,534.88
2027-07-15	2027-04-15	2027-07-15	Float Rate Nominal	ZAR	523,255,813.95
2027-10-15	2027-07-15	2027-10-15	Float Rate Nominal	ZAR	488,372,093.02
2028-01-17	2027-10-15	2028-01-17	Float Rate Nominal	ZAR	453,488,372.09
2028-04-18	2028-01-17	2028-04-18	Float Rate Nominal	ZAR	418,604,651.16
2028-07-17	2028-04-18	2028-07-17	Float Rate Nominal	ZAR	383,720,930.23
2028-10-16	2028-07-17	2028-10-16	Float Rate Nominal	ZAR	348,837,209.30
2029-01-15	2028-10-16	2029-01-15	Float Rate Nominal	ZAR	313,953,488.37
2029-04-16	2029-01-15	2029-04-16	Float Rate Nominal	ZAR	279,069,767.44
2029-07-16	2029-04-16	2029-07-16	Float Rate Nominal	ZAR	244,186,046.51
2029-10-15	2029-07-16	2029-10-15	Float Rate Nominal	ZAR	209,302,325.58
2030-01-15	2029-10-15	2030-01-15	Float Rate Nominal	ZAR	174,418,604.65
2030-04-15	2030-01-15	2030-04-15	Float Rate Nominal	ZAR	139,534,883.72
2030-07-15	2030-04-15	2030-07-15	Float Rate Nominal	ZAR	104,651,162.79
2030-10-15	2030-07-15	2030-10-15	Float Rate Nominal	ZAR	69,767,441.86
2030-12-02	2030-10-15	2030-12-02	Float Rate Nominal	ZAR	34,883,720.93

**Addendum to Confirmation: Annexure A****Calculation Periods for ZAR Interest Rate Swap Transaction : 32538332**

Payer: Counterparty					
Payment Date	Start Date	End Date	Type	Currency	Notional Amount
2016-04-15	2016-03-07	2016-04-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2016-07-15	2016-04-15	2016-07-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2016-10-17	2016-07-15	2016-10-17	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-01-16	2016-10-17	2017-01-16	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-04-18	2017-01-16	2017-04-18	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-07-17	2017-04-18	2017-07-17	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-10-16	2017-07-17	2017-10-16	Fixed Rate Nominal	ZAR	1,500,000,000.00
2018-01-15	2017-10-16	2018-01-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2018-04-16	2018-01-15	2018-04-16	Fixed Rate Nominal	ZAR	1,500,000,000.00
2018-07-16	2018-04-16	2018-07-16	Fixed Rate Nominal	ZAR	1,500,000,000.00
2018-10-15	2018-07-16	2018-10-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2019-01-15	2018-10-15	2019-01-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2019-04-15	2019-01-15	2019-04-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2019-07-15	2019-04-15	2019-07-15	Fixed Rate Nominal	ZAR	1,500,000,000.00

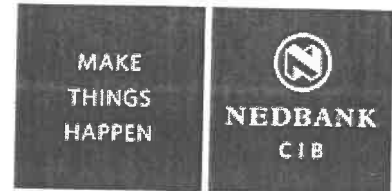




Ref No: 32538332

2019-10-15	2019-07-15	2019-10-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2020-01-15	2019-10-15	2020-01-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2020-04-15	2020-01-15	2020-04-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2020-07-15	2020-04-15	2020-07-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2020-10-15	2020-07-15	2020-10-15	Fixed Rate Nominal	ZAR	1,465,116,279.07
2021-01-15	2020-10-15	2021-01-15	Fixed Rate Nominal	ZAR	1,430,232,558.14
2021-04-15	2021-01-15	2021-04-15	Fixed Rate Nominal	ZAR	1,395,348,837.21
2021-07-15	2021-04-15	2021-07-15	Fixed Rate Nominal	ZAR	1,360,465,116.28
2021-10-15	2021-07-15	2021-10-15	Fixed Rate Nominal	ZAR	1,325,581,395.35
2022-01-17	2021-10-15	2022-01-17	Fixed Rate Nominal	ZAR	1,290,697,674.42
2022-04-19	2022-01-17	2022-04-19	Fixed Rate Nominal	ZAR	1,255,813,953.49
2022-07-15	2022-04-19	2022-07-15	Fixed Rate Nominal	ZAR	1,220,930,232.56
2022-10-17	2022-07-15	2022-10-17	Fixed Rate Nominal	ZAR	1,186,046,511.63
2023-01-16	2022-10-17	2023-01-16	Fixed Rate Nominal	ZAR	1,151,162,790.70
2023-04-17	2023-01-16	2023-04-17	Fixed Rate Nominal	ZAR	1,116,279,069.77
2023-07-17	2023-04-17	2023-07-17	Fixed Rate Nominal	ZAR	1,081,395,348.84
2023-10-16	2023-07-17	2023-10-16	Fixed Rate Nominal	ZAR	1,046,511,627.91
2024-01-15	2023-10-16	2024-01-15	Fixed Rate Nominal	ZAR	1,011,627,906.98
2024-04-15	2024-01-15	2024-04-15	Fixed Rate Nominal	ZAR	976,744,186.05
2024-07-15	2024-04-15	2024-07-15	Fixed Rate Nominal	ZAR	941,860,465.12
2024-10-15	2024-07-15	2024-10-15	Fixed Rate Nominal	ZAR	906,976,744.19
2025-01-15	2024-10-15	2025-01-15	Fixed Rate Nominal	ZAR	872,093,023.26
2025-04-15	2025-01-15	2025-04-15	Fixed Rate Nominal	ZAR	837,209,302.33
2025-07-15	2025-04-15	2025-07-15	Fixed Rate Nominal	ZAR	802,325,581.40
2025-10-15	2025-07-15	2025-10-15	Fixed Rate Nominal	ZAR	767,441,860.47
2026-01-15	2025-10-15	2026-01-15	Fixed Rate Nominal	ZAR	732,558,139.53
2026-04-15	2026-01-15	2026-04-15	Fixed Rate Nominal	ZAR	697,674,418.60
2026-07-15	2026-04-15	2026-07-15	Fixed Rate Nominal	ZAR	662,790,697.67
2026-10-15	2026-07-15	2026-10-15	Fixed Rate Nominal	ZAR	627,906,976.74
2027-01-15	2026-10-15	2027-01-15	Fixed Rate Nominal	ZAR	593,023,255.81
2027-04-15	2027-01-15	2027-04-15	Fixed Rate Nominal	ZAR	558,139,534.88
2027-07-15	2027-04-15	2027-07-15	Fixed Rate Nominal	ZAR	523,255,813.95
2027-10-15	2027-07-15	2027-10-15	Fixed Rate Nominal	ZAR	488,372,093.02
2028-01-17	2027-10-15	2028-01-17	Fixed Rate Nominal	ZAR	453,488,372.09
2028-04-18	2028-01-17	2028-04-18	Fixed Rate Nominal	ZAR	418,604,651.16
2028-07-17	2028-04-18	2028-07-17	Fixed Rate Nominal	ZAR	383,720,930.23
2028-10-16	2028-07-17	2028-10-16	Fixed Rate Nominal	ZAR	348,837,209.30
2029-01-15	2028-10-16	2029-01-15	Fixed Rate Nominal	ZAR	313,953,488.37
2029-04-16	2029-01-15	2029-04-16	Fixed Rate Nominal	ZAR	279,069,767.44
2029-07-16	2029-04-16	2029-07-16	Fixed Rate Nominal	ZAR	244,186,046.51
2029-10-15	2029-07-16	2029-10-15	Fixed Rate Nominal	ZAR	209,302,325.58
2030-01-15	2029-10-15	2030-01-15	Fixed Rate Nominal	ZAR	174,418,604.65
2030-04-15	2030-01-15	2030-04-15	Fixed Rate Nominal	ZAR	139,534,883.72
2030-07-15	2030-04-15	2030-07-15	Fixed Rate Nominal	ZAR	104,651,162.79
2030-10-15	2030-07-15	2030-10-15	Fixed Rate Nominal	ZAR	69,767,441.86
2030-12-02	2030-10-15	2030-12-02	Fixed Rate Nominal	ZAR	34,883,720.93





Counterparty      TRANSNET SOC LTD  
 From                Nedbank Limited  
 Date                Mar 08, 2016  
 Ref No.            32539770  
 Confirmation      ZAR Interest Rate Swap Transaction

1. The purpose of this communication is to set forth the terms and conditions of the transaction(s) referred to above and entered into on the Trade Date specified below (the "Transaction(s)") between Nedbank Limited, Johannesburg Office ("Nedbank") and TRANSNET SOC LTD ("Counterparty"). This communication constitutes a Confirmation as referred to in the Agreement specified below.
2. Nedbank and Counterparty agree that with effect from the date of signature of this Confirmation by the party signing last in time, this Confirmation shall supersede all prior verbal and written agreements or confirmations or understandings or representations by or between Nedbank and Counterparty regarding the subject matter of this Confirmation and neither Nedbank nor Counterparty shall be entitled to rely, in any dispute or otherwise regarding this Confirmation on any terms, conditions or representations not expressly contained in this Confirmation.
3. This Confirmation is subject to, and incorporates, the 2006 ISDA Definitions (the 'Definitions') as published by the International Swaps and Derivatives Association, Inc. ('ISDA'). In the event of any inconsistency between the Definitions and this Confirmation, this Confirmation will prevail.
4. This Confirmation supplements, forms a part of and is subject to the ISDA Master Agreement entered into by Nedbank and the Counterparty and dated as of October 13, 2009, as amended and supplemented from time to time (the "Agreement"). All provisions contained in the Agreement will govern this Confirmation except as expressly modified below.
5. Nedbank and Counterparty represent to each other that it has entered into this Transaction in reliance upon such tax, accounting, regulatory, legal and financial advice as it deemed necessary and not upon any view expressed by the other party. Nedbank does not hold itself out as any form of advisor and is not aware of all the financial circumstances of Counterparty, Counterparty is therefore advised to seek independent advice.
6. Counterparty represents to Nedbank that it is entering into this Transaction for the purpose of hedging and not for speculative reasons of any kind.
7. The terms of the particular Transaction to which this Confirmation relates are as follows:

#### General Terms

Notional Amount	See Annexure A
Trade Date	Mar 08, 2016
Effective Date	Mar 07, 2016
Termination Date	Dec 02, 2030, subject to adjustment in accordance with the Modified Following Business Day Convention

#### Fixed Amounts

Fixed Rate Payer	Counterparty
Fixed Rate Payer Payment Date(s)	See Annexure A
Fixed Rate	12.37 %
Fixed Rate Day Count Fraction	Act/365 (Fixed)
Business Days	Johannesburg
Business Day Convention	Modified Following

#### Floating Amounts

Nedbank 135 Rivonia Campus 135 Rivonia Road Sandown Sandton 2196 Private Bag X25 Benmore 2010 South Africa  
 Tel 011 294 4444 Fax 011 295 1111 www.nedbankcapital.co.za  
 Nedbank Limited Reg No 195/000009/06, 135 Rivonia Road, Sandown, Sandton 2196, South Africa

Directors: V Naidoo (Chairman) MWT Brown (Chief Executive) DKT Adomakoh (Ghanaian) TA Boardman BA Dames ID Gladman\* PB Hanratty(Irish) JB Hemphill PM Makwana Dr MA Matooane NP Mxasana RK Morathi (Chief Financial Officer) JK Netshitenzhe MC Nkuhiu (Chief Operating Officer) MI Wyman\*  
 (\*British) Company Secretary: TSB Jali 25.11.2015

We subscribe to the Code of Banking Practice of The Banking Association South Africa and, for unresolved disputes, support resolution through the Ombudsman for Banking Services. We are an authorised financial services provider. We are a registered credit provider in terms of the National Credit Act (NCR Reg No NCRCP16).

A Member of the OLD MUTUAL Group



Ref No: 32539770

Floating Rate Payer	Nedbank
Floating Rate Payer Payment Date(s)	See Annexure A
Floating Rate Option	ZAR-JIBAR-SAFEX
Designated Maturity	3 Months
Compounding	Not Applicable
Averaging	Not Applicable
Floating Rate Day Count Fraction	Act/365 (Fixed)
Floating Rate Spread	2.7 %
Discounting	Not Applicable
Fixing Dates	The first Business Day of each Calculation Period
Business Days	Johannesburg
Business Day Convention	Modified Following
Calculation Agent	Nedbank, unless otherwise specified in the Agreement
Governing Law	This Agreement will be governed by and construed in accordance with the laws of South Africa and each party submits to the non-exclusive jurisdiction of The High Court of South Africa, Gauteng Local Division, Johannesburg, or any other division of such court which may have jurisdiction.

## 8. Additional Representations

Additional Representations, as defined and contemplated in the Agreement, will apply and for the purpose of Section 3 of the Agreement, each of the following will constitute an Additional Representation in respect of this Transaction. In respect of each Additional Representation each of us as a party to the Transaction represents to the other on the date on which this Transaction is entered into and will be deemed to represent continuously for the duration of the term of this Transaction and at all times until the termination of this Transaction that:

- 8.1 Each party represents, warrants and undertakes to the other that its obligations herein constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)), and it has full legal capacity and power (whether under its rules or any applicable law, statute or regulation or otherwise) to enter into, and perform its obligations under, this Transaction.
- 8.2 Each party represents, warrants and undertakes to the other that each of the signatories (and the agent, if applicable) acting for and/or on behalf of such party has the corporate power and authority (a) to execute and deliver the relevant documents required in respect of the Transaction and to bind the party for which it acts thereto; and (b) to transact derivative transactions to which such party will be bound.
- 8.3 Exchange Control:  
All exchange control approvals or authorisations needed by either party to conduct its business and execute, perform and comply with its obligations under the Agreements have been obtained, and are in full force and effect.
- 8.4 Non Reliance
  - 8.4.1 Each of us is acting for its own account;
  - 8.4.2 Each of us has made its own independent decisions based upon its own judgment and upon advice from such advisors as it has deemed necessary to obtain as to whether or not:
    - 8.4.2.1 to enter into this Transaction;
    - 8.4.2.2 it is suitable, appropriate or proper to enter in this Transaction;
    - 8.4.2.3 it has the capacity to enter into this Transaction,
  - 8.4.3 Each of us has entered into this Transaction:
    - 8.4.3.1 in reliance upon such investment, financial, legal, regulatory, tax, accounting, actuarial and other advice as it deemed necessary;
    - 8.4.3.2 not relying in any manner on any view, proposal, guidance, advice or opinion expressed by the other one of us;



Ref No: 32539770

8.4.3.3 not relying in any manner on any communication (written or oral) of the other one of us as investment, financial, legal, regulatory, tax, accounting, actuarial and other advice, it being understood that any information and explanations relating to the terms and conditions of this Transaction shall not be considered or construed as investment, financial, legal, regulatory, tax, accounting, actuarial and other advice or as a proposal, guidance or recommendation to enter into this Transaction,

8.4.4 None of us has received from the other one any assurance, warranty or guarantee as to the expected results or financial or investment returns of or related to this Transaction.

#### 8.5 Assessment and Understanding

8.5.1 Each of us is capable of assessing the merits of and understanding, and in fact understands and accepts the terms, conditions of, associated with and related to this Transaction; and

8.5.2 Each of us is capable of assessing and assuming the risks of whatsoever nature, and in fact accepts and assumes all the risks of, associated with and related to this Transaction.

#### 8.6 Status of Parties

8.6.1 None of us is acting as a fiduciary for or as an advisor of whatsoever nature or kind to the other one of us in respect of this Transaction; and

8.6.2 Each of us will be liable as principal for its own obligations under this Transaction read with the Agreement and schedule elections incorporated by reference in this Confirmation.

#### 8.7 Purpose

Each of us has entered into this Transaction:

8.7.1 for the purpose of managing its borrowings or investments; and/or

8.7.2 for the purpose of hedging its assets or liabilities; and/or

8.7.3 in connection with a line of its business.

#### 9. Additional Provisions

##### 9.1 Recording of Conversations

Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings

9.2.1 The Counterparty acknowledge and agree that certain payments may, through the operation of:

9.2.1.1 international law; and/or

9.2.1.2 the laws and regulations of other jurisdictions; and/or

9.2.1.3 international or governmental practice, whether or not having the force of law,

be prohibited, confiscated, embargoed, withheld or otherwise prevented from being made before such payments have reached the intended recipient(s).

9.2.2 The Counterparty accordingly waives any rights that it may have to claim against Nedbank which it may suffer or incur, directly or indirectly, as a consequence of any of the aforesaid.

9.2.3 Nedbank may, to the extent legally permissible, notify the Counterparty if any payment is prohibited, confiscated, embargoed, withheld or otherwise prevented from being made as soon as Nedbank becomes aware thereof.

#### 10. Settlement Instructions

Nedbank	ZAR	NEDBANK
		1570000018



Ref No: 32539770

Counterparty                      ZAR                      NEDSAJJ  
STANDARD BANK SA  
002372819  
SBZAJJJ

**11. Offices**

The offices of Nedbank                      Johannesburg, South Africa

The offices of Counterparty                      JOHANNESBURG, SOUTH AFRICA

12. Upon receipt hereof, Counterparty hereby agrees to review this Confirmation (Ref No. 32539770) and to either (i) notify Nedbank of any errors or discrepancies or (ii) to confirm that the foregoing correctly sets forth the terms of the agreement with respect to the particular Transaction to which this Confirmation relates by signing this Confirmation and returning to facsimile +27 11 294 6569, Attention: Derivative Department, Treasury Operations or (iii) to achieve an exchange of Confirmations as intended by section 9(e)(ii) of the ISDA Master Agreement by sending an authorised Confirmation in ISDA format to facsimile +27 11 294 6569, Attention: Derivative Department, Treasury Operations.

Yours,

Nedbank Limited

This Confirmation is electronically generated and requires no signature by Nedbank.

Agreed and Accepted by:

TRANSNET SOC LTD

Signed

Signed

Title

Title

Dated

Dated

**Addendum to Confirmation: Annexure A****Calculation Periods for ZAR Interest Rate Swap Transaction : 32539770****Payer: Nedbank**

Payment Date	Start Date	End Date	Type	Currency	Notional Amount
2016-04-15	2016-03-07	2016-04-15	Float Rate Nominal	ZAR	1,500,000,000.00
2016-07-15	2016-04-15	2016-07-15	Float Rate Nominal	ZAR	1,500,000,000.00
2016-10-17	2016-07-15	2016-10-17	Float Rate Nominal	ZAR	1,500,000,000.00
2017-01-16	2016-10-17	2017-01-16	Float Rate Nominal	ZAR	1,500,000,000.00
2017-04-18	2017-01-16	2017-04-18	Float Rate Nominal	ZAR	1,500,000,000.00
2017-07-17	2017-04-18	2017-07-17	Float Rate Nominal	ZAR	1,500,000,000.00
2017-10-16	2017-07-17	2017-10-16	Float Rate Nominal	ZAR	1,500,000,000.00
2018-01-15	2017-10-16	2018-01-15	Float Rate Nominal	ZAR	1,500,000,000.00
2018-04-16	2018-01-15	2018-04-16	Float Rate Nominal	ZAR	1,500,000,000.00
2018-07-16	2018-04-16	2018-07-16	Float Rate Nominal	ZAR	1,500,000,000.00
2018-10-15	2018-07-16	2018-10-15	Float Rate Nominal	ZAR	1,500,000,000.00
2019-01-15	2018-10-15	2019-01-15	Float Rate Nominal	ZAR	1,500,000,000.00
2019-04-15	2019-01-15	2019-04-15	Float Rate Nominal	ZAR	1,500,000,000.00
2019-07-15	2019-04-15	2019-07-15	Float Rate Nominal	ZAR	1,500,000,000.00
2019-10-15	2019-07-15	2019-10-15	Float Rate Nominal	ZAR	1,500,000,000.00
2020-01-15	2019-10-15	2020-01-15	Float Rate Nominal	ZAR	1,500,000,000.00
2020-04-15	2020-01-15	2020-04-15	Float Rate Nominal	ZAR	1,500,000,000.00
2020-07-15	2020-04-15	2020-07-15	Float Rate Nominal	ZAR	1,500,000,000.00



Ref No: 32539770

2020-10-15	2020-07-15	2020-10-15	Float Rate Nominal	ZAR	1,465,116,279.07
2021-01-15	2020-10-15	2021-01-15	Float Rate Nominal	ZAR	1,430,232,558.14
2021-04-15	2021-01-15	2021-04-15	Float Rate Nominal	ZAR	1,395,348,837.21
2021-07-15	2021-04-15	2021-07-15	Float Rate Nominal	ZAR	1,360,465,116.28
2021-10-15	2021-07-15	2021-10-15	Float Rate Nominal	ZAR	1,325,581,395.35
2022-01-17	2021-10-15	2022-01-17	Float Rate Nominal	ZAR	1,290,697,674.42
2022-04-19	2022-01-17	2022-04-19	Float Rate Nominal	ZAR	1,255,813,953.49
2022-07-15	2022-04-19	2022-07-15	Float Rate Nominal	ZAR	1,220,930,232.56
2022-10-17	2022-07-15	2022-10-17	Float Rate Nominal	ZAR	1,186,046,511.63
2023-01-16	2022-10-17	2023-01-16	Float Rate Nominal	ZAR	1,151,162,790.70
2023-04-17	2023-01-16	2023-04-17	Float Rate Nominal	ZAR	1,116,279,069.77
2023-07-17	2023-04-17	2023-07-17	Float Rate Nominal	ZAR	1,081,395,348.84
2023-10-16	2023-07-17	2023-10-16	Float Rate Nominal	ZAR	1,046,511,627.91
2024-01-15	2023-10-16	2024-01-15	Float Rate Nominal	ZAR	1,011,627,906.98
2024-04-15	2024-01-15	2024-04-15	Float Rate Nominal	ZAR	976,744,186.05
2024-07-15	2024-04-15	2024-07-15	Float Rate Nominal	ZAR	941,860,465.12
2024-10-15	2024-07-15	2024-10-15	Float Rate Nominal	ZAR	906,976,744.19
2025-01-15	2024-10-15	2025-01-15	Float Rate Nominal	ZAR	872,093,023.26
2025-04-15	2025-01-15	2025-04-15	Float Rate Nominal	ZAR	837,209,302.33
2025-07-15	2025-04-15	2025-07-15	Float Rate Nominal	ZAR	802,325,581.40
2025-10-15	2025-07-15	2025-10-15	Float Rate Nominal	ZAR	767,441,860.47
2026-01-15	2025-10-15	2026-01-15	Float Rate Nominal	ZAR	732,558,139.53
2026-04-15	2026-01-15	2026-04-15	Float Rate Nominal	ZAR	697,674,418.60
2026-07-15	2026-04-15	2026-07-15	Float Rate Nominal	ZAR	662,790,697.67
2026-10-15	2026-07-15	2026-10-15	Float Rate Nominal	ZAR	627,906,976.74
2027-01-15	2026-10-15	2027-01-15	Float Rate Nominal	ZAR	593,023,255.81
2027-04-15	2027-01-15	2027-04-15	Float Rate Nominal	ZAR	558,139,534.88
2027-07-15	2027-04-15	2027-07-15	Float Rate Nominal	ZAR	523,255,813.95
2027-10-15	2027-07-15	2027-10-15	Float Rate Nominal	ZAR	488,372,093.02
2028-01-17	2027-10-15	2028-01-17	Float Rate Nominal	ZAR	453,488,372.09
2028-04-18	2028-01-17	2028-04-18	Float Rate Nominal	ZAR	418,604,651.16
2028-07-17	2028-04-18	2028-07-17	Float Rate Nominal	ZAR	383,720,930.23
2028-10-16	2028-07-17	2028-10-16	Float Rate Nominal	ZAR	348,837,209.30
2029-01-15	2028-10-16	2029-01-15	Float Rate Nominal	ZAR	313,953,488.37
2029-04-16	2029-01-15	2029-04-16	Float Rate Nominal	ZAR	279,069,767.44
2029-07-16	2029-04-16	2029-07-16	Float Rate Nominal	ZAR	244,186,046.51
2029-10-15	2029-07-16	2029-10-15	Float Rate Nominal	ZAR	209,302,325.58
2030-01-15	2029-10-15	2030-01-15	Float Rate Nominal	ZAR	174,418,604.65
2030-04-15	2030-01-15	2030-04-15	Float Rate Nominal	ZAR	139,534,883.72
2030-07-15	2030-04-15	2030-07-15	Float Rate Nominal	ZAR	104,651,162.79
2030-10-15	2030-07-15	2030-10-15	Float Rate Nominal	ZAR	69,767,441.86
2030-12-02	2030-10-15	2030-12-02	Float Rate Nominal	ZAR	34,883,720.93

## Addendum to Confirmation: Annexure A

Calculation Periods for ZAR Interest Rate Swap Transaction : 32539770

Payer: Counterparty					
Payment Date	Start Date	End Date	Type	Currency	Notional Amount
2016-04-15	2016-03-07	2016-04-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2016-07-15	2016-04-15	2016-07-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2016-10-17	2016-07-15	2016-10-17	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-01-16	2016-10-17	2017-01-16	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-04-18	2017-01-16	2017-04-18	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-07-17	2017-04-18	2017-07-17	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-10-16	2017-07-17	2017-10-16	Fixed Rate Nominal	ZAR	1,500,000,000.00
2018-01-15	2017-10-16	2018-01-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2018-04-16	2018-01-15	2018-04-16	Fixed Rate Nominal	ZAR	1,500,000,000.00
2018-07-16	2018-04-16	2018-07-16	Fixed Rate Nominal	ZAR	1,500,000,000.00
2018-10-15	2018-07-16	2018-10-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2019-01-15	2018-10-15	2019-01-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2019-04-15	2019-01-15	2019-04-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2019-07-15	2019-04-15	2019-07-15	Fixed Rate Nominal	ZAR	1,500,000,000.00





Ref No: 32539770

2019-10-15	2019-07-15	2019-10-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2020-01-15	2019-10-15	2020-01-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2020-04-15	2020-01-15	2020-04-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2020-07-15	2020-04-15	2020-07-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2020-10-15	2020-07-15	2020-10-15	Fixed Rate Nominal	ZAR	1,465,116,279.07
2021-01-15	2020-10-15	2021-01-15	Fixed Rate Nominal	ZAR	1,430,232,558.14
2021-04-15	2021-01-15	2021-04-15	Fixed Rate Nominal	ZAR	1,395,348,837.21
2021-07-15	2021-04-15	2021-07-15	Fixed Rate Nominal	ZAR	1,360,465,116.28
2021-10-15	2021-07-15	2021-10-15	Fixed Rate Nominal	ZAR	1,325,581,395.35
2022-01-17	2021-10-15	2022-01-17	Fixed Rate Nominal	ZAR	1,290,697,674.42
2022-04-19	2022-01-17	2022-04-19	Fixed Rate Nominal	ZAR	1,255,813,953.49
2022-07-15	2022-04-19	2022-07-15	Fixed Rate Nominal	ZAR	1,220,930,232.56
2022-10-17	2022-07-15	2022-10-17	Fixed Rate Nominal	ZAR	1,186,046,511.63
2023-01-16	2022-10-17	2023-01-16	Fixed Rate Nominal	ZAR	1,151,162,790.70
2023-04-17	2023-01-16	2023-04-17	Fixed Rate Nominal	ZAR	1,116,279,069.77
2023-07-17	2023-04-17	2023-07-17	Fixed Rate Nominal	ZAR	1,081,395,348.84
2023-10-16	2023-07-17	2023-10-16	Fixed Rate Nominal	ZAR	1,046,511,627.91
2024-01-15	2023-10-16	2024-01-15	Fixed Rate Nominal	ZAR	1,011,627,906.98
2024-04-15	2024-01-15	2024-04-15	Fixed Rate Nominal	ZAR	976,744,186.05
2024-07-15	2024-04-15	2024-07-15	Fixed Rate Nominal	ZAR	941,860,465.12
2024-10-15	2024-07-15	2024-10-15	Fixed Rate Nominal	ZAR	906,976,744.19
2025-01-15	2024-10-15	2025-01-15	Fixed Rate Nominal	ZAR	872,093,023.26
2025-04-15	2025-01-15	2025-04-15	Fixed Rate Nominal	ZAR	837,209,302.33
2025-07-15	2025-04-15	2025-07-15	Fixed Rate Nominal	ZAR	802,325,581.40
2025-10-15	2025-07-15	2025-10-15	Fixed Rate Nominal	ZAR	767,441,860.47
2026-01-15	2025-10-15	2026-01-15	Fixed Rate Nominal	ZAR	732,558,139.53
2026-04-15	2026-01-15	2026-04-15	Fixed Rate Nominal	ZAR	697,674,418.60
2026-07-15	2026-04-15	2026-07-15	Fixed Rate Nominal	ZAR	662,790,697.67
2026-10-15	2026-07-15	2026-10-15	Fixed Rate Nominal	ZAR	627,906,976.74
2027-01-15	2026-10-15	2027-01-15	Fixed Rate Nominal	ZAR	593,023,255.81
2027-04-15	2027-01-15	2027-04-15	Fixed Rate Nominal	ZAR	558,139,534.88
2027-07-15	2027-04-15	2027-07-15	Fixed Rate Nominal	ZAR	523,255,813.95
2027-10-15	2027-07-15	2027-10-15	Fixed Rate Nominal	ZAR	488,372,093.02
2028-01-17	2027-10-15	2028-01-17	Fixed Rate Nominal	ZAR	453,488,372.09
2028-04-18	2028-01-17	2028-04-18	Fixed Rate Nominal	ZAR	418,604,651.16
2028-07-17	2028-04-18	2028-07-17	Fixed Rate Nominal	ZAR	383,720,930.23
2028-10-16	2028-07-17	2028-10-16	Fixed Rate Nominal	ZAR	348,837,209.30
2029-01-15	2028-10-16	2029-01-15	Fixed Rate Nominal	ZAR	313,953,488.37
2029-04-16	2029-01-15	2029-04-16	Fixed Rate Nominal	ZAR	279,069,767.44
2029-07-16	2029-04-16	2029-07-16	Fixed Rate Nominal	ZAR	244,186,046.51
2029-10-15	2029-07-16	2029-10-15	Fixed Rate Nominal	ZAR	209,302,325.58
2030-01-15	2029-10-15	2030-01-15	Fixed Rate Nominal	ZAR	174,418,604.65
2030-04-15	2030-01-15	2030-04-15	Fixed Rate Nominal	ZAR	139,534,883.72
2030-07-15	2030-04-15	2030-07-15	Fixed Rate Nominal	ZAR	104,651,162.79
2030-10-15	2030-07-15	2030-10-15	Fixed Rate Nominal	ZAR	69,767,441.86
2030-12-02	2030-10-15	2030-12-02	Fixed Rate Nominal	ZAR	34,883,720.93







Counterparty TRANSNET SOC LTD  
 From Nedbank Limited  
 Date Mar 08, 2016  
 Ref No. 32539903  
 Confirmation ZAR Interest Rate Swap Transaction

1. The purpose of this communication is to set forth the terms and conditions of the transaction(s) referred to above and entered into on the Trade Date specified below (the "Transaction(s)") between Nedbank Limited, Johannesburg Office ("Nedbank") and TRANSNET SOC LTD ("Counterparty"). This communication constitutes a Confirmation as referred to in the Agreement specified below.
2. Nedbank and Counterparty agree that with effect from the date of signature of this Confirmation by the party signing last in time, this Confirmation shall supersede all prior verbal and written agreements or confirmations or understandings or representations by or between Nedbank and Counterparty regarding the subject matter of this Confirmation and neither Nedbank nor Counterparty shall be entitled to rely, in any dispute or otherwise regarding this Confirmation on any terms, conditions or representations not expressly contained in this Confirmation.
3. This Confirmation is subject to, and incorporates, the 2006 ISDA Definitions (the 'Definitions') as published by the International Swaps and Derivatives Association, Inc. ('ISDA'). In the event of any inconsistency between the Definitions and this Confirmation, this Confirmation will prevail.
4. This Confirmation supplements, forms a part of and is subject to the ISDA Master Agreement entered into by Nedbank and the Counterparty and dated as of October 13, 2009, as amended and supplemented from time to time (the "Agreement"). All provisions contained in the Agreement will govern this Confirmation except as expressly modified below.
5. Nedbank and Counterparty represent to each other that it has entered into this Transaction in reliance upon such tax, accounting, regulatory, legal and financial advice as it deemed necessary and not upon any view expressed by the other party. Nedbank does not hold itself out as any form of advisor and is not aware of all the financial circumstances of Counterparty, Counterparty is therefore advised to seek independent advice.
6. Counterparty represents to Nedbank that it is entering into this Transaction for the purpose of hedging and not for speculative reasons of any kind.
7. The terms of the particular Transaction to which this Confirmation relates are as follows:

#### General Terms

Notional Amount	See Annexure A
Trade Date	Mar 08, 2016
Effective Date	Mar 07, 2016
Termination Date	Dec 02, 2030, subject to adjustment in accordance with the Modified Following Business Day Convention

#### Fixed Amounts

Fixed Rate Payer	Counterparty
Fixed Rate Payer Payment Date(s)	See Annexure A
Fixed Rate	12.37 %
Fixed Rate Day Count Fraction	Act/365 (Fixed)
Business Days	Johannesburg
Business Day Convention	Modified Following

#### Floating Amounts

Nedbank 135 Rivonia Campus 135 Rivonia Road Sandown Sandton 2196 Private Bag X25 Benmore 2010 South Africa  
 Tel 011 294 4444 Fax 011 295 1111 www.nedbankcapital.co.za

Nedbank Limited Reg No 1951/000009/06, 135 Rivonia Road, Sandown, Sandton 2196, South Africa

Directors: V Naidoo (Chairman) MWT Brown (Chief Executive) DKT Adomakoh (Ghanaian) TA Boardman BA Dames ID Gladman\* PB Hanratty (Irish) JB Hemphill PM Makwana Dr MA Matooane NP Mxasana RK Morathi (Chief Financial Officer) JK Netshitenzhe MC Nkuhlu (Chief Operating Officer) MI Wyman\*  
 (\*British) Company Secretary: TSB Jai 25.11.2015

We subscribe to the Code of Banking Practice of The Banking Association South Africa and, for unresolved disputes, support resolution through the Ombudsman for Banking Services. We are an authorised financial services provider. We are a registered credit provider in terms of the National Credit Act (NCR Reg No NCRCP16).

A Member of the OLD MUTUAL Group



Ref No: 32539903

Floating Rate Payer	Nedbank
Floating Rate Payer Payment Date(s)	See Annexure A
Floating Rate Option	ZAR-JIBAR-SAFEX
Designated Maturity	3 Months
Compounding	Not Applicable
Averaging	Not Applicable
Floating Rate Day Count Fraction	Act/365 (Fixed)
Floating Rate Spread	2.7 %
Discounting	Not Applicable
Fixing Dates	The first Business Day of each Calculation Period
Business Days	Johannesburg
Business Day Convention	Modified Following
Calculation Agent	Nedbank, unless otherwise specified in the Agreement
Governing Law	This Agreement will be governed by and construed in accordance with the laws of South Africa and each party submits to the non-exclusive jurisdiction of The High Court of South Africa, Gauteng Local Division, Johannesburg, or any other division of such court which may have jurisdiction.

## 8. Additional Representations

Additional Representations, as defined and contemplated in the Agreement, will apply and for the purpose of Section 3 of the Agreement, each of the following will constitute an Additional Representation in respect of this Transaction. In respect of each Additional Representation each of us as a party to the Transaction represents to the other on the date on which this Transaction is entered into and will be deemed to represent continuously for the duration of the term of this Transaction and at all times until the termination of this Transaction that:

- 8.1 Each party represents, warrants and undertakes to the other that its obligations herein constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)), and it has full legal capacity and power (whether under its rules or any applicable law, statute or regulation or otherwise) to enter into, and perform its obligations under, this Transaction.
- 8.2 Each party represents, warrants and undertakes to the other that each of the signatories (and the agent, if applicable) acting for and/or on behalf of such party has the corporate power and authority (a) to execute and deliver the relevant documents required in respect of the Transaction and to bind the party for which it acts thereto; and (b) to transact derivative transactions to which such party will be bound.
- 8.3 Exchange Control:
 

All exchange control approvals or authorisations needed by either party to conduct its business and execute, perform and comply with its obligations under the Agreements have been obtained, and are in full force and effect.
- 8.4 Non Reliance
  - 8.4.1 Each of us is acting for its own account;
  - 8.4.2 Each of us has made its own independent decisions based upon its own judgment and upon advice from such advisors as it has deemed necessary to obtain as to whether or not:
    - 8.4.2.1 to enter into this Transaction;
    - 8.4.2.2 it is suitable, appropriate or proper to enter in this Transaction;
    - 8.4.2.3 it has the capacity to enter into this Transaction,
  - 8.4.3 Each of us has entered into this Transaction:
    - 8.4.3.1 in reliance upon such investment, financial, legal, regulatory, tax, accounting, actuarial and other advice as it deemed necessary;
    - 8.4.3.2 not relying in any manner on any view, proposal, guidance, advice or opinion expressed by the other one of us;



Ref No: 32539903

8.4.3.3 not relying in any manner on any communication (written or oral) of the other one of us as investment, financial, legal, regulatory, tax, accounting, actuarial and other advice, it being understood that any information and explanations relating to the terms and conditions of this Transaction shall not be considered or construed as investment, financial, legal, regulatory, tax, accounting, actuarial and other advice or as a proposal, guidance or recommendation to enter into this Transaction,

8.4.4 None of us has received from the other one any assurance, warranty or guarantee as to the expected results or financial or investment returns of or related to this Transaction.

#### 8.5 Assessment and Understanding

8.5.1 Each of us is capable of assessing the merits of and understanding, and in fact understands and accepts the terms, conditions of, associated with and related to this Transaction; and

8.5.2 Each of us is capable of assessing and assuming the risks of whatsoever nature, and in fact accepts and assumes all the risks of, associated with and related to this Transaction.

#### 8.6 Status of Parties

8.6.1 None of us is acting as a fiduciary for or as an advisor of whatsoever nature or kind to the other one of us in respect of this Transaction; and

8.6.2 Each of us will be liable as principal for its own obligations under this Transaction read with the Agreement and schedule elections incorporated by reference in this Confirmation.

#### 8.7 Purpose

Each of us has entered into this Transaction:

8.7.1 for the purpose of managing its borrowings or investments; and/or

8.7.2 for the purpose of hedging its assets or liabilities; and/or

8.7.3 in connection with a line of its business.

#### 9. Additional Provisions

##### 9.1 Recording of Conversations

Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings

9.2.1 The Counterparty acknowledge and agree that certain payments may, through the operation of:

9.2.1.1 international law; and/or

9.2.1.2 the laws and regulations of other jurisdictions; and/or

9.2.1.3 international or governmental practice, whether or not having the force of law,

be prohibited, confiscated, embargoed, withheld or otherwise prevented from being made before such payments have reached the intended recipient(s).

9.2.2 The Counterparty accordingly waives any rights that it may have to claim against Nedbank which it may suffer or incur, directly or indirectly, as a consequence of any of the aforesaid.

9.2.3 Nedbank may, to the extent legally permissible, notify the Counterparty if any payment is prohibited, confiscated, embargoed, withheld or otherwise prevented from being made as soon as Nedbank becomes aware thereof.

#### 10. Settlement Instructions

Nedbank	ZAR	NEDBANK
		1570000018

Ref No: 32539903



Counterparty                      ZAR                      NEDSAJJ  
STANDARD BANK SA  
002372819  
SBZAJJJ

**11. Offices**

The offices of Nedbank                      Johannesburg, South Africa

The offices of Counterparty                      JOHANNESBURG, SOUTH AFRICA

12. Upon receipt hereof, Counterparty hereby agrees to review this Confirmation (Ref No. 32539903) and to either (i) notify Nedbank of any errors or discrepancies or (ii) to confirm that the foregoing correctly sets forth the terms of the agreement with respect to the particular Transaction to which this Confirmation relates by signing this Confirmation and returning to facsimile +27 11 294 6569, Attention: Derivative Department, Treasury Operations or (iii) to achieve an exchange of Confirmations as intended by section 9(e)(ii) of the ISDA Master Agreement by sending an authorised Confirmation in ISDA format to facsimile +27 11 294 6569, Attention: Derivative Department, Treasury Operations.

Yours,

Nedbank Limited

This Confirmation is electronically generated and requires no signature by Nedbank.

Agreed and Accepted by:

TRANSNET SOC LTD

Signed

Signed

Title

Title

Dated

Dated

**Addendum to Confirmation: Annexure A****Calculation Periods for ZAR Interest Rate Swap Transaction : 32539903****Payer: Nedbank**

Payment Date	Start Date	End Date	Type	Currency	Notional Amount
2016-04-15	2016-03-07	2016-04-15	Float Rate Nominal	ZAR	1,500,000,000.00
2016-07-15	2016-04-15	2016-07-15	Float Rate Nominal	ZAR	1,500,000,000.00
2016-10-17	2016-07-15	2016-10-17	Float Rate Nominal	ZAR	1,500,000,000.00
2017-01-16	2016-10-17	2017-01-16	Float Rate Nominal	ZAR	1,500,000,000.00
2017-04-18	2017-01-16	2017-04-18	Float Rate Nominal	ZAR	1,500,000,000.00
2017-07-17	2017-04-18	2017-07-17	Float Rate Nominal	ZAR	1,500,000,000.00
2017-10-16	2017-07-17	2017-10-16	Float Rate Nominal	ZAR	1,500,000,000.00
2018-01-15	2017-10-16	2018-01-15	Float Rate Nominal	ZAR	1,500,000,000.00
2018-04-16	2018-01-15	2018-04-16	Float Rate Nominal	ZAR	1,500,000,000.00
2018-07-16	2018-04-16	2018-07-16	Float Rate Nominal	ZAR	1,500,000,000.00
2018-10-15	2018-07-16	2018-10-15	Float Rate Nominal	ZAR	1,500,000,000.00
2019-01-15	2018-10-15	2019-01-15	Float Rate Nominal	ZAR	1,500,000,000.00
2019-04-15	2019-01-15	2019-04-15	Float Rate Nominal	ZAR	1,500,000,000.00
2019-07-15	2019-04-15	2019-07-15	Float Rate Nominal	ZAR	1,500,000,000.00
2019-10-15	2019-07-15	2019-10-15	Float Rate Nominal	ZAR	1,500,000,000.00
2020-01-15	2019-10-15	2020-01-15	Float Rate Nominal	ZAR	1,500,000,000.00
2020-04-15	2020-01-15	2020-04-15	Float Rate Nominal	ZAR	1,500,000,000.00
2020-07-15	2020-04-15	2020-07-15	Float Rate Nominal	ZAR	1,500,000,000.00



Ref No: 32539903

2020-10-15	2020-07-15	2020-10-15	Float Rate Nominal	ZAR	1,465,116,279.07
2021-01-15	2020-10-15	2021-01-15	Float Rate Nominal	ZAR	1,430,232,558.14
2021-04-15	2021-01-15	2021-04-15	Float Rate Nominal	ZAR	1,395,348,837.21
2021-07-15	2021-04-15	2021-07-15	Float Rate Nominal	ZAR	1,360,465,116.28
2021-10-15	2021-07-15	2021-10-15	Float Rate Nominal	ZAR	1,325,581,395.35
2022-01-17	2021-10-15	2022-01-17	Float Rate Nominal	ZAR	1,290,697,674.42
2022-04-19	2022-01-17	2022-04-19	Float Rate Nominal	ZAR	1,255,813,953.49
2022-07-15	2022-04-19	2022-07-15	Float Rate Nominal	ZAR	1,220,930,232.56
2022-10-17	2022-07-15	2022-10-17	Float Rate Nominal	ZAR	1,186,046,511.63
2023-01-16	2022-10-17	2023-01-16	Float Rate Nominal	ZAR	1,151,162,790.70
2023-04-17	2023-01-16	2023-04-17	Float Rate Nominal	ZAR	1,116,279,069.77
2023-07-17	2023-04-17	2023-07-17	Float Rate Nominal	ZAR	1,081,395,348.84
2023-10-16	2023-07-17	2023-10-16	Float Rate Nominal	ZAR	1,046,511,627.91
2024-01-15	2023-10-16	2024-01-15	Float Rate Nominal	ZAR	1,011,627,906.98
2024-04-15	2024-01-15	2024-04-15	Float Rate Nominal	ZAR	976,744,186.05
2024-07-15	2024-04-15	2024-07-15	Float Rate Nominal	ZAR	941,860,465.12
2024-10-15	2024-07-15	2024-10-15	Float Rate Nominal	ZAR	906,976,744.19
2025-01-15	2024-10-15	2025-01-15	Float Rate Nominal	ZAR	872,093,023.26
2025-04-15	2025-01-15	2025-04-15	Float Rate Nominal	ZAR	837,209,302.33
2025-07-15	2025-04-15	2025-07-15	Float Rate Nominal	ZAR	802,325,581.40
2025-10-15	2025-07-15	2025-10-15	Float Rate Nominal	ZAR	767,441,860.47
2026-01-15	2025-10-15	2026-01-15	Float Rate Nominal	ZAR	732,558,139.53
2026-04-15	2026-01-15	2026-04-15	Float Rate Nominal	ZAR	697,674,418.60
2026-07-15	2026-04-15	2026-07-15	Float Rate Nominal	ZAR	662,790,697.67
2026-10-15	2026-07-15	2026-10-15	Float Rate Nominal	ZAR	627,906,976.74
2027-01-15	2026-10-15	2027-01-15	Float Rate Nominal	ZAR	593,023,255.81
2027-04-15	2027-01-15	2027-04-15	Float Rate Nominal	ZAR	558,139,534.88
2027-07-15	2027-04-15	2027-07-15	Float Rate Nominal	ZAR	523,255,813.95
2027-10-15	2027-07-15	2027-10-15	Float Rate Nominal	ZAR	488,372,093.02
2028-01-17	2027-10-15	2028-01-17	Float Rate Nominal	ZAR	453,488,372.09
2028-04-18	2028-01-17	2028-04-18	Float Rate Nominal	ZAR	418,604,651.16
2028-07-17	2028-04-18	2028-07-17	Float Rate Nominal	ZAR	383,720,930.23
2028-10-16	2028-07-17	2028-10-16	Float Rate Nominal	ZAR	348,837,209.30
2029-01-15	2028-10-16	2029-01-15	Float Rate Nominal	ZAR	313,953,488.37
2029-04-16	2029-01-15	2029-04-16	Float Rate Nominal	ZAR	279,069,767.44
2029-07-16	2029-04-16	2029-07-16	Float Rate Nominal	ZAR	244,186,046.51
2029-10-15	2029-07-16	2029-10-15	Float Rate Nominal	ZAR	209,302,325.58
2030-01-15	2029-10-15	2030-01-15	Float Rate Nominal	ZAR	174,418,604.65
2030-04-15	2030-01-15	2030-04-15	Float Rate Nominal	ZAR	139,534,883.72
2030-07-15	2030-04-15	2030-07-15	Float Rate Nominal	ZAR	104,651,162.79
2030-10-15	2030-07-15	2030-10-15	Float Rate Nominal	ZAR	69,767,441.86
2030-12-02	2030-10-15	2030-12-02	Float Rate Nominal	ZAR	34,883,720.93

**Addendum to Confirmation: Annexure A****Calculation Periods for ZAR Interest Rate Swap Transaction : 32539903****Payer: Counterparty**

Payment Date	Start Date	End Date	Type	Currency	Notional Amount
2016-04-15	2016-03-07	2016-04-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2016-07-15	2016-04-15	2016-07-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2016-10-17	2016-07-15	2016-10-17	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-01-16	2016-10-17	2017-01-16	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-04-18	2017-01-16	2017-04-18	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-07-17	2017-04-18	2017-07-17	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-10-16	2017-07-17	2017-10-16	Fixed Rate Nominal	ZAR	1,500,000,000.00
2018-01-15	2017-10-16	2018-01-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2018-04-16	2018-01-15	2018-04-16	Fixed Rate Nominal	ZAR	1,500,000,000.00
2018-07-16	2018-04-16	2018-07-16	Fixed Rate Nominal	ZAR	1,500,000,000.00
2018-10-15	2018-07-16	2018-10-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2019-01-15	2018-10-15	2019-01-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2019-04-15	2019-01-15	2019-04-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2019-07-15	2019-04-15	2019-07-15	Fixed Rate Nominal	ZAR	1,500,000,000.00

Ref No: 32539903

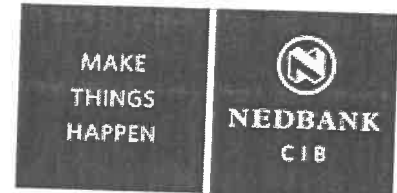


2019-10-15	2019-07-15	2019-10-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2020-01-15	2019-10-15	2020-01-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2020-04-15	2020-01-15	2020-04-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2020-07-15	2020-04-15	2020-07-15	Fixed Rate Nominal	ZAR	1,500,000,000.00
2020-10-15	2020-07-15	2020-10-15	Fixed Rate Nominal	ZAR	1,465,116,279.07
2021-01-15	2020-10-15	2021-01-15	Fixed Rate Nominal	ZAR	1,430,232,558.14
2021-04-15	2021-01-15	2021-04-15	Fixed Rate Nominal	ZAR	1,395,348,837.21
2021-07-15	2021-04-15	2021-07-15	Fixed Rate Nominal	ZAR	1,360,465,116.28
2021-10-15	2021-07-15	2021-10-15	Fixed Rate Nominal	ZAR	1,325,581,395.35
2022-01-17	2021-10-15	2022-01-17	Fixed Rate Nominal	ZAR	1,290,697,674.42
2022-04-19	2022-01-17	2022-04-19	Fixed Rate Nominal	ZAR	1,255,813,953.49
2022-07-15	2022-04-19	2022-07-15	Fixed Rate Nominal	ZAR	1,220,930,232.56
2022-10-17	2022-07-15	2022-10-17	Fixed Rate Nominal	ZAR	1,186,046,511.63
2023-01-16	2022-10-17	2023-01-16	Fixed Rate Nominal	ZAR	1,151,162,790.70
2023-04-17	2023-01-16	2023-04-17	Fixed Rate Nominal	ZAR	1,116,279,069.77
2023-07-17	2023-04-17	2023-07-17	Fixed Rate Nominal	ZAR	1,081,395,348.84
2023-10-16	2023-07-17	2023-10-16	Fixed Rate Nominal	ZAR	1,046,511,627.91
2024-01-15	2023-10-16	2024-01-15	Fixed Rate Nominal	ZAR	1,011,627,906.98
2024-04-15	2024-01-15	2024-04-15	Fixed Rate Nominal	ZAR	976,744,186.05
2024-07-15	2024-04-15	2024-07-15	Fixed Rate Nominal	ZAR	941,860,465.12
2024-10-15	2024-07-15	2024-10-15	Fixed Rate Nominal	ZAR	906,976,744.19
2025-01-15	2024-10-15	2025-01-15	Fixed Rate Nominal	ZAR	872,093,023.26
2025-04-15	2025-01-15	2025-04-15	Fixed Rate Nominal	ZAR	837,209,302.33
2025-07-15	2025-04-15	2025-07-15	Fixed Rate Nominal	ZAR	802,325,581.40
2025-10-15	2025-07-15	2025-10-15	Fixed Rate Nominal	ZAR	767,441,860.47
2026-01-15	2025-10-15	2026-01-15	Fixed Rate Nominal	ZAR	732,558,139.53
2026-04-15	2026-01-15	2026-04-15	Fixed Rate Nominal	ZAR	697,674,418.60
2026-07-15	2026-04-15	2026-07-15	Fixed Rate Nominal	ZAR	662,790,697.67
2026-10-15	2026-07-15	2026-10-15	Fixed Rate Nominal	ZAR	627,906,976.74
2027-01-15	2026-10-15	2027-01-15	Fixed Rate Nominal	ZAR	593,023,255.81
2027-04-15	2027-01-15	2027-04-15	Fixed Rate Nominal	ZAR	558,139,534.88
2027-07-15	2027-04-15	2027-07-15	Fixed Rate Nominal	ZAR	523,255,813.95
2027-10-15	2027-07-15	2027-10-15	Fixed Rate Nominal	ZAR	488,372,093.02
2028-01-17	2027-10-15	2028-01-17	Fixed Rate Nominal	ZAR	453,488,372.09
2028-04-18	2028-01-17	2028-04-18	Fixed Rate Nominal	ZAR	418,604,651.16
2028-07-17	2028-04-18	2028-07-17	Fixed Rate Nominal	ZAR	383,720,930.23
2028-10-16	2028-07-17	2028-10-16	Fixed Rate Nominal	ZAR	348,837,209.30
2029-01-15	2028-10-16	2029-01-15	Fixed Rate Nominal	ZAR	313,953,488.37
2029-04-16	2029-01-15	2029-04-16	Fixed Rate Nominal	ZAR	279,069,767.44
2029-07-16	2029-04-16	2029-07-16	Fixed Rate Nominal	ZAR	244,186,046.51
2029-10-15	2029-07-16	2029-10-15	Fixed Rate Nominal	ZAR	209,302,325.58
2030-01-15	2029-10-15	2030-01-15	Fixed Rate Nominal	ZAR	174,418,604.65
2030-04-15	2030-01-15	2030-04-15	Fixed Rate Nominal	ZAR	139,534,883.72
2030-07-15	2030-04-15	2030-07-15	Fixed Rate Nominal	ZAR	104,651,162.79
2030-10-15	2030-07-15	2030-10-15	Fixed Rate Nominal	ZAR	69,767,441.86
2030-12-02	2030-10-15	2030-12-02	Fixed Rate Nominal	ZAR	34,883,720.93









Counterparty TRANSNET SOC LTD  
 From Nedbank Limited  
 Date Mar 08, 2016  
 Ref No. 32537127  
 Confirmation ZAR Interest Rate Swap Transaction

1. The purpose of this communication is to set forth the terms and conditions of the transaction(s) referred to above and entered into on the Trade Date specified below (the "Transaction(s)") between Nedbank Limited, Johannesburg Office ("Nedbank") and TRANSNET SOC LTD ("Counterparty"). This communication constitutes a Confirmation as referred to in the Agreement specified below.
2. Nedbank and Counterparty agree that with effect from the date of signature of this Confirmation by the party signing last in time, this Confirmation shall supersede all prior verbal and written agreements or confirmations or understandings or representations by or between Nedbank and Counterparty regarding the subject matter of this Confirmation and neither Nedbank nor Counterparty shall be entitled to rely, in any dispute or otherwise regarding this Confirmation on any terms, conditions or representations not expressly contained in this Confirmation.
3. This Confirmation is subject to, and incorporates, the 2006 ISDA Definitions (the 'Definitions') as published by the International Swaps and Derivatives Association, Inc. ('ISDA'). In the event of any inconsistency between the Definitions and this Confirmation, this Confirmation will prevail.
4. This Confirmation supplements, forms a part of and is subject to the ISDA Master Agreement entered into by Nedbank and the Counterparty and dated as of October 13, 2009, as amended and supplemented from time to time (the "Agreement"). All provisions contained in the Agreement will govern this Confirmation except as expressly modified below.
5. Nedbank and Counterparty represent to each other that it has entered into this Transaction in reliance upon such tax, accounting, regulatory, legal and financial advice as it deemed necessary and not upon any view expressed by the other party. Nedbank does not hold itself out as any form of advisor and is not aware of all the financial circumstances of Counterparty, Counterparty is therefore advised to seek independent advice.
6. Counterparty represents to Nedbank that it is entering into this Transaction for the purpose of hedging and not for speculative reasons of any kind.
7. The terms of the particular Transaction to which this Confirmation relates are as follows:

#### General Terms

Notional Amount	See Annexure A
Trade Date	Mar 08, 2016
Effective Date	Mar 07, 2016
Termination Date	Dec 02, 2030, subject to adjustment in accordance with the Modified Following Business Day Convention

#### Fixed Amounts

Fixed Rate Payer	Counterparty
Fixed Rate Payer Payment Date(s)	See Annexure A
Fixed Rate	12.37 %
Fixed Rate Day Count Fraction	Act/365 (Fixed)
Business Days	Johannesburg
Business Day Convention	Modified Following

#### Floating Amounts

Nedbank 135 Rivonia Campus 135 Rivonia Road Sandown Sandton 2196 Private Bag X25 Benmore 2010 South Africa  
 Tel 011 294 4444 Fax 011 295 1111 www.nedbankcapital.co.za

Nedbank Limited Reg No 1951/000009/06, 135 Rivonia Road, Sandown, Sandton 2196, South Africa

Directors: V Naidoo (Chairman) MWT Brown (Chief Executive) DKT Adomakoh (Ghanaian) TA Boardman BA Dames ID Gladman\* PB Hanratty (Irish) JB Hemphill PM Makwana Dr MA Matsoane NP Mxasana RK Morathi (Chief Financial Officer) JK Netshitenzhe MC Nkulu (Chief Operating Officer) MI Wyman\*  
 (\*British) Company Secretary: TSB Jali 25.11.2015

We subscribe to the Code of Banking Practice of The Banking Association South Africa and, for unresolved disputes, support resolution through the Ombudsman for Banking Services. We are an authorised financial services provider. We are a registered credit provider in terms of the National Credit Act (NCR Reg No NCRCP16).

A Member of the OLD MUTUAL Group



Ref No: 32537127

Floating Rate Payer	Nedbank
Floating Rate Payer Payment Date(s)	See Annexure A
Floating Rate Option	ZAR-JIBAR-SAFEX
Designated Maturity	3 Months
Compounding	Not Applicable
Averaging	Not Applicable
Floating Rate Day Count Fraction	Act/365 (Fixed)
Floating Rate Spread	2.6 %
Discounting	Not Applicable
Fixing Dates	The first Business Day of each Calculation Period
Business Days	Johannesburg
Business Day Convention	Modified Following
Calculation Agent	Nedbank, unless otherwise specified in the Agreement
Governing Law	This Agreement will be governed by and construed in accordance with the laws of South Africa and each party submits to the non-exclusive jurisdiction of The High Court of South Africa, Gauteng Local Division, Johannesburg, or any other division of such court which may have jurisdiction.

## 8. Additional Representations

Additional Representations, as defined and contemplated in the Agreement, will apply and for the purpose of Section 3 of the Agreement, each of the following will constitute an Additional Representation in respect of this Transaction. In respect of each Additional Representation each of us as a party to the Transaction represents to the other on the date on which this Transaction is entered into and will be deemed to represent continuously for the duration of the term of this Transaction and at all times until the termination of this Transaction that:

- 8.1 Each party represents, warrants and undertakes to the other that its obligations herein constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)), and it has full legal capacity and power (whether under its rules or any applicable law, statute or regulation or otherwise) to enter into, and perform its obligations under, this Transaction.
- 8.2 Each party represents, warrants and undertakes to the other that each of the signatories (and the agent, if applicable) acting for and/or on behalf of such party has the corporate power and authority (a) to execute and deliver the relevant documents required in respect of the Transaction and to bind the party for which it acts thereto; and (b) to transact derivative transactions to which such party will be bound.
- 8.3 Exchange Control:
 

All exchange control approvals or authorisations needed by either party to conduct its business and execute, perform and comply with its obligations under the Agreements have been obtained, and are in full force and effect.
- 8.4 Non Reliance
  - 8.4.1 Each of us is acting for its own account;
  - 8.4.2 Each of us has made its own independent decisions based upon its own judgment and upon advice from such advisors as it has deemed necessary to obtain as to whether or not:
    - 8.4.2.1 to enter into this Transaction;
    - 8.4.2.2 it is suitable, appropriate or proper to enter in this Transaction;
    - 8.4.2.3 it has the capacity to enter into this Transaction,
  - 8.4.3 Each of us has entered into this Transaction:
    - 8.4.3.1 in reliance upon such investment, financial, legal, regulatory, tax, accounting, actuarial and other advice as it deemed necessary;
    - 8.4.3.2 not relying in any manner on any view, proposal, guidance, advice or opinion expressed by the other one of us;



Ref No: 32537127

8.4.3.3 not relying in any manner on any communication (written or oral) of the other one of us as investment, financial, legal, regulatory, tax, accounting, actuarial and other advice, it being understood that any information and explanations relating to the terms and conditions of this Transaction shall not be considered or construed as investment, financial, legal, regulatory, tax, accounting, actuarial and other advice or as a proposal, guidance or recommendation to enter into this Transaction,

8.4.4 None of us has received from the other one any assurance, warranty or guarantee as to the expected results or financial or investment returns of or related to this Transaction.

#### 8.5 Assessment and Understanding

8.5.1 Each of us is capable of assessing the merits of and understanding, and in fact understands and accepts the terms, conditions of, associated with and related to this Transaction; and

8.5.2 Each of us is capable of assessing and assuming the risks of whatsoever nature, and in fact accepts and assumes all the risks of, associated with and related to this Transaction.

#### 8.6 Status of Parties

8.6.1 None of us is acting as a fiduciary for or as an advisor of whatsoever nature or kind to the other one of us in respect of this Transaction; and

8.6.2 Each of us will be liable as principal for its own obligations under this Transaction read with the Agreement and schedule elections incorporated by reference in this Confirmation.

#### 8.7 Purpose

Each of us has entered into this Transaction:

8.7.1 for the purpose of managing its borrowings or investments; and/or

8.7.2 for the purpose of hedging its assets or liabilities; and/or

8.7.3 in connection with a line of its business.

#### 9. Additional Provisions

##### 9.1 Recording of Conversations

Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings

9.2.1 The Counterparty acknowledge and agree that certain payments may, through the operation of:

9.2.1.1 international law; and/or

9.2.1.2 the laws and regulations of other jurisdictions; and/or

9.2.1.3 international or governmental practice, whether or not having the force of law,

be prohibited, confiscated, embargoed, withheld or otherwise prevented from being made before such payments have reached the intended recipient(s).

9.2.2 The Counterparty accordingly waives any rights that it may have to claim against Nedbank which it may suffer or incur, directly or indirectly, as a consequence of any of the aforesaid.

9.2.3 Nedbank may, to the extent legally permissible, notify the Counterparty if any payment is prohibited, confiscated, embargoed, withheld or otherwise prevented from being made as soon as Nedbank becomes aware thereof.

#### 10. Settlement Instructions

Nedbank	ZAR	NEDBANK 1570000018
---------	-----	-----------------------



Ref No: 32537127

Counterparty                      ZAR                      NEDSAJJ  
STANDARD BANK SA  
002372819  
SBZAJJ

**11. Offices**

The offices of Nedbank                      Johannesburg, South Africa

The offices of Counterparty                      JOHANNESBURG, SOUTH AFRICA

12. Upon receipt hereof, Counterparty hereby agrees to review this Confirmation (Ref No. 32537127) and to either (i) notify Nedbank of any errors or discrepancies or (ii) to confirm that the foregoing correctly sets forth the terms of the agreement with respect to the particular Transaction to which this Confirmation relates by signing this Confirmation and returning to facsimile +27 11 294 6569, Attention: Derivative Department, Treasury Operations or (iii) to achieve an exchange of Confirmations as intended by section 9(e)(ii) of the ISDA Master Agreement by sending an authorised Confirmation in ISDA format to facsimile +27 11 294 6569, Attention: Derivative Department, Treasury Operations.

Yours,

Nedbank Limited

This Confirmation is electronically generated and requires no signature by Nedbank.

Agreed and Accepted by:

TRANSNET SOC LTD

Signed

Signed

Title

Title

Dated

Dated

**Addendum to Confirmation: Annexure A****Calculation Periods for ZAR Interest Rate Swap Transaction : 32537127****Payer: Nedbank**

Payment Date	Start Date	End Date	Type	Currency	Notional Amount
2016-06-01	2016-03-07	2016-06-01	Float Rate Nominal	ZAR	1,500,000,000.00
2016-09-01	2016-06-01	2016-09-01	Float Rate Nominal	ZAR	1,500,000,000.00
2016-12-01	2016-09-01	2016-12-01	Float Rate Nominal	ZAR	1,500,000,000.00
2017-03-01	2016-12-01	2017-03-01	Float Rate Nominal	ZAR	1,500,000,000.00
2017-06-01	2017-03-01	2017-06-01	Float Rate Nominal	ZAR	1,500,000,000.00
2017-09-01	2017-06-01	2017-09-01	Float Rate Nominal	ZAR	1,500,000,000.00
2017-12-01	2017-09-01	2017-12-01	Float Rate Nominal	ZAR	1,500,000,000.00
2018-03-01	2017-12-01	2018-03-01	Float Rate Nominal	ZAR	1,471,698,113.21
2018-06-01	2018-03-01	2018-06-01	Float Rate Nominal	ZAR	1,443,396,226.42
2018-09-03	2018-06-01	2018-09-03	Float Rate Nominal	ZAR	1,415,094,339.62
2018-12-03	2018-09-03	2018-12-03	Float Rate Nominal	ZAR	1,386,792,452.83
2019-03-01	2018-12-03	2019-03-01	Float Rate Nominal	ZAR	1,358,490,566.04
2019-06-03	2019-03-01	2019-06-03	Float Rate Nominal	ZAR	1,330,188,679.25
2019-09-02	2019-06-03	2019-09-02	Float Rate Nominal	ZAR	1,301,886,792.45
2019-12-02	2019-09-02	2019-12-02	Float Rate Nominal	ZAR	1,273,584,905.66
2020-03-02	2019-12-02	2020-03-02	Float Rate Nominal	ZAR	1,245,283,018.87
2020-06-01	2020-03-02	2020-06-01	Float Rate Nominal	ZAR	1,216,981,132.08
2020-09-01	2020-06-01	2020-09-01	Float Rate Nominal	ZAR	1,188,679,245.28

Ref No: 32537127



2020-12-01	2020-09-01	2020-12-01	Float Rate Nominal	ZAR	1,160,377,358.49
2021-03-01	2020-12-01	2021-03-01	Float Rate Nominal	ZAR	1,132,075,471.70
2021-06-01	2021-03-01	2021-06-01	Float Rate Nominal	ZAR	1,103,773,584.91
2021-09-01	2021-06-01	2021-09-01	Float Rate Nominal	ZAR	1,075,471,698.11
2021-12-01	2021-09-01	2021-12-01	Float Rate Nominal	ZAR	1,047,169,811.32
2022-03-01	2021-12-01	2022-03-01	Float Rate Nominal	ZAR	1,018,867,924.53
2022-06-01	2022-03-01	2022-06-01	Float Rate Nominal	ZAR	990,566,037.74
2022-09-01	2022-06-01	2022-09-01	Float Rate Nominal	ZAR	962,264,150.94
2022-12-01	2022-09-01	2022-12-01	Float Rate Nominal	ZAR	933,962,264.15
2023-03-01	2022-12-01	2023-03-01	Float Rate Nominal	ZAR	905,660,377.36
2023-06-01	2023-03-01	2023-06-01	Float Rate Nominal	ZAR	877,358,490.57
2023-09-01	2023-06-01	2023-09-01	Float Rate Nominal	ZAR	849,056,603.77
2023-12-01	2023-09-01	2023-12-01	Float Rate Nominal	ZAR	820,754,716.98
2024-03-01	2023-12-01	2024-03-01	Float Rate Nominal	ZAR	792,452,830.19
2024-06-03	2024-03-01	2024-06-03	Float Rate Nominal	ZAR	764,150,943.40
2024-09-02	2024-06-03	2024-09-02	Float Rate Nominal	ZAR	735,849,056.60
2024-12-02	2024-09-02	2024-12-02	Float Rate Nominal	ZAR	707,547,169.81
2025-03-03	2024-12-02	2025-03-03	Float Rate Nominal	ZAR	679,245,283.02
2025-06-02	2025-03-03	2025-06-02	Float Rate Nominal	ZAR	650,943,396.23
2025-09-01	2025-06-02	2025-09-01	Float Rate Nominal	ZAR	622,641,509.43
2025-12-01	2025-09-01	2025-12-01	Float Rate Nominal	ZAR	594,339,622.64
2026-03-02	2025-12-01	2026-03-02	Float Rate Nominal	ZAR	566,037,735.85
2026-06-01	2026-03-02	2026-06-01	Float Rate Nominal	ZAR	537,735,849.06
2026-09-01	2026-06-01	2026-09-01	Float Rate Nominal	ZAR	509,433,962.26
2026-12-01	2026-09-01	2026-12-01	Float Rate Nominal	ZAR	481,132,075.47
2027-03-01	2026-12-01	2027-03-01	Float Rate Nominal	ZAR	452,830,188.68
2027-06-01	2027-03-01	2027-06-01	Float Rate Nominal	ZAR	424,528,301.89
2027-09-01	2027-06-01	2027-09-01	Float Rate Nominal	ZAR	396,226,415.09
2027-12-01	2027-09-01	2027-12-01	Float Rate Nominal	ZAR	367,924,528.30
2028-03-01	2027-12-01	2028-03-01	Float Rate Nominal	ZAR	339,622,641.51
2028-06-01	2028-03-01	2028-06-01	Float Rate Nominal	ZAR	311,320,754.72
2028-09-01	2028-06-01	2028-09-01	Float Rate Nominal	ZAR	283,018,867.92
2028-12-01	2028-09-01	2028-12-01	Float Rate Nominal	ZAR	254,716,981.13
2029-03-01	2028-12-01	2029-03-01	Float Rate Nominal	ZAR	226,415,094.34
2029-06-01	2029-03-01	2029-06-01	Float Rate Nominal	ZAR	198,113,207.55
2029-09-03	2029-06-01	2029-09-03	Float Rate Nominal	ZAR	169,811,320.75
2029-12-03	2029-09-03	2029-12-03	Float Rate Nominal	ZAR	141,509,433.96
2030-03-01	2029-12-03	2030-03-01	Float Rate Nominal	ZAR	113,207,547.17
2030-06-03	2030-03-01	2030-06-03	Float Rate Nominal	ZAR	84,905,660.38
2030-09-02	2030-06-03	2030-09-02	Float Rate Nominal	ZAR	56,603,773.58
2030-12-02	2030-09-02	2030-12-02	Float Rate Nominal	ZAR	28,301,886.79

## Addendum to Confirmation: Annexure A

Calculation Periods for ZAR Interest Rate Swap Transaction : 32537127

Payer: Counterparty

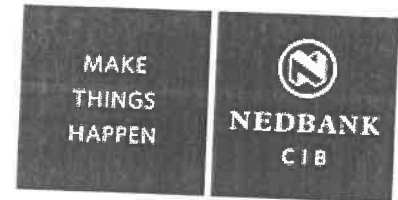
Payment Date	Start Date	End Date	Type	Currency	Notional Amount
2016-06-01	2016-03-07	2016-06-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2016-09-01	2016-06-01	2016-09-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2016-12-01	2016-09-01	2016-12-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-03-01	2016-12-01	2017-03-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-06-01	2017-03-01	2017-06-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-09-01	2017-06-01	2017-09-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-12-01	2017-09-01	2017-12-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2018-03-01	2017-12-01	2018-03-01	Fixed Rate Nominal	ZAR	1,471,698,113.21
2018-06-01	2018-03-01	2018-06-01	Fixed Rate Nominal	ZAR	1,443,396,226.42
2018-09-03	2018-06-01	2018-09-03	Fixed Rate Nominal	ZAR	1,415,094,339.62
2018-12-03	2018-09-03	2018-12-03	Fixed Rate Nominal	ZAR	1,386,792,452.83
2019-03-01	2018-12-03	2019-03-01	Fixed Rate Nominal	ZAR	1,358,490,566.04
2019-06-03	2019-03-01	2019-06-03	Fixed Rate Nominal	ZAR	1,330,188,679.25
2019-09-02	2019-06-03	2019-09-02	Fixed Rate Nominal	ZAR	1,301,886,792.45
2019-12-02	2019-09-02	2019-12-02	Fixed Rate Nominal	ZAR	1,273,584,905.66



Ref No: 32537127

2020-03-02	2019-12-02	2020-03-02	Fixed Rate Nominal	ZAR	1,245,283,018.87
2020-06-01	2020-03-02	2020-06-01	Fixed Rate Nominal	ZAR	1,216,981,132.08
2020-09-01	2020-06-01	2020-09-01	Fixed Rate Nominal	ZAR	1,188,679,245.28
2020-12-01	2020-09-01	2020-12-01	Fixed Rate Nominal	ZAR	1,160,377,358.49
2021-03-01	2020-12-01	2021-03-01	Fixed Rate Nominal	ZAR	1,132,075,471.70
2021-06-01	2021-03-01	2021-06-01	Fixed Rate Nominal	ZAR	1,103,773,584.91
2021-09-01	2021-06-01	2021-09-01	Fixed Rate Nominal	ZAR	1,075,471,698.11
2021-12-01	2021-09-01	2021-12-01	Fixed Rate Nominal	ZAR	1,047,169,811.32
2022-03-01	2021-12-01	2022-03-01	Fixed Rate Nominal	ZAR	1,018,867,924.53
2022-06-01	2022-03-01	2022-06-01	Fixed Rate Nominal	ZAR	990,566,037.74
2022-09-01	2022-06-01	2022-09-01	Fixed Rate Nominal	ZAR	962,264,150.94
2022-12-01	2022-09-01	2022-12-01	Fixed Rate Nominal	ZAR	933,962,264.15
2023-03-01	2022-12-01	2023-03-01	Fixed Rate Nominal	ZAR	905,660,377.36
2023-06-01	2023-03-01	2023-06-01	Fixed Rate Nominal	ZAR	877,358,490.57
2023-09-01	2023-06-01	2023-09-01	Fixed Rate Nominal	ZAR	849,056,603.77
2023-12-01	2023-09-01	2023-12-01	Fixed Rate Nominal	ZAR	820,754,716.98
2024-03-01	2023-12-01	2024-03-01	Fixed Rate Nominal	ZAR	792,452,830.19
2024-06-03	2024-03-01	2024-06-03	Fixed Rate Nominal	ZAR	764,150,943.40
2024-09-02	2024-06-03	2024-09-02	Fixed Rate Nominal	ZAR	735,849,056.60
2024-12-02	2024-09-02	2024-12-02	Fixed Rate Nominal	ZAR	707,547,169.81
2025-03-03	2024-12-02	2025-03-03	Fixed Rate Nominal	ZAR	679,245,283.02
2025-06-02	2025-03-03	2025-06-02	Fixed Rate Nominal	ZAR	650,943,396.23
2025-09-01	2025-06-02	2025-09-01	Fixed Rate Nominal	ZAR	622,641,509.43
2025-12-01	2025-09-01	2025-12-01	Fixed Rate Nominal	ZAR	594,339,622.64
2026-03-02	2025-12-01	2026-03-02	Fixed Rate Nominal	ZAR	566,037,735.85
2026-06-01	2026-03-02	2026-06-01	Fixed Rate Nominal	ZAR	537,735,849.06
2026-09-01	2026-06-01	2026-09-01	Fixed Rate Nominal	ZAR	509,433,962.26
2026-12-01	2026-09-01	2026-12-01	Fixed Rate Nominal	ZAR	481,132,075.47
2027-03-01	2026-12-01	2027-03-01	Fixed Rate Nominal	ZAR	452,830,188.68
2027-06-01	2027-03-01	2027-06-01	Fixed Rate Nominal	ZAR	424,528,301.89
2027-09-01	2027-06-01	2027-09-01	Fixed Rate Nominal	ZAR	396,226,415.09
2027-12-01	2027-09-01	2027-12-01	Fixed Rate Nominal	ZAR	367,924,528.30
2028-03-01	2027-12-01	2028-03-01	Fixed Rate Nominal	ZAR	339,622,641.51
2028-06-01	2028-03-01	2028-06-01	Fixed Rate Nominal	ZAR	311,320,754.72
2028-09-01	2028-06-01	2028-09-01	Fixed Rate Nominal	ZAR	283,018,867.92
2028-12-01	2028-09-01	2028-12-01	Fixed Rate Nominal	ZAR	254,716,981.13
2029-03-01	2028-12-01	2029-03-01	Fixed Rate Nominal	ZAR	226,415,094.34
2029-06-01	2029-03-01	2029-06-01	Fixed Rate Nominal	ZAR	198,113,207.55
2029-09-03	2029-06-01	2029-09-03	Fixed Rate Nominal	ZAR	169,811,320.75
2029-12-03	2029-09-03	2029-12-03	Fixed Rate Nominal	ZAR	141,509,433.96
2030-03-01	2029-12-03	2030-03-01	Fixed Rate Nominal	ZAR	113,207,547.17
2030-06-03	2030-03-01	2030-06-03	Fixed Rate Nominal	ZAR	84,905,660.38
2030-09-02	2030-06-03	2030-09-02	Fixed Rate Nominal	ZAR	56,603,773.58
2030-12-02	2030-09-02	2030-12-02	Fixed Rate Nominal	ZAR	28,301,886.79





Counterparty      TRANSNET SOC LTD  
 From                Nedbank Limited  
 Date                Mar 08, 2016  
 Ref No.            32538073  
 Confirmation      ZAR Interest Rate Swap Transaction

1. The purpose of this communication is to set forth the terms and conditions of the transaction(s) referred to above and entered into on the Trade Date specified below (the "Transaction(s)") between Nedbank Limited, Johannesburg Office ("Nedbank") and TRANSNET SOC LTD ("Counterparty"). This communication constitutes a Confirmation as referred to in the Agreement specified below.
2. Nedbank and Counterparty agree that with effect from the date of signature of this Confirmation by the party signing last in time, this Confirmation shall supersede all prior verbal and written agreements or confirmations or understandings or representations by or between Nedbank and Counterparty regarding the subject matter of this Confirmation and neither Nedbank nor Counterparty shall be entitled to rely, in any dispute or otherwise regarding this Confirmation on any terms, conditions or representations not expressly contained in this Confirmation.
3. This Confirmation is subject to, and incorporates, the 2006 ISDA Definitions (the 'Definitions') as published by the International Swaps and Derivatives Association, Inc. ('ISDA'). In the event of any inconsistency between the Definitions and this Confirmation, this Confirmation will prevail.
4. This Confirmation supplements, forms a part of and is subject to the ISDA Master Agreement entered into by Nedbank and the Counterparty and dated as of October 13, 2009, as amended and supplemented from time to time (the "Agreement"). All provisions contained in the Agreement will govern this Confirmation except as expressly modified below.
5. Nedbank and Counterparty represent to each other that it has entered into this Transaction in reliance upon such tax, accounting, regulatory, legal and financial advice as it deemed necessary and not upon any view expressed by the other party. Nedbank does not hold itself out as any form of advisor and is not aware of all the financial circumstances of Counterparty, Counterparty is therefore advised to seek independent advice.
6. Counterparty represents to Nedbank that it is entering into this Transaction for the purpose of hedging and not for speculative reasons of any kind.
7. The terms of the particular Transaction to which this Confirmation relates are as follows:

#### General Terms

Notional Amount	See Annexure A
Trade Date	Mar 08, 2016
Effective Date	Mar 07, 2016
Termination Date	Dec 02, 2030, subject to adjustment in accordance with the Modified Following Business Day Convention

#### Fixed Amounts

Fixed Rate Payer	Counterparty
Fixed Rate Payer Payment Date(s)	See Annexure A
Fixed Rate	12.37 %
Fixed Rate Day Count Fraction	Act/365 (Fixed)
Business Days	Johannesburg
Business Day Convention	Modified Following

#### Floating Amounts

Nedbank 135 Rivonia Campus 135 Rivonia Road Sandown Sandton 2196 Private Bag X25 Benmore 2010 South Africa  
 Tel 011 294 4444 Fax 011 295 1111 www.nedbankcapital.co.za

Nedbank Limited Reg No 1951/00009/06, 135 Rivonia Road, Sandown, Sandton 2196, South Africa

Directors: V Naidoo (Chairman) MWT Brown (Chief Executive) DKT Adomakoh (Ghanaian) TA Boardman BA Dames ID Gladman\* PB Hanratty(Irish) JB Hemphill PM Makwana Dr MA Matoane NP Mnxasana RK Morathi (Chief Financial Officer) JK Netshitenzhe MC Nkuhlu (Chief Operating Officer) MI Wyman\*

(\*British) Company Secretary: TSB Juli 25.11.2015

We subscribe to the Code of Banking Practice of The Banking Association South Africa and, for unresolved disputes, support resolution through the Ombudsman for Banking Services. We are an authorised financial services provider. We are a registered credit provider in terms of the National Credit Act (NCR Reg No NCRCP16).

A Member of the OLD MUTUAL Group



Ref No: 32538073



Floating Rate Payer	Nedbank
Floating Rate Payer Payment Date(s)	See Annexure A
Floating Rate Option	ZAR-JIBAR-SAFEX
Designated Maturity	3 Months
Compounding	Not Applicable
Averaging	Not Applicable
Floating Rate Day Count Fraction	Act/365 (Fixed)
Floating Rate Spread	2.7 %
Discounting	Not Applicable
Fixing Dates	The first Business Day of each Calculation Period
Business Days	Johannesburg
Business Day Convention	Modified Following
Calculation Agent	Nedbank, unless otherwise specified in the Agreement
Governing Law	

This Agreement will be governed by and construed in accordance with the laws of South Africa and each party submits to the non-exclusive jurisdiction of The High Court of South Africa, Gauteng Local Division, Johannesburg, or any other division of such court which may have jurisdiction.

## 8. Additional Representations

Additional Representations, as defined and contemplated in the Agreement, will apply and for the purpose of Section 3 of the Agreement, each of the following will constitute an Additional Representation in respect of this Transaction. In respect of each Additional Representation each of us as a party to the Transaction represents to the other on the date on which this Transaction is entered into and will be deemed to represent continuously for the duration of the term of this Transaction and at all times until the termination of this Transaction that:

- 8.1 Each party represents, warrants and undertakes to the other that its obligations herein constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)), and it has full legal capacity and power (whether under its rules or any applicable law, statute or regulation or otherwise) to enter into, and perform its obligations under, this Transaction.
- 8.2 Each party represents, warrants and undertakes to the other that each of the signatories (and the agent, if applicable) acting for and/or on behalf of such party has the corporate power and authority (a) to execute and deliver the relevant documents required in respect of the Transaction and to bind the party for which it acts thereto; and (b) to transact derivative transactions to which such party will be bound.
- 8.3 **Exchange Control:**  
All exchange control approvals or authorisations needed by either party to conduct its business and execute, perform and comply with its obligations under the Agreements have been obtained, and are in full force and effect.
- 8.4 **Non Reliance**
  - 8.4.1 Each of us is acting for its own account;
  - 8.4.2 Each of us has made its own independent decisions based upon its own judgment and upon advice from such advisors as it has deemed necessary to obtain as to whether or not:
    - 8.4.2.1 to enter into this Transaction;
    - 8.4.2.2 it is suitable, appropriate or proper to enter in this Transaction;
    - 8.4.2.3 it has the capacity to enter into this Transaction,
  - 8.4.3 Each of us has entered into this Transaction:
    - 8.4.3.1 in reliance upon such investment, financial, legal, regulatory, tax, accounting, actuarial and other advice as it deemed necessary;
    - 8.4.3.2 not relying in any manner on any view, proposal, guidance, advice or opinion expressed by the other one of us;

Ref No: 32538073



8.4.3.3 not relying in any manner on any communication (written or oral) of the other one of us as investment, financial, legal, regulatory, tax, accounting, actuarial and other advice, it being understood that any information and explanations relating to the terms and conditions of this Transaction shall not be considered or construed as investment, financial, legal, regulatory, tax, accounting, actuarial and other advice or as a proposal, guidance or recommendation to enter into this Transaction,

8.4.4 None of us has received from the other one any assurance, warranty or guarantee as to the expected results or financial or investment returns of or related to this Transaction.

#### 8.5 Assessment and Understanding

8.5.1 Each of us is capable of assessing the merits of and understanding, and in fact understands and accepts the terms, conditions of, associated with and related to this Transaction; and

8.5.2 Each of us is capable of assessing and assuming the risks of whatsoever nature, and in fact accepts and assumes all the risks of, associated with and related to this Transaction.

#### 8.6 Status of Parties

8.6.1 None of us is acting as a fiduciary for or as an advisor of whatsoever nature or kind to the other one of us in respect of this Transaction; and

8.6.2 Each of us will be liable as principal for its own obligations under this Transaction read with the Agreement and schedule elections incorporated by reference in this Confirmation.

#### 8.7 Purpose

Each of us has entered into this Transaction:

8.7.1 for the purpose of managing its borrowings or investments; and/or

8.7.2 for the purpose of hedging its assets or liabilities; and/or

8.7.3 in connection with a line of its business.

#### 9. Additional Provisions

##### 9.1 Recording of Conversations

Each party (i) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction, (ii) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel and (iii) agrees, to the extent permitted by applicable law, that recordings may be submitted in evidence in any Proceedings

9.2.1 The Counterparty acknowledge and agree that certain payments may, through the operation of:

9.2.1.1 international law; and/or

9.2.1.2 the laws and regulations of other jurisdictions; and/or

9.2.1.3 international or governmental practice, whether or not having the force of law,

be prohibited, confiscated, embargoed, withheld or otherwise prevented from being made before such payments have reached the intended recipient(s).

9.2.2 The Counterparty accordingly waives any rights that it may have to claim against Nedbank which it may suffer or incur, directly or indirectly, as a consequence of any of the aforesaid.

9.2.3 Nedbank may, to the extent legally permissible, notify the Counterparty if any payment is prohibited, confiscated, embargoed, withheld or otherwise prevented from being made as soon as Nedbank becomes aware thereof.

#### 10. Settlement Instructions

Nedbank	ZAR	NEDBANK
		1570000018

Ref No: 32538073



Counterparty                      ZAR                      NEDSAJJ  
STANDARD BANK SA  
002372819  
SBZAJAJ

**11. Offices**

The offices of Nedbank                      Johannesburg, South Africa

The offices of Counterparty                      JOHANNESBURG, SOUTH AFRICA

12. Upon receipt hereof, Counterparty hereby agrees to review this Confirmation (Ref No. 32538073) and to either (i) notify Nedbank of any errors or discrepancies or (ii) to confirm that the foregoing correctly sets forth the terms of the agreement with respect to the particular Transaction to which this Confirmation relates by signing this Confirmation and returning to facsimile +27 11 294 6569, Attention: Derivative Department, Treasury Operations or (iii) to achieve an exchange of Confirmations as intended by section 9(e)(ii) of the ISDA Master Agreement by sending an authorised Confirmation in ISDA format to facsimile +27 11 294 6569, Attention: Derivative Department, Treasury Operations.

Yours,

Nedbank Limited

This Confirmation is electronically generated and requires no signature by Nedbank.

Agreed and Accepted by:

TRANSNET SOC LTD

Signed

Signed

Title

Title

Dated

Dated

**Addendum to Confirmation: Annexure A****Calculation Periods for ZAR Interest Rate Swap Transaction : 32538073**

Payer: Nedbank					
Payment Date	Start Date	End Date	Type	Currency	Notional Amount
2016-06-01	2016-03-07	2016-06-01	Float Rate Nominal	ZAR	1,500,000,000.00
2016-09-01	2016-06-01	2016-09-01	Float Rate Nominal	ZAR	1,500,000,000.00
2016-12-01	2016-09-01	2016-12-01	Float Rate Nominal	ZAR	1,500,000,000.00
2017-03-01	2016-12-01	2017-03-01	Float Rate Nominal	ZAR	1,500,000,000.00
2017-06-01	2017-03-01	2017-06-01	Float Rate Nominal	ZAR	1,500,000,000.00
2017-09-01	2017-06-01	2017-09-01	Float Rate Nominal	ZAR	1,500,000,000.00
2017-12-01	2017-09-01	2017-12-01	Float Rate Nominal	ZAR	1,500,000,000.00
2018-03-01	2017-12-01	2018-03-01	Float Rate Nominal	ZAR	1,500,000,000.00
2018-06-01	2018-03-01	2018-06-01	Float Rate Nominal	ZAR	1,500,000,000.00
2018-09-03	2018-06-01	2018-09-03	Float Rate Nominal	ZAR	1,500,000,000.00
2018-12-03	2018-09-03	2018-12-03	Float Rate Nominal	ZAR	1,500,000,000.00
2019-03-01	2018-12-03	2019-03-01	Float Rate Nominal	ZAR	1,500,000,000.00
2019-06-03	2019-03-01	2019-06-03	Float Rate Nominal	ZAR	1,500,000,000.00
2019-09-02	2019-06-03	2019-09-02	Float Rate Nominal	ZAR	1,500,000,000.00
2019-12-02	2019-09-02	2019-12-02	Float Rate Nominal	ZAR	1,500,000,000.00
2020-03-02	2019-12-02	2020-03-02	Float Rate Nominal	ZAR	1,500,000,000.00
2020-06-01	2020-03-02	2020-06-01	Float Rate Nominal	ZAR	1,500,000,000.00
2020-09-01	2020-06-01	2020-09-01	Float Rate Nominal	ZAR	1,500,000,000.00

Ref No: 32538073



2020-12-01	2020-09-01	2020-12-01	Float Rate Nominal	ZAR	1,464,285,714.29
2021-03-01	2020-12-01	2021-03-01	Float Rate Nominal	ZAR	1,428,571,428.57
2021-06-01	2021-03-01	2021-06-01	Float Rate Nominal	ZAR	1,392,857,142.86
2021-09-01	2021-06-01	2021-09-01	Float Rate Nominal	ZAR	1,357,142,857.14
2021-12-01	2021-09-01	2021-12-01	Float Rate Nominal	ZAR	1,321,428,571.43
2022-03-01	2021-12-01	2022-03-01	Float Rate Nominal	ZAR	1,285,714,285.71
2022-06-01	2022-03-01	2022-06-01	Float Rate Nominal	ZAR	1,250,000,000.00
2022-09-01	2022-06-01	2022-09-01	Float Rate Nominal	ZAR	1,214,285,714.29
2022-12-01	2022-09-01	2022-12-01	Float Rate Nominal	ZAR	1,178,571,428.57
2023-03-01	2022-12-01	2023-03-01	Float Rate Nominal	ZAR	1,142,857,142.86
2023-06-01	2023-03-01	2023-06-01	Float Rate Nominal	ZAR	1,107,142,857.14
2023-09-01	2023-06-01	2023-09-01	Float Rate Nominal	ZAR	1,071,428,571.43
2023-12-01	2023-09-01	2023-12-01	Float Rate Nominal	ZAR	1,035,714,285.71
2024-03-01	2023-12-01	2024-03-01	Float Rate Nominal	ZAR	1,000,000,000.00
2024-06-03	2024-03-01	2024-06-03	Float Rate Nominal	ZAR	964,285,714.29
2024-09-02	2024-06-03	2024-09-02	Float Rate Nominal	ZAR	928,571,428.57
2024-12-02	2024-09-02	2024-12-02	Float Rate Nominal	ZAR	892,857,142.86
2025-03-03	2024-12-02	2025-03-03	Float Rate Nominal	ZAR	857,142,857.14
2025-06-02	2025-03-03	2025-06-02	Float Rate Nominal	ZAR	821,428,571.43
2025-09-01	2025-06-02	2025-09-01	Float Rate Nominal	ZAR	785,714,285.71
2025-12-01	2025-09-01	2025-12-01	Float Rate Nominal	ZAR	750,000,000.00
2026-03-02	2025-12-01	2026-03-02	Float Rate Nominal	ZAR	714,285,714.29
2026-06-01	2026-03-02	2026-06-01	Float Rate Nominal	ZAR	678,571,428.57
2026-09-01	2026-06-01	2026-09-01	Float Rate Nominal	ZAR	642,857,142.86
2026-12-01	2026-09-01	2026-12-01	Float Rate Nominal	ZAR	607,142,857.14
2027-03-01	2026-12-01	2027-03-01	Float Rate Nominal	ZAR	571,428,571.43
2027-06-01	2027-03-01	2027-06-01	Float Rate Nominal	ZAR	535,714,285.71
2027-09-01	2027-06-01	2027-09-01	Float Rate Nominal	ZAR	500,000,000.00
2027-12-01	2027-09-01	2027-12-01	Float Rate Nominal	ZAR	464,285,714.29
2028-03-01	2027-12-01	2028-03-01	Float Rate Nominal	ZAR	428,571,428.57
2028-06-01	2028-03-01	2028-06-01	Float Rate Nominal	ZAR	392,857,142.86
2028-09-01	2028-06-01	2028-09-01	Float Rate Nominal	ZAR	357,142,857.14
2028-12-01	2028-09-01	2028-12-01	Float Rate Nominal	ZAR	321,428,571.43
2029-03-01	2028-12-01	2029-03-01	Float Rate Nominal	ZAR	285,714,285.71
2029-06-01	2029-03-01	2029-06-01	Float Rate Nominal	ZAR	250,000,000.00
2029-09-03	2029-06-01	2029-09-03	Float Rate Nominal	ZAR	214,285,714.29
2029-12-03	2029-09-03	2029-12-03	Float Rate Nominal	ZAR	178,571,428.57
2030-03-01	2029-12-03	2030-03-01	Float Rate Nominal	ZAR	142,857,142.86
2030-06-03	2030-03-01	2030-06-03	Float Rate Nominal	ZAR	107,142,857.14
2030-09-02	2030-06-03	2030-09-02	Float Rate Nominal	ZAR	71,428,571.43
2030-12-02	2030-09-02	2030-12-02	Float Rate Nominal	ZAR	35,714,285.71

## Addendum to Confirmation: Annexure A

Calculation Periods for ZAR Interest Rate Swap Transaction : 32538073

Payment Date	Start Date	End Date	Payee Counterparty		
			Type	Currency	Notional Amount
2016-06-01	2016-03-07	2016-06-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2016-09-01	2016-06-01	2016-09-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2016-12-01	2016-09-01	2016-12-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-03-01	2016-12-01	2017-03-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-06-01	2017-03-01	2017-06-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-09-01	2017-06-01	2017-09-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2017-12-01	2017-09-01	2017-12-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2018-03-01	2017-12-01	2018-03-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2018-06-01	2018-03-01	2018-06-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2018-09-03	2018-06-01	2018-09-03	Fixed Rate Nominal	ZAR	1,500,000,000.00
2018-12-03	2018-09-03	2018-12-03	Fixed Rate Nominal	ZAR	1,500,000,000.00
2019-03-01	2018-12-03	2019-03-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2019-06-03	2019-03-01	2019-06-03	Fixed Rate Nominal	ZAR	1,500,000,000.00
2019-09-02	2019-06-03	2019-09-02	Fixed Rate Nominal	ZAR	1,500,000,000.00
2019-12-02	2019-09-02	2019-12-02	Fixed Rate Nominal	ZAR	1,500,000,000.00

Ref No: 32538073



2020-03-02	2019-12-02	2020-03-02	Fixed Rate Nominal	ZAR	1,500,000,000.00
2020-06-01	2020-03-02	2020-06-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2020-09-01	2020-06-01	2020-09-01	Fixed Rate Nominal	ZAR	1,500,000,000.00
2020-12-01	2020-09-01	2020-12-01	Fixed Rate Nominal	ZAR	1,464,285,714.29
2021-03-01	2020-12-01	2021-03-01	Fixed Rate Nominal	ZAR	1,428,571,428.57
2021-06-01	2021-03-01	2021-06-01	Fixed Rate Nominal	ZAR	1,392,857,142.86
2021-09-01	2021-06-01	2021-09-01	Fixed Rate Nominal	ZAR	1,357,142,857.14
2021-12-01	2021-09-01	2021-12-01	Fixed Rate Nominal	ZAR	1,321,428,571.43
2022-03-01	2021-12-01	2022-03-01	Fixed Rate Nominal	ZAR	1,285,714,285.71
2022-06-01	2022-03-01	2022-06-01	Fixed Rate Nominal	ZAR	1,250,000,000.00
2022-09-01	2022-06-01	2022-09-01	Fixed Rate Nominal	ZAR	1,214,285,714.29
2022-12-01	2022-09-01	2022-12-01	Fixed Rate Nominal	ZAR	1,178,571,428.57
2023-03-01	2022-12-01	2023-03-01	Fixed Rate Nominal	ZAR	1,142,857,142.86
2023-06-01	2023-03-01	2023-06-01	Fixed Rate Nominal	ZAR	1,107,142,857.14
2023-09-01	2023-06-01	2023-09-01	Fixed Rate Nominal	ZAR	1,071,428,571.43
2023-12-01	2023-09-01	2023-12-01	Fixed Rate Nominal	ZAR	1,035,714,285.71
2024-03-01	2023-12-01	2024-03-01	Fixed Rate Nominal	ZAR	1,000,000,000.00
2024-06-03	2024-03-01	2024-06-03	Fixed Rate Nominal	ZAR	964,285,714.29
2024-09-02	2024-06-03	2024-09-02	Fixed Rate Nominal	ZAR	928,571,428.57
2024-12-02	2024-09-02	2024-12-02	Fixed Rate Nominal	ZAR	892,857,142.86
2025-03-03	2024-12-02	2025-03-03	Fixed Rate Nominal	ZAR	857,142,857.14
2025-06-02	2025-03-03	2025-06-02	Fixed Rate Nominal	ZAR	821,428,571.43
2025-09-01	2025-06-02	2025-09-01	Fixed Rate Nominal	ZAR	785,714,285.71
2025-12-01	2025-09-01	2025-12-01	Fixed Rate Nominal	ZAR	750,000,000.00
2026-03-02	2025-12-01	2026-03-02	Fixed Rate Nominal	ZAR	714,285,714.29
2026-06-01	2026-03-02	2026-06-01	Fixed Rate Nominal	ZAR	678,571,428.57
2026-09-01	2026-06-01	2026-09-01	Fixed Rate Nominal	ZAR	642,857,142.86
2026-12-01	2026-09-01	2026-12-01	Fixed Rate Nominal	ZAR	607,142,857.14
2027-03-01	2026-12-01	2027-03-01	Fixed Rate Nominal	ZAR	571,428,571.43
2027-06-01	2027-03-01	2027-06-01	Fixed Rate Nominal	ZAR	535,714,285.71
2027-09-01	2027-06-01	2027-09-01	Fixed Rate Nominal	ZAR	500,000,000.00
2027-12-01	2027-09-01	2027-12-01	Fixed Rate Nominal	ZAR	464,285,714.29
2028-03-01	2027-12-01	2028-03-01	Fixed Rate Nominal	ZAR	428,571,428.57
2028-06-01	2028-03-01	2028-06-01	Fixed Rate Nominal	ZAR	392,857,142.86
2028-09-01	2028-06-01	2028-09-01	Fixed Rate Nominal	ZAR	357,142,857.14
2028-12-01	2028-09-01	2028-12-01	Fixed Rate Nominal	ZAR	321,428,571.43
2029-03-01	2028-12-01	2029-03-01	Fixed Rate Nominal	ZAR	285,714,285.71
2029-06-01	2029-03-01	2029-06-01	Fixed Rate Nominal	ZAR	250,000,000.00
2029-09-03	2029-06-01	2029-09-03	Fixed Rate Nominal	ZAR	214,285,714.29
2029-12-03	2029-09-03	2029-12-03	Fixed Rate Nominal	ZAR	178,571,428.57
2030-03-01	2029-12-03	2030-03-01	Fixed Rate Nominal	ZAR	142,857,142.86
2030-06-03	2030-03-01	2030-06-03	Fixed Rate Nominal	ZAR	107,142,857.14
2030-09-02	2030-06-03	2030-09-02	Fixed Rate Nominal	ZAR	71,428,571.43
2030-12-02	2030-09-02	2030-12-02	Fixed Rate Nominal	ZAR	35,714,285.71

## **REPORT 2(B) – EXHIBIT 27**

## MEMORANDUM

www.transnet.net

To : Garry Pika, Acting Group Chief Financial Officer

From : Phetolo Ramosebudi, Group Treasurer

SUBJECT : R12 BILLION CLUB LOAN INTEREST RATE RISK EXPLANATION

## PURPOSE:

1. The purpose of this memorandum is to obtain approval from the Acting Group Chief Financial Officer to:

- 1.1 Hedge the interest rate risk exposures from a float for fixed basis for the amount of R12 billion
- 1.2 instruct Regiments Capital as per the 1064 Locomotives mandate to execute the hedges with Transnet approved counterparts
- 1.3. The execution cost of hedges by Regiments Capital will be all inclusive in the rate of the interest rate swap.

## BACKGROUND:

2. A club loan to the amount of R12 billion was recently entered into to fund the locomotive payments to CSR and CNR as well as redemption of loan maturities in February 2016
3. The club loan was done on a floating rate basis at a cost of 3 month Libor plus 270 basis points to manage the pricing divergence from all parts.

## DISCUSSION:

4. The current floating rate risk exposure of the total debt portfolio is 29% after the inclusion of the hedges and 71% fixed.
5. If the full amount of the club loan is included as fixed, the floating rate portion will decrease from 29% to 26%, which is still within Board approved limit in FRMP. This is

well in line with the FRMF that allows a floating rate portion that may be managed between 10% and 50%.

6. High level calculations done by our Traders have indicated that to swap the club loan to fix, the mid-rate will be around 11.50% (NACQ), all inclusive of execution cost by Regiments Capital. This excludes the cost of the bid offer spread which needs to be determined in market.
7. The annual interest rate cost of 9.217% on R12 billion is R1.106 billion which is likely to be volatile due to the high inflationary environment ahead, whilst the annual interest cost is R1.38 billion on 11.50%. This eliminates the interest uncertainty for the loan and fixed the commitments for the duration of the loan.
8. The latest 3 month Jibar forecast from BER is reflected below to give an indication of what may happen with floating interest rates over the medium term.

Q4 15	Q1 16	Q2 16	Q3 16	Q4 16	Q1 17	Q2 17	Q3 17	Q4 17
6.50%	6.50%	6.70%	6.71%	6.89%	6.86%	6.84%	6.81%	6.81%

#### MOTIVATION

9. As per the interest rate forecast above, the short term interest rates are expected to increase over the medium period, the poses a serious risk to Transnet debt portfolio which is currently 29% floating;
10. In addition, to this, the volatile currency has a consequential risk to the short term rates too, which will be a double whammy to the rates;
11. The interest rate expense line is expected to increase in line with the increase in the short term rates;
12. This will have a negative impact to the Cash interest Cover ratio to the detriment of Transnet ratings;
13. Therefore it is important to manage the volatility of interest rate risk to contain its negative impact to the cash interest cover ratio.





14. The implementation of the identified financial risk initiatives such as Float for fixed swaps, CPI bond and Swaps will result in the 50% proportion of fixed for floating as illustrated in the figure below.

#### **CPI LINKED SWAPS:**

15. As part of the progression to relieve pressure on the CIC ratio, thereby managing the cost of interest expense and short to medium term liquidity, a conversion of R15 billion fixed rate debt (bonds) need be swapped to CPI linked debt early in the new-year. This should be in line with the appropriate accounting treatment.
16. The net savings achieved from converting fixed bullet bonds to CPI linked will be positive initially, but will result in large cash outflows at redemption of each bond and Transnet will need to meet liquidity demands as the redemptions of the bonds fall due. The Treasury is developing a solution related to the redemption portfolio to cater for the balloon payments of the CPI bond and swaps.
17. The above will result in lower interest payments over the majority of the life of the bond, but will increase closer to the bond redemption dates.
18. The above action will furthermore increase the duration of the debt portfolio to manage assets and liabilities.

#### **ACCOUNTING:**

19. Any interest rate swap entered into will have to be hedge accounted for to minimise volatility of fair value movements in the Group's income statement.
20. PWC has been appointed a while ago to test system capability to apply either cash flow and/or fair value hedge accounting on interest rate swaps and the cash flow hedge accounting process is almost completed.

#### **BUDGET AND FINANCIAL IMPLICATIONS:**

21. Interest is budgeted for in corporate plan for 15/16 financial year.

#### **DELEGATION OF AUTHORITY (DOA):**

22. The DOA makes provision for the acting GCFO to approve interest rate risk hedging with an unlimited amount and tenors exceeding 5 years.

CLUB LOAN INTEREST RATE RISK

23. An extract of the DOA is reflected below for ease of reference:

**"Interest Rate Risk Hedging**

Approval Authority	Notional Amounts	Group Treasurer	GCFO
Group	Notional amount of hedge expressed in USD or equivalent in RAND (FX loans and leases)	Up to but not exceeding \$100m or equivalent in RAND	Exceeding \$100m or equivalent in RAND
Tenure		Not exceeding 5 years	Exceeding 5 years

All breaches of the above limits to be reported to the Audit Committee.

Note: Where no specific limit is mentioned, the FRMF policy on interest rate risk will apply.

The above limits are applicable per hedging submission.

24. The amount of R12billion and tenor of 15 years are within his delegation.

**RECOMMENDATION:**

24. It is recommended that the Acting GCFO approves the hedging of the interest rate, risk exposures on a float for fixed basis for all the R12 billion club loan drawdowns.

Compiled by:

  
\_\_\_\_\_

**Phetolo Ramosebudi**

Group Treasurer

Date: 2/12/15

**Approved/Not Approved:**

  
\_\_\_\_\_

**Garry Pita**

Acting Group Chief Financial Officer

Date: 3/12/15

## **REPORT 2(B) – EXHIBIT 28**

8 MAY 2015

**TRANSNET****PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR  
LOAN SYNDICATION****J.P. Morgan response to Request for Proposals dated 6 May 2015****Kindly send all correspondence in connection with this proposal to:**

Marc Hussey – Managing Director, Head Global Corporate Banking Sub-Saharan Africa  
J.P. Morgan Johannesburg  
Telephone: +27 11 507 0730  
Mobile: +27 82 460 1940  
Email: [marc.j.hussey@jpmorgan.com](mailto:marc.j.hussey@jpmorgan.com)

Frank Vein - Executive Director, Global Corporate Banking Sub-Saharan Africa  
J.P. Morgan Johannesburg  
Telephone: +27 11 507 0727  
Mobile: +27 82 604 5460  
Email: [frank.vein@jpmorgan.com](mailto:frank.vein@jpmorgan.com)

Laurent Lalou – Managing Director, Head of Emerging Markets Sales  
J.P. Morgan London  
Telephone: +44 207 742 1819  
Mobile: +44 782 543 4770  
Email: [laurent.lalou@jpmorgan.com](mailto:laurent.lalou@jpmorgan.com)

**J.P.Morgan**

STRICTLY PRIVATE AND CONFIDENTIAL

CONFIDENTIAL

## Disclaimer

This presentation was prepared exclusively for the benefit and internal use of the J.P. Morgan client to whom it is directly addressed and delivered (including such client's subsidiaries, the "Company") in order to assist the Company in evaluating, on a preliminary basis, the feasibility of a possible transaction or transactions and does not carry any right of publication or disclosure, in whole or in part, to any other party. This presentation is for discussion purposes only and is incomplete without reference to, and should be viewed solely in conjunction with, the oral briefing provided by J.P. Morgan. Neither this presentation nor any of its contents may be disclosed or used for any other purpose without the prior written consent of J.P. Morgan.

The information in this presentation is based upon any management forecasts supplied to us and reflects prevailing conditions and our views as of this date, all of which are accordingly subject to change. J.P. Morgan's opinions and estimates constitute J.P. Morgan's judgment and should be regarded as indicative, preliminary and for illustrative purposes only. In preparing this presentation, we have relied upon and assumed, without independent verification, the accuracy and completeness of all information available from public sources or which was provided to us by or on behalf of the Company or which was otherwise reviewed by us. In addition, our analyses are not and do not purport to be appraisals of the assets, stock, or business of the Company or any other entity. J.P. Morgan makes no representations as to the actual value which may be received in connection with a transaction nor the legal, tax or accounting effects of consummating a transaction. Unless expressly contemplated hereby, the information in this presentation does not take into account the effects of a possible transaction or transactions involving an actual or potential change of control, which may have significant valuation and other effects.

Notwithstanding anything herein to the contrary, the Company and each of its employees, representatives or other agents may disclose to any and all persons, without limitation of any kind, the U.S. federal and state income tax treatment and the U.S. federal and state income tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to the Company relating to such tax treatment and tax structure insofar as such treatment and/or structure relates to a U.S. federal or state income tax strategy provided to the Company by J.P. Morgan. J.P. Morgan's policies on data privacy can be found at <http://www.jpmorgan.com/pages/privacy>.

J.P. Morgan's policies prohibit employees from offering, directly or indirectly, a favorable research rating or specific price target, or offering to change a rating or price target, to a subject company as consideration or inducement for the receipt of business or for compensation. J.P. Morgan also prohibits its research analysts from being compensated for involvement in investment banking transactions except to the extent that such participation is intended to benefit investors.

**IRS Circular 230 Disclosure:** JPMorgan Chase & Co. and its affiliates do not provide tax advice. Accordingly, any discussion of U.S. tax matters included herein (including any attachments) is not intended or written to be used, and cannot be used, in connection with the promotion, marketing or recommendation by anyone not affiliated with JPMorgan Chase & Co. of any of the matters addressed herein or for the purpose of avoiding U.S. tax-related penalties.

J.P. Morgan is a marketing name for investment banking businesses of JPMorgan Chase & Co. and its subsidiaries worldwide. Securities, syndicated loan arranging, financial advisory and other investment banking activities are performed by a combination of J.P. Morgan Securities LLC, J.P. Morgan Limited, J.P. Morgan Securities plc and the appropriately licensed subsidiaries of JPMorgan Chase & Co. in EMEA and Asia-Pacific, and lending, derivatives and other commercial banking activities are performed by JPMorgan Chase Bank, N.A. J.P. Morgan deal team members may be employees of any of the foregoing entities.

JPMorgan

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

CONFIDENTIAL

This presentation does not constitute a commitment by any J.P. Morgan entity to underwrite, subscribe for or place any securities or to extend or arrange credit or to provide any other services.

This message has been prepared by personnel in the Sales and Trading Departments of one or more affiliates of JPMorgan Chase & Co. and is not the product of JPMorgan's Research Department. It is not a research report and is not intended as such. This material is for the general information of our clients and is a "solicitation" only as that term is used within CFTC Rule 1.71 and 23.605 promulgated under the U.S. Commodity Exchange Act.

This material was prepared by an Associated Person. All questions related to swaps referenced in these materials must be directed to [us.swaps.marketing@jpmorgan.com](mailto:us.swaps.marketing@jpmorgan.com).

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

CONFIDENTIAL

## Table of contents

<b>1. Summary of RFP Response</b>	<b>1</b>
Introduction	1
Section 1: Notice to Bidders; Sub Section 5.4: Supplier Development Initiatives	2
Section 1: Notice to Bidders; Sub Section 7: Confidentiality, and in Appendix iv – Non Disclosure Agreement	3
Section 1: Notice to Bidders; Sub Section 8: Instructions for completing the RFP	3
Section 2: Scope of requirements; Sub Section 1.1 Cross Currency and Contingent Credit Default Swap and 1.2 Loan Syndication	3
Section 2: Scope of Requirements; Sub Section 5: Green economy/carbon footprint	3
Section 3: Pricing; Sub Section 1.1: Service Level	3
Annexure C – Supplier Development Plan	4
Appendix ii – General Bid Conditions - Services	4
Appendix iii – Service Standard Ts and Cs of Contract	4
Appendix v – Integrity Pact	4
<b>2. RFP Document</b>	<b>5</b>
<b>3. Annexures</b>	<b>6</b>
Annexure A: Technical Pre-Qualification	6
Annexure B: Supplier Development Plan, and	6
Annexure C: Supplier Development Value Summary	6
Annexure D: B-BBEE Improvement Plan	6

## Appendices

<b>A. Appendix – Supporting Documentation</b>	<b>7</b>
Copy of B-BBEE Accreditation Certification	7
Copy of Tax Clearance Certificate	7
Copy of ID's of directors	7
Copy of company registration documents	7
Company letterhead	7
<b>B. Appendix - General Bid Conditions</b>	<b>8</b>
<b>C. Appendix - Standard Ts and Cs of Contract</b>	<b>9</b>
<b>D. Appendix – Non Disclosure Agreement</b>	<b>10</b>
<b>E. Appendix – Integrity Pact</b>	<b>11</b>
<b>F. Appendix - Letter Agreement</b>	<b>12</b>
<b>G. Appendix - Representation Letter (relating to JPMorgan Chase's Global Anti-corruption Compliance Program)</b>	<b>13</b>

CONFIDENTIAL

## 1. Summary of RFP Response

### Introduction

JPMorgan Chase Bank, N.A., Johannesburg Branch ("JPMC or JP Morgan") is pleased to submit our proposal in response to Transnet SOC Ltd's ("Transnet" or "the Company") Request for Proposal ("RFP") dated 6 May 2015 for the provision of hedging of financial risks (interest rate, credit and currency risk) and to act as lead arranger for the syndicated ZAR12 billion loan (the "Loan") for a period of up to fifteen (15) years.

Please note that given the short time frame we have endeavored to respond as completely and fully as possible but kindly note the following:

- The terms of the RFP document do not accurately reflect the potential transactions as envisaged and appear to contemplate a straightforward supplier contractual arrangement. Accordingly, we have made certain amendments to reflect:
  - the correct nature and extent of the transactions being proposed;
  - that final terms are still subject to negotiation and agreement with Transnet; and
  - that all potential transactions are subject to the negotiation and conclusion of applicable documentation (terms sheets etc., confirmations etc.).
- Extensive negotiations between the parties to date have already resulted in substantial agreement on the key terms and principles, including confidentiality. Accordingly we have amended the RFP to align to these agreed terms. We attach the draft form of letter agreement relating to the hedging of financial risk and which we refer to in our mark-up as the "Letter Agreement".
- Certain matters we cannot commit to or represent or warrant due to global policy requirements. In these cases we have provided alternative assurances or representations which we believe should provide sufficient comfort to Transnet.

Further, JPMC's obligations under any transactions are subject to JPMC obtaining all credit, risk, market risk, compliance, legal and reputational approvals.

JPMC shall not be responsible for, and will not be deemed as, advising the Company or any other person or entity on the suitability or corporate implications of any loan, any hedging or other transaction, performing on the Company's behalf due diligence investigations in connection with any loan or any transaction, nor giving the Company legal, accounting, taxation, regulatory, ratings or investment advice in relation to any loan or any transaction. JPMC and any of its affiliates, subsidiaries or employees shall have no liability to the Company or to any of its subsidiaries or affiliates or its or their respective directors, officers, employees, partners, shareholders or other security holders or creditors for any actions or omissions of such other advisors and including in respect of the advice of such any other advisors in relation to any transaction.

The provisions of the ISDA Master Agreement and confirmations of any transactions entered into thereunder shall prevail over the provisions of the RFP, including but not limited to, the Service Standard Terms and Conditions of Contract or General Bid Conditions ("RFP Documents"). Any breach by the parties of the terms and conditions of the RFP Documents shall not give rise to any rights to terminate any existing transactions under the ISDA Master Agreement between the parties.

Kindly note that our RFP response is valid for a period of 120 business days from 8 May 2015.

There may be occasions where JP Morgan needs to communicate with the working group regarding the proposed hedging and loan transactions in which case we will request permission to do so.

In response to the RFP, we have detailed our responses to the required sections below.

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION



CONFIDENTIAL

## Section 1: Notice to Bidders; Sub Section 5.4: Supplier Development Initiatives

### Definition of contract value

Transnet has requested we set out the 'contract value' to determine the value of the 35% of contract value to be attributable to supplier development initiatives. Below we set out how we have determined contract value.

Transnet is proposing to enter into a US\$2.5billion loan facility with a committed first tranche of US\$1.5billion and a further optional tranche of US\$1billion at Transnet's option (the "CBD Loan") with China Development Bank ("CDB") to finance part of the Company's purchase of locomotives from China North Railways and China South Railways. In connection with this Loan, JP Morgan will act as sole hedge counterparty. Transnet will enter into a hedging transaction with JP Morgan in the form of a series of cross currency swaps and credit contingent structures in the form of Contingent Credit Default Swaps (the "Transaction").

As described in the attached form of Letter Agreement between JP Morgan and Transnet, Transnet will hedge each draw-down of the CDB Loan with JP Morgan at or about the time of each draw-down by way of entering into a cross-currency swap and a contingent credit default swap, up to an aggregate cross-currency swaps notional amount of US\$1.5billion, subject to the market conditions, and the same number of credit contingent structures. Each part of the Transaction, subject to any changes in market conditions, such as liquidity and volatility, and provided there is no *force majeure*, will be priced based on the following charges from an agreed mid price:

Trading Charge (bps)	Credit Valuation Adjustment (bps)	Credit Contingent Default Swap charge (bps)
12.9	7	-112.5

The value of the Transaction to JP Morgan is based on the estimated final profitability of the transaction. It is important to note that this will not be known at the outset as it will depend on market conditions and movements, as well as the ability of JP Morgan to risk manage the credit and market risk exposures arising from the cross-currency swap and a contingent credit default swap. The exposure generated is long-term exposure (the underlying CDB Loan has a 15-year final maturity date), although the greatest exposure and risk to JP Morgan arises when the loan is fully drawn and declines gradually over the 15-year tenor.

We also note that the profitability is based on our best assumption of future costs of capital. However the regulatory environment may (and will most likely) change and may impact the actual cost of the transaction, therefore impacting the final profitability.

Assuming correct risk management of these exposures and a stable regulatory environment we estimate the resulting value of the contract to JP Morgan to be in the region of R40 million, though, as noted, it may be higher or lower, and under certain instances may even be negative. Thirty-five percent (35%) of this amount equates to R14 million.

Separately, in respect of our role as lead arranger of the syndicated loan of up to R12 billion, the value to JP Morgan of this role is 0.2% of R12 billion, or R24 million. Thirty-five percent (35%) of this amount equates to R8.4 million.

Therefore we estimate 35% of the total contract value to be R22.4 million.

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

CONFIDENTIAL

## **Section 1: Notice to Bidders; Sub Section 7: Confidentiality, and in Appendix iv – Non Disclosure Agreement**

We refer to the terms of the attached Letter Agreement relating to confidentiality as set out in paragraphs 1 to 6 (both inclusive) and note that these are the terms that have been extensively negotiated and agreed with Transnet. For the avoidance of doubt, the terms of the Letter Agreement shall apply to the Transaction described therein.

## **Section 1: Notice to Bidders; Sub Section 8: Instructions for completing the RFP**

In line with previous submissions to Transnet, we will send the hard-copies of the RFP response as requested and send an electronic version via email. For security protocol reasons we may not be able provide a CD.

## **Section 2: Scope of requirements; Sub Section 1.1 Cross Currency and Contingent Credit Default Swap and 1.2 Loan Syndication**

In relation to the scope of work relating to the swaps and in relation to the loan syndication we understand and agree to the requirements in the RFP, but we wish to clarify in sub section 1.2 that we are arranging the loan syndication as lead manager but we are not proposing to underwrite the loan syndication. This change has been marked up in the RFP response. We propose a 0.2% fee on the loan notional to arrange.

## **Section 2: Scope of Requirements; Sub Section 5: Green economy/carbon footprint**

JPMorgan Chase has designed policies that ensure environmental and human rights impacts are identified early, carefully evaluated and managed responsibly. Such policies not only promote positive environmental stewardship, but also highlight business opportunities to support investments in renewable energy, energy efficiency, sustainable water management, sustainable forestry and sustainable supply chains.

As a financial institution, our direct environmental impacts stem primarily from the operation of our corporate real estate, including office buildings, bank branches, data centers and other specialty use buildings. We strive to manage our operations in an efficient and sustainable manner, continually look for opportunities to improve our performance, find innovative solutions to environmental challenges and engage our employees in these efforts.

JPMorgan Chase has made commitments to reduce greenhouse gas emissions and water usage, improve energy efficiency, and manage waste responsibly. These commitments are detailed in the firm's Environmental and Social Policy Framework along with our broader approach to key issues such as climate change, biodiversity and human rights. We report our progress towards these goals in the firm's annual Corporate Responsibility Report.

Please refer to the following links for more information.

- GRI Index (environmental footprint data): [www.jpmorganchase.com/corporateresponsibility](http://www.jpmorganchase.com/corporateresponsibility)
- Environmental Sustainability at JPMorgan Chase:  
[www.jpmorganchase.com/corporate/Corporate-Responsibility/environment](http://www.jpmorganchase.com/corporate/Corporate-Responsibility/environment)

## **Section 3: Pricing; Sub Section 1.1: Service Level**

The designated JP Morgan account representatives under this RFP for Transnet are:

- Mr Frank Vein

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

CONFIDENTIAL

- Executive Director, Global Corporate Banking Sub-Saharan Africa
- Telephone: +27 11 507 0727
- Mobile: +27 82 604 5460
- Email: [frank.vein@jpmorgan.com](mailto:frank.vein@jpmorgan.com)
- The alternate is Mr Marc Hussey
  - Managing Director, Global Corporate Banking Sub-Saharan Africa
  - Telephone: +27 11 507 0730
  - Mobile: +27 82 460 1940
  - Email: [marc.i.hussey@jpmorgan.com](mailto:marc.i.hussey@jpmorgan.com)

### **Annexure C – Supplier Development Plan**

We note that our Supplier Development Plan, sets out current supplier development initiatives related to the transaction, which already meet 35% of contract value. We note also that our future supplier development initiatives and associated budget over the next 5-years are expected to exceed the 35% of contract value to be spent on supplier development. However, we note this is a forecast and is not a contractual commitment at this point and the contractual terms in relation to the Supplier Development Plan are still to be negotiated, as reflected on page 16 of the marked-up RFP.

### **Appendix ii – General Bid Conditions - Services**

Please refer to mark-up of the General Bid Conditions in the attached documents. We note that the conditions are more readily applicable to a straightforward supplier contractual arrangement and a number of the clauses are not applicable in this instance.

### **Appendix iii – Service Standard Ts and Cs of Contract**

Please refer to mark-up of the Ts and Cs of the contract in the attached documents. We note that the terms and conditions are more readily applicable to a straightforward supplier contractual arrangement and a number of the clauses are not applicable in this instance. It is market standard to document terms of cross-border OTC derivative transactions by entering into the ISDA Master Agreement and Confirmations governing individual transactions, incorporating terms of the relevant sets of definitions published by the International Swaps and Derivatives Association, Inc. ("ISDA"). JP Morgan and Transnet have already signed an ISDA Master Agreement in 2009. In addition all terms relating to the ZAR syndicated loan are still to be negotiated and agreed between the parties.

### **Appendix v – Integrity Pact**

We are attaching our Representation Letter relating to JPMorgan Chase's Global Anti-corruption Compliance Program which we believe should provide you with sufficient comfort. Unfortunately due to global policy considerations we are unable to sign up to your form of Integrity Pact.

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

1

CONFIDENTIAL

## 2. RFP Document

Including the following:

- Returnable documents
  - Section 3 – Pricing,
  - Section 5: RFP Declaration and Breach of Law Form,
  - Section 11: Vendor Application Form, and
- Essential returnable documents
  - Section 4 – Proposal Form and List of Returnable Documents
  - Section 9: Declaration of Supplier Development Commitments

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

TRANSNET

**TRANSNET SOC LTD**

[Registration No. 1990/000900/30]

**REQUEST FOR PROPOSAL [RFP]**

FOR THE PROVISION OF HEDGING FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD <sup>ARRANGE</sup> ~~AND UNDERWRITE~~ THE EQUIVALENT <sup>UP TO FIFTEEN</sup> ~~SYNDICATE~~ ZAR 12 BILLION <sup>15</sup> ~~LOAN~~ FOR A PERIOD OF <sup>15</sup> ~~FOURTEEN (14)~~ YEARS

<b>RFP NUMBER</b>	<b>GSM/15/05/1265</b>
<b>ISSUE DATE:</b>	<b>06 May 2015</b>
<b>CLOSING DATE:</b>	<b>08 May 2015</b>
<b>CLOSING TIME:</b>	<b>12:00</b>
<b>BID VALIDITY PERIOD:</b>	<b>120 days Business Days from Closing Date</b>

**SCHEDULE OF BID DOCUMENTS**

<b>Section No</b>	<b>Page</b>
<b>SECTION 1: NOTICE TO BIDDERS</b>	<b>3</b>
1 INVITATION TO BID	3
2 FORMAL BRIEFING	3
3 PROPOSAL SUBMISSION	3
4 DELIVERY INSTRUCTIONS FOR RFP	4
5 BROAD-BASED BLACK ECONOMIC EMPOWERMENT AND SOCIO-ECONOMIC OBLIGATIONS	4
6 COMMUNICATION	6
7 CONFIDENTIALITY	6
8 INSTRUCTIONS FOR COMPLETING THE RFP	7
9 COMPLIANCE	7
10 DISCLAIMERS	7
11 LEGAL REVIEW	8
<b>SECTION 2: SCOPE OF REQUIREMENTS</b>	<b>8</b>
1 SCOPE OF REQUIREMENTS	8
2 GREEN ECONOMY / CARBON FOOTPRINT	9
3 GENERAL SERVICE PROVIDER OBLIGATIONS	9
4 EVALUATION METHODOLOGY	10
<b>SECTION 3: PRICING</b>	<b>13</b>
1 SERVICE LEVELS	13
<b>SECTION 4: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS</b>	<b>15</b>
<b>SECTION 5: RFP DECLARATION AND BREACH OF LAW FORM</b>	<b>21</b>
<b>SECTION 6: RFP CLARIFICATION REQUEST FORM</b>	<b>24</b>
<b>SECTION 7: B-BBEE STATUS</b>	<b>25</b>
<b>SECTION 8 : SUPPLIER DEVELOPMENT INITIATIVES</b>	<b>27</b>
<b>SECTION 9 : DECLARATION OF SUPPLIER DEVELOPMENT COMMITMENTS</b>	<b>31</b>
<b>SECTION 10 : B-BBEE IMPROVEMENT PLAN</b>	<b>32</b>
<b>SECTION 11 : VENDOR APPLICATION FORM</b>	<b>33</b>
<b>RFP ANNEXURES:</b>	
ANNEXURE A	TECHNICAL PREQUALIFICATION
ANNEXURE B	SUPPLIER DEVELOPMENT VALUE SUMMARY
ANNEXURE C	SUPPLIER DEVELOPMENT PLAN
ANNEXURE D	B-BBEE IMPROVEMENT PLAN
<b>RFP APPENDICES:</b>	
APPENDIX (i)	SD GUIDELINES
APPENDIX (ii)	GENERAL BID CONDITIONS
APPENDIX (iii)	SERVICES STANDARD TERMS AND CONDITIONS OF CONTRACT
APPENDIX (iv)	NON DISCLOSURE AGREEMENT SERVICES
APPENDIX (v)	SUPPLIER INTEGRITY PACT

**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD, <sup>ARRANGE</sup> ~~AND UNDERWRITE~~ THE EQUIVALENT SYNDICATED <sup>12 billion</sup> ~~ZAR~~ <sup>UP TO FIFTEEN (15)</sup> ~~LOAN~~ FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS**

**Section 1: NOTICE TO BIDDERS**

**1 INVITATION TO BID**

Responses to this RFP [hereinafter referred to as a **Bid** or a **Proposal**] are requested from persons, companies, close corporations or enterprises [hereinafter referred to as an **entity, Respondent** or **Bidder**].

<b>DESCRIPTION</b>	The Provision of Hedging of Financial Risks (Interest Rate, Credit and Currency Risk) and to Lead, <sup>Arrange</sup> <del>and Underwrite</del> the Equivalent Syndicated <sup>12 billion</sup> <del>ZAR</del> <sup>UP TO FIFTEEN (15)</sup> <del>LOAN</del> for a period of <del>fourteen (14)</del> years.
<b>BID FEE AND BANKING DETAILS</b>	This RFP is issued free of charge.
<b>INSPECT / COLLECT DOCUMENTS FROM</b>	This RFP will be emailed to potential bidders.
<b>ISSUE DATE AND COLLECTION DATE DEADLINE</b>	This RFP will be emailed to potential bidders.
<b>COMPULSORY/NON COMPULSORY BRIEFING SESSION</b>	No briefing session will be held.
<b>CLOSING DATE</b>	<b>12:00 on Friday 08 May 2015</b> Bidders must ensure that bids are delivered timeously to the correct address. As a general rule, if a bid is late or delivered to the incorrect address, it will not be accepted for consideration.
<b>VALIDITY PERIOD</b>	<b>120 Business Days from Closing Date</b> Bidders are to note that they may be requested to extend the validity period of their bid, at the same terms and conditions, if the internal evaluation process has not been finalised within the validity period.

Any additional information or clarification will be faxed or emailed to all Respondents, if necessary.

**2 FORMAL BRIEFING**

A formal briefing session will not be held but should Respondents have specific queries they should email these to the Transnet employee(s) indicated in paragraph 6 [Communication] below:

**3 PROPOSAL SUBMISSION**

Proposals must be submitted in a sealed envelope addressed as follows:

The Secretariat, Transnet Acquisition Council  
 RFP No: GSM/15/05/1265  
 Description: The Provision of Hedging of Financial Risks (Interest Rate, Credit and Currency Risk) and to Lead, <sup>Arrange</sup> ~~and Underwrite~~ the Equivalent Syndicated <sup>12 billion</sup> ~~ZAR~~ <sup>UP TO FIFTEEN (15)</sup> ~~LOAN~~ for a period of ~~fourteen (14)~~ years.  
 Closing date and time: 08 May 2015 at 12:00  
 Closing address: [Refer to options in paragraph 4]

All envelopes must reflect the return address of the Respondent on the reverse side.

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015



**4 DELIVERY INSTRUCTIONS FOR RFP****4.1 Delivery by hand**

If delivered by hand, the envelope is must be deposited in the Transnet tender box which is located at the main entrance of the Office Block, Carlton Centre, 150 Commissioner Street, Johannesburg, and must be addressed as follows:

THE SECRETARIAT  
TRANSNET ACQUISITION COUNCIL  
CARLTON CENTRE  
TENDER BOX  
OFFICE BLOCK FOYER  
150 COMMISSIONER STREET  
JOHANNESBURG 2001

- a) The measurements of the "tender slot" are 400mm wide x 100mm high, and Respondents must please ensure that response documents or files are no larger than the above dimensions. Responses which are too bulky [i.e. more than 100mm thick] must be split into two or more files, and placed in separate envelopes, each such envelope to be addressed as required in paragraph 3 above.
- b) It should also be noted that the above tender box is located at the street level outside the main entrance in Commissioner Street and is accessible to the public 24 hours a day, 7 days a week.

**4.2 Dispatch by courier**

If dispatched by courier, the envelope must be addressed as follows and delivered to the Office of The Secretariat, Transnet Acquisition Council and a signature obtained from that Office:

THE SECRETARIAT  
TRANSNET ACQUISITION COUNCIL  
48TH FLOOR  
CARLTON CENTRE  
OFFICE BLOCK  
150 COMMISSIONER STREET  
JOHANNESBURG

- 4.3 If responses are not delivered as stipulated herein, such responses will not be considered.
- 4.4 No email or faxed responses will be considered, unless otherwise stated herein.
- 4.5 The responses to this RFP will be opened as soon as possible after the closing date and time. Transnet shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the Proposals / information received, i.e. pricing, delivery, etc. The names and locations of the Respondents will be divulged to other Respondents upon request.
- 4.6 Envelopes must not contain documents relating to any RFP other than that shown on the envelope.

**5 BROAD-BASED BLACK ECONOMIC EMPOWERMENT AND SOCIO-ECONOMIC OBLIGATIONS**

In terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations, Respondents are to note that Transnet will allow a "preference" to companies who provide a valid B-BBEE Verification Certificate.

**5.1 B-BBEE Joint Ventures or Consortiums**

Respondents who would wish to respond to this RFP as a Joint Venture [JV] or consortium with B-BBEE entities, must state their intention to do so in their RFP submission. Such Respondents must



JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

also submit a signed JV or consortium agreement between the parties clearly stating the percentage [%] split of business and the associated responsibilities of each party. If such a JV or consortium agreement is unavailable, the partners must submit confirmation in writing of their intention to enter into a JV or consortium agreement should they be awarded business by Transnet through this RFP process. This written confirmation must clearly indicate the percentage [%] split of business and the responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV or consortium agreement is submitted to Transnet.

## 5.2 Subcontracting

Transnet fully endorses Government's transformation and empowerment objectives and when contemplating subcontracting Respondents are requested to give preference to companies which are Black Owned, Black Women Owned, Black Youth Owned, owned by Black People with Disabilities, EMEs and QSEs including any companies designated as B-BBEE Facilitators<sup>1</sup>.

A person awarded a contract may not subcontract more than 25% [twenty-five percent] of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

## 5.3 B-BBEE Improvement Plan

Transnet encourages its Service Providers to constantly strive to improve their B-BBEE rating. Respondents are therefore requested to indicate the extent to which they <sup>intend to</sup> ~~will~~ maintain or improve their B-BBEE status over the contract period.

Respondents are requested to submit their <sup>indicative</sup> B-BBEE Improvement Plan as an additional document with their Proposals by completion of Annexure D appended hereto. [Refer to Section 10 and Annexure D for further instructions]

## 5.4 Supplier Development Initiatives

Historically in South Africa there has been a lack of investment in infrastructure, skills and capability development and inequality in the income distribution and wealth of a significant portion of the population. There have been a number of Government initiatives developed to address these challenges. In particular, the New Growth Path [NGP] and New Development Plan [NDP] aligns and builds on previous policies to ensure the achievement of Government's development objectives for South Africa.

Transnet fully endorses and supports Government's economic policies through its facilitation of Supplier Development [SD] initiatives. Hence Respondents are required to submit their commitments with regard to Supplier Development Initiatives over the duration of this contract.

<sup>1</sup> The Minister of the Department of Trade and Industry has the power to designate certain Organs of State or Public Entities as B-BBEE Facilitators. For example, the South African National Military Veterans' Association (SANMVA) has been designated as a B-BBEE Facilitator. As such they will be treated as having rights of ownership held 100% by Black People, 40% by Black Women and 20% by Black designated groups.



JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

As a prequalification criterion to participate in this bid, Respondents are required to provide a commitment that the monetary value of all SD initiatives to be undertaken by them will not be less than 35% [thirty five percent] of the contract value.

*The tenderer must provide a definition of what the contract value will be and provide a value which will be used for the measurement of the SD delivered against the contract value for the duration of the contract. Transnet will in the negotiation stage finalise the contract value definition and the final value that will be used.*

All Respondents must refer to Section 8 for instructions and complete Section 9 [Declaration of Supplier Development Commitments] as this is a mandatory returnable document. In addition, Respondents are required to submit a Supplier Development Plan and SD Value Summary, Annexure B and Annexure C as these are required as essential returnable documents.

Note: Should a JV be envisaged the principal respondent is required to submit the required responses as indicated above.

<sup>indicative</sup>  
The commitments made by the successful Respondents will be incorporated as a term of the contract and monitored for compliance.

## 6 COMMUNICATION

- 6.1 For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted to Suellen Du Plessis before **12:00 on 07 May 2015**, substantially in the form set out in Section 6 hereto. In the interest of fairness and transparency Transnet's response to such a query will then be made available to the other Respondents who have collected RFP documents. For this purpose Transnet will communicate with Respondents using the contact details provided to the Secretariat on issue of the bid documentation to the Respondent. Kindly ensure that you provide the Secretariat with the **correct** contact details, as Transnet will not accept responsibility for being unable to contact a bidder who provided incorrect contact details.
- 6.2 After the closing date of the RFP, a Respondent may only communicate with the Secretariat of the Transnet Acquisition Council, at telephone number 011 308 3528/3522, email TAC.SECRETARIAT@transnet.net or facsimile number 011 308 3967 on any matter relating to its RFP Proposal.
- 6.3 Respondents are to note that changes to its submission will not be considered after the closing date. Respondents are warned that a Proposal will be liable to disqualification should any attempt be made by a Respondent either directly or indirectly to canvass any officer or employee of Transnet in respect of this RFP between the closing date and the date of the award of the business. Furthermore, Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with Transnet in the future.

## 7 CONFIDENTIALITY

- 7.1 All information related to this RFP is to be treated with strict confidence. In this regard Respondents are required to certify that they have acquainted themselves with the Non-Disclosure Agreement (Appendix iv). All information related to a subsequent contract, both during and after completion thereof, will be treated with strict confidence. ~~Should the need however arise to divulge any information gleaned from provision of the Services, which is either directly or indirectly related to Transnet's business, written approval to divulge such information must be obtained from Transnet, provided that the Respondent may disclose such confidential information or portions thereof: (a) at the request of any regulatory, supervisory or governmental authority, institution or department; (b) under Court process or pursuant to statutory requirement or regulation; (c) to the Respondent's or its representative's auditors, external counsel or accountants, on a confidential basis; or (d) to affiliates or subsidiaries of JPMorgan Chase and Co, and their employees, officers, directors who~~

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

**8 INSTRUCTIONS FOR COMPLETING THE RFP**

- 8.1 Proposals must be submitted in duplicate hard copies [1 original and 1 copy] and must be bound.
- 8.2 Sign one set of original documents [sign, stamp and date the bottom of each page]. This set will serve as the legal and binding copy. A duplicate set of documents is required. This second set must be a copy of the original signed Proposal.
- 8.3 Both sets of documents are to be submitted to the address specified in paragraph 4 above, and Bidders must ensure that the original and copies (where applicable) are identical in all respects as Transnet will not accept any liability for having disqualified a bidder for failing to provide a mandatory returnable document in either the original or the copy of the RFP albeit that it was included in the other.
- 8.4 A CD copy of the RFP must also be submitted. Please provide files in MS WORD/Excel format, not PDF versions, noting that the signed original set will be legally binding.
- 8.5 **All returnable documents tabled in the Proposal Form [Section 4] must be returned with your Proposal.**
- 8.6 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be an *indicative* offer, ~~subject to negotiation and agreement between the parties.~~ Any exceptions to this statement must be clearly and specifically indicated.
- 8.7 ~~Any~~ <sup>may</sup> Additional conditions ~~must~~ be embodied in an accompanying letter. ~~Subject only to clause 15 [Alterations made by the Respondent to Bid Prices] of the General Bid Conditions (Appendix II); alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.~~

**9 COMPLIANCE**

~~The successful Respondent [hereinafter referred to as the Service Provider] shall be in full and complete compliance with any and all applicable laws and regulations.~~

**10 DISCLAIMERS**

Respondents are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this RFP and/or its receipt of Proposals. In particular, please note that Transnet reserves the right to:

- 10.1 modify the RFP's Services and request Respondents to re-bid on any such changes;
- 10.2 reject any Proposal which does not conform to instructions and specifications which are detailed herein;
- 10.3 disqualify Proposals submitted after the stated submission deadline [Closing Date];
- 10.4 not necessarily accept the lowest priced Proposal or an alternative bid;
- 10.5 reject all Proposals, if it so decides;
- 10.6 withdraw the RFP on good cause shown;
- 10.7 award a contract in connection with this Proposal at any time after the RFP's closing date;
- 10.8 award a contract for only a portion of the proposed Services which are reflected in the scope of this RFP;
- 10.9 split the award of the contract between more than one Service Provider, should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
- 10.10 make no award of a contract;

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

10.11 should a contract be awarded on the strength of information furnished by the Respondent, which after conclusion of the contract, is proved to have been incorrect, Transnet reserves the right to cancel the contract.

Transnet reserves the right to undertake post-tender negotiations [PTN] with selected Respondents or any number of short-listed Respondents, such PTN to include, at Transnet's option, any evaluation criteria listed in this RFP document.

Kindly note that Transnet will not reimburse any Respondent for any preparatory costs or other work performed in connection with its Proposal, whether or not the Respondent is awarded a contract.

## 11 LEGAL REVIEW

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

**Transnet urges its clients, suppliers and the general public**

**to report any fraud or corruption to**

**TIP-OFFS ANONYMOUS : 0800 003 056**

**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD <sup>ARRANGE</sup> AND <sup>UP TO FIFTEEN (15)</sup> UNDERWRITE THE EQUIVALENT <sup>12 BILLION</sup> SYNDICATE ZAR LOAN FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS**

## Section 2: SCOPE OF REQUIREMENTS

### 1 SCOPE OF REQUIREMENTS

The following are the scope of requirements:

#### 1.1 Cross Currency Swap and Contingent Credit Default Swap

- The bidder must act as sole hedge counterparty to the Company in connection with the Loan on the terms of the Transaction. <sup>US\$1.5 billion China Development Bank ("Loan")</sup>
- The bidder must hedge each draw-down of the Loan at or about the time of each draw-down by way of entering into a cross-currency swap.
- The bidder must execute the credit contingent structure (either in a form of a Credit Default Swap Overlay or a Contingent Credit Default Swap), up to an aggregate cross-currency swaps notional amount of US\$1.5 billion; and
- The bidder must pre-hedge the Transaction with effect from the date <sup>the contract is awarded</sup> ~~hereof~~, it being understood that the gains or losses resulting from such pre-hedging shall be for the account of the bidder.

#### 1.2 Loan Syndication

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

- The bidder must lead and manage the raising of \$1.5 billion, ZAR equivalent facility for up to 15 year tenor with amortising profile with 54 month grace period.
- The bidder must co-ordinate the production of appropriate information materials by the Company for the prospective lenders, including due diligence requirements and bank presentations, where appropriate;
- The bidder shall (where appropriate) set up and maintain secured data-dissemination websites.
- The bidder must be a liaison between Company, lenders and legal counsel in order to establish optimal and consensus financing terms and an efficient and streamlined documentation negotiation process for the Facilities; and

The bidder must co-ordinate the legal documentation process and general process management (including management of all-party calls and/or meetings, advising in relation to comments from potential lenders on the Facility Documents) for a streamlined and efficient process to signing and closing.

- The bidder must co-ordinate the legal documentation process and general process management (including management of all-party calls and/or meetings, advising in relation to comments from potential lenders on the Facility Documents) for a streamlined and efficient process to signing and closing.

## 2 GREEN ECONOMY / CARBON FOOTPRINT

Transnet wishes to have an understanding of your company's position with regard to environmental commitments, including key environmental characteristics such as waste disposal, recycling and energy conservation. *Please submit details of your entity's policies in this regard.*

## 3 GENERAL SERVICE PROVIDER OBLIGATIONS

- 3.1 The Service Provider(s) shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.
- 3.2 The Service Provider(s) must comply with the requirements stated in this RFP.



JPMorgan Chase Bank, N.A. (Johannesburg Branch)

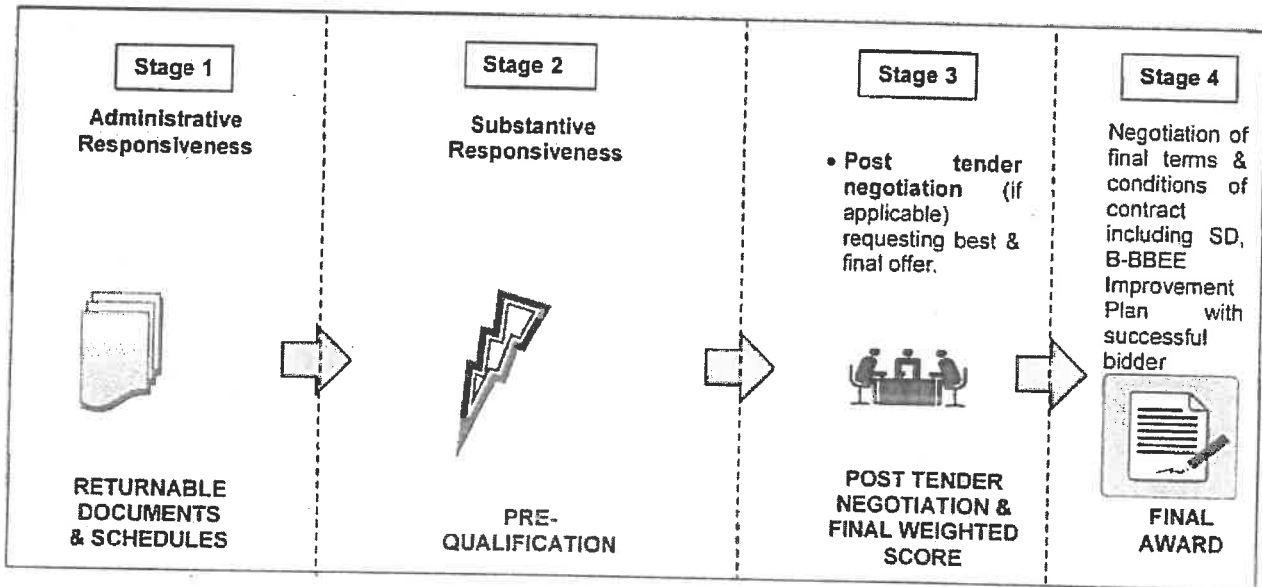
Date: 8/5/2015

#### 4 EVALUATION METHODOLOGY

Transnet will utilise the following methodology and criteria in selecting a preferred Service Provider, if so required:

**Please note:**

As this is a Treasury transaction for hedging requirements, preference (i.e. 80/20 or 90/10) in accordance with the PPPFA and PPM will not be applicable.



NB: Evaluation of the various stages will normally take place in a sequential manner. However, in order to expedite the process, Transnet reserves the right to conduct the different stages of the evaluation process in parallel. In such instances the evaluation of bidders at any given stage must therefore not be interpreted to mean that bidders have necessarily passed any previous stage(s).

##### 4.1 STAGE ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

Administrative Responsiveness Check	RFP Reference
• Whether the Bid has been lodged on time	Section 1 paragraph 3
• Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time	Section 4
• Verify the validity of all returnable documents	Section 4, page 19 and 20

**The test for Administrative Responsiveness [Stage One] must be passed for a Respondent's Proposal to progress to Stage Two for Substantive Responsiveness Check**

#### 4.2 STAGE TWO: Test for Substantive Responsiveness to RFP

The test for substantive responsiveness to this RFP will include the following:

Substantive Responsiveness Check	RFP Reference
<ul style="list-style-type: none"> <li>Whether any general pre-qualification criteria set by Transnet, have been met</li> </ul>	<i>Section 1 paragraphs 2.2, 6, 10.3</i> <i>Section 4 – validity period</i> <i>General Bid Conditions - clause 19</i> <i>Sections 10, 11</i>
<ul style="list-style-type: none"> <li>Whether the Bid contains a priced offer</li> </ul>	<i>Section 3</i>
<ul style="list-style-type: none"> <li>Whether the Bid materially complies with the scope and/or specification given</li> </ul>	<i>All Sections</i>
<ul style="list-style-type: none"> <li>Annexure A: Technical Pre-qualification</li> </ul>	<i>Section 2 – Scope of Work</i>
<ul style="list-style-type: none"> <li>Whether the Bid contains a commitment that the monetary value of all SD initiatives to be undertaken by the Respondent will not be less than 35 % [thirty five percent] of the contract value.</li> </ul>	<i>Section 9</i>

***The test for substantive responsiveness [Stage Two] must be passed for a Respondent's Proposal to progress to Stage Three for final evaluation (Price and B-BBEE)***

#### 5 STAGE THREE: Post Tender Negotiations (if applicable)

Transnet reserves the right to conduct post tender negotiations with a shortlist of Respondent(s). The shortlist could comprise of one or more Respondents. Should Transnet conduct post tender negotiations, Respondents will be requested to provide their best and final offers to Transnet based on such negotiations.

#### 6 STAGE FOUR: Final Contract Award

Transnet will negotiate the final terms and conditions<sup>sof</sup> the contract with the successful Respondent(s). This may include aspects such as Supplier Development, the B-BBEE Improvement Plan, price and delivery. Thereafter the final contract will be awarded to the successful Respondent(s).



JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015



**IMPORTANT NOTICE TO RESPONDENTS**

Transnet has appointed a Procurement Ombudsman to investigate any material complaint in respect of RFPs exceeding R5million [five million S.A. Rand] in value. Should a Respondent have any material concern regarding an RFP process which meets this threshold, a complaint may be lodged with the Ombudsman for further investigation. The Ombudsman reserves the right to refer the complaint to an external service provider for investigation.

It is incumbent on the Respondent to familiarise himself/herself with the Terms of Reference OF the Ombudsman which are available for review at Transnet's website www.transnet.net.

An official complaint form may be downloaded from this website and submitted, together with any supporting documentation, within the prescribed period, to procurement.ombud@transnet.net.

For transactions below the abovementioned threshold, a complaint may be lodged with the Chief Procurement Officer of the relevant Transnet Operating Division/Specialist Unit.

Respondents are to note that a complaint must be made in good faith. If a complaint is made in bad faith, Transnet reserves the right to place such a Bidder on its List of Excluded Bidders.



JF Morgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD <sup>ARRANGE</sup> AND <sup>UP TO FIFTEEN (15)</sup> ~~UNDERWRITE~~ THE <sup>0 12 Billion</sup> ~~EQUIVALENT~~ SYNDICATE ZAR LOAN FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS**

### Section 3: PRICING

Please indicate each part of the Transaction prices based on the table below:

Trading Charge (bps)	Credit Valuation Adjustment (bps)	Credit Default Swap Overlay (bps)	Credit Contingent Default Swap (bps)
12.9	7		-112.5

For the avoidance of doubt; all prices set out above are subject to the terms and conditions of the draft Letter Agreement that has been extensively

- a) the Trading Charge and the Credit Valuation Adjustment will apply to each cross-currency swap substantially on the terms of Annex 1 hereto, negotiated and is in substantially agreed form, which is submitted
- b) the Contingent Credit Default Swap charge will apply to each Contingent Credit Default Swap concluded together with this proposal and the specific terms and conditions of the underlying ISDA Master Agreement, read with the relevant confirmation for each trade.

- 1 SERVICE LEVELS** All pricing terms for the ZAR Syndicated Loan are still to be negotiated and agreed between the parties
- 1.1 An experienced national account representative(s) is required to work with Transnet's procurement department. [No sales representatives are needed for individual department or locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.
  - 1.2 Transnet will have quarterly reviews with the Service provider's account representative on an on-going basis.
  - 1.3 Transnet reserves the right to request that any member of the Service provider's team involved on the Transnet account be replaced if deemed not to be adding value for Transnet.
  - 1.4 The Service provider must provide a telephone number for customer service calls.
  - 1.5 Failure of the Service provider to comply with stated service level requirements will give Transnet the right to cancel the contract in whole, without penalty to Transnet, giving 30 [thirty] calendar days' notice to the Service provider of its intention to do so.

**Acceptance of Service Levels:**

YES	<input checked="" type="checkbox"/>
-----	-------------------------------------

NO	<input type="checkbox"/>
----	--------------------------

  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date & Company Stamp

SIGNED at JOHANNESBURG on this 8<sup>TH</sup> day of MAY 2015

## SIGNATURE OF WITNESSES

1 [Signature]  
Name Sara Wojcik2 [Signature]  
Name Yuriska Chetty

## ADDRESS OF WITNESSES

1 Fricker Road1 Fricker RdSIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: [Signature]NAME: MARK HUSSEYDESIGNATION: MANAGING DIRECTOR[Signature]  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date &amp; Company Stamp

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD <sup>ARRANGE</sup> ~~AND UNDERWRITE~~ <sup>D 12 BILLION</sup> THE EQUIVALENT SYNDICATE ZAR LOAN <sup>UP TO FIFTEEN (15)</sup> FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS

## Section 4: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS

#We JPMORGAN CHASE BANK, N.A., JOHANNESBURG BRANCH  
[name of entity, company, close corporation or partnership] of [full address]  
1 FRICKER ROAD, ILLOVO, JOHANNESBURG, 2196

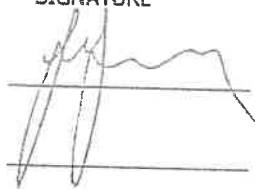
carrying on business trading/operating as

N/A

represented by MARC HUSSEY

in my capacity as MANAGING DIRECTOR

being duly authorised thereto by a <sup>certificate of incumbency</sup> Resolution of the Board of Directors or Members or Certificate of Partners, dated as at the date of issue to enter into, sign execute and complete any documents relating to this proposal and any subsequent Agreement. The following list of persons are hereby authorised to negotiate on behalf of the abovementioned entity, should Transnet decide to enter into Post Tender Negotiations with shortlisted bidder(s).

FULL NAME(S)	CAPACITY	SIGNATURE
<u>MARC HUSSEY</u>	<u>MANAGING DIRECTOR</u>	
_____	_____	_____
_____	_____	_____
_____	_____	_____

I/We hereby offer to supply the abovementioned Services at the prices quoted in the schedule of prices in accordance with the terms set forth in the documents listed in the accompanying schedule of RFP documents, and specifically including the covering letter and the terms of the Letter Agreement.

I/We agree to be bound by those conditions in Transnet's:

- (i) Terms and Conditions of Contract - Services
- (ii) General Bid Conditions - Services ; and
- (iii) any other standard or special conditions mentioned and/or embodied in this Request for Proposal,

in each instance as amended in this marked-up Proposal and as amended or substituted by any subsequent agreement, including the Letter Agreement, the relevant ISDA Master Agreement and the relevant confirmation for each trade and in relation to the syndicated ZAR loan, as amended in any agreement relating to our appointment as lead arranger, from time to time.

  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)  
Date: 8/5/2015  
Date & Company Stamp

... terms and conditions relating to the proposed transactions will be negotiated and agreed between Transnet and the proposer in the appropriate form of documentation

Page 16 of 34  
Returnable document

I/We accept that unless Transnet should otherwise decide and so inform me/us in the letter of award/intent, this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence], together with Transnet's acceptance thereof shall constitute a binding contract between Transnet and me/us.

Should Transnet decide that a formal contract should be signed and so inform me/us in a letter of intent [the Letter of Intent], this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence] together with Transnet's Letter of Intent, shall constitute a binding contract between Transnet and me/us until the formal contract is signed.

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply of Services within 4 [four] weeks thereafter, Transnet may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.

I/We accept that any contract resulting from this offer will be for a period of 14 [fourteen] years only.

Furthermore, I/we agree to a penalty clause/s to be negotiated with Transnet, which will allow Transnet to invoke a penalty against us for non-compliance with material terms of this RFP including the delayed delivery of the Services due to non-performance by ourselves, failure to meet Supplier Development and/or B-BBEE Improvement Plan commitments. A penalty of up to 100% of the outstanding portion of the Supplier Development commitment will be applied and Transnet reserves the right to set this off against any payment due to the Respondent. In addition, I/we agree that non-compliance with any of the material terms of this RFP, including those mentioned above, will constitute a material breach of contract and provide Transnet with cause for cancellation.

#### ADDRESS FOR NOTICES

The law of the Republic of South Africa shall govern any contract created by the acceptance of this RFP. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent hereunder, at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. Foreign Respondents shall, therefore, state hereunder the name of their authorised representative in the Republic of South Africa who has the power of attorney to sign any contract which may have to be entered into in the event of their Proposal being accepted and to act on their behalf in all matters relating to such contract.

Respondent to indicate the details of its *domicilium citandi et executandi* hereunder:

Name of Entity:

JPMORGAN CHASE BANK, N.A., JOHANNESBURG BRANCH

Facsimile:

Address:

1 FRICKER ROAD, CNR. HURLINGHAM ROAD, ILLOVO,  
JOHANNESBURG, 2196

Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date & Company Stamp

**NOTIFICATION OF AWARD OF RFP**

As soon as possible after approval to award the contract(s), the successful Respondent [the Service provider] will be informed of the acceptance of its Proposal. Unsuccessful Respondents will be advised in writing of the name of the successful Service provider and the reason as to why their Proposals have been unsuccessful, for example, in the category of price, delivery period, quality, B-BBEE status or for any other reason.

**VALIDITY PERIOD**

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

**NAME(S) AND ADDRESS / ADDRESSES OF DIRECTOR(S) OR MEMBER(S)**

The Respondent must disclose hereunder the full name(s) and address(s) of the director(s) or members of the company or close corporation [C.C.] on whose behalf the RFP is submitted.

- (i) Registration number of company / C.C. 2001/016069/10
- (ii) Registered name of company / C.C. JPMorgan Chase Bank N.A (Johannesburg Branch)
- (iii) Full name(s) of director/member(s) Address/Addresses Passport Number(s)
- |                    |                           |           |
|--------------------|---------------------------|-----------|
| James S Crown      | 270 Park Avenue, New York | 208810080 |
| Laban P Jackson Jr | 270 Park Avenue, New York | 457060759 |
| Marianne Lake      | 270 Park Avenue, New York | 472983892 |
| Matthew E Zames    | 270 Park Avenue, New York | 488314625 |
| William C Weldon   | 270 Park Avenue, New York | 039660004 |

**RETURNABLE DOCUMENTS**

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent. Returnable Documents means all the documents, Sections and Annexures, as listed in the tables below.

**a) Mandatory Returnable Documents**

*Failure to provide all Mandatory Returnable Documents at the closing date and time of this tender will result in a Respondent's disqualification. Bidders are therefore urged to ensure that all these documents are returned with their Proposals.*

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

MANDATORY RETURNABLE DOCUMENTS	SUBMITTED [Yes/No]
SECTION 3 : Pricing	/
ANNEXURE A : Technical Pre-Qualification	/
SECTION 9 : Declaration of Supplier Development Commitments	/
ANNEXURE B : Supplier Development Value Summary	/

  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date & Company Stamp

b) **Essential Returnable Documents**

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

***Failure to provide all Essential Returnable Documents may result in a Respondent's disqualification at Transnet's sole discretion. Bidders are therefore urged to ensure that all these documents are returned with their Proposals.***

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

<b>ESSENTIAL RETURNABLE DOCUMENTS &amp; SCHEDULES</b>		<b>SUBMITTED [Yes or No]</b>
SECTION 4 : Proposal Form and List of Returnable documents		
- Valid and original, or a certified copy, of your entity's B-BBEE Accreditation Certification. Note: failure to provide these required documents at the closing date and time of the RFP will result in an automatic score of zero being allocated for preference		X
- In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement		-
Original and valid Tax Clearance Certificate [Consortia / Joint Ventures must submit a separate Tax Clearance Certificate for each party]		X
SECTION 5 : RFP Declaration and Breach of Law Form		
SECTION 11 : Vendor Application Form		X
Original cancelled cheque or bank verification of banking details		
- Certified copies of IDs of shareholder/directors/members [as applicable]		X
- Certified copies of the relevant company registration documents from Companies and Intellectual Property Commission (CIPC)		X
- Certified copies of the company's shareholding/director's portfolio		
- Entity's letterhead		X
- Certified copy of valid VAT Registration Certificate		X
- ANNEXURE B : Supplier Development Plan		X
ANNEXURE D : B-BBEE Improvement Plan		X

**CONTINUED VALIDITY OF RETURNABLE DOCUMENTS**

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

  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date & Company Stamp

By signing this certificate the Respondent is deemed to acknowledge that he/she has made himself/herself thoroughly familiar with, and agrees with all the conditions governing this RFP, *as amended in this marked-up Version and as set out in the covering letter submitted with this proposal.* including those contained in any printed form stated to form part hereof, including but not limited to the documents stated below and Transnet SOC Ltd will recognise no claim for relief based on an allegation that the Respondent overlooked any such condition or failed properly to take it into account for the purpose of calculating tendered prices or otherwise.

Bidders furthermore agree that Transnet SOC Ltd shall recognise no claim from them for relief based on an allegation that they have overlooked any RFP/contract condition or failed to take it into account for the purpose of calculating their offered prices or otherwise.

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

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

- 1 General Bid Conditions
- 2 Terms and Conditions of Contract for the supply of Services to Transnet
- 3 Supplier Integrity Pact
- 4 Non-disclosure Agreement
- 5 Supplier Development initiatives included in this RFP
- 6 Vendor Application Form\* and all supporting documents (first time vendors only)

Alternatively, for all existing vendors, please provide vendor number(s) here:

Transnet Operating Division	Unique Vendor Number	Yes / No
Transnet Group		
TFR, etc.		

In the Yes/No column above, please confirm that all the information e.g. company address and contact details, banking details etc. are still correct as at the time of allocation of the vendor number(s).

  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/8/2015

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



SIGNED at JOHANNESBURG on this 8<sup>TH</sup> day of MAY 2015

## SIGNATURE OF WITNESSES

## ADDRESS OF WITNESSES

1 [Signature]  
Name John W. Galt1 Fricker Road2 [Signature]  
Name Yurisha A. Galt1 Fricker Rd

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

NAME: MARC HUSSEYDESIGNATION: MANAGING DIRECTOR[Signature][Signature]  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date &amp; Company Stamp

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD <sup>ARRANGE</sup> ~~AND UNDERWRITE~~ THE EQUIVALENT <sup>D 12 Billion</sup> ~~SYNDICATE~~ ZAR LOAN <sup>UPTO FIFTEEN (US)</sup> FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS

## Section 5: RFP DECLARATION AND BREACH OF LAW FORM

NAME OF ENTITY: JPMORGAN CHASE BANK, N.A. JOHANNESBURG BRANCHWe JPMORGAN CHASE BANK N.A. JOHANNESBURG BRANCH do hereby certify that; to the best of our knowledge and belief;

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

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

ADDRESS:

N/A

Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date &amp; Company Stamp

Indicate nature of relationship with Transnet:

NIA

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

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

7. We accept that any dispute pertaining to this Bid will be resolved through the Ombudsman process and will be subject to the Terms of Reference of the Ombudsman. The Ombudsman process must first be exhausted before judicial review of a decision is sought.

8. We further accept that Transnet reserves the right to reverse an award of business or decision based on the recommendations of the Ombudsman without having to follow a formal court process to have such award or decision set aside.

**BREACH OF LAW**

12. We further hereby certify that I/we (the bidding entity ~~and/or any of its directors, members or partners~~) ~~have~~ **have not been** [delete as applicable] found guilty during the preceding 5 [five] years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences. This includes the imposition of an administrative fine or penalty.

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

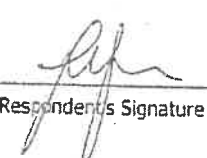
NATURE OF BREACH:

NIA

DATE OF BREACH: NIA

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

SIGNED at JOHANNESBURG on this 8<sup>th</sup> day of MAY 2015

  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date &amp; Company Stamp

For and on behalf of <u>SP Morgan</u> duly authorised hereto	AS WITNESS:
Name:	Name: <u>MARC MUESER</u>
Position:	Position: <u>MANAGING DIRECTOR</u>
Signature:	Signature: <u>[Signature]</u>
Date:	Registration No of Company/CC
Place:	Registration Name of Company/CC

[Signature]  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

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

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD <sup>ARRANGE</sup> AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN <sup>UP TO FIFTEEN (15)</sup> FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS

### Section 6: RFP CLARIFICATION REQUEST FORM

RFP No: GSM/15/05/1265

RFP deadline for questions / RFP Clarifications: Before 12:00 on 07 May 2015.

TO: Transnet SOC Ltd  
ATTENTION: Suellen Du Plessis  
EMAIL: Suellen.DuPlessis@transnet.net

DATE:

FROM:

RFP Clarification No [to be inserted by Transnet]

#### REQUEST FOR RFP CLARIFICATION

AS PER EMAIL SENT ON 7 MAY 2015

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Respondent's Signature

Date & Company Stamp

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD <sup>ARRANGE</sup> ~~AND UNDERWRITE~~ THE EQUIVALENT SYNDICATE <sup>D 12.8 BILLION</sup> ZAR LOAN <sup>UP TO FIFTEEN (15)</sup> FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS

## Section 7: B-BBEE STATUS

## 1. B-BBEE STATUS AND SUBCONTRACTING

## 1.1 Subcontracting:

Will any portion of the contract be subcontracted? YES/NO [delete which is not applicable]

~~YES, indicate:~~

- ~~(i) What percentage of the contract will be subcontracted? .....%~~  
~~(ii) The name of the subcontractor .....~~  
~~(iii) The B-BBEE status level of the subcontractor .....~~  
~~(iv) Is the subcontractor an EME? ..... YES/NO~~

## 1.2 Declaration with regard to Company/Firm

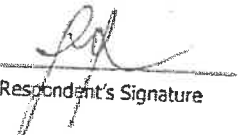
- ~~(i) Name of Company/Firm.....~~  
~~(ii) VAT registration number.....~~  
~~(iii) Company registration number.....~~  
~~(iv) Type of Company / Firm [TICK APPLICABLE BOX]~~  
~~☐ Partnership/Joint Venture/Consortium~~  
~~☐ One person business/sole propriety~~  
~~☐ Close Corporations~~  
~~☐ Company (Pty) Ltd~~  
~~(v) Describe Principal Business Activities~~  
~~.....~~  
~~.....~~  
~~(vi) Company Classification [TICK APPLICABLE BOX]~~  
~~☐ Manufacturer~~  
~~☐ Supplier~~  
~~☐ Professional Service Provider~~  
~~☐ Other Service Providers, e.g Transporter, etc~~  
~~(vii) Total number of years the company/firm has been in business.....~~

## BID DECLARATION

I/we, the undersigned, who warrants that he/she is duly authorised to do so on behalf of the company/firm, certify that points claimed, based on the B-BBEE status level of contribution indicated in paragraph 4 above, qualifies the company/firm for the preference(s) shown and I / we acknowledge that:

- (i) The Information furnished is true and correct, based on our most recent Empowerdex Certificate. JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

  
Respondent's Signature

Date & Company Stamp

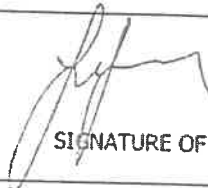
- (ii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 6 above, the contractor may be required to furnish documentary proof to the satisfaction of Transnet that the claims are correct.
- (iii) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, Transnet may, in addition to any other remedy it may have:
- (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) restrict the Bidder or contractor, its shareholders and directors, and/or associated entities, or only the shareholders and directors who acted in a fraudulent manner, from obtaining business from Transnet for a period not exceeding 10 years, after the *audi alteram partem* [hear the other side] rule has been applied; and/or
  - (e) forward the matter for criminal prosecution.

**WITNESSES:**

1.



2.

SIGNATURE OF BIDDER

DATE: 8 MAY 2015

COMPANY NAME: JPMORGAN CHASE BANK, N.A., JOHANNESBURG BRANCH  
 ADDRESS: 1 FRICKER ROAD, ILLOVO, JOHANNESBURG, 2196



Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date &amp; Company Stamp

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF ~~FOURTEEN (14)~~ <sup>UP TO FIFTEEN (15)</sup> YEARS

### Section 8 : SUPPLIER DEVELOPMENT INITIATIVES

#### 1.1 Aim and Objectives

Historically in South Africa there has been a lack of investment in infrastructure, skills and capability development and an inequality in the income distribution and wealth of a significant portion of the population. There have been a number of Government initiatives developed to address these challenges. In particular, the New Growth Path [NGP] and New Development Plan [NDP] aligns and builds on previous policies to ensure the achievement of Government's development objectives for South Africa. Transnet fully endorses and supports Government's New Growth Path policy.

The key focuses of the NGP include:

- increasing employment intensity of the economy
- addressing competitiveness
- balancing spatial development of rural areas and poorer provinces
- reducing the carbon intensity of the economy
- creating opportunities in improving regional and global cooperation
- enabling transformation that benefits a wider range of social actors in society e.g. workers, rural communities, youth and women

Transnet, as a State Owned Company [SOC], plays an important role to ensure these objectives are achieved. Therefore, the purchasing of goods and services needs to be aligned to Government's objectives for developing and transforming the local supply base. Transnet's mission is to transform its supplier base by engaging in targeted supplier development initiatives to support localisation and industrialisation whilst providing meaningful opportunities for Black<sup>2</sup> South Africans with a particular emphasis on:

- Youth [16 to 35 year olds]
- Black women
- People with disabilities
- Small businesses
- Rural integration

#### 1.2 Supplier Development [SD]

To facilitate the implementation of Supplier Development initiatives, Transnet has adapted an existing framework from the Department of Public Enterprises [DPE]. This framework allows for a basic set of principles to be applied to appropriately targeted SD initiatives. Supplier development initiatives aim to build local suppliers who are competitive through building capability and capacity. Hence the framework has been termed the Increased Competitiveness, Capability and Capacity Supplier Development Classification Matrix [IC<sup>3</sup> Matrix]. Currently there are four quadrants of SD initiatives which Transnet considers according to the IC<sup>3</sup> Matrix. This RFP has been identified as strategic, involving high commercial leverage and high value.

<sup>2</sup> "Black" means South African Blacks, Coloureds and Indians, as defined in the B-BBEE Act, 53 of 2003



As a prequalification criterion to participate in this bid, Respondents are required to provide a commitment that the monetary value of all SD initiatives to be undertaken by them will not be less than 35% [thirty five percent] of the contract value.

Accordingly, Respondents are required to provide <sup>an indicative</sup> commitment of the Supplier Development initiative they will undertake during the contract period in the **Supplier Development Value Summary**. In addition, Transnet requires that all Respondents submit <sup>an indicative</sup> **Supplier Development Plan** demonstrating <sup>intend to</sup> how they ~~will~~ discharge their commitments made in the Supplier Development Value Summary. ~~The contract which will be concluded with the successful bidder will incorporate the SD undertakings made in the above-mentioned documents as a term of the contract.~~

- a) For a detailed understanding of the IC<sup>3</sup> Matrix, the respective SD initiatives and their objectives, please refer to the "Supplier Development Guidelines" appended hereto as Appendix I. This document must be used as a guideline to complete the SD Plan.
- b) The following Supplier Development [SD] focus areas have been identified, namely:

Category	Description
Transfer of Technology and Intellectual Property Rights [IPR]	Transfer technology, IPR and methodology to small businesses
New Skills development	Skills transfer & skills education which will occur as a result of the award of contract
Job Preservation	Number of jobs created or preserved resulting from the award of contract
Small Business Promotion	Encouragement for growth and the expansion of emerging local firms, through procurement and support mechanisms

*Green economy / carbon footprint: The potential reduction of the economy's carbon intensity [i.e. creation of a greener economy] should be regarded as a key priority within all the above SD Categories and for all proposed SD initiatives*

- c) The **Supplier Development Plan** is to be submitted as a separate document, developed in line with the criteria set out in the **Supplier Development Value Summary**. The Supplier Development Plan is <sup>an indicative</sup> ~~a detailed narrative~~ document explaining the Respondent's Bid value as summarised in the Supplier Development Value Summary. The SD Plan should outline the type of activities you intend to embark upon should you be awarded the contract. This SD Plan should also provide an overview of what you intend to achieve, when, and the mechanisms <sup>you will employ to</sup> whereby you will achieve those objectives. ~~The SD Value Summary and SD Plan will represent a binding commitment on the part of the successful Respondent.~~
- Annexure B must be completed, indicating by cross-reference the detailed areas which have been addressed in your SD Plan for each of the evaluation criteria listed in paragraph 1.2 (b) above, together with the Value Indicators therefore.

Notes for completion of the SD Plan:

- (i) ~~Respondents are required to address each of the aspects under the detailed SD Description as a minimum for submission. This is not an exhaustive list however, and Respondents must not be limited to these choices when compiling each section.~~
- (ii) ~~Please provide detailed calculations to illustrate how your estimated Rand values have been derived.~~
- (iii) ~~Respondents are required to provide an electronic copy [CD] of the completed Annexure B as part of the SD Plan submission.~~

**1.3 Additional contractual requirements**

~~Should a contract be awarded through this RFP process, the successful Respondent(s) [hereinafter referred to as the Supplier] will be contractually committed, inter alia, to the following conditions:~~

- ~~a) The Supplier will be required to submit a Supplier Development Implementation Plan within 45 [forty-five] calendar days from the signature date of a Letter of Intent [LOI]. This Implementation Plan represents additional detail in relation to the SD Plan providing an explicit breakdown of the nature, extent, timelines and monetary value of the SD commitments which the Supplier proposes to undertake and deliver during the term of the contract. Specific milestones, timelines and targets will be recorded to ensure that the Implementation Plan is in line with Transnet's SD objectives and that implementation thereof is completed within the term of the contract.~~
- b) The <sup>SD</sup> Implementation Plan may require certain additions or updates to the initial SD Plan in order to ensure that Transnet is satisfied that development objectives will be met.
- ~~c) The Supplier will need to ensure that the relevant mechanisms and procedures are in place to allow for access to information to measure and verify the Supplier's compliance with its stated SD commitments.~~
- d) The Supplier will ~~be required to provide Transnet with regular annual updates regarding its indicative SD Plan and the achievements in terms~~ <sup>of such plan, including any updates or amendments thereto.</sup>
  - ~~(i) monthly status updates to Transnet for each SD Initiative. [Detailed requirements will be provided by Transnet];~~
  - ~~(ii) quarterly status reports for Transnet and the DPE. [Detailed reporting requirements will be provided by Transnet]; and~~
  - ~~(iii) a final Supplier Development report, to be submitted to Transnet prior to the expiry date of the contract, detailing delivery, implementation and completion of all SD components plus auditable confirmation of the Rand value contribution associated with each such SD commitment.~~
- ~~e) All information provided by the Supplier in order to measure its progress against its stated targets will be auditable.~~
- ~~f) The Supplier will be required to submit this Implementation Plan to Transnet in writing, within 45 [forty-five] calendar days after signature of a Letter of Intent [LOI], where after both parties must reach an agreement [signed by both parties] within 20 [twenty] calendar days. Transnet will reserve the right to reduce or increase the number of days in which the Supplier must submit its Implementation Plan if it is deemed reasonable, based on the degree of complexity of the SD initiative.~~
- ~~g) The contract will be conditional on agreement being reached by the parties on the Implementation Plan submitted by the Supplier. Therefore failure to submit or thereafter to agree to the~~

~~Implementation Plan within the stipulated timelines will result in the non-award of such a contract or termination thereof.~~

- ~~h) Failure to adhere to the milestones and targets defined in an Implementation Plan may result in the invocation of financial penalties, to be determined at Transnet's discretion, as well as providing Transnet cause to terminate the contract in certain cases where material milestones are not being achieved.~~

#### 1.4 Supplier Development Returnable Documents

Attached herewith is the following documentation:

- Declaration of Supplier Development Commitments – Section 9 [mandatory]
- <sup>indicative</sup> SD Plan – Annexure C [essential]
- <sup>indicative</sup> SD Value Summary – Annexure B [mandatory]

*Respondents are to note whether the abovementioned documents are listed as mandatory or essential returnable documents in Section 4 to this RFP as failure to submit, or to submit an incomplete mandatory returnable document will result in disqualification of your Proposal. Failure to submit an essential returnable document may result in disqualification of your Proposal.*



JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD <sup>ARRANGE</sup> AND ~~UNDERWRITE~~ <sup>D 12 BILLION</sup> THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS**

**Section 9 : DECLARATION OF SUPPLIER DEVELOPMENT COMMITMENTS**

I/We JPMORGANCHASE BANK, N.A., JOHANNESBURG BRANCH hereby ~~agree~~/~~do not agree~~ to commit that not less than 35% of the contract value will be spent <sup>over the duration of the contract</sup> cumulatively on Supplier Development Initiatives. This pre-qualification criterion must be discharged <sup>indicative</sup> against the following Supplier Development categories as outlined in the Supplier Development Value Summary [Annexure B]:

- Transfer of Technology and Intellectual Property Rights
- Skills Development
- Job Preservation
- Small Business Promotion

I/We do hereby certify that the Supplier Development commitments made in relation to this RFP are solely in relation to this transaction and are not duplicated in relation to any other contracts that I/we have secured with any other organ of state including other State Owned Companies.

Furthermore, I/we do hereby declare that this undertaking also applies to any other contracts that I may have secured with Transnet including other Transnet Operating Divisions/Specialist Units. For the purposes of verification of this undertaking, the following is a list of contracts with Supplier Development commitments that I/we have secured with Transnet:

SIGNED at JOHANNESBURG on this 8<sup>th</sup> day of MAY 2015

[Signature]  
SIGNATURE OF WITNESS

[Signature]  
SIGNATURE OF RESPONDENT

[Signature]  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)  
Date: 8/5/2015

Date & Company Stamp

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD <sup>ARRANGE</sup> ~~AND UNDERWRITE~~ THE EQUIVALENT <sup>D 12 billions</sup> ~~SYNDICATE ZAR LOAN~~ UP TO FIFTEEN (15) YEARS

Section 10 : B-BBEE IMPROVEMENT PLAN

Transnet encourages its Suppliers to constantly strive to improve their B-BBEE rating and requests that Respondents submit <sup>an indicative</sup> ~~a~~ B-BBEE improvement plan. Respondents are therefore requested to indicate whether they <sup>intend to</sup> ~~will~~ maintain or improve their BBEE status over the contract period.

**Additional contractual requirements**

Should a contract be awarded through this RFP process, the successful Respondent(s) <sup>will provide Transnet</sup> ~~may be contractually~~ committed, *inter alia*, to the following conditions: <sup>with regular annual updates on its indicative B-BBEE improvement plan.</sup>

- a) ~~The original B-BBEE Improvement Plan may require certain additions or updates in order to ensure that Transnet is satisfied that developmental objectives will be met.~~
- b) ~~The Supplier will need to ensure that the relevant mechanisms and procedures are in place to allow Transnet access to information to measure and verify the Supplier's compliance with its stated B-BBEE Improvement commitments.~~
- c) ~~The Supplier will be required to provide:~~
  - ~~(i) quarterly status reports for Transnet; and~~
  - ~~(ii) a final B-BBEE Improvement Plan report, to be submitted to Transnet prior to the expiry date of the contract, detailing delivery, implementation and completion of all B-BBEE Improvement components.~~
- d) ~~All information provided by the Supplier in order to measure its progress against its stated targets will be auditable.~~

Respondents are requested to submit their <sup>indicative</sup> ~~a~~ B-BBEE Improvement Plan as an **additional document** with their Proposals by completion of Annexure D appended hereto. [Refer Annexure D for further instructions]

Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date & Company Stamp

**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD <sup>REARRANGE</sup> AND <sup>UP TO FIFTEEN (15)</sup> UNDERWRITE THE <sup>3</sup> <sup>12 BILLION</sup> EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS**

**Section 11 : VENDOR APPLICATION FORM**

*Respondents are to furnish the following documentation and complete the Vendor Application Form below:*

1. **Original** cancelled cheque **OR** letter from the Respondent's bank verifying banking details [with bank stamp]
2. **Certified copy** of Identity Document(s) of Shareholders/Directors/Members [where applicable]
3. **Certified copies** of the relevant company registration documents from Companies and Intellectual Property Commission (CIPC)
4. **Certified copies** of the company's shareholding/director's portfolio
5. **Original** letterhead confirm physical and postal addresses
6. **Original** valid SARS Tax Clearance Certificate [RSA entities only]
7. **Certified** copy of VAT Registration Certificate [RSA entities only]
8. **A valid and original** B-BBEE Verification Certificate / sworn affidavit **or** **certified copy** thereof meeting the requirements for B-BBEE compliance as per the B-BBEE Codes of Good Practice;
9. **Certified copy** of valid Company Registration Certificate [if applicable]

**Note:** *No contract shall be awarded to any South African Respondent whose tax matters have not been declared by SARS to be in order.*

**Vendor Application Form**

Entity's trading name JPMORGAN CHASE BANK, N.A., JOHANNESBURG BRANCH

Entity's registered name JPMORGAN CHASE BANK, N.A., JOHANNESBURG BRANCH

Entity's Registration Number or ID Number if a Sole Proprietor 2001/016069/10

Form of entity [v] EXTERNAL COMPANY Trust Pty Ltd Limited Partnership Sole Proprietor

How many years has your entity been in business? 14 YEARS

VAT number [if registered] 4290195686

Entity's telephone number +27 11 507 3000


Entity's fax number —

Entity's email address FRANK.L.VELN@JPMORGAN.COM

Entity's website address WWW.JPMORGAN.COM

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

  
Respondent's Signature

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

USD BANK ACCOUNT

Bank name JPMORGAN CHASE BANK Branch & Branch code SWIFT: CHASUS33

Account holder JPMORGAN CHASE BANK Bank account number 060020712

Postal address PRIVATE BAG X9936

SANDTON, SOUTH AFRICA Code 2146

Physical address 1 FRICKER ROAD

ILLOVO, JOHANNESBURG, SOUTH AFRICA Code 2196

Contact person FRANK VEIN

Designation EXECUTIVE DIRECTOR

Telephone +27 11 507 0727

Email FRANK.L.VEIN@JPMORGAN.COM

Annual turnover range [last financial year] < R5 m R5 - 35 m > R35 m X

Does your entity provide Products Services Both X

Area of delivery National X Provincial Local

Is your entity a public or private entity Public Private X

Does your entity have a Tax Directive or IRP30 Certificate Yes No X

Main product or services [e.g. Stationery/Consulting] FINANCIAL SERVICES

## Complete B-BBEE Ownership Details:

% Black ownership — % Black women ownership — % Disabled Black ownership — % Youth ownership —

Does your entity have a B-BBEE certificate Yes No

What is your B-BBEE status [Level 1 to 9 / Unknown] LEVEL 2

How many personnel does the entity employ Permanent 148 Part time —

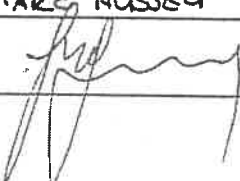
If you are an existing Vendor with Transnet please complete the following:

Transnet contact person N/A

Contact number N/A

Transnet Operating Division N/A

Duly authorised to sign for and on behalf of Entity / Organisation:

Name	<u>MARC HUSSEY</u>	Designation	<u>MANAGING DIRECTOR</u>
Signature		Date	<u>8 MAY 2015</u>

Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date &amp; Company Stamp

2



CONFIDENTIAL

### 3. Annexures

**Annexure A: Technical Pre-Qualification**

**Annexure B: Supplier Development Plan, and**

**Annexure C: Supplier Development Value Summary**

**Annexure D: B-BBEE Improvement Plan**

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

GSM/15/03/1255

Page 1 of 1

**ANNEXURE A: TECHNICAL PRE-QUALIFICATION**

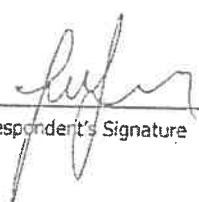
**GSM/15/05/1265 - FOR THE PROVISION OF HEDGING FINANCIAL RISKS  
(INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD <sup>ARRANGE</sup> AND ~~UNDERWRITE~~  
THE ~~EQUIVALENT~~ <sup>D 12 BILLION</sup> SYNDICATE ZAR LOAN FOR A PERIOD OF <sup>UP TO 1 FIFTEEN (15)</sup> ~~FOURTEEN (14)~~ YEARS**

Respondents are required to indicate whether they are able to provide the services/deliverables as specified in the scope of work.

I/We JPMorgan Chase Bank hereby agree to 100% compliance to the scope of work as set out in this marked-up response and subject to the conclusion of satisfactory documentation in relation to each aspect of the transaction between the parties.

ACCEPT	✓	DECLINE	
--------	---	---------	--

Note that this technical pre-qualification (Annexure A) is a mandatory returnable document.

  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

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



## Instructions and Notes for completion of the SD Value Summary Template:

1	Respondents must complete this Annexure which summarises your Supplier Development (SD) Plan and related value commitments over the contract period.						
2	Do not populate greyed out areas.						
3	Populate the following columns as requested in SD MEASUREMENT column: NUMBER, PERCENTAGE, RAND VALUE excluding VAT, YES/NO and SD PLAN CROSS REFERENCE.						
4	Cross-reference the Value Indicators quoted under the column heading "SD PLAN CROSS-REFERENCE" with the corresponding section in your SD Plan.						
SD CATEGORY	SD MEASUREMENT	NUMBER	PERCENTAGE	RAND VALUE excluding VAT	YES/NO	SD PLAN CROSS-REFERENCE	
1	Transfer of Technology & Intellectual Property Rights	Technology and Intellectual Property Rights (IPR) transfers are intangible and/or tangible assets with significant economic value. Respondents will be measured on their plans to transfer knowledge, and/or IPR to contribute to capability building of a regional supply base which would ultimately lead to improved capability, efficiency and regional capacity					
	1	Number and Rand value of new Technology Transfer on hedging of financial risks, or other similar or related type of transaction to be exposed to the Black Graduates In Training at Transnet Group Treasury.	3 day derivative valuation seminar	R1 million		2.1	
	1.1	Number and Rand value of new Technology Transfer on hedging of financial risks, or other similar or related type of transaction to be exposed to Transnet employees at our Group Treasury Department.	6 month engagement with Regiments Capital	R25 million		2.1	
2	Skills Development	New skills development initiatives indicates your company's commitment to skills education, and how this would match with targeted groups. Consideration needs to be directed towards the adequate quality and value of proposed skills development to allow for better evaluation in line with government objectives.					
2	2	Number and Rand value of Black Owned Institution Skills Transfer on Hedging of Financial Risks and Underwriting thereof.	Undetermined at this point	R6 million R24 million		2.2.2 2.4	
	2.1	Number and Rand value of Black Women Owned Institutions Skills Transfer on Hedging of Financial Risks and Underwriting thereof.				2.2.2	
	2.2	Number and Rand value of Black Youth Graduates Skills Transfer on Hedging of Financial Risks and Underwriting thereof at our Group Treasury.		R36 million R2.4 million		2.2.2	

\*Where "Black" means South African Blacks, Coloureds and Indians, as defined in the B-BBEE Act, 53 of 2003

3	Job Preservation	This potential for job preservation directly due to the award of this business.				
3	Number of jobs which would be preserved through award of contract:	Undetermined at this point				

Responsible Signature

Page 1 of 2

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Small Business Promotion		These SD value measurements give an indication of your commitment to developing small businesses in line with the Government's New Growth Path (NGP) and B-BBEE requirements			
4	Percentage of your projected annual procurement spend from businesses with an annual turnover of less than R35 million (Black EMES)			5.6%	
4.1	Percentage of your projected annual procurement spend from businesses with an annual turnover of less than R5 million (Black EMES)			3.2%	
4.2	Percentage of your projected annual procurement spend from Black start-up enterprises			-	
ESTIMATED RAND VALUE TOTAL OF SUPPLIER DEVELOPMENT COMMITMENT, EXCLUDING VAT :					R94 400 000
SUPPLIER DEVELOPMENT COMMITMENT EXPRESSED AS A PERCENTAGE OF ESTIMATED CONTRACT VALUE :					> 100%

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date Company Stamp

  
Respondent's Signature



TRANSNET



### ANNEXURE C: SUPPLIER DEVELOPMENT PLAN

Transnet requires that all Respondents submit <sup>an indicative</sup> ~~a~~ <sup>indicative</sup> ~~Supplier Development Plan~~ demonstrating how they <sup>intend to</sup> ~~will~~ discharge their commitments made in the <sup>indicative</sup> ~~Supplier Development Value Summary~~.

The <sup>indicative</sup> ~~Supplier Development Plan~~ is a detailed narrative document explaining the Respondent's SD proposal as summarised in the Supplier Development Value Summary.

Respondents must compile the SD plan, with an understanding of Supplier Development as detailed and described in the SD Guideline Document and further guided by the specific requirements mentioned below.

#### Important Notes for completion of SD Plan:

- (i) Respondents are urged to pay careful attention to the compilation of the SD Plan ~~since it, together with the SD Value Summary, represents a binding commitment on the part of the successful Respondent.~~
- (ii) Respondents are required to address each of the categories under the detailed SD Description as a minimum for submission. This is however not an exhaustive list and Respondents are not limited to these choices when compiling each section.
- (iii) Respondents must ensure that the SD Value Summary submission and the SD Plan submission are accurately cross-referenced with each other.
- (iv) Respondents are requested to address each of the SD aspects in no more than two (2) pages per category, to avoid lengthy submissions.
- (v) Respondents are required to provide an electronic copy [CD] of the completed SD Value Summary and SD Plan as part of their submissions.

#### Minimum SD plan requirements

The SD Plan should outline the type of activities you intend to embark upon should you be awarded the contract. This SD Plan should also provide an overview of what you intend to achieve, by when, and the mechanisms to be used to achieve those objectives.

Category	Description
Technology Transfer and Intellectual Property Rights	Transfer technology, IPR and methodology to small businesses
New Skills development	Skills transfer & skills education which will occur as a result of the award of contract
Job Preservation	Number of jobs preserved resulting from the award of contract
Small Business Promotion	Encouragement for growth and the expansion of emerging local firms, through procurement and support mechanisms

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

**SUPPLIER DEVELOPMENT PLAN**

1. Supplier Development Executive Summary
2. Supplier Development plan per category:
  - 2.1. Technology Transfer and Intellectual Property Rights
  - 2.2. New Skills Development
  - 2.3. Job Preservation
  - 2.4. Small Business Promotion

Conclusion

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

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

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



MAY 2015

SUPPLIER DEVELOPMENT PLAN

STRICTLY PRIVATE AND CONFIDENTIAL

J.P.Morgan

CONFIDENTIAL

## 1. Supplier Development Plan Executive Summary

J.P. Morgan has a strong, long-standing commitment to the South African market and to Broad-Based Black Economic Empowerment (B-BBEE). We currently have a Level 2 rating under the Financial Sector Code as Gazetted on 26 November 2012.

J.P. Morgan has a history in South Africa dating back over 110 years and has been a trusted advisor to South African clients and the Republic of South Africa in many landmark transactions.

As a result, J.P. Morgan is a significant banking group in South Africa and one of the largest foreign banking operations in the country. The firm's commitment to South Africa is further demonstrated by the relative size of the Johannesburg office which has a full banking license, and currently employs 142 people.

J.P. Morgan South Africa has proactively embraced the Government's BBBEE agenda through numerous initiatives. This is based on our primary belief that the foundations of true transformation lie in a strategy that recognizes the inter-related nature of the Department of Trade and Industry ("DTI") and the Financial Sector Charter ("FSC") scorecard pillars and accords equal importance to each.

J.P. Morgan is highly committed to education, skills transfer and related initiatives. As detailed below we have six programs in South Africa which focus on enterprise development including grants to USAID, the GOLD Peer Education Development Agency, Canon Collins Trust, Dalberg Global Development, Thembani, Operation Hope and Harambee Youth Employment Accelerator.

In the context of this Request for Proposal, we believe we have already created value of ZAR26 million attributable to the initiatives directly related to this transaction and we detail this in Section 2.1 below. Thus we have already exceeded the 35% contract value target (a target of R22.4 million).

In addition, we have set out additional Supplier Development projects under Sections 2.2 and 2.4 below that are expected to total around ZAR80 million (\$6.5m) over the next five years. We have detailed these together with our historic projects to show that we are confident we have a robust long-term Supplier Development engagement planned over the next 5-years even though not all the specific projects in these areas are contracted at this stage.

The allocation of the spend above is directly linked to J.P. Morgan doing business in South Africa. So the transaction with Transnet will assist J.P. Morgan to maintain its local presence and generate the revenue to part fund this target allocation.

SUPPLIER DEVELOPMENT PLAN

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/15



CONFIDENTIAL

## 2. Supplier Development per Category

### 2.1 Technology Transfer and Intellectual Property Rights

There are two specific supplier development initiatives already underway that are directly relevant to this transaction with a combined Rand value which we estimate at R26 million. Therefore we believe we have already exceeded the 35% contract value target of R22.4 million.

#### Transnet derivative valuation seminar

J.P. Morgan conducted a detailed 3-day derivatives valuation seminar for the exclusive benefit of Transnet's Treasury team on the 4th through 6th February 2015. The course was open to the entire Treasury team, and 5 members attended for the duration: Danie Smit, Tshepo Matlamela, Reon Louw, Deva Sathee, and Zander Grobler.

The training was delivered by 4 senior J.P. Morgan professionals (Tom Briggs, Sam Pannetier, Ed Fanklin and Laurent Lalou), 3 of whom flew down from our London office specifically to provide this training. This ensured that the training was delivered by seasoned market practitioners, focusing on derivatives execution and advanced risk management topics. This we believe resulted in a significant transfer of technology in the area of derivatives and specifically in the area of credit default swaps.

We estimate the value of this course, including travel, to be approximately ZAR1 million.

We believe this initiative will meet the "Technology Transfer/sustainability" category definitions set out in Sections 5.3 of Transnet's Supplier Development Guideline Document (March 2015).

#### Regiments Capital technology transfer

For the past 6 months, senior-level professionals at J.P. Morgan have worked closely with Regiments Capital, a specialized black owned and empowerment financial advisory firm, and an advisor to Transnet in relation to the China Development Bank loan and related locomotive acquisition. Regiments' role was expanded to advise Transnet on the associated proposed risk management transaction. We have worked and continue to work with the advisory, quantitative and legal professionals at Regiments and have shared in detail a confidential and proprietary J.P. Morgan risk management structure for the South African environment. This interaction has included extensive understanding and knowledge transfer around credit default swaps and credit contingent default swaps.

Because of the very specialized nature of these instruments we believe Regiments Capital have received highly valuable intellectual capital transfer, which has enabled Regiments to advise Transnet effectively on this transaction and in the future will allow Regiments and its professionals to market their skills in this area profitably. The involvement of Regiments in a large scale risk management transaction with J.P. Morgan and Transnet will provide Regiments with key credentials and a track record to allow them to offer services independently across South Africa and internationally.

We estimate the total value of this skills transfer both from the value derived (as defined in the RFP) from Transnet and in the future to be in excess of ZAR25 million.

Together, we believe these two initiatives meet the 'Technology Transfer/sustainability' category definition set out in Sections 5.3 of Transnet's Supplier Development Guideline Document (March 2015). We estimate the total value of this skills transfer both from the value derived from Transnet and in the future to be in excess of ZAR26 million.

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/15



CONFIDENTIAL

## 2.2 New Skills Development

### 2.2.1 Skills and education development directly related to J.P. Morgan's business

From January 2012 to 31 December 2014 J.P. Morgan invested R13.5 million in the training and development of the South African office staff. J.P. Morgan's plan for the next 5 years is to spend a further R20 million for internal and external training which includes our graduate training program and learnerships.

Given South Africa's history and the need to develop a broader and deeper base of skilled professionals has never been a more pressing business imperative for all companies operating in the country. Led by J.P. Morgan's global commitment to diversity as a core value of the firm, as well as J.P. Morgan's commitment to doing business in South Africa, we developed a series of education and development initiatives described below.

#### The Analyst Program

- Graduates in investment banking, trading and sales, are sent to New York in the first year of joining the company to attend a 6 to 8 week Analyst Training program. The programs provide exposure to both financial theory and practice for entry level professionals into banking and financial services.
- These individuals may go on to work further in our overseas offices in London and New York on secondments.

#### The Winter Training program (University students)

- This targets students currently in university and who are completing their final year of studies.
- This is a 3 week program exposing students to investment banking.
- This program offers soft skills training, business presentations, job shadowing, working on a research project and a corporate social investment project as part of the 3 week initiative.

#### The Graduate Program

- The graduate program is designed to attract and retain a pipeline of strong young talent. Our aim with this program is to employ black graduates who can make a meaningful contribution to our South African business.
- Students are hired directly from the universities for different lines of business.

#### Learnership Program for Graduates and Junior Management Staff

- 6 graduates and 5 junior management staff members were enrolled with Da Vinci Institute for 2014 / 2015. This program has been customized to banking and the students will graduate with a Banking Certificate, NQF level 5, at the end of June 2015. 10 out of the 11 students attending this program are Black candidates.
- 4 graduates and 3 junior management staff members are enrolled with Da Vinci Institute for 2015/2016. This program has been customized to banking and the students will graduate with a Banking Certificate, NQF level 5, at the end of Jan 2016. 7 out of the 7 students attending this program are Black candidates

#### International secondments (since January 2012)

- In addition to the graduate training program, we offer international secondments to our London and New York offices to accommodate candidates from designated groups.

#### Central Bank conference

- We run an annual central bank conference in Johannesburg – in 2014 this event attracted central banks from across the continent with the largest attendance (15+ persons) from the

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

3 Date: 25/15

JPMorgan

SUPPLIER DEVELOPMENT PLAN

CONFIDENTIAL

South African Reserve Bank, National Treasury and the Public Investment Corporation. One of the objectives of the conference is to hear from J.P. Morgan, external speakers, network and share ideas.

- We estimate the value of our spend on these initiatives over the next 5 years to be R20 million. We believe these initiatives meet the 'Skills Development' category definition set out in Section 5.4 of Transnet's Supplier Development Guideline Document (March 2015).

## 2.2.2 Skills and education development related to the South African economy

In addition to the above initiatives, J.P. Morgan has extensive supplier development initiatives focused on addressing the skills and education deficits which underpin the high levels of unemployment, especially youth unemployment in South Africa. We estimate there are seven million 16-to-34-year-old South Africans out of work, 70% of the country's unemployed population.

J.P. Morgan is currently supporting six skills development projects in South Africa. These are summarized below:

Organisation	Programme Description	Projected Impact	Impact to Date
Harambee	Activating latent demand in SMEs for entry level staff and efficiently filling these positions with work-ready qualified youth job-seekers.	800 youth placed into jobs with SMEs	SME sourcing on track
Maharishi Institute	Training and placement of youth into jobs in the business process outsourcing (BPO) and information technology (IT) sectors	475 youth placed into BPO/IT jobs	Grant commenced Dec 2014
GOLD	Leadership vocational skills and entrepreneurship training for young people, with work placements to support them into employment.	133 youth placed high growth industries	Employers signed onto job commitments
Operation Hope	Pilot initiative to give students an understanding of skills necessary to implement a business and be employable.	350 youth trained in finance and business	Curriculum and school partners established
Thembani	Enterprise development programme to support job creation and access to new markets and clients to enhance revenue of select businesses.	Growth of 160 agri-businesses	Training is 100% on track.
School Capacity & Innovation Program	Investing in innovative approaches that enhance education standards and provision across South Africa.	Reach 2 million students and 75,000 teachers	Just under 10,000 teachers trained to date.

Over the next 5 years J.P. Morgan expects to allocate around \$3 million (ZAR36 million) on these and similar programs. Allocation of this spend is directly linked to successfully doing business in South Africa, so the transaction with Transnet will assist us to maintain our local presence and generate the revenue to part fund this target allocation.

These programs will primarily focus on workforce readiness. We expect to support demand-driven training models that connect youth who have some level of secondary education with entry-level jobs in high-growth industries. We have not identified all of the projects that will benefit from this spend, but some will involve a continuation of the above projects, other will be new. We are evaluating the following projects:

- Rural Education Access Program (REAP) – potential alumni progression and placement project.
- The Tertiary School in Business Administration (TSiBA) – potential program to take youth from disadvantaged backgrounds who have received business/finance education and place them into the financial services industry.
- Ikamva Youth – potential program to further connect youth who have received tertiary education support to employment opportunities upon matriculation.

J.P. Morgan Chase Bank, N.A. (Johannesburg Branch)  
Date: 8/5/15

J.P. Morgan

CONFIDENTIAL

Below are two specific examples of the type of projects we do expect to finance:

*South African National Youth Development Agency (NYDA) and Youth Build International*

- In April 2015 we approved a \$200,000 (ZAR 2.4 million) grant to Youth Build International which will partner with the South African National Youth Development Agency. The funding will be spent over the next 18-months in a project to support 150 South African marginalized youth into sustained employment and livelihood and to strengthen South Africa's employment training sector by building the capacities of NYDA and its implementing partner.

*J.P. Morgan School of Finance*

- We plan to establish the J.P. Morgan School of Finance (with an expected spend of up to R6 million over the next 5 years) to increase our ability to contribute international skills and knowledge to our clients and empowerment partners. This is expected to be launched in 2016 and will include modules in finance, management, technology and leadership.

We estimate the value of our spend over the next 5 years to be R36 million. We believe these initiatives will meet the 'Skills Development' category definition set out in Section 5.4 of Transnet's Supplier Development Guideline Document (March 2015).

### 2.3 Job Preservation

Not applicable.

### 2.4 Small Business Promotion

Over the next five years, J.P. Morgan will continue its focus on small business promotion and we expect to spend around R24 million (\$2.1 million) on initiatives in this space:

- Our focus will be on small and medium enterprise (SME) training and holistic business development support (BDS) provision to enhance the growth of quality SMEs. It will also include technical assistance and access to finance for high potential SMEs.
- We also expect to focus on creating small business system tools to create a metric for quality BDS across markets.

As a recent example, in 2014, J.P. Morgan's predominant focus in South Africa in this space was around the Catalyst for Growth (C4G) initiative which we funded. C4G attempts to build an analytics platform upon which business development support (BDS) providers can be rated and assessed in order to ensure greatest potential Small and Medium Enterprise (SME) growth.

After a 2 year pilot program, all companies in the C4G program are still successfully operating, with an overall median annual revenue increase of 27%, growth in employment and an increase in successful applications for finance by 14%. The program has received very positive feedback, as shown below:

## BUSINESSREPORT

### JPMorgan applauds success of SME pilot programme in SA

June 13 2014 at 08:00am

JPMorgan Chase Bank, N.A. (Johannesburg Branch)  
Date: 6/15/15

CONFIDENTIAL

finweek

**ENTREPRENEURSHIP: JP Morgan's two year SME boost success**June 11, 2014 by [L. Brown](#), [J. Lee](#) & [S. Brown](#)**BusinessDay** 

Raka Qureshi, Vice President Philanthropy for Europe, Middle East and Africa, JP Morgan reports back on the bank's two-year pilot SME programme

# Financial Mail

FEATURES



Small and medium enterprise sector

**SMEs: Pressure to get going**

BY GILLIAN JONES, MANAGING EDITOR

But he says it takes time to properly develop and evolve SMEs.

This is where an initiative by the JPMorgan Chase Foundation might play a role.

## Conclusion

We estimate the total value of our spend over the next 5 years to be R94.4 million. We believe these programs will meet the 'Enterprise and Supplier Development' category definition set out in Section 5 of Transnet's Supplier Development Guideline Document (March 2015).

SUPPLIER DEVELOPMENT PLAN

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/15





TRANSNET



### ANNEXURE D : B-BBEE IMPROVEMENT PLAN

Transnet encourages its Suppliers/Service Providers to constantly strive to improve their B-BBEE rating. Whereas Respondents will be allocated points in terms of a preference point system based on its B-BBEE scorecard, in addition to such scoring, Transnet also requests that Respondents submit a B-BBEE improvement plan. Respondents are therefore requested to indicate the extent to which their ownership, management control, employment equity, preferential procurement and enterprise development will be maintained or improved over the contract period.

Respondents are requested to submit their B-BBEE Improvement Plan as an additional document with their Proposals.

Respondents are to insert their current status (%) and future targets (%) for the B-BBEE Improvement Plan [i.e. not the % change but the end-state quantum expressed as a percentage] in the table below. This will indicate how you intend to sustain or improve your B-BBEE rating over the contract period, which will represent a binding commitment to the successful Respondent.

Ownership Indicator	Required Responses	Current Status (%)	Future Target (%)
1. The percentage of the business owned by Black <sup>1</sup> persons.	<i>Provide a commitment based on the extent to which ownership in the hands of Black persons as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>	JPMorgan applies the FSC carve out as it is a branch of an international bank	JPMorgan will continue to apply carve out when the new FSC codes are gazetted
2. The percentage of your business owned by Black women.	<i>Provide a commitment based on the extent to which ownership in the hands of Black women as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>		
3. The percentage of the business owned by Black youth <sup>2</sup>	<i>Provide a commitment based on the extent to which ownership in the hands of Black youth as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>		
4. The percentage of the business owned by Black persons living with disabilities	<i>Provide a commitment based on the extent to which ownership in the hands of Black disabled persons as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>		
5. The percentage of the business owned by Employment Schemes or Co-Operatives	<i>Provide a commitment based on the extent to which ownership in the hands of Employment Schemes or Co-Operatives as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>		

<sup>1</sup> "Black" means South African Blacks, Coloureds and Indians, as defined in the B-BBEE Act, 53 of 2003

<sup>2</sup> "Black youth" means Black persons from the age of 16 to 35

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 6/5/15

Respondent's Signature

Date & Company Stamp

Management Control Indicator	Required Responses	Current Status (%)	Future Targets (%)
6. The percentage of Black Board members in relation to the total number of Board members	<i>Provide a commitment based on the extent to which the number of Black Board members, as a percentage of the total Board, would be sustained or increased over the contract period.</i>	JPMorgan applies the FSC carve out as it is a branch of an international bank	JPMorgan will continue to apply carve out when the new FSC codes are gazetted
7. The percentage of Black female Board members in relation to the total number of Board members	<i>Provide a commitment based on the extent to which the number of Black female Board members, as a percentage of the total Board, would be sustained or increased over the contract period.</i>		
8. The percentage of Black senior managers involved in day to day management of the organisation, in relation to the total senior management cadre	<i>Provide the percentage of Blacks that would be appointed or retained by the Board and would be operationally involved in the day to day <b>senior management</b> of the business, with individual responsibility for overall and/or financial management of the business and actively involved in the development and implementation of <b>overall strategy</b>, over the contract period.</i>	25.45%	33%
9. The percentage of Black middle managers involved in day to day management of the organisation, in relation to the total middle management cadre.	<i>Provide the percentage of Blacks that would be retained or appointed by the organisation in the <b>middle management</b> cadre and would be operationally involved in the day to day management of the business, with individual responsibility for a particular area within the business and actively involved in the <b>day to day management</b> of the organisation, over the contract period.</i>	61.76%	75%
10. The percentage of Black junior managers involved in day to day management of the organisation, in relation to the total junior management cadre.	<i>Provide the percentage of Blacks that would be retained or appointed by the organisation in the <b>junior management</b> cadre and would be operationally involved in the day to day running of the business, with individual responsibility for a particular area within the business and actively involved in a <b>supervisory role</b> with regards to the day to day management of the organisation, over the contract period.</i>	69.77%	75%
Employment Equity Indicator	Required Responses	Current Status (%)	Future Targets (%)
11. The percentage of Black employees as a percentage of the total number of employees in the organisation.	<i>Provide a commitment based on the extent to which the number of Black employees would be sustained or increased as a percentage of the organisation's total workforce, over the contract period.</i>	49%	53%
12. The percentage of Black women employees as a percentage of the total workforce.	<i>Provide a commitment based on the increase in the number of Black women employees as a percentage of the organisation's total workforce, or sustained over the contract period.</i>	24%	28%
13. The percentage of Black youth employed in relation to	<i>Provide a commitment based on the extent to which the <u>percentage of Black youth</u></i>	27%	35%

  
 Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/15

Date &amp; Company Stamp

the total number of employees in the organisation.	<i>employed, in relation to the total of all employees in the organisation, would be sustained or increased over the contract period.</i>		
14. The percentage of Black disabled employees in relation to the total number of employees in the organisation.	<i>Provide a commitment based on the extent to which the percentage of Black disabled employees, in relation to the total of all employees in the organisation, would be sustained or increased over the contract period.</i>	1%	2%
<b>Preferential Procurement Indicator</b>	<b>Required Responses</b>	<b>Current Status (%)</b>	<b>Future Targets (%)</b>
15. B-BBEE procurement spend from all suppliers based on the B-BBEE procurement recognition level as a percentage of total measured procurement spend	<i>Provide a commitment based on the extent to which B-BBEE spend would be sustained or increased over the contract period.</i>	117%	75%
16. B-BBEE procurement spend from QSEs based on the applicable B-BBEE procurement recognition levels as a percentage of total measured procurement spend	<i>Provide a commitment based on the extent to which B-BBEE spend from QSEs would be sustained or increased over the contract period</i>	6.54%	5.60%
17. B-BBEE procurement spend from EMEs based on the applicable B-BBEE procurement recognition levels as a percentage of total measured procurement spend	<i>Provide a commitment based on the extent to which B-BBEE spend from EMEs would be sustained or increased over the contract period</i>	4.35%	3.2%
<b>Preferential Procurement Indicator [continued]</b>	<b>Required Response</b>	<b>Current Status (%)</b>	<b>Future Targets (%)</b>
18. B-BBEE procurement spend from any of the following suppliers as a percentage of total measured procurement spend: <ul style="list-style-type: none"> <li>Suppliers who are more than 50% Black-owned</li> <li>Suppliers who are more than 30% Black women-owned</li> </ul>	<i>Provide a commitment based on the extent to which spend from suppliers who are more than 50% Black-owned or 30% Black women-owned would be maintained or increased over the contract period.</i>	14.01% 1.63%	20% 9%
<b>Enterprise Development Indicator</b>	<b>Required Response</b>	<b>Current Status (%)</b>	<b>Future Target (%)</b>
19. The organisation's annual spend on Enterprise Development as a percentage of Net Profit after Tax [NPAT]	<i>Provide a commitment based on the retention or increase in your organisation's annual spend on Enterprise Development initiatives, as a percentage of its Net Profit after Tax, over the contract period.</i>	1.76%	2%

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/16

  
Respondent's Signature

Date &amp; Company Stamp

3

CONFIDENTIAL

**A. Appendix – Supporting Documentation**

**Copy of B-BBEE Accreditation Certification**

**Copy of Tax Clearance Certificate**

**Copy of ID's of directors**

**Copy of company registration documents**

**Company letterhead**

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

J.P.Morgan

07 May 2015

Transnet

To whom it may concern

Please find attached the following certified documents / information of JPMorgan Chase bank N.A. (Johannesburg Branch) :

1. B-BBEE accreditation certificate
2. Tax clearance certificate
3. Certified copies of ID's of directors
4. Company registration documents
5. Entity letterhead

Kind regards



Ronelle Reddy  
Company Secretary / LEC  
Vice President

JPMorgan Chase Bank, N.A. (Johannesburg Branch) 1 Fricker Road, Cnr Hurlingham Road, Illovo, Johannesburg 2196, South Africa  
Private Bag X9936, Sandton 2146, South Africa

Telephone: +27 (11) 507 0300 Facsimile: +27 (11) 507 0353

James S. Crown, Laban P. Jackson Jr., Marianne Lake, William C. Weldon (Non-Executive Chairman), Matthew E. Zarnes  
Organised under the Federal Law of the United States  
A subsidiary of JP Morgan Chase & Co.  
Registration Number: 2001/016069/10 Vat Number: 4290195686

Authorised Financial Services Provider

CM39

**Certificate issued by the Registrar of Companies & Close Corporations on Friday, June 18, 2010 11:32**  
**Certificate of Confirmation**



COMPANIES AND INTELLECTUAL  
 PROPERTY REGISTRATION OFFICE

a member of the dti group

Registration number	2001 / 016069 / 10
Enterprise Name	JPMORGAN CHASE BANK NATIONAL ASSOCIATION JOHANNESBURG BRANCH
Enterprise Shortened Name	None provided.
Enterprise Translated Name	None provided.
Registration Date	24/07/2001
Business Start Date	24/07/2001
Enterprise Type	External Company
Enterprise Status	In Business
Financial year end	December
Main Business/Main Object	
Postal address	PRIVATE BAG X 60500 HOUGHTON 2041
Address of registered office	13 WELLINGTON ROAD PARKTOWN 2193



COMPANIES AND INTELLECTUAL PROPERTY REGISTRATION OFFICE

Registrar of Companies & Close Corporations

P.O. BOX 429 PRETORIA, 0001 Republic of South Africa. Docax 256 PRETORIA

Call Centre Tel 086 184 3334 Website www.cipro.co.za WAP www.cipro.co.za/mobile



South African Revenue Service

Tax Clearance Certificate Number  
0071/2/2015/0006809161

## Tax Clearance Certificate - Good Standing

**Enquiries**

0800 00 7277

**Approved Date**

2015-02-12

**Expiry Date**

2016-02-12

Company Registration Number	200101606910
Income Tax	9337186143 - JP MORGAN CHASE BANK N.A. (JOHANNESBURG BRANCH)
VAT/Diesel Registration	4290195686 - JP MORGAN CHASE BANK- JOHANNESBURGBRANCH
PAYE Registration	7890739743 - JP MORGAN CHASE BANK (JOHANNESBURGBRANCH)
UIF Registration	U890739743 - JP MORGAN CHASE BANK (JOHANNESBURGBRANCH)
SDL Registration	L890739743 - JP MORGAN CHASE BANK (JOHANNESBURGBRANCH)
Trading Name	JPMorgan Chase Bank N.A. Johannesburg Branch
Tender Number	GoodStanding

It is hereby confirmed that, on the basis of the information at my disposal, the above-mentioned taxpayer has complied with the requirements as set out in section 256(3) of the Tax Administration Act.

This certificate is valid for a period of 12 months unless otherwise communicated by SARS.

Verification of this certificate can be done at any SARS Revenue office nationwide.

Photo copies of this certificate are not valid.

SARS reserves the right to withdraw this certificate at any time should any taxes, levies or duties become due and outstanding by the above taxpayer during the one year period for which the certificate is valid.

*This certificate is issued free of charge by SARS.*



**RONELLE CHARLENE REDDY (CA)**  
 Ex Officio Commissioner of Oaths: Republic of South Africa  
 Member: The South African Institute of Chartered Accountants  
 Member Number: 07997093

CERTIFIED A TRUE COPY  
 OF THE ORIGINAL

**EMPOWERDEX**

Economic Empowerment Rating Agency



07 May 2015  
 JPMorgan Chase Bank, N.A. (Johannesburg Branch)  
 1 Fricker Road, Illovo, 2196  
 Reg No.: 2001/016069/10

**Generic Financial Sector Code B-BBEE Verification Certificate**  
 - Local Branch of Foreign Bank Not Exempt from Empowerment Financing but Exempt from  
 Access to Financial Services

**JP Morgan South Africa**

Incorporating

JP Morgan Chase Bank (Reg No: 2001/016069/10), JP Morgan Equities Ltd (Reg No:  
 1995/011815/06), JP Morgan Securities South Africa (Reg No: 1996/015112/07)

Address: 1 Fricker Road, Illovo, Johannesburg, 2196

**Level Two Contributor**

Scorecard Information	Actual Score	Target Score	Analysis	Results
Ownership	17.00	14.00	Procurement Recognition Level	125.00%
Management	4.58	5.00	Empowerment Financing Category	Applicable
Employment Equity	9.54	16.00	Access to Financial Services Category	Exempt
Skills Development	6.07	10.00	Black Ownership	N/A
Preferential Procurement	13.20	18.00	Black Women Ownership	N/A
Empowerment Financing	15.00	15.00	VAT Number	4290195888, 4350153425, 4280184480
Enterprise Development	5.00	5.00	Value Adding Enterprise	Yes
Socio-Economic Development	3.00	3.00	Issue Date	28 April 2015
Access to Financial Services	N/A	N/A	Expiry Date	27 April 2016
Total Score	73.39	83.00	Re-issue Date	N/A
Total Score Equivalent	88.42	100.00		

For EMPOWERDEX (Pty) Ltd

28 April 2015  
 Date

This verification certificate and the verification report are based on information provided to Empowerdex and represent an independent opinion based on the verification and analysis completed by Empowerdex. The calculation of the scores has been determined in accordance with the Financial Sector Code as Gazetted on 26 November 2012.

Empowerdex (Pty) Ltd Reg No: 2001/027963/07  
 Directors: C Wuytack, L Kuma, J Brebnor



BVA 030  
 A01262

FS15J30019

C e r t i f i c a t e



**DATA AND SEX OF PASSENGER**  
Type / Type / Tipo : **Coast / Costa / Costa** / Passport No. / No. du Passeport / No. do Passaporto  
**P** / **USA** / **039660004**  
Surname / Nom / Apelidos  
**WELDON**  
Given names / Prénoms / Nombres  
**WILLIAM CONRAD**  
Nationality / Nationalité / Nacionalidade  
**UNITED STATES OF AMERICA**  
Date of birth / Date de naissance / Fecha de nacimiento  
**26 NOV 1948**  
Sex / Sexe / Sexo **Place of Birth / Lieu de naissance / Lugar de nacimiento**  
**M** **NEW YORK, U.S.A.**  
Date of issue / Date de délivrance / Fecha de expedición  
**04 MAY 2006** Authority / Autorité / Autorizado  
**United States**  
Date of expiration / Date of expiration / Fecha de caducidad  
**03 MAY 2016** Department of State  
Amendments / Modifications / Enmiendas  
**SEE PAGE 24**

P<USAWELDON<<WILLIAM<CONRAD<<<<<<<<<<<<<<<<<<  
0396600042USA4811262M1605033<<<<<<<<<<<<<<<06

**RONELLE CHARLENE REDDY (CA)**  
Ex Officio Commissioner of Oaths: Republic of South Africa  
Member: The South African Institute of Chartered Accountants  
Member Number: 07997093

07 May 2015

JPMorgan Chase Bank, N.A. (Johannesburg Branch)  
1 Fricker Road, Illovo, 2196  
Reg No.: 2001/016069/10

REPUBLIC OF SOUTH AFRICA  
COMPANIES ACT, 1973

FORM CM 49

## Application for the Registration of Memorandum of External Company

SA Companies Registration Office  
CHASE MANHATTAN BANK INCORPORATED IN

2001/016069/10

Paste revenue receipt here

Affix revenue stamps here

or

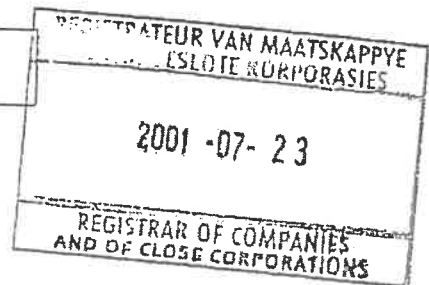
Impress revenue stamping machine impression here



R350 in terms of Section 322 (2)

FTR 036

REPUBLIC OF SOUTH AFRICA



Name of company CHASE MANHATTAN BANK (JOHANNESBURG BRANCH)

which has been incorporated in NEW YORK

according to the laws of the NEW YORK

requires registration as an external company in the Republic.

The issued capital of the company is S 1,335,000,000

which is equivalent, at current rates of exchange, of R10,613,250,000

The financial year of the company ends on 31 December..... of each year.

~~\*The sole purpose for which the company is establishing a place of business in the Republic is to establish a share transfer office and/or a share registration office.~~

\*Delete if not applicable

Dated this 30th day of MAY 2001

**RONELLE CHARLENE REDDY (CA)**  
Ex Officio Commissioner of Oaths: Republic of South Africa  
Member: The South African Institute of Chartered Accountants  
Member Number: 07997093

Signature of person acting on behalf of  
external company

07 May 2015  
JPMorgan Chase Bank, N.A. (Johannesburg Branch)  
1 Fricker Road, Illovo, 2196  
Reg No.: 2001/016069/10

CERTIFIED A TRUE COPY  
OF THE ORIGINAL

**J P MORGAN CHASE BANK NATIONAL ASSOCIATION**  
**INCORPORATION IN THE STATE OF NEW YORK USA**  
**(Registration No. 2001/016069/10)**

**RESOLUTIONS OF THE BOARD OF DIRECTORS DATED 1 MARCH 2012**

**ORDINARY RESOLUTION NUMBER 1**

**APPOINTMENT OF COMPANY SECRETARIES**

It was **RESOLVED THAT** Statucor Pty Ltd hereby resign as company secretary and that Ronelle Charlene Reddy be appointed as company secretary in their stead.

**ORDINARY RESOLUTION NUMBER 2**

**NOTICE OF REGISTERED OFFICE AND POSTAL ADDRESS**

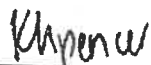
It was **RESOLVED THAT** the registered office and postal address of the company be and is hereby changed to the following addresses with immediate effect:

**Registered Office:**

1 Fricker Road  
 Illovo  
 Johannesburg  
 2196

**Postal Address:**

Private Bag X 9936  
 Sandton  
 2146

  
 KATHRYN ANNE SPENCER

  
**RONELLE CHARLENE REDDY (CA)**  
 Ex Officio Commissioner of Oaths: Republic of South Africa  
 Member: The South African Institute of Chartered Accountants  
 Member Number: 07997093

07 May 2012  
 JPMorgan Chase Bank, N.A. (Johannesburg Branch)  
 1 Fricker Road, Illovo, 2196  
 Reg No.: 2001/016069/10

# J.P.Morgan

SAMPLE

JPMorgan Chase Bank, N.A. (Johannesburg Branch) 1 Fricker Road, Cnr Hurlingham Road, Illovo, Johannesburg 2196, South Africa  
Private Bag X9936, Sandton 2146, South Africa

Telephone: +27 (11) 507 0300 Facsimile: +27 (11) 507 0353

James S. Crown, Laban P. Jackson Jr., Marianne Lake, William C. Weldon (Non-Executive Chairman), Matthew E. Zarnes  
Organised under the Federal Law of the United States

A subsidiary of JP Morgan Chase & Co.  
Registration Number: 2001/016069/10 Vat Number: 4290195686

Authorised Financial Services Provider

4

CONFIDENTIAL

## B. Appendix - General Bid Conditions

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION



TRANSNET



**GENERAL BID CONDITIONS - SERVICES**

**[March 2015]**

A handwritten signature in dark ink, appearing to be 'JP' followed by a long, sweeping horizontal line.

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Transnet General Bid Conditions – Services  
[March 2015]

## TABLE OF CONTENTS

1	DEFINITIONS .....	3
2	GENERAL .....	3
3	SUBMISSION OF BID DOCUMENTS.....	3
4	USE OF BID FORMS .....	3
5	BID FEES .....	4
6	VALIDITY PERIOD.....	4
7	SITE VISIT / BRIEFING SESSION.....	4
8	CLARIFICATION BEFORE THE CLOSING DATE .....	4
9	COMMUNICATION AFTER THE CLOSING DATE .....	4
10	UNAUTHORISED COMMUNICATION ABOUT BIDS.....	4
11	POST TENDER NEGOTIATIONS.....	5
12	RETURNABLE DOCUMENTS .....	5
13	DEFAULTS BY RESPONDENTS .....	5
14	CURRENCY .....	5
15	PRICES SUBJECT TO CONFIRMATION .....	5
16	ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES .....	5
17	EXCHANGE AND REMITTANCE.....	5
18	ACCEPTANCE OF BID.....	6
19	NOTICE TO UNSUCCESSFUL RESPONDENTS.....	6
20	TERMS AND CONDITIONS OF CONTRACT .....	6
21	CONTRACT DOCUMENTS .....	7
22	LAW GOVERNING CONTRACT.....	7
23	IDENTIFICATION .....	7
24	CONTRACTUAL SECURITIES.....	7
25	DELETION OF ITEMS TO BE EXCLUDED FROM BID .....	8
26	VALUE-ADDED TAX .....	8
27	IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT .....	8
28	DELIVERY REQUIREMENTS .....	9
29	SPECIFICATIONS AND COPYRIGHT.....	9
30	BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS.....	9
31	CONFLICT WITH BID DOCUMENT .....	10
32	TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST).....	10

Transnet General Bid Conditions – Services  
[March 2015]

## 1 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:

- 1.1 **Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;
- 1.2 **Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;
- 1.3 **Business Day** shall mean any day other than a Saturday, Sunday or public holiday;
- 1.4 **Respondent(s)** shall mean a respondent/bidder to a Bid Document;
- 1.5 **RFP** shall mean Request for Proposal;
- 1.6 **RFQ** shall mean Request for Quotation;
- 1.7 **RFX** shall mean RFP or RFQ, as the case may be;
- 1.8 **Services** shall mean the services required by Transnet as specified in its Bid Document;
- 1.9 **Service Provider** shall mean the successful Respondent;
- 1.10 **Tax Invoice** shall mean the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 1.11 **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and
- 1.12 **VAT** shall mean Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

## 2 GENERAL

All Bid Documents and subsequent contracts and orders shall be subject to the following general conditions as laid down by Transnet and are to be strictly adhered to by any Respondent to this RFX.

## 3 SUBMISSION OF BID DOCUMENTS

- 3.1 A Bid, which shall hereinafter include reference to an RFP or RFQ, shall be submitted to Transnet no later than the closing date and time specified in accordance with the directions issued in the Bid Documents. Late Bids will not be considered.
- 3.2 Bids shall be delivered in a sealed envelope in accordance with the instructions indicated in the Bid Documents with the Bid number and subject marked on the front of the envelope.
- 3.3 The Respondent's return address must be stated on the reverse side of the sealed envelope.

## 4 USE OF BID FORMS

- 4.1 Where special forms are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and not in other forms or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.
- 4.2 Respondents must note that the original Bid forms must be completed for submission and not a reprocessed copy thereof.



Transnet General Bid Conditions – Services  
[March 2015]

- 4.3 Only if insufficient space has been allocated for a particular response may a Respondent submit additional information under separate cover using its company's letterhead. This must be duly cross-referenced in the RFX.

### ~~5~~ **BID FEES** N/A

- ~~5.1 A non-refundable fee may be charged for Bid Documents, depending on the administrative cost of preparing and issuing such Bid Documents.~~
- ~~5.2 Only Respondents that have paid the Bid fee and provided proof of payment when submitting their Bid will be considered.~~

### **6 VALIDITY PERIOD**

- 6.1 Respondents must hold their Bid valid for acceptance by Transnet at any time within the requested validity period <sup>of 120 business days</sup> after the closing date of the bid.
- 6.2 Respondents may be requested to extend their validity period for a specified additional period. In such instances, Respondents will not be allowed to change any aspect of their Bid, unless they are able to demonstrate that the proposed change(s) is as a direct and unavoidable consequence of Transnet's extension of the validity period.

### **7 SITE VISIT / BRIEFING SESSION**

Respondents may be requested to attend a site visit where it is considered necessary to view the site prior to the preparation of Bids, or where Transnet deems it necessary to provide Respondents with additional information relevant to the compilation of their Bids. When such visits or sessions are indicated as compulsory in the Bid Document, Respondents are obliged to attend these meetings as failure to do so will result in their disqualification.

### **8 CLARIFICATION BEFORE THE CLOSING DATE**

Should clarification be required on any aspect of the RFX before the closing date, the Respondent must direct such queries to the contact person identified in the Bid Document.

### **9 COMMUNICATION AFTER THE CLOSING DATE**

After the closing date of a Bid [i.e. during the evaluation period] the Respondent may only communicate with the Chairperson or Secretary of the relevant Acquisition Council.

### **10 UNAUTHORISED COMMUNICATION ABOUT BIDS**

Where Bids are submitted to the Secretary of an Acquisition Council, Respondents may at any time communicate with the Secretary on any matter relating to its Bid but, in the absence of written authority from the Secretary, no communication on a question affecting the subject of a Bid shall take place between Respondents or other potential service providers or any member of the Acquisition Council or official of Transnet during the period between the closing date for the receipt of the Bid and the date of the notification of the successful Respondent(s). A Bid, in respect of which any such unauthorised communication has occurred, may be disqualified.



Transnet General Bid Conditions – Services  
[March 2015]

- Transnet and the Bidder will enter into post tender negotiations and will document all terms and conditions applicable in agreed written contracts.*
- 11 POST TENDER NEGOTIATIONS**  
~~Transnet reserves the right to conduct post tender negotiations with the preferred bidder or a shortlist of preferred bidders. Should Transnet decide to conduct post-tender negotiations, bidders will be requested to provide their best and final offers to Transnet based on such negotiations. A final evaluation will be conducted in terms of 80/20 or 90/10 (whichever is applicable) and the contract will be negotiated and awarded to the successful bidder(s).~~
- 12 RETURNABLE DOCUMENTS**  
All returnable documents listed in the RFX Documents must be submitted with Respondent's Bid. Failure to submit mandatory returnable schedules / documents will result in disqualification. Failure to submit other schedules / documents may result in disqualification.
- 13 DEFAULTS BY RESPONDENTS**  
If the Respondent, after it has been notified of the acceptance of its Bid fails to: *agree the terms and conditions for the particular transaction in writing with Transnet,*  
~~13.1 enter into a formal contract when called upon to do so within such period as Transnet may specify; or~~  
~~13.2 accept an order in terms of the Bid;~~ *within a time period to be agreed between the parties*  
~~13.3 furnish satisfactory security when called upon to do so for the fulfilment of the contract; or~~  
~~13.4 comply with any condition imposed by Transnet,~~  
Transnet may, in any such case, without prejudice to any other legal remedy which it may have, proceed to accept any other Bid or, if it is necessary to do so, call for Bids afresh, ~~and may recover from the defaulting Respondent any additional expense incurred by Transnet in calling for new offers or in accepting a less favourable offer.~~
- 14 CURRENCY**  
All monetary amounts referred to in a Bid response must be in Rand, the currency of the Republic of South Africa [ZAR], save to the extent specifically permitted in the RFX. *or as set out in agreed documentation between Transnet and the Bidder for the specific transaction.*
- 15 PRICES SUBJECT TO CONFIRMATION**  
~~15.1 Prices which are quoted subject to confirmation will not be considered.~~  
~~15.2 Firm prices quoted for the duration of any resulting order and/or contract will receive precedence over prices which are subject to fluctuation if this is in Transnet's best interests.~~
- 16 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES**  
All alterations made by the Respondent to its Bid price(s) prior to the submission of its Bid Documents must be done by deleting the incorrect figures and words where required and by inserting the correct figures and words against the items concerned. All such alterations must be initialled by the person who signs the Bid Documents. Failure to observe this requirement may result in the particular item(s) concerned being excluded in the matter of the award of the business.
- 17 EXCHANGE AND REMITTANCE**  
~~17.1 The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Service Provider, effect payment~~

Transnet General Bid Conditions – Services  
[March 2015]

~~overseas directly to the foreign principal of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents.~~

- ~~17.2 It is Transnet's preference to enter into Rand-based agreements. Transnet would request, therefore, that the Respondent give favourable consideration to obtaining forward exchange cover on the foreign currency portion of the Agreement at a cost that is acceptable to Transnet to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order.~~
- ~~17.3 The Respondent who desires to avail itself of the aforementioned facility must at the time of bidding furnish the Information called for in the *Exchange and Remittance* section of the Bid Documents and also furnish full details of the principals to whom payment is to be made.~~
- ~~17.4 The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.~~
- ~~17.5 Transnet will not recognise any claim for adjustment of the order and/or contract price if the increase in price arises after the date on which agreement on an overall Rand contract has been reached.~~
- ~~17.6 Transnet reserves the right to request a pro-forma invoice/tax invoice in order to ensure compliance with the contract and Value Added Tax Act no. 89 of 1991 [VAT Act].~~

#### ~~18 ACCEPTANCE OF BID~~

- ~~18.1 Transnet does not bind itself to accept the lowest priced or any Bid.~~
- ~~18.2 Transnet reserves the right to accept any Bid in whole or in part.~~
- ~~18.3 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and any contractual terms and/or any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.~~
- ~~18.4 Where the Respondent has been informed by Transnet per fax message or email of the acceptance of its Bid, the acknowledgement of receipt transmitted shall be regarded as proof of delivery to the Respondent.~~

#### 19 NOTICE TO UNSUCCESSFUL RESPONDENTS

Unsuccessful Respondents shall be advised in writing that their Bids have not been accepted as soon as possible after the closing date of the Bid. On award of business to the successful Respondent all unsuccessful Respondents shall be informed of the name of the successful Respondent and of the reason as to why their Bids have not been successful.

#### ~~20 TERMS AND CONDITIONS OF CONTRACT~~

- ~~20.1 The Service Provider shall adhere to the Terms and Conditions of Contract issued with the Bid Documents, together with any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.~~
- ~~20.2 Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer amendments/ alternatives by written submission on its company letterhead. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed amendments/ alternative(s) are acceptable or otherwise, as the case may be.~~

Transnet General Bid Conditions – Services  
[March 2015]

## 21 CONTRACT DOCUMENTS

*be negotiated and agreed between the parties.*

- 21.1 The contract documents will ~~comprise these General Bid Conditions, the Terms and Conditions of Contract and any schedule of "Special Conditions" which form part of the Bid Documents.~~
- 21.2 The abovementioned documents together with the Respondent's Bid response will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of award / intent, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.
- 21.3 Should Transnet inform the Respondent that a formal contract will be signed, the abovementioned documents together with the Respondent's Bid response [and, if any, its covering letter and any subsequent exchange of correspondence] as well as Transnet's Letter of Acceptance/Intent, shall ~~constitute a binding contract until the final contract is signed.~~

## 22 LAW GOVERNING CONTRACT

~~The law of the Republic of South Africa shall govern the contract created by the acceptance of a Bid. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent in its Bid at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. A foreign Respondent shall, therefore, state in its Bid the name of its authorised representative in the Republic of South Africa who is empowered to sign any contract which may be entered into in the event of its Bid being accepted and to act on its behalf in all matters relating to the contract.~~

## 23 IDENTIFICATION

If the Respondent is a company, the full names of the directors shall be stated in the Bid. If the Respondent is a close corporation, the full names of the members shall be stated in the Bid. If the Respondent is a partnership or an individual trading under a trade name, the full names of the partners or of such individual, as the case may be, shall be furnished.

## 24 CONTRACTUAL SECURITIES N/A

- 24.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of an advanced payment guarantee [APG] and/or a performance bond [Performance Bond], as the case may be, to be furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 24.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.
- 24.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 24.4 The successful Respondent shall be required to submit to Transnet or Transnet's designated official the specified security document(s) within 30 [thirty] calendar days from the date of signature of the contract. Failure to return the securities within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Service Provider to cancel the contract with immediate effect.
- 24.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Service ~~Provider in relation to the conditions of this clause 24 will be for the account of the Service Provider.~~

Transnet General Bid Conditions – Services  
[March 2015]

## 25 DELETION OF ITEMS TO BE EXCLUDED FROM BID

The Respondent must delete items for which it has not tendered or for which the price has been included elsewhere in its Bid.

## 26 VALUE-ADDED TAX

26.1 In respect of local Services, i.e. Services to be rendered in the Republic of South Africa, the prices quoted by the Respondent are to be exclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.

26.2 In respect of foreign Services rendered:

- a) the invoicing by a South African Service Provider on behalf of its foreign principal rendering such Service represents a Service rendered by the principal; and
- b) the Service Provider's Tax Invoice(s) for the local portion only [i.e. the "commission" for the Services rendered locally] must show the VAT separately.

## ~~27 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT~~

### ~~27.1 Method of Payment~~

N/A

- a) The attention of the Respondent is directed to the Terms and Conditions of Contract which set out the conditions of payment on which Bid price(s) shall be based.
- b) However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.
- c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.
- d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 27.1a) above. Failure to comply with clause 27.1a) above may preclude a Bid from further consideration.

NOTE: The successful Respondent [the **Service Provider**], where applicable, shall be required to furnish a guarantee covering any advance payments, as set out in clause 24 above [~~Contractual Securities~~].

### ~~27.2 Conditional Discount~~

N/A

~~Respondents offering prices which are subject to a conditional discount applicable for payment within a specific period are to note that the conditional period will be calculated from the date of receipt by Transnet of the Service Provider's month-end statement reflecting the relevant Tax Invoice(s) for payment purposes, provided the conditions of the order or contract have been fulfilled and the Tax Invoice is correct in all respects in terms of the contract or order. Incomplete and/or incorrect Tax Invoices shall be returned and the conditional discount period will be recalculated from the date of receipt of the correct documentation.~~



Transnet General Bid Conditions – Services  
[March 2015]

## ~~28 DELIVERY REQUIREMENTS~~

### ~~28.1 Period Contracts~~

*N/A*  
It will be a condition of any resulting contract/order that the delivery period embodied therein will be governed by the provisions of the Terms and Conditions of Contract.

### ~~28.2 Progress Reports~~

The Service Provider may be required to submit periodical progress reports with regard to the delivery of the Services.

### ~~28.3 Emergency Demands as and when required~~

If, due to unforeseen circumstances, the rendering of the Services covered by the Bid are required at short notice for immediate delivery, the Service Provider will be given first right of refusal for such business. If it is unable to meet the desired critical delivery period, Transnet reserves the right to purchase such services as may be required to meet the emergency outside the contract if immediate delivery can be offered from any other source. The "Total or Partial Failure to Perform the Scope of Services" section in the Terms and Conditions of Contract will not be applicable in these circumstances.

## ~~29 SPECIFICATIONS AND COPYRIGHT~~

### ~~29.1 Specifications~~

*N/A*  
The Respondent should note that, unless notified to the contrary by Transnet or a designated official by means of an official amendment to the Bid Documents, it is required to tender for the Services strictly in accordance with the specifications supplied by Transnet.

### ~~29.2 Copyright~~

Copyright in plans, drawings, diagrams, specifications and documents compiled by the Service Provider for the purpose of contract work shall be governed by the *Intellectual Property Rights* section in the Terms and Conditions of Contract.

## ~~30 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS~~

*N/A*  
30.1 Bids submitted by foreign principals may be forwarded directly by the principals or by its South African representative or agent to the Secretary of the Acquisition Council or to a designated official of Transnet according to whichever officer is specified in the Bid Documents.

30.2 In the case of a representative or agent, written proof must be submitted to the effect that such representative or agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative or agent shall disqualify the Bid.

30.3 When legally authorised to prepare and submit Bids on behalf of their principals not domiciled in the Republic of South Africa, representatives or agents must compile the Bids in the names of such principals and sign them on behalf of the latter.

30.4 South African representatives or agents of a successful foreign Respondent must when so required enter into a formal contract in the name of their principals and must sign such contract on behalf of the latter. In every such case a legal Power of Attorney from their principals must be furnished to Transnet by the South African representative or agents authorising them to enter into and sign such contract.



Transnet General Bid Conditions – Services  
[March 2015]

- ~~a) Such Power of Attorney must comply with Rule 63 [Authentication of documents executed outside the Republic for use within the Republic] of the Uniform Rules of Court: Rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa.~~
- b) The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.
- c) If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of a contract with Transnet, a certified copy thereof should be furnished.
- d) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi* as provided for in the Terms and Conditions of Contract.
- 30.5 If payment is to be made in South Africa, the foreign Service Provider [i.e. the principal, or its South African agent or representative], must notify Transnet in writing whether, for payment by electronic funds transfer [EFT]:
- a) funds are to be transferred to the credit of the foreign Service Provider's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or
- b) funds are to be transferred to the credit of its South African agent or representative, in which case the name and branch of such bank shall be furnished.

### 31 CONFLICT WITH BID DOCUMENT

Should a conflict arise between these General Bid Conditions and the Bid Document issued, the conditions stated in the Bid Document shall prevail.

### 32 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)

- 32.1 All the stipulations around Transnet's blacklisting process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by reference. Below follows a condensed summary of this blacklisting procedure.
- 32.2 Blacklisting is a mechanism used to exclude a company/person from future business with Transnet for a specified period. The decision to blacklist is based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "prima facie" (i.e. on the face of it) case has been established.
- 32.3 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to blacklisting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.
- 32.4 A supplier or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.
- 32.5 Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:
- a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;

Transnet General Bid Conditions – Services  
[March 2015]

- b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
- c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;
- d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
- e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;
- f) has made any incorrect statement in a certificate or other communication with regard to the Service or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:
  - (i) he made the statement in good faith honestly believing it to be correct; and
  - (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;
- g) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
- h) has litigated against Transnet in bad faith.

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

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

32.7 Where any person or Enterprise has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 Years, such person/Enterprise may also be blacklisted. Serious breaches of the law would include but are not limited to corruption, fraud, theft, extortion, or contraventions of the Competition Act 89 of 1998 (e.g. collusive tendering). This process excludes minor convictions such as traffic offences or personal disagreements between parties which have no bearing on the business operations of the person or Enterprise.



Transnet General Bid Conditions – Services  
[March 2015]

- 32.8 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Tender Defaulters.
- 32.9 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.
- 32.10 Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the Chief Financial Officer of Transnet SOC Ltd, whose decision shall be final.

oooo0000oooo



S

CONFIDENTIAL

## C. Appendix - Standard Ts and Cs of Contract

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

TRANSNET



**STANDARD TERMS AND CONDITIONS OF CONTRACT  
FOR THE PROVISION OF SERVICES TO TRANSNET  
[March 2015]**


A handwritten signature in black ink, appearing to be 'J. K. J.', is located at the bottom left of the page.

JPMorgan Chase Bank, N.A. (Johannesburg Branch)  
Date: 8/5/2015

Standard Terms and Conditions of Contract  
Services [March 2015]

## TABLE OF CONTENTS

1	INTRODUCTION.....	3
2	DEFINITIONS .....	3
3	INTERPRETATION .....	6
4	NATURE AND SCOPE .....	6
5	AUTHORITY OF PARTIES .....	7
6	WARRANTIES .....	7
7	TRANSNET'S OBLIGATIONS .....	9
8	GENERAL OBLIGATIONS OF THE SERVICE PROVIDER.....	9
9	B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS .....	10
10	FEES AND EXPENSES.....	15
11	INVOICING AND PAYMENT .....	16
12	FEE ADJUSTMENTS .....	16
13	INTELLECTUAL PROPERTY RIGHTS .....	16
14	SERVICE PROVIDER'S PERSONNEL .....	18
15	LIMITATION OF LIABILITY.....	19
16	INSURANCES .....	20
17	CONFIDENTIALITY .....	20
18	TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES.....	22
19	TERM AND TERMINATION .....	22
20	CONSEQUENCE OF TERMINATION.....	23
21	ASSIGNMENT.....	24
22	FORCE MAJEURE.....	24
23	EQUALITY AND DIVERSITY .....	24
24	NON-WAIVER .....	25
25	PARTIAL INVALIDITY .....	25
26	DISPUTE RESOLUTION.....	25
27	ADDRESSES FOR NOTICES .....	25
28	WHOLE AND ONLY AGREEMENT.....	26
29	AMENDMENT AND CHANGE CONTROL .....	26
30	GOVERNING LAW.....	26
31	COUNTERPARTS .....	27
32	TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST) .....	27





**1 INTRODUCTION**

When an Agreement is entered into between Transnet SOC Ltd [Transnet] and the appointed supplier of Services to Transnet [the Service Provider], these Standard Terms and Conditions of Contract, ~~the technical specifications for the Services, a Work Order including such special conditions as may be applicable, and any terms in the associated Bid Documents, exclusively govern the provision of Services~~

**2 DEFINITIONS**

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

- agreements detailing such appointment and/or the terms of the specific transaction shall apply*
- 2.1 **AFSA** means the Arbitration Foundation of South Africa;
  - 2.2 **Agreement** means the 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 the Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed in writing between the Parties], which collectively and exclusively govern the provision of Services by the Service Provider to Transnet;
  - 2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under the Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to the Agreement;
  - 2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;
  - 2.5 **Commencement Date** means [●], notwithstanding the signature date of the Agreement;
  - 2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:
    - a) information relating to methods of operation, data and plans of the disclosing Party;
    - b) the contents of the 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;

Standard Terms and Conditions of Contract  
Services [March 2015]

- 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 statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of the Agreement and in respect of which such Party is liable to the other;
- 2.9 **Deliverable(s)** means any and all works of authorship, products and materials developed, written, prepared, assembled, integrated, modified or provided by the Service Provider in relation to the Services;
- 2.10 **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 the Agreement, as amended by mutual agreement between the Parties and in accordance with the provisions of the Agreement from time to time;
- 2.12 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to the Agreement;



Standard Terms and Conditions of Contract  
Services [March 2015]

- 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 and the Third Party Materials;
- 2.16 **Parties** mean the Parties to the Agreement together with their subsidiaries, divisions, business units, successors-in-title and their assigns;
- 2.17 **Party** means either one of these 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 the 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 Service(s) provided to Transnet by the Service Provider, pursuant to the Work Order(s) in terms of the Agreement;
- 2.23 **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Service Provider;
- 2.24 **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;
- 2.25 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;
- 2.26 **Service Provider Materials** means all works of authorship, products and materials [including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques] owned by, or licensed to, the Service Provider prior to the Commencement Date or independently developed by the Service Provider outside the scope of the Agreement at no expense to Transnet, and used by the Service Provider in the performance of the Services;
- 2.27 **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;



Standard Terms and Conditions of Contract  
Services [March 2015]

- 2.28 **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;
- 2.29 **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;
- 2.30 **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
- 2.31 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, including timeframes, Deliverable, Fees and costs for the supply of the Service to Transnet, which may be appended to the Agreement from time to time.

### 3 INTERPRETATION

- 3.1 Clause headings in the Agreement are included for ease of reference only and do not form part of the Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.
- 3.2 Any term, word, acronym or phrase used in the 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 the 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 N/A

- 4.1 The 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 the Agreement.
- 4.2 Such Purchase Orders shall be agreed between the Parties from time to time, subject to the terms of the relevant Work Order(s).
- 4.3 Each properly executed Purchase Order forms an inseparable part of the Agreement as if it were fully incorporated into the body of the Agreement.
- 4.4 During the period of the 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 the Agreement and/or a Purchase Order, or where the Agreement is silent on the matter, the term, provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

~~4.6 Time will be of the essence and the Service Provider will perform its obligations under the 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 the 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 the Agreement and that the Agreement is executed by a duly authorised representative of the Service Provider;
- b) it will discharge its obligations under the Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence; ~~and~~
- c) it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations;
- ~~d) it will procure licences for Transnet in respect of all Third Party Material detailed in the Work Order(s), and will procure the right for Transnet to take such copies [in whole or in part] of such Third Party Materials as it may reasonably require for the purposes of back-up for archiving and disaster recovery; and~~
- ~~e) the use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.~~

~~6.2 The Service Provider warrants that it will perform its obligations under the Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services. Without prejudice to clause 6.3 below, in the event that the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule and/or Work Order.~~

~~6.3 The Service Provider warrants that for a period of 90 [ninety] calendar days from Acceptance of the Deliverables they will, if properly used, conform in all material respects with the requirements set out in the relevant schedule. The Service Provider will at its expense remedy any such non-conformance as soon as possible but in any event within 30 [thirty] calendar days of notification~~

~~by Transnet. In the event that the Service Provider fails or is unable to remedy such non-conformance within such time-scale, Transnet will be entitled to employ a third party to do so in place of the Service Provider and any excess charges or costs incurred by Transnet as a result shall be paid by the Service Provider.~~

~~6.4 The Service Provider will remedy any defect within 30 [thirty] calendar days of being notified of that defect by Transnet in writing.~~

~~6.5 The Service Provider will not be liable to remedy any problem arising from or caused by any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.~~

~~6.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 29 [Amendment and Change Control].~~

~~6.7 The Service Provider warrants that:~~

- ~~a) it has, using the most up-to-date software available, tested for [and deleted] all commonly known viruses in the Materials and for all viruses known by the Service Provider at the date of the relevant Work Order; and~~
- ~~b) at the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.~~

~~The Service Provider agrees that, in the event that a virus is found, it will at its own expense use its best endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.~~

6.8 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with the Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

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

~~6.10 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of the Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall grant Transnet access, during the term of the 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 the 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 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 the Agreement.

**8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER****8.1 The Service Provider shall:**

- a) respond promptly to all complaints and enquiries from Transnet;
- b) inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services;
- c) conduct its business in a professional manner that will reflect positively upon the Service Provider and the Service Provider's Services;
- d) keep full records clearly indicating all transactions concluded by the Service Provider relating to the performance of the Services and keep such records for at least 5 [five] years from the date of each such transaction;
- e) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Service Provider;
- ~~f) observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993;~~
- ~~g) comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance; and~~
- ~~h) ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Verification Certificate, for the duration of the 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 the 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;



Standard Terms and Conditions of Contract  
Services [March 2015]

- c) endeavour to provide the highest possible standards of service and professionalism, with a reasonable degree of care and diligence;
- d) use its best endeavours and make every diligent effort to meet agreed deadlines;
- e) treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;
- f) practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination [as further referred to in clause 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 Information, except where a non-disclosure undertaking has been entered into between the Parties;
- ~~i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;~~
- j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
- k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image; and
- ~~m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services.~~

## 9 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS

### 9.1 B-BBEE Scorecard

- a) Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past. It is also a fundamental requirement of the RFP that the Service Provider also contributes to the Supplier Development Programme, as applied by Transnet.
- b) In response to this requirement, the Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of the Agreement.
- c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:



- (i) a change in the Service Provider's B-BBEE status which is <sup>materially</sup> less than what it was at the time of its appointment including the impact thereof; and
- (ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Service Provider's B-BBEE status.
- ~~d) Notwithstanding any other reporting requirement in terms hereof, the Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service Provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Service Provider Default and may be dealt with in accordance with the provisions of clause 19.~~
- ~~e) In the event there is a change in the Service Provider's B-BBEE status, then the provisions of clause 19 shall apply.~~

**9.2 B-BBEE Improvement Plan**

- a) Transnet encourages its Service Providers to constantly strive to improve their B-BBEE levels. To this end, the Service Provider undertakes to provide Transnet with a B-BBEE Improvement Plan to indicate the extent to which their B-BBEE status will be maintained or improved over the contract period, as per Annexure E of the RFP.
- b) The Service Provider shall, for the duration of the Agreement, comply with the B-BBEE Improvement Plan.
- c) The terms of the B-BBEE Improvement Plan and monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in such B-BBEE Improvement Plan.

**9.3 Supplier Development Implementation Plan**

- a) In addition to the Supplier Development Plan which the Service Provider provided as part of its bid, the Service Provider undertakes, as stipulated in the RFP, to provide Transnet with a Supplier Development Implementation Plan [the Implementation Plan] setting out the nature, extent and monetary value of the Service Provider's commitments which the Service Provider shall undertake, as well as mechanisms and procedures to allow for access to information and verification of the Service Provider's compliance with the Implementation Plan, as shall be agreed with Transnet but in any event no later than 45 (forty five) calendar days from the signature date of the LOI/LOA.
- b) The Parties undertake to negotiate in good faith with a view to agreeing the content of the Implementation Plan by no later than 45 (forty five) calendar days as aforesaid (or such later date as Transnet may consent to in writing).
- c) If the Parties (acting reasonably and in good faith with due consideration to the Supplier Development Plan proposed by the Service Provider in response to the RFP fail to reach agreement on the Supplier Development Implementation Plan within the time limit stipulated in the clause above, it shall constitute a Service Provider Default and Clause 19 shall apply.
- d) The Supplier's Implementation Plan shall include, but not be limited to Technology transfer, New skills development, Job creation, Job preservation, Training, Small business promotion and Rural integration and regional development.

- ~~e) The terms of the Implementation Plan's and the monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in the Supplier Development Implementation Plan.~~

#### 9.4 Green Economy/Carbon Footprint

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

#### 9.5 Reporting

- a) The Service Provider shall monitor, audit, and record ~~in an auditable manner,~~ its own implementation and compliance with the <sup>indicative</sup> B-BBEE Improvement Plan and the <sup>indicative</sup> Supplier Development Implementation Plan and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning the implementation of the <sup>indicative</sup> B-BBEE Improvement Plan and the <sup>indicative</sup> Supplier Development Implementation Plan.
- ~~b) The Service Provider shall, on a monthly basis from the Commencement Date and within 7 (seven) calendar days of the end of the previous calendar month, provide Transnet with a report (for monitoring purposes only) in respect of each of the undertakings stipulated in this clause 9.5.~~
- ~~c) Transnet, through its Supplier Development division, shall, every 6 (six) months from the Commencement Date, review and verify the Service Provider's undertakings stipulated in this clause with respect to B-BBEE and Supplier Development commitments, based on the Service Provider's report.~~
- ~~d) The Service Provider shall attach adequate proof to enable Transnet to verify compliance with the B-BBEE Improvement Plan and Supplier Development Implementation Plan.~~
- ~~e) Post verification of the submitted report to Transnet, Transnet shall engage with the Service Provider on the findings. The Contract Manager, assisted by the relevant specialist from Transnet's Supplier Development division, must report to the Service Provider at the end of every 6 (six) months as to whether or not the Contract Manager and/or the Supplier Development specialist reasonably considers, based on the information available to it, that the Service Provider has during such time complied with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan and the extent, if any, to which the Service Provider has not so complied.~~
- ~~f) Without prejudice to the Transnet's rights under the Agreement:~~
- (i) if the Contract Manager and/or Transnet's Supplier Development specialist reasonably considers that the Service Provider is not at any time complying with B-BBEE Improvement Plan and/or the Supplier Development Implementation Plan, the Contract Manager and/or the Supplier Development specialist may make such recommendations as is considered reasonably appropriate to the Service Provider as to the steps he reasonably considers should be taken by the Service Provider in order for the Service Provider to remedy such non-compliance and the time period within which such steps must be taken;

- ~~(ii) If such recommendations are not implemented by the Service Provider in accordance with such recommendations, then the provisions of clause 9.6 shall apply; and~~
- ~~(iii) Transnet may at any time request a meeting with the Service Provider to consider any non-compliance reported to it by the Supplier Development specialist of Transnet and/or the Contract Manager or which otherwise comes to its attention. Both Parties must attend such a meeting and negotiate in good faith with a view to reach agreement on the steps or actions that the Service Provider must undertake in order to remedy that non-compliance.~~
- g) In the event the Service Provider is found not to have met the B-BBEE and Supplier Development requirements agreed upon in the B-BBEE Improvement Plan and the Supplier Development Implementation Plan, and/or is found to be fraudulent in submitting the reports, then Transnet shall impose a non-compliance penalty as provided for in clause 9.6 below or shall be entitled to terminate in terms of clauses 18 and 19.
- h) For the sake of completion of its contractual obligations, the Service Provider shall be obliged to complete all the undertakings made under the B-BBEE Improvement Plan and the Supplier Development Implementation Plan 3 to 6 months before the Termination Date.

**9.6 Penalties****Non-Compliance Penalties:**

- a) If the Service Provider fails, at any time, to achieve its commitments under and in accordance with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan ("a Non Compliance"), the Service Provider shall, subject to the applicable Non Compliance Penalty Cap, pay a Non Compliance penalty ("Non Compliance Penalty") to Transnet in respect of such Non Compliance at the applicable rate ("Applicable Rate"), as prescribed in clause 9.6 b) to m) below.
- (i) Non Compliance Penalties shall be calculated as a percentage of the Contract Value and accrue at the Applicable Rate per month until:
- (ii) the date on which the Service Provider has remedied such Non Compliance by complying with the Supplier Development Implementation Plan and/or the B-BBEE Improvement Plan (as applicable); or
- (iii) the Agreement being terminated.

**Applicable Rates of Non Compliance Penalties (for Large Enterprises Only):**

- b) In relation to the Supplier Development Implementation Plan, Non Compliance Penalties shall accrue based on the difference between the committed SD value for the period under review and the delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 10% (ten percent) of such difference.
- c) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall accrue at the following Applicable Rates based on a percentage of the Contract Value:
- (i) for the first month (or part thereof), a rate of 1.0% (one percent);
- (ii) for the second month (or part thereof), a rate of 1.5% (one and a half percent);
- ~~(iii) for the third month (or part thereof), a rate of 2.0% (two percent);~~

- (iv) for the fourth month (or part thereof), a rate of 2.5% (two and a half percent); and
- (v) for any period of Non Compliance after the fourth month, a rate of 3% (three percent).

**Non Compliance Penalty Cap for Large Enterprises:**

- d) The Non Compliance Penalty Cap in respect of Supplier Development commitments shall not exceed the difference between the committed SD value for the period under review and the delivered value (i.e. 100% of the undelivered portion of the committed SD value), plus an additional 10% (ten percent) of such difference.
- e) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties in the case of the B-BBEE Improvement Plan shall not exceed 5% (five percent) of the Contract Value.

**Applicable Rates of Non Compliance Penalties for Qualifying Small Enterprises (QSEs):**

- f) In relation to the Supplier Development Implementation Plan, Non Compliance Penalties shall accrue based on the difference between the committed SD value for the period under review and the delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 5% (five percent) of such difference;
- g) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall apply annually at the rate of 0.5% (one half percent).

**Non Compliance Penalty Cap for QSEs:**

- h) The Non Compliance Penalty Cap in respect of Supplier Development commitments shall not exceed the difference between the committed SD value for the period under review and the delivered value (i.e. 100% of the undelivered portion of the committed SD value), plus an additional 5% (five percent) of such difference.
- i) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties in the case of the B-BBEE Improvement Plan shall not exceed 1.5% (one and a half percent) of the Contract Value.

**Applicable Rates of Non Compliance Penalties for Exempted Micro Enterprises (EMEs):**

- j) In relation to the Supplier Development Implementation Plan, Non Compliance Penalties shall accrue based on the difference between the committed SD value and the delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 3% (three percent) of such difference;
- k) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall apply annually at the rate of 0.5% (one half percent).

**Non Compliance Penalty Cap for EMEs:**

- l) The Non Compliance Penalty Cap in respect of Supplier Development commitments shall not exceed the difference between the committed SD value for the period under review and the delivered value (i.e. 100% of the undelivered portion of the committed SD value), plus an additional 3% (three percent) of such difference.
- m) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties in the case of the B-BBEE Improvement Plan shall not exceed 1.5% (one and a half percent) of the Contract Value.

**Non Compliance Penalty Certificate:**


Standard Terms and Conditions of Contract  
Services [March 2015]

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

**Payment of Non Compliance Penalties:**

- p) Subject to Clause o), the Service Provider shall pay the Non Compliance Penalty Indicated in the Non Compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Service Provider for Non Compliance Penalties accrued during any relevant period, those Non Compliance Penalties shall be carried forward to the next period.
- q) The Service Provider shall pay the amount due within 10 (ten) Business Days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under the Agreement, be entitled to call for payment which may be in form Transnet deems reasonable and/or appropriate.
- r) Should the Service Provider fail to pay any Non Compliance Penalties within the time indicated in above (as applicable), Transnet shall be entitled to deduct (set off) the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.
- s) The Non Compliance Penalties set forth in this Clause 9.6 are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the Supplier.

- 10 FEES AND EXPENSES** *The parties will negotiate and agree the relevant fees payable in the documentation relating to each aspect of the various transactions*
- 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 Unless otherwise agreed in a schedule or Work Order, Transnet will reimburse to the Service Provider all reasonable and proper expenses incurred directly and solely in connection with the provision of the Services, provided that all such expenses:
- a) are agreed by Transnet in advance;
  - b) are incurred in accordance with Transnet's standard travel and expenses policies;

- c) are passed on to Transnet at cost with no administration fee; and
- d) will only be reimbursed if supported by relevant receipts.

10.4 All Tax Invoices relating to Fees, out of pocket expenses and, if applicable, travel and accommodation costs, will provide the detail for each of the Personnel carrying out the Services and incurring the expenses, and the Tax Invoice will, where appropriate, include VAT as a separate item.

## 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 the Agreement.~~

~~11.2 Transnet shall pay such amounts to the Service Provider, upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation as specified in the Work Order appended hereto, once the valid and undisputed Tax Invoices, or such portion of the Tax Invoices which are valid and undisputed become due and payable to the Service Provider for the provision of the Services, in terms of clause 11.4 below.~~

11.3 All Fees and other sums payable under the 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 the Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] calendar days after date of receipt by Transnet of the statement together with all valid and undisputed Tax Invoices and supporting documentation.~~

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 Fees for Services rendered in terms of the Agreement shall be subject to review as indicated in the Work Order(s) annexed hereto from time to time.~~

~~12.2 No less than 2 [two] months prior to any proposed Fee adjustment, the Parties shall commence negotiations for Fees for the next period or as otherwise indicated and appended hereto.~~

~~12.3 Should Transnet and the Service Provider fail to reach an agreement on Fees for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with clause 26 of this Master Agreement [Dispute Resolution].~~

## 13 INTELLECTUAL PROPERTY RIGHTS

### 13.1 Title to Confidential Information

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

- b) Transnet shall grant to the Service Provider an irrevocable, royalty free, non-exclusive licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This license shall not permit the Service Provider to sub-license to other parties.
- ~~c) The Service Provider shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Service Provider's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.~~
- ~~d) The Service Provider shall grant Transnet access to the Service Provider's Background Intellectual Property on terms which shall be *bona fide* negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.~~

**13.2 Title to Intellectual Property**

- a) All right, title and interest in and to Foreground Intellectual Property prepared, conceived or developed by the Service Provider, its researchers, agents and employees shall vest in <sup>Transnet and Transnet</sup> ~~Transnet~~ and the Service Provider acknowledges that it has no claim of any nature in and to the Foreground Intellectual Property. <sup>Transnet</sup> ~~The Service Provider~~ shall not at any time during or after the termination or cancellation of the Agreement dispute the validity or enforceability of such Foreground Intellectual Property, or cause to be done any act or anything contesting or in any way impairing or tending to impair any part of that right, title and interest to any of the Foreground Intellectual Property and shall not counsel or assist any person to do so.
- b) Transnet shall be entitled to seek protection in respect of the Foreground Intellectual Property anywhere in the world as it shall decide in its own absolute discretion and the Service Provider shall reasonably assist Transnet in attaining and maintaining protection of the Foreground Intellectual Property.
- c) Where the Foreground Intellectual Property was created by the Service Provider or its researchers, agents and employees and where Transnet elects not to exercise its option to seek protection or decides to discontinue the financial support of the prosecution or maintenance of any such protection, Transnet shall notify the Service Provider who shall have the right of first refusal to file or continue prosecution or maintain any such applications and to maintain any protection issuing on the Foreground Intellectual Property.
- d) No consideration shall be paid by Transnet to the Service Provider for the assignment of any Foreground Intellectual Property from the Service Provider to Transnet, over and above the sums payable in terms of the Agreement. The Service Provider undertakes to ~~sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Foreground Intellectual Property to Transnet.~~
- e) Subject to anything contrary contained in the Agreement and/or the prior written consent of Transnet [which consent shall not be unreasonably withheld or delayed], the Service Provider shall under no circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground Intellectual Property.



~~13.3 Title to Improvements~~

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

## 13.4 Unauthorised Use of Confidential Information

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

~~13.5 Unauthorised Use of Intellectual Property~~

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

## 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.

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 the 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 replacement of equivalent calibre and experience, and any such replacement shall be approved by Transnet prior to commencing provision of the Services, such approval not to be unreasonably withheld or delayed.

## 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 The Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Service Provider or its Personnel in connection with the Agreement. The Service Provider'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 the Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.~~

15.4 Subject to clause 15.1 above, and except as provided in clauses 15.2 and 15.3 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 If for any reason the exclusion of liability in clause 15.4 above is void or unenforceable, either Party's total liability for all loss or damage under the Agreement shall be as provided in clause 15.3 above.~~

15.6 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 the 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 the Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Service Provider.

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

16.3 Subject to clause 16.4 below, if the Service Provider fails to effect 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, whereafter either the Service Provider or Transnet may terminate the Agreement on giving the other Party not less than 30 [thirty] calendar days prior written notice to that effect.

## ~~17 CONFIDENTIALITY~~ replace with terms of confidentiality in paragraphs 1 to 6 (both inclusive) of the Letter Agreement

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

- a) not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other, without the prior written consent of such other Party, other than when called upon to do so in accordance with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;
- b) not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of the 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 the 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 the 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 the 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 the 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 the Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;
- h) each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or consultants honour such obligations;
- i) each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;
- j) each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in the Agreement as if such person or entity has signed the Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of the 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 the Agreement by that Party, or its Personnel;
- or



- ~~b) was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or~~
- ~~c) can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or~~
- ~~d) is independently developed by a Party as proven by its written records.~~

17.3 This clause 17 shall survive termination for any reason of the Agreement and shall remain in force and effect from the Commencement Date of the Agreement and 5 [five] years after the termination of the Agreement. Upon termination of the Agreement, all documentation furnished to the Service Provider by Transnet pursuant to the 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 the Agreement or Work Order, Transnet may cancel the 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 <sup>of</sup> the Agreement is ~~for~~ <sup>the date of</sup> ~~signature of the latter Agreement and shall be for a duration in~~ <sup>accordance with its</sup> ~~and the duration shall be for a [0] [[0]] year period, expiring on [0], unless:~~ <sup>terms and those of</sup>

- ~~a) the 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) the Agreement is extended at Transnet's option for a further period to be agreed by the Parties.~~

~~19.2 Either Party may terminate the 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] calendar days of receiving notice specifying the Default and requiring its remedy.~~

~~19.3 Either Party may terminate the 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;~~
- ~~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 the 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] calendar days' written notice.~~

~~19.6 Notwithstanding this clause 19, either Party may cancel the Agreement without cause by giving 30 [thirty] calendar 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 the Agreement or impliedly do so shall remain in force and in effect.~~

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

~~20.3 To the extent that any of the Deliverables and property referred to in clause 20.2 above are in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.~~

~~20.4 In the event that the 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 the such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.~~

~~20.5 The provisions of clauses 1 [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 the Agreement.~~

~~20.6 If either Party [the Defaulting Party] commits a material breach of the Agreement and fails to remedy such breach within 30 [thirty] calendar days of written notice thereof, the other Party [hereinafter the Aggrieved Party], shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the 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~~

~~business rescue~~

*fl*

~~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 the 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 the Agreement or any interest hereunder except with the prior written consent of the other. ~~Further, in the event that Transnet wishes to assign or novate the Agreement to any third party, the Service Provider agrees that it shall not unreasonably withhold or delay its consent to such assignment or novation and that it shall only be entitled to recover from Transnet any reasonable legal costs incurred by it as a direct result of such assignment or novation.~~

## ~~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 the Agreement caused by an act of *force majeure* such as acts of God, fire, flood, war, lockout, government action, laws or regulations, terrorism or civil disturbance, defaults or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the foregoing, any period stipulated for any such performance shall be reasonably extended. Transnet may however rely on strikes, industrial dispute and riots as a ground of *force majeure*.~~

~~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 the Agreement in order to accommodate the new circumstances caused by the act of *force majeure*. If a Party fails to agree to such modifications proposed by the other Party within 90 [ninety] calendar days of the act of *force majeure* first occurring, either Party may thereafter terminate the Agreement with immediate notice.~~

## 23 EQUALITY AND DIVERSITY

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

**24 NON-WAIVER**

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

**25 PARTIAL INVALIDITY**

If any provision of the 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 the 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 the Agreement and shall remain in effect even if the 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.

**27 ADDRESSES FOR NOTICES**

- 27.1 The Parties to the 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 the 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: [●]  
Fax No. [●]  
Attention: Legal Counsel
- (ii) For commercial matters: [●]  
Fax No. [●]  
Attention: [●]

Standard Terms and Conditions of Contract  
Services [March 2015]

**b) The Service Provider**

- (i) For legal notices: [•]  
Fax No. [•]  
Attention: [•]
- (ii) For commercial matters: [•]  
Fax No. [•]  
Attention: [•]

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

**29 AMENDMENT AND CHANGE CONTROL**

- 29.1 Any amendment or change of any nature made to this Agreement ~~and the Schedule of Requirements thereof~~ shall only be valid if it is in writing, signed by both Parties and added to this Agreement as an addendum hereto.
- 29.2 ~~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 proposal is exclusively governed by and shall be construed in accordance with South African law and shall be subject to the jurisdiction of the South African courts.*  
~~The 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**

*agreements relating to the specific transactions will be as negotiated and agreed between the parties*  
In the 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 the Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Fees, Deliverables, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 26 (Dispute Resolution) above.~~

### 31 COUNTERPARTS

The 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 the Agreement by signing any such counterpart.

### 32 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)

32.1 All the stipulations around Transnet's blacklisting process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this blacklisting procedure.

32.2 Blacklisting is a mechanism used to exclude a company/person from future business with Transnet for a specified period. The decision to blacklist is based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "*prima facie*" (i.e. on the face of it) case has been established.

32.3 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to blacklisting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.

32.4 A supplier or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.

32.5 Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:

- a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;
- b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
- c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;
- d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
- e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;

- f) has made any incorrect statement in a certificate or other communication with regard to the Services or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:
  - (i) he made the statement in good faith honestly believing it to be correct; and
  - (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;
- g) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
- h) has litigated against Transnet in bad faith.

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

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

32.7 Where any person or Enterprise has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 Years, such person/Enterprise may also be blacklisted. Serious breaches of the law would include but are not limited to corruption, fraud, theft, extortion, or contraventions of the Competition Act 89 of 1998 (e.g. collusive tendering). This process excludes minor convictions such as traffic offences or personal disagreements between parties which have no bearing on the business operations of the person or Enterprise.

32.8 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Tender Defaulters.

32.9 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.



Standard Terms and Conditions of Contract  
Services [March 2015]

32.10 Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the Chief Financial Officer of Transnet SOC Ltd, whose decision shall be final.

oooOOooo



8/5/2015

6

CONFIDENTIAL

## D. Appendix – Non Disclosure Agreement

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

TRANSNET



This indicative proposal is subject to the terms and conditions relating to confidentiality as set out in the Letter Agreement (paragraphs 1 to 6 inclusive) which has been extensively negotiated with Transnet, is in substantially agreed form and is submitted as an attachment to the covering letter.

**NON DISCLOSURE AGREEMENT - SERVICES****[March 2015]**

N/A

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Transnet Non Disclosure Agreement – Services  
[March 2015]

**THIS AGREEMENT is made between**

**Transnet SOC Ltd [Transnet]** [Registration No. 1990/000900/30]

whose registered office is at 49<sup>th</sup> Floor, Carlton Centre, 150 Commissioner Street, Johannesburg 2001,

**and**

**the Company as indicated in the RFP bid response hereto**

**WHEREAS**

Transnet and the Company wish to exchange Information [as defined below] and it is envisaged that each party may from time to time receive Information relating to the other in respect thereof. In consideration of each party making available to the other such Information, the parties jointly agree that any dealings between them shall be subject to the terms and conditions of this Agreement which themselves will be subject to the parameters of the Bid Document.

**IT IS HEREBY AGREED**

**1. INTERPRETATION**

In this Agreement:

- 1.1 **Agents** mean directors, officers, employees, agents, professional advisers, contractors or sub-contractors, or any Group member;
- 1.2 **Bid or Bid Document** means Transnet's Request for Information [RFI] Request for Proposal [RFP] or Request for Quotation [RFQ], as the case may be;
- 1.3 **Confidential Information** means any information or other data relating to one party [the Disclosing Party] and/or the business carried on or proposed or intended to be carried on by that party and which is made available for the purposes of the Bid to the other party [the Receiving Party] or its Agents by the Disclosing Party or its Agents or recorded in agreed minutes following oral disclosure and any other information otherwise made available by the Disclosing Party or its Agents to the Receiving Party or its Agents, whether before, on or after the date of this Agreement, and whether in writing or otherwise, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:
- a) Is publicly available at the time of its disclosure or becomes publicly available [other than as a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement]; or
  - b) was lawfully in the possession of the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] free of any restriction as to its use or disclosure prior to its being so disclosed; or

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Transnet Non Disclosure Agreement – Services  
[March 2015]

- c) following such disclosure, becomes available to the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] from a source other than the Disclosing Party or its Agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information;

1.4 **Group** means any subsidiary, any holding company and any subsidiary of any holding company of either party; and

1.5 **Information** means all information in whatever form including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by machine-readable medium.

## 2. CONFIDENTIAL INFORMATION

2.1 All Confidential Information given by one party to this Agreement [the Disclosing Party] to the other party [the Receiving Party] will be treated by the Receiving Party as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose [whether in writing or orally or in any other manner] Confidential Information to any other person other than in accordance with the terms of this Agreement.

2.2 The Receiving Party will only use the Confidential Information for the sole purpose of technical and commercial discussions between the parties in relation to the Bid or for the subsequent performance of any contract between the parties in relation to the Bid.

2.3 Notwithstanding clause 2.1 above, the Receiving Party may disclose Confidential Information:

- a) to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 2.2 above, provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or
- b) to the extent required by law or the rules of any applicable regulatory authority, subject to clause 2.4 below.

2.4 In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 2.3 b) above, it shall promptly notify the Disclosing Party and cooperate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.

2.5 In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and if requested take such steps [including the institution of legal proceedings] as shall be necessary to remedy [if capable of remedy] the default and/or to prevent further unauthorised copying, disclosure or use.

2.6 All Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights, including intellectual property rights over the Confidential Information whatsoever, beyond those contained in this Agreement.



JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015



Transnet Non Disclosure Agreement – Services  
[March 2015]

### 3. RECORDS AND RETURN OF INFORMATION

- 3.1 The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof.
- 3.2 The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information provided and any copies made thereof and, so far as is reasonably practicable, of the location of such Confidential Information and any copies thereof.
- 3.3 The Company shall, within 7 [seven] days of receipt of a written demand from Transnet:
- a) return all written Confidential Information [including all copies]; and
  - b) expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Company or on its behalf.
- 3.4 The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 3.3 b) above.

### 4. ANNOUNCEMENTS

- 4.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Bid without the prior written consent of the other party.
- 4.2 Neither party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.

### 5. DURATION

The obligations of each party and its Agents under this Agreement shall survive the termination of any discussions or negotiations between the parties regarding the Bid and continue thereafter for a period of 5 [five] years.

### 6. PRINCIPAL

Each party confirms that it is acting as principal and not as nominee, agent or broker for any other person and that it will be responsible for any costs incurred by it or its advisers in considering or pursuing the Bid and in complying with the terms of this Agreement.

### 7. ADEQUACY OF DAMAGES

Nothing contained in this Agreement shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available to it, either at law or in equity, for any such threatened or actual breach of this Agreement, including specific performance, recovery of damages or otherwise.

### 8. PRIVACY AND DATA PROTECTION

- 8.1 The Receiving Party undertakes to comply with South Africa's general privacy protection in terms Section 14 of the Bill of Rights in connection with this Bid and shall procure that its personnel shall observe the provisions of such Act [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.
- 8.2 The Receiving Party warrants that it and its Agents have the appropriate technical and organisational measures in place against unauthorised or unlawful processing of data relating to the Bid and against accidental loss or destruction of, or damage to such data held or processed by them.

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Transnet Non Disclosure Agreement – Services  
[March 2015]

**9. GENERAL**

- 9.1 Neither party may assign the benefit of this Agreement, or any interest hereunder, except with the prior written consent of the other, save that Transnet may assign this Agreement at any time to any member of the Transnet Group.
- 9.2 No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any right, power or privilege under this Agreement or otherwise.
- 9.3 The provisions of this Agreement shall be severable in the event that any of its provisions are held by a court of competent jurisdiction or other applicable authority to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.
- 9.4 This Agreement may only be modified by a written agreement duly signed by persons authorised on behalf of each party.
- 9.5 Nothing in this Agreement shall constitute the creation of a partnership, joint venture or agency between the parties.
- 9.6 This Agreement will be governed by and construed in accordance with South African law and the parties irrevocably submit to the exclusive jurisdiction of the South African courts.

000000000

N/A



JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

7

CONFIDENTIAL

## E. Appendix – Integrity Pact

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

Please see J.P.Morgan's form of representation letter relating to our global anti-corruption compliance program.



**Important Note:** All potential bidders must read this document and certify in the RFP Declaration Form that they have acquainted themselves with, and agree with the content. The contract with the successful bidder will automatically incorporate this Integrity Pact as part of the final concluded contract.

#### **INTEGRITY PACT**

Between

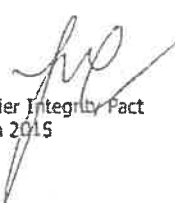
**TRANSNET SOC LTD**

Registration Number: 1990/000900/30

("Transnet")

and

The Bidder / Supplier/ Service Provider / Contractor (hereinafter referred to as the "Bidder / Supplier")

  
Supplier Integrity Pact  
March 2015

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

**PREAMBLE**

Transnet values full compliance with all relevant laws and regulations, ethical standards and the principles of economical use of resources, fairness and transparency in its relations with its Bidders / Suppliers.

In order to achieve these goals, Transnet and the Bidder / Supplier hereby enter into this agreement hereinafter referred to as the "Integrity Pact" which will form part of the Bidder's / Supplier's application for registration with Transnet as a vendor.

The general purpose of this Integrity Pact is to agree on avoiding all forms of dishonesty, fraud and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and subsequent to the currency of any procurement and / or reverse logistics event and any further contract to be entered into between the Parties, relating to such event.

All Bidders / Suppliers will be required to sign and comply with undertakings contained in this Integrity Pact, should they want to be registered as a Transnet vendor.

**1 OBJECTIVES**

- 1.1 Transnet and the Bidder / Supplier agree to enter into this Integrity Pact, to avoid all forms of dishonesty, fraud and corruption including practices that are anti-competitive in nature, negotiations made in bad faith and under-pricing by following a system that is fair, transparent and free from any influence / unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:
- a) Enable Transnet to obtain the desired contract at a reasonable and competitive price in conformity to the defined specifications of the works, goods and services; and
  - b) Enable Bidders / Suppliers to abstain from bribing or participating in any corrupt practice in order to secure the contract.

**2 COMMITMENTS OF TRANSNET**

Transnet commits to take all measures necessary to prevent dishonesty, fraud and corruption and to observe the following principles:

- 2.1 Transnet hereby undertakes that no employee of Transnet connected directly or indirectly with the sourcing event and ensuing contract, will demand, take a promise for or accept directly or through intermediaries any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to any contract.
- 2.2 Transnet will, during the registration and bidding process treat all Bidders / Suppliers with equity, transparency and fairness. Transnet will in particular, before and during the registration process, provide to all Bidders / Suppliers the same information and will not provide to any Bidders / Suppliers confidential / additional information through which the Bidders / Suppliers could obtain an advantage in relation to any bidding process.
- 2.3 Transnet further confirms that its employees will not favour any prospective bidder in any form that could afford an undue advantage to a particular bidder during the tendering stage, and will further treat all Bidders / Supplier participating in the bidding process.
- 2.4 Transnet will exclude from the bidding process such employees who have any personal interest in the Bidders / Suppliers participating in the bidding process.

3

**OBLIGATIONS OF THE BIDDER / SUPPLIER**

- 3.1 The Bidder / Supplier commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any ensuing contract stage in order to secure the contract or in furtherance to secure it and in particular the Bidder / Supplier commits to the following:
- a) The Bidder / Supplier will not, directly or through any other person or firm, offer, promise or give to Transnet or to any of Transnet's employees involved in the bidding process or to any third person any material or other benefit or payment, in order to obtain in exchange an advantage during the bidding process; and
  - b) The Bidder / Supplier will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any employee of Transnet, connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.
- 3.2 The acceptance and giving of gifts may be permitted provided that:
- a) the gift does not exceed R1 000 (one thousand Rand) in retail value;
  - b) many low retail value gifts do not exceed R 1 000 within a 12 month period;
  - c) hospitality packages do not exceed R5 000 in value or many low value hospitality packages do not cumulatively exceed R5 000;
  - d) a Bidder / Supplier does not give a Transnet employee more than 2 (two) gifts within a 12 (twelve) month period, irrespective of value;
  - e) a Bidder / Supplier does not accept more than 1 (one) gift in excess of R750 (seven hundred and fifty Rand) from a Transnet employee within a 12 (twelve) month period, irrespective of value;
  - f) a Bidder / Supplier may under no circumstances, accept from or give to, a Transnet employee any gift, business courtesy, including an invitation to a business meal and /or drinks, or hospitality package, irrespective of value, during any bid evaluation process, including a period of 12 (twelve) months after such tender has been awarded, as it may be perceived as undue and improper influence on the evaluation process or reward for the contract that has been awarded; and
  - g) a Bidder / Supplier may not offer gifts, goods or services to a Transnet employee at artificially low prices, which are not available to the public at those prices.
- 3.3 The Bidder / Supplier will not collude with other parties interested in the contract to preclude a competitive bid price, impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract. The Bidder / Supplier further commits itself to delivering against all agreed upon conditions as stipulated within the contract.
- 3.4 The Bidder / Supplier will not enter into any illegal or dishonest agreement or understanding, whether formal or informal with other Bidders / Suppliers. This applies in particular to certifications, submissions or non-submission of documents or actions that are restrictive or to introduce cartels into the bidding process.
- 3.5 The Bidder / Supplier will not commit any criminal offence under the relevant anti-corruption laws of South Africa or any other country. Furthermore, the Bidder / Supplier will not use for illegitimate purposes or for restrictive purposes or personal gain, or pass on to others, any information provided by Transnet as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

Private &amp; Confidential

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

- 3.6 A Bidder / Supplier of foreign origin shall disclose the name and address of its agents or representatives in South Africa, if any, involved directly or indirectly in the registration or bidding process. Similarly, the Bidder / Supplier of South African nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the registration or bidding process.
- 3.7 The Bidder / Supplier will not misrepresent facts or furnish false or forged documents or information in order to influence the bidding process to the advantage of the Bidder / Supplier or detriment of Transnet or other competitors.
- 3.8 The Bidder / Supplier shall furnish Transnet with a copy of its code of conduct, which code of conduct shall reject the use of bribes and other dishonest and unethical conduct, as well as compliance programme for the implementation of the code of conduct.
- 3.9 The Bidder / Supplier will not instigate third persons to commit offences outlined above or be an accessory to such offences.

#### 4 INDEPENDENT BIDDING

- 4.1 For the purposes of that Certificate in relation to any submitted Bid, the Bidder declares to fully understand that the word "competitor" shall include any individual or organisation, other than the Bidder, whether or not affiliated with the Bidder, who:
- a) has been requested to submit a Bid in response to this Bid invitation;
  - b) could potentially submit a Bid in response to this Bid invitation, based on their qualifications, abilities or experience; and
  - c) provides the same Goods and Services as the Bidder and/or is in the same line of business as the Bidder.
- 4.2 The Bidder has arrived at his submitted Bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium will not be construed as collusive bidding.
- 4.3 In particular, without limiting the generality of paragraph 5 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
- a) prices;
  - b) geographical area where Goods or Services will be rendered [market allocation];
  - c) methods, factors or formulas used to calculate prices;
  - d) the intention or decision to submit or not to submit, a Bid;
  - e) the submission of a Bid which does not meet the specifications and conditions of the RFP; or
  - f) bidding with the intention of not winning the Bid.
- 4.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the Goods or Services to which his/her Bid relates.
- 4.5 The terms of the Bid as submitted have not been, and will not be, disclosed by the Bidder, directly or indirectly, to any competitor, prior to the date and time of the official Bid opening or of the awarding of the contract.
- 4.6 Bidders are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, Bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in



terms of section 59 of the Competition Act No 89 of 1998 and/or may be reported to the National Prosecuting Authority [NPA] for criminal investigation and/or may be restricted from conducting business with the public sector for a period not exceeding 10 [ten] years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

## 5 DISQUALIFICATION FROM BIDDING PROCESS

- 5.1 If the Bidder / Supplier has committed a transgression through a violation of section 3 of this Integrity Pact or in any other form such as to put its reliability or credibility as a Bidder / Supplier into question, Transnet may reject the Bidder's / Supplier's application from the registration or bidding process and remove the Bidder / Supplier from its database, if already registered.
- 5.2 If the Bidder / Supplier has committed a transgression through a violation of section 3, or any material violation, such as to put its reliability or credibility into question. Transnet may after following due procedures and at its own discretion also exclude the Bidder / Supplier from future bidding processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, which will include amongst others the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder / Supplier and the amount of the damage. The exclusion will be imposed for up to a maximum of 10 (ten) years. However, Transnet reserves the right to impose a longer period of exclusion, depending on the gravity of the misconduct.
- 5.3 If the Bidder / Supplier can prove that it has restored the damage caused by it and has installed a suitable corruption prevention system, or taken other remedial measures as the circumstances of the case may require, Transnet may at its own discretion revoke the exclusion or suspend the imposed penalty.

## 6 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)

- 6.1 All the stipulations around Transnet's blacklisting process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this blacklisting procedure.
- 6.2 Blacklisting is a mechanism used to exclude a company/person from future business with Transnet for a specified period. The decision to blacklist is based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "*prima facie*" (i.e. on the face of it) case has been established.
- 6.3 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to blacklisting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.
- 6.4 A supplier or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.
- 6.5 Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:

- a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;
- b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
- c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;
- d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
- e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;
- f) has made any incorrect statement in a certificate or other communication with regard to the Local Content of his Goods or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:
  - (i) he made the statement in good faith honestly believing it to be correct; and
  - (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;
- g) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
- h) has litigated against Transnet in bad faith.

6.6 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Tender Defaulters.

6.7 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.

## 7 PREVIOUS TRANSGRESSIONS

7.1 The Bidder / Supplier hereby declares that no previous transgressions resulting in a serious breach of any law, including but not limited to, corruption, fraud, theft, extortion and contraventions of the Competition Act 89 of 1998, which occurred in the last 5 (five) years with any other public sector undertaking, government department or private sector company that could justify its exclusion from its registration on the Bidder's / Supplier's database or any bidding process.

7.2 If it is found to be that the Bidder / Supplier made an incorrect statement on this subject, the Bidder / Supplier can be rejected from the registration process or removed from the Bidder / Supplier database, if already registered, for such reason (refer to the Breach of Law Form contained in the applicable RFX document.)

## 8 SANCTIONS FOR VIOLATIONS

8.1 Transnet shall also take all or any one of the following actions, wherever required to:

- a) Immediately exclude the Bidder / Supplier from the bidding process or call off the pre-contract negotiations without giving any compensation the Bidder / Supplier. However, the proceedings with the other Bidders / Suppliers may continue;
- b) Immediately cancel the contract, if already awarded or signed, without giving any compensation to the Bidder / Supplier;
- c) Recover all sums already paid by Transnet;
- d) Encash the advance bank guarantee and performance bond or warranty bond, if furnished by the Bidder / Supplier, in order to recover the payments, already made by Transnet, along with interest;
- e) Cancel all or any other contracts with the Bidder / Supplier; and
- f) Exclude the Bidder / Supplier from entering into any bid with Transnet in future.

## 9 CONFLICTS OF INTEREST

9.1 A conflict of interest includes, inter alia, a situation in which:

- a) A Transnet employee has a personal financial interest in a bidding / supplying entity; and
- b) A Transnet employee has private interests or personal considerations or has an affiliation or a relationship which affects, or may affect, or may be perceived to affect his / her judgment in action in the best interest of Transnet, or could affect the employee's motivations for acting in a particular manner, or which could result in, or be perceived as favouritism or nepotism.

9.2 A Transnet employee uses his / her position, or privileges or information obtained while acting in the capacity as an employee for

- a) Private gain or advancement; or
- b) The expectation of private gain, or advancement, or any other advantage accruing to the employee must be declared in a prescribed form.

Thus, conflicts of interest of any bid committee member or any person involved in the sourcing process must be declared in a prescribed form.

9.3 If a Bidder / Supplier has or becomes aware of a conflict of interest i.e. a family, business and / or social relationship between its owner(s) / member(s) / director(s) / partner(s) / shareholder(s) and a Transnet employee / member of Transnet's Board of Directors in respect of a bid which will be considered for the bid process, the Bidder / Supplier:

- a) must disclose the interest and its general nature, in the Request for Proposal ("RFX") declaration form; or
- b) must notify Transnet immediately in writing once the circumstances has arisen.

9.4 The Bidder / Supplier shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any committee member or any person involved in the sourcing process, where this is done, Transnet shall be entitled forthwith to rescind the contract and all other contracts with the Bidder / Supplier.

## 10 MONITORING

10.1 Transnet will be responsible for appointing an independent Monitor to:

- a) Conduct random monitoring of compliance to the provisions of this Integrity Pact for contracts entered into between Transnet and the Bidder / Supplier for less than R100,000,000 (one hundred million Rand) in value;
- b) Monitor compliance to the provisions of this Integrity Pact for contracts entered into between Transnet and the Bidder / Supplier for greater than R100,000,000 (one hundred million Rand) in value; and
- c) Investigate any allegation of violation of any provisions of this Integrity Pact for contracts entered into between Transnet and the Bidder / Supplier, irrespective of value.

10.2 The Monitor will be subjected to Transnet's Terms of Conditions of Contract for the Provision of Services to Transnet, as well as to Transnet's Supplier Code of Conduct.

**11 EXAMINATION OF FINANCIAL RECORDS, DOCUMENTATION AND/OR ELECTRONIC DATA**

For the purpose of Monitoring, as stipulated above, the Monitor shall be entitled to:

- a) Examine the financial records, documentation and or electronic data of the Bidder / Supplier / Transnet. The Bidder / Supplier / Transnet shall provide all requested information / documentation / data to the Monitor and shall extend all help possible for the purpose of such examination.

**12 DISPUTE RESOLUTION**

12.1 Transnet recognises that trust and good faith are pivotal to its relationship with its Bidders / Suppliers. When a dispute arises between Transnet and its Bidder / Supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, following a blacklisting process as mentioned in paragraph 6 above, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

- a) **Vexatious proceedings:** these are frivolous proceedings which have been instituted without proper grounds;
- b) **Perjury:** where a supplier makes a false statement either in giving evidence or on an affidavit;
- c) **Scurrilous allegations:** where a supplier makes allegations regarding a senior Transnet employee which are without proper foundation, scandalous, abusive or defamatory; and
- d) **Abuse of court process:** when a supplier abuses the court process in order to gain a competitive advantage during a bid process.

**13 GENERAL**

- 13.1 This Integrity Pact is governed by and interpreted in accordance with the laws of the Republic of South Africa.
- 13.2 The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the law relating to any civil or criminal proceedings.
- 13.3 The validity of this Integrity Pact shall cover all the bidding processes and will be valid for an indefinite period unless cancelled by either Party.
- 13.4 Should one or several provisions of this Integrity Pact turn out to be invalid the remainder of this Integrity Pact remains valid.
- 13.5 Should a Bidder / Supplier be confronted with dishonest, fraudulent or corruptive behaviour of one or more Transnet employees, Transnet expects its Bidders / Suppliers to report this behaviour directly to a senior Transnet official / employee or alternatively by using Transnet's "Tip-Off Anonymous" hotline number 0800 003 056, whereby your confidentiality is guaranteed.

The Parties hereby declare that each of them has read and understood the clauses of this Integrity Pact and shall abide by it. To the best of the Parties' knowledge and belief, the information provided in this Integrity Pact is true and correct.

ooo000ooo

Private & Confidential

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

8

CONFIDENTIAL

## F. Appendix - Letter Agreement

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

DRAFT – NOT FOR SIGNATURE  
TO BE PRINTED ON A J.P. MORGAN LETTERHEAD

STRICTLY CONFIDENTIAL

Attention:

Date:

Dear Sirs

Transnet SOC Ltd (the “Company”) is proposing to enter into a US\$2.5billion loan facility with a committed first tranche of US\$1.5billion and a further optional tranche of US\$1billion at the Company’s option (the “Loan”) with China Development Bank (“CDB”) to finance part of the Company’s purchase of locomotives from China North Railways and China South Railways. In connection with this Loan, the Company and JPMorgan Chase Bank N.A., Johannesburg Branch (“JPMC”) and/or its affiliates (“JPMC Representatives”) are considering entering into a hedging transaction in the form of a series of cross currency swaps and credit contingent structures in the form of Contingent Credit Default Swaps (the “Transaction”). JPMC and the Company (collectively the “Parties” and each a “Party”) hereby agree as follows.

1. Each Party agrees and undertakes that all Confidential Information (as defined below) received by it (the “Receiving Party”) from the other Party (the “Disclosing Party”), as well as the nature, form and content of the Transaction, the identity and role of JPMC and JPMC’s Representatives and any subsequent execution of the Transaction shall be kept confidential and shall not, without the prior written consent of the Disclosing Party, be disclosed by the Receiving Party. The Company further agrees to disclose the Confidential Information only to such of its employees and professional advisers (collectively “Company’s Representatives”) who need to know the Confidential Information for the purpose of the Transaction. Prior to receipt of any Confidential Information, each Party shall ensure that its Representatives are aware of and adhere to the obligations of confidentiality set out in this Agreement. Each Party hereby agrees to be responsible for any breach of this Agreement by its Representatives. Each Party agrees that the Confidential Information shall not be used by it or its Representatives other than in connection with an evaluation of the Transaction and any decision to proceed with and/or execute the Transaction or any part thereof.
2. The Confidential Information shall be returned to the Disclosing Party or destroyed (to the extent reasonably practicable) following the Disclosing Party’s written request, save for that Confidential

DRAFT – NOT FOR SIGNATURE  
TO BE PRINTED ON A J.P. MORGAN LETTERHEAD

Information which the Receiving Party or its Representatives are requested or required to retain by any regulatory, supervisory or governmental authority, institution or department; under court process or pursuant to statutory requirement or regulation; pursuant to such Party's or its Representative's internal audit, legal or compliance policies or procedures; or which has been created pursuant to electronic archiving procedures. The Receiving Party shall supply a written confirmation of such destruction to the Disclosing Party upon request.

3. Notwithstanding anything to the contrary contained herein, it is understood that:

- (i) each Party and its Representatives may disclose the Confidential Information or portions thereof: (a) at the request of any regulatory, supervisory or governmental authority, institution or department; or (b) under court process or pursuant to statutory requirement or regulation; or (c) to its or its Representative's auditors, external counsel or accountants; and
- (ii) JPMC and its Representatives may disclose the Confidential Information or portions thereof: (a) to the institutions referred to in clause 9(b), on a confidential basis; or (b) to affiliates or subsidiaries of JPMorgan Chase & Co; and
- (iii) the Company and its Representatives may disclose each cross-currency swap confirmation, in the form of Annex 1 hereto, to CDB upon execution of the cross-currency swap concerned; provided that CDB will be under an obligation of confidentiality in this regard to the Company; and
- (iv) the Company will report the Transaction in their annual report in accordance with applicable reporting standards.

4. In this Agreement, "Confidential Information" shall mean all information, analyses, compilations, studies, documents or other material (whether communicated orally, in written form or other media) obtained by one Party or its Representatives from the other Party or any of such Disclosing Party's Representatives in connection with the Transaction, the Loan and/or relating to the Disclosing Party, including any execution of any part of the Transaction, together with any analyses, compilations, studies, documents or other material written or otherwise prepared by the Disclosing Party or its Representatives, which reflects or incorporates such information, as well as the nature, form and content of the Transaction, the identity and role of JPMC and JPMC's Representatives; provided that



DRAFT – NOT FOR SIGNATURE  
TO BE PRINTED ON A J.P. MORGAN LETTERHEAD

“Confidential Information” shall not include:

- a) information or material which at the time of its disclosure is, or which thereafter becomes part of the public domain other than as a result of a disclosure by the Receiving Party or its Representatives in violation of this Agreement; and
  - b) information or material which the Receiving Party can show was in its possession, or the possession of one or more of its Representatives, at the time of disclosure and was not acquired directly or indirectly, under a confidentiality obligation.
5. It is further understood and agreed that any breach of the obligations of confidentiality in this Agreement could cause the other Party irreparable injury and that monetary damages may not be adequate remedy for any such breach. In the event of a breach or threatened breach by a Party or its Representatives of any of the confidentiality provisions of this Agreement, the other Party shall be entitled to seek injunctive relief in any court of competent jurisdiction restraining the Party in breach from breaching the terms hereof or from disclosing any Confidential Information to any person.
6. The obligations of confidentiality owed hereunder by the Parties shall expire after a period of 3 years from the date hereof.
7. Subject always to clause 10 hereof JPMC will act as sole hedge counterparty to the Company in connection with the Loan on the terms of the Transaction. The Company will hedge each draw-down of the Loan with JPMC at or about the time of each draw-down by way of entering into a cross-currency swap and a Contingent Credit Default Swap, up to an aggregate cross-currency swaps notional amount of US\$1.5billion, subject to the market conditions, and the same number of credit contingent structures. Each part of the Transaction, subject to any changes in market conditions, such as liquidity and volatility, and provided there is no *force majeure* (as defined below), will be priced based on the following charges from an agreed mid price:

Trading Charge (bps)	Credit Valuation Adjustment (bps)	Credit Contingent Default Swap charge (bps)
12.9	7	-112.5

For the avoidance of doubt:

DRAFT – NOT FOR SIGNATURE  
TO BE PRINTED ON A J.P. MORGAN LETTERHEAD

- a) the Trading Charge and the Credit Valuation Adjustment will apply to each cross-currency swap substantially on the terms of Annex 1 hereto,
- b) the Contingent Credit Default Swap charge will apply to each Contingent Credit Default Swap concluded at each Loan drawn-down substantially on the terms of Annex 2 hereto.
- c) *Force majeure* means any of the following extraordinary and unavoidable circumstances in given conditions if as a result of its occurrence, subject to the ability to perform an alternative obligation or other measures agreed between the Parties, either the Company or JPMC as the case may be become unable to perform any or all of its payment or delivery obligations, as well as other material obligations under either a cross-currency swap or the Contingent Credit Default Swap:
  - i) riot, insurrection, revolution, invasion or blockade;
  - ii) fire, flood or other acts of God;
  - iii) war, civil war, military actions, state of emergency or martial law; or
  - iv) other extraordinary and unavoidable circumstances, the consequences of which render either Party unable to perform.

The provisions of this clause 7 shall remain in effect for a period of 3 years from the date hereof, or as may otherwise be agreed by written agreement between the Parties.

- 8. The Company hereby authorises JPMC to commence pre-hedging for the Transaction with effect from the date hereof, it being understood that the gains or losses resulting from such pre-hedging shall be for the account of JPMC and JPMC's Representatives only, in the event that the Transaction does not proceed and provided further that the JPMC and its Representatives warrants that it shall not engage in any front-running or other practice akin thereto.
- 9. The Parties hereby further acknowledge and agree that:
  - a) the Transaction may subsequently be partially novated by JPMC and/or JPMC's Representatives, as applicable, to the Company's relationship banks approved by JPMC. In order to facilitate this process and prior to any part of the Transaction being executed, the Company undertakes and agrees to provide JPMC's authorised employee representatives, as notified to the Company in writing, on a confidential basis, with the non-binding estimates of the credit and market risk appetite of its relationship banks;
  - b) in order to reduce JPMC's and/or JPMC's Representatives' market and credit risk exposure under any Transaction that is executed, the Company undertakes and agrees, and will procure that the Company's Representatives undertake and agree, to provide all assistance as may be reasonably

DRAFT – NOT FOR SIGNATURE  
TO BE PRINTED ON A J.P. MORGAN LETTERHEAD

requested by JPMC and/or JPMC's Representatives to effect any subsequent novation or transfer, including: (i) authorising JPMC and/or JPMC's Representatives to approach the potential transferees identified by the Company pursuant to sub-clause 9 (a) and/or potential protection sellers, including, but not limited to, CDB, the African Development Bank ("ADB") and the Multilateral Investment Guarantee Agency ("MIGA"); (ii) providing any information reasonably requested by JPMC or JPMC's Representatives; and/or (iii) making the Company's senior management and representatives available to participate in meetings with potential transferees, at such times and places as JPMC may reasonably request;

- c) in order to effect any of the potential novations referred to in sub-clause 9 (a) above, the Company may run a credit auction among the Company's and JPMC's relationship banks, on a confidential basis;
- d) the Company has separately engaged Regiments Capital Proprietary Limited ("RC") to act as its financial adviser in relation to the Loan and for the Transaction and the Company understands and agrees that JPMC will not rely upon any services or work performed by any advisors of the Company, including RC. Accordingly, the Company agrees that JPMC and JPMC's Representatives shall have no liability to the Company or to any of its subsidiaries or affiliates or its or their respective directors, officers, employees, partners, shareholders or other security holders or creditors for any actions or omissions of such other advisors (including specifically RC) and including in respect of the advice of such other advisors in relation to the Transaction;

10. The Parties hereby agree that:

- a) the Transaction is subject to:
  - a. JPMC obtaining all credit, risk, market risk, compliance, legal and reputational approvals; and
  - b. the Company providing to JPMC a legal opinion from the Company's external legal advisers in the form which is satisfactory to JPMC prior to entering into the first cross-currency swap hereunder;
- b) nothing in this Agreement constitutes an agreement or commitment of JPMC or JPMC's Representatives to act as arranger, underwriter, lead manager, bookrunner or mandated lead arranger or to provide all or any part of the Loan or any other financing or to enter into the Transaction. Any

DRAFT – NOT FOR SIGNATURE  
TO BE PRINTED ON A J.P. MORGAN LETTERHEAD

agreement to act in any such capacity or to provide any additional services would, amongst other things, be subject to the negotiation and execution of separate engagement letter(s) and/or underwriting agreement(s) on terms acceptable to JPMC or, as the case may be, such JPMC Representatives as customarily act in the relevant capacity and/or provide the relevant services. Any such engagement letter(s) or underwriting agreement(s) would be on terms (including as to remuneration, indemnification, costs and expenses) acceptable to JPMC or JPMC's Representatives and would be entered into with the Company and/or its affiliate(s) or special purpose vehicle(s) acceptable to JPMC or JPMC's Representatives; and

c) JPMC shall not be responsible for, and will not be deemed as, advising the Company or any other person or entity on the suitability or corporate implications of the Loan, the Transaction or any other transaction specified herein, performing on the Company's behalf due diligence investigations in connection with the Loan or the Transaction, nor giving the Company legal, accounting, taxation, regulatory, ratings or investment advice in relation to the Loan, the Transaction or any other transaction. Accordingly, the Company specifically confirms that it has obtained its own legal, accounting, taxation, regulatory, rating, financial and/or investment advice as to the effects of entering into a cross-currency swap and a corresponding Contingent Credit Default Swap on the same day as opposed to their execution on two different days. The Company agrees that any decision of the Company to proceed with the execution of a cross-currency swap and a corresponding Contingent Credit Default Swap on the same day or on two different days will be made on the basis of such independent accounting advice.

11. Where this Agreement imposes any obligations on a Party's Representatives, such obligation shall be deemed to include an obligation on the Party concerned to procure that such persons comply with such obligations.
12. This Agreement shall be governed by, and construed in accordance with the laws of the Republic of South Africa, and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the High Court of South Africa, Johannesburg in connection with any dispute related to or brought under this Agreement.
13. This Agreement constitutes the entire agreement between the Parties as to the subject matter hereof, no representations having been made by either Party except as are herein specifically set forth. No rights or obligations other than those expressly recited herein are to be implied from this Agreement.

DRAFT -- NOT FOR SIGNATURE  
TO BE PRINTED ON A J.P. MORGAN LETTERHEAD

Please acknowledge your agreement to the foregoing by countersigning this letter, and returning an original copy to us.

Yours faithfully,

*DRAFT -- NOT FOR SIGNATURE*

\_\_\_\_\_  
For and on behalf of  
JPMorgan Chase Bank N.A.,  
Johannesburg Branch

Accepted and agreed:  
for and on behalf of  
Transnet SOC Ltd:

*DRAFT -- NOT FOR SIGNATURE*

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

9

CONFIDENTIAL

**G. Appendix - Representation Letter (relating to JPMorgan Chase's  
Global Anti-corruption Compliance Program)**

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

# J.P.Morgan

8 May 2015

Transnet Soc Limited  
The Secretariat  
Transnet Acquisition Counsel  
Carlton Centre  
Tender Box  
Office Block Foyer  
150 Commissioner Street  
Johannesburg 2001

RE: JPMorgan Chase & Co. Global Anti-Corruption Compliance Program

Dear Sir or Madam:

This letter is to inform you that JPMorgan Chase & Co., including each of its subsidiaries, ("JPMC") is firmly committed to participating in international efforts to combat corruption.

JPMC has established an Anti-Corruption Policy that requires compliance with the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and other applicable anti-corruption laws. The Anti-Corruption Policy is referenced in the publicly available JPMC Code of Conduct.

The JPMC Anti-Corruption Policy:

- Affirms that JPMC has zero tolerance for bribery – whether direct or indirect or in the public or private sector;
- Requires that relevant employees and third parties receive anti-corruption training;
- Explains how JPMC employees may report and escalate corruption-related issues;
- Requires employees to accurately maintain books and records related to the firm's business;
- Prohibits cash gifts and equivalents (e.g., gift cards);
- Establishes a system of internal controls requiring adherence to special procedures when anything of value is provided to a government official to ensure that the benefit is reasonable and customary, proportionate to the underlying business purpose related to it, compliant with local law, and transparently documented;
- Establishes a system of internal controls requiring preclearance of the following items when provided directly or indirectly to a non-U.S. government official:
  - Gifts and Business Hospitality
  - Honoraria and Speaker Fees
  - Visa Letters
  - Political Contributions

JPMorgan Chase Bank, N.A. (Johannesburg Branch) 1 Fricker Road, Cnr Hurlingham Road, Illovo, Johannesburg 2196, South Africa  
Private Bag X9936, Sandton 2146, South Africa

Telephone: +27 (11) 507 0300 Facsimile: +27 (11) 507 0353

James S. Crown, Laban P. Jackson Jr., Marianne Lake, William C. Weldon (Non-Executive Chairman), Matthew E. Zames  
Organised under the Federal Law of the United States

A subsidiary of JP Morgan Chase & Co.  
Registration Number: 2001/016069/10 Vat Number: 4290195686

Authorised Financial Services Provider



# J.P.Morgan

- Establishes a system of internal controls requiring preclearance of contributions to a charity or other philanthropic organization recommended by, or that would benefit, a non-U.S. government official;
- Prohibits facilitation payments;
- Establishes a system of controls requiring pre-clearance of any offer of JPMC employment (whether paid or unpaid) to a candidate who is referred by a government official, or an existing or potential client/business partner;
- Establishes a system of controls involving the engagement of entities that act as agents on behalf of JPMC in order to (1) obtain or retain business from any third party, or (2) interact with government officials; and
- Requires employees to assess the corruption risk associated with their transaction types.

JPMC is a publicly traded company that is regulated by various U.S. federal and state banking and securities regulators as well as other regulatory organizations, including self regulatory organizations and other U.S. and non-U.S. governmental agencies that have supervisory authority over certain legal entities. For more information concerning JPMC's businesses and the products and services offered, please feel free to visit our website at [www.jpmorgan.com](http://www.jpmorgan.com).

Compliance with the legal and regulatory requirements that govern the interactions with government officials, clients, potential clients, and other third parties is critical for JPMC to protect itself, its shareholders and the international financial system from the abuses of corruption and illicit finance. Moreover, compliance with the Anti-Corruption Policy and internal procedures allows JPMC to maintain good standing in the jurisdictions where it transacts business.

If you have any questions or require further information regarding JPMC's anti-corruption efforts, please call me at +27 11 507 0730.

Sincerely,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

JPMorgan Chase Bank, N.A., Johannesburg Branch



\* Affidavit letter

TRANSNET



J.P. Morgan Chase Bank  
Johannesburg Branch,  
1 Fricker Road Illovo,  
Johannesburg,  
2196

Tel: 011 507 0730

Email: marc.f.hussey@jpmorgan.com

Dear Sir/Madam

**DESCRIPTION: GSM/15/05/1265 FOR THE PROVISION OF HEDGING FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD ARRANGE THE SYNDICATED ZAR 12 BILLION LOAN FOR A PERIOD OF UP TO FIFTEEN (15) YEARS**

Your proposal dated 06 May 2015 refers.

This letter serves to confirm that your company has been selected as the Preferred Bidder to supply the Transnet Corporate Centre, with the abovementioned service.

Transnet SOC Ltd will engage with JP Morgan Chase Bank, to finalize and agree on the letter of agreement, which will detail the Terms and Conditions of the final agreement. Furthermore, Supplier Development commitments will be concluded on a separate Supplier Development agreement.

Kindly acknowledge receipt of this communiqué by return fax or scanned and e-mail.

Name: Marc Hussey

Date: 21/5/15

Signature: [Signature]

Company Name: JP Morgan Chase Bank Johannesburg Branch

Yours Sincerely,

[Signature]

Anoj Singh  
Group Chief Financial Officer  
Transnet SOC Ltd.

Date: 21/5/15

Transnet SOC Ltd  
Registration Number  
1990/000900/00

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: LC Mabaso (Chairperson) B Molefe\* (Group Chief Executive) Y Forbes GJ Mahlaele PEB Mathekega N Moola ZA Nagdee VM Nkonyane  
MR Seleke SD Shane BG Stegman PG Williams A Singh\* (Group Chief Financial Officer)

\*Executive  
Group Company Secretary: ANC Ceba

www.transnet.net

# J.P.Morgan

The terms of the particular Cross-Currency Rate Swap Transaction to which this Confirmation relates are as follows:

## TRANSACTION DETAILS

JPMorgan Deal Number(s): \*\*\*\*\*

Trade Date: [•] 2015

Effective Date: 01 May 2015

Termination Date: 01 May 2030, subject to adjustment in accordance with the Modified Following Business Day Convention.

## Floating Amounts I:

Floating Rate Payer: JPMorgan

Floating Rate Payer Currency Amount: The Floating Rate Payer Currency Amount set out in respect of the relevant Calculation Period in Schedule 1 (USD Floating Rate Payer Currency Amounts).

Floating Rate Payer Payment Dates: 01 February, 01 May, 01 August and 01 November in each year from and including 01 May 2015 to and including the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.

## Floating Rate Option:

USD-LIBOR-BBA,

## Designated Maturity:

3 Months

## Spread:

257000 percent

## Floating Rate Day Count Fraction:

Actual/360

## Reset Dates:

The last day of each Calculation Period.

## Compounding:

Inapplicable

## Business Days:

New York and London

## Floating Amounts II:

Floating Rate Payer: Counterparty

Floating Rate Payer Currency: The Floating Rate Payer Currency Amount set out in

## J.P.Morgan

Amount: respect of the relevant Calculation Period in Schedule 2 (ZAR Floating Rate Payer Currency Amounts).

Floating Rate Payer Payment Dates: 01 February, 01 May, 01 August and 01 November in each year from and including 01 May 2015 to and including the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.

Floating Rate Option: ZAR-JIBAR-3M SAFEX

Designated Maturity: 3 Months

Spread: 4.44 percent *Does not include*

Floating Rate Day Count Fraction: Actual/360

Reset Dates: The last day of each Calculation Period.

Compounding: Inapplicable

Business Days: Johannesburg and London

Calculation Agent: JPMorgan, unless otherwise stated in the Agreement

Initial Exchange:

Initial Exchange Date: Effective Date

Counterparty Initial Exchange Amount: USD 100,000,000

JPMorgan Initial Exchange Amount: ZAR 1,200,000,000

Interim Exchanges:

Counterparty Interim Exchange Dates: 01 February, 01 May, 01 August and 01 November in each year from, and including, 01 November 2019 to, but excluding, the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.

Counterparty Interim Exchange Amount: In respect of each Interim Exchange Date, ZAR 27,906,976.74

JPMorgan Interim Exchange Dates: 01 February, 01 May, 01 August and 01 November in each year from, and including, 01 November 2019 to,




## **REPORT 2(B) – EXHIBIT 29**

**TRANSNET SOC LTD**

[Registration No. 1990/000900/30]

**REQUEST FOR PROPOSAL [RFP]**

**FOR THE PROVISION OF HEDGING FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS**

<b>RFP NUMBER</b>	<b>GSM/15/05/1265</b>
<b>ISSUE DATE:</b>	<b>06 May 2015</b>
<b>CLOSING DATE:</b>	<b>08 May 2015</b>
<b>CLOSING TIME:</b>	<b>12:00</b>
<b>BID VALIDITY PERIOD:</b>	<b>120 days Business Days from Closing Date</b>

**SCHEDULE OF BID DOCUMENTS**

<b>Section No</b>	<b>Page</b>
<b>SECTION 1: NOTICE TO BIDDERS</b>	
1 INVITATION TO BID	3
2 FORMAL BRIEFING	3
3 PROPOSAL SUBMISSION	3
4 DELIVERY INSTRUCTIONS FOR RFP	4
5 BROAD-BASED BLACK ECONOMIC EMPOWERMENT AND SOCIO-ECONOMIC OBLIGATIONS	4
6 COMMUNICATION	6
7 CONFIDENTIALITY	6
8 INSTRUCTIONS FOR COMPLETING THE RFP	7
9 COMPLIANCE	7
10 DISCLAIMERS	7
11 LEGAL REVIEW	8
<b>SECTION 2: SCOPE OF REQUIREMENTS</b>	
1 SCOPE OF REQUIREMENTS	8
2 GREEN ECONOMY / CARBON FOOTPRINT	9
3 GENERAL SERVICE PROVIDER OBLIGATIONS	9
4 EVALUATION METHODOLOGY	10
<b>SECTION 3: PRICING</b>	
1 SERVICE LEVELS	13
<b>SECTION 4: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS</b>	15
<b>SECTION 5: RFP DECLARATION AND BREACH OF LAW FORM</b>	21
<b>SECTION 6: RFP CLARIFICATION REQUEST FORM</b>	24
<b>SECTION 7: B-BBEE STATUS</b>	25
<b>SECTION 8 : SUPPLIER DEVELOPMENT INITIATIVES</b>	27
<b>SECTION 9 : DECLARATION OF SUPPLIER DEVELOPMENT COMMITMENTS</b>	31
<b>SECTION 10 : B-BBEE IMPROVEMENT PLAN</b>	32
<b>SECTION 11 : VENDOR APPLICATION FORM</b>	33
<b>RFP ANNEXURES:</b>	
ANNEXURE A TECHNICAL PREQUALIFICATION	
ANNEXURE B SUPPLIER DEVELOPMENT VALUE SUMMARY	
ANNEXURE C SUPPLIER DEVELOPMENT PLAN	
ANNEXURE D B-BBEE IMPROVEMENT PLAN	
<b>RFP APPENDICES:</b>	
APPENDIX (i) SD GUIDELINES	
APPENDIX (ii) GENERAL BID CONDITIONS	
APPENDIX (iii) SERVICES STANDARD TERMS AND CONDITIONS OF CONTRACT	
APPENDIX (iv) NON DISCLOSURE AGREEMENT SERVICES	
APPENDIX (v) SUPPLIER INTEGRITY PACT	



**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS**

**Section 1: NOTICE TO BIDDERS**

**1 INVITATION TO BID**

Responses to this RFP [hereinafter referred to as a **Bid** or a **Proposal**] are requested from persons, companies, close corporations or enterprises [hereinafter referred to as an **entity, Respondent** or **Bidder**].

<b>DESCRIPTION</b>	The Provision of Hedging of Financial Risks (Interest Rate, Credit and Currency Risk) and to Lead and Underwrite the Equivalent Syndicate ZAR Loan for a period of fourteen (14) years.
<b>BID FEE AND BANKING DETAILS</b>	This RFP is issued free of charge.
<b>INSPECT / COLLECT DOCUMENTS FROM</b>	This RFP will be emailed to potential bidders.
<b>ISSUE DATE AND COLLECTION DATE DEADLINE</b>	This RFP will be emailed to potential bidders.
<b>COMPULSORY/NON COMPULSORY BRIEFING SESSION</b>	No briefing session will be held.
<b>CLOSING DATE</b>	<b>12:00 on Friday 08 May 2015</b> Bidders must ensure that bids are delivered timeously to the correct address. As a general rule, if a bid is late or delivered to the incorrect address, it will not be accepted for consideration.
<b>VALIDITY PERIOD</b>	<b>120 Business Days from Closing Date</b> Bidders are to note that they may be requested to extend the validity period of their bid, at the same terms and conditions, if the internal evaluation process has not been finalised within the validity period.

Any additional information or clarification will be faxed or emailed to all Respondents, if necessary.

**2 FORMAL BRIEFING**

A formal briefing session will not be held but should Respondents have specific queries they should email these to the Transnet employee(s) indicated in paragraph 6 [Communication] below:

**3 PROPOSAL SUBMISSION**

Proposals must be submitted in a sealed envelope addressed as follows:

The Secretariat, Transnet Acquisition Council  
RFP No: GSM/15/05/1265  
Description: The Provision of Hedging of Financial Risks (Interest Rate, Credit and Currency Risk) and to Lead and Underwrite the Equivalent Syndicate ZAR Loan for a period of fourteen (14) years.  
Closing date and time: 08 May 2015 at 12:00  
Closing address: [Refer to options in paragraph 4]

All envelopes must reflect the return address of the Respondent on the reverse side.

#### 4 DELIVERY INSTRUCTIONS FOR RFP

##### 4.1 Delivery by hand

If delivered by hand, the envelope is must be deposited in the Transnet tender box which is located at the main entrance of the Office Block, Carlton Centre, 150 Commissioner Street, Johannesburg, and must be addressed as follows:

THE SECRETARIAT  
TRANSNET ACQUISITION COUNCIL  
CARLTON CENTRE  
TENDER BOX  
OFFICE BLOCK FOYER  
150 COMMISSIONER STREET  
JOHANNESBURG 2001

- a) The measurements of the "tender slot" are 400mm wide x 100mm high, and Respondents must please ensure that response documents or files are no larger than the above dimensions. Responses which are too bulky [i.e. more than 100mm thick] must be split into two or more files, and placed in separate envelopes, each such envelope to be addressed as required in paragraph 3 above.
- b) It should also be noted that the above tender box is located at the street level outside the main entrance in Commissioner Street and is accessible to the public 24 hours a day, 7 days a week.

##### 4.2 Dispatch by courier

If dispatched by courier, the envelope must be addressed as follows and delivered to the Office of The Secretariat, Transnet Acquisition Council and a signature obtained from that Office:

THE SECRETARIAT  
TRANSNET ACQUISITION COUNCIL  
48TH FLOOR  
CARLTON CENTRE  
OFFICE BLOCK  
150 COMMISSIONER STREET  
JOHANNESBURG

- 4.3 If responses are not delivered as stipulated herein, such responses will not be considered.
- 4.4 No email or faxed responses will be considered, unless otherwise stated herein.
- 4.5 The responses to this RFP will be opened as soon as possible after the closing date and time. Transnet shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the Proposals / information received, i.e. pricing, delivery, etc. The names and locations of the Respondents will be divulged to other Respondents upon request.
- 4.6 Envelopes must not contain documents relating to any RFP other than that shown on the envelope.

#### 5 BROAD-BASED BLACK ECONOMIC EMPOWERMENT AND SOCIO-ECONOMIC OBLIGATIONS

In terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations, Respondents are to note that Transnet will allow a "preference" to companies who provide a valid B-BBEE Verification Certificate.

##### 5.1 B-BBEE Joint Ventures or Consortiums

Respondents who would wish to respond to this RFP as a Joint Venture [JV] or consortium with B-BBEE entities, must state their intention to do so in their RFP submission. Such Respondents must

also submit a signed JV or consortium agreement between the parties clearly stating the percentage [%] split of business and the associated responsibilities of each party. If such a JV or consortium agreement is unavailable, the partners must submit confirmation in writing of their intention to enter into a JV or consortium agreement should they be awarded business by Transnet through this RFP process. This written confirmation must clearly indicate the percentage [%] split of business and the responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV or consortium agreement is submitted to Transnet.

## 5.2 Subcontracting

Transnet fully endorses Government's transformation and empowerment objectives and when contemplating subcontracting Respondents are requested to give preference to companies which are Black Owned, Black Women Owned, Black Youth Owned, owned by Black People with Disabilities, EMEs and QSEs including any companies designated as B-BBEE Facilitators<sup>1</sup>.

A person awarded a contract may not subcontract more than 25% [twenty-five percent] of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

## 5.3 B-BBEE Improvement Plan

Transnet encourages its Service Providers to constantly strive to improve their B-BBEE rating. Respondents are therefore requested to indicate the extent to which they will maintain or improve their B-BBEE status over the contract period.

Respondents are requested to submit their B-BBEE Improvement Plan as an additional document with their Proposals by completion of **Annexure D** appended hereto. *[Refer to Section 10 and Annexure D for further instructions]*

## 5.4 Supplier Development Initiatives

Historically in South Africa there has been a lack of investment in infrastructure, skills and capability development and inequality in the income distribution and wealth of a significant portion of the population. There have been a number of Government initiatives developed to address these challenges. In particular, the New Growth Path [**NGP**] and New Development Plan [**NDP**] aligns and builds on previous policies to ensure the achievement of Government's development objectives for South Africa.

Transnet fully endorses and supports Government's economic policies through its facilitation of Supplier Development [**SD**] initiatives. Hence Respondents are required to submit their commitments with regard to Supplier Development Initiatives over the duration of this contract.

<sup>1</sup> The Minister of the Department of Trade and Industry has the power to designate certain Organs of State or Public Entities as B-BBEE Facilitators. For example, the South African National Military Veterans' Association (SANMVA) has been designated as a B-BBEE Facilitator. As such they will be treated as having rights of ownership held 100% by Black People, 40% by Black Women and 20% by Black designated groups.

As a prequalification criterion to participate in this bid, Respondents are required to provide a commitment that the monetary value of all SD initiatives to be undertaken by them will not be less than 35% [thirty five percent] of the contract value.

***The tenderer must provide a definition of what the contract value will be and provide a value which will be used for the measurement of the SD delivered against the contract value for the duration of the contract. Transnet will in the negotiation stage finalise the contract value definition and the final value that will be used.***

*All Respondents must refer to Section 8 for instructions and complete Section 9 [Declaration of Supplier Development Commitments] as this is a mandatory returnable document. In addition, Respondents are required to submit a Supplier Development Plan and SD Value Summary, **Annexure B** and **Annexure C** as these are required as essential returnable documents.*

*Note: Should a JV be envisaged the principal respondent is required to submit the required responses as indicated above.*

**The commitments made by the successful Respondents will be incorporated as a term of the contract and monitored for compliance.**

## **6 COMMUNICATION**

- 6.1 For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted to Suellen Du Plessis before **12:00 on 07 May 2015**, substantially in the form set out in Section 6 hereto. In the interest of fairness and transparency Transnet's response to such a query will then be made available to the other Respondents who have collected RFP documents. For this purpose Transnet will communicate with Respondents using the contact details provided to the Secretariat on issue of the bid documentation to the Respondent. Kindly ensure that you provide the Secretariat with the **correct** contact details, as Transnet will not accept responsibility for being unable to contact a bidder who provided incorrect contact details.
- 6.2 After the closing date of the RFP, a Respondent may only communicate with the Secretariat of the Transnet Acquisition Council, at telephone number 011 308 3528/3522, email TAC.SECRETARIAT@transnet.net or facsimile number 011 308 3967 on any matter relating to its RFP Proposal.
- 6.3 Respondents are to note that changes to its submission will not be considered after the closing date. Respondents are warned that a Proposal will be liable to disqualification should any attempt be made by a Respondent either directly or indirectly to canvass any officer or employee of Transnet in respect of this RFP between the closing date and the date of the award of the business. Furthermore, Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with Transnet in the future.

## **7 CONFIDENTIALITY**

- 7.1 All information related to this RFP is to be treated with strict confidence. In this regard Respondents are required to certify that they have acquainted themselves with the Non-Disclosure Agreement (Appendix iv). All information related to a subsequent contract, both during and after completion thereof, will be treated with strict confidence. Should the need however arise to divulge any information gleaned from provision of the Services, which is either directly or indirectly related to Transnet's business, written approval to divulge such information must be obtained from Transnet.

**8 INSTRUCTIONS FOR COMPLETING THE RFP**

- 8.1 Proposals must be submitted in duplicate hard copies [1 original and 1 copy] and must be bound.
- 8.2 Sign one set of original documents [sign, stamp and date the bottom of each page]. This set will serve as the legal and binding copy. A duplicate set of documents is required. This second set must be a copy of the original signed Proposal.
- 8.3 Both sets of documents are to be submitted to the address specified in paragraph 4 above, and Bidders must ensure that the original and copies (where applicable) are identical in all respects as Transnet will not accept any liability for having disqualified a bidder for failing to provide a mandatory returnable document in either the original or the copy of the RFP albeit that it was included in the other.
- 8.4 A CD copy of the RFP must also be submitted. Please provide files in MS WORD/Excel format, not PDF versions, noting that the signed original set will be legally binding.
- 8.5 **All returnable documents tabled in the Proposal Form [Section 4] must be returned with your Proposal.**
- 8.6 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be offers. Any exceptions to this statement must be clearly and specifically indicated.
- 8.7 Any additional conditions must be embodied in an accompanying letter. Subject only to clause 15 [Alterations made by the Respondent to Bid Prices] of the General Bid Conditions (Appendix ii), alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.

**9 COMPLIANCE**

The successful Respondent [hereinafter referred to as the **Service Provider**] shall be in full and complete compliance with any and all applicable laws and regulations.

**10 DISCLAIMERS**

Respondents are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this RFP and/or its receipt of Proposals. In particular, please note that Transnet reserves the right to:

- 10.1 modify the RFP's Services and request Respondents to re-bid on any such changes;
- 10.2 reject any Proposal which does not conform to instructions and specifications which are detailed herein;
- 10.3 disqualify Proposals submitted after the stated submission deadline [Closing Date];
- 10.4 not necessarily accept the lowest priced Proposal or an alternative bid;
- 10.5 reject all Proposals, if it so decides;
- 10.6 withdraw the RFP on good cause shown;
- 10.7 award a contract in connection with this Proposal at any time after the RFP's closing date;
- 10.8 award a contract for only a portion of the proposed Services which are reflected in the scope of this RFP;
- 10.9 split the award of the contract between more than one Service Provider, should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
- 10.10 make no award of a contract;

- 10.11 should a contract be awarded on the strength of information furnished by the Respondent, which after conclusion of the contract, is proved to have been incorrect, Transnet reserves the right to cancel the contract.

Transnet reserves the right to undertake post-tender negotiations [PTN] with selected Respondents or any number of short-listed Respondents, such PTN to include, at Transnet's option, any evaluation criteria listed in this RFP document.

Kindly note that Transnet will not reimburse any Respondent for any preparatory costs or other work performed in connection with its Proposal, whether or not the Respondent is awarded a contract.

## 11 LEGAL REVIEW

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

**Transnet urges its clients, suppliers and the general public**

**to report any fraud or corruption to**

**TIP-OFFS ANONYMOUS : 0800 003 056**

## **RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS**

### **Section 2: SCOPE OF REQUIREMENTS**

#### **1 SCOPE OF REQUIREMENTS**

The following are the scope of requirements:

##### **1.1 Cross Currency Swap and Contingent Credit Default Swap**

- The bidder must act as sole hedge counterparty to the Company in connection with the Loan on the terms of the Transaction.
- The bidder must hedge each draw-down of the Loan at or about the time of each draw-down by way of entering into a cross-currency swap.
- The bidder must execute the credit contingent structure (either in a form of a Credit Default Swap Overlay or a Contingent Credit Default Swap), up to an aggregate cross-currency swaps notional amount of US\$1.5billion; and
- The bidder must pre-hedge the Transaction with effect from the date hereof, it being understood that the gains or losses resulting from such pre-hedging shall be for the account of the bidder.

##### **1.2 Loan Syndication**

- The bidder must lead and manage the raising of \$1.5 billion, ZAR equivalent facility for up to 15 year tenor with amortising profile with 54 month grace period.
- The bidder must co-ordinate the production of appropriate information materials by the Company for the prospective lenders, including due diligence requirements and bank presentations, where appropriate;
- The bidder shall (where appropriate) set up and maintain secured data-dissemination websites.
- The bidder must be a liaison between Company, lenders and legal counsel in order to establish optimal and consensus financing terms and an efficient and streamlined documentation negotiation process for the Facilities; and

The bidder must co-ordinate the legal documentation process and general process management (including management of all-party calls and/or meetings, advising in relation to comments from potential lenders on the Facility Documents) for a streamlined and efficient process to signing and closing.

- The bidder must co-ordinate the legal documentation process and general process management (including management of all-party calls and/or meetings, advising in relation to comments from potential lenders on the Facility Documents) for a streamlined and efficient process to signing and closing.

## **2 GREEN ECONOMY / CARBON FOOTPRINT**

Transnet wishes to have an understanding of your company's position with regard to environmental commitments, including key environmental characteristics such as waste disposal, recycling and energy conservation. *Please submit details of your entity's policies in this regard.*

## **3 GENERAL SERVICE PROVIDER OBLIGATIONS**

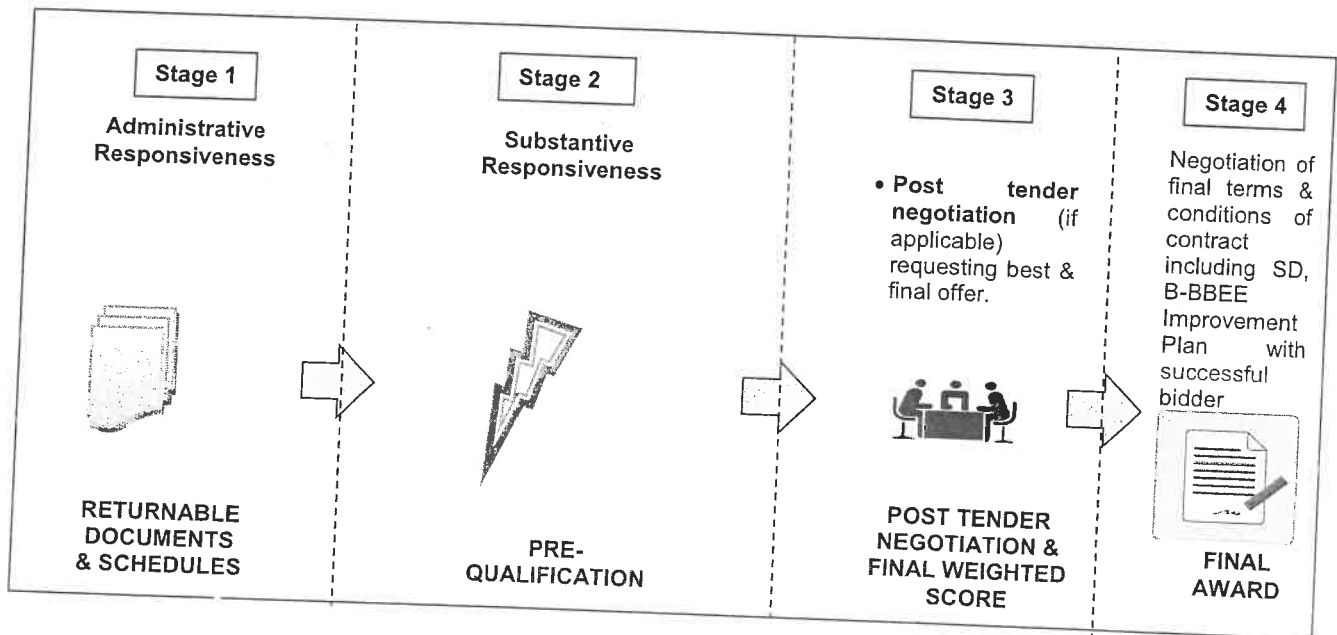
- 3.1 The Service Provider(s) shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.
- 3.2 The Service Provider(s) must comply with the requirements stated in this RFP.

#### 4 EVALUATION METHODOLOGY

Transnet will utilise the following methodology and criteria in selecting a preferred Service Provider, if so required:

**Please note:**

As this is a Treasury transaction for hedging requirements, preference (i.e. 80/20 or 90/10) in accordance with the PPPFA and PPM will not be applicable.



NB: Evaluation of the various stages will normally take place in a sequential manner. However, in order to expedite the process, Transnet reserves the right to conduct the different stages of the evaluation process in parallel. In such instances the evaluation of bidders at any given stage must therefore not be interpreted to mean that bidders have necessarily passed any previous stage(s).

##### 4.1 STAGE ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

Administrative Responsiveness Check	RFP Reference
• Whether the Bid has been lodged on time	Section 1 paragraph 3
• Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time	Section 4
• Verify the validity of all returnable documents	Section 4, page 19 and 20

**The test for Administrative Responsiveness [Stage One] must be passed for a Respondent's Proposal to progress to Stage Two for Substantive Responsiveness Check**



#### 4.2 STAGE TWO: Test for Substantive Responsiveness to RFP

The test for substantive responsiveness to this RFP will include the following:

Substantive Responsiveness Check	RFP Reference
<ul style="list-style-type: none"> <li>Whether any general pre-qualification criteria set by Transnet, have been met</li> </ul>	<i>Section 1 paragraphs 2.2, 6, 10.3</i> <i>Section 4 – validity period</i> <i>General Bid Conditions - clause 19</i> <i>Sections 10, 11</i>
<ul style="list-style-type: none"> <li>Whether the Bid contains a priced offer</li> </ul>	<i>Section 3</i>
<ul style="list-style-type: none"> <li>Whether the Bid materially complies with the scope and/or specification given</li> </ul>	<i>All Sections</i>
<ul style="list-style-type: none"> <li>Annexure A: Technical Pre-qualification</li> </ul>	<i>Section 2 – Scope of Work</i>
<ul style="list-style-type: none"> <li>Whether the Bid contains a commitment that the monetary value of all SD initiatives to be undertaken by the Respondent will not be less than 35 % [thirty five percent] of the contract value.</li> </ul>	<i>Section 9</i>

***The test for substantive responsiveness [Stage Two] must be passed for a Respondent's Proposal to progress to Stage Three for final evaluation (Price and B-BBEE)***

#### 5 STAGE THREE: Post Tender Negotiations (if applicable)

Transnet reserves the right to conduct post tender negotiations with a shortlist of Respondent(s). The shortlist could comprise of one or more Respondents. Should Transnet conduct post tender negotiations, Respondents will be requested to provide their best and final offers to Transnet based on such negotiations.

#### 6 STAGE FOUR: Final Contract Award

Transnet will negotiate the final terms and condition the contract with the successful Respondent(s). This may include aspects such as Supplier Development, the B-BBEE Improvement Plan, price and delivery. Thereafter the final contract will be awarded to the successful Respondent(s).

**IMPORTANT NOTICE TO RESPONDENTS**

Transnet has appointed a Procurement Ombudsman to investigate any material complaint in respect of RFPs exceeding R5million [five million S.A. Rand] in value. Should a Respondent have any material concern regarding an RFP process which meets this threshold, a complaint may be lodged with the Ombudsman for further investigation. The Ombudsman reserves the right to refer the complaint to an external service provider for investigation.

It is incumbent on the Respondent to familiarise himself/herself with the Terms of Reference OF the Ombudsman which are available for review at Transnet's website [www.transnet.net](http://www.transnet.net).

An official complaint form may be downloaded from this website and submitted, together with any supporting documentation, within the prescribed period, to [procurement.ombud@transnet.net](mailto:procurement.ombud@transnet.net).

For transactions below the abovementioned threshold, a complaint may be lodged with the Chief Procurement Officer of the relevant Transnet Operating Division/Specialist Unit.

Respondents are to note that a complaint must be made in good faith. If a complaint is made in bad faith, Transnet reserves the right to place such a Bidder on its List of Excluded Bidders.

**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS**

**Section 3: PRICING**

Please indicate each part of the Transaction prices based on the table below:

Trading Charge (bps)	Credit Valuation Adjustment (bps)	Credit Default Swap Overlay (bps)	Credit Contingent Default Swap (bps)

For the avoidance of doubt:

- a) the Trading Charge and the Credit Valuation Adjustment will apply to each cross-currency swap substantially on the terms of Annex 1 hereto,
- b) the Contingent Credit Default Swap charge will apply to each Contingent Credit Default Swap concluded at each Loan drawn-down.

**1 SERVICE LEVELS**

- 1.1 An experienced national account representative(s) is required to work with Transnet's procurement department. [No sales representatives are needed for individual department or locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.
- 1.2 Transnet will have quarterly reviews with the Service provider's account representative on an on-going basis.
- 1.3 Transnet reserves the right to request that any member of the Service provider's team involved on the Transnet account be replaced if deemed not to be adding value for Transnet.
- 1.4 The Service provider must provide a telephone number for customer service calls.
- 1.5 Failure of the Service provider to comply with stated service level requirements will give Transnet the right to cancel the contract in whole, without penalty to Transnet, giving 30 [thirty] calendar days' notice to the Service provider of its intention to do so.

**Acceptance of Service Levels:**

<b>YES</b>	
------------	--

<b>NO</b>	
-----------	--

Respondent's Signature

Date & Company Stamp

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 \_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2 \_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: \_\_\_\_\_

NAME: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

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

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

**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS**

**Section 4: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS**

I/We \_\_\_\_\_  
[name of entity, company, close corporation or partnership] of [full address]

\_\_\_\_\_ carrying on business trading/operating as \_\_\_\_\_

represented by \_\_\_\_\_  
in my capacity as \_\_\_\_\_  
being duly authorised thereto by a Resolution of the Board of Directors or Members or Certificate of Partners, dated \_\_\_\_\_ to enter into, sign execute and complete any documents relating to this proposal and any subsequent Agreement. The following list of persons are hereby authorised to negotiate on behalf of the abovementioned entity, should Transnet decide to enter into Post Tender Negotiations with shortlisted bidder(s).

FULL NAME(S)

CAPACITY

SIGNATURE

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

I/We hereby offer to supply the abovementioned Services at the prices quoted in the schedule of prices in accordance with the terms set forth in the documents listed in the accompanying schedule of RFP documents.

I/We agree to be bound by those conditions in Transnet's:

- (i) Terms and Conditions of Contract - Services
- (ii) General Bid Conditions – Services ; and
- (iii) any other standard or special conditions mentioned and/or embodied in this Request for Proposal.

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

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

I/We accept that unless Transnet should otherwise decide and so inform me/us in the letter of award/intent, this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence], together with Transnet's acceptance thereof shall constitute a binding contract between Transnet and me/us.

Should Transnet decide that a formal contract should be signed and so inform me/us in a letter of intent [the **Letter of Intent**], this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence] together with Transnet's Letter of Intent, shall constitute a binding contract between Transnet and me/us until the formal contract is signed.

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply of Services within 4 [four] weeks thereafter, Transnet may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.

I/We accept that any contract resulting from this offer will be for a period of 14 [fourteen] years only.

Furthermore, I/we agree to a penalty clause/s to be negotiated with Transnet, which will allow Transnet to invoke a penalty against us for non-compliance with material terms of this RFP including the delayed delivery of the Services due to non-performance by ourselves, failure to meet Supplier Development and/or B-BBEE Improvement Plan commitments. A penalty of up to 100% of the outstanding portion of the Supplier Development commitment will be applied and Transnet reserves the right to set this off against any payment due to the Respondent. In addition, I/we agree that non-compliance with any of the material terms of this RFP, including those mentioned above, will constitute a material breach of contract and provide Transnet with cause for cancellation.

#### ADDRESS FOR NOTICES

The law of the Republic of South Africa shall govern any contract created by the acceptance of this RFP. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent hereunder, at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. Foreign Respondents shall, therefore, state hereunder the name of their authorised representative in the Republic of South Africa who has the power of attorney to sign any contract which may have to be entered into in the event of their Proposal being accepted and to act on their behalf in all matters relating to such contract.

Respondent to indicate the details of its *domicilium citandi et executandi* hereunder:

Name of Entity:

Facsimile:

Address:

Respondent's Signature

Date & Company Stamp

**NOTIFICATION OF AWARD OF RFP**

As soon as possible after approval to award the contract(s), the successful Respondent [**the Service provider**] will be informed of the acceptance of its Proposal. Unsuccessful Respondents will be advised in writing of the name of the successful Service provider and the reason as to why their Proposals have been unsuccessful, for example, in the category of price, delivery period, quality, B-BBEE status or for any other reason.

**VALIDITY PERIOD**

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

**NAME(S) AND ADDRESS / ADDRESSES OF DIRECTOR(S) OR MEMBER(S)**

The Respondent must disclose hereunder the full name(s) and address(s) of the director(s) or members of the company or close corporation [**C.C.**] on whose behalf the RFP is submitted.

- (i) Registration number of company / C.C. \_\_\_\_\_
- (ii) Registered name of company / C.C. \_\_\_\_\_
- (iii) Full name(s) of director/member(s)                      Address/Addresses                      ID Number(s)
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

**RETURNABLE DOCUMENTS**

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent. **Returnable Documents** means all the documents, Sections and Annexures, as listed in the tables below.

**a) Mandatory Returnable Documents**

***Failure to provide all Mandatory Returnable Documents at the closing date and time of this tender will result in a Respondent's disqualification. Bidders are therefore urged to ensure that all these documents are returned with their Proposals.***

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

MANDATORY RETURNABLE DOCUMENTS	SUBMITTED [Yes/No]
SECTION 3 : Pricing	
ANNEXURE A : Technical Pre-Qualification	
SECTION 9 : Declaration of Supplier Development Commitments	
ANNEXURE B : Supplier Development Value Summary	

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

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

b) **Essential Returnable Documents**

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

***Failure to provide all Essential Returnable Documents may result in a Respondent's disqualification at Transnet's sole discretion. Bidders are therefore urged to ensure that all these documents are returned with their Proposals.***

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

<b>ESSENTIAL RETURNABLE DOCUMENTS &amp; SCHEDULES</b>		<b>SUBMITTED [Yes or No]</b>
SECTION 4 : Proposal Form and List of Returnable documents		
<ul style="list-style-type: none"> <li>- Valid and original, or a certified copy, of your entity's B-BBEE Accreditation Certification. Note: failure to provide these required documents at the closing date and time of the RFP will result in an automatic score of zero being allocated for preference</li> </ul>		
<ul style="list-style-type: none"> <li>- In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement</li> </ul>		
Original and valid Tax Clearance Certificate [Consortia / Joint Ventures must submit a separate Tax Clearance Certificate for each party]		
SECTION 5 : RFP Declaration and Breach of Law Form		
SECTION 11 : Vendor Application Form		
Original cancelled cheque or bank verification of banking details		
<ul style="list-style-type: none"> <li>- Certified copies of IDs of shareholder/directors/members [as applicable]</li> </ul>		
<ul style="list-style-type: none"> <li>- Certified copies of the relevant company registration documents from Companies and Intellectual Property Commission (CIPC)</li> </ul>		
<ul style="list-style-type: none"> <li>- Certified copies of the company's shareholding/director's portfolio</li> </ul>		
<ul style="list-style-type: none"> <li>- Entity's letterhead</li> </ul>		
<ul style="list-style-type: none"> <li>- Certified copy of valid VAT Registration Certificate</li> </ul>		
<ul style="list-style-type: none"> <li>- ANNEXURE B : Supplier Development Plan</li> </ul>		
ANNEXURE D : B-BBEE Improvement Plan		

**CONTINUED VALIDITY OF RETURNABLE DOCUMENTS**

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

Respondent's Signature

Date &amp; Company Stamp



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

Bidders furthermore agree that Transnet SOC Ltd shall recognise no claim from them for relief based on an allegation that they have overlooked any RFP/contract condition or failed to take it into account for the purpose of calculating their offered prices or otherwise.

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

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

- 1 General Bid Conditions
- 2 Terms and Conditions of Contract for the supply of Services to Transnet
- 3 Supplier Integrity Pact
- 4 Non-disclosure Agreement
- 5 Supplier Development initiatives included in this RFP
- 6 Vendor Application Form\* and all supporting documents (first time vendors only)

Alternatively, for all existing vendors, please provide vendor number(s) here:

Transnet Operating Division	Unique Vendor Number	Yes / No
Transnet Group		
TFR, etc.		

In the Yes/No column above, please confirm that all the information e.g. company address and contact details, banking details etc. are still correct as at the time of allocation of the vendor number(s).

Respondent's Signature

Date & Company Stamp

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

SIGNATURE OF WITNESSES

ADDRESS OF WITNESSES

1 \_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2 \_\_\_\_\_

Name \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE: \_\_\_\_\_

NAME: \_\_\_\_\_

DESIGNATION: \_\_\_\_\_

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

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

**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS**

**Section 5: RFP DECLARATION AND BREACH OF LAW FORM**

NAME OF ENTITY: \_\_\_\_\_

We \_\_\_\_\_ do hereby certify that:

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

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

ADDRESS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Respondent's Signature

Date & Company Stamp

Indicate nature of relationship with Transnet:

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

9. We declare, to the extent that we are aware or become aware of any relationship between ourselves and Transnet [other than any existing and appropriate business relationship with Transnet] which could unfairly advantage our entity in the forthcoming adjudication process, we shall notify Transnet immediately in writing of such circumstances.
10. We accept that any dispute pertaining to this Bid will be resolved through the Ombudsman process and will be subject to the Terms of Reference of the Ombudsman. The Ombudsman process must first be exhausted before judicial review of a decision is sought.
11. We further accept that Transnet reserves the right to reverse an award of business or decision based on the recommendations of the Ombudsman without having to follow a formal court process to have such award or decision set aside.

#### BREACH OF LAW

12. We further hereby certify that I/we (the bidding entity and/or any of its directors, members or partners) **have/have not been** [delete as applicable] found guilty during the preceding 5 [five] years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences. This includes the imposition of an administrative fine or penalty.

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

NATURE OF BREACH:

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

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

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

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

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

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

\_\_\_\_\_  
Respondent's Signature\_\_\_\_\_  
Date & Company Stamp

**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS**

**Section 6: RFP CLARIFICATION REQUEST FORM**

RFP No: GSM/15/05/1265

RFP deadline for questions / RFP Clarifications: Before 12:00 on 07 May 2015.

TO: Transnet SOC Ltd  
ATTENTION: Suellen Du Plessis  
EMAIL: Suellen.DuPlessis@transnet.net

DATE:

FROM:

RFP Clarification No [to be inserted by Transnet]

**REQUEST FOR RFP CLARIFICATION**

Respondent's Signature

Date & Company Stamp

**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS**

**Section 7: B-BBEE STATUS**

**1. B-BBEE STATUS AND SUBCONTRACTING**

**1.1 Subcontracting:**

Will any portion of the contract be subcontracted? YES/NO [delete which is not applicable]

If YES, indicate:

- (i) What percentage of the contract will be subcontracted? .....%
- (ii) The name of the subcontractor .....
- (iii) The B-BBEE status level of the subcontractor .....
- (iv) Is the subcontractor an EME? .....  
YES/NO

**1.2 Declaration with regard to Company/Firm**

- (i) Name of Company/Firm.....
- (ii) VAT registration number.....
- (iii) Company registration number.....
- (iv) Type of Company / Firm [TICK APPLICABLE BOX]
  - ☐ Partnership/Joint Venture/Consortium
  - ☐ One person business/sole propriety
  - ☐ Close Corporations
  - ☐ Company (Pty) Ltd
- (v) Describe Principal Business Activities  
.....  
.....
- (vi) Company Classification [TICK APPLICABLE BOX]
  - ☐ Manufacturer
  - ☐ Supplier
  - ☐ Professional Service Provider
  - ☐ Other Service Providers, e.g Transporter, etc
- (vii) Total number of years the company/firm has been in business.....

**BID DECLARATION**

I/we, the undersigned, who warrants that he/she is duly authorised to do so on behalf of the company/firm, certify that points claimed, based on the B-BBEE status level of contribution indicated in paragraph 4 above, qualifies the company/firm for the preference(s) shown and I / we acknowledge that:

- (i) The information furnished is true and correct.

Respondent's Signature

Date & Company Stamp

- (ii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 6 above, the contractor may be required to furnish documentary proof to the satisfaction of Transnet that the claims are correct.
- (iii) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, Transnet may, in addition to any other remedy it may have:
- (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) restrict the Bidder or contractor, its shareholders and directors, and/or associated entities, or only the shareholders and directors who acted in a fraudulent manner, from obtaining business from Transnet for a period not exceeding 10 years, after the *audi alteram partem* [hear the other side] rule has been applied; and/or
  - (e) forward the matter for criminal prosecution.

**WITNESSES:**

1. ....

2. ....

SIGNATURE OF BIDDER

DATE:.....

COMPANY NAME: .....

ADDRESS:.....

Respondent's Signature

Date &amp; Company Stamp



**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS**

**Section 8 : SUPPLIER DEVELOPMENT INITIATIVES**

**1.1 Aim and Objectives**

Historically in South Africa there has been a lack of investment in infrastructure, skills and capability development and an inequality in the income distribution and wealth of a significant portion of the population. There have been a number of Government initiatives developed to address these challenges. In particular, the New Growth Path [NGP] and New Development Plan [NDP] aligns and builds on previous policies to ensure the achievement of Government's development objectives for South Africa. Transnet fully endorses and supports Government's New Growth Path policy.

The key focuses of the NGP include:

- increasing employment intensity of the economy
- addressing competitiveness
- balancing spatial development of rural areas and poorer provinces
- reducing the carbon intensity of the economy
- creating opportunities in improving regional and global cooperation
- enabling transformation that benefits a wider range of social actors in society e.g. workers, rural communities, youth and women

Transnet, as a State Owned Company [SOC], plays an important role to ensure these objectives are achieved. Therefore, the purchasing of goods and services needs to be aligned to Government's objectives for developing and transforming the local supply base. Transnet's mission is to transform its supplier base by engaging in targeted supplier development initiatives to support localisation and industrialisation whilst providing meaningful opportunities for Black<sup>2</sup> South Africans with a particular emphasis on:

- Youth [16 to 35 year olds]
- Black women
- People with disabilities
- Small businesses
- Rural integration

**1.2 Supplier Development [SD]**

To facilitate the implementation of Supplier Development initiatives, Transnet has adapted an existing framework from the Department of Public Enterprises [DPE]. This framework allows for a basic set of principles to be applied to appropriately targeted SD initiatives. Supplier development initiatives aim to build local suppliers who are competitive through building capability and capacity. Hence the framework has been termed the Increased Competitiveness, Capability and Capacity Supplier Development Classification Matrix [IC<sup>3</sup> Matrix]. Currently there are four quadrants of SD initiatives which Transnet considers according to the IC<sup>3</sup> Matrix. This RFP has been identified as strategic, involving high commercial leverage and high value.

<sup>2</sup> "Black" means South African Blacks, Coloureds and Indians, as defined in the B-BBEE Act, 53 of 2003

As a prequalification criterion to participate in this bid, Respondents are required to provide a commitment that the monetary value of all SD initiatives to be undertaken by them will not be less than 35% [thirty five percent] of the contract value.

Accordingly, Respondents are required to provide a commitment of the Supplier Development initiative they will undertake during the contract period in the **Supplier Development Value Summary**. In addition, Transnet requires that all Respondents submit a **Supplier Development Plan** demonstrating how they will discharge their commitments made in the Supplier Development Value Summary. The contract which will be concluded with the successful bidder will incorporate the SD undertakings made in the abovementioned documents as a term of the contract.

- a) For a detailed understanding of the IC<sup>3</sup> Matrix, the respective SD initiatives and their objectives, please refer to the "Supplier Development Guidelines" appended hereto as Appendix i. This document must be used as a guideline to complete the SD Plan.
- b) The following Supplier Development [SD] focus areas have been identified, namely:

Category	Description
Transfer of Technology and Intellectual Property Rights [IPR]	Transfer technology, IPR and methodology to small businesses
New Skills development	Skills transfer & skills education which will occur as a result of the award of contract
Job Preservation	Number of jobs created or preserved resulting from the award of contract
Small Business Promotion	Encouragement for growth and the expansion of emerging local firms, through procurement and support mechanisms

*Green economy / carbon footprint: The potential reduction of the economy's carbon intensity [i.e. creation of a greener economy] should be regarded as a key priority within all the above SD Categories and for all proposed SD initiatives*

- c) The **Supplier Development Plan** is to be submitted as a separate document, developed in line with the criteria set out in the **Supplier Development Value Summary**. The Supplier Development Plan is a detailed narrative document explaining the Respondent's Bid value as summarised in the Supplier Development Value Summary. The SD Plan should outline the type of activities you intend to embark upon should you be awarded the contract. This SD Plan should also provide an overview of what you intend to achieve, when, and the mechanisms whereby you will achieve those objectives. The SD Value Summary and SD Plan will represent a binding commitment on the part of the successful Respondent.

Annexure B must be completed, indicating by cross-reference the detailed areas which have been addressed in your SD Plan for each of the evaluation criteria listed in paragraph 1.2 (b) above, together with the Value Indicators therefore.

Notes for completion of the SD Plan:

- (i) Respondents are required to address each of the aspects under the detailed SD Description as a minimum for submission. This is not an exhaustive list however, and Respondents must not be limited to these choices when compiling each section.
- (ii) Please provide detailed calculations to illustrate how your estimated Rand values have been derived.
- (iii) Respondents are required to provide an electronic copy [CD] of the completed Annexure B as part of the SD Plan submission.

**1.3 Additional contractual requirements**

Should a contract be awarded through this RFP process, the successful Respondent(s) [hereinafter referred to as **the Supplier**] will be contractually committed, *inter alia*, to the following conditions:

- a) The Supplier will be required to submit a **Supplier Development Implementation Plan** within 45 [forty-five] calendar days from the signature date of a Letter of Intent [LOI]. This Implementation Plan represents additional detail in relation to the SD Plan providing an explicit breakdown of the nature, extent, timelines and monetary value of the SD commitments which the Supplier proposes to undertake and deliver during the term of the contract. Specific milestones, timelines and targets will be recorded to ensure that the Implementation Plan is in line with Transnet's SD objectives and that implementation thereof is completed within the term of the contract.
- b) The Implementation Plan may require certain additions or updates to the initial SD Plan in order to ensure that Transnet is satisfied that development objectives will be met.
- c) The Supplier will need to ensure that the relevant mechanisms and procedures are in place to allow for access to information to measure and verify the Supplier's compliance with its stated SD commitments.
- d) The Supplier will be required to provide:
  - (i) monthly status updates to Transnet for each SD initiative. [Detailed requirements will be provided by Transnet];
  - (ii) quarterly status reports for Transnet and the DPE. [Detailed reporting requirements will be provided by Transnet]; and
  - (iii) a final Supplier Development report, to be submitted to Transnet prior to the expiry date of the contract, detailing delivery, implementation and completion of all SD components plus auditable confirmation of the Rand value contribution associated with each such SD commitment.
- e) All information provided by the Supplier in order to measure its progress against its stated targets will be auditable.
- f) The Supplier will be required to submit this Implementation Plan to Transnet in writing, within 45 [forty-five] calendar days after signature of a Letter of Intent [LOI], where after both parties must reach an agreement [signed by both parties] within 20 [twenty] calendar days. Transnet will reserve the right to reduce or increase the number of days in which the Supplier must submit its Implementation Plan if it is deemed reasonable, based on the degree of complexity of the SD initiative.
- g) The contract will be conditional on agreement being reached by the parties on the Implementation Plan submitted by the Supplier. Therefore failure to submit or thereafter to agree to the

Implementation Plan within the stipulated timelines will result in the non-award of such a contract or termination thereof.

- h) Failure to adhere to the milestones and targets defined in an Implementation Plan may result in the invocation of financial penalties, to be determined at Transnet's discretion, as well as providing Transnet cause to terminate the contract in certain cases where material milestones are not being achieved.

#### 1.4 **Supplier Development Returnable Documents**

Attached herewith is the following documentation:

- **Declaration of Supplier Development Commitments – Section 9 [mandatory]**
- **SD Plan – Annexure C [essential]**
- **SD Value Summary – Annexure B [mandatory]**

*Respondents are to note whether the abovementioned documents are listed as mandatory or essential returnable documents in Section 4 to this RFP as failure to submit, or to submit an incomplete mandatory returnable document will result in disqualification of your Proposal. Failure to submit an essential returnable document may result in disqualification of your Proposal.*

**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS**

**Section 9 : DECLARATION OF SUPPLIER DEVELOPMENT COMMITMENTS**

I/We \_\_\_\_\_ hereby **agree/do not agree** to commit that not less than 35% of the contract value will be spent cumulatively on Supplier Development Initiatives. This pre-qualification criterion must be discharged against the following Supplier Development categories as outlined in the Supplier Development Value Summary [Annexure B]:

- Transfer of Technology and Intellectual Property Rights
- Skills Development
- Job Preservation
- Small Business Promotion

I/We do hereby certify that the Supplier Development commitments made in relation to this RFP are solely in relation to this transaction and are not duplicated in relation to any other contracts that I/we have secured with any other organ of state including other State Owned Companies.

Furthermore, I/we do hereby declare that this undertaking also applies to any other contracts that I may have secured with Transnet including other Transnet Operating Divisions/Specialist Units. For the purposes of verification of this undertaking, the following is a list of contracts with Supplier Development commitments that I/we have secured with Transnet:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SIGNED at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
SIGNATURE OF WITNESS

\_\_\_\_\_  
SIGNATURE OF RESPONDENT

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

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

**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS**

**Section 10 : B-BBEE IMPROVEMENT PLAN**

Transnet encourages its Suppliers to constantly strive to improve their B-BBEE rating and requests that Respondents submit a B-BBEE improvement plan. Respondents are therefore requested to indicate whether they will maintain or improve their BBBEE status over the contract period.

**Additional contractual requirements**

Should a contract be awarded through this RFP process, the successful Respondent(s) may be contractually committed, *inter alia*, to the following conditions:

- a) The original B-BBEE Improvement Plan may require certain additions or updates in order to ensure that Transnet is satisfied that developmental objectives will be met.
- b) The Supplier will need to ensure that the relevant mechanisms and procedures are in place to allow Transnet access to information to measure and verify the Supplier's compliance with its stated B-BBEE Improvement commitments.
- c) The Supplier will be required to provide:
  - (i) quarterly status reports for Transnet; and
  - (ii) a final B-BBEE Improvement Plan report, to be submitted to Transnet prior to the expiry date of the contract, detailing delivery, implementation and completion of all B-BBEE Improvement components.
- d) All information provided by the Supplier in order to measure its progress against its stated targets will be auditable.

Respondents are requested to submit their B-BBEE Improvement Plan as an **additional document** with their Proposals by completion of **Annexure D** appended hereto. [*Refer Annexure D for further instructions*]

Respondent's Signature

Date & Company Stamp

**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF FOURTEEN (14) YEARS**

**Section 11 : VENDOR APPLICATION FORM**

*Respondents are to furnish the following documentation and complete the Vendor Application Form below:*

1. **Original** cancelled cheque **OR** letter from the Respondent's bank verifying banking details [**with bank stamp**]
2. **Certified copy** of Identity Document(s) of Shareholders/Directors/Members [*where applicable*]
3. **Certified copies** of the relevant company registration documents from Companies and Intellectual Property Commission (CIPC)
4. **Certified copies** of the company's shareholding/director's portfolio
5. **Original** letterhead confirm physical and postal addresses
6. **Original** valid SARS Tax Clearance Certificate [RSA entities only]
7. **Certified** copy of VAT Registration Certificate [RSA entities only]
8. **A valid and original** B-BBEE Verification Certificate / sworn affidavit **or certified copy** thereof meeting the requirements for B-BBEE compliance as per the B-BBEE Codes of Good Practice;
9. **Certified copy** of valid Company Registration Certificate [if applicable]

**Note:** *No contract shall be awarded to any South African Respondent whose tax matters have not been declared by SARS to be in order.*

**Vendor Application Form**

Entity's trading name

Entity's registered name

Entity's Registration Number or ID Number if a Sole Proprietor

Form of entity [✓] ☐ CC ☐ Trust ☐ Pty Ltd ☐ Limited ☐ Partnership ☐ Sole Proprietor

How many years has your entity been in business?

VAT number [if registered]

Entity's telephone number

Entity's fax number

Entity's email address

Entity's website address

Respondent's Signature

Date & Company Stamp

Bank name  
Account holder  
Postal address  
Physical address  
Contact person  
Designation  
Telephone  
Email

Branch & Branch code  
Bank account number  
Code  
Code

Annual turnover range [last financial year]      < R5 m      R5 - 35 m      > R35 m

Does your entity provide      Products      Services      Both

Area of delivery      National      Provincial      Local

Is your entity a public or private entity      Public      Private

Does your entity have a Tax Directive or IRP30 Certificate      Yes      No

Main product or services [e.g. Stationery/Consulting]

*Complete B-BBEE Ownership Details:*

% Black ownership      % Black women ownership      % Disabled Black ownership      % Youth ownership

Does your entity have a B-BBEE certificate      Yes      No

What is your B-BBEE status [Level 1 to 9 / Unknown]

How many personnel does the entity employ      Permanent      Part time

*If you are an existing Vendor with Transnet please complete the following:*

Transnet contact person  
Contact number  
Transnet Operating Division

*Duly authorised to sign for and on behalf of Entity / Organisation:*

Name		Designation	
Signature		Date	

Respondent's Signature

Date &amp; Company Stamp







J.P. Morgan Chase Bank  
Johannesburg Branch,  
1 Fricker Road Illovo,  
Johannesburg,  
2196

Tel: 011 507 0730  
Email: marc.f.hussey@jpmorgan.com

Dear Sir/Madam

**DESCRIPTION: GSM/15/05/1265 FOR THE PROVISION OF HEDGING FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD ARRANGE THE SYNDICATED ZAR 12 BILLION LOAN FOR A PERIOD OF UP TO FIFTEEN (15) YEARS**

Your proposal dated 06 May 2015 refers.

This letter serves to confirm that your company has been selected as the Preferred Bidder to supply the Transnet Corporate Centre, with the abovementioned service.

Transnet SOC Ltd will engage with JP Morgan Chase Bank, to finalize and agree on the letter of agreement, which will detail the Terms and Conditions of the final agreement. Furthermore, Supplier Development commitments will be concluded on a separate Supplier Development agreement.

Kindly acknowledge receipt of this communiqué by return fax or scanned and e-mail.

Name: Marc Hussey

Date: 12/5/15 Signature: [Signature]

Company Name: JP Morgan Chase Bank Johannesburg Branch

Yours Sincerely,

[Signature]  
Anoj Singh  
Group Chief Financial Officer  
Transnet SOC Ltd.  
Date: 12/05/15

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: LC Mabaso (Chairperson) B Molefe\* (Group Chief Executive) Y Forbes GJ Mahlalela PEB Mathekga N Moola ZA Nagdee VM Nkonyane  
MR Seleke SD Shane BG Sigman PG Williams A Singh\* (Group Chief Financial Officer)  
\*Executive  
Group Company Secretary: ANC Ceba

www.transnet.net

# J.P.Morgan

STRICTLY CONFIDENTIAL

Transnet SOC Limited  
Carlton Centre  
150 Commissioner Street  
Johannesburg  
2001

Attention: Mr. Anoj Singh, Chief Financial Officer

11 May 2015

Dear Sirs

Transnet SOC Ltd (the "**Company**") is proposing to enter into a US\$2.5billion loan facility with a committed first tranche of US\$1.5billion and a further optional tranche of US\$1billion at the Company's option (the "**Loan**") with China Development Bank ("**CDB**") to finance part of the Company's purchase of locomotives from China North Railways and China South Railways. In connection with this Loan, the Company and JPMorgan Chase Bank N.A., Johannesburg Branch ("**JPMC**") and/or its affiliates ("**JPMC Representatives**") are considering entering into a hedging transaction in the form of a series of cross currency swaps and credit contingent structures in the form of Contingent Credit Default Swaps (the "**Transaction**"). JPMC and the Company (collectively the "**Parties**" and each a "**Party**") hereby agree as follows.

1. Each Party agrees and undertakes that all Confidential Information (as defined below) received by it (the "**Receiving Party**") from the other Party (the "**Disclosing Party**"), as well as the nature, form and content of the Transaction, the identity and role of JPMC and JPMC's Representatives and any subsequent execution of the Transaction shall be kept confidential and shall not, without the prior written consent of the Disclosing Party, be disclosed by the Receiving Party. The Company further agrees to disclose the Confidential Information only to such of its employees and professional advisers (collectively "**Company's Representatives**") who need to know the Confidential Information for the purpose of the Transaction. Prior to receipt of any Confidential Information, each Party shall ensure that its Representatives are aware of and adhere to the obligations of confidentiality set out in this Agreement. Each Party hereby agrees to be responsible for any breach of this Agreement by its Representatives. Each Party agrees that the Confidential Information shall not be used by it or its Representatives other than in connection with an evaluation of the Transaction and any decision to proceed with and/or execute the Transaction or any part thereof.
2. The Confidential Information shall be returned to the Disclosing Party or destroyed (to the extent reasonably practicable) following the Disclosing Party's written request, save for that Confidential Information which the Receiving Party or its Representatives are requested or required to retain by any regulatory, supervisory or governmental authority, institution or department; under court process or pursuant to statutory requirement or regulation; pursuant to such Party's or its Representative's internal audit, legal or compliance policies or procedures; or which has been created pursuant to electronic archiving procedures. The Receiving Party shall supply a written confirmation of such destruction to the Disclosing Party upon request.

JPMorgan Chase Bank, N.A. (Johannesburg Branch) 1 Fricker Road, Cnr Hurlingham Road, Illovo, Johannesburg 2196, South Africa  
Private Bag X9936, Sandton 2146, South Africa

Telephone: +27 (11) 507 0300 Facsimile: +27 (11) 507 0353

James S. Crown, Laban P. Jackson Jr., Marianne Lake, William C. Weldon (Non-Executive Chairman), Matthew E. James  
Organised under the Federal Law of the United States  
A subsidiary of JP Morgan Chase & Co.

Registration Number: 2001/016069/10 Vat Number: 4290195686

Authorised Financial Services Provider



# J.P.Morgan

3. Notwithstanding anything to the contrary contained herein, it is understood that:

- (i) each Party and its Representatives may disclose the Confidential Information or portions thereof: (a) at the request of any regulatory, supervisory or governmental authority, institution or department; or (b) under court process or pursuant to statutory requirement or regulation; or (c) to its or its Representative's auditors, external counsel or accountants; and
- (ii) JPMC and its Representatives may disclose the Confidential Information or portions thereof: (a) to the institutions referred to in clause 9(b), on a confidential basis; or (b) to affiliates or subsidiaries of JPMorgan Chase & Co; and
- (iii) the Company and its Representatives may disclose each cross-currency swap confirmation, in the form of Annex 1 hereto, to CDB upon execution of the cross-currency swap concerned; provided that CDB will be under an obligation of confidentiality in this regard to the Company; and
- (iv) the Company will report the Transaction in their annual report in accordance with applicable reporting standards.

4. In this Agreement, "**Confidential Information**" shall mean all information, analyses, compilations, studies, documents or other material (whether communicated orally, in written form or other media) obtained by one Party or its Representatives from the other Party or any of such Disclosing Party's Representatives in connection with the Transaction, the Loan and/or relating to the Disclosing Party, including any execution of any part of the Transaction, together with any analyses, compilations, studies, documents or other material written or otherwise prepared by the Disclosing Party or its Representatives, which reflects or incorporates such information, as well as the nature, form and content of the Transaction, the identity and role of JPMC and JPMC's Representatives; provided that "Confidential Information" shall not include:

- a) information or material which at the time of its disclosure is, or which thereafter becomes part of the public domain other than as a result of a disclosure by the Receiving Party or its Representatives in violation of this Agreement; and
- b) information or material which the Receiving Party can show was in its possession, or the possession of one or more of its Representatives, at the time of disclosure and was not acquired directly or indirectly, under a confidentiality obligation.

5. It is further understood and agreed that any breach of the obligations of confidentiality in this Agreement could cause the other Party irreparable injury and that monetary damages may not be adequate remedy for any such breach. In the event of a breach or threatened breach by a Party or its Representatives of any of the confidentiality provisions of this Agreement, the other Party shall be entitled to seek injunctive relief in any court of competent jurisdiction restraining the Party in breach from breaching the terms hereof or from disclosing any Confidential Information to any person.

6. The obligations of confidentiality owed hereunder by the Parties shall expire after a period of 3 years from the date hereof.

7. Subject always to clause 10 hereof JPMC will act as sole hedge counterparty to the Company in connection with the Loan on the terms of the Transaction. The Company will hedge each draw-down

# J.P.Morgan

of the Loan with JPMC at or about the time of each draw-down by way of entering into a cross-currency swap and a Contingent Credit Default Swap, up to an aggregate cross-currency swaps notional amount of US\$1.5billion, subject to the market conditions, and the same number of credit contingent structures. Each part of the Transaction, subject to any changes in market conditions, such as liquidity and volatility, and provided there is no *force majeure* (as defined below), will be priced based on the following charges from an agreed mid price:

Trading Charge (bps)	Credit Valuation Adjustment (bps)	Credit Contingent Default Swap charge (bps)
12.9	7	-112.5

For the avoidance of doubt:

- a) the Trading Charge and the Credit Valuation Adjustment will apply to each cross-currency swap substantially on the terms of Annex 1 hereto,
- b) the Contingent Credit Default Swap charge will apply to each Contingent Credit Default Swap concluded at each Loan drawn-down substantially on the terms of Annex 2 hereto.
- c) *Force majeure* means any of the following extraordinary and unavoidable circumstances in given conditions if as a result of its occurrence, subject to the ability to perform an alternative obligation or other measures agreed between the Parties, either the Company or JPMC as the case may be become unable to perform any or all of its payment or delivery obligations, as well as other material obligations under either a cross-currency swap or the Contingent Credit Default Swap:
  - i) riot, insurrection, revolution, invasion or blockade;
  - ii) fire, flood or other acts of God;
  - iii) war, civil war, military actions, state of emergency or martial law; or
  - iv) other extraordinary and unavoidable circumstances, the consequences of which render either Party unable to perform.

The provisions of this clause 7 shall remain in effect for a period of 3 years from the date hereof, or as may otherwise be agreed by written agreement between the Parties.

8. The Company hereby authorises JPMC to commence pre-hedging for the Transaction with effect from the date hereof, it being understood that the gains or losses resulting from such pre-hedging shall be for the account of JPMC and JPMC's Representatives only, in the event that the Transaction does not proceed and provided further that the JPMC and its Representatives warrants that it shall not engage in any front-running or other practice akin thereto.

9. The Parties hereby further acknowledge and agree that:

- a) the Transaction may subsequently be partially novated by JPMC and/or JPMC's Representatives, as applicable, to the Company's relationship banks approved by JPMC. In order to facilitate this process and prior to any part of the Transaction being executed, the Company undertakes and agrees to provide JPMC's authorised employee representatives, as notified to the Company in writing, on a confidential basis, with the non-binding estimates of the credit and market risk appetite of its relationship banks;

# J.P.Morgan

- b) in order to reduce JPMC's and/or JPMC's Representatives' market and credit risk exposure under any Transaction that is executed, the Company undertakes and agrees, and will procure that the Company's Representatives undertake and agree, to provide all assistance as may be reasonably requested by JPMC and/or JPMC's Representatives to effect any subsequent novation or transfer, including: (i) authorising JPMC and/or JPMC's Representatives to approach the potential transferees identified by the Company pursuant to sub-clause 9 (a) and/or potential protection sellers, including, but not limited to, CDB, the African Development Bank ("ADB") and the Multilateral Investment Guarantee Agency ("MIGA"); (ii) providing any information reasonably requested by JPMC or JPMC's Representatives; and/or (iii) making the Company's senior management and representatives available to participate in meetings with potential transferees, at such times and places as JPMC may reasonably request;
- c) in order to effect any of the potential novations referred to in sub-clause 9 (a) above, the Company may run a credit auction among the Company's and JPMC's relationship banks, on a confidential basis;
- d) the Company has separately engaged Regiments Capital Proprietary Limited ("RC") to act as its financial adviser in relation to the Loan and for the Transaction and the Company understands and agrees that JPMC will not rely upon any services or work performed by any advisors of the Company, including RC. Accordingly, the Company agrees that JPMC and JPMC's Representatives shall have no liability to the Company or to any of its subsidiaries or affiliates or its or their respective directors, officers, employees, partners, shareholders or other security holders or creditors for any actions or omissions of such other advisors (including specifically RC) and including in respect of the advice of such other advisors in relation to the Transaction;

## 10. The Parties hereby agree that:

- a) the Transaction is subject to:
  - a. JPMC obtaining all credit, risk, market risk, compliance, legal and reputational approvals; and
  - b. the Company providing to JPMC a legal opinion from the Company's external legal advisers in the form which is satisfactory to JPMC prior to entering into the first cross-currency swap hereunder;
- b) nothing in this Agreement constitutes an agreement or commitment of JPMC or JPMC's Representatives to act as arranger, underwriter, lead manager, bookrunner or mandated lead arranger or to provide all or any part of the Loan or any other financing or to enter into the Transaction. Any agreement to act in any such capacity or to provide any additional services would, amongst other things, be subject to the negotiation and execution of separate engagement letter(s) and/or underwriting agreement(s) on terms acceptable to JPMC or, as the case may be, such JPMC Representatives as customarily act in the relevant capacity and/or provide the relevant services. Any such engagement letter(s) or underwriting agreement(s) would be on terms (including as to remuneration, indemnification, costs and expenses) acceptable to JPMC or JPMC's Representatives and would be entered into with the Company and/or its affiliate(s) or special purpose vehicle(s) acceptable to JPMC or JPMC's Representatives; and
- c) JPMC shall not be responsible for, and will not be deemed as, advising the Company or any other person or entity on the suitability or corporate implications of the Loan, the Transaction or any



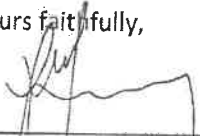
# J.P.Morgan

other transaction specified herein, performing on the Company's behalf due diligence investigations in connection with the Loan or the Transaction, nor giving the Company legal, accounting, taxation, regulatory, ratings or investment advice in relation to the Loan, the Transaction or any other transaction. Accordingly, the Company specifically confirms that it has obtained its own legal, accounting, taxation, regulatory, rating, financial and/or investment advice as to the effects of entering into a cross-currency swap and a corresponding Contingent Credit Default Swap on the same day as opposed to their execution on two different days. The Company agrees that any decision of the Company to proceed with the execution of a cross-currency swap and a corresponding Contingent Credit Default Swap on the same day or on two different days will be made on the basis of such independent accounting advice.

11. Where this Agreement imposes any obligations on a Party's Representatives, such obligation shall be deemed to include an obligation on the Party concerned to procure that such persons comply with such obligations.
12. This Agreement shall be governed by, and construed in accordance with the laws of the Republic of South Africa, and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the High Court of South Africa, Johannesburg in connection with any dispute related to or brought under this Agreement.
13. This Agreement constitutes the entire agreement between the Parties as to the subject matter hereof, no representations having been made by either Party except as are herein specifically set forth. No rights or obligations other than those expressly recited herein are to be implied from this Agreement.

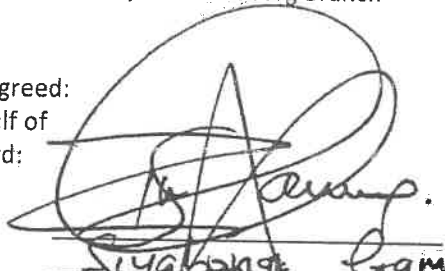
Please acknowledge your agreement to the foregoing by countersigning this letter, and returning an original copy to us.

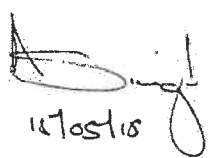
Yours faithfully,

  
 For and on behalf of  
 JPMorgan Chase Bank N.A., Johannesburg Branch

Accepted and agreed:  
 for and on behalf of  
 Transnet SOC Ltd:

By:  
 Name:  
 Title:  
 Date:

  
 Syabanga Grama  
 Acting Group Chief Executive  
 2015.05.15

  
 16/05/15

**J.P.Morgan**

ANNEX 1  
to the Letter Agreement dated 11 May 2015

JPMorgan Chase Bank, N.A.

[●] 2015

**Cross-Currency Rate Swap Transaction**

The purpose of this letter (this "Confirmation") is to confirm the terms and conditions of the Swap Transaction entered into between: JPMorgan Chase Bank, N.A. ("JPMorgan") and TRANSNET SOC LIMITED (the "Counterparty") on the Trade Date and identified by the JPMorgan Deal Number specified below (the "Transaction"). This letter agreement constitutes a "Confirmation" as referred to in the Master Agreement specified below, and supersedes any previous confirmation or other writing with respect to the transaction described below.

The definitions and provisions contained in the 2006 ISDA Definitions (the "Definitions"), as published by the International Swaps and Derivatives Association, Inc. are incorporated into this Confirmation. In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern.

J.P. Morgan Chase Bank, N.A. is authorised by the Office of the Comptroller of the Currency in the jurisdiction of the U.S.A. Authorised by the Prudential Regulation Authority. Subject to regulation by the Financial Conduct Authority and to limited regulation by the Prudential Regulation Authority. Details about the extent of our regulation by the Prudential Regulation Authority are available from us on request.

This Confirmation supplements, forms part of, and is subject to, the ISDA Master Agreement dated as of [●], as amended and supplemented from time to time (the "Agreement"), between JPMorgan and the Counterparty. All provisions contained in the Agreement govern this Confirmation except as expressly modified below.





# J.P.Morgan

The terms of the particular Cross-Currency Rate Swap Transaction to which this Confirmation relates are as follows:

## TRANSACTION DETAILS

JPMorgan Deal Number(s):

\*\*\*\*\*

Trade Date:

[●] 2015

Effective Date:

01 May 2015

Termination Date:

01 May 2030, subject to adjustment in accordance with the Modified Following Business Day Convention.

## Floating Amounts I:

Floating Rate Payer:

JPMorgan

Floating Rate Payer Currency Amount:

The Floating Rate Payer Currency Amount set out in respect of the relevant Calculation Period in Schedule 1 (USD Floating Rate Payer Currency Amounts).

Floating Rate Payer Payment Dates:

01 February, 01 May, 01 August and 01 November in each year from and including 01 May 2015 to and including the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.

Floating Rate Option:

USD-LIBOR-BBA

Designated Maturity:

3 Months

Spread:

2.57000 percent

Floating Rate Day Count Fraction:

Actual/360

Reset Dates:

The last day of each Calculation Period.

Compounding:

Inapplicable

Business Days:

New York and London

## Floating Amounts II:

Floating Rate Payer:

Counterparty

Floating Rate Payer Currency

The Floating Rate Payer Currency Amount set out in

**J.P.Morgan**

Amount: respect of the relevant Calculation Period in Schedule 2 (ZAR Floating Rate Payer Currency Amounts).

Floating Rate Payer Payment Dates: 01 February, 01 May, 01 August and 01 November in each year from and including 01 May 2015 to and including the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.

Floating Rate Option: ZAR-JIBAR-SAFEX

Designated Maturity: 3 Months

Spread: 4.44 percent

Floating Rate Day Count Fraction: Actual/360

Reset Dates: The last day of each Calculation Period.

Compounding: Inapplicable

Business Days: Johannesburg and London

Calculation Agent: JPMorgan, unless otherwise stated in the Agreement.

**Initial Exchange:**

Initial Exchange Date: Effective Date

Counterparty Initial Exchange Amount: USD 100,000,000

JPMorgan Initial Exchange Amount: ZAR 1,200,000,000

**Interim Exchanges:**

Counterparty Interim Exchange Dates: 01 February, 01 May, 01 August and 01 November in each year from, and including, 01 November 2019 to, but excluding, the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.

Counterparty Interim Exchange Amount: In respect of each Interim Exchange Date, ZAR 27,906,976.74

JPMorgan Interim Exchange Dates: 01 February, 01 May, 01 August and 01 November in each year from, and including, 01 November 2019 to,




# J.P.Morgan

but excluding, the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention.

JPMorgan Interim Exchange Amount: In respect of each Interim Exchange Date,  
USD 2,325,581.40

## Final Exchange:

Final Exchange Date: Termination Date

Counterparty Final Exchange Amount: ZAR 27,906,976.74

JPMorgan Final Exchange Amount: USD 2,325,581.40

## Additional Provisions:

Notwithstanding anything to the contrary in the Agreement, payments required to be made by Counterparty under this Transaction will be made by 2.00pm South Africa standard time (the "Payment Cut-off Time") on the due date. Without prejudice to the generality of Section 2(a)(iii) of the Agreement, failure by Counterparty to make payments prior to the Payment Cut-off Time will constitute a Potential Event of Default.

## ACCOUNT DETAILS

Payments to JPMorgan in USD: As per our standard settlement instructions.

Payments to JPMorgan in ZAR: As per our standard settlement instructions.

Payments to Counterparty in USD: As per your standard settlement instructions.

Payments to Counterparty in ZAR: As per your standard settlement instructions.

## OFFICES

JPMorgan: LONDON

Counterparty: JOHANNESBURG

## DOCUMENTS TO BE DELIVERED

Each party shall deliver to the other, at the time of its execution of this Confirmation, evidence of the incumbency and specimen signature of the person(s) executing this Confirmation, unless such evidence has been previously supplied and remains true and in effect.

**J.P.Morgan****RELATIONSHIP BETWEEN PARTIES**

Each party will be deemed to represent to the other party on the date on which it enters into a Transaction that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary for that Transaction):

(a) *Non-Reliance*. It is acting for its own account, and it has made its own independent decisions to enter into that Transaction and as to whether that Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into that Transaction; it being understood that information and explanations related to the terms and conditions of a Transaction shall not be considered investment advice or a recommendation to enter into that Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction.

(b) *Assessment and Understanding*. It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of that Transaction. It is capable of assuming, and assumes the risks of that Transaction.

(c) *Status of Parties*. The other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction.

**TIME OF DEALING**

The time of dealing will be confirmed by JPMorgan upon written request.

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation and returning it to us or by sending to us a letter, telex or facsimile substantially similar to this letter, which letter, telex or facsimile sets forth the material terms of the Transaction to which this Confirmation relates and indicates agreement to those terms. When referring to this Confirmation, please indicate: JPMorgan Deal Number(s): \*\*\*\*\*

Two handwritten signatures in black ink, one on the left and one on the right, appearing to be initials or names.

J.P.Morgan

**SCHEDULE 1**  
**USD FLOATING RATE PAYER CURRENCY AMOUNTS**

For all Calculation Periods falling within periods:

	From and Including:*	To but Excluding:*	USD Floating Rate Payer Currency Amount:
1.	01 May 2015	01 August 2015	100,000,000.00
2.	01 August 2015	01 November 2015	100,000,000.00
3.	01 November 2015	01 February 2016	100,000,000.00
4.	01 February 2016	01 May 2016	100,000,000.00
5.	01 May 2016	01 August 2016	100,000,000.00
6.	01 August 2016	01 November 2016	100,000,000.00
7.	01 November 2016	01 February 2017	100,000,000.00
8.	01 February 2017	01 May 2017	100,000,000.00
9.	01 May 2017	01 August 2017	100,000,000.00
10.	01 August 2017	01 November 2017	100,000,000.00
11.	01 November 2017	01 February 2018	100,000,000.00
12.	01 February 2018	01 May 2018	100,000,000.00
13.	01 May 2018	01 August 2018	100,000,000.00
14.	01 August 2018	01 November 2018	100,000,000.00
15.	01 November 2018	01 February 2019	100,000,000.00
16.	01 February 2019	01 May 2019	100,000,000.00
17.	01 May 2019	01 August 2019	100,000,000.00
18.	01 August 2019	01 November 2019	100,000,000.00
19.	01 November 2019	01 February 2020	97,674,418.60
20.	01 February 2020	01 May 2020	95,348,837.21
21.	01 May 2020	01 August 2020	93,023,255.81
22.	01 August 2020	01 November 2020	90,697,674.42
23.	01 November 2020	01 February 2021	88,372,093.02
24.	01 February 2021	01 May 2021	86,046,511.63
25.	01 May 2021	01 August 2021	83,720,930.23
26.	01 August 2021	01 November 2021	81,395,348.84
27.	01 November 2021	01 February 2022	79,069,767.44
28.	01 February 2022	01 May 2022	76,744,186.05
29.	01 May 2022	01 August 2022	74,418,604.65
30.	01 August 2022	01 November 2022	72,093,023.26
31.	01 November 2022	01 February 2023	69,767,441.86
32.	01 February 2023	01 May 2023	67,441,860.47
33.	01 May 2023	01 August 2023	65,116,279.07
34.	01 August 2023	01 November 2023	62,790,697.67
35.	01 November 2023	01 February 2024	60,465,116.28

J.P.Morgan

36.	01 February 2024	01 May 2024	58,139,534.88
37.	01 May 2024	01 August 2024	55,813,953.49
38.	01 August 2024	01 November 2024	53,488,372.09
39.	01 November 2024	01 February 2025	51,162,790.70
40.	01 February 2025	01 May 2025	48,837,209.30
41.	01 May 2025	01 August 2025	46,511,627.91
42.	01 August 2025	01 November 2025	44,186,046.51
43.	01 November 2025	01 February 2026	41,860,465.12
44.	01 February 2026	01 May 2026	39,534,883.72
45.	01 May 2026	01 August 2026	37,209,302.33
46.	01 August 2026	01 November 2026	34,883,720.93
47.	01 November 2026	01 February 2027	32,558,139.53
48.	01 February 2027	01 May 2027	30,232,558.14
49.	01 May 2027	01 August 2027	27,906,976.74
50.	01 August 2027	01 November 2027	25,581,395.35
51.	01 November 2027	01 February 2028	23,255,813.95
52.	01 February 2028	01 May 2028	20,930,232.56
53.	01 May 2028	01 August 2028	18,604,651.16
54.	01 August 2028	01 November 2028	16,279,069.77
55.	01 November 2028	01 February 2029	13,953,488.37
56.	01 February 2029	01 May 2029	11,627,906.98
57.	01 May 2029	01 August 2029	9,302,325.58
58.	01 August 2029	01 November 2029	6,976,744.19
59.	01 November 2029	01 February 2030	4,651,162.79
60.	01 February 2030	Termination Date	2,325,581.40

\*Dates subject to adjustment in accordance with the Modified Following Business Day Convention

J.P.Morgan

**SCHEDULE 2**  
**ZAR FLOATING RATE PAYER CURRENCY AMOUNTS**

For all Calculation Periods falling within periods:

	From and Including:*	To but Excluding:*	ZAR Floating Rate Payer Currency Amount:
1.	01 May 2015	01 August 2015	1,200,000,000.00
2.	01 August 2015	01 November 2015	1,200,000,000.00
3.	01 November 2015	01 February 2016	1,200,000,000.00
4.	01 February 2016	01 May 2016	1,200,000,000.00
5.	01 May 2016	01 August 2016	1,200,000,000.00
6.	01 August 2016	01 November 2016	1,200,000,000.00
7.	01 November 2016	01 February 2017	1,200,000,000.00
8.	01 February 2017	01 May 2017	1,200,000,000.00
9.	01 May 2017	01 August 2017	1,200,000,000.00
10.	01 August 2017	01 November 2017	1,200,000,000.00
11.	01 November 2017	01 February 2018	1,200,000,000.00
12.	01 February 2018	01 May 2018	1,200,000,000.00
13.	01 May 2018	01 August 2018	1,200,000,000.00
14.	01 August 2018	01 November 2018	1,200,000,000.00
15.	01 November 2018	01 February 2019	1,200,000,000.00
16.	01 February 2019	01 May 2019	1,200,000,000.00
17.	01 May 2019	01 August 2019	1,200,000,000.00
18.	01 August 2019	01 November 2019	1,200,000,000.00
19.	01 November 2019	01 February 2020	1,172,093,023.26
20.	01 February 2020	01 May 2020	1,144,186,046.51
21.	01 May 2020	01 August 2020	1,116,279,069.77
22.	01 August 2020	01 November 2020	1,088,372,093.02
23.	01 November 2020	01 February 2021	1,060,465,116.28
24.	01 February 2021	01 May 2021	1,032,558,139.53
25.	01 May 2021	01 August 2021	1,004,651,162.79
26.	01 August 2021	01 November 2021	976,744,186.05
27.	01 November 2021	01 February 2022	948,837,209.30
28.	01 February 2022	01 May 2022	920,930,232.56
29.	01 May 2022	01 August 2022	893,023,255.81
30.	01 August 2022	01 November 2022	865,116,279.07
31.	01 November 2022	01 February 2023	837,209,302.33
32.	01 February 2023	01 May 2023	809,302,325.58
33.	01 May 2023	01 August 2023	781,395,348.84
34.	01 August 2023	01 November 2023	753,488,372.09
35.	01 November 2023	01 February 2024	725,581,395.35

Jh CS

J.P.Morgan

36.	01 February 2024	01 May 2024	697,674,418.60
37.	01 May 2024	01 August 2024	669,767,441.86
38.	01 August 2024	01 November 2024	641,860,465.12
39.	01 November 2024	01 February 2025	613,953,488.37
40.	01 February 2025	01 May 2025	586,046,511.63
41.	01 May 2025	01 August 2025	558,139,534.88
42.	01 August 2025	01 November 2025	530,232,558.14
43.	01 November 2025	01 February 2026	502,325,581.40
44.	01 February 2026	01 May 2026	474,418,604.65
45.	01 May 2026	01 August 2026	446,511,627.91
46.	01 August 2026	01 November 2026	418,604,651.16
47.	01 November 2026	01 February 2027	390,697,674.42
48.	01 February 2027	01 May 2027	362,790,697.67
49.	01 May 2027	01 August 2027	334,883,720.93
50.	01 August 2027	01 November 2027	306,976,744.19
51.	01 November 2027	01 February 2028	279,069,767.44
52.	01 February 2028	01 May 2028	251,162,790.70
53.	01 May 2028	01 August 2028	223,255,813.95
54.	01 August 2028	01 November 2028	195,348,837.21
55.	01 November 2028	01 February 2029	167,441,860.47
56.	01 February 2029	01 May 2029	139,534,883.72
57.	01 May 2029	01 August 2029	111,627,906.98
58.	01 August 2029	01 November 2029	83,720,930.23
59.	01 November 2029	01 February 2030	55,813,953.49
60.	01 February 2030	Termination Date	27,906,976.74

\*Dates subject to adjustment in accordance with the Modified Following Business Day Convention



J.P.Morgan

ANNEX 2  
to the Letter Agreement dated 11 May 2015

---

[Headed paper of JPM]

Date: [●] May 2015  
 From: JPMorgan Chase Bank, N.A. ("JPMCB" and "Buyer")  
 To: Transnet SOC Limited ("Transnet" and "Seller")  
 [Name and Address or Facsimile Number of Transnet]

Re: Credit Derivative Transaction:

---

The purpose of this letter (this "**Confirmation**") is to confirm the terms and conditions of the Credit Derivative Transaction entered into between us on the Trade Date specified below (the "**Transaction**"). This Confirmation constitutes a "Confirmation" as referred to in the ISDA Master Agreement specified below, and supersedes any previous confirmation or other writing with respect to the transaction described below.

The definitions and provisions contained in the 2014 ISDA Credit Derivatives Definitions (the "**2014 Definitions**"), as published by the International Swaps and Derivatives Association, Inc. ("**ISDA**"), are incorporated into this Confirmation. In the event of any inconsistency between the 2014 Definitions and this Confirmation, this Confirmation will govern.

J.P. Morgan Chase Bank, N.A. is authorised by the Office of the Comptroller of the Currency in the jurisdiction of the U.S.A. Authorised by the Prudential Regulation Authority and is subject to regulation by the Financial Conduct Authority and to limited regulation by the Prudential Regulation Authority. Details about the extent of our regulation by the Prudential Regulation Authority are available from us on request.

This Confirmation supplements, forms a part of, and is subject to, the ISDA Master Agreement dated as of [●] 2015, as amended and supplemented from time to time (the "**Agreement**"), between you and us. All provisions contained in the Agreement govern this Confirmation except as expressly modified below. The sample transaction terms set out in the Annex hereto are provided by way of example only and the Annex and such sample transaction terms do not form part of this Confirmation.

Transnet acknowledges and accepts that when structuring this Transaction and when entering into this Transaction with Transnet, JPMCB has acted and will act out of its own economic interest and for its own benefit. Accordingly, JPMCB is acting solely as a commercial counterparty to Transnet and not as its advisor. Transnet further acknowledges and accepts that upon inception of this Transaction, the market value of the Transaction from Transnet's perspective will be negative reflecting, inter alia, the estimated costs that JPMCB will incur in connection with the Transaction (the "**Transaction Costs**") as well as its estimated profit margin. The Transaction Costs include but are not limited to JPMCB's internal credit charges if applicable, the estimated costs which JPMCB will incur in hedging its risks under the Transaction, and any transaction specific adjustments or reserves taken into account in JPMCB's books and records.

JPMCB's determination of the market value of the Transaction at inception is derived from proprietary models based upon well recognised financial principles and its estimates of relevant future market conditions, and specifically takes into account JPMCB's estimated profit margin on the Transaction as well as the estimated Transaction Costs.

The terms of the Transaction to which this Confirmation relates are as follows:

1. General Terms

# J.P.Morgan

Transaction Type: Standard Emerging European Corporate

Trade Date: [●]

Effective Date: [●]

Scheduled Termination Date: [●]

Floating Rate Payer: N/A

Fixed Rate Payer: N/A

Calculation Agent: JPMCB

Reference Entity: Transnet SOC Limited

Standard Reference Obligation: Not Applicable

Reference Obligation: The obligation identified as follows:  
 Primary Obligor: [Transnet SOC Limited]  
 Guarantor: [Not Applicable]  
 Maturity: [26 July 2022]  
 Coupon: [4]%  
 CUSIP/ISIN: [XS0809571739]

## 2. Fixed Payment

Fixed Payment Payer: JPMCB.

Fixed Payment Amount: [ZAR][●]

Fixed Payment Date: The earlier of:

- (i) [1 May 2018];
- (ii) The Cash Settlement Date; and
- (iii) The Early Termination Date (if any) designated in respect of this Transaction under the Agreement.

## 3. Floating Payment

Floating Rate Payer Calculation Amount: An amount in [USD] equal to the Mark-to-market Value of the Reference Derivative as at the Cash Settlement Date.

Notifying Party: JPMCB

Notice of Publicly Available Information: Applicable, provided that, in relation to a Master Agreement Event or in relation to any other Credit

# J.P.Morgan

Event where JPMCB, or one of its Affiliates, is (A) the sole source of information in its capacity as trustee, fiscal agent, administrative agent, clearing agent or paying agent for an Obligation and (B) a holder of the Obligation with respect to which a Credit Event has occurred, JPMCB may deliver a certificate signed by two Managing Directors (or other substantively equivalent title) of JPMCB, certifying the occurrence of a Credit Event with respect to a Reference Entity, which shall satisfy the requirement for a Notice of Publicly Available Information.

## Public Sources:

Bloomberg, Reuters, Dow Jones Newswires, The Wall Street Journal, The New York Times, Nihon Keizai Shimbun, Asahi Shimbun, Yomiuri Shimbun, Financial Times, La Tribune, Les Echos, The Australian Financial Review, Debtwire (and successor publications), the main source(s) of business news in South Africa and any other internationally recognised published or electronically displayed news sources.

## Specified Number:

Two

## Additional Credit Event:

Article IV of the 2014 Definitions shall be amended by the addition of an additional Credit Event which will apply to this Credit Derivative Transaction:

**"Master Agreement Event.** "Master Agreement Event" means the occurrence of an event or circumstance (other than an 'Event of Default' specified in Section 5(a)(iv) (*Misrepresentation*) of the Agreement or a 'Termination Event' specified in Section 5(b)(i) (*Illegality*), 5(b)(ii) (*Force Majeure*), 5(b)(iii) (*Tax Event*) or 5(b)(iv) (*Tax Event Upon Merger*) of the Agreement or an Additional Termination Event specified in Part 1 (7)(B)(c) (*Change of Business*), (7)(B)(d) (*Change of Ownership*) and (7)(B)(e) (*Negative Pledge*) of the Schedule to the Agreement) following which JPMCB designates an Early Termination Date (as defined in the Agreement) under the Agreement."

## 4. Settlement Terms

### Settlement Method:

Cash Settlement

### Cash Settlement:

Section 7.1 of the 2014 Definitions shall be deleted in its entirety and replaced with the following:

# J.P.Morgan

"If "Cash Settlement" is specified as the Settlement Method in the related Confirmation:

- (i) if the Cash Settlement Amount is a positive amount, JPMCB shall pay to Transnet the Cash Settlement Amount on the Cash Settlement Date; and
- (ii) if the Cash Settlement Amount is a negative amount, Transnet shall pay to JPMCB the absolute value of the Cash Settlement Amount on the Cash Settlement Date."

Cash Settlement Date:

Following an Event Determination Date, deemed or otherwise, the date that is the "Early Termination Date" in respect of the Agreement.

Cash Settlement Amount:

An amount equal to the Floating Rate Payer Calculation Amount.

The Calculation Agent shall determine the Cash Settlement Amount and shall notify the parties of such amount.

Mark-to-market Value:

"Mark-to-market Value" means, in respect of any date (the "MtM Valuation Date"), the amount (which may be positive or negative) equal to the Close-out Amount (as defined under the Reference Agreement), as if:

- (i) the Reference Derivative were the sole Terminated Transaction as of the date the Mark-to-market Value is determined; and
- (ii) the Determining Party under the Reference Agreement were the [Floating Amount / Floating Rate Payer][*Note: terms to match Reference Confirmation in Exhibit*] under the Reference Agreement,

as determined by the Calculation Agent and in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the Calculation Agent as being required to purchase such amount of such Other Currency as at the MtM Valuation Date.

Reference Derivative:

A hypothetical derivative transaction having the terms set out in the Exhibit hereto (the "Reference

# J.P.Morgan

**Confirmation").** The Reference Confirmation is deemed to supplement, form part of and be subject to a hypothetical agreement (the "**Reference Agreement**") in the pre-printed form of the ISDA 2002 Master Agreement (Multicurrency-Cross Border) but without any Schedule thereto except for the elections of (i) English law as the governing law; and (ii) [USD] as the Termination Currency.

## 5. Notice and Account Details:

Notice and Account Details for JPMCB:

Inquiries regarding payments and/or rate resettings only:  
Attention: CDS Documentation  
Telephone: 0044 2073257372  
Facsimile: 0044 2073253206  
Telex: 896631 MGT G  
Cable: Morganbank

Please send inquiries regarding documentation to:  
Credit Derivatives Operations  
Middle Office Contact:  
Attention: CDS Documentation  
Telephone: 0044 2073257372  
Facsimile: 0044 2073253206

Please send notices to:  
Middle Office Contact as noted above AND Front Office Contact  
Attention: Guy America  
Telephone: 0044 2077793095  
Facsimile: 0044 207779150

Please quote our reference of:  
[●]

Notice and Account Details for Transnet:

Transnet SOC Ltd  
150 Commissioner Street  
43rd Floor, Carlton International Centre  
Johannesburg  
2001  
Attention: Group Treasurer  
Telephone No: +27 11 308 2600  
Facsimile No: +27 11 308 2699

## 6. Offices:

Transnet:

JOHANNESBURG

Transnet SOC Ltd  
150 Commissioner Street  
43rd Floor, Carlton International Centre

# J.P.Morgan

Johannesburg  
2001

JPMCB: JOHANNESBURG

JPMorgan Chase Bank, N.A.  
1 Fricker Road  
Cnr Hurlingham Road  
Illovo  
Johannesburg 2196  
South Africa

7. Additional Terms:

(a) Section 1.16 of the 2014 Definitions shall be deleted in its entirety and replaced with the following:

**"Section 1.16. Event Determination Date.** "Event Determination Date" means:

- (i) with respect to any Credit Event other than the Additional Credit Event, the first date such Credit Event occurs; or
- (ii) with respect to the Additional Credit Event, the Notice Delivery Date if the Notice Delivery Date occurs during the Notice Delivery Period."

(b) Section 2.2(n)(ii) of the 2014 Definitions shall be deleted in its entirety and replaced with the following:

"Where, pursuant to Section 2.2(a)(iii), (iv) or (vi), more than one Successor has been identified, the terms of the relevant Credit Derivative Transaction will be adjusted by the Calculation Agent with any such amendments being determined by the Calculation Agent in its sole discretion and notified to the parties.

(c) Section 4.2. of the 2014 Definitions shall be deleted in its entirety and replaced with the following:

**"Section 4.2. Bankruptcy.** "Bankruptcy" shall mean of any of the events specified in clauses (1) to (9) of Section 5(a)(vii) of the Agreement. For this purpose, all references to "a party", "Credit Support Provider" or "Specified Entity" in Section 5(a)(vii) of the Agreement shall be deemed to be references to a Reference Entity."

8. Documents to be delivered

Each party shall deliver to the other, at the time of its execution of this Confirmation, evidence of the incumbency and specimen signature of the person(s) executing this Confirmation, unless such evidence has been previously supplied and remains true and in effect.

# J.P.Morgan

## 9. Additional covenants

In connection with this Transaction, the parties hereto agree and acknowledge that:

- (a) it shall be the responsibility of each party to ensure that its own accounting, regulatory and all other treatments of this Transaction are consistent with the conditional nature of its entitlement to receive any floating payment under this Transaction. Notwithstanding the foregoing, Transnet confirms and represents that this Transaction (including, for the avoidance of doubt, the settlement mechanism following the occurrence of an Event Determination Date) will be accounted for in accordance with applicable accounting principles and disclosed to the public as appropriate. Transnet also agrees that any valuation of this Transaction used by Transnet in the determination and/or disclosure of its financial results with respect to any given fiscal period will reflect the inclusion of the conditions to an Event Determination Date;
- (b) the replacement cost, close-out value, or Close-Out Amount of this Transaction at any given time prior to the occurrence of an Event Determination Date will not only be a function of the ZAR/USD exchange rates, applicable interest rates and swap spreads, but will also be a function of the creditworthiness of Transnet/the Reference Entity; and
- (c) for the avoidance of doubt, in calculating amounts due under Section 6(e) of the Agreement at any given time prior to the occurrence of an Event Determination Date, a party will have regard to all provisions of this Transaction including the provisions in and related to the Credit Derivatives Definitions and not only to the payment provisions.

## 10. Relationship between parties

Each party will be deemed to represent to the other party on the Trade Date that (absent a written agreement between the parties that expressly imposes affirmative obligations to the contrary):

- (a) **Non-Reliance.** It is acting for its own account, and it has made its own independent decisions to enter into the Transaction and as to whether the Transaction is appropriate or proper for it based upon its own judgment and upon advice from such advisers as it has deemed necessary. It is not relying on any communication (written or oral) of the other party as investment advice or as a recommendation to enter into the Transaction; it being understood that information and explanations related to the terms and conditions of the Transaction shall not be considered investment advice or a recommendation to enter into the Transaction. No communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of the Transaction.
- (b) **Assessment and Understanding.** It is capable of assessing the merits of and understanding (on its own behalf or through independent professional advice), and understands and accepts, the terms, conditions and risks of the Transaction. It is capable of assuming, and assumes the risks of the Transaction.
- (c) **Status of Parties.** The other party is not acting as a fiduciary for or an adviser to it in respect of the Transaction.

## 11. Time of dealing

The time of dealing will be confirmed by JPMCB upon written request.

# J.P.Morgan

Please confirm that the foregoing correctly sets forth the terms of our agreement by executing a copy of this Confirmation and returning it to us or by sending to us a letter, telex or facsimile substantially similar to this letter, which letter, telex or facsimile sets forth the material terms of the Transaction to which this Confirmation relates and indicates agreement to those terms. When referring to this Confirmation, please indicate: JPMorgan Deal Number(s): [•].

Yours sincerely,

JPMorgan Chase Bank, N.A.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Confirmed as of the date first above written:

Transnet SOC Limited

By:

Name:  
Title:

*Siyabonga Langa*  
*Acting Group Chief executive*

*S*



J.P.Morgan

EXHIBIT

Reference Confirmation

*[Reference Confirmation based on CCY swap confirmation to be inserted]*

*[Handwritten signature]* *[Handwritten signature]*

# J.P.Morgan

## ANNEX – Sample Standard Emerging European Corporate Transaction Terms

Transaction Type	STANDARD EMERGING EUROPEAN CORPORATE
Business Days:	If the Floating Rate Payer Calculation Amount is denominated in USD: London, New York EUR: London, TARGET CAD: London & Toronto
Calculation Agent City:	London
All Guarantees:	Applicable
Conditions to Settlement:	Notice of Publicly Available Information Applicable
Credit Events:	Bankruptcy Failure to Pay Grace Period Extension: Applicable Obligation Acceleration Repudiation/Moratorium Restructuring Multiple Holder Obligation: a) Not Applicable with respect to Obligation Category "Bonds" b) Applicable with respect to Obligation Category "Loans"
Obligation Category:	Bond or Loan
Obligation Characteristics:	Not Subordinated Not Domestic Law Not Domestic Currency Not Domestic Issuance
Settlement Method:	Auction Settlement
Fallback Settlement Method:	Physical Settlement
Physical Settlement Period:	As per Section 8.19 of the 2014 Definitions
Deliverable Obligation Category:	Bond or Loan
Deliverable Obligation Characteristics:	Not Subordinated Specified Currency Not Domestic Issuance Not Contingent Transferable Not Bearer Assignable Loan Consent Required Loan Not Domestic Law

# J.P.Morgan

Escrow:	Applicable
Financial Reference Entity Terms:	Not Applicable
Subordinated European Insurance Terms:	Not Applicable
60 Business Day Cap on Settlement:	Not Applicable
2014 Sovereign No Asset Package Delivery Supplement to the 2014 ISDA Credit Derivatives Definitions (September 15, 2014):	Not Applicable
Monoline Supplement:	Not Applicable
Additional Provisions for the Russian Federation (August 13, 2004) :	Not Applicable
Hungary Additional Provisions:	Not Applicable
Additional Provisions for the Argentine Republic: Excluded Obligations and Excluded Deliverable Obligations (December 21, 2005):	Not Applicable
Secured Deliverable Obligation Characteristic Additional Provisions:	Not Applicable
Additional Provisions for Reference Entities with Delivery Restrictions (February 1, 2007):	Not Applicable
LPN Additional Provisions:	Not Applicable
Additional Provisions for STMicroelectronics NV (December 6, 2007):	Not Applicable
2009 ISDA Credit Derivatives Determinations Committees, Auction Settlement and Restructuring Supplement to the 2003 ISDA Credit Derivatives Definitions (July 14, 2009):	Applicable
Fixed Recovery CDS Additional Provisions:	Not Applicable unless otherwise specified as Applicable in the relevant Confirmation
Recovery Lock Additional Provisions:	Not Applicable unless otherwise specified as Applicable in the relevant Confirmation
Sukuk Additional Provisions:	Not Applicable
2012 ISDA U.S. Municipal Reference Entity Supplement to the 2003 ISDA Credit Derivatives Definitions (March 5, 2012):	Not Applicable
Additional Provisions for the Hellenic Republic (May	Not Applicable

J.P.Morgan

29, 2012):	
2014 CoCo Supplement to the 2014 ISDA Credit Derivatives Definitions (September 15, 2014):	Not Applicable
Fixed Rate Payer Payment Dates frequency:	Quarterly
Earliest Exercise Time: <i>(Only applicable to transactions documented under the ISDA Single Name CDS Swaption Standard Terms Supplement and the Credit Default Swaption Confirmation, each as published on January 20, 2011 or, if subsequently amended, as most recently published by ISDA)</i>	9:00 AM (London Time)
Expiration Time: <i>(Only applicable to transactions documented under the ISDA Single Name CDS Swaption Standard Terms Supplement and the Credit Default Swaption Confirmation, each as published on January 20, 2011 or, if subsequently amended, as most recently published by ISDA)</i>	4:00 PM (London Time)





8 MAY 2015

TRANSNET

**PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR  
LOAN SYNDICATION****J.P. Morgan response to Request for Proposals dated 6 May 2015**

Kindly send all correspondence in connection with this proposal to:

Marc Hussey – Managing Director, Head Global Corporate Banking Sub-Saharan Africa  
J.P. Morgan Johannesburg  
Telephone: +27 11 507 0730  
Mobile: +27 82 460 1940  
Email: [marc.j.hussey@jpmorgan.com](mailto:marc.j.hussey@jpmorgan.com)

Frank Vein – Executive Director, Global Corporate Banking Sub-Saharan Africa  
J.P. Morgan Johannesburg  
Telephone: +27 11 507 0727  
Mobile: +27 82 604 5460  
Email: [frank.vein@jpmorgan.com](mailto:frank.vein@jpmorgan.com)

Laurent Lalou – Managing Director, Head of Emerging Markets Sales  
J.P. Morgan London  
Telephone: +44 207 742 1819  
Mobile: +44 782 543 4770  
Email: [laurent.lalou@jpmorgan.com](mailto:laurent.lalou@jpmorgan.com)

**J.P.Morgan**

STRICTLY PRIVATE AND CONFIDENTIAL

CONFIDENTIAL

## Disclaimer

This presentation was prepared exclusively for the benefit and internal use of the J.P. Morgan client to whom it is directly addressed and delivered (including such client's subsidiaries, the "Company") in order to assist the Company in evaluating, on a preliminary basis, the feasibility of a possible transaction or transactions and does not carry any right of publication or disclosure, in whole or in part, to any other party. This presentation is for discussion purposes only and is incomplete without reference to, and should be viewed solely in conjunction with, the oral briefing provided by J.P. Morgan. Neither this presentation nor any of its contents may be disclosed or used for any other purpose without the prior written consent of J.P. Morgan.

The information in this presentation is based upon any management forecasts supplied to us and reflects prevailing conditions and our views as of this date, all of which are accordingly subject to change. J.P. Morgan's opinions and estimates constitute J.P. Morgan's judgment and should be regarded as indicative, preliminary and for illustrative purposes only. In preparing this presentation, we have relied upon and assumed, without independent verification, the accuracy and completeness of all information available from public sources or which was provided to us by or on behalf of the Company or which was otherwise reviewed by us. In addition, our analyses are not and do not purport to be appraisals of the assets, stock, or business of the Company or any other entity. J.P. Morgan makes no representations as to the actual value which may be received in connection with a transaction nor the legal, tax or accounting effects of consummating a transaction. Unless expressly contemplated hereby, the information in this presentation does not take into account the effects of a possible transaction or transactions involving an actual or potential change of control, which may have significant valuation and other effects.

Notwithstanding anything herein to the contrary, the Company and each of its employees, representatives or other agents may disclose to any and all persons, without limitation of any kind, the U.S. federal and state income tax treatment and the U.S. federal and state income tax structure of the transactions contemplated hereby and all materials of any kind (including opinions or other tax analyses) that are provided to the Company relating to such tax treatment and tax structure insofar as such treatment and/or structure relates to a U.S. federal or state income tax strategy provided to the Company by J.P. Morgan. J.P. Morgan's policies on data privacy can be found at <http://www.jpmorgan.com/pages/privacy>.

J.P. Morgan's policies prohibit employees from offering, directly or indirectly, a favorable research rating or specific price target, or offering to change a rating or price target, to a subject company as consideration or inducement for the receipt of business or for compensation. J.P. Morgan also prohibits its research analysts from being compensated for involvement in investment banking transactions except to the extent that such participation is intended to benefit investors.

**IRS Circular 230 Disclosure:** JPMorgan Chase & Co. and its affiliates do not provide tax advice. Accordingly, any discussion of U.S. tax matters included herein (including any attachments) is not intended or written to be used, and cannot be used, in connection with the promotion, marketing or recommendation by anyone not affiliated with JPMorgan Chase & Co. of any of the matters addressed herein or for the purpose of avoiding U.S. tax-related penalties.

J.P. Morgan is a marketing name for investment banking businesses of JPMorgan Chase & Co. and its subsidiaries worldwide. Securities, syndicated loan arranging, financial advisory and other investment banking activities are performed by a combination of J.P. Morgan Securities LLC, J.P. Morgan Limited, J.P. Morgan Securities plc and the appropriately licensed subsidiaries of JPMorgan Chase & Co. in EMEA and Asia-Pacific, and lending, derivatives and other commercial banking activities are performed by JPMorgan Chase Bank, N.A. J.P. Morgan deal team members may be employees of any of the foregoing entities.

J.P.Morgan

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

CONFIDENTIAL

This presentation does not constitute a commitment by any J.P. Morgan entity to underwrite, subscribe for or place any securities or to extend or arrange credit or to provide any other services.

This message has been prepared by personnel in the Sales and Trading Departments of one or more affiliates of JPMorgan Chase & Co. and is not the product of JPMorgan's Research Department. It is not a research report and is not intended as such. This material is for the general information of our clients and is a "solicitation" only as that term is used within CFTC Rule 1.71 and 23.605 promulgated under the U.S. Commodity Exchange Act.

This material was prepared by an Associated Person. All questions related to swaps referenced in these materials must be directed to [us.swaps.marketing@jpmorgan.com](mailto:us.swaps.marketing@jpmorgan.com).

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION



## Table of contents

<b>1. Summary of RFP Response</b>	<b>1</b>
Introduction	1
Section 1: Notice to Bidders; Sub Section 5.4: Supplier Development Initiatives	2
Section 1: Notice to Bidders; Sub Section 7: Confidentiality, and in Appendix iv – Non Disclosure Agreement	3
Section 1: Notice to Bidders; Sub Section 8: Instructions for completing the RFP	3
Section 2: Scope of requirements; Sub Section 1.1 Cross Currency and Contingent Credit Default Swap and 1.2 Loan Syndication	3
Section 2: Scope of Requirements; Sub Section 5: Green economy/carbon footprint	3
Section 3: Pricing; Sub Section 1.1: Service Level	3
Annexure C – Supplier Development Plan	4
Appendix ii – General Bid Conditions - Services	4
Appendix iii – Service Standard Ts and Cs of Contract	4
Appendix v – Integrity Pact	4
<b>2. RFP Document</b>	<b>5</b>
<b>3. Annexures</b>	<b>6</b>
Annexure A: Technical Pre-Qualification	6
Annexure B: Supplier Development Plan, and	6
Annexure C: Supplier Development Value Summary	6
Annexure D: B-BBEE Improvement Plan	6
<b>Appendices</b>	
<b>A. Appendix – Supporting Documentation</b>	<b>7</b>
Copy of B-BBEE Accreditation Certification	7
Copy of Tax Clearance Certificate	7
Copy of ID's of directors	7
Copy of company registration documents	7
Company letterhead	7
<b>B. Appendix - General Bid Conditions</b>	<b>8</b>
<b>C. Appendix - Standard Ts and Cs of Contract</b>	<b>9</b>
<b>D. Appendix – Non Disclosure Agreement</b>	<b>10</b>
<b>E. Appendix – Integrity Pact</b>	<b>11</b>
<b>F. Appendix - Letter Agreement</b>	<b>12</b>
<b>G. Appendix - Representation Letter (relating to JPMorgan Chase's Global Anti-corruption Compliance Program)</b>	<b>13</b>

CONFIDENTIAL

## 1. Summary of RFP Response

### Introduction

JPMorgan Chase Bank, N.A., Johannesburg Branch ("JPMC" or "JP Morgan") is pleased to submit our proposal in response to Transnet SOC Ltd's ("Transnet" or "the Company") Request for Proposal ("RFP") dated 6 May 2015 for the provision of hedging of financial risks (interest rate, credit and currency risk) and to act as lead arranger for the syndicated ZAR12 billion loan (the "Loan") for a period of up to fifteen (15) years.

Please note that given the short time frame we have endeavored to respond as completely and fully as possible but kindly note the following:

- The terms of the RFP document do not accurately reflect the potential transactions as envisaged and appear to contemplate a straightforward supplier contractual arrangement. Accordingly, we have made certain amendments to reflect:
  - the correct nature and extent of the transactions being proposed;
  - that final terms are still subject to negotiation and agreement with Transnet; and
  - that all potential transactions are subject to the negotiation and conclusion of applicable documentation (terms sheets etc., confirmations etc.).
- Extensive negotiations between the parties to date have already resulted in substantial agreement on the key terms and principles, including confidentiality. Accordingly we have amended the RFP to align to these agreed terms. We attach the draft form of letter agreement relating to the hedging of financial risk and which we refer to in our mark-up as the "Letter Agreement".
- Certain matters we cannot commit to or represent or warrant due to global policy requirements. In these cases we have provided alternative assurances or representations which we believe should provide sufficient comfort to Transnet.

Further, JPMC's obligations under any transactions are subject to JPMC obtaining all credit, risk, market risk, compliance, legal and reputational approvals.

JPMC shall not be responsible for, and will not be deemed as, advising the Company or any other person or entity on the suitability or corporate implications of any loan, any hedging or other transaction, performing on the Company's behalf due diligence investigations in connection with any loan or any transaction, nor giving the Company legal, accounting, taxation, regulatory, ratings or investment advice in relation to any loan or any transaction. JPMC and any of its affiliates, subsidiaries or employees shall have no liability to the Company or to any of its subsidiaries or affiliates or its or their respective directors, officers, employees, partners, shareholders or other security holders or creditors for any actions or omissions of such other advisors and including in respect of the advice of such any other advisors in relation to any transaction.

The provisions of the ISDA Master Agreement and confirmations of any transactions entered into thereunder shall prevail over the provisions of the RFP, including but not limited to, the Service Standard Terms and Conditions of Contract or General Bid Conditions ("RFP Documents"). Any breach by the parties of the terms and conditions of the RFP Documents shall not give rise to any rights to terminate any existing transactions under the ISDA Master Agreement between the parties.

Kindly note that our RFP response is valid for a period of 120 business days from 8 May 2015.

There may be occasions where JP Morgan needs to communicate with the working group regarding the proposed hedging and loan transactions in which case we will request permission to do so.

In response to the RFP, we have detailed our responses to the required sections below.

CONFIDENTIAL

## Section 1: Notice to Bidders; Sub Section 5.4: Supplier Development Initiatives

### Definition of contract value

Transnet has requested we set out the 'contract value' to determine the value of the 35% of contract value to be attributable to supplier development initiatives. Below we set out how we have determined contract value.

Transnet is proposing to enter into a US\$2.5billion loan facility with a committed first tranche of US\$1.5billion and a further optional tranche of US\$1billion at Transnet's option (the "CDB Loan") with China Development Bank ("CDB") to finance part of the Company's purchase of locomotives from China North Railways and China South Railways. In connection with this Loan, JP Morgan will act as sole hedge counterparty. Transnet will enter into a hedging transaction with JP Morgan in the form of a series of cross currency swaps and credit contingent structures in the form of Contingent Credit Default Swaps (the "Transaction").

As described in the attached form of Letter Agreement between JP Morgan and Transnet, Transnet will hedge each draw-down of the CDB Loan with JP Morgan at or about the time of each draw-down by way of entering into a cross-currency swap and a contingent credit default swap, up to an aggregate cross-currency swaps notional amount of US\$1.5billion, subject to the market conditions, and the same number of credit contingent structures. Each part of the Transaction, subject to any changes in market conditions, such as liquidity and volatility, and provided there is no *force majeure*, will be priced based on the following charges from an agreed mid price:

Trading Charge (bps)	Credit Valuation Adjustment (bps)	Credit Contingent Default Swap charge (bps)
12.9	7	-112.5

The value of the Transaction to JP Morgan is based on the estimated final profitability of the transaction. It is important to note that this will not be known at the outset as it will depend on market conditions and movements, as well as the ability of JP Morgan to risk manage the credit and market risk exposures arising from the cross-currency swap and a contingent credit default swap. The exposure generated is long-term exposure (the underlying CDB Loan has a 15-year final maturity date), although the greatest exposure and risk to JP Morgan arises when the loan is fully drawn and declines gradually over the 15-year tenor.

We also note that the profitability is based on our best assumption of future costs of capital. However the regulatory environment may (and will most likely) change and may impact the actual cost of the transaction, therefore impacting the final profitability.

Assuming correct risk management of these exposures and a stable regulatory environment we estimate the resulting value of the contract to JP Morgan to be in the region of R40 million, though, as noted, it may be higher or lower, and under certain instances may even be negative. Thirty-five percent (35%) of this amount equates to R14 million.

Separately, in respect of our role as lead arranger of the syndicated loan of up to R12 billion, the value to JP Morgan of this role is 0.2% of R12 billion, or R24 million. Thirty-five percent (35%) of this amount equates to R8.4 million.

Therefore we estimate 35% of the total contract value to be R22.4 million.

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

CONFIDENTIAL

## **Section 1: Notice to Bidders; Sub Section 7: Confidentiality, and in Appendix iv – Non Disclosure Agreement**

We refer to the terms of the attached Letter Agreement relating to confidentiality as set out in paragraphs 1 to 6 (both inclusive) and note that these are the terms that have been extensively negotiated and agreed with Transnet. For the avoidance of doubt, the terms of the Letter Agreement shall apply to the Transaction described therein.

## **Section 1: Notice to Bidders; Sub Section 8: Instructions for completing the RFP**

In line with previous submissions to Transnet, we will send the hard-copies of the RFP response as requested and send an electronic version via email. For security protocol reasons we may not be able provide a CD.

## **Section 2: Scope of requirements; Sub Section 1.1 Cross Currency and Contingent Credit Default Swap and 1.2 Loan Syndication**

In relation to the scope of work relating to the swaps and in relation to the loan syndication we understand and agree to the requirements in the RFP, but we wish to clarify in sub section 1.2 that we are arranging the loan syndication as lead manager but we are not proposing to underwrite the loan syndication. This change has been marked up in the RFP response. We propose a 0.2% fee on the loan notional to arrange.

## **Section 2: Scope of Requirements; Sub Section 5: Green economy/carbon footprint**

JPMorgan Chase has designed policies that ensure environmental and human rights impacts are identified early, carefully evaluated and managed responsibly. Such policies not only promote positive environmental stewardship, but also highlight business opportunities to support investments in renewable energy, energy efficiency, sustainable water management, sustainable forestry and sustainable supply chains.

As a financial institution, our direct environmental impacts stem primarily from the operation of our corporate real estate, including office buildings, bank branches, data centers and other specialty use buildings. We strive to manage our operations in an efficient and sustainable manner, continually look for opportunities to improve our performance, find innovative solutions to environmental challenges and engage our employees in these efforts.

JPMorgan Chase has made commitments to reduce greenhouse gas emissions and water usage, improve energy efficiency, and manage waste responsibly. These commitments are detailed in the firm's Environmental and Social Policy Framework along with our broader approach to key issues such as climate change, biodiversity and human rights. We report our progress towards these goals in the firm's annual Corporate Responsibility Report.

Please refer to the following links for more information.

- GRI Index (environmental footprint data): [www.jp.morganchase.com/corporateresponsibility](http://www.jp.morganchase.com/corporateresponsibility)
- Environmental Sustainability at JPMorgan Chase:  
[www.jp.morganchase.com/corporate/Corporate-Responsibility/environment](http://www.jp.morganchase.com/corporate/Corporate-Responsibility/environment)

## **Section 3: Pricing; Sub Section 1.1: Service Level**

The designated JP Morgan account representatives under this RFP for Transnet are:

- Mr Frank Vein

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

CONFIDENTIAL

- Executive Director, Global Corporate Banking Sub-Saharan Africa
- Telephone: +27 11 507 0727
- Mobile: +27 82 604 5460
- Email: [frank.vein@jpmorgan.com](mailto:frank.vein@jpmorgan.com)

- The alternate is Mr Marc Hussey
- Managing Director, Global Corporate Banking Sub-Saharan Africa
- Telephone: +27 11 507 0730
- Mobile: +27 82 460 1940
- Email: [marc.l.hussey@jpmorgan.com](mailto:marc.l.hussey@jpmorgan.com)

### **Annexure C – Supplier Development Plan**

We note that our Supplier Development Plan, sets out current supplier development initiatives related to the transaction, which already meet 35% of contract value. We note also that our future supplier development initiatives and associated budget over the next 5-years are expected to exceed the 35% of contract value to be spent on supplier development. However, we note this is a forecast and is not a contractual commitment at this point and the contractual terms in relation to the Supplier Development Plan are still to be negotiated, as reflected on page 16 of the marked-up RFP.

### **Appendix ii – General Bid Conditions - Services**

Please refer to mark-up of the General Bid Conditions in the attached documents. We note that the conditions are more readily applicable to a straightforward supplier contractual arrangement and a number of the clauses are not applicable in this instance.

### **Appendix iii – Service Standard Ts and Cs of Contract**

Please refer to mark-up of the Ts and Cs of the contract in the attached documents. We note that the terms and conditions are more readily applicable to a straightforward supplier contractual arrangement and a number of the clauses are not applicable in this instance. It is market standard to document terms of cross-border OTC derivative transactions by entering into the ISDA Master Agreement and Confirmations governing individual transactions, incorporating terms of the relevant sets of definitions published by the International Swaps and Derivatives Association, Inc. ("ISDA"). JP Morgan and Transnet have already signed an ISDA Master Agreement in 2009. In addition all terms relating to the ZAR syndicated loan are still to be negotiated and agreed between the parties.

### **Appendix v – Integrity Pact**

We are attaching our Representation Letter relating to JPMorgan Chase's Global Anti-corruption Compliance Program which we believe should provide you with sufficient comfort. Unfortunately due to global policy considerations we are unable to sign up to your form of Integrity Pact.

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

1

CONFIDENTIAL

## 2. RFP Document

Including the following:

- Returnable documents
  - Section 3 – Pricing,
  - Section 5: RFP Declaration and Breach of Law Form,
  - Section 11: Vendor Application Form, and
- Essential returnable documents
  - Section 4 – Proposal Form and List of Returnable Documents
  - Section 9: Declaration of Supplier Development Commitments

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

**TRANSNET SOC LTD**

[Registration No. 1990/000900/30]

**REQUEST FOR PROPOSAL [RFP]**

FOR THE PROVISION OF HEDGING FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD <sup>ARRANGE</sup> ~~AND UNDERWRITE~~ THE EQUIVALENT <sup>UP TO FIFTEEN IS</sup> ~~SYNDICATE~~ ZAR 12 BILLION <sup>D</sup> ~~LOAN~~ FOR A PERIOD OF <sup>15</sup> ~~FOURTEEN (14)~~ YEARS

<b>RFP NUMBER</b>	<b>GSM/15/05/1265</b>
<b>ISSUE DATE:</b>	<b>06 May 2015</b>
<b>CLOSING DATE:</b>	<b>08 May 2015</b>
<b>CLOSING TIME:</b>	<b>12:00</b>
<b>BID VALIDITY PERIOD:</b>	<b>120 days Business Days from Closing Date</b>



**SCHEDULE OF BID DOCUMENTS**

<b>Section No</b>	<b>Page</b>
<b>SECTION 1: NOTICE TO BIDDERS .....</b>	<b>3</b>
1 INVITATION TO BID .....	3
2 FORMAL BRIEFING.....	3
3 PROPOSAL SUBMISSION .....	3
4 DELIVERY INSTRUCTIONS FOR RFP .....	4
5 BROAD-BASED BLACK ECONOMIC EMPOWERMENT AND SOCIO-ECONOMIC OBLIGATIONS .....	4
6 COMMUNICATION.....	6
7 CONFIDENTIALITY .....	6
8 INSTRUCTIONS FOR COMPLETING THE RFP .....	7
9 COMPLIANCE.....	7
10 DISCLAIMERS.....	7
11 LEGAL REVIEW.....	8
<b>SECTION 2: SCOPE OF REQUIREMENTS .....</b>	<b>8</b>
1 SCOPE OF REQUIREMENTS.....	8
2 GREEN ECONOMY / CARBON FOOTPRINT.....	9
3 GENERAL SERVICE PROVIDER OBLIGATIONS.....	9
4 EVALUATION METHODOLOGY .....	10
<b>SECTION 3: PRICING .....</b>	<b>13</b>
1 SERVICE LEVELS.....	13
<b>SECTION 4: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS .....</b>	<b>15</b>
<b>SECTION 5: RFP DECLARATION AND BREACH OF LAW FORM.....</b>	<b>21</b>
<b>SECTION 6: RFP CLARIFICATION REQUEST FORM.....</b>	<b>24</b>
<b>SECTION 7: B-BBEE STATUS.....</b>	<b>25</b>
<b>SECTION 8 : SUPPLIER DEVELOPMENT INITIATIVES .....</b>	<b>27</b>
<b>SECTION 9 : DECLARATION OF SUPPLIER DEVELOPMENT COMMITMENTS.....</b>	<b>31</b>
<b>SECTION 10 : B-BBEE IMPROVEMENT PLAN.....</b>	<b>32</b>
<b>SECTION 11 : VENDOR APPLICATION FORM .....</b>	<b>33</b>
<b>RFP ANNEXURES:</b>	
ANNEXURE A	TECHNICAL PREQUALIFICATION
ANNEXURE B	SUPPLIER DEVELOPMENT VALUE SUMMARY
ANNEXURE C	SUPPLIER DEVELOPMENT PLAN
ANNEXURE D	B-BBEE IMPROVEMENT PLAN
<b>RFP APPENDICES:</b>	
APPENDIX (i)	SD GUIDELINES
APPENDIX (ii)	GENERAL BID CONDITIONS
APPENDIX (iii)	SERVICES STANDARD TERMS AND CONDITIONS OF CONTRACT
APPENDIX (iv)	NON DISCLOSURE AGREEMENT SERVICES
APPENDIX (v)	SUPPLIER INTEGRITY PACT

**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD, <sup>ARRANGE</sup> ~~AND UNDERWRITE~~ THE EQUIVALENT SYNDICATED ZAR <sup>12 billion</sup> ~~LOAN~~ <sup>UP TO FIFTEEN (15)</sup> ~~FOR A PERIOD OF FOURTEEN (14) YEARS~~**

**Section 1: NOTICE TO BIDDERS**

**1 INVITATION TO BID**

Responses to this RFP [hereinafter referred to as a **Bid** or a **Proposal**] are requested from persons, companies, close corporations or enterprises [hereinafter referred to as an **entity, Respondent or Bidder**].

<b>DESCRIPTION</b>	The Provision of Hedging of Financial Risks (Interest Rate, Credit and Currency Risk) and to Lead, <sup>Arrange</sup> <del>and Underwrite</del> the Equivalent Syndicated ZAR <sup>12 billion</sup> <del>Loan</del> <sup>UP TO FIFTEEN (15)</sup> <del>FOR A PERIOD OF FOURTEEN (14) YEARS</del> .
<b>BID FEE AND BANKING DETAILS</b>	This RFP is issued free of charge.
<b>INSPECT / COLLECT DOCUMENTS FROM</b>	This RFP will be emailed to potential bidders.
<b>ISSUE DATE AND COLLECTION DATE DEADLINE</b>	This RFP will be emailed to potential bidders.
<b>COMPULSORY/NON COMPULSORY BRIEFING SESSION</b>	No briefing session will be held.
<b>CLOSING DATE</b>	<b>12:00 on Friday 08 May 2015</b> Bidders must ensure that bids are delivered timeously to the correct address. As a general rule, if a bid is late or delivered to the incorrect address, it will not be accepted for consideration.
<b>VALIDITY PERIOD</b>	<b>120 Business Days from Closing Date</b> Bidders are to note that they may be requested to extend the validity period of their bid, at the same terms and conditions, if the internal evaluation process has not been finalised within the validity period.

Any additional information or clarification will be faxed or emailed to all Respondents, if necessary.

**2 FORMAL BRIEFING**

A formal briefing session will not be held but should Respondents have specific queries they should email these to the Transnet employee(s) indicated in paragraph 6 [Communication] below:

**3 PROPOSAL SUBMISSION**

Proposals must be submitted in a sealed envelope addressed as follows:

The Secretariat, Transnet Acquisition Council  
 RFP No: GSM/15/05/1265  
 Description: The Provision of Hedging of Financial Risks (Interest Rate, Credit and Currency Risk) and to Lead, <sup>Arrange</sup> ~~and Underwrite~~ the Equivalent Syndicated ZAR <sup>12 billion</sup> ~~Loan~~ <sup>UP TO FIFTEEN (15)</sup> ~~FOR A PERIOD OF FOURTEEN (14) YEARS~~.  
 Closing date and time: 08 May 2015 at 12:00  
 Closing address: [Refer to options in paragraph 4]

All envelopes must reflect the return address of the Respondent on the reverse side.



JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

**4 DELIVERY INSTRUCTIONS FOR RFP****4.1 Delivery by hand**

If delivered by hand, the envelope must be deposited in the Transnet tender box which is located at the main entrance of the Office Block, Carlton Centre, 150 Commissioner Street, Johannesburg, and must be addressed as follows:

THE SECRETARIAT  
TRANSNET ACQUISITION COUNCIL  
CARLTON CENTRE  
TENDER BOX  
OFFICE BLOCK FOYER  
150 COMMISSIONER STREET  
JOHANNESBURG 2001

- a) The measurements of the "tender slot" are 400mm wide x 100mm high, and Respondents must please ensure that response documents or files are no larger than the above dimensions. Responses which are too bulky [i.e. more than 100mm thick] must be split into two or more files, and placed in separate envelopes, each such envelope to be addressed as required in paragraph 3 above.
- b) It should also be noted that the above tender box is located at the street level outside the main entrance in Commissioner Street and is accessible to the public 24 hours a day, 7 days a week.

**4.2 Dispatch by courier**

If dispatched by courier, the envelope must be addressed as follows and delivered to the Office of The Secretariat, Transnet Acquisition Council and a signature obtained from that Office:

THE SECRETARIAT  
TRANSNET ACQUISITION COUNCIL  
48TH FLOOR  
CARLTON CENTRE  
OFFICE BLOCK  
150 COMMISSIONER STREET  
JOHANNESBURG

- 4.3 If responses are not delivered as stipulated herein, such responses will not be considered.
- 4.4 No email or faxed responses will be considered, unless otherwise stated herein.
- 4.5 The responses to this RFP will be opened as soon as possible after the closing date and time. Transnet shall not, at the opening of responses, disclose to any other company any confidential details pertaining to the Proposals / information received, i.e. pricing, delivery, etc. The names and locations of the Respondents will be divulged to other Respondents upon request.
- 4.6 Envelopes must not contain documents relating to any RFP other than that shown on the envelope.

**5 BROAD-BASED BLACK ECONOMIC EMPOWERMENT AND SOCIO-ECONOMIC OBLIGATIONS**

In terms of the Preferential Procurement Policy Framework Act (PPPFA), Act 5 of 2000 and its Regulations, Respondents are to note that Transnet will allow a "preference" to companies who provide a valid B-BBEE Verification Certificate.

**5.1 B-BBEE Joint Ventures or Consortiums**

Respondents who would wish to respond to this RFP as a Joint Venture [JV] or consortium with B-BBEE entities, must state their intention to do so in their RFP submission. Such Respondents must



JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

also submit a signed JV or consortium agreement between the parties clearly stating the percentage [%] split of business and the associated responsibilities of each party. If such a JV or consortium agreement is unavailable, the partners must submit confirmation in writing of their intention to enter into a JV or consortium agreement should they be awarded business by Transnet through this RFP process. This written confirmation must clearly indicate the percentage [%] split of business and the responsibilities of each party. In such cases, award of business will only take place once a signed copy of a JV or consortium agreement is submitted to Transnet.

## 5.2 Subcontracting

Transnet fully endorses Government's transformation and empowerment objectives and when contemplating subcontracting Respondents are requested to give preference to companies which are Black Owned, Black Women Owned, Black Youth Owned, owned by Black People with Disabilities, EMEs and QSEs including any companies designated as B-BBEE Facilitators<sup>1</sup>.

A person awarded a contract may not subcontract more than 25% [twenty-five percent] of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is subcontracted to an EME that has the capability and ability to execute the subcontract.

## 5.3 B-BBEE Improvement Plan

Transnet encourages its Service Providers to constantly strive to improve their B-BBEE rating. Respondents are therefore requested to indicate the extent to which they <sup>intend to</sup> maintain or improve their B-BBEE status over the contract period.

Respondents are requested to submit their <sup>indicative</sup> B-BBEE Improvement Plan as an additional document with their Proposals by completion of Annexure D appended hereto. [Refer to Section 10 and Annexure D for further instructions]

## 5.4 Supplier Development Initiatives

Historically in South Africa there has been a lack of investment in infrastructure, skills and capability development and inequality in the income distribution and wealth of a significant portion of the population. There have been a number of Government initiatives developed to address these challenges. In particular, the New Growth Path [NGP] and New Development Plan [NDP] aligns and builds on previous policies to ensure the achievement of Government's development objectives for South Africa.

Transnet fully endorses and supports Government's economic policies through its facilitation of Supplier Development [SD] initiatives. Hence Respondents are required to submit their commitments with regard to Supplier Development Initiatives over the duration of this contract.

<sup>1</sup> The Minister of the Department of Trade and Industry has the power to designate certain Organs of State or Public Entities as B-BBEE Facilitators. For example, the South African National Military Veterans' Association (SANMVA) has been designated as a B-BBEE Facilitator. As such they will be treated as having rights of ownership held 100% by Black People, 40% by Black Women and 20% by Black designated groups.



JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

As a prequalification criterion to participate in this bid, Respondents are required to provide a commitment that the monetary value of all SD Initiatives to be undertaken by them will not be less than 35% [thirty five percent] of the contract value.

*The tenderer must provide a definition of what the contract value will be and provide a value which will be used for the measurement of the SD delivered against the contract value for the duration of the contract. Transnet will in the negotiation stage finalise the contract value definition and the final value that will be used.*

*All Respondents must refer to Section 8 for instructions and complete Section 9 [Declaration of Supplier Development Commitments] as this is a mandatory returnable document. In addition, Respondents are required to submit a Supplier Development Plan and SD Value Summary, Annexure B and Annexure C as these are required as essential returnable documents.*

*Note: Should a JV be envisaged the principal respondent is required to submit the required responses as indicated above.*

*indicative*  
The commitments made by the successful Respondents will be incorporated as a term of the contract and monitored for compliance.

## 6 COMMUNICATION

- 6.1 For specific queries relating to this RFP, an RFP Clarification Request Form should be submitted to Suellen Du Plessis before **12:00 on 07 May 2015**, substantially in the form set out in Section 6 hereto. In the interest of fairness and transparency Transnet's response to such a query will then be made available to the other Respondents who have collected RFP documents. For this purpose Transnet will communicate with Respondents using the contact details provided to the Secretariat on issue of the bid documentation to the Respondent. Kindly ensure that you provide the Secretariat with the **correct** contact details, as Transnet will not accept responsibility for being unable to contact a bidder who provided incorrect contact details.
- 6.2 After the closing date of the RFP, a Respondent may only communicate with the Secretariat of the Transnet Acquisition Council, at telephone number 011 308 3528/3522, email TAC.SECRETARIAT@transnet.net or facsimile number 011 308 3967 on any matter relating to its RFP Proposal.
- 6.3 Respondents are to note that changes to its submission will not be considered after the closing date. Respondents are warned that a Proposal will be liable to disqualification should any attempt be made by a Respondent either directly or indirectly to canvass any officer or employee of Transnet in respect of this RFP between the closing date and the date of the award of the business. Furthermore, Respondents found to be in collusion with one another will be automatically disqualified and restricted from doing business with Transnet in the future.

## 7 CONFIDENTIALITY

- 7.1 All information related to this RFP is to be treated with strict confidence. In this regard Respondents are required to certify that they have acquainted themselves with the Non-Disclosure Agreement (Appendix iv). All information related to a subsequent contract, both during and after completion thereof, will be treated with strict confidence, ~~Should the need however arise to divulge any information gleaned from provision of the Services, which is either directly or indirectly related to Transnet's business, written approval to divulge such information must be obtained from Transnet, provided that the Respondent may disclose such confidential information or portions thereof: (a) at the request of any regulatory, supervisory or governmental authority, institution or department; (b) under court process or pursuant to statutory requirement or regulation; (c) to the Respondent's or its representative's auditors, external counsel & accountants on a confidential basis; or (d) to affiliates or subsidiaries of JPMorgan Chase and Co. and their employees, officers, directors who~~

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

**8 INSTRUCTIONS FOR COMPLETING THE RFP**

- 8.1 Proposals must be submitted in duplicate hard copies [1 original and 1 copy] and must be bound.
- 8.2 Sign one set of original documents [sign, stamp and date the bottom of each page]. This set will serve as the legal and binding copy. A duplicate set of documents is required. This second set must be a copy of the original signed Proposal.
- 8.3 Both sets of documents are to be submitted to the address specified in paragraph 4 above, and Bidders must ensure that the original and copies (where applicable) are identical in all respects as Transnet will not accept any liability for having disqualified a bidder for failing to provide a mandatory returnable document in either the original or the copy of the RFP albeit that it was included in the other.
- 8.4 A CD copy of the RFP must also be submitted. Please provide files in MS WORD/Excel format, not PDF versions, noting that the signed original set will be legally binding.
- 8.5 **All returnable documents tabled in the Proposal Form [Section 4] must be returned with your Proposal.**
- 8.6 Unless otherwise expressly stated, all Proposals furnished pursuant to this RFP shall be deemed to be an *indicative* ~~offer~~ <sup>subject to negotiation and agreement between the parties.</sup> Any exceptions to this statement must be clearly and specifically indicated.
- 8.7 ~~Any~~ <sup>may</sup> Additional conditions ~~must~~ be embodied in an accompanying letter. ~~Subject only to clause 15 [Alterations made by the Respondent to Bid Prices] of the General Bid Conditions (Appendix II), alterations, additions or deletions must not be made by the Respondent to the actual RFP documents.~~

**9 COMPLIANCE**

~~The successful Respondent (hereinafter referred to as the Service Provider) shall be in full and complete compliance with any and all applicable laws and regulations.~~

**10 DISCLAIMERS**

Respondents are hereby advised that Transnet is not committed to any course of action as a result of its issuance of this RFP and/or its receipt of Proposals. In particular, please note that Transnet reserves the right to:

- 10.1 modify the RFP's Services and request Respondents to re-bid on any such changes;
- 10.2 reject any Proposal which does not conform to instructions and specifications which are detailed herein;
- 10.3 disqualify Proposals submitted after the stated submission deadline [Closing Date];
- 10.4 not necessarily accept the lowest priced Proposal or an alternative bid;
- 10.5 reject all Proposals, if it so decides;
- 10.6 withdraw the RFP on good cause shown;
- 10.7 award a contract in connection with this Proposal at any time after the RFP's closing date;
- 10.8 award a contract for only a portion of the proposed Services which are reflected in the scope of this RFP;
- 10.9 split the award of the contract between more than one Service Provider, should it at Transnet's discretion be more advantageous in terms of, amongst others, cost or developmental considerations;
- 10.10 make no award of a contract;



JPMorgan Chase Bank, N.A. (Johannesburg Branch)  
Date: 8/5/2015

10.11 should a contract be awarded on the strength of information furnished by the Respondent, which after conclusion of the contract, is proved to have been incorrect, Transnet reserves the right to cancel the contract.

Transnet reserves the right to undertake post-tender negotiations [PTN] with selected Respondents or any number of short-listed Respondents, such PTN to include, at Transnet's option, any evaluation criteria listed in this RFP document.

Kindly note that Transnet will not reimburse any Respondent for any preparatory costs or other work performed in connection with its Proposal, whether or not the Respondent is awarded a contract.

## 11 LEGAL REVIEW

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

**Transnet urges its clients, suppliers and the general public**

**to report any fraud or corruption to**

**TIP-OFFS ANONYMOUS : 0800 003 056**

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO <sup>ARRANGE</sup> ~~LEAD AND UNDERWRITE~~ <sup>THE EQUIVALENT</sup> ~~SYNDICATE~~ <sup>UP TO FIFTEEN (15)</sup> ~~ZAR~~ <sup>US\$</sup> ~~LOAN~~ <sup>FOR A PERIOD OF FOURTEEN (14) YEARS</sup>

## Section 2: SCOPE OF REQUIREMENTS

### 1 SCOPE OF REQUIREMENTS

The following are the scope of requirements:

#### 1.1 Cross Currency Swap and Contingent Credit Default Swap

- The bidder must act as sole hedge counterparty to the Company in connection with the <sup>450.5 billion China Development Bank</sup> ~~Loan~~ <sup>(Loan)</sup> on the terms of the Transaction.
- The bidder must hedge each draw-down of the Loan at or about the time of each draw-down by way of entering into a cross-currency swap.
- The bidder must execute the credit contingent structure (either in a form of a Credit Default Swap Overlay or a Contingent Credit Default Swap), up to an aggregate cross-currency swaps notional amount of US\$1.5 billion; and
- The bidder must pre-hedge the Transaction with effect from the date <sup>the contract is awarded</sup> ~~hereof~~, it being understood that the gains or losses resulting from such pre-hedging shall be for the account of the bidder.

#### 1.2 Loan Syndication

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

- The bidder must lead and manage the raising of \$1.5 billion, ZAR equivalent facility for up to 15 year tenor with amortising profile with 54 month grace period.
  - The bidder must co-ordinate the production of appropriate information materials by the Company for the prospective lenders, including due diligence requirements and bank presentations, where appropriate;
  - The bidder shall (where appropriate) set up and maintain secured data-dissemination websites.
  - The bidder must be a liaison between Company, lenders and legal counsel in order to establish optimal and consensus financing terms and an efficient and streamlined documentation negotiation process for the Facilities; and
- The bidder must co-ordinate the legal documentation process and general process management (including management of all-party calls and/or meetings, advising in relation to comments from potential lenders on the Facility Documents) for a streamlined and efficient process to signing and closing.
- The bidder must co-ordinate the legal documentation process and general process management (including management of all-party calls and/or meetings, advising in relation to comments from potential lenders on the Facility Documents) for a streamlined and efficient process to signing and closing.

## 2 GREEN ECONOMY / CARBON FOOTPRINT

Transnet wishes to have an understanding of your company's position with regard to environmental commitments, including key environmental characteristics such as waste disposal, recycling and energy conservation. *Please submit details of your entity's policies in this regard.*

## 3 GENERAL SERVICE PROVIDER OBLIGATIONS

- 3.1 The Service Provider(s) shall be fully responsible to Transnet for the acts and omissions of persons directly or indirectly employed by them.
- 3.2 The Service Provider(s) must comply with the requirements stated in this RFP.



JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

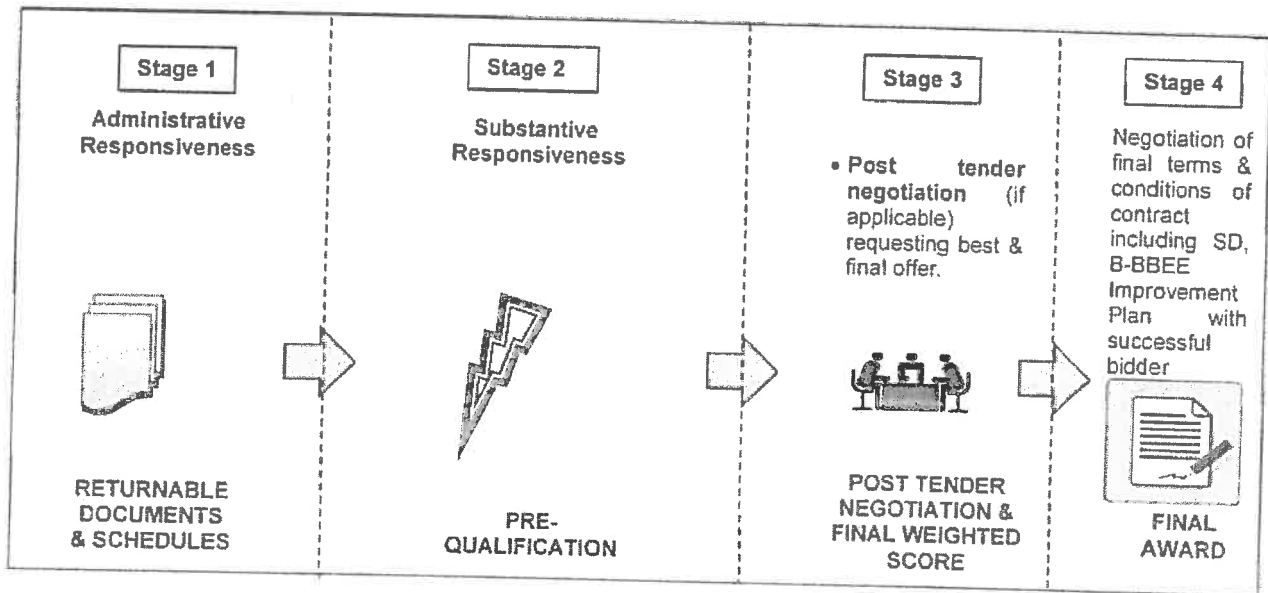


#### 4 EVALUATION METHODOLOGY

Transnet will utilise the following methodology and criteria in selecting a preferred Service Provider, if so required:

**Please note:**

As this is a Treasury transaction for hedging requirements, preference (i.e. 80/20 or 90/10) in accordance with the PPPFA and PPM will not be applicable.



NB: Evaluation of the various stages will normally take place in a sequential manner. However, in order to expedite the process, Transnet reserves the right to conduct the different stages of the evaluation process in parallel. In such instances the evaluation of bidders at any given stage must therefore not be interpreted to mean that bidders have necessarily passed any previous stage(s).

##### 4.1 STAGE ONE: Test for Administrative Responsiveness

The test for administrative responsiveness will include the following:

Administrative Responsiveness Check	RFP Reference
• Whether the Bid has been lodged on time	Section 1 paragraph 3
• Whether all Returnable Documents and/or schedules [where applicable] were completed and returned by the closing date and time	Section 4
• Verify the validity of all returnable documents	Section 4, page 19 and 20

**The test for Administrative Responsiveness [Stage One] must be passed for a Respondent's Proposal to progress to Stage Two for Substantive Responsiveness Check**

#### 4.2 STAGE TWO: Test for Substantive Responsiveness to RFP

The test for substantive responsiveness to this RFP will include the following:

Substantive Responsiveness Check	RFP Reference
<ul style="list-style-type: none"> <li>Whether any general pre-qualification criteria set by Transnet, have been met</li> </ul>	<i>Section 1 paragraphs 2.2, 6, 10.3</i> <i>Section 4 – validity period</i> <i>General Bid Conditions - clause 19</i> <i>Sections 10, 11</i>
<ul style="list-style-type: none"> <li>Whether the Bid contains a priced offer</li> </ul>	<i>Section 3</i>
<ul style="list-style-type: none"> <li>Whether the Bid materially complies with the scope and/or specification given</li> </ul>	<i>All Sections</i>
<ul style="list-style-type: none"> <li>Annexure A: Technical Pre-qualification</li> </ul>	<i>Section 2 – Scope of Work</i>
<ul style="list-style-type: none"> <li>Whether the Bid contains a commitment that the monetary value of all SD initiatives to be undertaken by the Respondent will not be less than 35 % [thirty five percent] of the contract value.</li> </ul>	<i>Section 9</i>


*The test for substantive responsiveness [Stage Two] must be passed for a Respondent's Proposal to progress to Stage Three for final evaluation (Price and B-BBEE)*

#### 5 STAGE THREE: Post Tender Negotiations (if applicable)

Transnet reserves the right to conduct post tender negotiations with a shortlist of Respondent(s). The shortlist could comprise of one or more Respondents. Should Transnet conduct post tender negotiations, Respondents will be requested to provide their best and final offers to Transnet based on such negotiations.

#### 6 STAGE FOUR: Final Contract Award

Transnet will negotiate the final terms and condition<sup>s of</sup> the contract with the successful Respondent(s). This may include aspects such as Supplier Development, the B-BBEE Improvement Plan, price and delivery. Thereafter the final contract will be awarded to the successful Respondent(s).



JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

**IMPORTANT NOTICE TO RESPONDENTS**

Transnet has appointed a Procurement Ombudsman to investigate any material complaint in respect of RFPs exceeding R5million [five million S.A. Rand] in value. Should a Respondent have any material concern regarding an RFP process which meets this threshold, a complaint may be lodged with the Ombudsman for further investigation. The Ombudsman reserves the right to refer the complaint to an external service provider for investigation.

It is incumbent on the Respondent to familiarise himself/herself with the Terms of Reference OF the Ombudsman which are available for review at Transnet's website [www.transnet.net](http://www.transnet.net).

An official complaint form may be downloaded from this website and submitted, together with any supporting documentation, within the prescribed period, to [procurement.ombud@transnet.net](mailto:procurement.ombud@transnet.net).

For transactions below the abovementioned threshold, a complaint may be lodged with the Chief Procurement Officer of the relevant Transnet Operating Division/Specialist Unit.

Respondents are to note that a complaint must be made in good faith. If a complaint is made in bad faith, Transnet reserves the right to place such a Bidder on its List of Excluded Bidders.



**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD <sup>ARRANGE</sup> AND <sup>UP TO FIFTY (50)</sup> UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN <sup>0 12 Billion</sup> FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS**

### Section 3: PRICING

Please indicate each part of the Transaction prices based on the table below:

Trading Charge (bps)	Credit Valuation Adjustment (bps)	Credit Default Swap Overlay (bps)	Credit Contingent Default Swap (bps)
12.9	7		-112.5

For the avoidance of doubt, all prices set out above are subject to the terms and conditions of the draft Letter Agreement that has been extensively negotiated and is in substantially agreed form, which is submitted together with this proposal and the specific terms and conditions of the underlying ISDA Master Agreement, read with the relevant Confirmation for each trade.

a) the Trading Charge and the Credit Valuation Adjustment will apply to each cross-currency swap substantially on the terms of Annex 1 hereto,

b) the Contingent Credit Default Swap charge will apply to each Contingent Credit Default Swap concluded at each Loan draw-down.

#### 1 SERVICE LEVELS

- 1.1 An experienced national account representative(s) is required to work with Transnet's procurement department. [No sales representatives are needed for individual department or locations]. Additionally, there shall be a minimal number of people, fully informed and accountable for this agreement.
- 1.2 Transnet will have quarterly reviews with the Service provider's account representative on an on-going basis.
- 1.3 Transnet reserves the right to request that any member of the Service provider's team involved on the Transnet account be replaced if deemed not to be adding value for Transnet.
- 1.4 The Service provider must provide a telephone number for customer service calls.
- 1.5 Failure of the Service provider to comply with stated service level requirements will give Transnet the right to cancel the contract in whole, without penalty to Transnet, giving 30 [thirty] calendar days' notice to the Service provider of its intention to do so.

#### Acceptance of Service Levels:

YES	✓
-----	---

NO	
----	--

Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date & Company Stamp

SIGNED at JOHANNESBURG on this 8<sup>TH</sup> day of MAY 2015

## SIGNATURE OF WITNESSES

1. [Signature]  
Name Sana Wgiale2. [Signature]  
Name Yuriska Chetty

## ADDRESS OF WITNESSES

1 Fricker Road1 Fricker Rd

## SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

NAME: MARC HUSSENDESIGNATION: MANAGING DIRECTOR[Signature][Signature]  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date &amp; Company Stamp

**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATED ZAR LOAN**  
<sup>ARRANGE</sup>  
<sup>UP TO FIFTEEN (15)</sup>  
<sup>D 12 BILLION</sup>  
**FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS**

**Section 4: PROPOSAL FORM AND LIST OF RETURNABLE DOCUMENTS**

I/We JPMORGAN CHASE BANK, N.A., JOHANNESBURG BRANCH  
 [name of entity, company, close corporation or partnership] of [full address]  
1 FRICKER ROAD, ILLOVO, JOHANNESBURG, 2196

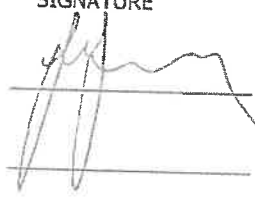
carrying on business trading/operating as

N/A

represented by MARC HUSSEY

in my capacity as MANAGING DIRECTOR

being duly authorised thereto by a <sup>certificate of incumbency</sup> Resolution of the Board of Directors or Members or Certificate of Partners, dated as at the date of issue to enter into, sign execute and complete any documents relating to this proposal and any subsequent Agreement. The following list of persons are hereby authorised to negotiate on behalf of the abovementioned entity, should Transnet decide to enter into Post Tender Negotiations with shortlisted bidder(s).

FULL NAME(S)	CAPACITY	SIGNATURE
<u>MARC HUSSEY</u>	<u>MANAGING DIRECTOR</u>	
_____	_____	_____
_____	_____	_____
_____	_____	_____

I/We hereby offer to supply the abovementioned Services at the prices quoted in the schedule of prices in accordance with the terms set forth in the documents listed in the accompanying schedule of RFP documents, and specifically including the covering letter and the terms of the Letter Agreement.  
 I/We agree to be bound by those conditions in Transnet's:

- (i) Terms and Conditions of Contract - Services
- (ii) General Bid Conditions - Services ; and
- (iii) any other standard or special conditions mentioned and/or embodied in this Request for Proposal,

in each instance as amended in this marked-up Proposal and as amended or substituted by any subsequent agreement, including the Letter Agreement, the relevant ISDA Master Agreement and the relevant confirmation for each trade and in relation to the syndicated ZAR loan, as amended in any agreement relating to our appointment as lead arranger, from time to time.

  
 Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015  
 Date & Company Stamp

... terms and conditions relating to the proposed transactions will be negotiated and agreed between Transnet and the proposer in the appropriate form of documentation

Page 16 of 34  
Returnable document

I/We accept that unless Transnet should otherwise decide and so inform me/us in the letter of award/intent, this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence], together with Transnet's acceptance thereof shall constitute a binding contract between Transnet and me/us.

Should Transnet decide that a formal contract should be signed and so inform me/us in a letter of intent [the Letter of Intent], this Proposal [and, if any, its covering letter and any subsequent exchange of correspondence] together with Transnet's Letter of Intent, shall constitute a binding contract between Transnet and me/us until the formal contract is signed.

I/We further agree that if, after I/we have been notified of the acceptance of my/our Proposal, I/we fail to enter into a formal contract if called upon to do so, or fail to commence the supply of Services within 4 [four] weeks thereafter, Transnet may, without prejudice to any other legal remedy which it may have, recover from me/us any expense to which it may have been put in calling for Proposals afresh and/or having to accept any less favourable Proposal.

I/We accept that any contract resulting from this offer will be for a period of 14 [fourteen] years only.

Furthermore, I/we agree to a penalty clause/s to be negotiated with Transnet, which will allow Transnet to invoke a penalty against us for non-compliance with material terms of this RFP including the delayed delivery of the Services due to non performance by ourselves, failure to meet <sup>the indicative</sup> Supplier Development and/or B-BBEE Improvement Plan <sup>proposed or any amendment thereto</sup> commitments. A penalty of up to 100% of the outstanding portion of the Supplier Development commitment will be applied and Transnet reserves the right to set this off against any payment due to the Respondent. In addition, I/we agree that non-compliance with any of the material terms of this RFP, including those mentioned above, will constitute a material breach of contract and provide Transnet with cause for cancellation.

#### ADDRESS FOR NOTICES

The law of the Republic of South Africa shall govern any contract created by the acceptance of this RFP. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent hereunder, at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. Foreign Respondents shall, therefore, state hereunder the name of their authorised representative in the Republic of South Africa who has the power of attorney to sign any contract which may have to be entered into in the event of their Proposal being accepted and to act on their behalf in all matters relating to such contract.

Respondent to indicate the details of its *domicilium citandi et executandi* hereunder:

Name of Entity:

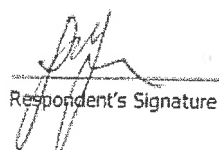
JPMORGAN CHASE BANK, N.A., JOHANNESBURG BRANCH

Facsimile:

—

Address:

1 FRICKER ROAD, CNR. HURLINGHAM ROAD, ILLOVO,  
JOHANNESBURG, 2196

  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date & Company Stamp

**NOTIFICATION OF AWARD OF RFP**

As soon as possible after approval to award the contract(s), the successful Respondent [the **Service provider**] will be informed of the acceptance of its Proposal. Unsuccessful Respondents will be advised in writing of the name of the successful Service provider and the reason as to why their Proposals have been unsuccessful, for example, in the category of price, delivery period, quality, B-BBEE status or for any other reason.

**VALIDITY PERIOD**

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

**NAME(S) AND ADDRESS / ADDRESSES OF DIRECTOR(S) OR MEMBER(S)**

The Respondent must disclose hereunder the full name(s) and address(s) of the director(s) or members of the company or close corporation [C.C.] on whose behalf the RFP is submitted.

- (i) Registration number of company / C.C. 2001/016069/10
- (ii) Registered name of company / C.C. JPMorgan Chase Bank N.A (Johannesburg Branch)
- (iii) Full name(s) of director/member(s)                      Address/Addresses                      Passport Number(s)
- |                    |                           |           |
|--------------------|---------------------------|-----------|
| James S Crown      | 270 Park Avenue, New York | 208810080 |
| Laban P Jackson Jr | 270 Park Avenue, New York | 457060759 |
| Marianne Lake      | 270 Park Avenue, New York | 472983892 |
| Matthew E Zames    | 270 Park Avenue, New York | 488314625 |
| William C Weldon   | 270 Park Avenue, New York | 039660004 |

**RETURNABLE DOCUMENTS**

All Sections, as indicated in the footer of each page, must be signed, stamped and dated by the Respondent.

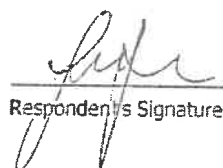
**Returnable Documents** means all the documents, Sections and Annexures, as listed in the tables below.

**a) Mandatory Returnable Documents**

***Failure to provide all Mandatory Returnable Documents at the closing date and time of this tender will result in a Respondent's disqualification. Bidders are therefore urged to ensure that all these documents are returned with their Proposals.***

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

MANDATORY RETURNABLE DOCUMENTS	SUBMITTED [Yes/No]
SECTION 3 : Pricing	✓
ANNEXURE A : Technical Pre-Qualification	✓
SECTION 9 : Declaration of Supplier Development Commitments	✓
ANNEXURE B : Supplier Development Value Summary	✓

  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)  
Date: 8/5/2015

Date & Company Stamp



b) **Essential Returnable Documents**

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

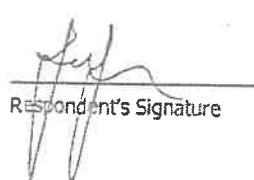
***Failure to provide all Essential Returnable Documents may result in a Respondent's disqualification at Transnet's sole discretion. Bidders are therefore urged to ensure that all these documents are returned with their Proposals.***

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

<b>ESSENTIAL RETURNABLE DOCUMENTS &amp; SCHEDULES</b>	
	<b>SUBMITTED [Yes or No]</b>
<b>SECTION 4 : Proposal Form and List of Returnable documents</b>	
- Valid and original, or a certified copy, of your entity's B-BBEE Accreditation Certification. Note: failure to provide these required documents at the closing date and time of the RFP will result in an automatic score of zero being allocated for preference	X
- In the case of Joint Ventures, a copy of the Joint Venture Agreement or written confirmation of the intention to enter into a Joint Venture Agreement	-
Original and valid Tax Clearance Certificate [Consortia / Joint Ventures must submit a separate Tax Clearance Certificate for each party]	X
<b>SECTION 5 : RFP Declaration and Breach of Law Form</b>	
<b>SECTION 11 : Vendor Application Form</b>	X
Original cancelled cheque or bank verification of banking details	
- Certified copies of IDs of shareholder/directors/members [as applicable]	X
- Certified copies of the relevant company registration documents from Companies and Intellectual Property Commission (CIPC)	X
- Certified copies of the company's shareholding/director's portfolio	
- Entity's letterhead	X
- Certified copy of valid VAT Registration Certificate	X
- ANNEXURE B : Supplier Development Plan	X
ANNEXURE D : B-BBEE Improvement Plan	X

**CONTINUED VALIDITY OF RETURNABLE DOCUMENTS**

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



Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date & Company Stamp

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

as amended  
in this  
marked-  
up  
Version  
and as  
set out in  
the covering  
letter  
submitted  
with this  
proposal.

Bidders furthermore agree that Transnet SOC Ltd shall recognise no claim from them for relief based on an allegation that they have overlooked any RFP/contract condition or failed to take it into account for the purpose of calculating their offered prices or otherwise.

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

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

- 1 General Bid Conditions
- 2 Terms and Conditions of Contract for the supply of Services to Transnet
- 3 Supplier Integrity Pact
- 4 Non-disclosure Agreement
- 5 Supplier Development initiatives included in this RFP
- 6 Vendor Application Form\* and all supporting documents (first time vendors only)

Alternatively, for all existing vendors, please provide vendor number(s) here:

Transnet Operating Division	Unique Vendor Number	Yes / No
Transnet Group		
TFR, etc.		

In the Yes/No column above, please confirm that all the information e.g. company address and contact details, banking details etc. are still correct as at the time of allocation of the vendor number(s).

  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/6/2015

Date & Company Stamp

SIGNED at JOHANNESBURG on this 8<sup>TH</sup> day of MAY 2015

## SIGNATURE OF WITNESSES

## ADDRESS OF WITNESSES

1 [Signature]  
Name John W. [unclear]1 Fricker Road2 [Signature]  
Name Yurisha. [unclear]1 Fricker Rd

SIGNATURE OF RESPONDENT'S AUTHORISED REPRESENTATIVE:

NAME: MARC HUSSEYDESIGNATION: MANAGING DIRECTOR[Signature][Signature]  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date &amp; Company Stamp

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD, <sup>ARRANGE</sup> ~~AND UNDERWRITE~~ THE EQUIVALENT SYNDICATE <sup>D 12 BILLION</sup> ZAR LOAN <sup>UP TO FIFTEEN (15)</sup> FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS

## Section 5: RFP DECLARATION AND BREACH OF LAW FORM

NAME OF ENTITY: JPMORGAN CHASE BANK, N.A., JOHANNESBURG BRANCHWe JPMORGAN CHASE BANK N.A. JOHANNESBURG BRANCH do hereby certify that, to the best of our knowledge and belief;

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

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

ADDRESS:

N/A

Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date &amp; Company Stamp

Indicate nature of relationship with Transnet:

N/A

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

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

710. We accept that any dispute pertaining to this Bid will be resolved through the Ombudsman process and will be subject to the Terms of Reference of the Ombudsman. The Ombudsman process must first be exhausted before judicial review of a decision is sought.

811. We further accept that Transnet reserves the right to reverse an award of business or decision based on the recommendations of the Ombudsman without having to follow a formal court process to have such award or decision set aside.

**BREACH OF LAW**

12. We further hereby certify that I/we (the bidding entity ~~and/or any of its directors, members or partners~~) ~~have~~ **have not been** [delete as applicable] found guilty during the preceding 5 [five] years of a serious breach of law, including but not limited to a breach of the Competition Act, 89 of 1998, by a court of law, tribunal or other administrative body. The type of breach that the Respondent is required to disclose excludes relatively minor offences or misdemeanours, e.g. traffic offences. This includes the imposition of an administrative fine or penalty.

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


NATURE OF BREACH:

N/A

DATE OF BREACH: N/A

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

SIGNED at JOHANNESBURG on this 8<sup>th</sup> day of MAY 2015

  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date &amp; Company Stamp

For and on behalf of <u>SP Morgan</u> duly authorised hereto	AS WITNESS:
Name:	Name: <u>MARC MUSEEN</u>
Position:	Position: <u>MANAGING DIRECTOR</u>
Signature:	Signature: <u>[Signature]</u>
Date:	Registration No of Company/CC
Place:	Registration Name of Company/CC

[Signature]  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

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

## Section 6: RFP CLARIFICATION REQUEST FORM

**RFP deadline for questions / RFP Clarifications: Before 12:00 on 07 May 2015.**

DATE: \_\_\_\_\_  
FROM: \_\_\_\_\_

## REQUEST FOR RFP CLARIFICATION

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

Date: 8/5/2015

Date & Company Stamp

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD <sup>ARRANGE</sup> ~~AND UNDERWRITE~~ <sup>UP TO FIFTEEN (15)</sup> ~~THE EQUIVALENT~~ <sup>D 12.8 billion</sup> ~~SYNDICATE~~ <sup>ZAR LOAN</sup>  
FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS

## Section 7: B-BBEE STATUS

## 1. B-BBEE STATUS AND SUBCONTRACTING

## 1.1 Subcontracting:

Will any portion of the contract be subcontracted? YES/NO [delete which is not applicable]

~~YES, indicate:~~

- ~~(i) What percentage of the contract will be subcontracted? .....%~~  
~~(ii) The name of the subcontractor .....~~  
~~(iii) The B-BBEE status level of the subcontractor .....~~  
~~(iv) Is the subcontractor an EME? YES/NO~~

## 1.2 Declaration with regard to Company/Firm

- ~~(i) Name of Company/Firm.....~~  
~~(ii) VAT registration number.....~~  
~~(iii) Company registration number.....~~  
~~(iv) Type of Company / Firm [TICK APPLICABLE BOX]~~

~~☐ Partnership/Joint Venture/Consortium~~

~~☐ One person business/sole propriety~~

~~☐ Close Corporations~~

~~☐ Company (Pty) Ltd~~

~~(v) Describe Principal Business Activities~~

~~(vi) Company Classification [TICK APPLICABLE BOX]~~

~~☐ Manufacturer~~

~~☐ Supplier~~

~~☐ Professional Service Provider~~

~~☐ Other Service Providers, e.g Transporter, etc~~

~~(vii) Total number of years the company/firm has been in business.....~~

## BID DECLARATION

I/we, the undersigned, who warrants that he/she is duly authorised to do so on behalf of the company/firm, certify that points claimed, based on the B-BBEE status level of contribution indicated in paragraph 4 above, qualifies the company/firm for the preference(s) shown and I / we acknowledge that:

- (i) The information furnished is true and correct, *based on our most recent Empowerdex Certificate.* JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: *8/5/2015*

*[Signature]*  
Respondent's Signature

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



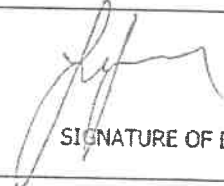
- (ii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 6 above, the contractor may be required to furnish documentary proof to the satisfaction of Transnet that the claims are correct.
- (iii) If the B-BBEE status level of contribution has been claimed or obtained on a fraudulent basis or any of the conditions of contract have not been fulfilled, Transnet may, in addition to any other remedy it may have:
- (a) disqualify the person from the bidding process;
  - (b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;
  - (c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;
  - (d) restrict the Bidder or contractor, its shareholders and directors, and/or associated entities, or only the shareholders and directors who acted in a fraudulent manner, from obtaining business from Transnet for a period not exceeding 10 years, after the *audi alteram partem* [hear the other side] rule has been applied; and/or
  - (e) forward the matter for criminal prosecution.

**WITNESSES:**

1.



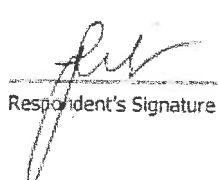
2.

SIGNATURE OF BIDDER

DATE: 8 MAY 2015

COMPANY NAME: JPMORGAN CHASE BANK, N.A., JOHANNESBURG BRANCH  
 ADDRESS: 1 FRICKER ROAD, ILLOVO, JOHANNESBURG, 2196



Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)  
 Date: 8/5/2015

Date & Company Stamp

**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN FOR A PERIOD OF <sup>ARRANGE UP TO FIFTEEN (15)</sup> ~~FOURTEEN (14)~~ YEARS**

### Section 8 : SUPPLIER DEVELOPMENT INITIATIVES

#### 1.1 Aim and Objectives

Historically in South Africa there has been a lack of investment in infrastructure, skills and capability development and an inequality in the income distribution and wealth of a significant portion of the population. There have been a number of Government initiatives developed to address these challenges. In particular, the New Growth Path [NGP] and New Development Plan [NDP] aligns and builds on previous policies to ensure the achievement of Government's development objectives for South Africa. Transnet fully endorses and supports Government's New Growth Path policy.

The key focuses of the NGP include:

- increasing employment intensity of the economy
- addressing competitiveness
- balancing spatial development of rural areas and poorer provinces
- reducing the carbon intensity of the economy
- creating opportunities in improving regional and global cooperation
- enabling transformation that benefits a wider range of social actors in society e.g. workers, rural communities, youth and women

Transnet, as a State Owned Company [SOC], plays an important role to ensure these objectives are achieved. Therefore, the purchasing of goods and services needs to be aligned to Government's objectives for developing and transforming the local supply base. Transnet's mission is to transform its supplier base by engaging in targeted supplier development initiatives to support localisation and industrialisation whilst providing meaningful opportunities for Black<sup>2</sup> South Africans with a particular emphasis on:

- Youth [16 to 35 year olds]
- Black women
- People with disabilities
- Small businesses
- Rural integration

#### 1.2 Supplier Development [SD]

To facilitate the implementation of Supplier Development initiatives, Transnet has adapted an existing framework from the Department of Public Enterprises [DPE]. This framework allows for a basic set of principles to be applied to appropriately targeted SD initiatives. Supplier development initiatives aim to build local suppliers who are competitive through building capability and capacity. Hence the framework has been termed the Increased Competitiveness, Capability and Capacity Supplier Development Classification Matrix [IC<sup>3</sup> Matrix]. Currently there are four quadrants of SD initiatives which Transnet considers according to the IC<sup>3</sup> Matrix. This RFP has been identified as strategic, involving high commercial leverage and high value.

<sup>2</sup> "Black" means South African Blacks, Coloureds and Indians, as defined in the B-BBEE Act, 53 of 2003

As a prequalification criterion to participate in this bid, Respondents are required to provide a commitment that the monetary value of all SD initiatives to be undertaken by them will not be less than 35% [thirty five percent] of the contract value.

Accordingly, Respondents are required to provide <sup>an indicative</sup> ~~a~~ commitment of the Supplier Development Initiative they will undertake during the contract period in the **Supplier Development Value Summary**. In addition, Transnet requires that all Respondents submit <sup>an indicative</sup> ~~a~~ **Supplier Development Plan** demonstrating how they <sup>intend to</sup> ~~will~~ discharge their commitments made in the Supplier Development Value Summary. ~~The contract which will be concluded with the successful bidder will incorporate the SD undertakings made in the above-mentioned documents as a term of the contract.~~

- a) For a detailed understanding of the IC<sup>3</sup> Matrix, the respective SD initiatives and their objectives, please refer to the "Supplier Development Guidelines" appended hereto as Appendix I. This document must be used as a guideline to complete the SD Plan.
- b) The following Supplier Development [SD] focus areas have been identified, namely:

Category	Description
Transfer of Technology and Intellectual Property Rights [IPR]	Transfer technology, IPR and methodology to small businesses
New Skills development	Skills transfer & skills education which will occur as a result of the award of contract
Job Preservation	Number of jobs created or preserved resulting from the award of contract
Small Business Promotion	Encouragement for growth and the expansion of emerging local firms, through procurement and support mechanisms

*Green economy / carbon footprint: The potential reduction of the economy's carbon intensity [i.e. creation of a greener economy] should be regarded as a key priority within all the above SD Categories and for all proposed SD initiatives*

- c) The **Supplier Development Plan** is to be submitted as a separate document, developed in line with the criteria set out in the **Supplier Development Value Summary**. The Supplier Development Plan is <sup>an indicative</sup> ~~a detailed narrative~~ document explaining the Respondent's Bid value as summarised in the Supplier Development Value Summary. The SD Plan should outline the type of activities you intend to embark upon should you be awarded the contract. This SD Plan should also provide an overview of what you intend to achieve, when, and the mechanisms <sup>you will employ to</sup> ~~whereby you will~~ achieve those objectives. ~~The SD Value Summary and SD Plan will represent a binding commitment on the part of the successful Respondent.~~

Annexure B must be completed, indicating by cross-reference the detailed areas which have been addressed in your SD Plan for each of the evaluation criteria listed in paragraph 1.2 (b) above, together with the Value Indicators therefore.

Notes for completion of the SD Plan:

- (i) ~~Respondents are required to address each of the aspects under the detailed SD Description as a minimum for submission. This is not an exhaustive list however, and Respondents must not be limited to these choices when compiling each section.~~
- (ii) ~~Please provide detailed calculations to illustrate how your estimated Rand values have been derived.~~
- (iii) ~~Respondents are required to provide an electronic copy [CD] of the completed Annexure B as part of the SD Plan submission.~~

**1.3 Additional contractual requirements**

~~Should a contract be awarded through this RFP process, the successful Respondent(s) [hereinafter referred to as the Supplier] will be contractually committed, inter alia, to the following conditions:~~

- ~~a) The Supplier will be required to submit a Supplier Development Implementation Plan within 45 [forty-five] calendar days from the signature date of a Letter of Intent [LOI]. This Implementation Plan represents additional detail in relation to the SD Plan providing an explicit breakdown of the nature, extent, timelines and monetary value of the SD commitments which the Supplier proposes to undertake and deliver during the term of the contract. Specific milestones, timelines and targets will be recorded to ensure that the Implementation Plan is in line with Transnet's SD objectives and that implementation thereof is completed within the term of the contract.~~
- b) <sup>SD</sup> The Implementation Plan may require certain additions or updates to the initial SD Plan in order to ensure that Transnet is satisfied that development objectives will be met.
- ~~c) The Supplier will need to ensure that the relevant mechanisms and procedures are in place to allow for access to information to measure and verify the Supplier's compliance with its stated SD commitments.~~
- d) The Supplier will ~~be required to provide~~ Transnet with regular annual updates <sup>regarding its indicative SD Plan and the achievements in terms of such plan, including any updates or amendments thereto.</sup>
  - ~~(i) monthly status updates to Transnet for each SD Initiative. [Detailed requirements will be provided by Transnet];~~
  - ~~(ii) quarterly status reports for Transnet and the DPE. [Detailed reporting requirements will be provided by Transnet]; and~~
  - ~~(iii) a final Supplier Development report, to be submitted to Transnet prior to the expiry date of the contract, detailing delivery, implementation and completion of all SD components plus auditable confirmation of the Rand value contribution associated with each such SD commitment.~~
- ~~e) All information provided by the Supplier in order to measure its progress against its stated targets will be auditable.~~
- ~~f) The Supplier will be required to submit this Implementation Plan to Transnet in writing, within 45 [forty-five] calendar days after signature of a Letter of Intent [LOI], where after both parties must reach an agreement [signed by both parties] within 20 [twenty] calendar days. Transnet will reserve the right to reduce or increase the number of days in which the Supplier must submit its Implementation Plan if it is deemed reasonable, based on the degree of complexity of the SD initiative.~~
- ~~g) The contract will be conditional on agreement being reached by the parties on the Implementation Plan submitted by the Supplier. Therefore failure to submit or thereafter to agree to the~~

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: .....8/5/2015.....

~~Implementation Plan within the stipulated timelines will result in the non-award of such a contract or termination thereof.~~

- ~~h) Failure to adhere to the milestones and targets defined in an Implementation Plan may result in the invocation of financial penalties, to be determined at Transnet's discretion, as well as providing Transnet cause to terminate the contract in certain cases where material milestones are not being achieved:~~

#### 1.4 Supplier Development Returnable Documents

Attached herewith is the following documentation:

- Declaration of Supplier Development Commitments – Section 9 [mandatory]
- <sup>indicative</sup> SD Plan – Annexure C [essential]
- <sup>indicative</sup> SD Value Summary – Annexure B [mandatory]

*Respondents are to note whether the abovementioned documents are listed as mandatory or essential returnable documents in Section 4 to this RFP as failure to submit, or to submit an incomplete mandatory returnable document will result in disqualification of your Proposal. Failure to submit an essential returnable document may result in disqualification of your Proposal.*



JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD <sup>ARRANGE</sup> ~~AND UNDERWRITE~~ THE <sup>D</sup> ~~EQUIVALENT~~ SYNDICATE <sup>12 BILLION</sup> ~~ZAR~~ LOAN  
FOR A PERIOD OF FOURTEEN (14) YEARS

### Section 9 : DECLARATION OF SUPPLIER DEVELOPMENT COMMITMENTS

I/We JPMORGANCHASE BANK, N.A., JOHANNESBURG BRANCH  
hereby ~~agree~~/~~do not agree~~ to commit that not less than 35% of the contract value will be spent  
cumulatively on Supplier Development Initiatives <sup>over the duration of the contract</sup>. This pre-qualification criterion must be discharged  
against the following Supplier Development categories as outlined in the <sup>indicative</sup> Supplier Development Value  
Summary [Annexure B]:

- Transfer of Technology and Intellectual Property Rights
- Skills Development
- Job Preservation
- Small Business Promotion

I/We do hereby certify that the Supplier Development commitments made in relation to this RFP are solely in relation to this transaction and are not duplicated in relation to any other contracts that I/we have secured with any other organ of state including other State Owned Companies.

Furthermore, I/we do hereby declare that this undertaking also applies to any other contracts that I may have secured with Transnet including other Transnet Operating Divisions/Specialist Units. For the purposes of verification of this undertaking, the following is a list of contracts with Supplier Development commitments that I/we have secured with Transnet:

SIGNED at JOHANNESBURG on this 8<sup>TH</sup> day of MAY 2015

[Signature]  
SIGNATURE OF WITNESS

[Signature]  
SIGNATURE OF RESPONDENT

[Signature]  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date & Company Stamp

RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD <sup>ARRANGE</sup> ~~AND UNDERWRITE~~ THE <sup>D 12 Billion</sup> ~~EQUIVALENT~~ SYNDICATE ZAR LOAN <sup>UP TO FIFTEEN (15)</sup> FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS

## Section 10 : B-BBEE IMPROVEMENT PLAN

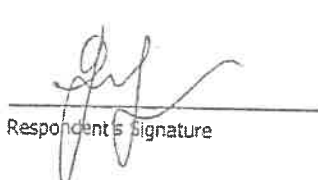
Transnet encourages its Suppliers to constantly strive to improve their B-BBEE rating and requests that Respondents submit <sup>an indicative</sup> ~~a~~ B-BBEE improvement plan. Respondents are therefore requested to indicate whether they <sup>intend to</sup> ~~will~~ maintain or improve their BBEE status over the contract period.

**Additional contractual requirements**

Should a contract be awarded through this RFP process, the successful Respondent(s) <sup>will provide Transnet with regular annual updates on its indicative B-BBEE improvement plan.</sup> ~~may be contractually committed, inter alia, to the following conditions:~~

- ~~a) The original B-BBEE Improvement Plan may require certain additions or updates in order to ensure that Transnet is satisfied that developmental objectives will be met.~~
- ~~b) The Supplier will need to ensure that the relevant mechanisms and procedures are in place to allow Transnet access to information to measure and verify the Supplier's compliance with its stated B-BBEE Improvement commitments.~~
- ~~c) The Supplier will be required to provide:
 
  - ~~(i) quarterly status reports for Transnet; and~~
  - ~~(ii) a final B-BBEE Improvement Plan report, to be submitted to Transnet prior to the expiry date of the contract, detailing delivery, implementation and completion of all B-BBEE Improvement components.~~~~
- ~~d) All information provided by the Supplier in order to measure its progress against its stated targets will be auditable.~~

Respondents are requested to submit their <sup>indicative</sup> ~~a~~ B-BBEE Improvement Plan as an **additional document** with their Proposals by completion of Annexure D appended hereto. [Refer Annexure D for further instructions]

  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date &amp; Company Stamp

**RFP FOR THE PROVISION OF HEDGING OF FINANCIAL RISKS (INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD AND UNDERWRITE THE EQUIVALENT SYNDICATE ZAR LOAN**  
~~FOR A PERIOD OF FOURTEEN (14) YEARS~~ <sup>UPTO FIFTEEN (15)</sup> <sup>12 BILLION</sup>

**Section 11 : VENDOR APPLICATION FORM**

*Respondents are to furnish the following documentation and complete the Vendor Application Form below:*

1. **Original** cancelled cheque **OR** letter from the Respondent's bank verifying banking details [with bank stamp]
2. **Certified copy** of Identity Document(s) of Shareholders/Directors/Members [where applicable]
3. **Certified copies** of the relevant company registration documents from Companies and Intellectual Property Commission (CIPC)
4. **Certified copies** of the company's shareholding/director's portfolio
5. **Original** letterhead confirm physical and postal addresses
6. **Original** valid SARS Tax Clearance Certificate [RSA entities only]
7. **Certified** copy of VAT Registration Certificate [RSA entities only]
8. A **valid and original** B-BBEE Verification Certificate / sworn affidavit **or certified copy** thereof meeting the requirements for B-BBEE compliance as per the B-BBEE Codes of Good Practice;
9. **Certified copy** of valid Company Registration Certificate [if applicable]

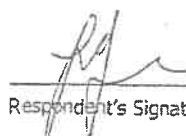
**Note:** No contract shall be awarded to any South African Respondent whose tax matters have not been declared by SARS to be in order.

**Vendor Application Form**

Entity's trading name **JPMORGAN CHASE BANK, N.A., JOHANNESBURG BRANCH**  
 Entity's registered name **JPMORGAN CHASE BANK, N.A., JOHANNESBURG BRANCH**  
 Entity's Registration Number or ID Number if a Sole Proprietor **2001/016069/10**  
 Form of entity [v] **EXTERNAL COMPANY** Trust Pty Ltd Limited Partnership Sole Proprietor  
 How many years has your entity been in business? **14 YEARS**  
 VAT number [if registered] **4290195686**  
 Entity's telephone number **+27 11 507 3000**  
 Entity's fax number **—**  
 Entity's email address **FRANK.L.VSIN@JPMORGAN.COM**  
 Entity's website address **WWW.JPMORGAN.COM**

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: **8/5/2015**

  
Respondent's Signature

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



USD BANK ACCOUNT

Bank name JP MORGAN CHASE BANK Branch & Branch code SWIFT: CHASUS33

Account holder JPMORGAN CHASE BANK Bank account number 060020712

Postal address PRIVATE BAG X9936  
SANDTON, SOUTH AFRICA Code 2146

Physical address 1 FRICKER ROAD  
ILLOVO, JOHANNESBURG, SOUTH AFRICA Code 2196

Contact person FRANK VEIN

Designation EXECUTIVE DIRECTOR

Telephone +27 11 507 0727

Email FRANK.L.VEIN@JPMORGAN.COM

Annual turnover range [last financial year] < R5 m R5 - 35 m > R35 m X

Does your entity provide Products Services Both X

Area of delivery National X Provincial Local

Is your entity a public or private entity Public Private X

Does your entity have a Tax Directive or IRP30 Certificate Yes No X

Main product or services [e.g. Stationery/Consulting] FINANCIAL SERVICES

## Complete B-BBEE Ownership Details:

% Black ownership — % Black women ownership — % Disabled Black ownership — % Youth ownership —

Does your entity have a B-BBEE certificate Yes No

What is your B-BBEE status [Level 1 to 9 / Unknown] LEVEL 2

How many personnel does the entity employ Permanent 148 Part time —

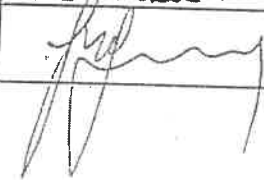
If you are an existing Vendor with Transnet please complete the following:

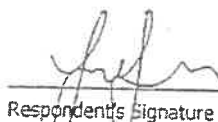
Transnet contact person N/A

Contact number N/A

Transnet Operating Division N/A

Duly authorised to sign for and on behalf of Entity / Organisation:

Name	MARC HUSSEY	Designation	MANAGING DIRECTOR
Signature		Date	8 MAY 2015

  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Date &amp; Company Stamp

2

CONFIDENTIAL

### **3. Annexures**

**Annexure A: Technical Pre-Qualification**

**Annexure B: Supplier Development Plan, and**

**Annexure C: Supplier Development Value Summary**

**Annexure D: B-BBEE Improvement Plan**

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

GSM/15/03/1255

Page 1 of 1

**ANNEXURE A: TECHNICAL PRE-QUALIFICATION**

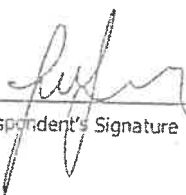
**GSM/15/05/1265 - FOR THE PROVISION OF HEDGING FINANCIAL RISKS  
(INTEREST RATE, CREDIT AND CURRENCY RISK) AND TO LEAD <sup>ARRANGE</sup> AND ~~UNDERWRITE~~  
THE ~~EQUIVALENT~~ <sup>D</sup> ~~SYNDICATE~~ <sup>12 BILLION</sup> ~~ZAR LOAN~~ <sup>UP TO 1 FIFTEEN (5)</sup> FOR A PERIOD OF ~~FOURTEEN (14)~~ YEARS**

Respondents are required to indicate whether they are able to provide the services/deliverables as specified in the scope of work.

I/We JPMorgan Chase Bank hereby agree to 100% compliance to the scope of work as set out in this marked-up response and subject to the conclusion of satisfactory documentation in relation to each aspect of the transaction between the parties.

ACCEPT	✓	DECLINE	
--------	---	---------	--

Note that this technical pre-qualification (Annexure A) is a mandatory returnable document.

  
Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/8/2015

Date & Company Stamp



**Instructions and Notes for completion of the SD Value Summary Template:**

1	Respondents must complete this Annexure which summarises your Supplier Development (SD) Plan and related value commitments over the contract period.						
2	Do not populate greyed out areas.						
3	Populate the following columns as requested in SD MEASUREMENT column: NUMBER, PERCENTAGE, RAND VALUE excluding VAT, YES/NO and SD PLAN CROSS REFERENCE.						
4	Cross-reference the Value Indicators quoted under the column heading "SD PLAN CROSS-REFERENCE" with the corresponding section in your SD Plan.						
SD CATEGORY	SD MEASUREMENT	NUMBER	PERCENTAGE	RAND VALUE excluding VAT	YES/NO	SD PLAN CROSS-REFERENCE	
1	Transfer of Technology & Intellectual Property Rights	Technology and Intellectual Property Rights (IPR) transfers are intangible and/or tangible assets with significant economic value. Respondents will be measured on their plans to transfer knowledge, and/or capital assets, and/or IPR to contribute to capability building of a regional supply base which would ultimately lead to improved capability, efficiency and regional capacity					
	1	Number and Rand value of new Technology Transfer on hedging of financial risks, or other similar or related type of transaction to be exposed to the Black Graduates in Training at Transnet Group Treasury.	3 day derivative valuation seminar	R1 million		2.1	
	1.1	Number and Rand value of new Technology Transfer on hedging of financial risks, or other similar or related type of transaction to be exposed to Transnet employees at our Group Treasury Department.	6 month engagement with Regiments Capital	R25 million		2.1	
2	Skills Development	New skills development initiatives indicates your company's commitment to skills education, and how this would match with targeted groups. Consideration needs to be directed towards the adequacy quality and value of proposed skills development to allow for better evaluation in line with Government objectives.					
2	2	Number and Rand value of Black Owned Institution Skills Transfer on Hedging of Financial Risks and Underwriting thereof.	Undetermined at this point	R6 million R24 million		2.2.2 2.4	
	2.1	Number and Rand value of Black Women Owned Institutions Skills Transfer on Hedging of Financial Risks and Underwriting thereof.				2.2.2	
	2.2	Number and Rand value of Black Youth Graduates Skills Transfer on Hedging of Financial Risks and Underwriting thereof at our Group Treasury.		R36 million R2.4 million		2.2.2	

\*where "Black" means South African Black, Coloured and Indian, as defined in the B-BBEE Act, 53 of 2003

3	Job Preservation	The potential for job preservation directly due to the award of this business.				
3	Number of jobs which would be preserved through award of contract:	Undetermined at this point				

Responsible Signature

Page 1 of 2


JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Small Business Promotion	These SD value measurements give an indication of your commitment to developing small businesses in line with the Government's New Growth Path (NGP) and B-BBEE requirements				
4	Percentage of your projected annual procurement spend from businesses with an annual turnover of less than R35 million (Black QSEs)		5.6%		
4.1	Percentage of your projected annual procurement spend from businesses with an annual turnover of less than R5 million (Black EMEs)		3.2%		
4.2	Percentage of your projected annual procurement spend from Black start-up enterprises				
ESTIMATED RAND VALUE TOTAL OF SUPPLIER DEVELOPMENT COMMITMENT, EXCLUDING VAT :					R94 400 000
SUPPLIER DEVELOPMENT COMMITMENT EXPRESSED AS A PERCENTAGE OF ESTIMATED CONTRACT VALUE :					> 100%

JPMorgan Chase Bank, N.A. (Johannesburg Branch)  
Date: 8/5/2015

Date Company Stamp

  
Authorised Signature





TRANSNET



### ANNEXURE C: SUPPLIER DEVELOPMENT PLAN

Transnet requires that all Respondents submit <sup>an indicative</sup> ~~a~~ <sup>indicative</sup> **Supplier Development Plan** demonstrating how they <sup>intend to</sup> ~~will~~ discharge their commitments made in the ~~Supplier Development Value Summary~~.

The <sup>indicative</sup> ~~Supplier Development Plan~~ is a detailed narrative document explaining the Respondent's SD proposal as summarised in the Supplier Development Value Summary.

Respondents must compile the SD plan, with an understanding of Supplier Development as detailed and described in the SD Guideline Document and further guided by the specific requirements mentioned below.

#### Important Notes for completion of SD Plan:

- (i) Respondents are urged to pay careful attention to the compilation of the SD Plan ~~since it, together with the SD Value Summary, represents a binding commitment on the part of the successful Respondent.~~
- (ii) Respondents are required to address each of the categories under the detailed SD Description as a minimum for submission. This is however not an exhaustive list and Respondents are not limited to these choices when compiling each section.
- (iii) Respondents must ensure that the SD Value Summary submission and the SD Plan submission are accurately cross-referenced with each other.
- (iv) Respondents are requested to address each of the SD aspects in no more than two (2) pages per category, to avoid lengthy submissions.
- (v) Respondents are required to provide an electronic copy [CD] of the completed SD Value Summary and SD Plan as part of their submissions.

#### Minimum SD plan requirements

The SD Plan should outline the type of activities you intend to embark upon should you be awarded the contract. This SD Plan should also provide an overview of what you intend to achieve, by when, and the mechanisms to be used to achieve those objectives.

Category	Description
Technology Transfer and Intellectual Property Rights	Transfer technology, IPR and methodology to small businesses
New Skills development	Skills transfer & skills education which will occur as a result of the award of contract
Job Preservation	Number of jobs preserved resulting from the award of contract
Small Business Promotion	Encouragement for growth and the expansion of emerging local firms, through procurement and support mechanisms

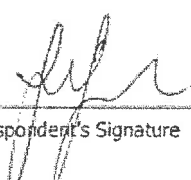
JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

**SUPPLIER DEVELOPMENT PLAN**

1. Supplier Development Executive Summary
2. Supplier Development plan per category:
  - 2.1. Technology Transfer and Intellectual Property Rights
  - 2.2. New Skills Development
  - 2.3. Job Preservation
  - 2.4. Small Business Promotion

Conclusion

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

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

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

MAY 2015

SUPPLIER DEVELOPMENT PLAN

STRICTLY PRIVATE AND CONFIDENTIAL

J.P.Morgan

CONFIDENTIAL

## 1. Supplier Development Plan Executive Summary

J.P. Morgan has a strong, long-standing commitment to the South African market and to Broad-Based Black Economic Empowerment (B-BBEE). We currently have a Level 2 rating under the Financial Sector Code as Gazetted on 26 November 2012.

J.P. Morgan has a history in South Africa dating back over 110 years and has been a trusted advisor to South African clients and the Republic of South Africa in many landmark transactions.

As a result, J.P. Morgan is a significant banking group in South Africa and one of the largest foreign banking operations in the country. The firm's commitment to South Africa is further demonstrated by the relative size of the Johannesburg office which has a full banking license, and currently employs 142 people.

J.P. Morgan South Africa has proactively embraced the Government's BBBEE agenda through numerous initiatives. This is based on our primary belief that the foundations of true transformation lie in a strategy that recognizes the inter-related nature of the Department of Trade and Industry ("DTI") and the Financial Sector Charter ("FSC") scorecard pillars and accords equal importance to each.

J.P. Morgan is highly committed to education, skills transfer and related initiatives. As detailed below we have six programs in South Africa which focus on enterprise development including grants to USAID, the GOLD Peer Education Development Agency, Canon Collins Trust, Dalberg Global Development, Thembani, Operation Hope and Harambee Youth Employment Accelerator.

In the context of this Request for Proposal, we believe we have already created value of ZAR26 million attributable to the initiatives directly related to this transaction and we detail this in Section 2.1 below. Thus we have already exceeded the 35% contract value target (a target of R22.4 million).

In addition, we have set out additional Supplier Development projects under Sections 2.2 and 2.4 below that are expected to total around ZAR80 million (\$6.5m) over the next five years. We have detailed these together with our historic projects to show that we are confident we have a robust long-term Supplier Development engagement planned over the next 5-years even though not all the specific projects in these areas are contracted at this stage.

The allocation of the spend above is directly linked to J.P. Morgan doing business in South Africa. So the transaction with Transnet will assist J.P. Morgan to maintain its local presence and generate the revenue to part fund this target allocation.

SUPPLIER DEVELOPMENT PLAN

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/15



CONFIDENTIAL

## 2. Supplier Development per Category

### 2.1 Technology Transfer and Intellectual Property Rights

There are two specific supplier development initiatives already underway that are directly relevant to this transaction with a combined Rand value which we estimate at R26 million. Therefore we believe we have already exceeded the 35% contract value target of R22.4 million.

#### Transnet derivative valuation seminar

J.P. Morgan conducted a detailed 3-day derivatives valuation seminar for the exclusive benefit of Transnet's Treasury team on the 4th through 6th February 2015. The course was open to the entire Treasury team, and 5 members attended for the duration: Danie Smit, Tshepo Matlamela, Reon Louw, Deva Sathee, and Zander Grobler.

The training was delivered by 4 senior J.P. Morgan professionals (Tom Briggs, Sam Pannetier, Ed Franklin and Laurent Lalou), 3 of whom flew down from our London office specifically to provide this training. This ensured that the training was delivered by seasoned market practitioners, focusing on derivatives execution and advanced risk management topics. This we believe resulted in a significant transfer of technology in the area of derivatives and specifically in the area of credit default swaps.

We estimate the value of this course, including travel, to be approximately ZAR1 million.

We believe this initiative will meet the "Technology Transfer/sustainability" category definitions set out in Sections 5.3 of Transnet's Supplier Development Guideline Document (March 2015).

#### Regiments Capital technology transfer

For the past 6 months, senior-level professionals at J.P. Morgan have worked closely with Regiments Capital, a specialized black owned and empowerment financial advisory firm, and an advisor to Transnet in relation to the China Development Bank loan and related locomotive acquisition. Regiments' role was expanded to advise Transnet on the associated proposed risk management transaction. We have worked and continue to work with the advisory, quantitative and legal professionals at Regiments and have shared in detail a confidential and proprietary J.P. Morgan risk management structure for the South African environment. This interaction has included extensive understanding and knowledge transfer around credit default swaps and credit contingent default swaps.

Because of the very specialized nature of these instruments we believe Regiments Capital have received highly valuable intellectual capital transfer, which has enabled Regiments to advise Transnet effectively on this transaction and in the future will allow Regiments and its professionals to market their skills in this area profitably. The involvement of Regiments in a large scale risk management transaction with J.P. Morgan and Transnet will provide Regiments with key credentials and a track record to allow them to offer services independently across South Africa and internationally.

We estimate the total value of this skills transfer both from the value derived (as defined in the RFP) from Transnet and in the future to be in excess of ZAR25 million.

Together, we believe these two initiatives meet the 'Technology Transfer/sustainability' category definition set out in Sections 5.3 of Transnet's Supplier Development Guideline Document (March 2015). We estimate the total value of this skills transfer both from the value derived from Transnet and in the future to be in excess of ZAR26 million.

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/15



CONFIDENTIAL

## 2.2 New Skills Development

### 2.2.1 Skills and education development directly related to J.P. Morgan's business

From January 2012 to 31 December 2014 J.P. Morgan invested R13.5 million in the training and development of the South African office staff. J.P. Morgan's plan for the next 5 years is to spend a further R20 million for internal and external training which includes our graduate training program and learnerships.

Given South Africa's history and the need to develop a broader and deeper base of skilled professionals has never been a more pressing business imperative for all companies operating in the country. Led by J.P. Morgan's global commitment to diversity as a core value of the firm, as well as J.P. Morgan's commitment to doing business in South Africa, we developed a series of education and development initiatives described below.

#### The Analyst Program

- Graduates in investment banking, trading and sales, are sent to New York in the first year of joining the company to attend a 6 to 8 week Analyst Training program. The programs provide exposure to both financial theory and practice for entry level professionals into banking and financial services.
- These individuals may go on to work further in our overseas offices in London and New York on secondments.

#### The Winter Training program (University students)

- This targets students currently in university and who are completing their final year of studies.
- This is a 3 week program exposing students to investment banking.
- This program offers soft skills training, business presentations, job shadowing, working on a research project and a corporate social investment project as part of the 3 week initiative.

#### The Graduate Program

- The graduate program is designed to attract and retain a pipeline of strong young talent. Our aim with this program is to employ black graduates who can make a meaningful contribution to our South African business.
- Students are hired directly from the universities for different lines of business.

#### Learnership Program for Graduates and Junior Management Staff

- 6 graduates and 5 junior management staff members were enrolled with Da Vinci Institute for 2014 / 2015. This program has been customized to banking and the students will graduate with a Banking Certificate, NQF level 5, at the end of June 2015. 10 out of the 11 students attending this program are Black candidates.
- 4 graduates and 3 junior management staff members are enrolled with Da Vinci Institute for 2015/2016. This program has been customized to banking and the students will graduate with a Banking Certificate, NQF level 5, at the end of Jan 2016. 7 out of the 7 students attending this program are Black candidates

#### International secondments (since January 2012)

- In addition to the graduate training program, we offer international secondments to our London and New York offices to accommodate candidates from designated groups.

#### Central Bank conference

- We run an annual central bank conference in Johannesburg – in 2014 this event attracted central banks from across the continent with the largest attendance (15+ persons) from the

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

3 Date: 25/15

JPMorgan

CONFIDENTIAL

South African Reserve Bank, National Treasury and the Public Investment Corporation. One of the objectives of the conference is to hear from J.P. Morgan, external speakers, network and share ideas.

- We estimate the value of our spend on these initiatives over the next 5 years to be R20 million. We believe these initiatives meet the 'Skills Development' category definition set out in Section 5.4 of Transnet's Supplier Development Guideline Document (March 2015).

## 2.2.2 Skills and education development related to the South African economy

In addition to the above initiatives, J.P. Morgan has extensive supplier development initiatives focused on addressing the skills and education deficits which underpin the high levels of unemployment, especially youth unemployment in South Africa. We estimate there are seven million 16-to-34-year-old South Africans out of work, 70% of the country's unemployed population.

J.P. Morgan is currently supporting six skills development projects in South Africa. These are summarized below:

Organisation	Programme Description	Projected Impact	Impact to Date
Harambee	Activating latent demand in SMEs for entry level staff and efficiently filling these positions with work-ready qualified youth job-seekers.	800 youth placed into jobs with SMEs	SME sourcing on track
Maharishi Institute	Training and placement of youth into jobs in the business process outsourcing (BPO) and information technology (IT) sectors.	475 youth placed into BPO/IT jobs	Grant commenced Dec 2014
GOLD	Leadership, vocational skills and entrepreneurship training for young people, with work placements to support them into employment.	133 youth placed high growth industries	Employers signed onto job commitments
Operation Hope	Pilot initiative to give students an understanding of skills necessary to implement a business and be employable.	350 youth trained in finance and business	Curriculum and school partners established
Themba	Enterprise development programme to support job creation and access to new markets and clients to enhance revenue of select businesses.	Growth of 160 agri-businesses	Training is 100% on track.
School Capacity & Innovation Program	Investing in innovative approaches that enhance education standards and provision across South Africa	Reach 2 million students and 70,000 teachers	Just under 10,000 teachers trained to date.

Over the next 5 years J.P. Morgan expects to allocate around \$3 million (ZAR36 million) on these and similar programs. Allocation of this spend is directly linked to successfully doing business in South Africa, so the transaction with Transnet will assist us to maintain our local presence and generate the revenue to part fund this target allocation.

These programs will primarily focus on workforce readiness. We expect to support demand-driven training models that connect youth who have some level of secondary education with entry-level jobs in high-growth industries. We have not identified all of the projects that will benefit from this spend, but some will involve a continuation of the above projects, other will be new. We are evaluating the following projects:

- Rural Education Access Program (REAP) – potential alumni progression and placement project.
- The Tertiary School in Business Administration (TSiBA) – potential program to take youth from disadvantaged backgrounds who have received business/finance education and place them into the financial services industry.
- Ikamva Youth – potential program to further connect youth who have received tertiary education support to employment opportunities upon matriculation.

J.P. Morgan Chase Bank, N.A. (Johannesburg Branch)  
Date: 8/5/15

CONFIDENTIAL

Below are two specific examples of the type of projects we do expect to finance:

*South African National Youth Development Agency (NYDA) and Youth Build International*

- In April 2015 we approved a \$200,000 (ZAR 2.4 million) grant to Youth Build International which will partner with the South African National Youth Development Agency. The funding will be spent over the next 18-months in a project to support 150 South African marginalized youth into sustained employment and livelihood and to strengthen South Africa's employment training sector by building the capacities of NYDA and its implementing partner.

*J.P. Morgan School of Finance*

- We plan to establish the J.P. Morgan School of Finance (with an expected spend of up to R6 million over the next 5 years) to increase our ability to contribute international skills and knowledge to our clients and empowerment partners. This is expected to be launched in 2016 and will include modules in finance, management, technology and leadership.

We estimate the value of our spend over the next 5 years to be R36 million. We believe these initiatives will meet the 'Skills Development' category definition set out in Section 5.4 of Transnet's Supplier Development Guideline Document (March 2015).

### 2.3 Job Preservation

Not applicable.

### 2.4 Small Business Promotion

Over the next five years, J.P. Morgan will continue its focus on small business promotion and we expect to spend around R24 million (\$2.1 million) on initiatives in this space:

- Our focus will be on small and medium enterprise (SME) training and holistic business development support (BDS) provision to enhance the growth of quality SMEs. It will also include technical assistance and access to finance for high potential SMEs.
- We also expect to focus on creating small business system tools to create a metric for quality BDS across markets.

As a recent example, in 2014, J.P. Morgan's predominant focus in South Africa in this space was around the Catalyst for Growth (C4G) initiative which we funded. C4G attempts to build an analytics platform upon which business development support (BDS) providers can be rated and assessed in order to ensure greatest potential Small and Medium Enterprise (SME) growth.

After a 2 year pilot program, all companies in the C4G program are still successfully operating, with an overall median annual revenue increase of 27%, growth in employment and an increase in successful applications for finance by 14%. The program has received very positive feedback, as shown below:

## BUSINESSREPORT

### JPMorgan applauds success of SME pilot programme in SA

June 13 2014 at 08:00am

JPMorgan Chase Bank, N.A. (Johannesburg Branch)  
Date: 6/5/15





CONFIDENTIAL

Finweek

**ENTREPRENEURSHIP: JP Morgan's two year SME boost success**June 11, 2014 by [JP Morgan Chase](#)**BusinessDay TV**

Rita Gurevitz, Vice President Philanthropy for Europe, Middle East and Africa, JP Morgan reports back on the Bank's two-year pilot SME programme

# Financial Mail

FEATURES



Small and medium enterprise sector

**SMEs: Pressure to get going**

BY RITA GUREVITZ, VICE PRESIDENT PHILANTHROPY FOR EUROPE, MIDDLE EAST AND AFRICA

But he says it takes time to properly develop and evolve SMEs.

This is where an initiative by the JPMorgan Chase Foundation might play a role.

## Conclusion

We estimate the total value of our spend over the next 5 years to be R94.4 million. We believe these programs will meet the 'Enterprise and Supplier Development' category definition set out in Section 5 of Transnet's Supplier Development Guideline Document (March 2015).

SUPPLIER DEVELOPMENT PLAN

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/15





### ANNEXURE D : B-BBEE IMPROVEMENT PLAN

Transnet encourages its Suppliers/Service Providers to constantly strive to improve their B-BBEE rating. Whereas Respondents will be allocated points in terms of a preference point system based on its B-BBEE scorecard, in addition to such scoring, Transnet also requests that Respondents submit a B-BBEE improvement plan. Respondents are therefore requested to indicate the extent to which their ownership, management control, employment equity, preferential procurement and enterprise development will be maintained or improved over the contract period.

Respondents are requested to submit their B-BBEE Improvement Plan as an additional document with their Proposals.

Respondents are to insert their current status (%) and future targets (%) for the B-BBEE Improvement Plan [i.e. not the % change but the end-state quantum expressed as a percentage] in the table below. This will indicate how you intend to sustain or improve your B-BBEE rating over the contract period, which will represent a binding commitment to the successful Respondent.

Ownership Indicator	Required Responses	Current Status (%)	Future Target (%)
1. The percentage of the business owned by Black <sup>1</sup> persons.	<i>Provide a commitment based on the extent to which ownership in the hands of Black persons as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>	JPMorgan applies the FSC carve out as it is a branch of an international bank	JPMorgan will continue to apply carve out when the new FSC codes are gazetted
2. The percentage of your business owned by Black women.	<i>Provide a commitment based on the extent to which ownership in the hands of Black women as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>		
3. The percentage of the business owned by Black youth <sup>2</sup>	<i>Provide a commitment based on the extent to which ownership in the hands of Black youth as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>		
4. The percentage of the business owned by Black persons living with disabilities	<i>Provide a commitment based on the extent to which ownership in the hands of Black disabled persons as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>		
5. The percentage of the business owned by Employment Schemes or Co-Operatives	<i>Provide a commitment based on the extent to which ownership in the hands of Employment Schemes or Co-Operatives as a percentage of total ownership of the organisation would be sustained or increased over the contract period.</i>		

<sup>1</sup> "Black" means South African Blacks, Coloureds and Indians, as defined in the B-BBEE Act, 53 of 2003

<sup>2</sup> "Black youth" means Black persons from the age of 16 to 35

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/15

Respondent's Signature

Date & Company Stamp

Management Control Indicator	Required Responses	Current Status (%)	Future Targets (%)
6. The percentage of Black Board members in relation to the total number of Board members	<i>Provide a commitment based on the extent to which the number of Black Board members, as a percentage of the total Board, would be sustained or increased over the contract period.</i>	JPMorgan applies the FSC carve out as it is a branch of an international bank	JPMorgan will continue to apply carve out when the new FSC codes are gazetted
7. The percentage of Black female Board members in relation to the total number of Board members	<i>Provide a commitment based on the extent to which the number of Black female Board members, as a percentage of the total Board, would be sustained or increased over the contract period.</i>		
8. The percentage of Black senior managers involved in day to day management of the organisation, in relation to the total senior management cadre	<i>Provide the percentage of Blacks that would be appointed or retained by the Board and would be operationally involved in the day to day <b>senior management</b> of the business, with individual responsibility for overall and/or financial management of the business and actively involved in the development and implementation of <b>overall strategy</b>, over the contract period.</i>	25.45%	33%
9. The percentage of Black middle managers involved in day to day management of the organisation, in relation to the total middle management cadre.	<i>Provide the percentage of Blacks that would be retained or appointed by the organisation in the <b>middle management</b> cadre and would be operationally involved in the day to day management of the business, with individual responsibility for a particular area within the business and actively involved in the <b>day to day management</b> of the organisation, over the contract period.</i>	61.76%	75%
10. The percentage of Black junior managers involved in day to day management of the organisation, in relation to the total junior management cadre.	<i>Provide the percentage of Blacks that would be retained or appointed by the organisation in the <b>junior management</b> cadre and would be operationally involved in the day to day running of the business, with individual responsibility for a particular area within the business and actively involved in a <b>supervisory role</b> with regards to the day to day management of the organisation, over the contract period.</i>	69.77%	75%
Employment Equity Indicator	Required Responses	Current Status (%)	Future Targets (%)
11. The percentage of Black employees as a percentage of the total number of employees in the organisation.	<i>Provide a commitment based on the extent to which the number of Black employees would be sustained or increased as a percentage of the organisation's total workforce, over the contract period.</i>	49%	53%
12. The percentage of Black women employees as a percentage of the total workforce.	<i>Provide a commitment based on the increase in the number of Black women employees as a percentage of the organisation's total workforce, or sustained over the contract period.</i>	24%	28%
13. The percentage of Black youth employed in relation to	<i>Provide a commitment based on the extent to which the percentage of Black youth</i>	27%	35%

  
 Respondent's Signature

JPMorgan Chase Bank, N.A. (Johannesburg Branch)


Date: 8/5/15

Date &amp; Company Stamp

the total number of employees in the organisation.	<i>employed, in relation to the total of all employees in the organisation, would be sustained or increased over the contract period.</i>		
14. The percentage of Black disabled employees in relation to the total number of employees in the organisation.	<i>Provide a commitment based on the extent to which the percentage of Black disabled employees, in relation to the total of all employees in the organisation, would be sustained or increased over the contract period.</i>	1%	2%
<b>Preferential Procurement Indicator</b>	<b>Required Responses</b>	<b>Current Status (%)</b>	<b>Future Targets (%)</b>
15. B-BBEE procurement spend from all suppliers based on the B-BBEE procurement recognition level as a percentage of total measured procurement spend	<i>Provide a commitment based on the extent to which B-BBEE spend would be sustained or increased over the contract period.</i>	117%	75%
16. B-BBEE procurement spend from QSEs based on the applicable B-BBEE procurement recognition levels as a percentage of total measured procurement spend	<i>Provide a commitment based on the extent to which B-BBEE spend from QSEs would be sustained or increased over the contract period</i>	6.54%	5.60%
17. B-BBEE procurement spend from EMEs based on the applicable B-BBEE procurement recognition levels as a percentage of total measured procurement spend	<i>Provide a commitment based on the extent to which B-BBEE spend from EMEs would be sustained or increased over the contract period</i>	4.35%	3.2%
<b>Preferential Procurement Indicator [continued]</b>	<b>Required Response</b>	<b>Current Status (%)</b>	<b>Future Targets (%)</b>
18. B-BBEE procurement spend from any of the following suppliers as a percentage of total measured procurement spend: <ul style="list-style-type: none"> <li>Suppliers who are more than 50% Black-owned</li> <li>Suppliers who are more than 30% Black women-owned</li> </ul>	<i>Provide a commitment based on the extent to which spend from suppliers who are more than 50% Black-owned or 30% Black women-owned would be maintained or increased over the contract period.</i>	14.01% 1.63%	20% 9%
<b>Enterprise Development Indicator</b>	<b>Required Response</b>	<b>Current Status (%)</b>	<b>Future Target (%)</b>
19. The organisation's annual spend on Enterprise Development as a percentage of Net Profit after Tax [NPAT]	<i>Provide a commitment based on the retention or increase in your organisation's annual spend on Enterprise Development initiatives, as a percentage of its Net Profit after Tax, over the contract period.</i>	1.76%	2%

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/16

  
 Respondent's Signature

Date &amp; Company Stamp

3

CONFIDENTIAL

**A. Appendix – Supporting Documentation**

**Copy of B-BBEE Accreditation Certification**

**Copy of Tax Clearance Certificate**

**Copy of ID's of directors**

**Copy of company registration documents**

**Company letterhead**

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

**J.P.Morgan**

07 May 2015

Transnet

To whom it may concern

Please find attached the following certified documents / information of JPMorgan Chase bank N.A. (Johannesburg Branch) :

1. B-BBEE accreditation certificate
2. Tax clearance certificate
3. Certified copies of ID's of directors
4. Company registration documents
5. Entity letterhead

Kind regards



**Ronelle Reddy**  
*Company Secretary / LEC*  
*Vice President*

JPMorgan Chase Bank, N.A. (Johannesburg Branch) 1 Fricker Road, Cnr Hurlingham Road, Illovo, Johannesburg 2196, South Africa  
Private Bag X9936, Sandton 2146, South Africa

Telephone: +27 (11) 507 0300 Facsimile: +27 (11) 507 0353

James S. Crown, Laban P. Jackson Jr., Marianne Lake, William C. Weldon (Non-Executive Chairman), Matthew E. Zames  
Organised under the Federal Law of the United States  
A subsidiary of JP Morgan Chase & Co.  
Registration Number: 2001/016069/10 Vat Number: 4290195686

Authorised Financial Services Provider



CM39

Certificate issued by the Registrar of Companies & Close  
Corporations on Friday, June 18, 2010 11:32  
Certificate of Confirmation



COMPANIES AND INTELLECTUAL  
PROPERTY REGISTRATION OFFICE

a member of the dti group

Registration number	2001 / 016069 / 10
Enterprise Name	JPMORGAN CHASE BANK NATIONAL ASSOCIATION JOHANNESBURG BRANCH
Enterprise Shortened Name	None provided.
Enterprise Translated Name	None provided.
Registration Date	24/07/2001
Business Start Date	24/07/2001
Enterprise Type	External Company
Enterprise Status	In Business
Financial year end	December
Main Business/Main Object	
Postal address	PRIVATE BAG X 60500 HOUGHTON 2041
Address of registered office	13 WELLINGTON ROAD PARKTOWN 2193



COMPANIES AND INTELLECTUAL PROPERTY REGISTRATION OFFICE

Registrar of Companies & Close Corporations

P.O. BOX 429, PRETORIA, 0001, Republic of South Africa, Docex 256, PRETORIA

Call Centre Tel 086 184 3384 Website www.cipro.co.za WAP www.cipro.co.za/mobile



South African Revenue Service

**Tax Clearance Certificate Number**  
0071/2/2015/0006809161

## Tax Clearance Certificate - Good Standing

**Enquiries**

0800 00 7277

**Approved Date**

2015-02-12

**Expiry Date**

2016-02-12

Company Registration Number	200101606910
Income Tax	9337186143 - JP MORGAN CHASE BANK N.A. (JOHANNESBURG BRANCH)
VAT/Diesel Registration	4290195686 - JP MORGAN CHASE BANK- JOHANNESBURGBRANCH
PAYE Registration	7890739743 - JP MORGAN CHASE BANK (JOHANNESBURGBRANCH)
UIF Registration	U890739743 - JP MORGAN CHASE BANK (JOHANNESBURGBRANCH)
SDL Registration	L890739743 - JP MORGAN CHASE BANK (JOHANNESBURGBRANCH)
Trading Name	JPMorgan Chase Bank N.A. Johannesburg Branch
Tender Number	GoodStanding

It is hereby confirmed that, on the basis of the information at my disposal, the above-mentioned taxpayer has complied with the requirements as set out in section 256(3) of the Tax Administration Act.

This certificate is valid for a period of 12 months unless otherwise communicated by SARS.

Verification of this certificate can be done at any SARS Revenue office nationwide.

Photo copies of this certificate are not valid.

SARS reserves the right to withdraw this certificate at any time should any taxes, levies or duties become due and outstanding by the above taxpayer during the one year period for which the certificate is valid.

*This certificate is issued free of charge by SARS.*

**RONELLE CHARLENE REDDY (CA)**  
 Ex Officio Commissioner of Oaths: Republic of South Africa  
 Member: The South African Institute of Chartered Accountants  
 Member Number: 07997093

07 May 2015

JPMorgan Chase Bank, N.A. (Johannesburg Branch)  
 1 Fricker Road, Illovo, 2196  
 Reg No.: 2001/016069/10

CERTIFIED A TRUE COPY  
 OF THE ORIGINAL

**EMPOWERDEX**

Economic Empowerment Rating Agency



**Generic Financial Sector Code B-BBEE Verification Certificate**  
 - Local Branch of Foreign Bank Not Exempt from Empowerment Financing but Exempt from Access to Financial Services

**JP Morgan South Africa**  
 Incorporating

JP Morgan Chase Bank (Reg No: 2001/016069/10), JP Morgan Equities Ltd (Reg No: 1995/011815/06), JP Morgan Securities South Africa (Reg No: 1996/015112/07)

Address: 1 Fricker Road, Illovo, Johannesburg, 2196

**Level Two Contributor**

Scorecard Information	Actual Score	Target Score	Analysis	Results
Ownership	17.00	14.00	Procurement Recognition Level	125.00%
Management	4.58	5.00	Empowerment Financing Category	Applicable
Employment Equity	9.54	15.00	Access to Financial Services Category	Exempt
Skills Development	6.07	10.00	Black Ownership	N/A
Preferential Procurement	13.20	15.00	Black Women Ownership	N/A
Empowerment Financing	15.00	15.00	VAT Number	4290195886, 4550153425, 4280154480
Enterprise Development	5.00	5.00	Value Adding Enterprise	Yes
Socio-Economic Development	3.00	3.00	Issue Date	28 April 2015
Access to Financial Services	N/A	N/A	Expiry Date	27 April 2016
Total Score	73.39	83.00	Re-Issue Date	N/A
Total Score Equivalent	88.42	100.00		

For EMPOWERDEX (Pty) Ltd

Date

28 April 2015

This verification certificate and the verification report are based on information provided to Empowerdex and represent an independent opinion based on the verification and analysis completed by Empowerdex. The calculation of the scores has been determined in accordance with the Financial Sector Code as Gazetted on 26 November 2012.

Empowerdex (Pty) Ltd, 2001/027963/07  
 Directors: C W. Jack, L. K. Ma, J. Brebnor



FS15J30019

BVA 030  
 A01262

C e r t i f i c a t e

Ex Officio Commissioner of Oaths: Republic of South Africa  
Member: The South African Institute of Chartered Accountants  
Member Number: 07997093

7 May 2015

JPMorgan Chase Bank, N.A. (Johannesburg Branch)  
1 Fricker Road, Illovo, 2196  
Reg No.: 2001/016069/10



JPMorgan Chase Bank, N.A. (Johannesburg Branch)  
1 Fricker Road, Illovo, 2196  
Reg No.: 2001/016069/10

REPUBLIC OF SOUTH AFRICA  
COMPANIES ACT, 1973

FORM CM 49

## Application for the Registration of Memorandum of External Company

SA Companies Registration Office  
CHASE MANHATTAN BANK INCORPORATED IN

2001/016069/10

Paste revenue receipt here

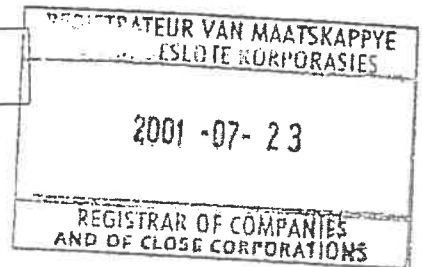
Affix revenue stamps here

or

Impress revenue stamping machine impression here



R350 in terms of Section 322 (2)  
FTR 036  
REPUBLIC OF SOUTH AFRICA



Name of company CHASE MANHATTAN BANK (JOHANNESBURG BRANCH)  
which has been incorporated in NEW YORK  
according to the laws of the NEW YORK  
requires registration as an external company in the Republic.

The issued capital of the company is S 1,335,000,000  
which is equivalent, at current rates of exchange, of R10,613,250,000

The financial year of the company ends on 31 December..... of each year.

~~\*The sole purpose for which the company is establishing a place of business in the Republic is to establish a share transfer office and/or a share registration office.~~

\*Delete if not applicable

Dated this 30th ..... day of MAY ..... 2001

**RONELLE CHARLENE REDDY (CA)**  
Ex Officio Commissioner of Oaths: Republic of South Africa  
Member: The South African Institute of Chartered Accountants  
Member Number: 07997093

Signature of person acting on behalf of  
external company

07 May 2015  
JPMorgan Chase Bank, N.A. (Johannesburg Branch)  
1 Fricker Road, Illovo, 2196  
Reg No.: 2001/016069/10

CERTIFIED A TRUE COPY  
OF THE ORIGINAL

**J P MORGAN CHASE BANK NATIONAL ASSOCIATION**  
**INCORPORATION IN THE STATE OF NEW YORK USA**  
**(Registration No. 2001/016069/10)**

**RESOLUTIONS OF THE BOARD OF DIRECTORS DATED 1 MARCH 2012**

**ORDINARY RESOLUTION NUMBER 1**

**APPOINTMENT OF COMPANY SECRETARIES**

It was **RESOLVED THAT** Statucor Pty Ltd hereby resign as company secretary and that Ronelle Charlene Reddy be appointed as company secretary in their stead.

**ORDINARY RESOLUTION NUMBER 2**

**NOTICE OF REGISTERED OFFICE AND POSTAL ADDRESS**

It was **RESOLVED THAT** the registered office and postal address of the company be and is hereby changed to the following addresses with immediate effect:


**Registered Office:**

1 Fricker Road  
 Illovo  
 Johannesburg  
 2196

**Postal Address:**

Private Bag X 9936  
 Sandton  
 2146

  
 \_\_\_\_\_  
**KATHRYN ANNE SPENCER**

  
 \_\_\_\_\_  
**RONELLE CHARLENE REDDY (CA)**  
 Ex Officio Commissioner of Oaths: Republic of South Africa  
 Member: The South African Institute of Chartered Accountants  
 Member Number: 07997093

07 May 2012  
 \_\_\_\_\_  
 JPMorgan Chase Bank, N.A. (Johannesburg Branch)  
 1 Fricker Road, Illovo, 2196  
 Reg No.: 2001/016069/10

# J.P.Morgan

SAMPLE

JPMorgan Chase Bank, N.A. (Johannesburg Branch) 1 Fricker Road, Cnr Hurlingham Road, Illovo, Johannesburg 2196, South Africa  
Private Bag X9936, Sandton 2146, South Africa

Telephone: +27 (11) 507 0300 Facsimile: +27 (11) 507 0353

James S. Crown, Laban P. Jackson Jr, Marianne Lake, William C. Weldon (Non-Executive Chairman), Matthew E. Zames  
Organised under the Federal Law of the United States

A subsidiary of JP Morgan Chase & Co.  
Registration Number: 2001/016069/10 Vat Number: 4290195686

Authorised Financial Services Provider



4

CONFIDENTIAL

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

## B. Appendix - General Bid Conditions

TRANSNET



**GENERAL BID CONDITIONS - SERVICES**

**[March 2015]**

A handwritten signature in black ink, appearing to be 'PJP' or similar, written in a cursive, flowing style.

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Transnet General Bid Conditions – Services  
[March 2015]

## TABLE OF CONTENTS

1	DEFINITIONS .....	3
2	GENERAL .....	3
3	SUBMISSION OF BID DOCUMENTS .....	3
4	USE OF BID FORMS .....	3
5	BID FEES .....	4
6	VALIDITY PERIOD .....	4
7	SITE VISIT / BRIEFING SESSION .....	4
8	CLARIFICATION BEFORE THE CLOSING DATE .....	4
9	COMMUNICATION AFTER THE CLOSING DATE .....	4
10	UNAUTHORISED COMMUNICATION ABOUT BIDS .....	4
11	POST TENDER NEGOTIATIONS .....	5
12	RETURNABLE DOCUMENTS .....	5
13	DEFAULTS BY RESPONDENTS .....	5
14	CURRENCY .....	5
15	PRICES SUBJECT TO CONFIRMATION .....	5
16	ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES .....	5
17	EXCHANGE AND REMITTANCE .....	5
18	ACCEPTANCE OF BID .....	6
19	NOTICE TO UNSUCCESSFUL RESPONDENTS .....	6
20	TERMS AND CONDITIONS OF CONTRACT .....	6
21	CONTRACT DOCUMENTS .....	7
22	LAW GOVERNING CONTRACT .....	7
23	IDENTIFICATION .....	7
24	CONTRACTUAL SECURITIES .....	7
25	DELETION OF ITEMS TO BE EXCLUDED FROM BID .....	8
26	VALUE-ADDED TAX .....	8
27	IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT .....	8
28	DELIVERY REQUIREMENTS .....	9
29	SPECIFICATIONS AND COPYRIGHT .....	9
30	BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS .....	9
31	CONFLICT WITH BID DOCUMENT .....	10
32	TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST) .....	10

Transnet General Bid Conditions – Services  
[March 2015]

## 1 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:

- 1.1 **Bid** shall mean a Respondent's tendered response / proposal to a Transnet RFP or RFQ;
- 1.2 **Bid Document(s)** shall mean a reference to a Request for Proposal or Request for Quotation;
- 1.3 **Business Day** shall mean any day other than a Saturday, Sunday or public holiday;
- 1.4 **Respondent(s)** shall mean a respondent/bidder to a Bid Document;
- 1.5 **RFP** shall mean Request for Proposal;
- 1.6 **RFQ** shall mean Request for Quotation;
- 1.7 **RFX** shall mean RFP or RFQ, as the case may be;
- 1.8 **Services** shall mean the services required by Transnet as specified in its Bid Document;
- 1.9 **Service Provider** shall mean the successful Respondent;
- 1.10 **Tax Invoice** shall mean the document as required by Section 20 of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time;
- 1.11 **Transnet** shall mean Transnet SOC Ltd, a State Owned Company; and
- 1.12 **VAT** shall mean Value-Added Tax in terms of the Value-Added Tax Act, 89 of 1991, as may be amended from time to time.

## 2 GENERAL

All Bid Documents and subsequent contracts and orders shall be subject to the following general conditions as laid down by Transnet and are to be strictly adhered to by any Respondent to this RFX.

## 3 SUBMISSION OF BID DOCUMENTS

- 3.1 A Bid, which shall hereinafter include reference to an RFP or RFQ, shall be submitted to Transnet no later than the closing date and time specified in accordance with the directions issued in the Bid Documents. Late Bids will not be considered.
- 3.2 Bids shall be delivered in a sealed envelope in accordance with the instructions indicated in the Bid Documents with the Bid number and subject marked on the front of the envelope.
- 3.3 The Respondent's return address must be stated on the reverse side of the sealed envelope.

## 4 USE OF BID FORMS

- 4.1 Where special forms are issued by Transnet for the submission of Bids, Respondents are required to submit their Bids by completion of the appropriate sections on such official forms and not in other forms or documents bearing their own terms and conditions of contract. Non-compliance with this condition may result in the rejection of a Bid.
- 4.2 Respondents must note that the original Bid forms must be completed for submission and not a reprocessed copy thereof.



Transnet General Bid Conditions – Services  
[March 2015]

- 4.3 Only if insufficient space has been allocated for a particular response may a Respondent submit additional information under separate cover using its company's letterhead. This must be duly cross-referenced in the RFX.

### ~~5~~ **BID FEES** N/A

~~5.1 A non-refundable fee may be charged for Bid Documents, depending on the administrative cost of preparing and issuing such Bid Documents.~~

~~5.2 Only Respondents that have paid the Bid fee and provided proof of payment when submitting their Bid will be considered.~~

### **6 VALIDITY PERIOD**

6.1 Respondents must hold their Bid valid for acceptance by Transnet at any time within the requested validity period <sup>of 120 business days</sup> after the closing date of the bid.

6.2 Respondents may be requested to extend their validity period for a specified additional period. In such instances, Respondents will not be allowed to change any aspect of their Bid, unless they are able to demonstrate that the proposed change(s) is as a direct and unavoidable consequence of Transnet's extension of the validity period.

### **7 SITE VISIT / BRIEFING SESSION**

Respondents may be requested to attend a site visit where it is considered necessary to view the site prior to the preparation of Bids, or where Transnet deems it necessary to provide Respondents with additional information relevant to the compilation of their Bids. When such visits or sessions are indicated as compulsory in the Bid Document, Respondents are obliged to attend these meetings as failure to do so will result in their disqualification.

### **8 CLARIFICATION BEFORE THE CLOSING DATE**

Should clarification be required on any aspect of the RFX before the closing date, the Respondent must direct such queries to the contact person identified in the Bid Document.

### **9 COMMUNICATION AFTER THE CLOSING DATE**

After the closing date of a Bid [i.e. during the evaluation period] the Respondent may only communicate with the Chairperson or Secretary of the relevant Acquisition Council.

### **10 UNAUTHORISED COMMUNICATION ABOUT BIDS**

Where Bids are submitted to the Secretary of an Acquisition Council, Respondents may at any time communicate with the Secretary on any matter relating to its Bid but, in the absence of written authority from the Secretary, no communication on a question affecting the subject of a Bid shall take place between Respondents or other potential service providers or any member of the Acquisition Council or official of Transnet during the period between the closing date for the receipt of the Bid and the date of the notification of the successful Respondent(s). A Bid, in respect of which any such unauthorised communication has occurred, may be disqualified.

Transnet General Bid Conditions – Services  
[March 2015]

# **11 POST TENDER NEGOTIATIONS**

*Transnet and the Bidder will enter into post tender negotiations and will document all terms and conditions applicable in agreed written contracts.*  
~~Transnet reserves the right to conduct post tender negotiations with the preferred bidder or a shortlist of preferred bidders. Should Transnet decide to conduct post tender negotiations, bidders will be requested to provide their best and final offers to Transnet based on such negotiations. A final evaluation will be conducted in terms of 80/20 or 90/10 (whichever is applicable) and the contract will be negotiated and awarded to the successful bidder(s).~~

## **12 RETURNABLE DOCUMENTS**

All returnable documents listed in the RFX Documents must be submitted with Respondent's Bid. Failure to submit mandatory returnable schedules / documents will result in disqualification. Failure to submit other schedules / documents may result in disqualification.

## **13 DEFAULTS BY RESPONDENTS**

If the Respondent, after it has been notified of the acceptance of its Bid fails to: *agree the terms and conditions for the particular transaction in writing with Transnet,*  
~~13.1 enter into a formal contract when called upon to do so within such period as Transnet may specify; or~~  
~~13.2 accept an order in terms of the Bid;~~ *within a time period to be agreed between the parties*

~~13.3 furnish satisfactory security when called upon to do so for the fulfilment of the contract; or~~

~~13.4 comply with any condition imposed by Transnet,~~

Transnet may, in any such case, without prejudice to any other legal remedy which it may have, proceed to accept any other Bid or, if it is necessary to do so, call for Bids afresh, and may recover from the defaulting Respondent any additional expense incurred by Transnet in calling for new offers or in accepting a less favourable offer.

## **14 CURRENCY**

All monetary amounts referred to in a Bid response must be in Rand, the currency of the Republic of South Africa [ZAR], save to the extent specifically permitted in the RFX. *or as set out in agreed documentation between Transnet and the Bidder for the*

## **15 PRICES SUBJECT TO CONFIRMATION**

*Specific transaction.*

~~15.1 Prices which are quoted subject to confirmation will not be considered.~~

~~15.2 Firm prices quoted for the duration of any resulting order and/or contract will receive precedence over prices which are subject to fluctuation if this is in Transnet's best interests.~~

## **16 ALTERATIONS MADE BY THE RESPONDENT TO BID PRICES**

All alterations made by the Respondent to its Bid price(s) prior to the submission of its Bid Documents must be done by deleting the incorrect figures and words where required and by inserting the correct figures and words against the items concerned. All such alterations must be initialled by the person who signs the Bid Documents. Failure to observe this requirement may result in the particular item(s) concerned being excluded in the matter of the award of the business.

## **17 EXCHANGE AND REMITTANCE**

~~17.1 The Respondent should note that where the whole or a portion of the contract or order value is to be remitted overseas, Transnet shall, if requested to do so by the Service Provider, effect payment~~

Transnet General Bid Conditions – Services  
[March 2015]

~~overseas directly to the foreign principal of such percentage of the contract or order value as may be stipulated by the Respondent in its Bid Documents.~~

- ~~17.2 It is Transnet's preference to enter into Rand-based agreements. Transnet would request, therefore, that the Respondent give favourable consideration to obtaining forward exchange cover on the foreign currency portion of the Agreement at a cost that is acceptable to Transnet to protect itself against any currency rate fluctuation risks for the duration of any resulting contract or order.~~
- ~~17.3 The Respondent who desires to avail itself of the aforementioned facility must at the time of bidding furnish the information called for in the *Exchange and Remittance* section of the Bid Documents and also furnish full details of the principals to whom payment is to be made.~~
- ~~17.4 The South African Reserve Bank's approval is required before any foreign currency payments can be made to or on behalf of Respondents.~~
- ~~17.5 Transnet will not recognise any claim for adjustment of the order and/or contract price if the increase in price arises after the date on which agreement on an overall Rand contract has been reached.~~
- ~~17.6 Transnet reserves the right to request a pro-forma invoice/tax invoice in order to ensure compliance with the contract and Value Added Tax Act no. 89 of 1991 [VAT Act].~~

#### ~~18 ACCEPTANCE OF BID~~

- ~~18.1 Transnet does not bind itself to accept the lowest priced or any Bid.~~
- ~~18.2 Transnet reserves the right to accept any Bid in whole or in part.~~
- ~~18.3 Upon the acceptance of a Bid by Transnet, the parties shall be bound by these General Bid Conditions and any contractual terms and/or any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.~~
- ~~18.4 Where the Respondent has been informed by Transnet per fax message or email of the acceptance of its Bid, the acknowledgement of receipt transmitted shall be regarded as proof of delivery to the Respondent.~~

#### 19 NOTICE TO UNSUCCESSFUL RESPONDENTS

Unsuccessful Respondents shall be advised in writing that their Bids have not been accepted as soon as possible after the closing date of the Bid. On award of business to the successful Respondent all unsuccessful Respondents shall be informed of the name of the successful Respondent and of the reason as to why their Bids have not been successful.

#### ~~20 TERMS AND CONDITIONS OF CONTRACT~~

- ~~20.1 The Service Provider shall adhere to the Terms and Conditions of Contract issued with the Bid Documents, together with any schedule of "Special Conditions" or otherwise which form part of the Bid Documents.~~
- ~~20.2 Should the Respondent find any conditions unacceptable, it should indicate which conditions are unacceptable and offer amendments/ alternatives by written submission on its company letterhead. Any such submission shall be subject to review by Transnet's Legal Counsel who shall determine whether the proposed amendments/ alternative(s) are acceptable or otherwise, as the case may be.~~



Transnet General Bid Conditions – Services  
[March 2015]

## 21 CONTRACT DOCUMENTS

*be negotiated and agreed between the parties.*

- 21.1 The contract documents will ~~comprise these General Bid Conditions, the Terms and Conditions of Contract and any schedule of "Special Conditions" which form part of the Bid Documents.~~
- 21.2 The abovementioned documents together with the Respondent's Bid response will constitute the contract between the parties upon receipt by the Respondent of Transnet's letter of award / intent, subject to all additional amendments and/or special conditions thereto as agreed to by the parties.
- 21.3 Should Transnet inform the Respondent that a formal contract will be signed, the abovementioned documents together with the Respondent's Bid response [and, if any, its covering letter and any subsequent exchange of correspondence] as well as Transnet's Letter of Acceptance/Intent, shall ~~constitute a binding contract until the final contract is signed.~~

## ~~22 LAW GOVERNING CONTRACT~~

~~The law of the Republic of South Africa shall govern the contract created by the acceptance of a Bid. The *domicilium citandi et executandi* shall be a place in the Republic of South Africa to be specified by the Respondent in its Bid at which all legal documents may be served on the Respondent who shall agree to submit to the jurisdiction of the courts of the Republic of South Africa. A foreign Respondent shall, therefore, state in its Bid the name of its authorised representative in the Republic of South Africa who is empowered to sign any contract which may be entered into in the event of its Bid being accepted and to act on its behalf in all matters relating to the contract.~~

## 23 IDENTIFICATION

If the Respondent is a company, the full names of the directors shall be stated in the Bid. If the Respondent is a close corporation, the full names of the members shall be stated in the Bid. If the Respondent is a partnership or an individual trading under a trade name, the full names of the partners or of such individual, as the case may be, shall be furnished.

## ~~24 CONTRACTUAL SECURITIES~~ N/A

- 24.1 The successful Respondent, when called upon to do so, shall provide security to the satisfaction of Transnet for the due fulfilment of a contract or order. Such security shall be in the form of an advanced payment guarantee [APG] and/or a performance bond [Performance Bond], as the case may be, to be furnished by an approved bank, building society, insurance or guarantee corporation carrying on business in South Africa.
- 24.2 The security may be applied in whole or part at the discretion of Transnet to make good any loss or damage which Transnet may incur in consequence of a breach of the contract or any part thereof.
- 24.3 Such security, if required, shall be an amount which will be stipulated in the Bid Documents.
- 24.4 The successful Respondent shall be required to submit to Transnet or Transnet's designated official the specified security document(s) within 30 [thirty] calendar days from the date of signature of the contract. Failure to return the securities within the prescribed time shall, save where prior extension has been granted, entitle Transnet without notice to the Service Provider to cancel the contract with immediate effect.
- 24.5 Additional costs incurred by Transnet necessitated by reason of default on the part of the Service Provider in relation to the conditions of this clause 24 will be for the account of the Service Provider.

Transnet General Bid Conditions – Services  
[March 2015]

## 25 DELETION OF ITEMS TO BE EXCLUDED FROM BID

The Respondent must delete items for which it has not tendered or for which the price has been included elsewhere in its Bid.

## 26 VALUE-ADDED TAX

26.1 In respect of local Services, i.e. Services to be rendered in the Republic of South Africa, the prices quoted by the Respondent are to be exclusive of VAT which must be shown separately at the standard rate on the Tax Invoice.

26.2 In respect of foreign Services rendered:

- a) the invoicing by a South African Service Provider on behalf of its foreign principal rendering such Service represents a Service rendered by the principal; and
- b) the Service Provider's Tax Invoice(s) for the local portion only [i.e. the "commission" for the Services rendered locally] must show the VAT separately.

## ~~27 IMPORTANT NOTICE TO RESPONDENTS REGARDING PAYMENT~~

### ~~27.1 Method of Payment~~

N/A

- a) The attention of the Respondent is directed to the Terms and Conditions of Contract which set out the conditions of payment on which Bid price(s) shall be based.
- b) However, in addition to the foregoing the Respondent is invited to submit offers based on alternative methods of payment and/or financing proposals.
- c) The Respondent is required to give full particulars of the terms that will be applicable to its alternative offer(s) and the financial merits thereof will be evaluated and taken into consideration when the Bid is adjudicated.
- d) The Respondent must, therefore, in the first instance, tender strictly in accordance with clause 27.1a) above. Failure to comply with clause 27.1a) above may preclude a Bid from further consideration.

NOTE: The successful Respondent [the **Service Provider**], where applicable, shall be required to furnish a guarantee covering any advance payments, as set out in clause 24 above [~~Contractual Securities~~].

### ~~27.2 Conditional Discount~~

N/A

~~Respondents offering prices which are subject to a conditional discount applicable for payment within a specific period are to note that the conditional period will be calculated from the date of receipt by Transnet of the Service Provider's month-end statement reflecting the relevant Tax Invoice(s) for payment purposes, provided the conditions of the order or contract have been fulfilled and the Tax Invoice is correct in all respects in terms of the contract or order. Incomplete and/or incorrect Tax Invoices shall be returned and the conditional discount period will be recalculated from the date of receipt of the correct documentation.~~

Transnet General Bid Conditions – Services  
[March 2015]

## ~~28 DELIVERY REQUIREMENTS~~

### ~~28.1 Period Contracts~~

It will be a condition of any resulting contract/order that the delivery period embodied therein will be governed by the provisions of the Terms and Conditions of Contract.

### ~~28.2 Progress Reports~~

The Service Provider may be required to submit periodical progress reports with regard to the delivery of the Services.

### ~~28.3 Emergency Demands as and when required~~

If, due to unforeseen circumstances, the rendering of the Services covered by the Bid are required at short notice for immediate delivery, the Service Provider will be given first right of refusal for such business. If it is unable to meet the desired critical delivery period, Transnet reserves the right to purchase such services as may be required to meet the emergency outside the contract if immediate delivery can be offered from any other source. The "Total or Partial Failure to Perform the Scope of Services" section in the Terms and Conditions of Contract will not be applicable in these circumstances.

## ~~29 SPECIFICATIONS AND COPYRIGHT~~

### ~~29.1 Specifications~~

The Respondent should note that, unless notified to the contrary by Transnet or a designated official by means of an official amendment to the Bid Documents, it is required to tender for the Services strictly in accordance with the specifications supplied by Transnet.

### ~~29.2 Copyright~~

Copyright in plans, drawings, diagrams, specifications and documents compiled by the Service Provider for the purpose of contract work shall be governed by the Intellectual Property Rights section in the Terms and Conditions of Contract.

## ~~30 BIDS BY OR ON BEHALF OF FOREIGN RESPONDENTS~~

30.1 Bids submitted by foreign principals may be forwarded directly by the principals or by its South African representative or agent to the Secretary of the Acquisition Council or to a designated official of Transnet according to whichever officer is specified in the Bid Documents.

30.2 In the case of a representative or agent, written proof must be submitted to the effect that such representative or agent has been duly authorised to act in that capacity by the principal. Failure to submit such authorisation by the representative or agent shall disqualify the Bid.

30.3 When legally authorised to prepare and submit Bids on behalf of their principals not domiciled in the Republic of South Africa, representatives or agents must compile the Bids in the names of such principals and sign them on behalf of the latter.

30.4 South African representatives or agents of a successful foreign Respondent must when so required enter into a formal contract in the name of their principals and must sign such contract on behalf of the latter. In every such case a legal Power of Attorney from their principals must be furnished to Transnet by the South African representative or agents authorising them to enter into and sign such contract.

Transnet General Bid Conditions – Services  
[March 2015]

- ~~a) Such Power of Attorney must comply with Rule 63 [Authentication of documents executed outside the Republic for use within the Republic] of the Uniform Rules of Court: Rules regulating the conduct of the proceedings of the several provincial and local divisions of the Supreme Court of South Africa.~~
- b) The Power of Attorney must be signed by the principal under the same title as used in the Bid Documents.
- c) If a Power of Attorney held by the South African representative or agent includes matters of a general nature besides provision for the entering into and signing of a contract with Transnet, a certified copy thereof should be furnished.
- d) The Power of Attorney must authorise the South African representative or agent to choose the *domicilium citandi et executandi* as provided for in the Terms and Conditions of Contract.
- 30.5 If payment is to be made in South Africa, the foreign Service Provider [i.e. the principal, or its South African agent or representative], must notify Transnet in writing whether, for payment by electronic funds transfer [EFT]:
- a) funds are to be transferred to the credit of the foreign Service Provider's account at a bank in South Africa, in which case the name and branch of such bank shall be furnished; or
- b) funds are to be transferred to the credit of its South African agent or representative, in which ~~case the name and branch of such bank shall be furnished.~~

### 31 CONFLICT WITH BID DOCUMENT

Should a conflict arise between these General Bid Conditions and the Bid Document issued, the conditions stated in the Bid Document shall prevail.

### 32 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)

- 32.1 All the stipulations around Transnet's blacklisting process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by reference. Below follows a condensed summary of this blacklisting procedure.
- 32.2 Blacklisting is a mechanism used to exclude a company/person from future business with Transnet for a specified period. The decision to blacklist is based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "prima facie" (i.e. on the face of it) case has been established.
- 32.3 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to blacklisting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.
- 32.4 A supplier or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.
- 32.5 Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:
- a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;

Transnet General Bid Conditions – Services  
[March 2015]

- b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
- c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;
- d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
- e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;
- f) has made any incorrect statement in a certificate or other communication with regard to the Service or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:
  - (i) he made the statement in good faith honestly believing it to be correct; and
  - (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;
- g) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
- h) has litigated against Transnet in bad faith.

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

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

32.7 Where any person or Enterprise has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 Years, such person/Enterprise may also be blacklisted. Serious breaches of the law would include but are not limited to corruption, fraud, theft, extortion, or contraventions of the Competition Act 89 of 1998 (e.g. collusive tendering). This process excludes minor convictions such as traffic offences or personal disagreements between parties which have no bearing on the business operations of the person or Enterprise.



Transnet General Bid Conditions – Services  
[March 2015]

- 32.8 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Tender Defaulters.
- 32.9 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.
- 32.10 Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the Chief Financial Officer of Transnet SOC Ltd, whose decision shall be final.

oooo0000oooo



5

CONFIDENTIAL

## C. Appendix - Standard Ts and Cs of Contract

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION



TRANSNET



**STANDARD TERMS AND CONDITIONS OF CONTRACT  
FOR THE PROVISION OF SERVICES TO TRANSNET  
[March 2015]**

A handwritten signature in black ink, appearing to be 'J. K. R.' or similar, written over a horizontal line.

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Standard Terms and Conditions of Contract  
Services [March 2015]

## TABLE OF CONTENTS

1	INTRODUCTION.....	3
2	DEFINITIONS .....	3
3	INTERPRETATION.....	6
4	NATURE AND SCOPE .....	6
5	AUTHORITY OF PARTIES.....	7
6	WARRANTIES .....	7
7	TRANSNET'S OBLIGATIONS .....	9
8	GENERAL OBLIGATIONS OF THE SERVICE PROVIDER.....	9
9	B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS .....	10
10	FEES AND EXPENSES.....	15
11	INVOICING AND PAYMENT .....	16
12	FEE ADJUSTMENTS .....	16
13	INTELLECTUAL PROPERTY RIGHTS .....	16
14	SERVICE PROVIDER'S PERSONNEL .....	18
15	LIMITATION OF LIABILITY.....	19
16	INSURANCES .....	20
17	CONFIDENTIALITY .....	20
18	TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES.....	22
19	TERM AND TERMINATION .....	22
20	CONSEQUENCE OF TERMINATION.....	23
21	ASSIGNMENT.....	24
22	FORCE MAJEURE.....	24
23	EQUALITY AND DIVERSITY .....	24
24	NON-WAIVER .....	25
25	PARTIAL INVALIDITY .....	25
26	DISPUTE RESOLUTION.....	25
27	ADDRESSES FOR NOTICES .....	25
28	WHOLE AND ONLY AGREEMENT.....	26
29	AMENDMENT AND CHANGE CONTROL .....	26
30	GOVERNING LAW.....	26
31	COUNTERPARTS .....	27
32	TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST) .....	27



**1 INTRODUCTION**

When an Agreement is entered into between Transnet SOC Ltd (**Transnet**) and the appointed supplier of Services to Transnet [**the Service Provider**], these Standard Terms and Conditions of Contract, ~~the technical specifications for the Services, a Work Order including such special conditions as may be applicable, and any terms in the associated Bid Documents, exclusively govern the provision of Services~~

**2 DEFINITIONS**

*as amended in this marked-up proposal and as further amended or substituted by the negotiated agreements detailing such appointment and/or the terms of the specific transaction shall apply*

Where the following words or phrases are used in the 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 the 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 the Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed in writing between the Parties], which collectively and exclusively govern the provision of Services by the Service Provider to Transnet;
- 2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by either Party to give effect to their obligations under the Agreement owned in whole or in part by or licensed to either Party or their affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to the Agreement;
- 2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;
- 2.5 **Commencement Date** means [●], notwithstanding the signature date of the Agreement;
- 2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses or provides to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:
  - a) Information relating to methods of operation, data and plans of the disclosing Party;
  - b) the contents of the 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 statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of the Agreement and in respect of which such Party is liable to the other;
- 2.9 **Deliverable(s)** means any and all works of authorship, products and materials developed, written, prepared, assembled, integrated, modified or provided by the Service Provider in relation to the Services;
- 2.10 **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 the Agreement, as amended by mutual agreement between the Parties and in accordance with the provisions of the Agreement from time to time;
- 2.12 **Foreground Intellectual Property** means all Intellectual Property developed by either Party pursuant to the 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 and the Third Party Materials;
- 2.16 **Parties** mean the Parties to the Agreement together with their subsidiaries, divisions, business units, successors-in-title and their assigns;
- 2.17 **Party** means either one of these 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 the 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 Service(s) provided to Transnet by the Service Provider, pursuant to the Work Order(s) in terms of the Agreement;
- 2.23 **Service Level Agreement** or **SLA** means the processes, deliverables, key performance indicators and performance standards relating to the Services to be provided by the Service Provider;
- 2.24 **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;
- 2.25 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;
- 2.26 **Service Provider Materials** means all works of authorship, products and materials [including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques] owned by, or licensed to, the Service Provider prior to the Commencement Date or independently developed by the Service Provider outside the scope of the Agreement at no expense to Transnet, and used by the Service Provider in the performance of the Services;
- 2.27 **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;



- 2.28 **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;
- 2.29 **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;
- 2.30 **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
- 2.31 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, including timeframes, Deliverable, Fees and costs for the supply of the Service to Transnet, which may be appended to the Agreement from time to time.

### 3 INTERPRETATION

- 3.1 Clause headings in the Agreement are included for ease of reference only and do not form part of the Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.
- 3.2 Any term, word, acronym or phrase used in the 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 the 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 The 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 the Agreement.
- 4.2 Such Purchase Orders shall be agreed between the Parties from time to time, subject to the terms of the relevant Work Order(s).
- 4.3 Each properly executed Purchase Order forms an inseparable part of the Agreement as if it were fully incorporated into the body of the Agreement.
- 4.4 During the period of the 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 the Agreement and/or a Purchase Order, or where the Agreement is silent on the matter, the term, provision or condition in this Master Agreement shall prevail, unless such term or provision or condition in this Master Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

~~4.6 Time will be of the essence and the Service Provider will perform its obligations under the 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 the 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 the Agreement and that the Agreement is executed by a duly authorised representatives of the Service Provider;
- b) it will discharge its obligations under the Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence; ~~and~~
- c) it will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations/.
- ~~d) it will procure licences for Transnet in respect of all Third Party Material detailed in the Work Order(s), and will procure the right for Transnet to take such copies [in whole or in part] of such Third Party Materials as it may reasonably require for the purposes of back-up for archiving and disaster recovery; and~~
- ~~e) the use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.~~

~~6.2 The Service Provider warrants that it will perform its obligations under the Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services. Without prejudice to clause 6.3 below, in the event that the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke a retention of Fees as detailed in the relevant schedule and/or Work Order.~~

~~6.3 The Service Provider warrants that for a period of 90 [ninety] calendar days from Acceptance of the Deliverables they will, if properly used, conform in all material respects with the requirements set out in the relevant schedule. The Service Provider will at its expense remedy any such non-conformance as soon as possible but in any event within 30 [thirty] calendar days of notification~~

~~by Transnet. In the event that the Service Provider fails or is unable to remedy such non-conformance within such time-scale, Transnet will be entitled to employ a third party to do so in place of the Service Provider and any excess charges or costs incurred by Transnet as a result shall be paid by the Service Provider.~~

~~6.4 The Service Provider will remedy any defect within 30 [thirty] calendar days of being notified of that defect by Transnet in writing.~~

~~6.5 The Service Provider will not be liable to remedy any problem arising from or caused by any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.~~

~~6.6 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.5 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 29 [Amendment and Change Control].~~

~~6.7 The Service Provider warrants that:~~

- ~~a) It has, using the most up-to-date software available, tested for [and deleted] all commonly known viruses in the Materials and for all viruses known by the Service Provider at the date of the relevant Work Order; and~~
- ~~b) at the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.~~

~~The Service Provider agrees that, in the event that a virus is found, it will at its own expense use its best endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.~~

~~6.8 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with the Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.~~

~~6.9 The Service Provider warrants that it has taken all reasonable precautions to ensure that, in the event of a disaster, the impact of such disaster on the ability of the Service Provider to comply with its obligations under the Agreement will be reduced to the greatest extent possible, and that the Service Provider shall ensure that it has appropriate, tested and documented recovery arrangements in place.~~

~~6.10 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of the Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall grant Transnet access, during the term of the 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 the 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 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 the Agreement.

## 8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

- 8.1 The Service Provider shall:
- a) respond promptly to all complaints and enquiries from Transnet;
  - b) inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services;
  - c) conduct its business in a professional manner that will reflect positively upon the Service Provider and the Service Provider's Services;
  - d) keep full records clearly indicating all transactions concluded by the Service Provider relating to the performance of the Services and keep such records for at least 5 [five] years from the date of each such transaction;
  - e) obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Service Provider;
  - ~~f) observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993;~~
  - ~~g) comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance; and~~
  - ~~h) ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Verification Certificate, for the duration of the 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 the Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.~~
- 8.2 The Service Provider acknowledges and agrees that it shall at all times:
- a) render the Services and perform all its duties with honesty and integrity;
  - b) communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;

- c) endeavour to provide the highest possible standards of service and professionalism, with a reasonable degree of care and diligence;
- d) use its best endeavours and make every diligent effort to meet agreed deadlines;
- e) treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;
- f) practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination [as further referred to in clause 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 Information, except where a non-disclosure undertaking has been entered into between the Parties;
- ~~i) not allow a conflict of interest to develop between its own interests [or the interests of any of its other customers] and the interests of Transnet;~~
- j) not accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;
- k) not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;
- l) not otherwise act in an unethical manner or do anything which could reasonably be expected to damage or tarnish Transnet's reputation or business image; and
- ~~m) immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services.~~

## 9 B-BBEE AND SOCIO-ECONOMIC OBLIGATIONS

### 9.1 B-BBEE Scorecard

- a) Transnet fully endorses and supports the Broad-Based Black Economic Empowerment Programme and is strongly of the opinion that all South African business enterprises have an equal obligation to redress the imbalances of the past. It is also a fundamental requirement of the RFP that the Service Provider also contributes to the Supplier Development Programme, as applied by Transnet.
- b) In response to this requirement, the Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of the Agreement.
- c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:

- (i) a change in the Service Provider's B-BBEE status which is <sup>materially</sup> less than what it was at the time of its appointment including the impact thereof; and
  - (ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Service Provider's B-BBEE status.
- ~~d) Notwithstanding any other reporting requirement in terms hereof, the Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service Provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) calendar days of such request. A failure to provide such data shall constitute a Service Provider Default and may be dealt with in accordance with the provisions of clause 19.~~ **Error! Reference source not found..**
- ~~e) In the event there is a change in the Service Provider's B-BBEE status, then the provisions of clause 19~~ **Error! Reference source not found.** shall apply.

**~~9.2 B-BBEE Improvement Plan~~**

- a) Transnet encourages its Service Providers to constantly strive to improve their B-BBEE levels. To this end, the Service Provider undertakes to provide Transnet with a B-BBEE Improvement Plan to indicate the extent to which their B-BBEE status will be maintained or improved over the contract period, as per Annexure E of the RFP.
- b) The Service Provider shall, for the duration of the Agreement, comply with the B-BBEE Improvement Plan.
- c) The terms of the B-BBEE Improvement Plan and monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in such B-BBEE Improvement Plan.

**~~9.3 Supplier Development Implementation Plan~~**

- a) In addition to the Supplier Development Plan which the Service Provider provided as part of its bid, the Service Provider undertakes, as stipulated in the RFP, to provide Transnet with a Supplier Development Implementation Plan [the Implementation Plan] setting out the nature, extent and monetary value of the Service Provider's commitments which the Service Provider shall undertake, as well as mechanisms and procedures to allow for access to information and verification of the Service Provider's compliance with the Implementation Plan, as shall be agreed with Transnet but in any event no later than 45 (forty five) calendar days from the signature date of the LOI/LOA.
- b) The Parties undertake to negotiate in good faith with a view to agreeing the content of the Implementation Plan by no later than 45 (forty five) calendar days as aforesaid (or such later date as Transnet may consent to in writing).
- c) If the Parties (acting reasonably and in good faith with due consideration to the Supplier Development Plan proposed by the Service Provider in response to the RFP fail to reach agreement on the Supplier Development Implementation Plan within the time limit stipulated in the clause above, it shall constitute a Service Provider Default and Clause 19 **Error! Reference source not found.** shall apply.
- d) The Supplier's Implementation Plan shall include, but not be limited to Technology transfer, New skills development, Job creation, Job preservation, Training, Small business promotion and Rural integration and regional development.

- e) ~~The terms of the Implementation Plan's and the monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in the Supplier Development Implementation Plan.~~

#### 9.4 Green Economy/Carbon Footprint

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

#### 9.5 Reporting

- a) The Service Provider shall monitor, audit, and record ~~in an auditable manner~~, its own implementation and compliance with the <sup>indicative</sup> B-BBEE Improvement Plan and the <sup>indicative</sup> Supplier Development Implementation Plan and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning the implementation of the <sup>indicative</sup> B-BBEE Improvement Plan and the <sup>indicative</sup> Supplier Development Implementation Plan.
- b) ~~The Service Provider shall, on a monthly basis from the Commencement Date and within 7 (seven) calendar days of the end of the previous calendar month, provide Transnet with a report (for monitoring purposes only) in respect of each of the undertakings stipulated in this clause 9.5.~~
- c) ~~Transnet, through its Supplier Development division, shall, every 6 (six) months from the Commencement Date, review and verify the Service Provider's undertakings stipulated in this clause with respect to B-BBEE and Supplier Development commitments, based on the Service Provider's report.~~
- d) ~~The Service Provider shall attach adequate proof to enable Transnet to verify compliance with the B-BBEE Improvement Plan and Supplier Development Implementation Plan.~~
- e) ~~Post verification of the submitted report to Transnet, Transnet shall engage with the Service Provider on the findings. The Contract Manager, assisted by the relevant specialist from Transnet's Supplier Development division, must report to the Service Provider at the end of every 6 (six) months as to whether or not the Contract Manager and/or the Supplier Development specialist reasonably considers, based on the information available to it, that the Service Provider has during such time complied with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan and the extent, if any, to which the Service Provider has not so complied.~~
- f) ~~Without prejudice to the Transnet's rights under the Agreement:~~
- (i) if the Contract Manager and/or Transnet's Supplier Development specialist reasonably considers that the Service Provider is not at any time complying with B-BBEE Improvement Plan and/or the Supplier Development Implementation Plan, the Contract Manager and/or the Supplier Development specialist may make such recommendations as is considered reasonably appropriate to the Service Provider as to the steps he reasonably considers should be taken by the Service Provider in order for the Service Provider to remedy such non-compliance and the time period within which such steps must be taken;

- ~~(ii) If such recommendations are not implemented by the Service Provider in accordance with such recommendations, then the provisions of clause 9.6 shall apply; and~~
- ~~(iii) Transnet may at any time request a meeting with the Service Provider to consider any non-compliance reported to it by the Supplier Development specialist of Transnet and/or the Contract Manager or which otherwise comes to its attention. Both Parties must attend such a meeting and negotiate in good faith with a view to reach agreement on the steps or actions that the Service Provider must undertake in order to remedy that non-compliance.~~
- g) ~~In the event the Service Provider is found not to have met the B-BBEE and Supplier Development requirements agreed upon in the B-BBEE Improvement Plan and the Supplier Development Implementation Plan, and/or is found to be fraudulent in submitting the reports, then Transnet shall impose a non-compliance penalty as provided for in clause 9.6 below or shall be entitled to terminate in terms of clauses 18 and 19.~~
- h) For the sake of completion of its contractual obligations, the Service Provider shall be obliged to complete all the undertakings made under the B-BBEE Improvement Plan and the Supplier Development Implementation Plan 3 to 6 months before the Termination Date.

**9.6 Penalties****~~Non-Compliance Penalties:~~**

- a) ~~If the Service Provider fails, at any time, to achieve its commitments under and in accordance with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan ("a Non Compliance"), the Service Provider shall, subject to the applicable Non Compliance Penalty Cap, pay a Non Compliance penalty ("Non Compliance Penalty") to Transnet in respect of such Non Compliance at the applicable rate ("Applicable Rate"), as prescribed in clause 9.6 b) to m) below.~~
- ~~(i) Non Compliance Penalties shall be calculated as a percentage of the Contract Value and accrue at the Applicable Rate per month until:~~
- ~~(ii) the date on which the Service Provider has remedied such Non Compliance by complying with the Supplier Development Implementation Plan and/or the B-BBEE Improvement Plan (as applicable); or~~
- ~~(iii) the Agreement being terminated.~~

**~~Applicable Rates of Non Compliance Penalties (for Large Enterprises Only):~~**

- b) ~~In relation to the Supplier Development Implementation Plan, Non Compliance Penalties shall accrue based on the difference between the committed SD value for the period under review and the delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 10% (ten percent) of such difference.~~
- c) ~~In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall accrue at the following Applicable Rates based on a percentage of the Contract Value:~~
- ~~(i) for the first month (or part thereof), a rate of 1.0% (one percent);~~
- ~~(ii) for the second month (or part thereof), a rate of 1.5% (one and a half percent);~~
- ~~(iii) for the third month (or part thereof), a rate of 2.0% (two percent);~~

- (iv) for the fourth month (or part thereof), a rate of 2.5% (two and a half percent); and
- (v) for any period of Non Compliance after the fourth month, a rate of 3% (three percent).

**Non Compliance Penalty Cap for Large Enterprises:**

- d) The Non Compliance Penalty Cap in respect of Supplier Development commitments shall not exceed the difference between the committed SD value for the period under review and the delivered value (i.e. 100% of the undelivered portion of the committed SD value), plus an additional 10% (ten percent) of such difference.
- e) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties in the case of the B-BBEE Improvement Plan shall not exceed 5% (five percent) of the Contract Value.

**Applicable Rates of Non Compliance Penalties for Qualifying Small Enterprises (QSEs):**

- f) In relation to the Supplier Development Implementation Plan, Non Compliance Penalties shall accrue based on the difference between the committed SD value for the period under review and the delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 5% (five percent) of such difference;
- g) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall apply annually at the rate of 0.5% (one half percent).

**Non Compliance Penalty Cap for QSEs:**

- h) The Non Compliance Penalty Cap in respect of Supplier Development commitments shall not exceed the difference between the committed SD value for the period under review and the delivered value (i.e. 100% of the undelivered portion of the committed SD value), plus an additional 5% (five percent) of such difference.
- i) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties in the case of the B-BBEE Improvement Plan shall not exceed 1.5% (one and a half percent) of the Contract Value.

**Applicable Rates of Non Compliance Penalties for Exempted Micro Enterprises (EMEs):**

- j) In relation to the Supplier Development Implementation Plan, Non Compliance Penalties shall accrue based on the difference between the committed SD value and the delivered SD value (i.e. 100% of the undelivered portion of the committed SD value) plus an additional 3% (three percent) of such difference;
- k) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall apply annually at the rate of 0.5% (one half percent).

**Non Compliance Penalty Cap for EMEs:**

- l) The Non Compliance Penalty Cap in respect of Supplier Development commitments shall not exceed the difference between the committed SD value for the period under review and the delivered value (i.e. 100% of the undelivered portion of the committed SD value), plus an additional 3% (three percent) of such difference.
- m) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties in the case of the B-BBEE Improvement Plan shall not exceed 1.5% (one and a half percent) of the Contract Value.

**Non Compliance Penalty Certificate:**


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

**Payment of Non Compliance Penalties:**

- p) Subject to Clause o), the Service Provider shall pay the Non Compliance Penalty Indicated in the Non Compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Service Provider for Non Compliance Penalties accrued during any relevant period, those Non Compliance Penalties shall be carried forward to the next period.
- q) The Service Provider shall pay the amount due within 10 (ten) Business Days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under the Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.
- r) Should the Service Provider fail to pay any Non Compliance Penalties within the time indicated in above (as applicable), Transnet shall be entitled to deduct (set off) the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.
- s) The Non Compliance Penalties set forth in this Clause 9.6 are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the Supplier.

**10 FEES AND EXPENSES**

*The parties will negotiate and agree the relevant fees payable in the documentation relating to each aspect of the various transactions*

~~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 Unless otherwise agreed in a schedule or Work Order, Transnet will reimburse to the Service Provider all reasonable and proper expenses incurred directly and solely in connection with the provision of the Services, provided that all such expenses:

- a) are agreed by Transnet in advance;
- b) are incurred in accordance with Transnet's standard travel and expenses policies;

- c) are passed on to Transnet at cost with no administration fee; and
- d) will only be reimbursed if supported by relevant receipts.

10.4 All Tax Invoices relating to Fees, out of pocket expenses and, if applicable, travel and accommodation costs, will provide the detail for each of the Personnel carrying out the Services and incurring the expenses, and the Tax Invoice will, where appropriate, include VAT as a separate item.

## 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 the Agreement.~~

~~11.2 Transnet shall pay such amounts to the Service Provider, upon receipt of a valid and undisputed Tax Invoice together with the supporting documentation as specified in the Work Order appended hereto, once the valid and undisputed Tax Invoices, or such portion of the Tax Invoices which are valid and undisputed become due and payable to the Service Provider for the provision of the Services, in terms of clause 11.4 below.~~

11.3 All Fees and other sums payable under the 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 the Agreement, Tax Invoices shall be submitted together with a month-end statement. Payment against such month-end statement shall be made by Transnet within 30 [thirty] calendar days after date of receipt by Transnet of the statement together with all valid and undisputed Tax Invoices and supporting documentation.~~

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 Fees for Services rendered in terms of the Agreement shall be subject to review as indicated in the Work Order(s) annexed hereto from time to time.~~

~~12.2 No less than 2 [two] months prior to any proposed Fee adjustment, the Parties shall commence negotiations for Fees for the next period or as otherwise indicated and appended hereto.~~

~~12.3 Should Transnet and the Service Provider fail to reach an agreement on Fees for the successive period, either Party shall be entitled to submit this matter to dispute resolution in accordance with clause 26 of this Master Agreement [Dispute Resolution].~~

## 13 INTELLECTUAL PROPERTY RIGHTS

### 13.1 Title to Confidential Information

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



- b) Transnet shall grant to the Service Provider an irrevocable, royalty free, non-exclusive licence to use Transnet's Background Intellectual Property only for the Permitted Purpose. This license shall not permit the Service Provider to sub-license to other parties.
- ~~c) The Service Provider shall grant to Transnet an irrevocable, royalty free, non-exclusive licence to use the Service Provider's Background Intellectual Property for the Permitted Purpose. This licence shall not permit Transnet to sub-license to other parties.~~
- ~~d) The Service Provider shall grant Transnet access to the Service Provider's Background Intellectual Property on terms which shall be bona fide negotiated between the Parties for the purpose of commercially exploiting the Foreground Intellectual Property, to the extent that such access is required.~~

**13.2 Title to Intellectual Property**

- a) ~~All right, title and interest in and to Foreground Intellectual Property prepared, conceived or developed by the Service Provider, its researchers, agents and employees shall vest in Transnet and the Service Provider acknowledges that it has no claim of any nature in and to the Foreground Intellectual Property. The Service Provider shall not at any time during or after the termination or cancellation of the Agreement dispute the validity or enforceability of such Foreground Intellectual Property, or cause to be done any act or anything contesting or in any way impairing or tending to impair any part of that right, title and interest to any of the Foreground Intellectual Property and shall not counsel or assist any person to do so.~~
- b) Transnet shall be entitled to seek protection in respect of the Foreground Intellectual Property anywhere in the world as it shall decide in its own absolute discretion and the Service Provider shall reasonably assist Transnet in attaining and maintaining protection of the Foreground Intellectual Property.
- c) Where the Foreground Intellectual Property was created by the Service Provider or its researchers, agents and employees and where Transnet elects not to exercise its option to seek protection or decides to discontinue the financial support of the prosecution or maintenance of any such protection, Transnet shall notify the Service Provider who shall have the right of first refusal to file or continue prosecution or maintain any such applications and to maintain any protection issuing on the Foreground Intellectual Property.
- d) No consideration shall be paid by Transnet to the Service Provider for the assignment of any Foreground Intellectual Property from the Service Provider to Transnet, over and above the sums payable in terms of the Agreement. The Service Provider undertakes to ~~sign all documents and do all things as may be necessary to effect, record and perfect the assignment of the Foreground Intellectual Property to Transnet.~~
- e) Subject to anything contrary contained in the Agreement and/or the prior written consent of Transnet [which consent shall not be unreasonably withheld or delayed], the Service Provider shall under no circumstances be entitled as of right, or to claim the right, to use Transnet's Background Intellectual Property and/or Foreground Intellectual Property.



~~13.3 Title to Improvements~~

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

## 13.4 Unauthorised Use of Confidential Information

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

~~13.5 Unauthorised Use of Intellectual Property~~

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

## 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.
- 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 the 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 replacement of equivalent calibre and experience, and any such replacement shall be approved by Transnet prior to commencing provision of the Services, such approval not to be unreasonably withheld or delayed.

## 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 The Service Provider shall indemnify and keep Transnet indemnified from and against liability for damage to any Transnet property [whether tangible or intangible] or any other loss, costs or damage suffered by Transnet to the extent that it results from any act of or omission by the Service Provider or its Personnel in connection with the Agreement. The Service Provider'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 the Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.~~

15.4 Subject to clause 15.1 above, and except as provided in clauses 15.2 and 15.3 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 If for any reason the exclusion of liability in clause 15.4 above is void or unenforceable, either Party's total liability for all loss or damage under the Agreement shall be as provided in clause 15.3 above.~~

15.6 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 the 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 the Agreement for theft, destruction, death or injury to any person and damage to property. The level of insurance will be kept under review by Transnet, on an annual basis, to ensure its adequacy, provided that any variation to the level of such insurance shall be entirely at the discretion of the Service Provider.

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

16.3 Subject to clause 16.4 below, if the Service Provider fails to effect 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, whereafter either the Service Provider or Transnet may terminate the Agreement on giving the other Party not less than 30 [thirty] calendar days prior written notice to that effect.

## ~~17 CONFIDENTIALITY~~ replace with terms of confidentiality in paragraphs 1 to 6 (both inclusive) of the Letter Agreement

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

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

*fs*

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

or



- ~~b) was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or~~
- ~~c) can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or~~
- ~~d) is independently developed by a Party as proven by its written records.~~

17.3 This clause 17 shall survive termination for any reason of the Agreement and shall remain in force and effect from the Commencement Date of the Agreement and 5 [five] years after the termination of the Agreement. Upon termination of the Agreement, all documentation furnished to the Service Provider by Transnet pursuant to the 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 the Agreement or Work Order, Transnet may cancel the 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 <sup>of</sup> the Agreement is ~~for~~ <sup>the date of</sup> ~~signature of the latter Agreement and shall be for a duration in~~ <sup>accordance with its</sup> ~~and the duration shall be for a [•] [[•]] year period, expiring on [•], unless:~~ <sup>terms and those of</sup>

- ~~a) the 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) the Agreement is extended at Transnet's option for a further period to be agreed by the Parties.~~

~~19.2 Either Party may terminate the 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] calendar days of receiving notice specifying the Default and requiring its remedy.~~

~~19.3 Either Party may terminate the 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;~~
- ~~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 the 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] calendar days' written notice.~~

~~19.6 Notwithstanding this clause 19, either Party may cancel the Agreement without cause by giving 30 [thirty] calendar 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 the Agreement or impliedly do so shall remain in force and in effect.~~

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

~~20.3 To the extent that any of the Deliverables and property referred to in clause 20.2 above are in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with unencrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held.~~

~~20.4 In the event that the 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 the such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.~~

~~20.5 The provisions of clauses 1 [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 the Agreement.~~

~~20.6 If either Party [the Defaulting Party] commits a material breach of the Agreement and fails to remedy such breach within 30 [thirty] calendar days of written notice thereof, the other Party [hereinafter the Aggrieved Party], shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate the 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~~

~~business rescue~~

~~judicial management~~

*fl*

~~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 the 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 the Agreement or any interest hereunder except with the prior written consent of the other. ~~Further, in the event that Transnet wishes to assign or novate the Agreement to any third party, the Service Provider agrees that it shall not unreasonably withhold or delay its consent to such assignment or novation and that it shall only be entitled to recover from Transnet any reasonable legal costs incurred by it as a direct result of such assignment or novation.~~

## ~~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 the Agreement caused by an act of *force majeure* such as acts of God, fire, flood, war, lockout, government action, laws or regulations, terrorism or civil disturbance, defaults or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the foregoing, any period stipulated for any such performance shall be reasonably extended. Transnet may however rely on strikes, industrial dispute and riots as a ground of *force majeure*.~~

~~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 the Agreement in order to accommodate the new circumstances caused by the act of *force majeure*. If a Party fails to agree to such modifications proposed by the other Party within 90 [ninety] calendar days of the act of *force majeure* first occurring, either Party may thereafter terminate the Agreement with immediate notice.~~

## 23 EQUALITY AND DIVERSITY

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



**24 NON-WAIVER**

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

**25 PARTIAL INVALIDITY**

If any provision of the 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 the 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 the Agreement and shall remain in effect even if the 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.

**27 ADDRESSES FOR NOTICES**

- 27.1 The Parties to the 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 the 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: [•]  
Fax No. [•]  
Attention: Legal Counsel
- (ii) For commercial matters: [•]  
Fax No. [•]  
Attention: [•]



**b) The Service Provider**

- (i) For legal notices: [●]  
Fax No. [●]  
Attention: [●]
- (ii) For commercial matters: [●]  
Fax No. [●]  
Attention: [●]

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

**29 AMENDMENT AND CHANGE CONTROL**

- 29.1 Any amendment or change of any nature made to this Agreement and the Schedule of Requirements thereof shall only be valid if it is in writing, signed by both Parties and added to this Agreement as an addendum hereto.
- 29.2 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 proposal is exclusively governed by and shall be construed in accordance with South African law and shall be subject to the jurisdiction of the South African courts. All agreements relating to the specific transactions will be negotiated and agreed between the parties.

The 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 the 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 the Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Fees, Deliverables, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 26 [Dispute Resolution] above.~~

### 31 COUNTERPARTS

The 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 the Agreement by signing any such counterpart.

### 32 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)

- 32.1 All the stipulations around Transnet's blacklisting process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this blacklisting procedure.
- 32.2 Blacklisting is a mechanism used to exclude a company/person from future business with Transnet for a specified period. The decision to blacklist is based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "*prima facie*" (i.e. on the face of it) case has been established.
- 32.3 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to blacklisting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.
- 32.4 A supplier or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.
- 32.5 Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:
- a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;
  - b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
  - c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;
  - d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
  - e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;



- f) has made any incorrect statement in a certificate or other communication with regard to the Services or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:
    - (i) he made the statement in good faith honestly believing it to be correct; and
    - (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;
  - g) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
  - h) has litigated against Transnet in bad faith.
- 32.6 Transnet recognizes that trust and good faith are pivotal to its relationship with its suppliers. When a dispute arises between Transnet and its supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:
- a) Vexatious proceedings. These are frivolous proceedings which have been instituted without proper grounds;
  - b) Perjury. Where a supplier commits perjury either in giving evidence or on affidavit;
  - c) Scurrilous allegations. Where a supplier makes allegations regarding a senior Transnet employee which are without a proper foundation, scandalous, abusive or defamatory.
  - d) Abuse of court process. When a supplier abuses the court process in order to gain a competitive advantage during a bid process.
- 32.7 Where any person or Enterprise has been found guilty by a court of law, tribunal or other administrative body of a serious breach of any law, during the preceding 5 Years, such person/Enterprise may also be blacklisted. Serious breaches of the law would include but are not limited to corruption, fraud, theft, extortion, or contraventions of the Competition Act 89 of 1998 (e.g. collusive tendering). This process excludes minor convictions such as traffic offences or personal disagreements between parties which have no bearing on the business operations of the person or Enterprise.
- 32.8 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Tender Defaulters.
- 32.9 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.



Standard Terms and Conditions of Contract  
Services [March 2015]

32.10 Any person or enterprise or company against whom a decision to blacklist has been taken, may make representations to the Chief Financial Officer of Transnet SOC Ltd, whose decision shall be final.

ooo000ooo



8/5/2015

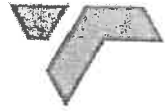
6

CONFIDENTIAL

## **D. Appendix – Non Disclosure Agreement**

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

TRANSNET



This indicative proposal is subject to the terms and conditions relating to confidentiality as set out in the Letter Agreement (paragraphs 1 to 6 inclusive) which has been extensively negotiated with Transnet, is in substantially agreed form and is submitted as an attachment to the covering letter.

**NON DISCLOSURE AGREEMENT - SERVICES**

[March 2015]

N/A

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015



Transnet Non Disclosure Agreement - Services  
[March 2015]

**THIS AGREEMENT is made between**

**Transnet SOC Ltd [Transnet]** [Registration No. 1990/000900/30]

whose registered office is at 49<sup>th</sup> Floor, Carlton Centre, 150 Commissioner Street, Johannesburg 2001,

and

the Company as indicated in the RFP bid response hereto

**WHEREAS**

Transnet and the Company wish to exchange Information [as defined below] and it is envisaged that each party may from time to time receive Information relating to the other in respect thereof. In consideration of each party making available to the other such Information, the parties jointly agree that any dealings between them shall be subject to the terms and conditions of this Agreement which themselves will be subject to the parameters of the Bid Document.

**IT IS HEREBY AGREED**

**1. INTERPRETATION**

In this Agreement:

- 1.1 **Agents** mean directors, officers, employees, agents, professional advisers, contractors or sub-contractors, or any Group member;
- 1.2 **Bid or Bid Document** means Transnet's Request for Information [RFI] Request for Proposal [RFP] or Request for Quotation [RFQ], as the case may be;
- 1.3 **Confidential Information** means any information or other data relating to one party [the Disclosing Party] and/or the business carried on or proposed or intended to be carried on by that party and which is made available for the purposes of the Bid to the other party [the Receiving Party] or its Agents by the Disclosing Party or its Agents or recorded in agreed minutes following oral disclosure and any other information otherwise made available by the Disclosing Party or its Agents to the Receiving Party or its Agents, whether before, on or after the date of this Agreement, and whether in writing or otherwise, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:
  - a) Is publicly available at the time of its disclosure or becomes publicly available [other than as a result of disclosure by the Receiving Party or any of its Agents contrary to the terms of this Agreement]; or
  - b) was lawfully in the possession of the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] free of any restriction as to its use or disclosure prior to its being so disclosed; or

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Transnet Non Disclosure Agreement – Services  
[March 2015]

- c) following such disclosure, becomes available to the Receiving Party or its Agents [as can be demonstrated by its written records or other reasonable evidence] from a source other than the Disclosing Party or its Agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information;

1.4 **Group** means any subsidiary, any holding company and any subsidiary of any holding company of either party; and

1.5 **Information** means all information in whatever form including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs whether in writing, conveyed orally or by machine-readable medium.

## 2. CONFIDENTIAL INFORMATION

2.1 All Confidential Information given by one party to this Agreement [the Disclosing Party] to the other party [the Receiving Party] will be treated by the Receiving Party as secret and confidential and will not, without the Disclosing Party's written consent, directly or indirectly communicate or disclose [whether in writing or orally or in any other manner] Confidential Information to any other person other than in accordance with the terms of this Agreement.

2.2 The Receiving Party will only use the Confidential Information for the sole purpose of technical and commercial discussions between the parties in relation to the Bid or for the subsequent performance of any contract between the parties in relation to the Bid.

2.3 Notwithstanding clause 2.1 above, the Receiving Party may disclose Confidential Information:

- a) to those of its Agents who strictly need to know the Confidential Information for the sole purpose set out in clause 2.2 above, provided that the Receiving Party shall ensure that such Agents are made aware prior to the disclosure of any part of the Confidential Information that the same is confidential and that they owe a duty of confidence to the Disclosing Party. The Receiving Party shall at all times remain liable for any actions of such Agents that would constitute a breach of this Agreement; or
- b) to the extent required by law or the rules of any applicable regulatory authority, subject to clause 2.4 below.

2.4 In the event that the Receiving Party is required to disclose any Confidential Information in accordance with clause 2.3 b) above, it shall promptly notify the Disclosing Party and cooperate with the Disclosing Party regarding the form, nature, content and purpose of such disclosure or any action which the Disclosing Party may reasonably take to challenge the validity of such requirement.

2.5 In the event that any Confidential Information shall be copied, disclosed or used otherwise than as permitted under this Agreement then, upon becoming aware of the same, without prejudice to any rights or remedies of the Disclosing Party, the Receiving Party shall as soon as practicable notify the Disclosing Party of such event and if requested take such steps [including the institution of legal proceedings] as shall be necessary to remedy [if capable of remedy] the default and/or to prevent further unauthorised copying, disclosure or use.

2.6 All Confidential Information shall remain the property of the Disclosing Party and its disclosure shall not confer on the Receiving Party any rights, including intellectual property rights over the Confidential Information whatsoever, beyond those contained in this Agreement.

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

### 3. RECORDS AND RETURN OF INFORMATION

3.1 The Receiving Party agrees to ensure proper and secure storage of all Information and any copies thereof.

3.2 The Receiving Party shall keep a written record, to be supplied to the Disclosing Party upon request, of the Confidential Information provided and any copies made thereof and, so far as is reasonably practicable, of the location of such Confidential Information and any copies thereof.

3.3 The Company shall, within 7 [seven] days of receipt of a written demand from Transnet:

- a) return all written Confidential Information [including all copies]; and
- b) expunge or destroy any Confidential Information from any computer, word processor or other device whatsoever into which it was copied, read or programmed by the Company or on its behalf.

3.4 The Company shall on request supply a certificate signed by a director as to its full compliance with the requirements of clause 3.3 b) above.

### 4. ANNOUNCEMENTS

4.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Bid without the prior written consent of the other party.

4.2 Neither party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.

### 5. DURATION

The obligations of each party and its Agents under this Agreement shall survive the termination of any discussions or negotiations between the parties regarding the Bid and continue thereafter for a period of 5 [five] years.

### 6. PRINCIPAL

Each party confirms that it is acting as principal and not as nominee, agent or broker for any other person and that it will be responsible for any costs incurred by it or its advisers in considering or pursuing the Bid and in complying with the terms of this Agreement.

### 7. ADEQUACY OF DAMAGES

Nothing contained in this Agreement shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available to it, either at law or in equity, for any such threatened or actual breach of this Agreement, including specific performance, recovery of damages or otherwise.

### 8. PRIVACY AND DATA PROTECTION

8.1 The Receiving Party undertakes to comply with South Africa's general privacy protection in terms Section 14 of the Bill of Rights in connection with this Bid and shall procure that its personnel shall observe the provisions of such Act [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

8.2 The Receiving Party warrants that it and its Agents have the appropriate technical and organisational measures in place against unauthorised or unlawful processing of data relating to the Bid and against accidental loss or destruction of, or damage to such data held or processed by them.

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

Transnet Non Disclosure Agreement – Services  
[March 2015]

**9. GENERAL**

- 9.1 Neither party may assign the benefit of this Agreement, or any interest hereunder, except with the prior written consent of the other, save that Transnet may assign this Agreement at any time to any member of the Transnet Group.
- 9.2 No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any right, power or privilege under this Agreement or otherwise.
- 9.3 The provisions of this Agreement shall be severable in the event that any of its provisions are held by a court of competent jurisdiction or other applicable authority to be invalid, void or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law.
- 9.4 This Agreement may only be modified by a written agreement duly signed by persons authorised on behalf of each party.
- 9.5 Nothing in this Agreement shall constitute the creation of a partnership, joint venture or agency between the parties.
- 9.6 This Agreement will be governed by and construed in accordance with South African law and the parties irrevocably submit to the exclusive jurisdiction of the South African courts.

ooo000ooo

N/A



JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

7

CONFIDENTIAL

## E. Appendix – Integrity Pact

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

Please see J.P. Morgans form of representation letter relating to our global anti-corruption compliance program.



**Important Note:** All potential bidders must read this document and certify in the RFP Declaration Form that they have acquainted themselves with, and agree with the content. The contract with the successful bidder will automatically incorporate this Integrity Pact as part of the final concluded contract.

#### INTEGRITY PACT

Between

**TRANSNET SOC LTD**

Registration Number: 1990/000900/30

("Transnet")

and

The Bidder / Supplier/ Service Provider / Contractor (hereinafter referred to as the "Bidder / Supplier")

Supplier Integrity Pact  
March 2015

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

**PREAMBLE**

Transnet values full compliance with all relevant laws and regulations, ethical standards and the principles of economical use of resources, fairness and transparency in its relations with its Bidders / Suppliers.

In order to achieve these goals, Transnet and the Bidder / Supplier hereby enter into this agreement hereinafter referred to as the "Integrity Pact" which will form part of the Bidder's / Supplier's application for registration with Transnet as a vendor.

The general purpose of this Integrity Pact is to agree on avoiding all forms of dishonesty, fraud and corruption by following a system that is fair, transparent and free from any undue influence prior to, during and subsequent to the currency of any procurement and / or reverse logistics event and any further contract to be entered into between the Parties, relating to such event.

All Bidders / Suppliers will be required to sign and comply with undertakings contained in this Integrity Pact, should they want to be registered as a Transnet vendor.

**1 OBJECTIVES**

- 1.1 Transnet and the Bidder / Supplier agree to enter into this Integrity Pact, to avoid all forms of dishonesty, fraud and corruption including practices that are anti-competitive in nature, negotiations made in bad faith and under-pricing by following a system that is fair, transparent and free from any influence / unprejudiced dealings prior to, during and subsequent to the currency of the contract to be entered into with a view to:
- a) Enable Transnet to obtain the desired contract at a reasonable and competitive price in conformity to the defined specifications of the works, goods and services; and
  - b) Enable Bidders / Suppliers to abstain from bribing or participating in any corrupt practice in order to secure the contract.

**2 COMMITMENTS OF TRANSNET**

Transnet commits to take all measures necessary to prevent dishonesty, fraud and corruption and to observe the following principles:

- 2.1 Transnet hereby undertakes that no employee of Transnet connected directly or indirectly with the sourcing event and ensuing contract, will demand, take a promise for or accept directly or through intermediaries any bribe, consideration, gift, reward, favour or any material or immaterial benefit or any other advantage from the Bidder, either for themselves or for any person, organisation or third party related to the contract in exchange for an advantage in the bidding process, bid evaluation, contracting or implementation process related to any contract.
- 2.2 Transnet will, during the registration and bidding process treat all Bidders / Suppliers with equity, transparency and fairness. Transnet will in particular, before and during the registration process, provide to all Bidders / Suppliers the same information and will not provide to any Bidders / Suppliers confidential / additional information through which the Bidders / Suppliers could obtain an advantage in relation to any bidding process.
- 2.3 Transnet further confirms that its employees will not favour any prospective bidder in any form that could afford an undue advantage to a particular bidder during the tendering stage, and will further treat all Bidders / Supplier participating in the bidding process.
- 2.4 Transnet will exclude from the bidding process such employees who have any personal interest in the Bidders / Suppliers participating in the bidding process.

Private & Confidential

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date 8/5/2015



### 3 OBLIGATIONS OF THE BIDDER / SUPPLIER

3.1 The Bidder / Supplier commits itself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of its bid or during any ensuing contract stage in order to secure the contract or in furtherance to secure it and in particular the Bidder / Supplier commits to the following:

- a) The Bidder / Supplier will not, directly or through any other person or firm, offer, promise or give to Transnet or to any of Transnet's employees involved in the bidding process or to any third person any material or other benefit or payment, in order to obtain in exchange an advantage during the bidding process; and
- b) The Bidder / Supplier will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any employee of Transnet, connected directly or indirectly with the bidding process, or to any person, organisation or third party related to the contract in exchange for any advantage in the bidding, evaluation, contracting and implementation of the contract.

3.2 The acceptance and giving of gifts may be permitted provided that:

- a) the gift does not exceed R1 000 (one thousand Rand) in retail value;
- b) many low retail value gifts do not exceed R 1 000 within a 12 month period;
- c) hospitality packages do not exceed R5 000 in value or many low value hospitality packages do not cumulatively exceed R5 000;
- d) a Bidder / Supplier does not give a Transnet employee more than 2 (two) gifts within a 12 (twelve) month period, irrespective of value;
- e) a Bidder / Supplier does not accept more than 1 (one) gift in excess of R750 (seven hundred and fifty Rand) from a Transnet employee within a 12 (twelve) month period, irrespective of value;
- f) a Bidder / Supplier may under no circumstances, accept from or give to, a Transnet employee any gift, business courtesy, including an invitation to a business meal and /or drinks, or hospitality package, irrespective of value, during any bid evaluation process, including a period of 12 (twelve) months after such tender has been awarded, as it may be perceived as undue and improper influence on the evaluation process or reward for the contract that has been awarded; and
- g) a Bidder / Supplier may not offer gifts, goods or services to a Transnet employee at artificially low prices, which are not available to the public at those prices.

3.3 The Bidder / Supplier will not collude with other parties interested in the contract to preclude a competitive bid price, impair the transparency, fairness and progress of the bidding process, bid evaluation, contracting and implementation of the contract. The Bidder / Supplier further commits itself to delivering against all agreed upon conditions as stipulated within the contract.

3.4 The Bidder / Supplier will not enter into any illegal or dishonest agreement or understanding, whether formal or informal with other Bidders / Suppliers. This applies in particular to certifications, submissions or non-submission of documents or actions that are restrictive or to introduce cartels into the bidding process.

3.5 The Bidder / Supplier will not commit any criminal offence under the relevant anti-corruption laws of South Africa or any other country. Furthermore, the Bidder / Supplier will not use for illegitimate purposes or for restrictive purposes or personal gain, or pass on to others, any information provided by Transnet as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically.

- 3.6 A Bidder / Supplier of foreign origin shall disclose the name and address of its agents or representatives in South Africa, if any, involved directly or indirectly in the registration or bidding process. Similarly, the Bidder / Supplier of South African nationality shall furnish the name and address of the foreign principals, if any, involved directly or indirectly in the registration or bidding process.
- 3.7 The Bidder / Supplier will not misrepresent facts or furnish false or forged documents or information in order to influence the bidding process to the advantage of the Bidder / Supplier or detriment of Transnet or other competitors.
- 3.8 The Bidder / Supplier shall furnish Transnet with a copy of its code of conduct, which code of conduct shall reject the use of bribes and other dishonest and unethical conduct, as well as compliance programme for the implementation of the code of conduct.
- 3.9 The Bidder / Supplier will not instigate third persons to commit offences outlined above or be an accessory to such offences.

#### 4 INDEPENDENT BIDDING

- 4.1 For the purposes of that Certificate in relation to any submitted Bid, the Bidder declares to fully understand that the word "competitor" shall include any individual or organisation, other than the Bidder, whether or not affiliated with the Bidder, who:
- a) has been requested to submit a Bid in response to this Bid invitation;
  - b) could potentially submit a Bid in response to this Bid invitation, based on their qualifications, abilities or experience; and
  - c) provides the same Goods and Services as the Bidder and/or is in the same line of business as the Bidder.
- 4.2 The Bidder has arrived at his submitted Bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium will not be construed as collusive bidding.
- 4.3 In particular, without limiting the generality of paragraph 5 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
- a) prices;
  - b) geographical area where Goods or Services will be rendered [market allocation];
  - c) methods, factors or formulas used to calculate prices;
  - d) the intention or decision to submit or not to submit, a Bid;
  - e) the submission of a Bid which does not meet the specifications and conditions of the RFP; or
  - f) bidding with the intention of not winning the Bid.
- 4.4 In addition, there have been no consultations, communications, agreements or arrangements with any competitor regarding the quality, quantity, specifications and conditions or delivery particulars of the Goods or Services to which his/her Bid relates.
- 4.5 The terms of the Bid as submitted have not been, and will not be, disclosed by the Bidder, directly or indirectly, to any competitor, prior to the date and time of the official Bid opening or of the awarding of the contract.
- 4.6 Bidders are aware that, in addition and without prejudice to any other remedy provided to combat any restrictive practices related to bids and contracts, Bids that are suspicious will be reported to the Competition Commission for investigation and possible imposition of administrative penalties in

terms of section 59 of the Competition Act No 89 of 1998 and/or may be reported to the National Prosecuting Authority [NPA] for criminal investigation and/or may be restricted from conducting business with the public sector for a period not exceeding 10 [ten] years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

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

## 5 DISQUALIFICATION FROM BIDDING PROCESS

- 5.1 If the Bidder / Supplier has committed a transgression through a violation of section 3 of this Integrity Pact or in any other form such as to put its reliability or credibility as a Bidder / Supplier into question, Transnet may reject the Bidder's / Supplier's application from the registration or bidding process and remove the Bidder / Supplier from its database, if already registered.
- 5.2 If the Bidder / Supplier has committed a transgression through a violation of section 3, or any material violation, such as to put its reliability or credibility into question. Transnet may after following due procedures and at its own discretion also exclude the Bidder / Supplier from future bidding processes. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the circumstances of the case, which will include amongst others the number of transgressions, the position of the transgressors within the company hierarchy of the Bidder / Supplier and the amount of the damage. The exclusion will be imposed for up to a maximum of 10 (ten) years. However, Transnet reserves the right to impose a longer period of exclusion, depending on the gravity of the misconduct.
- 5.3 If the Bidder / Supplier can prove that it has restored the damage caused by it and has installed a suitable corruption prevention system, or taken other remedial measures as the circumstances of the case may require, Transnet may at its own discretion revoke the exclusion or suspend the imposed penalty.

## 6 TRANSNET'S LIST OF EXCLUDED TENDERERS (BLACKLIST)

- 6.1 All the stipulations around Transnet's blacklisting process as laid down in Transnet's Supply Chain Policy and Procurement Procedures Manual are included herein by way of reference. Below follows a condensed summary of this blacklisting procedure.
- 6.2 Blacklisting is a mechanism used to exclude a company/person from future business with Transnet for a specified period. The decision to blacklist is based on one of the grounds for blacklisting. The standard of proof to commence the blacklisting process is whether a "*prima facie*" (i.e. on the face of it) case has been established.
- 6.3 Depending on the seriousness of the misconduct and the strategic importance of the Goods/Services, in addition to blacklisting a company/person from future business, Transnet may decide to terminate some or all existing contracts with the company/person as well.
- 6.4 A supplier or contractor to Transnet may not subcontract any portion of the contract to a blacklisted company.
- 6.5 Grounds for blacklisting include: If any person/Enterprise which has submitted a Bid, concluded a contract, or, in the capacity of agent or subcontractor, has been associated with such Bid or contract:

- a) Has, in bad faith, withdrawn such Bid after the advertised closing date and time for the receipt of Bids;
- b) has, after being notified of the acceptance of his Bid, failed or refused to sign a contract when called upon to do so in terms of any condition forming part of the bid documents;
- c) has carried out any contract resulting from such bid in an unsatisfactory manner or has breached any condition of the contract;
- d) has offered, promised or given a bribe in relation to the obtaining or execution of the contract;
- e) has acted in a fraudulent or improper manner or in bad faith towards Transnet or any Government Department or towards any public body, Enterprise or person;
- f) has made any incorrect statement in a certificate or other communication with regard to the Local Content of his Goods or his B-BBEE status and is unable to prove to the satisfaction of Transnet that:
  - (i) he made the statement in good faith honestly believing it to be correct; and
  - (ii) before making such statement he took all reasonable steps to satisfy himself of its correctness;
- g) caused Transnet damage, or to incur costs in order to meet the contractor's requirements and which could not be recovered from the contractor;
- h) has litigated against Transnet in bad faith.

- 6.6 Grounds for blacklisting include a company/person recorded as being a company or person prohibited from doing business with the public sector on National Treasury's database of Restricted Suppliers or Register of Tender Defaulters.
- 6.7 Companies associated with the person/s guilty of misconduct (i.e. entities owned, controlled or managed by such persons), any companies subsequently formed by the person(s) guilty of the misconduct and/or an existing company where such person(s) acquires a controlling stake may be considered for blacklisting. The decision to extend the blacklist to associated companies will be at the sole discretion of Transnet.

## 7 PREVIOUS TRANSGRESSIONS

- 7.1 The Bidder / Supplier hereby declares that no previous transgressions resulting in a serious breach of any law, including but not limited to, corruption, fraud, theft, extortion and contraventions of the Competition Act 89 of 1998, which occurred in the last 5 (five) years with any other public sector undertaking, government department or private sector company that could justify its exclusion from its registration on the Bidder's / Supplier's database or any bidding process.
- 7.2 If it is found to be that the Bidder / Supplier made an incorrect statement on this subject, the Bidder / Supplier can be rejected from the registration process or removed from the Bidder / Supplier database, if already registered, for such reason (refer to the Breach of Law Form contained in the applicable RFX document.)

## 8 SANCTIONS FOR VIOLATIONS

- 8.1 Transnet shall also take all or any one of the following actions, wherever required to:

Private & Confidential

JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

- a) Immediately exclude the Bidder / Supplier from the bidding process or call off the pre-contract negotiations without giving any compensation the Bidder / Supplier. However, the proceedings with the other Bidders / Suppliers may continue;
- b) Immediately cancel the contract, if already awarded or signed, without giving any compensation to the Bidder / Supplier;
- c) Recover all sums already paid by Transnet;
- d) Encash the advance bank guarantee and performance bond or warranty bond, if furnished by the Bidder / Supplier, in order to recover the payments, already made by Transnet, along with interest;
- e) Cancel all or any other contracts with the Bidder / Supplier; and
- f) Exclude the Bidder / Supplier from entering into any bid with Transnet in future.

## 9 CONFLICTS OF INTEREST

- 9.1 A conflict of interest includes, inter alia, a situation in which:
- a) A Transnet employee has a personal financial interest in a bidding / supplying entity; and
  - b) A Transnet employee has private interests or personal considerations or has an affiliation or a relationship which affects, or may affect, or may be perceived to affect his / her judgment in action in the best interest of Transnet, or could affect the employee's motivations for acting in a particular manner, or which could result in, or be perceived as favouritism or nepotism.
- 9.2 A Transnet employee uses his / her position, or privileges or information obtained while acting in the capacity as an employee for:
- a) Private gain or advancement; or
  - b) The expectation of private gain, or advancement, or any other advantage accruing to the employee must be declared in a prescribed form.
- Thus, conflicts of interest of any bid committee member or any person involved in the sourcing process must be declared in a prescribed form.
- 9.3 If a Bidder / Supplier has or becomes aware of a conflict of interest i.e. a family, business and / or social relationship between its owner(s) / member(s) / director(s) / partner(s) / shareholder(s) and a Transnet employee / member of Transnet's Board of Directors in respect of a bid which will be considered for the bid process, the Bidder / Supplier:
- a) must disclose the interest and its general nature, in the Request for Proposal ("RFX") declaration form; or
  - b) must notify Transnet immediately in writing once the circumstances has arisen.
- 9.4 The Bidder / Supplier shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any committee member or any person involved in the sourcing process, where this is done, Transnet shall be entitled forthwith to rescind the contract and all other contracts with the Bidder / Supplier.

## 10 MONITORING

- 10.1 Transnet will be responsible for appointing an Independent Monitor to:
- a) Conduct random monitoring of compliance to the provisions of this Integrity Pact for contracts entered into between Transnet and the Bidder / Supplier for less than R100,000,000 (one hundred million Rand) in value;
  - b) Monitor compliance to the provisions of this Integrity Pact for contracts entered into between Transnet and the Bidder / Supplier for greater than R100,000,000 (one hundred million Rand) in value; and
  - c) Investigate any allegation of violation of any provisions of this Integrity Pact for contracts entered into between Transnet and the Bidder / Supplier, irrespective of value.
- 10.2 The Monitor will be subjected to Transnet's Terms of Conditions of Contract for the Provision of Services to Transnet, as well as to Transnet's Supplier Code of Conduct.

**11 EXAMINATION OF FINANCIAL RECORDS, DOCUMENTATION AND/OR ELECTRONIC DATA**

For the purpose of Monitoring, as stipulated above, the Monitor shall be entitled to:

- a) Examine the financial records, documentation and or electronic data of the Bidder / Supplier / Transnet. The Bidder / Supplier / Transnet shall provide all requested information / documentation / data to the Monitor and shall extend all help possible for the purpose of such examination.

**12 DISPUTE RESOLUTION**

12.1 Transnet recognises that trust and good faith are pivotal to its relationship with its Bidders / Suppliers. When a dispute arises between Transnet and its Bidder / Supplier, the parties should use their best endeavours to resolve the dispute in an amicable manner, whenever possible. Litigation in bad faith negates the principles of trust and good faith on which commercial relationships are based. Accordingly, following a blacklisting process as mentioned in paragraph 6 above, Transnet will not do business with a company that litigates against it in bad faith or is involved in any action that reflects bad faith on its part. Litigation in bad faith includes, but is not limited to the following instances:

- a) **Vexatious proceedings:** these are frivolous proceedings which have been instituted without proper grounds;
- b) **Perjury:** where a supplier makes a false statement either in giving evidence or on an affidavit;
- c) **Scurrilous allegations:** where a supplier makes allegations regarding a senior Transnet employee which are without proper foundation, scandalous, abusive or defamatory; and
- d) **Abuse of court process:** when a supplier abuses the court process in order to gain a competitive advantage during a bid process.


**13 GENERAL**

- 13.1 This Integrity Pact is governed by and interpreted in accordance with the laws of the Republic of South Africa.
- 13.2 The actions stipulated in this Integrity Pact are without prejudice to any other legal action that may follow in accordance with the provisions of the law relating to any civil or criminal proceedings.
- 13.3 The validity of this Integrity Pact shall cover all the bidding processes and will be valid for an indefinite period unless cancelled by either Party.
- 13.4 Should one or several provisions of this Integrity Pact turn out to be invalid the remainder of this Integrity Pact remains valid.
- 13.5 Should a Bidder / Supplier be confronted with dishonest, fraudulent or corruptive behaviour of one or more Transnet employees, Transnet expects its Bidders / Suppliers to report this behaviour directly to a senior Transnet official / employee or alternatively by using Transnet's "Tip-Off Anonymous" hotline number 0800 003 056, whereby your confidentiality is guaranteed.

The Parties hereby declare that each of them has read and understood the clauses of this Integrity Pact and shall abide by it. To the best of the Parties' knowledge and belief, the information provided in this Integrity Pact is true and correct.

oooOOOooo

Private & Confidential



JPMorgan Chase Bank, N.A. (Johannesburg Branch)

Date: 8/5/2015

8

CONFIDENTIAL

## F. Appendix - Letter Agreement

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION



DRAFT – NOT FOR SIGNATURE  
TO BE PRINTED ON A J.P. MORGAN LETTERHEAD

STRICTLY CONFIDENTIAL

Attention:

Date:

Dear Sirs

Transnet SOC Ltd (the "Company") is proposing to enter into a US\$2.5billion loan facility with a committed first tranche of US\$1.5billion and a further optional tranche of US\$1billion at the Company's option (the "Loan") with China Development Bank ("CDB") to finance part of the Company's purchase of locomotives from China North Railways and China South Railways. In connection with this Loan, the Company and JPMorgan Chase Bank N.A., Johannesburg Branch ("JPMC") and/or its affiliates ("JPMC Representatives") are considering entering into a hedging transaction in the form of a series of cross currency swaps and credit contingent structures in the form of Contingent Credit Default Swaps (the "Transaction"). JPMC and the Company (collectively the "Parties" and each a "Party") hereby agree as follows.

1. Each Party agrees and undertakes that all Confidential Information (as defined below) received by it (the "Receiving Party") from the other Party (the "Disclosing Party"), as well as the nature, form and content of the Transaction, the identity and role of JPMC and JPMC's Representatives and any subsequent execution of the Transaction shall be kept confidential and shall not, without the prior written consent of the Disclosing Party, be disclosed by the Receiving Party. The Company further agrees to disclose the Confidential Information only to such of its employees and professional advisers (collectively "Company's Representatives") who need to know the Confidential Information for the purpose of the Transaction. Prior to receipt of any Confidential Information, each Party shall ensure that its Representatives are aware of and adhere to the obligations of confidentiality set out in this Agreement. Each Party hereby agrees to be responsible for any breach of this Agreement by its Representatives. Each Party agrees that the Confidential Information shall not be used by it or its Representatives other than in connection with an evaluation of the Transaction and any decision to proceed with and/or execute the Transaction or any part thereof.
2. The Confidential Information shall be returned to the Disclosing Party or destroyed (to the extent reasonably practicable) following the Disclosing Party's written request, save for that Confidential

DRAFT – NOT FOR SIGNATURE  
TO BE PRINTED ON A J.P. MORGAN LETTERHEAD

Information which the Receiving Party or its Representatives are requested or required to retain by any regulatory, supervisory or governmental authority, institution or department; under court process or pursuant to statutory requirement or regulation; pursuant to such Party's or its Representative's internal audit, legal or compliance policies or procedures; or which has been created pursuant to electronic archiving procedures. The Receiving Party shall supply a written confirmation of such destruction to the Disclosing Party upon request.

3. Notwithstanding anything to the contrary contained herein, it is understood that:

- (i) each Party and its Representatives may disclose the Confidential Information or portions thereof: (a) at the request of any regulatory, supervisory or governmental authority, institution or department; or (b) under court process or pursuant to statutory requirement or regulation; or (c) to its or its Representative's auditors, external counsel or accountants; and
- (ii) JPMC and its Representatives may disclose the Confidential Information or portions thereof: (a) to the institutions referred to in clause 9(b), on a confidential basis; or (b) to affiliates or subsidiaries of JPMorgan Chase & Co; and
- (iii) the Company and its Representatives may disclose each cross-currency swap confirmation, in the form of Annex I hereto, to CDB upon execution of the cross-currency swap concerned; provided that CDB will be under an obligation of confidentiality in this regard to the Company; and
- (iv) the Company will report the Transaction in their annual report in accordance with applicable reporting standards.

4. In this Agreement, "Confidential Information" shall mean all information, analyses, compilations, studies, documents or other material (whether communicated orally, in written form or other media) obtained by one Party or its Representatives from the other Party or any of such Disclosing Party's Representatives in connection with the Transaction, the Loan and/or relating to the Disclosing Party, including any execution of any part of the Transaction, together with any analyses, compilations, studies, documents or other material written or otherwise prepared by the Disclosing Party or its Representatives, which reflects or incorporates such information, as well as the nature, form and content of the Transaction, the identity and role of JPMC and JPMC's Representatives; provided that

DRAFT – NOT FOR SIGNATURE  
TO BE PRINTED ON A J.P. MORGAN LETTERHEAD

“Confidential Information” shall not include:

- a) information or material which at the time of its disclosure is, or which thereafter becomes part of the public domain other than as a result of a disclosure by the Receiving Party or its Representatives in violation of this Agreement; and
  - b) information or material which the Receiving Party can show was in its possession, or the possession of one or more of its Representatives, at the time of disclosure and was not acquired directly or indirectly, under a confidentiality obligation.
5. It is further understood and agreed that any breach of the obligations of confidentiality in this Agreement could cause the other Party irreparable injury and that monetary damages may not be adequate remedy for any such breach. In the event of a breach or threatened breach by a Party or its Representatives of any of the confidentiality provisions of this Agreement, the other Party shall be entitled to seek injunctive relief in any court of competent jurisdiction restraining the Party in breach from breaching the terms hereof or from disclosing any Confidential Information to any person.
6. The obligations of confidentiality owed hereunder by the Parties shall expire after a period of 3 years from the date hereof.
7. Subject always to clause 10 hereof JPMC will act as sole hedge counterparty to the Company in connection with the Loan on the terms of the Transaction. The Company will hedge each draw-down of the Loan with JPMC at or about the time of each draw-down by way of entering into a cross-currency swap and a Contingent Credit Default Swap, up to an aggregate cross-currency swaps notional amount of US\$1.5billion, subject to the market conditions, and the same number of credit contingent structures. Each part of the Transaction, subject to any changes in market conditions, such as liquidity and volatility, and provided there is no *force majeure* (as defined below), will be priced based on the following charges from an agreed mid price:

Trading Charge (bps)	Credit Valuation Adjustment (bps)	Credit Contingent Default Swap charge (bps)
12.9	7	-112.5

For the avoidance of doubt:

DRAFT – NOT FOR SIGNATURE  
TO BE PRINTED ON A J.P. MORGAN LETTERHEAD

- a) the Trading Charge and the Credit Valuation Adjustment will apply to each cross-currency swap substantially on the terms of Annex 1 hereto,
- b) the Contingent Credit Default Swap charge will apply to each Contingent Credit Default Swap concluded at each Loan drawn-down substantially on the terms of Annex 2 hereto.
- c) *Force majeure* means any of the following extraordinary and unavoidable circumstances in given conditions if as a result of its occurrence, subject to the ability to perform an alternative obligation or other measures agreed between the Parties, either the Company or JPMC as the case may be become unable to perform any or all of its payment or delivery obligations, as well as other material obligations under either a cross-currency swap or the Contingent Credit Default Swap:
  - i) riot, insurrection, revolution, invasion or blockade;
  - ii) fire, flood or other acts of God;
  - iii) war, civil war, military actions, state of emergency or martial law; or
  - iv) other extraordinary and unavoidable circumstances, the consequences of which render either Party unable to perform.

The provisions of this clause 7 shall remain in effect for a period of 3 years from the date hereof, or as may otherwise be agreed by written agreement between the Parties.

- 8. The Company hereby authorises JPMC to commence pre-hedging for the Transaction with effect from the date hereof, it being understood that the gains or losses resulting from such pre-hedging shall be for the account of JPMC and JPMC's Representatives only, in the event that the Transaction does not proceed and provided further that the JPMC and its Representatives warrants that it shall not engage in any front-running or other practice akin thereto.
- 9. The Parties hereby further acknowledge and agree that:
  - a) the Transaction may subsequently be partially novated by JPMC and/or JPMC's Representatives, as applicable, to the Company's relationship banks approved by JPMC. In order to facilitate this process and prior to any part of the Transaction being executed, the Company undertakes and agrees to provide JPMC's authorised employee representatives, as notified to the Company in writing, on a confidential basis, with the non-binding estimates of the credit and market risk appetite of its relationship banks;
  - b) in order to reduce JPMC's and/or JPMC's Representatives' market and credit risk exposure under any Transaction that is executed, the Company undertakes and agrees, and will procure that the Company's Representatives undertake and agree, to provide all assistance as may be reasonably

DRAFT – NOT FOR SIGNATURE  
TO BE PRINTED ON A J.P. MORGAN LETTERHEAD

requested by JPMC and/or JPMC's Representatives to effect any subsequent novation or transfer, including: (i) authorising JPMC and/or JPMC's Representatives to approach the potential transferees identified by the Company pursuant to sub-clause 9 (a) and/or potential protection sellers, including, but not limited to, CDB, the African Development Bank ("ADB") and the Multilateral Investment Guarantee Agency ("MIGA"); (ii) providing any information reasonably requested by JPMC or JPMC's Representatives; and/or (iii) making the Company's senior management and representatives available to participate in meetings with potential transferees, at such times and places as JPMC may reasonably request;

c) in order to effect any of the potential novations referred to in sub-clause 9 (a) above, the Company may run a credit auction among the Company's and JPMC's relationship banks, on a confidential basis;

d) the Company has separately engaged Regiments Capital Proprietary Limited ("RC") to act as its financial adviser in relation to the Loan and for the Transaction and the Company understands and agrees that JPMC will not rely upon any services or work performed by any advisors of the Company, including RC. Accordingly, the Company agrees that JPMC and JPMC's Representatives shall have no liability to the Company or to any of its subsidiaries or affiliates or its or their respective directors, officers, employees, partners, shareholders or other security holders or creditors for any actions or omissions of such other advisors (including specifically RC) and including in respect of the advice of such other advisors in relation to the Transaction;

10. The Parties hereby agree that:

a) the Transaction is subject to:

- a. JPMC obtaining all credit, risk, market risk, compliance, legal and reputational approvals; and
- b. the Company providing to JPMC a legal opinion from the Company's external legal advisers in the form which is satisfactory to JPMC prior to entering into the first cross-currency swap hereunder;

b) nothing in this Agreement constitutes an agreement or commitment of JPMC or JPMC's Representatives to act as arranger, underwriter, lead manager, bookrunner or mandated lead arranger or to provide all or any part of the Loan or any other financing or to enter into the Transaction. Any

DRAFT – NOT FOR SIGNATURE  
TO BE PRINTED ON A J.P. MORGAN LETTERHEAD

agreement to act in any such capacity or to provide any additional services would, amongst other things, be subject to the negotiation and execution of separate engagement letter(s) and/or underwriting agreement(s) on terms acceptable to JPMC or, as the case may be, such JPMC Representatives as customarily act in the relevant capacity and/or provide the relevant services. Any such engagement letter(s) or underwriting agreement(s) would be on terms (including as to remuneration, indemnification, costs and expenses) acceptable to JPMC or JPMC's Representatives and would be entered into with the Company and/or its affiliate(s) or special purpose vehicle(s) acceptable to JPMC or JPMC's Representatives; and

- c) JPMC shall not be responsible for, and will not be deemed as, advising the Company or any other person or entity on the suitability or corporate implications of the Loan, the Transaction or any other transaction specified herein, performing on the Company's behalf due diligence investigations in connection with the Loan or the Transaction, nor giving the Company legal, accounting, taxation, regulatory, ratings or investment advice in relation to the Loan, the Transaction or any other transaction. Accordingly, the Company specifically confirms that it has obtained its own legal, accounting, taxation, regulatory, rating, financial and/or investment advice as to the effects of entering into a cross-currency swap and a corresponding Contingent Credit Default Swap on the same day as opposed to their execution on two different days. The Company agrees that any decision of the Company to proceed with the execution of a cross-currency swap and a corresponding Contingent Credit Default Swap on the same day or on two different days will be made on the basis of such independent accounting advice.

11. Where this Agreement imposes any obligations on a Party's Representatives, such obligation shall be deemed to include an obligation on the Party concerned to procure that such persons comply with such obligations.
12. This Agreement shall be governed by, and construed in accordance with the laws of the Republic of South Africa, and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the High Court of South Africa, Johannesburg in connection with any dispute related to or brought under this Agreement.
13. This Agreement constitutes the entire agreement between the Parties as to the subject matter hereof, no representations having been made by either Party except as are herein specifically set forth. No rights or obligations other than those expressly recited herein are to be implied from this Agreement.

DRAFT -- NOT FOR SIGNATURE  
TO BE PRINTED ON A J.P. MORGAN LETTERHEAD

Please acknowledge your agreement to the foregoing by countersigning this letter, and returning an original copy to us.

Yours faithfully,

*DRAFT -- NOT FOR SIGNATURE*

\_\_\_\_\_  
For and on behalf of  
JPMorgan Chase Bank N.A.,  
Johannesburg Branch

Accepted and agreed:  
for and on behalf of  
Transnet SOC Ltd:

*DRAFT -- NOT FOR SIGNATURE*

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

9



CONFIDENTIAL

**G. Appendix - Representation Letter (relating to JPMorgan Chase's  
Global Anti-corruption Compliance Program)**

PROVISION OF HEDGING OF FINANCIAL RISKS AND ZAR LOAN SYNDICATION

# J.P.Morgan

8 May 2015

Transnet Soc Limited  
The Secretariat  
Transnet Acquisition Counsel  
Carlton Centre  
Tender Box  
Office Block Foyer  
150 Commissioner Street  
Johannesburg 2001

RE: JPMorgan Chase & Co. Global Anti-Corruption Compliance Program

Dear Sir or Madam:

This letter is to inform you that JPMorgan Chase & Co., including each of its subsidiaries, ("JPMC") is firmly committed to participating in international efforts to combat corruption.

JPMC has established an Anti-Corruption Policy that requires compliance with the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, and other applicable anti-corruption laws. The Anti-Corruption Policy is referenced in the publicly available JPMC Code of Conduct.

The JPMC Anti-Corruption Policy:

- Affirms that JPMC has zero tolerance for bribery – whether direct or indirect or in the public or private sector;
- Requires that relevant employees and third parties receive anti-corruption training;
- Explains how JPMC employees may report and escalate corruption-related issues;
- Requires employees to accurately maintain books and records related to the firm's business;
- Prohibits cash gifts and equivalents (e.g., gift cards);
- Establishes a system of internal controls requiring adherence to special procedures when anything of value is provided to a government official to ensure that the benefit is reasonable and customary, proportionate to the underlying business purpose related to it, compliant with local law, and transparently documented;
- Establishes a system of internal controls requiring preclearance of the following items when provided directly or indirectly to a non-U.S. government official:
  - Gifts and Business Hospitality
  - Honoraria and Speaker Fees
  - Visa Letters
  - Political Contributions

JPMorgan Chase Bank, N.A. (Johannesburg Branch) 1 Fricker Road, Cnr Hurlingham Road, Illovo, Johannesburg 2196, South Africa  
Private Bag X9936, Sandton 2146, South Africa

Telephone: +27 (11) 507 0300 Facsimile: +27 (11) 507 0353

James S. Crown, Laban P. Jackson Jr., Marianne Lake, William C. Weldon (Non-Executive Chairman), Matthew E. Zarnes  
Organised under the Federal Law of the United States  
A subsidiary of JP Morgan Chase & Co.  
Registration Number: 2001/016069/10 Vat Number: 4290195686

Authorised Financial Services Provider

# J.P.Morgan

- Establishes a system of internal controls requiring preclearance of contributions to a charity or other philanthropic organization recommended by, or that would benefit, a non-U.S. government official;
- Prohibits facilitation payments;
- Establishes a system of controls requiring pre-clearance of any offer of JPMC employment (whether paid or unpaid) to a candidate who is referred by a government official, or an existing or potential client/business partner;
- Establishes a system of controls involving the engagement of entities that act as agents on behalf of JPMC in order to (1) obtain or retain business from any third party, or (2) interact with government officials; and
- Requires employees to assess the corruption risk associated with their transaction types.

JPMC is a publicly traded company that is regulated by various U.S. federal and state banking and securities regulators as well as other regulatory organizations, including self regulatory organizations and other U.S. and non-U.S. governmental agencies that have supervisory authority over certain legal entities. For more information concerning JPMC's businesses and the products and services offered, please feel free to visit our website at [www.jpmorgan.com](http://www.jpmorgan.com).

Compliance with the legal and regulatory requirements that govern the interactions with government officials, clients, potential clients, and other third parties is critical for JPMC to protect itself, its shareholders and the international financial system from the abuses of corruption and illicit finance. Moreover, compliance with the Anti-Corruption Policy and internal procedures allows JPMC to maintain good standing in the jurisdictions where it transacts business.

If you have any questions or require further information regarding JPMC's anti-corruption efforts, please call me at +27 11 507 0730.

Sincerely,

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

JPMorgan Chase Bank, N.A., Johannesburg Branch

## **REPORT 2(B) – EXHIBIT 30**

**MNS**

MNCEDISI NDLOVU & SEDUMEDI  
**ATTORNEYS**

TRANSNET SOC LTD

//

PRELIMINARY REPORT  
INTO THE ALLEGED  
IRREGULARITIES RELATING  
TO THE  
APPOINTMENT OF THE  
TRANSACTION ADVISORS  
IN RESPECT OF THE  
ACQUISITION OF THE 1064  
LOCOMOTIVES TENDER

VOL 2a

3 of 3

**FILED**

1<sup>st</sup> FLOOR

16 FRICKER ROAD, ILLOVO, 2196  
P.O. BOX 10100 JOHANNESBURG E2000  
TEL: (011) 268-5225 FAX: (011) 268-6805  
EMAIL: [RECEPTION@NDLOVU-  
SEDUMEDI.CO.ZA](mailto:RECEPTION@NDLOVU-SEDUMEDI.CO.ZA)  
[WWW.MNSATTORNEYS.COM](http://WWW.MNSATTORNEYS.COM)  
DIRECTORS: MNCEDISI NDLOVU,  
TSHIAMO SEDUMEDI,  
MANDLA MNISI, THOBANI MNYANDU,  
NKOSENHLE MZINYATHI

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 1089

TRANSNET



Annex 30

21/09/2015

R82 Million

## MEMORANDUM

www.transnet.net

**TO : The Acquisitions and Disposals Committee**

**FROM : Siyabonga Gama, Acting: Group Chief Executive**

**SUBJECT : REQUEST TO APPOINT TRILLIAN AS LEAD MANAGER IN THE US\$1 BILLION ZAR EQUIVALENT CLUB LOAN**

**PURPOSE:**

1. The purpose of the submission is to request the Acquisitions and Disposals Committee (ADC) to:
  - 1.1. ~~Approve the appointment of Trillian in the place of JP Morgan as a lead Manager of the US\$1 billion ZAR equivalent Club loan which was previously confined to JP Morgan.~~
  - 1.2. Approve the termination of JP Morgan on the ZAR syndication loan.
  - 1.3. Delegate authority to the GCE to approve all documentation related to this confinement.

**BACKGROUND:**

2. Transnet has signed the mandate letter and Term sheet for the US\$2.5 billion 15-year amortizing loan from China Development Bank ("CDB") to finance 232 and 359 locomotives from China North Railways ("CNR") and China South Railways ("CSR"), respectively.
3. The Board approved the transaction during August 2014.
4. Transnet decided to split the transaction into 2 tranches the US\$ 1.5 billion tranche and the standby facility of US\$1 billion tranche.
5. ~~JP Morgan was appointed through a confinement approved by ADC to lead the ZAR Club as a substitute for the US\$1 billion standby facility to bring the overall cost of the transaction lower and avoid foreign exchange exposure and the need for cross currency swaps.~~

**DISCUSSION:**

6. In order to further reduce the cost of CDB funding, Transnet considered a dual tranche loan to fund the Chinese locomotives acquisition.

7. Therefore it was decided to utilise the US\$1.5 billion from CDB and JP Morgan to underwrite a ZAR equivalent funding of US\$1 billion.
8. This would enable Transnet to meet the rating agency requirements in demonstrating the committed funding against the committed capital investments.
9. Consequently the GCE signed a revised term sheet and mandate letter with CDB for US\$1.5 billion.
10. Regiments Capital was appointed as a 1064 locomotive funding advisor and had SD obligations to Transnet on their contract.
11. One of their SD initiatives is the development of other smaller black owned organisations in the industry and Trillian is one of the beneficiaries of this initiative.
12. When it became apparent that JP Morgan would not be able to deliver the ZAR loan Regiments engaged with its SD beneficiary to see if there were options available to Transnet. It became apparent that Trillian would be able to deliver on Transnet's requirement for a Club loan deal at a price and tenor which was most comparable to both the CDB loan and JP Morgan proposal.
13. The illustration of the benefits is presented below.

#### **TRILLIAN CAPITAL**

14. Post the ~~successful completion of the 1064 locomotive transaction~~, Transnet developed detailed funding plan to secure the necessary funding for the locomotives together with the general purpose funding requirement.
15. One of the salient transactions was the approval of the US\$2.5 billion credit facility to finance the purchase of the Chinese locomotives.
16. In order to achieve a reduced blended rate in the funding of the Chinese portion of the locomotives, Trillian recommended that Transnet only utilise \$1.5bn of the CDB facility, and blend that with a US\$1bn ZAR club loan. The ZAR club loan would allow for a reduction in the blended rate paid by Transnet of approximately 37bp (a net present value saving of approx. R666m- as opposed to utilising the full CDB facility of \$2.5bn with the full cost of the cross currency swaps).
17. Following the decision to use only US\$1.5 billion out of the total USD 2.5 billion proposed by CDB, Trillian recommended that US\$ 1 billion be available for Transnet as standby facility with no commitment fee until September 2015 over and above the ZAR club loan. Besides the financial benefit at least in terms of the commitment fee that would have otherwise been paid, the availability of such committed funding facility from CDB would provide an additional ratings benefit to Transnet.
18. Trillian have advised Transnet to achieve a mix of float and fixed rate in this transaction in order to best manage the interest rate risk with regard to Transnet's Financial Risk Framework (FRM).

*Same motivation as per Regime*

REQUEST TO APPOINT TRILLIAN AS LEAD MANAGER IN THE R18 BILLION CLUB LOAN

19. Trillian has assisted Transnet in negotiating with a number of potential funding sources of ZAR funding, including the following firm commitments:

19.1. Nedbank group(R6 billion);

19.2. Bank Of China (R3 billion);

19.3. ABSA Bank (R3 billion); and

19.4. Libfin (R1 billion).

20. Trillian's advice and the subsequent conscious decision taken by Transnet to utilise foreign sources of funding for both the USD portion and the significant portion of the ZAR syndicated issue have a desirable impact of leaving Transnet's credit lines intact in the domestic market.

21. The savings achieved via the blending of the ZAR club loan, and the change in the applicable reference rate (3 month as opposed to the 6 month Jibar) have allowed Transnet the ability to fix the required portion of the loan without placing undue pressure on the interest cover ratio or the company cash flows. The total financial benefits that accrued to Transnet from the negotiating strategy (comprising of the achievements specified above) pioneered by Trillian is calculated to be R820 million.

22. In this regard, with Trillian's assistance the average cost of the Club Loan is around is 9.008%(3month Jibar+2.7% (nominal annual compounded semi-annually)) nacs as compared to the cost of the CDB Loan converted to ZAR at 9.533%(3month Jibar+322.5bps) nacs with 3 month Jibar at 6.308%.

23.  $337,50 = 15 \text{ pbs.}$   
Transnet was able to achieve the 15 year tenor at 3 month Jibar +270bps tenor as compared to the JP Morgan advice of 15 Year tenor at 370bps over 3 month Jibar.

24. The financial advice and negotiation support that Trillian provided through this entire process which took in excess of 5 months was done at risk with an expectation of compensation only on successful completion of the transaction.

#### ENTERPRISE AND SUPPLIER DEVELOPMENT AND BBBEE:

25. Trillian will be subject to 10% Supplier development obligations.

#### DELEGATIONS:

26. The ADC had previously approved the award through confinement, and due to the termination of the JP Morgan mandate and it is required that the ADC approve Trillian to replace JP Morgan.

REQUEST TO APPOINT TRILLIAN AS LEAD MANAGER IN THE R18 BILLION CLUB LOAN



**FINANCIAL IMPLICATIONS:**

27. Transnet value add to Transnet in relation to the 1064 locomotive ZAR club loan funding can be summarised in the following table:

**INITIATIVE****SAVINGS**

7 Saving achieved by securing club loan at 52.5 bps including cost cheaper than the equivalent dollar funding from CDB (3m Jibar+322.5bps -3m jibar +270bps)

R418m

7 Saving achieved by securing club loan at 100bps including cost cheaper than the equivalent dollar funding from Morgan (3m Jibar+370bps -3m jibar +270bps)

R796m

Fees

R24m

**TOTAL**

R820 million

28. The total financial benefits that accrued to Transnet from the negotiating strategy (comprising of the achievements specified above) pioneered by Trillian is calculated to be in excess of R 820 billion.
29. The financial advice, negotiation support and execution support that Trillian provided through the raising of the ZAR club loan took in excess of 5 months and is done with an expectation of compensation only on successful completion of the transaction at 20% of savings. However, Transnet negotiated that the fee is calculated as 10% of the total financial benefit related to the CDB loan:

SUCCESS FEE IN PERCENT (ZAR 12 BILLION)	SUCCESS FEE
10%	R82 million

30. Given the invaluable contribution of Trillian to the successful conclusion of funding transaction, Trillian is due a success based fee of 10% of the savings payable by Transnet subject to a maximum of R82 million.
31. The fees for Trillian will be part of the market related cost to the borrowing costs of the loan.

**BUDGET IMPLICATIONS:**

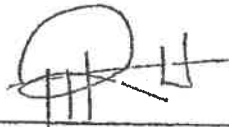
32. The costs have been budgeted as part of the funding plan for 2015/16.

REQUEST TO APPOINT TRILLIAN AS LEAD MANAGER IN THE R18 BILLION CLUB LOAN

**RECOMMENDATION:**

33. That the Acquisitions and Disposals Committee (ADC):
- 33.1. Approve the appointment of Trillian in the place of JP Morgan as a Lead manager for the US\$1.5 billion ZAR equivalent club loan which was previously confined to JP Morgan;
- 33.2. Approve the termination of JP Morgan ZAR syndication loan;
- 33.3. Delegate authority to the GCE to approve all documentation related to this confinement.

Compiled by:

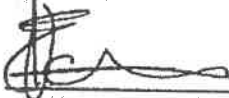


**Phetolo Ramosebudi**

Group Treasurer

Date: 17/09/15

**Recommended/Not Recommended:**



**Edward Thomas**

Acting: Group Chief Supply Chain Officer

Date: 17/9/15

**Recommended/Not Recommended:**



**Garry Pita**

Acting: Group Chief Financial Officer

Date: 18/9/15

**Recommended/Not Recommended:**



**Siyabonga Gama**

Acting: Group Chief Executive

Date: 20/09/15

REQUEST TO APPOINT TRILLIAN AS LEAD MANAGER IN THE R18 BILLION CLUB LOAN

## ANNEXURE B

## INTEREST RATE SWAPS

Counterparty	Execution Agent	Structure	Underlying Loan Issuer	Execution Date	Maturity Date	Principal (Rands)	Pay/Fixed	Receive Floating	Year on Execution Date	Current Market Value
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	ABSA	04-Dec-15	02-Dec-30	1 500 000 000.00	11.83 3 month Jibar + 2.6		6.517	-71 637 420.03
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	Bank of China	04-Dec-15	02-Dec-30	1 500 000 000.00	11.83 3 month Jibar + 2.7		6.517	-75 972 039.31
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	Nedbank	04-Dec-15	02-Dec-30	500 000 000.00	11.83 3 month Jibar + 2.7		6.517	-23 786 580.02
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	Future Growth	04-Dec-15	02-Dec-30	500 000 000.00	11.83 3 month Jibar + 2.7		6.517	-22 796 580.02
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	OMSPR	04-Dec-15	02-Dec-30	500 000 000.00	11.83 3 month Jibar + 2.7		6.517	-23 786 580.02
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	ABSA	07-Mar-16	02-Dec-30	1 500 000 000.00	12.27 3 month Jibar + 2.6		7.017	-101 051 185.82
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	Bank of China	07-Mar-16	02-Dec-30	1 500 000 000.00	12.27 3 month Jibar + 2.7		7.017	-111 735 381.34
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	Nedbank	07-Mar-16	02-Dec-30	2 500 000 000.00	12.27 3 month Jibar + 2.7		7.017	-177 028 518.41
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	OMSPR	07-Mar-16	02-Dec-30	1 000 000 000.00	12.27 3 month Jibar + 2.7		7.017	-70 811 407.36
TSDBF Old Mutual	Regiments Capital	EDC-Investec 2026-02-22	Future Growth	07-Mar-16	02-Dec-30	1 800 000 000.00	12.27 3 month Jibar + 2.7		7.017	-70 811 407.32
TSDBF Old Mutual	Regiments Capital	EDC-Investec 2026-02-22	EDC	30-Mar-16	22-Feb-28	6 993 500 000.00	12.07 3 month Jibar + 2.0		7.233	-481 556 477.18
TSDBF Old Mutual	Regiments Capital	EDC-Investec 2026-02-22	EDC	08-Apr-16	19-Jul-32	1 604 166 666.64	11.15 3 month Jibar + 2.75		7.75	-77 427 742.51
TSDBF Old Mutual	Regiments Capital	EDC-Investec 2026-02-22	Edin	08-Apr-16	31-Mar-33	1 000 000 000.00	11.15 3 month Jibar + 2.05		7.75	-59 112 227.23
TSDBF Old Mutual	Regiments Capital	EDC-Investec 2026-02-22	Std bank	08-Apr-16	21-Apr-24	1 700 000 000.00	11.15 3 month Jibar + 1.65		7.75	-62 413 954.63
						23 295 666 666.64				-3 421 912 531.20

## **REPORT 2(B) – EXHIBIT 31**

ANNEXURE A



REGIMENTS

Enabling Progress

Annex 31

15 July 2015

Anoj Singh  
Group Chief Financial Officer  
Transnet SOC Ltd  
Box 72501  
South Africa  
2122

Dear Mr. Singh

The purpose of this letter is to detail the work undertaken by Regiments for the capital raising, transaction management and hedging advisory services related to the 1064 locomotive funding.

## 1. Capital raising

## 1.1. China Development Bank Loan

Regiments is entitled to a lead manager and debt origination fee upon the successful conclusion of the China Development Bank (CDB) loan amounting to 15 basis points calculated on the yield to maturity of the CDB loan. This fee is a debt origination fee, and the basis of calculation of the Rand based fee is as follows:

- 15bp on the yield to maturity of the CDB \$1.5bn loan (as per attached detailed loan profile and yield calculation)

R152 756 408

101,837 605 333

## 2. Hedging of CDB loan and arrangement of CCDS Structure

## 2.1. Cross Currency Swap

Regiments assisted in the structuring and arrangement of the Cross Currency Swap in order to convert the USD denominated CDB loan to a ZAR obligation, and was due the following success contingency fee:

- Cross Currency Success fee

R7 500 000

## 2.2. CCDS Structure

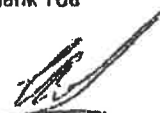
Regiments structured and arranged a CCDS structure in order to effectively reduce the ZAR interest rate payable on the loan structure by Transnet. The following contingency success fee was applicable to this structure:

- CCDS Structure Success fee

R5 743 592

The total Contingency fee paid to Regiments amounted to R13 243 592. This contingency fee is attributed to the work streams as detailed above.

Thank You

  
Eric Wood  
Executive Director  
Regiments Capital (Pty) Ltd

## ADVISORY

T +27 11 715 0300 F +27 86 691 1523 E info@regiments.co.za

Physical Address 91 Central Str, Houghton, 2198 Postal Address Postnet Suite 25, Private Bag X11, Birnam Park, 2015

Directors L Nyhonyha, M Pillay, E Wood

Regiments Capital (Pty) Ltd Reg No (2004/023761/07) FSP No 16831

www.regiments.co.za  
An Authorised Financial Services Provider

→ NOT applicable to boos.

Nedland: 120. billion for \$1.5 billion  
Old Mutual. 211,3 billion for \$1.5 billion

Buy  $\frac{1}{2}$  bps.  $\rightarrow$  market price  
Buy Broker - £2000. Value.

Nedlark - Regions  
↳ paid 20bps  
↳ mispriced :-

↓  
STRATEGY (also offered)

2.1 + 1.6 billion in fixed vs variable.

## **REPORT 2(B) – EXHIBIT 32**

**Noluthando Masondo**

---

**From:** Yusuf Mahomed Transnet Corporate JHB <Yusuf.Mahomed@transnet.net>  
**Sent:** 02 July 2014 08:27  
**To:** Anoj Singh Corporate JHB  
**Cc:** Theo Takane Corporate JHB  
**Subject:** Memo to Mr Harry Gazendam - TSDBF Asset Manager Strategy  
**Attachments:** Memo to Mr Harry Gazendam - TSDBF Asset Manager Strategy.docx; Annexure A (TSDBF asset manager strategy June 2014).pptx

Hi

Revised version for your comment.

Regards



## **REPORT 2(B) – EXHIBIT 33**

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 2345  
F +27 11 308 2573



## MEMORANDUM

www.transnet.net

**To:** Harry Gazendam, Chairman, Transnet Second Defined Benefit Fund

**From:** Anoj Singh, Group Chief Financial Officer

**Date:** 2 July 2014

**SUBJECT: THE TSDBF LDI MANAGER STRATEGY**

### PURPOSE:

1. The purpose of this memorandum is to request the Chairman of the Transnet Second Defined Benefit Fund ("the TSDBF") to review the proposed timelines for the appointment of the TSDBF Liability Driven Investment Manager ("LDI Manager"), and confirms the adoption of these timelines by the TSDBF.

### BACKGROUND:

2. The proposed timelines for the appointment of the LDI Manager, based on the current position and processes implemented to date are as follows:
  - a. RFI responses are due by Friday 4 July 2014 from Sanlam, Old Mutual, Ashburton, Colourfield and Regiments Capital
  - b. The TSDBF LDI Project team (which includes a Transnet representative (Helen Walsh)) will be:
    - i. considering the RFI responses on Thursday 17 July 2014; and
    - ii. shortlisting the candidates to whom the Confidential Information Memo (CIM) is to be distributed
  - c. It is proposed that the CIM is distributed to the shortlisted candidates on Friday 18 July 2014
3. It is therefore imperative that Transnet be provided with the CIM by Friday, 4 July 2014, in order to provide comments thereon and approve the final version prior to distribution.
4. The CIM provides the shortlisted candidates with a notional portfolio of R2 billion for application of their specific proposed solution to return to the TSDBF; it is proposed that these submission be returned by Friday 31 July 2014.

5. The TSDBF LDI Project team will then consider the CIM responses and finalise a recommendation at a meeting of the TSDBF LDI Project team on or about 13 August 2014 (to be brought forward from 25 August 2014).
6. Thereafter the TSDBF will submit its recommendation to Transnet on 15 August 2014 for consideration and approval at the Transnet Board of Directors on 28 August 2014.
7. Further, I have attached (as annexure A) the proposed TSDBF Asset Management Services procurement strategy.
8. It is further proposed that the Transnet Internal Audit (TIA) process for High Value Tenders (HVT) be adopted, with TIA involvement in each aspect from 4 July 2014, to 15 August 2014, including reporting on the process to both the TSDBF LDI Project team and Transnet.
9. It is noted that the above process dovetails with that resolved by the Investment Committee of the TSDBF, but proposes dates aligned to the process.

#### **FINANCIAL IMPLICATIONS:**

10. There are no financial implications to Transnet or the TSDBF of the proposed process.
11. The financial implications up to date of appointment have been approved by Transnet.
12. The financial implications of the appointment will be part of the CIM evaluation process.

#### **BUDGET IMPLICATIONS:**

13. There are no budget implications to Transnet or the TSDBF of the proposed process.
14. The budget implications up to date of appointment have been approved and provided for by Transnet.
15. The budget implications of the appointment will be part of the CIM evaluation process.

## **RECOMMENDATION**

16. It is recommended that the Chairman of the TSDBF approves the adoption of the proposed timelines for the appointment of the TSDBF LDI Manager.

### **Compiled by:**

---

**Mr Anoj Singh**

Group Chief Financial Executive

Date:

### **Approved by:**

---

**Harry Gazendam,**

Chairman,

Transnet Second Defined Benefit Fund

Date:

## **REPORT 2(B) – EXHIBIT 34**

# Annexure A

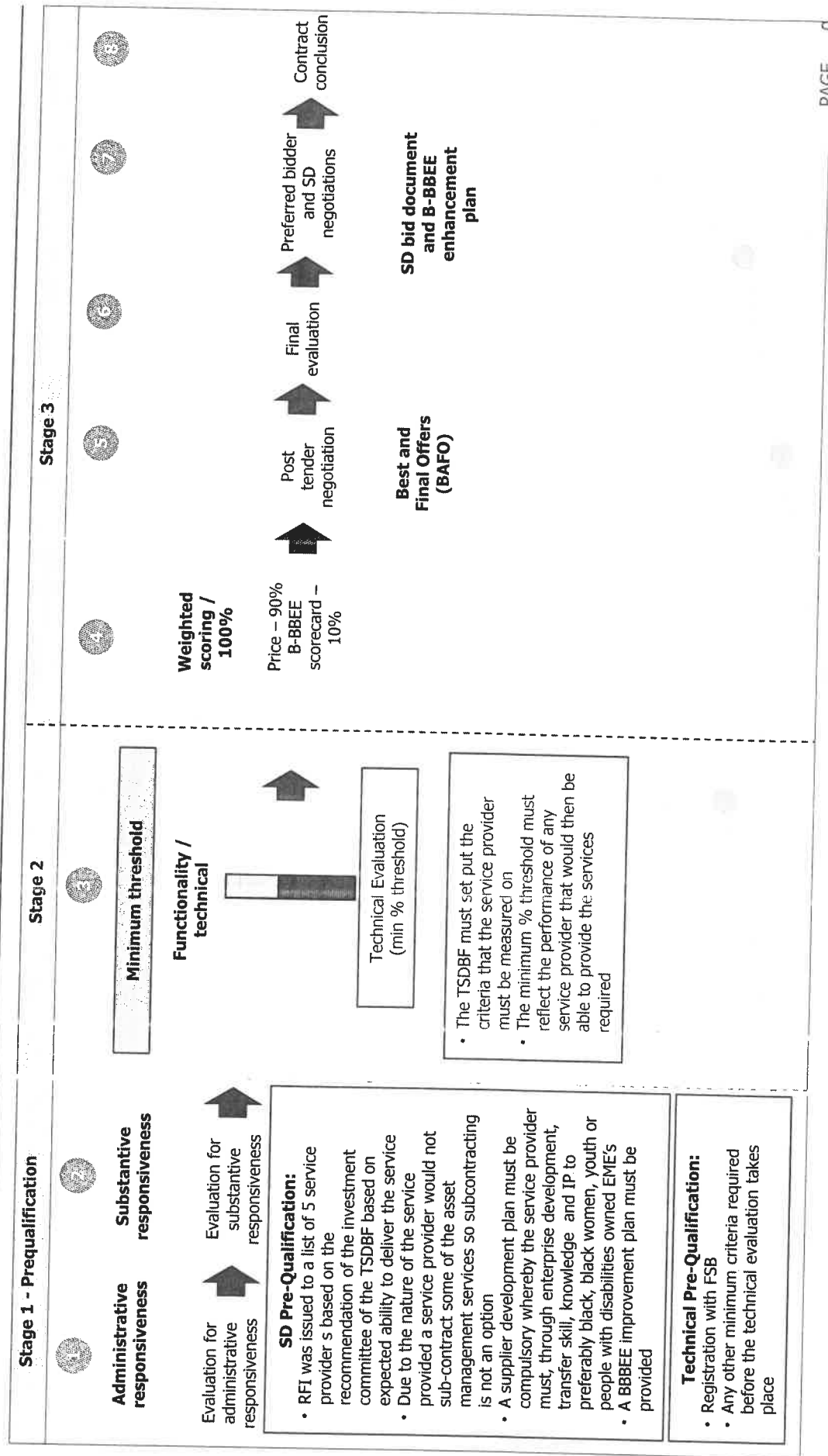
## TSDBF Asset Management Services - proposed procurement strategy

TRANSNET



delivering freight reliably

### RFP evaluation process



## TSDBF INVESTMENT POLICY STATEMENT AMENDMENTS SEPTEMBER 2013

### Unmatched Portfolio

#### Objectives:

- Overall "unmatched portfolio return" to meet or exceed CPI +5.5% p.a. over 5 years
- Minimum acceptable return is "liability return" (estimated at CPI + 2% to 2.5% p.a.) over 5 years
- Underlying investment managers to meet or exceed their respective benchmarks / absolute performance objectives

#### Risk constraints:

Individual and overall portfolio to comply with Regulation 28 guidelines:

- Maximum 75% equities
- Maximum 25% offshore
- Maximum 25% illiquid debt
- No further investment in private equity
- Maximum single investment manager: 30% (noted that Allan Gray currently exceeds 30% due to reduction of size of unmatched assets but will be reduced over time)

Risk budget for overall "unmatched portfolio return": Maximum 10% volatility (annualised standard deviation)

#### Mandate restrictions:

The Fund has specified detailed mandates with each of the specialist managers that it has appointed.

The mandates given to the Investment Managers that manage portfolios on behalf of the Fund include restrictions on:

- The maximum invested in equities (if applicable)
- Maximum offshore
- Maximum in any single company/counterparty
- Limits on credit quality
- Leverage
- Use of derivatives
- Investment in unlisted securities
- Investment in pooled funds

#### Key risk areas

Market risk refers to adverse changes in the level of equity markets. Market risk is managed using:

- Limits on exposure to markets
- Diversification amongst asset classes
- Hedging a portion of market exposure
- Active management

Active risk refers to the failure of a manager to add value in relation to its costs. Active risk is managed using:

- Expert advice from independent investment consultant
- Extensive upfront due diligence of investment managers
- Diversification amongst managers
- High quality managers
- Monthly monitoring of managers

Credit risk refers to the capital loss due to default, impairment or adverse pricing movements in relation to investments in interest-bearing investments. Credit risk is managed using:

- Diversification
- Credit quality requirements
- Active management

# FINANCIAL SERVICES BOARD

Rigel Park 446 Rigel Avenue South Erasmusrand Pretoria 0181 South Africa

PO Box 35655 Menlo Park Pretoria 0102 South Africa

Tel +27 12 428 8000 Fax +27 12 347 0221 E-mail [info@fsb.co.za](mailto:info@fsb.co.za)

Toll free 0800 110443 Internet <http://www.fsb.co.za>



ENQUIRIES:	W MOKUPO	D. DIALLING NO.:	+27 12 428 8032
OUR REF:	12/12/1	FAX:	+27 12 347 8787
DATE:	11 JUNE 2007	E-MAIL:	<a href="mailto:wilmam@fsb.co.za">wilmam@fsb.co.za</a>

(To all funds, approved administrators, and insurers who underwrite pension funds)

## CIRCULAR PF NO. 130

### GOOD GOVERNANCE OF RETIREMENT FUNDS

#### PREAMBLE

1. The assets of a retirement fund are administered for the main purpose of providing the benefits promised in terms of the registered rules of that fund. The board of management (sometimes referred to as trustees) therefore holds fund assets in trust for those persons who will ultimately benefit from them. They stand in a position of trust or fiduciary relationship to funds and therefore must act with *integrity*. As fiduciaries, the board, its alternates and other persons duly appointed by the board to act on its behalf, have to deal with the assets or affairs of the fund in terms of pensions law, the common law, customary law, regulations, the (registered) rules of the fund, codes of conduct and policies that apply to the fund. Trustees may be required to exercise a degree of discretion in making decisions. Therefore, not all circumstances relating to the management and functions of the board may be circumscribed or clearly defined within a legal framework. This necessitates the introduction of governance measures. Governance therefore includes values and ethical principles which require a certain standard of behaviour of the board.
2. *The fundamental principle* is that the board shall at all time act with the *utmost good faith* towards the fund and in the best interest of all members. The board should always give full and proper effect to the rules of the fund and the board should deal with all matters relating to the fund and its members in accordance with their fiduciary duties, *fairly* and with respect.
3. The stakeholders in the governance of a fund are the fund's members (they include pensioners, former members and deferred pensioners), their dependants and, if applicable, nominees of the members (the dependants and nominees hereafter referred to as "the beneficiaries"). The other parties affected by the governance of a fund are the employer participating in the fund (other than with a preservation fund), the sponsor (if not the employer) and the Registrar (all of whom are collectively referred to as "the stakeholders").

**Board Members** Dr CDR Rustumjee (Chairperson) AM Sithole (Deputy Chairperson) BM Hawksworth  
Ms JV Mogadime Ms AMM Mokgabudi Ms LM Mojela Prof PJ Sutherland Ms HS Wilton  
**Executive Officer** RJG Barrow





4. Accordingly, the purpose of good governance in a fund is to ensure that –
  - 4.1. the benefits provided for in terms of the rules of the fund are actually delivered;
  - 4.2. the benefits are optimised and the associated investment risks are minimised, with these opposing concepts being appropriately balanced against each other;
  - 4.3. the process involved in the provision of the benefits and the administration of the fund warrants that the cost implications to members and beneficiaries, is *transparent* and quantifiable by the stakeholders.
5. The board of a fund, assisted by the principal officer, is *responsible* for the governance of a fund.
6. Fundamental to the governance of a fund is the extent of the *accountability* of the board and the principal officer. The principal officer is appointed by and *accountable* to the board, and the board is *accountable* to the members and beneficiaries and the Registrar for its governance of the fund. The board is secondarily also *accountable* to the employer participating in the fund and the sponsor of the fund because, in respect of an employer, the fund fulfils one of the employment promises made by the employer, which is to provide the benefits set out in the rules of the fund; and in respect of the sponsor (if different from the employer), because the sponsor set up the fund confirming provision of the benefits in terms of the rules. This accountability for the governance of a fund is very important due to the fact that the assets of a fund are required by members and beneficiaries to fulfill a vital need on retirement, withdrawal from service, death or disability. Members and beneficiaries require legal recourse or remedies should the benefits not be provided to them as stipulated in the rules of the fund.
7. The accountability requirement of the board means that collectively and individually the board members may be held liable for any breach of the governance which results in any loss to the fund and to the members or beneficiaries in the provision of benefits. The board should adhere to the rules of the fund and should institute disciplinary measures in the event of an alleged breach by a board member. Furthermore, members and beneficiaries may request the Pension Funds Adjudicator or a court of law to determine the liability of the board.
8. The board and the principal officer should ensure at all times that their governance of the fund complies with the requirements of the applicable legislation. This means that the rules of the fund should be adhered to, the applicable legislation followed and other legal or compliance requirements should be applied. The board should obtain expert advice where necessary for this purpose.
9. With the above as background, the *principles* of governance are set out below. These are under the following headings –
  - 9.1. the governance by the board of itself/ the governance structure;
  - 9.2. the governance by the board of the operations of the fund/ the governance mechanism; and

- 9.3. the management of relationships in the governance of the fund.
10. Every fund should have –
- 10.1. a code of conduct;
  - 10.2. an investment policy statement (IPS);
  - 10.3. a communication policy; and
  - 10.4. a performance assessment tool for trustees which should inform their education and training policy.
11. Reference should also be made in the annual financial statements of a fund to the fact that a fund has each of these documents in existence and that they have, during the period of those financial statements, been viewed by the board and are available to beneficiaries on request or accessible on the appropriate website or through the principal officer. Communication to the board and members should be done in an adequate, appropriate and cost-effective manner to afford all parties the opportunity to understand the information and make informed decisions.
12. Any annexure(s) added to this circular should be regarded as providing guidelines for creating appropriate policies and as flexible documents which may be amended from time to time. Funds may adapt these documents to suite their unique needs and circumstances without detracting from the principles contained therein, because good governance requires the application of appropriate and cost effective policies and processes to cater for the specific needs of different funds.

## GOVERNANCE BY THE BOARD

### Principle 1: Roles, Responsibilities and Accountabilities of the Board/ the Governance Structure

#### THE BOARD

13. The board is *responsible* and *accountable* to the members for the administration of the fund, including the prudent investment of fund assets.
14. The board may, should the rules of the fund permit, delegate some of its functions to board sub-committees, employees of the fund and service providers; but such delegation does not relieve the board of accountability for the functions so delegated. The board may not abdicate from any of its functions and responsibilities.
15. The board members should act jointly. If the rules of a fund permit a decision of the board to be carried by a majority of its members voting in favour of it, then the minority should respect the majority decision. Strong objections may be minuted but the final decision should be recorded clearly. A deadlock breaking mechanism should be outlined in the rules.

16. Irrespective of whether board members are employer-appointed, member-elected, in the employment of the sponsor or independent board members, they –
  - 16.1. should endeavour to work together;
  - 16.2. should trust each other and also be worthy of trust in return;
  - 16.3. owe a primary duty of care to the fund and the members and beneficiaries, and are not specifically *accountable* to or required to disclose any information to that group of persons or entities through whom they were appointed or elected as a board member. To this end the board should be sensitive to managing the diversity of the board effectively to ensure that any tension, fears, disagreements, influence, affiliations, special interests, etc. do not hinder decision-making.

#### THE CHAIRPERSON

17. The chairperson of the board is pivotal in creating the conditions for overall board and individual board member effectiveness. To this end the chairperson should –
  - 17.1. proactively lead the board impartially, for example, without bias in favour of the sponsor, the employer or any service provider;
  - 17.2. confirm the agenda for board meetings, and review the draft minutes of such meetings;
  - 17.3. manage board meetings to ensure that sufficient time is allowed for discussion of complex or contentious issues;
  - 17.4. ensure that the performance of the board as a whole, the board sub-committees and the principal officer is reviewed and evaluated on a regular basis; and also to manage the performance of any board member or sub-committee that is not performing as required;
  - 17.5. meet regularly with the principal officer to monitor the operations of the fund;
  - 17.6. if required, act as spokesperson for the fund;
  - 17.7. proactively raise issues of concern, on behalf of the board, with the sponsor, the employer, the administrator and other service providers;

#### THE PRINCIPAL OFFICER

18. The role of the principal officer is vital for the proper performance of the board. The principal officer should not be the chairperson of the board and his or her duty to the fund overrides any responsibilities or obligations arising from being in the employment of or remunerated by the employer, the sponsor or any service provider. The principal officer's functions include -

- 18.1. ensuring that decisions of the board are executed;
- 18.2. ensuring that the fund complies with the formal requirements of the law, including directives from the Registrar, SARS and any other relevant regulatory authority;
- 18.3. liaising on behalf of the board with service providers to the fund, unless where there is direct contact between the board and the service provider;
- 18.4. contributing at board meetings even though, as principal officer, he or she does not have any vote in any decisions of the board if he/she is not a board member.

### CONFLICTS OF INTEREST

19. The fiduciary duty owed by the board and the principal officer requires that they *avoid conflicts of interest*. The following should be appreciated by the board and the principal officer in this regard –

- 19.1. the proper resolution by the board of any conflict of interest is necessary for promoting the credibility of the governance of a fund; and enhances the trust of both members and beneficiaries and any stakeholders;
- 19.2. the board should distinguish between conflicts of interest which may be structural, and therefore unavoidable, and those conflicts of interest which can be avoided or, if this does not compromise the credibility of the governance arrangements, managed appropriately;
- 19.3. a structural conflict of interest may arise where a board member finds himself or herself in a position in which his or her duties as board member conflict with his or her direct or indirect personal financial interests or the financial interests of a stakeholder in the fund (such as the employer or the sponsor), of which he or she is an employee or in which he or she is a shareholder. In such circumstances the legislation is clear: the primary obligation of a board member is to act in the best interests of the fund and the members and beneficiaries. Where a board member finds himself/ herself in a structural conflict of interest situation one should act without regard for one's personal interests or those of the entity or persons through which he or she was appointed. This is to ensure one's actions in such a situation may, as far as possible, be demonstrated to be no different, as if the structural conflict did not exist;
- 19.4. any conflict of interest other than a structural conflict should be avoided. The board should ensure, not only in relation to conflicts of interest as amongst the members of the board or the principal officer, but also in relation to any service provider to the fund, that a conflict of interest is removed or, if this is not possible, resolved *transparently* and defensibly. The mere disclosure of such a conflict of interest will rarely be an adequate resolution of a conflict of interest;

- 19.5. potential or perceived conflicts of interest are as serious as actual conflicts of interest;
- 19.6. any conflict of interest situation should be fully recorded in the board minutes, which should include details as to how the board has resolved the matter.
20. Members of the board should be able to demonstrate their *independence*. Such *independence* is essential also for the credibility of the governance arrangements, and is demonstrated by any discretion of the board being exercised in a manner which is impartial, fully informed and not influenced by inappropriate considerations. In particular the board should always consider what is in the best interests of the members, and should appreciate that the duty of good faith owed by the fund to the employer and the sponsor is subordinate to this requirement. In particular, the board should appreciate that it is not *responsible*, where the fund is an umbrella fund, preservation fund or a retirement annuity fund, for the viability of the business proposition of the sponsor in respect of such a fund.
21. Board members should respect the *confidentiality* of their functioning as a board and also the information pertaining to the fund. In particular, no board member may disclose information about the operations of the board or the fund unless authorised to do so by the board itself. Board members generally, but specifically board members in the employment of the sponsor of a fund, as well as independent board members, who may be members of various boards, need to be vigilant with respect to confidentiality.
22. Each board should have a *code of conduct* in which it outlines and confirms its duties and obligations. Every fund should also require of each board member that he or she completes an acceptance of duties form and, at least annually or at such greater frequency as the board may require, a declaration of interests. This should set out all financial and other interests as set out in the fund's codes of good practice/ code of conduct.
- Principle 2: Composition and Competency of the Board and delegation through the use of sub-committees
23. Board members should have sufficient capacity to deal diligently and thoroughly with their duties and responsibilities. Where an employer has the power to appoint board members in terms of the rules of the fund, the employer should use this power appropriately to ensure that the board has, as far as possible, the necessary skills. To minimise conflict of interest, the employer should preferably not appoint persons to the board who would otherwise be involved in decisions on behalf of the employer in respect of the fund. In umbrella funds, preservation and retirement annuity funds, the credentials of independent board members should be verified with the various regulatory authorities and/ or licensing institutions to ensure that the independent board members appointed to the board have the necessary fitness and propriety and skills to exercise their governance responsibilities.
24. Large funds may benefit from professional trustees, namely independent board members from a particular profession such as registered attorneys, actuaries and chartered accountants where the costs are justified. It is recommended that at least 50% of the board of multiple-employer (umbrella) funds and retirement annuity and preservation funds should be independent.

25. Independent board member should not be employees of the employer participating in the fund and neither should they be controlled by, or in common control with the employer, the administrator or the sponsor of the fund. The independent board member should preferably not provide any other services to the fund or the employer or the sponsor, other than serving as a trustee to the fund. Any variations should be dealt with in the registered rules of the fund or in the code of conduct.
26. Sub-committees of the board may be established to exercise a specific oversight *responsibility* or to carry out, where the rules of the fund permit it, any board-delegated *responsibility*. Any such sub-committee should have an appropriate written mandate which sets out clearly its functions, scope and authority, as well as the criteria or membership requirements.
27. Clear terms of reference should be set by the board for the sub-committees which should be adhered to at all times. Sub-committees should operate within the set parameters.
28. The sub-committees appropriate for each fund will vary from fund to fund but may include, amongst others
  - 28.1. an audit and administration sub-committee;
  - 28.2. an investment sub-committee;
  - 28.3. a legal sub-committee;
  - 28.4. a communication and education sub-committee;
  - 28.5. a risk benefits sub-committee dealing with death and disability benefits;
  - 28.6. an actuarial sub-committee in the case of a defined benefit fund.
29. Each sub-committee should be required to advise the board on risks relating to the functions to be performed by that sub-committee, and the process or controls necessary to mitigate that risk.

Principle 3: Board Orientation and Education

30. New board members should, at the expense of the fund, post appointment and election, receive rigorous and comprehensive training on both the legislative and regulatory framework and governance principles in order to equip them to effectively carry out their functions as board members, and to enable them to minimise their risk of liability as well as to safeguard them against bad decision-making.
31. Board members should be educated on an ongoing basis about new matters relating to funds to ensure that they acquire and maintain an understanding of risk management, investment risks and strategies, benefit structures, legal issues, regulatory and compliance requirements, taxation, actuarial and reform issues. The cost of this information provision and training should be at the expense of the fund.

32. Training and education requirements for board members should be an ongoing process, with an emphasis placed on continuous and lifelong learning (this can be NQF aligned /SAQA approved).

Principle 4: Board Assessment and Breach of Code of Conduct

33. The board, the principal officer and the sub-committees of the board should be subject to an appraisal of their performance at least once every year. The sub-committees of the board should also be subject to appraisal. The purpose of the appraisal is to assess the effectiveness of the board, the principal officer and the sub-committees, and to highlight where improvements should be implemented.
34. Where a board member breaches the fund's code of conduct or acts in contravention of any of the responsibilities imposed upon him or her then the board should take such action as it considers appropriate, after consideration of any argument presented in defence of the board member concerned. This may, should the rules of the fund permit, be in the form of, *inter alia*, declaring that such trustee should vacate office; that such trustee is suspended from office for such period or in respect of such function as the board may decide, and subject to any appropriate terms and conditions imposed by the board. The objective of action by the board against a trustee is to preserve the integrity of the board and its governance role. Action against a board member should not be solely driven by whether or not the breach gave rise to financial or other reputational prejudice being suffered by the fund or any other stakeholder. Each matter should be assessed on the facts and merits of the situation, and an appropriate form of discipline should be imposed.

**GOVERNANCE BY THE BOARD OF THE OPERATIONS OF THE FUND**

Principle 5: Internal Controls/ Governance Mechanisms

35. The primary function of the board in relation to the business of a fund is to ensure that it (the board) exercises a rigorous oversight function. There should be a clear identification and assignment of operational responsibilities, either to persons with appropriate skills employed by the fund (where the fund is privately-administered), or by way of a written agreement to a licensed administrator or long-term insurer (where the fund is underwritten).
36. For the board to exercise its oversight role properly, those to whom functions are delegated should be required to report back regularly on such delegated functions and with sufficient and relevant information to enable board to make an informed performance assessment.
37. The board should ensure that there is adherence to and compliance with all statutory and regulatory requirements. In particular, the board should appreciate the rights and duties of those involved in the operation of the fund, others associated with the fund such as the employer and sponsor, as well as the members and beneficiaries of a fund.
38. In addition, the oversight *responsibility* of the board requires that there should be –

- 38.1. a regular assessment of the performance of the persons and entities involved in the operation of the fund in terms of service level agreements, mandates, performance contracts, etc.;
- 38.2. a regular review of services and fees and all costs associated with the operation of the fund in order to ensure that they are appropriate;
- 38.3. a regular review, preferably with the assistance of independent external advisers, of the information processes, operational software systems, and accounting and financial reporting systems involved in the operation of the fund;
- 38.4. the monitoring and resolution of actual, potential or perceived conflicts of interest amongst those involved in the operation of the fund;
- 38.5. the protection of confidential information of the fund;
- 38.6. regular review of compliance with regulatory and statutory requirements of the fund.

#### Principle 6: Expert Advisors

- 39. Board members are not obliged to have all the expert skills necessary for the day-to-day operation of a fund. It is reasonable for the board to engage professional accounting, actuarial, investment, legal and other experts for advice on issues which are the *responsibility* of the board, and to pay the professionals involved appropriately for that advice. However, the expert advice or opinions obtained by the board should be considered by the board and assessed independently and the board should always be free, to procure a second opinion where it is not comfortable with the advice that it has received.
- 40. The board should only make use of licensed/ registered/ accredited/ approved entities or professional advisors where regulators and/or independent standard setting bodies can attest to their fitness and propriety.
- 41. The function of an actuary in a defined benefit arrangement is of particular importance, and the board should appreciate the issues around the different assumptions and methodologies which are available for an actuary to use.
- 42. The board should satisfy itself that any expert advice obtained is independently given. Where the professional gives expert advice in respect of a service provider or the employer or sponsor to the fund then the board should satisfy itself that such advice is not compromised by the relationship of that professional or his or her firm to that service provider, employer or sponsor as the case may be.
- 43. The appointment of an expert adviser should be made by the board itself, even where it acts on the advice of another service provider, so that the board itself interacts and communicates with that external expert adviser that the board itself has appointed.



Principle 7: Risk Management
------------------------------

44. The management of risk in a fund is a vital component of the governance of a fund. Every fund should have in place a risk management policy which should be reviewed annually and should include, *inter alia*: –
- 44.1. the identification of risks facing the fund;
  - 44.2. the assessment of the impact of each such risk to the fund;
  - 44.3. the process or controls necessary to reduce the impact of key risks;
  - 44.4. the monitoring of the risk process or controls to ensure that they are appropriate; and
  - 44.5. the communication to the members and the stakeholders of the fund's risk management policy, including the identification of the key risks and the processes or controls in place to manage them. This may be outlined in the annual financial statements of a fund.
45. The types of risk will vary according to the type of fund. Thus, in a defined benefit fund, there will be risks associated with the actuarial valuation (such as the solvency ratio, the longevity assumptions and the post retirement interest rate) which may not be found in a defined contribution fund. A common type of risk found in categories of funds may have different consequences because of the nature of those funds; for example, the investment risk in a defined benefit fund will be different from the investment risk in a defined contribution fund, and the administration risk in a self-administered fund may be different from the more complex administration risks found in umbrella funds. It is important is that each type of risk is identified in the fund according to the nature of that fund and an applicable process or control put in place to manage it.
46. The risks to be identified should not be limited to those which have a financial consequence, but should include risks which relate to the governance of the fund and which may jeopardise the governance structure. Poor communication by the fund may not have a financial consequence but may impair the credibility of the provision of the benefits by the fund and the administration of the fund. Such risks which do not have a financial consequence are equally important in a fund's risk management strategy.
47. A fund is not expected to micro-manage the functions delegated to service providers, but those functions should, when delegated, contain sufficient detail to ensure that the service provider understands what is expected by the board. There should also be a reasonable right of recourse in the event that there is any breach of the delegated functions by the service provider.
48. In terms of pensions law a fund is required to take out fidelity cover. The purpose of this cover is to indemnify the fund against any loss suffered by the fund which cannot otherwise be recovered. The terms of this cover and the quantum should be carefully considered by the board to ensure that it is appropriate for the fund; where necessary, expert advice should be obtained in this regard. Such cover should include loss arising from negligence. Members of the board themselves should have indemnity insurance provided by the fund, or an indemnity from the sponsor of the fund. The board should also ensure that each service

provider has adequate malpractice cover in the form of professional indemnity and fidelity guarantee insurance so that the fund's right of recourse against that service provider, where required to be invoked, is safeguarded.

Principle 8: The Investment Performance of the Fund Assets

49. The investment performance of the fund assets is the most important factor in determining whether the fund will be able to deliver on the retirement benefits (in a defined benefit fund) or whether there will be a sufficient amount accumulated (in a defined contribution fund) for an adequate replacement of income. The proper management of the investments of the fund is a critically important component of the governance of a fund.
50. It is important that the board ensures that the mandates given to service providers clearly define the board's expectations and reporting requirements relating to the performance of the investments. The board should therefore not endorse mandates or agreements that are vague or ambiguous. Any contractual arrangement between a fund and an investment manager should set out clearly the benchmarks against which performance will be measured. Any contract should be on such terms and conditions that are acceptable to the fund, and may require independent legal advice being given to the fund in that regard.
51. A fund investment policy statement, (IPS) should be communicated to stakeholders, and reviewed annually (when considering the financial statements) to ensure it remains appropriate in terms of the member-profile and needs of the fund. The IPS should contain the following minimum information:-
  - 51.1 who the fund's investment advisers are;
  - 51.2 where applicable, who the custodian of the investments are;
  - 51.3 whether the fund has a socially *responsible* investment policy, and its definition of such investment type;
  - 51.4 whether the investments of the fund are in the form an insurance policy or a segregated mandate, and the reasons therefor;
  - 51.5 what the targeted performance benchmarks are in respect of each asset manager and asset class held by the fund, and what the previous year's actual performance was in relation to the fund's benchmarks, as well as the tracking error;
  - 51.6 the level of risk attributed to each asset class and asset manager;
  - 51.7 whether or not the fund exercises its ownership rights in respect of investments held by it (and if so, what the proxy voting policy is) and, if not, the reasons therefor.
52. Where a fund has member investment choice, the board is responsible for ensuring that the investment portfolios from which members may make their selection is appropriate for the profile of the fund

membership; if there is a default portfolio, it must be reviewed regularly for appropriateness in relation to the membership profile of the fund.

53. The board should not permit an investment arrangement to exist where the fund may not invest outside the investment offerings of the sponsor or any subsidiary or associated entity, other than in the case of preservation fund or retirement annuity fund, where such an investment arrangement is permissible. The rules of the fund, pensions law and applicable tax laws should be adhered to in respect of transfers. The board should exercise special care in relation to transfers to ensure that the rights of members are protected.
54. Where there is a balance of cost obligation owed by the employer (typically in a defined benefit fund) then the board should be mindful of the risk to the employer of any investment decision it makes. In particular, a board may not use the balance of cost obligation as an excuse to make investments of a nature which would not otherwise have been made had the balance of cost obligation not existed.
55. The appointment of the custodian of the fund investments should be made directly by the fund to enable the board to have direct access to the custodian information about the fund investments. It is inappropriate for the fund's custodian arrangement to be set up between the custodian and the fund's investment adviser alone. It is the board's sole *responsibility* to determine the terms of the relationship between the custodian and the fund. Similarly, the board should have direct access to all office bearers including the fund's auditors, actuary/ valuator and other appointed experts.

## MANAGEMENT OF STAKEHOLDER RELATIONSHIPS

### Principle 9: Communication and Access to Information

56. Board members should have unfettered access to all relevant information relating to the fund to enable them to make informed decisions.
57. All information about the fund is confidential and may not be released to any person unless such person has a lawful right to such information, such as the rights of members to obtain the registered rules of the fund, actuarial valuations and audited financial statements. In particular, no person, other than board members and service providers, should have access to minutes of board meetings and membership details unless such information is required for a lawful purpose. The board should not, however, be obstructive in supplying information when the person requesting it has a lawful right to access such information.
58. The information about a fund, its membership and investments belongs to the fund and the board should ensure that where this information is held by a service provider, that it is returned to the fund should the relationship with that service provider be terminated.
59. A Communication Policy should be established for the disclosure of fund information to members and beneficiaries. Cognisance should be taken of the Registrar's prescribed minimum disclosure requirements

to members and beneficiaries. Other information may relate to the fund's investment policy statement, cash flow, the fund membership details, and any other information which the board considers appropriate, relevant or useful in order to carry out its functions. Such communication should be appropriate, timely, accurate, complete, consistent, cost-effective, useful, comprehensible and accessible. Communication to members and beneficiaries should be informative, *transparent* and *fair* and display *accountability*. This should include information in respect of the operations, administration and investments of the fund.

*It is recommended that a Communication Policy should include ( but is not restricted) to the following:*

*Operating activities:*

- 59.1 Benefit calculations, method and timing of benefit payments;
- 59.2 Changes to the rules of the fund;
- 59.3 Important changes to regulatory requirements.

*Funding activities:*

- 59.4 Financial data and extracts from the annual financial statements;
- 59.5 Funding status and funding method of the fund;
- 59.6 Changes in investment strategy;
- 59.7 Fund return and measurement against benchmarks;
- 59.8 Name and contact details of the administrator

60. In funds that give members the option of individual investment choice, the inherent risks should be disclosed

**Principle 10: Members and Beneficiaries (protection of rights)**

61. The board should communicate aspects of the operation of the fund, including the performance of the fund's investments, which are of relevance to members and which will assist the membership of the fund to assess the credibility and trustworthiness of the administration of the fund and the delivery of benefits. The fund should establish a communication policy reflecting the board's commitment to this and other aspects of disclosure decided by the board, which should be made available to the membership of the fund.
62. All communication with members, beneficiaries and the stakeholders should be responded to promptly by or on behalf of the board and with thoroughness and respect. In particular, complaints by members or any other person, which are directed to the fund, should be treated seriously at least and noted by the board.
63. Where a fund offers member investment choice, the details of the investments in respect of which members may make an election should be described setting out the severity of any associated risk and the performance benchmarks, as well as the underlying type of investments. Members should be able to make an informed decision from such information. Members should also be reminded periodically of the need to

review the investment choices made by them. In a defined contribution arrangement with individual investment choice, it should be made clear that the member bears the investment risk. In certain cases the fund may require that basic training be provided by the fund to ensure that the members understand the operations of the fund and investments. The fund should also communicate to stakeholders any Pension Fund Adjudicator determinations against the fund, regulatory issues raised by the Registrar, and all deviations from policy, rules, etc.

64. The board should consider holding an annual general meeting at which fund issues can be discussed, provided this is practical and cost-effective. It would be appropriate at such a meeting that the financial statements of the fund as well as the performance of the investments be tabled and discussed. Members should be reminded that they may not pass resolutions which bind the board. The meeting should preferably be chaired by the chairperson of the board.
65. The fund's investment performance, the average costs per member and also, in respect of any fund which has independent board members, the fees and disbursements paid to or in respect of them, must be communicated to members at least once a year. Members should also be aware of who the service providers of the fund are.

#### Principle 11: Employer and Sponsor

66. A fund owes the employer and sponsor (where different from the employer) a duty of good faith. The relationship
67. , accordingly, between the board and an employer and sponsor should be one marked by the *independence* and cooperation of the board. The board is independent of the employer / employee relationship.
68. Where the fund is an umbrella fund, a preservation fund or a retirement annuity fund, the communication by the board with the sponsor of such a fund should be distinguished from the communication by the board with any subsidiary of the sponsor which provides services (such as administration, investment or custodian services) to the fund.
69. The board should establish a channel of communication with the employer and sponsor which should not be through employer appointed board members or sponsor employed board members (in respect of umbrella, preservation and retirement annuity funds), but which should be through the chairperson of the board.

#### Principle 12: Approved Service Providers

70. When selecting and appointing service providers the board should be alert to possible conflicts of interest in acceptance of advice where for instance a consultant is also an employee of the investment administrator.

These conflicts of interest must be pro-actively identified and disclosed. Acceptable, workable policies and directives to deal with such situations must be determined.

71. Boards are held *accountable* for any actions and decisions taken by their mandated sub-committees, agents, office bearers and duties outsourced to service providers. As such, the members of the board of the fund can be held jointly and severally liable for the actions of their mandated agents.
72. A fund should have clear written rules and control processes in place for the financial management and funding, investment management and the safeguarding of assets, delegation of duties, outsourcing of functions and selection process to be followed in the evaluation and appointment of service providers.
73. No service provider should derive any benefit from the fund assets and resources or its association with the fund other than those terms contractually agreed to in the signed service level agreements.
74. A policy should be established which sets out the frequency of reporting by the administrators and service providers to ensure that the fund is administered and managed properly and responsibly as delegated by the board.
75. There are various factors to consider during a formal selection and ongoing assessment process of service provider(s) including, but not limited to, the following:
  - 74.1 Skills and competencies of service provider;
  - 74.2 Track record in terms of fulfillment of mandates, breaches, case law etc.;
  - 74.3 Fee-structure of service provider and how it is linked to performance standards/ delivery on its mandates;
  - 74.4 The internal policies, practices and procedures of service providers e.g. policy on conflict of interest;
  - 74.5 Independent reference checks with past and present clients of the service providers;
  - 74.6 Benchmarking against set standards as set in the service level agreement(s), mandates etc.

<b>Principle 13: Regulatory Authorities/ Effective Supervision</b>
--

76. The board should ensure that the requirements of any regulatory authority; particularly those of the Registrar, are complied with and that any query from such regulatory authority is dealt with expeditiously and thoroughly. Any complaint by any regulatory authority, including any correspondence from the Pension Funds Adjudicator, Magistrate or court official should be dealt with by the board itself and treated seriously and where necessary, independent, expert legal advice should be sought by the board directly.

77. It is reiterated that the annexure(s) added to this circular should be regarded as providing guidelines for creating appropriate policies and as flexible documents which may be amended from time to time. Funds may adapt these documents to suite their unique needs and circumstances without detracting from the principles contained therein, because good governance requires the application of appropriate and cost effective policies and processes to cater for the specific needs of different funds.



**J.A. BOYD**  
**DEPUTY REGISTRAR OF RETIREMENT FUNDS**

Encl.

## REPORT 2(B) – EXHIBIT 35



INVESTMENT POLICY STATEMENT  
TRANSNET 2<sup>ND</sup> DEFINED BENEFIT FUND

30 SEPTEMBER 2010

Version: 3

Status: Approved

## INDEX

1.	INTRODUCTION.....	1
2.	RELEVANT BACKGROUND INFORMATION .....	2
3.	NATURE OF LIABILITIES.....	4
4.	MISSION OF THE FUND.....	5
5.	COMPOSITION / MANDATE OF THE INVESTMENT COMMITTEE .....	6
6.	INVESTMENT BELIEFS .....	8
7.	INVESTMENT OBJECTIVE AND OVERVIEW OF STRATEGY .....	9
8.	RISK BUDGETING AND CAPITAL MARKET ASSUMPTIONS.....	11
9.	LIABILITY MATCHING PORTFOLIO.....	14
10.	BONUS MATCHING PORTFOLIO .....	16
11.	UNMATCHED PORTFOLIO.....	18
12.	ACTIVE VERSUS PASSIVE MANAGEMENT.....	20
13.	SELECTION OF ASSET MANAGERS.....	21
14.	VOTING RIGHTS.....	22
15.	SCRIP LENDING.....	23
16.	CUSTODIANS AND REGISTRATION OF ASSETS.....	24
17.	COMPLIANCE AND MONITORING.....	25
18.	SOCIALLY RESPONSIBLE INVESTMENTS.....	26
19.	REVIEW OF IPS .....	27
20.	SIGNATURE.....	28

## 1. Introduction

### **Purpose of this document**

This document sets out the Investment Policy Statement (IPS) of the Transnet Second Defined Benefit Fund (the Fund). The IPS is drawn up in accordance with Principle 8 of Circular PF 130 of the Financial Services Board.

### **Preamble**

The Fund is a defined benefit arrangement. The Fund is closed to new entrants. The Fund's liability thus consists entirely of its obligation to pay pensioners, special pensioners and dependants in terms of the Fund Rules.

### **Legal**

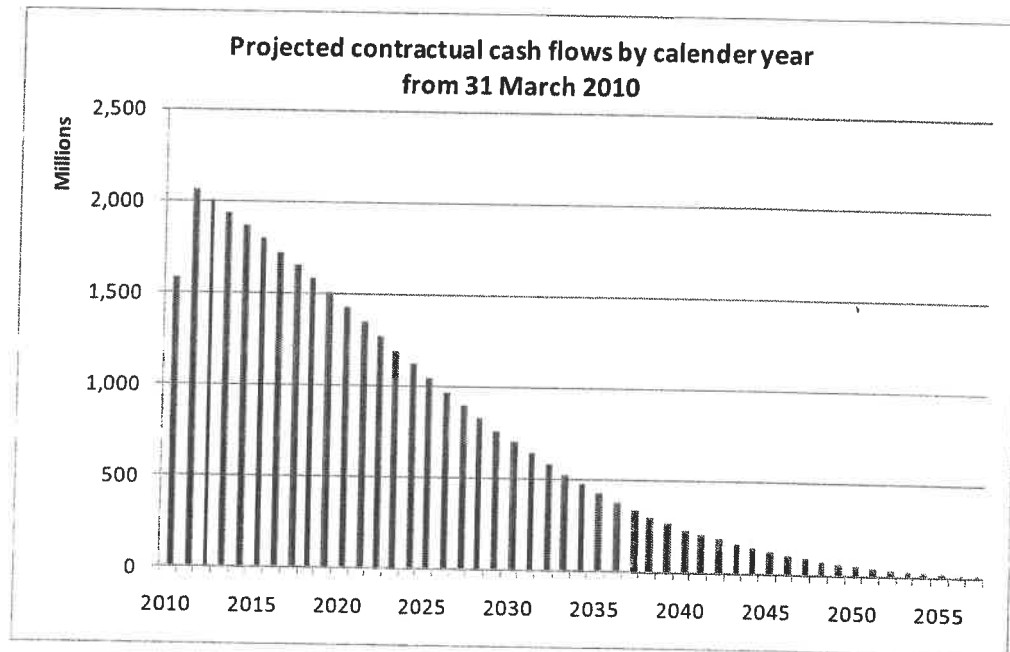
The Fund was created by the Transnet Pension Fund Act 1990 and does not fall under the Pension Fund Act 1956.

The investments are governed by the Rules of the Fund as amended in 2007. The Rules of the Fund give the Trustees wide leeway to implement an appropriate investment strategy.

## 2. Relevant background information

### Liquidity and cash flow requirements

The cash flow profile is reflected in the graph below:



The Fund receives no regular contributions and currently needs to make monthly pension payments of some R180 million.

The Fund is thus net cash flow negative and there is an ongoing need for liquidity to make the monthly pension payments.

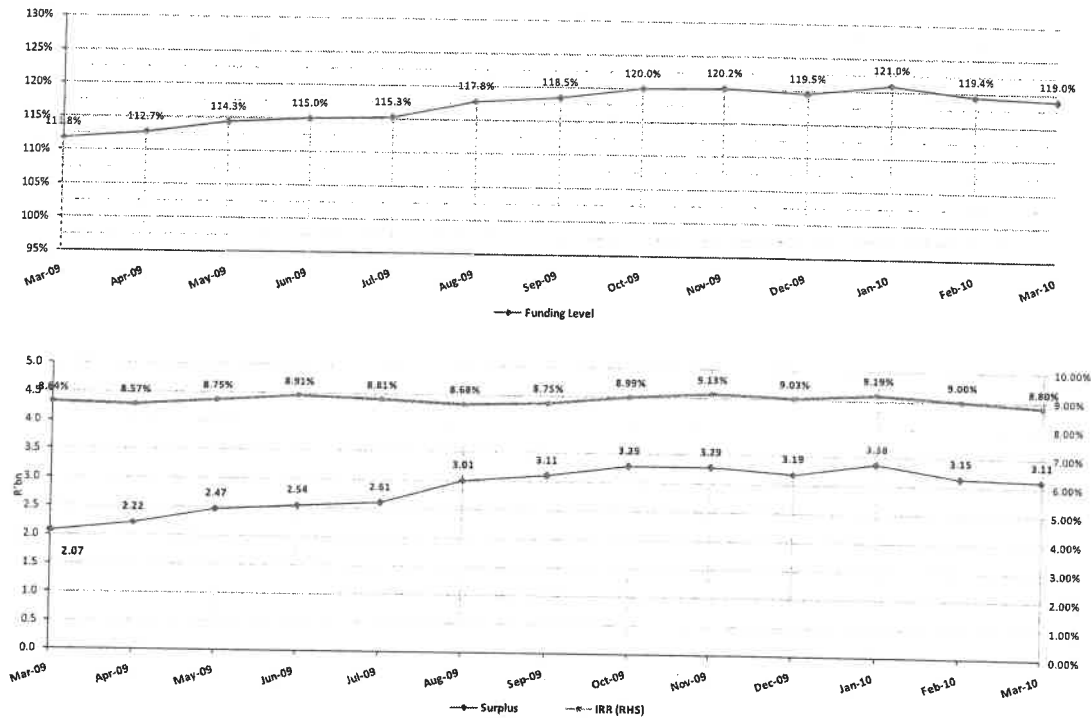
The Fund receives monthly payments from its Liability-Matching Portfolio equivalent to some R180m per month which meets its immediate liquidity requirements. (There is currently a shortfall of about 3m per month which needs to be drawn down from the Fund's investments.)

In addition, the annual bonuses have been secured through the Bonus Matching Portfolio, which will provide a level annual bonus payment of 8.5%, from 2010 to 2021.

**However, the Fund still has a long duration (especially as regards the liabilities covered by its Unmatched Portfolio) and so the Fund can still take on exposure to the illiquidity premium.**

### Financial position of the Fund

The investment consultant calculates the indicative financial position of the Fund on a monthly basis, based on the cash flows supplied by the Actuary. The change in the financial position of the Fund on this basis over the past year is shown below.



The results of the Actuarial Valuation of the Fund are set out below:

	31 March 2009 (R'million)	31 March 2010 (R'million)
Total net assets	19 614	19 662
Total liabilities	17 285	16 190
Solvency Reserve	634	637
<b>Surplus / (Deficit)</b>	<b>1 695</b>	<b>2 835</b>
<b>Funding Level</b>	<b>109.5%</b>	<b>116.8%</b>

The surplus of the Fund allows a degree of mismatch to exist between the contractual liabilities and the assets.

### 3. Nature of liabilities

#### **Assessment of financial soundness and actuarial assumptions**

The Fund is a defined benefit arrangement and thus the cost of the benefits needs to be assessed by an actuary.

The key budgeting assumptions that the actuary needs to make in the context of this Fund being a pensioner fund are future investment returns and pensioner longevity. As at the 31 March 2010 valuation the liabilities budgeted for future investment returns of 8.96% p.a. and mortality in line with that developed specifically for the Fund.

To the extent that the actual experience of the Fund differs from that budgeted for, a surplus or shortfall will arise.

The Fund must earn an investment return of at least **7% p.a.** (and the pensioner mortality must be in line with that budgeted for) to pay the current pensions (with 2% increases) for the remaining lifetime of the pensioners and their dependants (see contractual liability below). This is lower than the budgeted return since the Fund has a surplus that can be used to subsidise the return.

#### **Pension increase policy**

The pension increase policy of the Fund is to grant annual increases of 2%.

The Fund may also grant bonuses which aim to mitigate the impact of inflation on the purchasing power of pensioners. Bonuses are not guaranteed and depend on the ability of the Fund to afford such increases. However, on 4 June 2010 the Fund implemented a bonus-matching strategy, in terms of which level annual bonuses of 8.5% have been secured, from 31 October 2010 to 31 October 2021.

#### **Reasonable Benefit Expectations (RBE)**

The RBE of the in-service members is to receive the benefits set out in the Fund Rules. The RBE of pensioners is to receive increases in line with the Fund's pension increase policy.

#### **Contractual liability**

For pensioners the contractual liability is to pay the current pension, with 2% annual increases, over the remaining lifetime of the pensioners and their dependants.

#### **Employer's obligation**

The Employer's obligation to the Fund is to ensure that it has sufficient assets to meet the RBE of the membership. If, on the basis of affordability, the RBE is reduced the Employer's liability is also reduced, but the RBE cannot be reduced below the Fund's contractual liability.

#### 4. Mission of the Fund

##### **Mission**

The objective of the Fund is to meet the Reasonable Benefit Expectations of the membership. Currently this means primarily that the Fund will aim to deliver 2% increases over the long term with as much certainty as is possible. In addition, the Fund has the secondary objective to grant bonuses to offset the impact of inflation.

##### **Key result areas**

The performance of the Fund will be measured against:

- (a) the wherewithal of the Fund to provide the benefits in terms of the Rules (2% increases); and
- (b) the ability of the Fund to grant bonuses to offset the impact of inflation over the long term.

The above two conditions should be met without at any time requiring additional funding from the Employer.

## 5. Composition / mandate of the Investment Committee

### Composition

The Investment Committee will consist of six members.

The Committee shall consist of the following:

- (a) A chairperson appointed by the Board
- (b) The Principal Officer
- (c) One independent member nominated by the Board
- (d) Two Trustees

### Undertaking

The members of the Committee commit themselves to:

- (a) Proper preparation before the meetings;
- (b) Active participation in the meetings;
- (c) A continuous process of learning about investments;
- (d) A review of their own contribution to the Committee and the performance of the Committee as a whole.

### Terms of reference

The table below sets out the terms of reference of the Investment Committee:

Description of activity	Trustee Board decision	Investment Committee recommendation	Investment Committee decision
<b>Governance and related issues</b>			
Composition and membership of the Investment Committee	✓ (as per Rules)	X	X
Fund mission	✓	✓	X
How markets work – beliefs of the Investment Committee	X	X	✓
Registration of Fund assets and custodian	X	X	✓
Investment Manager fees	X	X	✓
Socially responsible investing	✓	✓	X
Exercise of voting rights	X	X	✓
Scrap lending	X	X	✓
Communication to members	✓	✓	X



Description of activity	Trustee Board decision	Investment Committee recommendation	Investment Committee decision
<b><u>Investment strategy</u></b>			
Investment objective and risk budget	✓ (must be approved by Actuary and Transnet)	✓	X
Asset classes included	✓ (must be approved by Actuary and Transnet)	✓	X
Strategic asset allocation	✓ (must be approved by Actuary and Transnet)	✓	X
Re-balancing rules (if applicable)	X	X	✓
Investment Manager configuration	X	X	✓
Benchmarks	X	X	✓
Investment Manager mandates	X	X	✓
<b><u>Manager selection</u></b>			
Manager selection and de-selection	X	X	✓
Investment consultant selection and de-selection	✓	✓	X
<b><u>Monitoring</u></b>			
Fund meeting its key performance indicators	✓	X	X
Portfolio performance and risk taken relative to objective	X	X	✓
Manager performance and risk taken	X	X	✓
Overall cost structure of the Fund	X	X	✓
Qualitative assessment of Investment Managers	X	X	✓
Performance of investment consultant	X	X	✓

## 6. Investment beliefs

The beliefs of the Investment Committee of the Fund are:

- (i) Investment markets are efficient most of the time, but periodically the price of an asset deviates significantly from its intrinsic value and the market becomes inefficient. This general market efficiency means that most of the time in order to earn a higher return the Fund needs to take on more risk.
- (ii) The market is generally subject to the force of mean reversion – this means that over the long term asset class returns will tend toward their average. The average return will be determined by fundamental factors (e.g. economic growth, demographics, available resources and skills) and occasional “jump shifts” in the average is possible (e.g. a move towards a structurally lower inflation rate).
- (iii) The Committee believes that the odds of earning superior investment returns are improved if the Fund adopts a long investment horizon for those portfolios which have such a horizon (i.e. the Unmatched Portfolio). The Committee accepts that maintaining a long term horizon in the face of possibly adverse outcomes in the short term is difficult, but a necessary condition for long term superior returns.
- (iv) Equities are likely to be the best performing asset class over the long term. In general a strategy of buying and holding equities should generate the highest return over the long term.
- (v) The Committee believes that the primary risk that the Fund needs to manage is to earn the required rate of return – the risk of underperforming the peer group is not regarded as being of importance.
- (vi) The Committee believes that inflation risk should be managed by holding a diversified portfolio, with a large proportion of the assets providing returns that are linked to inflation over the long term.
- (vii) Whilst the Committee accepts that quantitative risk models are a useful tool in managing risk, a common sense approach to risk is better (e.g. the Fund should not invest in something the Committee does not understand fully).
- (viii) The belief that investment markets are efficient most of the time, when coupled with the belief that investment manager skill is rare (because the competition is tough) results in the conclusion that most managers will not outperform the benchmark net of fees.
- (ix) If the Fund is to appoint active managers the better investment strategy is to select shares that have strong “value” characteristics (i.e. low price / earnings ratio, high dividend yield, low price to book ratio) or shares of great companies that have done well for investors over a long time.
- (x) The Committee believes that not only is investment manager skill rare, it comes in waves rather than in a straight line. This means that even skilful investment managers will underperform the benchmark, possibly by a substantial margin, for measurement periods that can be as long as 3 to 5 years.
- (xi) Importantly the Committee believes that it has the courage and patience to stay with an underperforming manager for a lengthy period, provided that it is satisfied that there are no adverse qualitative aspects and the manager can deal with and rebut robust questioning on his/her strategy.
- (xii) The Committee believes that it, together with its investment advisors, can select skilful managers, although it accepts that manager skill is rare.

A key condition for many of the above beliefs is that the Committee has the necessary time, expertise and organisational capacity to implement what is a more difficult strategy to implement successfully. The Committee believes it has such capacity as well as the ability to consider innovations and as a consequence possibly become early adopters of new strategies.

## 7. Investment objective and overview of strategy

The Investment Committee aims to achieve an efficient trade-off between risk and return, taking due account of the time, expertise and organisational structure the Investment Committee can bring to bear on the strategy.

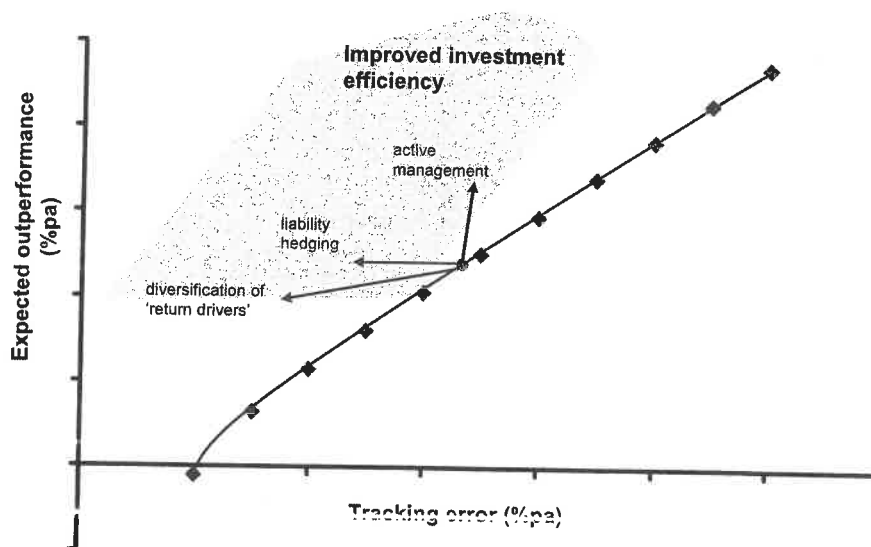
### Investment objective

The Fund is currently in surplus. If the surplus is used to supplement the investment return the minimum required return from the assets reduces to 7% p.a. net of all costs over the remaining life of its pensioners.

If the Fund aims to provide an income to its pensioners that increases at 70% of expected inflation each year (currently expected to be 6%) then it needs to earn at least 10.6% p.a. net of all costs over the remaining life of its pensioners (calculated as at 30 June 2010 and assuming an annual bonus rate of 7%, besides the matched bonuses).

### Key pillars of the investment strategy

The three key pillars of the investment strategy are liability hedging (also known as liability driven investment abbreviated to LDI), asset class diversification and manager skill (active management). The risk and return payoff of these three pillars is shown in the chart below.



### Liability hedging

The Fund would best be able to meet its objective and key results areas if it invested its assets in bonds that were structured to meeting the quantum and timing of the Fund's liabilities. This would mean that pensioners would receive pension increases of 2% each year.

The instruments would need to be backed by institutions that have a credit rating at least equivalent to that of the South African government or else the investments would need to be properly collateralised.

**Consideration of full liability hedging**

Liability hedging in the form described above has not been implemented by the Fund at this time as very long term assets of this nature are expensively priced.

In addition full liability hedging would expose the Fund to unanticipated inflation over the long term which could impact on the purchasing power of the pensioners.

As indicated the required return for the Fund to be able to afford 70% on expected inflation is 10.6% p.a. The return on a nominal liability hedging portfolio is currently of the order of 9% p.a. This return is fixed in relation to inflation.

Given this constraint the Fund will only invest part of its assets in liability hedging strategies. The balance of the assets will be invested in a diversified portfolio of assets that is expected to generate a higher return over the long term (e.g. equities, property) – the so-called Unmatched Portfolio. The Investment Committee will look to the Investment Managers of the Portfolio to supplement the return over time by skill.

**Future strategy**

The intention is that over time the Unmatched Portfolio will be used to extend the liability hedging.

## 8. Risk budgeting and capital market assumptions

The Fund has adopted a "risk budgeting" approach. A risk budgeting approach is where the Fund manages its assets after due consideration of its exposure to risk. A key tenet of a risk budgeting approach is that risk should be managed at an acceptable level and that risk exposures should be optimised i.e. ideally rewarded forms of risk should be retained with unrewarded risk avoided.

A risk budgeting approach entails:

- (a) Identification of risk;
- (b) Quantification of risk;
- (c) Risk management strategy (policy guidelines on types and exposures allowed, mitigation strategies and monitoring of risk).

The Fund will review the risk budget on an ongoing basis but at least annually. The factors that the Fund will take account of when determining the risk budget include:

- (a) The financial position of the Fund;
- (b) Market conditions (the risk and pricing of assets);
- (c) Changes in regulatory or legal environment;
- (d) Changes in tax applicable to the Fund;
- (e) The financial position of Transnet;
- (f) Any input from Transnet.

The primary risk which the Fund is exposed to is a failure to meet its liabilities as they fall due. Given that the Fund's liabilities are largely known and fixed in nature the Fund has managed this risk through investment of a portion of the Fund's available asset pool in a "Liability Matching Portfolio" (see section 9).

A secondary risk that the Fund faces is the inability to provide a pension income which maintains the purchasing power of its pensioners. The Fund has managed this risk by investing a portion of the Fund's assets in a "Bonus Matching Portfolio" (see section 10) and an "Unmatched Portfolio" (see section 12).

The Fund has specified an upper limit for its risk budget as follows:

- (a) Minimum degree of matching of contractual liabilities: **75%** of contractual liabilities, to be matched at all times;
- (b) Maximum gross exposure to equities in Unmatched Portfolio: **74%** (maximum of **53% unhedged**);
- (c) Maximum exposure to offshore in Unmatched Portfolio: **25%** (an overall maximum of **15%** at Fund level is specified in the Fund Rules).

The asset class assumptions will form the basis on which the Fund will seek to position its risk budget over the medium to longer term i.e. the Fund will tend to utilize its full risk budget when current pricing and risk are attractive and also to skew its risk budget towards those asset classes where there is a better risk return trade-off.

### Asset classes and expected returns

Investment performance is most likely the primary objective of any member. This performance must, however, be weighed against the underlying risk associated with the performance as well as the time horizon associated with the performance. The Trustees need to make decisions on how the assets need to be allocated among the various asset classes.

The table below sets out the asset class assumptions – these assumptions will be reviewed by the Investment Committee:

Asset class	Current pricing	Long term pricing	Long term risk
SA inflation	5.50%	6.00%	
SA listed equities	10.80%	13.00%	22.50%
SA private equity	12.80%	14.00%	23.00%
SA property	9.50 %	11.00%	20.60%
SA cash	7.00%	8.50%	1.00%
SA index linked bonds	7.00%	9.00%	6.00%
SA government bonds	7.00%	9.50%	8.00%
SA nominal bonds – investment grade	7.80%	11.00%	10.20%
International equities (ZAR)	9.00%	12.00%	16.60%
International bonds (ZAR)	6.00%	10.00%	12.20%

The key assumptions underlying the above table are:

- (i) The market consensus view is that inflation will average near the upper end of the 3% to 6% band over the next 10 years, suggesting an inflation risk premium in the 0.25% to 0.75% p.a. range. On this basis a reasonable estimate of the market's expectation of future inflation is probably about 5.5% p.a.
- (ii) Over long measurement periods the equity risk premium (ERP – the excess return of SA equities to nominal bonds) has been some 4.00% to 5.00% p.a. However, the ERP depends critically on the pricing of the market – if the market is expensive the prospective ERP is lower and *vice versa*.
- (iii) There is currently no term premium for holding index-linked bonds. This is on the basis that there is a demand / supply imbalance of index-linked bonds in SA, with demand exceeding supply. This implies that our current expected return for this asset class is lower, being a real return of 1.50% (in line with cash).
- (iv) The term premium for SA bonds (mainly compensation for taking on inflation and default risk) is 0.80% p.a.
- (v) We have assumed a sovereign risk premium of 1.00% p.a. (the excess return on SA assets compared to the developed world). This is priced off the market and reflects the premium associated with a very well-run developing country economy.
- (vi) In terms of global equities, we would assume an equity risk premium of 3.00% p.a. at this time, which is below our assumed long term average. Our concern is that economic growth in the developed world may be muted and there is the risk of a "double dip" recession.

**Summary**

In summary these assumptions assume a good long term economic outcome for SA and a reserve bank that is independent of the government having an inflation target of 3% to 6% p.a.

Currently we regard SA credit as the preferred asset class. Whilst there is some value left in global investment grade credit, the opportunity is coming to an end. We continue to favour global equities to local equities, mainly because of the currency hedge, although the local market may continue to be under-pinned by strong institutional flows to emerging markets.

**Overall asset class pricing would suggest that the Fund at least maintains its risk budget. This suggests that the Fund should not pursue further matching at this point in time.**

## 9. Liability Matching Portfolio

### How much liability hedging

The Fund resolved that a minimum of 75% of liabilities be matched at all times. In 2007 the Fund matched 85% of the contractual liability at that point in time. Currently some 82% of liabilities are matched.

Further matching will be required in early 2012.

### Nature of the liability hedging

Pension payments from January 2008 to July 2021 (inclusive) allowing for 2% increases were secured by investing in cash flow matching transactions. Importantly the payments do not vary depending on the level of inflation.

### How the liability hedging is implemented

The Fund's liability hedging was implemented using a combination of so-called structured deposits and swaps.

The way in which a structured deposit works is that the Fund places on deposit with the counterparty cash which earns a higher return (the so-called funding spread). Each month the cash is drawn down to make the pension payments specified in the schedule. The counterparty undertakes that the cash will be sufficient to make all the pension payments specified in the schedule. Under a swap arrangement the Fund retains a portfolio of bonds but swaps the cash flows from the bonds for the required schedule of payments.

The counterparty will be a high quality financial services provider (abbreviated to FSP). It is required that unless the FSP has a credit rating at least equivalent to that of the South African government, the credit risk will be reduced to a minimum via a collateral arrangement.

The selected counterparties, allocation and the nature of each investment are summarised below:

- (i) The assets are structured as deposits and swap agreements with prominent banks to deliver specified cash payments on specified dates. The counterparty banks were chosen by requesting prominent banks for proposals and following a rigorous three stage selection process. The successful banks were selected on aspects like competitive pricing, credit risk, diversification of risk and company profile.
- (ii) The deposit and swap assets are underwritten by ABSA Bank, Standard Bank, First Rand Bank acting through its Rand Merchant Bank division and JP Morgan Chase Bank (Johannesburg Branch). The ABSA Bank deposit is secured by a guarantee from Barclays Bank PLC, whilst the other assets are secured through collateral pledge agreements.
- (iii) The counterparty banks had a minimum Fitch International Credit Rating of A- at inception and a Rating of BBB+ as at 21 April 2009. The collateral and contractual conditions will be monitored regularly by Alexander Forbes, the appointed cash flow monitoring service provider.
- (iv) The deposit and swap contracts furthermore contain various early termination conditions to protect the Fund's assets from potential default events.
- (v) The existing contracts with the four banks make provision for further investments on the same terms, but with pricing determined by ruling market conditions. This will allow the Fund to extend its investment in the Liability Matching Portfolio to ensure that a minimum percentage of the Fund's liabilities are always matched.



(vi) As at 31 March 2010 the asset allocation was:

JP Morgan:	30%
ABSA:	40%
Standard Bank:	20%
Rand Merchant Bank:	10%

#### **Key risk areas**

Default risk refers to the failure of the counterparty to meet its contractual obligations.

Default risk is managed using:

- a) Diversification
- b) High quality counterparties
- c) Monitoring of credit ratings
- d) Collateral pledged
- e) Guarantee from government equivalent entity
- f) Termination provisions

Operational risk relates to a failure to administer the contracts correctly.

Operational risk is managed using:

- a) Monitoring of cash flows by independent party
- b) Liquidity held in the Fund to cover a monthly payment

## 10. Bonus Matching Portfolio

### Level of bonus to be matched

The Fund elected to utilise a portion of the Fund's surplus to protect part of the existing level of bonus paid to pensioners. Various alternative levels of bonus and matching terms were considered and the Fund decided that a level annual bonus of 8.5% would be the most suitable.

### Nature of the bonus matching portfolio

Bonus payments payable annually on 31 October from 2010 to 2021 (inclusive) were secured by investing in a cash flow matching transaction. The payments are fixed and do not depend on the level of inflation.

### How the bonus matching portfolio is implemented

The bonus matching portfolio was implemented on 4 June 2010 using a structured deposit.

In exchange for the deposit paid by the Fund, the counterparty (Standard Bank) has undertaken to provide the Fund with a series of predetermined fixed annual cash flows, which have been calculated as an annual pension bonus of 8.5%.

The selection of a counterparty and the nature of the investment are summarised below:

- (i) The portfolio is structured as a deposit agreement with a prominent bank to deliver specified cash payments on specified dates. The counterparty bank was chosen by following a selection process whereby prominent banks were requested to provide proposals for the arrangement in terms of structure and pricing. The counterparty was then selected based on competitive pricing and favourable terms and conditions of the agreement. The Fund's exposure to banks through the Liability Matching Portfolio was also taken into account, to ensure that the Fund's counterparty exposure is appropriately diversified.
- (ii) The deposit arrangement was entered into with Standard Bank and secured through a collateral pledge agreement. Of the entities considered, Standard Bank offered the most favourable combination of pricing and terms.
- (iii) Standard Bank had a Fitch International Credit Rating of BBB+ and a National Credit Rating of AA at inception of the arrangement and as at 12 August 2010.
- (iv) The collateral and contractual conditions will be monitored regularly by Fifth Quadrant, in capacity as the appointed monitoring service provider.
- (v) The deposit agreement contains various early termination conditions to protect the Fund's assets from potential default events.
- (vi) The agreement with Standard Bank makes provision for further investments on the same terms, but with pricing determined by ruling market conditions. This will allow the Fund to extend its investment in the Bonus Matching Portfolio.

**Key risk areas**

Default risk refers to the failure of the counterparty to meet its contractual obligations.

Default risk is managed using:

- a) Diversification – taking the Liability Matching Portfolio into account
- b) High quality counterparties
- c) Monitoring of credit ratings
- d) Collateral pledged
- e) Termination provisions

Operational risk relates to a failure to administer the contracts correctly.

Operational risk is managed using:

- a) Monitoring of cash flows by independent party
- b) Liquidity held in the Fund to cover an expected payment

## 11. Unmatched Portfolio

### Investment objective

The Fund is currently in surplus. If the surplus is used to supplement the investment return the minimum required return from the assets reduces to 7.0% p.a. net of all costs over the remaining life of its pensioners. Since the Liability Matching Portfolio generates a return of approximately 9.2% and the Bonus Matching Portfolio a return of 9.5%, the minimum required return from the Unmatched Portfolio (given the current extent of matching) is 1.0%.

If the Fund aims to provide an income to its pensioners that increases at 70% of expected inflation each year then it needs to earn a return of at least 10.6% p.a. net of all costs over the remaining life of its pensioners. Since the Liability Matching Portfolio generates a return of 9.2% and the Bonus Matching Portfolio a return of 9.5%, the minimum required return from the Unmatched Portfolio (given the current extent of matching) is 14.5% i.e. some 8.5% p.a. above long term expected inflation.

### Specification of objectives and benchmarks

The table below sets out the benchmarks for the various portfolios:

Portfolio	Fund objectives	Performance comparison benchmark
Long term portfolios	CPI + 7% p.a. over 5+ years	Peer group median
Short term portfolios (except cash portfolio)	CPI + 5% p.a. over 3+ years	Investec: Stefi+1.5% p.a. net Prescient: CPI+5% p.a.
Overall objective	Minimum return of inflation Target: CPI + 6%+ p.a. over 3 to 5 years	

### Allocation of Unmatched Portfolio

The following table represents the range of every asset manager's allowable exposure within the Unmatched Portfolio.

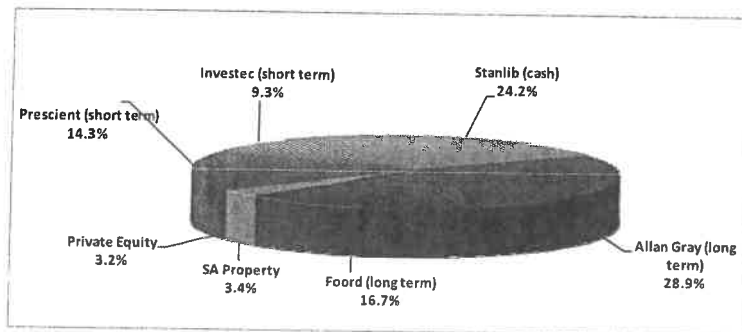
Investment approach	Current manager	Target	Allowable range (as % of Unmatched Portfolio) <sup>1</sup>
<b>Long term portfolios</b>		66%	Maximum 71%
Flexible asset allocation, Regulation 28 compliant <sup>2</sup>	Allan Gray	44%	Maximum 49%
Flexible asset allocation, Regulation 28 compliant <sup>2</sup>	Foord	22%	Maximum 27%
Private equity	Brait, Ethos, Old Mutual, etc	0%	Illiquid assets – not tradeable; no further investment, currently < 5%
Direct property	East Rand Mall	0%	Illiquid assets – not tradeable; no further investment, currently < 5%
<b>Short term portfolios</b>		34%	No maximum
Absolute return - equities hedged using derivatives, Regulation 28 compliant	Prescient	22%	Maximum 27%
Unlisted non-investment grade debt	Investec	12% (floating weight)	Illiquid assets – not tradeable; no further investment
SA money market	Stanlib	R200m <sup>3</sup>	No Maximum

1 5% tolerance vs target

2 Managers have exemption to hold up to 25% offshore excluding inward listed shares.

3 Higher allocation has been held to fund for bonus payments in 2009/2010.

### Actual asset allocation as at 31 March 2010



The over allocation to the Stanlib account is due to the investment of R1.2 billion in Stanlib, which was disinvested from the long term portfolio in December 2009, to fund the bonus matching strategy. The deviation from the Fund's investment strategy was approved by the Investment Committee and by Transnet. On 3 June 2010 the bonus matching strategy was finalised and the deposit amount was disinvested from the Stanlib account, reducing the allocation.

### Mandate restrictions

The Fund has specified detailed mandates with each of the specialist managers that it has appointed.

The mandates given to the Investment Managers that manage portfolios on behalf of the Fund include restrictions on:

- The maximum invested in equities (if applicable)
- Maximum offshore
- Maximum in any single company/counterparty
- Limits on credit quality
- Leverage
- Use of derivatives
- Investment in unlisted securities

### Key risk areas

Market risk refers to adverse changes in the level of equity markets. Market risk is managed using:

- a) Limits on exposure to markets
- b) Diversification amongst asset classes
- c) Hedging a portion of market exposure
- d) Active management

Active risk refers to the failure of a manager to add value in relation to its costs. Active risk is managed using:

- a) Expert advice
- b) Extensive upfront due diligence
- c) Diversification amongst managers
- d) High quality managers
- e) Monitoring of managers

Credit risk refers to the capital loss due to default, impairment or adverse pricing movements in relation to investments in interest-bearing investments. Credit risk is managed using:

- a) Diversification
- b) Credit quality requirements
- c) Active management

## 12. Active versus passive management

### Equity

The Investment Committee believes that the market has inefficiencies from time to time and that value managers and investment managers that focus on buying high quality companies that have delivered to shareholders over time are most likely to outperform the index over the long term. Consistent with this belief system, the Fund follows an active approach to SA equity management with a strong bias to value investing.

The Investment Committee understands that the “value” approach relies on fundamental factors and “mean reversion”. At times sentiment can dominate market prices and mean reversion may not come through for a lengthy period. During such times value managers can underperform the benchmark substantially. To deliver on this approach the investment manager must have a long term (5+ years) investment horizon, in-depth research and an organisational structure that is comfortable for the manager to underperform significantly over measurement periods that may be as long as 5 years.

Although the international equity markets are more efficient than the SA market, evidence still suggests that high quality value managers should outperform the index over the long term.

The SA equity market is limited and it would be difficult to construct a diversified portfolio consisting of only high quality companies that have delivered very good returns to shareholders over the long term. It is expected that value managers will include such companies in their portfolios from time to time.

### Bonds

The Investment Committee also believes that the SA and international bond markets are inefficient. Here the inefficiency arises from market participants with different objectives, most notably central bank monetary policy. The Fund therefore follows an active investment approach to bonds.

### 13. Selection of asset managers

The process of awarding a mandate to an investment manager is a stringent and disciplined one. The process may take a few months to complete. The manager selection is based on both qualitative and quantitative assessments of the managers, both of which are discussed below.

#### Qualitative Analysis

The process is biased by the qualitative research with emphasis placed on:

- Organisation
- People
- Investment process

#### Organisation

The Fund looks to build long term partnerships with asset managers, and to this end the Fund requires the security offered by managers who have the backing of a strong and credible holding company with a stable shareholding structure.

The assets under management and financial standing (i.e. profitability, strength of balance sheet) play an important role in the analysis of the manager.

#### People

Asset management is a people business. Intellectual capital represents the biggest asset of any investment manager. The Fund requires managers with committed, experienced and respected investment professionals. Team dynamics and staff turnover are vital aspects.

#### Investment process

The Fund looks for a manager with a clearly defined and understandable investment philosophy and process. This investment philosophy and process must fit in well with the Fund's portfolio construction philosophy and must also be stable for at least a 5 year period (one market cycle). Analysis of the investment process includes the philosophy, style, portfolio construction, research and valuation methodologies of the manager.

#### Quantitative Analysis

The quantitative analysis is conducted to confirm the Fund's qualitative understanding of the manager. Included in the analysis are relative performance analysis, style analysis, and performance and risk attribution.

Black economic empowerment will also be considered as a factor when selecting managers. The rationale for the inclusion relates to the long term sustainability of the business.

**Ultimately the key consideration is trying to understand what the "edge" of the manager is and whether this is sustainable.**

## 14. Voting rights

The Committee recognises that proper governance, capital allocation decisions and the alignment of interest between shareholders and management is essential if the Company in which the Fund is invested is to create value for shareholders over the long term. It therefore expects the entrusted Investment Managers to take all actions related to the governance, allocation of capital and alignment of interest in order to optimise the expected return for shareholders such as the Fund.

The Committee accepts that where the Investment Manager only holds a small percentage in a Company whose shares are highly tradeable, the manager always has the option to sell out if it perceives governance, capital allocation or alignment issues. However in cases where there is limited liquidity in the selected company's share, the Committee expects a high degree of oversight from the Investment Manager.

The Fund has specified its voting guidelines to its managers. Where the manager does not vote in accordance with the guideline this should be reported to the Fund and the reasons explained. The managers are also required to send a summary of their voting actions on a quarterly basis.

The investment manager is required to inform the Fund when it appoints someone to the board of a company in which it invests.



## 15. Scrip lending

Scrip lending is not currently permitted by any service provider for the Fund.

At this time the Committee has decided that the Fund should not engage in scrip lending activities for the following reasons:

- (a) It is possible for some of the Fund's SA equity Investment Managers to hold a significant percentage of the issued capital of a company for its entire client base. If this scrip is lent and then needs to be re-called (because the Investment Manager wants to sell down their holding) it is possible that the parties to whom the scrip is lent (mainly hedge funds) could use this inference to trade against the Fund. It is accepted that this risk can be reduced by specifying that certain scrip cannot be lent out.
- (b) There is evidence that from time to time transactions need to be delayed by a few days as the scrip is re-called; this may hinder the trading activity of the manager.
- (c) Scrip lending is not risk free (if JP Morgan had not bought out Bear Stearns in the USA some lenders would have suffered significant scrip losses) and the expected fees generated are relatively low in relation to the risk and administrative burden imposed by such a lending program.

## 16. Custodians and registration of assets

As a general guideline the Committee would require the assets to be registered with the Fund named as the beneficial owner and holding all the associated voting rights. The Fund has appointed a master custodian (Nedbank) for the safekeeping of the Fund's assets.

In some circumstances it may not be possible or optimal for the assets to be registered with the Fund as the beneficial owner – such situations include:

- (a) Where the amount that the Fund has to invest is too small and the selected Investment Manager is only prepared to offer a pooled arrangement (applies mainly to offshore investments);
- (b) Where there are benefits in using the bulk buying power of a much larger group (e.g. money market investments);
- (c) Where the assets only come in large units (e.g. direct property or private equity) and to achieve sufficient diversification the Fund needs to invest in a pooled arrangement.

Any investment in a pooled vehicle is subject to the Committee being satisfied that:

- (a) The organisation in whose pooled fund the Fund's assets are invested is one of high reputation;
- (b) The assets are ringfenced for the exclusive benefit of the investors in the pool and there is no risk that losses elsewhere can impact on the returns of the pool;
- (c) Independent reporting, that the pool holds the said assets and the market value thereof is fairly reflected;
- (d) There are sufficient protections in place to protect investors from large inflows and outflows – specifically there is a requirement that the future investment returns of the remaining investors should not be adversely affected by large scale redemptions.

Currently the Fund invests in the following collective investment schemes (listed property holdings are excluded):

- (a) Allan Gray and Foord offshore portfolios
- (b) Stanlib money-market
- (c) Private equity holdings
- (d) Investec unlisted credit debenture
- (e) Foord Compass Debentures
- (f) Sanlam property policy (East Rand Mall)

## 17. Compliance and monitoring

On an annual basis the auditors assess the compliance of the Fund's assets with the Rules and the investment policy as set out in this statement.

The credit ratings and cash flow matching transactions in the Liability Matching Portfolio and Bonus Matching Portfolio are monitored daily by an independent party and Fifth Quadrant respectively, as appointed by the Fund. The parties are required to notify the Investment Committee and the investment consultant of any material issues in this regard.

Guidelines relating to the structure of the Unmatched Portfolio, the asset allocation of each manager's portfolio, the level of matching and the overall level of offshore exposure are monitored monthly by the investment consultant. The Fund's investment consultant will report monthly on compliance and performance to the Investment Committee.

The Investment Committee meets monthly with the investment consultant to monitor the investments of the Fund. On a quarterly basis the Investment Committee provides feedback to the Board of Trustees.

The Investment Committee will meet formally with the investment managers at least once per annum.

## 18. Socially responsible investments

The Committee recognises that a key risk to long term investing is the underestimation of factors that ultimately adversely affect the intrinsic value of a company (e.g. a change in environmental legislation or even just the stricter application of existing laws). Consistent with this, the Committee will challenge its active managers, the economic sustainability of their investment decisions and the extent to which they have allowed for low probability but high adverse impact events in the assessment of intrinsic value.

Socially Responsible Investing (SRI) can be considered from two aspects, namely:

- (a) *Imposition of constraints (negative screening)* – in this case the Investment Manager is precluded from investing in businesses that are considered to have a negative impact on society. Businesses that are typically included under this heading are tobacco, alcohol, gambling and defence. This approach may also apply on a political level (e.g. not investing in countries that have a poor human rights record).

Whilst the Committee will challenge its Investment Managers on sustainability issues, the Fund will allow its managers to invest in any business that is legal and will not impose ethical judgements precluding certain investments.

- (b) *Positive screening* – here the aim is to allocate capital to those businesses which are assumed to hold positive benefits for society. In the South African context the focus is largely on positive SRI investing. The Fund will invest in such opportunities, subject to the requirement that the expected return from the investment must be at least fair compared to the associated risk taking into account diversification benefits. (The mission of the Fund is to provide superior risk adjusted returns over the long term and so any investment must meet this criterion.)

The Fund will not classify such investments as SRI, but rather relate the investment to its underlying nature. For example, if the investment is in infrastructure, it will be called “Infrastructure” – in this way it is clear what the nature of the investment is.

The Fund has adopted the United Nation’s Principals of responsible investment provided this does not conflict with the investment performance of the Fund.

## 19. Review of IPS

In the normal course of events the Investment Committee will review the investment strategy annually. The investment strategy must be reviewed within 3 months of any of the following events occurring:

- (a) A change in exchange control regulations
- (b) A change in the tax basis affecting the investment strategy of the Fund
- (c) A change in Pension Funds Act or the Long Term Insurance Act that affects investments
- (d) A change in the economic policy regarding inflation targeting or the independence of the South African Reserve Bank
- (e) An indication that the Fund will have significant cash flow requirements (particularly outflows)
- (f) Material change in market conditions (asset class pricing and risk)
- (g) Material change in economic conditions (growth)

**20. Signature**

This statement has been formally approved by the Trustees and is the policy that governs the investment policy of the Fund.

.....  
Chairperson of trustees

.....  
Date

## REPORT 2(B) – EXHIBIT 36

**ENSafrica**

150 west street  
sandown sandton johannesburg 2196  
p o box 783347 sandton south africa 2146  
docex 152 randburg  
tel +2711 269 7600 fax +2711 269 7899  
info@ensafrica.com ensafrica.com

**PORTFOLIO MANAGEMENT AGREEMENT**

entered into between

**TRANSNET SECOND DEFINED BENEFIT FUND**

and

**REGIMENTS FUND MANAGERS PROPRIETARY LIMITED**

(Registration No. 2005/014462/07)

VP  
AEN



## TABLE OF CONTENTS

Clause number and description	Page
1. INTERPRETATION AND PRELIMINARY .....	4
2. RECORDAL .....	10
3. APPOINTMENT .....	11
4. DURATION .....	11
5. TRANSITION MANAGEMENT .....	13
6. AUTHORITY .....	14
7. POWERS AND RESPONSIBILITIES OF REGIMENTS .....	14
8. DUTIES OF THE CLIENT .....	19
9. DESIGNATED ACCOUNT & REGISTRATION OF INVESTMENTS .....	20
10. MANAGEMENT FEES .....	21
11. OUTPERFORMANCE FEE .....	21
12. PROFESSIONAL ADVICE .....	25
13. EXECUTION COSTS .....	25
14. INVOICING, PAYMENT AND VAT .....	25
15. ACCOUNTING AND REPORTING REQUIREMENTS .....	27
16. CONFLICTS OF INTEREST .....	27
17. REPRESENTATIONS AND WARRANTIES .....	28
18. LIMITATION OF LIABILITY .....	30
19. INDEMNITY AND INSURANCE .....	31
20. CONFIDENTIALITY AND PUBLICITY .....	32
21. EXPERT DETERMINATION .....	34
22. BREACH .....	35
23. ARBITRATION .....	37
24. FORCE MAJEURE .....	38
25. INTEREST ON OVERDUE AMOUNTS .....	39
26. DOMICILIUM CITANDI ET EXECUTANDI .....	39
27. GOOD FAITH AND CO-OPERATION .....	40
28. GOVERNING LAW .....	41

VP  
RST

29.	WHOLE AGREEMENT, NO AMENDMENT .....	41
30.	LEGAL COSTS .....	41
31.	STIPULATIO ALTERI .....	42
32.	SEVERABILITY .....	42
33.	CESSION AND ASSIGNMENT .....	42
34.	EXECUTION IN COUNTERPARTS .....	42

Annexure A	- Liability Schedule .....	1
Annexure B	- Effective Date Portfolio Assets .....	1
Annexure C	- Investment and Risk Management Framework .....	1
Annexure D	- Power of Attorney .....	1
Annexure E	- Risk Disclosure .....	1
Annexure F	- Reporting .....	1
Annexure G	- Statement M .....	1
Annexure H	- SARB Reporting Items .....	1

IP  
02/1

**WHEREBY IT IS AGREED AS FOLLOWS:****1. INTERPRETATION AND PRELIMINARY**

The headings of the clauses in this Agreement are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof. Unless a contrary intention clearly appears -

1.1. words importing -

1.1.1. any one gender include the other two genders;

1.1.2. the singular include the plural and *vice versa*; and

1.1.3. natural persons include created entities (corporate or unincorporate) and *vice versa*;

1.2. the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely -

1.2.1. "**Accrual Rate**" means in relation to each Quarter, the JIBAR on the Reset Date, adjusted, to the extent required, in terms of clause 11.3;

1.2.2. "**Agreement**" means this portfolio management agreement, as well as all annexures hereto, as may be amended from time to time;

1.2.3. "**Applicable Law**" means the Pension Funds Act, FAIS, FICA, the Financial Institutions (Protection of Funds) Act, No. 28 of 2001, the FMA, and all other statutory provisions, licences, financial services provider codes of conduct promulgated under FAIS and authorisations regulating the affairs of Regiments and the Client as contemplated in this Agreement, to the extent applicable;

1.2.4. "**Associates**" includes, but is not limited to shareholders, officers, directors, employees, nominees, representatives and agents from time to time, in their capacity as such, as well as subsidiaries, branches, holding companies and subsidiaries thereof, related parties or persons and any other persons or entities directly or indirectly associated with the above;

1.2.5. "**Average Swap Yield Curve**" means the average of the midpoints between the buy and sell yields on the "swap yield curve" of each of Absa Bank Limited, Rand Merchant Bank (a division FirstRand Bank Limited), The Standard Bank of South Africa Limited and Nedbank Limited, as close as possible to 17h00 on any relevant date on which a valuation of the Fund is conducted as required in terms of this Agreement, as these figures have been updated on Reuters or

VP  
R22

Bloomberg, whichever of these two news services Regiments may elect to use in its business as its primary source of news;

- 1.2.6. **"Banks Act"** means the Banks Act, No. 94 of 1990;
- 1.2.7. **"Business Days"** means any day other than a Saturday, Sunday or South African public holiday;
- 1.2.8. **"Client"** means Transnet Second Defined Benefit Fund (registration number 12/8/28846), a retirement fund established in terms of the Transnet Pension Fund Act, 62 of 1990;
- 1.2.9. **"Custodian"** means the custodian as contemplated in clause 9.2;
- 1.2.10. **"Designated Account"** means the separately designated bank account opened and operated by the Client for the purposes of holding the cash forming part of the Portfolio Assets whilst it is not invested in a term investment, as contemplated in clause 9.3;
- 1.2.11. **"Effective Date"** means 1 October 2015 (or such later date as the Parties may agree to in writing);
- 1.2.12. **"Execution Costs"** means the actual cost of executing a trade and shall include –
  - 1.2.12.1. the difference between the actual trade price and the mid-market price of the instrument at the time of the trade;
  - 1.2.12.2. the brokerage fees paid pursuant to the trade; and
  - 1.2.12.3. booking fees paid to any agent or exchange;
- 1.2.13. **"FAIS"** means the Financial Advisory and Intermediary Services Act, No. 37 of 2002;
- 1.2.14. **"FICA"** means the Financial Intelligence Centre Act, No. 38 of 2001;
- 1.2.15. **"FMA"** means the Financial Markets Act, No. 19 of 2012;
- 1.2.16. **"Fund Payment"** means any pension payment made or to be made from the Portfolio Assets by the Client to its members in respect of the liabilities owed to them, which payments are typically made on a monthly basis and are intended to accord with the Liability Schedule;

VP  
A201

- 1.2.17. **"Independent Expert"** means an independent expert appointed in accordance with clause 21.2;
- 1.2.18. **"Investment and Risk Management Framework"** means the investment and risk management framework and parameters adopted by the Client in consultation with Regiments. The Investment and Risk Management Framework, as at the Effective Date, is attached as **Annexure C**, which framework may be amended by the Parties in writing from time to time;
- 1.2.19. **"JIBAR "** means in relation to each Quarter, the arithmetic mean of the mid-market yield rate (rounded upwards, if necessary, to the nearest one thousandth of a percentage point) for deposits in South African Rand for a 3 (three) month period which appears on the Reuters market data system (or its successor) as at the 'fixing' time for the day (which is at 11h00, as at the Signature Date);
- 1.2.20. **"JSE"** means JSE Limited (Registration No. 2005/022939/06);
- 1.2.21. **"Liability Schedule"** means the schedule setting out the projected monthly pension payment liabilities of the Client to its members which are to be made from the Portfolio Assets, attached as **Annexure A**, as amended or replaced from time to time pursuant to the actuarial restatement of the liabilities in question, which is anticipated to occur not more frequently than annually (and which amendment or replacement shall only take effect for purposes of this Agreement once provided to Regiments in writing);
- 1.2.22. **"Management Fees"** means the management fees payable by the Client to Regiments, determined in accordance with clause 10;
- 1.2.23. **"Market Value"** means, in relation to -
- 1.2.23.1. an instrument listed on the securities exchange operated by the JSE or any other licensed securities exchange, the value of the instrument on the relevant date at the last traded price as quoted by that securities exchange;
  - 1.2.23.2. money market assets, the value calculated in accordance with the appropriate yield curve on the relevant date, midway between buy and sell rates;
  - 1.2.23.3. cash, the face value of the cash on the relevant date at face value plus the present value of any interest accrued in relation thereto but not yet received; and

VP  
08/11

- 1.2.23.4. all other instruments not listed on a securities exchange, a value derived from the value(s) quoted on the securities exchange operated by the JSE or any other securities exchange, using a valuation methodology that is accepted in the market with reference to the valuation of the relevant security or instrument;
- 1.2.24. **"Outperformance"** means the outperformance of the Portfolio in relation to the benchmark over a Period, which shall be calculated in accordance with clause 11;
- 1.2.25. **"Outperformance Fees"** means the performance fees payable to Regiments (if any), determined in accordance with clause 11;
- 1.2.26. **"Parties"** means the Client and Regiments collectively and **"Party"** means either one of them, as the context may require;
- 1.2.27. **"Pension Funds Act"** means the Pension Funds Act, No. 24 of 1956;
- 1.2.28. **"Period"** means the period under consideration, being either a month or a Quarter, or a portion thereof, as the context may indicate;
- 1.2.29. **"Portfolio"** means the portfolio of the Client to be managed by Regiments in terms of this Agreement, which portfolio encompasses the Portfolio Assets and/or the Portfolio Liabilities, as the context may require;
- 1.2.30. **"Portfolio Assets"** means the cash in the Designated Account and the investments of the Client under this Agreement, the Market Value of which shall be calculated on the 1<sup>st</sup> (first) Business Day of the relevant Period and as otherwise contemplated in this Agreement, which, as at the Signature Date, are those reflected in **Annexure B**;
- 1.2.31. **"Portfolio Liabilities"** means the pension payment liabilities from time to time of the Portfolio actuarially estimated to be owing to its members, which, as at the Signature Date, constitute those as set out in the Liability Schedule;
- 1.2.32. **"Present Value of Liabilities"** means the present value of all future Portfolio Liabilities calculated by the Average Swap Yield Curve;
- 1.2.33. **"Quarter"** means each period of 3 (three) months calculated from the first day of January, April, July and October, respectively, provided that where the Effective Date of the Agreement is not the first day of any such quarter, any values to be determined in relation to the first quarter to which this Agreement applies shall be determined *pro rata* to the actual number of days of the first

V  
AJP

quarter during which the Services were provided in terms of this Agreement and references to "**Quarterly**" shall be construed accordingly;

- 1.2.34. "**Regiments**" means Regiments Fund Managers Proprietary Limited (Registration No. 2005/014462/07), a private limited liability company incorporated under the laws of the Republic of South Africa;
- 1.2.35. "**Representative**" means the person appointed by Regiments to communicate and manage the relationship with the Client in terms of this Agreement. The Client shall be notified in writing of the name and contact details of the Representative from time to time, failing which the representative shall be the chief executive officer of Regiments;
- 1.2.36. "**Reset Date**" means the last Business Day of the Quarter preceding the Quarter in question;
- 1.2.37. "**Services**" means the asset management, investment and financial services to be rendered by Regiments in terms of this Agreement;
- 1.2.38. "**Signature Date**" means the date on which this Agreement is signed by the Party signing last in time;
- 1.2.39. "**Structural Execution Costs**" means the Execution Costs of trade/s incurred by the Portfolio as a result of changes to the Portfolio Assets and/or Portfolio Liabilities resulting from Transition Events, or, where no trade/s is/are executed, the value of the change in the Market Value of the Portfolio resulting from such changes;
- 1.2.40. "**Take On Value of the Portfolio**" means the value of the Portfolio Assets as at the Effective Date, determined as contemplated in clause 5.3;
- 1.2.41. "**Transition Event**" means any of the following acts or omissions being committed by the Client –
- 1.2.41.1. the amendment of the Liability Schedule;
  - 1.2.41.2. withdrawal of any Portfolio Assets from the Portfolio other than to effect a Fund Payment on the date on which it is scheduled to be made in accordance with the Liability Schedule;
  - 1.2.41.3. the revision of the Investment and Risk Management Framework in terms of clause 4.5;

VP  
RSC

- 1.2.41.4. the Client issuing an instruction to Regiments, as contemplated in clause 6.1.3;
- 1.2.41.5. the revocation by the Client of any proxy issued by Regiments in the circumstances set out in clause 7.2.12; or
- 1.2.41.6. providing Regiments with instructions in terms of clause 7.6 where such instruction requires a change to be made to the Portfolio Assets and/or requires deviation from the Investment and Risk Management Framework;
- 1.2.42. "VAT" means Value-Added Tax levied in terms of the Value-Added Tax Act, No. 89 of 1991;
- 1.2.43. "ZAR" or "Rand" means the lawful currency of the Republic of South Africa;
- 1.3. any reference in this Agreement to "exchange" and "securities" shall, unless otherwise stated or inconsistent with the context, bear the meanings assigned to them in the FMA;
- 1.4. any reference to an enactment is to that enactment as at the Signature Date and as amended or re-enacted from time to time and includes any subordinate legislation made from time to time under such enactment. Any reference to a particular section in an enactment is to that section as at the Signature Date, and as amended or re-enacted from time to time and/or an equivalent measure in an enactment, provided that if as a result of such amendment or re-enactment, the specific requirements of a section referred to in this Agreement are changed, the relevant provision of this Agreement shall be read also as if it had been amended as necessary, without the necessity for an actual amendment;
- 1.5. if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the agreement;
- 1.6. when any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or a South African public holiday, in which case the last day shall be the next succeeding day which is not a Saturday, Sunday or a South African public holiday;
- 1.7. if figures are referred to in numerals and in words and if there is any conflict between the two, the words shall prevail;
- 1.8. expressions defined in this Agreement shall bear the same meanings in schedules or annexures to this Agreement which do not themselves contain their own definitions;

✓  
AJS



- 1.9. if any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of this Agreement, notwithstanding that that term has not been defined in this interpretation clause;
- 1.10. the expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this;
- 1.11. the rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply;
- 1.12. any reference in this Agreement to a Party shall include a reference to that Party's assigns expressly permitted under this Agreement and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be;
- 1.13. the words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s;
- 1.14. any reference in this Agreement to any other agreement or document shall be construed as a reference to such other agreement or document as same may have been, or may from time to time be, amended, varied, novated or supplemented;
- 1.15. the words "other" and "otherwise" shall not be construed *eiusdem generis* with any preceding words if a wider construction is possible.

## 2. RECORDAL

- 2.1. The Portfolio was established by the Client in order to ensure that the Client will be able to effect the Fund Payments.
- 2.2. Pursuant to a bid process by the Client and based on the proposal submitted to the Client by Regiments, Regiments has been selected to be appointed to manage the Portfolio.
- 2.3. Accordingly, the Parties wish to record their agreement in relation to the management of the Portfolio.
- 2.4. Regiments is a Category 2 Financial Services Provider (FSP 22302) with the following sub-categories:
  - 2.4.1. Securities and Instruments : Shares;

VP

- 2.4.2. Securities and Instruments : Money market instruments;
- 2.4.3. Securities and Instruments : Debentures and securitised debt;
- 2.4.4. Securities and Instruments : Warrants, certificates and other instruments;
- 2.4.5. Securities and Instruments : Bonds;
- 2.4.6. Securities and Instruments : Derivative instruments.

### 3. APPOINTMENT

- 3.1. The Client appoints Regiments, who hereby accepts such appointment, as the fund manager in respect of the Portfolio, to provide the Services as set out in this Agreement.
- 3.2. For the duration of this Agreement, Regiments shall be appointed as the exclusive fund manager in respect of the Portfolio.

### 4. DURATION

- 4.1. Subject to the provisions of clause 4.2, this Agreement will commence on the Effective Date and shall, unless terminated in terms of clause 4.3, 4.4, 22.2.2, 22.5.2 or 24, endure for an initial period of 3 (three) years ("Initial Period").
- 4.2. The Agreement will automatically renew and endure for a further period of 2 (two) years after the expiry of the Initial Period, unless –
  - 4.2.1. the Client notifies Regiments, in writing and by no later than 120 (one hundred and twenty) days before the expiry of the Initial Period, that it does not wish to renew the Agreement for the further 2 (two) year period; or
  - 4.2.2. terminated in terms of clause 4.3, 4.4, 22.2.2, 22.5.2 or 24.
- 4.3. Regiments may terminate this Agreement on at least 60 (sixty) days' prior written notice to the Client.
- 4.4. The Client may terminate this Agreement on at least 60 (sixty) days' prior written notice to Regiments, provided that should the termination in terms of this clause 4.4 take effect prior to the expiry of the Initial Period, the Client shall (in addition to any other amounts that may be due to Regiments in terms of this Agreement) be liable to pay Regiments an amount (exclusive of VAT) equal to –
  - 4.4.1. 50% (fifty percent) of the monthly management fee that would have been payable in terms of clause 10 over the period commencing on the day after the day on which the termination takes effect and ending on the last day of the

VP

Initial Period (both days inclusive), for purposes of calculation of which the Market Value of the Portfolio Assets as at the last day of the month immediately preceding the day on which the termination takes effect, shall be used; less

- 4.4.2. the monthly management fees (if any) (exclusive of VAT) that Regiments had received, as at the day on which the termination takes effect, in terms of any liability driven investment mandate concluded after the Signature Date with the Client, the Transnet Retirement Fund and/or the Transport Pension Fund.

The amount so calculated (together with VAT thereon) shall become payable against production by Regiments of an invoice to the Client and the provisions of clauses 14.3 and 14.4 shall apply *mutatis mutandis* to the payment thereof.

- 4.5. In the event that the Agreement is terminated as contemplated in clause 4.3 or 4.4, the Client shall, if it wishes to restrict the investment and risk management framework and/or parameters as then contained in the Investment and Risk Management Framework ("**Old Framework**") until the termination of the Agreement takes effect, provide Regiments with the revised Investment and Risk Management Framework which Regiments is required to implement ("**Revised Framework**"), in which event Regiments shall implement the Revised Framework as soon as reasonably possible, but mindful of the undertakings provided by Regiments in terms of clause 7.1. Should the Client elect to avail itself of its rights in terms of this clause 4.5, the New Framework shall be provided to be received by Regiments –

- 4.5.1. within 15 (fifteen) Business Days of Regiments giving notice of termination to the Client, as contemplated in clause 4.3; or
- 4.5.2. simultaneously with the termination notice as contemplated in clause 4.4 being provided to Regiments,

failing which the Old Framework shall continue to apply until the termination of the Agreement becomes effective.

- 4.6. Once the termination of this Agreement takes effect -

- 4.6.1. any and all powers of attorney granted by the Client to Regiments in terms of this Agreement shall be deemed to be cancelled with immediate effect; and
- 4.6.2. Regiments shall forthwith return to the Client or cause to be returned to the Client all cash, assets and documents of title in its possession (taking into account the provisions of clause 9.1), and shall simultaneously provide the Client with a detailed final statement of account.

✓

- 4.7. Notwithstanding the duration of this Agreement as provided for in this clause 4, in the event that, upon the termination or expiry of this Agreement, the Client has not yet concluded a new portfolio management agreement either with Regiments or another fund manager, the Client and Regiments may agree in writing to extend this Agreement until such time as a new portfolio management agreement has been concluded between the Client and a fund manager and such agreement has become effective in accordance with its terms.

## 5. TRANSITION MANAGEMENT

- 5.1. It is acknowledged by the Parties that transition management may be required to be effected to certain Portfolio Assets when Regiments commences to render the Services from the Effective Date. It is envisaged that such transition management would focus on cash-flow matching transactions that the Client has in place prior to the Effective Date.
- 5.2. Regiments shall accordingly evaluate the risk and monitor for opportunities to restructure the cash flow matching instruments that may form part of the Portfolio Assets as at the commencement of this Agreement, with a view to unwind and restructure the then Portfolio Assets so as to reduce risk and/or enhance returns in the Portfolio.
- 5.3. In order to allow Regiments opportunity to unwind and restructure the relevant Portfolio Assets, without the transition management impacting upon its performance measurement, the Parties agree that the Portfolio shall have an agreed take on value, as at the Effective Date. For such purposes, Regiments shall be entitled to obtain quotations for the unwind and/or restructure cost (including costs that would constitute Execution Costs when the unwind and/or restructure is effected) of the relevant investments or transactions, prior to the Effective Date. The Client shall provide reasonable assistance to Regiments in its engagements with the issuers of the investments or transaction counterparties (including any authorities that may be required by Regiments to approach them) and ensure that Regiments is afforded access to the documents and/or records relating to such investments or transactions. By no later than the 5<sup>th</sup> (fifth) Business Day after the Effective Date (or such longer period as agreed to between the Parties in writing), the Parties, acting in good faith, shall endeavour to agree the take on value of the Portfolio, as at the Effective Date, for purposes of this Agreement. Failing such agreement between the Parties, either Party shall be entitled to refer the matter for expert determination in terms of clause 20. Pending the determination of the matter by the Independent Expert, the take on value of the Portfolio shall be deemed to be the Market Value of the Portfolio, as at the Effective Date, as reduced by any undisputed portion of the unwind and/or restructure cost ("**Deemed Take On Value**"). Should the take on value of the Portfolio, as at the Effective Date, once determined by the Independent Expert, be lower than the Deemed Take On Value of the Portfolio, the Outperformance and Outperformance Fees, if any, shall be recalculated based on such value as determined by the Independent Expert. Any shortfall in Outperformance Fees shall

VP

R227

be paid to Regiments at the end of the Quarter during which the Independent Expert makes his/her determination known to the Parties.

## 6. AUTHORITY

- 6.1. Subject to the Investment and Risk Management Framework, Applicable Law and the provisions of this Agreement, the Client authorises Regiments to –
- 6.1.1. take over the management of the Portfolio and to do all things necessary to effect this takeover;
  - 6.1.2. take all such actions as Regiments considers reasonably necessary to attain the investment objectives of the Portfolio, as set out in the Investment and Risk Management Framework;
  - 6.1.3. exercise any rights conferred on the Client by virtue of the investments of the Portfolio, on behalf of the Client and in a manner that Regiments considers to be in the best interest of the Client, unless the Client specifically instructs Regiments in writing to the contrary; and
  - 6.1.4. operate and have access to the Designated Account for the purposes of managing the Portfolio and providing the Services.
- 6.2. Regiments' authority in terms of this Agreement shall be evidenced in a separately contained power of attorney in the form set out in **Annexure D**, which may be amended by agreement between the Parties in writing upon approval by the relevant mandated official of the Client, which approval may not be unreasonably withheld or delayed.

## 7. POWERS AND RESPONSIBILITIES OF REGIMENTS

### Management of the Portfolio

- 7.1. Regiments undertakes to manage the Portfolio and render the Services –
- 7.1.1. diligently and professionally at all times and acknowledges that it has a fiduciary duty to act with the standard of care that can reasonably be expected of an authorised professional financial services provider acting in good faith and with reasonable care and skill;
  - 7.1.2. in accordance with the provisions of this Agreement, the Investment and Risk Management Framework and all Applicable Law. To the extent that any of the provisions of this Agreement may conflict with, be inconsistent with, or impose a lesser standard on Regiments than that in terms of Applicable Law, the

✓ *APM*

provisions of such Applicable Law shall prevail and be complied with by Regiments; and

- 7.1.3. in accordance with the service level standards used in the financial management industry,

in its capacity as fund manager for and on behalf of the Client.

- 7.2. Subject to the provisions of clauses 7.1 and 7.6, Regiments shall have full power and discretion and shall be entitled, without prior approval or consent from the Client, to deal with the Portfolio in whatever manner it deems necessary or appropriate in order to achieve the Client's investment objectives as set out in the Investment and Risk Management Framework. Regiments' powers to manage the Portfolio shall include (without limitation) the power, and, where appropriate, obligation as the Client's agent, to –

- 7.2.1. buy any investments on behalf of the Client, including, but not limited to call or term accounts, overnight deposits, negotiable certificates of deposit, investment grade South African bonds and cash, and to sell or otherwise realise or deal with any investments comprised in the Portfolio;
- 7.2.2. subscribe to issues and apply for offers for sale and accept placings;
- 7.2.3. withdraw from the Custodian such monies as may be required to effect payment for assets purchased and costs associated with any such purchase;
- 7.2.4. instruct any member of a financial exchange or a licensed securities exchange to deal on any such exchange on the Client's behalf in any listed financial instrument or other listed security;
- 7.2.5. utilise licensed brokers and investment and commercial banks for the purchasing and selling of assets on behalf of the Portfolio;
- 7.2.6. execute "put-through" transactions (as defined in the Rules of the JSE) between different clients of Regiments, including the Client, provided that such transactions shall at all times be concluded on an arms' length basis at prices no worse to the Client than market related prices and on a basis which is not prejudicial to the Client and, where applicable, be processed through a broker authorised in terms of the Applicable Laws. For the purposes of this clause 7.2.6, "put-through" transactions shall mean counter party settlements to be executed through authorised brokers where Regiments require such counterparty settlements to be made and will be fully disclosed to the Client on a monthly basis;

VP  
AET

- 7.2.7. where necessary, for and on behalf of the Client, enter into any client agreements with any other person, financial exchange, financial exchange member or regulatory body, including but not limited to ISDA (International Swaps and Derivatives Association), ISMA (International Security Management Association), and ISLA (International Securities Lending Association) agreements (where applicable) as well as agreements entered into in accordance with the requirements of any financial exchange or licensed securities exchange and with such members of such exchanges as Regiments may determine, provided, if Regiments enters into any such agreements for the Client, it shall advise the Client of the conclusion of such agreements (in its monthly report as contemplated in clause 1.1.1.1 of **Annexure F**) and provided further that Regiments shall ensure that such agreements are concluded on terms that are fair and reasonable to the Client and no worse to the Client than market related terms. Regiments shall ensure that all procedures are in place to maintain adequate margin balances and to settle client agreements on behalf of the Client as may be dictated by the provisions of the relevant client agreements;
- 7.2.8. enter into, as agent for and on behalf of the Client, derivative transaction client agreements with any broking member of the Derivatives Market of the JSE for the purchase and sale of any derivative instruments governed by the derivatives legislation and/or derivatives rules published by the JSE from time to time and comply with all procedures for the settlement of derivative transactions and the maintenance of adequate margin balances in terms of the JSE Derivatives Rules by instructing the Custodian to make payment directly to the clearing member of the Derivatives Market out of the Client's cash assets in the Portfolio as may be required to meet any calls for margin;
- 7.2.9. retain any cash accruals (including interest and dividends) that it receives on the Client's behalf (with the Custodian) and reinvest such cash accruals at its discretion in accordance with clause 7.2.10;
- 7.2.10. reinvest any income derived from investments made in respect of the Portfolio, or to re-invest such proceeds arising upon their sale or redemption, at its discretion (whether by depositing the cash accruals in a bank account with a bank finally registered in terms of the Banks Act on a term investment, or purchasing assets other than cash) for the Client's benefit;
- 7.2.11. aggregate purchases or sales of investments for the Portfolio with purchases or sales, as the case may be, of the same investments of the same issuer for other clients of Regiments occurring on the same day, provided that such aggregation

VP

does not cause any impairment to the Portfolio. When transactions are so aggregated, the actual prices applicable to the aggregated transactions shall be averaged, and the Portfolio and the accounts of other participating clients of Regiments will be deemed to have purchased or sold, as the case may be, their proportionate share of the investments involved at the average price so obtained;

- 7.2.12. attend any meetings held for the holders of Portfolio Assets or sign proxies for the purpose of voting thereat or for any purpose connected therewith, and exercise or elect not to exercise any voting rights or other rights, including accepting scrip or cash dividends, conferred on the Client by virtue of the investments of the Portfolio, on behalf of the Client, provided that Regiments shall at all times act only in the Client's own best interest, that is in furtherance of what Regiments believes in good faith to be the Client's best interest as an investor in the securities concerned. In this regard, Regiments undertakes to maintain a written record of its exercise of, or election not to exercise, any rights and privileges which attach to the investments of the Portfolio. Except as may be explicitly provided by Applicable Law, neither Regiments nor its Associates shall incur any liability to the Client by reason of any exercise of, or failure to exercise, any such discretion. Where Regiments elects to exercise or procure the exercise of voting rights or other rights, it does so exclusively on the basis of the records and positions held by the Custodian and the Client acknowledges that Regiments shall be entitled to rely on the information supplied by any other person acting for the Custodian or appointed by the Client, provided that Regiments shall be required to investigate or reconcile any discrepancies between the information held by it and the information held by the Custodian, to the extent reasonably possible. It is moreover recorded and agreed that the right to vote on any of the securities held in the Portfolio remains and rests at all times with the Client as the beneficial and/or registered owner of such securities. The Client may at any time, up to and including at the meeting of securities holders, in writing, addressed to Regiments, the Custodian and the issuer company concerned, revoke any proxy issued by Regiments;
- 7.2.13. to administer any such investments and to hold them, or arrange for them to be held, in safe custody on behalf of the Client, at the cost of the Client;
- 7.2.14. generally do whatever may be necessary to comply with the provisions of the Investment and Risk Management Framework (unless otherwise instructed or consented to in writing by the Client), the rules of the securities exchange (including the procedures for the settlement of transactions and maintenance of

✓  
A271



adequate margin balances in terms of derivatives legislation and/or derivatives rules published by the JSE from time to time) and all Applicable Laws; and

- 7.2.15. generally attend to all actions ancillary to the provision of the Services.
- 7.3. A determination as to whether an investment falls within the risk parameters as set out in the Investment and Risk Management Framework shall be made as at the date of purchase of that investment and the Investment and Risk Management Framework shall not be deemed breached as a result of changes in the value or status (including the credit rating) of an investment following purchase.

#### **Risk Disclosure**

- 7.4. The Parties shall use best endeavours to ensure that all and any risks pertaining to the management and administration of the Portfolio are considered and, if appropriate, minimized.
- 7.5. Regiments hereby informs the Client of the risks pertaining to any investment of the Portfolio, both local and foreign, which may include, but shall not be limited to the risks set out in **Annexure E**, that are inherent in the buying and selling of listed financial instruments issued by individual financial exchanges from time to time in relation to specific financial markets. The Client shall accept such risks, which may result in financial loss to the Client and will not hold Regiments responsible or liable therefor, provided that all such investments to which the risks relate fall within the parameters of the Investment and Risk Management Framework. The Client, however, acknowledges that –
- 7.5.1. it understands and is aware of the various risks that are involved in holding a portfolio of investments and in dealing therein in the financial markets;
- 7.5.2. Regiments does not guarantee any future performance of the investments of the Portfolio entrusted to it or acquired in terms of this Agreement, nor does Regiments guarantee that any investment of the Portfolio will hold its value or behave in any particular manner; and
- 7.5.3. there is an investment risk associated with all asset classes, including foreign investments, that are exposed to currency risk.

#### **Further Instructions**

- 7.6. The Client may give reasonable instructions in writing to Regiments relating to Regiments' duties under this Agreement from time to time (such instructions to be given in accordance with clause 26, also setting out the duration for which each instruction is intended to apply), provided that no such instruction may –

VP

2021

- 7.6.1. be inconsistent with the objectives set out in clause 1 of **Annexure C**;
- 7.6.2. require that Regiments should breach any of its undertakings in terms of clause 7.1 in order to give effect thereto; or
- 7.6.3. result in the unilateral amendment of any provision of this Agreement by the Client (save as contemplated in clause 4.5),

and provided further that should Regiments exercise its right to terminate this Agreement under clause 4.3 during the Initial Period (as defined in clause 4.1) following receipt of an instruction in terms of this clause 7.6, the Client shall, provided that Regiments had given notice of termination in terms of clause 4.3 within 15 (fifteen) Business Days of receipt by Regiments of the Client's instructions given in accordance with clause 26 (in addition to any other amounts that may be due to Regiments in terms of this Agreement) be liable to pay Regiments an amount (exclusive of VAT) as determined, and payable to Regiments, *mutatis mutandis* in accordance with the provisions of clause 4.4.

## 8. DUTIES OF THE CLIENT

For the duration of this Agreement, the Client shall –

- 8.1. pay to Regiments –
  - 8.1.1. all Management Fees and Outperformance Fees, plus VAT thereon, as may be due and payable to Regiments in accordance with clauses 10 and 11, respectively;
  - 8.1.2. all costs and disbursements incurred by Regiments in respect of the implementation of instructions as contemplated in clause 7.6 or the purchase, sale, settlement, retention of investments and administration of the Portfolio, in accordance with clause 13;
  - 8.1.3. the cost of external audits, in the event that the Client requires such audits to be undertaken by external auditors; and
  - 8.1.4. the costs of any additional services, not included in this Agreement, to be rendered by Regiments at the request of the Client;
- 8.2. remain responsible for the management of its affairs for tax, legal and accounting purposes. In this regard, it is recorded that Regiments shall not be required to provide the Client with tax, legal or accounting advice or services and is under no obligation to report to the Client on the tax, legal or accounting consequences of buying or selling assets on behalf of the Portfolio;

V  
AST

- 8.3. consult with Regiments with regard to early Fund Payments proposed in relation to the Liability Schedule as soon as reasonably practicable;
- 8.4. respond to Regiments within 7 (seven) Business Days of Regiments making a request for approval to the Client in respect of a possible investment that falls outside of the risk parameters set out in the Investment and Risk Management Framework, including when Regiments seeks approval to conduct alternative types of trades or deals with alternative counterparties; and
- 8.5. give the requisite instructions to the Custodian to transfer cash or securities in connection with the settlement of transactions and procure that the Custodian provides Regiments with copies of periodic statements and access to electronic systems and gives Regiments timely notice of any voting or other rights due to be exercised with respect to any of the Portfolio Assets as soon as possible upon becoming aware of any such rights.

9. **DESIGNATED ACCOUNT & REGISTRATION OF INVESTMENTS**

- 9.1. All investments will be held and registered in the name of the Client.
- 9.2. The Client has appointed Nedbank Limited, a bank registered in terms of the Banks Act, to be its banker in respect of the investments and to be the custodian of the Portfolio Assets on its behalf.
- 9.3. All investments which belong to the Client and which are subject to this Agreement shall be held in safe custody by the Custodian on behalf of the Client in the Designated Account, particulars of which shall be notified by the Client in writing, such notice to be received by Regiments by no later than 23h59 on the Effective Date.
- 9.4. Any employee/s of –
  - 9.4.1. Regiments; and/or
  - 9.4.2. Regiments' back office service provider which attends to settlement on behalf of Regiments and is accountable to Regiments on such a basis that Regiments can remain in control of the cash in the Designated Account,

designated for this purpose in writing to the Client and subsequently approved by the Client (which approval shall not be unreasonably withheld or delayed) may withdraw such monies from the Designated Account for investment on the Client's behalf or to make payments in accordance with the Client's instructions or in performance of the Services in terms of this Agreement.

P  
A27

- 9.5. Any change to the arrangements contemplated by this clause 9 must be in writing and must be signed by both Parties.
- 9.6. Regiments shall, on a daily basis, reconcile all script and cash held with the same records of the Custodian. This reconciliation shall be done for both holdings and the market value. In the event that a difference remains unreconciled for 3 (three) Business Days, the reasons therefore shall be reported in writing to the Client.
- 9.7. The Client shall procure that the Custodian with whom the Designated Account is held provides access to download bank statements of the Designated Account to Regiments on a daily basis.

#### 10. MANAGEMENT FEES

- 10.1. The Client shall pay to Regiments a monthly management fee to be calculated, exclusive of VAT, as 0.17% (zero comma one seven per cent) per annum of the Market Value of the Portfolio Assets, taking into account accrued interest and dividends, and which amount shall be apportioned by reference to the number of days of the month in question.
- 10.2. The Market Value of the Portfolio Assets shall be calculated by Regiments as at the last day of the month immediately preceding the month in question in accordance with clause 1.2.30.

#### 11. OUTPERFORMANCE FEE

- 11.1. In addition to the Management Fee, the Client shall, subject to the provisions of this clause 11, pay Regiments an Outperformance Fee in respect of each Quarter based on Outperformance by Regiments.
- 11.2. The Outperformance (if any) in respect of each Quarter shall be calculated –

- 11.2.1. with reference to a benchmark for the Outperformance, which shall be calculated as follows –

$$B = V_{L1} - V_{L2}$$

where –

$B$  = benchmark;

$V_{L2}$  =  $V_{L0}$  incremented to the last Business Day of the Quarter in question at a rate equal to the Accrual Rate, for which purposes the Accrual Rate shall be fixed on the relevant Reset Date. For the avoidance of any doubt,  $V_{L2}$  will always be a negative rand amount;

*VP*  
*aff*

$V_{L0}$  = the Present Value of Liabilities at close of business on the last Business Day of the Quarter preceding the Quarter in question. For the avoidance of any doubt,  $V_{L0}$  will always be a negative rand amount;

$V_{L1}$  = Present Value of Liabilities at close of business on the last Business Day of the Quarter in question. For the avoidance of any doubt,  $V_{L1}$  will always be a negative rand amount;

- 11.2.2. with reference to the performance of the Portfolio Assets ("Asset Performance") at the end of each Quarter, which shall be calculated as follows –

$$AP = V_{A1} - V_{A0}$$

where –

$AP$  = Asset Performance at close of business on the last Business Day of the Quarter in question;

$V_{A0}$  =  $V_{A0}$  incremented to the last Business Day of the Quarter in question at a rate equal to the Accrual Rate, for which purposes the Accrual Rate shall be fixed on the relevant Reset Date;

$V_{A0}$  = the Take On Value of the Portfolio, where the Quarter in question is the Quarter commencing on the Effective Date, and, thereafter, the Market Value of the Portfolio Assets at close of business on the last Business Day of the Quarter preceding the Quarter in question;

$V_{A1}$  = Market Value of the Portfolio Assets at close of business on the last Business Day of the Quarter in question;

and

- 11.2.3. in accordance with the following formula –

$$POP = AP + B - T_T - T_F - T_R - T_C$$

where –

$POP$  = Period Outperformance;

$AP$  = Portfolio Asset Performance at close of business on the last Business Day of the Quarter in question as set out in clause 11.2.2;

*VP*

- $B$  = the benchmark calculated as set out in clause 11.2.1;
- $T_T$  = all the Structural Execution Costs, if any, incurred in respect of the Portfolio during the Quarter in question, which, for the avoidance of any doubt,  $T_T$  will be a negative rand amount, provided that where there were no Structural Execution Costs incurred during the relevant Outperformance measurement Period,  $T_T$  will be equal to zero;
- $T_F$  = all the Management Fees, Outperformance Fees, banking charges, custody fees and/or any other statutory charges or imposts paid in respect of the Portfolio during the Quarter in question, if any, including any VAT thereon, incremented from the date of payment of the fee to the last Business Day of the Quarter in question, at a rate equal to the Accrual Rate, for which purposes the Accrual Rate shall be fixed on the relevant Reset Date. For the avoidance of any doubt, (i)  $T_F$  will be a negative rand amount, provided that where there were no fees paid during the Quarter in question  $T_F$  will be equal to zero and (ii) Execution Costs will never be added back to determine Outperformance during the relevant Period (save to the extent that such costs form part of Structural Execution Costs as contemplated in  $T_T$ );
- $T_R$  = any changes to the Liability Schedule during the Quarter in question, incremented from the date of the change to the last Business Day of the Quarter in question, at a rate equal to the Accrual Rate, for which purposes the Accrual Rate shall be fixed on the relevant Reset Date. For the avoidance of any doubt,  $T_R$  will be a negative rand amount where the liability profile is increased (on a net basis) and will be a positive rand amount where the liability profile is decreased (on a net basis), provided that where there were no changes to the liability profile (on a net basis) during the Quarter in question  $T_R$  will be equal to zero;
- $T_C$  = any cash which the Client may pay into the Designated Account or other assets which the Client may transfer into the Portfolio during the term of this Agreement, by agreement with Regiments, to be managed by Regiments in accordance with the provisions of this Agreement ("Contributions") received into the Portfolio during the Quarter in question, incremented from the date of receipt of the Contribution to the last Business Day of the Quarter in question, at a rate equal to the Accrual Rate, for which purposes the Accrual Rate

✓  
DST

shall be fixed on the relevant Reset Date. For the avoidance of any doubt,  $T_c$  will be a positive rand amount, provided that where there were no Contributions made during the Quarter in question,  $T_c$  will be equal to zero.

11.3. All values set out in this clause 11 that are incremented will be incremented in accordance with the following –

11.3.1. if the Accrual Rate has a compounding frequency that is not quarterly it will be adjusted to a rate with a quarterly compounding frequency using standard market convention;

11.3.2. the quarterly compounding Accrual Rate referred to in clause 11.3.1 will then be further adjusted to an effective accrual rate in respect of the Quarter in question by multiplying it by the actual number of days in the Quarter in question, divided by 365 (three hundred and sixty five) ("**Effective Accrual Rate**");

11.3.3. if a value is incremented over the full Quarter in question, it will be multiplied by the Effective Accrual Rate;

11.3.4. if a value is incremented over a portion of the Quarter in question, the value will be incremented using the following formula –

$$IV = VS * (1 + EAR)^{\left(\frac{AD}{NDQ}\right)}$$

where –

$IV$  = incremented value;

$VS$  = value to be incremented;

$EAR$  = Effective Accrual Rate;

$AD$  = accrual days; and

$NDQ$  = number of days in the Quarter.

11.4. The Outperformance Fee (if any) in respect of each Quarter shall be calculated, exclusive of VAT, at a rate of 0% (zero per cent) of the Outperformance over the Quarter in question, as calculated in accordance with clause 11.2.3 (provided such Outperformance is higher than R0,00 (zero rand)).

11.5. The Outperformance Fee shall be due and payable in accordance with the provisions of clause 14.

VP

**12. PROFESSIONAL ADVICE**

Should Regiments at any time consider that it is necessary or prudent, for the proper execution of its duties to manage the Portfolio, to take legal or other professional advice, Regiments will consult with the Client and the matter shall be referred by Regiments on behalf of and at the reasonable cost of the Client, to professionals duly approved and/or appointed by the Client in accordance with its procurement policies. Should the Client fail and/or refuse to refer the matter to the appropriate professional or fail to refer the matter timeously or refuse to bear the costs of obtaining such legal or professional advice, it will have no recourse whatsoever against Regiments for not performing any relevant duty to manage the Portfolio in accordance with this Agreement and the Client hereby indemnifies Regiments and holds it harmless against all claims, damages, costs, expenses, losses or liabilities of the Client arising as a result of a matter not being referred (or referred timeously) for legal or other professional advice in accordance with this clause 12.

**13. EXECUTION COSTS**

It is recorded that the Portfolio shall, subject to the provisions of clause 16.4, bear any Execution Costs incurred by Regiments in the performance of its Services, as well as any other actual costs or expenses incurred (other than with an Associate, unless the Agreement contemplates the relevant cost being borne by the Portfolio and the cost is incurred on an arms' length basis) in respect of the purchase, sale, settlement and retention in safekeeping of investments of the Portfolio, "back office" costs (such as asset administration fees, fund accounting, generation of standard reporting packs, and system maintenance, operation and support), custodial service fees, brokerage charges, commissions, transfer fees, registration fees, exchange fees, settlement fees, and stamp duty, tax or other fiscal liabilities or any other transaction related expenses and fees arising out of transactions in respect of the Portfolio incurred by Regiments, its delegates, Associates or third parties in performing the Services under this Agreement.

**14. INVOICING, PAYMENT AND VAT**

14.1. Regiments shall provide the Client with separate written invoices in relation to –

14.1.1. the Management Fees due and payable, in terms of clause 10, which fees are invoiced on the 1<sup>st</sup> (first) Business Day of each month and payable at the end of the month; and

14.1.2. Outperformance Fees that may become due and payable in terms of clause 11, which fees are due in arrears on the 1<sup>st</sup> (first) Business Day following the Quarter in question and payable within 20 (twenty) Business Days after Regiments issues a written invoice to the Client.

Y  
13/11



- 14.2. All invoices submitted by Regiments in accordance with clause 14.1 shall set out the amount due and payable, plus VAT thereon, and may indicate whether any portion of such total amount has already been paid.
- 14.3. Subject to clause 14.4, any amounts owing to Regiments in accordance with an invoice submitted in terms of clause 14.1, shall be debited from the Designated Account by the employee of Regiments designated to operate the Designated Account, as contemplated in clause 9.4, and paid directly to Regiments and the Client authorises Regiments to effect such debits when payment is due.
- 14.4. In the event that the amount of any fee or disbursement as set out in an invoice issued by Regiments in terms of clause 14.1 is disputed by the Client, the Client shall notify Regiments of such dispute in writing within 5 (five) Business Days of the Client's receipt of the invoice issued by Regiments. The matter shall be submitted to the principal officer of the Client and the chief executive officer of Regiments for resolution. In the event that the principal officer of the Client and the chief executive officer of Regiments fail to reach agreement on the matter within 10 (ten) Business Days of the date of the Client's written notice contemplated above, the matter shall be submitted for determination by an Independent Expert in accordance with clause 21. In the event that the Independent Expert has not resolved the matter within the 25 (twenty five) Business Day period referred to in clause 21.7, Regiments may provide the Client with a separate written invoice in respect of the undisputed amount, which amount shall be paid to Regiments in accordance with clause 14.3. Once the Independent Expert has made his/her determination as to the total amount to be paid to Regiments, Regiments shall provide the Client with another invoice in respect of the amount in excess of the undisputed amount (if any), which shall be paid to Regiments in accordance with clause 14.3 within 5 (five) Business Days of the Independent Expert's determination.
- 14.5. Save as otherwise provided herein, all Management Fees and Outperformance Fees payable to the Regiments in terms of this Agreement are calculated exclusive of VAT and the Client will be liable to pay VAT thereon as set out in the relevant written invoice submitted by Regiments.
- 14.6. The Management Fees, the Outperformance Fees, and any costs and disbursements, as contemplated in clause 13, shall be reflected on the Client's monthly portfolio statement for the Period in question.
- 14.7. In respect of any investment made, or other transactions concluded, by Regiments in terms of this Agreement on behalf of the Client, the Client shall be entitled to such brokerages and commissions to which it would have been entitled (in terms of the prospectus or other offer document setting out the terms of the investment) as if it had made such investment, or

V  
ASPT

concluded such transaction, itself. Regiments shall not receive any commissions or rebates for making investments, or concluded such transactions, on the Client's behalf.

14.8. No part of any fee paid by the Client to Regiments in terms of this Agreement may be shared with any of the Client's trustees, officers or consultants (provided they are known to Regiments to be consultants of the Client) and no commission shall be paid to any such trustee, officer or consultant, without the express approval of the Client in writing in each instance.

14.9. All amounts payable in terms of this Agreement shall be paid in Rand.

15. **ACCOUNTING AND REPORTING REQUIREMENTS**

15.1. Regiments shall be obliged to keep separate transaction records in respect of the Portfolio, as prescribed for a fund manager in terms of Applicable Laws and applicable accounting standards.

15.2. Regiments hereby undertakes, as part of the delivery of the Services and at its own cost, to report to the Client as set out in **Annexure F**.

15.3. Regiments shall retain transaction records and any supporting vouchers, notes and/or documents, in relation to the transactions processed by Regiments on behalf of the Portfolio, for a minimum period of 5 (five) years, and to allow them to be inspected or reviewed by the Client's officials or independent auditors whenever necessary for audit and control purposes, as may be prescribed by Applicable Laws, provided that inspections and/or reviews are conducted within business hours and upon reasonable notice being given to Regiments.

16. **CONFLICTS OF INTEREST**

16.1. It is recorded that Regiments is involved in a wider range of investment management, corporate finance and securities issuing, trading and research. As a result of these varied activities, conflicts of interests and duties in relation to the provision of the Services may arise. It is recorded that, in accordance with Applicable Laws, Regiments has established and maintains a conflict of interest management policy ("**COI Policy**") that prescribes certain practices and procedures, including information barriers, which restrict the flow of information and thereby manages or assists in managing such conflicts in a proper manner.

16.2. Regiments undertakes to provide the Client with a copy of its COI Policy as at the Signature Date and undertakes to notify the Client of any amendments thereto or the replacement thereof, which COI Policy, as amended or replaced from time to time, will be available on Regiments' website.

V  
A25

16.3. Regiments agrees that, notwithstanding the practices and procedures referred to in clause 16.1, it shall -

16.3.1. as far as reasonably possible, undertake not to place itself in a position where the interests and duties of Regiments may conflict with the interests of the Client or to sell for its own account any asset owned by it to the Client, or to buy from the Client any Portfolio Assets;

16.3.2. be obliged to notify the Client, as soon as possible, of any potential or actual conflicts of interests or duties that may arise.

16.4. Subject to Applicable Law, Regiments may, when acting as agent for the Client, or dealing on a fiduciary basis with the Client, deal with or through, or make use of the services of any of Regiments' Associates. Regiments' Associates shall be entitled to retain any fees, profits or other consideration arising from such dealings or from the use or provision of such services as though Regiments was not acting as such agent or fiduciary.

## 17. REPRESENTATIONS AND WARRANTIES

17.1. Each of the Parties hereby warrants to and in favour of the other that -

17.1.1. it has the legal capacity and has taken all necessary corporate actions required to empower and authorise it to enter into this Agreement;

17.1.2. this Agreement constitutes an agreement that is valid and binding on it and enforceable against it in accordance with its terms;

17.1.3. the execution of this Agreement and the performance of its obligations hereunder does not and shall not -

17.1.3.1. contravene any Applicable Law or regulation to which that Party is subject;

17.1.3.2. contravene any provision of that Party's constitutional documents;  
or

17.1.3.3. conflict with, or constitute a breach of any of the provisions of any other agreement, obligation, restriction or undertaking which is binding on it;

17.1.4. to the best of its knowledge and belief, it is not aware of the existence of any fact or circumstance that may impair its ability to comply with all or any of its obligations in terms of this Agreement;

P  
28

- 17.1.5. it is entering into this Agreement as principal (and not as agent or in any other capacity);
  - 17.1.6. the natural person who signs and executes this Agreement on its behalf is validly and duly authorised to do so;
  - 17.1.7. it is not relying upon any statement or representation by or on behalf of the other Party to this Agreement, except those expressly set forth in this Agreement.
- 17.2. Regiments warrants in favour of the Client that as at the Signature Date and at all times during the currency of this Agreement –
- 17.2.1. it is a licenced financial services provider registered in terms of FAIS and holds all appropriate licences and approvals issued in terms of FAIS required by it to give effect to this Agreement;
  - 17.2.2. its designated representatives and key individuals are registered with the Financial Services Board and meet the fit and proper requirements in relation to their operational competency, skills, qualifications and experience as set out in Applicable Laws;
  - 17.2.3. it is an accountable institution as contemplated in FICA, and as such warrants that it complies with the obligations outlined in FICA pertaining to the combating of money laundering. In pursuance hereof, Regiments ensures that all clients are identified and verified in accordance with the requisite "know your client" requirements and keeps records of client transactions within the course of a business relationship or single transaction and furthermore adheres to all reporting requirements of FICA;
  - 17.2.4. it has not taken any steps for its de-registration in terms of section 82 of the Companies Act, No. 71 of 2008, and is not aware of any steps that have been taken by a third party for its de-registration;
  - 17.2.5. it is not aware of any corporate action, legal proceedings or other procedure or step which has been taken or which is pending or threatened in relation to -
    - 17.2.5.1. the suspension of payments, a moratorium of indebtedness, liquidation, winding-up, dissolution, administration, judicial management or business rescue in respect of it;
    - 17.2.5.2. a composition, compromise, assignment or arrangement with any of its creditors;

✓  
AS

- 17.2.5.3. the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager, judicial manager, business rescue practitioner or other similar officer in respect of Regiments;
- 17.2.5.4. the enforcement of any security over any of Regiments' assets, or any analogous procedure is taken in any jurisdiction;
- 17.2.6. no meeting has been proposed or convened by the directors of Regiments, no resolution has been proposed or passed, no application been made or an order of court applied for or granted, to authorise the entry into or implementation of any business rescue proceedings (or any similar proceedings) or any analogous procedure or step has been taken in any jurisdiction.
- 17.3. Notwithstanding any other provision in this Agreement, no warranty, assurance or undertaking is given by Regiments as to the performance of the Services, returns, increase in or retention of value or profitability of the Portfolio (or any part of it) or that the investment objectives or targets set out in the Investment and Risk Management Framework shall be successfully achieved, whether in whole or in part.
- 17.4. The Client warrants in favour of Regiments that, as at the Effective Date, it will have complied with the provisions of Applicable Law, including those governing its powers or capacity to select Regiments as fund manager of the Portfolio, and has taken such other legal steps with which it is required to comply to validly conclude the Agreement and give effect to its terms, or which otherwise requires statutory approval to be obtained by the Client.
- 17.5. Each of the representations and warranties given by the Parties in terms of clause 17 shall –
  - 17.5.1. be a separate warranty and will in no way be limited or restricted by inference from the terms of any other warranty or by any other words in this Agreement; and
  - 17.5.2. *prima facie* be deemed to be material and to be a material warranty and/or representation inducing the other Party to this Agreement to enter into this Agreement.

## 18. LIMITATION OF LIABILITY

- 18.1. Notwithstanding anything contained in this Agreement to the contrary, no liability (whether based on a single or multiple causes of action) shall be incurred by Regiments in relation to claims, damages, costs, expenses, losses or liabilities of the Client, its Associates or the Portfolio, whether arising from warranties, representations, indemnities or otherwise in terms

VP  
AP

of this Agreement, to the extent that the liability is in excess of the Management Fees and Performance Fees paid and/or accrued to Regiments under this Agreement during the 12 (twelve) months prior to the institution of the claim by the Client (provided that where this Agreement has been in force for less than 12 (twelve) months, Regiments' liability shall be limited to the aggregate of the Management Fees and Performance Fees paid and/or accrued to Regiments from the Effective date until the date on which the Client instituted its claim) ("**Limitation Amount**"), except that where any liability for any claims, damages, costs, expenses, losses or liabilities is directly attributable to the fraud, dishonesty or gross negligence of Regiments or any of Regiments' Associates employed or engaged in the performance of the Services, the liability of Regiments shall not be limited to the Limitation Amount.

- 18.2. The provisions of clause 18 constitute a *stipulatio alteri* in favour of the Associates of Regiments, capable of acceptance at any time.

## 19. INDEMNITY AND INSURANCE

- 19.1. Regiments shall not be liable to the Client, its Associates or to any third party and, without derogating from the generality of the foregoing, to any member, customer or client of the Client for any loss, liability, damage, expense or penalty of any nature whatsoever (whether direct, indirect or consequential, and whether or not in the contemplation of the Parties) which the Client, any of its Associates or any such other third party may suffer or incur, whether directly or indirectly, as a result of, or which may be attributable to or caused by any act or omission on the part of Regiments pursuant to –

- 19.1.1. any instructions from the Client or the Client's investment advisor; and/or
- 19.1.2. the performance by Regiments or its directors, employees, representatives, agents and/or shareholders of any of Regiments' obligations under the Agreement,

unless such loss, liability, damage or expense is directly attributable to fraud, dishonesty or gross negligence on the part of Regiments.

- 19.2. Accordingly, and without limiting the generality hereof the Client hereby indemnifies and holds harmless Regiments from –

- 19.2.1. any loss incurred on the Client's behalf or on behalf of any member, customer or client of the Client pursuant to any *bona fide* investment made by Regiments in terms of this mandate; and
- 19.2.2. any and all claims, damages, liabilities, costs and expenses, including reasonable attorneys' fees as between attorney and client, which may be

✓  
[Signature]

brought against, or claimed from, Regiments or such third parties by reason of the operation of the Client's account,

unless such loss, claim, damages, liabilities, costs or expense are directly attributable to fraud, dishonesty or gross negligence on the part of Regiments.

- 19.3. If any Party becomes aware of any claim which may give rise to any liability under this Agreement, such Party will promptly notify the other Parties in writing within 5 (five) Business Days.
- 19.4. Notwithstanding the provisions of clause 19.3, Regiments shall advise the Client in writing within 48 (fourty eight) hours (or within such shorter period as may be possible, should circumstances reasonably require expedient notification) of any breach of Applicable Laws or of the Investment and Risk Management Framework, or of any breach of Regiments' internal compliance rules that directly affects the Client in any manner.
- 19.5. Regiments undertakes to arrange and maintain, at its expense, fidelity and professional indemnity insurance to indemnify it against any losses that may result from the negligence, dishonesty or fraud of any of the officers, directors or employees of Regiments, its holding company or any other subsidiaries of its holding company. The details of such insurance cover shall be disclosed to the Client on request. Regiments shall indemnify and hold the Client harmless in respect of any loss or damage suffered by the Client as a result of any failure by Regiments to maintain the cover or to comply with the insurer's requirements and any subsequent refusal by the insurer to pay the claim.
- 19.6. The rights conferred on the Associates of Regiments in terms of the provisions of clause 19 or elsewhere in this Agreement, which shall apply to them *mutatis mutandis*, constitute a *stipulatio alteri* in favour of them, capable of acceptance at any time.

## 20. CONFIDENTIALITY AND PUBLICITY

- 20.1. Any information obtained by either Party in terms, or arising from the implementation, of this Agreement ("**Confidential Information**") shall be treated as confidential by the Parties and shall not be used, divulged or permitted to be divulged to any person not being a Party to this Agreement, without the prior written consent of the other Party, save that –
  - 20.1.1. each Party shall be entitled to disclose such information to such of its employees (which shall include any of its directors and agents), professional advisors and/or contractors who need to know such information for the purpose of this Agreement or for the purpose of performing the duties of their office or appointment and such information shall only be used for that purpose. Before revealing the Confidential Information to any such employees and/or

VP  
M

professional advisors and/or contractors, each Party undertakes to procure that the employees and/or professional advisors and/or contractors are aware of the confidential nature of the Confidential Information being made available to them and are either generally subject to contractual or legal duties of confidentiality in relation to the confidential information of Regiments' clients or specifically in relation to the Confidential Information;

- 20.1.2. the Client may disclose any such Confidential Information to Transnet SOC Limited and the directors, agents, professional advisors and contractors thereof on the same basis as disclosure pursuant to clause 20.1.1;
- 20.1.3. any information which is required to be furnished by law or by any securities exchange on which the shares of Regiments are listed may be so furnished;
- 20.1.4. Regiments shall be entitled (after consultation with the Client so as to avoid embarrassment or prejudice, to the extent possible) to make such information available to its shareholders as may be necessary to enable such shareholders to consider the value and prospects of their shareholdings, provided that such shareholders are aware of the confidential nature of the Confidential Information being made available to them and are subject to appropriate contractual duties of confidentiality;
- 20.1.5. neither Party shall be precluded from divulging any Confidential Information to any person who is negotiating with such Party for the acquisition of an interest in such Party, provided that the person to whom any disclosure is made in the aforesaid circumstances shall first have undertaken in writing not to divulge such information to any other person and to use it only for the purpose of evaluating the value of the enterprise;
- 20.1.6. neither Party shall be precluded from using or divulging the Confidential Information in order to pursue any legal remedy available to it.
- 20.2. For the avoidance of doubt, the Confidential Information shall not include –
  - 20.2.1. any part of such information which is or becomes public knowledge and in the public domain by reason of becoming public property other than through an act or omission by either Party;
  - 20.2.2. information which came lawfully into the Party's possession from a third party lawfully possessing such information.

VP  
20/11



20.3. Neither Party shall publish the fact of or any information concerning the conclusion of this Agreement or the terms hereof without the consent of the other Party, save –

20.3.1. as required by Applicable Law or to implement this Agreement;

20.3.2. in instances where Regiments finds it necessary to include information concerning the fact that this Agreement has been concluded and such other matters as may be approved by the Client in any response to a request for proposal.

20.4. No announcements of any nature whatsoever will be made by or on behalf of a Party relating to this Agreement without the prior written consent of the other Party, save for any announcement or other statement required to be made in terms of the provisions of any Applicable Law or by the rules of any recognised securities exchange, in which event the Party obliged to make such statement will first consult with the other Parties in order to enable the Parties in good faith to attempt to agree the content of such announcement, which (unless agreed) must go no further than is required in terms of such Applicable Law or rules. This will not apply to a Party wishing to respond to the other Party which has made an announcement of some nature in breach of this clause.

## 21. **EXPERT DETERMINATION**

21.1. The provisions of this clause shall apply to any matter which must, by express statement to that effect in this Agreement, be submitted to and determined by an Independent Expert.

21.2. The expert shall be an independent practising chartered accountant, chartered financial analyst or other professional, as may be suitable depending on the nature of the matter subject to determination, of not less than 10 (ten) years' standing and registered with the applicable professional association, agreed upon between the Client and Regiments. If the Client and Regiments fail to agree on an expert within 14 (fourteen) days after the matter is subjected to determination by an Independent Expert, the expert shall be nominated, at the request of any one of the Client or Regiments by the CEO or Chairperson for the time being of the South African Institute of Chartered Accountants.

21.3. The Independent Expert shall obtain from each of the Client and Regiments a written submission containing, where applicable, an indication of the monetary amount or valuation which they respectively believe to be appropriate in respect of the matter the subject of the determination and consult with each of them in an endeavour to reach agreement. If either of the Client or Regiments failed to make a submission to the Independent Expert within 5 (five) Business Days of being requested in writing by the Independent Expert to do so, the right of such Party to make such submission to the Independent Expert shall immediately cease and the Independent Expert shall not, save with the written approval of the other of

✓

them, be entitled to have regard to any submission lodged after the expiry of such period. If agreement is not reached, the Independent Expert shall make a fair determination, taking due regard of the provisions of this Agreement, the aforesaid submission/s and all other relevant circumstances.

21.4. Each Party shall give effect to the determination made by the Independent Expert, provided that if the Independent Expert's determination is found to be manifestly unjust by a court, but the court exercises its general power, if any, to correct such determination, the Parties shall be bound thereby.

21.5. The Independent Expert –

21.5.1. may award interest with effect from any date, and on any basis, he considers appropriate in the circumstances; and

21.5.2. shall determine the liability for his charges.

21.6. Any applicable matter shall be deemed to have been subjected to determination by an Independent Expert when either of the Client or Regiments gives written notice to the other of them demanding determination by an Independent Expert and requests agreement on an Independent Expert.

21.7. It is the intention that the determination by the Independent Expert shall, where possible, be concluded within 25 (twenty five) Business Days following the matter being subjected to determination by the Independent Expert. Each of the Client and Regiments shall use their best endeavours to procure the expeditious finalisation of the determination.

## 22. BREACH

22.1. Regiments shall be deemed to have breached this Agreement, for the purposes of clause 22.2, in circumstances where it –

22.1.1. breaches any warranty or representation or fails to fulfill any of its obligations contained in this Agreement; or

22.1.2. ceases to hold a valid license under FAIS.

22.2. In the event that Regiments commits a breach of this Agreement, as contemplated in clause 22.1, and fails to remedy such breach within 20 (twenty) Business Days (or such longer period as may be agreed to between the Parties in writing should the Parties agree that such failure or breach is not capable of being remedied within 20 (twenty) Business Days) after written notice from the Client requiring that it be remedied or such extended period as may be determined by the Client in its discretion, from the date of written notice

P

from the Client calling upon it to do so, the Client shall be entitled, without prejudice to its other rights in terms of this Agreement and the law, including obtaining an interdict, to –

22.2.1. claim specific performance of any obligation; or

22.2.2. cancel the Agreement by written notice to Regiments,

without prejudice to the Client's right to claim damages.

22.3. The provisions of clause 22.2 shall not prevent the Client from obtaining an interdict or other relief on an urgent basis or otherwise, without having given Regiments the period of notice referred to in clause 22.2.

22.4. Despite clause 22.2, if any of the warranties given in clause 17.1 or 17.2 are not true at any time, this Agreement may forthwith be terminated on notice to Regiments.

22.5. In the event that the Client commits a breach of this Agreement and fails to remedy such breach within 20 (twenty) Business Days (or such longer period as may be agreed to between the Parties in writing should the Parties agree that such failure or breach is not capable of being remedied within 20 (twenty) Business Days) after written notice from Regiments requiring that it be remedied or such extended period as may be determined by Regiments in its discretion, from the date of written notice from Regiments calling upon it to do so, Regiments shall be entitled, without prejudice to its other rights in terms of this Agreement and the law, including obtaining an interdict, to –

22.5.1. claim specific performance of any obligation; or

22.5.2. cancel the Agreement by written notice to the Client,

without prejudice to Regiments' right to claim damages.

22.6. The provisions of clause 22.5 shall not prevent Regiments from obtaining an interdict or other relief on an urgent basis or otherwise, without having given the Client the period of notice referred to in clause 22.5.

22.7. Despite clause 22.5, if any of the warranties given in clause 17.1 or 17.4 are not true at any time, this Agreement may forthwith be terminated on notice to the Client.

22.8. Termination of the Agreement shall not affect accrued rights, existing commitments or any contractual provision intended to survive termination.

V  
AB

## 23. ARBITRATION

- 23.1. Save in respect of those provisions of this Agreement which provide for determination by an Independent Expert or other remedies which would be incompatible with arbitration, a dispute which arises in regard to -
- 23.1.1. the interpretation of; or
  - 23.1.2. the carrying into effect of; or
  - 23.1.3. either of the Parties' rights and obligations arising from; or
  - 23.1.4. the termination or purported termination of or arising from the termination of; or
  - 23.1.5. the rectification or proposed rectification of
- this Agreement, or out of or pursuant to this Agreement, (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction), shall be submitted to and decided by arbitration.
- 23.2. That arbitration shall be held -
- 23.2.1. with only the parties, their representatives and their legal representatives present thereat;
  - 23.2.2. in Johannesburg, South Africa.
- 23.3. The arbitration shall, where possible, be held and concluded in 21 (twenty one) Business Days after it has been demanded. The Parties shall use their Best Endeavours to procure the expeditious completion of the arbitration.
- 23.4. The arbitrator shall be an independent person nominated by the Parties or failing agreement between them within 7 (seven) days after the arbitration has been demanded shall be a person appointed by the chairperson for the time being of the Arbitration Foundation of Southern Africa (or its successor body).
- 23.5. The Rules of the Arbitration Foundation of Southern Africa shall apply to this arbitration.
- 23.6. The arbitrator shall have the fullest and freest discretion with regard to the proceedings.
- 23.7. The arbitrator shall have the power to give default judgment if any Party fails to make submissions on due date and/or fails to appear at the arbitration.
- 23.8. The arbitrator shall be obliged to give his award to the Parties to the dispute in writing fully supported by reasons.
- P

- 23.9. The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential.
- 23.10. The arbitrator's decision shall be final and binding on the Parties to the dispute save in the case of manifest error. The arbitrator may make an award as to his costs.
- 23.11. The provisions of this clause are severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

#### 24. **FORCE MAJEURE**

- 24.1. Should Regiments be prevented from fulfilling any of its obligations in terms of this Agreement as a result of an event of *force majeure*, then –
- 24.1.1. those obligations shall be deemed to have been suspended to the extent that and for so long as Regiments is so prevented from fulfilling them and the corresponding obligations of the Client shall be suspended to the same extent;
- 24.1.2. Regiments shall promptly notify the Client in writing of such event of *force majeure* and such notice shall include an estimation of the approximate period for which the suspension in terms of clause 24.1.1 will endure, which estimate shall not be binding on Regiments; and
- 24.1.3. the duration of this Agreement as well as each period within which and each date by which any obligation is required to be performed in terms of this Agreement shall be extended or postponed, as the case may be, by the period of suspension in terms of clause 24.1.1.
- 24.2. Should Regiments partially or completely cease to be prevented from fulfilling their obligations by the event of *force majeure*, Regiments shall immediately give written notice to the Client of such cessation and Regiments shall, as soon as possible, attempt to fulfil its obligations which were previously suspended, provided that in the event and to the extent that fulfilment is no longer possible or the Client has given written notice that it no longer requires such fulfilment, Regiments shall not be obliged to fulfil its suspended obligations and the Client shall not be obliged to fulfil its corresponding obligations. Regiments shall not be liable for any loss, liability, damage or expense of whatsoever nature which is caused by or attributable exclusively to such *force majeure* event.
- 24.3. Should an event of *force majeure* continue for more than 30 (thirty) days after the date of the notice referred to in clause 24.1.2 and notice in terms of clause 24.2 that the Client no longer requires fulfilment of the obligation has not been given, then Regiments shall be entitled (but not obliged) to terminate this Agreement by giving not less than 30 (thirty) days written notice to the Client to that effect, provided that any such notice of termination shall be

VP

deemed not to have been given if a notice in terms of clause 24.2 is received by Regiments prior to the expiry of such 30 (thirty) day period.

- 24.4. An "event of force majeure" shall mean any event or circumstance whatsoever which is not within the reasonable control of Regiments, including *vis major*, *cases fortuitus*, any act of nature, strike, fire, explosion, riot, insurrection or other civil disorder, war (whether declared or not) or military operations, international restrictions, the extended downtime of any external telecommunications line, the computer hardware and data reliant equipment, software, applications, operating and/or business systems or any enhancements, modifications, upgrades and peripherals thereto of Regiments and/or any business partner on whom Regiments relies, whether directly or indirectly, any requirement of any international authority, any requirement of any government or other competent local authority, any court order, export control and shortage of transport facilities.

## 25. INTEREST ON OVERDUE AMOUNTS

Any amount falling due for payment by any Party to the other in terms of or pursuant to this Agreement and not paid on due date, including any amount which may be payable as damages, shall bear interest at the prime rate plus 2% (two per cent), compounded monthly in arrears, calculated on and with effect from the due date for payment or discharge thereof up to and including the date of actual payment or discharge thereof. In the case of a dispute as to the rate of interest, a certificate in writing by a manager or accountant of The Standard Bank of South Africa Limited shall be prima facie evidence.

## 26. DOMICILIUM CITANDI ET EXECUTANDI

- 26.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses –

### 26.1.1. the Client:

Physical: Metropolitan Park, Block A  
8 Hillside Road  
Parktown  
2193  
Postal: Private Bag X41  
Braamfontein  
2017  
E-mail: peet.maritz@transnetfunds.co.za  
Marked for the attention of: Peet Maritz

V  
P

**26.1.2. Regiments:**

Physical: 35 Ferguson Road  
Illovo  
Johannesburg

Postal: Postnet Suite 25  
Private Bag x11  
Birnam Park  
2015

E-mail: NivenP@regiments.co.za and EricW@regiments.co.za

Marked for the attention of: Niven Pillay and Eric Wood

26.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by e-mail.

26.3. Any Party may by notice to the others change the physical address chosen as its *domicilium citandi et executandi* to another physical address where postal delivery occurs in the Republic of South Africa or its postal address or its e-mail address, provided that the change shall become effective on the 7<sup>th</sup> (seventh) Business Day from the deemed receipt of the notice by the other Party.

26.4. Any notice to a Party –

26.4.1. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or

26.4.2. sent by e-mail to its chosen e-mail address stipulated in clause 26.1, shall be deemed to have been received on the date of despatch (unless the contrary is proved).

26.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

**27. GOOD FAITH AND CO-OPERATION**

27.1. The Parties undertake to observe good faith in dealing with each other and in implementing the provisions of this Agreement.

27.2. The Parties undertake to co-operate with each other in all respects in order to give effect to this Agreement according to its intent and purpose.

VP  
12/11/11

**28. GOVERNING LAW**


Notwithstanding the conflict of law principles which might otherwise have governed this Agreement shall be governed by and interpreted in accordance with the substantive laws of the Republic of South Africa (and if the prescription laws of the Republic of South Africa are not considered to be substantive laws thereof, by the prescription laws as well but excluding its conflict of law principles).

**29. WHOLE AGREEMENT, NO AMENDMENT**

- 29.1. This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes any other discussions, agreements and/or understandings regarding the subject matter hereof.
- 29.2. No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of or agreement not to enforce or to suspend or postpone the enforcement of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 29.3. No oral *pactum de non petendo* shall be of any force or effect.
- 29.4. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement or any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement, shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party (save as to any extension, waiver or relaxation actually given) thereafter from exercising its rights strictly in accordance with this Agreement.
- 29.5. To the extent permissible by law neither Party shall be bound by any express or implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

**30. LEGAL COSTS**

Each Party shall bear its own costs of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement (including prior drafts and consultations) including VAT.





**31. STIPULATIO ALTERI**

No part of this Agreement shall constitute a *stipulatio alteri* in favour of any person who is not a Party to the Agreement unless the provision in question expressly provides that it does constitute a *stipulatio alteri*.

**32. SEVERABILITY**

Each provision of this Agreement is severable from all others, notwithstanding the manner in which they may be linked together or grouped grammatically and if in terms of any judgement or order, any provision, phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason, the remaining provisions, phrases, sentences, paragraphs and clauses shall nevertheless continue to be of full force. In particular and without limiting the generality of the foregoing, the Parties acknowledge the intention to continue to be bound by this Agreement notwithstanding that any provision may be found to be unenforceable or void or voidable, in which event, the provision concerned shall be severed from the other provisions, each of which shall continue to be of full force.

**33. CESSION AND ASSIGNMENT**

- 33.1. Neither Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party.
- 33.2. Notwithstanding the provisions of clause 33.1, Regiments shall be entitled to delegate any of the Services to any person which is an Associate thereof, provided Regiments notifies the Client in writing promptly thereafter and provided further that such Associate is authorised in terms of FAIS to represent Regiments in providing such services to the Client.
- 33.3. Regiments' liability to the Client shall not be affected by any delegation to another party of its obligations under this Agreement.

**34. EXECUTION IN COUNTERPARTS**

This Agreement may be executed in several counterparts, each of which shall together constitute one and the same instrument.

✓  
[Signature]

For: **TRANSNET SECOND DEFINED BENEFIT FUND**

Signature: \_\_\_\_\_



who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_

PJJ Maritz

Date: \_\_\_\_\_

01 OCTOBER 2015

Place: \_\_\_\_\_

JOHANNESBURG

Witness: \_\_\_\_\_



Witness: \_\_\_\_\_



For: **REGIMENTS FUND MANAGERS PROPRIETARY LIMITED**

Signature: \_\_\_\_\_



who warrants that he / she is duly authorised thereto

Name: \_\_\_\_\_

M. PILLAY

Date: \_\_\_\_\_

01 OCTOBER 2015

Place: \_\_\_\_\_

JOHANNESBURG

Witness: \_\_\_\_\_

Witness: \_\_\_\_\_

## Annexure A - Liability Schedule

It is noted that where the 22<sup>nd</sup> day of the relevant month falls on a Saturday, Sunday or public holiday then notwithstanding the date specified below the payment date shall be the business day immediately preceding the relevant payment date. Payment should be made by no later than 12h00 of the relevant day.

Date	Amount	Date	Amount	Date	Amount
22-Aug-15	13,553,260.66	22-Feb-19	11,561,608.76	22-Aug-22	9,459,774.49
22-Sep-15	13,511,551.98	22-Mar-19	11,513,385.94	22-Sep-22	9,411,350.08
22-Oct-15	13,469,130.43	22-Apr-19	11,463,120.09	22-Oct-22	9,362,663.78
22-Nov-15	13,424,058.07	22-May-19	11,413,046.67	22-Nov-22	9,312,563.45
22-Dec-15	13,378,508.13	22-Jun-19	11,362,677.07	22-Dec-22	9,262,233.39
22-Jan-16	13,330,560.57	22-Jul-19	11,312,300.67	22-Jan-23	9,210,678.14
22-Feb-16	13,285,035.72	22-Aug-19	11,263,775.71	22-Feb-23	9,161,595.23
22-Mar-16	13,241,479.58	22-Sep-19	11,215,364.64	22-Mar-23	9,113,374.32
22-Apr-16	13,195,236.38	22-Oct-19	11,166,596.44	22-Apr-23	9,063,902.53
22-May-16	13,149,029.82	22-Nov-19	11,115,840.81	22-May-23	9,014,534.36
22-Jun-16	13,102,839.13	22-Dec-19	11,064,785.73	22-Jun-23	8,964,937.69
22-Jul-16	13,056,311.36	22-Jan-20	11,012,034.31	22-Jul-23	8,915,432.85
22-Aug-16	13,012,060.35	22-Feb-20	10,961,933.90	22-Aug-23	8,867,054.69
22-Sep-16	12,967,729.46	22-Mar-20	10,913,171.94	22-Sep-23	8,819,066.23
22-Oct-16	12,922,833.30	22-Apr-20	10,862,576.45	22-Oct-23	8,771,012.56
22-Nov-16	12,875,395.39	22-May-20	10,812,236.31	22-Nov-23	8,721,498.21
22-Dec-16	12,827,533.32	22-Jun-20	10,761,548.32	22-Dec-23	8,671,804.77
22-Jan-17	12,777,456.49	22-Jul-20	10,710,906.17	22-Jan-24	8,621,230.35
22-Feb-17	12,729,898.87	22-Aug-20	10,661,939.48	22-Feb-24	8,572,866.02
22-Mar-17	12,684,187.08	22-Sep-20	10,613,153.18	22-Mar-24	8,525,166.75
22-Apr-17	12,636,001.73	22-Oct-20	10,563,857.98	22-Apr-24	8,476,553.27
22-May-17	12,587,897.09	22-Nov-20	10,512,957.86	22-May-24	8,428,376.74
22-Jun-17	12,539,728.84	22-Dec-20	10,461,720.64	22-Jun-24	8,379,580.66
22-Jul-17	12,491,320.19	22-Jan-21	10,409,018.72	22-Jul-24	8,331,235.65
22-Aug-17	12,445,072.03	22-Feb-21	10,358,957.70	22-Aug-24	8,283,914.34
22-Sep-17	12,398,803.84	22-Mar-21	10,310,032.49	22-Sep-24	8,236,962.29
22-Oct-17	12,352,053.83	22-Apr-21	10,259,401.21	22-Oct-24	8,189,786.62
22-Nov-17	12,302,899.14	22-May-21	10,209,142.57	22-Nov-24	8,141,563.01
22-Dec-17	12,253,415.83	22-Jun-21	10,158,502.28	22-Dec-24	8,093,084.32
22-Jan-18	12,201,895.02	22-Jul-21	10,107,992.20	22-Jan-25	8,043,720.93
22-Feb-18	12,152,965.20	22-Aug-21	10,058,978.61	22-Feb-25	7,996,496.03
22-Mar-18	12,105,728.15	22-Sep-21	10,010,204.31	22-Mar-25	7,949,865.44
22-Apr-18	12,056,232.52	22-Oct-21	9,961,149.55	22-Apr-25	7,902,395.82
22-May-18	12,006,878.23	22-Nov-21	9,910,488.11	22-May-25	7,855,475.61
22-Jun-18	11,957,357.74	22-Dec-21	9,859,512.34	22-Jun-25	7,807,948.15
22-Jul-18	11,907,695.12	22-Jan-22	9,807,229.76	22-Jul-25	7,760,748.07
22-Aug-18	11,860,048.16	22-Feb-22	9,757,553.40	22-Aug-25	7,714,495.71
22-Sep-18	11,812,448.39	22-Mar-22	9,708,845.09	22-Sep-25	7,668,725.39
22-Oct-18	11,764,436.41	22-Apr-22	9,658,700.19	22-Oct-25	7,622,389.03
22-Nov-18	11,714,251.34	22-May-22	9,608,870.20	22-Nov-25	7,575,435.26
22-Dec-18	11,663,734.51	22-Jun-22	9,558,539.48	22-Dec-25	7,528,306.54
22-Jan-19	11,611,353.23	22-Jul-22	9,508,497.98	22-Jan-26	7,480,401.95

Date	Amount
22-Feb-26	7,434,738.65
22-Mar-26	7,389,340.46
22-Apr-26	7,343,237.60
22-May-26	7,297,605.60
22-Jun-26	7,251,478.34
22-Jul-26	7,205,819.25
22-Aug-26	7,160,858.73
22-Sep-26	7,116,397.90
22-Oct-26	7,071,694.19
22-Nov-26	7,026,236.06
22-Dec-26	6,980,589.84
22-Jan-27	6,934,280.19
22-Feb-27	6,890,082.73
22-Mar-27	6,846,072.88
22-Apr-27	6,801,448.84
22-May-27	6,757,434.40
22-Jun-27	6,712,863.77
22-Jul-27	6,668,762.72
22-Aug-27	6,625,295.50
22-Sep-27	6,582,314.80
22-Oct-27	6,539,093.63
22-Nov-27	6,495,326.19
22-Dec-27	6,451,338.72
22-Jan-28	6,406,774.42
22-Feb-28	6,364,185.78
22-Mar-28	6,321,674.88
22-Apr-28	6,278,675.53
22-May-28	6,236,316.53
22-Jun-28	6,193,462.30
22-Jul-28	6,151,066.48
22-Aug-28	6,109,219.76
22-Sep-28	6,067,872.19
22-Oct-28	6,026,291.13
22-Nov-28	5,984,302.77
22-Dec-28	5,942,126.12
22-Jan-29	5,899,438.99
22-Feb-29	5,858,583.85
22-Mar-29	5,817,715.97
22-Apr-29	5,776,471.47
22-May-29	5,735,892.41
22-Jun-29	5,694,849.07
22-Jul-29	5,654,281.51
22-Aug-29	5,614,190.12
22-Sep-29	5,574,511.13
22-Oct-29	5,534,705.76
22-Nov-29	5,494,623.80
22-Dec-29	5,454,357.34
22-Jan-30	5,413,663.17
22-Feb-30	5,374,654.73
22-Mar-30	5,335,554.27
22-Apr-30	5,296,183.15

Date	Amount
22-May-30	5,257,494.80
22-Jun-30	5,218,373.43
22-Jul-30	5,179,733.09
22-Aug-30	5,141,528.07
22-Sep-30	5,103,821.70
22-Oct-30	5,065,907.33
22-Nov-30	5,027,817.69
22-Dec-30	4,989,558.08
22-Jan-31	4,950,906.94
22-Feb-31	4,913,837.41
22-Mar-31	4,876,608.73
22-Apr-31	4,839,194.69
22-May-31	4,802,484.68
22-Jun-31	4,765,373.34
22-Jul-31	4,728,754.96
22-Aug-31	4,692,524.02
22-Sep-31	4,656,777.73
22-Oct-31	4,620,839.09
22-Nov-31	4,584,841.74
22-Dec-31	4,548,666.98
22-Jan-32	4,512,202.48
22-Feb-32	4,477,141.17
22-Mar-32	4,441,869.07
22-Apr-32	4,406,484.63
22-May-32	4,371,812.19
22-Jun-32	4,336,772.60
22-Jul-32	4,302,219.66
22-Aug-32	4,268,038.88
22-Sep-32	4,234,287.37
22-Oct-32	4,200,404.51
22-Nov-32	4,166,533.42
22-Dec-32	4,132,500.69
22-Jan-33	4,098,228.55
22-Feb-33	4,065,223.42
22-Mar-33	4,031,965.68
22-Apr-33	3,998,657.91
22-May-33	3,966,060.11
22-Jun-33	3,933,140.80
22-Jul-33	3,900,706.10
22-Aug-33	3,868,608.23
22-Sep-33	3,836,964.18
22-Oct-33	3,805,167.08
22-Nov-33	3,773,448.40
22-Dec-33	3,741,572.88
22-Jan-34	3,709,514.12
22-Feb-34	3,678,593.06
22-Mar-34	3,647,388.66
22-Apr-34	3,616,179.80
22-May-34	3,585,675.84
22-Jun-34	3,554,892.58
22-Jul-34	3,524,576.05

Date	Amount
22-Aug-34	3,494,588.90
22-Sep-34	3,465,034.89
22-Oct-34	3,435,344.22
22-Nov-34	3,405,784.34
22-Dec-34	3,376,086.30
22-Jan-35	3,346,239.28
22-Feb-35	3,317,396.69
22-Mar-35	3,288,258.77
22-Apr-35	3,105,366.39
22-May-35	3,105,366.39
22-Jun-35	3,105,366.39
22-Jul-35	3,105,366.39
22-Aug-35	3,105,366.39
22-Sep-35	3,105,366.39
22-Oct-35	3,105,366.39
22-Nov-35	3,105,366.39
22-Dec-35	3,105,366.39
22-Jan-36	3,105,366.39
22-Feb-36	3,105,366.39
22-Mar-36	3,105,366.39
22-Apr-36	2,785,208.65
22-May-36	2,785,208.65
22-Jun-36	2,785,208.65
22-Jul-36	2,785,208.65
22-Aug-36	2,785,208.65
22-Sep-36	2,785,208.65
22-Oct-36	2,785,208.65
22-Nov-36	2,785,208.65
22-Dec-36	2,785,208.65
22-Jan-37	2,785,208.65
22-Feb-37	2,785,208.65
22-Mar-37	2,785,208.65
22-Apr-37	2,489,761.87
22-May-37	2,489,761.87
22-Jun-37	2,489,761.87
22-Jul-37	2,489,761.87
22-Aug-37	2,489,761.87
22-Sep-37	2,489,761.87
22-Oct-37	2,489,761.87
22-Nov-37	2,489,761.87
22-Dec-37	2,489,761.87
22-Jan-38	2,489,761.87
22-Feb-38	2,489,761.87
22-Mar-38	2,489,761.87
22-Apr-38	2,218,333.83
22-May-38	2,218,333.83
22-Jun-38	2,218,333.83
22-Jul-38	2,218,333.83
22-Aug-38	2,218,333.83
22-Sep-38	2,218,333.83
22-Oct-38	2,218,333.83

✓  
RST

Date	Amount
22-Nov-38	2,218,333.83
22-Dec-38	2,218,333.83
22-Jan-39	2,218,333.83
22-Feb-39	2,218,333.83
22-Mar-39	2,218,333.83
22-Apr-39	1,970,029.01
22-May-39	1,970,029.01
22-Jun-39	1,970,029.01
22-Jul-39	1,970,029.01
22-Aug-39	1,970,029.01
22-Sep-39	1,970,029.01
22-Oct-39	1,970,029.01
22-Nov-39	1,970,029.01
22-Dec-39	1,970,029.01
22-Jan-40	1,970,029.01
22-Feb-40	1,970,029.01
22-Mar-40	1,970,029.01
22-Apr-40	1,743,725.71
22-May-40	1,743,725.71
22-Jun-40	1,743,725.71
22-Jul-40	1,743,725.71
22-Aug-40	1,743,725.71
22-Sep-40	1,743,725.71
22-Oct-40	1,743,725.71
22-Nov-40	1,743,725.71
22-Dec-40	1,743,725.71
22-Jan-41	1,743,725.71
22-Feb-41	1,743,725.71
22-Mar-41	1,743,725.71
22-Apr-41	1,538,192.23
22-May-41	1,538,192.23
22-Jun-41	1,538,192.23
22-Jul-41	1,538,192.23
22-Aug-41	1,538,192.23
22-Sep-41	1,538,192.23
22-Oct-41	1,538,192.23
22-Nov-41	1,538,192.23
22-Dec-41	1,538,192.23
22-Jan-42	1,538,192.23
22-Feb-42	1,538,192.23
22-Mar-42	1,538,192.23
22-Apr-42	1,352,193.18
22-May-42	1,352,193.18
22-Jun-42	1,352,193.18
22-Jul-42	1,352,193.18
22-Aug-42	1,352,193.18
22-Sep-42	1,352,193.18
22-Oct-42	1,352,193.18
22-Nov-42	1,352,193.18
22-Dec-42	1,352,193.18
22-Jan-43	1,352,193.18

Date	Amount
22-Feb-43	1,352,193.18
22-Mar-43	1,352,193.18
22-Apr-43	1,184,437.70
22-May-43	1,184,437.70
22-Jun-43	1,184,437.70
22-Jul-43	1,184,437.70
22-Aug-43	1,184,437.70
22-Sep-43	1,184,437.70
22-Oct-43	1,184,437.70
22-Nov-43	1,184,437.70
22-Dec-43	1,184,437.70
22-Jan-44	1,184,437.70
22-Feb-44	1,184,437.70
22-Mar-44	1,184,437.70
22-Apr-44	1,033,566.49
22-May-44	1,033,566.49
22-Jun-44	1,033,566.49
22-Jul-44	1,033,566.49
22-Aug-44	1,033,566.49
22-Sep-44	1,033,566.49
22-Oct-44	1,033,566.49
22-Nov-44	1,033,566.49
22-Dec-44	1,033,566.49
22-Jan-45	1,033,566.49
22-Feb-45	1,033,566.49
22-Mar-45	1,033,566.49
22-Apr-45	898,270.64
22-May-45	898,270.64
22-Jun-45	898,270.64
22-Jul-45	898,270.64
22-Aug-45	898,270.64
22-Sep-45	898,270.64
22-Oct-45	898,270.64
22-Nov-45	898,270.64
22-Dec-45	898,270.64
22-Jan-46	898,270.64
22-Feb-46	898,270.64
22-Mar-46	898,270.64
22-Apr-46	777,342.96
22-May-46	777,342.96
22-Jun-46	777,342.96
22-Jul-46	777,342.96
22-Aug-46	777,342.96
22-Sep-46	777,342.96
22-Oct-46	777,342.96
22-Nov-46	777,342.96
22-Dec-46	777,342.96
22-Jan-47	777,342.96
22-Feb-47	777,342.96
22-Mar-47	777,342.96
22-Apr-47	669,595.76

Date	Amount
22-May-47	669,595.76
22-Jun-47	669,595.76
22-Jul-47	669,595.76
22-Aug-47	669,595.76
22-Sep-47	669,595.76
22-Oct-47	669,595.76
22-Nov-47	669,595.76
22-Dec-47	669,595.76
22-Jan-48	669,595.76
22-Feb-48	669,595.76
22-Mar-48	669,595.76
22-Apr-48	573,928.61
22-May-48	573,928.61
22-Jun-48	573,928.61
22-Jul-48	573,928.61
22-Aug-48	573,928.61
22-Sep-48	573,928.61
22-Oct-48	573,928.61
22-Nov-48	573,928.61
22-Dec-48	573,928.61
22-Jan-49	573,928.61
22-Feb-49	573,928.61
22-Mar-49	573,928.61
22-Apr-49	489,340.94
22-May-49	489,340.94
22-Jun-49	489,340.94
22-Jul-49	489,340.94
22-Aug-49	489,340.94
22-Sep-49	489,340.94
22-Oct-49	489,340.94
22-Nov-49	489,340.94
22-Dec-49	489,340.94
22-Jan-50	489,340.94
22-Feb-50	489,340.94
22-Mar-50	489,340.94
22-Apr-50	414,881.66
22-May-50	414,881.66
22-Jun-50	414,881.66
22-Jul-50	414,881.66
22-Aug-50	414,881.66
22-Sep-50	414,881.66
22-Oct-50	414,881.66
22-Nov-50	414,881.66
22-Dec-50	414,881.66
22-Jan-51	414,881.66
22-Feb-51	414,881.66
22-Mar-51	414,881.66
22-Apr-51	349,651.06
22-May-51	349,651.06
22-Jun-51	349,651.06
22-Jul-51	349,651.06

V  
RZ



Date	Amount
22-Aug-51	349,651.06
22-Sep-51	349,651.06
22-Oct-51	349,651.06
22-Nov-51	349,651.06
22-Dec-51	349,651.06
22-Jan-52	349,651.06
22-Feb-52	349,651.06
22-Mar-52	349,651.06
22-Apr-52	292,783.12
22-May-52	292,783.12
22-Jun-52	292,783.12
22-Jul-52	292,783.12
22-Aug-52	292,783.12
22-Sep-52	292,783.12
22-Oct-52	292,783.12
22-Nov-52	292,783.12
22-Dec-52	292,783.12
22-Jan-53	292,783.12
22-Feb-53	292,783.12
22-Mar-53	292,783.12
22-Apr-53	243,524.39
22-May-53	243,524.39
22-Jun-53	243,524.39
22-Jul-53	243,524.39
22-Aug-53	243,524.39
22-Sep-53	243,524.39
22-Oct-53	243,524.39
22-Nov-53	243,524.39
22-Dec-53	243,524.39
22-Jan-54	243,524.39
22-Feb-54	243,524.39
22-Mar-54	243,524.39
22-Apr-54	201,115.75
22-May-54	201,115.75
22-Jun-54	201,115.75
22-Jul-54	201,115.75
22-Aug-54	201,115.75
22-Sep-54	201,115.75
22-Oct-54	201,115.75
22-Nov-54	201,115.75
22-Dec-54	201,115.75
22-Jan-55	201,115.75
22-Feb-55	201,115.75
22-Mar-55	201,115.75
22-Apr-55	164,877.35
22-May-55	164,877.35
22-Jun-55	164,877.35
22-Jul-55	164,877.35
22-Aug-55	164,877.35
22-Sep-55	164,877.35
22-Oct-55	164,877.35

Date	Amount
22-Nov-55	164,877.35
22-Dec-55	164,877.35
22-Jan-56	164,877.35
22-Feb-56	164,877.35
22-Mar-56	164,877.35
22-Apr-56	134,148.14
22-May-56	134,148.14
22-Jun-56	134,148.14
22-Jul-56	134,148.14
22-Aug-56	134,148.14
22-Sep-56	134,148.14
22-Oct-56	134,148.14
22-Nov-56	134,148.14
22-Dec-56	134,148.14
22-Jan-57	134,148.14
22-Feb-57	134,148.14
22-Mar-57	134,148.14
22-Apr-57	108,318.10
22-May-57	108,318.10
22-Jun-57	108,318.10
22-Jul-57	108,318.10
22-Aug-57	108,318.10
22-Sep-57	108,318.10
22-Oct-57	108,318.10
22-Nov-57	108,318.10
22-Dec-57	108,318.10
22-Jan-58	108,318.10
22-Feb-58	108,318.10
22-Mar-58	108,318.10
22-Apr-58	86,747.60
22-May-58	86,747.60
22-Jun-58	86,747.60
22-Jul-58	86,747.60
22-Aug-58	86,747.60
22-Sep-58	86,747.60
22-Oct-58	86,747.60
22-Nov-58	86,747.60
22-Dec-58	86,747.60
22-Jan-59	86,747.60
22-Feb-59	86,747.60
22-Mar-59	86,747.60
22-Apr-59	68,910.74
22-May-59	68,910.74
22-Jun-59	68,910.74
22-Jul-59	68,910.74
22-Aug-59	68,910.74
22-Sep-59	68,910.74
22-Oct-59	68,910.74
22-Nov-59	68,910.74
22-Dec-59	68,910.74
22-Jan-60	68,910.74

Date	Amount
22-Feb-60	68,910.74
22-Mar-60	68,910.74
22-Apr-60	54,296.96
22-May-60	54,296.96
22-Jun-60	54,296.96
22-Jul-60	54,296.96
22-Aug-60	54,296.96
22-Sep-60	54,296.96
22-Oct-60	54,296.96
22-Nov-60	54,296.96
22-Dec-60	54,296.96
22-Jan-61	54,296.96
22-Feb-61	54,296.96
22-Mar-61	54,296.96
22-Apr-61	42,414.03
22-May-61	42,414.03
22-Jun-61	42,414.03
22-Jul-61	42,414.03
22-Aug-61	42,414.03
22-Sep-61	42,414.03
22-Oct-61	42,414.03
22-Nov-61	42,414.03
22-Dec-61	42,414.03
22-Jan-62	42,414.03
22-Feb-62	42,414.03
22-Mar-62	42,414.03
22-Apr-62	32,856.65
22-May-62	32,856.65
22-Jun-62	32,856.65
22-Jul-62	32,856.65
22-Aug-62	32,856.65
22-Sep-62	32,856.65
22-Oct-62	32,856.65
22-Nov-62	32,856.65
22-Dec-62	32,856.65
22-Jan-63	32,856.65
22-Feb-63	32,856.65
22-Mar-63	32,856.65
22-Apr-63	25,241.25
22-May-63	25,241.25
22-Jun-63	25,241.25
22-Jul-63	25,241.25
22-Aug-63	25,241.25
22-Sep-63	25,241.25
22-Oct-63	25,241.25
22-Nov-63	25,241.25
22-Dec-63	25,241.25
22-Jan-64	25,241.25
22-Feb-64	25,241.25
22-Mar-64	25,241.25
22-Apr-64	19,227.38

V  
RST

Date	Amount
22-May-64	19,227.38
22-Jun-64	19,227.38
22-Jul-64	19,227.38
22-Aug-64	19,227.38
22-Sep-64	19,227.38
22-Oct-64	19,227.38
22-Nov-64	19,227.38
22-Dec-64	19,227.38
22-Jan-65	19,227.38
22-Feb-65	19,227.38
22-Mar-65	19,227.38
22-Apr-65	14,531.20
22-May-65	14,531.20
22-Jun-65	14,531.20
22-Jul-65	14,531.20
22-Aug-65	14,531.20
22-Sep-65	14,531.20
22-Oct-65	14,531.20
22-Nov-65	14,531.20
22-Dec-65	14,531.20
22-Jan-66	14,531.20
22-Feb-66	14,531.20
22-Mar-66	14,531.20
22-Apr-66	10,899.35
22-May-66	10,899.35
22-Jun-66	10,899.35
22-Jul-66	10,899.35
22-Aug-66	10,899.35
22-Sep-66	10,899.35
22-Oct-66	10,899.35
22-Nov-66	10,899.35
22-Dec-66	10,899.35
22-Jan-67	10,899.35
22-Feb-67	10,899.35
22-Mar-67	10,899.35
22-Apr-67	8,118.95
22-May-67	8,118.95
22-Jun-67	8,118.95
22-Jul-67	8,118.95
22-Aug-67	8,118.95
22-Sep-67	8,118.95
22-Oct-67	8,118.95
22-Nov-67	8,118.95
22-Dec-67	8,118.95
22-Jan-68	8,118.95
22-Feb-68	8,118.95
22-Mar-68	8,118.95
22-Apr-68	6,007.01
22-May-68	6,007.01
22-Jun-68	6,007.01
22-Jul-68	6,007.01

Date	Amount
22-Aug-68	6,007.01
22-Sep-68	6,007.01
22-Oct-68	6,007.01
22-Nov-68	6,007.01
22-Dec-68	6,007.01
22-Jan-69	6,007.01
22-Feb-69	6,007.01
22-Mar-69	6,007.01
22-Apr-69	4,418.07
22-May-69	4,418.07
22-Jun-69	4,418.07
22-Jul-69	4,418.07
22-Aug-69	4,418.07
22-Sep-69	4,418.07
22-Oct-69	4,418.07
22-Nov-69	4,418.07
22-Dec-69	4,418.07
22-Jan-70	4,418.07
22-Feb-70	4,418.07
22-Mar-70	4,418.07
22-Apr-70	3,234.80
22-May-70	3,234.80
22-Jun-70	3,234.80
22-Jul-70	3,234.80
22-Aug-70	3,234.80
22-Sep-70	3,234.80
22-Oct-70	3,234.80
22-Nov-70	3,234.80
22-Dec-70	3,234.80
22-Jan-71	3,234.80
22-Feb-71	3,234.80
22-Mar-71	3,234.80
22-Apr-71	2,357.57
22-May-71	2,357.57
22-Jun-71	2,357.57
22-Jul-71	2,357.57
22-Aug-71	2,357.57
22-Sep-71	2,357.57
22-Oct-71	2,357.57
22-Nov-71	2,357.57
22-Dec-71	2,357.57
22-Jan-72	2,357.57
22-Feb-72	2,357.57
22-Mar-72	2,357.57
22-Apr-72	1,713.23
22-May-72	1,713.23
22-Jun-72	1,713.23
22-Jul-72	1,713.23
22-Aug-72	1,713.23
22-Sep-72	1,713.23
22-Oct-72	1,713.23

Date	Amount
22-Nov-72	1,713.23
22-Dec-72	1,713.23
22-Jan-73	1,713.23
22-Feb-73	1,713.23
22-Mar-73	1,713.23
22-Apr-73	1,245.48
22-May-73	1,245.48
22-Jun-73	1,245.48
22-Jul-73	1,245.48
22-Aug-73	1,245.48
22-Sep-73	1,245.48
22-Oct-73	1,245.48
22-Nov-73	1,245.48
22-Dec-73	1,245.48
22-Jan-74	1,245.48
22-Feb-74	1,245.48
22-Mar-74	1,245.48
22-Apr-74	903.98
22-May-74	903.98
22-Jun-74	903.98
22-Jul-74	903.98
22-Aug-74	903.98
22-Sep-74	903.98
22-Oct-74	903.98
22-Nov-74	903.98
22-Dec-74	903.98
22-Jan-75	903.98
22-Feb-75	903.98
22-Mar-75	903.98
22-Apr-75	655.91
22-May-75	655.91
22-Jun-75	655.91
22-Jul-75	655.91
22-Aug-75	655.91
22-Sep-75	655.91
22-Oct-75	655.91
22-Nov-75	655.91
22-Dec-75	655.91
22-Jan-76	655.91
22-Feb-76	655.91
22-Mar-76	655.91
22-Apr-76	475.96
22-May-76	475.96
22-Jun-76	475.96
22-Jul-76	475.96
22-Aug-76	475.96
22-Sep-76	475.96
22-Oct-76	475.96
22-Nov-76	475.96
22-Dec-76	475.96
22-Jan-77	475.96

P  
RPT

Date	Amount
22-Feb-77	475.96
22-Mar-77	475.96
22-Apr-77	345.34
22-May-77	345.34
22-Jun-77	345.34
22-Jul-77	345.34
22-Aug-77	345.34
22-Sep-77	345.34
22-Oct-77	345.34
22-Nov-77	345.34
22-Dec-77	345.34
22-Jan-78	345.34
22-Feb-78	345.34
22-Mar-78	345.34
22-Apr-78	250.48
22-May-78	250.48
22-Jun-78	250.48
22-Jul-78	250.48
22-Aug-78	250.48
22-Sep-78	250.48
22-Oct-78	250.48
22-Nov-78	250.48
22-Dec-78	250.48
22-Jan-79	250.48
22-Feb-79	250.48
22-Mar-79	250.48
22-Apr-79	181.05
22-May-79	181.05
22-Jun-79	181.05
22-Jul-79	181.05
22-Aug-79	181.05
22-Sep-79	181.05
22-Oct-79	181.05
22-Nov-79	181.05
22-Dec-79	181.05
22-Jan-80	181.05
22-Feb-80	181.05
22-Mar-80	181.05
22-Apr-80	130.58
22-May-80	130.58
22-Jun-80	130.58
22-Jul-80	130.58
22-Aug-80	130.58
22-Sep-80	130.58
22-Oct-80	130.58
22-Nov-80	130.58
22-Dec-80	130.58
22-Jan-81	130.58
22-Feb-81	130.58
22-Mar-81	130.58
22-Apr-81	93.55

Date	Amount
22-May-81	93.55
22-Jun-81	93.55
22-Jul-81	93.55
22-Aug-81	93.55
22-Sep-81	93.55
22-Oct-81	93.55
22-Nov-81	93.55
22-Dec-81	93.55
22-Jan-82	93.55
22-Feb-82	93.55
22-Mar-82	93.55
22-Apr-82	66.49
22-May-82	66.49
22-Jun-82	66.49
22-Jul-82	66.49
22-Aug-82	66.49
22-Sep-82	66.49
22-Oct-82	66.49
22-Nov-82	66.49
22-Dec-82	66.49
22-Jan-83	66.49
22-Feb-83	66.49
22-Mar-83	66.49
22-Apr-83	46.64
22-May-83	46.64
22-Jun-83	46.64
22-Jul-83	46.64
22-Aug-83	46.64
22-Sep-83	46.64
22-Oct-83	46.64
22-Nov-83	46.64
22-Dec-83	46.64
22-Jan-84	46.64
22-Feb-84	46.64
22-Mar-84	46.64
22-Apr-84	32.34
22-May-84	32.34
22-Jun-84	32.34
22-Jul-84	32.34
22-Aug-84	32.34
22-Sep-84	32.34
22-Oct-84	32.34
22-Nov-84	32.34
22-Dec-84	32.34
22-Jan-85	32.34
22-Feb-85	32.34
22-Mar-85	32.34
22-Apr-85	22.09
22-May-85	22.09
22-Jun-85	22.09
22-Jul-85	22.09

Date	Amount
22-Aug-85	22.09
22-Sep-85	22.09
22-Oct-85	22.09
22-Nov-85	22.09
22-Dec-85	22.09
22-Jan-86	22.09
22-Feb-86	22.09
22-Mar-86	22.09
22-Apr-86	14.78
22-May-86	14.78
22-Jun-86	14.78
22-Jul-86	14.78
22-Aug-86	14.78
22-Sep-86	14.78
22-Oct-86	14.78
22-Nov-86	14.78
22-Dec-86	14.78
22-Jan-87	14.78
22-Feb-87	14.78
22-Mar-87	14.78
22-Apr-87	9.66
22-May-87	9.66
22-Jun-87	9.66
22-Jul-87	9.66
22-Aug-87	9.66
22-Sep-87	9.66
22-Oct-87	9.66
22-Nov-87	9.66
22-Dec-87	9.66
22-Jan-88	9.66
22-Feb-88	9.66
22-Mar-88	9.66
22-Apr-88	6.13
22-May-88	6.13
22-Jun-88	6.13
22-Jul-88	6.13
22-Aug-88	6.13
22-Sep-88	6.13
22-Oct-88	6.13
22-Nov-88	6.13
22-Dec-88	6.13
22-Jan-89	6.13
22-Feb-89	6.13
22-Mar-89	6.13
22-Apr-89	3.78
22-May-89	3.78
22-Jun-89	3.78
22-Jul-89	3.78
22-Aug-89	3.78
22-Sep-89	3.78
22-Oct-89	3.78

✓



Date	Amount	Date	Amount
22-Nov-89	3.78	22-Feb-94	0.37
22-Dec-89	3.78	22-Mar-94	0.37
22-Jan-90	3.78	22-Apr-94	0.18
22-Feb-90	3.78	22-May-94	0.18
22-Mar-90	3.78	22-Jun-94	0.18
22-Apr-90	2.26	22-Jul-94	0.18
22-May-90	2.26	22-Aug-94	0.18
22-Jun-90	2.26	22-Sep-94	0.18
22-Jul-90	2.26	22-Oct-94	0.18
22-Aug-90	2.26	22-Nov-94	0.18
22-Sep-90	2.26	22-Dec-94	0.18
22-Oct-90	2.26	22-Jan-95	0.18
22-Nov-90	2.26	22-Feb-95	0.18
22-Dec-90	2.26	22-Mar-95	0.18
22-Jan-91	2.26	22-Apr-95	0.07
22-Feb-91	2.26	22-May-95	0.07
22-Mar-91	2.26	22-Jun-95	0.07
22-Apr-91	1.30	22-Jul-95	0.07
22-May-91	1.30	22-Aug-95	0.07
22-Jun-91	1.30	22-Sep-95	0.07
22-Jul-91	1.30	22-Oct-95	0.07
22-Aug-91	1.30	22-Nov-95	0.07
22-Sep-91	1.30	22-Dec-95	0.07
22-Oct-91	1.30	22-Jan-96	0.07
22-Nov-91	1.30	22-Feb-96	0.07
22-Dec-91	1.30	22-Mar-96	0.07
22-Jan-92	1.30	22-Apr-96	0.02
22-Feb-92	1.30	22-May-96	0.02
22-Mar-92	1.30	22-Jun-96	0.02
22-Apr-92	0.71	22-Jul-96	0.02
22-May-92	0.71	22-Aug-96	0.02
22-Jun-92	0.71	22-Sep-96	0.02
22-Jul-92	0.71	22-Oct-96	0.02
22-Aug-92	0.71	22-Nov-96	0.02
22-Sep-92	0.71	22-Dec-96	0.02
22-Oct-92	0.71	22-Jan-97	0.02
22-Nov-92	0.71	22-Feb-97	0.02
22-Dec-92	0.71	22-Mar-97	0.02
22-Jan-93	0.71	22-Apr-97	0.00
22-Feb-93	0.71	22-May-97	0.00
22-Mar-93	0.71	22-Jun-97	0.00
22-Apr-93	0.37	22-Jul-97	0.00
22-May-93	0.37	22-Aug-97	0.00
22-Jun-93	0.37	22-Sep-97	0.00
22-Jul-93	0.37	22-Oct-97	0.00
22-Aug-93	0.37	22-Nov-97	0.00
22-Sep-93	0.37	22-Dec-97	0.00
22-Oct-93	0.37	22-Jan-98	0.00
22-Nov-93	0.37	22-Feb-98	0.00
22-Dec-93	0.37	22-Mar-98	0.00
22-Jan-94	0.37	22-Apr-98	-

✓

RET

**Annexure B - Effective Date Portfolio Assets**

1. The Client has entered into a swap transaction (the "**Swap Transaction**") with JPMorgan Chase Bank N.A., Johannesburg Branch ("**JP Morgan**"), the terms of which are documented in -

- 1.1. a written ISDA 2002 Master Agreement and Schedule to the 2002 Master Agreement dated as of 30 November 2007 executed in counterparts between the Client and JP Morgan on or about 5 December 2007;
- 1.2. a written confirmation ("**Confirmation**") in relation to the ISDA Master Agreement executed in counterparts between the Client and JP Morgan on or about 30 November 2007;
- 1.3. a written credit support deed executed in counterparts between the Client and JP Morgan on or about 30 November 2007 (the "**Credit Support Deed**");
- 1.4. a written side letter executed in counterparts between the Client and JP Morgan on or about 30 November 2007;
- 1.5. a written rectification to the Schedule to the 2002 ISDA Master Agreement dated as of 3 January 2008 executed in counterparts between the Client and JP Morgan on or about 14 January 2008; and
- 1.6. a written amendment to the Confirmation dated as of January 2008 executed in counterparts between the Client and JP Morgan on or about 23 January 2008.

2. The Portfolio Assets shall comprise -

- 2.1. the rights and obligations of the Client under either -
  - 2.1.1. a written swap confirmation with JP Morgan, which confirmation shall evidence one half of the rights and obligations under the Swap Transaction referred to in clause 1.2 of this **Annexure B**; or
  - 2.1.2. one half of the rights and obligations under the Swap Transaction referred to in clause 1.2 of this **Annexure B**;
- 2.2. the reference bonds contemplated as being held by the Client to fund its obligations under clause 2.1.1 or 2.1.2 of this **Annexure B**;
- 2.3. one half of the bonds pledged to JP Morgan under the Credit Support Deed referred to in clause 1 of this **Annexure B**; and

P  
AOT

- 2.4. the rights and obligations of the Client under the other documents referred to in clauses 1.1, 1.3, 1.4, 1.5 and 1.6 of this **Annexure B** insofar as those documents apply to the rights and obligations referred to in clause 2.1 of this **Annexure B**.

✓

RBS

## Annexure C - Investment and Risk Management Framework

### 1. OBJECTIVES OF THE LIABILITY DRIVEN INVESTMENT (LDI) SOLUTION

- 1.1. **Effective management of liquidity risk.** A risk facing the Client arises from the requirement to pay monthly benefit payments into the future. The LDI solution manages this actively and makes use of a liquidity buffer to ensure benefit payments are managed optimally.
- 1.2. **Immunise interest rate risk.** Fluctuation in interest rates affects the valuation of the liability profile, which creates volatility in the valuation of the Portfolio. The asset strategy for the Portfolio is designed to mirror and offset these fluctuations, thus reducing valuation risks in respect of the Portfolio.
- 1.3. **Generate outperformance over the liabilities.**
  - 1.3.1. Within a defined risk framework, 300 basis points over the liabilities is targeted.
  - 1.3.2. The investment performance shall be measured on quarterly basis as well as over the 3 (three) year rolling periods ending on the 3<sup>rd</sup> (third), 4<sup>th</sup> fourth and 5<sup>th</sup> (fifth) anniversaries of the Effective Date, respectively.
- 1.4. **Tracking:** Closely track the investment performance of the benchmark such that the funding level is not volatile.

### 2. INVESTMENT GUIDELINES

#### 2.1. General -

Regiments shall at all times adhere to the requirements of the Pension Funds Act, Regulation 28 and other regulations and notices issued by the Financial Services Board from time to time in relation to pension funds, including without limitation the draft "Conditions for the use of Derivative Instruments" posted for comment in December 2013, once they take effect.

#### 2.2. Repurchase (repo) transactions -

- 2.2.1. Regiments may transact in repos (sell/buy-back and buy/sell-back) trades in order to enhance the performance of the bond component of the Portfolio.
- 2.2.2. The maximum allowable portion of the Portfolio which can be transacted in repos at any given point in time, will be limited to a maximum of 50% (fifty percent) of the Portfolio.

VP  
ATC

- 2.2.3. Any repo trade will only be transacted with counter-parties where a Global Master Repurchase Agreement (GMRA) agreement is in place.
- 2.2.4. Repo trades may only be entered into with counter-parties that have a minimum short-term credit rating of F1. For instruments of more than 1 (one) year's duration the counter-party must have a minimum long-term credit rating of AA-.
- 2.2.5. Repo trades are subject to the same Credit Guidelines as outlined in clause 3 of Annexure C.
- 2.2.6. Trading activity will be limited to trades through the JSE Debt Market.
- 2.2.7. Any repo trade must be fully collateralised.
- 2.2.8. Regiments will not perform any securities lending beyond that of repo (sell/buy-back or buy/sell-back) trades as stipulated above.
- 2.2.9. Regiments is required to report on repo trades in its monthly reporting to the Client.
- 2.3. Prior written approval from the Client is required for investment in -
  - 2.3.1. a pooled vehicle where the investment is not directly held and any such investments may be subject to further guidelines and restrictions as may be prescribed by the Client from time to time;
  - 2.3.2. equity securities, commodities or direct currency exposures other than Rand.

### 3. RISK FRAMEWORK

#### 3.1. Credit Risk:

- 3.1.1. *Investment Credit risk* is limited in accordance with the following table:

Rating	Limit of Credit portfolio
AAA	100%
AA+	80%
AA	80%
AA-	80%
A+	70%
A	70%
A-	70%
BBB+	20%
BBB	20%
BBB-	10%

✓  
REF 1

3.1.2. **Counterparty credit risk** is managed by calling for collateral in accordance with the Credit Support Annexure (CSA) to the Master ISDA Agreements with Over-the-Counter (OTC) counterparties. When trading with a new OTC counterparty, a long form confirmation will be used for each trade. A Master ISDA agreement will be signed as soon as possible.

3.1.3. Credit exposure is further managed by meeting either one of the following criteria:

3.1.3.1. limiting the exposure to a single obligor to less than or equal to 10% (ten per cent) of the Market Value of the Portfolio (including the Portfolio Liabilities and the Portfolio Assets); or;

3.1.3.2. limiting the exposure to a single obligor to less than or equal to 20% (twenty per cent) of the net asset value of the obligor in question.

3.1.4. In the event that a potential counterparty is not rated, a credit report and request for counterparty exposure limit will be submitted to the Client for approval. In the event that the Client grants such approval, Regiments shall be entitled to transact with that counter-party.

## 3.2. **Liquidity Risk:**

3.2.1. Liquidity is monitored on a daily basis, save in respect of days which are not Business Days, and is limited in accordance with the following table to a percentage of the Market Value of the Portfolio Assets:

<b>Maturity</b>	<b>Shortfall</b>
< 1 months	0%
1 - 2 months	0%
2 - 3 months	5%
3 - 6 months	7%
6 - 12 months	13,5%
> 1 year	no limit

3.2.2. The solution is able to cover the shortfall in the time to maturity of the cash flow with minimal cost, if any. For example if there is a shortfall of 5% (five percent) of the Market Value of the Portfolio Assets in just over 2 (two) months' time, the cash could be comfortably raised without incurring position unwinding costs. Cash and near cash instruments are used.

✓  
RBT

**3.3. Market Risk:**

The following risk attributes are considered when positioning the Portfolio and are also monitored on a daily basis for performance.

Attribute	Description	Limit	
Parallel Curve Moves	Change in the net value of the Portfolio with a 100bps parallel change in the swap curve	2,5% of the value of the Portfolio Assets.	
Credit Spread Moves	Change in the net value of the Portfolio with a change in the credit spread of 100bps in each credit position at the same time.	5% of the value of the Portfolio Assets.	
Bonds vs Swaps	Change in the net value of the Portfolio with a 100bps change in the asset swap spread between bonds and swaps.	5% of the value of the Portfolio Assets.	

✓  
RFP 1

## Annexure D - Power of Attorney

## SPECIAL POWER OF ATTORNEY

We, the undersigned, being duly authorised hereto by a resolution of the trustees of the Transnet Second Defined Benefit Fund ("the Client"), dated 19 August 2014 do hereby nominate, constitute and appoint Regiments Fund Managers (Pty) Ltd ("REGIMENTS"), to manage the Client investments and matters relating thereto and to transact on behalf of the Client in relation to such investments on the basis set out hereinafter and in accordance with the terms of the Portfolio Management Agreement entered into or to be entered into between the Client and REGIMENTS on [•] 2015 ("Portfolio Management Agreement").

REGIMENTS has full power and authority, with the power of substitution, to be the Client's lawful attorney and agent, and without detracting from the generality thereof, in its name, place and stead to buy, sell acquire, dispose of, vote convert, manage, transact and otherwise deal with those assets and securities of the Client that are entrusted to REGIMENTS, including placing and removing script in the Client's name from safe custody, without the requirement for further authorisation, provided however that:

- i. REGIMENTS shall only be entitled to realise the Client investments if the proceeds of such realised investments are deposited into an account designated by the Client ("Client Designated Account");
- ii. all transactions contemplated herein including, without limitation the receipt of dividends or other proceeds on investments must be processed through the Client Designated Account;
- iii. REGIMENTS shall at all times act in accordance with the provisions of the Investment and Risk Management Framework attached to the Portfolio Management Agreement.

This authorisation does not only apply to the Client assets and securities currently in existence entrusted REGIMENTS. It also applies to and includes such further assets and securities as the Client may from time to time entrust to REGIMENTS, in terms of the Portfolio Management Agreement.

REGIMENTS is further authorised to sign all documentation in the Client's name, place and stead for purposes of effecting the objectives aforesaid, and to do or cause to be done whatsoever shall be further required to achieve such objectives as the Client might or could do if personally present and acting therein.

SIGNED at Johannesburg on this 01 OCTOBER 2015 of \_\_\_\_\_ in the presence of the undersigned witnesses:

Witnesses:

1. [Signature]  
2. [Signature]

[Signature]  
who warrants that he/she is duly authorised thereto

FOR AND ON BEHALF OF TRANSNET SECOND  
DEFINED BENEFIT FUND

V



**Annexure E - Risk Disclosure****1. INTRODUCTION**

It is recorded that -

- 1.1. there is a natural degree of risk inherent in trading and investing in financial instruments and markets;
- 1.2. the purpose of this annexure is to explain in general terms the nature of risks involved in investing in any of the financial instruments referred to in **Annexure C**. This annexure does not disclose or explain all of the risks and other significant aspects of dealing in financial instruments and markets;
- 1.3. past performance may not be indicative of future performance;
- 1.4. investment in any of the financial instruments referred to in **Annexure C** is generally done by sophisticated institutional investors who understand and are able to bear the risks involved in making the investment and the impact of the investment on their overall investment portfolio; and
- 1.5. in addition to the risks listed below and such other risks as have not been disclosed in this **Annexure C**, is the risk of losing the entire value of an investment or (in the case of certain derivative and other Transactions) the risk of being exposed to liability over and above the initial investment.

**2. INVESTMENT RISK**

Investment risk can be defined as the risk of not meeting a long term investment objective and/or by losing capital over the short to medium term. Investment risk is, amongst others, dependent upon market conditions. Due to a wide range of factors, financial instruments may trade at a discount to their offering price.

**3. REINVESTMENT RISK**

Reinvestment risk may arise in the circumstances where it may not be possible to reinvest interest or dividends earned from an investment in such a way that the same effective rate of return is yielded as had been earned by the invested funds through which they had been generated. For example, falling interest rates may prevent bond coupon payments from earning the same rate of return as the original bond. As an extreme example, where too high a weighting is held in cash to protect capital, then should interest rates go sideways to slightly downwards, it may be necessary to continually reinvest at lower and lower rates of return.

VP  
AP/1

4. **CUSTODIAN / INSTITUTIONAL RISK**

Custodian or institutional risk is unquantifiable. While the probability of this risk materialising may be low, when it does occur, it may result in a substantial negative impact upon a significant portion of the investment. For this reason, Regiments pays particular attention to this risk and only uses the approved or graded institutions when placing investment funds in accordance with the Investment and Risk Management Framework.

5. **CREDIT RISK**

Credit risk may arise if a bond issuer were to default, by failing to repay principal debt and/or interest in a timely manner. Potential causes for such default could include impaired liquidity and changes in the issuer's industry affecting its market share. Bonds issued by the government are highly unlikely to default. Municipalities occasionally default as well, although it is uncommon. Bonds issued by corporations are more likely to be defaulted on.

6. **EXCHANGE RATE RISK**

The risk that the value of an investment could be affected as a result of fluctuations in the applicable exchange rate constitutes exchange rate risk. Collateral deposits denominated in one currency may be subject to margin calls in circumstances where the obligations secured by such collateral are denominated in another currency.

7. **POLITICAL, SOCIAL AND/OR REGULATORY RISKS.**

The value of an investment may be adversely affected by uncertainties due to international or local political or social developments, changes in government policies, taxation, restrictions on foreign investment and currency repatriation, currency fluctuations and other developments in the laws and regulations of the countries in which the assets are invested, which are beyond the issuer's control.

8. **ECONOMIC CONDITIONS**

The success of any investment activity is affected by general economic conditions that may affect the level and volatility of many of the key market indicators and the extent and timing of the engagement into the trading activity. Unexpected volatility or illiquidity in the markets in which the positions are held could impair the client ability to carry out the investor's business or cause the investor to incur losses.

9. **LIQUIDITY AND MARKET RISK**

In some circumstances the markets in which the trades are made may be illiquid, thereby making it difficult to acquire or dispose of investments at prices quoted on the relevant exchanges rapidly and at a satisfactory price. In addition, the suspension by an exchange of trading in a particular market

✓  
APR

could make it impossible for positions to be realised and consequently there may be exposure to losses.

VP  
PSE

**Annexure F - Reporting****1. MONTHLY REPORTS**

1.1. Regiments will provide the Client at monthly intervals by no later than 17h00 on –

1.1.1. the 5th (fifth) Business Day of each month with -

1.1.1.1. a monthly portfolio report reflecting full details of -

1.1.1.1.1. any change in the composition of the Portfolio since the date of the previous statement of account, including particulars of any Fund Payments and any assets delivered to the Client;

1.1.1.1.2. any Portfolio Assets on the date to which the statement of account relates, as well as details of cash received and payments made by Regiments since the date of the previous statement of account;

1.1.1.1.3. the cost and market value of all assets on the date to which the statement relates;

1.1.1.1.4. all commissions, fees and other charges incurred by Client as contemplated in this Agreement;

1.1.1.2. a "Statement M" in the standard format attached hereto as **Annexure G** or in a different format but containing as a minimum the information as contemplated in the attached statement format.

In the event of Regiments being unable to supply any such monthly reports by the agreed time, Regiments shall notify the Client immediately;

1.1.2. 10th (tenth) Business Day of each month with a monthly risk report, reflecting full details of -

1.1.2.1. yield to maturity of the overall portfolio and each instrument and how this compares to the liability;

1.1.2.2. the probability of default, the loss given default and the expected default rate on the portfolio and each instrument (provided on a "best endeavours" basis using credit ratings);

VP  
AFF1

- 1.1.2.3. interest rate risk (modified duration, convexity, Rand per point, sensitivity) of overall portfolio and each instrument and how this compares to the liability;
- 1.1.2.4. spread risk of overall portfolio and each instrument and how this compares to the liability;
- 1.1.2.5. credit breakdown of portfolio compared to mandate guidelines;
- 1.1.2.6. basis risk of portfolio compared to liability, being the risk that arises from assets being priced off a different curve to that of the liabilities (e.g. if assets are priced off a swap curve but liabilities off a bond curve);
- 1.1.2.7. liquidity risk and breakdown of portfolio;
- 1.1.2.8. maturity breakdown of overall portfolio;
- 1.1.2.9. projected liquidity position of overall portfolio on a roll forward basis;
- 1.1.2.10. exposure and sensitivity analysis to repo, swap, futures and options transactions compared to mandate guidelines; and
- 1.1.2.11. full reporting on any collateral arrangements.

## 2. QUARTERLY REPORTING

2.1. Regiments shall, no later than 1 (one) month after a Quarter end, provide the Client with -

- 2.1.1. the information required for the Client to comply with reporting requirements of the South African Reserve Bank, as set out in the specimen report attached as **Annexure H**;
- 2.1.2. detailed information which the Client will require in order to assess the Client's compliance with Regulation 28 of Pension Funds Act ("**Regulation 28**"), as contemplated by the forms prescribed by the Financial Services Board from time to time in relation to pension funds. This information shall include a quarterly portfolio listing with investment holdings classified according to the categories specified in Regulation 28 together with the name of the issuer of each security included in the listing and an indication of whether the security is listed on an exchange or not. The "look-through" principle of Regulation 28 shall apply.

VP  
AET-1

2.2. Regiments shall furnish the Client with a quarterly report by the 15th (fifteenth) Business Day of the month following the end of the Quarter to which the report relates, reflecting at least the following -

2.2.1. an analysis of the performance of the Portfolio and a comparison of the Portfolio's performance to the benchmark as set out in the Investment and Risk Management Framework;

2.2.2. a statement of the quarterly and annual investment returns attributable to the asset allocation, sector selection and stock selection.

2.3. Regiments shall, on a quarterly basis -

2.3.1. provide the Client with a report setting out the manner in which it voted on resolutions of the companies in which the Client's assets are invested. The report shall also show which securities holders meetings Regiments attended in person or by proxy. This information shall be provided no later than 1 (one) month after a Quarter end;

2.3.2. make suitable senior personnel available to the Client as required, for consultation and report-back purposes;

2.3.3. Provide the Client with a statement by the compliance officer confirming compliance with the mandate requirements over the period.

### 3. ANNUAL REPORTING

Regiments shall, on an annual basis, provide the Client with a report setting out the progress it has made in terms of transformation and black economic empowerment. This shall include, but not be limited to -

3.1. an analysis of the investment professionals by seniority and the proportion of staff that are previously disadvantaged persons by seniority. It is specifically provided that this analysis relates to persons that are involved in the investment decision and analysis process (including trainees) and does not include administrative, operational and marketing staff;

3.2. the amount of money spent on the training and development of staff involved in the investment decision and analysis process;

3.3. the number of previously disadvantaged persons that joined Regiments in a capacity where he or she will be involved in the investment decision and analysis process. The same information must be provided for PDI staff that leave the business and the reason for their departure;

✓  
AS/1

- 3.4. details of shareholding; and
- 3.5. information regarding procurement.

The above report shall be provided by 31 March each year.

4. **MISCELLANEOUS INFORMATION**

Regiments shall, from time to time at the request of the Client, furnish its comments and investment views to the Client to keep the Client informed of current investment trends, and shall furnish such information regarding the management of the Portfolio as the Client may reasonably request, and shall attend meetings at times and places as reasonably requested by the Client. The Client acknowledges and confirms that no part of the Services constitutes a solicitation, recommendation, guidance or proposal, and that the Services are not intended nor do they constitute financial, tax, legal, investment or other advice. The Client should take particular care to consider, either on its own or through its own qualified financial advisor, whether the investment is appropriate considering the Client's objectives, financial situation and particular needs.

5. **FORMAT OF REPORTING**

- 5.1. The reports referred to in this **Annexure F** shall be made available to the Client in electronic format or, upon specific written request, in hard copy format.
- 5.2. The statement contemplated in clause 1.1.1.2 of this **Annexure F** shall comply with the formatting requirements set out in such clause and shall be emailed to the relevant contact persons as notified to Regiments by the Client in writing.

VP  
RBT

**Annexure G - Statement M**

VP  
10/17



# Statement M

Month Ended: 31 AUGUST 2015

Manager: PORTFOLIO MANAGER/CLIENT SERVICING CONTACT

FUND NAME

FUND CODE

Market value as at 31-Jul-2015	Exposure Value as at 31-Jul-2015	Purchases Consideration	Sales Proceeds	Investment Income	Nett Cashflow	Market value as at 31-Aug-2015	Exposure Value as at 31-Aug-2015	Money/Time Weighted MV	Modified Dietz MV
Local Equity									
Basic Materials									
Consumer Goods									
Consumer Services									
Derivatives									
Financials									
Industrials									
Oil & Gas									
Specialist Securities									
Technology									
Telecommunications									
Local Commodities									
Metals									
Local Cash									
General Cash									
Money Market									
Call									
CCD									
Local Bonds									
Fixed Interest Bonds									
+12YRS									
1-3YRS									
3-7YRS									
7-12YRS									
Other									
Floating Rate Securities									
1-3YRS									
Bond Cash									
Inflation linked bonds									

# Statement M

Month Ended: 31 AUGUST 2015  
 Manager: PORTFOLIO MANAGER/CLIENT SERVICING CONTACT

FUND NAME FUND CODE

	Market value as at 31-Jul-2015	Exposure Value as at 31-Jul-2015	Purchases Consideration	Sales Proceeds	Investment Income	Nett Cashflow	Market value as at 31-Aug-2015	Exposure Value as at 31-Aug-2015	Money/Time Weighted MV	Modified Dietz MV
3-7YRS										
Total Local Assets										
Total Assets (Gross of Fees)										
Total Assets (Nett of Fees)										
Cash Flow	Contributions	0.00	Expenses & Withdrawals	0.00	Net Contribution	0.00				

**Annexure H - SARB Reporting Items**

VP  
AET

Quarterly Asset Allocation Report D427				
Name and address of reporting Institution		ABC PENSION FUND		March 31, 2015
SECTION A: ASSET ALLOCATION				
	Rand denominated		Foreign currency denominated	
	Domestic assets R'000	Foreign assets R'000	R'000	
	(1)	(2)	(3)	
A) Cash and Deposits	R343	R0	R0	
B) Loans	R0	R0	R0	
C) Bonds and Debentures	R0	R0	R0	
D) Property	R0	R0	R0	
E) Equities	R0	R0	R0	
E.1) Equities with Primary listing on JSE	R0	R0	R0	
E.2) Equities with Secondary Listing on JSE	R0	R0	R0	
E.3) Other Foreign Listed Equities	R0	R0	R0	
E.4) Unlisted Securities	R0	R0	R0	
E.5) Equity index-linked instruments	R0	R0	R0	
F) Other Portfolio Assets (specify)	R0	R0	R0	
G) Total portfolio assets	R343	R0	R0	
H) Institutional assets deemed foreign for exchange control purposes	R0			
I) Institutional assets deemed African for exchange control purposes	R0			
J) Assets deemed foreign for exchange control purposes	R0			
		% of total portfolio assets		0.00%

10  
RDC

## **REPORT 2(B) – EXHIBIT 37**

MNS

TRANSNET AND MCKINSEY/REGIMENTS CONTRACTUAL RELATIONSHIP				
Scope of Work		Alignment of the Third Addendum (LOI) and Second Addendum (MSA)		
Third Addendum to the LOI	Second Addendum to the MSA	Comparative Assessment		Comments
	16/07/2015	Third Addendum to the LOI	Second Addendum to the MSA	The items from Columns 1 and 2 are re-organised to align with and indicate the overlap, where applicable in columns 3 and 4. Column 5 provides comments related to and motivation for the outcome. Green indicates 100% overlap and light green a significant overlap. Light Blue indicates some overlap. Red indicates no overlap between the items in the two addenda. Note that the items shaded in red (Column 3) do not feature in the Second Addendum.
(a) 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/1205/0447. 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:	(a) Technical support including building cost escalation models and total cost of ownership models to inform and guide Transnet throughout the negotiation process;	(a.2.) Cost escalation risk management.	(a) Technical support including building cost escalation models and total cost of ownership models to inform and guide Transnet throughout the negotiation process;	In order to develop and implement best practice risk management for the transaction, building cost escalation model and total cost of ownership models would have been required as part of the Third Addendum to the LOI. Therefore items (e.2) and (a) overlap and the work indicated as part of the Second Addendum to the MSA is a duplication and would form part of Item e.2 of the Third Addendum to the LOI. It is not possible to manage risk escalation if the basis provided by modelling the potential risks does not exist. Aligned hereto and forming the basis thereof is the total cost of ownership modelling.
(a.1.) Determining the development and sustainability impact of the acquisition by:	(b.) Develop a detailed funding plan for the acquisition of the 1064 locomotives Transnet from G.E. Bombardier, CNR and CSR considering the following:	(d) 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.	(b.2.) Matching of assets and liabilities;	An assessment of the items (d), (e.4) and (b) included in the Third Addendum would form part of the funding plan (b) in the MSA. In other words, a funding plan is already provided for in the assessment of all the items and in particular matching assets and liabilities (b.2) would be included in the items of the Third Addendum
(a.1.1.) Conducting socio-economic impact studies.	(b.1.) Evaluation of all funding sources including US Exim, EDC, Bond Insurance under Transnet's DIN and GMTN, China Development Bank (CDB), Sinosure and China Exim;	(e.4.) Balance sheet impact – The balance sheet post acquisition and post financing will be evaluated and any necessary responses will be detailed and executed.	(b.5.5.) Recommendation, advice and assistance post the successful conclusion of negotiation with the abovementioned sources on the following aspects:	These items (b5.5.) together with the sub-items will also form part of the assessment to consider balance sheet and other implications and are directly related to Item (d) and Item (e.4) of the Third Addendum to the LOI
(a.1.2.) Determine the acquisition's impact on the environment	(b.2.) Matching of assets and liabilities; and	(b) 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.	(b.5.5.1.) Amortization durations;	The work related to Item (b5.5) is only relevant to the pre-negotiation period as any requirements to deal with the matters stated in Item (b5.5) would be addressed in house as sufficient capacity existed. This alludes to a parallel process and should not form part of the MSA, but as indicated above all these matters are relevant to consider the impacts related to Items (d) and (e.4) of the Third Addendum to the LOI
(a.1.3.) Examining the project's contribution to regional integration.	(b.3.) Identification and management of all financial risks (including liquidity, interest rate, credit and currency risks);		(b.5.5.2.) Interest rates;	
(b) 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.	(b.4.) Assist Transnet in the negotiations with all of the identified Chinese potential funders and in particular the CDB;		(b.5.5.3.) Cross Currency Swaps;	
(c) Present a detailed analysis with specific recommendation to be pursued and executed.	(b.5.) Assist Transnet in negotiating with a number of potential Chinese sources of ZAR funding including:		(b.5.5.4.) Calculations and forecasts;	
(d) 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.	(b.5.1.) CBC;		(b.5.5.5.) Blended funding models;	
(e) Developing and implementing a best practice risk management to the transaction.	(b.5.2.) Bank of China;			

MNS

TRANSNET AND MCKINSEY/REGIMENTS CONTRACTUAL RELATIONSHIP				
Scope of Work			Alignment of the Third Addendum (LOI) and Second Addendum (MSA)	
Third Addendum to the LOI	Second Addendum to the MSA		Comparative Assessment	
	16/07/2015		Second Addendum to the MSA	
(e.1.) 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.5.3.) China Construction Bank;	(g.) 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:	(b.1.) Evaluation of all funding sources including US-Exim, EDC, Bond Issuance under Fovera's DMAs and GMTN, China Development Bank (CDB), Sinosure and China Esim.	The items from Columns 1 and 2 are re-organised to align with and indicate the overlap, where applicable in columns 3 and 4. Column 5 provides comments related to and motivation for the outcome. Green indicates 100% overlap and light green a significant overlap. Light beige indicates some overlap. Red indicates no overlap between the items in the two addenda. Note that the items shaded in rust (Column 1) do not feature in the Second Addendum.
(e.2.) Cost escalation risk management.	(b.5.4.) Sinosure	(g.1.) Local and International Banks.		
(e.3.) Legal and regulatory risks.	(b.5.5.) Recommendation, at vice and assistance post the successful conclusion of negotiation with the abovementioned sources on the following aspects:	(g.2.) Local and International development finance institutions.		There is a 100% overlap with the tasks stated in the Third Addendum the LOI and the Second Addendum to the MSA
(e.4.) Balance sheet Impact – The balance sheet post acquisition and post financing will be evaluated and any necessary responses will be detailed and executed.	(b.5.5.1.) Amortization durations;	(g.3.) Export credit agencies.		
(f) Developing an optimal risk management solution by examining solution that is embedded in the acquisition agreement, funding agreement and separate risk overlays.	(b.5.5.2.) Interest rates;	(g.4.) Vendor financing.		
(g.) 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:	(b.5.5.3.) Cross Currency Swaps;	(e.1.) 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.3.) Identification and management of all financial risks (including liquidity, interest rate, credit and currency risks).	
(g.1.) Local and International Banks.	(b.5.5.4.) Calculations and forecasts;	(e.) Developing and implementing a best practice risk management to the transaction;		
(g.2.) Local and International development finance institutions.	(b.5.5.5.) Blended funding models;	(e.2.) Cost escalation risk management.		
(g.3.) Export credit agencies.		(e.3.) Legal and regulatory risks.		The identification and management of all financial risks (Item b.3.) MSA overlaps by at least 95% with the Third Addendum to the LOI. The Second Addendum to the MSA just confirms the tasks stated in the Third Addendum to the LOI.
(g.4.) Vendor financing.		(f) Developing an optimal risk management solution by examining solution that is embedded in the acquisition agreement, funding agreement and separate risk overlays.		

MNS

TRANSNET AND MCKINSEY/REGIMENTS CONTRACTUAL RELATIONSHIP				
Scope of Work		Alignment of the Third Addendum (LOI) and Second Addendum (MSA)		
Third Addendum to the LOI	Second Addendum to the MSA	Comparative Assessment		Comments
	16/07/2015	Third Addendum to the LOI	Second Addendum to the MSA	
(h) Provide execution support programme management and support in respect to funding:  (h.1) Assist in the preparation and management of capital raising related tenders/RFP's and RFI's. (h.2.) Participate in roadshows and assisting with the preparation of information memorandums.  (h.3.) Participate in the fulfilment of conditions precedent required by the funders.  (h.4) Participate in due diligence exercise and responding to all credit queries raised by the funders		(h) Provide execution support programme management and support in respect to funding:  (h.1) Assist in the preparation and management of capital raising related tenders/RFP's and RFI's. (h.2.) Participate in roadshows and assisting with the preparation of information memoranda.  (h.3.) Participate in the fulfilment of conditions precedent required by the funders.  (h.4) Participate in due diligence exercise and responding to all credit queries raised by the funders	(b.5.) Assist Transnet in negotiating [discussions and engagements] [own emphasis] with a number of potential Chinese sources of ZAR funding including:  (b.5.1.) ICBC;  (b.5.2.) Bank of China;  (b.5.3.) China Construction Bank;  (b.5.4.) Sino ure	



## **REPORT 2(B) – EXHIBIT 38**



- 1.4. 11 Post Tender Negotiations commenced on 4 February 2013. The negotiations culminated in Transnet concluding contracts with the four OEMs on 17 March 2014 at a total cost of R49 547 224 410 including hedging and escalations, as per the table below:

OEMs	Class of Locomotives	Quantity	Contract Price Per Loco
CSR	22E (Electric)	359	R50 480 000
BT	23E (Electric)	240	R54 371 693
GE	44D (Diesel)	233	R36 174 650
CNR	45D (Diesel)	232	R42 875 020
CONTINGENCY			R4.9bn
TOTAL		1064	R54.4bn

**Electric Locomotives Cost Breakdown (R 'mil)**

	2014	2015	2016	2017	2018	2019	2020
Loco prices*	300	1,728	4,125	4,195	4,195	4,632	155
SA PPI	-	13	138	264	399	596	23
US CPI	-	5	56	105	156	228	9
Forex	-	114	346	478	610	828	31
Contingencies	18	114	286	309	329	386	13
	318	1,974	4,951	5,352	5,689	6,670	230

\*includes localisation premium of 2% and delivery schedule set out in section 7.

**Breakdown of the R38.6 billion by locomotive type (R 'mil)**

	Diesel	Electric	Total
Loco prices*	11,147	19,329	30,476
SA PPI	388	1,432	1,821
US CPI	154	559	713
Forex	951	2,407	3,358
Contingencies	776	1,456	2,232
	13,416	25,184	38,600

\*includes localisation premium of 2%

Escalations and forex amounted to a total of R2.53 billion (R1.82 billion + R0.71 billion) and R3.36 billion respectively, as per the figures in the table above.

The Estimated Total Cost of R38.6 billion aggregates costs over 6 years and therefore does not account for the time value of money. The time value of money is the idea that money that is available at the present time is worth more than the same amount in the future, due to its potential earning capacity (PennState, 2018). This is because it is a simple summation of the estimated acquisition costs in each year. It reflects the budgeted spend for each of the future 6 years for Transnet to meet its procurement objective if the delivery schedule was realised. It does not reflect the funds that Transnet Freight Rail would have been required to set aside on the 18th of April 2013 for the acquisition of the locomotives with one lump sum.

The Present Value of the estimated acquisition costs in each year, discounted at a risk-free rate of interest, would provide an indication of the lump sum cost that Transnet Freight Rail would have been required to set aside for the acquisition of the locomotives.

Based on a 5-year government bond yield of 5.68% as at 18 April 2013 (Investing.com, 2018), the present value of yearly cash flows summing to R38.6 billion comes to R31.2 billion.

## **REPORT 2(B) – EXHIBIT 39**

## Swap Position Report

Position Date: 01-Nov-2018

Print Date: 2018/11/01

Receive										Pay									
Deal no	Deal Date	Settle Date	Mature Date	Fix / Float	Nominal Value	Rate	Margin	Frequency	Fix / Float	Nominal Value	Rate	Margin	Frequency	Net ZAR	Market Value				
Reval Method Used: PROJECTED																			
Funding																			
CDB																			
Currency Swap (MV Import)																			
CDB_1	344457	3-Jun-2015	12-Jun-2015	FLOATING	USD	337,217,887	2.8579	2.5700	QUARTERLY	ZAR	(4,154,524,367)	10.4830	4.3500	QUARTERLY	678,345,664				
CDB_10	355492	22-Jun-2016	12-Jun-2030	FLOATING	USD	30,938,456	3.2119	2.5700	QUARTERLY	ZAR	(454,826,235)	11.3975	4.0725	QUARTERLY	(21,520,076)				
CDB_11	356574	12-Jul-2016	12-Jun-2030	FLOATING	USD	9,049,464	3.2346	2.5700	QUARTERLY	ZAR	(129,497,834)	11.3680	4.0100	QUARTERLY	(1,635,984)				
CDB_12	357297	28-Jul-2016	12-Jun-2030	FLOATING	USD	22,623,661	3.3265	2.5700	QUARTERLY	ZAR	(321,934,691)	11.3200	3.9700	QUARTERLY	(1,290,576)				
CDB_13	357825	18-Aug-2016	12-Jun-2030	FLOATING	USD	14,426,979	3.3813	2.5700	QUARTERLY	ZAR	(192,744,441)	11.3520	4.0100	QUARTERLY	13,883,077				
CDB_14	359728	6-Oct-2016	12-Jun-2030	FLOATING	USD	29,325,885	3.4416	2.5700	QUARTERLY	ZAR	(403,524,183)	11.1980	3.8400	QUARTERLY	17,415,216				
CDB_15	359729	6-Oct-2016	12-Jun-2030	FLOATING	USD	12,219,119	3.4416	2.5700	QUARTERLY	ZAR	(168,868,223)	11.1980	3.8400	QUARTERLY	6,380,197				
CDB_16	360962	14-Nov-2016	12-Jun-2030	FLOATING	USD	14,579,547	3.4757	2.5700	QUARTERLY	ZAR	(209,508,094)	11.3270	3.9600	QUARTERLY	(3,182,928)				
CDB_17	361997	13-Dec-2016	12-Jun-2030	FLOATING	USD	7,188,763	3.5334	2.5700	QUARTERLY	ZAR	(98,414,434)	11.3530	3.9950	QUARTERLY	4,134,526				
CDB_18	362791	17-Jan-2017	12-Jun-2030	FLOATING	USD	21,106,294	3.5932	2.5700	QUARTERLY	ZAR	(285,357,092)	11.3580	4.0000	QUARTERLY	16,384,879				
CDB_19	365919	12-Apr-2017	12-Jun-2030	FLOATING	USD	10,169,284	3.7251	2.5700	QUARTERLY	ZAR	(139,624,267)	11.2900	3.9400	QUARTERLY	5,730,039				
CDB_2	344458	24-Jul-2015	12-Jun-2030	FLOATING	USD	15,702,918	2.7908	2.5700	QUARTERLY	ZAR	(196,247,215)	10.6100	4.3300	QUARTERLY	28,377,771				
CDB_20	367278	12-May-2017	12-Jun-2030	FLOATING	USD	25,288,348	3.7509	2.5700	QUARTERLY	ZAR	(339,369,635)	11.2220	3.8600	QUARTERLY	24,637,560				
CDB_21	368513	9-Jun-2017	12-Jun-2030	FLOATING	USD	15,178,416	3.7981	2.5700	QUARTERLY	ZAR	(196,256,918)	11.2070	3.8900	QUARTERLY	23,695,577				
CDB_22	369997	13-Jul-2017	12-Jun-2030	FLOATING	USD	20,341,418	3.8739	2.5700	QUARTERLY	ZAR	(267,794,771)	11.2320	3.8900	QUARTERLY	25,897,598				
CDB_23	371128	14-Aug-2017	12-Jun-2030	FLOATING	USD	20,230,052	3.8850	2.5700	QUARTERLY	ZAR	(269,363,143)	10.9380	3.8800	QUARTERLY	22,252,073				
CDB_24	372322	13-Sep-2017	12-Jun-2030	FLOATING	USD	20,167,738	3.8892	2.5700	QUARTERLY	ZAR	(264,197,374)	10.9520	3.9100	QUARTERLY	26,991,315				
CDB_25	373453	13-Oct-2017	12-Jun-2030	FLOATING	USD	19,400,178	3.9292	2.5700	QUARTERLY	ZAR	(259,962,388)	10.8950	3.8600	QUARTERLY	19,616,254				
CDB_26	373786	24-Oct-2017	12-Jun-2030	FLOATING	USD	14,910,790	3.9374	2.5700	QUARTERLY	ZAR	(204,277,826)	10.9650	3.9400	QUARTERLY	8,938,442				
CDB_27	374560	14-Nov-2017	12-Jun-2030	FLOATING	USD	7,007,887	3.9890	2.5700	QUARTERLY	ZAR	(100,563,173)	10.9370	3.8700	QUARTERLY	(924,988)				
CDB_28	375809	15-Dec-2017	12-Jun-2030	FLOATING	USD	18,577,422	4.1585	2.5700	QUARTERLY	ZAR	(250,609,423)	10.9620	3.8200	QUARTERLY	17,268,249				
CDB_29	376434	12-Jan-2018	12-Jun-2030	FLOATING	USD	31,854,216	4.2791	2.5700	QUARTERLY	ZAR	(394,992,284)	10.9330	3.7750	QUARTERLY	71,926,612				
CDB_3	344459	18-Aug-2015	12-Jun-2030	FLOATING	USD	15,455,452	2.7608	2.5700	QUARTERLY	ZAR	(199,684,435)	10.4980	4.3650	QUARTERLY	19,635,487				
CDB_30	376545	16-Jan-2018	12-Jun-2030	FLOATING	USD	34,508,734	4.2915	2.5700	QUARTERLY	ZAR	(422,731,998)	10.9300	3.7800	QUARTERLY	83,988,209				
CDB_31	376951	24-Jan-2018	12-Jun-2030	FLOATING	USD	15,748,327	4.3152	2.5700	QUARTERLY	ZAR	(188,901,180)	10.9230	3.7900	QUARTERLY	43,024,992				
CDB_32	377984	23-Feb-2018	12-Jun-2030	FLOATING	USD	5,500,312	4.5136	2.5700	QUARTERLY	ZAR	(63,913,621)	10.9250	3.8000	QUARTERLY	17,456,155				
CDB_33	378763	16-Mar-2018	12-Jun-2030	FLOATING	USD	11,050,973	4.7150	2.5700	QUARTERLY	ZAR	(131,838,112)	10.9050	3.7800	QUARTERLY	31,111,940				
CDB_34	379888	16-Apr-2018	12-Jun-2030	FLOATING	USD	22,110,364	4.9251	2.5700	QUARTERLY	ZAR	(267,093,202)	10.6100	3.7100	QUARTERLY	59,195,723				
CDB_35	381283	24-May-2018	12-Jun-2030	FLOATING	USD	5,335,144	4.9000	2.5700	QUARTERLY	ZAR	(66,422,544)	10.6200	3.7200	QUARTERLY	11,905,013				
CDB_36	381939	15-Jun-2018	12-Jun-2030	FLOATING	USD	20,990,101	4.9106	2.5700	QUARTERLY	ZAR	(281,267,357)	10.7070	3.7900	QUARTERLY	22,173,721				
CDB_37	382970	11-Jul-2018	12-Jun-2030	FLOATING	USD	19,407,528	4.9070	2.5700	QUARTERLY	ZAR	(261,322,371)	10.8080	3.8500	QUARTERLY	18,241,002				
CDB_38	383505	16-Aug-2018	12-Jun-2030	FLOATING	USD	9,926,317	4.8852	2.5700	QUARTERLY	ZAR	(143,633,809)	10.8480	3.8400	QUARTERLY	(2,527,530)				
Total - CDB														1,250,596,492					

Reval Method Used: PROJECTED

Funding

CDB

Currency Swap (MV Import)

## Position Date: 01-Nov-2018

Print Date: 2018/11/01

[illegible]
$$\begin{array}{r} 11.5475 \\ \underline{15} \\ 11.39 \\ 10.48 \\ \underline{15} \\ 10.33 \end{array}$$

## **REPORT 2(B) – EXHIBIT 40**

TRANSNET

**Mr Phetolo Ramosebudi appointed Transnet Group Treasurer**

02 March 2015

Dear colleague,

We are pleased to announce that Mr Phetolo Ramosebudi has been appointed Group Treasurer with effect from 01 March 2015.

Phetolo will be responsible for driving Transnet's funding strategy as well as managing rating agencies, investor and lender relationships. He will lead all aspects of the company's comprehensive funding through various funding sources, including commercial paper; domestic bonds; development funding institutions and bank loans amongst others.

He joins us from South African Airways where he was Group Treasurer and Head of Corporate Finance.

Phetolo is not new to Transnet. He was our Deputy Treasurer responsible for Risk Management between 2006 and 2007. In this role, he was responsible for managing the hedging portfolio for the group. He also played a key role in the establishment of the Global Mid-Term Note programme (GMTN), in terms of which we have successfully issued bonds in international markets.

He is a seasoned and well-respected finance executive, having also held senior positions at various bodies including Airports Company South Africa, Development Bank of Southern Africa and National Treasury.

Phetolo has an MBA in Financial and Investment Management from the University of Pretoria and a BSc in Physics and Chemistry from the University of Venda among others.

On behalf of all of us at Transnet, we warmly welcome Phetolo and wish him well in his new role.

He is guaranteed our support.

**Issued on behalf of Brian Molefe, Group Chief Executive.**

By: Mboniso Sigonyela, GM: Corporate and Public Affairs  
011 308 2458/ 083 463 7701  
Mboniso.sigonyela@transnet.net



## **REPORT 2(B) – EXHIBIT 41**

## ANNEXURE B

## INTEREST RATE SWAPS

Counterparty	Execution Agent	Structure	Underlying Loan Issuer	Execution Date	Maturity Date	Principal (Rands)	Fixed	Receive Floating	Year on Execution Date	Current Market Value
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	ABSA	04-Dec-15	02-Dec-30	1 500 000 000.00	11.83 3 month floor + 2.6		6.517	-71 632 420.03
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	Bank of China	04-Dec-15	02-Dec-30	1 500 000 000.00	11.83 3 month floor + 2.7		6.517	-75 872 039.51
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	Nedbank	04-Dec-15	02-Dec-30	500 000 000.00	11.83 3 month floor + 2.7		6.517	-33 786 580.02
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	Future Growth	04-Dec-15	02-Dec-30	500 000 000.00	11.83 3 month floor + 2.7		6.517	-23 786 580.02
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	QMSR	04-Dec-15	02-Dec-30	500 000 000.00	11.83 3 month floor + 2.7		6.517	-23 786 580.02
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	ABSA	07-Mar-16	02-Dec-30	1 500 000 000.00	12.27 3 month floor + 2.6		7.017	-101 051 185.82
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	Bank of China	07-Mar-16	02-Dec-30	1 500 000 000.00	12.27 3 month floor + 2.7		7.017	111 735 381.34
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	Nedbank	07-Mar-16	02-Dec-30	2 500 000 000.00	12.27 3 month floor + 2.7		7.017	-177 028 518.41
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	QMSR	07-Mar-16	02-Dec-30	1 000 000 000.00	12.27 3 month floor + 2.7		7.017	-70 811 407.35
NEDBANK LTD	Regiments Capital	R12Bln Club Loan	Future Growth	07-Mar-16	02-Dec-30	1 000 000 000.00	12.27 3 month floor + 2.7		7.017	-70 811 407.35
ESDIF Old Mutual	Regiments Capital	ESD-Investec 2028-02-22	EDC	30-Mar-16	22-Feb-28	8 951 500 000.00	12.07 3 month floor + 2.0		7.233	-481 556 477.18
ESDIF Old Mutual	Regiments Capital	ESDIF	ESDIF	08-Apr-16	19-Jul-32	1 000 000 000.00	11.15 3 month floor + 1.75		7.25	-77 427 761.51
ESDIF Old Mutual	Regiments Capital	ESDIF	ESDIF	08-Apr-16	31-Mar-33	1 000 000 000.00	11.15 3 month floor + 2.05		7.25	-59 112 221.23
ESDIF Old Mutual	Regiments Capital	ESDIF	ESDIF	08-Apr-16	21-Aug-36	1 700 000 000.00	13.15 3 month floor + 1.65		7.25	-62 413 954.63
						23 795 861 666.64				-1 321 912 531.20

## REPORT 2(B) – EXHIBIT 42

No Annexure 42

## **REPORT 2(B) – EXHIBIT 43**

**Noluthando Masondo**

**From:** Tshiamo Sedumedi <Tshiamo@ndlovu-sedumedi.co.za>  
**Sent:** 01 October 2018 17:03  
**To:** jbloom@mpbs.co.za  
**Subject:** FW: China Development Bank



**TSHIAMO SEDUMEDI**  
 MANAGING DIRECTOR

Mobile 083 381 4926  
 Tell 011 268 5225  
 Fax 011 268 6805  
 Email [Tshiamo@ndlovu-sedumedi.co.za](mailto:Tshiamo@ndlovu-sedumedi.co.za)  
 Address 2nd Floor, 16 Fricker Road, Illovo, 2196  
 Website [www.mnsattorneys.co.za](http://www.mnsattorneys.co.za)



Legal Expertise In Your Corner

This e-mail and its attachments is subject to legal privilege. Any unauthorised use, distribution, duplication or interception of this e-mail is expressly prohibited. If you are not the intended recipient of this e-mail, please delete it immediately and arrange for the complete deletion thereof on your server. No responsibility or liability is accepted for damages arising from the use of or reliance on this email. This forms part of this e-mail for purposes of sec 11 of the ECT Act 25 of 2002.

**From:** Nkosenhle Mzinyathi  
**Sent:** Monday, 01 October 2018 16:25  
**To:** 1064 Professionals <1064Professionals@ndlovu-sedumedi.co.za>  
**Subject:** FW: China Development Bank

FYI

**From:** Theo Takane Transnet Corporate JHB <[Theo.Takane@transnet.net](mailto:Theo.Takane@transnet.net)>  
**Sent:** Monday, 01 October 2018 16:05  
**To:** Nkosenhle Mzinyathi <[Nkosenhle@ndlovu-sedumedi.co.za](mailto:Nkosenhle@ndlovu-sedumedi.co.za)>  
**Subject:** FW: China Development Bank

**From:** Yusuf Mahomed Transnet Corporate JHB  
**Sent:** Monday, 01 October 2018 15:55  
**To:** Theo Takane Transnet Corporate JHB <[Theo.Takane@transnet.net](mailto:Theo.Takane@transnet.net)>  
**Subject:** FW: China Development Bank

**From:** Yusuf Mahomed Transnet Corporate JHB [<mailto:yusuf.mahomed@transnet.net>]  
**Sent:** Tuesday, 28 August 2018 3:36 PM  
**To:** Yusuf Mahomed Transnet Corporate JHB <[Yusuf.Mahomed@transnet.net](mailto:Yusuf.Mahomed@transnet.net)>  
**Subject:** FW: China Development Bank

**From:** "Mathane Makgatho Corporate JHB" <Mathane.Makgatho@transnet.net>  
**Date:** 21/08/2014 at 12:53:37  
**To:** "Brian Molefe Transnet Corp" <Brian.Molefe@transnet.net>, "Anoj Singh Corporate JHB" <Anoj.Singh@transnet.net>  
**Cc:** "Yusuf Mahomed Transnet Corporate JHB" <Yusuf.Mahomed@transnet.net>, "Dorothy Kobe Transnet Corporate JHB" <Dorothy.Kobe@transnet.net>  
**Subject:** China Development Bank

Dear Brian and Anoj

I trust that all is well with both of you.

This email is a follow up of various discussions I had with yourselves and in some instances with Regiments included where I had indicated my discomfort and disagreement on how the China Development bank facility negotiations are being handled, Regiment's pricing methodology as well as my disagreement of the appointment of Regiments as the Transaction advisor for the facility. For the avoidance of doubt I would like to bring the following to your attention:

#### 1. Overall governance

I respect your Executive Authority and powers that go with it, but I also believe that it is my responsibility as the current Transnet Group Treasurer to advise you on matters relating to Treasury activities. As I indicated, I was not consulted nor was I aware that Regiments was appointed as the Transaction advisor and lead negotiator for the facility as I believe there was no need for them to be appointed given progress that we had made. I do not support that a R26 billion facility be negotiated and led by a transaction advisor, as we cannot and should not negotiate a loan facility in isolation of Transnet's current R90 billion debt portfolio. When we negotiate and enter into agreement with lenders and investors, we make certain undertakings and covenants that should apply to future facilities as well. The fact that Transnet's biggest ever transaction, is negotiated and decided by outsiders (Regiments) is a cause for concern as it exposes the Company to undue risk. When we negotiate a facility of this magnitude, we assemble a multi-disciplinary team that includes legal, tax, accounting, structured finance and risk management team members. This is to ensure that all potential risks relating to the facility are identified and mitigated to the extent possible.

#### 2. Fees

##### a. Interest expense

The current pricing indication is not in line with other DFI's; asset backed or even tied facilities. The main reason Transnet has opted to diversify its funding sources to include ECA's and DFI's in its funding portfolio is to increase maturity profile of our debt portfolio and achieve cost effective funding. As China development bank facility is tied to procurement from China, as it is supposed to support CNR and CSR locomotive contracts, the terms and conditions should mirror that of tied facilities as well as asset backed facilities. These two elements (tied and security) should translate into cost effective funds which should be close to local funds as well as simpler terms and conditions. This facility cannot be compared to a GMTN global bond as a GMTN bond is unsecured and untied and does not have other DFI related fees. The pricing of a global bond is transparent and

in line with other international bond issuance of similar rated entities. The same is not true with CDB facility.

The table below is a calculation of fixed interest rate based on Jibar + 400 and Jibar + 260 basis points. I have added an additional 50 basis points as a fair price is around 210 and took into consideration size of the facility. In the current market, the proposed CDB structure costs R3.5 billion more in interest expenses.

3m libor +257			
Year	3m Jibar + 400	3m Jibar + 260	Difference
1	3 187 862 136.99	2 814 300 000.00	373 562 136.99
2	3 205 377 863.01	2 829 720 821.92	375 657 041.09
3	3 196 620 000.00	2 806 589 589.04	390 030 410.96
4	3 122 339 309.06	2 726 734 404.83	395 604 904.23
5	2 822 806 381.41	2 492 584 644.82	330 221 736.59
6	2 557 758 415.16	2 264 541 530.30	293 216 884.86
7	2 299 282 349.33	2 035 375 779.94	263 906 569.39
8	2 033 505 728.87	1 784 990 978.63	248 514 750.24
9	1 767 729 108.43	1 551 643 101.37	216 086 007.06
10	1 514 199 483.61	1 325 376 465.54	188 823 018.07
11	1 231 607 766.18	1 087 686 084.82	143 921 681.36
12	966 741 963.49	853 857 077.92	112 884 885.57
13	703 529 645.32	622 779 145.64	80 750 499.68
14	438 860 018.76	383 781 079.24	55 078 939.52
15	172 747 096.36	151 087 044.82	21 660 051.54
<b>TOTAL</b>	<b>29 220 967 265.98</b>	<b>25 731 047 748.83</b>	<b>3 489 919 517.15</b>

b. Once off arrangement fee

i. The table below illustrates the amount of money that Transnet has to pay if we agree with Regiment's proposed once off fee of 118 basis points which is R313.3 million. I recommend that at worst, we should settle for 80 basis points which will save the company at least R101 million with the best case scenario being 60 basis points and saving of R154 million. This is in line with other DFI's that Transnet has facilities with.

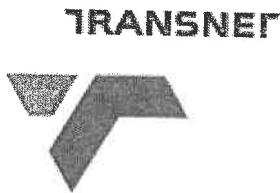
Basis points	Amount in ZAR
118	313 290 000.00
110	292 050 000.00
90	238 950 000.00
80	212 400 000.00
70	185 850 000.00
60	159 300 000.00
50	132 750 000.00

3. Conclusion



It is my believe that the CDB facility in its current form is not in the best interest of the Company or the country given potential **capital leakage** of up to **R3.7 billion** in excessive interest expense and excessive arrangement fees which may be classified as PFMA violation given information at our disposal. The additional interest expense will have a negative impact on the already fragile cash interest cover ratio. I therefore recommend that we terminate discussions with China Development Bank and explore other sources of funds. Transnet has proved its ability to raise funds from diverse funding sources even under trying circumstances. In 2008-09, we were able to raise over R22 billion even when the market was "closed" for other issuers. The latest example is our ability to raise R8 billion for the locomotive deposit at short notice. As indicated in the Company's June 14 going concern document, the Company has sufficient facilities to meet all its obligations as they fall due. The resuscitation of Transnet's domestic bond program and availability of short term facilities will assist in alleviating any potential cash flow problems. Even if domestic spreads can widen, overall pricing will still be much better than the CDB facility.

Sincerely;



Mathane Makgatho  
Group Treasurer  
Group Treasury  
Transnet SOC Ltd

+27 11 308-2613

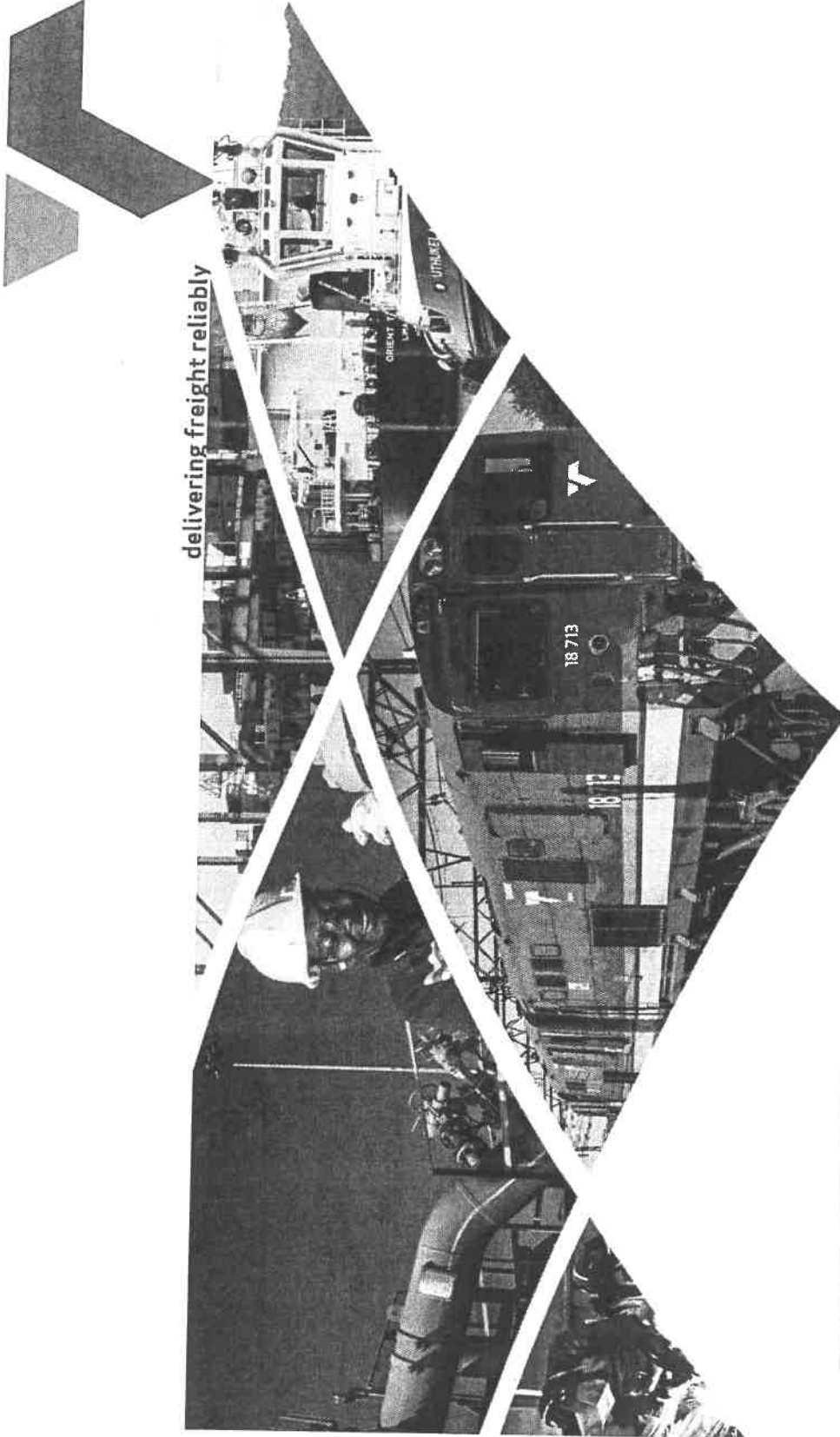
+27 11 308-2699

[www.transnet.net](http://www.transnet.net)

+27 83 270 7651

[Mathane.Makgatho@transnet.net](mailto:Mathane.Makgatho@transnet.net)

# TRANSNET

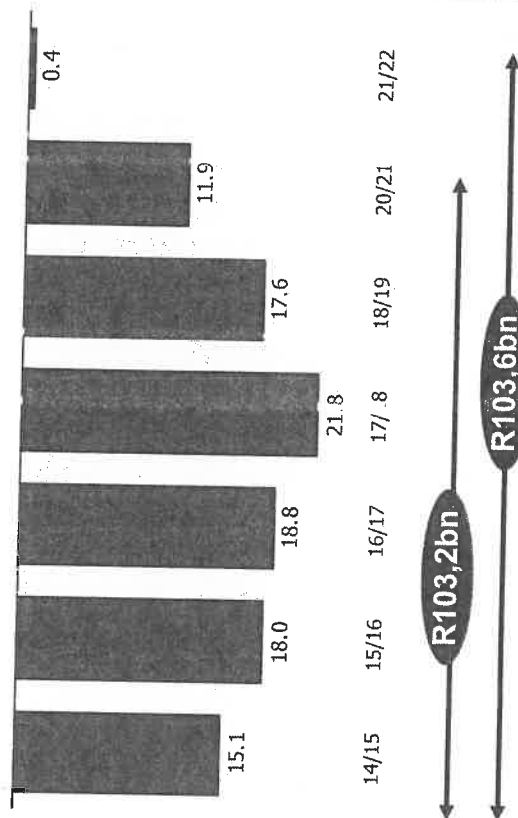


Presentation to CDB – 30 July 2014: Funding



## Funding for FY 2014/14

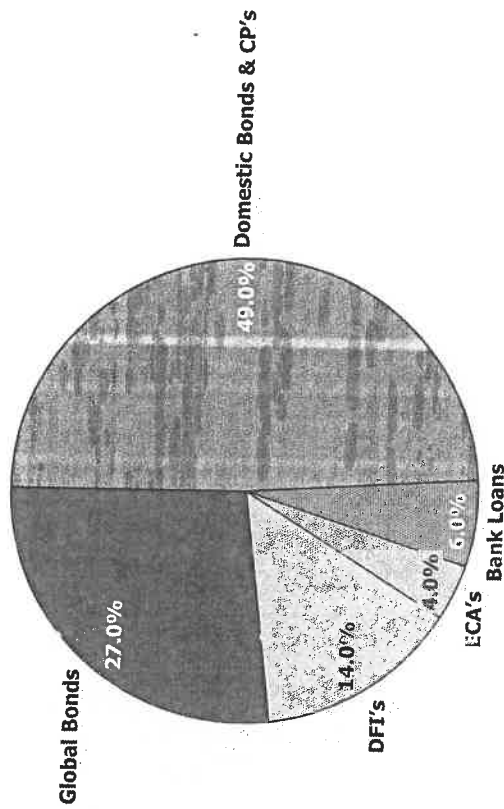
### Projected Borrowings: (R billion)



### Focus for 2014

- Continue to use the domestic DCM as a primary funding source with emphasis on issuing new L-T Fixed Bonds and M-T Floating Rate Note Bonds
- Use commercial paper for working capital needs
- Continue utilising export credit agency and DFI funding
- Explore opportunistic bank and private placement funding

### Funding Portfolio



### Funding Sources

- Transnet's main source of funding is primarily in the domestic capital markets which accounts for 49% of total funding and 27% from the international capital markets
- Other sources of funding include ECAs, DFIs and commercial bank loans

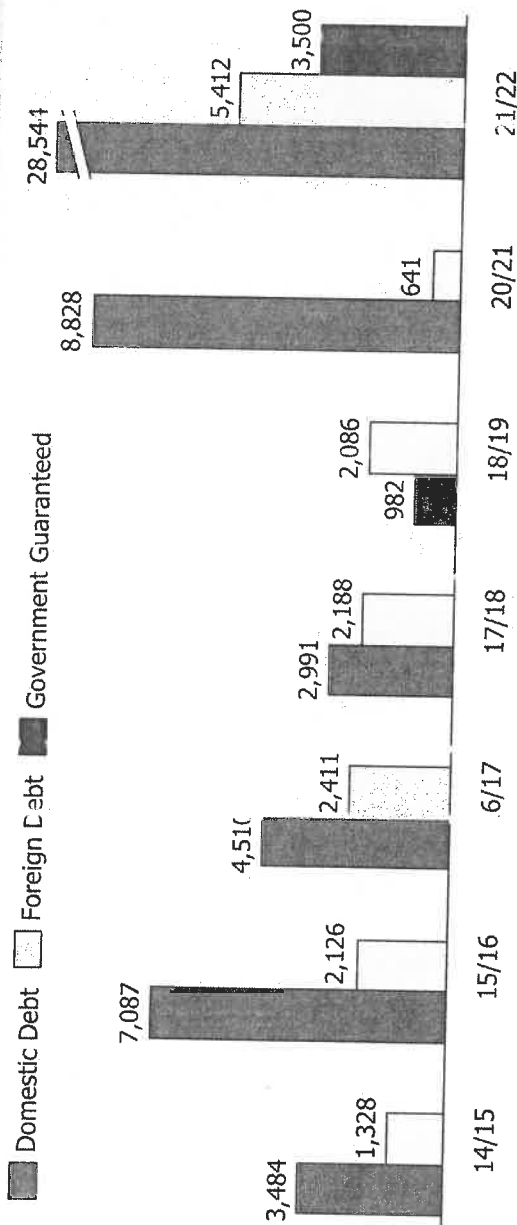
# Debt Profile

TRANSNET

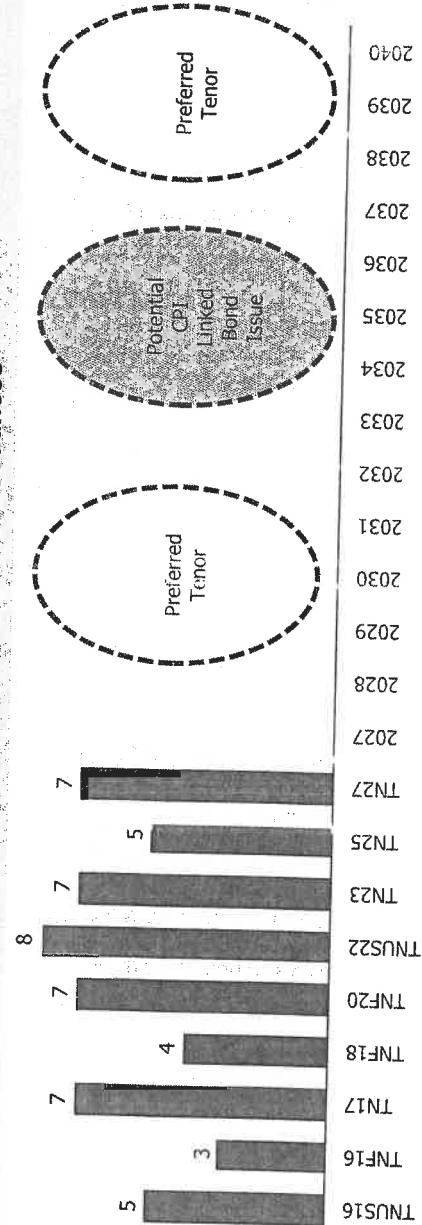


delivering freight reliability

## Debt Maturity Profile in R' million – 30 June 2014



## Domestic and International Issuances



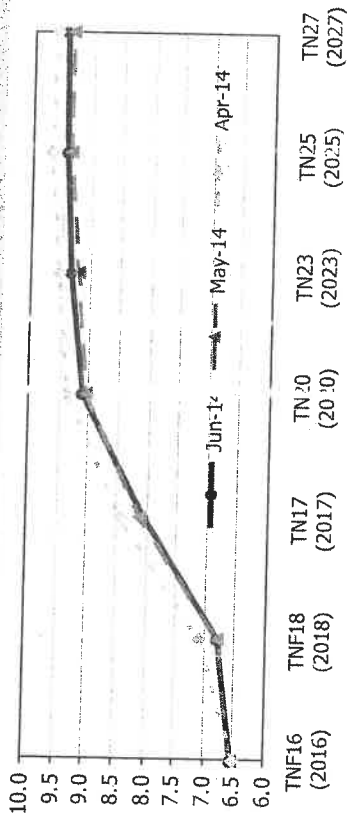
## Funding Strategy

- Re-financing strategies – especially from FY15/16 – 17/18 financial years
- Issue longer dated bonds to extend debt maturities
- As well as to better match the financing of assets to the assets lifespan
- Continue to Issue additional Floating Rate Notes on expiry of the existing FRN's
- Ideal Tenors for Transnet between the 22-25 year region
- Issuance of Inflation-linked bonds

# Risk Management – Additional Info

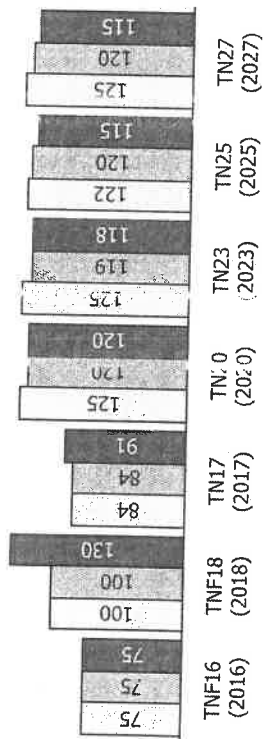
TRANSNET

Transnet Yield Curve

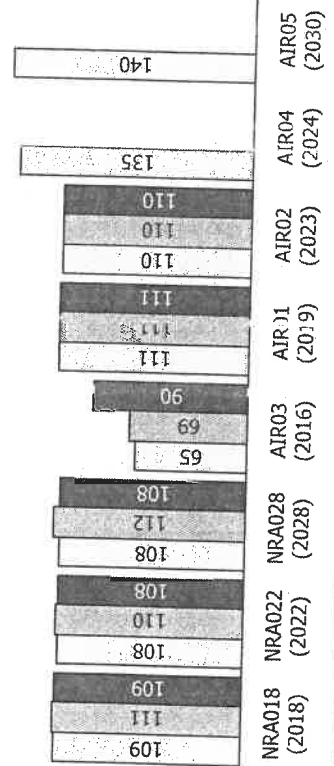


Corporate Bond Yields: SOE's

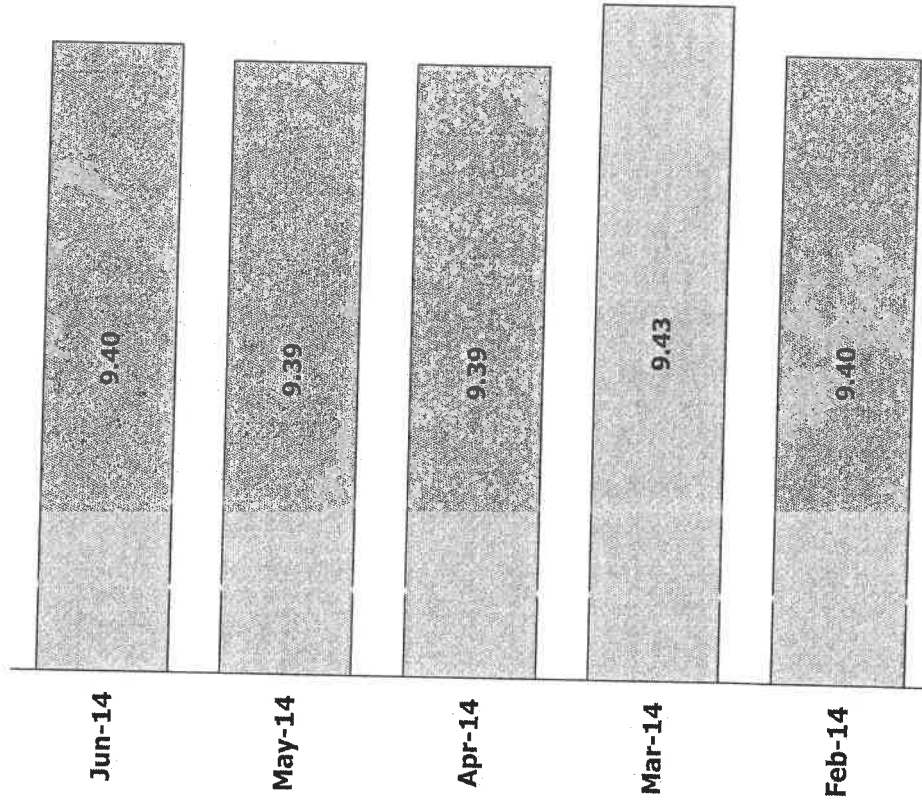
Jun-14 May-14 Apr-14



Sanral and ACTSA



Weighted Average Cost of Debt (%)



## Pricing of recently concluded/under negotiation facilities

TRANSNET



defining freight reliability

### Concluded

Libfin ZAR R1.75 **18 years** facility @ **Jibar + 175**  
Bank of Tokyo Mitsubishi – USD 500 mln 5 year facility @ libor  
+ 125 –

### Under negotiations

Export Development Bank Canada – USD 600 mln **13 year** facility at Jibar + 200  
EDC is willing to provide ZAR funding  
African Development Bank -- USD 250 direct lending **20 years** @ Jibar + 230  
AfDB willing to provide ZAR funding  
US Exim supported – 14 years USD 530 mln @ **Jibar + 155**  
US Exim willing to provide ZAR supported  
CDB – **15 years** USD 2.5 billion @ libor + 275 which is equivalent to **Jibar + 430**

**All of the above facilities including all ECAs, DMTN , EMTN, bank loans and GMTN issuance do not contain financial covenants and Transnet has taken a decision to standardize all its loan/bond covenants to the extent possible.**

***If CDB is not willing to reconsider the current draft terms and conditions, Transnet will use other cost effective sources of fund to finance the CSR and CNR locomotives***

TRANSNET

## **REPORT 2(B) – EXHIBIT 44**

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 1089

TRANSNET



## MEMORANDUM

www.transnet.net

**TO : The Acquisitions and Disposals Committee**

**FROM : Siyabonga Gama, Acting Group Chief Executive**

**SUBJECT : REQUEST TO APPOINT JP MORGAN AND REGIMENTS CAPITAL TO CONCLUDE ON THE CHINA DEVELOPMENT BANK LOAN (CDB)**

### PURPOSE OF SUBMISSION:

1. The purpose of the submission is to request the Acquisitions and Disposals Committee (ADC) to:
  - 1.1. Approve the confined appointment of JP MORGAN to hedge the financial risks (interest rate; credit and currency risk) emanating from the US\$ 1,5 billion China Development Bank (CDB) loan back into ZAR ;
  - 1.2. Approve the confined appointment of JP MORGAN to lead and underwrite the equivalent syndicated ZAR loan of \$1,5 billion;
  - 1.3. Approve the contract extension from R99,5 million to R265,5 million for the appointment of Regiments Capital for transaction advisory services and support to Transnet on the 1064 locomotive transaction, and
  - 1.4. Delegate authority to the Acting GCE to approve all documentation related to this confinement.

### EXECUTIVE SUMMARY AND BENEFITS

2. By favourably considering the recommendation above, Transnet will be able to achieve significant benefits.
3. Approximately ~R46 billion (at R11/\$) of the required R50 billion (excluding contingencies) to fund the locomotive supplier agreements will be concluded on a committed basis (92% secured funding).
4. This is critical to mitigate liquidity risk due to the high levels of committed capital – which is a major area of focus for rating agencies specifically Standard and Poor's (A/B ratio).
5. The overall cost of debt will be within an acceptable levels with the overall cost of the Chinese portion of the debt at approximately 10.5% compared to the current weight average cost of debt of 9,7% with an average repayment profile of 7 years, subject to market conditions at time of execution.
6. Matching the asset and liability profile with longer dated funding structures (10 - 15 years) for long dated assets such as locomotives that have 30 year useful lives.
7. Enabling Transnet to enter into fixed rate funding (50%) for a portion of the borrowing to better manage interest rate risk and volatility.
8. Transnet and other Chinese financial institutions will be able to give effect to the BRICS commitments of both countries within commercial acceptable terms and conditions.



9. By utilising Chinese funding sources Transnet is able to conserve its use of its domestic credit lines with local financial institutions which can be used in the event of a financial crisis similar to 2008.

#### **DISCUSSION:**

10. Transnet has signed a MOU with CDB during 2014 for the provision of funding of up to \$5 billion, however this was non-binding on either party.
11. This MOU was signed in the presence of the Honourable Presidents of the Republic of South Africa and the Peoples Republic of China as part of the respective countries BRICS commitments.
12. Transnet awarded the locomotive supplier agreements relating to the supply of 1064 locomotives during March 2014 following a rigorous open tender process.
13. The award was made to General Electric; Bombardier Transport; China South Railways and China North Railways with a contract value of R54,5 billion including contingencies.
14. Due to the rating agency requirements of matching commitment capital to committed funding sources to reduce liquidity risk Transnet needed to identify appropriate and cost effective funding sources.
15. To this end Transnet successfully concluded committed funding facilities with USEXIM and EDC to fund the GE and BT portions of the locomotive contracts. These facilities have provided approximately R13 billion of the required funding.
16. Given the above Transnet engaged with CDB during 2014 to conclude a possible loan agreement to fund the Chinese portion of the locomotive supplier agreements.
17. The Board of Directors approved the potential loan from CDB during August 2014 - refer **annexure A**.
18. Consequently Transnet signed a Term sheet (term sheet 1) for the US\$2.5 billion 15-year amortizing loan from CDB to finance 232 and 359 locomotives from CNR and CSR, respectively during August 2014.
19. This term sheet was subject to Transnet being satisfied with the cost of hedging as this is significant cost associated with a foreign denominated loan.
20. Transnet's risk management policies require the currency exposure to be hedged back into Rand
21. The size and tenor of the loan is exceptionally large for the South African market. To quantify this:
  - 21.1. A 1bps (1/100th of 1%) move higher in the USD:ZAR basis market will cost Transnet R15 million on a loan of \$2.5 billion
  - 21.2. The USD:ZAR basis market which can easily move up or down by 25bps in a single day, equivalent to R370 million on a loan of \$2.5 billion.
22. Due to CDBs lack of knowledge of the local financial markets they approached various banks in the local and international market to hedge the possible exposure which resulted in adverse financial consequences for Transnet as the cost of the hedge was unacceptable – see paragraph 30 below.
23. Prudently, Transnet opted not to proceed and communicated to CDB and to the market that it would pursue other funding avenues for the financing.
24. Transnet should choose the route that delivers the lowest Rand funding for Transnet as there is tremendous pressure on its cash interest cover ratio.



**JP MORGAN – cross currency swap**

25. There are two ways to execute a hedge of this magnitude:
26. Transnet could approach a number of banks and ask for quotes, and then select the bank (or banks) with the lowest quotes – similar to approach used by CDB above which resulted in adverse pricing impacts for Transnet, or
27. Transnet could work in strict confidence with one bank that is of sufficient financial substance (balance sheet) to execute the hedge so that the market is entirely unaware of the hedge until after it is concluded.
28. The first route (approach a number of banks) is optically attractive – banks are put into open competition – but it is certain to lead to materially higher Rand funding for Transnet as the basis swap may increase.
29. We are confident in this assertion because unfortunately, this exact route was tested and proven by CDB with disastrous results in August 2014:
  - 29.1. In April 2014, CDB evaluated providing the loan in ZAR to Transnet, and approached several banks for an indicative price on a USD:ZAR cross currency swap.
  - 29.2. This immediately moved the basis swap market on the screen by 25bps against Transnet and resulted in 15bps wider bid-offers.
  - 29.3. Since each 1bps move costs Transnet R15 million in a higher Rand interest rate, the cumulative cost to Transnet would have been R600 million.
  - 29.4. This powerfully demonstrated that absolute confidentiality is critical to obtain the best pricing, and a completely different approach to risk management is required to secure this pricing.
30. To secure the lowest Rand funding, Transnet should instead work with a single bank with a balance sheet large enough to warehouse the risk and execute the currency hedge quietly and in strict confidence.
31. In this way the market is completely unaware that the currency hedge is being executed; so complete confidentiality is maintained at all times.
32. At the same time, Transnet and the bank agree pricing in advance, so Transnet has complete certainty around the cost of the hedge up front and can deem it to be fair and reasonable.
33. J.P. Morgan, with one of the largest bank balance sheets globally, will provide this confidential solution to Transnet. In so doing, we will assume significant market risk.
34. It is therefore vital that the transaction is executed in strict confidence.
35. There are two types of risk that need to be carefully managed in executing this swap:
36. Market risk: A single basis point (0.01%) move up or down during execution represents a R15 million gain or loss to Transnet
  - 36.1. J.P. Morgan can do this because of the large appetite they have to warehouse risk, and because we have a superior ability to tap into several liquidity pools to exit the risk quickly but also smoothly
37. Credit risk: The resulting credit and tenor exposure and on the hedge is significant. We will address this as follows:
  - 37.1. J.P. Morgan has a large appetite and could underwrite the entire transaction whilst holding a significant quantum
  - 37.2. Distribute the rest of the credit risk.
38. This vanilla cross currency swap will enable Transnet to apply hedge accounting to IAS 39 to shield the Transnet balance sheet from significant equity volatility that will have severe adverse impacts on the gearing ratio which is also under some strain.
39. Sensitivity analyses indicate that the volatility could be as high as R33 billion under different stress scenarios of exchange rates and interest rates.

40. Vanilla cross currency swaps are approved instruments that Transnet is allowed to use to hedge financial risks in terms of the Board approved Financial Risk Management Framework.
41. Transnet has successfully executed large cross currency swaps with J P Morgan in the past to hedge currency risk exposures.
  - 41.1. AFLAC loan of JPY 15 billion, hedged in Nov 09 with maturity of 15 Nov 19.
  - 41.2. USD 750 million GMTN issuance, hedged in Feb 11 with maturity of 10 Feb 16.
  - 41.3. USD 500 million GMTN issuance, hedged in Jul 12, with maturity of 26 July 22.
42. Apart from the swaps above, forward exchange contracts are done with J P Morgan on a regular basis for operational and capital imports.


#### **JP MORGAN – contingent credit default swap**

43. In addition to the above and more importantly JP Morgan as provided a proprietary solution that will enable Transnet to further reduce the cost of funding by approximately 112 basis points by the execution of a contingent credit default swap.
44. This instrument will be a stand-alone instrument that will not impact the hedge accounting of the cross currency swap above and will not be hedge accounted.
45. No other financial institution that has presented to Transnet to date has been able achieve the above.
46. Equity volatility on this instrument is a more manageable and acceptable value of approximately R3 billion under various stress tests.
47. The GCFO and GCE are allowed in terms of the Financial Risk Management Framework to introduce new instruments to manage financial risks and consequently will approve this instrument for use post ADC approval.

#### **JP MORGAN – ZAR syndicated loan of \$1,5billion equivalent**

48. To further reduce the cost of funding to Transnet it became apparent that Transnet would need to consider a dual tranche denominated loan to fund the Chinese locomotive purchases.
49. Thus it was decided to utilise only \$1,5billion of the funding from CDB and use the JP Morgan balance sheet to underwrite a ZAR funding facility of \$1,5 billion equivalent.
50. Consequently the GCE signed a revised term sheet (term sheet 2) and mandate letter in April 2015 with CDB for a \$1,5billion only.
51. There appears (gauged during our recent visit to China) to be sufficient appetite from other Chinese financial institutions that are willing to provide Transnet with funding in ZAR namely Bank of China; ICBC and China Construction Bank.
52. Thus we are very confident that the ZAR tranche will be successfully executed.
53. This will enable Transnet to still meet the rating agency requirement of demonstrating committed funding facilities for committed capital.

#### **Other Considerations**

54. All necessary accounting, taxation and legal opinions have been obtained and no adverse issues have been identified in support of the above execution strategy.
  55. An application has been made to National Treasury to increase Transnet's foreign borrowing limit from the current R55 billion to a revised R105 billion.
  56. We are currently in discussions with DPE and National Treasury to address their queries regarding the above application.
  57. Currently approximately R9,5 billion of the R55 billion approved limit is available to be utilised.
- 

- 58. Due to the confidentiality reasons and adverse impacts outlined above of an open tender it also made sense that Regiments Capital having supported Transnet in the 1064 locomotive tender as the transaction adviser is the BEE and empowerment partner of JP Morgan to enable Regiments to benefit from a significant transfer of skill from JP Morgan.
- 59. Participation in this transaction together with JP Morgan will lay the foundation for further future co-operation between the two entities.
- 60. Transnet will again play its role in creating an enabling environment to enhance its socio economic mandate and this time in the financial services sector.
- 61. Regiments Capital is a level 1 contributor in terms of the BEE codes. Their BEE credentials including black ownership has been verified by the Transnet Supplier development team.

### **Regiments Capital – Transaction advisory**

- 62. Transnet appointed Regiments Capital as the Transaction advisors on the 1064 Locomotive Transaction. In terms of the aforementioned mandate, Regiments Capital was required to advise on deal structuring, financing and funding options to minimise risk for Transnet.
- 63. Regiments was required to evaluate a number of funding sources including:
  - 63.1. US Exim funding for the GE locomotives
  - 63.2. EDC funding for the Bombardier locomotives
  - 63.3. Bond issuance under Transnet's DMTN and GMTN
  - 63.4. China Development Bank (CDB), Sinosure, China Exim and ICBC funding for the Chinese locomotives
- 64. Regiments have been working together with the risk management/middle office of Transnet Treasury for over the last 12 months to achieve the outcome below.
- 65. Assist Transnet with detailed negotiations to achieve the following tangible outcomes:
  - 65.1. Negotiating a better asset/liability match as opposed to CDB's proposed 10 year amortising profile as well as extending the capital grace period thereby lengthening the duration of the loan profile.
  - 65.2. Work with management to reduce the overall CDB's initial pricing of 300bp over 6 month Libor.
  - 65.3. Evaluating all options that would allow for Transnet to complete the CDB transaction at fair pricing.
- 66. In order to achieve a reduced blended rate in the funding of the Chinese portion of the locomotives, Regiments recommended that Transnet only utilise \$1.5bn of the CDB facility, and blend that with a \$1bn ZAR syndicated loan issue. The ZAR syndicated loan issue would allow for a reduction in the blended rate paid by Transnet of approx. 37bp (a net present value saving of approx. R666m- as opposed to utilising the full CDB facility of \$2.5bn with the full cost of the cross currency swap).
- 67. Following the decision to use only USD 1.5 billion out of the total USD 2.5 billion proposed by CDB, an agreement has been reached during the negotiations to have the unutilised USD 1.0 billion available for Transnet with no commitment fee until September 2015. Besides the financial benefit at least in terms of the commitment fee that would have otherwise been paid, the availability of such committed funding facility from CDB would provide an additional ratings benefit to Transnet.
- 68. Regiments have advised Transnet to achieve a mix of float and fixed rate in this transaction in order to best manage the interest rate risk with regard to Transnet's Financial Risk Management Framework (FRMF).
- 69. Regiments has assisted Transnet in negotiating with a number of potential Chinese sources of ZAR funding for the ZAR syndicated loan facility, including:
  - 69.1. ICBC (R2bn funding- term sheet to be provided)
  - 69.2. Bank Of China (R6bn – term sheet to be provided)

- 69.3. China Construction Bank (Potential of R2bn- negotiations to be finalised)
- 69.4. Sinasure- (Pursued the potential for a ZAR guarantee)
70. Regiments' advice and the subsequent conscious decision taken by Transnet to utilise foreign sources of funding for both the USD portion and the significant portion of the ZAR syndicated issue have a desirable impact of leaving Transnet's credit lines intact in the domestic market.
71. The savings achieved via the CDB margin compression, the blending of the ZAR syndicated loan, and the change in the applicable reference rate (3 month as opposed to the 6 month Jibar) have allowed Transnet the ability to fix the required portion of the loan without placing undue pressure on the interest cover ratio or the company cash flows. The total financial benefits that accrued to Transnet from the negotiating strategy (comprising of the achievements specified above) pioneered by Regiments is calculated to be in excess of R 2.7 billion.
72. In this regard, with Regiments assistance the weighted average cost of the blended finance for the Chinese locomotives is around 10.40%, as opposed to the current weighted average cost of funding payable by Transnet on its existing loan portfolio of 9.70%. The current debt portfolio has a significantly shorter duration than the Chinese locomotive funding, and the current funding is predominantly ZAR based as opposed to the predominantly USD based funding of the Chinese locomotives.
73. The financial advice and negotiation support that Regiments provided through this entire process which took in excess of 12 months was done at risk with an expectation of compensation only on successful completion of the transaction.
74. The range of NPV fee outcomes can vary between 15bps and 25bps on a transaction of a similar nature – ie R166 million – R277 million based on yield.
75. Given the invaluable contribution of Regiments to the successful conclusion of this transaction, Regiments success based fee will not exceed 15 bps on the yield as reflected in the NPV calculation below, payable on conclusion of the funding and hedging documents with CDB and JP Morgan.

Success fee in bps	Success fee in Rand (NPV)
15	R166 million

#### DELEGATIONS OF AUTHORITY

76. The CDB loan was approved by the Board of Directors of Transnet in August 2014.
77. The vanilla cross currency swap and the contingent credit default swap can be approved by the GCFO or GCE based on the Board of Directors approved Financial Risk Management Framework.
78. The appointment of JP Morgan for purposes of the said transaction is silent in the PPM.
79. The GCE has delegations to approve confinements up to R250 million.
80. The ADC's delegations to approve confinements is from R250 million to R1 billion.
81. Due to the silence of the PPM and the confidentiality required to execute this transaction it was decided to approach the ADC for approval.

#### APPLICABILITY OF THE APPROVED GROUNDS FOR CONFINEMENT:

82. Appended below, for ease of reference, is an extract from the current Procurement Procedure Manual, par 15.1.2, which sets out the grounds for confinement.
- Where a genuine unforeseeable urgency has arisen which is not attributable to bad planning;
  - The goods/services are only obtainable from one supplier/limited number of suppliers. For instance, patented/proprietary goods or OEM spares and components.

Operating Divisions are however required to satisfy themselves that there are no new entrants on the market who could also be tested;

- c) For reasons of standardization or compatibility with existing products and services. A case must be made that deviation from existing standardized goods or services will cause major operational disruption. If not, confinements based on "standardization" will not be considered' or
- 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 tender 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 prerequisites must be satisfied i.e. the goods or services must be highly specialized, almost identical to previous work done and approaching the market again would result in wasted money and time.

83. We are of the view that this matter continues to comply with ground (a) as set out below, and the request for confinement is therefore fully supported.

Ground for confinement per Par 15.1.2	Confinement considerations
a. Where a genuine unforeseeable urgency has arisen which is not attributable to bad planning;	<ul style="list-style-type: none"> <li>• Genuine unforeseeable urgency has arisen to close the CDB transaction at current rates in light of the economic circumstances, Eskom credit rating and the impact on the sovereign.</li> <li>• The Transnet's risk management policies require the currency exposure to be hedged back into Rand</li> <li>• The size and tenor of the loan is exceptionally large for the South African market.</li> <li>• A 1bps (1/100th of 1%) move higher in the USD:ZAR basis market will cost Transnet R15 million on a loan of \$2.5 billion.</li> <li>• This could translate into additional costs of R600 million.</li> <li>• Uncertainty of counterparty unwillingness could delay full execution, leaving Transnet exposed to broader FX and rate risks on the USD exposure.</li> </ul>

#### Confidentiality in terms of Delegations of authority

- 84. In terms of section 15.1.4 of the Delegation of authority "In instances where a confinement is confidential the GCE may approve such confinement without the confinement request being routed via any other authority".
- 85. In light of the risks we have highlighted, Transnet's key objective should therefore be to engage with a counterparty on a confidential basis that is:
  - 85.1. Qualified and capable to execute the market risk components efficiently
    - 85.1.1. – Transnet should be offered best advice but also the possibility for full risk transfer on the market risk
    - 85.1.2. – The right trade-off between transparency and confidentiality to ensure a fair and proper outcome

- 85.2. Prepared to fully underwrite the credit risk arising from the hedge
- 85.3. Prepared to reduce the credit costs and therefore all-in pricing from the hedge through optimisation of the position
- 86. There is clearly a trade-off between transparency and confidentiality, in particular, as regards to the market risk components
- 87. Relying on one price from one bank protects the confidentiality and potential front-running.
- 88. However, Transnet must avoid a messy execution environment, as seen when CDB asked for indicative pricing from a number of banks for the full transaction earlier this year. We saw the basis swap move 25bps against Transnet within hours, while bid-offers from banks increased dramatically (15bps).
- 89. If Transnet had been transacting then, this would have crystallised additional transaction costs of ZAR600mm, clearly the opposite effect that Transnet would have been seeking through a competitive bidding/procurement process.
- 90. Moreover, if Transnet had wanted to wait for the market to become 'unaffected' again, this would have delayed execution for several months, exposing Transnet to broader market volatility.
- 91. To secure the lowest Rand funding, Transnet must work with a single bank with a balance sheet large enough to warehouse the risk and execute the currency hedge quietly and in strict confidence.
- 92. In this way the market is completely unaware that the currency hedge is being executed; so complete confidentiality is maintained at all times.
- 93. At the same time, Transnet and the bank agree pricing in advance, so Transnet has complete certainty around the cost of the hedge up front and can deem it to be fair and reasonable.
- 94. It is not in the public interest as there would be additional cost to Transnet.

#### **ENTERPRISE AND SUPPLIER DEVELOPMENT AND BBBEE**

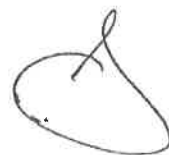
- 95. Supplier development subject a maximum of 35 % will be applicable to JP Morgan.
- 96. Supplier development applicable to Regiments Capital will be subject to a maximum of 10%.

#### **FINANCIAL IMPLICATIONS**

- 97. Given the invaluable contribution of Regiments to the successful conclusion of funding transaction, Regiments is due a success or risk based fee of 15 bp on yield payable by Transnet or JP Morgan (or a portion thereof) subject to a maximum of R166 million.
- 98. The fees for JP Morgan will be part of the market related cost to hedge the exposure to ZAR.

#### **BUDGET IMPLICATIONS**

- 99. The costs have been budgeted as part of the funding plan for 2015/16.



**RECOMMENDATION:**

- It is recommended that the ADC:
  - Approve the confined appointment of JP MORGAN to hedge the financial risks (interest rate; credit and currency risk) emanating from the US\$ 1,5 billion China Development Bank (CDB) loan back into ZAR ;
  - Approve the confined appointment of JP MORGAN to lead and underwrite the equivalent syndicated ZAR loan of \$1,5 billion;
  - Approve the contract extension from R99,5 million to R265,5 million for the appointment of Regiments Capital for transaction advisory services and support to Transnet on the 1064 locomotive transaction, and;
  - Delegate authority to the Acting GCE to approve all documentation related to this confinement.

**Compiled by**

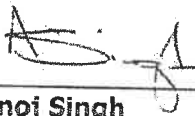

**Phetolo Ramosebudi**  
**Group Treasurer**

Date: 28/04/2015

**Recommended/Not Recommended**

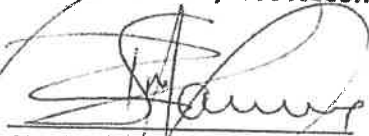

**Garry Pita**  
**Group Chief Supply Chain Officer**

Date: 28/4/15

**Recommended/Not Recommended**


**Anoj Singh**  
**Group Chief Financial Officer**

Date: 28/04/15

**Recommended/Not Recommended**


**Siyabonga Gama,**  
**Acting Group Chief Executive**

Date: 2015-04-28



## **REPORT 2(B) – EXHIBIT 45**

Transnet SOC Ltd	Carlton Centre	P.O. Box 72501
Registration	150 Commissioner	Parkview
Number	Str. Johannesburg	South Africa, 2122
1990/000900/30	2001	T +27 11 308 2253
		F +27 11 308 1269

TRANSNET

**MEMORANDUM**

www.transnet.net

---

**To:** Chairperson: Transnet Risk Committee  
**From:** Mohammed Mahomed, Acting Chief Financial Officer  
**Subject:** **DRAFT STATUS UPDATE - TRILLIAN AND REGIMENTS REVIEW**

---

**PURPOSE**

1. The purpose of the submission is to request the Chairperson to note the draft status update and high level summary of the various documents reviewed by the Acting CFO into the role of Regiments and Trillian in the services provided to Transnet.
2. This update excludes the consulting services provided by Regiments, Trillian and its associated companies.

*contradicting***BACKGROUND****Transaction advisor and Regiments**

3. The GCE approved the appointment of the McKinsey led Consortium to provide advisory services on the 1064 locomotive tender, and a Letter of Intent was signed on 04 December 2012 for R35,2 million excluding VAT and disbursements.
4. In May 2013 a potential conflict of interest was raised with McKinsey concerning Nedbank Capital and on 19 November 2013 the Group CFO confirmed Transnet's agreement to replace Nedbank Capital with Regiments Capital.
5. In terms of the aforementioned mandate, Regiments Capital was required to advise on deal structuring, financing and funding options to minimise risk for Transnet.
6. The entire scope of the advisory services engagement was subsequently allocated to Regiments with McKinsey only responsible for the business case and limited technical optimisation aspects – based on the cession agreement of 5 February 2014.
7. On 4 February 2014 the LOI scope for Regiments Capital was extended to reflect the above and the budgeted fees were also increased to R51,2 million.

8. On 17 April 2014, a change in the remuneration model of the transaction adviser was approved by the GCE and the transaction advisor fee increased from R51,2 million to R119,1 million. This fee later increased to R265,5 million (refer below).
9. 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 Wentzel	6.5	6.7
Regiments	21.1	99.5
Ningiza Horner	3.5	3.5
McKinsey	20.1	10.0
<b>Total</b>	<b>51.2</b>	<b>119.7</b>

### CDB Loan and cross currency swaps

2015

10. The CDB loan was approved by the Board of Directors of Transnet in August 2014.
11. The loan was to fund the purchase of locomotives from CSR and CNR.
12. On 28 April 2015 the GCE approved:
- The confinement of JP MORGAN to hedge the financial risks (interest rate; credit and currency risk) emanating from the US\$ 1,5 billion CDB loan back into ZAR and →
  - The confinement of JP MORGAN to lead and underwrite the equivalent syndicated ZAR loan of \$1,5 billion;
  - The contract extension from R99,5 million to R265,5 million for Regiments Capital for transaction advisory services and support on the 1064 locomotive transaction, refer Annexure A.
13. In June 2015 Transnet drew down \$1,5 billion from CDB.
14. The US\$ CDB loan was hedged with cross currency swaps (CCS) to shield the Transnet balance sheet from significant equity volatility – these were executed by JP Morgan.
15. Based on the information reviewed Transnet paid CDB \$17,7 million on 11 June 2015 as an "upfront fee" for the loan.
16. We understand, that the fees paid to JP Morgan cannot be separately identified as they have been rolled up in the underlying costs of the CCS. *bp? → Deal → (MANCO) fees*
17. Any fees paid by JP Morgan or CDB to Regiments could not be separately identified.

### JP MORGAN – contingent credit default swap (CCDS) Insurance

18. Transnet also entered into a contingent credit default swap with JP Morgan.
19. The fees paid to JP Morgan could not be separately identified as they would have been rolled up in the underlying costs of the CCDS.
20. As this instrument was not hedge accounted and resulted in volatility on the Income statement, it was closed out in February 2018 at a cost of R125 million whilst it was held as an asset on the Balance sheet at ~R400 million, resulting in a net negative R525 million movement to the fair value line on the Income statement.
21. Any fees paid by JP Morgan to Regiments could not be separately identified.

Transnet paid Regiments R5,7m

**R12 billion ZAR syndicated loan (Club loan)**

22. JP Morgan was appointed as the lead manager balance sheet to underwrite a ZAR club loan.
23. On 22 Sep 2015 recommendation was received from the GCE for JP Morgan to be replaced with Trillian Asset Management as the lead arranger with fees of R82 million excl VAT.
24. The ADC approved the appointment on 1 October 2015.
25. The fees paid to JP Morgan could not be separately identified as they would have been rolled up in the underlying costs of the interest rate of the club loan.
26. Any fees paid by JP Morgan to Trillian Asset Management or any other party could not be separately identified.
27. An amount of R93,8 million incl VAT was paid to Trillian Asset Management on 18 November 2015.

**Nedbank interest rate swaps**

28. Loans with a floating interest rate totaling R12 billion were swapped with Nedbank.
29. As per Treasury, fees amounting to 20bp was paid by Transnet. However we could not confirm this as they would have been rolled up in the underlying costs of the swaps.
30. As Regiments executed these, they would have been paid by Nedbank. However we could not confirm this. Indications from articles on the OCCRP website indicate fees of ~R500m.
31. Should Transnet unwind this transaction it will result in a realized loss for Transnet.
32. The interest rate swaps have a maturity date of December 2030.
33. The detail of the loans swapped are included in Annexure B.

**TSDBF interest rate swaps (old Mutual)**

34. The Club loans with a floating interest rate totaling R12 billion were swapped with TSDBF.
35. As per Treasury, fees amounting to 20bp was paid by Transnet. However we could not confirm this as they would have been rolled up in the underlying costs of the swaps.
36. As Regiments executed these, an amount of R227,8 million was paid by TSDBF.
37. The fees paid by the (TSDBF to Trillian and Regiments) now a matter before the courts, with action brought by the (TSDBF).
38. Should Transnet unwind this transaction it will result in a realized loss for Transnet.
39. The detail of the loans swapped are included in Annexure B.

**Loan Book**

40. The detail of the current loan book is included in Annexure C.

### Overall fees to Regiments, Trillian and Mckinsey

41. Transnet entered into a number of transactions with Regiments, Trillian and Mckinsey.
42. The overall fees paid since 2013 – 2017 for the 3 service providers on the various engagements are as follows:

	Total		
	Income statement	Balance Sheet	Total
McKinsey	210 457 840	562 731 076	773 188 916
Regiments	264 360 096	667 457 702	931 817 798
Trillian	55 641 500	127 309 489	182 950 989
	<b>530 459 436</b>	<b>1 357 498 267</b>	<b>1 887 957 703</b>

### CONCLUSION

43. The various documents reviewed in preparing this status update are available for review.
44. These have been provided to MNS and Fundudzi, as requested by them.
45. We also attach a letter sent by the ACFO to Treasurer, as Annexure D, requesting clarity on the Regiments and Trillian engagements.
46. At the time of writing this update we have not factored into account any responses from the Treasurer. This will be done in the final report.

### RECOMMENDATION

47. It is recommended that Chairpersons note the draft status update and high level summary of the various documents reviewed by the Acting CFO into the role of Regiments and Trillian in the services provided to Transnet.
48. The Chairpersons's note that this update excludes the consulting services provided by Regiments, Trillian and its associated companies.

## **REPORT 2(B) – EXHIBIT 46**

favour of a "clean break", with effect from 1 March 2016. The agterskot contingency idea was simply not practicable as it would have meant that Regiments and Trillian would have to have accounted to one another for several years.

### The Club Loan

123. The position regarding the Club Loan is as follows.

- 123.1 Regiments was initially engaged to provide advisory services to Transnet in relation to the acquisition of 1,064 locomotives. Thereafter, Transnet sought the advice of Regiments to raise funding for their acquisition.
- 123.2 Regiments, accordingly, arranged a loan facility of \$2.5billion from the China Development Bank to assist Transnet in acquiring the 1,064 locomotives. For that work, Regiments invoiced Transnet in the amount of R166million (excluding VAT) on 3 June 2015. A copy of that invoice is attached to the applicants' response to my notice in terms of Rule 35(12) as "FA76". This amount was paid by Transnet to Regiments.
- 123.3 On 15 July 2015, I wrote to Mr Anoj Singh, the then Chief Financial Officer of Transnet, setting out a full breakdown of the services that Regiments had rendered to Transnet in relation to the contract over the 1,064 locomotives China Development Bank loan mandate. A

60 805

copy of that letter is attached, as "AA39". By the time that letter was sent, the Club Loan had not even been commenced. There can, therefore, be no suggestion that the amount of R166million paid to Regiments included work Regiments performed on the Club Loan.

2  
g  
t  
f

- 123.4 JP Morgan were initially designated by Transnet to be the "lead arrangers" of the Club Loan. Transnet was not satisfied with the JP Morgan proposal, which was also very expensive. As a result, Transnet asked Regiments whether they could make a proposal for the putting together of the Club Loan. Regiments, accordingly, put together a proposal, which Transnet approved.
- 123.5 While Transnet approved that proposal, Mr Singh indicated that Regiments could not be appointed to the "lead arranger" role since it had not met its supplier-development requirements, which included that 30% of the work done had to be done by previously disadvantaged or black-owned entities as defined in B-BBEE legislation.
- 123.6 There was no difficulty when JP Morgan was going to be the lead arranger since Regiments fulfilled its (JP Morgan's) supplier-development requirements. There was, accordingly, no way in which Regiments could be appointed as the "lead arranger" of the Club Loan unless it had met this supplier-development requirement.

13

W



- 123.7 To complicate matters, Mr Singh took the firm view that Transnet approved of the solution Regiments proposed in relation to the Club Loan and that it wanted Regiments to do the work (provided that it met its supplier-development requirements), but that Transnet did not intend to pay Regiments any further fees for arranging the Club Loan, given that Transnet had already paid Regiments R166million to arrange finance for the 1,064 locomotives with the China Development Bank.
- 123.8 I tried to persuade Mr Singh to pay Regiments a market-related fee for the work done in arranging the Club Loan, but Mr Singh refused. This is apparent from the e-mail that I sent to Mr Singh on 17 July 2015, a copy of which I attach, as "AA40". It appeared that Regiments was going to have to arrange the Club Loan but that it needed to resolve its supplier-development issues before it would be allowed to be involved in the transaction.
- 123.9 During July and early August 2015, Messrs Essa and Kuben Moodley, a friend of Mr Pillay went to see him. They indicated to Mr Pillay that because Regiments would, be unable to proceed with the arranging of the Club Loan Regiments should, accordingly, allow Trillian Asset Management, a business which had recently been acquired by Mr Essa, to assist in performing the work. I point out that this took place while I was employed by Regiments and before the decision had been taken by Messrs Nyhonyha, Pillay and me to part



62 807

ways. Given that Trillian Asset Mangement is a majority-black-owned entity, this would allow Regiments to carry out the work as "lead arranger" on the Club Loan because Regiments could thus meet its supplier-development requirements. It was pointed out to Mr Pillay that Regiments would, in any event, profit from the transaction because Regiments would benefit from certain interest-rate swaps that would take place as a result of the Club Loan. Mr Moodley approached Mr Pillay in this regard because Mr Pillay had always been the Regiments partner who had managed the relationship and the contracts between Regiments and Mr Moodley. Mr Moodley had been contracted by Regiments to introduce business to Regiments.

123.10 Mr Moodley later approached me on the same basis, and informed me that Mr Pillay had indicated that he had no objection to Trillian Asset Management assisting Regiments in arranging the Club Loan. As a result, and with Mr Pillay's blessing, I, as the "lead arranger", arranged a meeting between Messrs Pita, who had by then replaced Mr Singh as the Chief Financial Officer of Transnet and Phetolo Ramosebudi, the treasurer to Transnet, Daniel Roy, the CEO of Trillian Asset Management and me. The credentials and profile of Trillian Asset Management were presented to Transnet for their consideration. Transnet agreed to the appointment of Trillian Asset Management as Regiments' supplier-development partner to carry out the work as "lead arranger" on the Club Loan.

13 W

- 123.11 Thereafter, from early August to November 2015, when the Club Loan was completed, Trillian Asset Management performed work in arranging the Club Loan, for which it invoiced Transnet and for which it was paid R81.5 million (excluding VAT). Regiments continued to play the role of "lead arranger" in relation to the Club Loan knowing that it would not be remunerated for the work, but that it would benefit from the interest-rate swaps that would take place as a result of the Club Loan. It was for this reason it was in Regiments interest to have the Club Loan completed. I refer in this regard to the confirmatory affidavits of Messrs Essa, Moodley and Roy enclosed.
- 123.12 At the time that those discussions took place, Trillian Asset Management was owned by Trillian Holdings (50%) and by its management. As I say above, at that time, I had no interest in any Trillian entity whatsoever. I commenced discussions with Mr Essa in relation to joining Trillian only once Messrs Nyhonyha and Pillay and me had decided, in September 2015, to part ways.
- 123.13 In January or February 2016, the Trillian Group was restructured and the Trillian Asset Management shareholders relinquished their shares in Trillian Asset Management and were issued shares in Trillian, which in turn is a subsidiary of Trillian Holdings (Pty) Ltd ("Trillian Holdings"). Trillian Holdings became the new holding company for the Trillian Group of Companies to which the Regiments advisory business was transferred.
- 13 W

- 123.14 The Club Loan of R12billion was delivered to Transnet, whereupon Trillian Asset Management earned a fee of approximately R81.5 million, while Regiments profited from the subsequent associated interest-rate swaps.
124. The manner in which the Club Loan was arranged and the involvement of Trillian Asset Management in it took place was with the full knowledge and consent of Mr Pillay. There was no overlap in the R166million paid to Regiments by Transnet in relation to the arrangement and execution of the \$2.5 billion China Development Bank loan facility, and the R81.5 million paid by Transnet to Trillian Asset Management.
125. In this regard, I refer to the confirmatory affidavits of Messrs Essa and Moodley.

#### The Trillian invoices

126. Regiments refers to invoices that have been made available through the press. Mr Nyhonyha draws the entirely unsubstantiated conclusion that the "overwhelming impact" of those invoices is that Trillian and I managed to secure payments of large amounts to Trillian for work allegedly done by Regiments and to secure payments due to neither Regiments, nor Trillian. I am accused of failing to account to Regiments for those amounts and of keeping those payments secret from Regiments. Mr Nyhonyha himself concedes speculatively that only "if what is reflected in the invoices and the
- B W

Eric Wood

"AA39"

1210

**From:** Eric Wood  
**Sent:** 15 July 2015 06:03 PM  
**To:** Anoj Singh Corporate JHB  
**Cc:** Phetolo Ramosebudi Transnet Corporate JHB  
**Subject:** 1064 Fee Attribution  
**Attachments:** 20150715175529074 (00000003).pdf

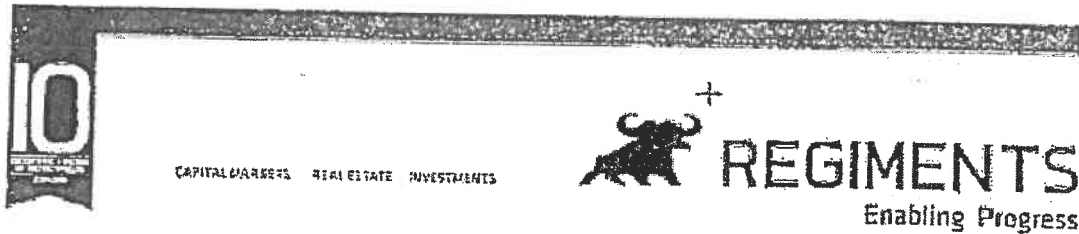
Hi Anoj

As discussed I have attached a letter detailing the fee attribution for the 1064 debt origination and hedging transactions (including detailed fee calculation model output)

Thank You

Eric Wood

Eric Wood  
 Executive Director  
 +27 83 626 0857



T +27 11 715 0009 D +27 11 715 0343 F +27 11 715 0052 E enq@regiments.co.za W www.regiments.co.za  
 91 Central Str. Houghton, 2198 Pretoria, South Africa Private Bag 211, Grahamstown, 6160

X3

EW

1211  
CAPITAL MARKETS**REGIMENTS**

Enabling Progress

15 July 2015

Anoj Singh  
Group Chief Financial Officer  
Transnet SOC Ltd  
Box 72501  
South Africa  
2122

Dear Mr. Singh

The purpose of this letter is to detail the work undertaken by Regiments for the capital raising, transaction management and hedging advisory services related to the 1064 locomotive funding.

**1. Capital raising****1.1. China Development Bank Loan**

Regiments is entitled to a lead manager and debt origination fee upon the successful conclusion of the China Development Bank (CDB) loan amounting to 15 basis points calculated on the yield to maturity of the CDB loan. This fee is a debt origination fee, and the basis of calculation of the Rand based fee is as follows:

- 15bp on the yield to maturity of the CDB \$1.5bn loan (as per attached detailed loan profile and yield calculation) **R152 756 408**

**2. Hedging of CDB loan and arrangement of CCDS Structure****2.1. Cross Currency Swap**

Regiments assisted in the structuring and arrangement of the Cross Currency Swap in order to convert the USD denominated CDB loan to a ZAR obligation, and was due the following success contingency fee:

- Cross Currency Success fee **R7 500 000**

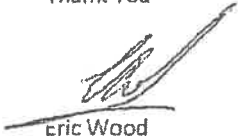
**2.2. CCDS Structure**

Regiments structured and arranged a CCDS structure in order to effectively reduce the ZAR interest rate payable on the loan structure by Transnet. The following contingency success fee was applicable to this structure:

- CCDS Structure Success fee **R5 743 592**

The total Contingency fee paid to Regiments amounted to R166 000 000. This contingency fee is attributed to the work streams as detailed above.

Thank You

  
Eric Wood  
Executive Director  
Regiments Capital (Pty) Ltd
**ADVISORY**

T +27 11 715 0300 F +27 85 691 1523 E info@regiments.co.za

Physical Address 91 Central Str, Houghton, 2198 Postal Address Postnet Suite 25, Private Bag X11, Birnam Park, 2015

Directors L Nyhonyha M Pillay E Wood

Regiments Capital (Pty) Ltd Reg No (2004/023761/01) FSP No 15521

  
www.regiments.co.za  
An Authorised Financial Services Provider

1212

Swap Rand Leg Terms	
Loan Profile	Amortising / Equal Capital
Start Date	12-Jun-15
Nominal	18 000 000 000
Method	Curve
Rate	3m JIBAR
Frequency (months)	3
Spread	337.50
Term	15y
Grace Period (years)	4.50
Delta per point	10 183 761

Fee Calculation

Delta per point X 15 bps

= 10 183 761 X 15

= 152 756 408

TS  
10  
10

1213

Market Rates	04-Jun-15
call	5.500%
1m JIBAR	5.950%
2m	6.025%
3m JIBAR	6.133%
3x6	6.373%
6x9	6.767%
9x12	7.000%
12x15	7.293%
15x18	7.458%
18x21	7.660%
2y	7.038%
3y	7.350%
4y	7.538%
5y	7.762%
6y	7.905%
7y	8.029%
8y	8.125%
9y	8.209%
10y	8.275%
11y	8.347%
12y	8.418%
13y	8.482%
14y	8.545%
15y	8.608%
16y	8.624%
17y	8.640%
18y	8.655%
19y	8.671%
20y	8.687%
25y	8.617%
30y	8.518%

Curve	
04-Jun-15	0.000%
05-Jun-15	5.642%
06-Jul-15	6.114%
04-Aug-15	6.178%
04-Sep-15	6.275%
04-Dec-15	6.400%
04-Mar-16	6.580%
06-Jun-16	6.734%
05-Sep-16	6.884%
05-Dec-16	7.014%
06-Mar-17	7.137%
06-Jun-17	7.250%
04-Jun-18	7.599%
04-Jun-19	7.814%
04-Jun-20	8.082%
04-Jun-21	8.257%
06-Jun-22	8.413%
05-Jun-23	8.536%
04-Jun-24	8.650%
04-Jun-25	8.739%
04-Jun-26	8.844%
04-Jun-27	8.957%
05-Jun-28	9.060%
04-Jun-29	9.170%
04-Jun-30	9.287%
04-Jun-31	9.300%
04-Jun-32	9.316%
06-Jun-33	9.336%
05-Jun-34	9.359%
04-Jun-35	9.386%
04-Jun-40	9.101%
05-Jun-45	8.687%

13  
W



1214

	Repayment	Interest	Capital Repayment	Drawdowns	Nominal
12-Jun-15			0	4 446 042 438	4 446 042 438
13-Jul-15		-35 759 502	0	204 210 849	4 650 253 287
12-Aug-15		-36 469 071	0	204 210 849	4 854 464 135
14-Sep-15	-114 421 334	-42 192 762	0	272 807 966	5 127 272 101
12-Oct-15		-38 189 136	0	477 755 263	5 605 027 365
12-Nov-15		-46 553 969	0	411 582 701	6 016 610 066
14-Dec-15	-136 707 047	-51 963 941	0	514 478 376	6 531 088 442
12-Jan-16		-52 305 567	0	617 374 051	7 148 462 493
12-Feb-16		-61 662 977	0	308 687 026	7 457 149 519
14-Mar-16	-178 802 972	-84 834 428	0	680 487 622	8 137 637 141
12-Apr-16		-66 638 112	0	747 713 852	8 885 350 993
12-May-16		-75 845 237	0	411 582 701	9 296 933 694
13-Jun-16	-227 813 985	-85 330 636	0	411 582 701	9 708 516 395
12-Jul-16		-81 651 257	0	478 808 931	10 187 325 327
12-Aug-16		-92 347 783	0	517 698 748	10 705 024 074
12-Sep-16	-271 832 904	-97 833 864	0	609 718 579	11 314 742 653
12-Oct-16		-99 988 433	0	611 308 484	11 926 051 138
14-Nov-16		-116 953 100	0	854 515 342	12 780 566 480
12-Dec-16	-324 111 822	-107 170 289	0	862 430 394	13 642 996 874
12-Jan-17		-126 858 254	0	770 088 122	14 413 084 996
13-Feb-17		-139 580 542	0	882 454 280	15 295 539 275
13-Mar-17	-397 078 536	-130 639 740	0	891 417 777	16 186 957 052
12-Apr-17		-147 542 673	0	846 600 290	17 033 557 343
12-May-17		-156 604 197	0	846 600 290	17 880 157 633
12-Jun-17	-471 105 722	-166 958 851	0	119 842 367	18 000 000 000
12-Sep-17	-508 401 838	-508 401 838	0	0	18 000 000 000
12-Dec-17	-509 873 108	-509 873 108	0	0	18 000 000 000
12-Mar-18	-511 391 059	-511 391 059	0	0	18 000 000 000
12-Jun-18	-528 480 625	-528 480 625	0	0	18 000 000 000
12-Sep-18	-514 785 958	-514 785 958	0	0	18 000 000 000
12-Dec-18	-516 444 177	-516 444 177	0	0	18 000 000 000
12-Mar-19	-518 156 140	-518 156 140	0	0	18 000 000 000
12-Jun-19	-537 435 827	-537 435 827	0	0	18 000 000 000
12-Sep-19	-542 811 898	-542 811 898	0	0	18 000 000 000
12-Dec-19	-963 951 147	-545 346 496	-418 604 651	0	17 581 395 349
12-Mar-20	-959 875 872	-541 271 221	-418 604 651	0	17 162 790 698
12-Jun-20	-958 720 470	-540 115 818	-418 604 651	0	16 744 186 047
14-Sep-20	-933 703 099	-515 098 448	-418 604 651	0	16 325 681 395
14-Dec-20	-912 413 212	-493 808 561	-418 604 651	0	15 908 976 744
12-Mar-21	-891 133 340	-472 528 689	-418 604 651	0	15 488 372 093
14-Jun-21	-915 939 124	-497 334 473	-418 604 651	0	15 069 767 442
13-Sep-21	-874 414 569	-455 809 918	-418 604 651	0	14 651 162 791
13-Dec-21	-868 892 492	-450 287 841	-418 604 651	0	14 232 558 140
14-Mar-22	-863 279 109	-444 674 458	-418 604 651	0	13 813 953 488
13-Jun-22	-855 519 202	-436 914 551	-418 604 651	0	13 395 348 837
12-Sep-22	-825 295 988	-406 691 337	-418 604 651	0	12 976 744 186
12-Dec-22	-818 977 222	-400 372 571	-418 604 651	0	12 558 139 535
13-Mar-23	-812 530 077	-393 925 426	-418 604 651	0	12 139 534 884
12-Jun-23	-804 326 267	-385 721 616	-418 604 651	0	11 720 930 233
12-Sep-23	-782 405 777	-363 801 126	-418 604 651	0	11 302 325 581
12-Dec-23	-771 341 611	-352 738 960	-418 604 651	0	10 883 720 930
12-Mar-24	-764 064 436	-345 459 785	-418 604 651	0	10 465 116 279
12-Jun-24	-758 390 676	-339 788 025	-418 604 651	0	10 046 511 628
12-Sep-24	-730 109 356	-311 504 704	-418 604 651	0	9 627 906 977
12-Dec-24	-718 762 182	-300 157 531	-418 604 651	0	9 209 302 326
12-Mar-25	-707 331 190	-288 726 539	-418 604 651	0	8 790 697 674
12-Jun-25	-704 270 161	-285 665 510	-418 604 651	0	8 372 093 023
12-Sep-25	-684 845 194	-266 240 543	-418 604 651	0	7 953 488 372
12-Dec-25	-673 105 901	-254 501 250	-418 604 651	0	7 534 883 721
12-Mar-26	-661 258 927	-242 654 276	-418 604 651	0	7 116 279 070
12-Jun-26	-656 175 268	-237 570 616	-418 604 651	0	6 697 674 419
14-Sep-26	-640 701 450	-222 096 799	-418 604 651	0	6 279 069 767
14-Dec-26	-623 783 898	-205 179 247	-418 604 651	0	5 860 465 116
12-Mar-27	-607 095 693	-188 491 042	-418 604 651	0	5 441 860 466
14-Jun-27	-607 923 235	-189 318 584	-418 604 651	0	5 023 255 814
13-Sep-27	-580 921 900	-162 317 249	-418 604 651	0	4 604 651 163
13-Dec-27	-570 089 807	-151 485 156	-418 604 651	0	4 186 046 512
13-Mar-28	-558 890 785	-140 286 134	-418 604 651	0	3 767 441 860
12-Jun-28	-546 768 295	-128 163 644	-418 604 651	0	3 348 837 209
12-Sep-28	-530 241 178	-111 636 527	-418 604 651	0	2 930 232 558
12-Dec-28	-517 036 729	-98 432 078	-418 604 651	0	2 511 627 907
12-Mar-29	-503 644 956	-85 040 316	-418 604 651	0	2 093 023 256
12-Jun-29	-492 161 036	-73 556 385	-418 604 651	0	1 674 418 605
12-Sep-29	-475 654 855	-57 050 204	-418 604 651	0	1 255 813 953
12-Dec-29	-461 751 056	-43 146 405	-418 604 651	0	837 209 302
12-Mar-30	-447 618 500	-29 013 849	-418 604 651	0	418 604 651
12-Jun-30	-433 529 924	-14 925 273	-418 604 651	0	0

B

W W

Eric Wood

1215  
"AA40"

From: Eric Wood  
 Sent: 17 July 2015 10:10 AM  
 To: Anoj Singh Corporate JHB  
 Subject: 1064 Funding Mandate- ZAR Club Loan

Hi Anoj

Pursuant to the execution of our 1064 funding mandate, and specifically relating to the R18bn local funding facility we would wish to note the following points:

- It was originally anticipated that Regiments would assist JP Morgan in the execution of the R18bn club loan.
- J P Morgan would be the appointed lead managers for the issue, for which they would be paid a fee equal to 20bp of the capital raised
- Regiments has picked up the full responsibility for the issue as lead managers, with all the incumbent work being performed by Regiments

As a result of the responsibility and additional work load as detailed above, Regiments would like to have the opportunity to discuss with yourself the possibility of market related compensation for the lead manager role as performed.

Thank You  
 Eric Wood

Eric Wood  
 Executive Director  
 +27 83 626 0857



T +27 11 715 0350 D +27 11 715 0342 F +27 11 715 0353 E [erwood@regiments.co.za](mailto:erwood@regiments.co.za) W [www.regiments.co.za](http://www.regiments.co.za)  
 91 Central Str Houghton, 2198 Postnet Suite 25 Private Bag X11 Birken Park, 2015

TB

W

## **REPORT 2(B) – EXHIBIT 47**

07/03/2016

CLUB LOAN 2

BLENDED MID RATE 11-4440

LOAN ABBA

91 Actions		92 Products		93 Views		94 Info		95 Settings		Swap Manager	
Solver (Premium)		31 Load		32 Save		33 Trade		30 CCP		43 Send to EMIR ID	
Main		Details		Curves		Cashflow		Resets		Scenario	
Deal		Amort		Fix Flt Swap		Counterparty		SWAP CTRPARTY		Ticker / SWAP	
Swap		SL4M22H4		Amortizing		SL4M22H4		Amortizing		Properties	
<b>Leg 1: Fixed</b>		<b>Receive</b>		<b>Leg 2: Float</b>		<b>Pay</b>					
National	1,500,000,000	National	1,500,000,000								
Currency	ZAR	Currency	ZAR								
Effective	03/07/2016	Effective	03/07/2016								
Maturity	14Y9 12/02/2030	Maturity	14Y9 12/02/2030								
Coupon	11.444000	Index	JIBAS3M								
Pay Freq	Quarterly	Spread	260.000								
Day Count	ACT/365	Leverage	1.00000								
Calc Basis	Money Mkt	Latent Index	6.89921								
		Reset Freq	Quarterly								
		Pay Freq	Quarterly								
		Day Count	ACT/365								
<b>Market</b>		<b>ESent</b>		<b>ESent</b>		<b>ESent</b>		<b>ESent</b>		<b>ESent</b>	
18 M ZAR-LOCAL IRS		18 M ZAR-LOCAL IRS		18 M ZAR-LOCAL IRS		18 M ZAR-LOCAL IRS		18 M ZAR-LOCAL IRS		18 M ZAR-LOCAL IRS	
<b>Leg 1: NPV</b>		1,727,881,830.70		<b>Leg 2: NPV</b>		-1,716,759,132.02					
<b>Valuation Results</b>											
Par Cpn	11.310942	Premium	11.310942								
Principal	11,092,687.68	BP Value	73.65125								
Accrued	0.00										
NPV	11,092,687.68										
<b>Calculators</b>											
PV01	833,675.58										
DV01	836,174.00										
Gamma (1bp)	716.78										

Australia 61 2 9777 6000 Brazil 55 11 2395 5000 Europe 44 20 7230 7500 Germany 49 69 9204 1210 Hong Kong 852 2977 6000  
Japan 81 3 3201 8900 Singapore 65 6212 1000 U S 1 212 316 2000 Copyright 2016 Bloomberg Finance L.P.  
CN 862687 SAST GMT+2:00 H626-2271-0 19-May-2016 17:05:58

07/03/2016

CLUB LOAN 2

ACTUAL MID RATE 11-3109

LOAN ABSA

Deal Saved.

91 Actions		92 Products		93 Views		94 Info		95 Settings		Swap Manager	
Solver (Coupon)		31 Load		33 Edit		35 Trade		38 CCP		43 Send to EMIR ID SL4MZZH3	
Main		Details		Curves		Cashflow		Resets		Scenario	
Deal		Amort		Fix		Swap		Counterparty		SWAP CNTRPARTY	
Swap		SL4MZZH4		Amortizing		SL4MZZH5		Amortizing		Valuation Settings	
Leg 1: Fixed		Receive		Leg 2: Float		Pay		Curve Date		03/07/2016	
Notional		1,500,000,000		Notional		1,500,000,000		valuation		03/07/2016	
Currency		ZAR		Currency		ZAR		Coll Ccy		N/A	
Effective		03/07/2016		Effective		03/07/2016					
Maturity		12/02/2030		Maturity		12/02/2030					
Coupon		11.310942		Index		3M					
Pay Freq		Quarterly		Spread		260.000 bp					
Day Count		ACT/365		Leverage		1.00000					
Calc Basis		Money Mkt		Latest Index		6.99921					
				Reset Freq		Quarterly					
				Pay Freq		Quarterly					
				Day Count		ACT/365					
Market				Market							
Descr		18 ZAR LOCAL IRS (I)		Descr		18 M ZAR LOCAL IRS (I)					
				Sym		18 ZAR LOCAL IRS (I)					
Leg 1: NPV		1,716,789,133.02		Leg 2: NPV		1,716,789,133.02					
Valuation Results				Calculators							
Par Cpn		11.310942		PV01		1831,675.54					
Principal		0.00		DV01		831,411.28					
Accrued		0.00		Gamma (1bp)		713.59					
NPV		0.00									
Australia 61 2 9777 8600 Brazil 5511 2395 9000 Europe 44 20 7330 7500 Germany 49 59 9204 1210 Hong Kong 852 2977 6000 Japan 81 3 3201 8900 Singapore 65 6212 1000 U.S. 1 212 318 2000 Copyright 2016 Bloomberg Finance L.P. NY 762687 SASI GMT+2 00 M628-2271-1 19-May-2016 17:22:27											

07/03/2016

CLUBB LOAN 2

ACTUAL MTD RATE: 11-4701

LOAN - BANK OF CHINA

Deal Saved.

91 Actions -		92 Products -		93 Views -		94 Info -		95 Settings -		Swap Manager	
1) Solver (Coupon)		3) Load		3) Edit		3) Trade		3) CCP		4) Send to EMIR	
2) Main		4) Details		5) Curves		6) Cashflow		7) Resets		8) Scenario	
9) Risk		10) CVA		11) Matrix		12) Ticker		13) SWAP		Properties	
Deal: SL4M12GV											
Amortizing Swap											
SWAP CTRPARTY											
Valuation Settings											
Curve Date: 03/07/2016											
Valuation: 03/07/2016											
CSA Coll Cry: N/A											
Leg 1: Fixed											
Notional: 1,500,000,000											
Currency: ZAR											
Effective: 03/07/2016											
Maturity: 12/02/2030											
Coupon: 11.470126											
Pay Freq: Quarterly											
Day Count: ACT/365											
Calc Basis: Money Mkt											
Leg 2: Float											
Notional: 1,500,000,000											
Currency: ZAR											
Effective: 03/07/2016											
Maturity: 12/02/2030											
Index: 3M JIB3M											
Spread: 270.000 bp											
Leverage: 1.00000											
Latest Index: 6.99921											
Reset Freq: Quarterly											
Day Count: Quarterly											
Calc Basis: ACT/365											
Market											
18 M ZAR LOCAL IRS (I)											
18 M ZAR LOCAL IRS (I)											
Leg 1: NPV: 1,753,061,834.40											
Leg 2: NPV: -1,753,061,834.40											
Valuation Results											
Par Cpn: 11.470126											
Principal: 0.00											
Accrued: 0.00											
NPV: 0.00											
Premium: 0.00000											
BP Value: 0.00000											
Calculators											
PV01: 939,364.27											
DV01: 940,933.88											
Gamma (1bp): 853.17											
Australia 61 2 9777 6000 Brazil 55 11 2395 9000 Europe 44 20 7330 7500 Germany 49 69 9264 1210 Hong Kong 852 2977 6000											
Japan 81 3 3201 6900 Singapore 65 6212 1000 U.S. 1 212 318 2000											
Copyright 2016 Bloomberg Finance L.P.											
AN 762687 EAST GMT+2:00 H628-2271-1 19-May-2016 17:19:57											

07/03/2016

CLUB LOAN 2

BLENDED MID RATE 11-4440

LOAN : BANK OF CHINA

90 Actions -		92 Products -		93 Views -		94 Info -		95 Settings -		Swap Manager	
Solver (Premium)		30 Load		32 Save		35 Trade		30 CCP		43 Send to EMIR	
Main		Details		Curves		Cashflow		Resets		Scenario	
Deal		Amort Fix Flt Swap		Counterparty		SWAP COUNTERPARTY		Ticker		SWAP	
Swap		SL4M226V		Amortizing		SL4M226V		Amortizing		Properties	
<b>Leg 1: Fixed</b>		<b>Receive</b>		<b>Leg 2: Float</b>		<b>Pay</b>		<b>Valuation Settings</b>			
Nominal	0	1,500,000,000		Nominal	0	1,500,000,000		Curve Date	03/07/2016		
Currency		ZAR		Currency		ZAR		Valuation	03/07/2016		
Effective	00	03/07/2016		Effective	00	03/07/2016		CSA Coll Grv	N/A		
Maturity	14Y9	12/02/2030		Maturity	14Y9	12/02/2030					
Spread		11:44:000		Index	3M	JIB3M					
Pay Freq		Quarterly		Spreads		270.000	bp				
Day Count		ACT/365		Leverage		1.00000					
Calc Basis		Money Mkt		Latest Index		6.99921					
<b>Market</b>				<b>Reset Freq</b>		Quarterly					
Dscnt		18		Pay Freq		Quarterly					
		ZAR LOCAL IRS		Day Count		ACT/365					
				Dscnt		18					
				Fwd		18					
						ZAR LOCAL IRS					
<b>Leg 1: NPV</b>		1,751,207,663.26		<b>Leg 2: NPV</b>		1,753,631,834.40					
<b>Valuation Results</b>											
Par Cpn		11.470126	Premium		0.16361	PV01		939,364.27			
Principal		-2,454,172.12	BP Value		16.26113	DV01		939,818.12			
Accrued						Gamma (1bp)		552.40			
NPV		-2,454,172.12									
Australia 61 2 9777 8600 Brazil 5511 2395 3000 Europe 44 20 2530 7500 Germany 49 69 9204 1210 Hong Kong 852 2977 6000											
Japan 81 3 3201 8900 Singapore 65 6212 1000 U.S. 1 212 318 2000 Copyright 2016 Bloomberg Finance L.P.											
EN 762657 EAST GMT+2:00 H628-2271-2 19-May-2016 17:05:56											

07/03/2016

CLUB LOAN 2

BLENDED MIA RATE 11-4440

LOAN = NEG + CASHFLOW + FUTURE GROWTH

91) Actions -		92) Products -		93) Views -		94) Info -		95) Settings -		Swap Manager	
Solver (Premium)		31) Load		32) Save		33) Trade		34) CCP		43) Send to EMIR	
Main		Details		Curves		Cashflow		Resets		Scenario	
Deal		Amort Fix Fix Swap		Counterparty		SWAP CTRPARTY		Ticker		SWAP	
Swap		SL4M2251		Amortizing		SL4M2252		Amortizing		Valuation Settings	
<b>Leg 1: Fixed</b>		<b>Receive</b>		<b>Leg 2: Float</b>		<b>Pay</b>					
Notional	4,500,000,000	Notional	4,500,000,000								
Currency	ZAR	Currency	ZAR								
Effective	03/07/2016	Effective	03/07/2016								
Maturity	14Y9 12/02/2030	Maturity	14Y9 12/02/2030								
Coupon	11.44000	Index	3M DJBA3M								
Pay Freq	Quarterly	Spread	270,000 bp								
Day Count	ACT/365	Leverage	1.00000								
Calc Basis	Money Mkt	Latest Index	6.82846								
		Reset Freq	Quarterly								
		Pay Freq	Quarterly								
		Day Count	ACT/365								
<b>Market</b>		<b>18 M ZAR LOCAL IRS</b>		<b>18 M ZAR LOCAL IRS</b>		<b>18 M ZAR LOCAL IRS</b>					
<b>Leg 1: NPV</b>		5,258,945,451.42		<b>Leg 2: NPV</b>		-5,267,759,202.38					
<b>Valuation Results</b>											
Per Cpn	11.475012	Premium	0.19584	FV01	2,641,764.51						
Principal	-9,812,750.06	BP Value	19.58389	DV01	2,900,115.71						
Accrued				Gamma (1bp)	2,602.94						
NPV	-8,612,750.06										

Australia 61 2 9777 8600 Brazil 5511 2395 9000 Europe 44 20 7390 7500 Germany 49 69 9204 1210 Hong Kong 852 2977 6000  
 Japan 81 3 3201 8500 Singapore 65 6212 1000 U.S. 1 212 318 2000 Copyright 2016 Bloomberg Finance L.P.  
 5N 762687 SAST GMT+2:00 H628-2271-1 19-May-2016 17:05:53



07/03/2016

CLUB LOAN 2

ACTUAL MID : 11-4750

LOAN = NEG + OMSFN + FUTUREGROWTH

Deal Saved.

91) Actions		92) Products		93) Views		94) Info		95) Settings		Swap Manager	
1) Solver (Coupon)		31) Load		33) Edit		35) Trade		38) CCP		43) Send to EMIR	
2) Main		4) Details		5) Curves		6) Cashflow		7) Resets		8) Scenario	
3) Deal		5) Amort		6) Fix		7) Flt		8) Swap		9) Counterparty	
4) Swap		SL4M2261		Amortizing		SL4M2262		Amortizing		SWAP CTRPARTY	
Leg 1: Fixed		Receive		Leg 2: Float		Pay		Valuation Settings		Properties	
Notional	4,500,000,000	Notional	4,500,000,000	Curve Date	03/07/2016						
Currency	ZAR	Currency	ZAR	Valuation	03/07/2016						
Effective	03/07/2016	Effective	03/07/2016	Insa cell key	N/A						
Maturity	12/02/2030	Maturity	12/02/2030								
Coupon	11.475012	Index	3M								
Pay Freq	Quarterly	Spread	270.000 bp								
Day Count	ACT/365	Leverage	1.00000								
Calc Basis	Money Mkt	Latest Index	6.82846								
		Reset Freq	Quarterly								
		Pay Freq	Quarterly								
		Day Count	ACT/365								
Market		18 M ZAR LOCAL IRS (I)		18 M ZAR LOCAL IRS (I)		18 M ZAR LOCAL IRS (I)					
Discnt		18 M ZAR LOCAL IRS (I)		18 M ZAR LOCAL IRS (I)		18 M ZAR LOCAL IRS (I)					
Fwd		18 M ZAR LOCAL IRS (I)		18 M ZAR LOCAL IRS (I)		18 M ZAR LOCAL IRS (I)					
Leg 1: NPV		5,267,758,202.38		Leg 2: NPV		-5,267,758,202.38					
Valuation Results											
Par Cpn	11.475012	Premium	0.00000	PV01	2,841,764.51						
Principal	0.00	BP Value	0.00000	DV01	2,904,153.64						
Accrued	0.00			Gamma (1bp)	2,605.93						
NPV	0.00										
Australia 61 2 9277 8600 Brazil 5511 2395 9000 Europe 44 20 7330 7500 Germany 49 69 9204 1210 Hong Kong 852 2977 6000 Japan 61 3 3201 8900 Singapore 65 6212 1000 U.S. 1 212 318 2000 Copyright 2016 Bloomberg Finance L.P. ON 762687 SAST GMT+2 00 HEST-2271-1 19-May-2016 17:18:24											

WAVE DATE 07/03/2016 (MID)

91 Actions		92 Products		93 Views		94 Info		95 Settings		Swap Manager	
1 Solver (Coupons)		31 Load		32 Save		33 Trade		34 CCP		43 Send to EMIR ID	
3 Main		4 Details		5 Curves		6 Cashflow		7 Resets		8 Scenario	
9 Risk		10 CVA		11 Matrix							
Curve #				Curve Data		Shift		+0.00bp			
Curve Name		ZAR LOCAL IRS		Term		Market Rate		Shift		Shifted Rate	
Curve Side				1 DY		6.52000		+0.00		6.52000	
Swap Fixing		JIBAZM		3 MS		7.01700		+0.00		7.01700	
Interpolation		Piecewise Linear (Simple)		SAFR00AS		7.23000		+0.00		7.23000	
Curve Date		03/07/2016		SAFR00BS		7.26000		+0.00		7.26000	
DV01 Calc Type		Constant		SAFR00CT		7.44000		+0.00		7.44000	
				SAFR00DD		7.47000		+0.00		7.47000	
				SAFR00EH		7.61000		+0.00		7.61000	
				SAFR00F1		7.64000		+0.00		7.64000	
				SAFR00F3		7.77000		+0.00		7.77000	
				SAFR00H1		7.80000		+0.00		7.80000	
				SAFR00I1		7.91000		+0.00		7.91000	
				SAFR00J1		8.06000		+0.00		8.06000	
				SAFR00L1		8.22000		+0.00		8.22000	
				SAFR00M1		8.32000		+0.00		8.32000	
				3 YR		8.08250		+0.00		8.08250	
				4 YR		8.27650		+0.00		8.27650	
				5 YR		8.43250		+0.00		8.43250	

CURVE DATE 07/03/2016 (MID)

Screen Printed

91) Actions - 92) Products - 93) Views - 94) Info - 95) Settings - Swap Manager

1) Solver (Coups: 31) Load 32) Save 33) Trade - 34) CCP - 43) Send to EMIR ID 314M22H2

3) Main 4) Details 5) Curves 6) Cashflow 7) Resets 8) Scenario 10) Risk 11) CVA 12) Matrix

Curve # 15 ZAR LOCAL IRS

Curve Name ZAR LOCAL IRS

Curve Side

Swap Fixing JTB42H 7.61700

Interpolation Piecewise Linear (Simple)

Curve Date 03/07/2016

DV01 Calc Type Constant

Curve Data Shift +0.00 bp

Term	Market Rate	Shift	Shifted Rate	Zero Rate	Discount
SAFR011	7.91000	+0.00	7.91000	7.49905	0.928397
SAFR011	8.06000	+0.00	8.06000	7.61178	0.904911
SAFR1F1	8.22000	+0.00	8.22000	7.71352	0.891442
SAFR1F1	8.32000	+0.00	8.32000	7.79974	0.873326
SAFR11L	8.40000	+0.00	8.40000	7.87384	0.855605
3 YR	8.08250	+0.00	8.08250	8.11631	0.785301
4 YR	8.27650	+0.00	8.27650	8.32917	0.718620
5 YR	8.43250	+0.00	8.43250	8.50584	0.656197
6 YR	8.55500	+0.00	8.55500	8.64826	0.598338
7 YR	8.65650	+0.00	8.65650	8.76967	0.544713
8 YR	8.74150	+0.00	8.74150	8.87488	0.495247
10 YR	8.80000	+0.00	8.80000	8.94670	0.450762
12 YR	8.83750	+0.00	8.83750	8.99049	0.410628
15 YR	8.86400	+0.00	8.86400	9.00807	0.343109
20 YR	8.85400	+0.00	8.85400	8.95763	0.264597
25 YR	8.81250	+0.00	8.81250	8.82895	0.174160
30 YR	8.74500	+0.00	8.74500	8.62602	0.118246
30 YR	8.67500	+0.00	8.67500	8.36835	0.082738

98 Curve Detail

Valuation Results

Par Cpn 11.210542 Premium 0.00000 PV01 833,675.56

Principal 0.00 BP Value 0.00000 DV01 831,411.28

Accrued 0.00 Gamma (1bp) 713.59

NPV 0.00

22 Calculators

Australia 51 2 9777 8500 Brazil 5511 2395 9000 Europe 44 20 7330 7500 Germany 49 69 9204 1210 Hong Kong 852 2977 6000

Japan 81 9 3201 8900 Singapore 55 6212 1000 U.S. 1 212 318 2000 Copyright 2016 Bloomberg Finance L.P.

SN 762687 SAST GMT+2 00 H626-2271-1 19-May-2016 17:27:28

## **REPORT 2(B) – EXHIBIT 48**

**Deva Sathee Transnet Corporate JHB**

**From:** Phetolo Ramosebudi Transnet Corporate JHB  
**Sent:** 29 February 2016 10:57 AM  
**To:** Rhulani Madale Transnet Corporate JHB; Stephen Mamabolo Corporate JHB; Tshepo Matlamela Transnet Corporate JHB; Nontlaza Sizani Transnet JHB; Tsietso Tlaletsi Transnet Corporate JHB; Jackie Borain Transnet Corporate JHB; Mark Tannous Transnet Corporate JHB; Deva Sathee Transnet Corporate JHB; Jackie Borain Transnet Corporate JHB; Malcolm Barnard Transnet Corporate JHB; Collin Moore Transnet Corporate JHB; Zander Grobler Transnet Corporate JHB; Reon Louw Transnet Corporate JHB; Monica Motloung Transnet Corporate JHB; Dorothy Kobe Transnet Corporate JHB  
**Subject:** RE: drawdown

Hi Colleagues,

Yes, Club Loan will be swapped into fixed.

**From:** Rhulani Madale Transnet Corporate JHB  
**Sent:** 29 February 2016 10:56 AM  
**To:** Stephen Mamabolo Corporate JHB; Tshepo Matlamela Transnet Corporate JHB; Nontlaza Sizani Transnet JHB; Tsietso Tlaletsi Transnet Corporate JHB; Jackie Borain Corporate JHB; Collin Moore Transnet Corporate JHB; Deva Sathee Transnet Corporate JHB; Zander Grobler Transnet Corporate JHB; Reon Louw Transnet Corporate JHB; Jackie Borain  
**Cc:** Monica Motloung Transnet Corporate JHB; Dorothy Kobe Transnet Corporate JHB; Phetolo Ramosebudi Transnet Corporate JHB  
**Subject:** RE: drawdown

Not sure. Mr Phetolo should be able to provide more clarity.  
 R

**From:** Stephen Mamabolo Corporate JHB  
**Sent:** 29 February 2016 09:56 AM  
**To:** Rhulani Madale Transnet Corporate JHB; Tshepo Matlamela Transnet Corporate JHB; Nontlaza Sizani Transnet JHB; Tsietso Tlaletsi Transnet Corporate JHB; Jackie Borain Corporate JHB; Mark Tannous Transnet Corporate JHB; Deva Sathee Transnet Corporate JHB; Jackie Borain Transnet Corporate JHB; Malcolm Barnard Transnet Corporate JHB; Collin Moore Transnet Corporate JHB; Zander Grobler Transnet Corporate JHB; Reon Louw Transnet Corporate JHB; Jackie Borain  
**Cc:** Monica Motloung Transnet Corporate JHB; Dorothy Kobe Transnet Corporate JHB; Phetolo Ramosebudi Transnet Corporate JHB  
**Subject:** RE: drawdown

Any swaps to be taken???

## **REPORT 2(B) – EXHIBIT 49**

## MEMORANDUM

www.transnet.net

To : Garry Pita, Acting Group Chief Financial Officer

From : Phetola Kanyosahudi, Group Treasurer

SUBJECT : R12 BILLION CLUB LOAN INTEREST RATE RISK EXPLANATION

## PURPOSE:

1. The purpose of this memorandum is to obtain approval from the Acting Group Chief Financial Officer to:
  - 1.1. Hedge the interest rate risk exposures from a float for fixed basis for the amount of R12 billion.
  - 1.2. Instruct Regiments Capital as per the 1064 Locomotives mandate to execute the hedges with Transnet approved counterparts.
  - 1.3. The execution cost of hedges by Regiments Capital will be all inclusive in the rate of the interest rate swap.

## BACKGROUND:

2. A club loan to the amount of R12 billion was recently entered into to fund the locomotive payments to CSR and CNR as well as redemption of loan maturities in February 2016.
3. The club loan was done on a floating rate basis at a cost of 3 month libor plus 270 basis points to manage the pricing divergence from all parts.

## DISCUSSION:

4. The current floating rate risk exposure of the total debt portfolio is 29% after the inclusion of the hedges and 71% fixed.
5. If the full amount of the club loan is included as fixed, the floating rate portion will decrease from 29% to 26% which is still within Eskom approved limit of 30%. This is

well in line with the FRMF that allows a floating rate portion that may be managed between 10% and 50%.

6. High level calculations done by our Traders have indicated that to swap the club loan to fix, the mid-rate will be around 11.50% (NACQ), all inclusive of execution cost by Regiments Capital. This excludes the cost of the bid offer spread which needs to be determined in market.
7. The annual interest rate cost of 9.217% on R12 billion is R1.106 billion which is likely to be volatile due to the high inflationary environment ahead, whilst the annual interest cost is R1.38 billion on 11.50%. This eliminates the interest uncertainty for the loan and fixed the commitments for the duration of the loan.
8. The latest 3 month Jibar forecast from BER is reflected below to give an indication of what may happen with floating interest rates over the medium term.

Q4 15	Q1 16	Q2 16	Q3 16	Q4 16	Q1 17	Q2 17	Q3 17	Q4 17
6.50%	6.50%	6.70%	6.71%	6.89%	6.85%	6.84%	6.82%	6.81%

#### MOTIVATION

9. As per the interest rate forecast above, the short term interest rates are expected to increase over the medium period, this poses a serious risk to Transnet debt portfolio which is currently 29% floating;
10. In addition, to this, the volatile currency has a consequential risk to the short term rates too, which will be a double whammy to the rates;
11. The interest rate expense line is expected to increase in line with the increase in the short term rates;
12. This will have a negative impact to the Cash Interest Cover ratio to the detriment of Transnet ratings;
13. Therefore it is important to manage the volatility of interest rate risk to mitigate the negative impact to the cash interest cover ratio.



14. The implementation of the identified financial risk initiatives such as Float for fixed swaps, CPI bond and Swaps will result in the 50% proportion of fixed for floating as illustrated in the figure below:

#### CPI LINKED SWAPS:

15. As part of the progression to relieve pressure on the CIC ratio, thereby managing the cost of interest expense and short to medium term liquidity, a conversion of R15 billion fixed rate debt (bonds) need be swapped to CPI linked debt early in the new-year. This should be in line with the appropriate accounting treatment.

16. The net savings achieved from converting fixed bullet bonds to CPI linked will be positive initially, but will result in large cash outflows at redemption of each bond and Transnet will need to meet liquidity demands as the redemptions of the bonds fall due. The Treasury is developing a solution related to the redemption portfolio to cater for the balloon payments of the CPI bond and swaps.

17. The above will result in lower interest payments over the majority of the life of the bond, but will increase closer to the bond redemption dates.

18. The above action will furthermore increase the duration of the debt portfolio to manage assets and liabilities.

#### ACCOUNTING:

19. Any interest rate swap entered into will have to be hedge accounted for to minimise volatility of fair value movements in the Group's income statement.

20. PwC has been appointed a while ago to test system capability to apply either cash flow and/or fair value hedge accounting on interest rate swaps and the cash flow hedge accounting process is almost completed.

#### BUDGET AND FINANCIAL IMPLICATIONS:

21. Interest is budgeted for in corporate plan for 15/16 financial year.

#### DELEGATION OF AUTHORITY (DOA):

22. The DOA makes provision for the acting GCFO to approve interest rate risk hedging with an unlimited amount and tenors exceeding 5 years.

#### GROUP LOAN INTEREST RATE RISK

23. An extract of the DOA is reflected below for ease of reference.

Approval Authority	Delegation Amounts	Group Treasurer	DOA
Group	Not exceeding a hedge expressed in US\$ of 25 years, 100% of the debt and equity	Not exceeding 50% of the debt and equity	Exceeding 50% of the debt and equity
		Exceeding 50% of the debt and equity	Exceeding 50% of the debt and equity

As stated in the DOA, the hedge expressed in US\$ of 25 years, 100% of the debt and equity, the RAGU position on interest rate risk will apply to the debt and equity of the company.

24. The amount of R12 billion and term of 15 years are within his delegation.

#### RECOMMENDATION:

24. It is recommended that the Acting GCEO approves the hedging of the interest rate risk exposures on a float for fixed basis for all the R12 billion club loan drawdowns.

Compiled by:

\_\_\_\_\_

Philipo Ramonahlovi

Group Treasurer

Date: 2/12/14

Approved/Not Approved:



Garry Pita

Acting Group Chief Financial Officer

Date: 3/12/14

<p>1. <u>1999</u></p> <p>2. <u>1999</u></p> <p>3. <u>1999</u></p> <p>4. <u>1999</u></p> <p>5. <u>1999</u></p> <p>6. <u>1999</u></p> <p>7. <u>1999</u></p> <p>8. <u>1999</u></p> <p>9. <u>1999</u></p> <p>10. <u>1999</u></p> <p>11. <u>1999</u></p> <p>12. <u>1999</u></p> <p>13. <u>1999</u></p> <p>14. <u>1999</u></p> <p>15. <u>1999</u></p> <p>16. <u>1999</u></p> <p>17. <u>1999</u></p> <p>18. <u>1999</u></p> <p>19. <u>1999</u></p> <p>20. <u>1999</u></p> <p>21. <u>1999</u></p> <p>22. <u>1999</u></p> <p>23. <u>1999</u></p> <p>24. <u>1999</u></p> <p>25. <u>1999</u></p> <p>26. <u>1999</u></p> <p>27. <u>1999</u></p> <p>28. <u>1999</u></p> <p>29. <u>1999</u></p> <p>30. <u>1999</u></p> <p>31. <u>1999</u></p> <p>32. <u>1999</u></p> <p>33. <u>1999</u></p> <p>34. <u>1999</u></p> <p>35. <u>1999</u></p> <p>36. <u>1999</u></p> <p>37. <u>1999</u></p> <p>38. <u>1999</u></p> <p>39. <u>1999</u></p> <p>40. <u>1999</u></p> <p>41. <u>1999</u></p> <p>42. <u>1999</u></p> <p>43. <u>1999</u></p> <p>44. <u>1999</u></p> <p>45. <u>1999</u></p> <p>46. <u>1999</u></p> <p>47. <u>1999</u></p> <p>48. <u>1999</u></p> <p>49. <u>1999</u></p> <p>50. <u>1999</u></p> <p>51. <u>1999</u></p> <p>52. <u>1999</u></p> <p>53. <u>1999</u></p> <p>54. <u>1999</u></p> <p>55. <u>1999</u></p> <p>56. <u>1999</u></p> <p>57. <u>1999</u></p> <p>58. <u>1999</u></p> <p>59. <u>1999</u></p> <p>60. <u>1999</u></p> <p>61. <u>1999</u></p> <p>62. <u>1999</u></p> <p>63. <u>1999</u></p> <p>64. <u>1999</u></p> <p>65. <u>1999</u></p> <p>66. <u>1999</u></p> <p>67. <u>1999</u></p> <p>68. <u>1999</u></p> <p>69. <u>1999</u></p> <p>70. <u>1999</u></p> <p>71. <u>1999</u></p> <p>72. <u>1999</u></p> <p>73. <u>1999</u></p> <p>74. <u>1999</u></p> <p>75. <u>1999</u></p> <p>76. <u>1999</u></p> <p>77. <u>1999</u></p> <p>78. <u>1999</u></p> <p>79. <u>1999</u></p> <p>80. <u>1999</u></p> <p>81. <u>1999</u></p> <p>82. <u>1999</u></p> <p>83. <u>1999</u></p> <p>84. <u>1999</u></p> <p>85. <u>1999</u></p> <p>86. <u>1999</u></p> <p>87. <u>1999</u></p> <p>88. <u>1999</u></p> <p>89. <u>1999</u></p> <p>90. <u>1999</u></p> <p>91. <u>1999</u></p> <p>92. <u>1999</u></p> <p>93. <u>1999</u></p> <p>94. <u>1999</u></p> <p>95. <u>1999</u></p> <p>96. <u>1999</u></p> <p>97. <u>1999</u></p> <p>98. <u>1999</u></p> <p>99. <u>1999</u></p> <p>100. <u>1999</u></p>	<p>1. <u>1999</u></p> <p>2. <u>1999</u></p> <p>3. <u>1999</u></p> <p>4. <u>1999</u></p> <p>5. <u>1999</u></p> <p>6. <u>1999</u></p> <p>7. <u>1999</u></p> <p>8. <u>1999</u></p> <p>9. <u>1999</u></p> <p>10. <u>1999</u></p> <p>11. <u>1999</u></p> <p>12. <u>1999</u></p> <p>13. <u>1999</u></p> <p>14. <u>1999</u></p> <p>15. <u>1999</u></p> <p>16. <u>1999</u></p> <p>17. <u>1999</u></p> <p>18. <u>1999</u></p> <p>19. <u>1999</u></p> <p>20. <u>1999</u></p> <p>21. <u>1999</u></p> <p>22. <u>1999</u></p> <p>23. <u>1999</u></p> <p>24. <u>1999</u></p> <p>25. <u>1999</u></p> <p>26. <u>1999</u></p> <p>27. <u>1999</u></p> <p>28. <u>1999</u></p> <p>29. <u>1999</u></p> <p>30. <u>1999</u></p> <p>31. <u>1999</u></p> <p>32. <u>1999</u></p> <p>33. <u>1999</u></p> <p>34. <u>1999</u></p> <p>35. <u>1999</u></p> <p>36. <u>1999</u></p> <p>37. <u>1999</u></p> <p>38. <u>1999</u></p> <p>39. <u>1999</u></p> <p>40. <u>1999</u></p> <p>41. <u>1999</u></p> <p>42. <u>1999</u></p> <p>43. <u>1999</u></p> <p>44. <u>1999</u></p> <p>45. <u>1999</u></p> <p>46. <u>1999</u></p> <p>47. <u>1999</u></p> <p>48. <u>1999</u></p> <p>49. <u>1999</u></p> <p>50. <u>1999</u></p> <p>51. <u>1999</u></p> <p>52. <u>1999</u></p> <p>53. <u>1999</u></p> <p>54. <u>1999</u></p> <p>55. <u>1999</u></p> <p>56. <u>1999</u></p> <p>57. <u>1999</u></p> <p>58. <u>1999</u></p> <p>59. <u>1999</u></p> <p>60. <u>1999</u></p> <p>61. <u>1999</u></p> <p>62. <u>1999</u></p> <p>63. <u>1999</u></p> <p>64. <u>1999</u></p> <p>65. <u>1999</u></p> <p>66. <u>1999</u></p> <p>67. <u>1999</u></p> <p>68. <u>1999</u></p> <p>69. <u>1999</u></p> <p>70. <u>1999</u></p> <p>71. <u>1999</u></p> <p>72. <u>1999</u></p> <p>73. <u>1999</u></p> <p>74. <u>1999</u></p> <p>75. <u>1999</u></p> <p>76. <u>1999</u></p> <p>77. <u>1999</u></p> <p>78. <u>1999</u></p> <p>79. <u>1999</u></p> <p>80. <u>1999</u></p> <p>81. <u>1999</u></p> <p>82. <u>1999</u></p> <p>83. <u>1999</u></p> <p>84. <u>1999</u></p> <p>85. <u>1999</u></p> <p>86. <u>1999</u></p> <p>87. <u>1999</u></p> <p>88. <u>1999</u></p> <p>89. <u>1999</u></p> <p>90. <u>1999</u></p> <p>91. <u>1999</u></p> <p>92. <u>1999</u></p> <p>93. <u>1999</u></p> <p>94. <u>1999</u></p> <p>95. <u>1999</u></p> <p>96. <u>1999</u></p> <p>97. <u>1999</u></p> <p>98. <u>1999</u></p> <p>99. <u>1999</u></p> <p>100. <u>1999</u></p>
---	---

All branches of the above limits to be reported to the Audit Committee for noting.  
 The above limits are applicable per agreement.  
 And, the Business Units shall always obtain quotes on FX forward rates and hedge with the Treasury Trading desk.  
 The Business Units are not allowed to hedge with the Treasury Trading desk. The Business Units can only enter into the FX hedges with the  
 Treasury Trading desk and approved by the Treasury Trading desk via a mail. Once the above approvals are obtained,  
 the Business Units can proceed with the FX hedges.

1. Frequency of reporting  
 2. Reporting currency  
 3. Reporting period  
 4. Reporting entity  
 5. Reporting method  
 6. Reporting format  
 7. Reporting language  
 8. Reporting unit  
 9. Reporting date  
 10. Reporting time  
 11. Reporting location  
 12. Reporting contact  
 13. Reporting channel  
 14. Reporting system  
 15. Reporting tool  
 16. Reporting platform  
 17. Reporting interface  
 18. Reporting user  
 19. Reporting role  
 20. Reporting permission  
 21. Reporting audit  
 22. Reporting log  
 23. Reporting history  
 24. Reporting version  
 25. Reporting status  
 26. Reporting error  
 27. Reporting warning  
 28. Reporting message  
 29. Reporting notification  
 30. Reporting alert  
 31. Reporting action  
 32. Reporting response  
 33. Reporting feedback  
 34. Reporting evaluation  
 35. Reporting improvement  
 36. Reporting optimization  
 37. Reporting enhancement  
 38. Reporting upgrade  
 39. Reporting maintenance  
 40. Reporting support  
 41. Reporting help  
 42. Reporting documentation  
 43. Reporting training  
 44. Reporting assistance  
 45. Reporting guidance  
 46. Reporting instruction  
 47. Reporting tutorial  
 48. Reporting manual  
 49. Reporting guide  
 50. Reporting reference  
 51. Reporting source  
 52. Reporting origin  
 53. Reporting originator  
 54. Reporting creator  
 55. Reporting author  
 56. Reporting owner  
 57. Reporting manager  
 58. Reporting supervisor  
 59. Reporting administrator  
 60. Reporting operator  
 61. Reporting user  
 62. Reporting role  
 63. Reporting permission  
 64. Reporting audit  
 65. Reporting log  
 66. Reporting history  
 67. Reporting version  
 68. Reporting status  
 69. Reporting error  
 70. Reporting warning  
 71. Reporting message  
 72. Reporting notification  
 73. Reporting alert  
 74. Reporting action  
 75. Reporting response  
 76. Reporting feedback  
 77. Reporting evaluation  
 78. Reporting improvement  
 79. Reporting optimization  
 80. Reporting enhancement  
 81. Reporting upgrade  
 82. Reporting maintenance  
 83. Reporting support  
 84. Reporting help  
 85. Reporting documentation  
 86. Reporting training  
 87. Reporting assistance  
 88. Reporting guidance  
 89. Reporting instruction  
 90. Reporting tutorial  
 91. Reporting manual  
 92. Reporting guide  
 93. Reporting reference  
 94. Reporting source  
 95. Reporting origin  
 96. Reporting originator  
 97. Reporting creator  
 98. Reporting author  
 99. Reporting owner  
 100. Reporting manager  
 101. Reporting supervisor  
 102. Reporting administrator  
 103. Reporting operator  
 104. Reporting user  
 105. Reporting role  
 106. Reporting permission  
 107. Reporting audit  
 108. Reporting log  
 109. Reporting history  
 110. Reporting version  
 111. Reporting status  
 112. Reporting error  
 113. Reporting warning  
 114. Reporting message  
 115. Reporting notification  
 116. Reporting alert  
 117. Reporting action  
 118. Reporting response  
 119. Reporting feedback  
 120. Reporting evaluation  
 121. Reporting improvement  
 122. Reporting optimization  
 123. Reporting enhancement  
 124. Reporting upgrade  
 125. Reporting maintenance  
 126. Reporting support  
 127. Reporting help  
 128. Reporting documentation  
 129. Reporting training  
 130. Reporting assistance  
 131. Reporting guidance  
 132. Reporting instruction  
 133. Reporting tutorial  
 134. Reporting manual  
 135. Reporting guide  
 136. Reporting reference  
 137. Reporting source  
 138. Reporting origin  
 139. Reporting originator  
 140. Reporting creator  
 141. Reporting author  
 142. Reporting owner  
 143. Reporting manager  
 144. Reporting supervisor  
 145. Reporting administrator  
 146. Reporting operator  
 147. Reporting user  
 148. Reporting role  
 149. Reporting permission  
 150. Reporting audit  
 151. Reporting log  
 152. Reporting history  
 153. Reporting version  
 154. Reporting status  
 155. Reporting error  
 156. Reporting warning  
 157. Reporting message  
 158. Reporting notification  
 159. Reporting alert  
 160. Reporting action  
 161. Reporting response  
 162. Reporting feedback  
 163. Reporting evaluation  
 164. Reporting improvement  
 165. Reporting optimization  
 166. Reporting enhancement  
 167. Reporting upgrade  
 168. Reporting maintenance  
 169. Reporting support  
 170. Reporting help  
 171. Reporting documentation  
 172. Reporting training  
 173. Reporting assistance  
 174. Reporting guidance  
 175. Reporting instruction  
 176. Reporting tutorial  
 177. Reporting manual  
 178. Reporting guide  
 179. Reporting reference  
 180. Reporting source  
 181. Reporting origin  
 182. Reporting originator  
 183. Reporting creator  
 184. Reporting author  
 185. Reporting owner  
 186. Reporting manager  
 187. Reporting supervisor  
 188. Reporting administrator  
 189. Reporting operator  
 190. Reporting user  
 191. Reporting role  
 192. Reporting permission  
 193. Reporting audit  
 194. Reporting log  
 195. Reporting history  
 196. Reporting version  
 197. Reporting status  
 198. Reporting error  
 199. Reporting warning  
 200. Reporting message  
 201. Reporting notification  
 202. Reporting alert  
 203. Reporting action  
 204. Reporting response  
 205. Reporting feedback  
 206. Reporting evaluation  
 207. Reporting improvement  
 208. Reporting optimization  
 209. Reporting enhancement  
 210. Reporting upgrade  
 211. Reporting maintenance  
 212. Reporting support  
 213. Reporting help  
 214. Reporting documentation  
 215. Reporting training  
 216. Reporting assistance  
 217. Reporting guidance  
 218. Reporting instruction  
 219. Reporting tutorial  
 220. Reporting manual  
 221. Reporting guide  
 222. Reporting reference  
 223. Reporting source  
 224. Reporting origin  
 225. Reporting originator  
 226. Reporting creator  
 227. Reporting author  
 228. Reporting owner  
 229. Reporting manager  
 230. Reporting supervisor  
 231. Reporting administrator  
 232. Reporting operator  
 233. Reporting user  
 234. Reporting role  
 235. Reporting permission  
 236. Reporting audit  
 237. Reporting log  
 238. Reporting history  
 239. Reporting version  
 240. Reporting status  
 241. Reporting error  
 242. Reporting warning  
 243. Reporting message  
 244. Reporting notification  
 245. Reporting alert  
 246. Reporting action  
 247. Reporting response

Approved Authority: [Signature] Group: [Signature] Date: [Signature]

All elements of the above limits to be reported to the Audit Committee  
for the maximum foreign currency cost entered 75% of annual budgetary consumption inclusive of energy rate increase.  
The first priority will be to the contract through LAR based agreements. If no other enclosure is to be taken, or a  
closed project is judged accordingly. This will have relation and bring certainty in terms of the Rand  
The above information is submitted for your submission.  
Note: Where no specific work is mentioned, the RRMF policy on control by the risk will apply.

Approval Authority: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 All breaches of the above limits to be reported to the Audit Committee  
 The above limits are subject to change without notice.

Approval Authority: \_\_\_\_\_  
 Group: \_\_\_\_\_  
 Approval Date: \_\_\_\_\_  
 Approval Signature: \_\_\_\_\_  
 All breaches of the above rules to be reported to the Audit Committee  
 The above limits are subject to change

All breaches of the above limits to be reported to the Audit Committee  
The above limits are applicable per trading column set  
Note: Where no specific limit is mentioned, the FRMF policy on continuously risk and apply

## **REPORT 2(B) – EXHIBIT 50**

**Csaba Nagy Transnet Corporate JHB**

**From:** Phetolo Ramosebudi Transnet Corporate JHB  
 <Phetolo.Ramosebudi@transnet.net>  
**Sent:** 16 March 2016 03:14 PM  
**To:** MossB@Nedbankcapital.co.za  
**Subject:** FW: Attached Image

Hi Moss,

In terms of the Interest rate Swap transactions entered into with Nedbank on or about 8 March 2016, I am aware that these trades priced at a pure mid-market rate of approximately 11.42% nacq. I am further aware and agree that these trades were executed at a level of 12.37% nacq, which results in a difference of 95 bps over mid-market value.

Furthermore attach is the approval for the transactions. Please note that the second subsequent transaction for the CPI loan novation as per the GCE approval no fees for Regiments as the 1064 locomotives agreements.

Kind Regards  
 Phetolo

**From:** "Phetolo Ramosebudi Transnet Corporate JHB" [mailto:Phetolo.Ramosebudi@transnet.net]  
**Sent:** 16 March 2016 03:06 PM  
**To:** Phetolo Ramosebudi Transnet Corporate JHB  
**Subject:** Attached Image

trade was done at: Fixed 12-27%  
 10 points lower - refer: Meeting - with NP.

## **REPORT 2(B) – EXHIBIT 51**

**Noluthando Masondo**

**From:** Brickman, M. (Moss) <MossB@Nedbank.co.za>  
**Sent:** 16 March 2016 13:30  
**To:** Phetolo.Ramosebudi@transnet.net  
**Subject:** Finalisation of documentation surrounding the swap transaction

@-ms-viewport { width: device-width;}

Hi Phetolo

Once again thank you for the opportunity provide to Nedbank to participate in your hedging requirements.

As per our discussion, in order that we are able to close the loop on the transaction completed it would be most appreciated if you would share with us the special authority granted you to go ahead with the hedging.

We are still awaiting the signed confirmations – but are aware that some people are travelling

Additionally our compliance is requesting a letter that essentially states that Transnet has looked at the transaction and the rates concluded and that Transnet is satisfied with the pricing and value of the transaction.

For ease – essentially they are looking for something along these lines:

"In terms of the Interest rate Swap transactions entered into with Nedbank on or about 8 March 2016, I am aware that these trades priced at a pure mid-market rate of approximately 11.42% nacq. I am further aware and agree that these trades were executed at a level of 12.37% nacq – which results in a difference of 95 bps over mid-market value.

The trade numbers of the trades in question are set out below:

32538073

32539903

32538332

32539770

32537127

Your assistance in this matter is much appreciated

Regards

Moss



**Moss Brickman**

**Head: Balance Sheet Management – Treasury**

**Nedbank Corporate and Investment Banking**

Sixth Floor Block F Nedbank 135 Rivonia Campus 135 Rivonia Road Sandown Sandton 2196 South Africa | PO Box 1144 Johannesburg 2000 South Africa  
 t +27 (0)11 294 4488 f +27 (0)86-528-0970 c +27 (0)82 900 0276 @ mossb@nedbank.co.za Website: nedbank.co.za  
 "Promise only what you can deliver. then deliver more than you promise"

## **REPORT 2(B) – EXHIBIT 52**



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 1089

TRANSNET



## MEMORANDUM

www.transnet.net

**TO : The Acquisitions and Disposals Committee**

**FROM : Siyabonga Gama, Acting Group Chief Executive**

**SUBJECT : REQUEST TO APPOINT JP MORGAN AND REGIMENTS CAPITAL TO CONCLUDE ON THE CHINA DEVELOPMENT BANK LOAN (CDB)**

### PURPOSE OF SUBMISSION:

1. The purpose of the submission is to request the Acquisitions and Disposals Committee (ADC) to:
  - 1.1. Approve the confined appointment of JP MORGAN to hedge the financial risks (Interest rate; credit and currency risk) emanating from the US\$ 1,5 billion China Development Bank (CDB) loan back into ZAR ;
  - 1.2. Approve the confined appointment of JP MORGAN to lead and underwrite the equivalent syndicated ZAR loan of \$1,5 billion;
  - 1.3. Approve the contract extension from R99,5 million to R265,5 million for the appointment of Regiments Capital for transaction advisory services and support to Transnet on the 1064 locomotive transaction, and
  - 1.4. Delegate authority to the Acting GCE to approve all documentation related to this confinement.

### EXECUTIVE SUMMARY AND BENEFITS

2. By favourably considering the recommendation above, Transnet will be able to achieve significant benefits.
3. Approximately ~R46 billion (at R11/\$) of the required R50 billion (excluding contingencies) to fund the locomotive supplier agreements will be concluded on a committed basis (92% secured funding).
4. This is critical to mitigate liquidity risk due to the high levels of committed capital – which is a major area of focus for rating agencies specifically Standard and Poor's (A/B ratio).
5. The overall cost of debt will be within an acceptable levels with the overall cost of the Chinese portion of the debt at approximately 10.5% compared to the current weight average cost of debt of 9,7% with an average repayment profile of 7 years, subject to market conditions at time of execution.
6. Matching the asset and liability profile with longer dated funding structures (10 - 15 years) for long dated assets such as locomotives that have 30 year useful lives.
7. Enabling Transnet to enter into fixed rate funding (50%) for a portion of the borrowing to better manage interest rate risk and volatility.
8. Transnet and other Chinese financial institutions will be able to give effect to the BRICS commitments of both countries within commercial acceptable terms and conditions.

9. By utilising Chinese funding sources Transnet is able to conserve its use of its domestic credit lines with local financial institutions which can be used in the event of a financial crisis similar to 2008.

#### **DISCUSSION:**

10. Transnet has signed a MOU with CDB during 2014 for the provision of funding of up to \$5 billion, however this was non-binding on either party.
11. This MOU was signed in the presence of the Honourable Presidents of the Republic of South Africa and the Peoples Republic of China as part of the respective countries BRICS commitments.
12. Transnet awarded the locomotive supplier agreements relating to the supply of 1064 locomotives during March 2014 following a rigorous open tender process.
13. The award was made to General Electric; Bombardier Transport; China South Railways and China North Railways with a contract value of R54,5 billion including contingencies.
14. Due to the rating agency requirements of matching commitment capital to committed funding sources to reduce liquidity risk Transnet needed to identify appropriate and cost effective funding sources.
15. To this end Transnet successfully concluded committed funding facilities with USEXIM and EDC to fund the GE and BT portions of the locomotive contracts. These facilities have provided approximately R13 billion of the required funding.
16. Given the above Transnet engaged with CDB during 2014 to conclude a possible loan agreement to fund the Chinese portion of the locomotive supplier agreements.
17. The Board of Directors approved the potential loan from CDB during August 2014 - refer **annexure A**.
18. Consequently Transnet signed a Term sheet (term sheet 1) for the US\$2.5 billion 15-year amortizing loan from CDB to finance 232 and 359 locomotives from CNR and CSR, respectively during August 2014.
19. This term sheet was subject to Transnet being satisfied with the cost of hedging as this is significant cost associated with a foreign denominated loan.
20. Transnet's risk management policies require the currency exposure to be hedged back into Rand
21. The size and tenor of the loan is exceptionally large for the South African market. To quantify this:
  - 21.1. A 1bps (1/100th of 1%) move higher in the USD:ZAR basis market will cost Transnet R15 million on a loan of \$2.5 billion
  - 21.2. The USD:ZAR basis market which can easily move up or down by 25bps in a single day, equivalent to R370 million on a loan of \$2.5 billion.
22. Due to CDB's lack of knowledge of the local financial markets they approached various banks in the local and international market to hedge the possible exposure which resulted in adverse financial consequences for Transnet as the cost of the hedge was unacceptable – see paragraph 30 below.
23. Prudently, Transnet opted not to proceed and communicated to CDB and to the market that it would pursue other funding avenues for the financing.
24. Transnet should choose the route that delivers the lowest Rand funding for Transnet as there is tremendous pressure on its cash interest cover ratio.



**JP MORGAN – cross currency swap**

25. There are two ways to execute a hedge of this magnitude:
26. Transnet could approach a number of banks and ask for quotes, and then select the bank (or banks) with the lowest quotes – similar to approach used by CDB above which resulted in adverse pricing impacts for Transnet, or
27. Transnet could work in strict confidence with one bank that is of sufficient financial substance (balance sheet) to execute the hedge so that the market is entirely unaware of the hedge until after it is concluded.
28. The first route (approach a number of banks) is optically attractive – banks are put into open competition – but it is certain to lead to materially higher Rand funding for Transnet as the basis swap may increase.
29. We are confident in this assertion because unfortunately, this exact route was tested and proven by CDB with disastrous results in August 2014:
  - 29.1. In April 2014, CDB evaluated providing the loan in ZAR to Transnet, and approached several banks for an indicative price on a USD:ZAR cross currency swap.
  - 29.2. This immediately moved the basis swap market on the screen by 25bps against Transnet and resulted in 15bps wider bid-offers.
  - 29.3. Since each 1bps move costs Transnet R15 million in a higher Rand interest rate, the cumulative cost to Transnet would have been R600 million.
  - 29.4. This powerfully demonstrated that absolute confidentiality is critical to obtain the best pricing, and a completely different approach to risk management is required to secure this pricing.
30. To secure the lowest Rand funding, Transnet should instead work with a single bank with a balance sheet large enough to warehouse the risk and execute the currency hedge quietly and in strict confidence.
31. In this way the market is completely unaware that the currency hedge is being executed; so complete confidentiality is maintained at all times.
32. At the same time, Transnet and the bank agree pricing in advance, so Transnet has complete certainty around the cost of the hedge up front and can deem it to be fair and reasonable.
33. J.P. Morgan, with one of the largest bank balance sheets globally, will provide this confidential solution to Transnet. In so doing, we will assume significant market risk.
34. It is therefore vital that the transaction is executed in strict confidence.
35. There are two types of risk that need to be carefully managed in executing this swap:
36. Market risk: A single basis point (0.01%) move up or down during execution represents a R15 million gain or loss to Transnet
  - 36.1. J.P. Morgan can do this because of the large appetite they have to warehouse risk, and because we have a superior ability to tap into several liquidity pools to exit the risk quickly but also smoothly
37. Credit risk: The resulting credit and tenor exposure and on the hedge is significant. We will address this as follows:
  - 37.1. J.P. Morgan has a large appetite and could underwrite the entire transaction whilst holding a significant quantum
  - 37.2. Distribute the rest of the credit risk.
38. This vanilla cross currency swap will enable Transnet to apply hedge accounting to IAS 39 to shield the Transnet balance sheet from significant equity volatility that will have severe adverse impacts on the gearing ratio which is also under some strain.
39. Sensitivity analyses indicate that the volatility could be as high as R33 billion under different stress scenarios of exchange rates and interest rates.



40. Vanilla cross currency swaps are approved instruments that Transnet is allowed to use to hedge financial risks in terms of the Board approved Financial Risk Management Framework.
41. Transnet has successfully executed large cross currency swaps with J P Morgan in the past to hedge currency risk exposures.
  - 41.1. AFLAC loan of JPY 15 billion, hedged in Nov 09 with maturity of 15 Nov 19.
  - 41.2. USD 750 million GMTN issuance, hedged in Feb 11 with maturity of 10 Feb 16.
  - 41.3. USD 500 million GMTN issuance, hedged in Jul 12, with maturity of 26 July 22.
42. Apart from the swaps above, forward exchange contracts are done with J P Morgan on a regular basis for operational and capital imports.

#### **JP MORGAN – contingent credit default swap**

43. In addition to the above and more importantly JP Morgan as provided a proprietary solution that will enable Transnet to further reduce the cost of funding by approximately 112 basis points by the execution of a contingent credit default swap.
44. This instrument will be a stand-alone instrument that will not impact the hedge accounting of the cross currency swap above and will not be hedge accounted.
45. No other financial institution that has presented to Transnet to date has been able achieve the above.
46. Equity volatility on this instrument is a more manageable and acceptable value of approximately R3 billion under various stress tests.
47. The GCFO and GCE are allowed in terms of the Financial Risk Management Framework to introduce new instruments to manage financial risks and consequently will approve this instrument for use post ADC approval.

#### **JP MORGAN – ZAR syndicated loan of \$1,5billion equivalent**

48. To further reduce the cost of funding to Transnet it became apparent that Transnet would need to consider a dual tranche denominated loan to fund the Chinese locomotive purchases.
49. Thus it was decided to utilise only \$1,5billion of the funding from CDB and use the JP Morgan balance sheet to underwrite a ZAR funding facility of \$1,5 billion equivalent.
50. Consequently the GCE signed a revised term sheet (term sheet 2) and mandate letter in April 2015 with CDB for a \$1,5billion only.
51. There appears (gauged during our recent visit to China) to be sufficient appetite from other Chinese financial institutions that are willing to provide Transnet with funding in ZAR namely Bank of China; ICBC and China Construction Bank.
52. Thus we are very confident that the ZAR tranche will be successfully executed.
53. This will enable Transnet to still meet the rating agency requirement of demonstrating committed funding facilities for committed capital.

#### **Other Considerations**

54. All necessary accounting, taxation and legal opinions have been obtained and no adverse issues have been identified in support of the above execution strategy.
55. An application has been made to National Treasury to increase Transnet's foreign borrowing limit from the current R55 billion to a revised R105 billion.
56. We are currently in discussions with DPE and National Treasury to address their queries regarding the above application.
57. Currently approximately R9,5 billion of the R55 billion approved limit is available to be utilised.



- 58. Due to the confidentiality reasons and adverse impacts outlined above of an open tender it also made sense that Regiments Capital having supported Transnet in the 1064 locomotive tender as the transaction adviser is the BEE and empowerment partner of JP Morgan to enable Regiments to benefit from a significant transfer of skill from JP Morgan.
- 59. Participation in this transaction together with JP Morgan will lay the foundation for further future co-operation between the two entities.
- 60. Transnet will again play its role in creating an enabling environment to enhance its socio economic mandate and this time in the financial services sector.
- 61. Regiments Capital is a level 1 contributor in terms of the BEE codes. Their BEE credentials including black ownership has been verified by the Transnet Supplier development team.

### **Regiments Capital – Transaction advisory**

- 62. Transnet appointed Regiments Capital as the Transaction advisors on the 1064 Locomotive Transaction. In terms of the aforementioned mandate, Regiments Capital was required to advise on deal structuring, financing and funding options to minimise risk for Transnet.
- 63. Regiments was required to evaluate a number of funding sources including:
  - 63.1. US Exim funding for the GE locomotives
  - 63.2. EDC funding for the Bombardier locomotives
  - 63.3. Bond issuance under Transnet's DMTN and GMTN
  - 63.4. China Development Bank (CDB), Sinosure, China Exim and ICBC funding for the Chinese locomotives
- 64. Regiments have been working together with the risk management/middle office of Transnet Treasury for over the last 12 months to achieve the outcome below.
- 65. Assist Transnet with detailed negotiations to achieve the following tangible outcomes:
  - 65.1. Negotiating a better asset/liability match as opposed to CDB's proposed 10 year amortising profile as well as extending the capital grace period thereby lengthening the duration of the loan profile.
  - 65.2. Work with management to reduce the overall CDB's initial pricing of 300bp over 6 month Libor.
  - 65.3. Evaluating all options that would allow for Transnet to complete the CDB transaction at fair pricing.
- 66. In order to achieve a reduced blended rate in the funding of the Chinese portion of the locomotives, Regiments recommended that Transnet only utilise \$1.5bn of the CDB facility, and blend that with a \$1bn ZAR syndicated loan issue. The ZAR syndicated loan issue would allow for a reduction in the blended rate paid by Transnet of approx. 37bp (a net present value saving of approx. R666m- as opposed to utilising the full CDB facility of \$2.5bn with the full cost of the cross currency swap).
- 67. Following the decision to use only USD 1.5 billion out of the total USD 2.5 billion proposed by CDB, an agreement has been reached during the negotiations to have the unutilised USD 1.0 billion available for Transnet with no commitment fee until September 2015. Besides the financial benefit at least in terms of the commitment fee that would have otherwise been paid, the availability of such committed funding facility from CDB would provide an additional ratings benefit to Transnet.
- 68. Regiments have advised Transnet to achieve a mix of float and fixed rate in this transaction in order to best manage the interest rate risk with regard to Transnet's Financial Risk Management Framework (FRMF).
- 69. Regiments has assisted Transnet in negotiating with a number of potential Chinese sources of ZAR funding for the ZAR syndicated loan facility, including:
  - 69.1. ICBC (R2bn funding- term sheet to be provided)
  - 69.2. Bank Of China (R6bn – term sheet to be provided)

- 69.3. China Construction Bank (Potential of R2bn- negotiations to be finalised)
- 69.4. Sinosure- (Pursued the potential for a ZAR guarantee)
70. Regiments' advice and the subsequent conscious decision taken by Transnet to utilise foreign sources of funding for both the USD portion and the significant portion of the ZAR syndicated issue have a desirable impact of leaving Transnet's credit lines intact in the domestic market.
71. The savings achieved via the CDB margin compression, the blending of the ZAR syndicated loan, and the change in the applicable reference rate (3 month as opposed to the 6 month Jibar) have allowed Transnet the ability to fix the required portion of the loan without placing undue pressure on the interest cover ratio or the company cash flows. The total financial benefits that accrued to Transnet from the negotiating strategy (comprising of the achievements specified above) pioneered by Regiments is calculated to be in excess of R 2.7 billion.
72. In this regard, with Regiments assistance the weighted average cost of the blended finance for the Chinese locomotives is around 10.40%, as opposed to the current weighted average cost of funding payable by Transnet on its existing loan portfolio of 9.70%. The current debt portfolio has a significantly shorter duration than the Chinese locomotive funding, and the current funding is predominantly ZAR based as opposed to the predominantly USD based funding of the Chinese locomotives.
73. The financial advice and negotiation support that Regiments provided through this entire process which took in excess of 12 months was done at risk with an expectation of compensation only on successful completion of the transaction.
74. The range of NPV fee outcomes can vary between 15bps and 25bps on a transaction of a similar nature – ie R166 million – R277 million based on yield.
75. Given the invaluable contribution of Regiments to the successful conclusion of this transaction, Regiments success based fee will not exceed 15 bps on the yield as reflected in the NPV calculation below, payable on conclusion of the funding and hedging documents with CDB and JP Morgan.

Success fee in bps	Success fee in Rand (NPV)
15	R166 million

#### DELEGATIONS OF AUTHORITY

76. The CDB loan was approved by the Board of Directors of Transnet in August 2014.
77. The vanilla cross currency swap and the contingent credit default swap can be approved by the GCFO or GCE based on the Board of Directors approved Financial Risk Management Framework.
78. The appointment of JP Morgan for purposes of the said transaction is silent in the PPM.
79. The GCE has delegations to approve confinements up to R250 million.
80. The ADC's delegations to approve confinements is from R250 million to R1 billion.
81. Due to the silence of the PPM and the confidentiality required to execute this transaction it was decided to approach the ADC for approval.

#### APPLICABILITY OF THE APPROVED GROUNDS FOR CONFINEMENT:

82. Appended below, for ease of reference, is an extract from the current Procurement Procedure Manual, par 15.1.2, which sets out the grounds for confinement.
- a) Where a genuine unforeseeable urgency has arisen which is not attributable to bad planning;
  - b) The goods/services are only obtainable from one supplier/limited number of suppliers. For instance, patented/proprietary goods or OEM spares and components.

Operating Divisions are however required to satisfy themselves that there are no new entrants on the market who could also be tested;

- c) For reasons of standardization or compatibility with existing products and services. A case must be made that deviation from existing standardized goods or services will cause major operational disruption. If not, confinements based on "standardization" will not be considered' or

- 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 tender 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 prerequisites must be satisfied i.e. the goods or services must be highly specialized, almost identical to previous work done and approaching the market again would result in wasted money and time.

83. We are of the view that this matter continues to comply with ground (a) as set out below, and the request for confinement is therefore fully supported.

Ground for confinement per Par 15.1.2	Confinement considerations
a. Where a genuine unforeseeable urgency has arisen which is not attributable to bad planning;	<ul style="list-style-type: none"> <li>• Genuine unforeseeable urgency has arisen to close the CDB transaction at current rates in light of the economic circumstances, Eskom credit rating and the impact on the sovereign.</li> <li>• The Transnet's risk management policies require the currency exposure to be hedged back into Rand</li> <li>• The size and tenor of the loan is exceptionally large for the South African market.</li> <li>• A 1bps (1/100th of 1%) move higher in the USD:ZAR basis market will cost Transnet R15 million on a loan of \$2.5 billion.</li> <li>• This could translate into additional costs of R600 million.</li> <li>• Uncertainty of counterparty unwillingness could delay full execution, leaving Transnet exposed to broader FX and rate risks on the USD exposure.</li> </ul>

#### Confidentiality in terms of Delegations of authority

84. In terms of section 15.1.4 of the Delegation of authority "In instances where a confinement is confidential the GCE may approve such confinement without the confinement request being routed via any other authority".
85. In light of the risks we have highlighted, Transnet's key objective should therefore be to engage with a counterparty on a confidential basis that is:
- 85.1. Qualified and capable to execute the market risk components efficiently
- 85.1.1.- Transnet should be offered best advice but also the possibility for full risk transfer on the market risk
- 85.1.2.- The right trade-off between transparency and confidentiality to ensure a fair and proper outcome

- 85.2. Prepared to fully underwrite the credit risk arising from the hedge
- 85.3. Prepared to reduce the credit costs and therefore all-in pricing from the hedge through optimisation of the position
- 86. There is clearly a trade-off between transparency and confidentiality, in particular, as regards to the market risk components
- 87. Relying on one price from one bank protects the confidentiality and potential front-running.
- 88. However, Transnet must avoid a messy execution environment, as seen when CDB asked for indicative pricing from a number of banks for the full transaction earlier this year. We saw the basis swap move 25bps against Transnet within hours, while bid-offers from banks increased dramatically (15bps).
- 89. If Transnet had been transacting then, this would have crystallised additional transaction costs of ZAR600mm, clearly the opposite effect that Transnet would have been seeking through a competitive bidding/procurement process.
- 90. Moreover, if Transnet had wanted to wait for the market to become 'unaffected' again, this would have delayed execution for several months, exposing Transnet to broader market volatility.
- 91. To secure the lowest Rand funding, Transnet must work with a single bank with a balance sheet large enough to warehouse the risk and execute the currency hedge quietly and in strict confidence.
- 92. In this way the market is completely unaware that the currency hedge is being executed; so complete confidentiality is maintained at all times.
- 93. At the same time, Transnet and the bank agree pricing in advance, so Transnet has complete certainty around the cost of the hedge up front and can deem it to be fair and reasonable.
- 94. It is not in the public interest as there would be additional cost to Transnet.

#### **ENTERPRISE AND SUPPLIER DEVELOPMENT AND BBBEE**

- 95. Supplier development subject a maximum of 35 % will be applicable to JP Morgan.
- 96. Supplier development applicable to Regiments Capital will be subject to a maximum of 10%.

#### **FINANCIAL IMPLICATIONS**

- 97. Given the invaluable contribution of Regiments to the successful conclusion of funding transaction, Regiments is due a success or risk based fee of 15 bp on yield payable by Transnet or JP Morgan (or a portion thereof) subject to a maximum of R166 million.
- 98. The fees for JP Morgan will be part of the market related cost to hedge the exposure to ZAR.

#### **BUDGET IMPLICATIONS**

- 99. The costs have been budgeted as part of the funding plan for 2015/16.



**RECOMMENDATION:**

- It is recommended that the ADC:
  - Approve the confined appointment of JP MORGAN to hedge the financial risks (interest rate; credit and currency risk) emanating from the US\$ 1,5 billion China Development Bank (CDB) loan back into ZAR ;
  - Approve the confined appointment of JP MORGAN to lead and underwrite the equivalent syndicated ZAR loan of \$1,5 billion;
  - Approve the contract extension from R99,5 million to R265,5 million for the appointment of Regiments Capital for transaction advisory services and support to Transnet on the 1064 locomotive transaction, and;
  - Delegate authority to the Acting GCE to approve all documentation related to this confinement.

**Compiled by**

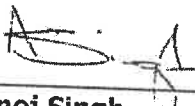

**Phetolo Ramosebudi**  
**Group Treasurer**

Date: 28/04/2015

**Recommended/Not Recommended**

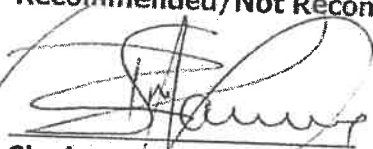

**Garry Pita**  
**Group Chief Supply Chain Officer**

Date: 28/4/15

**Recommended/Not Recommended**


**Anoj Singh**  
**Group Chief Financial Officer**

Date: 28/04/15

**Recommended/Not Recommended**


**Siyabonga Gama,**  
**Acting Group Chief Executive**

Date: 2015-04-28

## **REPORT 2(B) – EXHIBIT 53**

## REGIMENTS AND TRILLIAN REVIEW

### EXECUTIVE SUMMARY

1. The purpose of this memorandum is to respond to question raised out of the information provide in the first version of the submission.
2. This submission detail the transactions done in Treasury between 2015 and 2017, in particular, the locomotive funding transactions facilitated by Regiments/Trillian and those done by the Group Treasury.
3. This also includes the interest swaps traded between Transnet and Nedbank, Transnet and TSDBF with Regiments Capital as the executing agent which earned 20bps on yield for the executions.
4. The rationale for the transaction was born from the Love/project factory initiatives with the PMO managed from the GCFO office at the time.
5. The Lead Coordinators were from various business units from Group Finance, with Group treasury leading the Financing cost stream, with the executive sponsor being the GCFO.
6. All the transactions mentioned below were driven from the GCFO office, and Group Treasury coordinating inputs from Taxation, Reporting and Procurement, not all of these transactions below were initiated and sponsored by Group Treasury.
7. The main objective was to manage and minimize the funding costs, income statement and balance sheet optimisations.

### 1064 LOCOMOTIVE FUNDING

### CHINA DEVELOPMENT BANK

8. A submission dated the 28/04/2015 was submitted to ADC for approval for the appointment of JP Morgan and Regiments. The purpose of the submission was to request the Acquisitions and Disposals Committee (ADC) to:
  - 8.1. Approve the confined appointment of JP MORGAN to hedge the financial risks (interest rate; credit and currency risk) emanating from the US\$ 1,5 billion China Development Bank (CDB) loan back into ZAR ;
  - 8.2. Approve the confined appointment of JP MORGAN to lead and underwrite the equivalent syndicated ZAR loan of \$1,5 billion;

- 8.3. Approve the contract extension from R99,5 million to R265,5 million for the appointment of Regiments Capital for transaction advisory services and support to Transnet on the 1064 locomotive transaction, and
- 8.4. Delegate authority to the Acting GCE to approve all documentation related to this confinement.
9. Transnet appointed Regiments Capital as the Transaction advisors on the 1064 Locomotive Transaction in terms of the aforementioned mandate, Regiments Capital was required to advise on deal structuring, financing and funding options to minimise risk for Transnet
10. JP Morgan was appointed to provide the hedge on financial risk and underwriting the balance of \$1 billion and in addition to the above and more importantly JP Morgan was to provide a proprietary solution that will enable Transnet to further reduce the cost of funding by approximately 112 basis points by the execution of a contingent credit default swap.
11. The fees payable to Regiments by Transnet for this transaction was R166 million
12. The fees payable to JP Morgan are in the interest swap rate quoted at each hedging transactions and are not separately provided for as they are part of the execution cots.
13. As part of this mandate, Regiments facilitated the CDB loan for the CNR and CSR locomotives.
14. The loan was signed in June 2015 for USD1.5 billion for 15 years and 4.5 years grace period.
15. This loan was priced at 3 month Libor+257 bps before the cross currency swap.
16. For a 15 year armotising loan, this loan is priced well below the 300 bps debt capital market bond.
17. This loan is drawn on delivery of the locomotives by CSR and CNR tested and accepted by TFR.
18. To date about USD 978 million has been drawn with the balance of USD 522 million still to be drawn.

#### **US EXIM BANK SUPPORTED LOANS**

19. The above loan for R 5.7 billion was facilitated by Group Treasury
20. This loan was approved by the GCE in terms of his delegation of authority

21. The loan is fully drawn, has tenor of 14 years and priced at 3 months Jibar+195bps

### ***EDC/INVESTEC LOAN***

22. The R6 992 million loan was sourced from syndicate above for the BT locomotives.

23. This loan was approved and signed by the GCE in terms of his delegated authority and was drawn down in full.

24. The tenor of the loan is 15 years and priced at 6 month Jibar+200bps

### ***KfW LOAN***

25. The loan was sourced from the German development bank KfW for the BT locomotives.

26. This loan was approved and signed by the GCE in terms of his delegated authority and was drawn down in full.

27. The tenor of the loan is 15 years and priced at 9.9%.

28. A schedule of all loans is attached for reference.

### ***CLUB LOAN***

29. Transnet has signed the mandate letter and Term sheet for the US\$2.5 billion 15-year amortizing loan from China Development Bank ("CDB") to finance 232 and 359 locomotives from China North Railways ("CNR") and China South Railways ("CSR"), respectively.

30. The appointment of Trillian was approved at ADC

31. In order to further reduce the cost of CDB funding, Transnet considered a dual tranche loan to fund the Chinese locomotives acquisition.

32. Trillian has assisted Transnet in negotiating with a number of potential funding sources of ZAR funding, including the following firm commitments:

- 32.1. Nedbank group(R6 billion);
- 32.2. Bank Of China (R3 billion); and
- 32.3. ABSA Bank (R3 billion)

33. The average cost of funding is 3 month Jibar +270bps and 15 year amortizing profile
34. The savings in the memo dated 22/9/2015, refers to the club loan transaction of R820 million. 1000 BP.
35. The 10% is a negotiated pricing from Trillian, with amount of R82 million excluding Vat, but the 0.15% on yield is what Regiments priced for the CDB loan. 15 BP
36. The invoice is attached for reference, and capitalized and amortized through the life of he loans.
37. The fee will be part of the borrowing costs, capitalized and amortized through the life of the loan.
38. The 12 billion loans were signed delivered, and fully drawn.

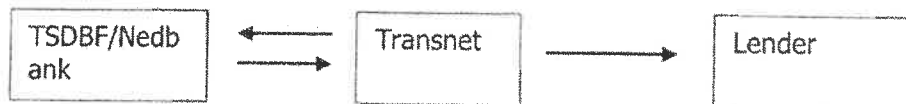
### INTEREST RATE SWAPS

39. A series of loan to the amount of R23.5 billion was recently entered into to fund the locomotive payments as well as redemption of loan maturities in February 2016.
40. These loans was done on a floating rate basis at a cost of 3 month Jibar plus spread ranging between 195 to 270 basis points to manage the pricing divergence from all parts.
41. At the time of the review, 3 month Jibar forecast from BER is reflected below to give an indication of what may happen with floating interest rates over the medium term.

Q4 15	Q1 16	Q2 16	Q3 16	Q4 16	Q1 17	Q2 17	Q3 17	Q4 17
6.50%	6.50%	6.70%	6.71%	6.89%	6.86%	6.84%	6.82%	6.81%

42. As per the interest rate forecast above, the short term interest rates were expected to increase over the medium period, which poses a serious risk to Transnet debt portfolio which was at the time 29% floating.
43. That would have a negative impact to the Cash interest Cover ratio to the detriment of Transnet ratings;
44. Therefore it was important to manage the volatility of interest rate risk to contain its negative impact to the cash interest cover ratio.
45. The costs of hedges are 20bps →

46. The Mark to market (mtm) on the transactions is still out of money which indicates that the short term rates didn't not rise as expected but have created a certainty on the interest rate profile of the debt book.
47. The diagram below illustrates the flow of payments between Transnet and hedging counterparties.



Please see the attached titled Interest swaps for the details of the transactions including the fixed rate per the deal.

#### **NEDBANK**

48. These are interest rate swaps between Transnet and Nedbank, to hedge Transnet interest from floating rate to a fix rate.
49. The loan swap are from ABSA, Nedbank, Future growth, OMSfin and BOC for the total amount of R12 billion.
50. The transaction was done under the delegation of the GCE and CFO.
51. Nedbank is an approved counterparty by the Audit Committee.
52. The fees payable by Transnet is 20bps
53. The fees payable to the execution agent ( Regiments Capital) is payable via the swap counterparty to Transnet and in this case is Nedbank
54. This will run for the life of the loans, and should we unwind it now Transnet will incur the mark to market loss which will be realized loss

#### **TSDBF**

55. These are interest rate swaps between Transnet and TSDB, to hedge Transnet interest from floating rate to a fix rate.
56. The loans swap are from OMSFI, Standard bank, Libfin for the total amount of R12 billion.
57. The transaction was done under the delegation of the GCE and CFO.
58. The TSDBF was approved by the Audit Committee as the counterparty
59. The fees payable by Transnet is 20bps

- 60. The fees payable to the execution agent is payable via the swap counterparty to Transnet and in this case is TSDBF
- 61. This will run for the life of the loans, and should we unwind it now Transnet will incur the mark to market loss which will be realized loss; and
- 62. As per the DOA effective December 2016, Counterparty Limits, any price limit above R250 million to be approved by the GCE.

#### **CCDS WITH JP MORGAN**

- 63. As part of compressing the overall cost of debt, Transnet traded the CCDS with JP Morgan. The aim of this structure was to reduce the overall cost of CDB loan after the cross currency swap by 112bps.
- 64. The CCDS was executed on the first 5 draw down of the CDB loans.
- 65. The CCDS has since been closed at the cost of R125 million.
- 66. JP Morgan fees on this transaction are charged in the structuring and execution of the swaps, and have not been disclosed to Transnet separately.

#### **NEDBANK STRUCTURED DEPOSITS**

- 67. This transaction is governed by the Financial Risk management framework and Delegation of Authority.
- 68. This policy framework was approved by the Board.
- 69. In terms of the above the GCFO at the time approved the investments with Nedbank.
- 70. This was necessitated by the high level of cash in the bank earning a high cost of carry.
- 71. Three (3) tranches were invested for 3, 6 and 12 months. The first two matured in 2015, and the last transaction matured in 2016, all with positive returns.

#### **EDC/IVESTEC LOAN NOVATION**

- 72. Transnet did not trade the novation structure on the EDC/Investec loan
- 73. The subject to as per the GCE was to confirm that the Novation structure does not attract any fees as the fees were raised in the funding of the loan.
- 74. Attached is the confirmation of all interest rate swaps



**CONCLUSION**

75. The above information illustrates the extent of my knowledge of these transactions, and I already indicated that these transactions involved a number of areas such as accounting treatment and supply chain process.
76. The executive sponsor of these transactions was the office of the GCFO.
77. Other relevant information was submitted previously in the form of memos and I am attaching other relevant information such as the schedule of all loans, interest swaps schedule, swaps confirmations, and invoices.
78. I am also attaching a set of invoices for these transactions which were paid from Transnet.

Compiled by



Phetolo Ramosebudi

Group Treasurer

Date 28/11/2017

## **REPORT 2(B) – EXHIBIT 54**

29.07.2016

TRANSNET



The Chairman  
Transnet Second Defined Benefit Fund  
44<sup>th</sup> Floor  
Carlton Centre  
150 Commissioner Street  
Johannesburg  
2001

Dear Mr Shane

**INTEREST RATE SWAP TRANSACTIONS CONCLUDED BETWEEN TRANSNET  
SECOND DEFINED BENEFIT FUND ("TSDBF") AND TRANSNET SOC LTD  
("TRANSNET")**

I refer to the meeting held on 20 May 2016 between Transnet, TSDBF, and ENS Africa, I undertook to respond to you in writing after giving due consideration to the questions raised by TSDBF at the meeting and in my capacity as the Group Chief Financial Officer of Transnet I confirm as follows:

- (i) Transnet obtained the necessary approvals to enter into the interest rate swaps transactions with TSDBF;
- (ii) Transnet is aware of four interest rate swap transactions entered into with TSDBF trading as a counterparty;
- (iii) Approval was obtained for the Advisor to be the execution party and that the 20 bps (yield) execution costs be inclusive in the fixed swap rates for all the individual interest swap transactions which is common practice in the market;
- (iv) During the process of approving TSDBF as a trading counterparty, Transnet considered the position of TSDBF as a pension fund as well as counterparty and the potential conflict of interest concerns that this may raise. After due consideration of all the information available to us we concluded that the transactions would not give rise to a conflict of interest; and
- (v) Transnet is keen to proceed with the transaction, as it forms part of the important interest rate risk management strategy.

The payment of the intermediation fees in the type of transaction is a present value (PV) of the fees in basis points (bps) agreed and payable as an upfront fee. The nature of these fees is normal in the origination of debt through a bond issuance, where the re-offer rate

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: LC Mabaso (Chairperson) SI Gama\* (Group Chief Executive) Y Forbes GJ Mahlelela PEB Matheke ZA Nagdee VM Nkonyane SD Shane  
BG Stagman PG Williams GJ Pila\* (Group Chief Financial Officer)  
\*Executive

Group Company Secretary: ANC Ceba

www.transnet.net

includes the fees in basis points charged, present valued and payable to the debt originator.

In addition to the above market treatment of advisor fees on interest rate swaps, we can confirm that a similar treatment of advisor commissions has taken place in other markets, including Bond issuances, diesel fuel hedging transactions and forex transactions. Remunerating Advisors in the above types of transactions through the yield/price of the instrument is a common practice. By way of example with the issuance of a bond, the advisors, and banks are at times remunerated through a discount in the yield, which yield discount would be paid up front to the advisors through the bond settlement process. Issuers will pay said fees through the yield discount, but the bond settlement process facilitates the settlement of these fees.

In this same way any fees relating to the Transnet interest rate swaps have in fact been paid by Transnet (through the additional 20bp on the yield). The fund has merely facilitated the settlement of these fees, in the same way that banks would have facilitated. This is evident through the response received from the Advisor Trillian on the question raised out of the discussion in the meeting with the TSDBF, see attached.

I can, therefore, state that Transnet has taken all the necessary steps to obtain such approvals as were necessary to trade the interest rate swap transactions with TSDBF. These include among others the Financial Risk Management Policy Framework, approval of the TSDBF as Counterparty, and the applicable delegation of Authority.

We would like to request that TSDBF urgently provide us with confirmations for all the interest rate swaps already executed so that we can complete the necessary accounting treatment analysis.

Yours sincerely,



**Garry Pita**

Group Chief Financial Officer

Date: 29/07/16



Chief Financial Officer  
Transnet SOC Limited  
49<sup>th</sup> Floor  
Carlton Centre  
150 Commissioner Street  
Johannesburg  
2001

25<sup>th</sup> July 2016

Dear Mr Garry Pita

Disclosure of fees charged for the execution of interest rate swap transactions on behalf of Transnet SOC Ltd

We acknowledge receipt of your letter dated 27 May 2016 relating to the interest rate swap transactions executed between Transnet and the Transnet Second Defined Benefit Fund in the period between 4 December 2015 and 8 April 2016, and kindly refer you to our responses as set out below:

An outline of the fee composition applied to each Transaction

The fee applied to each interest rate swap transaction is equivalent to 20 basis points ("bps") on the running yield of the interest rate swap, and was added to the all in yield of the interest rate swap. This fee was in consideration for sourcing, advising, structuring and executing of the interest rate swap transaction. This fee basis on running yield is consistent with market practise and is paid by Transnet over the life of the loan/swap. Transnet is therefore able to amortise such fees over the life of the loan/swap.

The fee agreed by Transnet was to be equivalent to 20 basis points on the yield of the interest rate swap traded. The 20 basis points fee was agreed to be added to the all in yield of the interest rate swap.

As is acceptable market practice, the counterpart with whom Transnet traded, facilitated the upfront payment of the 20 basis points fee on a current net present value basis. This net present value of fees is illustrated in Table 1 below.

Table 1

Trade date	4 December 2015	7 March 2016	30 March 2016	8 April 2016
Counterparty	Nedbank	Nedbank	TSDBF	TSDBF
Settlement date	4 December 2015	7 March 2016	30 March 2016	8 April 2016
Maturity date	1 December 2030	1 December 2030	22 February 2028	18 July 2032 (R1.6bn) 31 March 2033 (R2.7bn)
All in fixed rate before fee	11.62%	12.07%	11.87%	10.95%
Fee (basis points)	20	20	20	20
All in fixed rate after fee	11.82%	12.27%	12.07%	11.15%
Nominal value (ZAR)	4 500 000 000	5 250 000 000	6 991 500 000	4 304 166 667
Present value of fee	56 719 779	63 916 019	67 403 305	39 851 767
Fees as a percentage of nominal value	1.26%	1.22%	0.96%	0.93%

As contained in Annexure B, Trillain have independently calculated the fees paid by Transnet as contained in Table 1. This independent calculation shows total fees of R227 805 846 as opposed to Table 1 whereby Regiments were paid total fees of R227 890 870. The difference of R85 024 is considered to be immaterial.

An analysis across each of the Transactions in Rand and basis point terms on the fees charged for each transaction executed and reconciled to the 20bps quoted continued





### Benchmarking of the Swap Pricing

As advisors to Transnet, the primary objective of Regiments and Trillian was to ensure that Transnet obtained the best possible pricing in the execution of these swaps.

Having tested pricing by the banks, Trillian approached Regiments Fund Managers (Pty) Ltd ("Regiments Fund Manager") Ltd in order to obtain optimal pricing. In the process of pricing, Trillian was advised by Regiments Fund Managers that they had been mandated by the TSDBF to trade in interest rate swaps and it would be most efficient in pricing if the TSDBF became a direct counterparty to Transnet and in so doing we could cut out the "middle man" (i.e. the banks) thereby obtaining the advantageous pricing for Transnet.

This advantageous pricing is evident in Annexure A in which the pricing quoted by Nedbank is detailed. Nedbank quoted an all in yield of 12.27%, on a like for like basis the all in yield of the interest rate swap executed by Trillian was 11.87% before the fee of 20 basis points and 12.07% after the aforementioned fee. This translates into a 40 basis points saving before the fee and 20 basis points after the fee. As can be clearly seen the benefit of this mechanism is self-evident.

### A comparison between fees, in Rand and basis point terms, charged by Regiments for the transactions and where Regiments executed interest rate swap transactions of a similar size with other financial institutions

### Benchmarking the Advisor's Fee

As per your request, we have provided a comparison of a number of swap transactions executed by Regiments with external parties and compared this with the swaps executed with Transnet in order to provide a comparative benchmarking of the fees paid by Transnet.

The information requested is shown in Table 2 below:

**Table 2: Regiments trades with external parties**

Client	SOC1	SOC2	MUN12	MUN12
Swap counterparty	Nedbank	SBSA	Nedbank	Nedbank
Swap Nominal value	1 500 000 000	1 750 000 000	943 000 000	361 000 000
Transaction date	31-Mar-10	31-May-10	20-Feb-13	24-Feb-14
Transaction fees paid to TSDBF via Swap	16 148 435	15 914 507	9 127 278	4 285 428
Present value of fee	16 148 435	15 914 507	9 127 278	4 285 428
Fee as a percentage of nominal value	1.08%	0.91%	0.97%	1.19%



Trillian Capital Partners (Pty) Ltd

Reg No: 2015/11750/07 | Directors: T. Seneviratne (Chairman), E. Nkomo (CEO), T. Lebello (Group CFO), J. Arian (MD)



A comparison between fees, in Rand and basis point terms, charged by Regiments for the Transactions and where Regiments executed interest rate swap transactions of a similar size with other financial institutions continued.

Table 3: Swap trades between Transnet and TSDBF as well as Nedbank

Trade date	4 December 2015	7 March 2016	30 March 2016	8 April 2016
Counterparty	Nedbank	Nedbank	TSDBF	TSDBF
Settlement date	4 December 2015	7 March 2016	30 March 2016	8 April 2016
Maturity date	1 December 2030	1 December 2030	22 February 2026	18 July 2032 (R1.6bn) 31 March 2033 (R2.7bn)
All in fixed rate before fee	11.62%	12.07%	11.87%	10.95%
Fee (basis points)	20	20	20	20
All in fixed rate after fee	11.82%	12.27%	12.07%	11.15%
Nominal value (ZAR)	4 500 000 000	5 250 000 000	6 991 500 000	4 304 166 667
Present value of fee	56 719 779	63 916 019	67 403 305	39 851 767
Fee as a percentage of nominal value	1.26%	1.22%	0.96%	0.93%

The 20bp fee expressed as a percentage of nominal value works out at 0.93% and 1.26% as a percentage of the nominal value of the transaction respectively (Table 3). This compares favorably with the Regiments transactions transacted with other counterparties (Table 2) in which it can be seen that these clients agreed to an effective fee ranging from 0.91% to 1.19% expressed as a percentage of the nominal value of the transaction. These fees paid by Transnet can be seen to be reasonable.

In addition to the requests contained in your letter above, we have noted that you would like clarification on the distinction between fees expressed as a percentage of price versus fees expressed as a percentage of yield.

The execution fee can be quoted either as a percentage of price or yield, both of which will be discussed in more detail below and illustrative examples are included in Annexure A: Fees on interest rate swap transactions are normally expressed in yield (i.e. as a number of basis points on yield), and as such are normally included into the execution yield.

Fee as a percentage of price:	Fee as a percentage of yield:
The fee is calculated as a percentage of the nominal face value of the swap transaction being executed.	The fee is calculated by applying the fee (quoted in basis points) to the nominal of the interest rate swap transaction at each interest rate reset date.
	The current NPV is calculated by discounting the fees by the discount factor, derived from the swap curve, applicable to the respective reset dates.

### Conclusion

The swap rates achieved by Transnet are market related and ultimately better than had Transnet executed the swaps directly with the banks as evidenced in Table 3 and Annexure A.

The fees paid by Transnet in these series of swap transactions can be seen to be fair and reasonable as evidenced in Table 3 and Annexure A.

The swap counterpart (TSDBF) has made a profit and said profit is merely reflective of a portion of the profit that would ordinarily be retained by the banks in the execution of the swap.





Yours sincerely,

A handwritten signature in black ink, appearing to read "Eric Wood", is written over a horizontal line.

Mr. Eric Wood

Director – Trillian Capital Partners (Pty) Ltd  
Cell: +27- 83 626 0857  
Email: eric@tcp.co.za



Trillian Capital Partners (Pty) Ltd

Reg No. 2015/111759/07 | Directors: T. Soxwato (Chairman), E. Wood (Group CEO), T. Lebello (Group CFO), J. Atrial (NED)





## Annexure A:

*Illustrative example: Fee as a percentage of price*

## Assumptions:

Notional	R5 000 000 000
Redemption profile	Bullet
Maturity	20 years
Swap rate	8% (assumed to be constant over the period)
Fee	20 basis points

## Calculation:

20-year discount factor - 8% (swap rate)	0.215
NPV (A)	R1 072 741 037
20-year discount factor - 7.8% (swap rate less fee)	0.223
NPV (B)	R1 113 255 341
Exception fee (NPV (B) - NPV (A))	R40 514 303





*Illustrative example: Fee as a percentage of yield*

**Assumptions:**

Initial Investment	R5 000 000 000
Structure	Bullet
Maturity	20 years
Yield	8% (assumed to be constant over the period)
Fee	20 basis points

**Calculation:**

	Face	Discount Factor	NPV
Year 1	10 000 000	0,926	9 259 259
Year 2	10 000 000	0,857	8 573 388
Year 3	10 000 000	0,794	7 938 322
Year 4	10 000 000	0,735	7 350 299
Year 5	10 000 000	0,681	6 805 832
Year 6	10 000 000	0,630	6 301 696
Year 7	10 000 000	0,583	5 834 904
Year 8	10 000 000	0,540	5 402 689
Year 9	10 000 000	0,500	5 002 490
Year 10	10 000 000	0,463	4 631 935
Year 11	10 000 000	0,429	4 288 829
Year 12	10 000 000	0,397	3 971 138
Year 13	10 000 000	0,368	3 676 979
Year 14	10 000 000	0,340	3 404 610
Year 15	10 000 000	0,315	3 152 417
Year 16	10 000 000	0,292	2 918 905
Year 17	10 000 000	0,270	2 702 690
Year 18	10 000 000	0,250	2 502 490
Year 19	10 000 000	0,232	2 317 121
Year 20	10 000 000	0,215	2 145 482
<b>Total</b>			<b>85 381 478</b>



Appendix B  
Interest rate swap transaction executed on 04 December 2016 (ABSA and BOC)

ABSA and BOC		
Execution date	Date	04-Dec-15
Maturity date	Date	01-Dec-30
Nominal	ZAR	3 000 000 000
Fees	%	0,20%
Net present value	ZAR	36 898 284

ABSA and BOC		01-Mar-16	01-Jun-16	01-Sep-16	01-Dec-16	01-Mar-17	01-Jun-17	01-Sep-17
Repayments	ZAR	-	-	-	-	-	-	-
Closing balance	ZAR	3 000 000 000	3 000 000 000	3 000 000 000	3 000 000 000	3 000 000 000	3 000 000 000	3 000 000 000
Days	#	88	92	92	91	90	92	92
Fees	ZAR	1 445 585	1 511 294	1 511 294	1 494 867	1 478 439	1 511 294	1 511 294
Discount factors	Factor	0,99	0,97	0,95	0,93	0,92	0,90	0,88
Discounted fees	ZAR	1 426 034	1 464 386	1 437 919	1 396 394	1 355 721	1 358 380	1 332 913

ABSA and BOC		01-Dec-17	01-Mar-18	01-Jun-18	03-Sep-18	03-Dec-18	01-Mar-19	03-Jun-19
Repayments	ZAR	-28 301 887	-28 301 887	-28 301 887	-28 301 887	-28 301 887	-28 301 887	-28 301 887
Closing balance	ZAR	2 971 698 113	2 943 396 226	2 915 094 340	2 886 792 453	2 858 490 566	2 830 188 679	2 801 886 792
Days	#	91	90	92	94	91	88	94
Fees	ZAR	1 494 867	1 464 492	1 482 779	1 500 446	1 438 456	1 377 397	1 456 743
Discount factors	Factor	0,86	0,85	0,83	0,81	0,80	0,78	0,76
Discounted fees	ZAR	1 292 530	1 241 862	1 232 135	1 220 726	1 146 080	1 075 820	1 113 390



**Appendix B**  
Interest rate swap transaction executed on 04 December 2016 (ABSA and BOC) continued

ABSA and BOC		02-Sep-19	02-Dec-19	02-Mar-20	01-Jun-20	01-Sep-20	01-Dec-20	01-Mar-21
Repayments	ZAR	-28 301 887	-28 301 887	-28 301 887	-28 301 887	-64 016 173	-64 016 173	-64 016 173
Closing balance	ZAR	2 773 584 906	2 745 283 019	2 716 981 132	2 688 679 245	2 624 663 073	2 560 646 900	2 498 630 728
Days	#	91	91	91	91	92	91	90
Fees	ZAR	1 396 149	1 382 046	1 367 944	1 353 841	1 354 461	1 307 840	1 261 920
Discount factors	Factor	0,75	0,73	0,72	0,70	0,69	0,67	0,66
Discounted fees	ZAR	1 044 436	1 011 473	979 977	948 940	928 200	876 029	827 231

ABSA and BOC		01-Jun-21	01-Sep-21	01-Dec-21	01-Mar-22	01-Jun-22	01-Sep-22	01-Dec-22
Repayments	ZAR	-64 016 173	-64 016 173	-64 016 173	-64 016 173	-64 016 173	-64 016 173	-64 016 173
Closing balance	ZAR	2 432 614 555	2 368 598 383	2 304 582 210	2 240 566 038	2 176 549 865	2 112 533 693	2 048 517 520
Days	#	92	92	91	90	92	92	91
Fees	ZAR	1 257 714	1 225 485	1 180 246	1 135 728	1 128 718	1 096 469	1 052 652
Discount factors	Factor	0,64	0,63	0,61	0,60	0,59	0,57	0,56
Discounted fees	ZAR	806 139	767 604	722 262	679 972	660 557	626 801	587 810

ABSA and BOC		01-Mar-23	01-Jun-23	01-Sep-23	01-Dec-23	01-Mar-24	03-Jun-24	02-Sep-24
Repayments	ZAR	-64 016 173	-64 016 173	-64 016 173	-64 016 173	-64 016 173	-64 016 173	-64 016 173
Closing balance	ZAR	1 984 501 348	1 920 485 175	1 856 469 003	1 792 452 830	1 728 436 658	1 664 420 485	1 600 404 313
Days	#	90	92	92	91	91	94	91
Fees	ZAR	1 009 536	999 721	967 472	925 058	893 159	889 654	829 362
Discount factors	Factor	0,55	0,53	0,52	0,51	0,50	0,49	0,47
Discounted fees	ZAR	551 364	533 625	504 239	470 712	444 273	432 055	393 322



## Appendix B

Interest rate swap transaction executed on 04 December 2016 (ABSA and BOC) continued

ABSA and BOC		02-Dec-24	03-Mar-25	02-Jun-25	01-Sep-25	01-Dec-25	02-Mar-26	01-Jun-26
Repayments	ZAR	-64 016 173	-64 016 173	-64 016 173	-64 016 173	-64 016 173	-64 016 173	-64 016 173
Closing balance	ZAR	1 536 388 140	1 472 371 966	1 408 355 795	1 344 339 623	1 280 323 450	1 216 307 278	1 152 291 105
Days	#	91	91	91	91	91	91	91
Fees	ZAR	797 464	765 565	733 667	701 766	669 869	637 971	606 072
Discount factors	Factor	0,46	0,45	0,44	0,43	0,42	0,41	0,40
Discounted fees	ZAR	369 106	346 304	324 186	302 737	281 957	262 231	243 148

ABSA and BOC		01-Sep-26	01-Dec-26	01-Mar-27	01-Jun-27	01-Sep-27	01-Dec-27	01-Mar-28
Repayments	ZAR	-64 016 173	-64 016 173	-64 016 173	-64 016 173	-64 016 173	-64 016 173	-64 016 173
Closing balance	ZAR	1 088 274 933	1 024 258 760	960 242 588	896 226 415	832 210 243	768 194 070	704 177 898
Days	#	92	91	90	92	92	91	91
Fees	ZAR	580 483	542 275	504 768	483 736	451 487	414 681	382 783
Discount factors	Factor	0,39	0,38	0,37	0,36	0,35	0,35	0,34
Discounted fees	ZAR	227 100	206 808	188 117	175 998	160 270	143 575	129 405

ABSA and BOC		01-Jun-28	01-Sep-28	01-Dec-28	01-Mar-29	01-Jun-29	03-Sep-29	03-Dec-29
Repayments	ZAR	-64 016 173	-64 016 173	-64 016 173	-64 016 173	-64 016 173	-64 016 173	-64 016 173
Closing balance	ZAR	640 161 725	576 145 553	512 129 380	448 113 208	384 097 035	320 080 863	256 064 690
Days	#	92	92	91	90	92	94	91
Fees	ZAR	354 740	322 491	287 087	252 384	225 744	197 701	159 493
Discount factors	Factor	0,33	0,32	0,31	0,31	0,30	0,29	0,28
Discounted fees	ZAR	117 009	103 720	89 999	77 320	67 520	57 667	45 377



**Appendix B**  
**Interest rate swap transaction executed on 04 December 2016 (ABSA and BOC) continued**

<b>ABSA and BOC</b>		<b>01-Mar-30</b>	<b>03-Jun-30</b>	<b>02-Sep-30</b>	<b>02-Dec-30</b>
Repayments	ZAR	-64 016 173	-64 016 173	-64 016 173	-64 016 173
Closing balance	ZAR	192 048 518	128 032 345	64 016 173	-
Days	#	88	94	91	91
Fees	ZAR	123 388	98 850	63 797	31 899
Discount factors	Factor	0,28	0,27	0,27	0,26
Discounted fees	ZAR	34 347	26 869	16 936	8 286



## Appendix B

Interest rate swap transaction executed on 04 December 2016 (Nedbank, Omsfin and Future Growth)

Nedbank, Omsfin and Future Growth		
Execution date	Date	04-Dec-15
Maturity date	Date	01-Dec-30
Nominal	ZAR	1 500 000 000
Fees	%	0,20%
Net present value	ZAR	19 567 710

Nedbank, Omsfin and Future Growth		15-Jan-16	15-Apr-16	15-Jul-16	17-Oct-16	18-Jan-17	18-Apr-17	17-Jul-17
Repayments	ZAR	-	-	-	-	-	-	-
Closing balance	ZAR	1 500 000 000	1 500 000 000	1 500 000 000	1 500 000 000	1 500 000 000	1 500 000 000	1 500 000 000
Days	#	42	91	91	94	91	92	90
Fees	ZAR	344 969	747 433	747 433	772 074	747 433	755 647	739 220
Discount factors	Factor	1,00	0,98	0,96	0,94	0,93	0,91	0,89
Discounted fees	ZAR	343 324	730 922	717 974	727 828	691 652	686 019	658 441

Nedbank, Omsfin and Future Growth		16-Oct-17	15-Jan-18	16-Apr-18	16-Jul-18	15-Oct-18	15-Jan-19	15-Apr-19
Repayments	ZAR	-	-	-	-	-	-	-
Closing balance	ZAR	1 500 000 000	1 500 000 000	1 500 000 000	1 500 000 000	1 500 000 000	1 500 000 000	1 500 000 000
Days	#	91	91	91	91	91	92	90
Fees	ZAR	747 433	747 433	747 433	747 433	747 433	755 647	739 220
Discount factors	Factor	0,87	0,86	0,84	0,82	0,81	0,79	0,77
Discounted fees	ZAR	652 810	640 031	627 450	614 858	602 287	595 260	571 442



## Appendix B

Interest rate swap transaction executed on 04 December 2016 (Nedbank, Omsfin and Future Growth) continued

<u>Nedbank, Omsfin and Future Growth</u>		15-Jul-19	15-Oct-19	15-Jan-20	15-Apr-20	15-Jul-20	15-Oct-20	15-Jan-21
Repayments	ZAR	-	-	-	-	-34 883 721	-34 883 721	-34 883 721
Closing balance	ZAR	1 500 000 000	1 500 000 000	1 500 000 000	1 500 000 000	1 465 118 279	1 430 232 558	1 395 348 837
Days	#	91	92	92	91	91	92	92
Fees	ZAR	747 433	755 647	755 647	747 433	747 433	738 074	720 500
Discount factors	Factor	0,76	0,74	0,72	0,71	0,69	0,68	0,66
Discounted fees	ZAR	565 669	559 496	547 370	529 863	518 306	500 277	477 449

<u>Nedbank, Omsfin and Future Growth</u>		15-Apr-21	15-Jul-21	15-Oct-21	17-Jan-22	19-Apr-22	15-Jul-22	17-Oct-22
Repayments	ZAR	-34 883 721	-34 883 721	-34 883 721	-34 883 721	-34 883 721	-34 883 721	-34 883 721
Closing balance	ZAR	1 360 465 116	1 325 581 395	1 290 697 674	1 255 813 953	1 220 930 233	1 186 046 512	1 151 162 791
Days	#	90	91	92	94	92	87	94
Fees	ZAR	687 646	677 905	667 781	664 343	632 635	581 634	610 477
Discount factors	Factor	0,65	0,63	0,62	0,61	0,59	0,58	0,57
Discounted fees	ZAR	445 872	429 781	413 628	401 935	374 222	336 638	344 922

<u>Nedbank, Omsfin and Future Growth</u>		16-Jan-23	17-Apr-23	17-Jul-23	16-Oct-23	15-Jan-24	15-Apr-24	15-Jul-24
Repayments	ZAR	-34 883 721	-34 883 721	-34 883 721	-34 883 721	-34 883 721	-34 883 721	-34 883 721
Closing balance	ZAR	1 116 279 070	1 081 395 349	1 046 511 628	1 011 627 907	976 744 186	941 860 465	906 976 744
Days	#	91	91	91	91	91	91	91
Fees	ZAR	573 612	556 229	538 847	521 465	504 083	486 701	469 319
Discount factors	Factor	0,55	0,54	0,53	0,52	0,50	0,49	0,48
Discounted fees	ZAR	316 705	300 241	284 208	269 600	253 644	239 350	225 453







## Appendix B

Interest rate swap transaction executed on 04 December 2016 (Nedbank, Omsfin and Future Growth) continued

Nedbank, Omsfin and Future Growth		15-Oct-24	15-Jan-25	15-Apr-25	15-Jul-25	15-Oct-25	15-Jan-26	15-Apr-26
Repayments	ZAR	-34 883 721	-34 883 721	-34 883 721	-34 883 721	-34 883 721	-34 883 721	-34 883 721
Closing balance	ZAR	872 093 023	837 209 302	802 325 581	767 441 860	732 558 140	697 674 419	662 790 698
Days	#	92	92	90	91	92	92	90
Fees	ZAR	456 903	439 330	412 588	399 790	386 610	369 037	343 823
Discount factors	Factor	0,47	0,46	0,45	0,44	0,43	0,42	0,41
Discounted fees	ZAR	214 224	201 109	184 591	174 676	164 822	153 527	139 687

Nedbank, Omsfin and Future Growth		15-Jul-26	15-Oct-26	15-Jan-27	15-Apr-27	15-Jul-27	15-Oct-27	17-Jan-28
Repayments	ZAR	-34 883 721	-34 883 721	-34 883 721	-34 883 721	-34 883 721	-34 883 721	-34 883 721
Closing balance	ZAR	627 908 977	593 023 256	558 139 535	523 255 814	488 372 093	453 488 372	418 604 651
Days	#	91	92	92	90	91	92	94
Fees	ZAR	330 261	316 317	298 744	275 058	260 733	246 025	233 418
Discount factors	Factor	0,40	0,39	0,38	0,37	0,36	0,35	0,34
Discounted fees	ZAR	130 923	122 244	112 629	101 318	93 759	86 293	79 828

Nedbank, Omsfin and Future Growth		18-Apr-28	17-Jul-28	16-Oct-28	16-Jan-29	16-Apr-29	16-Jul-29	15-Oct-29
Repayments	ZAR	-34 883 721	-34 883 721	-34 883 721	-34 883 721	-34 883 721	-34 883 721	-34 883 721
Closing balance	ZAR	383 720 930	348 837 209	313 953 488	279 069 767	244 186 047	209 302 326	174 418 605
Days	#	92	90	91	92	90	91	91
Fees	ZAR	210 878	189 103	173 822	158 159	137 529	121 675	104 293
Discount factors	Factor	0,33	0,33	0,32	0,31	0,30	0,30	0,29
Discounted fees	ZAR	70 386	61 597	55 206	49 002	41 634	35 961	30 075





## Appendix B

Interest rate swap transaction executed on 04 December 2016 (Nedbank, Omsfin and Future Growth) continued

Nedbank, Omsfin and Future Growth		15-Jan-30	15-Apr-30	15-Jul-30	15-Oct-30	02-Dec-30
Repayments	ZAR	-34 883 721	-34 883 721	-34 883 721	-34 883 721	-34 883 721
Closing balance	ZAR	139 534 884	104 651 163	69 767 442	34 883 721	-
Days	#	92	90	91	92	48
Fees	ZAR	87 866	68 785	52 147	35 146	9 169
Discount factors	Factor	0,28	0,28	0,27	0,26	0,26
Discounted fees	ZAR	24 734	18 926	14 022	9 225	2 376



## Appendix B

Interest rate swap transaction executed on 07 March 2016 (Nedbank, Omsfin and Future Growth)

Nedbank, Omsfin and Future Growth		
Execution date	Date	07-Mar-16
Maturity date	Date	01-Dec-30
Nominal	ZAR	4 500 000 000
Fees	%	0,20%
Net present value	ZAR	55 782 933

Nedbank, Omsfin and Future Growth		15-Apr-16	15-Jul-16	17-Oct-16	16-Jan-17	18-Apr-17	17-Jul-17	16-Oct-17
Repayments	ZAR	-	-	-	-	-	-	-
Closing balance	ZAR	4 500 000 000	4 500 000 000	4 500 000 000	4 500 000 000	4 500 000 000	4 500 000 000	4 500 000 000
Days	#	39	91	94	91	92	90	91
Fees	ZAR	960 986	2 242 300	2 316 222	2 242 300	2 266 940	2 217 659	2 242 300
Discount factors	Factor	0,99	0,97	0,96	0,94	0,92	0,90	0,88
Discounted fees	ZAR	953 605	2 184 898	2 214 053	2 103 210	2 084 932	1 999 632	1 980 981

Nedbank, Omsfin and Future Growth		15-Jan-18	16-Apr-18	16-Jul-18	15-Oct-18	15-Jan-19	15-Apr-19	15-Jul-19
Repayments	ZAR	-	-	-	-	-	-	-
Closing balance	ZAR	4 500 000 000	4 500 000 000	4 500 000 000	4 500 000 000	4 500 000 000	4 500 000 000	4 500 000 000
Days	#	91	91	91	91	92	90	91
Fees	ZAR	2 242 300	2 242 300	2 242 300	2 242 300	2 266 940	2 217 659	2 242 300
Discount factors	Factor	0,87	0,85	0,83	0,81	0,80	0,78	0,76
Discounted fees	ZAR	1 940 112	1 900 075	1 861 099	1 822 123	1 802 309	1 725 738	1 707 668



## Appendix B

Interest rate swap transaction executed on 07 March 2016 (Nedbank, Omsfin and Future Growth) continued

Nedbank, Omsfin and Future Growth		15-Oct-19	15-Jan-20	15-Apr-20	15-Jul-20	15-Oct-20	15-Jan-21	15-Apr-21
Repayments	ZAR	-	-	-	-104 651 163	-104 651 163	-104 651 163	-104 651 163
Closing balance	ZAR	4 500 000 000	4 500 000 000	4 500 000 000	4 395 348 837	4 290 697 674	4 186 046 512	4 081 395 349
Days	#	92	92	91	91	92	92	90
Fees	ZAR	2 266 940	2 266 940	2 242 300	2 190 153	2 161 501	2 108 782	2 011 365
Discount factors	Factor	0,74	0,73	0,71	0,70	0,68	0,66	0,65
Discounted fees	ZAR	1 688 366	1 650 299	1 586 023	1 524 706	1 470 636	1 401 476	1 306 649

Nedbank, Omsfin and Future Growth		15-Jul-21	15-Oct-21	17-Jan-22	19-Apr-22	15-Jul-22	17-Oct-22	16-Jan-23
Repayments	ZAR	-104 651 163	-104 651 163	-104 651 163	-104 651 163	-104 651 163	-104 651 163	-104 651 163
Closing balance	ZAR	3 976 744 186	3 872 093 023	3 767 441 860	3 662 790 698	3 558 139 535	3 453 486 372	3 348 837 209
Days	#	91	92	94	92	87	94	91
Fees	ZAR	1 981 567	1 950 623	1 939 162	1 845 184	1 695 048	1 777 566	1 668 688
Discount factors	Factor	0,64	0,62	0,61	0,59	0,58	0,56	0,55
Discounted fees	ZAR	1 268 655	1 210 501	1 174 442	1 091 517	981 053	1 004 281	920 474

Nedbank, Omsfin and Future Growth		17-Apr-23	17-Jul-23	16-Oct-23	15-Jan-24	15-Apr-24	15-Jul-24	15-Oct-24
Repayments	ZAR	-104 651 163	-104 651 163	-104 651 163	-104 651 163	-104 651 163	-104 651 163	-104 651 163
Closing balance	ZAR	3 244 186 047	3 139 534 884	3 034 883 721	2 930 232 558	2 825 581 395	2 720 930 233	2 616 279 070
Days	#	91	91	91	91	91	91	92
Fees	ZAR	1 616 542	1 564 395	1 512 249	1 460 102	1 407 856	1 355 809	1 317 989
Discount factors	Factor	0,54	0,53	0,51	0,50	0,49	0,48	0,47
Discounted fees	ZAR	870 829	823 378	777 218	732 349	689 530	648 921	616 007





## Appendix B

Interest rate swap transaction executed on 07 March 2016 (Nedbank, Omsfin and Future Growth) continued

Nedbank, Omsfin and Future Growth		15-Jan-25	15-Apr-25	15-Jul-25	15-Oct-25	15-Jan-26	15-Apr-26	15-Jul-26
Repayments	ZAR	-104 651 163	-104 651 163	-104 651 163	-104 651 163	-104 651 163	-104 651 163	-104 651 163
Closing balance	ZAR	2 511 627 907	2 406 976 744	2 302 325 581	2 197 674 419	2 093 023 256	1 988 372 093	1 883 720 930
Days	#	92	90	91	92	92	90	91
Fees	ZAR	1 265 269	1 186 190	1 147 223	1 107 110	1 054 391	979 896	938 637
Discount factors	Factor	0,46	0,45	0,44	0,43	0,42	0,41	0,40
Discounted fees	ZAR	577 148	528 646	499 906	471 330	438 317	398 166	373 099

Nedbank, Omsfin and Future Growth		15-Oct-26	15-Jan-27	15-Apr-27	15-Jul-27	15-Oct-27	17-Jan-28	18-Apr-28
Repayments	ZAR	-104 651 163	-104 651 163	-104 651 163	-104 651 163	-104 651 163	-104 651 163	-104 651 163
Closing balance	ZAR	1 779 069 767	1 674 418 605	1 569 767 442	1 465 116 279	1 360 465 116	1 255 613 953	1 151 162 791
Days	#	92	92	90	91	92	94	92
Fees	ZAR	896 232	843 513	773 602	730 051	685 354	646 387	579 915
Discount factors	Factor	0,39	0,38	0,37	0,36	0,36	0,35	0,34
Discounted fees	ZAR	348 229	320 201	287 199	265 260	243 542	224 418	196 890

Nedbank, Omsfin and Future Growth		17-Jul-28	16-Oct-28	16-Jan-29	16-Apr-29	16-Jul-29	15-Oct-29	15-Jan-30
Repayments	ZAR	-104 651 163	-104 651 163	-104 651 163	-104 651 163	-104 651 163	-104 651 163	-104 651 163
Closing balance	ZAR	1 046 511 628	941 860 465	837 209 302	732 558 140	627 906 977	523 255 814	418 604 651
Days	#	90	91	92	90	91	91	92
Fees	ZAR	515 735	469 319	421 756	361 014	312 879	260 733	210 878
Discount factors	Factor	0,33	0,33	0,32	0,31	0,30	0,30	0,29
Discounted fees	ZAR	171 422	152 611	134 070	112 309	95 321	77 755	61 516



## Appendix B

Interest rate swap transaction executed on 07 March 2016 (Nedbank, Omsfin and Future Growth) continued

Nedbank, Omsfin and Future Growth		15-Apr-30	15-Jul-30	15-Oct-30	02-Dec-30
Repayments	ZAR	-104 651 163	-104 651 163	-104 651 163	-104 651 163
Closing balance	ZAR	313 953 488	209 302 326	104 651 163	-
Days	#	90	91	92	46
Fees	ZAR	154 720	104 293	52 720	-
Discount factors	Factor	0,29	0,28	0,27	0,27
Discounted fees	ZAR	44 194	29 180	14 449	-





Appendix B  
Interest rate swap transaction executed on 07 March 2016 (ABSA)

ABSA		
Execution date	Date	07-Mar-16
Maturity date	Date	01-Dec-30
Nominal	ZAR	750 000 000
Fees	%	0,20%
Net present value	ZAR	8 132 425

ABSA		01-Jun-16	01-Sep-16	01-Dec-16	01-Mar-17	01-Jun-17	01-Sep-17	01-Dec-17
Repayments	ZAR	-	-	-	-	-	-	-14 150 943
Closing balance	ZAR	750 000 000	750 000 000	750 000 000	750 000 000	750 000 000	750 000 000	735 849 057
Days	#	86	92	91	90	92	92	91
Fees	ZAR	353 183	377 823	373 717	369 610	377 823	377 823	366 665
Discount factors	Factor	0,98	0,96	0,95	0,93	0,91	0,89	0,87
Discounted fees	ZAR	347 202	364 580	353 920	343 481	344 159	337 197	320 556

ABSA		01-Mar-18	01-Jun-18	03-Sep-18	03-Dec-18	01-Mar-19	03-Jun-19	02-Sep-19
Repayments	ZAR	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943
Closing balance	ZAR	721 698 113	707 547 170	693 396 226	679 245 283	665 094 340	650 943 396	636 792 453
Days	#	90	92	94	91	88	94	91
Fees	ZAR	355 662	356 437	356 902	338 460	320 484	335 051	317 307
Discount factors	Factor	0,86	0,84	0,82	0,80	0,79	0,77	0,75
Discounted fees	ZAR	304 525	298 905	292 887	271 870	252 042	257 733	238 813



## Appendix B

Interest rate swap transaction executed on 07 March 2016 (ABSA) continued

ABSA		02-Dec-19	02-Mar-20	01-Jun-20	01-Sep-20	01-Dec-20	01-Mar-21	01-Jun-21
Repayments	ZAR	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943
Closing balance	ZAR	622 641 509	608 490 566	584 339 623	580 188 679	566 037 736	551 886 792	537 735 849
Days	#	91	91	91	92	91	90	92
Fees	ZAR	310 255	303 204	296 153	282 278	282 060	271 977	270 892
Discount factors	Factor	0,74	0,72	0,70	0,69	0,67	0,66	0,64
Discounted fees	ZAR	228 353	218 127	208 407	201 066	189 626	178 653	173 959

ABSA		01-Sep-21	01-Dec-21	01-Mar-22	01-Jun-22	01-Sep-22	01-Dec-22	01-Mar-23
Repayments	ZAR	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943
Closing balance	ZAR	523 584 906	509 433 962	495 283 019	481 132 075	466 981 132	452 830 189	438 679 245
Days	#	92	91	90	92	92	91	90
Fees	ZAR	263 764	253 845	244 082	242 377	235 249	225 640	216 187
Discount factors	Factor	0,63	0,61	0,60	0,59	0,57	0,56	0,55
Discounted fees	ZAR	165 527	155 634	146 160	141 848	134 498	125 990	117 855

ABSA		01-Jun-23	01-Sep-23	01-Dec-23	01-Mar-24	03-Jun-24	02-Sep-24	02-Dec-24
Repayments	ZAR	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943
Closing balance	ZAR	424 528 302	410 377 358	396 226 415	382 075 472	367 924 528	353 773 585	339 622 642
Days	#	92	92	91	91	94	91	91
Fees	ZAR	213 862	206 734	197 435	190 384	189 377	176 281	169 230
Discount factors	Factor	0,53	0,52	0,51	0,50	0,48	0,47	0,46
Discounted fees	ZAR	113 899	107 516	100 237	94 301	91 612	83 317	76 103







Appendix B  
Interest rate swap transaction executed on 07 March 2016 (ABSA) continued

ABSA		03-Mar-25	02-Jun-25	01-Sep-25	01-Dec-25	02-Mar-26	01-Jun-26	01-Sep-26
Repayments	ZAR	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943
Closing balance	ZAR	325 471 698	311 320 755	297 169 811	283 016 868	268 867 925	254 716 981	240 566 038
Days	#	91	91	91	91	91	91	92
Fees	ZAR	162 179	155 128	148 076	141 025	133 974	126 923	121 189
Discount factors	Factor	0,45	0,44	0,43	0,42	0,41	0,40	0,39
Discounted fees	ZAR	73 046	68 324	63 750	59 316	55 022	50 993	47 606

ABSA		01-Dec-26	01-Mar-27	01-Jun-27	01-Sep-27	01-Dec-27	01-Mar-28	01-Jun-28
Repayments	ZAR	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943
Closing balance	ZAR	226 415 094	212 264 151	198 113 208	183 962 264	169 811 321	155 660 377	141 509 434
Days	#	91	90	92	92	91	91	92
Fees	ZAR	112 820	104 607	99 802	92 674	84 615	77 564	71 287
Discount factors	Factor	0,38	0,38	0,37	0,36	0,35	0,34	0,34
Discounted fees	ZAR	43 321	39 252	36 644	33 286	29 723	26 633	23 955

ABSA		01-Sep-28	01-Dec-28	01-Mar-29	01-Jun-29	03-Sep-29	03-Dec-29	01-Mar-30
Repayments	ZAR	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943	-14 150 943
Closing balance	ZAR	127 358 491	113 207 547	99 056 604	84 905 680	70 754 717	56 603 774	42 452 830
Days	#	92	91	90	92	94	91	88
Fees	ZAR	64 159	56 410	48 816	42 772	36 419	28 205	20 456
Discount factors	Factor	0,33	0,32	0,31	0,31	0,30	0,29	0,29
Discounted fees	ZAR	21 092	18 138	15 348	13 167	10 969	8 314	5 902



Appendix B  
Interest rate swap transaction executed on 07 March 2016 (ABSA) continued

ABSA		03-Jun-30	02-Sep-30	02-Dec-30
Repayments	ZAR	-14 150 943	-14 150 943	-14 150 943
Closing balance	ZAR	28 301 887	14 150 943	-
Days	#	94	91	91
Fees	ZAR	14 567	7 051	-
Discount factors	Factor	0,28	0,28	0,27
Discounted fees	ZAR	4 116	1 952	-





Appendix B  
Interest rate swap transaction executed on 30 March 2016 (EDC)

EDC		
Execution date	Date	30-Mar-16
Maturity date	Date	22-Feb-28
Nominal	ZAR	6 991 500 000
Fees	%	0,20%
Net present value	ZAR	67 095 385

EDC		15-Aug-16	13-Feb-17	15-Aug-17	13-Feb-18	15-Aug-18	14-Feb-19	15-Aug-19
Repayments	ZAR					-349 575 000	-349 575 000	-349 575 000
Closing balance	ZAR	6 991 500 000	6 991 500 000	6 991 500 000	6 991 500 000	6 641 925 000	6 292 350 000	5 942 775 000
Days	#	138	183	183	183	183	183	183
Fees	ZAR	5 283 105	6 991 500	6 991 500	6 991 500	6 641 925	6 292 350	5 942 775
Discount factors	Factor	0,97	0,94	0,90	0,86	0,83	0,79	0,76
Discounted fees	ZAR	5 138 951	6 548 275	6 296 157	6 044 149	5 509 787	5 002 052	4 526 743

EDC		14-Feb-20	15-Aug-20	13-Feb-21	15-Aug-21	13-Feb-22	15-Aug-22	14-Feb-23
Repayments	ZAR	-349 575 000	-349 575 000	-349 575 000	-349 575 000	-349 575 000	-349 575 000	-349 575 000
Closing balance	ZAR	5 593 200 000	5 243 625 000	4 894 050 000	4 544 475 000	4 194 900 000	3 845 325 000	3 495 750 000
Days	#	183	183	183	183	183	183	183
Fees	ZAR	5 593 200	5 243 625	4 894 050	4 544 475	4 194 900	3 845 325	3 495 750
Discount factors	Factor	0,73	0,70	0,67	0,64	0,61	0,58	0,56
Discounted fees	ZAR	4 077 037	3 657 815	3 262 793	2 896 741	2 553 335	2 236 697	1 940 875

EDC		15-Aug-23	14-Feb-24	15-Aug-24	13-Feb-25	15-Aug-25	13-Feb-26	15-Aug-26
Repayments	ZAR	-349 575 000	-349 575 000	-349 575 000	-349 575 000	-349 575 000	-349 575 000	-349 575 000
Closing balance	ZAR	3 146 175 000	2 796 600 000	2 447 025 000	2 097 450 000	1 747 875 000	1 398 300 000	1 048 725 000
Days	#	183	183	183	183	183	183	183
Fees	ZAR	3 146 175	2 796 600	2 447 025	2 097 450	1 747 875	1 398 300	1 048 725
Discount factors	Factor	0,53	0,51	0,48	0,46	0,44	0,42	0,40
Discounted fees	ZAR	1 667 972	1 413 827	1 181 485	966 270	769 268	587 372	421 181





# Appendix B

Interest rate swap transaction executed on 30 March 2016 continued (EDC)

EDC		14-Feb-27	15-Aug-27	22-Feb-28
Repayments	ZAR	-349 575 000	-349 575 000	-349 575 000
Closing balance	ZAR	699 150 000	349 575 000	-
Days	#	183	183	190
Fees	ZAR	699 150	349 575	-
Discount factors	Factor	0,38	0,37	0,35
Discounted fees	ZAR	268 246	128 356	-





Appendix B  
Interest rate swap transaction executed on 8 April 2016 continued (Libfin)

LibFin		
Execution date	Date	08-Apr-16
Maturity date	Date	19-Jul-32
Nominal	ZAR	1 604 166 667
Fees	%	0,20%
Net present value	ZAR	16 687 720

LibFin		20-Jul-16	19-Oct-16	18-Jan-17	19-Apr-17	20-Jul-17	19-Oct-17	18-Jan-18
Repayments	ZAR	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556
Closing balance	ZAR	1 555 555 556	1 531 250 000	1 506 944 444	1 482 636 889	1 458 333 333	1 434 027 778	1 409 722 222
Days	#	103	91	91	91	91	91	91
Fees	ZAR	877 329	765 625	753 472	741 319	729 167	717 014	704 861
Discount factors	Factor	0,98	0,96	0,94	0,93	0,91	0,89	0,87
Discounted fees	ZAR	859 689	736 313	710 929	685 994	661 566	637 577	614 027

LibFin		20-Apr-16	20-Jul-16	19-Oct-16	19-Jan-19	20-Apr-19	20-Jul-19	20-Oct-19
Repayments	ZAR	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556
Closing balance	ZAR	1 385 416 667	1 361 111 111	1 336 805 556	1 312 500 000	1 288 194 444	1 263 888 889	1 239 583 333
Days	#	91	91	91	91	91	91	91
Fees	ZAR	692 706	680 556	668 403	656 250	644 097	631 944	619 792
Discount factors	Factor	0,85	0,84	0,82	0,80	0,78	0,77	0,75
Discounted fees	ZAR	590 963	568 661	546 786	525 336	504 401	484 437	464 876

LibFin		19-Jan-20	19-Apr-20	20-Jul-20	19-Oct-20	18-Jan-21	19-Apr-21	20-Jul-21
Repayments	ZAR	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556
Closing balance	ZAR	1 215 277 778	1 190 972 222	1 166 666 667	1 142 361 111	1 118 055 556	1 093 750 000	1 069 444 444
Days	#	91	91	91	91	91	91	91
Fees	ZAR	607 639	595 486	583 333	571 181	559 028	546 875	534 722
Discount factors	Factor	0,73	0,72	0,70	0,69	0,67	0,66	0,64
Discounted fees	ZAR	445 716	427 032	409 245	391 836	374 805	358 230	342 540





Appendix B  
Interest rate swap transaction executed on 8 April 2016 continued (Libfin) continued

LibFin		19-Oct-21	18-Jan-22	20-Apr-22	20-Jul-22	19-Oct-22	19-Jan-23	20-Apr-23
Repayments	ZAR	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556
Closing balance	ZAR	1 045 138 889	1 020 833 333	996 527 778	972 222 222	947 916 667	923 611 111	899 305 555
Days	#	91	91	91	91	91	91	91
Fees	ZAR	522 569	510 417	498 264	486 111	473 958	461 806	449 653
Discount factors	Factor	0,63	0,61	0,60	0,58	0,57	0,56	0,54
Discounted fees	ZAR	327 201	312 214	297 652	283 906	270 484	257 386	244 669

LibFin		20-Jul-23	20-Oct-23	19-Jan-24	19-Apr-24	20-Jul-24	19-Oct-24	18-Jan-25
Repayments	ZAR	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556
Closing balance	ZAR	875 000 000	850 694 444	826 388 889	802 083 333	777 777 778	753 472 222	729 166 667
Days	#	91	91	91	91	91	91	91
Fees	ZAR	437 500	425 347	413 194	401 042	388 889	376 736	364 583
Discount factors	Factor	0,53	0,52	0,51	0,50	0,48	0,47	0,46
Discounted fees	ZAR	232 699	221 025	209 650	198 631	188 293	178 225	168 428

LibFin		19-Apr-25	20-Jul-25	19-Oct-25	18-Jan-26	20-Apr-26	20-Jul-26	19-Oct-26
Repayments	ZAR	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556
Closing balance	ZAR	704 881 111	680 555 555	656 250 000	631 944 444	607 638 889	583 333 333	559 027 778
Days	#	91	91	91	91	91	91	91
Fees	ZAR	352 431	340 278	328 125	315 972	303 819	291 667	279 514
Discount factors	Factor	0,45	0,44	0,43	0,42	0,41	0,40	0,39
Discounted fees	ZAR	158 949	150 054	141 402	132 995	124 876	117 275	109 891

LibFin		19-Jan-27	20-Apr-27	20-Jul-27	20-Oct-27	19-Jan-28	19-Apr-28	20-Jul-28
Repayments	ZAR	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556
Closing balance	ZAR	534 722 222	510 416 666	486 111 111	461 805 555	437 500 000	413 194 444	388 888 889
Days	#	91	91	91	91	91	91	91
Fees	ZAR	267 361	255 208	243 056	230 903	218 750	206 597	194 444
Discount factors	Factor	0,38	0,38	0,37	0,36	0,35	0,34	0,34
Discounted fees	ZAR	102 724	95 808	89 305	82 997	76 883	70 982	65 430



Appendix B  
Interest rate swap transaction executed on 8 April 2016 continued (Libfin) continued

LibFin		19-Oct-28	18-Jan-29	19-Apr-29	20-Jul-29	19-Oct-29	18-Jan-30	20-Apr-30
Repayments	ZAR	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556
Closing balance	ZAR	364 583 333	340 277 778	315 972 222	291 666 666	267 361 111	243 055 555	218 750 000
Days	#	91	91	91	91	91	91	91
Fees	ZAR	182 292	170 139	157 986	145 833	133 681	121 528	109 375
Discount factors	Factor	0,33	0,32	0,32	0,31	0,30	0,30	0,29
Discounted fees	ZAR	60 049	54 841	49 819	45 062	40 459	36 011	31 726

LibFin		20-Jul-30	19-Oct-30	19-Jan-31	20-Apr-31	20-Jul-31	20-Oct-31	19-Jan-32
Repayments	ZAR	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556	-24 305 556
Closing balance	ZAR	194 444 444	170 138 889	145 833 333	121 527 778	97 222 222	72 916 666	48 611 111
Days	#	91	91	91	91	91	91	91
Fees	ZAR	97 222	85 069	72 917	60 764	48 611	36 458	24 306
Discount factors	Factor	0,28	0,28	0,27	0,27	0,26	0,26	0,25
Discounted fees	ZAR	27 648	23 709	19 907	16 249	12 749	9 375	6 125

LibFin		19-Apr-32	20-Jul-32
Repayments	ZAR	-24 305 556	-24 305 556
Closing balance	ZAR	24 305 555	-
Days	#	91	91
Fees	ZAR	12 153	-
Discount factors	Factor	0,25	0,24
Discounted fees	ZAR	3 001	-



**Appendix B**  
Interest rate swap transaction executed on 8 April 2016 (Omsfin and Standard Bank)

<u>Omsfin and Standard Bank</u>		
Execution date	Date	08-Apr-16
Maturity date	Date	31-Mar-33
Nominal	ZAR	2 700 000 000
Fees	%	0,2%
Net present value	ZAR	23 641 389

<u>Omsfin and Standard Bank</u>		30-Jun-16	29-Sep-16	29-Dec-16	30-Mar-17	30-Jun-17	29-Sep-17	29-Dec-17
Repayments	ZAR	-	-100 000 000	-	-100 000 000	-	-100 000 000	-
Closing balance	ZAR	2 700 000 000	2 600 000 000	2 600 000 000	2 500 000 000	2 500 000 000	2 400 000 000	2 400 000 000
Days	#	83	91	91	91	91	91	91
Fees	ZAR	1 348 989	1 299 026	1 299 026	1 249 064	1 249 064	1 199 101	1 199 101
Discount factors	Factor	0,96	0,96	0,95	0,93	0,91	0,89	0,87
Discounted fees	ZAR	1 299 978	1 251 831	1 228 233	1 158 303	1 135 798	1 068 762	1 047 158

<u>Omsfin and Standard Bank</u>		31-Mar-18	30-Jun-18	29-Sep-18	30-Dec-18	31-Mar-19	30-Jun-19	30-Sep-19
Repayments	ZAR	-100 000 000	-	-100 000 000	-	-100 000 000	-	-100 000 000
Closing balance	ZAR	2 300 000 000	2 300 000 000	2 200 000 000	2 200 000 000	2 100 000 000	2 100 000 000	2 000 000 000
Days	#	91	91	91	91	91	91	91
Fees	ZAR	1 149 139	1 149 139	1 099 176	1 099 176	1 049 213	1 049 213	999 251
Discount factors	Factor	0,86	0,84	0,82	0,80	0,79	0,77	0,75
Discounted fees	ZAR	982 822	962 740	901 672	882 463	824 015	806 635	751 672





## Appendix B

Interest rate swap transaction executed on 8 April 2016 (Omsfin and Standard Bank) continued

Omsfin and Standard Bank		30-Dec-19	30-Mar-20	30-Jun-20	29-Sep-20	29-Dec-20	30-Mar-21	30-Jun-21
Repayments	ZAR	-	-100 000 000	-	-100 000 000	-75 000 000	-100 000 000	-75 000 000
Closing balance	ZAR	2 000 000 000	1 900 000 000	1 900 000 000	1 800 000 000	1 725 000 000	1 625 000 000	1 550 000 000
Days	#	91	91	91	91	91	91	91
Fees	ZAR	999 251	949 288	949 288	899 326	861 854	811 891	774 419
Discount factors	Factor	0,74	0,72	0,70	0,69	0,67	0,66	0,64
Discounted fees	ZAR	735 120	682 639	667 885	618 756	579 580	533 363	497 560

Omsfin and Standard Bank		29-Sep-21	29-Dec-21	31-Mar-22	30-Jun-22	29-Sep-22	30-Dec-22	31-Mar-23
Repayments	ZAR	-100 000 000	-75 000 000	-100 000 000	-75 000 000	-100 000 000	-75 000 000	-100 000 000
Closing balance	ZAR	1 450 000 000	1 375 000 000	1 275 000 000	1 200 000 000	1 100 000 000	1 025 000 000	925 000 000
Days	#	91	91	91	91	91	91	91
Fees	ZAR	724 457	686 985	637 022	599 551	549 588	512 116	462 154
Discount factors	Factor	0,63	0,61	0,60	0,59	0,57	0,56	0,55
Discounted fees	ZAR	454 994	421 537	381 678	351 188	314 554	286 241	252 118

Omsfin and Standard Bank		30-Jun-23	30-Sep-23	30-Dec-23	30-Mar-24	30-Jun-24	29-Sep-24	29-Dec-24
Repayments	ZAR	-75 000 000	-100 000 000	-27 500 000	-100 000 000	-27 500 000	-100 000 000	-27 500 000
Closing balance	ZAR	850 000 000	750 000 000	722 500 000	622 500 000	595 000 000	495 000 000	467 500 000
Days	#	91	91	91	91	91	91	91
Fees	ZAR	424 602	374 719	360 979	311 017	297 277	247 315	233 575
Discount factors	Factor	0,53	0,52	0,51	0,50	0,49	0,47	0,46
Discounted fees	ZAR	226 493	195 273	183 707	154 485	144 361	117 354	108 243





Appendix B  
Interest rate swap transaction executed on 8 April 2016 (Omsfin and Standard Bank) continued

Omsfin and Standard Bank		30-Mar-25	30-Jun-25	29-Sep-25	29-Dec-25	31-Mar-26	30-Jun-26	29-Sep-26
Repayments	ZAR	-	-27 500 000	-	-27 500 000	-	-27 500 000	-
Closing balance	ZAR	467 500 000	440 000 000	440 000 000	412 500 000	412 500 000	385 000 000	385 000 000
Days	#	91	91	91	91	91	91	91
Fees	ZAR	233 575	219 835	219 835	206 095	206 095	192 356	192 356
Discount factors	Factor	0,45	0,44	0,43	0,42	0,41	0,40	0,39
Discounted fees	ZAR	105 651	97 232	95 027	87 021	84 955	77 574	75 656

Omsfin and Standard Bank		30-Dec-26	31-Mar-27	30-Jun-27	30-Sep-27	30-Dec-27	30-Mar-28	30-Jun-28
Repayments	ZAR	-27 500 000	-	-27 500 000	-	-27 500 000	-	-27 500 000
Closing balance	ZAR	357 500 000	357 500 000	330 000 000	330 000 000	302 500 000	302 500 000	275 000 000
Days	#	91	91	91	91	91	91	91
Fees	ZAR	178 616	178 616	164 876	164 876	151 137	151 137	137 397
Discount factors	Factor	0,39	0,38	0,37	0,36	0,35	0,34	0,34
Discounted fees	ZAR	68 843	67 248	60 750	59 424	53 256	52 041	46 340

Omsfin and Standard Bank		29-Sep-28	29-Dec-28	30-Mar-29	30-Jun-29	29-Sep-29	29-Dec-29	31-Mar-30
Repayments	ZAR	-	-27 500 000	-	-27 500 000	-	-27 500 000	-
Closing balance	ZAR	275 000 000	247 500 000	247 500 000	220 000 000	220 000 000	192 500 000	192 500 000
Days	#	91	91	91	91	91	91	91
Fees	ZAR	137 397	123 657	123 657	109 918	109 918	96 178	96 178
Discount factors	Factor	0,33	0,32	0,32	0,31	0,30	0,30	0,29
Discounted fees	ZAR	45 370	39 960	39 088	34 050	33 355	28 578	27 971



## Appendix B

Interest rate swap transaction executed on 6 April 2016 (Omsfin and Standard Bank) continued

Omsfin and Standard Bank		30-Jun-30	29-Sep-30	30-Dec-30	31-Mar-31	30-Jun-31	30-Sep-31	30-Dec-31
Repayments	ZAR	-27 500 000	-	-27 500 000	-	-27 500 000	-	-27 500 000
Closing balance	ZAR	165 000 000	165 000 000	137 500 000	137 500 000	110 000 000	110 000 000	82 500 000
Days	#	91	91	91	91	91	91	91
Fees	ZAR	82 438	82 438	68 698	68 698	54 959	54 959	41 219
Discount factors	Factor	0,29	0,28	0,27	0,27	0,26	0,26	0,25
Discounted fees	ZAR	23 507	23 039	18 809	18 419	14 452	14 169	10 415

Omsfin and Standard Bank		30-Mar-32	30-Jun-32	29-Sep-32	29-Dec-32	30-Mar-33	30-Jun-33
Repayments	ZAR	-	-27 500 000	-	-27 500 000	-	-27 500 000
Closing balance	ZAR	82 500 000	55 000 000	55 000 000	27 500 000	27 500 000	-
Days	#	91	91	91	91	91	91
Fees	ZAR	41 219	27 479	27 479	13 740	13 740	-
Discount factors	Factor	0,25	0,24	0,24	0,23	0,23	0,23
Discounted fees	ZAR	10 202	6 675	6 548	3 211	3 147	-

## **REPORT 2(B) – EXHIBIT 55**



# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA

Vol. 426 Pretoria, 1 December 2000/1 Desember 2000  
No. 21817



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

## GOVERNMENT NOTICE

## DEPARTMENT OF PUBLIC ENTERPRISES

No. 1300

1 December 2000

**Pension Fund Rules**

I, Jeffrey Thamsanqa Radebe, Minister of Public Enterprises, acting under section 4A(2) and (5) of the Transnet Pension Fund Act, 1990 (Act No 62 of 1990) as amended by Transnet Pension Fund Amendment Act, 2000 (Act No 41 of 2000), hereby with the concurrence of the Minister of Finance establish a Pension Fund and publish the Rules of the Pension Fund as required by those sections.

**RULE 1: DEFINITIONS****1.1 words**

In these Rules, unless the context indicates otherwise, the following words bear the meanings assigned to them hereinafter:

**1.1.1 Act:** The Transnet Pension Fund Act, 1990 (Act 62 of 1990), as amended.

**1.1.2 Actuary:** The actuary of the Fund appointed in terms of Rule 4.14.1.

**1.1.3 Administration Committee:** The committee established in terms of Rule 4.7.1.

**1.1.4 Administrator:** The administrator appointed in terms of Rule 4.12.

**1.1.5 Approved Fund:** A Pension, Provident, Preservation or Retirement Annuity Fund approved as such by the Commissioner.

**1.1.6 Auditor:** The auditor as appointed in terms of Rule 4.16.

**1.1.7 Beneficiary:** Member, Dependant or Nominee.

**1.1.9 Commencement Date:** The date of publication of the notice in the Government Gazette as contemplated in section 14A of the Act.

**1.1.10 Death Benefits:** The benefits referred to in Rule 10.

**1.1.11 Death Multiple:** The multiple of the Member's salary to be paid as part of the Death Benefits as defined in Rule 10; provided that this multiple shall be dependent on the cost of benefits in relation to the Employer Contributions as defined in Rule 7.1.2; and provided further that this multiple shall be reviewed annually by the Trustees on the advice of the Actuary.

**1.1.12 Dependant :**

- (i) Qualifying Spouse;
- (ii) Qualifying child;
- (iii) any other person in respect of whom the Member is legally liable for maintenance, including if such person-;
- (iv) (a) was, in the opinion of the Trustees, upon the death of the Member in fact dependent on the Member for maintenance; or  
(b) a person in respect of whom the Member would have become legally liable for maintenance, had the Member not died.

**1.1.13 Disability Benefits:** The benefits in terms of Rule 9.

**1.1.14 Disability Proportion:** That 75% of the Disabled Members Pensionable Salary to be paid as a Disability Benefit on disability as defined in Rule 9; provided that this portion **will be dependant** on the cost of the benefit in

relation to the employer contributions as defined in Rule 7.1.2; and provided further that this portion shall be reviewed annually by the Trustees in the advice of the Actuary in terms of Rule 7.1.6.

- 1.1.15 **Disabled Member:** A Member in receipt of a benefit in terms of Rule 9.
- 1.1.16 **Eligible Employee:** An employee of an Employer who in terms of his/her conditions of service is obliged to become a Member of the Fund.
- 1.1.17 **Employer:** The Principal Employer and any other Employer which is a company which forms part of the group of companies as defined in section 14 of the Act which, on application, has been approved by the Trustees and the Principal Employer, subject to such conditions as determined by the Trustees and the Principal Employer, to qualify as an employer party to these Rules.
- 1.1.18 **Financial Year:** Any period of twelve months commencing on 1 April and ending on 31 March of the following year. The first financial year will start on Commencement date and ending on 31 March 2001.
- 1.1.19 **Financial Year-End: 31 March.**
- 1.1.20 **Fund:** The Transnet Retirement Fund.
- 1.1.21 **Insurer:** An insurer registered in terms of the Long Term Insurance Act, 1998 (Act 52 of 1998) to transact long term insurance business.
- 1.1.22 **Investment Committee:** The committee established in terms of Rule 4.7.2.
- 1.1.23 **Member:** A person who is a Member in terms of Rule 3.
- 1.1.24 **Member's Account:** The account referred to in Rule 5.1.



- 1.1.25 **Minister:** The Minister of Public Enterprises.
- 1.1.26 **Nominee:** Any person (natural or otherwise) appointed as such in writing by a Member in terms of these Rules.
- 1.1.27 **Normal Retirement Age:** The retirement age of a Member in terms of his/her conditions of service; provided that if no such age is specified, the normal retirement age of the Member shall be 63 (Sixty three) years.
- 1.1.28 **Normal Retirement Date:** The last day of the month in which a Member attains the Normal Retirement Age.
- 1.1.29 **Old Fund:** The Transnet Pension Fund established by the Transnet Pension Fund Act, 1990 ( Act 62 of 1990).
- 1.1.30 **Pensionable Salary :** The remuneration of a Member stipulated by his/her Employer to constitute "Pensionable Salary" subject to approval of the Principal Employer;
- 1.1.31 **Pensionable Service :**
- (i) The Member's number of years (and completed months) of Membership of the Fund, plus
  - (ii) If the Member was a Member of the Old Fund and elected to become a Member of the Fund the number of years (and completed months) of pensionable service recognised by the Old Fund in respect of such a Member at the date of joining the Fund, plus

- (iii) if the Member was transferred from another approved fund in terms of Rule 12.9, the pensionable service accumulated by such a Member from such other approved fund.

1.1.32 **Principal Employer:** Transnet Limited.

1.1.33 **Principal Officer:** The person appointed in terms of Rule 4.11.

1.1.34 **Qualifying Child:** A child legally adopted or a stepchild of a Member at the time of the Member's death and a child whom the Trustees believe would have been dependent upon the Member had the Member not died, Where the Trustees so direct, any other child may be included as qualifying child on terms and conditions agreed to by the Trustees.

1.1.35 **Qualifying Spouse:** The surviving spouse(s) of a Member or a Recognised Marital Union existing at the time of the death of the Member.

1.1.36 **Recognised Marital Union:** A legal marriage or a union according to Customary Law, Common Law or a union recognised by the Trustees in their sole discretion to be a recognised marital union.

1.1.37 **Registered Trade Union:** A trade union that has been duly registered with the Department of Labour.

1.1.38 **Reserve Account:** The account referred to in Rule 5.2.

1.1.39 **Trustees:** The Board of Trustees as constituted in terms of Rule 4 to manage the Fund.

1.1.40 Transfer Value: In relation to a Member of the Old Fund and who is an employee of an Employer or the Principal Employer who has elected to become a Member of the Fund, an amount as calculated in terms of a formula as determined by the Actuary and approved by the Principal Employer and Trustees.

## 1.2 Interpretation

1.2.1 In these Rules, unless the context dictates otherwise, words and expressions signifying the singular, shall include the plural and vice versa.

1.2.2 The decision of the Trustees regarding the meaning of or interpretation of these Rules or of any particular Rule or part of a Rule shall be final and binding on the Employer, Member and every other person entitled to a benefit in terms of these Rules.

## RULE 2: ESTABLISHMENT OF THE FUND

2.1 The Fund shall have legal personality and as such be capable of acquiring its own assets and of suing or being sued in its own name, and of doing all such things as may be necessary for, or incidental to the exercise of its powers or the performance of its functions in terms of these Rules.

2.2 The object of the Fund shall be to invest and administer the credit amounts in the Member Accounts and Reserve Accounts in respect of every Member for the benefit of such Member or their Dependents or Nominees as the case may be.

2.3 The registered office of the Fund shall be:

**Transnet Retirement Fund**

222 Smit Street

Johannesburg

Or such other address decided by the Trustees and notified in writing to the Minister.

- 2.4 Should the Fund be established after the Commencement Date, the Rules of the Fund shall be deemed to take effect on such later date.

**RULE 3: MEMBERSHIP**

- 3.1 Membership of the Fund shall commence from -

3.1.1 in the case of an Eligible Employee, who commences with his/her service with an Employer subsequent to the Commencement Date, at the date when he/she commences with such service or in the event that the approval as required in terms of Rule 1.1.17 had been granted at a date, subsequent to commencement of service, such later date; or

3.1.2 in the case of an employee who commenced with his/her service with an Employer prior to the Commencement Date and who is a Member of the Old Fund and who has elected within a period as decided by the Trustees, reckoned from the Commencement Date, to become a Member of the Fund retrospectively from the Commencement Date.

- 3.2 A Member shall produce such evidence as to the state of his/her health as the Trustees may require.

- 3.3 If, in the opinion of the Trustees such a Member is not in good health, he/she will be subject to such restrictions with regard to Disability Benefits and Death Benefits as the Trustees, acting on the advice of the Actuary, shall determine.

**RULE 4: MANAGEMENT OF THE FUND****4.1 Board of Trustees**

The management, control and administration of the Fund shall vest in a board of Trustees appointed in terms of Rules 4.2. and 4.3. The number of Trustees shall at no time be less than 7 (Seven). In the event that the recognised trade unions who are Registered Trade Unions do not appoint their Member Trustees as provided for in Rule 4.3 within 30 (Thirty) days of being requested thereto in writing by the Principal Officer, the Principal Employer may appoint such additional Trustees in order to comply with the minimum number of Trustees.

**4.2 Employer Trustees**

**4.2.1** The Principal Employer shall appoint an equal number of Trustees as provided for in 4.3 (and their alternates) by giving written notice to that effect to the Principal Officer.

**4.2.2** These Trustees will be known as Employer Trustees.

**4.2.3** An Employer Trustee shall hold office for a period of 48 (forty-eight) months after which period he/she may either be replaced or reappointed by the Principal Employer.

**4.2.4** An Employer Trustee may, at any time, be replaced by the Employer or he/she may resign from his/her position by giving the Employer and the other Trustees, 1 (one) month's written notice

#### 4.3 MEMBER Trustees

- 4.3.1 Every recognised trade union as at Commencement Date with which the Principal Employer has a recognition agreement and that is a Registered Trade Union, may appoint 1 (one) Trustees who is a Member of the Fund (and his/her alternate) by giving written notice to that effect to the Principal Officer.
- 4.3.2 Members not belonging to a recognised trade union, may collectively appoint 1 (one) Trustees who is a Member of the Fund (and his/her alternate) by giving written notice to that effect to the Principal Officer.
- 4.3.3 These Trustee appointed in terms of Rules 4.3.1 and 4.3.2 will be known as Member Trustees.
- 4.3.4 A Member Trustee shall hold office for a period of 48 (forty eight) months after which period he may either be replaced or reappointed by the constituency that appointed him/her.
- 4.3.5 A Member Trustee may, at any time, be replaced by the constituency that appointed him/her, or he/she may resign from his/her position by giving the Principal Officer and other Trustees 1 (one) month's written notice.

#### 4.4 Ability to act as Trustee

Any of the following persons shall be disqualified from being appointed or acting as a Trustee of the Fund:

- (i) a body corporate;
- (ii) a minor or any other person who is insane or otherwise incapable of acting as a Trustee;

- (iii) any person who is the subject of any order under the Companies Act, 1973 (Act 61 of 1973) disqualifying him from being a director;
- (iv) a Member Trustee who leaves the employment of an Employer;
- (v) save under authority of the Court -
  - a) an unrehabilitated insolvent
  - b) any person removed from an office of trust on account of misconduct;
  - c) any person who has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention of Corruption Act, 1958 (Act 60 of 1958), or any offence involving dishonesty or in connection with the promotion, formation or management of a company, and has been sentenced to imprisonment without the option of a fine or to a fine exceeding R1 00,00 (one hundred rand).

#### 4.5 Meetings of the Board of Trustees

- 4.5.1 The Trustees shall elect 1 (one) of their number at the first Trustee meeting of every Financial Year to act as the chairperson at all meetings of the Trustees during that Financial Year and a further Trustee as vice chairperson to act in the place of the chairperson in his/her absence.
- 4.5.2 In the absence of both the chairperson and vice chairperson from any meeting, the Trustees present shall elect one of their number to act as chairperson for that meeting.

- 4.5.3 The Trustees shall meet at least once a quarter and from time to time if necessary to conduct the business of the Fund.
- 4.5.4 A quorum at any meeting of the board of Trustees shall be constituted when at least two thirds of the board are present at a duly convened Trustees meeting. In the event that no quorum is present, within "half an hour after the time appointed for the meeting, the meeting shall stand adjourned to a day not earlier than seven days and not later than twenty-one days after the date of the meeting and if at such adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting the Trustees present in person or by proxy shall be a quorum.
- 4.5.5 All Trustees must be informed, in writing, at least 15 (fifteen) days prior to the date of any meeting of the board of Trustees unless all the Trustees agree on a shorter period.
- 4.5.6 The chairperson or vice-chairperson of the Trustees or any 3 (three) or more Trustees may instruct the Principal Officer to convene a meeting in terms of Rule 4.5.5.
- 4.5.7 At all meetings resolutions shall be made by a majority vote.
- 4.5.8 A resolution shall be regarded to have been made by a majority vote if the Trustees present at a duly constituted meeting of the board of Trustees voted in favor of the resolution. In the event of a deadlock, Rule 15 shall apply.
- 4.5.9 Voting shall be by show of hands by the Trustees, provided that if at least 2 (two) Trustees require that a voting by ballot be held, the voting shall be by ballot.



4.5.10 A resolution in writing signed by all of the Trustees or their alternates shall be effective as if it had been passed at a meeting of the **Trustees** duly convened and held.

4.5.11 Any resolution passed in terms of Rule 4.5.10 shall be minuted at the first meeting of Trustees held after the passing of such resolution.

#### 4.6 Powers of the Board of Trustees

**Subject to the provisions** of the Act, the Trustees shall be empowered to carry out the objectives and purposes of the Fund in accordance with the Rules and, without prejudice to the general purport of this provision, shall have the following powers:

- (i) to receive, administer and invest the monies of the Fund;
- (ii) to contract on behalf of the Fund and to sign such contract or other document on behalf of the Fund;
- (iii) to institute and defend any legal or administrative action, application or process for or against the Fund and to conduct, oversee, defend, settle or abandon such action or application;
- (iv) to raise, borrow or lend moneys, at interest or otherwise, for the purposes of the Fund; provided that borrowing shall be limited to temporary loans for bridging unforeseen cash shortages or for taking advantage of attractive investment opportunities;
- (v) to acquire, hold, alienate or otherwise deal with any movable or immovable property of the Fund subject to the provisions of the Act;

- (vi) to invest, lend, place on deposit, make advances of, or otherwise deal with all moneys of the Fund upon such securities and in such manner as they may determine from time to time; and, in particular, to invest the whole or part of the moneys of the Fund, for such period and on such terms as they may determine, in an investment policy "issued by an Insurer; provided that the Trustees may delegate their powers to make investments of any nature to any 1 (one) or more of their Members, or to a financial institution as defined in the Financial Institutions (Investment of Funds) Act, 1984 (Act 39 of 1984), or to a person approved in terms of section 4(1)(9) of the Stock Exchanges Control Act, 1985 (Act 1 of 1985), and may defray expenses incurred as a result of such delegation out of the moneys of the Fund;
- (vii) to insure with an insurer any benefits provided by the Fund to its Members or any potential liabilities that may be incurred by the Fund;
- (viii) to delegate any of their powers and functions to a sub-committee or any other person, subject to any conditions they may determine;
- (ix) to make, amend and rescind the regulations in respect of any matter concerning the Fund, which shall be binding on the Trustees, Members, Dependants and Nominees, provided that such regulations do not conflict with the existing Rules and the Act;
- (x) to insure the Trustees and all other officials (including the Principal officer and secretary) of the Fund against claims for damages arising from the negligent performance or non-performance of their functions, acting collectively or individually, excluding damages arising from dishonest and fraudulent conduct on the part of the Trustees or such other officials;
- (xi) to take, generally, such steps as are, in their discretion, conducive to the attainment of the objectives of the Fund.

- (xii) To transfer the assets and liabilities of the transferring Members of the Fund or part thereof to another Approved Fund or to take transfer of the assets and liabilities or part thereof of another Approved Fund as approved by the Principal Employer.

#### 4.7 Appointment of Committees

Without derogating from the powers of the Trustees in terms of the Rules, the Trustees may appoint –

##### 4.7.1 an Administration Committee which shall consist of -

4 (four) persons (and their alternates), of whom at least 2 (two) must be Trustees or their alternates, as the Trustees may deem fit;

##### 4.7.2 an Investment Committee, which shall consist of -

such persons as the Trustees may determine from time to time, but not less than 5 (five) (and their alternates), of whom at least 2 (two) must be Trustees or their alternates, as the Trustees may deem fit;

##### 4.7.3 such other committees as appointed by the Trustees.

#### 4.8 Termination of appointments

The Trustees may in their sole discretion terminate the appointment of Members or alternates of the Administration Committee and of the Investment Committee, or any other committee established in terms of Rule 4.7.3.

#### 4.9 Powers of appointed Committees

##### 4.9.1 Administration Committee

The Administration Committee shall-

- (i) consider cases in which Members apply for Disability Benefits in terms of Rule 9 and make decisions in connection therewith as the Administration Committee deems fit;
- (ii) attempt to settle all disputes in respect of contributions and benefits falling which the provisions of Rule 15 shall apply;
- (iii) authorise the payment of all Death Benefits, including payments to a guardian of a minor or to a curator of a person under curatorship or legal disability ; and
- (iv) perform any other duties prescribed by the Trustees or these Rules.

##### 4.9.2 Investment Committee

The Investment Committee shall-

- (i) subject to guidelines prescribed by the Trustees and the requirements of the Pension Fund Act, 1956 (Act 24 of 1956), invest or cause to be invested the moneys of the Fund not immediately required for current expenses and benefit payments;
- (ii) submit reports on the investments to the Trustees at such intervals and in such form as the Trustees may prescribe;

- (iii) keep complete accounts, records and minutes of all actions taken in the performance of its functions and the exercise of its powers; and
- (iv) be allowed to make use of the services of portfolio managers not in the salaried employment of the Fund or the Employer.

#### 4.9.3 **Other Committees**

Other Committees appointed in terms of Rule 4.9.3 shall have powers as decided by the Trustees and conveyed to such Committee in writing.

#### 4.10 **Procedures at Committee Meetings**

4.10.1 The chairperson of each of the Administration Committee and of the Investment Committee shall be appointed by the Members of such committees at the commencement of every Financial Year.

4.10.2 A quorum at the meetings of the Administration Committee and the Investment Committee, shall be a majority of Members of such a committee.

4.10.3 Any resolution shall be made by a majority vote at a duly constituted meeting

#### 4.11 **Appointment of Principal Officer**

4.11.1 The Trustees will appoint a Principal Officer from time to time. The first Principal Officer shall be the Executive Manager of the Old Fund immediately prior to the Commencement Date of the Fund. Such appointment shall endure for a period not exceeding 12 (twelve) months calculated from the Commencement Date.

4.11.2 Any appointment of a Principal Officer may be revoked or amended by the Trustees in their sole discretion.

4.11.3 The Trustees shall inform the Principal Employer of the name of the Principal Officer within 30 (thirty) days of his/her appointment.

4.11.4 If the Principal Officer is absent from the Republic of South Africa for a period exceeding 30 (thirty) days or is otherwise unable to perform his/her duties, the Trustees shall appoint another person to act as principal officer during the period of his/her absence or disability and the Principal Employer shall be informed of the substituted appointment within 30 (thirty) days of such appointment.

#### **4.12 Appointment of Administrator**

4.12.1 The Trustees, subject to the approval of the Principal Employer, shall appoint the Administrator of the Fund for such periods and on such terms as shall be agreed between the Trustees, the Principal Employer and the Administrator.

4.12.2 The Fund shall be administered by the Administrator acting on the instructions of the Trustees.

4.12.3 The Administrator shall keep a complete record of all necessary particulars of the Member and beneficiaries of the Fund and of all other matters essential to the operation of the Fund.

4.12.4 The Administrator shall keep full and true accounts of the Fund as required in terms of Rule 4.13.

4.12.5 All cheques, contracts and other documents pertaining to the Fund shall be signed by such persons designated by the Administrator and the Trustees by resolution.

4.12.6 The Administrator shall maintain professional indemnity cover to indemnify the Fund against any loss resulting from theft, negligence, dishonesty or fraud by any person employed by it to administer the Fund.

#### 4.13 Books of Account

4.13.1 The Trustees shall ensure that such accounts, entries, registers and records as are necessary for the proper management of the Fund are kept in accordance with generally accepted accounting practice.

4.13.2 The books of account must be closed off at every Financial Year End and be audited by the Auditor of the Fund.

4.13.3 The accounts shall be approved by the Trustees and a copy thereof shall be available for inspection by Members of the Fund and any other person having an interest in the Fund.

#### 4.14 Actuary

4.14.1 The Trustees shall appoint an Actuary who shall be the valuator of the Fund in terms of the Act.

4.14.2 The appointment of an Actuary in terms of Rule 4.14.1 shall remain in force until terminated by the Trustees.

#### 4.15 Actuarial Valuations

- 4.15.1 The Trustees shall ensure that such registers and records be kept which shall enable the Actuary to undertake an actuarial valuation of the Fund at any time.
- 4.15.2 The Fund shall be valued by the Actuary at intervals not exceeding 3 (three) years, the first such valuation to be done not later than the third Financial year-end following the Commencement Date.
- 4.15.3 The Actuary shall submit a valuation report to the Trustees within 12 (twelve) months of the date of valuation, which report shall contain recommendations in respect of the financial position of the Fund.
- 4.15.4 The Trustees shall send a copy of such report to the Employer and Minister within the period of 12 (twelve) months referred to in Rule 4.15.3 and shall indicate to the Minister if deemed necessary the action they and/or the Employer propose taking with regard to any recommendation made by the Actuary in his report.

#### 4.16 Auditor

The Trustees shall appoint an Auditor for each Financial Year. The first Auditor shall be appointed at the first meeting of the Board or Trustees after the Commencement Date. At each first meeting thereafter of every Financial Year the Trustees shall appoint an Auditor for the Financial Year. The Trustees shall notify the Principal Employer thereof within 30 days of the appointment of the Auditor.



#### **4.17 Records and safe custody of securities**

4.17.1 The Trustees shall ensure that complete records are kept of all the necessary particulars of the Members and any other persons entitled to benefits and of all other matters essential to the efficient administration of the Fund.

4.17.2 All mortgage bonds, title deeds and other securities belonging to or held by the Fund shall, unless temporarily held in custody by approved custodians for the purposes of the Fund, be stored in safe custody in a safe or strongroom at the registered office of the Fund or with any registered financial institution approved by the Trustees.

#### **4.18 Fidelity Insurance**

The Trustees shall ensure that the Fund is sufficiently protected against loss owing to theft, negligence, dishonesty or fraud of any of its officials either by means of a policy of insurance or such other indemnification as the Trustees may allow.

#### **4.19 Expenses**

4.19.1 The expenses related to the Trustee meetings, management and administration (including legal costs) of the Fund, including the cost of audits and actuarial investigations shall be defrayed out of the 4,5% (four comma five per cent) contribution by the Employer as referred to Rule 7.1.2.

4.19.2 The expenses related to the asset management of the Fund shall be borne by the Fund.

## RULE 5: ACCOUNTS

5.1 **Member's Account**

A Members' Account shall be debited and credited with the following:

**Credits**

- 5.1.1 The Member Transfer value in respect of Members who elected to transfer from the Old Fund in terms of Rule 6.1.2 or who elected to transfer in terms of Rule 12.9 to the Fund
- 5.1.2 The amount referred to in Rule 12.1
- 5.1.3 Any transfer amount from any other fund;
- 5.1.4 The contributions in terms of Rules 6.1.3 and 6.1.4 paid by the Member to the Fund from the date of becoming a Member of the Fund
- 5.1.5 The Employer contributions in terms of Rule 7.1.1 paid to the Fund in respect of the Members from the date of the Member becoming a Member of the Fund;
- 5.1.6 The investment returns (including any capital reduction as the case may be) as determined by the Trustees on the advice of the Actuary on the amounts referred to in Rules 5.1.1 to 5.1.5 which stand to the credit of a Member.

**Debits**

- 5.1.7 The full Members account on retirement in terms of Rule 8;
- 5.1.8 The full Members Account on withdrawal in terms of Rule 11.1;
- 5.1.9 The full Members Account on death in terms of Rule 10,1;
- 5.1.10 The investment returns (including any capital reduction as the case may be) as determined by the Trustees on the advice of the Actuary on the amounts referred to in Rules 5.1.7 to 5.1.9 which stand to the debit of a Member.

**5.2 Reserve Account**

The Reserve Account shall be credited and debited with the following:

**Credits**

- 5.2.1 The contributions in terms of Rule 7.1.2;
- 5.2.2 Any other contributions the Employer may choose to make in terms of Rule 7.1.7
- 5.2.3 the investment returns (including any capital reduction as the case may be) as determined by the Trustees on the advice of the Actuary on the amounts referred to in Rule 5.2.1 and 5.2.2 which stand to the credit of the Reserve Account.

**Debits**

- 5.2.4 Expenses in terms of Rule 4.19.1;
  - 5.2.5 the amount in terms of Rule 10.1(i) on the death of a Member;
  - 5.2.6 the amount and expenses in terms of Rule 9.2 and 9.4.1 on the disablement of a Member;
  - 5.2.7 the investment returns (including any capital reduction as the case may be) as determined by the Trustees on the advice of the Actuary on the amounts referred to in Rule 5.2.4 to 5.2.6 which stand to the debit of the Reserve Account.
- 5.3 Any amounts not allocated to either the Member or Reserve Accounts shall be dealt with by the Trustees in their sole discretion on the advice of the Actuary.

**RULE 6: MEMBER CONTRIBUTIONS****6.1 Member Contributions**

- 6.1.1 Members referred to in Rules 3.1.1 and 3.1.2 shall be obliged to contribute to the Fund.
- 6.1.2 A Member of the Old Fund, who elected to join the Fund, shall cause the Transfer Value to be transferred to the Fund by giving the Fund written notice of his/her election.
- 6.1.3 The contribution by Members in terms of Rule 6.1.1 shall be 1/13 (one thirteenth) monthly of 7,5% (seven comma five per cent) of the Members' annual Pensionable Salary save that in the month when the Members' annual service bonus is payable, the contribution will be 2/13 (two

thirteenthths) of 7,5% (seven comma five per cent) of the annual Pensionable Salary.

- 6.1.4 A Member may increase his contribution as referred to in Rule 6.1.3 subject to such contributions as agreed between the Principal Employer and the Member.
- 6.1.5 Every Member's contribution shall be deducted by the Employer from the Member's salary or wages monthly and paid to the Fund not later than 7 (seven) days from the end of the calendar month to which such contributions relate
- 6.1.6 In the event of a Member being on unpaid leave with the consent of the Employer, the Member may nevertheless continue to contribute his/her contribution as referred to in Rule 6.1.3 and 6.1.4, subject thereto that it shall be such Member's own responsibility to ensure that such contributions are paid to the Fund.
- 6.1.7 For as long as the Member is entitled to Disability Benefits in terms of Rule 9, the Member will remain a Member of the Fund and his/her contribution to the Member's Account will be deducted from the Disability Benefits payable to such a Member. The contributions will be based on the Member's Pensionable Salary.

## 6.2 Payment of Contributions

- 6.2.1 The Member's contributions in terms of Rule 6.1, shall be paid by the Employer to the Fund within a period of 7 (seven) days from the end of the calendar month to which such contributions relate.
- 6.2.2 The Principal Officer shall immediately notify the Employer should payment not be made within a period of 30 (thirty) days from the end of the calendar month to which such contributions relate.

**RULE 7: EMPLOYER'S CONTRIBUTIONS****7.1 Contributions**

The Employer shall contribute:

- 7.1.1 **a monthly amount** equal to  $1/13$ th (one thirteenth) of 7,5% (seven comma five per cent) of the annual Pensionable Salary of every Member referred to in Rule 3.1.1 and 3.1.2 to the fund in terms of retirement benefits, save that in the month when the Member's annual service bonus is payable, the contribution will be  $2/13$ ths (two thirteenths) of 7,5% (seven comma five per cent) of the annual Pensionable Salary; and
- 7.1.2 **a monthly amount** equal to  $1/13^*$  (one thirteenth) of 4,5% (four comma five per cent) of the annual Pensionable Salary of every Member referred to in Rule 3.1.1 and 3.1.2 to the fund in respect of provision for disability benefits, death benefits (and expenses of the fund in terms of Rule 4.19.1) save that in the month when the Member's annual service bonus is payable, the contribution is  $2/13$  (two thirteenths) of 4,5% (four comma five per cent) of the annual Pensionable Salary.
- 7.1.3 The amounts referred to in 7.1.1 and 7.1.2 as contribution by the Employer to the Fund, shall not be deducted from a Member's Pensionable Salary but shall be an amount paid by the Employer monthly as calculated in terms of the aforementioned Rules.
- 7.1.4 In the event of a Member being on unpaid leave with the consent of the Employer, for any period, the Employer shall not be obliged to contribute the amounts referred to in Rule 7.1.1 in respect of such a Member

(subject to the conditions of service between the Member and the Employer to the contrary) until such a Member has resumed his/her service with the Employer but the Employer shall nevertheless be obliged to contribute the amount referred to in Rule 7.1.2 to the Fund.

7.1.5 In the event of a Member receiving Disability Benefits in terms of Rule 9, the Employer shall nevertheless be obliged to continue to contribute the amounts referred to in Rules 7.1.1 and 7.1.2 in respect of such a Member.

7.1.6 The total Employer contribution in respect of Rule 7.1.2 is limited to the amount specified in that Rule. If the cost of Disability Benefits, Death Benefits and expenses in terms of Rule 4.19.1 exceed the amount stipulated in Rule 7.1.2, the DISABILITY and / or Death Benefits for future deaths and disabilities will decrease, in accordance with the advice of the Actuary.

7.1.7 The Employer may from time to time make additional contributions to the Fund in order to increase the balance in the Reserve Account in consultation with the Actuary and subject to the approval of the Principal Employer.

## 7.2 Payment of Contributions

7.2.1 The Employers' contributions in terms of Rule 7.1, shall be paid by the Employer to the Fund within a period of 7 (seven) days from the end of the calendar month to which such contributions relate.

7.2.2 The Principal Officer shall immediately notify the Principal Employer should payment not be made within a period of 30 (thirty) days from the end of the calendar month to which such contributions relate.

**RULE 8: RETIREMENT BENEFITS****8.1 Benefit**

- 8.1.1 A Member shall be obliged to retire at the Normal Retirement Date in which event a benefit in terms of Rule 8.1.5 shall become payable to such a Member as from such date.
- 8.1.2 In the event of a Member who is not entitled to benefits in terms of Rule 9 and who retires before the Normal Retirement Date due to ill-health as approved by the Trustees, a benefit in terms of Rule 8.1.5 shall become payable to such a Member as from such accelerated retirement date.
- 8.1.3 A Member who resigns, or is dismissed at any time during a period of 3 (three) years prior to Normal Retirement Age shall be deemed to have retired for purposes of these Rules.
- 8.1.4 A Member may retire early in terms of his conditions of employment or agreements reached.
- 8.1.5 A Member who retires in terms of Rule 8.1.1, 8.1.2, 8.1.3 or 8.1.4 shall be entitled to a lump sum and an annuity vesting on the last day of the month in which he/she retires calculated as follows:
- (i) not more than  $\frac{1}{3}$  (one third) of the credit amount in the Member's Account (as elected in writing by the Member) at date of retirement paid as a lump sum; and
  - (ii) the balance of the amount in the Member's Account as instructed by the Member in writing, to be used to purchase an annuity on behalf of the Member from an Insurer or Approved Fund of the Member's



choice. In such event the Member shall have no further claim against the Fund, the Employer or Principal Employer in respect of any annuity purchased from an Insurer or Approved Fund in terms of this Rule.

## 8.2 Manner of Payment

Annuities payable on retirement in terms of these Rules must be payable in arrear in monthly installments commencing on the last day of the month following the date of retirement, (or at the discretion of the Trustees and subject to the approval of the Commissioner in which case the annuities may be payable on some other basis).

## RULE 9: DISABILITY BENEFITS

### 9.1 Eligibility

9.1.1 A Member is totally disabled if, in the opinion of both the Employer and the Administration Committee (which shall consider the recommendation of a suitably qualified medical professional), he or she is by reason of infirmity of mind or body (whether temporarily or permanently) totally incapable of discharging efficiently

- (i) his or her duties; and
- (ii) any other duties which he or she may reasonably be expected to perform for the Employer, taking into account his or her age, training, remuneration, work experience, education and potential for re-training.

9.1.2 A Member is partially disabled if, in the opinion of both the Employer and the Administration Committee (which shall consider the recommendation of a suitably qualified medical professional), he or she is by reason of infirmity of mind or body (whether temporarily or permanently) partially incapable of discharging efficiently

- (i) his or her duties; and
- (ii) any other duties which he or she may reasonably be expected to perform for the Employer, taking into account his or her age, training, remuneration, work experience, education and potential for re-training.

9.1.3 A Member shall be entitled to receive a benefit in terms of this Rule 9 for the period referred to in Rule 9.3 below, and subject to any restriction in terms of Rule 3.3 and any limitations in terms of Rule 12.6) if he or she is totally disabled or partially disabled.

9.1.4 Any dispute arising out of the application of aforementioned Rules must be dealt with in terms of Rule 15.

## 9.2 Amount and Conditions of Benefit

9.2.1 A Member who is totally disabled shall receive a monthly benefit equal to  $\frac{1}{12}$ <sup>th</sup> of the Disability Proportion of the member's Pensionable Salary immediately prior to becoming totally disabled.

9.2.2 A Member who is partially disabled shall receive a monthly benefit equal to  $\frac{1}{12}$ <sup>th</sup> of the Disability Proportion of the Member's Pensionable Salary immediately prior to becoming partially disabled, multiplied by a "Degree

of Disability Factor". The "Degree of Disability Factor" shall be determined by the Administration Committee (which shall consider the recommendation of a suitably qualified medical professional appointed by the Administration Committee who shall apply principles agreed with the Administration Committee) and must reflect the extent to which the Member is incapable of discharging efficiently the duties contemplated in 9.1.1 and 9.1.2; provided that, if the partially disabled Member remains in the employ of the Employer, the benefit in terms of this Rule 9.2.2 shall not exceed the difference between the Disability Proportion multiplied by the Member's Pensionable Salary immediately prior to becoming partially disabled and the amount of remuneration which the Member continues to receive from the Employer.

9.2.3 There shall be a waiting period of 3 months before any disability benefit shall be payable, such period being reckoned from the last day of full time employment.

9.2.4 The benefit in payment may be increased as may be decided by the Trustees from time to time in consultation with the Actuary.

9.2.5 The cost of providing the Disability Benefits in terms of this Rule 9 shall be met from the Reserve Account.

9.2.6 The Employer shall pay the costs of any reasonable initial medical examination, reports and evidence. Further medical costs required by the Administration Committee will be borne by the Fund.

### 9.3 Duration of Benefit

9.3.1 The Member shall be entitled to Disability Benefits as contemplated under Rule 9.2.1 or 9.2.2 as from a date determined by the Administration Committee until:

- (i) the Normal Retirement **Date**; or earlier termination *of employment but* not later than normal retirement date.
- (ii) the Administration Committee is of the opinion that the conditions for a Disability Benefit to be payable as set out in Rules 9.1.1 and 9.1.2 no longer apply, having received evidence from medical examination(s) conducted at intervals determined by the Administration Committee; or
- (iii) evidence is brought to the attention of the Administration Committee that he/she is receiving income by virtue of being employed elsewhere, having neglected to inform the Administration Committee of such income in terms of Rule 9.4.3; or
- (iv) death if it occurs prior to Normal Retirement Age,

Whereafter the Disability Benefits will cease, or shall be adjusted in terms of Rule 9.4.1, 9.4.2 and 9.4.3.

#### 9.4 Proof of Continued Disability

- 9.4.1 A Member receiving Disability Benefits as contemplated under Rule 9.2.1 may be required by the Administration Committee to undergo further medical examinations at intervals determined by the Administration Committee. The cost of such examinations shall be borne by the Fund. If, in the opinion of the Administration Committee, the Member is no longer totally disabled, but rather partially disabled, the Administration Committee may, in its sole discretion, determine that Disability Benefits shall be paid as contemplated under Rule 9.2.2 from a date determined by the Administration Committee.
- 9.4.2 The Administration Committee may review the Degree of Disability Factor (as contemplated in Rule 9.2.2) upon considering evidence from medical examinations conducted at intervals determined by the Administration

Committee. An increased or decreased Degree of Disability Factor shall be applied in order to determine benefits as contemplated under Rule 9.2.2 as from a date determined by the Administration Committee.

9.4.3 If a Member receiving benefits under Rule 9.2.1 or 9.2.2 at any stage starts to receive income by virtue of being employed elsewhere, such Member shall notify the Employer and the Administration Committee immediately and the Administration Committee will determine revised benefits as determined by the Trustees from time to time. Failure to do so will give the Administration Committee the right to decrease or suspend all benefits payable to the Member under this Rule 9, and further to claim back any benefits already paid to the Member whilst he/she did receive such income.

9.4.4 In the event of Rule 7.1.6 being applied, the Trustees shall be entitled to reduce Disability Benefits in respect of Members who are not already receiving such benefits, on the advice of the Actuary.

#### **RULE 10: DEATH BENEFITS**

10.1 In the event of the death of a Member whilst in service with the Employer and prior to Normal Retirement Date, an amount equal to the sum of:

- (i) a lump sum equal to the Death Multiple times the annual Pensionable Salary, subject to Rule 3.3 and Rule 12.6; and
- (ii) the total amount in the Member's Account.

shall be payable to the Dependents and/or the Nominees of such a deceased Member and shall not form part of the assets in the estate of such a Member (subject to Rule 10.4 (iv)). It is provided in terms of Rules 10.4 (vi) and 10.4 (vii) that the Trustees may pay the amounts in some other manner than an immediate lump sum.

- 10.2 In the event of Rule 7.1.6 being applied, the Trustees shall be entitled to reduce Death Benefits for Members, as determined by the Actuary.
- 10.3 For the purposes of Rule 10, a Disabled Member will be treated as a Member, and the Pensionable Salary of the Disabled Member will be taken into account for the purposes of determining the amount of Death Benefits.
- 10.4 The manner of payment of the amount referred to in Rule 10.1 shall be as follows :
- (i) If the Fund within 12 (twelve) months of the death of the Member becomes aware of or traces a Dependant or Dependents of the Member, the benefit shall be paid to such Dependant or, as may be deemed equitable by the Trustees, to 1 (one) of such Dependents or in proportions to some of or all such Dependents.
  - (ii) If the Fund does not become aware of or cannot trace any Dependant of the Member within 12 (twelve) months of the death of the Member, and the Member has designated in writing to the Fund a Nominee who is not a Dependant of the Member, to receive the benefit or such portion of the benefit as is specified by the Member in writing to the Fund, the benefit or such portion of the benefit shall be paid to such Nominee: Provided that where the aggregate amount of the debts in the estate of the Member exceeds the aggregate amount of the assets in his estate, so much of the benefit as is equal to the difference between such aggregate amount of debts and such aggregate amount of assets shall be paid into the estate and the balance of such benefit or the balance of such portion of the benefit as specified by the Member in writing to the Fund shall be paid to the Nominee.

- (iii) If a Member has a Dependant and the Member has *also* designated in writing to the Fund a Nominee to receive the benefit or such portion of the benefit as is specified by the Member in writing to the Fund, the Fund shall within 12 (twelve) months of the death of such Member pay the benefit or such portion thereof to such Dependant or Nominee in such proportions as the Trustees may deem equitable: Provided that this paragraph shall not prohibit the Fund from paying the benefit, either to a Dependant or Nominee contemplated in this paragraph or, if there is more than 1 (one) such Dependant or Nominee, in proportions to any or all of those Dependents and Nominees.
- (iv) If the Fund does not become aware of or cannot trace any Dependant of the Member within 12 (twelve) months of the death of the Member and if the Member has not designated a Nominee or if the Member has designated a Nominee to receive a portion of the benefit in writing to the Fund, the benefit or the remaining portion of the benefit after payment to the designated Nominee, shall be paid into the estate of the Member or, if no inventory in respect of the Member has been received by the Master of the High Court, in terms of section 9 of the Administration of Estates Act, 1965 (Act 66 of 1965), into the Guardian's Fund.
- (v) For the purposes of this Rule 10.1, a payment by the Fund to a trustee contemplated in the Trust Property Control, 1988 (Act 57 of 1988), for the benefit of a Dependant or Nominee shall be deemed to be a payment to such Dependant or Nominee.
- (vi) Any benefit payable to a minor Dependant or minor Nominee, may be paid in more than 1 (one) payment in such amounts as the Trustees may from time to time consider appropriate and in the best interests of such Dependant or Nominee: Provided that interest at a reasonable rate, having regard to the investment return earned by the Fund, shall be added to the outstanding

balance at such times as the Trustees may determine: Provided further that any balance owing to such a **Dependant** or **Nominee** at the date on which he or she attains majority or dies, whichever occurs first, shall be paid in full.

(vii) Any benefit payable to a major **Dependant** or major **Nominee**, maybe paid in more than 1 (one) payment if the **Dependant** or **Nominee** has consented thereto in writing : Provided that-

- (a) the amount of the payments, intervals of payment, interest to be added and other terms and conditions are disclosed in a" written agreement;
- (b) the agreement may be cancelled by either party on written notice not exceeding 90 days; and
- (c) if the agreement contemplated in paragraph (a) is cancelled the balance of the benefit shall be paid to the **Dependant** or **Nominee** in full.

#### **RULE 11: WITHDRAWAL BENEFITS**

11.1 if the service of a Member is terminated before retirement due to resignation, the Member is entitled to the total amount in his/her Members Account at the date of termination of his/her service subject to the provisions of Rule 8.1.3.. 12.1 2 and 12.3.

11.2 If the service of a Member is terminated before retirement due to dismissal or retrenchment, the Member is entitled to the total amount in his/her Members Account at the date of termination of his/her service but subject to the provisions of Rule 8.1.3 and 12.3.



11.3 A Member whose service has been terminated as contemplated in Rule 11.1 or 11.2 may elect in writing prior to termination date to transfer all or part of the benefit to which he/she has become entitled to in terms of this Rule, to another Approved Fund.

11.4 Payment in terms of this Rule shall be made as soon as possible after termination of services subject to Rule 12.1.2.

## RULE 12: GENERAL PROVISIONS

### 12.1 Incentive Payment

12.1.1 Every Member of the Old Fund who transfers to the Fund shall, receive an additional amount equal to 4.7% of such a Member's Transfer Value in order to induce Members of the Old Fund to transfer to the Fund which amount shall be paid by the Principal Employer on or before the date of transfer.

12.1.2 A Member of the Old Fund who elected to transfer to the Fund shall only be entitled to the additional amount referred to in Rule 12.1.1, together with any positive or negative return thereon, after expiry of 12 (twelve) months reckoned from the date of transfer irrespective of whether such a Member is still in the employment of the Employer.

### 12.2 Proof Of Age

Proof of age to the satisfaction of the Trustees is required in respect of a Member and of any other person to whom a benefit may be payable in terms of these Rules, before the payment of any benefit is to be made, unless the Trustees specify otherwise.

### 12.3 Prior Right To Benefits

**Any benefit payable to a Beneficiary in terms** of these Rules upon a Member's termination of service for any reason, is subject to a deduction in respect of -

- 12.3.1 any sum owing to the Employer by the Member for a housing loan granted to the Member in respect of a dwelling or land purchased by the Member;
- 12.3.2 any amount for which the Fund (or the Employer) is liable under a suretyship furnished in respect of a loan granted by some other person or body to the Member in respect of a dwelling or land purchased by the Member;
- 12.3.3 any amount advanced by the Employer to a Member in terms of a written loan agreement concluded between the Employer and a Member; and
- 12.3.4 compensation (including legal costs recoverable from the Member) in respect of any loss suffered by the Fund or the Employer as a result of any theft, misconduct, fraud or dishonesty on the Member's part for which the Member has admitted liability in writing or in respect of which the Employer has obtained a court judgement.

### 12.4 Moneys Not To Revert to Employer

No amount contributed by the Employer shall revert to or become the property of the Employer.

**12.5 Alienation of Benefits**

- 12.5.1 Subject to section 7 of the Divorce Act, 1979 (Act 70 of 1979) and section 9 and 10 of the Act, no benefit or right under the Fund shall be capable of being ceded, pledged or assigned nor shall any such benefit be subject to any form of attachment or execution.
- 12.5.2 No Beneficiary shall alienate any benefit or right to any benefit unless permitted by Rule 12.5.
- 12.5.3 Any act of insolvency or any attempt by any Dependant or Nominee to alienate any "benefit or right to any benefit (unless permitted by Rule 12.5) shall result in such benefit being withheld or suspended.
- 12.5.4 In the event of the benefit being withheld or suspended in terms of Rule 12.5.3, it shall thereupon become payable in such manner as the Trustees in their sole discretion may deem fit.

**12.6 Re-insurance Of Disability Benefits And Death Benefits**

- 12.6.1 This Rule shall apply notwithstanding anything to the contrary contained in Rules 9 and 10.
- 12.6.2 The Trustees may after consultation, with the Actuary reinsure the Disability Benefits and Death Benefits described in these Rules with an Insurer by utilising moneys in the Reserve Account.
- 12.6.3 The Disability Benefits and Death Benefits paid by the Insurer to the Fund shall be subject to such limitations and conditions as imposed by the Insurer concerned.

- 12.6.4 Where the Disability Benefits and Death Benefits paid by the Insurer is less than the benefit in terms of these Rules or where the Insurer refuses a claim on lawful grounds, the Member's benefit shall be reduced to the benefit paid to the Fund by the Insurer if at all.
- 12.6.5 Should the Member's benefit reduce in terms of Rule 12.6.4, the Trustees may in their discretion, after consultation with the Actuary, pay the balance of the benefit or the full benefit that would have been payable were it not for the provisions of Rule 12.6.4.
- 12.6.6 Any Member in respect of whom the benefits in terms of Rule 12.6.4, is restricted, shall be informed of the extent of such restriction by the Trustees.
- 12.6.7 For purposes of this Rule 12.6, the reference to reinsurance of Death Benefits shall not include a Member's accumulated credit in his/her Member's Account to which a Member will be entitled in addition to the reinsured Death Benefits.

## 12.7 Unclaimed Benefits

- 12.7.1 If a Beneficiary does not claim benefits payable to him/her in terms of the Rules, such benefits shall remain in the Fund and shall only become payable provided the Trustees are satisfied that a valid claim has been submitted within a period of 5 (five) years reckoned from the date upon which the Beneficiary becomes entitled to the benefit in terms of these Rules. Subsequent to the expiring of the 5 (five) year period, such benefits will be transferred to the Reserve Account.
- 12.7.2 In the event of the death of a Member, the provisions of Rule 10.4 (iv) shall apply.

**12.8 Payment of Benefits**

- 12.8.1 Whenever a benefit becomes payable to any Beneficiary, the benefit will be paid by means of an electronic fund transfer to the beneficiaries account in a banking institution, the details of which have been furnished by the Employer or the Beneficiary to the Trustees.
- 12.8.2 The Employer or the Beneficiary may however specifically request that the benefit be paid by means of a cheque posted to the Beneficiary's registered postal address as notified by the Employer and/or the Beneficiary to the Trustees.
- 12.8.3 The payment referred to in Rule 12.8.2 shall be on such terms and conditions as advised by the Trustees in writing to the Beneficiary and the Employer.

**12.9 Transfers From Other Funds**

The Trustees may, after consultation with the Actuary and on conditions determined by the Actuary, approve special arrangements for the preservation of transferred pension benefits, which may make provision, inter alia, for the following:

- 12.9.1 the recognition of certain periods of former service as pensionable or additional service in recognition of any former employment;
- 12.9.2 the payment by such persons or such other fund of contributions in respect of such recognition of service in any former employment.

**RULE 13: AMENDMENT TO THE RULES OF THE FUND AND  
DISCONTINUANCE OF THE FUND**

**13.1 Amendment**

13.1.1 Save for the provisions of Rules 13.1.2 and 13.1.3, the Trustees may at any time amend the Rules provided that:

- (i) the value of a Member's Account portion prior to such amendment shall not be reduced;
- (ii) the amendment is not inconsistent with the provisions of the Act or the Income Tax Act, 1962 (Act 58 of 1962);
- (iii) Members have been fully informed of the amendment;
- (iv) if the amendment would have the effect of increasing an Employer's contribution, the approval of the Employer concerned has been obtained.

13.1.2 Subject to the provisions of Rules 13.1.3 and 13.1.4, the Rules of the Fund shall be amended by the Trustees to give effect to any agreement signed between the Employer and a Registered Trade Union with whom the Principal Employer has a recognition agreement, provided that the amendment shall not affect any other Employer or being a party to the agreement, or a Member who is an Employee of such other Employer.

13.1.3 The Trustees shall submit any proposed amendment to the Rules to the Principal Employer, the Minister, and the Minister of Finance, for approval and the amendment shall become effective upon the date of such last approval.

13.1.4 Once any amendment to the Rules has been approved in terms of Rule 13.1.3, or at least once every year, the Trustees shall notify the Members of every amendment to the Rules.

### 13.2 Discontinuance

13.2.1 The Fund shall be dissolved under the following circumstances:

(i) by an unanimous decision by the Trustees; or

(ii) by an order of court; or

(iii) if there is no longer an Employer or Members in terms of the Rules.

13.2.2 If the Fund is dissolved in terms of Rule 13.2.1, the Trustees shall appoint a liquidator subject to the approval of the Principal Employer; or if no liquidator is so appointed by the Trustees, the Principal Employer shall appoint a liquidator.

13.2.3 The liquidator shall use each Member's amount in the Member's Account either to purchase an annuity from an Insurer or transfer such amount to a retirement annuity fund of the Member's choice in the Member's name.

13.2.4 The conditions determined in respect of such annuity shall be as similar to the Member's benefits in terms of these Rules as is reasonably possible.

- 13.2.5 The balance of the assets of the Fund shall be divided by the liquidator in an equitable manner, as recommended by the Actuary, amongst the Members then participating in the Fund, and each Member's share of the Fund shall be invested with the Insurer or retirement annuity fund.
- 13.2.6 Alternatively to Rules 13.2.2 to 13.2.4, the liquidator may determine another method of disposing of the assets of the Fund for the benefit of the Members, subject to the approval of the Principal Employer and the Commissioner.
- 13.2.7 Subject to the provisions of the Act, the liquidator shall decide in what manner the assets of the Fund shall be realised and, after consultation with the Actuary, in what manner the obligations of the Fund, including obligations and contingent obligations in respect of Members, shall be met.
- 13.2.8 The Actuary shall take the following into account:
- (i) any pensions and enhancements to pensions in the course of payment to Dependants and Nominees in terms of the Rules;
  - (ii) every Member's equitable interest of the Fund as at the date of dissolution; and
  - (iii) any other obligations and liabilities.
- 13.2.9 Any assets remaining in the Fund after the obligations referred to in Rule 13.2.7 above have been met, shall, in the discretion of the liquidator, be divided by the liquidator amongst the Members in a just manner, provided that an ex Member who either voluntarily or due to a reduction in or reorganisation of staff left service during the



immediately preceding 12 (twelve) months or such shorter period as the liquidator may determine, may, for the purposes of this Rule, be regarded as if they were Members on the date of dissolution of the Fund; and provided further, that the benefits already paid to any such Eligible Employee before the division of the remaining assets, shall be taken into account in determining the amount payable to such person.

**13.2.10** Should the Fund be terminated or dissolved under the Act, all moneys remaining unclaimed for a period of 6 (six) months from the date on which payment of benefits commenced after completion of all necessary formalities, shall be paid into the Guardian's Fund for the account of the Member concerned and thereafter there shall be no claim against the Fund or the Employer.

**13.2.11** The liquidator shall indicate in his/her final liquidation account the amount thus paid and shall simultaneously furnish the Principal Employer with a certificate to the effect that all reasonable steps were taken to trace persons entitled to the amount. An auditor approved by the Principal Employer shall certify the account as correct.

### **13.3 Withdrawal of An Employer**

**13.3.1** Subject to the giving of 3 (Three) months' (or such shorter period as is accepted by the Trustees) written notice by the Employer concerned to the Trustees and the Members employed by that Employer, and subject to the approval of the Principal Employer, an Employer may withdraw from the Fund when one of the following provisions shall apply:

- (i) If after such withdrawal there is no Employer in terms of the Rules, the Fund shall be discontinued and dissolved in accordance with Rule 13.2;

- (ii) In all other instances the Members who are employees of such Employer shall be entitled to their full equitable interest in the Fund as determined by the Actuary.

13.3.2 [an Employer ceases to operate for any reason, such cessation shall be deemed a withdrawal from the Fund by such Employer for the purposes of this Rule, in which event Rule 13.3.1(i) or (ii) above shall apply, as the case may be.

#### **RULE 14: MEMBER INVESTMENT CHOICE**

- 14.1 The Trustees may from time to time offer to Members different investment risk profile choices, on specified terms and conditions, as recommended by the Actuary.
- 14.2 Members shall exercise their choice of investment risk profile in writing addressed to the Fund, failing which, the Trustees will elect the investment choice on behalf of such Members.

#### **RULE 15: DISPUTE RESOLUTION**

- 15.1 **Save in respect of those provisions** of the Rules, which provide for their own remedies, which would be incompatible with arbitration, a dispute which arises in regard to -
- (i) the interpretation of; or
  - (ii) the carrying into effect of; or
  - (iii) any of any party's rights and obligations arising from; or
  - (iv) the rectification or proposed rectification of;

- (v) these Rules, or out of or pursuant to these Rules or on any matter which in terms of these Rules requires agreement by one or more parties (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction), shall be submitted to and decided by arbitration.
  - (vi) deadlock in respect of a resolution sought in terms of Rule 4.5.8.
- 15.2 That arbitration shall be held with only the parties and their representatives present thereat.
- 15.3 it is the intention that the arbitration shall, where possible, be held and concluded within 21 (twenty-one) working days after it has been demanded. The parties shall use their best endeavors to procure the expeditious completion of the arbitration.
- 15.4 Save as expressly provided in these Rules to the contrary, the arbitration shall be subject to the arbitration legislation for the time being in force in the Republic of South Africa.
- 15.5 Depending on the nature of the dispute, the arbitrator shall be an impartial practicing attorney or advocate, alternatively an independent actuary of not less than 10 (ten) years standing appointed by the parties, or, failing agreement by the parties within 5 (five) days after the arbitration has been demanded, at the request of either of the parties shall be nominated by the President for the time being of the Law Society of Gauteng or the Actuarial Society of South Africa (or the successor body thereto). If that person fails or refuses to make the nomination, either party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.

- 15.6 If there is any other clause in these Rules providing for a different method of determination of a particular dispute, that clause shall prevail over this clause.
- 15.7 The parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.
- 15.8 The arbitrator shall be obliged to give his or her award in writing fully supported by reasons which shall be final and binding on all the parties and which shall include a determination on the cost of the arbitration.
- 15.9 The arbitrator shall have the power to give default judgement if any party fails to make submissions on due date and/or fails to appear at the arbitration.

Approved

  
J.T. Radebe

Minister of Public Enterprises

Date: 01/11/2000

Approved

  
T.A. Manuel

Minister of Finance

Date: 24/11/2000

## **REPORT 2(B) – EXHIBIT 56**

TRANSNET



ANNEXURE "B"

**DELEGATION OF AUTHORITY FRAMEWORK  
(EFFECTIVE FROM 1 DECEMBER 2015)**

**APPROVED BY THE BOARD OF DIRECTORS ON  
25 NOVEMBER 2015  
UNDER RESOLUTION  
10-15/16FY/8**

*AUC*

## INDEX

	Page
1. Interpretation and Definitions	3
2. Scope	5
3. Application	5
4. Delegating Powers	5
5. Company Authorities	6
5.1. Capital Expenditure	6
5.2. Treasury	10
5.3. Finance	14
5.4. Procurement, Enterprise Development & Supplier Development	15
5.5. Contracts and/or Agreements	18
5.6. Legal	21
5.7. Human Resources	22
5.8. General	27

*AUC*

## 1 Interpretation and Definitions

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

- 1.1 "Alternative Dispute Resolution" (ADR) refers to the process of resolving disputes among parties without necessarily resorting to court action, although the agreements and outcomes may be legally binding. ADR processes include conciliation, mediation, adjudication and arbitration.
- 1.2 "Board" means the Board of Directors of the Company and includes the Board when it acts as the deemed Authority under the National Ports Act No. 12 of 2005;
- 1.3 "Board Reserved Matters" means matters reserved by the Board as set out in Annexure "A" of the Delegation of Authority Framework approved by the Board.
- 1.4 "CAPIC" means the Capital Investment Committee, a sub-committee of the Group Executive Committee which has been established to make decisions regarding capital expenditure;
- 1.5 "CE" means Chief Executive of an Operating Division;
- 1.6 "Chairperson" means the person who is appointed as the Chairperson of the Board as per the MOI;
- 1.7 "Company" means Transnet SOC Ltd including its Operating Divisions and Specialist Units, with registration number 1990/000900/30 and "Transnet" shall have a corresponding meaning;
- 1.8 "Company Strategy" means the strategy for the Company as approved from time to time by the Board;
- 1.9 "Consultant" means a person, or partners in a firm, or a company or a close corporation who can provide expert or specialised advisory skills, but excludes anyone who also carries out the physical work or provides the end product for Transnet based on his own professional or expert advice. Such consultancy service normally pertains to a specific project and therefore non-repetitive in nature and confined to design work, investigation, or advice on management, financial, business or technical matters;  
  
In short, a consultant does not supply the ultimate end product, but merely gives a recommendation, based on his expertise, of the best solution to a specific problem. That proposed solution, if acceptable to Transnet, still has to be acquired, built or erected by another party and may or may not be connected with the consultant. Excludes any professional services procurement package included in the approved asset procurement package plan for and approved physical asset project.
- 1.10 "Delegation of Authority Framework" means this document, recording the nature and extent of authorities required in order to implement certain actions by or on behalf of the company, including any sub-delegation of authority where permitted and "Delegation" shall have a corresponding meaning;
- 1.11 "Estimated Total Cost" (ETC) means costs planned to bring the project into operation. These include costs such as:
  - Direct activities relating to the project such as building materials, delivery cost thereof;
  - Project management fees;
  - Gate review costs (FEL3 and 4);
  - Transnet Internal Audit Costs;
  - Group Capital Integration & Assurance;
    - Preliminaries and general; and
    - Contingencies.

Typical accounting entry type transactions such as capitalisation of borrowing costs and allocated costs are excluded from ETC;
- 1.12 "FRMF" means Financial Risk Management Framework;
- 1.13 "GCE" means Group Chief Executive;
- 1.14 "GCFO" means Group Chief Financial Officer;
- 1.15 "GCSCO" means Group Chief Supply Chain Officer;

*ANC*



- 1.16 "Group Executive Committee" or "Group Exco" means the executive committee established to take responsibility for the day-to-day execution of strategy and running of the Company;
- 1.17 "Group Executive (GE) or Group Executive nominee" refers to the Group Executive responsible for the supporting business or his/her nominee;
- 1.18 "Head of Legal" refers to the most senior employee with a Legal qualification in the respective Legal Department;
- 1.19 "International agreements" means agreements which are required to be construed in accordance with the laws of a foreign jurisdiction including the neighbouring countries;
- 1.20 "Memorandum of Incorporation" or "MOI" means the constitutive documents of the Company, as amended;
- 1.21 "Memorandum of Understanding" means a formal agreement between two or more parties. Companies and organizations can use MOUs to establish official partnerships. MOUs are not legally binding but they carry a degree of seriousness and mutual respect, stronger than a gentlemen's agreement.
- 1.22 "Neighbouring Countries" means countries sharing a border with the Republic of South Africa;
- 1.23 "Non-Disclosure Agreement/Confidentiality Agreement" means a contract by which one or more parties agree not to disclose confidential information that they have shared with each other as a necessary part of doing business together.
- 1.24 "Operating Divisions" means the Operating Divisions of Transnet, namely, Transnet Freight Rail, Transnet Engineering, Transnet National Ports Authority, Transnet Port Terminals and Transnet Pipelines;
- 1.25 "PFMA" means the Public Financial Management Act 1 of 1999 (as amended), read together with its regulations' including Treasury Regulations;
- 1.26 "Prescribed Officer" means a person who, within a company, performs any function that has been designated by the Minister of Trade and Industry in terms of section 66(10) of the Companies Act, Act 71 of 2008, read with Regulation 38. Within the Company, members of Group Exco are designated Prescribed Officers;
- 1.27 "Rental" means money payable for the hire of movable and immovable property in terms of a lease agreement, but excludes the payment of operational expenses and costs.
- 1.28 "Shareholder" means the Government of the Republic of South Africa represented by the Shareholder Minister.
- 1.29 "Shareholder Minister" means the Minister of Public Enterprises as defined in the MOI;
- 1.30 "Shareholder's Compact" means the shareholder's compact being an agreement entered into pursuant to section 52 of the PFMA between the Shareholder representative and the Board from time to time;
- 1.31 "Specialist Unit" mean all business units of Transnet which have been deemed 'supporting businesses' in terms of the Company Strategy, these include Transnet Property, Transnet Foundation, Transnet Capital Projects and Transnet Corporate Centre. Where a Specialist Unit GE is not a member of the Group Exco, the Group Exco member responsible for such Specialist Unit shall sub-delegate powers to the Specialist Unit's GE;
- 1.32 "Subsidiary" means subsidiary as defined in the Companies Act 71 of 2008 (as amended) and Subsidiaries shall have a corresponding meaning;
- 1.33 "Transnet" means the Company with its Subsidiaries and Operating Divisions/Specialist Units as stated in clause 1.7 above.
- 1.34 "Treasury Regulations" means the regulations issued in terms of section 76 of the PFMA, amended from time to time;
- 1.35 "Transnet Total Asset Base": refers to the total value of the assets in Transnet and is set at the asset value indicated in the integrated report for the year; and
- 1.36 "VAT" means Value Added Tax. All amounts indicated in the document are exclusive of VAT.

AUC

## 2 Scope

This Delegation of Authority Framework records the nature and extent of the authorities delegated by the Board of Directors to the Group Chief Executive, and in turn, by the Group Chief Executive to the members of the Group Executive Committee, in order to implement certain actions by or on behalf of the Company. It includes, to the extent necessary and/or incidental thereto, the authority to discharge all of the duties, obligations and powers imposed upon the deemed Authority under the National Ports Act 12 of 2005.

## 3 Application

3.1 This Delegation of Authority Framework applies to all employees of the Company, including its Operating Divisions and Specialist Units. It does not apply to any of the Company's subsidiaries. The respective Boards of Directors of the Company will prepare the requisite delegations of authority for those subsidiaries.

3.2 The persons set out in clause 5 below are granted the power and /or authority to perform their functions and responsibilities subject to the limits of authority outlined in clause 5 below, provided that the exercise of such power and/or authority in terms of this delegation is not in conflict with the following:

- PFMA;
- Board Reserved Matters;
- Memorandum of Incorporation;
- Company Strategy;
- Shareholder's Compact;
- the Corporate Plan, Annual Budget and Borrowing Strategy and/or Funding Plan of the Company as approved by the Board from time to time;
- Project and Programme Frameworks;
- Enterprise Risk Management Framework; and
- Any approvals by the Board and the Minister of Finance for the delegation of the power to borrow money or issue a guarantee, indemnity or security, or enter into any other transaction that binds or may bind the Company to any future financial commitment in terms of section 66 of the PFMA.

3.3 This Delegation supersedes any prior Delegations of Authority Framework and takes effect upon the date determined by the Board of Directors.

3.4 The Delegation of Authority Framework shall be sub-delegated to Group Exco and Extended Exco within 30 days from the date of signature by the GCE.

3.5 Any proposal for amendments to this Delegation or to the authorities or the authorities delegated in this Delegation must be submitted in writing to the Transnet Company Secretary for consideration and approval by the Board of Directors.

## 4 Delegating Powers

4.1 A person authorised to exercise any of the authorities set out in clause 5 below ("original bearer of authority") may, in writing, sub-delegate to his/her subordinate ("designate") during his/her temporary absence or for an indefinite period, provided:

4.1.1 the authority is conferred by way of a certificate signed by the original bearer of authority, naming and identifying the designate, and the extent of the authority which is sub-delegated to the designate;

4.1.2 the sub-delegated authority shall only be exercised within the original bearer of authority's respective area of responsibility;

4.1.3 the powers delegated by the original bearer of authority cannot be sub-delegated further by the designate unless explicitly stated in the certificate signed by the original bearer of authority; and

4.1.4 the sub-delegated authority may be revoked in writing, at any time by the original bearer of authority.

4.2 Unless otherwise specifically indicated, approval of any of the matters listed in clause 5 below may be granted by a designate.

4.3 With respect to all matters and authorities specifically listed in clause 5 below, the delegated authority by the GCE to bind the Company is in regard to any business activity or transaction (or a series of related transactions) and is subject to the value in the aggregate of all payments or any consideration made or to be made for any such business activity or transaction(s) being complied with.

*Handwritten signature/initials*

- 4.4 The original bearer of authority or designate must ensure that all the necessary procedures and/or approvals have been fulfilled prior to exercising any of the matters and authorities listed in clause 5 below.
- 4.5 All delegations of authority, signed by the original bearer of authority and accepted by the designate, must be filed with the Office of the Group Secretariat prior to the effective date.

## 5 Company Authorities

*Limits of authority have been delegated by the Board of Directors to the Group Chief Executive. In the interest of good corporate governance, approval structures have been established in the Company. Requests for approval must follow the approved governing processes and structures for recommendation but the final approval vests with the delegated individual (for example CE, GCFO, GCE) as reflected in the specific delegations set out in this document.*

*In cases where business requirements necessitate that approval be obtained from the delegated authority without the review and recommendation by the relevant governance structures (CAPIC, Group Exco, etc.) this must be reported to the relevant governance structures immediately thereafter.*

The authority to approve the Corporate Plan and Budget of the Company vests with the Board of Directors, provided that it must be submitted to the Shareholder in terms of Section 52 of the PFMA.

### Management's intervention in addressing non-compliance with the DOA

Approval Authority →	OD CE	GCFO	GCE
Operating Divisions	Nil	Nil	Unlimited
Approval Authority →	Group Exco Member	GCFO	GCE
Specialist Units	Nil	Nil	Unlimited

Note: All requests for approval of non-compliance must be made by the OD CE/Group Exco member to the GCE. Together with the application for approval of non-compliance, the requestor must advise on the steps/corrective measures taken to avoid a repeat of the transgression within 30 days of the transgression being discovered.

## 5.1 Capital Expenditure

**NOTE 1:** Capital expenditure may only be authorised if the project has been so approved by CAPIC or the relevant divisional CAPIC in accordance with the limits set out in this Delegation of Authority Framework and capital funds have been allocated in the annual Budget of the Company.

**NOTE 2:** Capital expenditure may only be authorised if the project has been approved and a warrant number has been issued by the relevant authority. All requests for capital expenditure exceeding the Divisional CE's limit must be submitted to the Principal Specialist: Governance and Assurance.

### 5.1.1 CAPEX in approved budget/Corporate Plan: To commence projects (execution funding)

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	CAPIC/GCFO	Group Exco /GCE	Acquisitions and Disposals Committee	Board	Shareholder Minister
Operating Divisions	Up to but not exceeding R250million	Up to but not exceeding R450million	Up to but not exceeding R800million	Up to but not exceeding R1.5billion	Up to but not exceeding R2billion	Up to but not exceeding R5.2 billion	Exceeding R5.2billion
Approval Authority →	Group Exco Member	GE: Transnet Property	CAPIC/GCFO	Group Exco /GCE	Acquisitions and Disposals Committee	Board	Shareholder Minister
Specialist Units	Up to but not exceeding R20million	Up to but not exceeding R50million	Up to but not exceeding R800million	Up to but not exceeding R1.5billion	Up to but not exceeding R2billion	Up to but not exceeding R5.2billion	Exceeding R5.2billion

Refer to Materiality and Significance Framework. If the set limit (R5.2billion) is exceeded then the Board has to consider and recommend to Shareholder Minister for approval.

- Approval limits are per individual project, reported on a monthly basis to Group Financial Planning.
- Amounts indicated above exclude the capitalisation of borrowing costs.
- All ICT projects requiring approval must be signed off by the Group Executive: EIMS.

ANC

- Acquisitions and Disposals Committee refers to the Acquisitions and Disposal Committee of the Board.
- Group Exco/GCE to be the final approval gate for all capitalisation of maintenance projects (COPEX) single or multi-year irrespective of the value of the project provided that it has been included in the Corporate Plan.
- It is mandatory that submissions to the Group Exco/GCE have been recommended by the approval bodies leading up to the Group Exco/GCE i.e. OD CAPIC and Group CAPIC.
- Front end loading (FEL) studies are to be submitted to CAPIC based on the value of the underlying asset on which the study is conducted. e.g. If the FEL study is for an asset that exceeds R250million (R450million for TFR) then the FEL study irrespective of its stage requires approval from Group CAPIC. Please refer to the Accounting Policy for Conceptual, Pre-feasibility and Feasibility Studies when capitalising FEL studies.
- Approvals exceeding R2billion but less than R5.2billion in ETC are to be reported to the Shareholder Minister

#### 5.1.2 Unforeseen CAPEX (not included in budget/Corporate Plan)

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	CAPIC/GCFO	Group Exco/GCE	Acquisitions and Disposals Committee	Board	Shareholder Minister
Operating Divisions	Up to but not exceeding R50million	Up to but not exceeding R75million	Up to but not exceeding R400million	Up to but not exceeding R800million	Up to but not exceeding R1billion	Up to but not exceeding R5.2billion	Exceeding R5.2billion
Approval Authority →	Group Exco Member	GE: Transnet Property	CAPIC/GCFO	Group Exco/GCE	Acquisitions and Disposals Committee	Board	Shareholder Minister
Specialist Units	Up to but not exceeding R20million	Up to but not exceeding R50million	Up to but not exceeding R400million	Up to but not exceeding R800million	Up to but not exceeding R1billion	Up to but not exceeding R5.2billion	Exceeding R5.2billion

Refer to Materiality and Significance Framework. If the set limit (R5.2billion) is exceeded then the Board has to consider and recommend to Shareholder Minister for approval.

- All unforeseen Capex approved by Operating Divisions/Specialist Units within their delegated authority, must be reported on a quarterly basis to Group Financial Planning.
- Amounts indicated above exclude the capitalisation of borrowing costs.
- All ICT projects requiring Transnet approval must be signed off by the Group Executive: Enterprise Information Management Services
- Approval limits are per project at Operating Divisional level and Transnet Property level subject to an aggregate divisional limit of R250million per annum (for ODs and Transnet Property) and R450million for TFR on condition that divisions remain within their annual approved capital budget (refer to 5.1.3.1).
- Divisional investment committees are to monitor the limits pertaining to the respective OD and to escalate submissions to Transnet if the respective OD limits are reached.
- If an unforeseen project will result in the divisional 7 year investment plan being increased then Group Exco needs to be approached for approval.

#### 5.1.3 Increase in Estimated Total Cost (ETC) of Existing/Approved Projects

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	CAPIC/GCFO	Group Exco/ GCE	Acquisitions and Disposals Committee	Board
Operating Divisions	ETC may be increased to a maximum of R250million, increases beyond this amount may only be approved at Transnet Level	ETC may be increased to a maximum of R450million, increases beyond this amount may only be approved at Transnet Level	ETC may be increased to a maximum of R800million	ETC may be increased to a maximum of R1.2billion.	ETC may be increased to a maximum of R2billion	Exceeding R2billion
Approval Authority →	Group Exco Member	GE: Transnet Property	CAPIC/GCFO	Group Exco/ GCE	Acquisitions and Disposals Committee	Board
Specialist Units	ETC may be increased to a maximum of R20million, increases beyond	ETC may be increased to a maximum of R50million, increases beyond this amount may only be approved at Transnet Level		ETC may be increased to a maximum of R1.2billion.	ETC may be increased to a maximum of R2billion.	Exceeding R2billion

ANC

•	In	this amount may only be approved at Transnet Level				
---	----	--	--	--	--	--

rease in ETC of projects already approved by the Shareholder Minister must be reported to the Shareholder Minister if the increase is in excess of 15%.

- All ICT projects requiring approval must be signed off by the GE: EIMS.
- All cost increases in excess of 25% of the approved budget for a project must be reported to Transnet CAPIC/GCFO.
- Amounts indicated above exclude the capitalisation of borrowing costs. Increases in ETC of a project solely due to the capitalisation of borrowing costs may be approved by the OD Exco/CE. Project costs and capitalisation of borrowing costs are to be managed separately and may not be expended on projects interchangeably.
- Increases in ETC of a project that results in the project exceeding a specific committee's approval limit needs to be submitted to the next approval body. If CAPIC approved a project at ETC of R700million, and the increase required is R200million then the final approval body for the increase will be Group Exco as the new ETC of R900million is beyond CAPIC's limit.
- Requests for increases in ETC need to be submitted to the approval body that originally approved the project. If Board approved a project to the value of R2.1billion, any increases to this project will require Board approval.

5.1.3.1 Any increase in excess of the annual approved capital investment budget must be submitted to CAPIC/GCFO for approval. Where the GCFO has approved an increase, the submission should be tabled at the subsequent CAPIC meeting for information purposes.

#### 5.1.4 Approval of Front-End Loading (FEL) Studies

Front end loading (FEL) studies are to be submitted to CAPIC based on the value of the underlying asset on which the study is conducted e.g. If the FEL study is for an asset that exceeds R250million (R450million for TFR) then the FEL study irrespective of its stage requires approval from Group CAPIC. The following limits apply in instances of the FEL study itself.

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Capic/GCFO	Group Exco/GCE	Acquisitions and Disposals Committee	Board
Operating Divisions	FEL studies conducted on assets not exceeding R250 million	FEL studies conducted on assets not exceeding R450 million	Up to but not exceeding R800million	Up to but not exceeding R1.2billion	Up to but not exceeding R2billion	Exceeding R2billion
Approval Authority →	Group Exco Member	GE: Transnet Property	Capic/GCFO	Group Exco/GCE	Acquisitions and Disposals Committee	Board
Specialist Units	FEL studies conducted on assets not exceeding R20 million	FEL studies conducted on assets not exceeding R50 million	Up to but not exceeding R800million	Up to but not exceeding R1.2billion	Up to but not exceeding R2billion	Exceeding R2billion

- Limits are per FEL study
- The study to be managed along the same principles as a project
- FEL studies to be managed and controlled by an appointed project manager to ensure efficient utilisation of Transnet resources.

#### 5.1.5 Matters pertaining to the Scope of a Project

##### Schedule:

- Project timelines may not exceed the end date contained in the business case by more than 12 months with no cost increases
- Approval to be sought from the original approval body at the earliest discovery that the 12 month limit is going to be exceeded.

##### Physical progress:

- Scope changes of more than 10% of the original scope requires approval from the original approval body.
- Funds allocated for future scope items may NOT be utilised to fund current items that have depleted their budgets and contingencies provided specifically for the item.

#### 5.1.6 Asset Write-off/Scrapping: Movable Assets

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Capic/GCFO	Group Exco/GCE	Acquisitions and Disposals Committee	Board
Operating Divisions	Up to but not exceeding R10million	Up to but not exceeding R50million	Up to but not exceeding R100million	Up to but not exceeding R250million	Up to but not exceeding R700million	Exceeding R700million

WAC

Approval Authority →	Group Exco Member	Capic/GCFO	Group Exco/ GCE	Acquisitions and Disposals Committee	Board
Specialist Units	Up to but not exceeding R5million	Up to but not exceeding R100million	Up to but not exceeding R250million	Up to but not exceeding R700million	Exceeding R700million

Refer to Materiality and Significance Framework. If the set limit (currently R5.2billion) is exceeded then the Board has to consider and recommend to Shareholder Minister for approval.

- The above amounts refer to net book value and pertains to the cost actually paid for the asset (revaluations are excluded) and are a cumulative annual limit. Write-offs below R10m and above R50m in the case of TFR must be reported to CAPIC/GCFO quarterly.
- Divisional investment committees are to monitor the limits pertaining to the respective OD and to escalate submissions to Transnet if the respective OD limits are reached.

#### 5.1.7 Asset write-off/Scrapping/Demolition of Immovable Assets (excluding land) e.g. buildings, structures

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Capic/GCFO	Group Exco/ GCE	Acquisitions and Disposals Committee	Board*
Operating Divisions	Up to but not exceeding R10million	Up to but not exceeding R50million	Up to but not exceeding R150million	Up to but not exceeding R250million	Up to but not exceeding R300million	Exceeding R300million
Approval Authority →	Group Exco Member		Capic/GCFO	Group Exco/GCE	Acquisitions and Disposals Committee	Board*
Specialist Units	Up to but not exceeding R5million		Up to but not exceeding R100million	Up to but not exceeding R250million	Up to but not exceeding R300million	Exceeding R300million

\*Refer to Materiality and Significance Framework. If the set limit (currently R5.2billion) is exceeded then the Board need to consider and recommend to the Shareholder Minister for approval.

- The above amounts refer to an estimated market value at that point in time and are a cumulative annual limit.
- Divisional investment committees are to monitor the limits pertaining to the respective OD and to escalate submissions to CAPIC if the respective OD limits are reached.
- Write-offs below R10million and below R50million in the case of TFR must be reported to CAPIC/GCFO quarterly.

#### 5.1.8 Disposal of Movable Assets (excluding sale of scrap)

Approval Authority →	OD Exco/CE*	Capic/GCFO	Group Exco/GCE	Acquisitions and Disposals Committee	Board**
Operating Divisions	Up to but not exceeding R50million	Up to but not exceeding R100million	Up to but not exceeding R250million	Up to but not exceeding R700million	Exceeding R700million
Approval Authority →	Group Exco Member	Capic/GCFO	Group Exco/GCE	Acquisitions and Disposals Committee	Board**
Specialist Units	Up to but not exceeding R5million	Up to but not exceeding R100million	Up to but not exceeding R250million	Up to but not exceeding R700million	Exceeding R700million

The above amounts refer to an estimated market value and are subject to a cumulative annual limit of R200million. For sale of scrap please refer to 5.5.1.

- Divisional investment committees are to monitor limits pertaining to their OD, and to escalate submissions to CAPIC once the respective OD limits are reached.

\*\*Refer to Materiality and Significance Framework. If the set limit (currently R5.2billion) is exceeded, then the Board need to consider and recommend to the Shareholder Minister for approval.

#### 5.1.9 Management's intervention in addressing non-compliance with regard to the approval of capital projects

Approval Authority →	OD CE:OD	GCFO	GCE
Operating Divisions	Nil		Unlimited
Approval Authority →	Group Exco Member	GCFO	GCE
Specialist Units	Nil	Nil	Unlimited

ANC

- Together with the application for approval of non-compliance, the requestor must advise on the steps/corrective measures taken to avoid a repeat of the transgression within 30 days of the transgression being discovered.
- If the approval of non-compliance results in the annual divisional budget being exceeded, then the request must be submitted to CAPIC for approval (refer to 5.1.3.1).

#### 5.1.10 Alienation/acquisition of Immovable property (land and servitudes)

Approval Authority →	OD Exco/CE excluding TFR	TFR Exco/CE	Capic/GCFO	Group Exco/GCE	Acquisitions and Disposals Committee	Board**
Operating Divisions	Up to but not exceeding R10million	Up to but not exceeding R50million	Up to but not exceeding R200million	Up to but not exceeding R350million	Up to but not exceeding R500million	Exceeding R500million
Approval Authority →	Group Exco Member	GE: Transnet Property	Capic/GCFO	Group Exco/GCE	Acquisitions and Disposals Committee	Board**
Specialist Units	Up to but not exceeding R1million	Up to but not exceeding R10million	Up to but not exceeding R200million	Up to but not exceeding R350million	Up to but not exceeding R500million	Exceeding R500million

\*\*Refer to Materiality and Significance Framework. If the set limit (R5.2billion) is exceeded then the Board need to consider and recommend to the Shareholder Minister for approval.

- Approval limits are per transaction and are with reference to market value
- All transactions entered into in terms of the above must be reported to CAPIC/GCFO
- Only immovable property on the non-core list, may be disposed of (refer to 5.1.8.1), such disposal may only be done through the Transnet Property.
- Amounts indicated above exclude the capitalisation of borrowing costs.

#### 5.1.10.1 Newly identified properties to be included on the non-core list (Book value of individual properties)

GE: Transnet Property	GCFO	GCE	Acquisitions and Disposals Committee	Board
Up to but not exceeding R50million	Up to but not exceeding R100million*	Up to but not exceeding R200million	Up to but not exceeding R300million	Exceeding R300million

These disposals must be reported to Capic/Group Exco/Acquisitions and Disposals Committee/ Board.

## 5.2 Treasury

### Treasury Policies

Approval Authority →	Group Treasurer	GCFO	GCE	Risk	Audit Committee	Board
Financial Risk Management Framework	Recommend	Recommend	Recommend	Noting	Recommend	Approve

**NOTE 1:** Only approved financial instruments as approved in terms of the applicable Treasury Financial Risk Management Framework approved by the Board and subject to such limits determined in accordance with such framework may be utilised in the Treasury operations.

#### 5.2.1 InterTransnet Debt (Treasury inter Transnet debt write-off)

Approval Authority →	Deputy Treasurer: Operations	Group Treasurer	GCFO	GCE
Operating Divisions	Up to but not exceeding R5million	Up to but not exceeding R10million	Up to but not exceeding R20million	Exceeding R20million
Specialist Units	Up to but not exceeding R2million	Up to but not exceeding R10million	Up to but not exceeding R20million	Exceeding R20million

All breaches of the above limits to be reported to the Audit Committee.

External debt write-off on financial instruments due to counter-party liquidation may only be approved by the GCE.

#### 5.2.2 Maximum annual loss on all repo activities (Realised and unrealised)

Approval Authority →	Traders and Chief Trader	Deputy Treasurer: Front Office	Group Treasurer	GCFO	GCE
Group	Up to but not exceeding R1million	Up to but not exceeding R1.5million	Up to but not exceeding R2.5million	Up to but not exceeding R5million	Exceeding R5million

All breaches of the above limits to be reported to the Audit Committee

Note: The above limits are aggregate desk limits

WUC



5.2.3 Buy and sell back and sell and buyback transactions (Expressed in nominal terms)

Approval Authority →	Traders	Chief Trader	Deputy Treasurer: Front Office	Group Treasurer	GCFO
Group	Up to but not exceeding R250million	Up to but not exceeding R500million	Up to but not exceeding R750million	Up to but not exceeding R1 billion	Exceeding R1 billion
Duration Limit	2 weeks	3 weeks	1 month	1 month	> 1 month

All breaches of the above limits (amount or tenure) to be reported to the Audit Committee.  
Approval limits are per transaction/event.

5.2.4 Foreign Exchange Spot Transactions Operational payments, not related to hedging, early take ups or extensions (expressed in USD equivalent)

Approval Authority →	Traders	Chief Trader	Deputy Treasurer: Front Office	Group Treasurer	GCFO
Group	Up to but not exceeding an aggregate equivalent of \$20million per day (desk total)	Up to but not exceeding an aggregate equivalent of \$40million per day (desk total)	Up to but not exceeding an aggregate equivalent of \$100million per day (desk total)	Up to but not exceeding an aggregate of \$250million per day (desk total)	Exceeding a daily equivalent of \$250million (desk total)

All breaches of the above limits to be reported to the Audit Committee.

5.2.5 Foreign Exchange Hedging Transactions New hedges or re-alignment of existing hedges (expressed in USD equivalent)

Approval Authority →	Deputy Treasurer Middle Office	Group Treasurer	GCFO
Group	Submissions not exceeding \$10million	Submissions not exceeding \$100million	Submissions exceeding \$100million
Tenure	Not exceeding 18 Months	Not exceeding 3 years	Exceeding 3 years

All breaches of the above limits (amount or tenure) to be reported to the Audit Committee.

5.2.6 Foreign Exchange Hedging Transactions: Extensions, early take ups (expressed in USD equivalent)

Approval Authority →	Traders	Chief Trader	Deputy Treasurer: Front Office	Group Treasurer
Group	Not exceeding an aggregate equivalent of \$20million per day (desk total)	Not exceeding an aggregate equivalent of \$50million per day (desk total)	Not exceeding an aggregate equivalent of \$100million per day (desk total)	Exceeding an aggregate of \$100million per day (desk total)

All breaches of the above limits to be reported to the Audit Committee.

Note: Where no specific limit is mentioned, the FRMF policy on foreign exchange rate risk will apply.

5.2.7 Approval of FX hedges to be hedged by external suppliers on their balance sheet for goods/services to be delivered to Transnet in respect of Rand agreements involving foreign content

Approval Authority →	Traders	Chief Trader	Deputy Treasurer: Front Office	Group Treasurer
Group	Not exceeding \$10million	Not exceeding \$25million	Not exceeding \$100million	Exceeding \$100million

All breaches of the above limits to be reported to the Audit Committee for noting.

The above limits are applicable per agreement.

Note: The Business Units must always obtain quotes on FX forward rates and liaise with the Treasury Trading desk that will verify the rates to ensure it is market related. The Business Units can only enter into the FX hedges with the supplier once the rates are accepted by the Treasury Trading desk via e mail. Once the above approvals are obtained, the Treasury Traders will provide sign off on the rate acceptance.

5.2.8 Interest Rate Risk Hedging

Approval Authority →	Notional Amounts	Group Treasurer	GCFO
Group	Notional amount of hedge expressed in RAND or equivalent in USD (FX loans and leases)	Up to but not exceeding R1billion or equivalent in USD	Exceeding R1billion or equivalent in USD
Tenure		Not exceeding 5 years	Exceeding 5 years

SAK



All breaches of the above limits to be reported to the Audit Committee.

Note: Where no specific limit is mentioned, the FRMF policy on interest rate risk will apply.

The above limits are applicable per hedging submission.

#### 5.2.9 Hedging of fuel risk exposures (RAND and USD)

Approval Authority →	Group Treasurer	GCFO
Tenure	Not exceeding 6 months	Not exceeding 18 months
Notional hedge expressed in USD or equivalent in RAND	Not exceeding \$50million or equivalent in RAND	Exceeding \$50million or equivalent in RAND

All breaches of the above limits to be reported to the Audit Committee.

Note: The maximum hedge should not exceed 75% of annual budgeted consumption.

The above limits are applicable per hedging submission.

Note: Where no specific limit is mentioned, the FRMF policy on commodity (fuel) risk will apply.

#### 5.2.10 Hedging of commodity risk exposures in supply agreements, including escalation (other than fuel) in FX or RAND

Approval Authority →	Group Treasurer	GCFO
Tenure	Not exceeding 24 months	Exceeding 24 months
Notional hedge expressed in RAND	Not exceeding R100million	Exceeding R100million
Notional hedge expressed in USD	Not exceeding \$10million	Exceeding \$10million

All breaches of the above limits to be reported to the Audit Committee.

The above limits are applicable per hedging submission.

Note: Where no specific limit is mentioned, the FRMF policy on commodity risk will apply.

#### 5.2.11 Granting of InterTransnet Loans (Interest-bearing only) to divisions/specialist units

Approval Authority →	Deputy Treasurer: Front Office	Group Treasurer	GCFO
Operating Division	Up to but not exceeding R750million	Up to but not exceeding R1 billion	Exceeding R1 billion
Specialist Unit	Up to but not exceeding R10million	Up to but not exceeding R25million	Exceeding R25million

These above limits are cumulative per OD/ SU per financial year.

#### 5.2.12 Letters of Credit

Approval Authority →	Deputy Treasurer: Front Office	Group Treasurer	GCFO	
Transnet	Up to but not exceeding R250million	Up to but not exceeding R500million	Exceeding R500million	

All breaches of the above limits to be reported to the Audit Committee.

The above limits are per Letter of Credit.

#### Funding Portfolio

**NOTE 1:** The total nominal funding amount per financial year in respect of Bonds and any other funding transactions shall be as determined per Board approved/Board amended Funding/Borrowing Plan.

**NOTE 2:** A. Signatories mean, subject to such approvals by the Board and the Minister of Finance in terms of section 66 of the PFMA as may be applicable, the Group Treasurer and any other officer so designated in writing by the GCFO.

B. Signatories mean, subject to such approvals by the Board and the Minister of Finance in terms of section 66 of the PFMA as may be applicable, persons so designated in writing by the Group Treasurer.

#### 5.2.13 Limits for approval and signing of funding agreements per financial year

Approval Authority →	Group Treasurer	GCFO	GCE
Tapping of bonds (in accordance with the approved Funding Plan or as approved by the Board)	-	Not exceeding R5billion	Exceeding R5billion
Bank facilities	-	No limit applies	No limit applies
Drawdown on Overnight facilities including Revolving Credit Facilities **	Up to but not exceeding R3billion	Exceeding R3billion	Exceeding R3billion
Commercial Paper	-	-	-
Loans	Up to but not exceeding R1billion	Not exceeding R5billion Up to but not exceeding R2.5billion	Exceeding R5billion Exceeding R2.5billion

WALC

Export Credit Agency supported funding			
Up to but not exceeding R1billion			
New domestic bond issues (in accordance with the approved Funding Plan or as approved by the Board)		Up to but not exceeding R2billion	Exceeding R2billion
Development Finance Institution Funding	Up to but not exceeding R1billion	Up to but not exceeding R2.5billion	Exceeding R2.5billion
Foreign funding	Up to but not exceeding \$100million	Up to but not exceeding \$250million	Exceeding \$250million
Any other source of funding not stipulated above	Up to but not exceeding R1billion	Up to but not exceeding R2billion	Exceeding R2billion
The above is further subjected to the following annual aggregate limit			
	R5billion	R12.5billion	Limited to the annual Board approved funding plan

The above is subject to the following:

- Be executed in accordance with the approved funding strategy as incorporated in the Corporate Plan (including any approved amendments).
- All breaches of the above limits to be reported to the Audit Committee.
- The GCE can increase funding requirements up to 10% of Board approved Borrowing Plan and this needs to be ratified by Board. Any funding increase above the 10% can only be approved by the Board.
- Any increase in the funding requirement beyond what was included in Corporate Plan is to be notified to the Shareholder and the Ministry of Finance.
- \* Bank facilities must be approved and signed by either the GCFO or GCE.
- \*\* Applicable on outstanding balances.
- The Group Treasurer must sign all Funding Agreements within their delegated authority limits, together with the GCFO signing as co-signatory
- The Group Treasurer can approve all drawdowns and sign any ancillary transaction related documentation required from time to time irrespective of the amounts involved.
- Pricing Supplements for new listings, existing bonds and commercial paper to be listed on any exchanges must be signed by the GCFO and GCE.
- Final Terms for new listings on international exchanges must be signed by the GCFO and GCE.
- The Group Treasurer is authorised to sign all ancillary documents related to listings in local and international exchanges.

**5.2.14 Signing of legally binding agreements in respect of Treasury related activities not listed in 5.2.13 above. (Such as ISDA, ISMA, JSE client agreements, data subscription agreements)**

Only the GCE or the GCFO have authority to sign. The Group Treasurer may sign with a specified delegation of authority.

**5.2.15 Counterparty Limits: Setting of Limits**

Group Treasurer	Approval Level		
	GCFO	GCE	Audit Committee
Price Risk Limits $\leq$ R25m <sup>3</sup>	Price Risk Limits $\leq$ R250million <sup>1</sup>	Price Risk Limits $\geq$ R250million <sup>3</sup>	Counter Party Risk Limits <sup>1</sup> Overall counterparty limit (as calculated in line with FRMF)
Recommendation of Bond Issue and Bond Issuer Limits	Approval of Bond Issue and Bond Issuer Limits		
Recommendation of Settlement Limits <sup>2</sup>	Approval of Settlement Limits <sup>2</sup>		
Recommendation of limits where the Company is exposed to counterparty issuer risk as a result of advance payment guarantees, performance bonds, retention bonds etc. issued under supplier agreement/contracts <sup>3</sup>	Approval of limits where the Company is exposed to counterparty issuer risk as a result of advance payment guarantees, performance bonds, retention bonds etc. issued under supplier agreement/contracts <sup>3</sup>		

Note: Where no specific limit is mentioned, the FRMF policy on Counter Party Risk will apply.

Note<sup>1</sup>: The approved counterparty limit may be utilised for price risk, investment risk as well as issuer risk (in respect of advance payment guarantees, performance bonds, retention bonds etc.) as long as the sum of the individual exposures remains within the overall Audit Committee approved risk limit.

Note<sup>2</sup>: Settlement risk limits are set at 1.5 times the approved counterparty limit as stipulated in the FRMF and will be approved with the counterparty limit.

Note<sup>3</sup>: In respect of counterparties not approved by Audit Committee

ANC

## 5.2.16 Appointment of Commercial Bankers and the Opening of Bank Accounts

	Group Treasurer	GCFO
All OD/SU	Recommendation to open bank accounts and the appointment of bankers.	Approval of new bank accounts and the appointment of bankers and the approval of all documentation relating to such accounts, including electronic banking documentation.
Process to follow	There is no delegation to any OD/SU to appoint commercial bankers or to open bank accounts, domestically or internationally; only the GCFO may make such appointments.	

## 5.2.17 Authorisation of cheque signatories, Test keys and EFT's

Signing Cheques	Two A signatories or one A and one B signatory
Signing Test keys for paying/receiving	Two A signatories or one A and one B signatory
Electronic transfer of funds	Two A signatories or one A and one B signatory

## 5.2.18 Payment instructions and confirmation notes

Signing payment instructions/ receipts/ settlement instructions:	Two A signatories or one A and one B signatory
Signing confirmation notes in respect of approved financial transactions executed:	One A signatory

## 5.2.19 Approval of Annual Borrowing Plan

	Board
Companywide	Approve the annual Borrowing Plan for execution by Treasury

Annual Borrowing Plan to be recommended by the Audit Committee for approval by the Board.

## 5.2.20 Authorisation to enter into binding transactions

	Group Treasurer
Companywide	Authorise Treasury employees to enter into binding financial transactions on behalf of Transnet

## 5.2.21 Issuing of Guarantees (subject to requirements of section 66 of the PFMA)

	Group Treasurer	GCFO	GCE	Board
Companywide	Up to but not exceeding 25million	Up to but not exceeding R200million	Up to but not exceeding R500million	Exceeding R500million

All breaches of the above limits to be reported to the Audit Committee.

The Limits are per transaction.

## 5.2.22 Issuing Letters of Support

	Board
Companywide	Only the Board of Directors has authority to issue letters of support

## 5.2.23 Issuing of security per transaction (subject to section 66 of the PFMA)

	Group Treasurer	GCFO	GCE	Board
Companywide	Up to but not exceeding R250million	Up to but not exceeding R500million	Up to but not exceeding R1 billion	Exceeding R1billion

All breaches of the above limits to be reported to the Audit Committee. The limits are per transaction.

## 5.2.24 Guarantees resulting from Supplier Agreements

	CFO:OD	Deputy Treasurer Middle Office <sup>1</sup>	Group Treasurer <sup>2</sup>	Group CFO <sup>3</sup>
Notional Value per OD per financial year	Up to but not exceeding R200million	Up to but not exceeding R250million	Up to but not exceeding R500million	Exceeding R500million
Issuer Acceptance		All issuers	All issuers	All issuers

- The limits are cumulative per OD/SU per annum.
- The OD is required to obtain legal acceptance from the Divisional Legal Department and or Group Legal in respect of all Guarantees.
- Guarantees should be constructed in a manner that they become payable on demand
- The minimum long-term credit rating requirements may be acceptable under the following:-
  - A- from Fitch Rating Investor Services or Standard & Poor's Rating Services or A3 from Moody's Investor Services;
  - Issuers not rated by a recognised credit rating agency will not be accepted, unless specific approval has been obtained from GCFO that internally developed credit rating of the Issuer is acceptable;

WANC

- Group Treasury may also consider an equivalent rating from other recognised rating agencies as contained in the FRMF.

Note: The approvals of <sup>123</sup> are additional and do not include the amount of lower level authority.

### 5.3 Finance

#### 5.3.1 Bad Debt Write-off

##### Trade Debtors

Approval Authority →	OD Exco/CE* excluding TFR	TFR Exco/CE	GCFO	Group Exco/ GCE	Audit Committee	Board**
Operating Divisions	Up to but not exceeding R10million	Up to but not exceeding R20million	Up to but not exceeding R100 million	Up to but not exceeding R250 million	Up to but not exceeding R500million	Exceeding R500 million
Approval Authority →	Group Exco Member		Capic/GCFO	Group Exco/ GCE	Audit Committee	Board
Specialist Units	Up to but not exceeding R5 million		Up to but not exceeding R100 million	Up to but not exceeding R250million	Up to but not exceeding R500million	Exceeding R500 million

\*\*Approval limits are R10million and R20million for TFR per transaction subject to an annual cumulative limit of R50 million and R100m for TFR. Specialist Unit limit is R5million cumulative per annum.

#### 5.3.2 Setting of limits for credit facilities (Trade debtors)

Approval Authority →	Divisional CFO excluding TFR	OD Exco/CE* excluding TFR	TFR CFO	TFR CE	GCFO	GCE
Operating Divisions	Up to but not exceeding R10 million	Up to but not exceeding R20 million	Up to but not exceeding R100 million	Up to but not exceeding R150million	Up to but not exceeding R300 million	Exceeding R300million
Specialist Units	Up to but not exceeding R5 million	Up to but not exceeding R10 million	n/a	n/a	Up to but not exceeding R300 million	Exceeding R300million

Limits are per individual customer/client. Credit limits are to be reviewed on an annual basis. The limits are applicable subject to the division following the credit evaluation process. Internal limits between ODs are not applicable.

#### 5.3.3 Issuing of Credit notes

Approval Authority →	Divisional CFO	OD Exco *	GCFO	GCE
Operating Divisions	Up to but not exceeding R10million	Up to but not exceeding R20million	Up to but not exceeding R300million	Exceeding R300million
Specialist Units	Up to but not exceeding R5million	Up to but not exceeding R10million	Up to but not exceeding R300million	Exceeding R300million

Limits are per individual credit note and relates to external parties. Issuing of credit notes regarding internal/interdivisional transactions must be within the control of the divisional CFOs.

Excludes the product reconciliation process at Transnet Pipelines where the Divisional CFO or General Manager: Strategy and Commercial recommend to the OD CE the approval of transactions arising out of the product reconciliation process.

#### 5.3.4 Exceeding the operational expenditure budget in total for the year (Operating Divisions/Specialist Units)

The Board of Directors to be informed at every meeting of the financial status and latest estimates of the Company

Approval Authority →	CE:OD *	GCFO	GCE	Board
Operating Divisions	Up to but not exceeding 5% of approved budget	Up to but not exceeding 7.5% of approved budget	Exceeding 7.5% of approved budget to a maximum of 10%	>10%
Specialist Units	Up to but not exceeding 5% of approved budget	Up to but not exceeding 7.5% of approved budget	Exceeding 7.5% of approved budget to a maximum of 10%	> 10%

\* To be reported quarterly to the GCFO and GCE together with mitigating action plans to ensure that key financial metrics are maintained or met.

ANC

Delegations for operational transactions that are too detailed to include in the Delegations of Authority Framework will be determined and applied in terms of the details set out by the CE/GE in conjunction with the CFO of the respective OD/SU.

### 5.3.5 Establishing financial policy with regard to insurance

Approval Authority →	GCFO	Risk Committee
Authority Level	GCFO after consulting with Chief Risk Officer to recommend to the Risk Committee	Final approval

### 5.3.6 Inventory Write-off

Approval Authority →	OD Exco/CE* excluding TFR	TFR Exco/CE	GCFO	Group Exco/ GCE	Audit Committee	Board
Operating Divisions	Up to but not exceeding R10million	Up to but not exceeding R20million	Up to but not exceeding R100million	Up to but not exceeding R250million	Up to but not exceeding R500million	Exceeding R500million
Approval Authority →	Group Exco Member		CAPIC/GCFO	Group Exco/ GCE	Audit Committee	Board
Specialist Units	Up to but not exceeding R5million		Up to but not exceeding R100million	Up to but not exceeding R250million	Up to but not exceeding R500million	Exceeding R500million

\* Approval limits are R10million and R20million for TFR per transaction, subject to an annual cumulative limit of R500million and R100million for TFR. Specialist Unit limit is R5million cumulative per annum.

### 5.4 Procurement, Enterprise Development and Supplier Development

All procurement transactions (including reverse logistics – selling of goods) must fully comply with the approved Supply Chain Policy and Procurement Procedures Manual (PPM), where applicable – Any commercial agreement (for the purchase of goods or services) must be signed off by an authorised employee of Supply Chain Management (Procurement) prior to signing of the contract to indicate that all the steps as per Clause 5.5 below have been followed and that all procurement related governance has been adhered to. In addition to the other exclusions specifically mentioned in the PPM, Treasury transactions related specifically to the appointment of service providers for Transnet's funding and hedging requirements are not subject to the PPM.

#### 5.4.1 Appointment of Consultants

Approval Authority →	CE:OD and GE:TCP	GCFO	Group Exco/ GCE	Acquisitions and Disposals Committee	Board
Operating Divisions including TCP	Up to but not exceeding R25million	Up to but not exceeding R50million	Up to but not exceeding R200million	Up to but not exceeding R300million	Exceeding R300million
Approval Authority →	Specialist Unit GE (i.e. Foundation & Property) Group Exco Members	GCFO	GCE	Acquisitions and Disposals Committee	Board
Specialist Units excluding TCP	R10million	Up to but not exceeding R50million	Up to but not exceeding R200million	Up to but not exceeding R300million	Exceeding R300million

\*Approval limits are cumulative per annum. Excludes appointment of consultants to perform feasibility studies for capital projects.

- Consultants may only be remunerated at set rates as follows:
  - Guideline for fees as determined by the South African Institute of Chartered Accountants.
  - Guide on Hourly Fee Rates for Consultants by the Department of Public Service and Administration.
  - Prescribed by the body regulating the profession of the consultant (for this purpose the *Guideline on Cost Containment Measures issued in terms of National Treasury's Instruction Note 01 of 2013/14* must be followed).

Prescribed in the Service Level Agreement concluded with lawyers on the Transnet legal panel.

#### 5.4.2 Approval to approach the market for Open Tenders

Approval Authority →	CE:OD and GE:TCP	GCSCO	GCFO	GCE	Acquisitions and Disposals Committee	Board
Operating Divisions including TCP	Up to but not exceeding R700million	Up to but not exceeding R750million	Up to but not exceeding R1billion	Up to but not exceeding R1.5billion	Up to but not exceeding R2.5billion	Exceeding R2.5billion
Approval Authority →	Specialist Unit (i.e. Foundation and Property) Group Exco Members					
Specialist Units excluding TCP	GE Up to but not exceeding R100million	Up to but not exceeding R750million	Up to but not exceeding R1billion	Up to but not exceeding R1.5billion	Up to but not exceeding R2.5billion	Exceeding R2.5billion

THVC

The CE: OD may only delegate these powers to go to market with Open Tenders to Heads of Procurement. The Requisition (or Request to Purchase) issued to Procurement must be approved by the OD's Budget Owner or GE in the case of Specialist Units or his duly authorised delegate. Such approved requisition or Request to Purchase will signify that the acquisition has been approved and that the necessary funds are available.

Submissions requiring approval by the person with delegated authority must also include a procurement strategy document which includes Supplier Development.

#### 5.4.3 Approval to approach the market for confined tenders: Confinement of tenders (applicable to transactions above R2m in value)

Approval Authority →	CE:OD and GE:TCP	GCSCO		GCE	Acquisitions and Disposals Committee	Board
Operating Divisions including TCP	Nil	Nil		Up to but not exceeding R500m	Up to but not exceeding R1.5billion	Exceeding R1.5billion
Approval Authority →	Specialist Unit GE (i.e. Foundation & Property) Group Exco Members	GCSCO		GCE	Acquisitions and Disposals Committee	Board
Specialist Units excluding TCP	Nil	Nil		Up to but not exceeding R500m	Up to but not exceeding R1.5billion	Exceeding R1.5 billion

The limits are per transaction/confinement. All requests for approval of confinements must be made by the CE:OD /Group Exco Member through the GCSCO and the GCFO to the GCE. The OD/SU shall prepare the submission in collaboration with integrated Supply Chain Management (iSCM) to ensure that the motivation for confinement contains sufficient information to meet one or more of the grounds for confinement as stipulated in the PPM. In instances where a confinement is confidential, the GCE may approve such confinement without the confinement request being routed through any other authority.

**Note:** Confinement must only be used in respect of transactions above R2million in value. For transactions below R2million, the quotation system must be used. The quotation system is a procurement mechanism that may only be used:

- For transactions below R2million in value that.
- Relates to goods or services required on a non-repetitive basis.
- Market is known.
- Minimum of 3 quotes must be obtained where applicable (greater than R100 000 but less than R2million).

#### 5.4.4. Management's intervention to address non-compliance with procurement policies and procedures

Approval Authority →	CE:OD/and GE:TCP	GCFO		GCE	Acquisitions and Disposals Committee	Board
Operating Divisions including TCP	Nil	Nil		Up to but not exceeding R500million	Up to but not exceeding R1.5billion	Exceeding R1.5billion
Approval Authority →	Specialist Unit GE (i.e. Foundation & Property) Group Exco Members	GCFO		GCE	Acquisitions and Disposals Committee	Board
SU excluding TCP	Nil	Nil		Up to but not exceeding R500million	Up to but not exceeding R1.5billion	Exceeding R1.5billion

**Note:** All requests for approval of non-compliance must be made by the CE: OD/Group Exco member to the GCE. The OD/SU shall prepare the submission in collaboration with iSCM to ensure that the rules for the addressing of non-compliance are met. Together with the application for approval of non-compliance, the requestor must advise on the steps/corrective measures taken to avoid a repeat of the transgression within 30 days of the transgression being discovered.

#### 5.4.5 Establishing Procurement policy (opex, capex and disposals)

Authority Level	Acquisitions and Disposals Committee
-----------------	--------------------------------------

#### 5.4.6 Procurement process approval

**NOTE:** Each OD/SU will have its own main Acquisition Council (AC) which will consider and approve all procurement processes, as well as the disposal of scrap, falling within its jurisdiction from R2million, but not exceeding R700million. This is subject to the discretion of the CE: OD/GE: SU to lower the R2million thresholds, or to create Secondary Regional/Local Acquisition Councils. Where a particular Transnet Entity chooses to create a secondary AC/s, the jurisdiction of the Secondary AC/s will start below the R2 million threshold. ODs have the discretion to set the maximum threshold/s of such secondary ACs to a value higher than R2 million. This

ANUC



value will then become the minimum threshold of the main AC of the Transnet Entity. The CE: OD/GE: SU may also delegate certain process approval powers to the relevant Manager for matters below the Secondary Acquisition Councils' delegation. Transactions exceeding the CE: OD's/GE: SU's delegated authority will also be considered by the OD's main AC for recommendation to the higher approval body (e.g. the Acquisitions and Disposals Committee). If it concurs with the recommendation, the matter will be referred to the relevant person/structure with the delegation of authority for approval. Should any process approval body not agree with the recommendation, the matter must be referred back to the recommending officer(s) for reconsideration or re-motivation.

Approval Authority →	ODs, TCP and TCC (Secondary and/or Main) Acquisition Councils	GCSCO	GCFO	GCE	Acquisitions and Disposals Committee	Board
Operating Divisions (including TCP and TCC)	Up to but not exceeding R700million	Up to but not exceeding R750million	Up to but not exceeding R1billion	Up to but not exceeding R1.5billion	Up to but not exceeding R2.5billion	Exceeding R2.5 billion
Approval Authority	Specialist Unit (excluding TCP and TCC)(Secondary and/or Main) Acquisition Councils	GCSCO	GCFO	GCE	Acquisitions and Disposals Committee	Board
Specialist Units (excluding TCP and TCC)	Up to but not exceeding R20million subject to the contract period not exceeding 5 years	Up to but not exceeding R750 million	Up to but not exceeding R1billion	Up to but not exceeding R1.5 billion	Up to but not exceeding R2.5 billion	Exceeding R2.5 billion

#### 5.4.7 Enterprise and Supplier Development

Approval Authority →	CE:OD	ISCM Council/ GCSCO	GCFO	Group EXCO/ GCE	Acquisitions and Disposals Committee	Board*
Operating Divisions (including TCP and TCC)	Up to but not exceeding R5m	Up to but not exceeding R25million	Up to but not exceeding R100million	Up to but not exceeding R250million	Up to but not exceeding R500million	Exceeding R500million
Approval Authority	Specialist Unit GE (i.e. Foundation & Property) Group Exco Members	ISCM Council/ GCSCO	GCFO	Group EXCO/ GCE	Acquisitions and Disposals Committee	Board
Specialist Units (excluding TCP and TCC)	Up to but not exceeding R2million	Up to but not exceeding R25million	Up to but not exceeding R100million	Up to but not exceeding R250million	Up to but not exceeding R500million	Any amount exceeding R500million

The abovementioned delegations are per transaction.

\*RemSEC to note all Enterprise and Supplier Development transactions.

#### 5.5 Contracts and/or Agreements

- NOTE 1:** Any person who has been authorised to execute any legal documents including deeds, leases, assignments, contracts, applications, financial instruments, external submissions to or on behalf of the Company and/or its OD's or SU's or any other legal documents may only do so with the prior advice of the relevant Legal Services department as set out in the Legal Policy.
- NOTE 2:** Unless otherwise indicated in the authorities below, the authority to execute a contract or other binding document carries with it like authority to cancel or modify it, but only with the prior written advice of the relevant Legal Services department as set out in the Legal Policy and if it relates to Procurement Contracts, the process prescribed in the Procurement Procedures Manual must be adhered to.
- NOTE 3:** Any person authorised to enter into an agreement/contract or other binding document involving capital expenditure must have obtained prior financial approval in terms of the procedures set out in 5.1 prior to entering into such a CAPEX contract.

MAUC

**NOTE 4:** Approval limits are per transaction/contract.

**NOTE 5:** The authority to execute a contract or other binding document carries with it the understanding that an authorised payment required thereby will be made once proof of receipt has been obtained. No person is authorised to obligate the company to an amount greater than such payment or create more onerous obligations than those contained in the contract or other binding document. Increases to the original scope of the binding document must be supported by authorised amendment.

**NOTE 6:** The PPM prescribes the process that must be followed in terms of approving procurement contract amendments: Non-material amendments (i.e. where the scope, value and/or period of the contract is less than 10% of the original contract value): the manager with the delegation of authority may effect such amendment and is only required to inform the AC (if within the AC jurisdiction) of such amendment as soon as possible thereafter. The manager who approves the amendment may be the original signatory of the contract if the cumulative value of the amended contract is still within his/her delegation of authority. However, if the cumulative value of the amended contract is above the original signatory's delegation, the amendment must be approved by the next level of authority on review and recommendation of the original signatory.

- Material amendments within the AC threshold (i.e., where the scope, value and/or period of the contract is greater than 10% of the original contract value): the manager with the delegation of authority may not effect such amendments without the PRIOR approval of the relevant AC first of such amendment. Following AC approval such amendment needs to be signed off by the original signatory (i.e. the person with delegation of authority who signed the initial contract or the person mandated to do so) provided the cumulative value of the contract and subsequent amendment(s) still falls within his/her delegations. However, if the cumulative value of the amended contract is above the original signatory's delegation, the amendment must be approved by the next level of authority on review and recommendation of the original signatory.
- **NOTE:** As a general rule, contracts may be amended by not more than 40% of the original contract value. Any deviation (as provided for in the paragraph below) in excess of this threshold will only be allowed in exceptional circumstances.
- Amendments in excess of 40% of the original contract value or contract period will be dealt with as follows: 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 person with the delegation of authority to approve the amended value. This rule applies regardless of whether the amendment is still within the original signatory's delegation of authority or above it. On approval, the amended contract will be signed off by the person with the delegation of authority to sign off the contract value concerned. However, this rule does not apply to amendments falling within the GCE, Acquisitions and Disposals Committee or the Board's delegation of authority. For such contract amendments, the matter will be submitted to the GCE, Acquisitions and Disposal Committee or the Board regardless of the value of the contract amendment (provided the cumulative value is still within their delegations of authority).
- For higher value contracts (i.e. those signed by the operating division's GE, the GCFO or GCE), it is advisable to obtain a written mandate from that official empowering a delegate to administer such contract and to effect changes to such contract not exceeding 10% of the initially approved contract value.

#### 5.5.1 Entering into and/or signing of Contracts and/or Agreements and award of business: (including the sale of scrap)

Approval Authority →	CE:OD and GE:TCP		GCSCO	GCFO	GCE	Acquisitions and Disposals Committee	Board
Operating Divisions (including TCP)	Up to but not exceeding R700 million		Up to but not exceeding R750million	Up to but not exceeding R1billion	Up to but not exceeding R1.5billion	Up to but not exceeding R2.5billion	Exceeding R2.5billion
Approval Authority →	GE: Specialist Unit GE (i.e. Foundation & Property)	Group Exco Members	GCSCO	GCFO	GCE	Acquisitions and Disposals Committee	Board
Specialist units (excluding TCP)	Up to but not exceeding R5m subject to the contract period not exceeding 5 years	Up to but not exceeding R30 million subject to the contract period not exceeding 5 years	Up to but not exceeding R750million	Up to but not exceeding R1billion	Up to but not exceeding R1.5billion	Up to but not exceeding R2.5billion	Exceeding R2.5billion

ANC



Contract award delegation carries with it the authority to issue letters of intent, letters of award, letters of regret and signing of the final contract. Values are per contract for the full term of the contract (Total value of contract excluding VAT) on condition that approval has been obtained for the related expenditure over the period. Please refer to the conditions stipulated below.

Payments: Once the decision to contract has been issued, contract execution will be governed by the Operating Divisions or Specialist Units, including the payment process provided that the contract amount is not exceeded.

#### 5.5.1.1 Contracts > R700 million, including Transnet's top 70% value opex items and capex contracts

Prior to entering into a high value (greater than R700 million) / highly complex contract (especially for the top 60% value opex items as dealt with by iSCM Strategic Sourcing commodity teams), any authorised official must first liaise with a multi-disciplinary team of experts at Corporate Centre, who should each sign off on any agreement/contract or other binding document:

- Group iSCM.
- Group Legal Services – entire document.
- GCFO to sign-off after sign-off from the Finance Departments (Group Finance/Reporting Financial Planning, Tax and Treasury).
- Group Risk.
- Group Insurance.
- Contracts less than R700 million within the OD's limit of authority, require a similar process as set out above to be followed by the relevant OD.

#### 5.5.1.2 Contracts with foreign exchange exposure

- Approval to enter into an agreement/contract or other binding document involving foreign currency exposure (including *international agreements*) may not be sub-delegated lower than to the Chief Procurement Officer (CPO) of an OD. Approval of the divisional CFO is required to enter into the contracts that may result in foreign currency exposure.
- The duly authorised official must obtain prior written approval in respect of FX agreements above R50million from Group iSCM, Group Legal Services, Group Treasury, Group Tax, Group Risk, Group Insurance and Group Reporting, both where the contract will be concluded in foreign currency and especially in such cases where foreign contracts will be concluded in South African Rand, as this may expose the Company to an embedded derivative. All FX agreements above R100million must apart from the above also obtain written approval from the GCFO. The GCFO to sign-off after sign-off from Group Treasury, Group Tax, Group Risk, Group Insurance, Group /Reporting, Group Legal Services (the entire document) and Group iSCM.

#### 5.5.2 Entering into and/or Signing of Revenue Contracts/Agreements and authority to issue binding quotes locally: (excluding lease contracts and the sale of scrap)

Approval Authority →	CE/OD/GE/SU Commercial Limit per Annum per contract up to but not exceeding 5 years	GCFO Limit per Annum per contract up to but not exceeding 5 years	GCE Limit per Annum per contract up to but not exceeding 5 years	Acquisitions and Disposals Committee Limit per Annum per contract and contracts exceeding 5 years	Board Limit per Annum per contract and contracts exceeding 5 years
Operating Divisions	Up to but not exceeding R500 million but not exceeding R2.5 billion for the total contract	Up to but not exceeding R700 million but not exceeding R3.5 billion for the total contract	Up to R2.5billion per annum but not exceeding R12.5billion for total contract value	Up to R3 billion per annum, unlimited total contract value	Exceeding R3 billion per annum and unlimited total contract value
Approval Authority →	Specialist Unit CE Limit per Annum per contract up to but not exceeding 5 years	GCFO Limit per Annum per contract up to but not exceeding 5 years	GCE Limit per Annum per contract up to but not exceeding 5 years	Acquisitions and Disposals Committee Limit per Annum per contract and contracts exceeding 5 years	Board Limit per Annum per contract and contracts exceeding 5 years
Specialist Units	Up to but not exceeding R10 million	Up to but not exceeding R700 million but not exceeding R3.5 billion for the total contract	Up to R1 billion but not exceeding R5 billion for the total contract	Up to R3 billion per annum, unlimited total contract value	Exceeding R3billion per annum and unlimited total contract value

- Integrated customer agreements where a service incorporates more than one division must be signed off by the Group Executive: Legal and Compliance, GCFO and the Group Executive: Commercial in addition to sign off by the CE: ODs, up to but not exceeding revenue of R500million per annum not exceeding 5 years.

ANC

- If the contract period is below 12 months the contract value is to be annualised and the delegated authority required to approve the transaction will be determined by the annualised amount.
- All limits indicated above are exclusive of VAT
- Board approval is required if the annual value of the contract exceeds R3 billion.

**5.5.3 Entering into and/or Signing of Revenue Contracts/Agreements and authority to issue binding quotes internationally including cross border contracts: (excluding lease contracts and the sale of scrap)**

Approval Authority →	CE:OD Limit per Annum per contract up to but not exceeding 3 years	GCFO Limit per Annum per contract up to but not exceeding 5 years	GCE Limit per Annum per contract up to but not exceeding 5 years	Acquisitions and Disposals Committee Limit per Annum per contract and contracts exceeding 5 years	Board Limit per Annum per contract and contracts exceeding 5 years
Operating Divisions	Up to but not exceeding R300 million	Up to but not exceeding R500 million	Up to but not exceeding R1 billion	Up to but not exceeding R3 billion	Exceeding R3 billion
Approval Authority →	GE:SU Group Exco Members Limit per Annum per contract up to but not exceeding 3 years	GCFO Limit per Annum per contract up to but not exceeding 5 years	GCE Limit per Annum per contract up to but not exceeding 5 years	Acquisitions and Disposals Committee Limit per Annum per contract and contracts exceeding 5 years	Board Limit per Annum per contract and contracts exceeding 5 years
Specialist Units	Up to but not exceeding R200 million	Up to but not exceeding R500 million	Up to but not exceeding R1 billion	Up to but not exceeding R3 billion	Exceeding R3 billion

**5.5.4 Internal Contracts**

Contracts between OD and/or SUs such as service level agreements and project specific agreements may be entered into between CE:ODs or GE:SUs.

**5.5.5 Property and Lease Agreements**

All internal and external Property Lease Agreements including revenue generating leases and expenditure leases (excluding vacant land).

Approval Authority →	CE:OD and GE:TCP	GE: Transnet Property	GCFO	GCE	Acquisitions and Disposals Committee
Operating Divisions	Up to but not exceeding R100 million per lease per annum	Up to but not exceeding R200 million annualised	Up to but not exceeding R200 million full term	Up to but not exceeding R500 million full term	Exceeding R500 million full term
	Tenure not exceeding 5 years	Tenure not exceeding 10 years	Tenure not exceeding 10 years	Tenure exceeding 10 years	Tenure exceeding 15 years

- Tenders that include alienation/leasing out of land for a period longer than 5 years must be submitted to the GCE for approval prior to going out on tender or RFP.
- Cession of leases: All cession or assignment of Lease agreements shall be approved by the GCFO or Group Executive: Transnet Property. For cession of leases at OD level, the CE of the respective OD/SU may approve cession or assignment of lease agreements.
- Cession of lease agreements, renewals and extensions of lease agreements with a change to material terms of the existing lease e.g. extension or shortening of the lease period, change of rental terms etc. may be approved in terms of the above limits i.e. where the original lease was approved in terms of the delegated authority above, changes of material terms to be approved by the same approval body.
- All external Lease Agreements (> 5 years) of properties on land/properties adjacent to other land/properties of ODs and/or belonging to Transnet Property, must be communicated and agreed with the relevant division/Transnet Property before entering into any Lease Agreements.
- All leases for vacant land may only be approved by the GCE with the above limits for the GCE applicable i.e. if the lease value exceeds R500million or the tenure exceeds 15 years then Acquisitions and Disposals Committee approval is required. For the purposes of this transaction vacant land is considered to be undeveloped land.
- In cases where vacant land is leased out with its own rental premium applicable to it and a separate rental premium for improvements located on the portion of the same leased site, although part of one lease transaction – to the extent that the

ANC

proposed lease has lettable vacant land, the GCE shall approve such lease transactions in line with his limits of authority as stated in the table above.

- Interdivisional leases for vacant land may be entered into and signed by the respective CE: ODs/GE: TCP/GE: Transnet Property.
- Leases for vacant land exclude the leasing in of land to be used for lay down areas and borrow pits for projects.
- Special Delegation to apply to the CE of TNPA in compliance with the National Ports Act of 2005 as amended.
- Internal leases between Transnet Property and the ODs/SUs may be signed by the CEs or GE's of the respective ODs/SUs.
- Revenue Generating Leases: Lease agreements concluded by Transnet in its capacity as lessor for purposes of generating revenue.
- Expenditure Lease: Lease agreements concluded by Transnet in its capacity as a Lessee.
- Properties on DPE approved Transnet non-core list may only be leased out for a maximum period of 10 years. Any leases of these non-core properties for longer than 10 years require s 54 (2) of the PFMA approval by the DPE.

#### 5.5.6 Non-Disclosure Agreements

Non-Disclosure Agreements can, with the authority to sub-delegate, be signed by the CE: ODs or GE: SU provided there are no direct monetary obligations created for Transnet.

#### 5.5.7 Memorandum of Understanding

A Memorandum of Understanding must be signed by the Group Chief Executive, with the authority to sub-delegate, to the CE: OD or GE: SU.

#### 5.6 Legal Services

**NOTE:** The provision of legal services must be in accordance with the Legal Policy. In respect of all litigation the bearer of the authority may, after taking legal advice from Group or Divisional Legal Services, as the case may be, execute all documents and do all things necessary to give effect to his/her authorisation including submission through governance structures.

#### 5.6.1 Commencing and settling any litigation, arbitration and other forms of Alternative Dispute Resolution

Approval Authority →	Divisional Head: Legal	CE:OD, GE: Transnet Property and GE:TCP	GE: Legal and Compliance	GCFO	GCE
Operating Divisions	Up to but not exceeding R2million	Up to but not exceeding R10 million Greater than R10 million but less than R35 million with concurrence of GE: Legal and Compliance	Up to but not exceeding R50 million	Up to but not exceeding R100million with concurrence of GE: Legal and Compliance	Exceeding R100 million

Approval limits are per litigation matter and relate to the settlement amount of that particular matter.

*ANC*

### 5.6.2 Disputes with Government and matters posing a reputational risk to the Company

Approval Authority →	Risk Committee	Board
	Matters which pose a reputational risk to the Company should be submitted for consideration.	Any disputes with government entities or where the outcome of any litigation, arbitration or similar proceedings is likely to have a material effect on the business, financial condition or prospects of the Company

### 5.6.3 Defending matters in court or any other competent forum

Approval Authority →	Legal Manager
	Defending, subject to the Legal Policy, any litigation (actions or applications) in court or any other competent forum, including the appointment of attorneys and/or advocates for such proceedings

NOTE: the Standard Operating Procedures for Litigation Matters prescribes the following:

- Upon receipt of instructions, the Legal Advisor must ascertain from the facts of the case and in law whether:
  - Transnet has legal grounds to pursue litigation and whether it would be financially viable to pursue litigation bearing in mind the quantum of the matter and the costs of pursuing the matter;
  - It would be more advisable to settle the matter;
  - There is any reputational or other risk to Transnet in proceeding with the litigation;
  - Whether there is any precedence that needs to be created by the company for future similar matters.
  - Should the Legal Advisor be satisfied that, on the facts presented, Transnet should institute legal action, the Legal Advisor must submit a written request to the person duly authorised, in terms of the Delegations of Authority Framework, for approval:
    - To institute litigation on behalf of Transnet, and
    - To appoint an external attorney from the Transnet approved panel of attorneys.

### 5.6.4 Subject to the Legal Policy, the appointment of external advisors, attorneys, advocates and any other external legal advisors including adjudicators, mediators, arbitrators for purposes of alternative dispute resolution process under NEC3 contracts or any other contract.

Approval Authority →	CE:OD	GE: Legal and Compliance	GCE
OPERATING DIVISION	Up to but not exceeding R25 million	Up to but not exceeding R50 million	Exceeding R50 million
	Specialist Units GEs and Heads of Legal	GE: Legal and Compliance	GCE
Specialist Units GEs and Heads of Legal	Up to but not exceeding R10 million	Up to but not exceeding R50 million	Exceeding R50 million

- The amounts indicated relates to the claim amount in the case of commencing litigation, and the estimated legal fees to be charged in all other matters.

### 5.6.5 Pleading to criminal charges and payment of penalties imposed by Regulators.

Approval Authority →	CE:OD	GE: Legal and Compliance	GCE
OPERATING DIVISION	Up to but not exceeding R25 million	Up to but not exceeding R50 million	Exceeding R50 million
	Specialist Units GEs and Heads of Legal	GE: Legal and Compliance	GCE
Specialist Units GEs and Heads of Legal	Up to but not exceeding R10 million	Up to but not exceeding R50 million	Exceeding R50 million

- The amounts indicated relate to the amount of fine or penalty competent or imposed against the Company.

## 5.7 Human Resources

MANC

## INTRODUCTION

The Delegation of Authority for Human Resources provides for controls and good governance in the following areas:

- Organisation Management
- Personnel Appointments and Remuneration
- Appointment of Fixed Term Contract Employees
- Interim / *Ad hoc* Remuneration Adjustments
- Rewards / Awards / Exceptional Payments / *Ex-gratia* Awards
- Suspension of Employees
- Dismissal of Employees
- Mutual Separation Agreements
- Collective Bargaining and Trade Union Recognition
- Deviation from approved Human Resources Policies

## PRINCIPLES

1. Any approval in the Human Resources environment must be obtained from a manager who is at least one hierarchical reporting level higher than the employee for whom authorisation is required.
2. When acting in a higher capacity, decision for own portfolio or department that will ordinarily be recommended by the acting incumbent must be referred to one level higher.
3. Where an incumbent acts in a higher position, the full powers of delegation of the position in which the person is acting, may be transferred to the acting incumbent. The incumbent's immediate line manager must agree to the appointment of the acting person. The powers delegated to the person acting must be clearly set out in a written document and the person delegated the powers must sign written acceptance of the powers.
4. Each OD may implement stricter delegations and increase the level of authority above those set out in the document. Any such change must be in writing.
5. The HR delegations contained herein cannot be sub-delegated except when delegating to an acting incumbent acting in the roles specified therein.
6. Board recommendation and approval is required for the appointment and remuneration of the Transnet GCE and GCFO.
7. The Remuneration, Social and Ethics Committee (REMSEC) provides final approval for the annual reward allocation including the salary mandate.

All matters relating to the position of the GCE and GCFO are reserved for the Board and Shareholder Minister in line with the Company's governing legislation and mandates.

## ABBREVIATIONS

The abbreviations used in the Human Resources Delegation of Authority are set out in the table below:

FA	Final Approval
FA:CC	Final Approval for Corporate Centre
FA:OD	Final Approval for Operating Division
R	Recommendation
R:OD	Recommendation by Operating Division
A	Has provided advice
A:OD	Advice provided by Operating Division
C	Consultation
N	Noting
I	Initiation
GE: HR	Group Executive: Human Resources
CE, GE	Chief Executive of OD or relevant Group Executive of Corporate Staff Department
GM: HRE	General Manager: Human Resources Enablement
GM:HR,CC	General Manager: Human Resources, Corporate Centre
GM: ER	General Manager: Group Employee Relations
OD HR: GM	General Manager: Human Resources at the Operating Division
LM: GM	Line Management - General Manager

The table below sets out the delegation framework for Human Resources.

*AVC*

1	Organisation Management: Creation of New Positions / Change in Positions / Restructuring								
	• No permanent or fixed term contract position can be created or the grade level changed unless the approved Organisation Management governance was followed in respect of the evaluation of positions and ratification of grade levels.								
	HUMAN RESOURCES	Shareholder)	Board	RemSEC	GCE	GE: HR	OD/SU CE/ GE	OD HR GM/OD COO	LM:GM
1.1	Group Exco (A level) Executive Directors	FA	R						
1.2	Group Exco A Level			C	FA	I			
1.3	General Managers (B level)					R	FA		
1.4	Executive Managers (C level)						FA	FA	I
1.5	Senior Management (D level and below)								FA
1.6	Organisational Structure of ODs/SUs/TCC				FA	R			

2		<b>Personnel Remuneration</b> <ul style="list-style-type: none"> <li>The RemSEC reviews the GCE's assessment of performance. The remuneration of the abovementioned category of employees shall be based on the Remuneration Policy.</li> <li>The appointment and remuneration of all management level employees (levels A to F) will be guided by the Guidelines and Salary Bands issued by the Group Remuneration Office. These Guidelines and Salary Bands will take into account the occupational specific categories.</li> <li>For managers in levels A and B the Group Remuneration Office will recommend the appropriate remuneration bands based on market information and internal parity. Approval of the final appointment and remuneration package will be in terms of the delegations below.</li> <li>Each OD will apply the Guidelines and Salary Bands when appointing and structuring the packages of management employees in levels C and below. Approval of the final appointment and remuneration package will be in terms of the delegations below.</li> <li>After salary adjustments and before a mandate is sought for the next financial year, the Group Remuneration Office will conduct a comparative analysis of salaries across ODs to inform the Group Guidelines and Salary Bands of managers for the new financial year. Affordability and the need for internal and external parity will inform these guidelines.</li> </ul>						
HUMAN RESOURCES		Shareholder	Board	RemSEC & CORP GOV	GCE	GE: HR	OD/SU CE/GE	ODHR GM
2.1	Group Exco (A level ) Executive Directors	FA	R			I		
2.2	Group Exco (A Level)			C	*FA	R		
2.3	General Managers (B level)				FA	R	R	
2.4	Executive Managers (C level)					A	FA	R
2.5	Senior Manager (D level and below)						FA	FA
2.6	I							

HMC

3

Appointment of Employees (Indefinite Contract and Fixed-Term Contract Employees)											
<ul style="list-style-type: none"><li>A person appointed on an indefinite contract or fixed-term contract (for a specific period of time or to perform a specific project) must be appointed into an approved graded position.</li><li>Once the appointment has been approved, the person delegated to approve the appointment may sub-delegate the signing of the contract of employment.</li><li>Any appointment of a person on an indefinite or fixed term contract for employment outside of the borders of South Africa must be approved by the Group Chief Executive on recommendation from the Chief Executive of the Operating Division or the Group Executive of Human Resources for Transnet Corporate Centre, including Transnet property and Transnet Capital Projects.</li></ul>											

\* The Chairpersons of Remuneration, Social and Ethics and the Corporate Governance and Nominations Committees will be consulted by the GCE for the appointment of Group Exco Members (other than executive directors). The consultation will be through a memorandum submitted to the Chairpersons of the Committees.

4	<b>Counter Offers</b> If an employee produces a written and current counter offer of employment with details of the remuneration package, and the Company seeks to retain the employee based on the criticality of the employee's skill, an interim adjustment of the employee's current remuneration package may be offered in terms of the delegations below. Any counter offer must be in accordance with the Group Guidelines and Salary Bands issued by Group Remuneration.									
	<b>HUMAN RESOURCES</b>	<b>Shareholder</b>	<b>Board</b>	<b>RemSEC/ Corp Gov</b>	<b>GCE</b>	<b>GE: HR</b>	<b>OD/SU CE/ GE</b>	<b>OD/ HR GM</b>	<b>GM:HRE</b>	<b>LM:GM</b>
4.1	Group Exco (A level) Executive Directors	FA	R	C						
4.2	Group Exco (A level)			FA	R	R			I	
4.3	General Managers (B level)				FA	R	R	I	I	
4.4	Executive Managers (C level)						FA	R	R	I
4.5	Senior Management (D level to Level F)						FA	R	R	I
4.6	Bargaining Level employees (in accordance with the applicable Collective Agreement)							FA	FA:CC	R

5	<b>Interim Salary Adjustments</b> <ul style="list-style-type: none"> <li>In line with the Group Remuneration Philosophy approved by the REMSEC, there will be no interim / ad-hoc remuneration adjustments.</li> </ul>
---	--

5	<b>Internal Rewards / Awards / Exceptional Payments / Ex-gratia Awards</b> • The amounts reflected below are per initiative (not per individual employee payment) per annum								
	<b>HUMAN RESOURCES</b>	<b>Board</b>	<b>RemSEC</b>	<b>GCE</b>	<b>GE: HR</b>	<b>OD CE/ GE</b>	<b>HR GM</b>	<b>GM: HRE</b>	<b>GM Line Manager</b>
5.1	R15m and above	FA	R	R	I			R	
5.2	Between R10m but not exceeding R15m		FA	R	I				
5.3	Between R50 000 but not exceeding R10m			FA	R	R	I	I	
5.4	Between R20 000 but not exceeding R50 000					FA	R	R	I
5.5	Up to but not exceeding R20 000					FA	R	R	I
5.6	Up to but not exceeding R 10 000					FA	R	R	I

ANC



6		Suspension of Employees										
		<ul style="list-style-type: none"><li>The suspension of all employees is per the delegations of authority below.</li><li>In the case of the suspension of a bargaining unit employee, the relevant OD Employee Relations Manager must recommend the suspension based on the merits of the case.</li></ul>										
HUMAN RESOURCES		Shareholder	Board	RemSEC/ Corp Gov	GCE	GE: HR	OD/SU CE/GE	OD/SU HR GM	GM: ER	LM: GM	LM	ER Manager
6.1	Group Exco (A level Executive Directors	FA	R	C/N								
6.2	Group Exco (A level excluding executive directors)			N	FA	R	R			R		
6.3	General Managers (B level)				N	R	FA		R			
6.4	Executive Managers (C level)						FA	R	A	R		
6.5	Senior Management (D level to F level)							R		FA	R	A
6.6	Bargaining unit employees							A			FA	R

7		<b>Dismissal of Employees</b> <ul style="list-style-type: none"> <li>The dismissal of any employee for reasons of discipline or incapacity must be preceded by a fair hearing/process in line with Company policies.</li> <li>The required authority to seek a dismissal of an employee at a disciplinary or incapacity hearing must be obtained prior to the hearing.</li> <li>The dismissal of an employee for operational requirements must be preceded by a fair consultation process.</li> </ul>									
<b>HUMAN RESOURCES</b>		Shareholder	Board	GCE	GE: HR	OD/SU CE/GE	OD/ HR GM	GM: ER	LM: GM	LM	ER Manager
7.1	Group A level Executive Directors	FA	R								
7.2	Group Exco (A level excluding executive directors)		N	FA	R			I			
7.3	General Managers (B level)			FA/N	R	FA		I			
7.4	Executive Managers (C level)					FA	R	I R:CC	R		I
7.5	Senior Management (D level to F level)					N	R		FA	R	R
7.6	Bargaining unit employees									FA	R

8		<b>Mutual Separation</b> <ul style="list-style-type: none"> <li>Terms and conditions and financial settlement amounts of mutual separation agreements for A – D Roles will be guided by the Guidelines issued by the Group Remuneration Office.</li> </ul>									
<b>HUMAN RESOURCES</b>		Shareholder	Board	RemSEC	GCE	GE: HR	OD/SU CE/GE	OD/SU HR GM	GM:HR, CC	GM:ER	LM:G M
8.1	Group Exco (A level) Executive Directors	FA	R								
8.2	Group Exco (A level)			FA	R	R			I	I	
8.3	General Managers (B level)			N	FA	R	R		I	I	
8.4	Executive Managers (C level and below)						FA	R		R	I

HMC



9	<b>Settlement of Legal Disputes of Employees and Arbitration</b> The settlement of labour disputes at a disciplinary hearing, at the Transnet Bargaining Council, the CCMA, the Labour Court or High Court is subject to approvals in terms of the delegations below									
HUMAN RESOURCES	Shareholder	Board	GCE	GE: HR	OD CE/ GE	OD HR GM	GM: ER	GM Line Manager	ER Manager	
9.1 Group Exco (A level) Executive Directors	FA	R								
9.2 Group Exco (A level) excluding Executive Directors		N	FA	R			I			
9.3 General Managers (B level)		N	FA	R	R		I			
9.4 Executive Managers (C level)					FA	R	A	R	I	
9.5 Management (D levels and below )						FA		R	I	
9.6 Bargaining unit employees					FA	R			I	

10	<b>Collective Bargaining and Trade Union Recognition</b> <ul style="list-style-type: none"> <li>Collective agreements shall only be concluded where a collective agreement as required by law</li> <li>Shift patterns and working arrangements are matters for consultation and not collective agreement</li> </ul>							
	<b>HUMAN RESOURCES</b>	RemSEC	GCE	GE: HR	OD/SU CE/GE	OD HR GM	GM:ER	LM:GM
10.1	Conclusion of any Collective Agreements with Labour excluding shift patterns and matters for consultation			FA	R	R	I	
10.2	Mandate for salary and wage negotiations	FA	R	R			I	
10.3	Recognition of Trade Union and Signing of Recognition Agreement	N	N	FA			I	

11	<b>Report all human Capital Risks</b>					
	Board	Risk Committee	Corp Gov	RemSEC	GCE	GE:HR
	FA	C	N	C	R	I

12	<b>Deviation from Approved Human Resources Policies and recommendation of policies</b>								
	<b>HUMAN RESOURCES</b>	Risk Committee	Group Exco	GCE	GE: HR	OD/SU CE/GE	OD HR GM	GM: ER	GM:HR,CC
12.1	Any deviation from a Transnet HR Policy*			FA	R	R	R	I	I
12.2	Approval of HR policies*		FA		R				

\* Excluding Board approved policies.

## 5.8 General Delegations

### 5.8.1 Chartering of Aircraft

Authority Level	OD / GE:SU	GCFO	GCE
Chartering of Aircraft	NIL	Up to but not exceeding R3 million	Exceeding R3 million
Chartering of helicopters for operations	R250 000*	Up to but not exceeding R1 million	Exceeding R1 million

\* The limits for CE:ODs/ GE: SUs are cumulative per helicopter per month.

### 5.8.2 Mobile phones: Authorising payments exceeding monthly limits (reflected in mobile phone contract)

Companywide	Group Exco Member	GCFO	GCE
	Up to but not exceeding R10 000 per month	Up to but not exceeding R20 000 per month	Exceeding R20 000 per month

### 5.8.3 Entertainment Expenditure

Authority Level	OD: CE/ Group Executives	GCE
	Up to but not exceeding R50 000 per occasion	Amounts exceeding R50 000 per occasion

Costs incurred by any person on behalf of the Company must be authorised by that person's superior and must be within the approved budgetary limits. Supporting documentation should be marked cancelled to prevent re-use thereof. All entertainment expenses must be business related expenses.

### 5.8.4 Rewards/Awards/Exceptional Payments to external parties: (Examples: *Ex-gratia* awards, exceptional performance, recognition payments)

	CE:OD	GCFO	GCE	REMSEC	Board
Operating Divisions(Incl TP and TCP)	Up to but not exceeding R50 000	Up to but not exceeding R100 000	Up to but not exceeding R5million	Up to but not exceeding R10million	Exceeding R10million
	Group Executive	GCFO	GCE	REMSEC	Board
Specialist units	Up to but not exceeding R50 000	Up to but not exceeding R100 000	Up to but not exceeding R5million	Up to but not exceeding R10million	Exceeding R10million

### 5.8.5 Sponsorships and Donations

Approval Authority →	OD CE	GCFO	GCE	REMSEC	Board
Operating Divisions	Up to but not exceeding R5million	Up to but not exceeding R7million	Up to but not exceeding R15million	Up to but not exceeding R20million	Exceeding R20million
Approval Authority →	Group Executive	GCFO	GCE	REMSEC	Board
Specialist Units	Up to but not exceeding R2million	Up to but not exceeding R7million	Up to but not exceeding R15million	Up to but not exceeding R20million	Exceeding R20million

Approval limits are cumulative per annum e.g. the CE:OD can approve a total amount of R5m per annum for sponsorships and donations.

### 5.8.6 Annual filing of tariff applications with Regulators

- OD tariff increase applications to be submitted to Exco for approval.
- The CE: OD in concurrence with the GCFO are delegated to file the Tariffs applications with relevant Regulatory bodies.

### 5.8.7 International Business Travel (including travel to African countries)

	Approval Authority
Below CE:OD level at Operating Division	GCE
CE:OD	GCE
Corporate Centre	GCE
Specialist Units	GCE
Group Executives	GCE
Travel to SADC Countries	CE: TFR / CE: TE / GE: Planning and Sustainability

WAC

GCE and Chairperson	User – Retrospective review by GCE or Chairperson and vice versa.
---------------------	---

Business benefits, analysis and purpose to be demonstrated in the application to the respective approval authority.  
Post travel a report back on the achievement of the above to be submitted to the respective approval authority.

#### 5.8.8 Domestic Business Travel

	Approval Authority
Chairperson/GCE/Group Exco Members	User
GE of Specialist Unit	Group Exco member responsible
General Managers/Extended Exco	CE:OD/CFO:OD/SU/Group Executives
All other levels	Extended Exco

All travel must be in line with the approved Travel Policy as amended in accordance with the provisions of National Treasury instruction Note 1 of 2013/14. Extended Exco Members at an OD/SU may sub-delegate to the appropriate lower level.

#### 5.8.9 Communication

	Approval Authority
External communication on strategy and operations	GM: Public and Corporate Affairs or GCE or his Designate
Communication on operational issues relating to an OD	Group Exco Member responsible for OD or any delegated appointee
Communication with the Shareholder Minister	Office of the GCE or Chairperson of the Board of Directors

Approval to attend seminars and or conduct presentations to external parties which may result in indirect communication may be approved by a CE:OD GE:SU or the GCE.

#### 5.8.10 Establishment of Special Purpose Vehicles (SPVs), Public Private Partnerships (PPPs), Private Sector Participation (PSP) and Trusts

	Approval Authority				
Establishment of SPVs, PPPs, PSPs and Trusts	Board to approve after recommendation by ADC, the GCE, GCFO, GE: Legal and Compliance as per the Materiality and Significance Framework contained in the Compact with the Shareholder if the transaction is specified in the Corporate Plan if not specified in the Corporate Plan then Board may approve the transaction up to but not exceeding capital risk of R100million. Capital risk in excess of R100million are to be recommended by the Board for Shareholder approval.				
Commencement of due diligence/feasibility studies for PSPs, PPPs and SPVs	<table border="1"> <tr> <th>GE: Commercial</th><th>GCE</th></tr> <tr> <td>Up to but not exceeding R5m for the study</td><td>Exceeding R5m for the study</td></tr> </table>	GE: Commercial	GCE	Up to but not exceeding R5m for the study	Exceeding R5m for the study
GE: Commercial	GCE				
Up to but not exceeding R5m for the study	Exceeding R5m for the study				

The Company shall not without the prior written approval of the Shareholder Minister enter into any transaction which exceeds or falls outside of the limits prescribed by the Shareholder's Compact or the Significance and Materiality Framework.

#### 5.8.11 Establishment of Joint Ventures or Consortia with Entities incorporated in foreign jurisdictions

To be read in conjunction with 5.8.10 above.

	Approval Authority
Establishment of Joint Ventures or Consortia with Entities incorporated in foreign jurisdictions	<p>Approval to enter into an agreement or other binding document establishing a joint venture or consortium with an entity incorporated in foreign jurisdiction requires approval from the Shareholder Minister on recommendation from the Board and in addition, if it also contains foreign currency exposure, approval must be sought and obtained as per the monetary thresholds indicated in the second bullet under item 5.5.1.2 above.</p> <p>If capital risk is R100million or below, Board approval is required as per the Materiality and Significance Framework contained in the Compact with the Shareholder. Capital risk in excess of R100million for this transaction are to be recommended by the Board of Directors for approval by the Shareholder.</p>

The Company shall not without the prior written approval of the Shareholder Minister enter into any transaction which exceeds or falls outside of the limits prescribed by the Shareholder's Compact or the Significance and Materiality Framework (SMF)

#### 5.8.12 Restructuring and sale of business

	Approval Authority
Restructuring or sale of business	Board in accordance with Section 54 of the PFMA

#### 5.8.13 Pension Fund and Medical Fund Rule Amendments as recommended by the Board of Trustees of the Funds

	Approval Authority
Changes to the rules of the pension and medical fund that do not require Ministerial approval	GCFO and GCE
Rule amendments that require Ministerial approval	Board to recommend to the Minister of Public Enterprises for approval

STAC

## 5.8.14 Application for Environmental Authorisation

- All environmental impact assessment or basic assessment applications must be prepared by a competent independent environmental assessment practitioner/consultant, unless exemption from this provision has been obtained in writing by the Department of Environmental Affairs and under the supervision of the Environmental Department in the OD/SU.
- The application for environmental authorisation must be signed as per the approval authority below.

	Approval authority to act as applicant for an environmental authorisation for Transnet SOC Ltd
Operating Division	Project Manager/ Operations Manager/Environmental Manager
Specialist Unit (Transnet Property)	Chief Operations Officer of Property
Specialist Unit (Transnet Capital Projects)	Project Director

- The applicant remains legally responsible for the compliance with the environmental authorisation throughout the implementation of the authorisation.
- Should an authorisation for new capital projects contain operational elements after formal handover of the project by TCP, the DEA needs to be informed in writing of the change in names and acknowledgement from DEA be filed.
- Should any of the above applicants leave the Company, the DEA needs to be informed in writing of the new person responsible for the implementation of the environmental authorisation.

## 5.8.15 Application for Liquor Licences (all types)

	Approval authority to act as applicant for application for liquor licences for Transnet SOC Ltd
Operating Division	Chief Executive
Specialist Unit (Transnet Property and Transnet Capital Projects and Foundation)	Group Executive
Corporate Centre	Group Chief Executive

## 5.8.16 Company Membership of Industry Associations or International Organisations

Approval Authority	CE:OD or GE:SU	GCE	Remunerations, Social and Ethics Committee
	Up to but not exceeding R5 million	Between R5 million and R20 million	Above R20 million.

The relevance of such membership shall be reviewed annually by the OD/SU concerned

## 5.8.17 Enterprise Information Management Systems (EIMS) Governance Framework and Charter

The Group Executive: EIMS is delegated to approve exemptions to the Framework.

## 5.8.18 Recommendation on Board-approved Policies

Deviation from Policy:	Board	Audit	Risk	ADC	Corporate Governance and Nominations Committee	RemSEC	Group Exco
Governance and Ethics Management Policies	FA				R	N	
HR related (succession planning, excluding executive directors)						FA	R
HR related (succession planning for executive and )	R				R		R
HR related (performance management)						FA	R
Procurement related	FA			R			R
Property related				FA			R
Risk related			FA/R				R
Treasury Related		FA					R
Tax related		FA					R
CSI related	FA						
Compliance related	FA	R				R	
Marketing and Advertising	FA					R	
Sustainability (Energy and Water)							
B-BBEE	FA					FA	R
PSP	FA			R		R	
Financial Policy w.r.t. Insurance		N	FA				R

ANC



## **REPORT 2(B) – EXHIBIT 57**

**Noluthando Masondo**

---

**From:** Carol Phiri Transnet Corporate JHB <Carol.Phiri@transnet.net>  
**Sent:** 31 March 2016 13:36  
**To:** Phetolo Ramosebudi Transnet Corporate JHB

Dear Mervin

The TSDBF is now an approved counterpart with Transnet for hedging transaction purposes.

Kind regards

Phetolo

## **REPORT 2(B) – EXHIBIT 58**



**Noluthando Masondo**

**From:** Phetolo Ramosebudi Transnet Corporate JHB  
<Phetolo.Ramosebudi@transnet.net>  
**Sent:** 16 March 2016 12:10  
**To:** Niven Pillay  
**Cc:** Deva Sathee Transnet Corporate JHB; Reon Louw Transnet Corporate JHB  
**Subject:** Re: interest swap club loan

Hi Niven

I see that no respond and feedback was provided on the discussion from the meeting on Friday and this transaction is now delay I would like to set the following steps;

- 1) any further transaction please engage Transnt dealing team through Deva for price verifications before execution, and
- 2) since there is no further discussion and rebate on the current deal, Transnt will confirm the current transaction in spite of the fact we have raised concerns.

Thanks  
 Phetolo  
 Sent from my iPad

On 15 Mar 2016, at 8:47 AM, Phetolo Ramosebudi Transnet Corporate JHB <[Phetolo.Ramosebudi@transnet.net](mailto:Phetolo.Ramosebudi@transnet.net)> wrote:

Regards  
 Phetolo

Begin forwarded message:

**From:** "Reon Louw Transnet Corporate JHB" <[Reon.Louw@transnet.net](mailto:Reon.Louw@transnet.net)>  
**Date:** 15 March 2016 at 08:09:21 SAST  
**To:** "Phetolo Ramosebudi Transnet Corporate JHB" <[Phetolo.Ramosebudi@transnet.net](mailto:Phetolo.Ramosebudi@transnet.net)>, "Tshepo Matlamela Transnet Corporate JHB" <[Tshepo.Matlamela@transnet.net](mailto:Tshepo.Matlamela@transnet.net)>  
**Cc:** "Mark Tannous Transnet Corporate JHB" <[Mark.Tannous@transnet.net](mailto:Mark.Tannous@transnet.net)>, "Deva Sathee Transnet Corporate JHB" <[Deva.Sathee@transnet.net](mailto:Deva.Sathee@transnet.net)>  
**Subject:** FW: interest swap club loan

Phetolo,

Following on from your conversation with Deva and Mark on Friday, please find the requested swap analysis below.

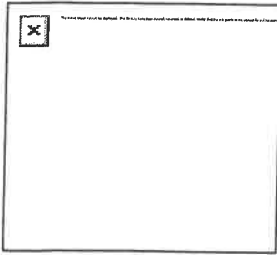
We were not involved in the pricing and execution of the first tranche of this transaction, so cannot comment around the consistent application of pricing methodology and fee application across the two tranches.

Deva also included some comment around the charging of fees.

We are still awaiting you approval for the capturing of the discussed transactions.

We are happy to discuss further if need be

Regards



Reon Louw  
Chief Trader  
Transnet Treasury  
Transnet SOC Ltd.

Cell: 083 387 9965

Work: 011 220 3200

Fax: 011 308 2639

Mail: [reon.louw@transnet.net](mailto:reon.louw@transnet.net)

**[www.transnet.net](http://www.transnet.net)**

---

**From:** Deva Sathee Transnet Corporate JHB

**Sent:** 14 March 2016 04:11 PM

**To:** Reon Louw Transnet Corporate JHB

**Subject:** interest swap club loan

Hi Phetolo,

Please see below the interest rate swap analysis for the deal executed by Nedbank

Table 1, 2 and 3 below outline the possible trading level.

- Table 1 analyses the fixed rate as traded with Nedbank
- Table 2 analyses the potential fixed rate with other banks
- Table 3 analyses the potential fixed rate with other bank and with reduced Regiment fee.
- The norm for advisory fees/execution fees are **basis points on the notional amount** and **not basis points on the fix rate**. The market fees are generally between 20bps and 50bps of notional.
- The 20bps fee charged by Regiments are based on the fixed rate and this implies an equivalent 121bps on notional. It is substantially more than the range of 20 to 50 bps of notional. Assuming the fees to be on the top side of the range, ie 50bps on notional, the fee amount therefore should be R37 500 000(ie 8.5 bps on the fixed rate).
- I received indicative pricing from **both Absa and HSBC** as below
- Please also note the potential for a lower Nedbank fix rate could have being achieved if Regiment executed smaller tranches with Nedbank instead of the full notional.

### HSBC

TABLE 1		TABLE 2	
mid -swap	11.500	mid -swap	
Nedbank cva	0.200	HSBC indicative CVA	
Regiment fees	0.200	Regiment fees	
Nedbank market execution fees	0.470	HSBC market execution fees	
	<b>12.370</b>		
Valuation Loss to Transnet: based on PV01 of R4 560 000		Potential valuation loss to Transnet based on PV01 of R4 560 000	
	R 396 720 000		

### ABSA

TABLE 1		TABLE 2	
mid -swap	11.500	mid -swap	
Nedbank cva	0.200	Abisa indicative CVA	
Regiment fees	0.200	Regiment fees	
Nedbank market execution fees	0.470	Abisa market execution fees	
	<b>12.370</b>		
Valuation Loss to Transnet: based on PV01 of R4 560 000		Potential valuation loss to Transnet based on PV01 of R4 560 000	
	R 396 720 000		

<image001.gif>