FLOW OF FUNDS

EXHIBIT VV 9

MCKINSEY
REFERENCE BUNDLE

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

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Report on the South African Airways contract with McKinsey/Regiments Consortium (BID No: RFP 085/13)

11 November 2020

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

11 November 2020

REPORT ON THE SOUTH AFRICAN AIRWAYS CONTRACT WITH MCKINSEY/REGIMENTS CONSORTIUM (BID NO: RFP 085/13)

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Annexures

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Annexure 2	Email – communication between Ramosebudi and Regiments and attached word document. Attachment “EVALUATION CRITERIA” 24 October 2013
Annexure 3	Email – communication between Regiments and Ramosebudi and attached word document. Attachment “Working Capital – Scope of Work” Added tracked changes – generated by SCC to highlight changes. 28 October 2013
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Annexure 13	Email trail– communication between SAA and McKinsey relating to the Working Capital proposal. 27 January 2014 to 28 January 2014
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Annexure Number	Description
	28 January 2014
Annexure 15	Email trail – communication within SAA regarding tender process. 29 January 2014
Annexure 16	Email trail – Communication between SAA and McKinsey relating to the appointment and a PDF attachment. 05 February 2015 to 06 February 2014
Annexure 17	Email from Wood to Moodley (Albatime) and wallemsa@gmail.com. Attached an Advisory Invoice Tracing – 2015 – 2016 excel spread sheet. 7 December 2015

1. Introduction

1. On 06 February 2014 South African Airways (SAA) awarded the McKinsey/Regiments consortium a contract to assist the South African Airways Group with the unlocking of working capital ("Working Capital Contract") ("BID NO: RFP 085/13).
2. The investigation of the State Capture Commission has revealed that the award of this contract to the McKinsey/Regiments consortium was the product of a corrupt tender process in which the then SAA Treasurer, Phetolo Ramosebudi ("Ramosebudi"), corruptly manipulated the process to ensure the success of the McKinsey/Regiments bid.
3. It is clear that Regiments bribed Ramosebudi to procure this outcome. There is no evidence known to the State Capture Commission suggesting that McKinsey were aware of the corrupt relationship between Regiments and Ramosebudi.

2. Findings

4. In the course of the investigation of the State Capture Commission, the following was noted.

5. <u>14 OCTOBER 2013</u>

Ramosebudi emailed to Eric Wood ("Wood") the draft Scope of Work for the Working Capital Contract that was going to be put on open tender. Wood was a co-founder and principal at Regiments. Ramosebudi's email was sent more than a month before the RFP including the scope of work was sent out to bidders. At this point the draft was still a privileged and internal document within SAA (**Annexure 1**).

6. 24 OCTOBER 2013
   In an email Ramosebudi sent Wood the draft evaluation criteria for the Working Capital tender and invited Wood to review and comment on the criteria. (**Annexure 2**).
7. 28 OCTOBER 2013
   In an email Wood sent Ramosebudi Regiments' revised evaluation criteria. Regiments' revised evaluation criteria made material changes to the document forwarded to them by Ramosebudi, including material changes to the evaluation weighting criteria i.e. the point allocation (**Annexure 3**).
8. 29 OCTOBER 2013
   Ramosebudi sent Wood an invoice. The invoice amounting to R 375 606,00 was addressed to Regiments for services provided by Ramosebudi' s company Rams Capital. The invoice records the nature of the services as being "Actuarial and Risk management consulting on behalf of Regiments Capital for Transnet" (**Annexure 4**).
9. 07 NOVEMBER 2013
   Regiments paid Ramosebudi the invoiced amount (**Annexure 5**).
10. 19 NOVEMBER 2013
    Ms Reinette Slabbert ("Slabbert"), SAA's Commodity Manager sent the RFP for the Working Capital Contract to the bidders, including McKinsey and Regiments. The scope of work issued on 19 November 2013 matches closely the scope of work Ramosebudi sent to Wood on the 14 October 2013, and the evaluation criteria in the RFP included most of the material changes made by Regiments to the draft evaluation criteria sent to Wood by Ramosebudi (**Annexure 6**).
11. 05 DECEMBER 2013
    The joint McKinsey/Regiments consortium bid proposal was sent to Regiments by Mr David Fine ("Mr Fine") of McKinsey to be signed off by Wood. The proposal was already signed by the McKinsey partners (Mr Fine, Ms Nomfanelo Magwetshu and Ms Christina Planert) (**Annexure 7**).
12. 22 JANUARY 2014
    With the bid evaluation still pending, Ramosebudi forwarded to Wood, an SAA internal communication relating to the bid adjudication process. The email from Ramosebudi to Wood attached the draft "Final Supplier Selection Recommendation for The appointment of a consultant to assist the SAA Group with the unlocking of working capital". The latter document had been sent from Ramosebudi's SAA email to his Rams Capital email and forwarded to

Wood. The document was a summary of the evaluation process. The document also recorded that SAA was requesting approval to appoint McKinsey/Regiments consortium. The document indicated that Ramosebudi was part of the team that supported the Bid Adjudication Committee with the recommendation (**Annexure 8**).

13. 24 JANUARY 2014

    Ramosebudi forwarded to Wood an internal SAA communication regarding Bid Adjudication committee deliberations. The forwarded email records Mr Ramosebudi stating the following to to his SAA colleagues:

    " Colleagues,

    Submission has been referred back for rework. We need to discuss the pricing wrt to delegation of authority. If Mckinsey is approved as is I will have to go to board and timing will be a issues.

    So whats the correct approach to still recommend to Mckinsey without breaching the procurement process. Would Mckinsey reducing the cap level be th appropriate way to do, or should we go back to all for BAFO with a limit below Board approval.

    Don't forget Boston was R14 million with 30 variable, IQ is R5,5 million with %age savings but no cap and MKensey is zero fixed but 8% on savings with R120 million which is above CEO delegation".

    The concern of Ramosebudi related to delegation of authority limits. In terms of SAA's system of authorities, adjudication of contracts over R100 million required board approval, but under the R100 million threshold the Bid Adjudication Committee would be able to award the contract (**Annexure 9**).

14. 24 JANUARY 2014

    In an email Ramosebudi forwarded to Wood a communication between McKinsey and SAA regarding clarification on the McKinsey pricing proposal (**Annexure 10**).

15. 24 JANUARY 2014

    Mr Ramosebudi forwarded to Wood an SAA communication with the Boston Group (a competing bidder) regarding price clarification (**Annexure 11**).

16. 24 JANUARY 2014

    Mr Ramosebudi forwarded to Wood an SAA communication with the Hackett Group (another competing bidder) regarding price clarification (**Annexure 12**).

17. 28 JANUARY 2014

    An email communication between SAA and McKinsey relating to the cap limit shows that McKinsey had still not confirmed whether they would adjust the R120 Million cap contained within their bid (**Annexure 13**).

18. 28 JANUARY 2014

    A later email communication between SAA and McKinsey reported the reduction of the cap limit to R70-80.5 million. This communication was shared by Slabbert within SAA with a

suggestion that the two other short listed bidders be provided with the opportunity to price on the same basis as McKinsey's revised cap (ie that savings of R1.2 billion capital savings would be unlocked) (**Annexure 14**).

19. 29 JANUARY 2014
    An internal SAA email chain reveals that Slabbert emailed the other bidders to submit their pricing based on the assumption that R 1.2 billion capital savings would be unlocked. However Ramosebudi stopped this process by objecting to the process being followed by Slabbert and accusing her of being biased (**Annexure 15**).
20. 06 FEBRUARY 2014
    The letter of appointment was sent to McKinsey (**Annexure 16**).
21. 07 December 2015
    Wood in an email to Mr Kuben Moodley (Albatime) and wallemsa@gmail.com attached a document titled Advisory Invoice Tracking – 2015-2016. The attachment records that of the R6 241 500.00 received by Regiments from SAA on the Working Capital Optimisation project, R2 496 600.00 (ie 40%) was paid to Homix (a shell company laundering proceeds of corrupt public sector contracts for the Guptas) and R312 075.00 (ie 5%) was paid to Albatime (the company of Moodley who had put Regiments in touch with Salim Essa, who, in turn, had procured the introduction of Regiments as McKinsey's supplier development partner at Transnet in 2012 (**Annexure 17**).

3. Conclusion

22. The contract for assisting South African airways group with the unlocking of working capital ("BID NO: RFP 085/13) that was awarded to the McKinsey/Regiments Consortium was tainted with corruption based on:
    - Regiments had the draft scope of work a month before the RFP was issued to the bidders;
    - Regiments had the draft evaluation criteria weeks before the RFP was issued to the bidders;
    - Regiments reviewed and made changes to the evaluation criteria before the RFP was issued;
    - While the evaluation process was taking place and at a stage when the McKinsey / Regiments was going to be invited to adjust their bid, Regiments was provided with confidential information relating to the evaluation process including bids from other bidders, the recommendation for appoint and internal processes.

- Ramosebudi used his position at SAA to ensure that the amount of the contract remained within the levels at which he could control the evaluation and award of the contract without the intervention of the SAA board;
- Ramosebudi interfered with the evaluation process to prevent competing bidders from having the opportunity that was afforded to the McKinsey / Regiments consortium of revising their best and final offer; and
- Ramosebudi' s company (Rams Capital) was paid a bribe by Regiments during the RFP period.

Annexure 1

Innocentia Ngubeni

From: Phetolo <phetolo@ramscap.co.za>
Sent: Monday, 14 October 2013 14:29
To: Eric Wood
Subject: Fwd: Working Capital - Scope of Work
Attachments: image001.jpg; ATT00001..htm; image002.jpg; ATT00002..htm; image003.jpg; ATT00003..htm; line.jpg; ATT00004..htm; skytrax.jpg; ATT00005..htm; line3.jpg; ATT00006..htm; Working Capital - Scope of Work.docx; ATT00007..htm

Regards
Phetolo Ramosebudi
0832630591

Begin forwarded message:

> **From:** Phetolo Ramosebudi <PhetoloRamosebudi@flysaa.com>
> **Date:** 14 October 2013 at 14:21:53 SAST
> **To:** 'Phetolo' <Phetolo@ramscap.co.za>
> **Subject: FW: Working Capital - Scope of Work**

Phetolo Ramosebudi | Group Treasurer | Finance: Treasury

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This message has been scanned for viruses and
dangerous content by **Pinpoint Securemail**,
and is believed to be clean.

Working Capital Management

Scope of Work

1. Introduction

SAA is operating in a challenging, dynamic and highly competitive trading environment exacerbated by organisation specific weaknesses and inefficiencies which make its business model unsustainable in the long run. SAA's Balance Sheet is weak primarily caused by operating losses, hedging losses, and high fuel prices. This materially curtails SAA's ability to raise the capital required to finance its operations. SAA has reliant on financial support from the Shareholder over the past decade. During this period, there were two major capital interventions by the Shareholder. The first one being R 8.5 billion in FY2006/07 primarily to restore the capital base in response to the hedging and translations losses incurred at the time and the second being R 1.5 billion in FY2009/10. In both instances, the intervention was a conversion of debt into equity. Subsequent to FY2009/10, Shareholder support to SAA had been granted in the form of guarantees, which enable SAA to borrow to finance the working capital requirements.

SAA commenced a major Cost Compression Programme in April 2012, to give momentum to one of the "seven major strategic initiatives, which addresses systemic competitive or structural issues" in the 2012-15 Corporate Plan. Of major concern was the increase in SAA's controllable costs (such as labour, catering and crew accommodation costs) and the increase in "uncontrollable" costs, primarily fuel and regulated airport and air navigation charges. Major airlines, such as Lufthansa, Qantas, and British Airways have all found a way to re-engineer their non-fuel CASK downward and have recently announced even further measures to relentlessly focus on unit cost reduction in a renewed period of high fuel costs.

The primary objective of the Cost Compression Programme is to reduce SAA's cost base by reducing non-fuel CASK 20% in 2014 to USD 5.64 cents. This had to be achieved, without negatively affecting the other main strategies initiatives of the group or negatively impacting the demand-side Revenue per Available Seat Kilometre (RASK). For FY2013 this programme yielded sustainable benefits in excess of R 700 million, with a consequential reduction in non-fuel CASK of USD 0.58 cents.

2. Business Rationale

Working capital management is concerned with the problems that arises in attempting to manage the current assets, current liabilities and the inter relationship that exist between the, thus the efficient management of working capital is an important indicator of sound health of the organisation which requires reduction of unnecessary blocking of capital in order to bring down costs of financing.

More business fails for lack of cash than for wanting profit. The goal of working capital management is to manage the company current assets and current liabilities in such a way that the satisfactory level of working capital is sustained.

3. Project Goals

1. To conduct an internal assessment, of the various components of working capital in the group;
2. To analyse the liquidity trends;
3. To analyse working capital trends;
4. To analyse the operating and cash cycle of the group;
5. To appraise the utilisation of current asset and current liabilities and establish short comings;
6. To suggest measures for effective management of working capital.

4. Project Stakeholders

5.1. Subsidiaries such as SAAT, Cargo, Air chefs, Voyager, and Mango
5.2. Group Finance
5.3. Group Supply Management
5.4. Executive Committee

5. Time Table

5.1 Project Plan

0 - 8 Weeks Project



• Articulate Cash Optimisation strategy& objective • Understand Current Initiatives • Select Bus and Divisions for review • Develop and Validate Approach • Communicate	• Gather, normalise date • Map as is process • Conduct values analytic and bench marking • Review process against best practice • Identify gaps • Confirm opportunities with stakeholders	• Formulate solutions • Build business case • Develop and priorities implementation plan • Establish roles and responsibilities • Communicate	• Develop and execute communication and change management plan • Implement solutions • Design and implement continuous monitoring dashboards and risk modelling

6. Project Deliverables



• Detailed Project Plan	• Data analysis, benchmarking and gap Analysis	• Future state design and road map	• Training and continuous monitoring

7. Scope Exclusion,

The project will not determine or test the profitability of the group or the effective costs structure of the group.

Annexure 2

Innocentia Ngubeni

From: Phetolo <phetolo@ramscap.co.za>
Sent: Thursday, 24 October 2013 18:39
To: Eric Wood
Subject: Fwd: EVALUATION CRITERIA
Attachments: line.jpg; ATT00001..htm; skytrax.jpg; ATT00002..htm; line3.jpg; ATT00003..htm; EVALUATION CRITERIA.docx; ATT00004..htm

Please review and comment

Regards
Phetolo Ramosebudi
0832630591

Begin forwarded message:

> **From:** Phetolo Ramosebudi <PhetoloRamosebudi@flysaa.com>
> **Date:** 24 October 2013 at 18:38:11 SAST
> **To:** 'Phetolo' <Phetolo@ramscap.co.za>
> **Subject: EVALUATION CRITERIA**

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REVISED EVALUATION CRITERIA (Annexure 1)

Methodology:

- **Phase 1-** Evaluation of the critical criteria. Bidders must fully comply with all critical criteria; failure to comply will lead to disqualification. It is also required that the bidders complete the table for phase 1 below.
- **Phase 2** – Bidders evaluated against the evaluation criteria will be short listed and proceed to phase 3. Short listed bidders will be required to do a presentation.
- **Phase 3 -** Phase 3 will consist of the Price and BBBEE evaluation.

Phase 1: Critical Evaluation Criteria:

Bidders must fully comply with all the Critical Criteria listed below; while failure to comply shall lead to the Bidder disqualification:

#	ELEMENTS	Yes	No
1	Tenderers that appear on the list of Restricted Tenderers as published by the Department of Treasury will not be considered		
2	Evidence of working capital management experience working with a global group with global operations		
3	Commitment to start the project within one week after award of project.		
4	Evidence of relevant Working Capital Management experience that is more than 5 years		
5	Submission of a list of at least three contactable signed business references (on company letterheads) outlining the similar scope of work and benefits realised		
6	Intellectual property to remain the property of SAA		

NB
Bidders that fail to meet the Critical Criteria will be eliminated from further assessment/evaluation and not invited to the Tender Briefing Session.

Phase 2: Functional Requirements and Weightings:

#	ELEMENTS	MEASURE	WEIGHT
1	Demonstration of working capital management capability and the methodology to be used.	Demonstrate working capital management methodology and approach adopted in previous projects or as proposed for SAA.	20%
2	Evaluation of three contactable references (on company letterheads) outlining executed scope of work and benefits	Evaluation of the scope of work and benefits realised in relation to the relevance of what is required for SAA.	15%

	realised	• 3 Group references = 15 • 2 Group level references and one small group reference = 10 • 2 Small group references and one big group reference = 5	
3	Demonstration of working capital management capabilities indicating the resources to be used.	Tenderer demonstrates the ability to conduct global research and benchmarking based on the team structure and expertise employed as well as a display of the relevant networks that the tenderer can access to support research.	10%
4	Demonstrate experience of working at senior management level in re-discovering working capital	Demonstrate experience of working at senior management level in re-discovering working capital capabilities by outlining methodology and approach utilised in similar projects as well as proposal for SAA. Tenderer must show a good grasp of sensitivities associated with the re-discovering of working capital and competency requirements	10%
5	Demonstration of unbundling working capital management capability and methodology to be used.	Demonstrate unbundling of working capital capability by outlining methodology and approach adopted in previous projects or as proposed for SAA. This should be indicated in terms of the various elements that will be addressed in working capital unbundling management as well as how this will be developed for SAA	10%
6	Years of experience in working capital management	One year = 2 points Two years=4 points Three years= 6 points Four years= 8 points Five years=10 points	10%
7	Proposal on project post implementation	Tenderer must provide a proposal on how they will address issues that will arise post implementation of this initiative.	10%
8	Demonstration of Project Management Methodology to be used.	Demonstrate project management capability by outlining methodology and approach adopted in previous projects and as proposed for SAA. This should be indicated in terms of	5%

		the various elements that will be addressed in project management as well as what elements will be included to ensure the success of this project.	
9	Knowledge transfer framework to SAA (during and after the project)	Tenderer must outline their framework to be utilised in ensuring knowledge transfer happens with key internal stakeholders.	10%
Total:			100%

Threshold: The minimum qualifying score for the Functional Requirements is 80%; while experience of all listed elements is required.

Phase 3

Preference Point System

#	CRITERIA	POINTS
1	Price	90
2	BBBEE	10
TOTAL		**100 Points**

Annexure 3

Innocentia Ngubeni

From: Eric Wood
Sent: Monday, 28 October 2013 16:19
To: Phetolo
Subject: FW: EVALUATION CRITERIA - SAA
Attachments: EVALUATION CRITERIA - SAA.docx



Eric Wood
Executive Director
91 Central Street, Houghton 2198 Postnet Suite 25, Private Bag X11, Birnam Park 2015
Tel: +27 11 715 0300 Direct: +27 11 715 0339 Fax: +27 11 715 0352
Mobile: +27 83 626 0857 E-mail: ericw@regiments.co.za www.regiments.co.za
Regiments Capital (Pty) Ltd is an authorised financial services provides FSP Number 16831 Reg. No. 2004/023761/07

From: Indheran Pillay
Sent: 28 October 2013 03:56 PM
To: Eric Wood
Cc: Tewodros Gebreselasie
Subject: EVALUATION CRITERIA - SAA

REVISED EVALUATION CRITERIA (Annexure 1)

Methodology:

- **Phase 1-** Evaluation of the critical criteria. Bidders must fully comply with all critical criteria; failure to comply will lead to disqualification. It is also required that the bidders complete the table for phase 1 below.
- **Phase 2** – Bidders evaluated against the evaluation criteria will be short listed and proceed to phase 3. Short listed bidders will be required to do a presentation.
- **Phase 3 -** Phase 3 will consist of the Price and BBBEE evaluation.

Phase 1: Critical Evaluation Criteria:

Bidders must fully comply with all the Critical Criteria listed below; while failure to comply shall lead to the Bidder disqualification:

#	ELEMENTS	Yes	No
1	Tenderers that appear on the list of Restricted Tenderers as published by the Department of Treasury will not be considered		
2	Evidence of working capital management experience working with a global group with global operations		
3	Commitment to start the project within one week after award of project.		
4	Evidence of relevant Working Capital Management experience that is more than 5 years		
5	Submission of a list of at least three contactable signed business references (on company letterheads) outlining the similar scope of work and benefits realised		
6	Intellectual property to remain the property of SAA		

NB
Bidders that fail to meet the Critical Criteria will be eliminated from further assessment/evaluation and not invited to the Tender Briefing Session.

Phase 2: Functional Requirements and Weightings:

#	ELEMENTS	MEASURE	WEIGHT
1	Demonstration of working capital management capability and the methodology to be used.	Demonstrate working capital management methodology and approach adopted in previous projects or as proposed for SAA.	20%
2	Evaluation of three contactable references (on company letterheads) outlining executed scope	Evaluation of the scope of work and benefits realised in relation to the relevance of what is required for SAA.	15%

	of work and benefits realised	• 3 Group references = 15 • 2 Group level references and one small group reference = 10 • 2 Small group references and one big group reference = 5	
3	Demonstration of working capital management capabilities indicating the resources to be used.	Tenderer demonstrates the ability to conduct global research and benchmarking based on the team structure and expertise employed as well as a display of the relevant networks that the tenderer can access to support research.	10%
4	Demonstrate experience of working at senior management level in re-discovering working capital	Demonstrate experience of working at senior management level in re-discovering working capital capabilities by outlining methodology and approach utilised in similar projects as well as proposal for SAA. Tenderer must show a good grasp of sensitivities associated with the re-discovering of working capital and competency requirements	10%
5	Demonstration of unbundling working capital management capability and methodology to be used.	Demonstrate unbundling of working capital capability by outlining methodology and approach adopted in previous projects or as proposed for SAA. This should be indicated in terms of the various elements that will be addressed in working capital unbundling management as well as how this will be developed for SAA	10%
6	Years of experience in working capital management	One year = 2 points Two years=4 points Three years= 6 points Four years= 8 points Five years=10 points	10%
7	Proposal on project post implementation	Tenderer must provide a proposal on how they will address issues that will arise post implementation of this initiative.	10%
8	Demonstration of Project Management Methodology to be used.	Demonstrate project management capability by outlining methodology and approach adopted in previous projects and as proposed for SAA. This should be indicated in terms of	5%

		the various elements that will be addressed in project management as well as what elements will be included to ensure the success of this project.	
9	Knowledge transfer framework to SAA (during and after the project)	Tenderer must outline their framework to be utilised in ensuring knowledge transfer happens with key internal stakeholders.	10%
Total:			100%

Threshold: The minimum qualifying score for the Functional Requirements is 80%; while experience of all listed elements is required.

Phase 3

Preference Point System

#	CRITERIA	POINTS
1	Price	90
2	BBBEE	10
TOTAL		**100 Points**

REVISED EVALUATION CRITERIA (Annexure 1)

Methodology:

- **Phase 1-** Evaluation of the critical criteria. Bidders must fully comply with all critical criteria to proceed to phase 2; failure to comply will lead to disqualification. It is also required that the bidders complete the table below for phase 1 ~~below~~.
- **Phase 2** – Bidders evaluated against the evaluation criteria will be short listed and ~~proceed~~advanced to phase 3. Short listed bidders will be required to do a presentation.
- **Phase 3 -** Phase 3 will consist of the Price and BBBEE evaluation.

Phase 1: Critical Evaluation Criteria:

Bidders must fully comply with all the Critical Criteria listed below; while failure to comply shall lead to the Bidder disqualification:

#	ELEMENTS	Yes	No
1	~~Tenderers that appear~~Tenderer on the list of Restricted Tenderers as published by the Department of Treasury ~~will not be considered~~.		
2	Evidence of working capital management experience ~~working with a global group with global operations~~		
3	Submission of a list of at least three contactable signed business references (on company letterheads) outlining the similar scope of work and benefits realised~~Commitment to start the project within one week after award of project.~~		
4	~~Evidence of relevant Working Capital Management experience that is more than 5 years~~ Proven track record with state owned entities		
5	Demonstrable understanding and experience in Public Finance Management Act (PFMA)~~Submission of a list of at least three contactable signed business references (on company letterheads) outlining the similar scope of work and benefits realised~~		
6	Intellectual property to remain the property of SAA		

NB
: Bidders that fail to meet the Critical Criteria will be eliminated from further assessment/evaluation and not invited to the Tender Briefing Session.

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Phase 2: Functional Requirements and Weightings:

#	ELEMENTS	MEASURE	WEIGHT
1	Demonstration of working capital management capability	Demonstrate working capital management methodology and approach adopted in previous projects or as proposed for SAA.	~~20~~30%

	and the methodology to be used.		
2	Evaluation of three contactable references (on company letterheads) outlining executed scope of work and benefits realised	Evaluation of the scope of work and benefits realised in relation to the relevance of what is required for SAA. • 3 ~~Group~~ references = 15 • 2 ~~Group level~~ references ~~and one small group reference~~ = 10 • ~~2 Small group references and one big group~~1 reference = 5	15%
~~3~~	~~Demonstration of working capital management capabilities indicating the resources to be used.~~	~~Tenderer demonstrates the ability to conduct global research and benchmarking based on the team structure and expertise employed as well as a display of the relevant networks that the tenderer can access to support research.~~	~~10%~~
~~4~~3	Demonstrate experience of working at senior management level in re-discovering working capital	Demonstrate experience of working at senior management level in re-discovering working capital capabilities by outlining methodology and approach utilised in similar projects as well as proposal for SAA. Tenderer must show a good grasp of sensitivities associated with the re-discovering of working capital and competency requirements	~~10~~15%
~~5~~	~~Demonstration of unbundling working capital management capability and methodology to be used.~~	~~Demonstrate unbundling of working capital capability by outlining methodology and approach adopted in previous projects or as proposed for SAA. This should be indicated in terms of the various elements that will be addressed in working capital unbundling management as well as how this will be developed for SAA~~	~~10%~~
~~6~~4	Years of experience in working capital management and balance sheet optimisation	One year = ~~2~~3 points Two years=~~4~~6 points Three years= ~~6~~9 points Four years= ~~8~~12 points Five years=~~10~~15 points	~~10~~15%
~~7~~5	Proposal on project post implementation	Tenderer must provide a proposal on how they will address issues that will arise post implementation of this initiative.	10%

6	Knowledge transfer framework to SAA (during and after the project)	Tenderer must outline their framework to be utilised in ensuring knowledge transfer happens with key internal stakeholders.	10%
~~8~~7	Demonstration of Project Management Methodology to be used.	Demonstrate project management capability by outlining methodology and approach adopted in previous projects and as proposed for SAA. This should be indicated in terms of the various elements that will be addressed in project management as well as what elements will be included to ensure the success of this project.	5%
~~9~~	~~Knowledge transfer framework to SAA (during and after the project)~~	~~Tenderer must outline their framework to be utilised in ensuring knowledge transfer happens with key internal stakeholders.~~	~~10%~~
Total:			100%

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Threshold: ~~The~~To proceed to Phase 3, Tenderers must score a minimum ~~qualifying score~~ of 80% for the Functional Requirements ~~is 80%; while experience of all listed elements is required~~.

Phase 3

Preference Point System

#	CRITERIA	POINTS
1	Price	90
2	BBBEE	10
TOTAL		**100 Points**

Annexure 4

Innocentia Ngubeni

From: Phetolo <phetolo@ramscap.co.za>
Sent: Tuesday, 29 October 2013 17:20
To: Eric Wood
Subject: Fwd: Book2.xlsx
Attachments: line3.jpg; ATT00001..htm; Book2.xlsx; ATT00002..htm

--
This message has been scanned for viruses and
dangerous content by **Pinpoint Securemail**,
and is believed to be clean.

FOF-08-030

INVOICE

Rams Capital cc

Box 728
Midrand,1685
Tel: 011 312 1317
Fax: 011 312 1317

DATE: October 22, 2020
INVOICE # 115

FOR: Consulting work for Transnet

BILL TO: Accounts
Regiments Capital
91 Central street
Houghton,2198
011 715 03100
vat #: 4620216665

DESCRIPTION	AMOUNT
Actuarial and Risk management consulting on behalf of Regiments Capital	375 606,00
for Transnet	

SUBTOTAL	R 375 606,00
VAT RATE	0,00%
VAT	-
OTHER	-
TOTAL	**R 375 606,00**

Make all cheque payable to Rams Capital. If you like to make electronic payments, please make payments to FNB, Accout # 62241878555, Killarney

THANK YOU FOR YOUR BUSINESS!

Annexure 5

[redacted]

200477757000	2013-11-07	-375606,00	RAMS CAPITAL FSF11 16:00

[redacted]

Annexure 6

Innocentia Ngubeni

From: Niven Pillay
Sent: Tuesday, 19 November 2013 16:39
To: Andile Nyhonyha; Eric Wood; Indheran Pillay; Mahommed Bobat
Subject: Fwd: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL.
Attachments: RFP Working Capital nn.doc; RFP-GSM -13 -NDA.docx

Importance: High

Sent from Samsung Mobile

-------- Original message --------
From: Reinette Slabbert <ReinetteSlabbert@flysaa.com>
Date: 19/11/2013 16:28 (GMT+02:00)
To: jschoefer@relconsultancy.com,Eric Wood <EricW@regiments.co.za>,Litha Nyhonyha <LithaN@regiments.co.za>,Niven Pillay <NivenP@regiments.co.za>,nhlamu.dlomu@kpmg.co.za,thpillay@deloitte.co.za,solly@xabiso.co.za,bashier@nexia-sabt.co.za,suzel@zeelie.com,edgarr@rakoma.co.za,lmabokela@sekela.co.za,victors@sng.co.za,a.craker@iqgroup.net,Christina_Planert@mckinsey.com,"Wuest Martin (Wuest.Martin@bcg.com)" <Wuest.Martin@bcg.com>
Cc: Shireen Subroyen <ShireenSubroyen@flysaa.com>
Subject: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL.

Dear Bidders,

Good afternoon everybody.

Attached herewith please find the following documents:

- RFP 085/13.
- NDA related to the RFP.

There is confidential financial information available that will be submitted but it will only be submitted once the NDA agreement has been signed and e-mailed back.

Please take note of the funding point that forms part of the scope of work (Part 3) of the RFP document.

All correspondence needs to be via e-mail and we will respond as soon as possible to all questions.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com

Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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Directors

DC Myeni* (Chairperson), M Kalawe (Chief Executive Officer), WH Meyer (Chief Financial Officer), A Khumalo*, N. Kubeka*, Y Kwinana*, R Lepule*, A Mabizela*, B Mpondo*, R Naithani*(Indian), LG Nkosi-Thomas*, C Roskruge*

*Non-Executive Director

Company Secretary - Sandile Dlamini

South African Airways SOC Ltd Reg. No. 1997/022444/30



SOUTH AFRICAN AIRV

A STAR ALLIANCE MEMBEI

REQUEST FOR PROPOSAL FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SOUTH AFRICAN AIRWAYS GROUP WITH THE UNLOCKING OF WORKING CAPITAL

BID NO: RFP 085/13

SOUTH AFRICAN AIRW
A STAR ALLIANCE MEMBEI

SOUTH AFRICAN AIRWAYS (SOC) LIMITED

REGISTRATION NO.: 1997/022444/30

OR TAMBO INTERNATIONAL AIRPORT
(Hereinafter referred to as "SAA")

1. INVITATION TO BID

You are hereby invited to submit a proposal for the following:

RFP NUMBER: GSM 085/13

RFP DESCRIPTION: **Request for Proposal for the appointment of a consultant to assist the SAA Group with the unlocking of working capital.**

Issue Date	**19 November 2013**
Closing Date for Questions	**29 November 2013@16h00**
Closing Date for RFP	**04 December 2013**
Closing Time	11H00
Compulsory Briefing	No
Date/Time/Place for the Briefing	N/A
Validity Period of Proposal Submission	(Minimum period of 120 days)

2. PROPRIETARY INFORMATION

SAA considers this *RFP GSM 085/13* and all related information, either written or verbal, which is provided to the respondents, to be proprietary to SAA. It shall be kept confidential by the respondent and its officers, employees, agents and representatives. The respondent shall not disclose, publish or advertise this specification or related information to any third party without the prior written consent of SAA.

3. GROUNDS FOR DISQUALIFICATION

All communication and attempts to obtain information of any kind with regards to this Proposal should be channeled to Reinette Slabbert, Commodity Manager e-mail reinetteslabbert@flysaa.com and Shireen Subroyen, Sourcing Specialist, e-mail shireensubroyen@flysaa.com

SAA reserves the right to **disqualify** any respondent from this Bid process if any attempts are made by that respondent to solicit information of any kind relative to this Bid/Proposal or subsequent evaluation from any other source in SAA other than the contact person as mentioned above.

SOUTH AFRICAN AIRW

A STAR ALLIANCE MEMBEI

TABLE OF CONTENTS FOR *RFPGSM 085/13*

Part	Title
	Invitation to Bid
	Proprietary Information
	Grounds for Disqualification
1	Information Schedule
2	Bid Conditions and Instructions to Bidders
3	Scope of Work / Specification
4	Evaluation Criteria
5	Declaration of Interest
6	Vendor Information Form
7	Deviations From the Request for Bid/Proposal
8	Tax Clearance Requirements
9	Pre-Bid Briefing / Site Inspection Certificate
10	General Conditions of Contract and/or Special Conditions of Contract
11	Preference Claim Form
12	Declaration Certificate for Local Production and Content
13	Certificate of Independent Bid Determination
14	National Industrial Participation Programme
15	Non Disclosure Agreement



PART 1

INFORMATION SCHEDULE

FOR

RFP NO.: GSM 085/13

TO ENSURE THAT YOU RECEIVE ALL INFORMATION RELATING TO THIS BID AND ANY ADDITIONAL INFORMATION, PLEASE COMPLETE THIS PAGE AND RETURN BY FACSIMILE OR E-MAILTO THE INDICATED NUMBER

TO	**:**	**Reinette Slabbert and Shireen Subroyen South African Airways (Proprietary) Limited Global Supply Management**
E-MAIL	**:**	**reinetteslabbert@flysaa.com and shireensubroyen@flysaa.com**
RE	**:**	**RFP GSM 085/13**
DATE	**:**	**_____**

NAME OF BIDDER : _____

ENTITY NAME : _____

CONTACT PERSON : _____

TEL NUMBER : _____

FACSIMILE NUMBER : _____

CELLULAR NUMBER : _____

E-MAIL ADDRESS : _____



PART 2

BID CONDITIONS AND INSTRUCTIONS TO BIDDERS

FOR

RFP GSM 085/13

1.0 INTRODUCTION

South African Airways has a proud history of excellence, competing with many Local, Regional and International carriers, and is considered by consumers to be a premium world class airline. This is confirmed by the long list of awards the airline has received. SAA is the finest in Africa with more routes to African destinations than any other airline. This has been historically expressed through the payoff line “Bringing the world to Africa & taking Africa to the world”

We are inspired by our unqualified belief in service excellence, integrity, accountability, quality, safety, people development and value to our shareholders.

All our business relations are guided by these values and business practice. Our business partners and suppliers are expected to uphold, promote and share the same values and vision.

The quality, price and service that we provide our customers can only be as good as what we receive from our suppliers.

We strive for continuous improvement in our critical business areas and seek to establish relationships with suppliers that are equally passionate in their quest for better quality, price and service.

Procurement Philosophy

It is the policy of SAA, when purchasing products, services and works, to follow a course of optimum value and efficiency by adopting best purchasing practices in Supply Chain Management, ensuring where possible that open and fair competition has prevailed, with due regard being had to the importance of:

- The Public Finance Management Act (PFMA) and the Preferential Procurement Policy Framework Act (PPPFA);

- The promotion, development and support of businesses from Exempted Micro Enterprises and Qualifying Small Enterprises. , that are 50% Black Owned, 30% Black Women Owned, 50% Black Youth Owned, 50% Black People Living in Rural Areas (towns and cities outside of the Tshwane, Johannesburg, eThekwini and Cape Town Metros) and 50% Black People with Disabilities.

- The promotion of domestic suppliers and agents before considering overseas suppliers and where purchases are from abroad, fostering development of local suppliers by the foreign suppliers in terms of setting aside 25% of the purchase for developing the local supplier; as well as

- The development, promotion and support for the moral values that underpin the above, in terms of SAA’s Business Ethics and Guidelines which requires that all commercial conduct be based on ethical and moral values and sound business practice. This value system governs all commercial behaviour within SAA.

2.0 CONDITIONS OF BID & CONTRACT

2.1 The Bidder/s accepts that this document and its associated documents do not constitute any contractual relationship between SAA and the Bidder/s and the acceptance of any Bid/s by SAA will not constitute any contractual relationship between SAA and any Bidder/s. The acceptance of any Bid/s will only indicate without any obligations on the part of either SAA and/or a Bidder/s, the willingness of such Parties to enter into negotiations, which may or may not result in a Contract.

2.2 SAA reserves the right to undertake physical evaluations on shortlisted Bidder/s.

2.3 The Bidder/s agree that during the contract period prices based on the impact of volumes, productivity improvements and sharing of risk may be negotiated.

2.4 The Agreement will be a non-exclusive Agreement and SAA reserves the right to purchase at its discretion service from any other service provider. SAA does not warrant that it will use any minimum quantity of the service from the successful Bidder/s.

2.5 During evaluation of the bids, additional information may be requested in writing from bidders. Replies to such request must be submitted, within 5 (five) working days or as otherwise indicated. Failure to comply, may lead to your bid being disqualified.

3.0 INTELLECTUAL PROPERTY, INVENTIONS AND COPYRIGHT

3.1 The specification is the intellectual property of SAA.

3.2 Copyright of all documentation relating to this assignment belongs to SAA. The successful bidders may not disclose any information, documentation or products to other clients without the written approval of the accounting authority or the delegate.

3.3 All the intellectual property rights arising from the execution of this Agreement shall vest in SAA and the Bidder undertakes to honour such intellectual property rights and all future rights by keeping the know-how and all published and unpublished material confidential.

3.4 In the event that the Bidder would like to use any information or data generated in terms of the Services, the prior written permission must be obtained from SAA.

3.5 SAA shall own all materials produced by the Bidder during the course of, or as part of the Services including without limitation, deliverables, computer programmes (source code and object code), programming aids and tools, documentation, reports, data, designs, concepts, know-how and other information whether capable of being copyrighted or not (“IP”) which IP SAA shall be entitled to freely cede and assign to parties nominated by SAA.

3.6 This clause 3.0 shall survive termination of this Agreement.

4.0 GUIDELINE ON COMPLETION OF SUBMISSION

4.1 Bidders must indicate compliance or non-compliance on a paragraph-by-paragraph basis. Indicate compliance with the relevant bid requirements by marking the YES box and non-compliance by marking the NO box. If the contents of the paragraph only need to be noted, please mark the NOTED box. The bidder must clearly state if a deviation from these requirements are offered and the reason therefor. If an explanatory note is provided, the paragraph reference must be attached as an appendix to the bid submission. Bids not completed in this manner may be considered incomplete and rejected. Should bidders fail to indicate agreement/compliance or otherwise, SAA will assume that the bidder is not in compliance or agreement with the statement(s) as specified in this bid.

4.2 SAA will interpret YES as full compliance/acceptance to the applicable paragraph. NO will be interpreted that the Bidder/s has/have read and understood the paragraph, but the Bidder/s does/do not comply/accept the content of the applicable paragraph.

4.3 Alternative Bids by the Bidder/s or any non-compliance to the specification will be evaluated and considered at SAA’s sole discretion.

5.0 PREPARATION COSTS

All costs incurred in the preparation, presentation and demonstration of the response shall be for the account of the Bidder. All supporting documentation and manuals submitted with the Bid will become SAA property unless otherwise stated by the Bidder/s at the time of submission.

6.0 COPIES REQUIRED

6.1 It is a condition that the Bidder/s shall furnish an offer comprising of the original response document plus 2 (two) copy. The Bidder/s shall ensure that all the relevant information and documentation is submitted with the original as well as the copy. SAA shall not be liable should it become evident that a Bidder/s offer/s is/are not accepted and the reason for such non-acceptance is as a result of the Bidder/s failure to include the information in both copies.

6.2 **BIDDER/S SHALL KEEP A COPY OF THEIR BID AND RESPONSE FOR FUTURE REFERENCE.**

7.0 SPECIFIC INFORMATION REQUIRED

For ease of reference and evaluating purposes, please furnish replies under the same headings and refer individually to all specific paragraph numbers. Please be clear in your response and use definite answers.

8.0 ENQUIRIES

Enquiries regarding this Bid should be submitted in writing to SAA at the following address:

Attention: Reinette Slabbert and Shireen Subroyen
Email: reinetteslabbert@flysaa.com and shireensubroyen@flysaa.com

9.0 QUESTIONS AND CLARIFICATIONS

9.1 Enquiries should reference the specific Bid number, section, document and paragraph number, where appropriate.

9.2 The questions and clarifications must be emailed to the details in 8.0 above.

9.3 If appropriate, the clarifying information will be made available to all bidders by e-mail only.

9.4 The closing date for questions is as mentioned in the Cover Sheet.

9.5 **No questions or clarifications will be entertained without receipt of the signed NDA duly signed by the bidder.**

10.0 INSTRUCTIONS FOR THE SUBMISSION OF A BID

10.1 Bids must be submitted in a sealed enveloped marked:

Tender number : *(RFP GSM 085/13)*

Tender for : The appointment of a consultant to assist the SAA Group with the unlocking of Working capital.
Closing Date / Time : 04 December 2013 at 11h00
Name & Address of the Bidder : *(Postal or Physical Address)*

10.2 **Bids must be deposited in the Bid Box situated at:**

South Africa Airways – Main Reception Gate
Airways Park
Jones Road
OR Tambo International Airport
Johannesburg

Or by e-mail to tenders@flysaa.com or mandycoetser@flysaa.com

10.3 Bids can be delivered between 08H00 and 16H30, Monday to Friday, prior to the closing date and between 08H 00 and 11H 00 on the closing date.

10.4 Submissions will be kept unopened in safe custody until the closing date & time for the Bid. Where a Bid is received without a Bid number on it, it will be opened, the Bid number ascertained, the envelope sealed and the Bid number written on the envelope.

10.5 As stipulated in the bid documents, tenders can be submitted by means of e-mail or deposited into the Tender Box.

10.6 All bids must be submitted in English.

10.7 **On submission of the completed bid document, a non-refundable fee of R1 000.00 will be charged. This fee should be deposited directly into SAA's bank account and the deposit slip should be supplied with the bid. The banking details are as follows:**

Standard Bank Greenstone
Branch Code: 016342
Account Number: 022771263
Reference: 1028

Bidders should ensure that bids are delivered before the closing date and time to the correct address.
If the bid is late, it will not be accepted for consideration.

11.0 LATE BID SUBMISSIONS

11.1 Late submissions of Bids will NOT be considered for evaluation and will be returned un-opened to the Bidder/s at the Bidders' own costs accompanied by an explanation to the effect that it is late.

11.2 A submission will be considered late if it arrives one second after 11:00 or any time thereafter. The bid box shall be locked at exactly 11:00 and bids arriving late will not be accepted under any circumstances. Bidders are therefore strongly advised to ensure that bids be dispatched allowing enough time for any unforeseen events that may delay the delivery of the bid.

12.0 PAYMENT TERMS RELATED TO THIS TENDER

12.1 Final payment terms will be negotiated with the successful bidder before awarding the bid.

12.2 The successful Bidder shall be responsible for accounting to the appropriate authorities for its Income Tax, VAT or other moneys required to be paid in terms of applicable law.

13.0 WARRANTS

13.1 The Bidder warrants that it is able to conclude and deliver on this Agreement to the satisfaction of SAA.

13.2 Although the Bidder will be entitled to provide products or services to persons other than SAA, the Bidder shall not without the prior written consent of SAA, be involved in any manner whatsoever, directly or indirectly, in any business or venture which competes or conflicts with the obligations of the Bidder to provide the products or services.

14.0 RETENTION

14.1 On termination of this agreement, the successful bidder shall on demand hand over all documentation, information, software, etc., without the right of retention, to SAA.

14.2 No agreement to amend or vary a contract or order or the conditions, stipulations or provisions thereof shall be valid and of any force and effect unless such agreement to amend or vary is entered into in writing and signed by the contracting parties. Any waiver of the requirement that the agreement to amend or vary shall be in writing, shall also be in writing.

15.0 SELECTION

15.1 SAA reserves the right to evaluate and consider any Bid/s that does not comply strictly with this Bid process.

15.2 Before the award of this Bid, SAA reserves the right to enter into a phase of negotiation to ensure the optimum solution in terms of the specified requirement for SAA with Bidder/s in order to establish a mutually acceptable solution. SAA will however not be bound to enter into any contract with any party, should negotiations fail to produce mutually acceptable conditions.

15.3 Should SAA consider it necessary, the Bidder/s shall agree to an inspection of the resources and works of the Bidder.

15.4 SAA may request documentary proof of any information supplied by the Bidder/s. Failure to comply with request will lead to disqualification.

15.5 Should SAA consider it necessary, SAA will visit the Bidder's customer sites.

15.6 SAA reserves the right:

15.6.1 to cancel this Bid or any part thereof at any time;

15.6.2 not to accept any Bids;

15.6.4 to accept one or more Bids for further negotiation

15.6.5 to contact any Bidder/s during the evaluation period, to clarify information only, without informing any other Bidder/s.

15.6.6 to either appoint one or more Bidder/s on a national basis, or award the contract on a regional basis to one or more Bidder/s.

16.0 NEGOTIATIONS

16.1 SAA has the right to enter into negotiation with a prospective bidder or prospective bidders regarding any terms and conditions, prices, BEE, technical/functionality requirements, etc.

16.2 SAA shall not be obliged to accept the lowest priced bid, quotation, offer or proposal.

17.0 BID PRESENTATIONS

17.1 SAA reserves the right to invite bidders for presentations before the award of the bid.

18.0 FORMAT OF BIDS

18.1 Fully comprehensive service documentation shall be supplied in English by each Bidder, which shall explicitly and in detail describe the service/s offered. This documentation shall include sufficient detail to clearly give the reader a precise and unambiguous description of the service/s offered. Incomplete or incomprehensible service documentation will result in rejection of the offer.

18.2 The following documentation forms part of the Bid and must be duly completed & returned in the Bidders response to this RFB

.

18.2.1 Part 1: Information Schedule

Bidders must complete and submit the Information Schedule.

18.2.2 Part 2: Technical/Functionality Proposal & Compliance

18.2.3 Part 3: SARS Tax Clearance Certificate(s)

A valid <u>original</u> SARS Tax Clearance Certificate must accompany the proposal. In case of a consortium/joint venture, or where sub-contractors are utilised, a valid <u>original</u> SARS Tax Clearance Certificate for each consortium/ joint venture member and/or sub-contractor (individual) <u>must</u> be submitted.

Each consortium/joint venture must submit its own valid <u>original</u> Tax Clearance Certificate.

18.2.4 Part 4: Declaration of Interest

Bidders must complete and submit the Declaration of Interest Form.

18.2.5 Part 5: Briefing Session or Site Inspection Certificate

Bidders must submit a signed certificate of the Briefing Session or Site Inspection which is a compulsory requirement.

18.2.6 Part 6: BEE Submission

Bidders must submit their B-BBEE Certificate.

Consortiums or joint ventures must submit a consolidated B-BBEE Certificate. Each member organisation must submit the percentage income split as per the consortium or joint venture agreement. The workload split must also be clearly defined and indicated.

18.2.7 Part 7: Pricing Schedule

Bidders must submit a detailed costing schedule. All prices submitted must include all applicable taxes.

18.2.8 Part 8: Vendor Information Form

Bidders must complete & submit the Vendor Information Form and source documents. Banking details will only be required from the successful bidder.



PART 3

SCOPE OF WORK

FOR

RFP NO.: GSM 085/13

Introduction

SAA is operating in a challenging, dynamic and highly competitive trading environment exacerbated by organisation specific weaknesses and inefficiencies which make its business model unsustainable in the long run. SAA's Balance Sheet is weak primarily caused by operating losses, hedging losses, and high fuel prices. This materially curtails SAA's ability to raise the capital required to finance its operations. SAA has reliant on financial support from the Shareholder over the past decade. During this period, there were two major capital interventions by the Shareholder. The first one being R 8.5 billion in FY2006/07 primarily to restore the capital base in response to the hedging and translations losses incurred at the time and the second being R 1.5 billion in FY2009/10. In both instances, the intervention was a conversion of debt into equity. Subsequent to FY2009/10, Shareholder support to SAA had been granted in the form of guarantees, which enable SAA to borrow to finance the working capital requirements.

1. Business Rationale

Working capital management is concerned with the problems that arises in attempting to manage the current assets, current liabilities and the inter relationship that exist between the, thus the efficient management of working capital is an important indicator of sound health of the organisation which requires reduction of unnecessary blocking of capital in order to bring down costs of financing.

More business fails for lack of cash than for wanting profit. The goal of working capital management is to manage the company current assets and current liabilities in such a way that the satisfactory level of working capital is sustained.

2. Project Goals

1. To conduct an internal assessment, of the various components of working capital in the group;
2. To analyse the liquidity trends;
3. To analyse working capital trends;
4. To analyse the operating and cash cycle of the group;
5. To appraise the utilisation of current asset and current liabilities and establish short comings;
6. To suggest measures for effective management of working capital.

3. Project funding

SAA would prefer considering a profit share option based on the positive outcome of the advice rather than paying a fixed rate to the appointed service provider.

4. SAA confidential financial information

This information will NOT be submitted to bidders without the signed NDA agreement that forms part of this document.

5.



PART 4

EVALUATION CRITERIA FOR

RFP GSM 085/13

EVALUATION CRITERIA AND METHODOLOGY

Methodology:

- **Phase 1- Evaluation of the critical criteria. Bidders must fully comply with all critical criteria in order to proceed to phase 2; failure to comply will lead to disqualification. It is also required that the bidders complete the table below for phase 1.**
- **Phase 2 – Bidders evaluated against the evaluation criteria will be short listed and advanced to phase 3. Short listed bidders will be required to do a presentation.**
- **Phase 3 - Phase 3 will consist of the Price and BBBEE evaluation.**

Phase 1: Critical Evaluation Criteria:

Bidders must fully comply with all the Critical Criteria listed below.Failure to comply shall lead to the Bidder disqualification (a 'no' answer will immediately disqualify a bidder from proceeding to the functional criteria phase):

#	ELEMENTS	Yes	No
1	Tenderer on the list of Restricted Tenderers as published by the Department of Treasury.		
2	Evidence of working capital management experience		
3	Submission of a list of at least three contactable signed business references (on company letterheads) outlining a similar scope of work and benefits realised		
4	Demonstrable understanding and experience in transactions dealing with Public Finance Management Act (PFMA)		
5	Intellectual property to remain the property of SAA		

NB: Bidders that fail to meet the Critical Criteria will be eliminated from further assessment/evaluation and not invited to the Tender Briefing Session.

Phase 2: Functional Requirements and Weightings:

#	ELEMENTS	MEASURE	WEIGHT
1	Demonstration of working capital management capability and the methodology to be used.	Demonstrate working capital management methodology and approach adopted in previous projects or as proposed for SAA.	30%
2	Evaluation of three contactable references (on company letterheads) outlining executed scope of work and benefits realised	Evaluation of the scope of work and benefits realised in relation to the relevance of what is required for SAA. • 3 references = 15 • 2 references = 10 • 1 reference = 5	15%
3	Demonstrate experience	Demonstrate experience of	15%

	of working at senior management level in re-discovering working capital	working at senior management level in re-discovering working capital capabilities by outlining methodology and approach utilised in similar projects as well as proposal for SAA. Tenderer must show a good grasp of sensitivities associated with the re-discovering of working capital and competency requirements	
4	Years of experience in working capital management and balance sheet optimisation	One year = 3 points Two years=6 points Three years= 9 points Four years= 12 points Five years=15 points	15%
5	Proposal on project post implementation	Tenderer must provide a proposal on how they will address issues that will arise post implementation of this initiative.	10%
6	Knowledge transfer framework to SAA (during and after the project)	Tenderer must outline their framework to be utilised in ensuring knowledge transfer happens with key internal stakeholders.	10%
7	Demonstration of Project Management Methodology to be used.	Demonstrate project management capability by outlining methodology and approach adopted in previous projects and as proposed for SAA. This should be indicated in terms of the various elements that will be addressed in project management as well as what elements will be included to ensure the success of this project.	5%
Total:			100%

Threshold: To proceed to Phase 3, Tenderers must score a minimum of 80% for the Functional Requirements.

Phase 3

Preference Point System

#	CRITERIA	POINTS
1	Price	90
2	BBBEE	10
TOTAL		**100 Points**

TRANSFORMATIONAL IMPERATIVES

SAA will give preference to bidders who are:

- 51% or more black owned companies
- 30% black women owned companies
- Black youth owned companies
- Companies owned by people with disabilities



PART 5

DECLARATION OF INTEREST

1. Any legal person, including persons employed by the principal, or persons having a kinship with persons employed by the principal, including a blood relationship, may make an offer or offers in terms of this invitation to bid. In view of possible allegations of favouritism, should the resulting bid, or part thereof, be awarded to persons employed by the principal, or to persons connected with or related to them, it is required that the bidder or his/her authorised representative declare his/her position in relation to the evaluating/adjudicating authority and/or take an oath declaring his/her interest, where:

   ❒ the bidder is employed by the principal; and/or

   ❒ the bidder is a board member

   ❒ the legal person on whose behalf the bidding document is signed, has a relationship with persons/a person who are/is involved in the evaluation and or adjudication of the bid(s), or where it is known that such a relationship exists between the person or persons for or on whose behalf the declarant acts and persons who are involved with the evaluation and or adjudication of the bid.

2. In order to give effect to the above, the following questionnaire must be completed and submitted with the bid.

2.1	Are you or any person connected with the bidder, employed by the principal?	YES/NO
2.1.2	If so, state particulars.	
	_____	
	_____	
2.2	Do you, or any person connected with the bidder, have any relationship (family, friend, other) with a person employed by the principal and who may be involved with the evaluation and or adjudication of this bid?	YES/NO
2.2.1	If so, state particulars	
	_____	
	_____	
2.3	Are you, or any person connected with the bidder, aware of any relationship (family, friend, other) between the bidder and any person employed by the principal who may be involved with the evaluation and or adjudication of this bid?	YES/NO
2.3.1	If so, state particulars	
	_____	
	_____	

3. **DECLARATION**

I _____, THE UNDERSIGNED CERTIFY THAT THE INFORMATION FURNISHED IN PARAGRAPH 2.1 TO 2.3.1 ABOVE IS CORRECT. I ACCEPT THAT THE PRINCIPAL MAY ACT AGAINST ME IN TERMS OF PARAGRAPH 23 OF THE GENERAL CONDITIONS OF CONTRACT SHOULD THIS DECLARATION PROVE TO BE FALSE.

_____ _____
Signature Date

_____
Position

_____
Name of Bidder

_____
Bid Number



PART 6

VENDOR INFORMATION FORM

FOR

RFP NO.: GSM 085/13

You are kindly requested to complete this document accurately as the information contained herein is required for the following purposes:

To support SAA in the implementation of a system of preferences as required by the Preferential Procurement Policy Framework Act (No 5 of 2000).
Failure to complete the form in full may result in the supplier not being considered for the awarding of any orders or contracts by SAA.

PAGES – PLEASE COMPLETE ALL PAGES.

Name of Company:	
Company Registration No:	
Vat Registration number:	
Tax registration No:	

Postal Address:	

Physical Address:	

Telephone No:		**Mobile Telephone No:**	
Fax No:		**E-mail address:**	

DOCUMENTS TO BE SUBMITTED

Certified Company Registration documents.
Certified Share Certificates.
Certified copies of Shareholders' Identity Documents.
Signed Joint Venture or Consortium agreement (where applicable).
Cancelled cheque or stamped bank confirmation letter not older than a year.
An original valid Tax Clearance Certificate must be attached to this form –. Failure to do so may disqualify the bid.
An original valid B-BBEE Certificate or a letter from the Auditor or Accounting Officer or a certified copy thereof.
In the case of a Joint Venture or Consortium, a joint B-BBEE Certificate fulfilling the above requirements should be submitted

In case of a consortium/joint venture, full details on consortium/joint venture members (if applicable):

Name of Company:	
Vat Registration number:	
Tax registration No:	

Name of Company:	
Vat Registration number:	

Tax registration No:	

Name of contracting entity in case of a consortium/joint venture (if applicable):

Name of Company:	
Postal address:	
Street address:	
Contact person on behalf of a consortium/joint venture:	
Telephone number:	
Cellphone number:	
Email address:	

1. Participation capacity (tick one box)

	Prime contractor		Supplier
	Sub-contractor		Professional services
	Manufacturer		Joint Venture partner
	Other, specify ……		

2. Type of firm (tick one box)

	Partnership		One person business/sole trader
	Close corporation		Company
	Pty Ltd.		
	Other, specify ……		

3. State business activities (tick one box)

	Security		Construction
	Catering		Consulting
	Manufacturer		Retailer/Distributor
	Other, specify ……		

4. Business sector (tick one box)

	Agriculture		Mining and Quarrying
	Manufacturing		Electricity, Gas and Water
	Retail and motor trade repair services		Construction
	Wholesale trade, commercial agents & allied		Community, social and personal services
	Commercial Agents and other trade		Transport, storage and communication
	Finance and business services		Commercial Agents and other trade
	Other, specify ……		

5. Company classification (tick one box)

	Contractor who generates more than 75% of turnover as a prime contractor		Contractor who generates less than 75% of turnover as a prime contractor
	Labour – only sub-contractor		Manufacturer
	Supplier		Professional service provider
	Other, specify ……		

Products or services to offer to SAA (fill in)

6. Total number of years the firm has been in business: _____

7. Total number of employees

Full time: _____**Part time**: _____

8. Street address of all facilities used by the Firm (e.g. Warehouse, storage space, offices, etc.)

_____
_____
_____

9. Do you share any facilities? YES/NO

If yes, which facilities are shared? _____

With whom do you share facilities? (Name of firm/individuals).

_____
_____

10. Is the firm registered or does it have a business license(s)?

YES/NO (if yes, give details and quote relevant reference numbers and dates)

_____

11. Detail all trade associations in which you have a membership:

_____
_____

12. Did the firm exist under a previous name? YES / NO

If yes, what was its previous name? _____

Who were the owners/partners/directors?

_____
_____

13. Identify any owner or management officer who has an interest in another firm:

Name	Duties as employee in	Name and address of other firm	Type of business of other firm

14 Indicate whether your company is an:

a. Exempted Micro Enterprise (EME)
b. Qualifying Small Enterprise (QSE)
c. Generic/ Large Supplier

15 What is the enterprise's average annual turnover (excl. VAT) during the lesser of the period for which the business has been operating or the previous three financial years?

R _

NB. Please submit your most recent set of annual financial statements (AFS) that are audited/independently reviewed not older than twelve months. If these financial statements are older than twelve months, please submit your most recent management accounts (Income Statement, Balance Sheet and Cash Flow) signed by the directors/members.

Please complete the following:

Checklist for required financial statements	Response	Comments
For a company and co-operative - Submission of most recent set of audited annual financial statements (AFS) signed by the directors and auditors. ***For a Close Corporation*** – Submission of the most recent set of annual financial statements (AFS) signed by the member(s) and accounting officer / independent reviewer.	□ Yes □ No	
Do the AFS have: 1. Signed audit/accounting office report and directors/members report 2. Balance sheet 3. Income statement 4. Cash flow statement	□ Yes □ No	
If annual set of AFS is older than twelve months, most recent set of interim results or management accounts signed by the directors have been submitted.	□ Yes □ No	
Do the Management accounts or interim AFS have: 1. Balance sheet 2. Income statement 3. Cash flow statement	□ Yes □ No	

AFS Language Medium is English	□ Yes □ No	
Obtain letter of support for subsidiary company if holding company's AFS was supplied	□ Yes □ No	
Did we get the following for a Joint Venture or Partnership: 1. Copy of each participant's AFS 2. Joint venture or partnership agreement	□ Yes □ No	

16 The financial manager/ external auditor/ CEO/Accounting Officer (whichever is relevant to your type of business) needs to confirm the following:

The business/entity is:

- □ A Going Concern — Yes / No
- □ In a Sound Financial Condition — Yes / No
- □ Have the financial & operational capacity to fulfil the contract requirements — Yes / No

Signature____

Capacity_

17 Identify by name, HDI status and length of service, those individuals in the firm (including owners and non-owners) responsible for the day-to-day management and business decisions

ACTIVITY	NAME	RACE W/B	GENDER M / F	DISABLED? YES / NO *	LIVING IN RURAL AREA? Y/N
FINANCING DECISIONS					
Cheque Signing					
Acquisition of lines of credit					
Sureties					
Major Purchase or Acquisitions					
Signing Contracts					

18 BLACK EQUITY OWNERSHIP

NAME	GENDER M / F	DISABLED? YES / NO *	I.D. NUMBER	NATIONALITY	% BLACK OWNERSHIP

19 List the four largest contracts/assignments completed by your firm in the last three years. Please provide projects that are similar to SAA's requirement.

Work performed	For whom	Contact person and telephone number	Contract fee/amount

*** Payment transactions:**

Alternative payee	
(This field is only to be filled in if payments are not to be made directly to the vendor to whom the payment is owed)	

*** Contact person**: (Sales person)

Name		Telephone number	

Bank Details:

Country (Where bank is located)	
Name of bank	
Bank key (Branch Number)	
Bank account (Account Number)	
Account holder (Only to be filled in if the name of the account holder is not the same as the name of the vendor)	
Name of account (Type of account)	

Date stamp of bank
Certified as correct

Initials and Surname (Bank official): _____

Signature (Bank official): _____

Telephone Number (Bank Official): _____

Signature _____duly authorised to sign on behalf of
_____(Name of organisation) address
_____
_____ _

Telephone no. _____Date _____

COMMISSIONER OF OATHS:

Signature: _____Date: _____

STAMP
MUST BE DATE STAMPED AND SIGNED BY A COMMISSIONER OF OATHS



PART 7

DEVIATIONS FROM THE REQUEST FOR BID/PROPOSAL

FOR

RFP NO.: GSM 085/13

Should the Bidder desire to make any departures from, or modifications to this Request for Bid or to qualify its Bidder in any way, it shall clearly set out its proposals hereunder or alternatively state them in a covering letter attached to its bid and referred to hereunder, failing which the Bid shall be deemed to be unqualified and conforms exactly with the requirements of this Request for Bid.

If no departures or modifications are desired, the Schedule hereunder is to be marked “NIL” and signed by the Bidder.

Unless otherwise specified specifically and stipulated in writing, the Contract constitutes the sole memorial of the Contract between the parties and any terms and conditions forming part of the Bidder’s Bid or other documentation.

PAGE NUMBER	CLAUSE NUMBER	DEVIATION

_____

SIGNATURE OF BIDDER

_____

DATE



PART 8

TAX CLEARANCE REQUIREMENTS

FOR

RFP NO.: GSM 085/13

1. IT IS A CONDITION OF BIDDING THAT

1.1 The taxes of the successful bidder **must** be in order, or that satisfactory arrangements have been made with the Receiver of Revenue to meet his/her tax obligations.

1.2 The attached form “Application for Tax Clearance Certificate (in respect of bidders)” must be completed in all respects and submitted to the Receiver of Revenue where the bidder is registered for tax purposes. The Receiver of Revenue will then furnish the bidder with a Tax Clearance Certificate that will be valid for a period of twelve (12) months from date of issue. This Tax Clearance Certificate must be submitted in the original together with the bid. Failure to submit the original and valid Tax Clearance Certificate **may** invalidate the bid.

1.3 In bids where Consortia/Joint Ventures/Sub-contractors are involved, each party must submit a separate Tax Clearance Certificate. Copies of the Application for Tax Clearance Certificates are available at any Receiver’s office.

Application for Tax Clearance Certificate
(IN RESPECT OF BIDDERS)

1. Name of Taxpayer/bidder: .....

2. Trade name:

3. Identification number:

4. Company/Close corporation registration number:

5. Income tax reference number:

6. VAT registration number (if applicable):

7. PAYE employer's registration number (if applicable):

Signature of contact person requiring Tax Clearance Certificate: .....

Name: .....

Telephone number: Code ..... Number .....

Address: .....

.....

.....

Date: 20……/……/……

Example

PLEASE NOTE THAT THE COMMISSIONER FOR THE SOUTH AFRICAN REVENUE SERVICE (SARS) WILL NOT EXERCISE HIS DISCRETIONARY POWERS IN FAVOUR OF ANY PERSON WITH REGARD TO ANY INTEREST, PENALTIES AND / OR ADDITIONAL TAX LEVIABLE DUE TO THE LATE- OR UNDERPAYMENT OF TAXES, DUTIES OR LEVIES OR THE RENDITION RETURNS BY ANY PERSON AS A RESULT OF ANY SYSTEM NOT BEING YEAR 2000 COMPLIANT.



PART 9

PRE-BID BRIEFING / SITE INSPECTION

FOR

RFP NO.: GSM 085/13

NOT APPLICABLE TO THIS TENDER.

South African Airways (SOC) Ltd

This is to certify that I, _____

representing and duly authorised by (Bidder) _____

_____

of (Address) _____

Attended the bid briefing/site inspection on (Date) _____
Having prior to this bid briefing/site inspection carefully examined the bid document; I confirm that I was given unrestricted access to inspect those sections of the Site necessary for the execution and or delivery of goods, services or works.

I further confirm that I am completely satisfied with the scope of Purchase as explained by the SAA representatives, and I am fully aware of all Site conditions and regulations of whatsoever nature that could influence the preparation of our bid.

I therefore append my signature below in agreement that we will not institute any claim against SAA, after submission of our bid based on lack of knowledge of site conditions or regulations appertaining to the execution of the Contract.

For and on behalf of the Bidder, being duly authorised;

_____ _____
Name Date

_____
Signature

For and on behalf of SAA:

_____ _____
Name Date

_____
Signature



PART 10

GENERAL CONDITIONS OF CONTRACT
and/or
SPECIAL CONDITIONS OF CONTRACT

FOR

RFP NO.: GSM 085/13

This information will be given to the appointed service provider.



PART 11

PREFERENCE CLAIM FORM

FOR

RFP NO.: GSM 085/13

PREFERENCE POINTS CLAIM FORM IN TERMS OF THE PREFERENTIAL PROCUREMENT REGULATIONS 2011

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

NB: BEFORE COMPLETING THIS FORM, BIDDERS MUST STUDY THE GENERAL CONDITIONS, DEFINITIONS AND DIRECTIVES APPLICABLE IN RESPECT OF B-BBEE, AS PRESCRIBED IN THE PREFERENTIAL PROCUREMENT REGULATIONS, 2011.

---

1. GENERAL CONDITIONS

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

- the 80/20 system for requirements with a Rand value of up to R500 000 (all applicable taxes included); and
- the 90/10 system for requirements with a Rand value above R500 000 (all applicable taxes included).

1.2 The value of this bid is estimated to exceed/not exceed R1 000 000 (all applicable taxes included) and therefore the … (insert appropriate system, e.g. 90/10) …… system shall be applicable.

1.3 Preference points for this bid shall be awarded for:

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

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

POINTS (insert appropriate points) .....

1.3.1.1 **PRICE (insert appropriate points)** .....

1.3.1.2 **B-BBEE STATUS LEVEL OF CONTRIBUTION** .....

Total points for Price and B-BBEE must not exceed 100

1.4 Failure on the part of a bidder to fill in and/or to sign this form and submit a B-BBEE Verification Certificate from a Verification Agency accredited by the South African Accreditation System (SANAS) or a Registered Auditor approved by the Independent Regulatory Board of Auditors (IRBA) or an Accounting Officer as contemplated in the Close Corporation Act (CCA) together with the bid, will be interpreted to mean that preference points for B-BBEE status level of contribution are not claimed.

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

2. DEFINITIONS

2.1 **"all applicable taxes"** includes value-added tax, pay as you earn, income tax, unemployment insurance fund contributions and skills development levies;

2.2 **"B-BBEE"** means broad-based black economic empowerment as defined in section 1 of the Broad-Based Black Economic Empowerment Act;

2.3 "**B-BBEE status level of contributor"** means the B-BBEE status received by a measured entity based on its overall performance using the relevant scorecard contained in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act;

2.4 **"bid"** means a written offer in a prescribed or stipulated form in response to an invitation by an organ of state for the provision of services, works or goods, through price quotations, advertised competitive bidding processes or proposals;

2.5 **"Broad-Based Black Economic Empowerment Act"** means the Broad-Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003);

2.6 **"comparative price"** means the price after the factors of a non-firm price and all unconditional discounts that can be utilised have been taken into consideration;

2.7 **"consortium or joint venture"** means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract;

2.8 **"contract"** means the agreement that results from the acceptance of a bid by an organ of state;

2.9 **"EME" or exempt micro enterprise** means any enterprise with an annual turnover of up to R5 million.

2.10 **"Firm price"** means the price that is only subject to adjustments in accordance with the actual increase or decrease resulting from the change, imposition, or abolition of customs or excise duty and any other duty, levy, or tax, which, in terms of the law or regulation, is binding on the contractor and demonstrably has an influence on the price of any supplies, or the rendering costs of any service, for the execution of the contract;

2.11 **"functionality"** means the measurement according to predetermined norms, as set out in the bid documents, of a service or commodity that is designed to be practical and useful, working or operating, taking into account, among other factors, the quality, reliability, viability and durability of a service and the technical capacity and ability of a bidder;

2.12 **"non-firm prices"** means all prices other than "firm" prices;

2.13 **"person"** includes a juristic person;

2.14 **"rand value"** means the total estimated value of a contract in South African currency, calculated at the time of bid invitations, and includes all applicable taxes and excise duties;

2.15 **"sub-contract"** means the primary contractor's assigning, leasing, making out work to, or employing, another person to support such primary contractor in the execution of part of a project in terms of the contract;

2.16 **"total revenue"** bears the same meaning assigned to this expression in the Codes of Good Practice on Black Economic Empowerment, issued in terms of section 9(1) of the Broad-Based Black Economic Empowerment Act and promulgated in the *Government Gazette* on 9 February 2007;

2.17 **"trust"** means the arrangement through which the property of one person is made over or

bequeathed to a trustee to administer such property for the benefit of another person; and

2.18 **"trustee"** means any person, including the founder of a trust, to whom property is bequeathed in order for such property to be administered for the benefit of another person.

3. ADJUDICATION USING A POINT SYSTEM

3.1 The bidder obtaining the highest number of total points will be awarded the contract.

3.2 Preference points shall be calculated after prices have been brought to a comparative basis taking into account all factors of non-firm prices and all unconditional discounts;.

1.3 Points scored must be rounded off to the nearest 2 decimal places.

1.4 In the event that two or more bids have scored equal total points, the successful bid must be the one scoring the highest number of preference points for B-BBEE.

1.5 However, when functionality is part of the evaluation process and two or more bids have scored equal points including equal preference points for B-BBEE, the successful bid must be the one scoring the highest score for functionality.

1.6 Should two or more bids be equal in all respects, the award shall be decided by the drawing of lots.

4. POINTS AWARDED FOR PRICE

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

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

80/20 or 90/10

$$Ps = 80\left(1 - \frac{Pt - P\min}{P\min}\right) \text{ or } Ps = 90\left(1 - \frac{Pt - P\min}{P\min}\right)$$

Where

Ps = Points scored for comparative price of bid under consideration

Pt = Comparative price of bid under consideration

Pmin = Comparative price of lowest acceptable bid

5. Points awarded for B-BBEE Status Level of Contribution

5.1 In terms of Regulation 5 (2) and 6 (2) of the Preferential Procurement Regulations, 2011 preference points must be awarded to a bidder for attaining the B-BBEE status level of contribution in accordance with the table below:

B-BBEE Status Level of Contributor	Number of points (90/10 system)	Number of points (80/20 system)
1	10	20
2	9	18

3	8	16
4	5	12
5	4	8
6	3	6
7	2	4
8	1	2
Non-compliant contributor	0	0

5.2 Bidders who qualify as EMEs in terms of the B-BBEE Act must submit a certificate issued by an Accounting Officer as contemplated in the CCA or a Verification Agency accredited by SANAS or a Registered Auditor. Registered auditors do not need to meet the prerequisite for IRBA's approval for the purpose of conducting verification and issuing EMEs with B-BBEE Status Level Certificates.

5.3 Bidders other than EMEs must submit their original and valid B-BBEE status level verification certificate or a certified copy thereof, substantiating their B-BBEE rating issued by a Registered Auditor approved by IRBA or a Verification Agency accredited by SANAS.

5.4 A trust, consortium or joint venture, will qualify for points for their B-BBEE status level as a legal entity, provided that the entity submits their B-BBEE status level certificate.

5.5 A trust, consortium or joint venture will qualify for points for their B-BBEE status level as an unincorporated entity, provided that the entity submits their consolidated B-B-BEE scorecard as if they were a group structure and that such a consolidated B-B-BEE scorecard is prepared for every separate bid.

5.6 Tertiary institutions and public entities will be required to submit their B-BBEE status level certificates in terms of the specialised scorecard contained in the B-BBEE Codes of Good Practice.

5.7 A person will not be awarded points for B-BBEE status level if it is indicated in the bid documents that such a bidder intends sub-contracting more than 25% of the value of the contract to any other enterprise that does not qualify for at least the points that such a bidder qualifies for, unless the intended sub-contractor is an EME that has the capability and ability to execute the sub-contract.

5.8 A person awarded a contract may not sub-contract more than 25% of the value of the contract to any other enterprise that does not have an equal or higher B-BBEE status level than the person concerned, unless the contract is sub-contracted to an EME that has the capability and ability to execute the sub-contract.

6. BID DECLARATION

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

7. B-BBEE STATUS LEVEL OF CONTRIBUTION CLAIMED IN TERMS OF PARAGRAPHS 1.3.1.2 AND 5.1

7.1 B-BBEE Status Level of Contribution: ……. = ……(maximum of 10 or 20 points)

(Points claimed in respect of paragraph 7.1 must be in accordance with the table reflected in paragraph 5.1 and must be substantiated by means of a B-BBEE certificate issued by a Verification Agency accredited by SANAS or a Registered Auditor approved by IRBA or an Accounting Officer as contemplated in the CCA), the said certificate may be a certified copy thereof.

8. SUB-CONTRACTING

8.1 Will any portion of the contract be sub-contracted? YES / NO (delete which is not applicable)

8.1.1 If yes, indicate:

(i) what percentage of the contract will be subcontracted? .....……..…%

(ii) the name of the sub-contractor?
……..

(iii) the B-BBEE status level of the sub-contractor?
……..

(iv) whether the sub-contractor is an EME?
YES / NO (delete which is not applicable)

9. DECLARATION WITH REGARD TO COMPANY/FIRM

9.1 Name of firm

9.2 VAT registration number : .....

9.3 Company registration number …….:

9.4 TYPE OF COMPANY/ FIRM

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

[TICK APPLICABLE BOX]

9.5 DESCRIBE STATE BUSINESS ACTIVITIES

…….....
…….....
…….. .....

9.6 COMPANY CLASSIFICATION

□ Manufacturer
□ Supplier

☐ Professional service provider
☐ Other service providers, e.g. transporter, etc.
[TICK APPLICABLE BOX]

9.7 MUNICIPAL INFORMATION

Municipality where business is situated .....
Registered Account Number .....
Stand Number .....

9.8 TOTAL NUMBER OF YEARS THE COMPANY/FIRM HAS BEEN IN BUSINESS?

…….....

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

(i) The information furnished is true and correct;

(ii) The preference points claimed are in accordance with the General Conditions as indicated in paragraph 1 of this form.

(iii) In the event of a contract being awarded as a result of points claimed as shown in paragraph 7, the contractor may be required to furnish documentary proof to the satisfaction of the purchaser that the claims are correct;

(iv) If 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, the purchaser may, in addition to any other remedy it may have –

(a) disqualify the person from the bidding process;

(b) recover costs, losses or damages it has incurred or suffered as a result of that person's conduct;

(c) cancel the contract and claim any damages which it has suffered as a result of having to make less favourable arrangements due to such cancellation;

(d) restrict the bidder or contractor, its shareholders and directors, or only the shareholders and directors who acted on a fraudulent basis, from obtaining business from any organ of state for a period not exceeding 10 years, after the *audi alteram partem* (hear the other side) rule has been applied; and

(e) forward the matter for criminal prosecution

WITNESSES:

1. .....

.....

SIGNATURE(S) OF BIDDER(S)

2. .....

DATE:.....

ADDRESS .....

.....

.....

.....



PART 12

DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT

FOR

RFP NO.: GSM 085/13

Not applicable to this bid

DECLARATION CERTIFICATE FOR LOCAL PRODUCTION AND CONTENT FOR DESIGNATED SECTORS

This Standard Bidding Document (SBD) must form part of all bids invited. It contains general information and serves as a declaration form for local content (local production and local content are used interchangeably).

Before completing this declaration, bidders must study the General Conditions, Definitions, Directives applicable in respect of Local Content as prescribed in the Preferential Procurement Regulations, 2011, the South African Bureau of Standards (SABS) approved technical specification number SATS 1286:2011 (Edition 1) and the Guidance on the Calculation of Local Content together with the Local Content Declaration Templates [Annex C (Local Content Declaration: Summary Schedule), D (Imported Content Declaration: Supporting Schedule to Annex C) and E (Local Content Declaration: Supporting Schedule to Annex C)].

1. General Conditions

1.1. Preferential Procurement Regulations, 2011 (Regulation 9) makes provision for the promotion of local production and content.

1.2. Regulation 9.(1) prescribes that in the case of designated sectors, where in the award of bids local production and content is of critical importance, such bids must be advertised with the specific bidding condition that only locally produced goods, services or works or locally manufactured goods, with a stipulated minimum threshold for local production and content will be considered.

1.3. Where necessary, for bids referred to in paragraph 1.2 above, a two stage bidding process may be followed, where the first stage involves a minimum threshold for local production and content and the second stage price and B-BBEE.

1.4. A person awarded a contract in relation to a designated sector, may not sub-contract in such a manner that the local production and content of the overall value of the contract is reduced to below the stipulated minimum threshold.

1.5. The local content (LC) expressed as a percentage of the bid price must be calculated in accordance with the SABS approved technical specification number SATS 1286: 2011 as follows:

$$LC = [1 - x / y] * 100$$

Where
x is the imported content in Rand
y is the bid price in Rand excluding value added tax (VAT)

Prices referred to in the determination of x must be converted to Rand (ZAR) by using the exchange rate published by South African Reserve Bank (SARB) at 12:00 on the date of advertisement of the bid as indicated in paragraph 4.1 below.

The SABS approved technical specification number SATS 1286:2011 is accessible on http:/www.thedti.gov.za/industrial development/ip.jsp at no cost.

1.6A bid may be disqualified if –

(a) this Declaration Certificate and the Annex C (Local Content Declaration: Summary Schedule) are not submitted as part of the bid documentation; and

(b) the bidder fails to declare that the Local Content Declaration Templates (Annex C, D and E) have been audited and certified as correct.

2. Definitions

2.1. **"bid"** includes written price quotations, advertised competitive bids or proposals;

2.2. **"bid price"** price offered by the bidder, excluding value added tax (VAT);

2.3. **"contract"** means the agreement that results from the acceptance of a bid by an organ of state;

2.4. **"designated sector"** means a sector, sub-sector or industry that has been designated by the Department of Trade and Industry in line with national development and industrial policies for local production, where only locally produced services, works or goods or locally manufactured goods meet the stipulated minimum threshold for local production and content;

2.5. **"duly signed"** in relation to a Declaration Certificate for Local Content means the said document has been signed by the Chief Financial Officer or other legally responsible person nominated in writing by the Chief Executive, or senior member / person with management responsibility(close corporation, partnership or individual).

2.6. **"imported content"** means that portion of the bid price represented by the cost of components, parts or materials which have been or are still to be imported (whether by the supplier or its subcontractors) and which costs are inclusive of the costs abroad (this includes labour or intellectual property costs), plus freight and other direct importation costs, such as landing costs, dock duties, import duty, sales duty or other similar tax or duty at the South African port of entry;

2.7. **"local content"** means that portion of the bid price which is not included in the imported content, provided that local manufacture does take place;

2.8. **"stipulated minimum threshold"** means that portion of local production and content as determined by the Department of Trade and Industry; and

2.9. **"sub-contract"** means the primary contractor's assigning, leasing, making out work to, or employing another person to support such primary contractor in the execution of part of a project in terms of the contract.

3. **The stipulated minimum threshold(s) for local production and content (refer to Annex A of SATS 1286:2011) for this bid is/are as follows:**

Description of services, works or goods	Stipulated minimum threshold
_____	_____%
_____	_____%
_____	_____%

4. Does any portion of the services, works or goods offered have any imported content?
(***Tick applicable box***)

YES		NO	

4.1 If yes, the rate(s) of exchange to be used in this bid to calculate the local content as prescribed in paragraph 1.5 of the general conditions must be the rate(s) published by SARB for the specific currency at 12:00 on the date of advertisement of the bid.

The relevant rates of exchange information is accessible on **www.reservebank.co.za.**

Indicate the rate(s) of exchange against the appropriate currency in the table below (refer to Annex A of SATS 1286:2011):

Currency	**Rates of exchange**
US Dollar	
Pound Sterling	
Euro	
Yen	
Other	

NB: Bidders must submit proof of the SARB rate (s) of exchange used.

5. Were the Local Content Declaration Templates (Annex C, D and E) audited and certified as correct?
(***Tick applicable box***)

YES		NO	

5.1. If yes, provide the following particulars:

(a) Full name of auditor: ……

(b) Practice number: ……..

(c) Telephone and cell number: …….

(d) Email address: ……..

(Documentary proof regarding the declaration will, when required, be submitted to the satisfaction of the Accounting Officer / Accounting Authority)

6. Where, after the award of a bid, challenges are experienced in meeting the stipulated minimum threshold for local content the dti must be informed accordingly in order for the dti to verify and in consultation with the AO/AA provide directives in this regard.

LOCAL CONTENT DECLARATION
(REFER TO ANNEX B OF SATS 1286:2011)

LOCAL CONTENT DECLARATION BY CHIEF FINANCIAL OFFICER OR OTHER LEGALLY RESPONSIBLE PERSON NOMINATED IN WRITING BY THE CHIEF EXECUTIVE OR SENIOR MEMBER/PERSON WITH MANAGEMENT RESPONSIBILITY (CLOSE CORPORATION, PARTNERSHIP OR INDIVIDUAL)

IN RESPECT OF BID NO. .....

ISSUED BY: (Procurement Authority / Name of Institution):
.....
NB

1 The obligation to complete, duly sign and submit this declaration cannot be transferred to an external authorized representative, auditor or any other third party acting on behalf of the bidder.

2 Guidance on the Calculation of Local Content together with Local Content Declaration Templates (Annex C, D and E) is accessible on http://www.thedti.gov.za/industrial development/ip.jsp. Bidders should first complete Declaration D. After completing Declaration D, bidders should complete Declaration E and then consolidate the information on Declaration C. **Declaration C should be submitted with the bid documentation at the closing date and time of the bid in order to substantiate the declaration made in paragraph (c) below.** Declarations D and E should be kept by the bidders for verification purposes for a period of at least 5 years. The successful bidder is required to continuously update Declarations C, D and E with the actual values for the duration of the contract.

I, the undersigned, ……..... (full names),
do hereby declare, in my capacity as …… ……..
of .....(name of bidder entity), the following:

(a) The facts contained herein are within my own personal knowledge.

(b) I have satisfied myself that:

(i) the goods/services/works to be delivered in terms of the above-specified bid comply with the minimum local content requirements as specified in the bid, and as measured in terms of SATS 1286:2011; and

(ii) the declaration templates have been audited and certified to be correct.

(c) The local content percentage (%) indicated below has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E which has been consolidated in Declaration C:

Bid price, excluding VAT (y)	R
Imported content (x), as calculated in terms of SATS 1286:2011	R
Stipulated minimum threshold for local content (paragraph 3 above)	

Local content %, as calculated in terms of SATS 1286:2011	

If the bid is for more than one product, the local content percentages for each product contained in Declaration C shall be used instead of the table above.
The local content percentages for each product has been calculated using the formula given in clause 3 of SATS 1286:2011, the rates of exchange indicated in paragraph 4.1 above and the information contained in Declaration D and E.

(d) I accept that the Procurement Authority / Institution has the right to request that the local content be verified in terms of the requirements of SATS 1286:2011.

(e) I understand that the awarding of the bid is dependent on the accuracy of the information furnished in this application. I also understand that the submission of incorrect data, or data that are not verifiable as described in SATS 1286:2011, may result in the Procurement Authority / Institution imposing any or all of the remedies as provided for in Regulation 13 of the Preferential Procurement Regulations, 2011 promulgated under the Preferential Policy Framework Act (PPPFA), 2000 (Act No. 5 of 2000).

SIGNATURE: _____ **DATE:** _____
WITNESS No. 1 _____ **DATE:** _____
WITNESS No. 2 _____ **DATE:** _____



PART 13

CERTIFICATE OF INDEPENDENT BID DETERMINATION

FOR

RFP NO.: GSM 085/13

1 This Standard Bidding Document (SBD) must form part of all bids[1] invited.

2 Section 4 (1) (b) (iii) of the Competition Act No. 89 of 1998, as amended, prohibits an agreement between, or concerted practice by, firms, or a decision by an association of firms, if it is between parties in a horizontal relationship and if it involves collusive bidding (or bid rigging).[2] Collusive bidding is a *per se* prohibition meaning that it cannot be justified under any grounds.

3 Treasury Regulation 16A9 prescribes that accounting officers and accounting authorities must take all reasonable steps to prevent abuse of the supply chain management system and authorises accounting officers and accounting authorities to:

a. disregard the bid of any bidder if that bidder, or any of its directors have abused the institution's supply chain management system and or committed fraud or any other improper conduct in relation to such system.

b. cancel a contract awarded to a supplier of goods and services if the supplier committed any corrupt or fraudulent act during the bidding process or the execution of that contract.

4 This SBD serves as a certificate of declaration that would be used by institutions to ensure that, when bids are considered, reasonable steps are taken to prevent any form of bid-rigging.

5 In order to give effect to the above, the attached Certificate of Bid Determination must be completed and submitted with the bid:

[1] Includes price quotations, advertised competitive bids, limited bids and proposals.
[2] Bid rigging (or collusive bidding) occurs when businesses, that would otherwise be expected to compete, secretly conspire to raise prices or lower the quality of goods and / or services for purchasers who wish to acquire goods and / or services through a bidding process. Bid rigging is, therefore, an agreement between competitors not to compete.

I, the undersigned, in submitting the accompanying bid:

_____

(Bid Number and Description)

in response to the invitation for the bid made by:

_____

(Name of Institution)

do hereby make the following statements that I certify to be true and complete in every respect:

I certify, on behalf of:_____ that:

(Name of Bidder)

1. I have read and I understand the contents of this Certificate;
2. I understand that the accompanying bid will be disqualified if this Certificate is found not to be true and complete in every respect;
3. I am authorized by the bidder to sign this Certificate, and to submit the accompanying bid, on behalf of the bidder;
4. Each person whose signature appears on the accompanying bid has been authorized by the bidder to determine the terms of, and to sign the bid, on behalf of the bidder;
5. For the purposes of this Certificate and the accompanying bid, I understand that the word "competitor" shall include any individual or organization, 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

6. The bidder has arrived at the accompanying bid independently from, and without consultation, communication, agreement or arrangement with any competitor. However communication between partners in a joint venture or consortium[3] will not be construed as collusive bidding.
7. In particular, without limiting the generality of paragraphs 6 above, there has been no consultation, communication, agreement or arrangement with any competitor regarding:
   (a) prices;
   (b) geographical area where product or service 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 bid; or

(f) bidding with the intention not to win the bid.

8. 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 products or services to which this bid invitation relates.

9. The terms of the accompanying bid 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.

[3] Joint venture or Consortium means an association of persons for the purpose of combining their expertise, property, capital, efforts, skill and knowledge in an activity for the execution of a contract.

10. I am 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 ten (10) years in terms of the Prevention and Combating of Corrupt Activities Act No 12 of 2004 or any other applicable legislation.

…… ……

Signature Date

…….. ……

Position Name of Bidder



PART 14

NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME

FOR

RFP NO.: GSM 085/13

The NIPP form to be inserted where applicable

THE NATIONAL INDUSTRIAL PARTICIPATION PROGRAMME INTRODUCTION

The National Industrial Participation (NIP) Programme, which is applicable to all government procurement contracts that have an imported content, became effective on the 1 September 1996. The NIP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all state and parastatal purchases / lease contracts (for goods, works and services) entered into after this date, are subject to the NIP requirements. NIP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade and Industry (DTI) is charged with the responsibility of administering the programme.

1 PILLARS OF THE PROGRAMME

1.1 The NIP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US$ 10 million or other currency equivalent to US$ 10 million will have a NIP obligation. This threshold of US$ 10 million can be reached as follows:

(a) Any single contract with imported content exceeding US$10 million or

(b) Multiple contracts for the same goods, works or services each with imported content exceeding US$3 million awarded to one seller over a 2 year period which in total exceeds US$10 million or

(c) A contract with a renewable option clause, where should the option be exercised the total value of the imported content will exceed US$10 million or

(d) Multiple suppliers of the same goods, works or services under the same contract, where the value of the imported content of each allocation is equal to or exceeds US$ 3 million worth of goods, works or services to the same government institution, which in total over a two (2) year period exceeds US$10 million.

1.2 The NIP obligation applicable to suppliers in respect of sub-paragraphs 1.1 (a) to 1.1 (c) above will amount to 30 % of the imported content whilst suppliers in respect of paragraph 1.1 (d) shall incur 30% of the total NIP obligation on a pro-rata basis.

1.3 To satisfy the NIP obligation, the DTI would negotiate and conclude agreements such as investments, joint ventures, sub-contracting, licensee production, export promotion, sourcing arrangements and research and development (R&D) with partners or suppliers.

1.4 A period of seven years has been identified as the time frame within which to discharge the obligation.

2 REQUIREMENTS OF THE DEPARTMENT OF TRADE AND INDUSTRY

2.1 In order to ensure effective implementation of the programme, successful bidders (contractors) are required to, immediately after the award of a contract that is in excess of **R10 million** (ten million Rands), submit details of such a contract to the DTI for reporting purposes.

2.2 The purpose for reporting details of contracts in excess of the amount of R10 million (ten million Rands) is to cater for multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as provided for in paragraphs 1.1.(b) to 1.1. (d) above.

3 BID SUBMISSION AND CONTRACT REPORTING REQUIREMENTS OF BIDDERS AND

SUCCESSFUL BIDDERS (CONTRACTORS)

3.1 Bidders are required to sign and submit this bidding document together with the bid on the closing date and time.

3.2 In order to accommodate multiple contracts for the same goods, works or services; renewable contracts and multiple suppliers for the same goods, works or services under the same contract as indicated in sub-paragraphs 1.1(b) to 1.1 (d) above and to enable the DTI in determining the NIP obligation, successful bidders (contractors) are required, immediately after being officially notified about any successful bid with a value in excess of R10 million (ten million Rands), to contact and furnish the DTI with the following information:

- Bid / contract number.
- Description of the goods, works or services.
- Date on which the contract was accepted.
- Name, address and contact details of the government institution.
- Value of the contract.
- Imported content of the contract, if possible.

3.3 The information required in paragraph 3.2 above must be sent to the Department of Trade and Industry, Private Bag X 84, Pretoria, 0001 for the attention of Mr Elias Malapane within five (5) working days after award of the contract. Mr Malapane may be contacted on telephone (012) 394 1401, facsimile (012) 394 2401 or e-mail at Elias@thedti.gov.za for further details about the programme.

4 PROCESS TO SATISFY THE NIP OBLIGATION

4.1 Once the successful bidder (contractor) has made contact with and furnished the DTI with the information required, the following steps will be followed:

a. the contractor and the DTI will determine the NIP obligation;
b. the contractor and the DTI will sign the NIP obligation agreement;
c. the contractor will submit a performance guarantee to the DTI;
d. the contractor will submit a business concept for consideration and approval by the DTI;
e. upon approval of the business concept by the DTI, the contractor will submit detailed business plans outlining the business concepts;
f. the contractor will implement the business plans; and
g. the contractor will submit bi-annual progress reports on approved plans to the DTI.

4.2 The NIP obligation agreement is between the DTI and the successful bidder (contractor) and, therefore, does not involve the purchasing institution.

Bid number: ……Closing date: ……..
Name of bidder: ……..
Postal address: ……
……
……
…….
Signature……Name (in print)……..
Date……

The National Industrial Participation (NIP) Programme, which is applicable to all government procurement contracts that have an imported content, became effective on the 1 September1996.The NIP policy and guidelines were fully endorsed by Cabinet on 30 April 1997. In terms of the Cabinet decision, all state and parastatal purchases / lease contracts (for goods, works and services) entered into after this date, are subject to the NIP requirements. NIP is obligatory and therefore must be complied with. The Industrial Participation Secretariat (IPS) of the Department of Trade and Industry (DTI) is charged with the responsibility of administering the programme. The NIP obligation is benchmarked on the imported content of the contract. Any contract having an imported content equal to or exceeding US$ 10 million or other currency equivalent to US$ 10 million will have a NIP obligation. Embedded NIP Form to be completed by Bidder(s):

PART 15

NON DISCLUSURE AGREEMENT RELATING TO RFP

Annexure 7

Innocentia Ngubeni

From: david_fine@mckinsey.com
Sent: Thursday, 05 December 2013 20:15
To: Eric Wood
Subject: Fwd: Final iteration: SAA LOP
Attachments: 20131205_SAA LOP Execsum v4.docx

Part 1

Sent from my iPhone

Begin forwarded message:

> From: "Johanna Jochim" <Johanna_Jochim@mckinsey.com>
> To: "Norbert Dörr" <norbert_doerr@mckinsey.com>, "Nomfanelo Magwentshu" <nomfanelo_magwentshu@external.mckinsey.com>, "Christina Planert" <christina_planert@mckinsey.com>, "David Fine" <david_fine@mckinsey.com>
> Subject: Final iteration: SAA LOP
>

+==+
This email is confidential and may be privileged. If you have received it
in error, please notify us immediately and then delete it. Please do not
copy it, disclose its contents or use it for any purpose.
+==+

McKinsey&Company

Request for proposal for the appointment of a consultant to assist the South African Airways Group with the unlocking of working capital

South African Airways

Letter of proposal - Response to RFP 085/13

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Executive summary

Thank you for inviting McKinsey & Company and Regiments Capital to propose how we could assist the South African Airways Group in unlocking working capital. We feel privileged to respond to your request for quotation, as we have deep insights into this important topic – and we also appreciate the important role of a healthy and thriving SAA in the future economic and social development of South Africa and the continent.

In the brief summary below we lay out the essence of our proposal as follows:

- Our understanding of your context and objectives
- Why we believe McKinsey and Regiments is the best possible combination of partners to support you
- Our proposed approach and tested methodology
- Our proposed team structure and professional arrangements
- Our distinctive approach to ensuring successful implementation
- Our unrivalled experience of supporting working capital management programmes, the airline industry in general and SAA in particular

This document is a summary of our proposal only. Please refer to the accompanying slide document for the full proposal, including our detailed explanation of how we meet and exceed your technical requirements.

Our understanding of your context and objectives

South African Airways operates in a challenging, dynamic and highly competitive environment. This challenging context has historically been exacerbated by organisation-specific weaknesses and inefficiencies, which ultimately make SAA's current business model unsustainable in the long term.

In particular, SAA is facing severe cash needs, having asked the shareholder and Treasury for multiple cash injections over recent years to avoid going concern issues. Growth is a key pillar of SAA's Long Term Turnaround Strategy (LTTS), and cash needs to be freed up to fund this growth. Better management of working capital will be critical in this regard, while financial reporting – and specifically systems capability to produce accurate and timely information – require urgent attention. A cash forecasting model might be required to obtain an accurate view on the cash burn and to 'avoid surprises'.

Good working capital management will thus provide an important lever for addressing historical shortcomings, by ensuring that SAA's current assets and liabilities are managed in an optimal way. Accordingly, SAA is seeking to appoint a consultant to suggest measures to optimise the management of its working capital, based on:

- An internal assessment of the various components of working capital in the group
- An analysis of liquidity trends, working capital trends, and SAA's operating and cash cycle
- An appraisal of the utilisation of current assets and current liabilities

McKinsey and Regiments: A unique partnership to support SAA

Regiments Capital and McKinsey propose to enter this engagement as equal partners, each leveraging the other's unique and considerable strengths. We believe McKinsey & Company and Regiments Capital is the best possible combination of partners to support you in this important effort, for five reasons:

- **We have a diverse team that combines the best global and local expertise and a long history of serving SAA.** We have access to industry expertise throughout our global footprint to bring global best practice to SAA, and we also have local experts with extensive relevant experience to provide ongoing support on the ground
- **We have a global knowledge network of dedicated research professionals with access to a wide range of information sources and databases**. In addition to access to our global network of 1,600 professionals, SAA will benefit from research conducted by McKinsey's dedicated Sub-Saharan Africa research team, the McKinsey Global Institute and Regiments' research team
- **We have an unrivalled track record in delivering projects of a similar size and nature, on time and within budget**. McKinsey and Regiments have deep understanding of the airline industry, its economics and capital requirements, including conducting multiple projects on working capital/cash management. We have in-depth industry knowledge and functional expertise, as well as proven experience in supporting similar projects throughout the globe
- **Extensive global consulting experience, with a long history of and commitment to servicing public and private clients in South Africa**. McKinsey has had an operation in South Africa for 17 years, and has worked on 906 consulting engagements across a wide range of industries and functions. Regiments Capital was established 7 years ago and has worked on many public and private sector engagements in SA over that time

- **Deep understanding of SAA, its processes and its people**. McKinsey has worked together with SAA and the DPE on more than 10 engagements since 1999, while Regiments has 9 years of working experience with SAA

Our proposed approach and tested methodology

Our initial, outside-in comparison to airline peers supports the hypothesis that working capital improvement can represent an important lever for SAA, especially in terms of accounts receivable. Indeed, our analysis suggests that bringing SAA's level of working capital management in line with the industry average would correspond to ~R1.5bn in cash freed up.

Apart from better management of accounts payable and receivable, in our experience there are also many key levers for working capital management that are specific to the airline industry. These include, for example, managing the cash flow impact of high and low traffic seasons; reducing technical inventories such as spares (in careful collaboration with Maintenance); cash pooling to reduce imbalances between regions and improve the discipline of regional operations; and offering incentives to passengers to make early bookings. Therefore, a critical element in designing a programme such as this one is careful prioritisation of which specific levers to address.

Given the significant 'size of the prize' and SAA's need to improve sustainability, we have designed our approach to the working capital programme based on the following overall principles:

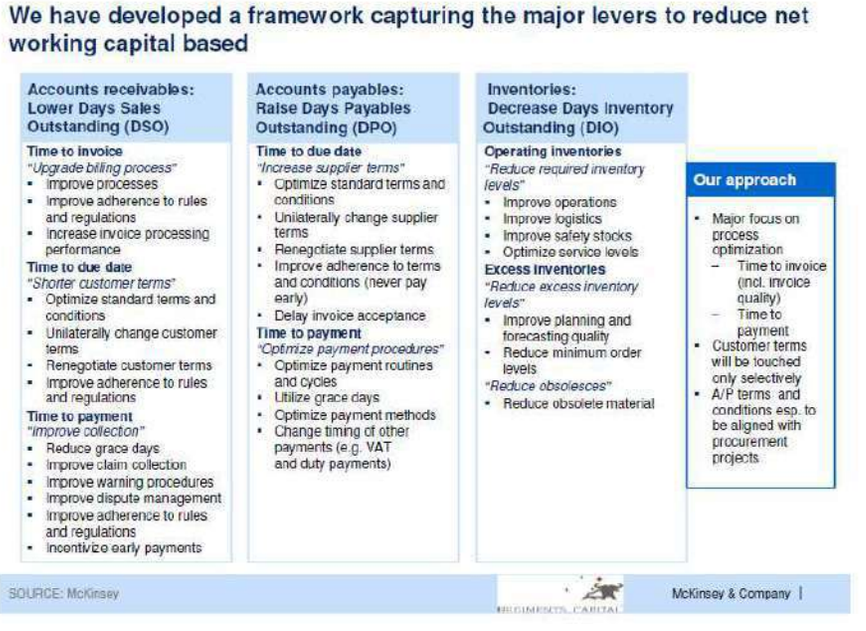
- **Get maximum benefit for least effort**. Prioritise those levers and areas that drive significant opportunity, but balance these choices using an assessment of risk, disruption and 'do-ability'
- **Ensure the fastest possible rollout**. Don't wait for completion of all analyses to begin rollout, but rather begin to move as soon as there is enough clarity on design and buy-in for a particular division/area. Continue to refine the approach and design based on impact
- **Make the effort business-friendly**. Maintain a low overhead to project interactions with the business (e.g., minimise template filling exercises). Maintain current levels of business health KPIs (e.g., customer satisfaction) while reducing working capital, and ensure transparency on what is happening, when, and why
- **Build internal capability for implementation**. Ensure true apprenticeship for South African Airways staff working on the project, transferring the tool-kit and codified knowledge from the initiative. Begin a "train the trainer" programme in phase I, which will be cascaded to build a pool of internal SAA experts to lead implementation

- **Focus strongly on open communication**. Over-invest in communication, addressing feedback and other elements of change management to ensure all issues are surfaced and addressed and all learnings are shared across all workstreams

Based on these overall principles, and on our extensive experience in this field, we have developed a methodology that captures the major levers to reduce net working capital, using three main angles of attack:

1. For **accounts receivable**, reducing Days Sales Outstanding (DSO) by upgrading billing processes, optimising customer terms, and improving the efficiency of collections
2. For **accounts payable**, raising Days Payables Outstanding (DPO) by optimising supplier terms and payment procedures
3. For **inventories**, decreasing Days Inventory Outstanding (DIO) by reducing required inventory levels, as well as excess and obsolescent inventory

Exhibit 1: Major levers framework

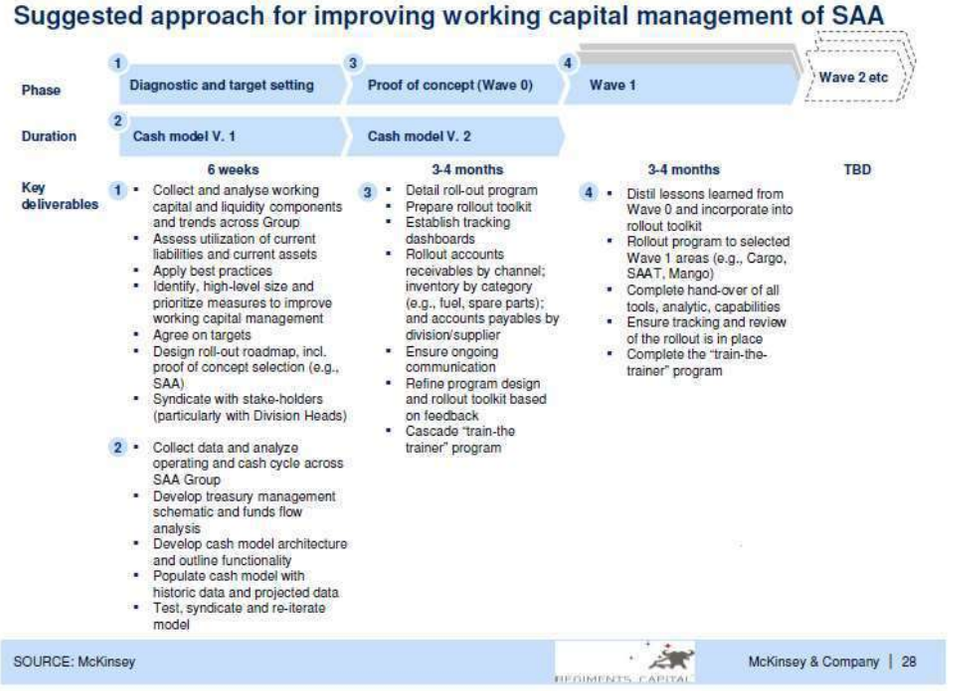


Our proposed approach would thus place its major focus on process optimisation, including achieving better speed and quality of invoicing and time to payment. Accounts payable terms and conditions would especially be aligned with procurement projects, while customer terms would be touched only selectively and inventories would be addressed only with minor focus..

To ensure tight focus on the most value-adding levers – and to lock in early capture of benefits – our proposed workplan would encompass the following:

- During the first ~6 weeks we would conduct a **thorough diagnostic** of current working capital management practices; prioritise measures to improve working capital management and agree on targets; and **design the roll-out** roadmap. In parallel we would also develop the architecture and functionality for an improved **cash model**, and populate the new cash model with historical and projected data
- In the following 3-4 months we would conduct a **trial rollout ('Wave 0')** of the new approach to working capital management across accounts receivable by selected channel; inventory by selected category; and accounts payable by selected division/supplier. We would use the results of these pilot rollouts to refine the programme design and rollout toolkit, as well as the overall cash model. During this period we would also begin a **"train-the-trainer"** programme to embed the required implementation capabilities among SAA personnel
- In the subsequent 3-4 months we would **roll out the programme** to selected Wave 1 areas (e.g., Cargo, SAAT, Mango); complete hand-over of all tools and analytic capabilities; ensure tracking and review of the rollout is in place; and complete the "train-the-trainer" programme. In this way we can ensure that SAA is set up to conduct subsequent rollout waves without external support

Exhibit 2: Project timelines



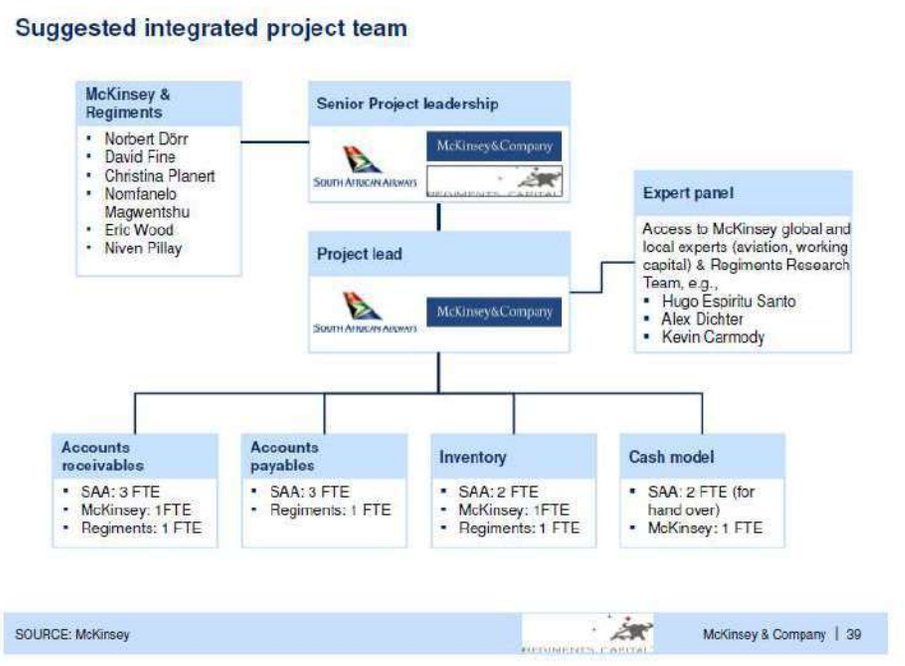
This focused approach would ensure that the proof of concept phase of the effort could get under way within six weeks of project kickoff (and already begin capturing benefits), and the first full wave of SAA's working capital management improvements could be rolled out within 4-6 months, with monthly continuation decisions.

Proposed team structure and professional arrangements

To support this ambitious and exciting programme, we propose setting up an integrated working team consisting of representatives from SAA, McKinsey and Regiments:

- Overall project leadership would be jointly provided on a part-time basis by senior leaders from both McKinsey and Regiments
- The project team would have access as required to an expert panel consisting of both McKinsey's global and local experts (e.g., in aviation, working capital) and the Regiments Research Team
- The full-time working team on the ground would be led by an engagement manager from McKinsey, with the workstreams jointly staffed by full-time resources appointed by SAA and appropriately skilled consultants from McKinsey and Regiments

Exhibit 3: Joint team structure



We are convinced that substantial value is at stake in this programme, and also that McKinsey and Regiments are ideally positioned to deliver rapid and significant value for SAA. We are therefore prepared to discuss a fee arrangement in terms of which both risk and upside would be shared between SAA and ourselves.

For the programme design and team configuration described above, our proposed professional fees would therefore be constituted as follows:

- **Phase 1: Diagnostic**
  - Team composition: 1 full-time McKinsey engagement manager, 3 full time McKinsey and 3 full time Regiment's Capital consultants, supported by local leadership and all required additional part-time resources in the form of expert advisors, research teams, visual graphics and executive assistant support
  - We would charge **no professional fees** for this 6-week phase of the engagement – fees for the diagnostic phase would be covered from savings realised in the implementation phase
  - A 'breaker fee' of R4 million would apply should SAA decide during or after the diagnostic phase that it wishes to terminate the contract and not continue jointly with the implementation phase. This would represent an hourly rate of R1075
  - SAA would reimburse all out of pocket cash expenses, including travel, accommodation and services in support of the engagement
- **Phase 2: Implementation**
  - Team configuration: 1 full-time McKinsey engagement manager, 3 full time McKinsey (2 after the cash model has been handed over to SAA) and 3 full time Regiment's Capital consultants, supported by local leadership and all required additional part-time resources in the form of expert advisors, research teams, visual graphics and executive assistant support
  - Professional fees and non-cash expenses would be 8% of savings identified, capped at R120 million
  - SAA would reimburse all out of pocket cash expenses, including travel, accommodation and services in support of the engagement, where required, on a monthly basis

Please regard this fee breakdown as a proposal for further discussion. We would need to agree upon the final details regarding financial arrangements prior to commencement of the project.

Setting up from the start for successful implementation

Given the importance of improved working capital management to SAA's future success it is imperative that this effort does not remain a purely theoretical exercise, but that it rapidly and sustainably 'takes flight' in the form of tangible, widespread and lasting changes to how the business is run.

As stated earlier, our approach to programmes such as this includes a strong focus on building the internal capabilities SAA will need to implement the required changes effectively. We have extensive experience in how to do this – our implementation experience spans multiple large-scale transformation portfolios as well as numerous complex projects in multiple industries. As a result, we can offer distinctive implementation support to our clients:

- **Unique, fully integrated consulting and implementation model.** Our support model links business strategy, organisational complexities, transformation programme design and on-the-ground implementation support, and our integrated leadership team includes experienced implementation experts
- **Distinctive, experienced implementation practitioners.** We have proven and experienced practitioners with solid implementation experience and specific implementation-focused skills and profiles
- **Simple and robust approach with proven proprietary tools.** Our distinctive approach is based on our expert experience in large scale transformations, and focuses on technical aspects, management infrastructure and organisational health using proprietary toolkits
- **Focus on coaching and capability building.** We ensure daily on-the-job coaching for line managers and change agents based on adult learning research – linking classroom training to real business problems – as well as skill building in communication, performance dialogues, influencing, feedback and role modelling
- **Supporting line management.** Our focus is on working through the line organisation and building ownership of all initiatives with line managers

Our unrivalled experience in working capital management and in the airline industry

The partnership between McKinsey and Regiments Capital brings the full complement of experiences and expertise required to ensure SAA's success in this important and challenging endeavour:

- **Proven track record in working capital**. In the last 10 years McKinsey has successfully implemented over 3,800 large corporate finance and working capital cost reduction programmes globally across all industries including the aviation industry. We have conducted more than 120 engagements on working capital management and optimisation over the past ten years, with significant impact achieved in all client cases. Regiments nurtures black intellectual capital to create a depth of skills and resources unparalleled in the South African financial services industry, with particular expertise in contract negotiation, developing balance sheet products and factoring payments
- **Deep understanding of the airline industry**, its economics and capital requirements. McKinsey's credentials include multiple projects on working capital/cash management, having served 15 of the 20 largest airlines globally over the last five years. We address our clients' most important and complex problems and are able to deliver fundamental, measurable, and lasting impact by applying a unique blend of global industry, functional, and regional expertise, as well as distinctive problem solving approaches and working methods.
- **Extensive experience of the South African public sector**. McKinsey has served South African public sector clients for 17 years, and Regiments similarly has built a successful track record in providing tailor-made solutions to the public sector since 2004, including clients such as ACSA, Transnet and Eskom
- **Proven McKinsey proprietary Working Capital Reduction toolkit**, which includes planning guide, 8+ templates, 6+ checklists, interview guides, an idea generation template and catalogue, a risk assessment tool, and a rollout toolkit
- **Strong existing relationship with South African Airways** with inherent knowledge of the company culture and working relationships with many of the key stakeholders, including an in-depth understanding of the LTTS, as a result of multiple engagements with SAA and the DPE since 1999

□ □ □

We fully appreciate the importance to SAA of achieving better management of its working capital, and are confident that McKinsey and Regiments can offer distinctive and rapid support rooted in our deep understanding of SAA and our extensive experience of supporting many airlines across the world facing comparable challenges. The suggested risk and upside sharing arrangements in our fee proposal reflect our belief in the value that is at stake, and in our ability to deliver significant value for SAA.

We would be most willing to discuss any of the elements of this proposal further with you, and to tailor them in such a way as to most closely reflect your needs.

Sincerely,

David Fine

Eric Wood

Nomfanelo Magwentshu

Christina Planert

Annexure 8

Innocentia Ngubeni

From: Phetolo <phetolo@ramscap.co.za>
Sent: Wednesday, 22 January 2014 19:44
To: Eric Wood
Subject: Fwd: Final Recommendation Working Capital rev1 nn
Attachments: 114012217244500943; ATT00001.htm; Final Recommendation Working Capital rev1 nn.doc; ATT00002.htm

Regards
Phetolo Ramosebudi
0832630591

Begin forwarded message:

> **From:** Phetolo Ramosebudi <PhetoloRamosebudi@flysaa.com>
> **Date:** 22 January 2014 at 17:24:42 SAST
> **To:** 'Phetolo' <Phetolo@ramscap.co.za>
> **Subject: Final Recommendation Working Capital rev1 nn**

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--
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dangerous content by **Pinpoint Securemail**,
and is believed to be clean.



Final Supplier Selection Recommendation for:
The appointment of a consultant to assist the SAA Group with the unlocking of working capital.

Tender description
RFP-GSM085/13

Global Supply Management
24 January 2014

Contents

1. Purpose 3
2. Background 3
3. Objective of the Project 4
4. Scope of Work 4
5. Contract Duration 4
6. CFST members 5
7. Critical Criteria and Evaluation Criteria with Weightings 5
8. Evaluation Process 7
9. Pricing Schedule 8
10. Financial Information 9
11. Risks and mitigation factors ..... **Error! Bookmark not defined.**
12. Approval Process Required ..... **Error! Bookmark not defined.**
13. Recommendation 10
14. Details of the Recommended Bidder 10
15. National Treasury Register for Tender Defaulters 10
16. Signatures 10

Summary of Evaluation

Detailed evaluation worksheets are available for review.

ACTIVITY	DETAIL
Tender ref no	RFP-GSM 085/13
Advertising date (Sunday Times)	19 November 2013
Compulsory briefing session	No
Closing date	06 December 2013
Validity period from the closing date	120 days
Number of responses received on time	Five (5)
Names of bidders who responded	Oliver Wyman IQ Business KPMG McKinsey Inc Boston Group
Late responses	**No late responses received**
Approved budget	No budget. Costs to be funded from savings gain share

1. Purpose

The purpose of this submission is to seek BAC support for approval as per the DOA to appoint McKinsey Incorporated to assist the SAA Group with the unlocking of working capital for a period of six months.

2. Background

SAA is operating in a challenging, dynamic and highly competitive trading environment exacerbated by organisation specific weaknesses and inefficiencies which make its business model unsustainable in the long run. SAA's Balance Sheet is weak primarily caused by operating losses, hedging losses, and high fuel prices. This materially curtails SAA's ability to raise the capital required to finance its operations. SAA has relied on financial support from the Shareholder over the past decade. During this period, there were two major capital interventions by the Shareholder. The first one being in the amount of R 8.5 billion in FY2006/07 primarily to restore the capital base in response to the hedging and translations losses incurred at the time and the second being an amount R 1.5 billion in FY2009/10. In both instances, the intervention was a conversion of debt into equity. Subsequent to FY2009/10, Shareholder support to SAA had been granted in the form of guarantees, which enable SAA to borrow to finance its working capital requirements.

SAA commenced a major Cost Compression Programme in April 2012, to give momentum to one of the "seven major strategic initiatives, which addresses systemic competitive or structural issues" in the 2012-15 Corporate Plan. Of major concern were the increase in SAA's controllable costs (such as labour, catering and crew accommodation costs) and the increase in "uncontrollable" costs, primarily fuel and regulated airport and air navigation charges. Major airlines, such as Lufthansa, Qantas, and British Airways have all found a way to re-engineer their non-fuel CASK downward and have recently announced even further measures to relentlessly focus on unit cost reduction in a renewed period of high fuel costs.

The primary objective of the Cost Compression Programme is to reduce SAA's cost base by reducing non-fuel CASK 20% in 2014 to USD 5.64 cents. This had to be achieved, without negatively affecting the other main strategies initiatives of the group or negatively impacting the demand-side Revenue per Available Seat Kilometre (RASK). For FY2013 this programme yielded sustainable benefits in excess of R 700 million, with a consequential reduction in non-fuel CASK of USD 0.58 cents.

3. Objective of the Project

Working capital management is concerned with the problems that arise in attempting to manage the current assets and current liabilities of the airline and the inter relationship that exists between them. The efficient management of working capital is thus an important indicator of the sound health of the organisation and same requires a reduction of any unnecessary blocking of capital in order to bring down costs of financing.

A number of businesses fail for lack of cash rather than for wanting profit. The goal of working capital management is to manage the company's current assets and current liabilities in such a way that a satisfactory level of working capital is sustained.

4. Scope of Work

The scope of work will consist of the following:

1. To conduct an internal assessment, of the various components of working capital in the group;
2. To analyse the liquidity trends;
3. To analyse working capital trends;
4. To analyse the operating and cash cycle of the group;
5. To appraise the utilisation of current asset and current liabilities and establish short comings;
6. To suggest measures for effective management of working capital; and
7. Implement necessary steps to unlock the cash in the business process.

5. Contract Duration

6 months

6. CFST members

Name & surname	Designation	Division	Signatures
Shireen Subroyen	Sourcing Specialist	GSM	
Reinette Slabbert	Commodity Manager	GSM	
Viwe Soga	Legal Advisor	GSM	
Phetolo Ramosebudi	HOD	Treasury	
Nthabiseng Ntshalintshali	HOD	Risk and Compliance	
Lindsay Olitzki	HOD	Finance	

Note: All the aforesaid supported this BAC recommendation.

7. Critical Criteria and Functional Criteria with Weightings

The BAC approved the following critical criteria and the evaluation criteria on 15 November 2013.

Phase 1: Critical Evaluation Criteria:

Bidders must fully comply with all the Critical Criteria listed below. Failure to comply shall lead to the Bidder disqualification (a 'no' answer will immediately disqualify a bidder from proceeding to the functional criteria phase):

#	ELEMENTS	Yes	No
1	Tenderer on the list of Restricted Tenderers as published by the Department of Treasury.		
2	Evidence of working capital management experience		
3	Submission of a list of at least three contactable signed business references (on company letterheads) outlining a similar scope of work and benefits realised		
4	Demonstrable understanding and experience in transactions dealing with Public Finance Management Act (PFMA)		
5	Intellectual property to remain the property of SAA		

NB: Bidders that fail to meet the Critical Criteria will be eliminated from further assessment/evaluation and not invited to the Tender Briefing Session.

Phase 2: Functional Requirements and Weightings:

#	ELEMENTS	MEASURE	WEIGHT
1	Demonstration of working capital management capability and the methodology to be used.	Demonstrate working capital management methodology and approach adopted in previous projects or as proposed for SAA.	30%
2	Evaluation of three contactable references (on company letterheads) outlining executed scope of work and benefits realised	Evaluation of the scope of work and benefits realised in relation to the relevance of what is required for SAA. • 3 references = 15 • 2 references = 10 • 1 reference = 5	15%
3	Demonstrate experience of working at senior management level in re-discovering working capital	Demonstrate experience of working at senior management level in re-discovering working capital capabilities by outlining methodology and approach utilised in similar projects as well as proposal for SAA. Tenderer must show a good grasp of sensitivities associated with the re-discovering of working capital and competency requirements	15%
4	Years of experience in working capital management and balance sheet optimisation	One year = 3 points Two years=6 points Three years= 9 points Four years= 12 points Five years=15 points	15%
5	Proposal on project post implementation	Tenderer must provide a proposal on how they will address issues that will arise post implementation of this initiative.	10%
6	Knowledge transfer framework to SAA (during and after the project)	Tenderer must outline their framework to be utilised in ensuring knowledge transfer happens with key internal stakeholders.	10%
7	Demonstration of Project Management Methodology to be used.	Demonstrate project management capability by outlining methodology and approach adopted in previous projects and as proposed for SAA. This should be indicated in terms of	5%

		the various elements that will be addressed in project management as well as what elements will be included to ensure the success of this project.	
Total:			100%

Threshold: To proceed to Phase 3, Tenderers must score a minimum of 80% for the Functional Requirements.

Phase 3

Preference Point System

#	CRITERIA	POINTS
1	Price	90
2	BBBEE	10
TOTAL		**100 Points**

TRANSFORMATIONAL IMPERATIVES

SAA will give preference to bidders who are:

- 51% or more black owned companies
- 30% black women owned companies
- Black youth owned companies
- Companies owned by people with disabilities

8. Evaluation Process

8.1 Phase 1: Critical criteria

Please refer to the attached Annexure A.

The following bidders did not qualify to proceed to phase two of the evaluation process for the reasons mentioned below:

- Oliver Wyman did not submit a list of at least three contactable signed business references (on company letterheads) outlining a similar scope of work and benefits realised;
- KPMG did not submit a list of at least three contactable signed business references (on company letterheads) outlining a similar scope of work and benefits realised as well as intellectual property will not remain the property of SAA.

8.2 Phase 2: Functional Evaluation Summary

Please refer to the attached Annexure B

McKinsey, BCG and IQ Business qualified to proceed to phase three of the evaluation process.

8.3 Phase 3: Price and BBBEE

#	CRITERIA	POINTS	McKinsey	BCG	IQ Business
1	Price	90	90	-157.5	-157.5
2	BBBEE	10	8	7	7
TOTAL		**100 Points**	**98**	**-150.5**	**-150.5**

8.4: BBBEE and Black Ownership status of the shortlisted bidders

The BBBEE and Black ownership status are as follows:

- **McKinsey Incorporated**:

Black Ownership: 25%;
Black Woman Ownership: 10%

- **IQ Group**:

Black Ownership: 23.13%;
Black Woman Ownership: 7.66%

- **Boston Consulting Group**:

Black Ownership: 25%;
Black Woman Ownership: 10%

9. Pricing Schedule

SAA indicated in the tender document that preference will be given to bidders that are prepared to conduct the analysis at no cost and then take part in a gain share should any working capital be found to be unlocked.

The pricing structure quoted by the shortlisted bidders were confirmed with all three shortlisted bidders and are as follows:

- **McKinsey Incorporated:**

McKinsey Incorporated quoted to perform the diagnostic phase free of charge as the fees for the diagnostic phase will be recovered from savings realised in the implementation phase.

During the implementation phase, the professional fees and non-cash expenses would be 8% of the savings identified, capped at R 120 million.

- **IQ Group:**

The IQ Group quoted a fixed fee of R 4.9 million for phase 1 (same which they designated as the 'diagnostic phase'.
.

IQ Group proposed a variable gain share model to be used further to the implementation stage. IQ Group will, furthermore and towards the end of the diagnostic phase, submit a consulting and implementation support proposal and 70% of the proposed fee will be a fixed fee and 30% of the said fee will be the gain share portion.

- **Boston Consulting Group:**

Boston Consulting Group quoted a fee of R14 million which consists of a variable portion of 70% based on the satisfaction of SAA at the end of the project and target benefits realised in priority initiative implementation.

The pricing expectation was a risk based pricing and only one bidder (i.e McKinsey Incorporated) met that expectation. McKinsey Incorporated has confirmed that in the event that no working capital is found to be unlocked, the risk will be on their side and no fees will be payable by SAA to them.

McKinsey confirmed that should SAA decide to terminate or not to proceed with the implementation phase, during or after the diagnostic phase, a "breaker fee" of R4 million (excl Vat) will be applicable.

10. Financial Information

Mckinsey Incorporated (South African branch)			**Medium**		
The bidder is a privately held entity in the USA and as such does not disclose its Annual Financial Statements due to confidentiality reasons. The entity's auditors, PWC, have provided us with the current ratio (1.6) and the liquidity ratio (1.6) and based on this we can note that the entity appears to be a going concern as at 31 December 2012. Furthermore we have no other knowledge of the financial position or performance of the entity. Based on the above the risk for this entity has been assessed as **MEDIUM.**					

.

11. Risk and mitigation factors:

None

12. Approval process required

- BAC;
- CEO

13. Details of the Recommended Bidder

Name of the awarded bidder	McKinsey Incorporated
Company registration number	1995/002398/10
VAT registration number	4710150048
BBBEE Level	2
% Black Ownership	25%
% Black Women Ownership	10%
% Black Youth Owned	0%
% Black People with Disabilities	0%
% Black People Living in Rural Areas	0%

14. National Treasury Register for Tender Defaulters and Database of Restricted Suppliers

As at 20 January 2014, GSM has verified that McKinsey Incorporated is not listed on the above database as a defaulter.

15. Final Recommendation

To recommend to the BAC to support the approval as per the DOA to appoint Mc Kinsey Incorporated to assist SAA with the unlocking of working capital for a period of six months.

16. Signatures

1. Compiled by:

_____ _____
Shireen Subroyen Date
Sourcing Specialist

2. Verified that the stipulated evaluation criteria is in line with SAA SCM Policy

_____ _____
Reinette Slabbert Date
Commodity Manager

3. Recommended by:

Phetolo Ramosebudi
Group Treasurer

Date

Wolf Meyer
CFO

Date

4. Supported by:

Reinette Slabbert
Acting Strategic Sourcing Manager

Date

Annexure 9

Innocentia Ngubeni

From: Phetolo <phetolo@ramscap.co.za>
Sent: Friday, 24 January 2014 10:50
To: Eric Wood; Tewodros Gebreselasie
Subject: Fwd: WORKING CAPITAL BAC FINAL RECOMMENDATION

Regards
Phetolo Ramosebudi
0832630591

Begin forwarded message:

From: Phetolo Ramosebudi <PhetoloRamosebudi@flysaa.com>
Date: 24 January 2014 at 10:44:40 SAST
To: "phetolo@ramscap.co.za (phetolo@ramscap.co.za)" <phetolo@ramscap.co.za>
Subject: FW: WORKING CAPITAL BAC FINAL RECOMMENDATION

Phetolo Ramosebudi | Group Treasurer | Finance: Treasury

Phone: +2711-978-5398 | Fax: +2711-978-1201 | E-Mail: PhetoloRamosebudi@flysaa.com
4th Floor, Block A, Airways Park, OR Tambo International Airport- Johannesburg- South Africa

---

From: Phetolo Ramosebudi
Sent: 24 January 2014 10:43 AM
To: Reinette Slabbert; Viwe Soga; Nthabiseng Ntshalintshali; Lindsay Olitzki; Shireen Subroyen
Subject: RE: WORKING CAPITAL BAC FINAL RECOMMENDATION

Colleagues,

Submission has ben referred back for rework. We need to discuss the pricing wrt to delegation of authority. If Mckinsey is approved as is I will have to go to board and timing will be a issues. So whats the correct approach to still recommend to Mckinsey without breaching the procurement process. Would Mckinsey reducing the cap level be th appropriate way to do, or should we go back to all for BAFO with a limit below Board approval.

Don't forget Boston was R14 million with 30 variable, IQ is R5,5 million with %age savings but no cap and MKensey is zero fixed but 8% on savings with R120 million which is above CEO delegation.

Lets quickly reflect on this. We need to go for Round robin early next week.

Regards

Phetolo Ramosebudi | Group Treasurer | Finance: Treasury

Phone: +2711-978-5398 | Fax: +2711-978-1201 | E-Mail: PhetoloRamosebudi@flysaa.com
4th Floor, Block A, Airways Park, OR Tambo International Airport- Johannesburg- South Africa

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From: Reinette Slabbert
Sent: 22 January 2014 12:08 PM
To: Viwe Soga; Nthabiseng Ntshalintshali; Phetolo Ramosebudi; Lindsay Olitzki; Shireen Subroyen
Subject: RE: WORKING CAPITAL BAC FINAL RECOMMENDATION

Dear Viwe,

Good afternoon to you.

Thanks for the inputs.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Viwe Soga
Sent: 22 January 2014 11:59 AM
To: Reinette Slabbert; Nthabiseng Ntshalintshali; Phetolo Ramosebudi; Lindsay Olitzki; Shireen Subroyen
Subject: RE: WORKING CAPITAL BAC FINAL RECOMMENDATION

Dear Reinette

Please find attached my comments and suggestions to the submission (which I made on the draft circulated by Nthabiseng with her comments). There are some areas which need to be clarified.

Regards,

Viwe Soga | Legal Advisor | Legal

Mobile: 082 228 6949 | Phone: +2711-978-6763 | Fax: +2711-978-1807 | E-Mail: ViweSoga@flysaa.com
Room 508, Floor 5, Block E, Airways Park, OR Tambo International- Johannesburg- SOUTH AFRICA

From: Reinette Slabbert
Sent: 22 January 2014 11:40 AM
To: Nthabiseng Ntshalintshali; Phetolo Ramosebudi; Viwe Soga; Lindsay Olitzki; Shireen Subroyen
Subject: RE: WORKING CAPITAL BAC FINAL RECOMMENDATION

Dear Nthabiseng,

Good morning to you.

Thanks for your valuable inputs.

Viwe, please submit your comments as well as a matter of urgency for us to finalise the document.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

---

From: Nthabiseng Ntshalintshali
Sent: 22 January 2014 10:34 AM
To: Reinette Slabbert; Phetolo Ramosebudi; Viwe Soga; Lindsay Olitzki; Shireen Subroyen
Subject: RE: WORKING CAPITAL BAC FINAL RECOMMENDATION
Importance: High

Hi Reinette,

Attached please find the cosmetic comments on the document. With noted comments, otherwise I am happy with the document.

Kind regards,

Nthabiseng Ntshalintshali | Chief Risk & Compliance Officer | Legal, Risk and Compliance

Mobile: 2778-304-4041 | Phone: 2711-978-2952 | Fax: 011-978-1436 | E-Mail: NthabisengNtshalintshali@flysaa.com
Room 430, Floor 4, Block A, Airways Park, OR Tambo International- Johannesburg- SOUTH AFRICA

From: Reinette Slabbert
Sent: 22 January 2014 08:40 AM
To: Phetolo Ramosebudi; Viwe Soga; Nthabiseng Ntshalintshali; Lindsay Olitzki; Shireen Subroyen
Subject: WORKING CAPITAL BAC FINAL RECOMMENDATION

Dear Team,

Good morning everybody.

Attached herewith please find the final document that will be circulated for signatures this morning as we are trying to include the document into the BAC agenda for Friday

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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Directors

DC Myeni* (Chairperson), M Kalawe (Chief Executive Officer), WH Meyer (Chief Financial Officer), A Khumalo*, N. Kubeka*, Y Kwinana*, R Lepule*, A Mabizela*, B Mpondo*, R Naithani*(Indian), LG Nkosi-Thomas*, C Roskruge*

*Non-Executive Director

Company Secretary - Sandile Dlamini

South African Airways SOC Ltd Reg. No. 1997/022444/30

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This message has been scanned for viruses and
dangerous content by **Pinpoint Securemail**,
and is believed to be clean.

Annexure 10

Innocentia Ngubeni

From: Phetolo <phetolo@ramscap.co.za>
Sent: Friday, 24 January 2014 18:35
To: Eric Wood
Subject: Fwd: SAA GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Regards
Phetolo Ramosebudi
0832630591

Begin forwarded message:

From: Phetolo Ramosebudi <PhetoloRamosebudi@flysaa.com>
Date: 24 January 2014 at 12:21:22 SAST
To: 'Phetolo' <Phetolo@ramscap.co.za>
Subject: FW: SAA GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Phetolo Ramosebudi | Group Treasurer | Finance: Treasury

Phone: +2711-978-5398 | Fax: +2711-978-1201 | E-Mail: PhetoloRamosebudi@flysaa.com
4th Floor, Block A, Airways Park, OR Tambo International Airport- Johannesburg- South Africa

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From: Reinette Slabbert
Sent: 16 January 2014 05:04 PM
To: Phetolo Ramosebudi; Nthabiseng Ntshalintshali; Lindsay Olitzki; Viwe Soga; Shireen Subroyen
Subject: FW: SAA GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Dear Team,

Attached herewith please find the response from McKinsey.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

---

From: christina_planert@mckinsey.com [mailto:christina_planert@mckinsey.com]
Sent: 16 January 2014 05:00 PM
To: Reinette Slabbert

Cc: Shireen Subroyen; nomfanelo_magwentshu@external.mckinsey.com; david_fine@mckinsey.com
Subject: Re: SAA GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Hello Reinette,

Thank you very much for your email.

I wanted to confirm your understanding of our pricing proposal: In the event that no savings are identified, we will charge no fees. This is the spirit of 100% aligned incentives between SAA and ourselves.

Thank you very much - please let me know should you have further questions,
Christina

Christina Planert | Principal
McKinsey & Company | Sandown Mews, East, 88 Stella Street | 2196 Sandown | Republic of South Africa
Direct +27 11 506-8138 | Fax +27 11 506-9138 | Mobile +27 82 329-8138 | Internal 327-8138
christina_planert@mckinsey.com

Assistant **Marlene Vorster** | Direct +27 11 506-8081 | Fax +27 11 506-9081 | Mobile +27 83 320-4606 | Internal 327-8081
marlene_vorster@mckinsey.com

Reinette Slabbert ---2014/01/16 10:10:35 AM---Dear Christina, Good morning to you.

From: Reinette Slabbert <ReinetteSlabbert@flysaa.com>
To: "Christina_Planert@mckinsey.com" <Christina_Planert@mckinsey.com>, "nomfanelo_magwentshu@external.mckinsey.com" <nomfanelo_magwentshu@external.mckinsey.com>,
Cc: Shireen Subroyen <ShireenSubroyen@flysaa.com>
Date: 2014/01/16 10:10 AM
Subject: SAA GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Dear Christina,

Good morning to you.

Please submit the following clarification most urgently by close of business today:

- Pricing proposal (Part 7)

According to the proposal, no professional fee will be charged for the diagnostic phase.

According to our understanding, should it happen that no savings opportunities are identified in the diagnostic phase, no implementation will take place and no professional fee will be due to McKinsey.

Awaiting your most urgent response.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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Directors

DC Myeni* (Chairperson), M Kalawe (Chief Executive Officer), WH Meyer (Chief Financial Officer), A Khumalo*, N. Kubeka*, Y Kwinana*, R Lepule*, A Mabizela*, B Mpondo*, R Naithani*(Indian), LG Nkosi-Thomas*, C Roskruge*

*Non-Executive Director

Company Secretary - Sandile Dlamini

South African Airways SOC Ltd Reg. No. 1997/022444/30

+==+
This email is confidential and may be privileged. If you have received it
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+==+

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dangerous content by **Pinpoint Securemail**,
and is believed to be clean.

Annexure 11

Innocentia Ngubeni

From: Phetolo <phetolo@ramscap.co.za>
Sent: Friday, 24 January 2014 16:22
To: Eric Wood
Subject: Fwd: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL.

Regards
Phetolo Ramosebudi
0832630591

Begin forwarded message:

From: Phetolo Ramosebudi <PhetoloRamosebudi@flysaa.com>
Date: 24 January 2014 at 12:21:34 SAST
To: 'Phetolo' <Phetolo@ramscap.co.za>
Subject: FW: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL.

Phetolo Ramosebudi | Group Treasurer | Finance: Treasury

Phone: +2711-978-5398 | Fax: +2711-978-1201 | E-Mail: PhetoloRamosebudi@flysaa.com
4th Floor, Block A, Airways Park, OR Tambo International Airport- Johannesburg- South Africa

---

From: Reinette Slabbert
Sent: 16 January 2014 05:03 PM
To: Phetolo Ramosebudi; Nthabiseng Ntshalintshali; Viwe Soga; Shireen Subroyen; Lindsay Olitzki
Subject: FW: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL.

Dear Team,

Good afternoon all.

I have done the clarification of the rates with each of the shortlisted bidders.

Attached herewith please find the response from Boston Group.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

From: Wuest Martin [mailto:Wuest.Martin@bcg.com]
Sent: 16 January 2014 03:32 PM
To: Reinette Slabbert
Cc: Shireen Subroyen; Ermias, Tenbite
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL.

Dear Reinette,

I trust you have been well.

Response to your question as follows:

Variable component in option 1:
The 70% refers to the fixed fee proposed to this option; i.e. 70% of the proposed fees are variable depending on:
1. your satisfaction with the project and
2. actual targets achieved (i.e. gains achieved)

The evaluation terms for both 1 and 2 above to be jointly agreed with you at the beginning of the project

Variable component in option 2:
The 60% refers to the fixed fee, 60% of the proposed fees are variable depending on your satisfaction at the end of the project
Evaluation terms to be jointly agreed with you at the beginning of the project

Should you require any further information, please do not hesitate to get in touch with me.

Kind Regards,

Martin Wuest
Principal
THE BOSTON CONSULTING GROUP
Tel. +27 11 245 1647 ▪ Mobile +27 83 657 8352

From: Reinette Slabbert [mailto:ReinetteSlabbert@flysaa.com]
Sent: Thursday, January 16, 2014 10:39 AM
To: Wuest Martin
Cc: Shireen Subroyen
Subject: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL.
Importance: High

Dear Martin,

Good morning to you.

Please submit the following clarification most urgently by close of business today:

- **Pricing options (** Part 7)

Please clarify the variable costs in terms of each option. Does this refer to a reduction of the fixed fee or gain share relating to the implementation phase?

Awaiting your most urgent response.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

---

From: Wuest Martin [mailto:Wuest.Martin@bcg.com]
Sent: 06 December 2013 08:34 AM
To: Reinette Slabbert
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. UPDATE NR 5. REMINDER OF THE CLOSING DATE OF THE TENDER

Dear Reinette,

Just to let you know we will be submitting our response as a hard copy document this morning (due to soft copy file size being quite large which may be over your email limit size).

Please do not hesitate to get in touch should you require any further information.

Kind Regards,

Martin Wuest
Principal
THE BOSTON CONSULTING GROUP
Tel. +27 11 245 1647 ▪ Mobile +27 83 657 8352

From: Reinette Slabbert [mailto:ReinetteSlabbert@flysaa.com]
Sent: Thursday, December 05, 2013 5:50 PM
To: jschoefer@relconsultancy.com; ericw@regiments.co.za; lithan@regiments.co.za; nivenp@regiments.co.za; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; solly@xabiso.co.za; bashier@nexia-sabt.co.za; suzel@zeelie.com; edgarr@rakoma.co.za; lmabokela@sekela.co.za; victors@sng.co.za; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin; Kasimu, Gerald (gerald.kasimu@kpmg.co.za); rob.bezuidenhout@kpmg.co.za; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com; pbhana@deloitte.co.za; smda@deloitte.co.za
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. UPDATE NR 5. REMINDER OF THE CLOSING DATE OF THE TENDER
Importance: High

Dear Bidders,

Good afternoon everybody.

Just a reminder that the abovementioned tender is closing tomorrow morning, 06 December 2013 at 11h00 local time.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Reinette Slabbert
Sent: 04 December 2013 07:23 AM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com; 'pbhana@deloitte.co.za'; 'smda@deloitte.co.za'
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. UPDATE NR 5. PAYMENT OF NON REFUNDABLE TENDER FEE
Importance: High

Dear Bidders,

Just a reminder that there is a non-refundable tender fee of ZAR 1,000.00 applicable and proof of payment must be submitted with the tender document.

Reagrds

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Reinette Slabbert
Sent: 02 December 2013 12:30 PM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com

Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. UPDATE NR 4 EXTENSION OF CLOSING DATE
Importance: High

Dear Bidders,

Good afternoon everybody.

This serves to confirm that the closing date and time of the above RFP is extended to 06 December 2013 at 11h00 local time. No other extension will be considered.

Please also remember bids can also be submitted via e-mail to tenders@flysaa.com or mandycoetser@flysaa.com

It remains the responsibility of the bidders to ensure bids get submitted on time .

Please acknowledge receipt.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

---

From: Reinette Slabbert
Sent: 01 December 2013 05:16 PM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. RESPONSE TO QUESTIONS SERIAL NUMBER 3 (DUPLICATION)
Importance: High

Dear Bidders,

Serial nr 3 was duplicated.

Attached herewith please find the question as well as the SAA responses to the duplicated serial nr 3.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Reinette Slabbert
Sent: 01 December 2013 05:10 PM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iggroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. RESPONSE TO QUESTIONS SERIAL NUMBER 2
Importance: High

Dear Bidders,

Attached herewith please find the question posed as serial nr 2 and the SAA response.

Can I please ask an urgent question: For the client references, the RFP states on "company letterhead" - which letterhead is meant here, ours as bidder ?
Or the client's letterhead? The logistics of procuring on clients' letterhead would be very challenging given the short deadline.

SAA response:

This references needs to be on client letter heads.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Reinette Slabbert
Sent: 01 December 2013 05:05 PM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com';

'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. RESPONSE TO QUESTIONS SERIAL NUMBER 1
Importance: High

Dear Bidders,

Attached herewith please find the questions and SAA response to this set of questions.

We have a question regarding the Project Scope and Goals:

Is it correct to assume that SAA expects a proposal that ranges beyond the mere analysis and suggestion of measures to SAA, but particularly includes assisting SAA in the design and implementation of these measures, for example through

- Extensive SAA staff involvement, training and coaching for sustainable results
- Design & Implementation of process improvements/solutions that remain with SAA
- Progress monitoring through implemented KPIs
- The implementation phase would then provide the foundation for a profit share/variable payment option based on results achieved.

SAA response:

Answer to all the questions are yes as per the scope of work.

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Reinette Slabbert
Sent: 01 December 2013 04:56 PM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. RESPONSE TO QUESTIONS SERIAL NUMBER 3
Importance: High

Dear Bidders,

Attached herewith please find the questions and answers posed as serial nr 3.

Thanks

I have a few clarification questions relating to the RFP unlocking of working capital (GSM 085/13)

The questions are in relation to the confidential information you sent. I would appreciate if you could kindly provide clarification on the following points relating to information in the spreadsheet you provided:

1. If the totals of the five worksheets are added (i.e., SAA, Cargo, SAAT, SATC, Air Chef) does this then constitute the SAA group total? Essentially yes.
2. What is the unit for each of the worksheets? (i.e. is the unit for the "SAA" and "Mango" worksheet in *ZAR '000*?) R000
3. What are the reasons for accounts payable always being negative for "Cargo"? Ignore – the ";" indicates a credit
4. What are the reasons for inventories being zero for "Cargo" and "SATC"? No inventory
5. What are the reasons for total revenue always being negative for "SATC"? "-" reflects credit
6. Is the data for South African Express Airways included in the data? If yes, under which worksheet is it included? No – not part of the SAA Group.

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Reinette Slabbert
Sent: 01 December 2013 04:53 PM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. RESPONSE TO QUESTIONS SERIAL NUMBER 4
Importance: High

Dear Bidders,

Four sets of questions was posed by bidders during the tender process.

Attached herewith please find the questions and response to the questions posed as serial nr 4.

Thank you for the information and for awarding our firm the opportunity to submit our proposal. Edgar and I are busy on the proposal and we had a few questions with regards to the financials as below which will assist us in the preparation:

SAA

1. Do you have a further breakdown of what else constitutes Receivables besides the Trade Receivables?
2. What is the percentage of Receivables that's past due?
3. What is the nature of the inventory?
4. Are there any long term commitments (loans and capital) that are payable in the current period?
5. Do you have the breakdown of the nature of the other payables excluding the Trade payables already specified?

SATC

6. In some months, the Trade receivables are greater than the receivables balance.

General / All

7. Will you be able to provide consolidated financial statements?
8. Please may we have the net profit figure excluding the non-cash items?

Response from SAA;

Please visit our website www.flysaa.com and bidders can find all the Annual Financial reports posted there until 2012.

SATC is not a concern at this stage.

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Reinette Slabbert
Sent: 29 November 2013 03:44 PM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com';

'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iggroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. UPDATE NR 3. CLOSING DATE OF RFP
Importance: High

Dear Bidders,

Good afternoon everybody.

There was requests for extension of the closing date. The CFST was deliberating on this but unfortunately the date cannot be extended and will remain 04 December 2013 at 11h00 local time.

Just a reminder that you can also submit your bids via e-mail to tenders@flysaa.com or mandycoetser@flysaa.com

We are looking forward in receiving your bids.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

---

From: Reinette Slabbert
Sent: 26 November 2013 01:18 PM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iggroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. UPDATE NR 2

Dear Bidders,

Good afternoon everybody.

There is a considerable amount of NDA's outstanding.

Please submit the signed NDA's most urgently.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Reinette Slabbert
Sent: 21 November 2013 11:54 AM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iggroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com)
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. UPDATE NR 1

Dear Bidders,

Good morning to you.

1) SAA annual report for 2013:

This report is not available as yet and will only be available after the Annual General Meeting of which the date is not known at this stage.

2) SAA Confidential Financial Information:

This will be available shortly and will only be distributed to bidders that have submitted the signed NDA documents.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

---

From: Reinette Slabbert
Sent: 19 November 2013 04:22 PM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iggroup.net; Christina_Planert@mckinsey.com; Wuest Martin

(Wuest.Martin@bcg.com)
Cc: Shireen Subroyen
Subject: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL.
Importance: High

Dear Bidders,

Good afternoon everybody.

Attached herewith please find the following documents:

- RFP 085/13.
- NDA related to the RFP.

There is confidential financial information available that will be submitted but it will only be submitted once the NDA agreement has been signed and e-mailed back.

Please take note of the funding point that forms part of the scope of work (Part 3) of the RFP document.

All correspondence needs to be via e-mail and we will respond as soon as possible to all questions.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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Directors

DC Myeni* (Chairperson), M Kalawe (Chief Executive Officer), WH Meyer (Chief Financial Officer), A Khumalo*, N. Kubeka*, Y Kwinana*, R Lepule*, A Mabizela*, B Mpondo*, R Naithani*(Indian), LG Nkosi-Thomas*, C Roskruge*

*Non-Executive Director

Company Secretary - Sandile Dlamini

South African Airways SOC Ltd Reg. No. 1997/022444/30

The Boston Consulting Group, Inc.

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and is believed to be clean.

Annexure 12

Innocentia Ngubeni

From: Phetolo <phetolo@ramscap.co.za>
Sent: Friday, 24 January 2014 16:22
To: Eric Wood
Subject: Fwd: SAA GSM 085/13: RFP TO APPOINT A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Regards
Phetolo Ramosebudi
0832630591

Begin forwarded message:

From: Phetolo Ramosebudi <PhetoloRamosebudi@flysaa.com>
Date: 24 January 2014 at 12:21:05 SAST
To: 'Phetolo' <Phetolo@ramscap.co.za>
Subject: FW: SAA GSM 085/13: RFP TO APPOINT A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Phetolo Ramosebudi | Group Treasurer | Finance: Treasury

Phone: +2711-978-5398 | Fax: +2711-978-1201 | E-Mail: PhetoloRamosebudi@flysaa.com
4th Floor, Block A, Airways Park, OR Tambo International Airport- Johannesburg- South Africa

---

From: Reinette Slabbert
Sent: 16 January 2014 05:07 PM
To: Phetolo Ramosebudi; Nthabiseng Ntshalintshali; Viwe Soga; Lindsay Olitzki; Shireen Subroyen
Subject: FW: SAA GSM 085/13: RFP TO APPOINT A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Dear Team,

Attached herewith please find the response from the IQ Group regarding the question of IQ Group, REL Consulting and The Hackard Group.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

---

From: Schoefer, Jonas [mailto:jschofer@relconsultancy.com]
Sent: 16 January 2014 01:04 PM

To: Reinette Slabbert
Cc: Shireen Subroyen
Subject: RE: SAA GSM 085/13: RFP TO APPOINT A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Dear Reinette,

Apologies.

The confirmed fixed fee for Phase 1 is 4.9m ZAR plus VAT (ZAR 5,586,000 incl. VAT).

Kind regards,

Jonas Schofer

Jonas Schoefer | Director Southern Africa | **The Hackett Group** | IQ Business Park | No. 3 Third Avenue | Rivonia, 2128 Gauteng, South Africa | mobile: +27 730 919674 | email: jschoefer@thehackettgroup.com | web: www.thehackettgroup.com
CASH FLOW DELIVERED
The Hackett Group is a BBBEE Level 3 supporter through it's South African Performance Partner IQ Business Group

---

From: Reinette Slabbert [mailto:ReinetteSlabbert@flysaa.com]
Sent: 16 January 2014 01:01 PM
To: Schoefer, Jonas
Cc: Shireen Subroyen
Subject: RE: SAA GSM 085/13: RFP TO APPOINT A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL
Importance: High

Dear Jonas,

Thanks for your response.

Please confirm what is the proposed fixed fee for phase 1.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

---

From: Schoefer, Jonas [mailto:jschofer@relconsultancy.com]
Sent: 16 January 2014 12:41 PM
To: Reinette Slabbert
Cc: Shireen Subroyen
Subject: RE: SAA GSM 085/13: RFP TO APPOINT A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Dear Reinette,

Thank you for your request for clarification:

1) IQ Business (Pty) Ltd and The Hackett Group, Inc. have entered into an exclusive Alliance Agreement since July 2009 where IQ Business (Pty) Ltd and The Hackett Group, Inc. are able to market each other's services. Under this Alliance Agreement IQ Business (Pty) Ltd is able to market all Intellectual Property and services of The Hackett Group, Inc. in Sub-Saharan Africa. The required services will be delivered through IQ Business (Pty) Ltd under the guidance of The Hackett Group, Inc. It must be noted that the REL Group is a wholly owned subsidiary of The Hackett Group, Inc.
2) You are correct, we proposed a fixed rate for Phase 1 and then a variable gain share model during Phase 2 – to elaborate: Towards the end of Phase 1, we will submit a consulting and implementation support proposal for Phase 2, based on effort from IQ/Hackett needed for Phase 2 to unlock the results (e.g. trainings, developments, etc). We proposed to base 30% of this baseline fee on the success of Phase 2 (gain share) and 70% of this baseline fee as a fixed fee engagement.

   30% gain share DOES NOT mean that we charge SAA 30% of all released cash results, which would be an astronomical fee.

   Example (this is not a proposal, just for illustration): Total Effort needed for Support for Phase 2: R 10m –> Fixed Fee: R 7m + Gain Share Fee: R 3m, if the defined targets are reached to 100%. Under- or Overperformance will lead to a pro rata adjustment of the R 3m.

I hope this clarifies the points in question to your satisfaction, I am happy to assist further on short notice.

Kind regards,

Jonas Schofer

Jonas Schoefer | Director Southern Africa | **The Hackett Group** | IQ Business Park | No. 3 Third Avenue | Rivonia, 2128 Gauteng, South Africa | mobile: +27 730 919674 | email: jschoefer@thehackettgroup.com | web: www.thehackettgroup.com
CASH FLOW DELIVERED
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---

From: Reinette Slabbert [mailto:ReinetteSlabbert@flysaa.com]
Sent: 16 January 2014 10:31 AM
To: Schoefer, Jonas
Cc: Shireen Subroyen
Subject: SAA GSM 085/13: RFP TO APPOINT A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL
Importance: High

Dear Jonas,

Good morning to you.

Please submit the following clarifications by close of business today:

1) Are REL Group and the IQ Group both subsidiaries of the Hackard Group or is there a JV between REL and The IQ Group?

2) Pricing proposal: Please clarify if there will be a fixed rate for phase 1 and a 30% gain share during phase 2. If there will be fixed rate applicable for phase 1, please confirm the rate.

Awaiting your most urgent response.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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Directors

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*Non-Executive Director

Company Secretary - Sandile Dlamini

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Annexure 13

Innocentia Ngubeni

From: Reinette Slabbert
Sent: Tuesday, 28 January 2014 13:01
To: Phetolo Ramosebudi; Viwe Soga; Shireen Subroyen; Nthabiseng Ntshalintshali; Lindsay Olitzki
Subject: FW: SAA GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Dear Team,

Good afternoon everybody.

Please refer to the response from McKinsey but they did not confirm if the capped amount of R 120 million will remain.

I have revert back to them to confirm this and will inform all as soon as they respond.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

---

From: christina_planert@mckinsey.com [mailto:christina_planert@mckinsey.com]
Sent: 28 January 2014 12:41 PM
To: Reinette Slabbert
Cc: Shireen Subroyen; david_fine@mckinsey.com; nomfanelo_magwentshu@external.mckinsey.com
Subject: Re: SAA GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Hello Reinette,

Apologies for the delay. As you can imagine this was an important discussion where we needed all consortium partners involved.

Here is what we agreed that we could offer as a sign of our commitment to SAA:

- Reduction of breaker fee to from R4m to 3m (excl. VAT) after the diagnostics phase
- Reduction of our professional fees to 7% of working capital savings identified for SAA. Assuming that we identify savings of R1 - 1.15 billion for SAA, this would amount to professional fees of R70-80.5 million

We trust that this offer demonstrates our confidence in the value potential at stake for SAA and in our ability to unlock this for SAA.

Thanks,
Christina

Christina Planert | Principal

McKinsey & Company | Sandown Mews, East, 88 Stella Street | 2196 Sandown | Republic of South Africa
Direct +27 11 506-8138 | Fax +27 11 506-9138 | Mobile +27 82 329-8138 | Internal 327-8138
christina_planert@mckinsey.com

Assistant **Marlene Vorster** | Direct +27 11 506-8081 | Fax +27 11 506-9081 | Mobile +27 83 320-4606 | Internal 327-8081
marlene_vorster@mckinsey.com

Reinette Slabbert ---2014/01/28 10:23:44 AM---Dear Christina and team, Awaiting your most urgent response please.

From: Reinette Slabbert <ReinetteSlabbert@flysaa.com>
To: "christina_planert@mckinsey.com" <christina_planert@mckinsey.com>,
Cc: "nomfanelo_magwentshu@external.mckinsey.com" <nomfanelo_magwentshu@external.mckinsey.com>, Shireen Subroyen <ShireenSubroyen@flysaa.com>, "david_fine@mckinsey.com" <david_fine@mckinsey.com>, Reinette Slabbert <ReinetteSlabbert@flysaa.com>
Date: 2014/01/28 10:23 AM
Subject: Re: SAA GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Dear Christina and team,

Awaiting your most urgent response please.

Thanks

> **From:** Reinette Slabbert
> **Sent:** Monday 27 January 2014 7:00 PM
> **To:** christina_planert@mckinsey.com
> **Cc:** nomfanelo_magwentshu@external.mckinsey.com; Shireen Subroyen; david_fine@mckinsey.com; Reinette Slabbert
> **Subject:** Re: SAA GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Dear Christina,

This will be perfect.

Thanks

> **From:** christina_planert@mckinsey.com
> **Sent:** Monday 27 January 2014 6:33 PM
> **To:** Reinette Slabbert
> **Cc:** nomfanelo_magwentshu@external.mckinsey.com; Shireen Subroyen; david_fine@mckinsey.com
> **Subject:** Re: SAA GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Hello Reinette,
I haven't been able to close the discussion fully with our consortium partners. I am hoping I can revert first thing in the morning with a final answer.
Thx for bearing with us,
Christina

Christina Planert
Principal

McKinsey & Company
+27823298138

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*Non-Executive Director

Company Secretary - Sandile Dlamini

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Annexure 14

Innocentia Ngubeni

From: Reinette Slabbert
Sent: Tuesday, 28 January 2014 13:21
To: Phetolo Ramosebudi; Lindsay Olitzki; Shireen Subroyen; Viwe Soga; Nthabiseng Ntshalintshali
Subject: FW: SAA GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Importance: High

Dear Team,

Please refer to the clarification from McKinsey regarding the capped amount.

I suggest the following to bring the bidders in line with the McKinsey pricing:

Boston Group and IQ Group to submit their complete pricing based on the unlocking of R 1.2 billion savings.

Please confirm urgently if you are all in agreement with my suggestion.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

---

From: christina_planert@mckinsey.com [mailto:christina_planert@mckinsey.com]
Sent: 28 January 2014 01:15 PM
To: Reinette Slabbert
Cc: Shireen Subroyen; david_fine@mckinsey.com; nomfanelo_magwentshu@external.mckinsey.com
Subject: RE: SAA GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Hello Reinette,
Thanks. As per the below, the capped amount will reduce to R70-80.5 million assuming we unlock savings of R1-1.2 billion.
Thx
Christina

Christina Planert | Principal
McKinsey & Company | Sandown Mews, East, 88 Stella Street | 2196 Sandown | Republic of South Africa
Direct +27 11 506-8138 | Fax +27 11 506-9138 | Mobile +27 82 329-8138 | Internal 327-8138
christina_planert@mckinsey.com

Assistant **Marlene Vorster** | Direct +27 11 506-8081 | Fax +27 11 506-9081 | Mobile +27 83 320-4606 | Internal 327-8081
marlene_vorster@mckinsey.com

Reinette Slabbert ---2014/01/28 12:57:09 PM---Dear Christina, Good afternoon to you.

From: Reinette Slabbert <ReinetteSlabbert@flysaa.com>
To: "christina_planert@mckinsey.com" <christina_planert@mckinsey.com>,
Cc: Shireen Subroyen <ShireenSubroyen@flysaa.com>, "david_fine@mckinsey.com" <david_fine@mckinsey.com>,
"nomfanelo_magwentshu@external.mckinsey.com" <nomfanelo_magwentshu@external.mckinsey.com>
Date: 2014/01/28 12:57 PM
Subject: RE: SAA GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Dear Christina,

Good afternoon to you.

Thanks for the info.

Please confirm urgently if the capped amount of R 120 million will be reduced as well and if so to what amount?

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

From: christina_planert@mckinsey.com [mailto:christina_planert@mckinsey.com]
Sent: 28 January 2014 12:41 PM
To: Reinette Slabbert
Cc: Shireen Subroyen; david_fine@mckinsey.com; nomfanelo_magwentshu@external.mckinsey.com
Subject: Re: SAA GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Hello Reinette,

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Here is what we agreed that we could offer as a sign of our commitment to SAA:

- Reduction of breaker fee to from R4m to 3m (excl. VAT) after the diagnostics phase
- Reduction of our professional fees to 7% of working capital savings identified for SAA. Assuming that we identify savings of R1 - 1.15 billion for SAA, this would amount to professional fees of R70-80.5 million

We trust that this offer demonstrates our confidence in the value potential at stake for SAA and in our ability to unlock this for SAA.

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Christina

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McKinsey & Company | Sandown Mews, East, 88 Stella Street | 2196 Sandown | Republic of South Africa
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marlene_vorster@mckinsey.com

Reinette Slabbert ---2014/01/28 10:23:44 AM---Dear Christina and team, Awaiting your most urgent response please.

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To: "christina_planert@mckinsey.com" <christina_planert@mckinsey.com>,
Cc: "nomfanelo_magwentshu@external.mckinsey.com" <nomfanelo_magwentshu@external.mckinsey.com>, Shireen Subroyen <ShireenSubroyen@flysaa.com>, "david_fine@mckinsey.com" <david_fine@mckinsey.com>, Reinette Slabbert <ReinetteSlabbert@flysaa.com>
Date: 2014/01/28 10:23 AM
Subject: Re: SAA GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Dear Christina and team,

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Thanks

> **From:** Reinette Slabbert
> **Sent:** Monday 27 January 2014 7:00 PM
> **To:** christina_planert@mckinsey.com
> **Cc:** nomfanelo_magwentshu@external.mckinsey.com; Shireen Subroyen; david_fine@mckinsey.com; Reinette Slabbert
> **Subject:** Re: SAA GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Dear Christina,

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> **From:** christina_planert@mckinsey.com
> **Sent:** Monday 27 January 2014 6:33 PM
> **To:** Reinette Slabbert
> **Cc:** nomfanelo_magwentshu@external.mckinsey.com; Shireen Subroyen; david_fine@mckinsey.com
> **Subject:** Re: SAA GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL

Hello Reinette,
I haven't been able to close the discussion fully with our consortium partners. I am hoping I can revert first thing in the morning with a final answer.
Thx for bearing with us,
Christina

Christina Planert
Principal
McKinsey & Company
+27823298138

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Directors

DC Myeni* (Chairperson), M Kalawe (Chief Executive Officer), WH Meyer (Chief Financial Officer), A Khumalo*, N. Kubeka*, Y Kwinana*, R Lepule*, A Mabizela*, B Mpondo*, R Naithani*(Indian), LG Nkosi-Thomas*, C Roskruge*

*Non-Executive Director

Company Secretary - Sandile Dlamini

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Annexure 15

Innocentia Ngubeni

From: Reinette Slabbert
Sent: Wednesday, 29 January 2014 08:50
To: Phetolo Ramosebudi; Nthabiseng Ntshalintshali; Lindsay Olitzki; Shireen Subroyen; Viwe Soga
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL.

Dear Team,

This is not the case people. This was just trying to get an understanding of what the costing would be.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Phetolo Ramosebudi
Sent: 29 January 2014 08:41 AM
To: Reinette Slabbert; Nthabiseng Ntshalintshali; Lindsay Olitzki; Shireen Subroyen; Viwe Soga
Subject: Re: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL.

Colleagues
I am seriously very unhappy the way this tender is run, Reinette seems to be biased and we can't BAFO after BAFO because someone didn't price the way Reinette expected.
Sent from my BlackBerry 10 smartphone.

From: Reinette Slabbert
Sent: Wednesday 29 January 2014 7:56 AM
To: Phetolo Ramosebudi; Nthabiseng Ntshalintshali; Lindsay Olitzki; Shireen Subroyen; Viwe Soga
Subject: FW: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL.

Dear Team,

Attached herewith please find the response from BCG should there be an amount of R 1.2 billion to be unlocked.

Thanks

Reinette Slabbert | Commodity Manager | GSM

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From: Wuest Martin [mailto:Wuest.Martin@bcg.com]
Sent: 28 January 2014 11:21 PM

To: Reinette Slabbert
Cc: Shireen Subroyen; Ermias, Tenbite
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL.

Dear Reinette,

Thank you for your enquiry for clarification.

We proposed 2 options in the proposal for SAA to consider – so I will provide feedback on your question for each of the options.

Option 1: Benchmarking, opportunity identification, SAA Enablement, priority initiative implementation
Phases
1. Benchmarking and top-down target setting
2. Target validation & setting the size of the prize
3. Roll-out of initiatives for prioritized levers
4. Enablement / Up-skilling of SAA

Variable component
70% of the fees are variable, based on your satisfaction at the end of the project and target benefits realised in priority initiative implementation
Evaluation terms to be jointly agreed with you at the beginning of the project

If we assume that BCG identifies and unlocks capital to the value of R1.2 billion as part of the prioritised project roll out – then the maximum cost to SAA would be R14.0m
Note: it could be less depending on the exact evaluation terms that are agreed with you before commencement.

Option 2: Benchmarking, opportunity identification, SAA Enablement, monitor initiative implementation
Phases
1. Benchmarking and top-down target setting
2. Target validation & setting the size of the prize
3. Monitoring roll-out of initiatives by SAA
4. Enablement / Up-skilling of SAA

Variable component
60% of the fees are variable, based on your satisfaction at the end of the project
Evaluation terms to be jointly agreed with you at the beginning of the project

If we assume that BCG identifies and monitors the roll out of the initiatives by SAA to unlock capital to the value of R1.2 billion – then the maximum cost to SAA would be R10.2m
Note: it could be less depending on the exact evaluation terms that are agreed with you before commencement.

I hope this provides clarity - please do not hesitate to get in touch should you require more information.

Kind Regards,

Martin Wuest
Principal
THE BOSTON CONSULTING GROUP
Tel. +27 11 245 1647 ▪ Mobile +27 83 657 8352

From: Reinette Slabbert [mailto:ReinetteSlabbert@flysaa.com]
Sent: Tuesday, January 28, 2014 1:24 PM
To: Wuest Martin
Cc: Shireen Subroyen; Ermias, Tenbite
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL.
Importance: High

Dear Martin,

Good afternoon to you.

Please confirm most urgently what will the total cost be if we assume BCG unlock capital to the value of R 1.2 billion.

Awaiting your most urgent response as we are in the process of finalising the approval of the tender.

Thanks

Reinette Slabbert | Commodity Manager | GSM

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Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

From: Wuest Martin [mailto:Wuest.Martin@bcg.com]
Sent: 27 January 2014 09:48 PM
To: Reinette Slabbert
Cc: Shireen Subroyen; Ermias, Tenbite
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL.

Dear Reinette,

Thank you for getting in touch regarding our best and final offer for this RFP.

After careful review and consideration we have confirmed that the submission we made to you in our proposal is the best and final offer.

Should you require any further information or clarification, please do not hesitate to get in touch with me.

Kind Regards,

Martin Wuest
Principal
THE BOSTON CONSULTING GROUP
Tel. +27 11 245 1647 ▪ Mobile +27 83 657 8352

From: Reinette Slabbert [mailto:ReinetteSlabbert@flysaa.com]
Sent: Monday, January 27, 2014 9:53 AM
To: Wuest Martin
Cc: Shireen Subroyen; Ermias, Tenbite
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL.

Dear Martin,

Good morning to you.

Please confirm your very best and final offer by close of business today, 27 January 2014

Awaiting your most urgent response.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Wuest Martin [mailto:Wuest.Martin@bcg.com]
Sent: 16 January 2014 03:32 PM
To: Reinette Slabbert
Cc: Shireen Subroyen; Ermias, Tenbite
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL.

Dear Reinette,

I trust you have been well.

Response to your question as follows:

Variable component in option 1:
The 70% refers to the fixed fee proposed to this option; i.e. 70% of the proposed fees are variable depending on:
1. your satisfaction with the project and
2. actual targets achieved (i.e. gains achieved)

The evaluation terms for both 1 and 2 above to be jointly agreed with you at the beginning of the project

Variable component in option 2:
The 60% refers to the fixed fee, 60% of the proposed fees are variable depending on your satisfaction at the end of the project
Evaluation terms to be jointly agreed with you at the beginning of the project

Should you require any further information, please do not hesitate to get in touch with me.

Kind Regards,

Martin Wuest
Principal
THE BOSTON CONSULTING GROUP
Tel. +27 11 245 1647 ▪ Mobile +27 83 657 8352

From: Reinette Slabbert [mailto:ReinetteSlabbert@flysaa.com]
Sent: Thursday, January 16, 2014 10:39 AM
To: Wuest Martin
Cc: Shireen Subroyen
Subject: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL.
Importance: High

Dear Martin,

Good morning to you.

Please submit the following clarification most urgently by close of business today:

- **Pricing options (** Part 7)

Please clarify the variable costs in terms of each option. Does this refer to a reduction of the fixed fee or gain share relating to the implementation phase?

Awaiting your most urgent response.

Thanks

Reinette Slabbert | Commodity Manager | GSM

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Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

From: Wuest Martin [mailto:Wuest.Martin@bcg.com]
Sent: 06 December 2013 08:34 AM
To: Reinette Slabbert
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. UPDATE NR 5. REMINDER OF THE CLOSING DATE OF THE TENDER

Dear Reinette,

Just to let you know we will be submitting our response as a hard copy document this morning (due to soft copy file size being quite large which may be over your email limit size).

Please do not hesitate to get in touch should you require any further information.

Kind Regards,

Martin Wuest
Principal
THE BOSTON CONSULTING GROUP
Tel. +27 11 245 1647 ▪ Mobile +27 83 657 8352

From: Reinette Slabbert [mailto:ReinetteSlabbert@flysaa.com]
Sent: Thursday, December 05, 2013 5:50 PM
To: jschoefer@relconsultancy.com; ericw@regiments.co.za; lithan@regiments.co.za; nivenp@regiments.co.za; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za;

solly@xabiso.co.za; bashier@nexia-sabt.co.za; suzel@zeelie.com; edgarr@rakoma.co.za; lmabokela@sekela.co.za; victors@sng.co.za; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin; Kasimu, Gerald (gerald.kasimu@kpmg.co.za); rob.bezuidenhout@kpmg.co.za; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com; pbhana@deloitte.co.za; smda@deloitte.co.za
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. UPDATE NR 5. REMINDER OF THE CLOSING DATE OF THE TENDER
Importance: High

Dear Bidders,

Good afternoon everybody.

Just a reminder that the abovementioned tender is closing tomorrow morning, 06 December 2013 at 11h00 local time.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Reinette Slabbert
Sent: 04 December 2013 07:23 AM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com; 'pbhana@deloitte.co.za'; 'smda@deloitte.co.za'
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. UPDATE NR 5. PAYMENT OF NON REFUNDABLE TENDER FEE
Importance: High

Dear Bidders,

Just a reminder that there is a non-refundable tender fee of ZAR 1,000.00 applicable and proof of payment must be submitted with the tender document.

Reagrds

Reinette Slabbert | Commodity Manager | GSM

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From: Reinette Slabbert
Sent: 02 December 2013 12:30 PM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. UPDATE NR 4 EXTENSION OF CLOSING DATE
Importance: High

Dear Bidders,

Good afternoon everybody.

This serves to confirm that the closing date and time of the above RFP is extended to 06 December 2013 at 11h00 local time. No other extension will be considered.

Please also remember bids can also be submitted via e-mail to tenders@flysaa.com or mandycoetser@flysaa.com

It remains the responsibility of the bidders to ensure bids get submitted on time .

Please acknowledge receipt.

Thanks

Reinette Slabbert | Commodity Manager | GSM

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Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Reinette Slabbert
Sent: 01 December 2013 05:16 PM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com

Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. RESPONSE TO QUESTIONS SERIAL NUMBER 3 (DUPLICATION)
Importance: High

Dear Bidders,

Serial nr 3 was duplicated.

Attached herewith please find the question as well as the SAA responses to the duplicated serial nr 3.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Reinette Slabbert
Sent: 01 December 2013 05:10 PM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. RESPONSE TO QUESTIONS SERIAL NUMBER 2
Importance: High

Dear Bidders,

Attached herewith please find the question posed as serial nr 2 and the SAA response.

Can I please ask an urgent question: For the client references, the RFP states on "company letterhead" - which letterhead is meant here, ours as bidder ?
Or the client's letterhead? The logistics of procuring on clients' letterhead would be very challenging given the short deadline.

SAA response:

This references needs to be on client letter heads.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Reinette Slabbert
Sent: 01 December 2013 05:05 PM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. RESPONSE TO QUESTIONS SERIAL NUMBER 1
Importance: High

Dear Bidders,

Attached herewith please find the questions and SAA response to this set of questions.

We have a question regarding the Project Scope and Goals:

Is it correct to assume that SAA expects a proposal that ranges beyond the mere analysis and suggestion of measures to SAA, but particularly includes assisting SAA in the design and implementation of these measures, for example through

- Extensive SAA staff involvement, training and coaching for sustainable results
- Design & Implementation of process improvements/solutions that remain with SAA
- Progress monitoring through implemented KPIs
- The implementation phase would then provide the foundation for a profit share/variable payment option based on results achieved.

SAA response:

Answer to all the questions are yes as per the scope of work.

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

From: Reinette Slabbert
Sent: 01 December 2013 04:56 PM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. RESPONSE TO QUESTIONS SERIAL NUMBER 3
Importance: High

Dear Bidders,

Attached herewith please find the questions and answers posed as serial nr 3.

Thanks

I have a few clarification questions relating to the RFP unlocking of working capital (GSM 085/13)

The questions are in relation to the confidential information you sent. I would appreciate if you could kindly provide clarification on the following points relating to information in the spreadsheet you provided:

1. If the totals of the five worksheets are added (i.e., SAA, Cargo, SAAT, SATC, Air Chef) does this then constitute the SAA group total? Essentially yes.
2. What is the unit for each of the worksheets? (i.e. is the unit for the "SAA" and "Mango" worksheet in *ZAR '000*?) R000
3. What are the reasons for accounts payable always being negative for "Cargo"? Ignore – the ";" indicates a credit
4. What are the reasons for inventories being zero for "Cargo" and "SATC"? No inventory
5. What are the reasons for total revenue always being negative for "SATC"? "-" reflects credit
6. Is the data for South African Express Airways included in the data? If yes, under which worksheet is it included? No – not part of the SAA Group.

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

From: Reinette Slabbert
Sent: 01 December 2013 04:53 PM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za';

'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. RESPONSE TO QUESTIONS SERIAL NUMBER 4
Importance: High

Dear Bidders,

Four sets of questions was posed by bidders during the tender process.

Attached herewith please find the questions and response to the questions posed as serial nr 4.

Thank you for the information and for awarding our firm the opportunity to submit our proposal. Edgar and I are busy on the proposal and we had a few questions with regards to the financials as below which will assist us in the preparation:

SAA

1. Do you have a further breakdown of what else constitutes Receivables besides the Trade Receivables?
2. What is the percentage of Receivables that's past due?
3. What is the nature of the inventory?
4. Are there any long term commitments (loans and capital) that are payable in the current period?
5. Do you have the breakdown of the nature of the other payables excluding the Trade payables already specified?

SATC

6. In some months, the Trade receivables are greater than the receivables balance.

General / All

7. Will you be able to provide consolidated financial statements?
8. Please may we have the net profit figure excluding the non-cash items?

Response from SAA;

Please visit our website www.flysaa.com and bidders can find all the Annual Financial reports posted there until 2012.

SATC is not a concern at this stage.

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Reinette Slabbert
Sent: 29 November 2013 03:44 PM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. UPDATE NR 3. CLOSING DATE OF RFP
Importance: High

Dear Bidders,

Good afternoon everybody.

There was requests for extension of the closing date. The CFST was deliberating on this but unfortunately the date cannot be extended and will remain 04 December 2013 at 11h00 local time.

Just a reminder that you can also submit your bids via e-mail to tenders@flysaa.com or mandycoetser@flysaa.com

We are looking forward in receiving your bids.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Reinette Slabbert
Sent: 26 November 2013 01:18 PM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com';

'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com); vikram.krishnan@oliverwyman.com
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. UPDATE NR 2

Dear Bidders,

Good afternoon everybody.

There is a considerable amount of NDA's outstanding.

Please submit the signed NDA's most urgently.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Reinette Slabbert
Sent: 21 November 2013 11:54 AM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com); Kasimu, Gerald (gerald.kasimu@kpmg.co.za); 'rob.bezuidenhout@kpmg.co.za'; Refilwe Mabihi (refilwem@motheoca.co.za); 'Paul Serote' (pauls@motheoca.co.za); Lilo Mkhwanazi (LiloM@sng.za.com)
Cc: Shireen Subroyen
Subject: RE: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL. UPDATE NR 1

Dear Bidders,

Good morning to you.

1) SAA annual report for 2013:

This report is not available as yet and will only be available after the Annual General Meeting of which the date is not known at this stage.

2) SAA Confidential Financial Information:

This will be available shortly and will only be distributed to bidders that have submitted the signed NDA documents.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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From: Reinette Slabbert
Sent: 19 November 2013 04:22 PM
To: 'jschoefer@relconsultancy.com'; 'ericw@regiments.co.za'; 'lithan@regiments.co.za'; 'nivenp@regiments.co.za'; nhlamu.dlomu@kpmg.co.za; thpillay@deloitte.co.za; 'solly@xabiso.co.za'; 'bashier@nexia-sabt.co.za'; 'suzel@zeelie.com'; 'edgarr@rakoma.co.za'; 'lmabokela@sekela.co.za'; 'victors@sng.co.za'; a.craker@iqgroup.net; Christina_Planert@mckinsey.com; Wuest Martin (Wuest.Martin@bcg.com)
Cc: Shireen Subroyen
Subject: GSM 085/13: RFP FOR THE APPOINTMENT OF A CONSULTANT TO ASSIST THE SAA GROUP WITH THE UNLOCKING OF WORKING CAPITAL.
Importance: High

Dear Bidders,

Good afternoon everybody.

Attached herewith please find the following documents:

- RFP 085/13.
- NDA related to the RFP.

There is confidential financial information available that will be submitted but it will only be submitted once the NDA agreement has been signed and e-mailed back.

Please take note of the funding point that forms part of the scope of work (Part 3) of the RFP document.

All correspondence needs to be via e-mail and we will respond as soon as possible to all questions.

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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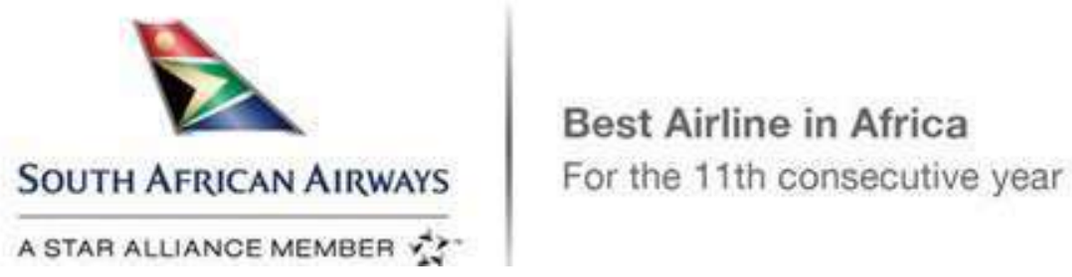

Directors

DC Myeni* (Chairperson), M Kalawe (Chief Executive Officer), WH Meyer (Chief Financial Officer), A Khumalo*, N. Kubeka*, Y Kwinana*, R Lepule*, A Mabizela*, B Mpondo*, R Naithani*(Indian), LG Nkosi-Thomas*, C Roskruge*

*Non-Executive Director

Company Secretary - Sandile Dlamini

South African Airways SOC Ltd Reg. No. 1997/022444/30

The Boston Consulting Group, Inc.

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Annexure 16

Innocentia Ngubeni

From: christina_planert@mckinsey.com
Sent: Thursday, 06 February 2014 11:08
To: Reinette Slabbert
Cc: Phetolo Ramosebudi; nomfanelo_magwentshu@external.mckinsey.com; marlene_vorster@mckinsey.com
Subject: Re: GSM 085/13: APPOINTMENT OF A CONSULTANT TO ASSIST SAA WITH THE UNLOCKING OF WORKING CAPITAL: LETTER OF APPOINTMENT
Attachments: 20140205 appointment letter SAA_signed McK.pdf

Dear Reinette,

Thank you very much again for the appointment and the trust in our partnership.

Please find attached the signed appointment letter.

I know we are trying to connect to find a suitable slot for the meeting next week.

Ahead of this meeting, would you be able to give us an indication as to when SAA would like to start the work, i.e., for when should we try to have a full time team on the ground?

Thank you very much,
Christina

(See attached file: 20140205 appointment letter SAA_signed McK.pdf)

Christina Planert | Principal
McKinsey & Company | Sandown Mews, East, 88 Stella Street | 2196 Sandown | Republic of South Africa
Direct +27 11 506-8138 | Fax +27 11 506-9138 | Mobile +27 82 329-8138 | Internal 327-8138
christina_planert@mckinsey.com

Assistant **Marlene Vorster** | Direct +27 11 506-8081 | Fax +27 11 506-9081 | Mobile +27 83 320-4606 | Internal 327-8081
marlene_vorster@mckinsey.com

Reinette Slabbert ---2014/02/05 04:05:51 PM---Dear Christina, Good afternoon to you.

From: Reinette Slabbert <ReinetteSlabbert@flysaa.com>
To: "Christina_Planert@mckinsey.com" <Christina_Planert@mckinsey.com>,
Cc: "nomfanelo_magwentshu@external.mckinsey.com" <nomfanelo_magwentshu@external.mckinsey.com>, Phetolo Ramosebudi <PhetoloRamosebudi@flysaa.com>
Date: 2014/02/05 04:05 PM
Subject: GSM 085/13: APPOINTMENT OF A CONSULTANT TO ASSIST SAA WITH THE UNLOCKING OF WORKING CAPITAL: LETTER OF APPOINTMENT

Dear Christina,

Good afternoon to you.

Attached herewith please find the above Letter of Appointment for your review and signature.

A " kick off" meeting will be scheduled for early next week to discuss the appointment and execution of the project.

Please submit the signed copy of the document a.s.a.p

Thanks

Reinette Slabbert | Commodity Manager | GSM

Mobile: 083 700 5809 | Phone: +2711-978-3753 | E-Mail: ReinetteSlabbert@flysaa.com
Open Plan Office, 4th Floor Block A, Airways Park- Johannesburg- South Africa

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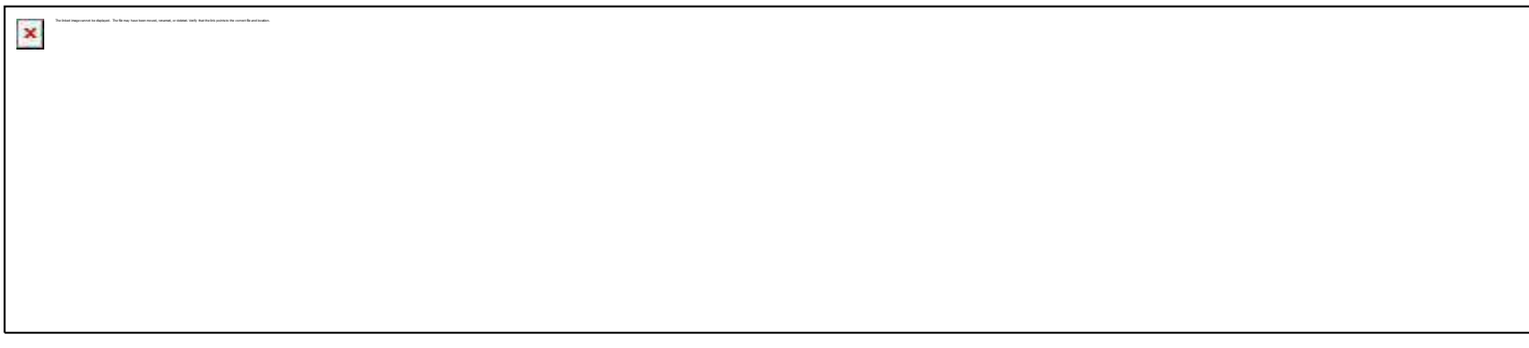

Directors

DC Myeni* (Chairperson), M Kalawe (Chief Executive Officer), WH Meyer (Chief Financial Officer), A Khumalo*, N. Kubeka*, Y Kwinana*, R Lepule*, A Mabizela*, B Mpondo*, R Naithani*(Indian), LG Nkosi-Thomas*, C Roskruge*

*Non-Executive Director

Company Secretary - Sandile Dlamini

South African Airways SOC Ltd Reg. No. 1997/022444/30
[attachment "img-205154904-0001.pdf" deleted by Christina Planert/JOH/Africa/MCKINSEY]

+===+
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in error, please notify us immediately and then delete it. Please do not
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+===+

Annexure 17

Innocentia Ngubeni

From: Eric Wood
Sent: Monday, 07 December 2015 10:27
To: wallemsa@gmail.com; kuben@albatime.co.za
Subject: Fwd: POP
Attachments: 10682c60_2459.PDF; ATT00001.htm; Advisory Invoice Tracking - 2015-2016.xlsx; ATT00002.htm

Sent from my iPhone

Begin forwarded message:

> **From:** Yvonne Mokone <YvonneM@regiments.co.za>
> **Date:** 07 December 2015 at 10:23:21 AM SAST
> **To:** Eric Wood <EricW@regiments.co.za>, Tebogo Leballo <Tebogol@regiments.co.za>
> **Subject: FW: POP**
>
> Morning Mr Wood,
>
> I have attached the latest remittance from Transnet and our invoice tracking showing all outstanding revenue and BD partner's cost.
> If you by any chance have the invoice from the BD partners for payment please forward them to me so I can process them.
>
> Regards,
> Yvonne
>
> **From:** Mamorena Monare Transnet Corporate JHB [mailto:Mamorena.Monare@transnet.net]
> **Sent:** 30 November 2015 10:42 AM
> **To:** Mohammed Abdool Transnet National Ports Authority JHB <Mohammed.Abdool@transnet.net>
> **Cc:** Yvonne Mokone <YvonneM@regiments.co.za>
> **Subject:** FW: POP
>
> Hi Mohammed
>
> Please find the attached POP.
>
> Regards
> Mams

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SAFCOL

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	Homix	Albatime	Bank	Outstanding	Bank date
				SAFCOL - SAFFPL1001	957 600,00	478 800,00	47 880,00			
				SAFCOL - SAFFPL1002	2 992 500,00	1 496 250,00	149 625,00			
	Feb-15	12/03/2015	Regiments Capital	SAFCOL - SAFFPL1003	1 761 300,00	880 650,00	88 065,00		1 761 300,00	
						880 650,00	88 065,00		**1 761 300,00**	

Nedbank

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	ProGrace		Bank	Outstanding	Bank date
	Mar-15	31/03/2015	NED 03/15	Nebank Capital - ACSA Swap R1.5bln	1 515 799,00			1 515 799,00	-	31/03/2015
						-				
									-	

SAA

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)			Bank	Outstanding	Bank date
	Mar-15	31/03/2015	MK/SAA1001	Working Capital Optimisation project(Mar-Oct 2014)	6 241 500,00	2 496 600,00	312 075,00	6 241 500,00	-	
	Oct-15	30/10/2015	SAA-010		2 793 000,00				2 793 000,00	
									2 793 000,00	

Transnet

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Chivita/Homix			Albatime	Bank	Outstanding	Bank date
Transnet	31-Oct-14	oct	TRXGCIA001(INV0055)	GCIA Portfolio - TRXGCIA002	3 934 510,27		1 967 255,14				3 934 510,27	-	24/11/2014
Transnet	Dec-14	15-Jan-15	TRXHR20002	Capital Projects -HR Recruitment TRXHR20002	402 799,83						402 799,83	-	22/05/2015
Transnet	Dec-14	15-Jan-15	TRXHR1002	Capital Project - HR strategy TRXHR1002	1 249 029,60		624 514,80			62 451,48	1 249 029,60	-	22/05/2015
							2 591 769,94			62 451,48		-	

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)		Chivita/Homix	Kupanua		Albatime	Bank	Outstanding	Bank date
Transnet	Jan-15	31-Jan-15	TRXGCIA005(INV0092)	GCIA Portfolio - TRXGCIA005	664 820,64					33 241,03	664 820,64	-	27/03/2015
Transnet	Jan-15	31-Jan-15	TRXDCT00001 (INV0096)	Durban Container Terminal - TRXDCT00001	878 000,64					43 900,03	878 000,64	-	27/03/2015
Transnet	Jan-15	31-Jan-15	TRX-IES0001 (INV0095)	GCIA SWAT2 IES - TRXIES0001	903 055,56					45 152,78	903 055,56	-	27/03/2015
Transnet	Jan-15	31-Jan-15	TRXMCO114	Maputo Corridor - TRXMCO114	2 218 123,26			665 436,98			2 218 123,26	-	27/05/2015
							-	665 436,98		122 293,84		-	

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)		Chivita/Homix	Kupanua		Albatime	Bank	Outstanding	Bank date
Transnet	Feb-15	28-Feb-15	TRXGCIA006	GCIA Portfolio - TRXGCIA006	3 065 478,24					153 273,91	3 065 478,24	-	27/03/2014
Transnet	Feb-15	28-Feb-15	TRXDCT00002	Durban Container Terminal - TRXDCT00002	2 483 120,64					124 156,03	2 483 120,64	-	27/03/2015
Transnet	Feb-15	28-Feb-15	TRX-IES0002	GCIA SWAT2 IES - TRXIES0002	2 895 109,80					144 755,49	2 895 109,80	-	27/03/2015
							-			422 185,43			

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Homix	Kupanua		Albatime	Bank	Outstanding	Bank date
Transnet	Mar-15	30-Mar-15	TRXCOAL010	Coal - TRXCOAL011	1 337 599,99		668 800,00			66 880,00	1 337 599,99	-	03/07/2015
Transnet	Mar-15	30-Mar-15	TRXGCIA007	GCIA Portfolio - TRXGCIA007	2 753 513,14		1 376 756,57			137 675,66	2 753 513,14	-	22/05/2015
Transnet	Mar-15	30-Mar-15	TRXNMPP012	NMPP - TRXNMPP012	3 947 833,55		1 973 916,78			197 391,68	3 947 833,55	-	22/05/2015
Transnet	Mar-15	30-Mar-15	TRXDCT00003	Durban Container Terminal - TRXDCT00003	2 151 663,36		1 075 831,68			107 583,17	2 151 663,36	-	22/05/2015
Transnet	Mar-15	30-Mar-15	TRX-IES0003	GCIA SWAT2 IES - TRXIES0003	2 231 702,42		1 115 851,21			111 585,12	2 231 702,42	-	22/05/2015
							6 211 156,23			621 115,62		-	

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Chivita/Homix	Kupanua		Albatime	Bank	Outstanding	Bank date
Transnet	Apr-15	30-Apr-15	TRXCOAL012	Coal - TRXCOAL012	14 264 250,00		7 132 125,00			713 212,50	14 264 250,00	-	03/07/2015
Transnet	Apr-15	30-Apr-15	TRXGCIA008	GCIA Portfolio - TRXGCIA008	**3 327 344,79**		1 663 672,40			**166 367,24**	3 327 344,79	-	01/07/2015
Transnet	Apr-15	30-Apr-15	TRXNMPP013	NMPP - TRXNMPP013	3 947 833,55		1 973 916,78			197 391,68	3 947 833,55	-	22/05/2015
Transnet	Apr-15	30-Apr-15	TRX-IES0004	GCIA SWAT2 IES - TRXIES0004	**2 132 647,70**		1 066 323,85			**106 632,39**	2 132 647,70	-	01/07/2015
Transnet	Apr-15	30-Apr-15	TRXIO005	Kumba Iron Ore	1 341 780,00		670 890,00			67 089,00	1 341 780,00	-	03/07/2015
Transnet	Feb-15	28-Feb-15	TRX-MC	Maputo Corridor - TRXMCO115	331 373,38			157 713,98		-	331 373,38	-	11/06/2015
Transnet	Apr-15	30-Apr-15	TRX-HR20005	HR Hiring - Recruitment	436 956,43						436 956,43	-	22/05/2015
Transnet	Jan-15	31-Jan-15	TRXHR20003	HR Hiring - Recruitment	409 268,52						409 268,52	-	22/05/2015
Transnet	Feb-15	28-Feb-15	TRXHR20004	HR Hiring - Recruitment	417 915,20						417 915,20	-	22/05/2015
							12 506 928,02					-	

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Forsure	Haustaff		Albatime	Bank	Outstanding	Bank date
Transnet	May-15	31-May-15	TRXCOAL	Coal -	4 232 250,00		**2 116 125,00**			211 612,50	4 232 250,00	-	03/07/2015
Transnet	May-15	31-May-15	TRXGCIA009	GCIA Portfolio - TRXGCIA009	3 425 462,52			**1 712 731,26**		171 273,13	3 425 462,52	-	03/07/2015
Transnet	May-15	31-May-15	TRXNMPP	NMPP - TRXNMPP	4 275 000,00			**2 137 500,00**		213 750,00	4 275 000,00	-	03/07/2015
Transnet	May-15	31-May-15	TRX-IES0005	GCIA SWAT2 IES - TRXIES0005	2 079 410,89			**1 039 705,45**		103 970,54	2 079 410,89	-	03/07/2015
Transnet	May-15	31-May-15	TRXIO006	Kumba Iron Ore - TRXO006	5 278 200,00		**2 639 100,00**			263 910,00	5 278 200,00	-	03/07/2015
Transnet	May-15	31-May-15	TRX-GFB00001	GFB	3 711 840,00		1 855 920,00			185 592,00	3 711 840,00	-	21/08/2015
Transnet	May-15	31-May-15	TRX-SAL0001	GCIA - Saldanha Support	2 334 576,82		1 167 288,41			116 728,84	2 334 576,82	-	03/07/2015
Transnet	May-15	31-May-15	TRX-MAN001	Manganese-Megaproject Exc.Org	6 881 673,33			**3 440 836,67**		344 083,67	6 881 673,33	-	03/07/2015
							7 778 433,41			**1 610 920,68**		-	

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Forsure	Haustaff		Albatime	Bank	Outstanding	Bank date
		02-Jun-15	TRXFR00001	China Development Bank	189 240 000,00					147 607 200,00	189 240 000,00	-	
Transnet	Jun-15	30-Jun-15	TRXCOAL014	Coal -	12 477 509,00		6 238 754,50			623 875,45	12 477 509,00	-	18/08/2015
Transnet	Jun-15	30-Jun-15	TRXGCIA010	GCIA Portfolio - TRXGCIA010	1 778 817,81			889 408,91		88 940,89	1 778 817,81	-	18/08/2015
Transnet	Jun-15	30-Jun-15	TRXNMPP015	NMPP - TRXNMPP015	3 620 667,10			1 810 333,55		181 033,36	3 620 667,10	-	18/08/2015
Transnet	Jun-15	30-Jun-15	TRX-IES0006	GCIA SWAT2 IES - TRXIES0006	3 815 932,03			1 907 966,02		190 796,60	3 815 932,03	-	18/08/2015
Transnet	Jun-15	30-Jun-15	TRX-GFB00002	GFB Breakthrough TRXGFB00002	5 016 000,00		2 508 000,00			250 800,00	5 016 000,00	-	21/08/2015
Transnet	Jun-15	30-Jun-15	TRX-SAL0002	GCIA - Saldanha Support	2 925 058,33		1 462 529,17			146 252,92	2 925 058,33	-	18/08/2015
Transnet	Jun-15	30-Jun-15	TRX-MAN002	Manganese-Megaproject Exc.Org	6 881 673,33			3 440 836,67		344 083,67	6 881 673,33	-	18/08/2015
												-	

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Forsure	Haustaff		Albatime	Bank	Outstanding	Bank date
Transnet	Jul-15	31-Jul-15	TRXCOAL015	Coal -	28 691 520,00		14 345 760,00			1 434 576,00	28 691 520,00	-	31/08/2015

FOF-08-193

Transnet	Jul-15	31-Jul-15	TRXGCIA011	GCIA Portfolio - TRXGCIA011	2 036 003,18			1 018 001,59		101 800,16	2 036 003,18	-	02/09/2015
Transnet	Jul-15	31-Jul-15	TRXNMPP015	NMPP - TRXNMPP015				-		-	-	-	
Transnet	Jul-15	31-Jul-15	TRX-IES0007	GCIA SWAT2 IES - TRXIES0006	4 829 541,49			2 414 770,75		241 477,07	4 829 541,49	-	02/09/2015
Transnet	Jul-15	31-Jul-15	TRXIO002	Iron Ore renegotiation			-			-		-	
Transnet	Jul-15	31-Jul-15	TRX-GFB00003	GFB Breakthrough TRXGFB00003	8 151 000,00		4 075 500,00			407 550,00	8 151 000,00	-	16/09/2015
Transnet	Jul-15	31-Jul-15	TRX-SAL0002	GCIA - Saldanha Support			-			-		-	
Transnet	Jul-15	31-Jul-15	TRX-MAN003	Manganese-Megaproject Exc.Org	6 881 673,33			3 440 836,67		344 083,67	6 881 673,33	-	18/09/2015
												-	

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Transnet partners				Bank	Outstanding	Bank date
							Fortime	Medjoul		Albatime			
Transnet	Jul-15	31-Aug-15	TRXCOAL015	Coal -	5 411 427,93		2 705 713,97		2 373 433,30	270 571,40	5 411 427,93	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRXGCIA011	GCIA Portfolio - TRXGCIA011	1 932 126,83			966 063,42	847 424,05	96 606,34	1 932 126,83	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRXNMPP015	NMPP - TRXNMPP015	4 798 629,13		2 399 314,57		2 104 661,90	239 931,46	4 798 629,13	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRX-IES0007	GCIA SWAT2 IES - TRXIES0006	4 110 178,12			2 055 089,06	1 802 709,70	205 508,91	4 110 178,12	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRXIO002	Iron Ore renegotiation			-		-	-	-	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRX-GFB00003	GFB Breakthrough TRXGFB00003	9 405 000,00		4 702 500,00		4 125 000,00	470 250,00	9 405 000,00	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRX-SAL0002	GCIA - Saldanha Support			-		-	-	-	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRX-MAN003	Manganese-Megaproject Exc.Org	6 881 673,33			3 440 836,67	3 018 277,78	344 083,67	6 881 673,33	-	01/10/2015

Date of Invoice	Invoice no	Mandate	Invoice Amount		Transnet partners				Bank	Outstanding	Bank date
					Fortime	Medjoul	Maher	Albatime			
30-Sep-15	TRXCOAL017	Coal	5 411 427,93		2 705 713,97			270 571,40	5 411 427,93	-	
30-Sep-15	TRXGCIA013	GCIA Portfolio Optimisation	1 102 716,19			551 358,10		55 135,81	1 102 716,19	-	02/11/2015
30-Sep-15	TRXIES0009	SWAT2-IES	2 041 014,41			1 020 507,21		102 050,72	2 041 014,41	-	02/11/2015
30-Sep-15	TRXGFB0005	GFB	9 405 000,00		4 702 500,00			470 250,00		9 405 000,00	
30-Sep-15	TRXMANG005	Manganese	6 881 673,33				3 440 836,67	344 083,67	6 881 673,33	-	02/11/2015
30-Sep-15	TRXNMPP017	NMPP Acceleration	5 016 000,00		2 508 000,00			250 800,00	5 016 000,00	-	02/11/2015
30-Sep-15	TRXSWIBC0001	SWAT 2 GFB CASE	3 511 232,10			1 755 616,05		175 561,61	3 511 232,10	-	02/11/2015
30-Sep-15	TRXSW2CM001	TRXSW2CM001	107 702,93		53 851,47			5 385,15	107 702,93	-	02/11/2015
			33 476 766,89		**9 916 213,97**	**3 327 481,35**	**3 440 836,67**	**1 673 838,34**	24 071 766,89	**9 405 000,00**	

Date of Invoice	Invoice no	Mandate	Invoice Amount		Transnet partners				Bank	Outstanding	Bank date
					Fortime	Medjoul	Maher	Albatime			
30-Oct-15	TRXIES0010	SWAT2-IES	2 280 241,50			1 140 120,75		114 012,08	2 280 241,50	-	30/11/2015
30-Oct-15	TRXGFB0006	GFB	12 540 000,00		6 270 000,00			627 000,00		12 540 000,00	
30-Oct-15	TRXMANG006	Manganese	6 881 673,33				3 440 836,67	344 083,67	6 881 673,33	-	30/11/0215
30-Oct-15	TRXNMPP018	NMPP Acceleration	5 016 000,00		2 508 000,00			250 800,00	5 016 000,00	-	30/11/2015
30-Oct-15	TRXSWIBC0001	SWAT 2 GFB CASE	3 549 916,00			1 774 958,00		177 495,80	3 549 916,00	-	30/11/2015
30-Oct-15	TRXSW2CM001	TRXSW2CM001	72 703,50							72 703,50	
			12 612 703,50		**8 778 000,00**	**2 915 078,75**	**3 440 836,67**	**1 513 391,54**	-	**12 612 703,50**	

	GL	**18 793 650,00** **6 242 560,00**
	Diff	**45 584,57** **-0,10**

SAFCOL	**1 761 300,00**
SAA	**2 793 000,00**
Total Outstanding	**22 017 703,50**

SAFCOL	1 761 300,00
Grand Total	23 779 003,50

FOF-08-194

Report on Vikas Sagar's relationships with Regiments, Trillian, Iqbal Sharma and Salim Essa

14 November 2020

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

14 November 2020

REPORT ON VIKAS SAGAR'S RELATIONSHIPS WITH REGIMENTS, TRILLIAN, IQBAL SHARMA AND SALIM ESSA

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Annexures

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Annexure 6	Meeting Invitation – meeting between Regiments and Essa 01 August 2012
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Annexure Number	Description
	22 August 2012
Annexure 10	Email communication from Regiments to Essa regarding *inter alia* Regiments McKinsey revenue opportunities at Transnet and Excel spreadsheet attachment. Attachment “Project Scoping” 11 September 2012
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1. Introduction

1. The investigation team of the Commission has evidence suggesting that the former McKinsey partner, Vikas Sagar ("Sagar"), was an individual implicated in corrupt activities of Salim Essa ("Essa"), Regiments and Trillian at Transnet and Eskom. However, it has found no evidence to show that anyone else at McKinsey was aware of the role being played by Sagar or that any other partner or employee of McKinsey was in any way implicated in corruption relating to McKinsey's contracts with Transnet, SAA or Eskom

2. Sagar used CCleaner on his McKinsey laptop to remove files from that laptop. McKinsey has provided the Commission with a detailed chronology of Sagar's downloading and use of CCleaner in relation to the timeline of McKinsey's own internal investigation of matters possibly related to state capture. This timeline is consistent with a conclusion that Sagar used CCleaner deliberately to prevent McKinsey's investigation from uncovering electronic evidence of his relationship with Essa and other Gupta associates. However, the Commission has been able to gather evidence from other sources to cast light on the nature of this relationship.

3. Over the period 2011 to 2016, Sagar met regularly with Essa and another Gupta associate, Iqbal Sharma ("Sharma"). Many of these meetings took place at key moments in the development of the relationships between McKinsey, Regiments and Trillian with Transnet and Eskom.

4. It is clear that by November 2015, Sagar was using Essa's improper influence over State Owned Enterprises to advance the position of McKinsey with Eskom in return for facilitating Trillian's involvement at Eskom.

5. In 2012, while Essa and Sharma were working together at Issar Capital ("Issar") in association with the Gupta family and Sharma was a Transnet Board member, they appear to have brokered the introduction of Regiments as McKinsey's supplier development partner at Transnet in order to launder Transnet payments through Regiments to entities associated with the Gupta family.

6. There is circumstantial evidence to suggest that Sagar was aware of Issa and Essa's corrupt role in this regard at the time, and had colluded with an earlier corrupt scheme of Sharma's to launder public funds to the Guptas through his entity, Nulane Investments 204 (Pty) Ltd t/a Nulane Management Services ("Nulane").

2. Findings

2.1 Sagar, Wood, Essa and the McKinsey/Trillian relationship

7. By November 2015, Sagar was working with Essa and Eric Wood ("Wood") to use Essa's influence over Eskom to secure a contract for McKinsey and Trillian at Eskom. Moreover, Sagar was sufficiently trusted by Essa in relation to Essa's corrupt dealings to have been given access to Essa's clandestine "Businessman" email address, Infoportal1@zoho.com, an email address which Essa used extensively for his unlawful dealings associated with the Gupta family and does not appear to have used for any other purposes. These facts are clear from the chronology of exchanges between Sagar, Wood, Essa and Clive Angel ("Angel") between 2 and 19 November 2015.

8. 02 NOVEMBER 2015

   Email communication on 2 November 2015 between Angel and Wood regarding a meeting with Sagar and Essa on 4 November 2015 (**Annexure 13**).

9. 04 NOVEMBER 2015

   Meeting invitation for 4 November from Wood to Angel with description "Meeting with Salim/Vikas/Clive" (**Annexure 14**). A corresponding meeting entry can be found in the electronic diary of Sagar which reads "BLOCK: ESK Contracts" (**Annexure 2**).

10. 16 NOVEMBER 2016

    Angel emails Sagar, Wood and Essa with the subject line "Trillian Updates?" (**Annexure 15**). He states:

    > "We are still waiting for the financial spreadsheet re the proposed "aggregate" 50/50 fee split and timelines. As mentioned last week Salim needs this in advance of setting up a meeting for you and Alex with Brian."

    "Brian" is a reference to Brian Molefe who was the Eskom Chief Executive Officer at that time.

    This email was sent to Sagar's McKinsey address. McKinsey informs us that traces of an email with the subject line "Trillian Updates?" can be still detected on Sagar's laptop but the content of email and the sender and recipients remain unrecoverable. The forensic evidence

suggests that the relevant email was, at some stage, bookmarked by Sagar in Lotus Notes, but was subsequently deleted.

11. 19 NOVEMBER 2015

    Sagar emails Angel and Essa a spreadsheet titled "20151101_cash flow rampup_partnerv2.xlsx". Sagar does not use his official McKinsey email address but his amalahle@gmail.com email to send this spreadsheet (**Annexure 16**). More significantly, he addresses the email to Essa's clandestine "Business Man" email address - infoportal1@zoho.com. The Angel email to which Sagar was responding did not use this clandestine email address for Essa. So, Sagar had independent access to the address, a privilege which Essa appears to have extended only to his trusted co-conspirators.

12. The full chronology of Sagar's involvement with Wood and Essa in relation to Eskom suggests that Sagar was alive to Wood and Essa's improper influence at Eskom from before the McKinsey/Eskom Top Engineers MSA negotiations began and was happy to exploit it for McKinsey's benefit.

13. 26 MAY 2015

    Wood emails a confidential Eskom document to Sagar on his amalahle@gmail.com email address. The attachment is an Eskom submission document prepared for the Exco Procurement Subcommittee and the Board Tender Committee in respect of the TOP Engineers program. The submission recommends the appointment of McKinsey and its supplier development partner on a risk-based system (**Annexure 11**).

14. 23 JUNE 2015

    Calendar entry in Wood's diary for a meeting between Sagar, Essa and Wood. (**Annexure 2**)

15. 6 JULY 2015

    The Eskom Board Tender Committee resolves by round robin resolution to negotiate with McKinsey on the Top Engineers appointment without prior tendering.

16. 15 JULY 2015

    Calendar entry in Wood's diary for a meeting between Sagar, Essa and Wood. (**Annexure 2**)

17. 22 OCTOBER 2015

Essa emails Wood and Angel a copy of the draft McKinsey contract with Eskom on the same day that McKinsey forwards this draft to Eskom. (**Annexure 12**).

2.2 Sagar, Essa, Sharma and the McKinsey/Regiments Relationship at Transnet

18. In 2012, Essa and Sharma worked together at Issar Capital, a company that was primarily involved in corrupt dealings with the Guptas and which was ultimately transferred in 2014 to the Gupta entity, Islandsite Investments (Pty) Ltd, for the nominal amount of R100.

19. It is clear that Essa brokered the start of the Regiments/McKinsey relationship at Transnet after Regiments were introduced to him by Kuben Moodley ("Moodley") of Albatime (Pty) Ltd. There is circumstantial evidence to suggest that Sharma and Sagar may also played a role in this regard.

20. The Commission's evidence in relation to the origins of the Regiments/McKinsey relationship is patchy because it depends heavily on the emails and calendar entries of Wood. However, the original link between Regiments and McKinsey was Pillay, not Wood. Wood's emails and calendar entries only reflect events from the time when Pillay's dealings in relation to the Regiments/McKinsey were at a sufficiently advanced stage to be shared with Wood.

21. Pillay has claimed that Sagar accompanied Essa at the first meeting Moodley set up with Pillay and Essa in 2012 to broker the McKinsey/Regiments relationship. [redacted] However, it is possible that he is telling the truth when he states that Sagar was present with Essa at the meeting which initiated the McKinsey/Regiments relationship at Transnet. The NPA has sealed mirror images of Pillay's laptop and Regiments mailbox. When these are unsealed and analysed they may throw further light on whether or not Sagar was involved with Essa and Sharma in the introduction of Regiments as McKinsey's supplier development partner at Transnet.

    At present, the available chronology of the origins of the Regiments/McKinsey relationship at Transnet shows the following:

22. <u>29 JUNE 2012</u>

    An entry in Sagar's electronic diary for a meeting with Sharma. It is marked: "Iqbal and Vikas (very important meeting, please do not move or reschedule)" (**Annexure 1**).

23. <u>9 JULY 2012</u>

An entry in Sagar's electronic diary for a meeting with Sharma (**Annexure 1**).

24. 11 JULY 2012

    An email sent from Regiments to McKinsey attaching the Regiments Capital entity profile (**Annexure 5**).

25. 27 JULY 2012

    An entry in Sagar's electronic diary for a meeting with Sharma (**Annexure 1**).

26. 1 AUGUST 2012

    A calendar entry for a meeting attended by Wood and Tewodros Gebreselasie (a Regiments employee) and Essa. The calendar entry records that the meeting is for "update and discussion on business opportunities". (**Annexure 6**)

27. 15 AUGUST 2012

    An email from Wood to Moodley (Albatime). Wood states the following (**Annexure 7**):

    " Hi Kuben

    As discussed with Niven, the following mandates are being worked on with yourselves:

    …

    Transnet: JV appointment with McKinsey for program management of capex plan (R300bn capex)"

28. 17 AUGUST 2012

    An entry in Sagar's electronic diary for a meeting with Sharma (**Annexure 1**).

29. 20 AUGUST 2012

    Moodley emails Pillay requesting that a spreadsheet of various Regiments opportunities be populated in respect of expected fees to be generated. Included on the spreadsheet are references to opportunities at Transnet in conjunction with McKinsey, specifically Capex Management, R36 B Loco and SWAT Analysis (**Annexure 8**).

30. 22 AUGUST 2012

Transnet memorandum dated 22 August 2012 titled “Appointment for the transaction advisor on the 1064 Locomotives tender”. The memorandum records that “Letsema replaced due to conflict with Barlowold” in the McKinsey consortium. Letsema was subsequently replaced with Regiments (**Annexure 9**).

31. 11 SEPTEMBER 2012

    Wood emails Essa, attaching a spreadsheet with Regiments opportunities, estimated revenue and timeline. Included on the spreadsheet reference to McKinsey/Regiments opportunities at Transnet (**Annexure 10**).

32. 12 SEPTEMBER 2012

    An entry in Sagar’s electronic diary for a meeting with Sharma (**Annexure 1**).

33. After Regiments had been introduced as McKinsey’s supplier development partner at Transnet, Sagar had regular meetings with Essa and Wood, several of which took place at key points in the development of the corrupt relationship between Regiments and Transnet as the following chronology illustrates.

34. 25 APRIL 2013

    An entry in Sagar’s electronic diary for a meeting with Essa (**Annexure 2**).

    On the same day, the McKinsey consortium business case for the 1064 procurement is adopted by the Transnet Board.

35. 5 JUNE 2013

    An entry in Sagar’s electronic diary for a meeting with Essa (**Annexure 2**).

36. 10 JUNE 2013

    Sagar and Prakash Parbhoo of McKinsey write to Transnet confirming that they will be finding a suitable replacement for PD Naidoo and Associates in their consortium now that Transnet has determined that PD Naidoo and Associates are conflicted.

37. 11 JANUARY 2014

    An entry in Sagar’s electronic diary for a meeting with Essa (**Annexure 2**).

38. 28 JANUARY 2014

An entry in Sagar's electronic diary for a meeting with Essa (**Annexure 2**).

39. 4 FEBRUARY 2014

McKinsey withdraw from their role as advisor to Transnet on the final stages of the 1064 locomotives procurement at a point where the business case still contemplates a price of R38.6 billion for the procurement.

40. 4 TO 26 FEBRUARY 2014

Regiments preside over the final stages of the 1064 locomotives procurement process in the absence of McKinsey and the price escalates to over R52 billion on spurious grounds.

41. 26 FEBRUARY 2014

Transnet Board Acquisitions and Disposal Committee approves the 1064 locomotives procurement for an amount of R52 billion

42. 4 MARCH 2014

An entry in Sagar's electronic diary for a meeting with Essa (**Annexure 2**).

43. 20 MARCH 2014

An entry in Sagar's electronic diary for a meeting with Essa (**Annexure 2**).

44. 31 MARCH 2014

Transnet decides to award the Coal Line contract to McKinsey and Regiments on a confinement basis without competitive bidding.

45. 1 APRIL 2014

Transnet decides to award the Kumba Iron Ore contract to McKinsey and Regiments on a confinement basis without competitive bidding.

46. 3 APRIL 2014

Transnet decides to award the Manganese contract and the NMPP contract to McKinsey and Regiments on a confinement basis without competitive bidding.

47. 18 JUNE 2014

An entry in Sagar's electronic diary for a meeting with Essa and Wood (**Annexure 2**).

48. 20 JUNE 2014

An entry in Sagar's electronic diary for a meeting with Essa and Wood (**Annexure 2**).

49. 28 May 2014 to 24 JUNE 2014

McKinsey and Regiments prepare bids for the Coal Line, Kumba Iron Ore, Manganese and NMPP contracts with Transnet. Regiments indicates that it will be using Albatime and Homix (Pty) Ltd ("Homix") as its supplier development partners. Albatime is Moodley's company. Homix is a Gupta laundering vehicle which is ultimately paid more than R100 million of the value Regiments receives under these contracts (see money flows report).

50. 3 SEPTEMBER 2014

An entry in Sagar's electronic diary for a meeting with Essa and Wood (**Annexure 2**).

51. 9 SEPTEMBER 2014

Deadline for the submission of the SWAT 2 bid of McKinsey and Regiments. This is another contract that has been awarded for McKinsey and Regiments on a confinement basis without competitive bidding. and which is later discovered to have been used by Regiments to launder Transnet payments through Homix, and other Gupta laundry vehicles designated by Essa.

52. 24 MARCH 2015

An entry in Sagar's electronic diary for a meeting with Essa and Wood (**Annexure 2**).

On the same day, Brian Molefe issues his recommendation for the GFB contract to be awarded to McKinsey and Regiments on a confinement basis without competitive bidding. This is another contract which is later discovered to have been used by Regiments to launder Transnet payments through Gupta laundry vehicles

2.3 Nulane, Sharma and Sagar

53. In the course of 2011, Sagar and Sharma met regularly. On several occasions they met at Sharma's business premises at 11 Alice Lane, Sandton. Sagar has informed McKinsey that he and Sharma knew each other socially and that their wives were friends.

54. By October 2011, Sharma appears to have been sufficiently confident of his relationship with Sagar to use McKinsey's name in the context of one the earliest known Gupta schemes to launder public funds through contracts with shell companies, a contract between the Free State Department of Agriculture and Rural Development ("the Department") and Nulane.

55. Nulane was a company nominally controlled by Sharma and operating out of his business premises at 11 Alice Lane, Sandton. In October 2011, the Department approved a recommendation that Nulane be appointed to a R25 million contract without any competitive bidding process.

56. The memorandum motivating the recommendation (**Annexure 3**) was prepared by the key Gupta associate in the Department, Peter Thabethe ("Thabethe") who would later be centrally involved in piloting the Gupta's Estina Dairy scheme through the Department. Thabete's memorandum justified the proposed deviation from normal procurement processes on the basis that the Department's proposed foreign strategic partner for the project, Worlds Window Impex India Pvt. Ltd ("Worlds Window"), required the appointment of Nulane as their local partner. Worlds Window was part of the Worlds Window group that laundered over $100 million of kickbacks paid to the Guptas by China South Rail and China North Rail in respect of the Transnet 1064 locomotives procurement on which McKinsey advised before being replaced in February/March 2014 by Regiments who presided over an increase in the procurement price from R38.6 billion to more than R50 billion in six weeks.

57. After Thabethe's recommendation was accepted, the Department and Nulane concluded an agreement on 21 October 2011(**Annexure 4**). Under the contract, the Free State Government paid R25 million to Nulane, most of which was immediately laundered on to the Guptas. In July 2012, R18.885 million was paid by Nulane to Gateway Limited, a Gupta family entity in Dubai. Most of the balance was laundered through to Gupta entities in South Africa through the Gupta vehicle, Pragat Investments (Pty) Ltd.

58. For present purposes, the significance of the contract flows from clause 6.1 which states the following:

> "The Contractor [Nulane] may be required, by virtue of its agreements with various International Consulting Firms such as McKinsey and DeLoitte, to subcontract the performance of the whole or any part of the Services."

59. Nulane clearly had an established relationship with Deloitte in October 2011. In 2010, Nulane and Deloitte had submitted a joint bid on a Telkom tender. Once the Nulane contract with the Department was signed, Deloitte did some work on the project. Deloitte furnished a report for

which they were paid R1.5 million. That report appears to be the only work that was produced by anyone on the project.

60. However, we have seen no evidence that Nulane had any agreement or prior relationship with McKinsey. It is highly unlikely that Sharma would have committed himself in writing to having an agreement with McKinsey unless there was an executive at McKinsey who could be depended upon to back him up if that was ever necessary. We are unaware of any McKinsey executive other than Sagar upon whom Sharma may have relied in this regard.

3. Conclusion

61. Over the period 2011 to 2016, Sagar of McKinsey met regularly with Sharma and Essa. From 2014, many of Sagar's meetings with Essa also included Wood.

62. There is circumstantial evidence to suggest that Sharma relied on his relationship with Sagar to use the name of McKinsey in the contract he concluded for Nulane with the Free State Department of Agriculture and Rural Development as in October 2011 a device for laundering public funds to the Guptas.

63. Essa was directly involved in brokering the introduction of Regiments as McKinsey's supplier development partner at Transnet to replace Letsema in 2012. There is circumstantial evidence suggesting that Sharma and Sagar were also involved in this process.

64. After Regiments became McKinsey's supplier development partner, Sagar continued to meet regularly with Essa and/or Wood. Several of Sagar's meetings with Essa and Wood took place at critical moments in the development of the McKinsey/Regiments relationship with Transnet and are linked temporally to decisions by Transnet to award contracts to McKinsey/Regiments consortium without any competitive bidding. All of the relevant contracts were used by Essa and Regiments to launder Transnet payments through Regiments into Homix and other Gupta laundry vehicles designated by Essa.

65. In May 2015, Wood emailed to Sagar a confidential Eskom submission recommending negotiations with McKinsey for the award of the Eskom Top Consultants contract to McKinsey and its supplier development partner on a confinement basis without competitive bidding.

66. In November 2015, Sagar used Essa's improper influence at Eskom to advance the position of McKinsey with Eskom in return for facilitating Trillian's involvement at Eskom on terms acceptable to Essa.

67. By this point, Sagar was sufficiently trusted by Essa in relation to Essa's corrupt dealings to have been given access to Essa's clandestine "Businessman" email address, Infoportal1@zoho.com. This was an email address which Essa appears to have used only for the purposes of his unlawful dealings associated with the Gupta family.

Annexure 1

Annexure 1

Calendar entries extracted from electronic diary of Vikas Sagar reflecting meetings arranged between Vikas Sagar and Iqbal Sharma

#	Subject	Required Attendees	Location	Date	Parent Date	From
1	Iqbal Sharma-		Alice Lane	2011/01/19	2015/01/04	Vikas Sagar vikas_sagar@mckinsey.com
2	Iqbal Sharma		11 Alice Lane	2011/01/28	2015/01/04	Vikas Sagar vikas_sagar@mckinsey.com
3	MTG w/ Iqbal Sharma		11 Alice Lane, Sandton	2011/02/02	2016/09/08	Vikas Sagar vikas_sagar@mckinsey.com Maryln Van Egmond <"cn=marylnvanegmond/ou=joh/ou =africa/o=mckin sey">
4	Iqbal & Vikas discussion	iqbalsharma@ hotmail.com	11 Alice Lane, Sandton	2011/02/23	2016/09/08	Vikas Sagar vikas_sagar@mckinsey.com All Recipients iqbalsharma@hotmail.com
5	Iqbal- Way forward		Michelangelo Hotel	2011/02/25	2015/01/22	Vikas Sagar vikas_sagar@mckinsey.com
6	Iqbal Sharma-		11 Alice Lane, Sandton	2011/03/09	2016/09/08	Vikas Sagar vikas_sagar@mckinsey.com
7	Iqbal & Vikas- Discussion		Scuzzi, Parkview	2011/05/19	2015/01/22	Vikas Sagar vikas_sagar@mckinsey.com
8	MTG w/ Iqbal & Vikas		Sandton Square	2011/07/06	2015/01/04	Vikas Sagar vikas_sagar@mckinsey.com
9	Iqbal		Fredman	2011/09/02	2015/01/22	Vikas Sagar vikas_sagar@mckinsey.com
10	Drinks with Iqbal		Home	2011/11/04	2015/01/22	Vikas Sagar vikas_sagar@mckinsey.com
11	Meeting- Iqbal & Vikas		Mandela Square, Michelangelo	2012/05/30	2014/10/22	Vikas Sagar vikas_sagar@mckinsey.com
12	Iqbal and Vikas (very important meeting, please do not move or reschedule)		Bella's, 66 Rivonia Road, Chiselhurston	2012/06/29	2016/06/10	Vikas Sagar vikas_sagar@mckinsey.com
13	Iqbal & vikas		Houghton	2012/07/09	2016/06/10	Vikas Sagar vikas_sagar@mckinsey.com
14	Iqbal and Vikas		Morningside	2012/07/27	2014/10/22	Vikas Sagar

Annexure 1

#	Subject	Required Attendees	Location	Date	Parent Date	From
			Shopping Center			vikas_sagar@mckinsey.com
15	Iqbal & Vikas meeting		Sandton location TBD	2012/08/17	2016/06/10	Vikas Sagar vikas_sagar@mckinsey.com
16	Iqbal and Vikas		11 Alice Lane	2012/09/12	2016/06/10	Vikas Sagar vikas_sagar@mckinsey.com
17	Iqbal & Vikas		Parc Ferme, Michelangelo Towers	2012/10/09	2016/06/10	Vikas Sagar vikas_sagar@mckinsey.com
18	Lunch with Iqbal		Tbc	2013/02/13	2016/06/10	Vikas Sagar vikas_sagar@mckinsey.com
19	Tarina and Iqbal anniversary party- 10 years		Summer place	2013/03/16	2016/06/10	Vikas Sagar vikas_sagar@mckinsey.com
20	Iqbal and Vikas		Sandton Sun City Sandbar	2013/04/18	2015/03/20	Vikas Sagar vikas_sagar@mckinsey.com
21	MTG w/ Iqbal Sharma & Vikas		Vida E Caffe 24 Central Corner Fredman & Gwen Lane Sandton JHB	2013/10/17	2016/06/10	Vikas Sagar vikas_sagar@mckinsey.com Tandolwetu Yokwana <"cn=tandolwetu yokwana/ou=joh/ou=africa/o=mckinsey">
22	Iqbal and Vikas		Bellas. 66 Rivonia.	2013/11/05	2014/10/22	Vikas Sagar vikas_sagar@mckinsey.com
23	Iqbal & Vikas		Parc Ferme, Sandton	2014/05/30	2015/03/20	Vikas Sagar vikas_sagar@mckinsey.com

Annexure 2

Annexure 2

Calendar entries extracted from electronic diaries of Vikas Sagar and Eric Wood reflecting meetings arranged for Vikas Sagar, Eric Wood and Salim Essa together

#	Date	Organiser	Nature	Location	Participants	Reference
1	25 April 2013	Vikas Sagar	Subject: “Salim and Vikas”	Tashas, Melrose Arch		Vikas Sagar – Electronic Diary Sheet 2388 Line item 8848
2	7 May 2013	Vikas Sagar	Subject: “Salim & Vikas”	Melrose Arch Mezepoli		Vikas Sagar – Electronic Diary Sheet 1128-1129
3	5 Jun 2013	Vikas Sagar	Subject: “Salim & Vikas”	Tashas, Melrose Arch		Vikas Sagar – Electronic Diary Sheet 2388 Line item 8853
4	28 June 2013	Vikas Sagar	Subject “Salim & Vikas”	Melrose Arch Mezepoli		Vikas Sagar – Electronic Diary Sheet 1128-1129
5	30 July 2013	Vikas Sagar	Subject “Salim & Vikas”	Mezepoli		Vikas Sagar – Electronic Diary Sheet 1128-1129
6	18 August 2013	Vikas Sagar	Subject “Salim & Vikas”	Melrose		Vikas Sagar – Electronic Diary Sheet 1128-1129
7	28 September 2013	Vikas Sagar	Subject “Salim a Vikas”	Melrose, Tasha’s		Vikas Sagar – Electronic Diary Sheet 797
8	28 November 2013	Vikas Sagar	Subject: “Salim & Vikas”	Mezepoli, Melrose Arch		Vikas Sagar – Electronic Diary Sheet 1128-1129
9	11 January 2014	Vikas Sagar	Subject “Salim and Vikas”	Melrose Arch		Vikas Sagar – Electronic Diary Sheet 797

Annexure 2

#	Date	Organiser	Nature	Location	Participants	Reference
10	28 January 2014	Vikas Sagar	Subject “Salim and Vikas”	Melrose Arch		Vikas Sagar – Electronic Diary Sheet 1128-1129
11	4 March 2014	Vikas and Sagar	Subject “Salim and Vikas”	Mezepoli, Melrose Arch		Vikas Sagar – Electronic Diary Sheet 1128-1129
12	20 March 2014	Vikas Sagar	Subject: “Salim & Vikas-“	Melrose Arch		Vikas Sagar – Electronic Diary Sheet 2390 Line item 8879
13	6 May 2014	Eric Wood	Lunch	N/A	Vikas Sagar Salim Essa Eric Wood	
	6 May 2014		Subject: “Salim, Eric & Vikas”	Melrose Arch		Vikas Sagar – Electronic Diary Sheet 2394 Line item 8948
14	18 June 2014	Vikas Sagar	Subject: “*TBR*Eric, Salim and Vikas - Mezepoli-Melrose Arch”			Vikas Sagar – Electronic Diary Sheet 665 Line item 2281 & 2282
15	20 June 2014	Vikas Sagar	Meeting	Mezepoli - Melrose Arch	Vikas Sagar Salim Essa Eric Wood	
	20 June 2014		Subject: “Eric, Salim and Vikas - Mezepoli-Melrose Arch”			Vikas Sagar – Electronic Diary Sheet 669 & 670 Line item 2314 & 2315
16	3 September 2014	Boitumelo Mapasa	Meeting	Vikas' s office	Vikas Sagar Salim Essa Eric Wood	

Annexure 2

#	Date	Organiser	Nature	Location	Participants	Reference
17	23 January 2015	Boitumelo Mapasa	Meeting	Mezepoli	Salim Essa visas Sagar Eric Wood	
18	24 March 2015	Eric Wood	Meeting	Melrose Arch	Eric wood Vikas Sagar Salim Essa	
19	13 April 2015	Boitumelo Mapasa	Meeting	N/A	Vikas Sagar Salim Essa Eric Wood	
20	14 April 2015	Eric Wood	Meeting	JB's Corner Melrose Arch	Eric wood Vikas Sagar Salim Essa	
21	20 April 2015	Eric Wood	Meeting	N/A	Eric wood Vikas Sagar Salim Essa	
22	23 June 2015	Eric Wood	Meeting	Melrose Arch	Eric wood Vikas Sagar Salim Essa	
23	15 July 2015	Eric Wood	Meeting	Melrose	Vikas Sagar Salim Essa Eric Wood	
24	4 November 2015	Clive Angel	Meeting	Melrose Arch - Inca	Vikas Sagar Salim Essa Eric Wood Clive Angel	
	4 November 2015	Vikas Sagar	Subject: “BLOCK: ESK contracts”			Vikas Sagar – Electronic Diary Sheet 2564 Line item 9672

Annexure 2

#	Date	Organiser	Nature	Location	Participants	Reference
25	18 January 2016	Eric Wood	Meeting	Melrose Arch	Eric wood Vikas Sagar Salim Essa	
26	11 February 2016	Eric Wood	Meeting	N/A	Eric wood Vikas Sagar Salim Essa	

Annexure 3

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agriculture & rural developme
Department of Agriculture and Rural Development
FREE STATE PROVINCE

TO: HEAD OF DEPARTMENT

DATE: 6 OCTOBER 2011

REQUEST TO DEVIATE FROM NORMAL TENDER PROCEDURES TO APPOINT NULANE INVESTMENTS 204 PTY. LTD t/a NULANE MANAGEMENT SERVICES

1. PURPOSE

To request approval for deviation in terms of the departmental SCM policy and regulations for the appointment of NULANE INVESTMENTS 204 PTY. LTD t/a Nulane Management Services to perform due diligence and feasibility studies for MOHOMA MOBUNG PROJECT.

2. DISCUSSION

The unaccepted low results that were obtained with development attempts especially also with land reform and agricultural development were also experienced in certain parts of South Africa, and in spite of the intensive attention that was given to development aspects over the past decade, mainly on political and academical fields, one still finds a great degree of disillusionment and even pessimism concerning development in Africa and South Africa in particular. The poverty problem has increased, which indicated that development strategies did not really show any meaningful results. Within the land reform programme, which is one of the most strategic and political important development and affirmative attempts, a success rate of less than 50 percent was obtained so far.

The poverty and development problems in the third world countries gave rise to the stimulating of thoughts about the concept of development and a change in development strategies. It was accepted that the development models which was inspirited due to the growth and modernization of first world countries, was not applicable for the circumstances in under-developed countries. The conventional development approach was criticized and questioned.

On the other hand, the agricultural sector, which is the most important natural resource of the majority of the provinces, are however far under-utilized, and only contributes a small portion to further economic development.

The department and the province recognized the need for an appropriate development and land reform approach, and recommended that:

- extension, support and advisory services should be upgraded and trained to be more holistic orientated, and

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- more holistic development approach should be followed when planning for agricultural and land reform projects.

The above discussions resulted in the decision by the department to come up with a more integrated approach that will address the issues and concerns as raised and further address the zero hunger strategy., hence MOHOMA MOBUNG PROJECT.

3. MOTIVATION

The SCM regulations and policy of the department allow the accounting officer to dispense with the official procurement processes established and procure any required goods and services through any convenient process, which may include direct negotiations, but only in the following cases:

- emergency or exceptional cases;
- if such goods or services are produced or available from a single provider only;
- for the acquisition of the special works of art or historical objects where specifications are difficult to compile;
- in any other exceptional cases where it is impractical or impossible to follow the normal procurement processes.

The appointment of Nulane Management Services makes it impossible for the department to follow the normal procurement processes due to the fact that it is a condition from the intended Strategic Partner (World Window Impex India Pvt. Ltd) that for them to be able to have comfort and confidence in the due diligence and feasibility study, they require us to use the services of Nulane Management Service as they know the quality of work they performed in similar projects around the world. ***Refer to the attached letter.***

4. FINANCIAL IMPLICATIONS

The budget required for these services will require an estimated amount of R25 million.

5. POWER OF APPROVAL

The power of approval is vested in the Head of Department as the accounting officer for the Department. The SCM regulations and policy of the department allow the accounting officer to dispense with the official procurement processes established and procure any required goods and services through any convenient process, which may include direct negotiations, but only in the following cases:

- emergency or exceptional cases;
- if such goods or services are produced or available from a single provider only;
- for the acquisition of the special works of art or historical objects where specifications are difficult to compile
- in any other exceptional cases where it is impractical or impossible to follow the official procurement processes.

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6. RECOMMENDATIONS

It is recommended that:

- approval be granted for deviation in terms of the departmental SCM policy and regulations for the appointment of NULANE INVESTMENTS 204 PTY. LTD t/a Nulane Management Services.

Submitted by:

S.D. Cezula
Acting Director: SCM
Date: 06/10/2011

Recommended/~~not recommended~~

S.S. Dhlamini
Chief Financial Officer
Date: 06/10/2011

Recommended/ not ~~recommended~~

Mr. P. Thabethe
Head: Rural Development
Date: 07/10/2011

Approved / ~~not approved~~

DR. L. Moorosi

Accounting Officer: Department of Agriculture and Rural Development

Date: 2011-10-07

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Worlds Window Impex India Pvt. Ltd.
Importers of Ferrous & Non - Ferrous Metal Scrap
Regd. Off. : 75, Khirki Village, Malviya Nagar, New Delhi - 110017
Tel. : +91-11-29545698, 29542460, 29544896 Fax : 29545475
E - Mail : info@worldswindow.cc

October 3, 2011

The Department of Agriculture and Rural Development
Free State Province
South Africa

Subject: Letter of Intent to participate as a Strategic Partner in Project Mohoma Mobung

Gentlemen:

At the outset, we would like to take this opportunity to congratulate the Department for this pioneering project, which we feel will be a flagship project for the whole country and will go a long way in alleviating the poverty situation by creating a sustainable agro-business model that will help the small-holder farmers gain financial independence and become positive contributors to the economy of South Africa.

We wish to introduce ourselves as Worlds Window Group, which is a diversified business conglomerate with global presence. The group is into the business of manufacturing, logistics, infrastructure, mining and metal scrap trading. South Africa is a territory known to us since last 15 years. We, until mid of last year, were operating out of South Africa as metal scrap traders. The presence, however, has further intensified with recent acquisition of some coal mines in South Africa. Going forward, we have plans of major investments in the territory by replicating our Indian business model here. Our presence extends to the most developed economies of the world viz. UK and USA, as well as to the most dynamic countries viz. the African nations. The reach is further pervading into the Caribbean, Far East Nations, UAE and the entire Indian sub Continent. In all, the Group has its own offices in over 25 countries of the World. The Group is into logistics and infrastructure segment where we are running a fleet of around 400 trailers and several dry ports in India. Our freight forwarding offices are extant in India, London, Manchester, New Jersey, Los Angeles, Durban, Dubai and Singapore. Several more are under final stage of establishment in Kenya, Germany and several other European destinations.

We are equally passionate about initiating social change and empowering the weaker sections of society through similar projects as initiated by your Department.

Please therefore consider this as a letter of intent from ourselves to participate in a strategic partnership with the Free State Department of Agriculture and Rural Development under the Private-Public-Partnership (PPP) framework of South Africa to initiate this project by a funding mechanism that will be mutually agreeable to all parties and in conformance with the requirements of the National and Provincial Treasury Departments of South Africa.

We agree in principle to participate on an equal (50/50) partnership basis to fund this project, which we understand has been initially projected at R1 billion. This, however, would be subject to a proper due diligence process conducted by a reputable Agency covering the commercial aspects of the project with detailed business plans which we would request the Department to conduct in order for us to take an informed decision in the matter.

We would request that the above due diligence and planning exercise be conducted by an Agency of our choice to provide the necessary level of comfort to our stakeholders. In the event that you are in agreement

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with our proposal, we would request you to revert to us in the affirmative and we will immediately advise you of the details of the proposed Planning Agent.

We would consider it an honor to become part of this prestigious Project and hope that we can form a strong strategic partnership that will enable us to jointly embark on this most ambitious project that will transform the rural landscape of South Africa.

Thanking you,

Yours faithfully,
For World Window Impex India Pvt Ltd

Anil Misra
Director

Annexure 4

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agriculture & rural development

Department of
Agriculture and Rural Development
FREE STATE PROVINCE

CONFIDENTIAL

CONTRACT FOR PROVISION OF SERVICES

BETWEEN THE

DEPARTMENT OF AGRICULTURE & RURAL DEVELOPMENT, FREE STATE PROVINCE, SOUTH AFRICA

AND

Nulane Investments 204 Pty Ltd t/a
NULANE MANAGEMENT SERVICES
Regn. No. 2008/020988/07

in relation to the provision of Services for

PROJECT MOHOMA MOBUNG

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TABLE OF CLAUSES

1. INTERPRETATION
2. PROVISION OF SERVICES
3. FEES, ALLOWANCES AND ASSISTANCE
4. TAXES, DUTIES AND GOVERNMENT CHARGES
5. ENTIRE AGREEMENT AND VARIATION
6. SUBCONTRACTING
7. SPECIFIED PERSONNEL
8. LIAISON
9. DARD MATERIAL
10. INTELLECTUAL PROPERTY IN CONTRACT MATERIAL
11. DISCLOSURE OF INFORMATION
12. ACCESS TO DARD PREMISES AND COMPLIANCE WITH DARD POLICIES
13. INDEMNITY
14. CONFLICT OF INTEREST
15. ACCESS TO CONTRACTOR'S PREMISES
16. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY
17. TERMINATION AND REDUCTION
18. DEFAULT
19. WAIVER
20. COMPLIANCE WITH LAW
21. DISPUTE RESOLUTION
22. ASSIGNMENT AND NOVATION
23. SEVERABILITY
24. APPLICABLE LAW
25. NOTICES
26. SURVIVAL

SCHEDULES

Schedule 1. OBLIGATIONS AND SERVICES TO BE PERFORMED

THIS CONTRACT is made on the 31st day of October 2011

BETWEEN

The DEPARTMENT OF AGRICULTURE & RURAL DEVELOPMENT, Free State Province, South Africa [hereinafter "**the Department**" or "**DARD**"]

AND

NULANE MANAGEMENT SERVICES, whose registered office is at 1st Floor, East Wing, 11 Alice Lane, Sandton 2196, [hereinafter **"the Contractor"** or **"Nulane"**]

WHEREAS:

A. The Department requires the provision of certain Services for the purposes of developing a concept document for Project Mohoma Mobung ('the Services').

B. The Contractor has fully informed itself on all aspects of the work required to be performed and has submitted a commercial proposal dated October 13, 2011

C. The Department has agreed to accept the Contractor's offer dated October 13, 2011 to provide the Services for the benefit of the Department upon the terms and conditions contained in this Contract.

NOW IT IS HEREBY AGREED as follows:

1. INTERPRETATION

1.1 In this Contract unless the contrary intention appears:

'DARD' means the Department of Agriculture and Rural Development, Free State Province, South Africa;

'DARD Material' means any Material provided by DARD to the Contractor for the purposes of this Contract or which is copied or derived from Material so provided;

'Confidential Information' means information that:

(a) is by its nature confidential;

(b) is designated by DARD as confidential; or

(c) the Contractor knows or ought to know is confidential;

but does not include information which:

(d) is or becomes public knowledge, other than by breach of this Contract or by any other unlawful means;

(e) is in the possession of the Contractor without restriction in relation to disclosure before the date of receipt from DARD; or

(f) has been independently developed or acquired by the Contractor;

'Contract' means this document, together with any Schedules and Annexures;

'Contract Material' means all Material:

(a) brought into existence for the purpose of performing the Services;

(b) incorporated in, supplied or required to be supplied along with the Material referred to in paragraph (a); or

(c) copied or derived from Material referred to in paragraphs (a) or (b);

'Contractor' shall, where the context so admits, include the officers, employees, agents and Subcontractors to the Contractor;

'Effective Date' means the date on which this Contract is signed by the parties, or if signed on separate days, on the date of the last signature;

'Intellectual Property' includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how) and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

'Material' includes documents, software, goods, equipment, information and data stored by any means;

'Personal Information' means information or an opinion (including information or an opinion forming part of a database), whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

'Project Officer' means the person for the time being holding, occupying or performing the duties of a position in DARD specified in Item E of Schedule 1 or any other person specified by the Project Officer in writing and notified to the Contractor;

'Services' means the services to be performed or provided by the Contractor as described in Item A of Schedule 1, and includes the provision to DARD of the Contract Material specified in Item B of Schedule 1;

'Subcontractor' means any person that, for the purposes of this Contract, furnishes Services directly to the Contractor or indirectly to the Contractor through another person.

1.2 In this Contract, unless the contrary intention appears:

(a) Words importing a gender include any other gender.

(b) Words in the singular number include the plural and words in the plural number include the singular.

(c) Clause headings in this Contract are for convenient reference only and have no effect in limiting or extending the language of the provisions to which they refer.

(d) A reference to a person includes a partnership and a body whether corporate or otherwise; and where the context permits, shall include a reference to the

person's executors, administrators, successors (including but not limited to, persons taking by novation) and permitted assigns.

(e) A reference to a clause or subclause is a reference to a clause or subclause of this Contract, and reference to an Item is a reference to an Item of the Schedules to this Contract.

(f) A reference to a Schedule (or Annexure) is a reference to a Schedule (or Annexure) to this Contract, and includes such Schedule (or Annexure) as amended or replaced from time to time by agreement in writing between the parties.

(g) Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

(h) Schedules and Annexures, if any, form part of this Contract. In the event of any conflict between the terms and conditions contained in the clauses of this Contract and any part (Item) of the Schedules and Annexures, if any, then the terms and conditions of the clauses shall take precedence.

(i) Where a conflict arises between any part of the Schedule and any part of an Annexure, the Schedule prevails.

(j) All monetary references are references to South African currency.

(k) A reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Republic of South Africa as amended or replaced from time to time.

(l) A provision of this Contract shall not be construed to the disadvantage of a party solely on the basis that the party proposed that provision.

2. PROVISION OF SERVICES

2.1 The Contractor shall perform the Services (including the preparation of Contract Material) in accordance with and described in Item A of Schedule 1 at a high standard of industry practice and to the satisfaction of DARD.

2.2 The Contractor warrants that:

(a) it, its agents and Subcontractors have the necessary expertise, experience, capacity and facilities required to perform its obligations and responsibilities in accordance with this Contract, and will use due care and skill in the performance of the Services;

(b) the Services will be fit for the purpose for which they are intended;

(c) any Materials the Contractor uses to perform the Services will be free from defects in design, performance and workmanship; and

(d) all work performed under this Contract will be carried out and completed timeously, using materials suitable for the purpose, and in accordance with

commercially recognised industry procedures, requirements and other standard practices.

2.3 The Contractor shall perform the Services during the term specified in Item C of Schedule 1, and at the times and in the manner specified in Item C of Schedule 1.

3. FEES, ALLOWANCES AND ASSISTANCE

3.1 The Department shall:

(a) pay to the Contractor a sum equivalent to 50% of the Contract value as mobilization funds in advance on signing of this Agreement.

(b) pay to the Contractor the balance 50% of the fees specified in Item D of Schedule 1 based on the milestones agreed by both parties

(b) provide the facilities and assistance specified in Item D of Schedule 1;

in accordance with the terms of this Contract.

3.2 Unless the Project Officer rejects any claim for payment which is not in accordance with this Contract, payments will be due and payable within 30(Thirty) days after receipt of a Tax Invoice specified in Item D of Schedule 1.

3.3 The obligation of the Department to make a payment under this clause 3 is subject to the performance of the Services to the satisfaction of DARD. The Department shall be entitled, in addition to any other right it may have, to delay payment or any instalment of fees or allowances, until the Contractor has completed, to the satisfaction of DARD, that part of the Services to which the payment relates.

3.4 The preferred method of payment under this contract is electronic funds transfer by way of direct credit to the Contractor's dedicated Bank Account for this Project. The Contractor must maintain a Contractor's dedicated Bank Account for the purposes of receiving electronic funds transfer for payment by the Department under this Contract.

4. TAXES, DUTIES AND GOVERNMENT CHARGES

4.1 All taxes, duties and charges imposed or levied in South Africa in connection with the Services shall be borne by the Contractor or its Subcontractor, as the case requires. The fees and charges specified in Item D of Schedule 1 include the VAT (Value Added Tax) for Services to be provided under this Contract

4.2 The Contractor agrees to issue the Department with a Tax Invoice in accordance with the VAT Act in relation to all taxable supplies made for the benefit of DARD under this Contract.

5. ENTIRE AGREEMENT AND VARIATION

5.1 This Contract constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements,

whether oral or written, between the parties with respect to the subject matter of this Contract.

5.2 The Contractor acknowledges that it does not rely upon any representation, warranty, condition or other conduct on the part of the Department or any person purporting to act on behalf of the Department in entering into this Contract other than any express warranty or condition contained in this Contract.

5.3 No agreement or understanding varying or extending this Contract (including in particular the scope of the Services described in Item A of Schedule 1) shall be legally binding upon either party unless it is in writing and signed by both parties.

6. SUBCONTRACTING

6.1 The Contractor may be required, by virtue of its agreements with various International Consulting Firms such as McKinsey and DeLoitte, to subcontract the performance of the whole or any part of the Services.

6.2 The Contractor shall be fully responsible for the performance of the Services notwithstanding that the Contractor has subcontracted the performance of any part of those Services.

6.3 Despite any approval given by the Department, the Contractor shall exercise care in selection of a Subcontractor and shall be responsible for ensuring the suitability of a Subcontractor for the proper performance of the Services proposed to be carried out by the Subcontractor, and for ensuring that the performance of the Services meets the requirements of this Contract.

7. SPECIFIED PERSONNEL

7.2 The Contractor shall use its best endeavours to ensure that only those persons are engaged by the Contractor to perform the Services who:

(a) are properly qualified for the tasks they are to perform; and

(b) will act, in all the circumstances, in a fit and proper manner; and

(c) have a high level of professionalism in the performance of the Services;

7.3 Where Specified Personnel or any other personnel who perform the Services are unable to undertake work in respect of the Services, the Contractor shall notify DARD immediately. The Contractor shall, if so requested by the Department, provide replacement personnel acceptable to DARD at no additional charge and at the earliest opportunity.

7.4 The Contractor acknowledges and agrees that the Department may, at its absolute discretion, give notice requiring the Contractor to remove personnel (including Specified Personnel) from work in respect of the Services. The Contractor shall, at its own cost, promptly arrange for the removal of such personnel from work in respect of the Services and their replacement with personnel acceptable to DARD.

7.7 The Contractor shall advise DARD promptly in writing of any change in the circumstances of an authorised person that, in the Contractor's reasonable opinion, is likely to affect DARD's assessment of the person as an authorised person.

7.8 The Contractor acknowledges and agrees that the Department may at any time and without coming under any liability whatsoever, withdraw, limit or suspend its authorisation in respect of a particular authorised person and shall so notify the Contractor. In addition, the Contractor acknowledges and agrees that DARD shall not be bound to give any reasons for any such withdrawal, limitation or suspension, and shall not be in any way liable in respect of any claim, action or demand made by any such person for any loss including but not limited to wages or damages and the Contractor shall indemnify and keep indemnified the Department and DARD against every such claim, action or demand. The Contractor shall also, if requested by DARD, provide replacement personnel acceptable to DARD at no additional charge and at the earliest opportunity.

8. LIAISON

8.1 The Project Officer is responsible for the administration of this Contract on behalf of the Department and for the benefit of DARD. The Contractor shall liaise with, report to and comply with any direction of the Project Officer, in accordance with this Contract, as reasonably required by the Project Officer during the period of this Contract.

8.2 The Contractor shall, on or before the Effective Date, nominate a person who has authority to receive and sign notices and written communications for the Contractor under this Contract and accept any request or direction in relation to the Services.

8.3 The Contractor must act in good faith at all times and give to the Department and DARD such assistance and co-operation as the Department or DARD reasonably requests in connection with the operation of this Contract.

9. DARD MATERIAL

9.1 The Department agrees to provide, and shall ensure that DARD provides Material to the Contractor as specified in Item B of Schedule 1 for Contract purposes. The Contractor shall be responsible for the reasonable care of DARD Material from the date the Contractor receives such DARD Material.

9.2 Ownership of all DARD Material remains vested at all times in the Department, but the Department grants to the Contractor a royalty-free, non-exclusive licence to use, reproduce and adapt DARD Material for the purposes of this Contract.

9.3 Upon the expiration or earlier termination of this Contract, the Contractor shall return to DARD all DARD Material remaining in its possession.

9.4 Subclauses 9.1 to 9.3 apply subject to any stipulation to the contrary in Item B of Schedule 1.

9.5 The Contractor shall ensure that DARD Material is used, copied, supplied or reproduced only for the purposes of this Contract. The Contractor agrees to establish and maintain procedures to secure all DARD Material against loss and unauthorised access, use, modification or disclosure.

9.6 The Contractor shall use DARD Material strictly in accordance with any conditions or restrictions specified in Item B of Schedule 1, or notified from time to time in writing by DARD.

10. INTELLECTUAL PROPERTY IN CONTRACT MATERIAL

10.1 Subject to this clause 10, Intellectual Property in all Contract Material vests or will vest in the Department.

10.2 If requested by the Department to do so, the Contractor shall bring into existence, sign, execute or otherwise deal with any document which may be necessary or desirable to give effect to this clause 10.

10.3 The Contractor warrants that it is entitled, or will be entitled at the relevant time, to deal with the Intellectual Property in any Contract Material in the manner provided for in this clause 10.

10.4 The Contractor shall at all times indemnify and hold harmless the Department, its officers, employees and agents (in this subclause referred to as 'those indemnified') from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person in respect of any infringement of Intellectual Property by the Contractor, its officers, employees, agents or Subcontractors in connection with the performance of the Services or the use by the Department of the Contract Material.

10.5 The indemnity referred to in subclause 10.5 shall survive the expiration or termination of this Contract.

10.6 The Contractor agrees to establish and maintain procedures to secure the Contract Material in its possession against loss and unauthorised access, use, modification or disclosure.

10.7 Upon the expiration or earlier termination of this Contract, the Contractor shall deliver to DARD all Contract Material remaining in its possession.

11. DISCLOSURE OF INFORMATION

11.1 The Contractor shall not, without the prior written approval of the Department, disclose to any person other than the Department, any Confidential Information contained in DARD Material or Contract Material. The Contractor agrees that in giving written approval, the Department may impose such terms and conditions as it thinks fit.

11.2 The Department shall not, without the prior written approval of the Contractor, disclose to any person other than the Contractor, any information which is confidential to the Contractor.

11.3 The Department may at any time require the Contractor to give and to arrange for its officers, employees, agents and Subcontractors engaged in the performance of the Services to give written undertakings, in a form required by the Department, relating to the non disclosure of such Confidential Information. The Contractor shall promptly arrange for all such undertakings to be given.

11.4 The obligations on the parties under this clause11 will not be taken to have been breached to the extent that Confidential Information:

(a) is disclosed by a party to its personnel solely in order to comply with obligations, or to exercise rights, under this Contract;

(b) is disclosed to a party's internal management personnel solely to enable effective management or auditing of Contract-related activities;

(c) is disclosed by the Department to the responsible Minister;

(d) is disclosed by the Department, in response to a request by a House or a Committee of the Parliament of the Department of Australia;

(e) is shared by DARD within DARD's organisation, or with another government body or agency, where this serves the Department's legitimate interests;

(f) is authorised or required by law to be disclosed; or

(g) is in the public domain otherwise than due to a breach of this clause 11.

11.5 Where a party discloses Confidential Information to another person pursuant to subclause 11.4, the disclosing party must notify the receiving person that the information is confidential.

11.6 In the circumstances referred to in paragraphs (a), (b) and (e) of subclause 11.4, the disclosing party agrees not to provide the information unless the receiving person agrees to keep the information confidential.

11.7 This clause 11 shall survive the expiration or termination of this Contract.

12. ACCESS TO DARD PREMISES AND COMPLIANCE WITH DARD POLICIES

12.1 The Department shall, during the period of this Contract, provide access to DARD premises for persons approved under clause 7, as reasonably necessary for the Contractor's performance of its obligations under this Contract.

12.2 The Department may, by notice to the Contractor, withdraw access rights to any DARD premises, at any time, for any period.

12.3 The Contractor must, when using DARD's premises or facilities, comply with all reasonable directions and DARD procedures relating to occupational health

(including DARD's smoke free work place policy), safety and security in effect at those premises or in regard to those facilities, as notified by DARD or as might reasonably be inferred from the use to which the premises or facilities are being put.

12.4 The Contractor must comply with all reasonable and appropriate security requirements relating to the custody of, and access to, Material wherever such Material is held.

13. INDEMNITY

13.1 Subject to the provisions of this Contract, the Contractor shall at all times indemnify and hold harmless the Department, its officers, employees and agents (in this subclause referred to as 'those indemnified') from and against:

(a) any loss (including legal costs and expenses on a solicitor/own client basis), or liability, suffered or reasonably incurred or suffered by any of those indemnified arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified; and

(b) any loss or damage to property of the Department (including DARD Material);

where such loss or liability was caused by any breach of this Contract, or any wilful, unlawful or negligent act or omission of the Contractor, its officers, employees, agents or Subcontractors in connection with this Contract.

13.2 The Contractor's liability to indemnify the Department under subclause 15.1 shall be reduced proportionally to the extent that any act or omission of the Department or its officers, employees or agents contributed to the loss or liability.

13.3 The right of the Department to be indemnified under this clause 15 is in addition to, and not exclusive of, any other right, power or remedy provided by law.

13.4 This clause 15 shall expire after the expiration or termination of this Contract.

14. CONFLICT OF INTEREST

14.1 In this clause 17, 'conflict' means any matter, circumstance, interest or activity affecting the Contractor (including its personnel) which may or may appear to impair the ability of the Contractor to provide the Services to the Department, for the benefit of DARD, diligently and independently.

14.2 The Contractor warrants that, to the best of its knowledge, after making diligent inquiry, at the date of signing this Contract no conflict with the interests of DARD exists or is likely to arise in the performance of its obligations under this Contract by itself or by any of its officers, employees, agents or Subcontractors.

14.3 If during the term of this Contract a conflict of interest arises, or appears likely to arise, the Contractor undertakes to notify DARD immediately in writing and to take such steps as DARD may reasonably require to resolve or otherwise deal with the conflict. If the Contractor fails to notify DARD or is unable or unwilling to

resolve or deal with the conflict as required, the Department may terminate this Contract in accordance with the provisions of clause 22.

14.4 The Contractor shall not, and shall ensure that any officer, employee, agent or Subcontractor of the Contractor does not, engage in any activity or obtain any interest during the course of this Contract that is likely to conflict with or restrict the Contractor in providing the Services to the Department, for the benefit of DARD, fairly and independently.

15. ACCESS TO CONTRACTOR'S PREMISES

15.1 The Contractor shall at all reasonable times give to the Project Officer or to any persons authorised in writing by the Project Officer, access to premises occupied by the Contractor where the Services are being undertaken and shall permit those persons to inspect and copy documentation and records, however stored, in the Contractor's possession or control including any DARD Material, Contract Material or other Material relevant to the Services.

15.2 The Contractor shall ensure that the provisions of any subcontract provide to the Project Officer, and persons authorised by the Project Officer, similar access to Subcontractor's premises and records in connection with the provision of the Services.

16. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY

16.1 The Contractor shall not represent itself, and shall ensure that its officers, employees, agents and Subcontractors do not represent themselves, as being an officer, employee, agent or partner of the Department, or as otherwise able to bind or represent the Department.

16.2 The Contractor shall not by virtue of this Contract be or for any purpose be taken to be an officer, employee, agent or partner of the Department, or as having any power or authority to bind or represent the Department.

17. TERMINATION AND REDUCTION

17.1 The Department may, at any time by written notice, terminate this Contract, in whole or in part. If this Contract is so terminated, the Department shall be liable only for:

(a) payments under the payment provisions of this Contract for services rendered before the effective date of termination; and

(b) subject to subclauses 21.3 and 21.4 any reasonable costs incurred by the Contractor and directly attributable to the termination or partial termination of this Contract.

17.2 Upon receipt of a notice of termination, the Contractor shall:

(a) stop work as specified in the notice;

(b) take all available steps to minimise loss resulting from that termination and to protect DARD Material and Contract Material; and

(c) continue work on any part of the Services not affected by the notice.

17.3 In the event of partial termination, the Department's liability to pay fees specified in Item D of Schedule 1 shall, in the absence of agreement to the contrary, abate proportionately to the reduction in the Services.

17.4 The Department shall not be liable to pay compensation in an amount which would, in addition to any amounts paid or due, or becoming due, to the Contractor under this Contract, together exceed the fees specified in Item D of Schedule 1. The Contractor shall not be entitled to compensation for loss of prospective profits.

18. DEFAULT

18.1 If either party is in default under this Contract on account of the failure to perform or observe any obligation or undertaking to be performed or observed on its part under this Contract, the party not in default may, subject to subclause 22.2, by notice in writing to the other party, terminate this Contract in whole or in part without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party.

18.2 Where the default is capable of being remedied, a party shall not exercise its rights of termination under subclause 22.1 unless it has first given to the other party notice in writing specifying the default and requiring the other party to remedy it within the time (being not less than 10 working days) specified in the notice and the default is not remedied within the time allowed.

18.3 The Department may, by notice in writing, terminate this Contract immediately (but without prejudice to any right of action or remedy which has accrued or which may accrue in favour of either party) if the Contractor:

(a) being a corporation, comes under one of the forms of external administration, or an order has been made for the purpose of placing the corporation under external administration; or

(b) being an individual, becomes bankrupt or enters into a scheme of arrangement with creditors.

19. WAIVER

19.1 A waiver by a party in respect of any breach of a condition or provision of this Contract shall not be deemed to be a waiver in respect of any continuing or subsequent breach of that provision, or breach of any other provision.

19.2 A failure or delay by a party to exercise any right or remedy it holds under this Contract or at law does not operate as a waiver of that right.

19.3 A single or partial exercise by a party of any right or remedy it holds under this Contract or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

20. COMPLIANCE WITH LAW

20.1 The Contractor shall in carrying out the Services for this Contract, comply with all relevant legislation of the Department. The Contractor shall also comply with the law in regard to behaviour, Code of Conduct and Values.

21. DISPUTE RESOLUTION

21.1 Subject to subclause 27.4, before resorting to external dispute resolution mechanisms, the parties shall attempt to settle by negotiation any dispute in relation to this Contract including by referring the matter to personnel who may have authority to intervene and direct some form of resolution.

21.2 If a dispute is not settled by the parties within 10 working days of one party first sending to the other party written notice that they are in dispute, the dispute may be the subject of court proceedings or may be submitted to some alternative dispute resolution mechanism as may be agreed in writing between the parties.

21.3 Notwithstanding the existence of a dispute, each party shall continue to perform its obligations under this Contract.

21.4 A party may commence court proceedings relating to any dispute arising from this Contract at any time where that party seeks urgent interlocutory relief.

21.5 This clause 27 shall expire after the expiration or termination of this Contract.

22. ASSIGNMENT AND NOVATION

22.1 The Contractor shall not assign, in whole or in part, its rights and obligations under this Contract without the prior written approval of the Department.

22.2 The Contractor shall not consult with any other person or body for the purpose of entering into an arrangement which will require novation of this Contract without first consulting the Department.

22.3 The Department will not withhold approval of an assignment to a wholly owned subsidiary of the Contractor if:

(a) the proposed assignee is sufficiently capitalised to meet all of the Contractor's obligations under this Contract, including indemnities;

(b) the Specified Personnel continue to provide the Services, subject to the terms of this Contract;

(c) the Contractor guarantees the performance of this Contract by the assignee and any liability on the part of the assignee arising under this Contract;

(d) the proposed assignee fully complies with all criteria applied to the Contractor as a tenderer for provision of the Services; and

(e) the Contractor provides to the Department all information reasonably required to determine compliance under this subclause 28.3.

23. SEVERABILITY

23.1 Each provision of this Contract and each part thereof shall, unless the context otherwise necessarily requires it, be read and construed as a separate and severable provision or part. If any provision or part thereof is void or otherwise unenforceable for any reason, then that provision or part (as the case may be) shall be severed and the remainder shall be read and construed as if the severable provision or part had never existed.

24. APPLICABLE LAW

24.1 This Contract shall be governed by and construed in accordance with the laws in force in the Republic of South Africa, and the parties agree that the Courts of that Territory shall have jurisdiction to entertain any action in respect of, or arising out of, this Contract.

25. NOTICES

25.1 Any notice, request or other communication to be given or served pursuant to this Contract shall be in writing and dealt with as follows:

(a) if given by the Contractor to the Department - addressed and forwarded to DARD for the attention of the Project Officer at the address specified in Item E of Schedule 1 or as otherwise notified by the Project Officer;

(b) if given by the Department to the Contractor - signed by the Project Officer and addressed and forwarded to the Contractor at the address specified in Item E of Schedule 1 or as otherwise notified by the Contractor under subclause 8.2.

25.2 Any such notice, request or other communication shall be delivered by hand or sent by pre-paid security post, facsimile or email, to the address of the party to which it is sent.

25.3 Any notice, request or other communication will be deemed to be received:

(a) if delivered personally, on the date of delivery;

(b) if sent by prepaid security post, on the day that the acknowledgment of delivery is completed by the recipient;

(c) if sent by facsimile, on the business day next following the day of dispatch provided that the sender receives an "OK" code in respect of the transmission and is not notified by the recipient by close of business of the next business day following the day of dispatch that the transmission was illegible; and

(d) if sent by email, when the email enters an information system accessible to the recipient.

26. SURVIVAL

26.1 Unless the contrary intention appears, the expiration or termination of this Contract will not affect the continued operation of any provision relating to:

(a) licensing of Intellectual Property;

(b) Confidential Information;

(c) protection of Personal Information;

(d) any other provision which expressly or by implication from its nature is intended to continue.

SIGNED AT SANDTON ON THIS THE 28 DAY OF OCTOBER 2011

For and on behalf of:
NULANE MANAGEMENT SERVICES

Name: MR. DINESH PATEL
Designation: PROJECT DIRECTOR

Signature: _____

Witness: _____ Name: BHAYESH NARAN

SIGNED AT BLOEMFONTEIN ON THIS THE 31ST DAY OF OCTOBER 2011

For and on behalf of:
DEPARTMENT OF AGRICULTURE & RURAL DEVELOPMENT

Name: PETER THABETHE
Designation: HOD: RURAL DEVELOPMENT

Signature: _____

Witness: _____ Name: L Maans



SCHEDULE 1

OBLIGATIONS AND SERVICES TO BE PERFORMED

A. Services (see subclauses 1.1, 2.1 and 5.3)

The Services are for the following:

1. Undertaking a study for the development of a Concept Document for Project Mohoma Mobung as outlined in the Commercial Proposal of the Contractor
2. Identifying a possible strategic investment Partner for the Project

B. Material

Contract Material (see subclause 1.1)

The following Contract Material is required to be produced and delivered by the Contractor:

(a) a detailed concept document outlining the deliverables as contained in the detailed Commercial proposal submitted to the department by the Contractor

(b) the Material is to be produced and delivered to the Department in 3 Hard copies in a bound paper document format and 3 copies in DVD format containing the Material in a portable document format (.pdf).

(d) the Material is to be submitted within 16 weeks of issuance of the final Purchase Order by the Department

DARD Material (see subclauses 1.1 and 9.1)

The Department shall ensure that DARD shall provide the following Material to the Contractor for the purposes of this Contract:

a) All available documentation produced by the Department in relation to Project Mohoma Mobung.

b) This will enable the Contractor to align its work to the requirements and Vision of the Department

Use of DARD Material (see subclauses 9.5 and 9.6)

The Contractor shall not, without the prior written approval of the Project Officer:

(a) use DARD Material other than for the purposes of this Contract;

(b) modify DARD Material;

(d) communicate or divulge DARD Material to any third party except for its sub-contractors



C. Time-frame (see subclause 2.3)

Term of Contract

Commencement Date:	**November 01, 2011**
Expiration Date:	**February 28, 2012**

Variation of Contract Term

The Department will have the right, upon written notice to the Contractor, to extend the term of this Contract for a further period on the same terms and conditions as in this Contract.

D. Fees, Allowances and Assistance (see subclause 4.1)

Fees (see subclauses 3.1, 17.3 and 17.4)

The Fees payable to the Contractor by the Department shall be based on the Commercial proposal submitted by the Contractor as well as the final Purchase Order issued by the Department

Payment Terms

Mobilization payment of **50%** amounting to **R12,492,120** (Rands Twelve million four hundred ninety two thousand one hundred and twenty only) will be made by the Department to the Contractor as advance payment against issuance of Purchase Order and signing of this Agreement. The Contractor must submit a Tax Invoice to the Department for this amount

The balance 50% payment will be split into 3 equal monthly payments made within 30 days of completion of the monthly Project milestone and sign-off by the Project Officer.

Total Amount Payable Under Contract

The total amount payable to the Contractor under this Contract shall not exceed **R24,984,240.00** (Rands Twenty Four Million Nine hundred and eighty four thousand, two hundred and forty only) inclusive of VAT, without the prior written approval of the Project Officer.

Payment Arrangements (see subclause 3.4)

The Contractor's dedicated Bank Account for payments related to this Project is as follows:

Name of Account:	Nulane Investments 204 Pty Ltd
Name of Bank:	NEDBANK
Account No.:	1003229697
Branch:	128 40500

Facilities and Assistance (see sub-clause 3.1(b))

The Department shall provide the following facilities free of charge to the Contractor if reasonably required for the performance of the Services:

(a) office accommodation at DARD premises that is reasonably required by the Contractor's personnel for the performance of the Services;

(b) such normal office services and facilities at DARD premises as are reasonably required by the Contractor's personnel for the performance of the Services; and

(c) such stationery and consumables at DARD premises as are reasonably required by the Contractor's personnel for the performance of the Services, other than specialised materials.

Invoice Procedures (see subclauses 3.3 and 3.4)

The due date for payment will be 30 days after receipt of a correctly rendered invoice.

The invoice shall be forwarded by the Contractor to the Project Officer and shall include the following information:

(a) Purchase Order Number
(b) title of Services; and
(c) name of the Department.

Invoices must not state that they are due and payable other than in accordance with the number of days for payment after receipt of invoice specified in this Schedule 1.

E. Addresses for Service of Notices

Department Address for Service of Notices (see subclause 31.1)

Any letters or notices from the Contractor to the Department shall be addressed as follows:

Mr. Peter Thabethe, Project Officer
The Department of Agriculture & Rural Development
Private Bag x02, Bloemfontein 9300
Facsimile: (051) 861 8454
Email: thabethe@fs.agric.za

Contractor's Address for Service of Notices (see subclause 31.1)

Any letters or notices from the Department or DARD to the Contractor shall be addressed as follows:

Mr. Dinesh Patel, Project Director
Nulane Management Services
1st Floor, East Wing, 11 Alice Lane, Sandton 2196
Facsimile: (086) 733 1628
Email: projects@nulanesa.co.za

SCC-_RnJlZV9TdGF0ZV9EZXBhcnRtZW50X09mX0FncmljdWx0dXJlLVJlbGF0aXZpdHkK

Form CM44 A

REPUBLIC OF SOUTH AFRICA

COMPANIES ACT, 1973

ARTICLES OF ASSOCIATION OF A COMPANY HAVING A SHARE CAPITAL
NOT

ADOPTING SCHEDULE 1

[SECTION 60(1) REGULATION 18]

REGISTRAR OF COMPANIES AND OF CLOSE CORPORATIONS
2008 -08- 27
BACK OFFICE

REGIST[illegible] PANY

NULANE INVESTMENTS 2
04
2008/020988/07

ARTICLES OF ASSOCIATION

OF

NULANE INVESTMENTS 204 (PROPRIETARY) LIMITED

("the company")

A. The articles of Table B contained in Schedule 1 of Companies Act, 1973, shall not apply to the company.

B. The Articles of the Company are as follows:

YOLANDIE RIVAS
NOTARIUS PUBLICUS

Annexure 5

FOF-08-245

Sent: Wed, 18 Jul 2012 08:23:19 +0200
From: Vikas Sagar <"cn=vikas sagar/ou=joh/ou=africa/o=mckinsey">
To: norbert_doerr@mckinsey.com, david_fine@mckinsey.com
Subject: Fw: Company profile
_.png
Company profile REGIMENTS CAPITAL 2012 07 11.pdf

Vikas Sagar
Principal
McKinsey & Company, Johannesburg
Tel: +27 11 506 8149
Cell: +27 82 329 8149
Fax: +27 11 506 9149

----- Forwarded by Vikas Sagar/JOH/Africa/MCKINSEY on 2012/07/18 08:22 AM -----

From: Shyma Pillay <ShymaP@regiments.co.za>

To: "vikas_sagar@mckinsey.com" <vikas_sagar@mckinsey.com>

Date: 2012/07/11 05:17 PM

Subject: FW: Company profile



COMPANY PROFILE

REGIMENTS CAPITAL

REGIMENTS CAPITAL

July 2012

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1 ABOUT REGIMENTS CAPITAL

Regiments Capital is an integrated investment banking and advisory firm focused on providing services to all sectors of government (national, provincial and municipal), state-owned enterprises and corporates. Regiments Capital consists of four core businesses:

- Financial Advisory
- Capital Markets
- Real Estate
- Proprietary Investments

As a leading financial advisor to public and private businesses across South Africa, Regiments Capital draws on the exceptional financial market skills of its members to provide unrivalled and unique solutions to its clients.

Since its inception in 2004, Regiments Capital's Financial Advisory business has successfully delivered on wide ranging mandates to a number of clients, including ACSA, City of Johannesburg, City of Tshwane, Transnet, SAA, City of Ekurhuleni and DBSA, amongst others. Projects typically include treasury restructuring, large scale capital raising, structured solutions for debt and/or equity, risk management solutions, etc.

The Group's Capital Markets business manages funds on behalf of its valued clients (such as the management of the sinking fund on behalf of the City of Johannesburg) and our Real Estate business generates significant returns through large property development opportunities. The most notable of these developments, the Kgoro Sandton Gateway (a large mixed-use development on the platform above the Gautrain station in Sandton), is currently in progress.

In addition to the Financial Advisory, Fund Management and Real Estate businesses, Regiments Capital's Proprietary Investments unit led a broad-based BEE consortium in the acquisition of 12.2% of Capitec Bank Holdings Limited. We previously held a stake in Nedbank through the Eyethu Corporate Scheme and have recently structured an investment into MTN through the MTN Zakhlele BEE scheme. Regiments Capital has also made a number of strategic investments in the private sector.

Regiments Capital's team comprises of leading corporate finance and economic professionals with extensive experience in transaction advisory, financial product engineering, financial modeling, large scale capital raising, fund management, structuring and property development.

The various business areas of Regiments Capital will be discussed briefly in the following sections.

1.1 ADVISORY

Since its inception in 2004, Regiments Capital's Financial Advisory business has successfully delivered on wide ranging mandates to a number of clients, including ACSA, Transnet, SAA, City of Johannesburg, City of Tshwane, City of Ekurhuleni, DBSA, amongst others. Projects typically include treasury restructuring, large scale capital raising, structured solutions for debt and/or equity, risk management solutions, etc.

Our financial advisory services cover the following areas:

- **Capital Markets Advisory:** Regiments Capital possesses a breadth and depth of expertise with respect to the debt capital markets encompassing debt raising, structuring, arranging, broking, trading, and investment. Regiments Capital has focused its debt origination services primarily on the public sector. Some of our accomplishments in capital market advisory includes the following:
  - Regiments Capital has successfully raised R1.5 billion in the form of short term funding and R1 billion in the form of long term funding for the City of Johannesburg;
  - Regiments Capital has played an important role in the development and upgrading of airport facilities by raising commercial funding of R1.75 billion and R4.2 billion DFI funding for the Airport Company of South Africa;
  - Regiments Capital has concluded (together with JPMorgan Chase and Calyon Bank Limited) a R5 billion Euro bond issue for Eskom Holdings Limited. This issue was 5 times oversubscribed.
  - Advising Sovereign Foods on a R700 million capital raising programme.
- **Treasury and risk management solutions:** Our clients also benefit from the specialized financial risk management solutions we provide and an in-depth knowledge of treasury functions we command. Regiments Capital designs and implements strategies for clients' treasury divisions to help them address the challenges of a rapidly transforming environment. Our close relationship with leading local and international financial institutions help clients to effectively underwrite the mix of products and provide world-class execution capabilities. The corporate solutions we provide include financial risk management consulting, cash and asset liability management. Some of the treasury and financial risk management projects we have completed thus far include:
  - Regiments Capital analysed and optimized the financial risk management framework and structured the treasury functions for Transnet;
  - Regiments Capital established a financial risk management framework and assisted in the establishment of the treasury functions for Airport Company of South Africa; and
  - Regiments Capital has successfully reviewed the treasury functions of the City of Tshwane and provided recommendations.

- **Structured financial solutions:** The Regiments Capital team's extensive experience in financial markets trading and structuring not only ensures that clients receive the very best advice and structuring services to enhance existing business operations, but also lays the path for future growth with the more efficient use of capital and access to advanced funding mechanisms. These structuring capabilities provide Regiments Capital an opportunity to leverage its capabilities to offer unique debt- and equity related products. Some of the structured solutions we provided to our clients include:

  - Optimization of the balance sheet of the City of Johannesburg;
  - Structured property solution for Ekurhuleni Metropolitan Municipality; and
  - Interest rate hedge strategy for ACSA totalling in excess of R6 billion.

- **Financial, Econometric and Escalation modelling:** As part of our commitment to provide the best and one-stop solutions to our esteemed clients, Regiments Capital's Economic Research Unit caters for the need of our external clients and internal clients including Regiments' Securities, Advisory, Investments and Fund Management businesses. The stock broking, private equity, advisory, securities, investments and fund management businesses benefit immensely from the research outputs of the Economic Research Unit. By maintaining econometric and quantitative approaches to its solutions, it sufficiently combines qualitative and quantitative techniques and produce deliverables that are as scientific as possible. Drawing on the skills of top class econometricians and a consortium of data providers and academics, Regiments Capital integrates a range of intricate modeling methods to present results and help clients forecast most likely outcomes and conduct policy simulations where required. Some of our major products include socioeconomic impact studies on policy interventions of the national, provincial and local governments.
  Along the various macro- and micro-econometric modeling, we also have a qualified and experienced team to conduct robust financial and cost escalation modeling for our clients. The cost escalation models we built at Regiments Capital integrate clients' financial models with specific econometric based cost driver models.

- **Strategy Advisory:** Regiments capital, through its subsidiary 'Burlington Consultants', has been able to assist clients with developing business plans and feasibility studies for market entries and new technology. Burlington is a leading provider of strategy development services in South Africa. Burlington is the market leader in areas of commercial due diligence and investment support, and is one of the few local players that can offer top tier strategy consulting services. Our approach is highly analytical to give fact-based solutions (Burlington sweats the detail).

Burlington has worked on over 150 engagements with more than 60 organisations ranging from major listed corporates to mid-sized private companies, private equity and institutional investors, and government and civic organisations.

Since its inception in Johannesburg, Burlington's unique offering has been well received by a broad spectrum of clients, resulting in sustained growth of our local team. The following factors have been critical to our success:

- A single-minded focus on delivering exceptional results for our clients
- An outstanding track record of past projects and client relationships
- The delivery of an international-standard, top-tier consulting product at rates that take into consideration the realities of local economics
- Local ownership and management who have an intimate understanding of the African business environment
- Senior staff with considerable local and international management consulting experience combined with non-consulting, real-world exposure to a range of industries
- An exceptional team of consultants nurtured through a structured development program
- AAA rated Black Economic Empowerment credentials

Burlington offers a full range of management consultancy and advisory services including strategy formulation, operational improvement and organisational development, aimed at assisting our clients in achieving full potential in their businesses.

In addition, our transaction services support investors assessing opportunities through commercial due diligence and assist vendors or entrepreneurs seeking funding by developing investment memoranda and business plans.

1.2 FUND MANAGEMENT

Our fund management mainly provides innovative asset management solutions using a liability-plus approach. This is basically a risk management advisory service targeted at annuity funds.

The principal features of our asset management solutions include the following:

- Closely tracking our clients liabilities,
- Liabilities plus approach,
- Sophisticated infrastructure to support liability analysis and the impact of investment decisions,
- Dynamically manage the assets to match the liability, and
- Strong oversight and risk management.

Regiments Capital uses a dynamic asset-liability management approach in managing annuity based funds. Asset-liability management is the practice of managing risks arising from the mismatch between assets and liabilities. The dynamism introduced to our approach is due to the active management of assets that would respond to the possible changes in underlying liabilities.

Some of the areas where the Liability Plus approach has been successfully used include:

- Debt Redemption: Assist clients in managing and repaying large debt commitments on time.
- Rehabilitation Fund: Ensuring timely provision for the financial redemption of rehabilitation liabilities through identifying, managing and hedging the financial drivers impacting on the underlying liability.
- Post-Retirement Medical Liability: Post-retirement health benefits that are paid out after retirement. These unfunded medical liabilities are generally driven by medical inflation which has historically been significantly higher than general inflation.
- Retirement Annuity/ Pension Fund: Savings plan for retirement that is put in place to allow individuals to enjoy the same life style during their retirement as they do during their working life.

Regiments Capital has earned a reputation for designing and managing a successful debt redemption fund that has proven to outperform the benchmark over the years. Currently, Regiments Capital manages a debt redemption fund for the City of Johannesburg. The fund's outstanding performance over the years can be seen from the following figure.

1.3 STOCK BROKING (FIXED INCOME AND MONEY MARKET)

In 2005, Regiments Capital acquired a 51% controlling interest in FFO Securities, a JSE registered stock- broking firm specializing in fixed income and money market transactions. In 2008, Regiments acquired the balance of equity in the firm, making it a 100% owned subsidiary, and proceeded to re-name the company "Regiments Securities". The company was recently ranked third by volume of fixed income transactions traded.

1.4 REAL ESTATE

Our Real Estate business generates significant returns through large property development opportunities. The most notable of these developments are Kgoro Sandton Gateway – a large mixed-use development on the platform above the Gautrain station in Sandton, and Ferguson Office Development in Illovo.

Developing and managing property funds also falls under the purview of Regiments Real Estate. It currently manages the Gauteng Fund, COJ Fund, and Housing Fund.

1.5 PORTFOLIO AND STRATEGIC INVESTMENTS: OWN BALANCE SHEET INVESTMENTS

In addition to the Financial Advisory, Fund Management and Real Estate businesses, Regiments Capital's Proprietary Investments unit led a broad-based BEE consortium in the acquisition of 12.2% of Capitec Bank Holdings Limited. We previously held a stake in Nedbank through the Eyethu Corporate Scheme and have recently structured an investment into MTN through the MTN Zakhlele BEE scheme. Regiments Capital has also made a number of other strategic investments in the private sector.

2 OUR CREDENTIALS

Regiments Capital operates primarily in the public sector space and caters for the complex needs of local, regional and provincial governments, state owned enterprises, corporations, institutions and entities responsible for infrastructure development.

2.1 FUNDING PLAN PREPARATION AND FUND RAISING CREDENTIALS

City of Johannesburg – Development of Funding Strategy for CoJ's R11bn Medium Term Budget (2009 to Present)

In 2009, Regiments Capital was appointed as funding facilitator for the development of a funding strategy for CoJ's R11 billion medium term budget.

Following approval of the funding strategy, Regiments Capital was appointed to assist the CoJ in implementing the recommendations of the funding plan. Over R2.3 billion of short and long-term debt was raised for their capital expenditure programme.

City of Tshwane – Long term sustainability financial plan
July 2009

In 2009 COT appointed Regiments Capital to assess COT's cash flow and liquidity, analyze revenue sources, identify critical success factors for COT and develop solutions to optimize COT's balance sheet. Regiments capital raised 700 million for COT.

Eskom – Capital raising and issuance of a 500 million Euro bond
(October 2005 – February 2006)

In October 2005, Eskom appointed Regiments Capital as joint lead managers together with Calyon and J.P. Morgan for the capital raising and issuance of a 500 million Euro bond.

Airports Company South Africa – Capital Raising Program (2006-2007)

In 2006, Regiments Capital was appointed by Airports Company South Africa (ACSA) as advisors in their capital restructuring program. A review on SAA's 5 year R21 billion capex and opex programs was then carried out. Appropriate financially modelled balance sheet trigger and target ratio's based on comparative airport analysis were developed together with a 5 year funding plan including spread of financial instruments.

Regiments designed, ran and managed of RFP processes for appointment of a ratings adviser and debt lead managers for SAA and assisted with the registration of R12 billion Domestic Medium Term Note (DMTN) borrowing program (including obtaining shareholder (NDOT) and National Treasury approvals); advised on the setup of a bond redemption fund; and successfully managed the inaugural ACSA R2 billion 12 year bond issues in March 2007.

ACSA – Re-appointment of Regiments Capital in March 2008

Review and update ACSA's Capital Expenditure Programme; requiring the preparation of an optimal funding plan through the modelling of all expected cash flows. Our mandate included assisting in the structure, pricing, placement and redemption planning of debt raised in fulfilment of ACSA's capital expenditure plan. We then reviewed ACSA's current financial risk management framework and executed the funding plan.

Our advisory services made recommendations for ACSA's revised financial risk management framework and placed key human resources at ACSA for the establishment of an optimal treasury, financial risk management and cash management solution. Regiments Capital then updated and reviewed ACSA's 5 year R22 billion funding plan and advised on the issuance of two of its bonds (AIR02 and AIRL01) collectively valued at R1.151 Billion.

Regiments assisted ACSA on the drafting, adjudication and appointment of ACSA's panel of advisors on the DMTN. In order to assist ACSA with the achievement of the proposed funding plan, Regiments Capital negotiated R9bn worth of committed general banking facilities with various local financial institutions having conducted a hybrid feasibility study; originating, structuring and advising on the pricing and quantum for a R1.75bn commercial banking term loan as well as R5bn term loan from various Development Finance Institutions including ECA Funding.

Sovereign Foods – Analysis of the CAPEX plan and development of the funding plan (February 2008 – April 2008)

In February 2008, Sovereign Foods appointed Regiments Capital to perform an analysis of the CAPEX plan and develop a funding plan. Sovereign Foods then engaged Regiments Capital to become the capital raising agent pursuant of the funding plan.

2.2 Treasury Review and Risk Management Credentials

Treasury review, analysis of asset portfolio, and balance sheet restructuring (September 2006 – February 2007)

Regiments Capital performed a treasury review in 2007 involving reviewing the CoJ treasury policies, procedures and processes in line with the MFMA and National Treasury regulations.

Regiments Capital analyzed the asset portfolio for the CoJ and realized R650m from financial asset sales (Note: These financial assets were previously underperforming).

Interest rate risk management: Facilitator of the execution of interest rate swap

Regiments Capital was appointed to assist the CoJ to execute interest rate swap transaction in March this year.

The CoJ had a long term loan of R 1 billion that carried a flexible interest rate linked to 3-month JIBAR. The swap allowed the CoJ to fix the interest rate instead of paying a variable rate that they used to pay in the past.

Liquidity management: Bond redemption fund (Department of Treasury)

Regiments Capital designed a unique asset management solution to provide efficient redemption of all listed debt of CoJ in compliance with the terms of the MFMA. Management of a R5.7 billion (CoJ01, CoJ02, CoJ03, CoJ04, CoJ05 and new retail bond) sinking fund on behalf of CoJ, in line with the unique asset management solution. Regiments reports on the fund's performance on a quarterly basis to the CoJ senior treasury management team and semi-annually to the Asset and Liability Committee (ALCO).

Funding Facilitator (June 2009): Financial risk management

In 2009, Regiments Capital was appointed as funding facilitator in order to identify, measure, manage and report on financial risks within the approved cash management framework. Regiments Capital's key objective was to ensure that the cash resources of the City were utilised optimally and assist in the adequate planning of funding or investment decisions.

City of Tshwane – Treasury review (July 2009)

In 2009, the COT appointed Regiments Capital to assist COT treasury in reviewing and advising on a treasury model for the treasury. The COT treasury is primarily a group risk management and execution service provider, which in the course of its duties services a number of divisions of COT. Regiments Capital is currently making recommendations based on the review. Key risks are being identified, quantified and action plans recommended.

Denel: Identify, assess and measure exposure to foreign exchange risk

Denel appointed Regiments Capital to indentify, assess and measure the company's exposure to foreign exchange risk since a substantial portion of Denel's costs are incurred in Euro or US dollars. A financial analysis of Denel's capital structure was performed together with a Rand/Euro market evaluation. Regiments developed a comprehensive strategy to protect Denel against foreign exchange risk advising on the percentage of exposure to hedge, what instruments to use and how often the strategy needed to be measured and reported.

Financial risk management framework and treasury policy and strategy

Regiments Capital was mandated by the largest state owned enterprise ("SOE") in South Africa to develop a financial risk management framework ("FRMF") that enabled the group to successfully embark on a significant corporate restructuring exercise. The Regiments Capital approach, unlike those of other advisory firms, was a solution driven approach and custom designed to meet the critical needs of the client.

The SOE therefore played an integral role in developing the design of the solution and, most importantly, Regiments Capital made available its diverse exposure to various first world treasury systems for the benefit of the SOE.

The mandate also entailed designing a template for the restructuring of the SOE's entire group treasury division to a world-class treasury in order to tackle the challenges of a rapidly transforming environment. Regiments Capital was actively involved in the implementation of the solution.

Development of an Enterprise Risk Management Framework (ERMF)
(July 2005 – January 2006)

Regiments Capital was mandated by SAA to develop an enterprise wide risk management framework ("ERMF") which mirrored the FRMF to ensure optimal decision making processes across the organisation. The scope of the project ensured that the ERMF process was aligned with the FRMF and the overall strategic objectives as defined in the overall restructuring program of the group.

SASRIA – Development of a business plan for their expansion into Africa
(February 2010 – May 2010)

In February 2010, Sasria appointed Regiments Capital to develop a business plan for their intended expansion of their operations into Africa. It involved market and risk analysis, financial modelling and other aspects of a business plan for each country Sasria intended entering. Regiments also assisted with the submission of the business plan to National Treasury for approval according to section 54 (2) of the PFMA.

2.3 MODELING AND OTHER CREDENTIALS

Nedbank - Assisted with the development of an econometric credit risk index model
(September 2008 – December 2008)

Nedbank appointed Regiments Capital to assist with the development of an econometric credit risk model. The scope of the work consisted of:

- Single Factor Analysis,
- Multi-Factor Analysis,
- Default prediction,
- Development of the portfolio indices,
- Development of the master index,
- A Nedbank-specific forecast of asset-class and aggregated default rates,
- Regression analysis related to the various portfolios, and
- Back testing of the estimated variables.

Development Bank of South Africa (DBSA) – Performed an independent valuation of the assets, used as collateral against its credit exposures (March 2009 – August 2009)

Regiments Capital was appointed by DBSA to perform an independent valuation of all the collateral held by the bank. The scope of the work included:

- Providing an updated, complete and accurate collateral register of all the collateral currently held by DBSA. The register included collaterals from both performing and non-performing loans.
- Establishing a robust and logical approach to value the collateral
- Valuing the assets held as collateral.

Development Bank of Africa – Assisted with the implementation of a Project Finance Risk Rating Tool (October 2008 – February 2009)

Regiments Capital assisted the Development Bank of South Africa ("DBSA") with the implementation of a Project Finance Risk Rating Tool.

The objective of the planned project was to build a rating model for the project finance portfolios, using a cash flow projection and simulation approach while:

- Prioritizing simplicity and flexibility over complexity and avoiding a 'black box' approach
- Tailoring the model to particularities of South African project finance deals (and more generally deals within the SADC region), including special attention to the multinational nature of transactions, and country-related risks including government support and legal systems
- Including standardized cash flow projection models to enhance consistency of credit analysis
- Enabling sensitivity and scenario analysis
- Offering the capability to link into monitoring/early warning processes, in particular the ability to re-rate projects already existing in DBSA's portfolio.

United Bank of Africa (UBA) – Implementation of a Top-Down Pillar II Capital Impact Assessment with Respect to Basel II Regulatory Capital (August 2008 – January 2009)

Regiments Capital assisted the United Bank of Africa Plc ("UBA") with the implementation of a top-down Pillar II capital impact assessment with respect to Basel II regulatory capital.

UBA which is the largest financial services institution in West Africa with a balance sheet size in excess of one trillion Naira and more than six million customer accounts engaged Regiments to assist with meeting both its regulatory and internal risk capital demands.

3 STAFF RESUME

3.1 REGIMENTS CAPITAL

3.1.1 EXECUTIVE DIRECTORS

Name	Litha Nyhonyha
Current position	Executive Chairman
Years of experience	20 years
Home office	Johannesburg
Qualifications	• BCom – University of Cape Town • Qualified CA(SA)
Professional associations	• Member of South African Institute of Chartered Accountants (SAICA)
Language skills	English, Xhosa
Country experience	South Africa
Employment history	• **Regiments Capital** (2004 – current). Together with his existing partners, Litha started Regiments Capital. Litha is also a director of Worldwide, South African Express Airways (a wholly owned subsidiary of Transnet) and chairman of Plessey. He is the immediate past chairman of the University Council of the new North West University formed after the merger of the former Potchefstroom University and the former University of North West. Regiments Capital is the parent company of Regiments Fund Managers which runs the CoJ Debt Redemption (Sinking) Fund. • **Worldwide African Investments** (2001 – 2004). Litha joined Worldwide African Investments to restructure the group and develop its financial services strategy. This lead to Worldwide focusing its financial interests on NBC Holdings, an actuarial consulting and fund administration business. In 2002 Litha was seconded by Worldwide to NBC to stabilise the business and return it to profitability. He successfully established the business but due to disagreement on strategy with the Executive Chairman decided to exit NBC at the same time the majority shareholder, Worldwide was exiting. • **SA Express Airways** (1994 – 2005). Litha was the Founder-Director of SA Express Airways and was also the Chairperson of the Audit Committee. He has served on the SA Express Board for over 10 years. • **Thebe Investment holdings** (1992 – 2001). In 1992 he established Thebe Investment Holdings, the first significant BEE investment holding company in South Africa, with Mr Vusi Khanyile. At Thebe, Litha was responsible for all acquisitions and growing NAV from R100 000 to over R500 million in a few

		years. • **Ernst and Young** (1989 – 1992). After completing his articles in 198 9 he completed his articles of clerkship in Ernest and Y oung. After serving as senior audit manager, Litha moved to the corporate finance department of Ernst & Young until his departure in 1992.
	Experience	• Financial Services Strategy Development • Acquisitions and NAV growth • Senior Audit Manager • Corporate Finance

	Name	Eric Wood
	Current position	Executive Director
	Years of experience	25 years
	Home office	Johannesburg
	Qualifications	• Masters of Management (ENT and NVC), *Cum Laude* (Wits) • Completed Accounting Articles
	Language skills	English, Afrikaans, Spanish
	Country experience	South Africa, Poland, Czech Republic, Hungary
	Employment history	• After completing his accounting articles in 1985, Eri c joined the stock broking firm of **Frankel Kruger Vinderine** as a trainee bond dealer. There he established a bond option operation that grew to become the largest bond option broking business (by volume) in the SA market. • In 1988 **Investec Bank** approached Eric in order to set up a Fixed Income trading business. This business developed into the largest m arket maker of bond options and exotic fixed-income derivatives in SA. Under Er ic's guidance the business was expanded into Equity derivatives trading, Fixed Inco me and Equity structuring and Gold and Kruger-rand trading. Eric was subsequently approached in order to expand Investec's interest rate desk into trading Caps, Floors and Swaptions in RSA and Eastern Europe. Eric was appointed to the I nvestec Group Strategy and Policy committee in 1994. He was instrumental in th e appointment of Investec as official Market Makers for South African Government Debt and served as chairman of the Primary Dealers Association in 1999 and 2000. In addition, Eric was appointed to bond exchange EXCO in 1999 and 2000. • In January 2002 Eric left Investec Bank in order to pursue new business opportunities. He subsequently set up the infrastru cture for a Hedge Fund

		business for **Credit Commerciae (Pty) Ltd** and proceeded to attract capital for the first of their hedge funds. He was involved in the trading and operating of this fund form 2002 to 2004. • In 2004, Eric left Credit Commerciae to jointly found **Regiments Capital**.
	Experience	• Statutory Audit and Advisory • Financial Risk Management and Governance • Foreign and Local Debt Origination • Regulatory Compliance • PFMA and MFMA

	Name	Niven Pillay
	Current position	Director
	Years of experience	23 years
	Home office	Johannesburg
	Qualifications	• BSc (Electrical Engineering/Computer Science). Princeton University. • Bachelor of Public and International Affairs - Princeton University
	Language skills	English
	Country experience	South Africa
	Employment history	• Niven started his career as a management consultant with **Andersen Consulting**. • In 1992, Niven joined **Standard Merchant Bank** to start up the Interest Rate Derivatives business. By 1994, Standard Merchant Bank enjoyed 70% market share in this business. In late 1994, Niven was appointed Director with responsibility for Derivatives. • In June 1995, Niven left SCMB to spend a 4-month stint with **Investec** with responsibility for cross-market structuring. • His next job was with **ABN Amro** where he spent 1 year establishing the trading operation in Johannesburg before being transferred to London to start up the Emerging Markets Derivatives business. • After 3 months, he joined **UBS** in London as Executive Director: Emerging Markets Derivatives. • He started at **Wipcapital** in December 1999 as Executive Director and Head of the Structured Markets Division until he left to join Regiments Capital in 2004. • Niven is currently in the process of setting up **Regiments Capital's** ALCO Risk Management Advisory (primarily to insurers and pension funds) and Fixed

		Income Fund Management business. • Niven is also the preceding Chairman of **Johannesburg City Power**. • Niven is the executive director in charge of the CoJ Debt Redemption (sinking) Fund since inception in 2006.
	Experience	• Consulting • Financial Modelling :It Systems, Interest Rate Derivatives & Cross Market Structuring • Trading • Risk Management Advisory • Debt Redemption (sinking) Fund Specialist.

3.1.2 REGIMENTS FUND MANAGERS: KEY PERSONNEL

Name	Paul Bate
Current position	Investment Strategist
Years of experience	31 years
Home office	Johannesburg
Qualifications	• C.A.I.B (1975) • Diploma in Financial Management (Damelin Management School 1983) • Managerial Finance, Advanced Management Finance, Tax and Management Planning (Wits Business School 1983 – 1985) • Advanced Financial and Banking Management-Wharton Business School, Philadelphia (USA 1985) • Banking and Managerial Finance-Insead International Business School Fontainebleau (France 1989) • Asset and Liability Management – Sungard Financial Systems, Boston (USA 1993)
Language skills	English
Country experience	South Africa, Zimbabwe
Employment history	• **Regiments Capital Pty Ltd (2010 – present).** Senior Fixed Income/Money Market Trader and Fund Manager. Paul has been the Senior Trader on the CoJ Debt Redemption (sinking) Fund since joining Regiments. • **ALM (Asset and Liability Management) consultancy (2003 – 2009).** Commenced offering ALM workshops to banks on the African Continent and conducted in excess of 65 workshops in 14 countries outside of South Africa, including workshops for the International Finance Corporation of the World Bank. In addition workshops were conducted for banks/institutions in South Africa including ABSA, Nedbank, KPMG and Mercantile Bank. Established a relationship with Nedbank to conduct workshops and install ALM risk models in their Africa operations. Risk models were also installed into 5 other banks on the continent, including Bank Windhoek in Namibia. • **African Merchant Bank Ltd (1997 – 2002).** Approached to head up the Money Market Desk at AMB. His responsibilities as Head of Money Markets and Funding included balance sheet management, group funding, liquidity management, statutory requirements, money market trading, Head of Alco Committee, corporate lending and relationships as well as being a member of the Risk Committee. In January of 1999 Paul was seconded to African Bank (a subsidiary of AMB) in charge of the Treasury Division. His duties included risk management, treasury policies and procedures and Alco development. In 2002 Paul was appointed as Treasurer at AMB. Built an ALM risk model which was approved for

		use by Deloitte and Touche and the Reserve Bank. • **Msele Corporate and Merchant Bank Ltd (1995 – 1997)** A start up wholesale treasury operation that culminated in the formation of FBC and thereafter the merged entity with Fidelity Bank Limited. Paul departed before the FBC/Fidelity merger to join African Merchant Bank Ltd. • **Standard Merchant Bank Ltd (1981 - 1995).** Upon relocating to South Africa, Paul joined Standard Merchant Bank as a Manager in the Banking Division responsible for corporate clients. In 1983 he was tasked to establish the Domestic Treasury Trading Desk running 2 corporate asset books. These books grew from start-up of R100m to R3bn at the end of 1995 with a client base in excess of 400. Between 1986 and 1988 his role broadened to asset liability management, product pricing, bank funding and money market trading. In 1990 he was appointed as the Assistant General Manager in the Treasury Division responsible for the running, structure and control of SMB's balance sheet. Following the merger of SMB and the corporate division of SBSA, Paul was appointed as the Director of Funding and Corporate. His portfolio including the funding of the entire Standard Bank Group with an asset base of R65bn. • **Barclays Bank International Ltd (1965 – 1981).** Paul began his career at Barclays Bank Zimbabwe in October of 1965. Following numerous promotions throughout his career at Barclays, Paul departed as an Assistant Branch Manager responsible for 65 Employees. Paul and his family immigrated to South Africa in 1981.
	Experience	• Asset Liability Specialist and ALM Training Expert • Fixed Income and Money Market Trading • Risk Management • Debt Redemption (sinking) Fund Trading Specialist.

	Name	Sybil Kekana
	Current position	Senior Investment Analyst
	Years of experience	13 years
	Home office	Johannesburg
	Qualifications	• Bachelor of Commerce Honours (Finance) Pretoria University • Diploma in Investment Management (Johannesburg University) • Bridging Certificate Theory of Accounting (Johannesburg University)
	Professional association	• Member of the Association of Corporate Treasurers of Southern Africa
	Language skills	English, North Sotho

	Country experience	South Africa
	Employment history	Sybil Kekana started her career at **Standard Bank of Southern Africa** in 1991 as a graduate trainee. She spent two years at the bank before moving to **Rennies Travel** as a Foreign exchange consultant in charge of dealing in foreign exchange sales to leisure and corporate clients. In 1993, Sybil was promoted and moved to the internal audit department of Rennies Travel. She worked as an internal auditor in charge of branch audits. In 1996 she moved to **Price Waterhouse Coppers (PwC)**. She worked with PwC from 1996-2000 as an internal auditor, responsible for manufacturing and public sector audits. Amongst the others her major clients included Medscheme, Land Bank, Hudaco, Department of Housing and Transnet. She gained valuable experience in various systems and processes, legislation compliance and GAAP in practice during her years with PwC. Sybil was in charge of overseeing these audits from inception to audit report stage. Sybil's diligence, attention to detail and meticulous approach to audit assignment contributed to her success in this field. She joined **Standard Corporate and Investment Bank** in 2000 working as a senior manager on the Interest Rate Derivatives Sales and Structuring division where she was responsible for structuring interest rate solutions for a portfolio of clients. Her main job functions included providing pricing on interest rate products such as swaps, options and cross currency interest rate swaps to corporates and parastatal clients. The 5 years spent at Standard Bank was instrumental in shaping her career in the financial market. Apart from executing deals with clients Sybil was instrumental in developing training manuals for graduate trainees at the bank. As part of her development on interest rate sales and structuring she conducted educational seminars involving mechanics of financial markets to corporate and parastatal clients. Sybil joined the **South Africa Post Office** in 2006 as a Treasury Dealer in charge of managing Post Office's R4 billion investment portfolio. She reported to the Post Office Group monthly Asset and Liability Committee on the performance of the portfolio. Sybil project managed the implementation of a treasury management system for the Post Office Group. She is also member of the working committee responsible for Postbank corporatisation scheme. She is an ex-officio member of the Postbank Committee.
	Experience	• Interest rate derivatives sales and structuring • Funds management • Internal Audit • Managing of sinking fund sales and distribution.

	Name	Andrew Daniel Lanyi
	Current position	Portfolio Manager

	Years of experience	10 years
	Home office	Johannesburg
	Qualifications	MSCi Physics, Cambridge University (2002)
	Language skills	English
	Country experience	South Africa, New York, United Kingdom
	Employment history	• **Regiments Capital** (Mar 2012 - Present). Daniel is currently a portfolio manager at Regiments Fund Managers. • **Rand Merchant Bank** (Jun 2010- Oct 2011). Daniel was an Interest Rates and Derivatives Trader • **Royal Bank of Canada** (2008-2009). Daniel was an Interest Rates Trader, specifically trading EMEA Interest Rates (European, Middle East and Africa) Interest Rates. • **HSBC (**2007-2008). Daniel was an Interest Rates Trader, specifically trading Rand/Poland EMEA Interest Rates (European, Middle East and Africa) interest Rates. • **Goldman Sachs** (2002-2006). Daniel was a GT10 EFEX forwards trader, specifically trading the Emerging Markets EFEX spot and forwards, Options (all categories) and EMEA Interest Rates (European, Middle East and Africa).
	Experience	• Interest Rates Trading EFEX spot and forwards • Emerging markets EFEX Trading • Options Trading • EMEA(European, Middle East and Africa) Interest Rate Trading

	Name	Shaun Dunstan
	Current position	Portfolio Manager
	Years of experience	10 years
	Home office	Johannesburg
	Qualifications	• BCom (Finance), University of the Witwatersrand,2001 • SACI Certificate, 2002 • RPE Certificate, 2003
	Language skills	English
	Country experience	South Africa, New York, United Kingdom

	Employment history	• **Regiments Fund Managers** (Mar 2012 - Present). Shaun is currently a portfolio manager at Regiments Fund Managers. • **Standard Bank SA** (Jul 2011 - Feb 2012). Shaun was a head of Bond trading at Standard Bank, managing bond trading book and driving Standard Bank brand awareness locally and offshore. • **Nedbank Capital** (Jun 2009 - Jun 2010). Shaun was a member of Interest Rates Sales and structuring for the asset managers. • **Deutsche Bank** (May 2006 - Jun 2009). Shaun was the Bond Market Maker and Trader, specifically to generate Income and stimulate business development and growth for foreign bond trading between South Africa and United Kingdom market. • **Rand Merchant Bank** (Mar 2003 - May 2006). Shaun started as a trainee and moved across all desks (Money Market, FRA SWAPS FX Commodities and Bond Desk). He was then promoted to the Interest Rate desk in charge of the interest rates desk and the Bond Book primarily to facilitate trades for client services.
	Experience	• Fixed Income trading • FX Trading

	Name	Brett Mahon
	Current position	Fund Manager / Quantitative Analyst
	Years of experience	9 years
	Nationality	South African
	Home office	Johannesburg
	Qualifications	• BSc. Engineering (Electrical), University of the Witwatersrand, 2002 • FSB Registered Persons Exam, RE5, 2010
	Language skills	English
	Country experience	South Africa, Ireland
	Employment history	• **Regiments Fund Managers** (Mar 2011-Current). *Hedge Fund Manager and Quantitative Analyst*. Brett manages the Duality Systems Primary Fund. The fund is a market-neutral quant equity fund. Brett also assists is general system design, research and modelling for the Regiments Group. • **Duality Systems** (Nov 2008-Mar 2011). *Director*. As a director of the business Brett oversaw all aspects of the business and specialised in system design,

	trading strategy design and risk management. Brett also co-authored the systems used throughout t he business. These systems managed all aspects of the fund from live trading, ri sk analytics and back-office profit and loss management • **Coronation Capital** (Oct 2005-July 2008). *Risk Manager.* Major responsibilities involved monitoring and managing group-wide market and credit risk, including risk reporting for the executive board. Reporting and analysis was required for both for the local and offshore (UK and Ireland) br anches of the group. This reporting included Value at Risk, volatility / underlying risk matrices and total market and credit exposure. Brett developed a system running in C#, R (mathematics package), VBA and SQL to achieve these ends. In addition to this, the company ran the *SunGard Front Arena* front-to-back office system. Maintenance and upgrading this system from a functional point of view was his responsibility. • **Comair Limited** (June 2005-October 2005). *Application Development Contractor.* Work included analysis and development of software for the airline. The project included both windows forms applications and web ap plications. This ran on top of a web service layer along with web components. Th ese components formed the basis of the www.kulula.com website. • **MyBeat Interactive** (Jan 2004 – June 2005). *Senior Software Developer.* Brett performed full life-cycle development of various pr oducts and services offered by the company. He was involved in the architecture/de sign phase through development, testing and software maintenance. He wa s also responsible for the database design aspects and performance tuning of the live systems
Experience	• Quantitative Analysis – Statistical Modelling, Monte -Carlo analysis, Time-series analysis. • Software Architecture and Development • Algorithm Design • Project Management, Business Development • Equity analysis and trading • Risk Management – Market and credit risk management a cross asset classes • ALM Risk Management of sinking funds.

Name	Michael Barber
Current position	Fund Manager / Quantitative Analyst
Years of experience	9 years

	Nationality	South African
	Home office	Johannesburg
	Qualifications	BSc Engineering (Electrical), Wits 2002, *Cum Laude*
	Language skills	English
	Country experience	South Africa, United Kingdom
	Employment history	• **Regiments Fund Managers** (Mar 2011 onwards). Michael is currently a hedge fund manager and quantitative analyst at Regiments Fund Managers. He has also worked on exotic derivatives pricing, and software systems design and optimisation for the Regiments group. • **Duality Systems** (Oct 2009 to Mar 2011). Michael was a director and quantitative analyst at the market-neutral equities fund, focusing on trading system development and analysis. His analytical work included the design of the statistical modelling framework used in the business, development of advanced statistical models, cointegration modelling, and other statistical arbitrage work. On the systems side, he handled the design and construction a high-frequency algorithmic trading solution, as well as the analytics infrastructure used for all the live market instrumentation for real-time trading decisions. • **Deutsche Bank, South Africa** (Jul 2007 to Oct 2009). Michael was a quantitative developer responsible for the design and implementation of high frequency statistical arbitrage trading systems in several emerging markets, including South Africa, Brazil and Turkey. Related work included the design and testing of related systems, including low-latency market data feeds, tick data archival and analysis, and statistical analysis. He was also responsible for the deployment and integration of an online pre-trade risk-analytics solution. • **RiskWorX**, including **Rand Merchant Bank** and **Standard Bank** (Sep 2006 to Jul 2007). Michael was employed as a risk analyst and integration engineer. As a risk analyst, he was responsible for developing pricing algorithms for various vanilla and exotic instruments traded by Standard Bank, as well as assisting with the value-at-risk calculations and reporting. As an integration engineer, he was responsible for integration of front-office and risk systems, diagnosis of errors, resilience planning, and system performance optimisation. • **Mintek** (Feb 2003 to Sep 2006). Michael was a senior engineer at Mintek, responsible for designing and building advanced, high-performance online process control systems for the minerals processing industry. His main focus was on AC arc furnace control systems, statistical process control, and several components of system integration and user interfaces.
	Experience	• Statistical modelling • Optimisation and machine learning

		• Advanced software design, development, and integratio n • Derivatives pricing and modelling • Trading strategy development and back-testing • Statistical arbitrage and high frequency trading • Risk analytics • Sinking fund analysis

	Name	Thabo Letlaka
	Current position	Fixed Income Trader
	Years of experience	4 years
	Home office	Johannesburg
	Qualifications	• Post Graduate Diploma in Management (Actuarial Scien ce Conversion) (University of Cape Town (UCT), 2007) • Bachelor of Science (Mathematics and Statistics) (R hodes University, 2004)
	Professional associations	• Actuarial Society of South Africa Student
	Language skills	English, Xhosa
	Country experience	South Africa
	Employment history	• **Regiments Capital Pty (Ltd)** (August 2008 - Current). Thabo joined Regiments Fund Managers as a Risk Associate in the Trading team . He is also working with Health Monitor Company (a company in the Regiments C apital group) working in the HIV/AIDS team modelling the cost impact of HI V/AIDS on entities • **RisCura Solutions Pty (Ltd)** Started in February 2008 and left later that year. Thabo's responsibilities lay in the unitisation tea m. He did reporting and analysis on the performance of the Funds and also h andled other queries that the Fund's trustees required. The second set of res ponsibilities he had, were with the quantitative (quant) research team, where he handled quant queries. • **Momentum Collective Benefits**. 4 Months of Vacation Work as a UCT student. As a university student Thabo Letlaka worked for Mo mentum Collective Benefits as Risk Analyst in the (Premiums) Quotes d ivision, where he analysed the premiums groups of lives for various Sums Assure d. This was on an initial and re-broke basis.
	Experience	• Economic Modelling • VBA Development

		• Sinking Fund Performance Analysis • Healthcare Actuarial Modelling • Fixed Income and Derivative Trading

	Name	Louis Schutte
	Current position	Risk Analyst
	Years of experience	5 years
	Home office	Johannesburg
	Qualifications	• MSc. Quantitative Risk Management – North West University (2005) • BSc. Honours Quantitative Risk Management – North West University (2004) • BSc. Business Mathematics and Informatics – Potchefstroom University (Cum Laude) (2003) • N4, N5, N6 Mechanical Engineering – Potchefstroom Technical College (1999)
	Language skills	English, Afrikaans
	Country experience	South Africa
	Employment history	• **Regiments Capital (August 2008 – current).** Louis joined Regiments Capital as a Risk Analyst in the Financial Risk Advisory unit in August 2008. Louis Managers the Risk process of the CoJ Debt Redemption (sinking) Fund. Since joining Regiments he has been working on a collateral valuation project for a development bank. He also worked on a Basel II project for a Nigerian bank in which Regiments was asked to calculate the overall regulatory capital as per the Basel II accord for the entire banking group. Other projects that he worked on include writing of a business plan for a SOE and loan analysis for the two major municipalities in Gauteng. • **Standard Bank (2007 – 2008).** Louis was part of a project team that conducted a proof of concept project to implement an Integrated Financial and Management Accounting solution for Standard Bank Off-shore Group on three of their products. The solution was part of SAP Bank Analyser. Tasks performed include documentation, customising and testing. He was also assisting in the customising of the SAP Balance Analyser which is part of the SAP Bank Analyser by doing customising, testing and writing of documentation. The system was being implemented for one retail product as the analytical finance solution in a proof of concept project. • **ABSA (2006 – 2007).** Louis undertook creating SAS data sets in preparation for stress testing models to be built, assisting with maintaining and updating the QRM system for market and credit risk and with the population of the Bank Act

		returns 200 series from SAP BW as required by the SARB. He also assisted in implementing the Basel II solution in QRM by making sure that the regulatory capital was being calculated correctly. He performed all the functions relating to the Calculation Process technical setup and configuration based on the Basel II approaches selected by ABSA for Retail and Wholesale lines of business on the SAP Credit Risk Analyser which is part of the SAP Bank Analyser. Louis also assisted in sorting out data issues relating to the Calculation Process of the regulatory capital requirement of ABSA bank for Retail and Wholesale, ran the Calculation Process in the SAP Credit Risk Analyser, analysed the errors and results and reported back to managers on a monthly basis. He re-configured the Credit Risk Analyser in release 5 of SAP and assisted with the population of the Bank Act returns 200 series from SAP BW as required by the SARB. • **ABSA Insurance (2005 – 2005).** Louis managed a small research project as part of M Sc. studies on the insurance cycle, the factors that impact it and how it could potentially be forecasted.
	Experience	• Process Consultant • Quantitative Risk Management • SAP – Bank Analyser: Including configuration of the Credit Risk Analyser • SDL (FDB) • AFI • BW Business Explorer • Risk and Data Analysis Skills using SAS • Risk Dimensions • Enterprise Miner (Data Mining) • S+, R and Matlab programming language • Sinking Fund Risk Specialist

	Name	Tiro Mokoka
	Current position	Business Development Associate
	Years of experience	5 years
	Home office	Johannesburg
	Qualifications	BCom – Business Management (UNISA)
	Language skills	English, Tswana
	Country experience	South Africa, United Kingdom

	Employment history	• **Regiments Capital** (2012-Present). Business Development Associate. Tiro is involved in growing the business. This includes meeting with clients, determining their requirements and communicating these to Regiments in order to build custom solutions. • **Keliana Management** (2008-2008). Marketing and Events Manager. Tiro planned, managed and controlled the marketing campaign for Emoyeni Conference Centre. It was his mandate to manage CRM with clients, and expand the client base. All events at the centre were planned, and executed by him. • **South African Breweries** (2007-2008). Events Co-ordinator. Tiro's duties involved planning, managing and controlling all beer selling opportunities such as beer fests, concerts, fashion shows, golf days and sports days to name a few. He also managed all staff, promotional activities, catering and security for the events. Tiro planned the annual/quarterly/monthly budgets for the events department, and implemented the events strategy for SAB Isando. • **Verpakt services** (2006-2007). Risk and fraud contact agent • **First National Bank** (2005-2005) .Financial sales consultant
	Experience	• Business strategy consultancy • Marketing • Events management • Marketing

	Name	Brian Gritzman
	Current position	Risk Administrator
	Years of experience	4 years
	Home office	Johannesburg
	Qualifications	• BSc(Mathematics and Mathematical Statistics), Wits, 2009
	Language skills	English
	Country experience	South Africa
	Employment history	• **Regiments Capital** (2009 – present). Brian joined the Regiments Fund Managers division as a Risk Analyst. Brian forms part of a team that is responsible for the management of the debt redemption fund. His main responsibilities amongst the others include, overseeing the fund's risk and investment management processes and modelling and developing structured products. He is also part of a team augmenting the current risk system on the existing platform to a new platform developing the functionality on the new risk system. Brian was appointed to

		oversee and manage the migration of COJ's debt redemption fund from the Dibanisa back office to Maitland. • **Regiments Capital** (2008 – 2009). Brian joined Regiments Capital as a Risk Analyst assigned to the Development Bank of South Africa (DBSA) Project undertaken for the Workout and Recovery Unit. In addition, Brian formed part of the Nedbank Credit Risk Index (CRI) Project Team designed to provide the client with a relative risk measure for providing credit to a portfolio exposure.
	Experience	• Risk analysis • Back office administration • Risk administration

3.1.3 REGIMENTS ADVISORY: KEY PERSONNEL

Name	Andile Nyhonyha
Current position	Head of Advisory
Years of experience	16 years
Home office	Johannesburg
Professional qualifications	Bjuris, LLB
Country experience	South Africa
Employment history	Andile started his career in 1994 at Standard Merchant Bank (Treasury Division) in the back office, providing support for the dealing room and compliance with the SARB exchange control regulations. In 1995 at the time when SCMB was merging with some divisions of Standard Bank to form Standard Corporate and Merchant Bank, Andile joined the Corporate Finance department where he was responsible for identifying merger and acquisition opportunities and advising and funding Black Economic Empowerment opportunities. He left SCMB in 1999 and joined Legae Securities as the Executive Director responsible for Corporate Finance. When Legae Securities was sold to Wipcapital in 2000, he founded Wip Treasury Solutions, which he ran as the Chief Executive Officer. In November 2001 Andile was appointed Head of Corporate Finance at Wipcapital. Andile left Wipcapital at the beginning of 2003 to establish Regiments Holdings and Regiments Capital. . Andile left Regiments in 2007 to establish Mfanta Investment Holdings. In November 2010 he rejoined Regiments as Head of Advisory.

Name	Tewodros Gebreselasie
Current position	Senior Economic Advisor / Senior Econometrician
Years of experience	14 years
Nationality	Eritrean
Home office	Johannesburg
Qualifications	• MCOM in Economics (Specialization in Trade & Investment) – University of Pretoria (Jan 2005 - Sep 2006) – Cum Laude • MPhil in International Business Management – University of Pretoria (Jan 2002 - Dec 2003) – Cum Laude • BCom (Honours) in Economics – University of Pretoria (Jan 2004 - Dec 2004) • BCom (Honours) in Business Management – University of Pretoria (Feb 2001 -

		Dec 2001) • B.A. in Business Management – Addis Ababa University (Sep 1989 - Jul 1992)
	Professional associations	• Economic Society of South Africa (ESSA)
	Language skills	English
	Country experience	South Africa, Eritrea, Ethiopia
	Employment history	• **Employment, Growth and Development Initiative, Human Sciences Research Council of South Africa, Pretoria** (Sep 2006 – May 2008). Tewodros conducted rigorous studies on growth, poverty reduction, and unemployment in South Africa. The studies mainly focused at evidence based scenarios for halving unemployment and poverty as part of South Africa's growth path. He also published peer-reviewed academic journal articles and participated in local and international workshops and conferences and was involved in conceptualizing research projects and writing up project proposals for funding. • **Faculty of Law & Department of Economics, University of Pretoria, South Africa** (Mar 2006 – Sep 2006). Tewodros coordinated the LLM (in Trade and Investment law) and MCOM (Economics in Trade and Investment) Trade Programmes. The Programmes were designed to address the shortage of African experts in trade and investment areas who can represent African interest at multinational foras, principally WTO. He also organized the Annual African Trade Moot Competition. • **Pan-African Investment Pty Ltd, Johannesburg** (Mar 2006 – Sept 2006). External Consultant contracting to do financial modelling. Successfully completed to build a robust financial model for a project that cost R400 million (US$ 57 million). Involved in econometric modelling of the contribution of the Tourism sector of South Africa. • **Medstra Business Administrators, Pretoria** (Jan 2005 – Mar 2006). Compiled statistical information on the profile of new and existing clients of BESTMED Medical scheme and assisted the Finance Section. • **Department of Economics, Pretoria** (Jan 2005 – Mar 2006). Part-time Researcher on modelling South African exports to the rest of the World using panel econometrics technique. The modelling work involved all industries at SIC 3 digit classification. • **Commercial Bank of Eritrea, Asmara** (Nov 1998 – Feb 2001). Undertook quantitative and qualitative analysis of credit information and documentation as the Credit Administration Officer. • **Commercial Bank of Ethiopia, Addis Ababa** (May 1994 – Sep 1998). Tewodros was a Relationship Officer who identified the specific needs for banking products of each corporate account customer, while conducting on-going

		financial evaluation and analysis.
	Experience	• Research Specialist on growth, poverty reduction, an d unemployment • Economics - Trade & Investment Specialist • Trade Projects Coordinator (LLM / MCOM / Trade Moot) • Financial and Econometric Modelling • Panel econometrics Technique Modelling (SIC 3 digit c lassification) • Quantitative and Qualitative Credit Analysis

3.1.4 REGIMENTS PROPERTY: KEY PERSONNEL

Name	Umeiya Majam
Current position	Corporate Finance Specialist
Years of experience	15 years
Home office	Johannesburg
Professional qualifications	CA (SA) H Dip Tax Law
Language skills	English
Country experience	South Africa
Employment history	Umeiya brings a wide range of public and private sect or experience to Regiments Capital. After obtaining her primary financial advisory education in Structured Finance at ABSA and Real Africa Durolink, she has b een involved in various domestic and foreign debt and equity capital raising initiatives, merger and acquisition transactions and consulting assignments, primarily through Leverage Finance and Kurisa Finance. Highlights of her career include the restructuring of the property portfolio and divisions of Telkom SA, the corporatisation of the municipal-owned entities of City of Johannesburg, the cross-border merger and acquisition of Gateway Telecommunications across four countries, and the disposal of the non-core businesses of Transnet. Umeiya has also manage d transfers of employees in respect of disposal transactions with Labour Unions, parliamentary and legislative amendment processes as well as inter-governmental bu siness transfers.

Name	Phia van der Spuy
Current position	Property Specialist
Years of experience	15 years
Home office	Johannesburg
Professional qualifications	M Com (International and Local Taxation); CA(SA); B Com Hons (Industrial

		Psychology)
	Country experience	South Africa
	Employment history	Phia has experience in domestic and cross-border vanilla and structured property finance, encompassing the financing of existing property, as well as property developments in the commercial, industrial, retail and housing sectors. She also worked for a property developer as part of the implementation team and was responsible for the funding of its asset book, as well development feasibility studies of prospective development opportunities and actual developments undertaken. Her role also included asset management through the optimisation of assets, including reducing funding and operating costs and increasing income from tenants. She headed business development for a private equity housing fund.

3.1.5 REGIMENTS SECURITIES: KEY PERSONNEL

Name	Thabo Maseko
Current position	Head Fixed Income Sales Trader
Years of experience	12years
Home office	Johannesburg
Professional qualifications	✉ Bachelor of Commerce (Financial Management) (UP) ✉ ACI Institute Dealing Certificate ✉ JSE Traders Certificate ✉ Financial Engineering (UP) ✉ Junior Certificate IFM (SAFEX) ✉ Ordinary Certificate IFM (SAFEX) ✉ Addressing Corporate Needs With Treasury Instruments ✉ Credit Monitoring And Control (IBF*) ✉ Accounting For Treasury And Derivative Products (IBF*) ✉ Identifying And Managing Credit Risk In Derivatives (IBF*) ✉ Credit Monitoring And Control (IBF*) ✉ Introduction to Trade Financing (IBF*) ✉ Effective Relationship Management (IBF*) *IBF Institute of Finance and Banking (Singapore)
Language skills	✉ English, North Sotho, Zulu, Afrikaans
Country experience	South Africa, Singapore
Employment history	✉ Thabo Maseko started his career at African Merchant Bank of in 1999 as a graduate trainee. He spent his time at the bank trading foreign Exchange Spot, Forwards, Currency futures and Currency options on the Rand. ✉ Trainee at Deutsche Bank Singapore and Asia Pacific Head Office. Areas of training, Trade Finance, In-house Consulting, Capital Markets Sales, Corporate Banking sales and Private Banking. The other area was at the Monetary Authority of Singapore (IBF*). ✉ He then co-founded Sakhumnotho Group of Companies responsible for Investment Advisory Services to Corporate clients and internally for the group. His duties also included deal structuring, Capital Raising, Project evaluation and Valuations. ✉ He then moved to Maude Street Securities as Fixed Income Sales Trader for Institutional Sales. Ran a proprietary Trading book of Bonds and bond Options for the company as well. ✉ Later on Joined Legae Securities as both Fixed Income and Equities Sales Trader. Primarily developing trade Ideas, and Trade Forecasting and Research writing

		and distribution. ✉ He then also ran a co-founded a corporate advisory and business planning consultancy firm. Leruo Corporate Consulting. Was responsible also for Capital Raising for small businesses and NGOs.
	Experience	✉ Interest rate derivatives sales and structuring ✉ Forex Trading ✉ Technical Analysis ✉ Corporate Finance ✉ Capital Raising

3.1.6 REGIMENTS CAPITAL PRINCIPAL INVESTMENTS: KEY PERSONNEL

Name	Jonathan Loeb
Current position	Senior Corporate Financier
Years of experience	5 years
Home office	Johannesburg
Professional qualifications	✉ ACMA (Chartered Institute of Management Accountants, UK) ✉ B Com Honours (Finance)
Country experience	South Africa
Employment history	✉ Jonathan is currently a key member of the corporate finance team at Regiments Capital. He is responsible for the analysis, structuring (financial and tax) and implementation of deals both within the group and for clients. ✉ Prior to joining Regiments, he spent two years as the CFO of a small renewable energy business focused on the conversion of waste gases into electricity. His key responsibilities included capital raising, accounting, budgeting, etc. ✉ After his studies, Jonathan worked within the Strategic Finance division of Deloitte Consulting. He worked as an analyst on projects for some of the world's largest mining/resource companies.
Experience	✉ Finance ✉ Capital Raising / Project Finance ✉ Private Equity ✉ Mining/Resources ✉ Renewable Energy

3.1.7 REGIMENTS CAPITAL: KEY OPERATIONS PERSONNEL

Name	Kyansambo Vundla
Current position	Chief Financial Officer
Years of experience	12 years
Home office	Johannesburg
Professional qualifications	✉ CA (SA) ✉ BCom Accounting - Rhodes University (2001) – Earned with distinction ✉ Awarded the Rhodes Honours Scholarship for distinguished achievement in undergraduate studies and ✉ Norman Harris Prize for the top taxation student in the Commerce faculty
Language skills	✉ English, French, Zulu
Country experience	10 Yrs (South Africa) and 2 yrs (United Kingdom)
Employment history	✉ Kyansambo competed her period of articles with BDO Spencer Steward (JHB), during which time she attained her CA (SA) designation. ✉ Then moved to London and worked on the Arbitrage desk as a Product Controller for Credit Suisse First Boston. ✉ Consulting for various Investment firms upon her return and spending a brief time at Teba Bank as a Business Performance Analyst, she then moved to Momentum Group Limited and served as CFO for the Employee Benefits Division for over 3 years before joining Regiments Capital.
Experience	✉ Financial Markets, ✉ Pension Funds Insurance, ✉ Enterprise Risk Management, ✉ Financial Management, and ✉ Management Consulting.
Other responsibilities	✉ Served as an Audit committee member for the Bonitas Medical Aid Fund, ✉ Currently a Non-executive director for the Altx listed Workforce Limited.

	Name	Reyana Sallie
	Current position	Group Legal and Compliance Officer
	Years of experience	10 years
	Home office	Johannesburg
	Qualifications	• Bachelor of Arts (1991) • Bachelor or Laws (1994) • Certificate in Compliance Management (2001) • Advanced Diploma in Banking (2002) • Advanced Company Law (2012)
	Language skills	English, Afrikaans
	Country experience	South Africa, Middle East
	Employment history	• **Regiments Capital** (2011-Present). Reyana was appointed as group legal and compliance officer. • Reyana has been employed in a legal and/or compliance capacity for the last 10 years at a number of reputable international banks including **UBS** (2003-2005), **Barclays Capital** (2005-2006), **ABN AMRO Bank** (2006-2008) and at **Deutsche Bank** (2008-2010) in the Dubai International Financial Centre.
	Experience	• Legal and Compliance • Investment Banking

3.2 REGIMENTS HEALTHCARE: RISK MONITOR GROUP AND M-CARE

Name	Izak J v H Fourie
Gender	Male
Ethnicity	Caucasian
M-Care role	Executive Committee Member: Chairman
Education	• MBChB. Stellenbosch University (1974) • Med (Urology) (cum laude). University of the Orange Free State (1981) • MBA. Graduate School of Business Administration, University of the Witwatersrand (Wits) (1991) • Post Graduate Diploma in Health Management: Economics and Financial Planning (cum laude). University of Cape Town (1995)
Healthcare experience (professional history)	• Urologist in private practice in Durban and Johannesburg (1981 – 1988) • Medical Advisor to the Lesotho Highlands Water Project (1989 – 1992) • Medical Advisor to the Chamber of Mines of South Africa. Responsible for the co-ordination, policy formulation and strategic planning of all healthcare related issues in the mining industry (1990 – 1996) • Extraordinary Professor, Department of Actuarial and Insurance Science, University of Pretoria (1995 – 2003) • Started own healthcare consulting company from which the Risk Monitor Group has evolved (1996 – present)
Additional positions held	• Board Member of the South African Institute for Medical Research (1991 – 1995) • Director of the Rand Mutual Assurance Company Ltd and the Rand Mutual Assurance Life Company Ltd (1994 – 1996) • Member of the Compensation Board (Tripartite advisory body to the Compensation Commissioner and Minister of Labour) (1994 – 1997) • Consultant to the Department of Transport on the Medical Aspects of the proposed new Road Accident Fund Act (1996 – 1999)

Name	Ferdi Preller
Gender	Male
Ethnicity	Caucasian
M-Care role	CEO M-Care ManCo
Education	Accounting, North West University
Professional history	• Lecturer, North West University • Strategic consultant to the petroleum industry
Healthcare experience	• Founder of M-Care • Instrumentally involved in the running of sub-acute facilities over the last 15 years • Founder of iSomi Management Services – provider of administrative services to medical practices • Steering committee member of Board of Healthcare Funders – assisted the BHF in developing standards and criteria for the sub-acute sector • More than 25 years experience in healthcare economics

Name	Sonja Krause
Gender	Female
Ethnicity	Caucasian
M-Care role	Executive Committee Member : Facility Roll-out Project Manager
Education	Bachelor of Business Science (Honours in Marketing, cum laude) – University of Cape Town (2004)
Professional history	TNS Customer Equity Company (2006-2008): Research Executive – Worked as a market researcher, with specific focus on a global brand equity measurement tool – managed projects, compiled reports, provided technical advice and conducted training

		Burlington Consultants (2008-present): Consultant – Worked as a consultant on strategic advisory and implementation projects. Core skills developed include research, analytical skills, communication skills, client relationship management, strategy development, project planning and management
	Healthcare experience	Two extensive projects for two healthcare NGOs focused on: • Business plan development • Strategic planning • Operational reviews, including development of organisational structures, processes and associated roles and responsibilities • Implementation planning Strategy development and project planning for the M-Care rollout

3.3 BURLINGTON MANAGEMENT CONSULTANTS: KEY PERSONNEL

	Name	James Smith
	Date of birth	15 April 1975
	Gender	Male
	Ethnicity	White
	Current position	Director
	Education	• Bachelor of Science Engineering (Chemical) (cum laude) – Wits University (1996)
	Professional experience	**Burlington Strategy Advisors (2004 –current):** Partner and founding Director of Burlington Strategy Advisors (Pty) Ltd **Bain and Company (1998 – 2003**): Consultant with Bain and Company, a leading global strategy house, in their Johannesburg and London offices **Palabora Mining Company (1996 – 1998):** Process engineer and production manager for smelter and refinery operations on the Palabora copper mining operations
	Summary of relevant experience	• 12 years consulting to CEOs and MDs of small, medium and large organisations • 1 year of running own small retail business • 9 years of training, coaching and mentoring experience
	Sector experience	• Agriculture, financial services, government, information technology, manufacturing, non-governmental organisations, resources, retail and wholesale, general services, telecommunications, transportation, FMCG

	Name	Andrew Titterton
	Date of birth	3 September 1971
	Gender	Male
	Ethnicity	White
	Current position	Director
	Education	• Bachelor of Science Engineering (Chemical) (cum Laude) – University of Cape Town
	Professional experience	**Burlington Strategy Advisors (2007 –2009):** Company Director **Northroad Consulting (2003 – 2007):** Company founding partner. Responsible for operations and sales within the consulting environment. **Bain and Company (1997 – 2003):** Progressed from Associate Consultant to Manager at international strategy consultancy. **Anglo American (1994 – 1997):** Technical assistant to Managing Director of Anglo American Research Laboratories.
	Summary of relevant experience	• 14 years consulting to CEOs and MDs of medium and large organisations • 11 years of training, coaching and mentoring experience
	Sector experience	• Agriculture, financial services, FMCG, government, information technology, manufacturing, non-governmental organisations, resources, retail and wholesale, general services, telecommunications, transportation, utilities

Annexure 6

Innocentia Ngubeni

Subject:	Updates and discussion on business opportunities
Location:	G2
Start:	Wed 2012/08/01 16:00
End:	Wed 2012/08/01 17:00
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Tewodros Gebreselasie
Required Attendees:	Eric Wood; salim.essa@issar.co.za
Optional Attendees:	G2 Boardroom

Annexure 7

Innocentia Ngubeni

From: Eric Wood
Sent: Wednesday, 15 August 2012 13:21
To: kuben.moodley@cyclocor.co.za
Cc: Niven Pillay
Subject: Mandates in progress

Hi Kuben
As discussed with Niven, the following mandates are being worked on with yourselves:
Denel: Financial risk management review and implementation
Balance sheet optimisation (including capital and loan structuring)
Security consulting contract (consulting on uav implementation strategy)
Ethekwini: Capital raising mandate for 3 years
Transnet: JV appointment with Mckinsey for program management of capex plan (R300bn capex)
Sanral: Financial risk management (including debt redemption management)
Prassa: Program management of Capex program (share in value creation)



Eric Wood
Executive Director
91 Central Street, Houghton 2198 Postnet Suite 25, Private Bag X11, Birnam Park 2015
Tel: +27 11 715 0300 Direct: +27 11 715 0339 Fax: +27 11 715 0352
Mobile: +27 83 626 0857 E-mail: ericw@regiments.co.za www.regiments.co.za
Regiments Capital (Pty) Ltd is an authorised financial services provides FSP Number 16831 Reg. No. 2004/023761/07

Annexure 8

Innocentia Ngubeni

From: Niven Pillay
Sent: Monday, 20 August 2012 17:42
To: Eric Wood
Subject: Fw: Fwd: Reg
Attachments: Regi.xlsx; ATT00001..txt

Eric, its urgent!

Sent via my BlackBerry from Vodacom - let your email find you!

-----Original Message-----
From: Kuben Moodley <kuben.moodley@cyclocor.co.za>
Date: Mon, 20 Aug 2012 17:21:11
To: nivenp@regiment.co.za<nivenp@regiment.co.za>
Subject: Fwd: Reg

Hi Niven we need this info urgently please
>

> Please see attached and send to N and Eric to populate for us ASAP

	TRANSNET	**Year 1**	**Year 2**
1	**Capex Management with Mkinsey**		
	Retainer Fees		
	Satisfaction Bonus		
	HR Outsourcing		
2	**Transnet Debt Management**		
	Retainer Fees		
	Success Fee		
3	**Transnet 2nd Defined Fund Management**		
	Retainer Fees		
	% of Success over Benchmark		
4	**Mkinsey Management R36 B Loco**		
	Fees		
5	**Mkinsey SWAT Anlaysis**		
	Fees		
	DENEL		
6	**Denel Interest & Forex Management**		
	Fees		
7	**Denel Balance Sheet Optimisation**		
	Retainer Fee		
8	**Denel Hybrid Fund Raising**		
	% of Raise		
9	**Denel Venezuela Project Manager & T/A**		
	Retainer		
	Success Fees		

10 Denel Security Consultants

Transnet UAV Sales
Transnet UAV PM
PRASA UAV Sales
PRASA UAV PM
Agency Sales

DoT

11 DoT Subsidy Management

Retainer Fee
Satisfaction Bonus

12 DoT ICT Hub Transaction Advisor

Retainer Fee

13 Sanral Debt Management

Retainer
Success Fee

14 ACSA Sinking Fund

Retainer
Success Fee

15 PRASA Capex Management

Fees
Satisfcation Bonus

16 RAF Treasury Management

Fees
Satisfaction Bonus

OTHER

17 CINPF R1 Billion Fund Management

Retainer Fees
% of Success over Benchmark

18 Ethekwini

Fees

Success Fee

19 Ekhurheleni

Fees
Success Fees

20 SABC Forex Management

Success Fees

21 Piper Jaffry Forex Swaps

% of Return

Year 3	Year 4	Year 5	Total

Annexure 9

Transnet SOC Ltd
Registration
Number
1990/000900/30

Carlton Centre
150 Commissioner
Str. Johannesburg
2001

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Parkview
South Africa, 2122
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F +27 11 308 1269

TRANSNET

www.transnet.net

MEMORANDUM

To: Brian Molefe
Group Chief Executive

From: Anoj Singh
Chief Financial Officer

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

PURPOSE

1. The purpose of this memorandum is to request approval of the Group Chief Executive for the appointment of the Mckinsey consortium for the complete advisory services and Webber Wenztel 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;

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Annexure A.

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
1. Business Case 5. Experience	99.08%	75.60%	89.42%	N/A
2. Technical Optimisation 5. Experience	63.96%	61.58%	90.74%	N/A
3. Deal Structuring and Financing 5. Experience	61.32%	82.32%	77.44%	N/A
4. Procurement and Legal 5. Experience	59.54%	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 BBEEE scorecard (per category)	PwC JV	McKinsey & Company / Letsema JV#	Webber Wentzel
1. Business Case 5. Experience	68.20%	86.24%	Not evaluated
2. Technical Optimisation 5. Experience	Not evaluated – threshold not met	86.24%	Not evaluated
3. Deal Structuring and Financing 5. Experience	65.51%	86.24%	Not evaluated
4. Procurement and Legal 5. Experience	28.50%*	86.24%	29.60%*

- Scores are the same as McKinsey scored the same for price and BBEE for all categories
* - PWC and Webbers scored 0 (as per RFP) for pricing as they are double the price compared to McKinsey. Scores shown are only for BBBEE

FOF-08-304

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, Kolkanyang, 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 Wenztel. 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 Wenztel – 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.

FOF-08-305

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: 14/9/2012

RECOMMENDED/~~NOT RECOMMENDED~~:

Garry Pita
GM: Integrated Supply Chain Management
Date: 15/9/12

RECOMMENDED/~~NOT RECOMMENDED~~:

Anoj Singh
Chief Financial Officer
Date: 2dec12

APPROVED BY:

Brian Molefe
Group Chief Executive
Date: 22.9.12

FOF-08-306

Annexure 10

Innocentia Ngubeni

From: Eric Wood
Sent: Tuesday, 11 September 2012 19:34
To: salim.essa@issar.co.za
Subject: FW: Project Scoping.xlsx
Attachments: Project Scoping.xlsx

Hi Salim
I have attached the spreadsheet as discussed
Regards
Eric

From: Kgomotso Mogomotsi
Sent: 11 September 2012 03:18 PM
To: Eric Wood
Subject: Project Scoping.xlsx

Project Name	Project description	Projected revenue per annum	Total Revenue	Timeline
TRANSNET				
Capex Management with McKinsey	Establishment of the Project Management Office (PMO) for the management and optimisation of the Transnet R300bn Capex over 4 years.	20 000 000	80 000 000	End Sept
Second defined benefit fund management	Optimisation and management of the asset liability solution for the second defined benefit fund	60 000 000	300 000 000	End November
Locomotive management with McKinsey	Project Management and Optimisation of Transnet's locomotive acquisition and refurbishment programme.	30 000 000	30 000 000	End September
Group SWOT analysis with McKinsey	Perform a SWOT analysis on the entire Transnet business business	30 000 000	30 000 000	End September
DENEL				
Financial Risk Management and Balance sheet optimisation	Analysis and review of the current risk environment and subsequent establishment and managemenent of the risk	15 000 000	15 000 000	Oct-12
Venezuela Project Manager	Project management of $1bn barter transaction on arms for oil and managing the Denels supply contracts and PetroSA oil purchases and management		60 000 000	End November
Security Consultant	Management of Denel's UAV programme and implementation of UAV's into SA SOE's including Transnet and PRASA		60 000 000	End October
DEPARTMENT OF TRANSPORT				
Subsidy Management	Manage the subsidy granted by government as well as subsidy received by provinces in order to ensure full and correct utilisation and implementation of subsidy programme (Programme Management)		40 000 000	End November
ICT Hub Transaction Advisor	Assist the DoT on the implementation of the ICT Hub transaction		40 000 000	End November
SANRAL				
Debt management	Optimal management of Sanral's debt ensuring adequate provision for redemption management and revenue model.		20 000 000	End November
PRASA				
Capex Management	Establishment of the Project Management Office (PMO) for the management and optimisation of the Transnet R300bn Capex over 4 years.	20000000	80 000 000	Feb-13
RAF				
Financial Risk Management	FRM including cash management, liquidity management, debt facilities and interest rate management		20 000 000	End November

Annexure 11

Innocentia Ngubeni

From: Eric Wood
Sent: Tuesday, 26 May 2015 16:42
To: amalahle@gmail.com
Subject: Utility Submission
Attachments: 20150526163818484.pdf

As discussed
Regards

Eric Wood
Executive Director
+27 83 626 0857

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Eskom	SUBMISSION DOCUMENT	Unique Identifier	221-222
		Document Type	OCSDTE
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

EXECUTIVE SUMMARY

SUBMISSION TO EXCO PROCUREMENT SUBCOMMITEE on 7 MAY 2015
SUBMISSION TO BOARD TENDER COMMITTEE on 9 MAY 2015

1. TITLE OF THE SUBMISSION

Strategy to develop the current TOP Engineers programme into an Internal Consulting Unit by driving savings and unlocking cash

2. RESOLUTION REQUIRED

RESOLVED THAT:

2.1 The strategy to develop the TOP Engineers programme into a fully functioning Internal Consulting Unit is hereby approved;
2.2 The appointment of McKinsey and Company ("McKinsey") as the sole partner for the development of the new internal consulting unit is hereby approved;
2.3 McKinsey will be contracted in a manner that is self-funding as this journey will span a 2-3 year time horizon;
2.4 The immediate taking over by McKinsey of the BPP value package on optimisation of Eskom's external spend, currently located within Group Commercial, is hereby approved;
2.5 The development of packages relating to the unlocking of cash by optimising the balance sheet, the unlocking of funding sources through additional financing opportunities and claim management at Medupi, Kusile and Ingula, is hereby approved;
2.6 It is noted that other projects will be added as they are identified and as the programme matures; and
2.7 The Group Executive, Technology and Commercial is hereby authorised, with the power to delegate further, to take all the necessary steps to give effect to the above, including the signing of any agreements, consents or other documentation necessary or related thereto.

3. SUMMARY OF FACTS

3.1 Salient Facts

3.1.1 Eskom annually spends between R2 to 4 billion for external consulting support directly and additionally outsources many tasks that in principle, a significant part should be performed by its own staff complement.

3.1.2 Given Eskom's current financial situation this amount needs to be reduced to an absolute minimum as soon as possible. The manner in which to achieve this target is to build up an internal consultancy unit within Eskom.

3.1.3 It will be essential that this unit has to have the management consulting as well as the professional competence to successfully deliver projects and line function work that Eskom currently seeks external support for.

3.1.4 Eskom has already started to build such an internal consulting unit with the TOP Engineers group over the last 3 years. TOP Engineers are young high potentials within Eskom's organisation that combine a solid engineering background together with a one year management consulting skills training by the global leading consulting firm McKinsey.

3.1.5 To date, 2 cohorts of TOP Engineers, roughly 30 individuals, have graduated from the programme and taken up consulting work within Eskom across all functions.

3.1.6 With their consulting work, the TOP Engineers have generated significant impact. They have designed Eskom's future gas strategy, run various work streams of Eskom's BPP programme and rolled out Eskom's new gold standard for outages execution. Consequently, the TOP Engineers have saved Eskom approximately R 500 Million in external consulting fees.

3.1.7 McKinsey developed the original TOP Engineers Programme and has intellectual property in the design of the programme that Eskom cannot recreate in respect of:

3.1.7.1 Content of class room training programmes;
3.1.7.2 Reverse secondment approach to include Eskom employees as trainees on McKinsey's engagements within Eskom and at other clients;
3.1.7.3 Specific mentorship methodology to fast track development; and
3.1.7.4 Specific evaluation schemes to assess consulting readiness of engineers in training

3.1.8 Additionally, McKinsey is the only leading global consulting firm capable of delivering this world class knowledge in South Africa, bearing in mind the following:

3.1.8.1 McKinsey is the largest global management consulting house;
3.1.8.2 McKinsey has the largest knowledge development spent in the industry;
3.1.8.3 McKinsey is the only global consulting company with a local presence of over 20 years, having transformed to a level 1 B-BBEE contributor

3.1.9 Eskom has completed the majority of its management consulting projects with McKinsey support, giving McKinsey privileged insight into the business, culture, processes, and people of Eskom. This intrinsic insight cannot be offered by any other consultancy.

Based on the aforementioned, it is proposed to develop the TOP Engineers programme into a fully functioning internal consulting unit that can provide world class management consulting services capable to resolving emerging company-wide risks as well as temporarily run critical line functions as the need arises. This will require fundamental transformation of the current engineering focused top talent development programme by

- Expanding the professional background of the internal consultants from engineering to finance, economics and other relevant experience like operations,
- Forming an internal leadership team by transferring senior Eskom talent into the unit and external recruiting,
- Developing a knowledge base capable of storing frameworks, best practice approaches, and benchmark data relevant to all core elements of Eskom's business
- Setting up governance within Eskom that gives the unit responsibility for all external consulting and outsourcing work.
- Adapting the current concept to enable a rapid increase of number of internal consultants to fulfil Eskom's current and future needs.

It is further proposed to contract McKinsey as sole partner for the development of the new internal consulting unit. McKinsey will subcontract other external partners for individual work packages as required.

The development of the internal consulting unit is envisioned to be a 2-3 year journey. During this period McKinsey will lead the internal consulting unit to deliver consulting projects focusing on accelerating efficiencies that can unlock immediate cash for Eskom as well as embedding long term efficiencies.

McKinsey will make all of these projects accessible as training environment for Eskom's new internal consulting unit. McKinsey and its partners will be paid for their consulting services as well as the development of the internal consulting unit out of the impact they generate during these projects and thus be self-funding. Total fee volume will depend on the benefits generated for Eskom.

It is envisaged that the work packages would consist of the modules listed below to be launched simultaneously:

i) **Build an internal consulting unit**;
ii) **Generate cash by improving procurement** across the entire spend base and ensure initiatives are implemented;
iii) **Unlock cash by optimising the balance sheet**;
iv) **Management support of claims at Medupi, Kusile and Ingula**; and
v) **Unlock funding sources** through additional financing opportunities.

McKinsey would be required to define savings and capability-building targets/objectives early in each work package. Capability-building would not be limited to the Top Engineers.

Impact would be measured separately to ensure transparency and close monitoring so that management can decide how to continue. McKinsey would be contracted on a performance basis, where Eskom pays McKinsey's professional fees only if savings are achieved.

It is proposed that to kick-start the process, McKinsey take over the BPP value package on optimization of Eskom's external spend currently with the commercial department and review work underway for securitization of the EFC (Eskom Finance Company).

Other projects will be added as they are identified and as the program matures but will also be on the same fee structure.

3.2 Key assumptions

3.2.1 Setting up the above described unit will be a 2 to 3 year journey. During this period, Eskom will work with McKinsey as its preferred partner for external consulting work to ensure a quick development and broad apprenticeship of the new internal consultants. McKinsey will subcontract other specialist consultancies for selected work packages, where needed.

3.2.2 In order to address Eskom's most immediate and crucial needs, McKinsey and its partners will initially focus on procurement savings as well as short term cash unlocking and equity creation. McKinsey and its partners will be compensated in a way that their impact funds the project work itself, i.e. through procurement savings. Individual agreements on the detailed scope as well as mechanism for compensation will be negotiated for all work packages.

3.2.3 Based on Eskom's historical consulting work this partnership is estimated to have a total volume of roughly R 2 billion over the next 2 years. Of these R 2 billion approx. 75% will depending on the impact of the support McKinsey and its partners rendering to Eskom and will only be payable in case the impact is generated (risk based fee). Eskom's overall external consulting budget should at the same time be reduced by this amount to overcompensate for the internal capability building. The professional fees for McKinsey and its partners will structure as illustrated in the below table. The fees are structured in a way that the majority of the fees is directly linked to the success of the project. Additionally there is a small share of the professional fees linked to initiation fees and expenses that are payable independent of this upfront or on a monthly basis.

Eskom	SUBMISSION DOCUMENT	Unique Identifier	221-222
		Document Type	OCSDTE
		Revision	0
		Review Date	July 2015
		Office of the Company Secretary Department	

	Impact (ZAR bn)		Fees at	Success	Fee (ZAR bn)	
	Min	Max	risk	share	Min	Max
Module procurement (18 - 24 months)						
Base component						
Consulting and initiation fee	-	-	0%		0,050	0,050
Expenses	-	-	0%		0,060	0,100
Success based component						
Success on capex and opex spent (~R 40 bn spent) @8-1	3,2	6,4	100%	10,00%	0,320	0,640
Module claim and counter claim management (24 months)						
Base component						
Consulting and initiation fee	-	-	0%		0,150	0,150
Expenses	-	-	0%		0,060	0,100
Success based component						
Success on capex and opex spent (~R 10 bn claims) @8-1	0,8	1,6	100%	5,00%	0,040	0,080
Module balance sheet optimisation						
Base component						
Consulting and initiation fee	-	-	0%		0,025	0,025
Expenses	-	-	0%		0,008	0,008
Success based component						
Sale of non-core property - agents commision	2,5	2,5	100%	2,00%	0,050	0,050
EFC Mortgage portfolio securitization	4,7	6,6	100%	1,20%	0,056	0,079
Sales of municipalities receivables	4	4,7	100%	2,00%	0,080	0,094
Forward sales of accounts receivable	9	10	100%	2,00%	0,180	0,200
Coal Monetisation*	9	9	100%	2,00%	0,180	0,180
Module "Additional financing"						
Base component						
Consulting and initiation fee	-	-	0%		0,025	0,025
Expenses	-	-	0%		0,008	0,008
Success based component						
Hybrid instruments	10	10	100%	1,20%	0,120	0,120
Discounting NERSA refund	8	8	100%	1,20%	0,096	0,096
Total	51,2	58,8			1,508	2,005
Thereoff fixed fees					0,386	0,466
					26%	*23%*
Thereoff risk based fees					1,122	1,539
					74%	*77%*

* On coal monetiization there will additional fees born by the subsequent SPV of 100 bps

3.3 Financial implications

McKinsey and its partners will be contracted in a manner that is self-funding and directly linked to their impact. This means that the professional fees of McKinsey and it partners can be paid out of the cash in-flow generated by their project work, e.g., procurement savings.

It is anticipated that the positive financial impact of the work of McKinsey and its partners will exceed their professional fees significantly. This means that the net

financial impact of the above proposed development of the internal consulting unit will be positive.

3.4 Human Resource implications

In order to make this programme successful Eskom needs to be willing to commit its young high potentials as well as key senior management resources to the development of the new Internal Consulting Unit. In certain instances, internal resources will not be sufficient to fill all necessary positions and external recruiting of people with specific skills and experience will be necessary (e.g. future leader of internal consulting unit).

3.5 Risks (including Environment, Legal or Contractual risks)

Not applicable.

3.6 Verification by independent party (if applicable)

Not applicable.

4. OTHER APPROVALS REQUIRED

None.

EDWIN MABELANE
GROUP EXECUTIVE: TECHNOLOGY AND COMMERCIAL (Acting)

_____ _____

SIGNATURE **DATE**

Who hereby represents that the above Information is correct.

STRATEGY ENDORSED:

BRIAN MOLEFE
CHIEF EXECUTIVE OFFICER (Acting)

_____ _____

SIGNATURE **DATE**

Annexure 12

Innocentia Ngubeni

From: Salim Essa <salimessa@gmail.com>
Sent: Thursday, 22 October 2015 20:29
To: Eric Wood; Angel, Clive
Subject: Contract
Attachments: [Amend 22.10.15] McKinsey_Eskom_Topps_Performance Based_SLA.docx

SERVICES LEVEL AGREEMENT

Between

Eskom Holdings SOC Limited

And

McKinsey and Company Africa (Proprietary) Limited

Draft 22.10.15

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Draft 22.10.15

1. PREAMBLE

This Service Level Agreement together with any Annexes or ~~Workstream~~Work Package Schedules attached ~~(or which shall, subsequent to the effective date of this Agreement, be attached)~~ hereto (this "**Agreement**") is concluded between:

Commented [BP1]: Eskom governance processes require an approval process for modifications.

McKinsey and Company Africa (Proprietary) Limited, a limited liability company (Registration No. 2013/091251/07) incorporated under the Company laws of the Republic of South Africa and having its principal place of business at 3rd Floor Sandown Mews East, 88 Stella Street, Sandown in the Republic of South Africa (the "contractor");

and

ESKOM HOLDINGS SOC LIMITED (acting through its Group Commercial division), a state owned company (Registration No. 2002/015527/06) incorporated under the Company laws of the Republic of South Africa and having its principal place of business at Megawatt Park, Maxwell Drive, Sunninghill, in the Republic of South Africa (the " employer"),

hereinafter referred to as "Party" or "Parties" as the context requires.

2. DEFINITIONS AND INTERPRETATION

2.1 In this Agreement the following capitalised words and expressions shall have the following meanings and cognate expressions shall have corresponding meanings:

2.1.1 **"Affiliate"** means, in respect of a person, any person which Controls (directly or indirectly) that person and any other person Controlled (directly or indirectly) by such first mentioned person, including, where a person is a company, the ultimate holding company of such person and any holding company of such person and any subsidiary (direct or indirect) of such holding company;

2.1.2 **"AFSA"** means the Arbitration Foundation of Southern Africa or any successor body;

2.1.3 **"Approval"** means any permission, permit, approval, consent, licence, authorization, registration, grant, exemption, acknowledgement or agreement to be obtained from any Competent Authority by either Party under any Law to enable either Party to perform its obligations in accordance with the provisions of this Agreement;

2.1.4 **"Auditors"** means **[*Insert name of auditors*]** appointed by the employer in consultation with the contractor and for purposes of undertaking the roles and responsibilities set forth in Clause 11;

Commented [BP2]: Eskom ANF to confirm if this is to be done internally or independent.

2.1.5 **"Baseline Value"** means, with respect to each Work Package, the amount confirmed as such in each relevant Work Package Schedule and by the Steering Committee pursuant to Clause 6 and "**Baseline**" shall have a corresponding meaning;

Draft 2.10.15

2.1.6 **"Baseline Parameters"** means, with respect to each Work Package, the values confirmed as such in each relevant Work Package Schedule and by the Steering Committee pursuant to Clause 7 as being the thresholds (in relation to a Baseline) which, if breached, may trigger a renegotiation pursuant to Clause 10;

2.1.7 **"Business Day"** means a day, other than a Saturday or a Sunday or an official public holiday in South Africa;

2.1.8 **"Competent Authority"** means the Government or any subdivision thereof and any ministry or governmental, electricity industry regulator or other regulatory department, (body, instrumentality, agency or authority of South Africa or of any subdivision thereof) having jurisdiction over (a) this Agreement, (b) a Party to this Agreement, or (c) any asset or transaction contemplated by this Agreement but excluding Eskom acting in its capacity under this Agreement or any of Eskom's Affiliates;

2.1.9 **"Conditions Precedent"** means the conditions precedent set forth in Clause 3;

2.1.10 **"Contractor"** means any contractors engaged by the [contractor] to undertake any part of the performance and obligations under this Agreement, any other suppliers or contractors appointed by the [contractor] in connection with this Agreement, including any sub-contractors appointed by any person who falls within this definition;

2.1.11 **"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities or any interest carrying voting rights, or to appoint or remove or cause the appointment or removal of any directors (or equivalent officials) or those of its directors (or equivalent officials) holding the majority of the voting rights on its board of directors (or equivalent body), whether by contract or otherwise and **Controlling** and **Controlled** shall be construed accordingly;

2.1.12 **"Deliverables"** means all deliverables furnished by the contractor to the employer in relation to the services;

2.1.13 **"Delta"** means the difference, in monetary value, between the relevant Impact Amount and the relevant Baseline Value.

2.1.14 **"Effective Date"** means the first Business Day following the day upon which all of the Conditions Precedent are fulfilled or waived and the contractor has received a task order in respect of any relevant Work Package and submitted an invoice in respect thereof in relation to the first payment pursuant to Clause 8.1 hereunder;

2.1.15 **"Eskom Initiative Lead"** means, the person indicated as such in any relevant Work Package Schedule hereto;

Draft 2210.1

2.1.16 **"Eskom Work Package Lead"** means, the person indicated as such in any relevant Work Package Schedule hereto;

2.1.17 **"Force Majeure Event"** means, war, riots, civil commotion, natural physical disaster or any circumstances wholly beyond the control of and which are not reasonably foreseen by any of the Parties;

2.1.18 **"Government"** means the Government of the Republic of South Africa as contemplated in The Constitution of the Republic of South Africa, 1996;

2.1.19 **"Guarantee"** means the bank guarantee (substantially in the form attached hereto as Annex G) furnished by the **[*Standard Bank of South Africa Limited*]** as security for the fulfilment of the contractor's obligations pursuant to Clause 8.5 hereunder;

2.1.20 **"Identified Impact Amount"** means, with respect to each, or a combination of, Work Package Initiatives, the amount agreed (pursuant to Clause 6.1) by the Eskom Initiative Lead, Eskom Work Package Lead and McKinsey Supporting Consultant;

2.1.21 **"Impact Amounts"** means, collectively, Identified Impact Amounts, Realised Impact Amounts and Recurring Impact Amounts;

2.1.22 **"Implementation Level"** means each respective "implementation level" as set forth in Annex "A" hereto;

2.1.23 **"Law"** means any constitution, statute, ordinance, treaty, decree, proclamation, by-law, regulation, delegated or subordinated legislation or other legislative measure, as well as the common law and customary law and any judgement, decision, order or rule of any court or tribunal with relevant jurisdiction, in each case having the force of law in South Africa;

2.1.24 **"McKinsey Partner"** means the person indicated as such in any relevant Work Package Schedule attached hereto;

2.1.25 **"McKinsey Supporting Consultant"** means the person indicated as such in any relevant Work Package Schedule attached hereto;

2.1.26 **"Month"** means a period of one calendar month according to the Gregorian calendar, each such period beginning at 00:00 hours on the first day of such calendar month and ending at 24:00 hours on the last day of such calendar month;

2.1.27 **"Payment Triggers"** means the payment triggers indicated as such in each Work Package Schedule attached hereto;

2.1.28 **"Person"** includes a corporation, company, firm, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of any of the foregoing that is recognised by Law as the subject of rights and duties, and references to a "person" (or to a word incorporating a person) shall be construed so as to include that person's

Draft 22 10 15

successors in title and permitted assigns or permitted transferees;

2.1.29 **"PFMA"** means, the Public Finance Management Act No.1 of 1999, as amended from time to time, including all regulations issued in terms of such Act from time to time;

2.1.30 **"Rand or ZAR"** means the lawful currency of South Africa and a **Cent** is a one hundredth (100th) part of a Rand;

2.1.31 **"Realised Impact Amount"** means, with respect to each, or a combination of, Work Package Initiatives, the amount agreed (pursuant to Clause 6.1) by the Eskom Work Package Lead and the McKinsey Partner;

2.1.32 **"Recurring Realised Impact Amount"** means, with respect to each, or a combination of, Work Package Initiatives, the amount agreed (pursuant to Clause 6.1) and calculated by the Eskom Work Package Lead and McKinsey Partner with reference to three years from ~~date of approval by Steering Committee~~the date of such calculation;

2.1.33 **"Steering Committee"** means the steering committee established and constituted pursuant to the provisions of Clause 6 below;

2.1.34 **"Surviving Provisions"** means clauses **[*insert clauses unaffected by conditions precedent*]**;

2.1.35 **"Top Engineer Work Package**" means the Work Package Schedule attached hereto and marked as Annex F;

2.1.36 **"Top Engineer"** means the person indicated as such in any relevant Work Package Schedule attached hereto~~;~~

2.1.37 **"Tracking Tool"** means WAVE® or any other software or other IT solution or tool agreed by the Parties;

2.1.38 **"Work Package"** means, generally, the obligations to be performed by each of the Parties as further set out in any relevant Work Package Schedule;

2.1.39 **"Work Package Initiative"** means each Initiative indicated as such in any relevant Work Package Schedule Attached hereto;

2.1.40 **"Work Package Team"** means, collectively but in relation to each Work Package, the McKinsey Supporting Consultant, the Eskom Initiative Lead, the Eskom Work Package Lead and the McKinsey Partner;

2.2 Unless the context of this Agreement otherwise requires:

2.2.1 The index and headings of Clauses to this Agreement are for convenience only and shall be ignored in construing this Agreement;

Draft 22.10.15

2.2.2 Words importing the singular shall include the plural and vice versa;

2.2.3 Words importing one gender shall include the other gender;

2.2.4 Unless otherwise specified, all references to any time shall be to the time of day in Johannesburg, South Africa and shall be based on the "Standard Time" published by Telkom Limited;

2.2.5 In computation of periods of time from a specified day to a later specified day, "**from**" means from and including and "**until**" or "**to**" means to and including;

2.2.6 When any number of days is prescribed in this Agreement, that number shall be reckoned exclusively of the first and inclusively of the last unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day;

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

2.2.8 Any references to either "Party" or any person shall include its legal successors and permitted assignees;

2.2.9 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail;

2.2.10 The rule of construction that, in the event of ambiguity, an agreement shall be interpreted against the Party responsible for the drafting thereof, shall not apply in the interpretation of this Agreement; and

2.2.11 If any provision in Clause 2 (*Definitions*) is a substantive provision conferring rights or imposing obligations on either Party then, notwithstanding that such provision is contained in such Clause, effect shall be given thereto as if such provision were a substantive provision in the body of this Agreement.

3. CONDITIONS PRECEDENT

3.1 The provisions of this Agreement (other than the Surviving Provisions which shall be unconditional and of immediate force and effect on and with effect from the date of signature of this Agreement), are subject to the fulfilment or waiver of the following Conditions Precedent by **[●]** (the "**Conditions Precedent Fulfilment Date**"):

3.1.1 The Auditors confirming in writing that the Tracking Tool incorporates the necessary controls to allow a reasonable audit of the data thereon pursuant to the terms of this Agreement;

3.1.2 **[*Insert relevant provisions relating to Eskom Governance and sign-off processes*]**;

3.1.3 **[*Steering Committee Terms of Reference*]**

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3.1.4 The employer confirming to the contractor, in writing, that it has secured all approvals and consents required by it in relation to this Agreement from National Treasury and in respect of the PFMA.

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3.2 **[*The Parties*]** shall, use their respective reasonable endeavours to procure the fulfilment of each of the Conditions Precedent by the Conditions Precedent Fulfilment Date.

3.3 The Parties may, by consent, which consent shall not be unreasonably withheld and recorded in writing by no later than the Conditions Precedent Fulfilment Date, waive (unless such condition is incapable of waiver) or extend the period of the fulfilment or waiver of any one or more or part of any of the Conditions Precedent.

3.4 If any Condition Precedent is not fulfilled or waived on or prior to the Conditions Precedent Fulfilment Date or any extended date stipulated pursuant to Clause 3.1, the Surviving Provisions shall continue to be of force or effect, but the remaining provisions of this Agreement shall never become effective.

3.5 If any Condition Precedent is not fulfilled or waived in terms of this Clause 3, neither Party shall have any claim against the other Party as a result of or in connection with any such non-fulfilment or non-waiver (other than a claim for a breach by a Party of any of its obligations under Clause 3.2), and the Parties indemnify each other accordingly.

4. TERM

~~Subject to the fulfilment or waiver of the Conditions Precedent (as applicable), this~~This Agreement shall, unless terminated in accordance with its terms, continue for a period of three (3) years from the Effective Date~~date upon which the contractor receives the first payment pursuant to Clause 8.1 hereunder~~.

5. SERVICES

5.1 The contractor shall provide such services to the employer as may be agreed and further defined in any relevant Work Package Schedules which is, or shall, be attached hereto.

5.2 The employer may amend the scope of works to be rendered under this Agreement, by written consent between the Parties.

5.3 The services shall be governed firstly by the terms and conditions of this Agreement and then by the provisions of such additional Work Package Schedules. Where there is a contradiction between the terms of any Work Package Schedule and the terms of this Agreement, the terms of the relevant ~~Workstream~~Work Package Schedule shall prevail.

Commented [BP3]: To be discussed with Eskom.

5.4 Any additional service(s) shall come into effect on the date agreed by the Parties and accordingly reflected in the respective Work Package Schedule.

6. WORK PACKAGE SCHEDULE PRINCIPLES

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6.1 The Parties agree that the following principles shall be applicable to all Work Package Schedules and the services to be performed thereunder:

6.1.1 Unless otherwise agreed in writing by the employer and the contractor, prior to the commencement of any services under any relevant Work Package Schedule, the Work Package Team shall agree and the Steering Committee shall confirm the following (collectively "**Prerequisites**"):

6.1.1.1 The applicable Baseline Value;

6.1.1.2 The applicable Baseline Value Parameters;

6.1.1.3 The scope of the services to be performed by the contractor (and any material revisions thereto) under the relevant Work Package Schedule and any workplans in respect thereof;

6.1.1.4 The deliverables to be furnished by the contractor to the employer under the relevant Work Package Schedule;

6.1.1.5 The methodology and assumptions to be applied in calculating the, Identified Impact Amount, Realised Impact Amount and/or Recurring Realised Impact Amount;

6.1.1.6 The Work Package Initiatives to be implemented in the performance of the services under the relevant Work Package Schedule;

6.1.1.7 Confirmation from the employer that the performance compact and/or short term incentives for each of its staff members assigned to a Work Package are aligned with the objects of that particular Work Package;

6.1.1.8 Confirmation from the employer that it will furnish the employer with access to all relevant sites, data, contracts, recently completed strategy documents, contract reviews or other commercial information which is necessary for the effective performance of the relevant services;

6.1.1.9 Confirmation that the employer has made financial resources and staff available for the effective performance of the relevant services including:

6.1.1.9.1 an Eskom Work Package Lead who will devote all of his or her time to ensure the effective performance of the relevant services;

6.1.1.9.2 other staff members of the employer, on a part-time basis, who will be responsible for managing critical stakeholder relations;

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6.1.1.9.3 other staff members of the employer jointly agreed with the consultant after a screening and interview process conducted by the employer and the consultant.

6.1.2 The relevant and accountable Executive Committee member of the employer shall also confirm support for the services to be provided under the relevant Work Package Schedule and the employer shall furnish the contractor with a task order in respect of the relevant Work Package prior to commencement of such Services.

6.1.3 During the performance of the services the Work Package Team shall meet regularly (but no less than once a week) to discuss and agree the following:

6.1.3.1 any Identified Impact Amounts;

6.1.3.2 any revised work plans in respect of the scope of the services performed or to be performed.

6.1.4 The employer also agrees to discuss the consequences of the implementation of any Work Package Initiatives with all relevant stakeholders.

6.1.5 The progress of each Work Package Initiative through Implementation Levels 1 (and any corresponding Identified Impact Amount) shall be jointly agreed to by the Eskom Initiative Lead, the Eskom Work Package Lead and the McKinsey Supporting Consultant at least once a month.

6.1.6 The relevant Eskom Work Package Lead and McKinsey Partner shall (at least once a month) jointly agree and confirm the progress of each Work Package Initiative through Implementation Level 2 and any corresponding Identified Impact Amount. All Work Package Initiatives which (as agreed between the relevant Eskom Work Package Lead and McKinsey Partner) have progressed through Implementation Level 2, shall be presented at the next Steering Committee meeting for confirmation by the Steering Committee that the Work Package Initiative should be implemented beyond Implementation Level 2.

6.1.7 Where the Steering Committee has, pursuant to Clause 6.1.6 agreed and confirmed that a Work Package Initiative should be implemented beyond Implementation Level 2:

6.1.7.1; the relevant Eskom Work Package Lead and McKinsey Partner shall (at least once a month) jointly agree and confirm: (i) the progress of such Work Package Initiative through any other applicable Implementation Levels, (ii) the occurrence of any Payment Triggers and; (iii) the corresponding Realised Impact Amount and/or Recurring Realised Impact Amount; and

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6.1.7.2 the Eskom Work Package Lead shall immediately make the agreement and confirmation contemplated in Clause 6.1.7.1 available to the Auditors for their confirmation of the Payment Trigger and the corresponding Realised Impact Amount and/or Recurring Realised Impact Amount; and

6.1.7.3 the Auditors shall, within five (5) Business Days from the date of the confirmation contemplated in Clause 6.1.7.1, confirm the Payment Trigger and the corresponding Realised Impact Amount and/or Recurring Realised Impact Amount. ~~.~~

6.1.8 Notwithstanding the aforegoing, the Eskom ~~Workstream~~Work Package Lead and McKinsey Partner shall have the discretion to jointly decide to present any ~~Workstream~~Work Package Initiatives which have not progressed through Implementation ~~Level 3~~Level 2 to the Steering Committee for approval and/or confirmation or any ~~Realised Impact Amount and/or Recurring Realised Impact Amounts~~Identified Impact Amounts.

6.1.9 The employer shall appoint a Top Engineer to each relevant Work Package and such Top Engineer shall have the following roles and responsibilities:

6.1.9.1 participating in the operation of the proposed internal consultant structure and governance;

6.1.9.2 participating in each respective Work Package Initiative as analyst, consultants and project managers;

6.1.9.3 participating in all skills transfer activities that would include training, coaching and mentorship;

6.1.9.4 participating in the development of each Work Package Schedule;

6.1.9.5 supporting the deliverables and sustainability of all Work Package Initiatives.

6.1.10 In calculating the Identified Impact Amount, Realised Impact Amount and/or Recurring Realised Impact Amount, the relevant Eskom Work Package Lead, McKinsey Partner and the Steering Committee shall:

6.1.10.1 not account for the effects of inflation;

6.1.10.2 adequately account for any relevant costs which are to be incurred in undertaking any relevant initiative proposed under that particular Work Package Schedule;

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6.1.10.3 strictly apply any agreed additional methods and assumptions;

6.1.10.4 attribute value to initiatives which forgo inflationary increases and trend changes where specified in the relevant Work Package Schedule;

6.1.10.5 consider the value of reductions in escalation factors or cost avoidance as Recurring Realised Impact Amounts;

6.1.10.6 ensure that the contractor does not benefit from any double counting in respect of any Impact Amounts;

6.1.10.7 pay strict regard to any relevant results derived by the Tracking Tool in relation to the calculation of any Impact Amounts;

6.1.10.8 not include any contingencies.

7. STEERING COMMITTEE

7.1 [***Detail to be incorporated from TORs but to include: meeting for Work Package approval; Impact Amount approval; Payment Trigger Confirmation; members of the Steerco; resolving audit queries; frequency of meetings; True up determination;*** **]**

7.2 The Steering Committee shall meet at least once a month to **[*insert wording aligned with TORs*]**

7.3 The Steering Committee shall consist of the employer's EXCO members, the employer's Chief Financial Office, other representatives from the employer's finance team, the Eskom Work Package Lead, **[GE]** and the McKinsey Partner.

8. FEES AND PAYMENT

8.1 Subject to the provisions of Clause 10.5 and Clause 14.3, the employer shall make the following mobilisation / initiation payments to the contractor:

Commented [BP4]: To be confirmed prior to finalisation.

8.1.1 In respect of the "Procurement" Work Package (described further in the attached Procurement Work Package Schedule), an amount of Fifty Million Rands (ZAR50,000,000) in six (6) equal monthly instalments with effect from the Effective Date;

8.1.2 In respect of the "Claim Management" Work Package (described further in the attached Claim Management Work Package Schedule), an amount of One Hundred Million Rands (ZAR100,000,000) in six (6) equal monthly instalments with effect from the Effective Date;

8.1.3 In respect of the "Generation" Work Package (described further in the attached Generation Work Package Schedule), an amount of Three Hundred and Forty Million (ZAR340,000,000) in six equal monthly instalments with effect from the Effective Date and apportioned as follows:

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8.1.3.1 Fifty Million Rands (ZAR50,000,000) in respect of any services relating to partial load losses;

8.1.3.2 Two Hundred and Forty Million Rands (ZAR240,000,000) in respect of any services relating to the unplanned capability loss factor;

8.1.3.3 Fifty Million Rands (ZAR50,000,000) in respect of any services relating the "Project Factor" as identified in the Generation Work Package Schedule;

8.1.4 In respect of the "Primary Energy" Work Package (described further in the attached Primary Energy Work Package Schedule), an amount of ~~Fifty~~ Seventy Five Million Rands (~~ZAR50~~ZAR75,000,000) in six (6) equal monthly instalments with effect from the Effective Date;

8.1.5 In respect of any other Work Package (and as described further in any relevant attached Work Package Schedule) an amount agreed between the Parties with reference to the methodology and logic set forth in this Clause 8.1.

8.2 The contractor will invoice the employer for professional services following confirmation of any relevant Identified Impact Amount, Realised Impact Amount or Recurring Realised Impact Amount as contemplated in clause 6.1.7. The parties agree that the amount to be invoiced by the contractor, and which shall be payable by the employer in respective of any Recurring Realised Impact Amounts shall be paid as to: (i) sixty percent (60%) thereof in accordance with clause 8.9 hereunder; (ii) thirty percent (30%) thereof on the first anniversary of the date contemplated in 8.2(i) above; and (iii) the balance thereafter remaining on the second anniversary of the date contemplated in 8.2(i) above.

8.3 Provided that, at the relevant time, the Impact Amounts exceed all amounts received by the contractor pursuant to Clause 8.1 (collectively "**Downpayments**") and Clause 8.2 hereof, the amount payable by the employer to the contractor:

8.3.1 in respect of Work Package Initiatives ~~that have progressed through Implementation Level 3 (and in respect of which the~~where the Realised Impact Amount or Recurring Realised Impact Amount) has been confirmed pursuant to Clause 6.1.7.2, shall be **[●]**% of the relevant Delta in respect of Realised Impact Amounts and **[●]**% of the relevant Delta in respect of Recurring Realised Impact Amounts;

8.3.2 in respect of Work Package Initiatives that have progressed through Implementation Level 2 (but which have not been pursued and/or implemented strictly in accordance with the applicable Work Package Schedule) shall be **[●]**% of the relevant Delta.

less the aggregate of all payments received by the contractor under ~~this clause 8~~Clauses 8.1 and 8.2.

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8.4 For the avoidance of doubt, it is recorded that (at any relevant time) where the Identified Impact Amount does not exceed the payments received by the contractor under Clauses 8.1 and 8.2, the contractor shall not be entitled to any payment in respect of additional professional fees.

8.5 The Parties also agree that where (after a period of twelve (12) months from the Effective Date) the Identified Impact Amount does not exceed the aggregate Downpayments, the contractor shall be liable to pay the employer the extent of any difference and failing such payment, the employer shall be entitled to call on the Guarantee.

8.6 Notwithstanding any other provision in this Agreement and unless otherwise agreed in writing by the Parties, the contractor shall not be entitled to receive any further payment in respect of professional fees where the aggregate of professional fees received from the employer is equal to or exceeds **[*insert Fee Cap Amount*]** (the "**Fee Cap**")

8.7 The contractor shall invoice the employer for any expenses incurred on a monthly basis subject to any guidelines published by the South African National Teasury.

8.8 All amounts invoiced set forth hereunder are exclusive of Value Added Tax.

8.9 Except in relation to invoices calculated with reference to the Delta in respect of Recurring Realised Impact Amounts which shall be payable as set forth in clause 8.2 all invoices are due and payable immediately on presentation.

8.10 Should any invoice remain unpaid for more than thirty (30) days after presentation, interest will accrue on the outstanding amount at the rate of 1% per month, calculated from the thirty first (31st) day after presentation until the date of payment.

9. TRACKING TOOL

Commented [BP5]: Eskom IT to confirm.

[*Incorporate MSO WAVE licensing and access provisions and interface with SAP cost centre / profit centre / project number that is expected to be affected by the impact developed*];

9.1 The contractor shall be responsible for procuring the Tracking Tool and allow access thereto at no cost to the employer.

9.2 In order to ensure the effective implementation of the Parties' respective obligations under this Agreement, the Parties agree to timeously upload all required information and supporting documents onto the Tool which shall be the repository of all data related to, or required under, this Agreement.

10. REVIEW AND RENEGOTIATION

10.1 The Parties shall: (a) in respect of any services having a duration in excess of six (6) months; or (b) in respect of the Agreement in general, jointly review the performance of such services or the Agreement, every six months from the commencement of the performance of the relevant services or the Effective Date, as applicable.

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10.2 Either of the Parties may request, in writing, for any provisions of this Agreement or any relevant Work Package Schedule to be renegotiated where:

10.2.1 the circumstances surrounding the performance of the Parties' obligations hereunder alter materially from those prevailing at the time of signature of this Agreement;

10.2.2 the Baseline Value Parameters are exceeded;

10.2.3 the performance of the obligations of the Parties hereunder have, pursuant to Clause 15, been suspended for a period in excess of forty (40) Business Days.

10.3 The Parties shall, as soon as reasonably practicable after the occurrence of the relevant event, enter into renegotiation discussions where:

10.3.1 the aggregate of all payments received by the contractor from the employer is equal to, or exceeds, the Fee Cap;

10.3.2 none of the services set forth under the Top Engineer Work Package Schedule have commenced within a period of six (6) months from the Effective Date;

10.3 In the event that: (i) any of the events listed in Clause 10.3 occurring or; (ii) either of the Parties should, in accordance with the provisions of Clause 10.2, request that any provisions of this Agreement or the relevant Work Package Schedule be renegotiated, the Parties shall enter into renegotiation discussions within five (5) Business Days from such request, in good faith. Each of the Parties undertake to renegotiate such of the terms and provisions of this Agreement and relevant Work Package Schedule (as applicable) as may be necessary and with a view to ensuring that the performance of their respective obligations under this Agreement remains fair and equitable to each of the Parties.

10.4 In the event that such renegotiation discussions (including any processes contemplated in Clause 26) are not concluded within forty (40) Business Days from the commencement thereof (the "**Renegotiation Conclusion Date**"), the matter shall be referred to dispute resolution in accordance with the provisions of Clause 13.3 and the subsequent provisions of Clause 13.

10.5 In the event that the renegotiation discussions are not concluded by the Renegotiation Conclusion Date, the Parties agree that the contractor shall not be entitled to any further Downpayments ~~subsequent to any~~after receipt of any Downpayment due at the end of the month in which the Renegotiation Conclusion Date occurs.

11. ROLES AND RESPONSIBILITIES OF THE AUDITORS

11.1 The Auditors shall have the following roles and responsibilities:

11.1.1 confirming that the Tracking Tool incorporates the necessary controls to allow a reasonable audit of the data thereon pursuant to the terms of this Agreement;

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11.1.2 confirming the Payment Trigger and any corresponding Realised Impact Amount or Recurring Realised Impact Amount as contemplated in Clause 6.1.7.

12. BREACH

12.1 If either Party (the "**Defaulting Party**") commits a breach of any of the material provisions of this Agreement and fails to remedy such breach within ten (10) days of the other Party (the "**Aggrieved Party**") giving notice in writing to the Defaulting Party requiring the Defaulting Party to remedy such breach, then the Aggrieved Party shall be entitled, without prejudice to any of its rights in law or otherwise, including any right to claim damages, to claim specific performance of the Defaulting Party's obligations or cancel this Agreement on a further twenty (20) days' written notice to that effect.

12.2 For the avoidance of doubt and without limiting the instances in which a breach of this Agreement may be committed by any of the Parties, the Parties agree that the absence of any of the Prerequisites at any time shall constitute a breach of this Agreement.

13. DISPUTE RESOLUTION

13.1 This clause is a separate, divisible agreement from the rest of this Agreement and shall:

13.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility of performance (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this clause. The Parties intend that any such issue shall at all times be and remain subject to dispute resolution in terms of this clause;

13.1.2 remain in effect even if this Agreement terminates or is cancelled.

13.2 In the event that a dispute should arise between the Parties concerning any matter relating to this Agreement or its performance, then both Parties shall enter into negotiations led by any relevant Eskom Work Package Lead and a Partner of the contractor, in good faith, in order to resolve the dispute at hand. The dispute must be submitted in a written format within five (5) days of the dispute arising.

13.3 The dispute must be resolved within five (5) days of it being referred to the Eskom Work Package Lead and Partner of the contractor, failing which, the dispute must be referred to the CFO of the employer and the contractor's South Africa Location Manager with copies of all relevant correspondence and documents made available to each.

13.4 In the event that the CFO of the employer and the contractor's South Africa Location Manager should fail to resolve the dispute within ten (10) days of it being referred to them, the dispute shall be referred to mediation as set out in Clause 13.5 hereunder.

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13.5 If the Parties are unable to agree on a mediator or to resolve any dispute by way of mediation within fourteen (14) days of such dispute being referred to mediation, then the dispute shall be submitted to and decided by arbitration as set out in Clause 13.6 to 13.10 hereunder.

13.6 The Parties shall agree on the arbitrator and if agreement is not reached within fourteen (14) days of any Party calling, in writing, for such agreement, the arbitrator shall be appointed by the Registrar of AFSA for the time being.

13.7 The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which either Party is aware and, if desired, suggesting suitable nominees for appointment as arbitrator.

13.8 The arbitration shall be held in Johannesburg and the Parties shall endeavour to ensure that it is completed within ninety (90) days after notice requiring the claim to be referred to arbitration is given.

13.9 The arbitration shall be governed by the Arbitration Act, 1965 or any replacement Act and shall take place in accordance with the Commercial Arbitration Rules of AFSA.

13.10 The arbitrator need not strictly observe the principles of law and may decide the matters submitted to him according to what he considers equitable in the circumstances.

13.11 Nothing contained in this clause 13 shall prohibit either Party from approaching any court of competent jurisdiction for urgent interim relief pending determination of the dispute hereunder.

14. FORCE MAJEURE

14.1 Neither Party shall be liable for any delay or failure in performing all or any part of this Agreement, to the extent that its performance has been prevented, delayed or hindered due to a Force Majeure Event and that the Party affected by such an event has taken all prudent, reasonable precautions and reasonable alternative measures in order to prevent and to reduce to a minimum and mitigate the effect of any delay caused by such Force Majeure Event and comply with the terms and conditions of this Agreement.

14.2 The Party affected by a Force Majeure Event shall notify the other Party of such an event as soon as possible after the occurrence of the same, and shall provide notice to the other Party of the termination of the relevant Force Majeure Event, as soon as possible following the cessation of such an event.

14.3 In the event that either Party is prevented from carrying out any of its obligations hereunder for a continuous period of fourteen (14) days, this Agreement may, at the other Party's instance, be terminated on the expiry of such fourteen (14) day period provided that the contractor shall remain entitled to eighty four percent (84%) of any Downpayments due at the end of the month during which such termination occurs.

14.4 The contractor shall be entitled during the fourteen (14) day period to make such temporary arrangements as may be necessary to ensure the continuous provision of the services at its premises.

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15. SUSPENSION OF PERFORMANCE

15.1 The Parties' obligations under this Agreement may be suspended by written notice delivered by any Party to the other where:

15.1.1 the employer experiences material leadership changes;

15.1.2 there are material changes in the organisational structure of the employer;

15.1.3 the strategies and plans of the employer are modified materially;

15.1.4 **[*shareholder compact*]**;

15.1.5 the employer's credit rating changes negatively.

15.2 The contractor shall not be entitled to any Downpayments during any period where the Parties' obligations have been suspended as contemplated in this Clause 15.

16. TERMINATION

16.1 The employer may not terminate this Agreement on account of breach thereof by the contractor within a period of twelve (12) months from the Effective Date.

16.2 In addition to any other rights of termination set out in this Agreement, but subject to the provisions of Clause 16.1 above, either Party may terminate this Agreement where at the relevant time, the aggregate of all Downpayments made to the contractor exceed the aggregate of all Identified Impact Amounts.

16.3 Where a Party intends to terminate this Agreement (the "**Terminating Party**"), it must give notice to the other Party specifying the date on which the Terminating Party proposes to terminate the Agreement, which date shall not be less than thirty (30) days after the date of such notice. Upon the occurrence of such date, this Agreement shall terminate unless the Parties have agreed to extend such date.

17. FORMALITIES

The Parties agree that they will do all things and sign all documents necessary to give effect to the terms of this Agreement.

18. WHOLE AGREEMENT

This written agreement and any Work Package Schedules which may be added thereto constitutes the entire agreement between the Parties with respect to the subject matter thereof, and no representation by any of the Parties or their agents, whether made prior or subsequent to the signing of this Agreement shall be binding on any of the Parties unless in writing and signed by the Parties.

19. INDEMNIFICATION

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The Deliverables are not intended as a substitute for financial, investment, legal, accounting or other professional advice, and the contractor does not intend to supplant the employer's management or other decision-making bodies. The contractor remains solely responsible for its decisions, actions, use of the Deliverables and compliance with applicable laws, rules and regulations. The contractor agrees to indemnify and hold the employer harmless from and against all loss, liability, damage, cost, or expense (including reasonable attorney fees) ("Losses") to the extent those Losses are determined by a final, non-appealable order or arbitral award to have resulted from the contractor's gross negligence or willful misconduct in the performance of the services. The employer agrees to indemnify and hold the contractor harmless from any Losses (including the costs of the contractor's professional time) relating to the services (including any Losses asserted by the employer, its agents or representatives, or third parties and any Losses sustained by the contractor when participating in any legal, regulatory, or administrative proceeding relating to the services), except to the extent those Losses are determined by a final, non-appealable order or arbitral award to have resulted from the contractor's gross negligence or willful misconduct in the performance of the services. Neither Party will be liable for any lost profits or other indirect, consequential, incidental, punitive or special damages.

20. USE OF THE CONTRACTORS NAME AND DELIVERABLES

The contractor's work for the employer is confidential and intended for the employer's internal use only. The contractor does not make public client names, client materials or reports prepared for clients without their prior written permission. Similarly, the employer agrees that it will not use the contractor's name, refer to the employer's work, or make the Deliverables or Proposals (including the consultant's fees, expenses and other commercial terms) or the existence or terms of this agreement available outside its organization without the contractor's prior written permission.

21. SERVING COMPETITORS

It is the contractor's long-standing policy to serve competing clients and clients with potentially conflicting interests as well as counter-parties in merger, acquisition and alliance opportunities, and to do so without compromising the contractor's professional responsibility to maintain the confidentiality of client information. Consistent with such practice and the contractor's confidentiality obligations to its other clients, the contractor is not able to advise or consult with the employer about the contractor serving the employer's competitors or other parties. To avoid situations of potential conflict, the contractor will not assign consultants, who are providing the services and who receive Confidential Information, to a competitively sensitive project for a significant period of time (typically one (1) year) following an assignment for the employer.

22. ASSIGNMENT

Neither Party shall be entitled to sell, cede, delegate, assign, transfer or otherwise dispose of (collectively, "Assign") all or any part of its rights and/or obligations hereunder without the prior written approval of the other Party. Any actual, attempted or purported Assignment by either Party of any of its rights or obligations or interests in, under or pursuant to this Agreement that does not comply with this Clause 20 shall be null and void and have no legal force or effect.

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23. CONFIDENTIALITY

23.1 Each Party shall treat any and all information and data disclosed to it by the other Party in connection with this Agreement in any form whatsoever, and this Agreement itself (the **"Confidential Information")** as confidential and proprietary, shall preserve the secrecy of the Confidential Information and shall not use the Confidential Information for any purpose other than solely in connection with this Agreement.

23.2 For the purposes of this Clause 23, the term Confidential Information shall not include information which:

23.2.1 at the time of disclosure or at any time thereafter is in, or becomes part of, the public domain other than through a breach of the provisions of this Agreement; or the Party receiving the information can prove was already known to it or was independently acquired or developed by it without being in breach of its obligations under this Agreement; or

23.2.2 became available to the Party receiving the information from another source in a non-confidential manner otherwise than in breach of an obligation of confidentiality.

23.3 Notwithstanding the provisions of this Clause 23, Confidential Information may be disclosed:

23.3.1 by either Party to any of their respective consultants and advisors, or to any of the shareholders, owners, agents, consultants, contractors, advisers, investors, insurers or lenders of such Party or its affiliates ["**Representatives**"], in each such case who needs to know the Confidential Information for the purpose of carrying out this Agreement (and for no other purpose) provided that:

23.3.1.1 such Party notifies the recipient in advance of such disclosure that the Confidential Information is subject to the non-disclosure restrictions contained in this Clause 23; and

23.3.1.2 such Party shall be responsible for ensuring that the recipient keeps the Confidential Information confidential and shall accordingly be responsible for any failure of the recipient to do so;

23.3.2 by either Party if required by any court, mediator, any arbitrator or administrative tribunal to which the disclosing Party is a party; provided that in these circumstances, the receiving Party shall advise the disclosing Party to take whatever steps it deems necessary to protect its interests in this regard and provided further that the receiving Party will disclose only that portion of the Confidential Information which it is legally required to disclose and the receiving Party will use its reasonable endeavours to protect the confidentiality of such Confidential Information to the greatest extent possible in the circumstances; or

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23.3.3 by either Party if so agreed in writing by the Parties prior to disclosure by the Party disclosing such Confidential Information such agreement not to be unreasonably withheld or delayed.

23.4 All information supplied by or on behalf of a Party shall remain the sole and exclusive property of such Party and this Agreement shall not operate to transfer ownership or any interest whatsoever therein, and the other Party shall, if requested by the Party disclosing the information following termination of this Agreement, promptly return to such Party all documents and any copies, extracts, notes or similar materials containing or based in whole on such information.

23.5 The receiving Party hereby indemnifies the disclosing Party against any loss or damage which the disclosing Party may suffer as a result of a breach of this clause by the receiving Party or its Representatives.

23.6 The disclosing Party may, at any time, and in its sole discretion request the receiving Party to return any material and/or data in whatever form containing, pertaining to or relating to Confidential Information disclosed pursuant to the terms of this Agreement and may, in addition request the receiving Party to furnish a written statement to the effect that, upon such return, the receiving Party has not retained in its possession, or under its control, either directly or indirectly, any such material and/or data.

23.7 Upon termination or expiry of this Agreement, the Parties will deliver to each other or, at each Party's option, destroy or ensure the destruction of all material and/or data in whatever form relating to the Confidential Information disclosed pursuant to the terms of this Agreement and delete, remove or erase or use best efforts to ensure the deletion, erasure or removal from any computer or database or document retrieval system under its or the Representatives' possession or control, all Confidential Information and all documents or files containing or reflecting any Confidential Information, in a manner that makes the deleted, removed or erased data permanently irrecoverable. The receiving Party shall furnish the disclosing Party with a written statement signed by one of its directors or duly authorized senior officers to the effect that all such material has been destroyed.

23.8 The provisions of this Clause 23 shall survive the expiry or termination of this Agreement for a period of five (5) years.

24. GOVERNING LAW

The Agreement will be governed by and construed in accordance with the laws of South Africa.

25. PFMA

The Parties acknowledge that the employer is obliged to comply with the provisions of the PFMA. In light thereof, the Parties acknowledge that the employer will not be required to (and the employer warrants and represents to the contractor that it shall not) take any steps contemplated in this Agreement, including the execution of this Agreement, unless and until it has secured any approvals or consents that may be required in terms of the PFMA.

Draft - T&Cs

26. AMENDMENTS

This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the Parties to this Agreement.

Commented [BP6]: Amendment mechanics to track Eskom internal governance.

27. MISCELLANEOUS

27.1 Each Party acknowledges and agrees that it is entering into this Agreement not in reliance on, and shall have no right of action against the other Party in respect of, any assurance, promise, undertaking, representation or warranty made by the other Party at any time prior to the Effective Date, unless it is expressly set out in this Agreement.

~~26.2 This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the Parties to this Agreement.~~

27.2 Each Party shall bear its own costs in relation to the negotiation and preparation of this Agreement.

27.3 Nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between the Parties, or as constituting either Party as the agent of the other Party for any purpose whatsoever. No Party shall have the authority to bind the other Party or to contract in the name of the other Party or otherwise bind the other Party in any way or for any purpose.

27.4 All Intellectual Property relating to the subject matter of this Agreement conceived, originated, devised, developed or created by either Party, its officers, employees, agents or consultants during the term of this Agreement shall vest in such Party as sole beneficial owner thereof save where the Parties otherwise agree in writing.

27.5 No delay or omission of any Party in exercising any right or remedy provided by Law or under this Agreement shall estop or impair such right or remedy or operate as a waiver thereof. The single or partial exercise of any right or remedy provided by Law or under this Agreement shall not preclude any other or further exercise thereof or the exercise of any other right or remedy.

27.6 The failure of any Party to exercise any contractual right or remedy shall not constitute a waiver thereof.

27.7 No waiver shall be effective unless it is communicated in writing to the other Party.

27.8 No waiver of any right or remedy arising from a breach of contract shall constitute a waiver of any right or remedy arising from any other breach of this Agreement.

27.9 If any provision of this Agreement is declared to be invalid, the other provisions shall not thereby be affected or impaired, shall continue in full force and effect, and the Parties shall seek to agree valid substitute

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provisions which maintain each Party in an equivalent financial position to that intended herein.

27.10 Each notice, instrument, certificate or other document to be given by either Party to the other Party under this Agreement shall be in the English language.

27.11 Neither Party may publicize the contents of this Agreement or its existence without the prior written consent of the other Party first having been received.

27.12 Except as expressly provided under this Agreement, the rights and remedies contained in this Agreement are cumulative and are not exclusive of any other rights or remedies provided by Law or otherwise.

27.13 The Parties intend that terms and conditions of this Agreement shall be solely for the benefit of the Parties and their respective successors, and shall not confer any rights upon any third parties.

27.14 Termination of this Agreement for any cause shall not release a Party from any liability which at the time of termination has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such termination. The provisions of this Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination, notwithstanding that the clauses themselves do not expressly provide for this.

27.15 This Agreement may be executed in any number of identical counterparts, all of which when taken together shall constitute one agreement. Any single counterpart or a set of counterparts taken together which, in either case, the Parties execute shall constitute a full original of this Agreement for all purposes.

27.16 The contractor undertakes that it will not offer, promise to, make or request, directly or indirectly, any payment or gift of money or other things of value or offer directly or indirectly an advantage in any form, to any third party nor exert or utilize any corrupt or any unlawful influence for the purpose of influencing an act or decision for its own benefit or for the benefit of a third party; Further, it shall ensure to impose such anti-corruption measures on its employees, affiliates and agents. Should it not impose such anti-corruption measures on its employees, its affiliates and/ or its agents, then this will result in grounds for material breach with appropriate remedies, which remedies may include termination of this Agreement.

28. NOTICES

28.1 Unless otherwise provided in this Agreement, all notices, requests, statements and other communications required or permitted between the Parties by this Agreement shall be in writing and either hand delivered or sent by pre-paid registered post or facsimile to the address or number within South Africa of the Party concerned set out in Clause ____ or such other address or number as contemplated in Clause _____. No communication shall be effective until received by the addressee and a communication shall be deemed to have been received:

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28.1.1 If delivered by hand during ordinary business hours, to its physical address in Clause ___, when so delivered;

28.1.2 If delivered by pre-paid registered post, to its postal address in Clause __, seven Business Days after posting, subject to proof of posting; and

28.1.3 If delivered by facsimile, upon sending, subject to confirmation of uninterrupted transmission on a transmission report and provided that a hard copy is promptly dispatched to the recipient in the manner provided in Clause ___ or _____.

28.2 The Parties choose the postal and physical addresses and contact details set out below:

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

28.3 The Parties choose the physical address set out opposite their names in Clause _____ as their *domicilium citandi et executandi* for all purposes of and in connection with this Agreement. Notwithstanding anything to the contrary herein, a written legal notice or process actually received by a Party shall be an adequate written notice or process, notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

28.4 Either Party may change its nominated physical or postal address to another physical or postal address, as the case may be, in South Africa (and not in any other country) or its contact details by giving at least 15 (fifteen) days prior written notice to the other Party.

28.5 Each Party agrees to execute, acknowledge and deliver such further instruments, and do all further similar acts as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorised representatives as of the date first written above.

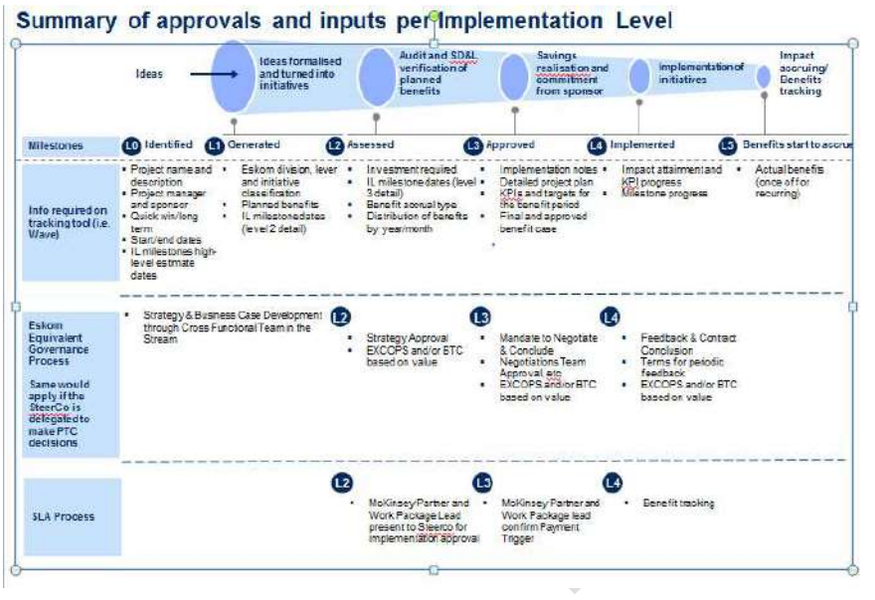
MCKINSEY AND COMPANY AFRICA PROPRIETARY LIMITED
By: _____
Name:
Title:
Date:

ESKOM HOLDINGS SOC LIMITED
By: _____
Name:
Title:
Date:

Draft 22 Nov 15

Annex A

ILLUSTRATION OF IMPLEMENTATION LEVELS



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Annex B

PROCUREMENT WORK PACKAGE SCHEDULE

[*To be updated*]

This memorandum summarises the outcome of negotiation between Eskom and McKinsey & Company on the Procurement value package based on the Master Service Agreement. It is structured as follows:

Scope of work

- Baseline
- Benefits to Eskom
- Payment triggers
- McKinsey role in the negotiation process

Eskom pre-requisites

Benefit calculation for inventory reduction – Articulation of positions still under discussion

Down-payments

Additional steps to be concluded

This memorandum represents the current status of the procurement workstream negotiation as presented in the respective documentation and parts of the MSA tracker. We are happy to take further guidance from Eskom and incorporate changes as they are resulting from the ongoing negotiations.

The negotiation status as presented in this document is subject to further approval and potential refinement by McKinsey's relevant governance committees.

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SCOPE OF WORK

The scope of work for this value package is to deliver rapid bottom line savings and free up cash. As a consequence it will also deal with adapting Eskom's existing structures, resources, tools and skills where necessary to ensure a sustainable implementation. In order to achieve this goal, the work will focus on the following three work streams:

Procurement capability transformation focused on Top Engineers, Commercial managers and sourcing specialists as needed for the project work. The value package will also address structures, systems, processes and tools and where needed determine implementation of improvement measures.

Third party cost reduction by applying a variety of cost reduction techniques including demand-management, specification reduction, re-negotiations, pricing and commercial term measures to Eskom's entire third party spend of R 165 billion in 2014 except for explicitly excluded categories

Inventory management from its current high level of R 13 billion by centralising spare parts and consumable warehousing across the power station fleet and Wires network. All inventory work is conditional to McKinsey and Eskom agreeing on an adequate compensation mechanism for cash flow benefits to Eskom in the MSA

Currently only categories subject to nuclear regulation and containing direct competitors of McKinsey & Company are excluded from the scope.

BASELINE

Eskom's spend data is stored on a number of separate systems and suffers from lack of proper codification. As a consequence, it is therefore difficult to produce an accurate baseline for the value package. In detail the challenges that will have to be addressed within the value package at a later stage are:

Lack of codification and manual input compromises data integrity

SAP standard reports/queries lack key information and therefore require customized queries. For example there is no clear link between vendor/ material group/ material and contract number which makes it difficult to determine total amount spent per material (category)

A significant portion of materials/short text cannot be matched thereby making it difficult to fully determine what was purchased

Off contract spend and cheque requisitions reduce Eskom's ability to determine what its category spend potential volume is

In order to not delay the start of the work package Eskom and McKinsey have agreed to start with a preliminary base line consisting of accounts payable, BPP and purchase order data. Based on this the preliminary list of categories to focus on in the first wave are

Yellow equipment (R 1 billion)

Boiler service (R 3 billion)

Excess inventory (R 1.9 billion)

ICT or diesel procurement (to be decided during baselining)

The above list of categories for wave 1 as well as the estimated size of the categories will be refined in joint workshops held between McKinsey & Company and Eskom in the coming days.

BENEFITS TO ESKOM

The MSA defines general rules about the measurement of benefits to Eskom and the subsequent payment of performance incentives to McKinsey. These also apply to this value package. Specifically the following types of benefits to Eskom have been defined:

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Price reduction per unit in comparison to historical unit price after taking inflation into consideration. Therefore price reduction will be considered as a price below the historical unit price (plus inflation)

Transaction cost reduced and budget adjusted compared to agreed-upon baseline (e.g., processing cost, lead time, logistic/handling costs, storage cost)

Demand reduction resulting into corresponding budget reduction compared to pre-agreed baseline

Optimised supplier payment terms including payment durations (for example, Eskom only having to pay after 90 days instead of 60 days) and cost price adjustment terms

Reduction in overall stock used in comparison to budgeted requirements

Other events leading to measurable benefits for Eskom

In addition the compensation of cash flow benefits to Eskom is still in general under negotiation and needs to be resolved before the inventory work can be started.

Improvement measures that include renegotiation of payment terms need to indicate what terms are being changed and what the expected impact is.

Finally it has been agreed to that measures that are presented to the Steerco for being accepted at implementation level 2 (IL2) should be specific about the respective baseline and the respective remuneration mechanism that translates the financial benefit to Eskom into the impact fee payable to McKinsey.

PAYMENT TRIGGERS

Linked to the above definition of Benefits to Eskom the following payment triggers (as defined by MSA) apply:

Receipt of an indicative (subject to explicit Steercom approval) or binding offer of minimum viable technical solution

Transaction cost reduced and budget adjusted compared to agreed-upon baseline (e.g., processing cost, lead time, logistic/handling costs, storage cost)

Demand reduction resulting into corresponding budget reduction compared to pre-agreed baseline

Supplier agreement to optimised payment terms as approved by the person delegated to effect the contract as well as the finance business partner

Other events leading to measurable benefits for Eskom

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MCKINSEY ROLE IN THE NEGOTIATION PROCESS

McKinsey support Eskom in the pre-negotiation phase through a variety of classroom-based modules, war game simulation exercises and direct coaching.

As discussed during negotiations it will be McKinsey's role to facilitate the negotiation back-office and to not form part of the actual negotiation team facing the supplier/contractors to prevent any conflict situations. In rare occasions Eskom would like to seek McKinsey's support in the negotiation room. In these cases McKinsey will on a case-by-case basis consults its governance committees and support Eskom in case the approval by the respective McKinsey governance committee is granted.

Our typical role during negotiations will therefore be:

Behind the scenes support in negotiation analytics backroom; or

Identification of external negotiators that Eskom can contract with; or

In the room once approved through governance and risk committees

ESKOM PREREQUISITES

Eskom needs to fulfil a couple of important prerequisites to allow for work on the procurement value package to start

Scope

A clear understanding that all spend is in scope except those spend elements explicitly mentioned in writing either during the negotiation phase or in the contract between Eskom and McKinsey

Team

Full support of the GE Commercial and Technology

A clear full time leader for the turnaround effort (GM - Commercial)

Team members should be appointed based on clear role descriptions and interviews (led by McKinsey)

McKinsey leadership will provide feedback to Eskom team members and input into their performance reviews and vice versa

Alignment of performance management (compact) between McKinsey, the stream leads and the line managers; all parties should be measured against the same savings targets

Appropriate Eskom resourcing for all initiatives through:

A full-time GM to lead overall effort and manage stakeholder relations

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- Six experienced commercial managers plus supporting Eskom resources from relevant areas like Generation, Distribution, Transmission, Technology and Finance
- Four senior Eskom Top Consultants (C1 or C2)
- A number of candidates to select five to ten Eskom Top Consultants (C3 Commercial)

Decision making process

Clear willingness across organization to expedite governance process when required to attain opportunities

Ensuring explicit 100% support and leadership from Commercial department and understanding that this is not another initiative but a "transformation turn-around" way of management

Clear ownership from Eskom and willingness to engage key stakeholders if required (e.g., on change of incentive system, enforcing compliance with operating procedures, movement from a BBBEE supplier)

Review meetings

- Fortnightly sessions with overall programme leadership
- Weekly procurement team leadership meeting

Access to data

McKinsey will need access to all data, contracts, CMAX and any other relevant systems including BPP (except where it would provide McKinsey with a competitive advantage)

BENEFIT CALCULATION FOR INVENTORY REDUCTION OR IMPROVEMENT IN WORKING CAPITAL BALANCES – ARTICULATION OF POSITIONS STILL UNDER DISCUSSION

McKinsey position

There is agreement between Eskom and McKinsey on two types of benefits to Eskom when Inventory is reduced

Reduction of Eskom's inventory levels reduces Eskom's financing need and as a consequence its interest payments. This impact is a recurring benefit to Eskom and should be compensated as such

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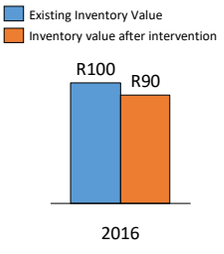
Eskom's inventory balance is currently R100. McKinsey does something and manages to reduce the inventory level to R80. The assumption being that Eskom will thus into perpetuity keep its inventory level at R80. If Eskom's cost of debt is 12% and the discount rate is 10%, then the total annual benefit to Eskom (R20 x 12% = R2.4). Into perpetuity this benefit will be (R2.4/.10)= R24. However in terms of our current MSA recurring benefits are limited to 3 years. Thus total impact is 2.4*3*10.55% = R0.7596.

Sale of obsolete inventory triggers a profit for Eskom on an item that would have been a write down otherwise. This is profit a one-time benefit to Eskom and should be compensated as such



Eskom's inventory balance is currently R100. R10 worth of inventory is actually obsolete and Mckinsey identifies this and sells this inventory in terms of a value package. The inventory balance therefore now drops to R90. Let's also assume that we could only get R5 for the sale of the inventory worth R10 (because its obsolete). In this example, McKinsey earns (R5 X 10.8%) = R0.54. This is assuming Mckinsey's onetime benefit proposal. On a self-funding principle, the accounting loss to Eskom should have been 10. We reduced this loss with (10-5+0.54).

Over and above these two benefits it is McKinsey's position that given the current cash constrains within Eskom, sustained reduction of Eskom's inventory levels through own consumption hold significant value to Eskom. In detail McKinsey argues along the following case example

Eskom is currently up to R 30 billion short of cash in this financial year

Out of this roughly R 6 billion come from additional money required to complete planned outages

If inventory can be redirected towards completing these outages and by that reducing the additional cash shortage of Eskom, it helps avoid a potential down grading of the company with significant implications on overall financing cost and borrowing capability – or even further, Eskom losing the status of a going concern

McKinsey therefore proposes to be compensated for the reduction of inventory by Eskom consumption. This is unlocking short-term cash as described above in line with other one time benefits, like direct cost savings. McKinsey suggests to be compensated for this inventory reduction as a one-time effect applying the compensation method as described in the Master Service Agreement (MSA). This comes in addition to the interest savings as described above.

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Eskom position

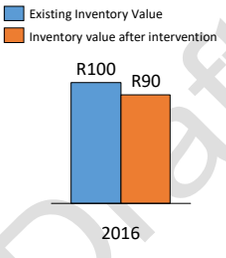
There is agreement between Eskom and McKinsey on two types of benefits to Eskom when Inventory is reduced or where there is improvement in the "working capital" of Eskom

Reduction of Eskom's inventory levels reduces Eskom's working capital and financing needs and as a consequence its interest payments. This saving on the interest impact is a recurring benefit to Eskom and should be compensated as such in line with the MSA for recurring benefits which is limited to 3 years. Similarly, an improvement in payment terms of suppliers from 30 to 60 days would also be accounted as reflected above but the impact would only be once off. E.g.



Eskom's inventory balance is currently R100. McKinsey does something and manages to reduce the inventory level to R80. The assumption being that Eskom will thus into perpetuity keep its inventory level at R80. If Eskom's cost of debt is 12% and the discount rate is 10%, then the total annual benefit to Eskom (R20 x 12% = R2.4). Into perpetuity this benefit will be (R2.4/.10)= R24. However in terms of our current MSA recurring benefits are limited to 3 years. Thus total impact is 2.4*3*10.55% = R0.7596.

Sale of obsolete inventory triggers a profit for Eskom (or reduction of a loss) on an item that would have been a write down otherwise. Thus the identification and sale of obsolete inventory should be compensated at the selling price of the inventory in line with the terms agreed per the MSA. E.g.



Eskom's inventory balance is currently R100. R10 worth of inventory is actually obsolete and Mckinsey identifies this and sells this inventory in terms of a value package. The inventory balance therefore now drops to R90. Let's also assume that we could only get R5 for the sale of the inventory worth R10 (because its obsolete). In this example, McKinsey earns (R5 X 10.8%) = R0.54. This is assuming Mckinsey's onetime benefit proposal. On a self-funding principle, the accounting loss to Eskom should have been 10. We reduced this loss with (10-5+0.54).

Over and above these two benefits for the improvement in Eskom's "working capital" position, Eskom does not see further benefits accruing.

DOWN-PAYMENTS

Eskom and McKinsey agree to down-payments of R50 million over a period of 6 months. Where, at any relevant time, aggregate instalments are less than the net benefits then McKinsey is not entitled to any subsequent down-payments until such a time this reverses within the down-payment period.

Draft 22 July

Annex C

PRIMARY ENERGY WORK PACKAGE SCHEDULE

[*To be updated*]

This memorandum summarises the outcome of negotiation between Eskom and McKinsey & Company on the Primary Energy value package based on the Master Service Agreement. It is structured as follows:

Scope of work

- Baseline
- Benefits to Eskom
- Payment triggers
- McKinsey role in the contract negotiation process (e.g., coal, logistics, etc.)

Eskom pre-requisites

Benefit calculation for coal stockyard reduction – Articulation of positions still under discussion

Down payment

Additional steps to be concluded

This memorandum represents the current status of the Primary Energy workstream negotiation as presented in the respective documentation and parts of the MSA tracker. We are happy to take further guidance from Eskom and incorporate changes as they are resulting from the ongoing negotiations.

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SCOPE OF WORK

The objective of this value package is to reduce coal costs. The scope will be conducted on a contract by contract level on a R/ton or R/GJ basis depending on the underlying contract. In addition, the work will aim to deliver a reduction in Eskom's capital costs per project and working capital related to coal with a net positive impact on Eskom's financial and technical performance and Generation performance (related to coal load losses). As a consequence it will also deal with adapting Eskom's existing coal contracting approach where necessary to ensure sustainable implementation. In order to achieve this goal, the work will focus on the following three work streams:

Cost-plus and Fixed price contracts focused on increasing value from Eskom's current long term contracts through improved volumes within a manageable cost trajectory. The value package will also take a Total Cost of Ownership approach to understand the overall opportunity (including coal price, transport, handling and quality specifications). The package will also consider the conversion of cost-plus contracts to fixed price contracts on a contract by contract basis, based on NPV comparisons

Short/Medium term contract and logistics optimisation that will focus on optimising current short and medium term contract prices and volumes by taking a total cost of ownership approach across the value chain applying a variety of contracting and technical levers to improve overall TCO (including coal price, transport, handling and quality specifications)

Critical bleeding topics will focus on immediately launching efforts (or integrating into existing efforts) to resolve the current coal issues that are negatively impacting Eskom's financial situation and operations. These include topics such as the Medupi coal penalty, Arnot overall coal supply situation, the Hendrina coal contract with Optimum, the Kusile limestone problem etc. This value package will focus on immediately reducing the bleed from these issues and reducing the expected cost impact on Eskom's income statement as agreed on a case by case basis.

Strategic Topics will focus on jointly developing a roadmap for the next 3 years that should enable PED to comply with the overall Design-to-Cost strategy. This roadmap will include a high-level set of hypothesis-driven business imperatives/principles, supply plan, savings & volume mix targets per station, hypotheses top-down levers & time-horizons on when this is anticipated to be achieved. McKinsey agrees to develop the top-down roadmap, as stated above, within the first 3-months of starting work in PED, and also agrees to further develop the detailed bottom-up PED business strategy (should it be required) after 12 months if R300 million in savings is achieved. This will be at no extra cost to Eskom.

Currently all non-coal Primary Energy categories are directly excluded, except those that impact the coal TCO (e.g., fuel oil, limestone).

BASELINE

The coal baseline will comprise of the following key elements which are regarded as a guideline and is not exhaustive

- For cost plus contracts

  The baseline should be developed on a R/ton; total cost (Rm); and volume (Mtpa) basis. The baseline is tied back to the historical cost development. However by doing this there is always created a link to the corporate plan and the assumptions/developments that caused the delta between the two. Based on this information and potential future projections/assumptions (based on committed mine budgets or approved mine plans) a baseline is derived on a case-by-case basis.

  The Total Cost of Ownership approach is taken as a principle

For existing fixed price and short/medium term contracts

In case of existing fixed priced and short medium term contracts the existing base prices, volume, quality, tenure and the basket of weighted indices that comprised the historic price development

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For new contracts

In case of new contracts, set baseline based on the lowest technically acceptable delivered offer of the initial round of bids from suppliers based on an RFP process

Eskom has the right to exclude McKinsey from any contract negotiations if Eskom feels that the McKinsey value-add does not justify the potential fees-payable. In cases where McKinsey is requested to support a negotiating team, a "joint-spirit" approach will be used, and the lowest technically acceptable delivered offer of the initial round of bids from suppliers based on an RFP process will be used as the baseline, without any modification for historical negotiation performance.

If the lowest technically acceptable offer falls outside an acceptable pre-defined market-price tolerance, a case-by-case resolution will be agreed-upon by Eskom and McKinsey to reset the baseline to an agreed level (eg, reset to Export parity price.)

When determining the baseline where the lowest offer received does not satisfy the complete RFP volume requirement (eg, 30% of volumes required), Then each of the lowest RFP offers making up the total volume will be used as a baseline e.g. 1st offer making 30% of volume will be baseline for that negotiation, then the next-lowest offer that is within the volume requirement will form the next baseline for negotiation. This process repeats until the full RFP volume requirement is met.

On working capital

The revised BPP level working capital (stockpile target levels) by power plant

On logistics

Logistics costs by mode and plant over last 5 years (potential base dependent on package) e.g. value package looking at revising rail rates

The baseline for logistics optimisation within existing contracts is Eskom PED's coal logistic model and the supply plan (including volume allocation, logistic modes, coal prices and logistic prices) from which transport contractors are paid on. Since the supply plan changes on monthly basis the baseline should be linked to a certain validity period.

Rates are based on historical rates; volumes are based on the supply plan going forward

In case of new road delivered contracts, set baseline based on the lowest technically acceptable delivered offer of the initial round of bids from road transport suppliers based on an RFP process and/or current logistics rates model.

In case of new rail delivered contracts or mode changes, set baseline based on the lowest technically acceptable delivered offer of the initial round

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of bids from (Road transport, siding operators, coal handling) suppliers and Transnet based on an RFP process or sole source proposal (Transnet is a monopoly)

On quality

Historical delivered qualities and contractual quality specifications by power plant (incl. quality driven load losses)

Any existing coal quality improvement projects (at the mines) that are already in the process of implementation as well as planned quality improvement projects.

Historical and future (Corporate plan or other measure) of station heat rates, cv's and burn rates, and coal-related OCLF

Revised "240" coal quality specification which is the current coal quality specification requirements of the Generation fleet.

In order to agree on the exact baseline figures for each of the above, it would be important for Eskom and McKinsey to develop the baseline ahead of the work starting. This can be done by Eskom PED providing McKinsey with the relevant coal financial data by power plant in order to develop a first draft of the baseline to be signed off with PED. The baseline can also be used to identify the priority contracts and stations to begin work at.

The bleeding topics stream will already begin immediately and its benefits will start fund the base lining effort

BENEFITS TO ESKOM

The MSA defines general rules about the measurement of benefits to Eskom and the subsequent payment of performance incentives to McKinsey. These also apply to this value package. Specifically the following types of benefits to Eskom have been defined:

Reduction in escalation of coal prices on a per ton basis by contract relative to agreed baseline.

Transaction cost reduced and budget adjusted compared to agreed-upon baseline (e.g., logistic/handling costs, storage cost)

Reductions in coal-related load losses due to improved delivered quality

Reduction in overall coal stock levels without risk to Eskom security of energy supply

Optimised supplier payment terms including payment durations (for example, Eskom only having to pay after 90 days instead of 60 days) and cost price adjustment terms

Reduction in capital spend on cost-plus mines (relative to the baseline definition)

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Quality: Improved quality requirement leading to lower total cost without negatively impacting generation performance, or improvements in coal-related OCLF

Reduction in logistics cost (e.g., lower rates, optimised coal dispatch, operational logistics excellence)

In addition, the compensation of cash flow benefits (working capital) to Eskom is still in general under negotiation and needs to be resolved before the stockpile work can be started.

Finally it has been agreed to that measures that are presented to the Steerco for being accepted at implementation level 2 (IL2) should be specific about the respective baseline and the respective remuneration mechanism that translates the financial benefit to Eskom into the impact fee payable to McKinsey. The measures need to be signed off by the McKinsey, the Eskom implementation owner, Finance business Partner and the area (cost centre owner and profit centre owner) where impact will be realized and budgets adjusted.

PAYMENT TRIGGERS

Linked to the above definition of Benefits to Eskom the following payment triggers (as defined by MSA) apply:

Binding term sheet received from supplier (subject to explicit Steercom approval)

Transaction cost reduced and budget adjusted compared to agreed-upon baseline (e.g., logistic/handling costs, storage cost)

Coal specification approved by steerco, relevant Gx representative (e.g., PSM) and Group Technology

Capital approved by the respective Governance body and agreed to by the mine. (Capital project-based value packages/initiatives will only be considered for payment if the capital project is, at a minimum, at an ERA stage)

For offers with outstanding technical approvals (water-use licences, mining rights, EMPR, quality certificate outstanding, safety systems outstanding, non-conformance to Department Of Energy's codes of good practice, PFMA approval required, or any other external hindrance that could render the mine unable to produce the offered coal) Eskom & McKinsey can apply for exemption on a case-by-case basis at Steerco only if an evidence base to justify that the outstanding approvals will be attained at a future date, within a mutually agreed confidence level

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MCKINSEY ROLE IN THE NEGOTIATION PROCESS

McKinsey support Eskom in the pre-negotiation phase through a variety of classroom-based modules, war game simulation exercises and direct coaching.

As discussed during negotiations it will be McKinsey's role to facilitate the negotiation back-office and to not form part of the actual negotiation team facing the coal supplier/contractors to prevent any conflict situations. In rare occasions Eskom would like to seek McKinsey's support in the negotiation room. In these cases McKinsey will on a case-by-case basis consult its governance committees and support Eskom in case the approval by the respective McKinsey governance committee is granted.

Our typical role during negotiations will therefore be:

Behind the scenes support in negotiation analytics backroom (e.g., coal pricing scenarios, bottom-up costing, negotiation strategy); or

Identification of external negotiators that Eskom can contract with; or

In the room once approved through governance and risk committees

ESKOM PREREQUISITES

Eskom needs to fulfil a couple of important prerequisites to allow for work on the Primary Energy value package to start

Team

Full support of the GE Commercial and SGM Primary Energy

A clear leader for the turnaround effort (e.g., SGM – Primary Energy; to be determined by Eskom)

Team members should be appointed based on clear role descriptions and interviews (led by McKinsey and Eskom leader)

McKinsey leadership provides feedback to Eskom team members and input into performance reviews and the other way around

Since this project is a full risk based project it is at McKinsey sole discretion to decide the quantity and qualification of resources deployed to the project

Alignment of performance management (compact) between McKinsey, the stream leads and the line managers; all parties should be measured against the same savings and volume targets

Appropriate Eskom resourcing for each module and its work streams

- A full-time senior manager leading the programme and manage stakeholder relations
- Four experienced PED managers plus supporting Eskom resources from relevant areas like Gx, Technology, Finance and Legal

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Four senior Eskom Top Engineers (C1 or C2)

A number of candidates (as possible from Primary Energy) to join Eskom Top programme

Decision making process

Clear willingness across organization to expedite governance process when required to capture opportunities

Explicit 100% support and leadership from PED department and understanding that this is not another initiative but a new way of coal management – Eskom will change how it contracts coal and manages costs

Clear ownership from Eskom and willingness to engage key stakeholders if required (e.g., on change of incentive system, enforcing compliance with operating procedures, movement from a BBBEE or Junior coal miner)

Willingness to develop clear plan on cost-plus mines based on robust business cases (e.g., convert to Fixed price vs. improve operations vs. enforce contract terms)

Review meetings

Fortnightly sessions with overall programme leadership

Weekly PED team leadership meeting

Access to data

Internal perspective on operational performance, cost drivers & Capex allocation for cost plus mines and S/M1 mines (including access to all contracts and data owned by Eskom) subject to all Non-disclosure agreements signed.

Willingness to pursue access to data not owned by Eskom (e.g., mine operational data on site)

Eskom stakeholder engagement and decisions

- Willingness to engage cost-plus mines for access for operational diagnostics and willingness to drive turnaround
- Willingness to obtain Transnet support in building rail infrastructure where applicable
- Willingness to take to steerco any opportunities/contracts that may be outside current Eskom standards – technical and transformational

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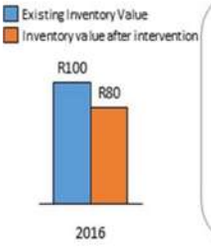
BENEFIT CALCULATION FOR COAL STOCKYARD REDUCTION – ARTICULATION OF POSITIONS STILL UNDER DISCUSSION

McKinsey position

There is agreement between Eskom and McKinsey on two types of benefits to Eskom when stockpiles are reduced

Reduction of Eskom's stock levels reduces Eskom's financing need and as a consequence its interest payments. This impact is a recurring benefit to Eskom and should be compensated as such



Eskom's inventory balance is currently R100. McKinsey does something and manages to reduce the inventory level to R80. The assumption being that Eskom will thus into perpetuity keep its inventory level at R80. If Eskom's cost of debt is 12% and the discount rate is 10%, then the total annual benefit to Eskom (R20 x 12% = R2.4). Into perpetuity this benefit will be (R2.4/.10)= R24. However in terms of our current MSA recurring benefits are limited to 3 years. Thus total impact is 2.4*3*10.55% = R0.7596.

Over and above this benefit it is McKinsey's position that given the current cash constraints within Eskom, sustained reduction of Eskom's coal stock levels through own consumption hold significant value to Eskom. In detail McKinsey argues along the following case example

Eskom is currently up to R 30 billion short of cash in this financial year

Out of this roughly R 6 billion come from additional money required to complete planned outages

If stock levels can be redirected towards completing these outages and by that reducing the additional cash shortage of Eskom, it helps avoid a potential down grading of the company with significant implications on overall financing cost and borrowing capability – or even further, Eskom losing the status of a going concern

McKinsey therefore proposes to be compensated for the reduction of stock levels by Eskom consumption. This is unlocking short-term cash as described above in line with other one time benefits, like direct cost savings. McKinsey suggests to be compensated for this inventory reduction as a one-time effect applying the compensation method as described in the Master Service Agreement (MSA). This comes in addition to the interest savings as described above.

Eskom position

With regards to coal inventory holdings levels, McKinsey needs to consider the balance between the risk posed to obtaining supply and the price of future supply vs the cost of holding inventory. i.e. if the price of coal is escalating at costs that are higher than Eskom's interest cost, then it may be prudent to hold coal inventory until the price of coal stabilizes. Our future coal contract

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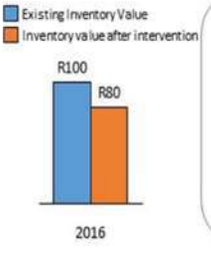
coverage, transport capacity and the readily available (lead times of) coal supply in the market needs to also be assessed.

There is also technically no obsolete coal within the Eskom system. Eskom does not define excess coal as obsolete.

There is agreement between Eskom and McKinsey on two types of benefits to Eskom when Inventory is reduced or where there is improvement in the "working capital" of Eskom

Reduction of Eskom's inventory levels reduces Eskom's working capital and financing needs and as a consequence its interest payments. This saving on the interest impact is a recurring benefit to Eskom and should be compensated as such in line with the MSA for recurring benefits which is limited to 3 years. Similarly, an improvement in payment terms of suppliers from 30 to 60 days would also be accounted as reflected above but the impact would only be once off.



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Sale of obsolete inventory triggers a profit for Eskom (or reduction of a loss) on an item that would have been a write down otherwise. Thus the identification and sale of obsolete inventory should be compensated at the selling price of the inventory in line with the terms agreed per the MSA.



Eskom's inventory balance is currently R100. R10 worth of inventory is actually obsolete and Mckinsey identifies this and sells this inventory in terms of a value package. The inventory balance therefore now drops to R90. Let's also assume that we could only get R5 for the sale of the inventory worth R10 (because its obsolete). In this example, McKinsey earns (R5 X 10.8%) = R0.54. This is assuming Mckinsey's onetime benefit proposal. On a self-funding principle, the accounting loss to Eskom should have been 10. We reduced this loss with (10-5+0.54).

Over and above these two benefits for the improvement in Eskom's "working capital" position, Eskom does not see further benefits accruing.

DOWNPAYMENT

Primary Energy downpayments are not included in the original Board agreement. Eskom and McKinsey agree to a R 75 mn downpayment payable in monthly rates over a period of 6 months (pending Eskom governance approval).

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For those packages where the benefit/or trigger point for payment is likely to be realised only after 12 months of value package being approved, Eskom shall accommodate on a case-by-case discussion to agree on down-payments for that specific work package. The value of that additional down-payment is limited to 25% of the total expected benefit payable to McKinsey of that respective work package. McKinsey is required to provide a bank guarantee for the duration until the true up is expected to happen

ADDITIONAL STEPS TO BE CONCLUDED

In parallel to Eskom seeking approval for the MSA and value package to take effect, Eskom and McKinsey together will conclude the following steps

Obtain the current PED contract-by-contract baseline data (R/ton prices and volumes by contract and power station)

Further define the project and development plan

Eskom negotiating team to get approval for impact and benefit payments to be made where the baseline is based on a cost avoidance scenario rather than a saving realised

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Annex D

CLAIM MANAGEMENT WORK PACKAGE SCHEDULE

[*To be inserted*]

This memorandum summarises the outcome of negotiation between Eskom and McKinsey & Company on the Claims and Commercial Management value package based on the Master Service Agreement. It is structured as follows:

- Scope of work
- Benefits to Eskom
- Baseline
- Operating model options
- Payment triggers
- McKinsey role in the contract negotiation process
- Prerequisites
- Down payment
- Additional steps to be concluded

This memorandum represents the current status of the Claims and Commercial Management workstream negotiation as presented in the respective documentation and parts of the MSA tracker. We are happy to take further guidance from Eskom and incorporate changes as they are resulting from the ongoing negotiations.

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SCOPE OF WORK

The scope of work for this value package is to develop and implement strategic project cost and/or schedule interventions to proactively manage the project risks and reduce future claims. The commercial risks will be reduced and the cashflows optimized through improved cost management practices, contract strategies and accelerated priority claims resolution. In order to achieve this goals, the work will focus on the following three work streams:

- Strategic services

  Develop commercial strategies for main packages and support the commercial teams in the negotiation and implementation of these commercial strategies

  Update and maintain the cost-to-completion models for the main packages to provide insights into the real cost drivers and actual costs for the main packages

- Development and implement schedule and cost risk mitigation targeted interventions e.g., improve integrated planning and progress reporting, access management, resource tracking
- Provide project oversight and assurance function

Future claims

- Expedite the resolution of priority future claims based on the commercial strategy
- Conduct real time root cause analysis to minimize the potential impact on schedule and costs
- Develop clean sheet costings to test the claims costs estimates
- Support the site teams with the implementation of the contract strategy for the main packages

Employers claims

- Identify high potential employers claims and develop strategy to recover the employers claims
- Setup the process to capture the potential employers claims
- Provide oversight on the progress with executing the employers claims
- Processing of employers claims by others

BENEFITS TO ESKOM

Reduce project costs and/or schedule overruns by proactively managing the project risks and/or reducing future claims

Reduce the commercial risks through improved cost management practises, contract strategies and accelerated priority claims resolution

Optimise project cash flows through claims strategies and improved risks management

Develop independent perspective on the actual contractor's cost to completion and use insights for negotiations

Develop internal commercial capabilities to efficiently manage the commercial processes and minimise the costs impact on the projects

POTENTIAL BASELINE FOR THE THREE AREAS

Strategic services

- Construction progress, commissioning and contractor integration risk categories that will be managed
- Targeted interventions that will prevent cost and/or schedule increases by minimizing construction progress, commissioning and contractor integration risk categories

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Future claims

Priority contractors claims to pursue

Targeted interventions that will reduce the construction progress, commissioning and contractor integration risk categories

Employers claims

Priority employer claims to pursue and the cost recovered to date on these claims

PROPOSED APPROACH

The baselines for the specific interventions will be defined in a three step process by first assessing the current status, followed by definition and approval steps:

Strategic services

Identify the priority packages, critical milestones and update the costs to completion models for the priority packages

Identify costs and schedule opportunities to reduce the costs for these packages

Assess the size of the opportunities, define the pre-requisites to capture the opportunity and develop a proposal to capture these opportunities

Setup the baseline and/or framework to capture the opportunity (baseline based on historic performance with real tangible KPIs e.g., insulation historic productivity measure)

Present the priority opportunities and baseline and/or framework to Steerco for approval

Develop detail implementation plan

Future claims

Identify main opportunities to reduce the claims costs

Develop clean sheet costing models for the main packages

Review the current business case assumptions and compare to the clean sheet costings

Define the baseline and/or framework to capture the opportunity and define the pre-requisites to capture the opportunity (baseline based on historic performance with real tangible KPIs)

Present the priority opportunities, baseline and/or framework to Steerco for approval

Develop the detail implementation plans to renegotiate the costs with contractors

Employers claims

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Review the employers claims registers and identify the main opportunities

Work with Eskom legal to test the legality of the claims

Define the services required to capture the value and define the pre-requisites to capture the opportunity

Finalise the priority employers claims, scope and services required with commercial teams

Set baseline based on what was processed for the contract and accepted by the contractor

Present the priority opportunities and baseline to Steerco for approval

Develop the implementation plans

PAYMENT TRIGGERS

Strategic services

37,5% of payment when strategy or initiative and the pre-requisites that needs to be met agreed and sign off by Steerco. The deliverable will be a document that summarise the value of the opportunity, the baseline for the opportunity, the KPI to measure future impact, the proposed strategy to capture the value, the priority initiatives aligned with the strategy, the pre-requisites for implementation, high level implementation plan and expected period to proof the opportunity.

62,5% of payment when the impact from the priority initiatives can be proven and future impact can be projected. The deliverable will be a document that summarise the impact measured from the priority initiatives, updated implementation plan for the remaining actions, the projected impact and calculated net impact for the project. The period of proof will be between 1-5 months and will be agreed at the definition of the strategy or initiative.

Future claims

37,5% of payment when approach or initiative and the pre-requisites that needs to be met agreed and sign off by Steerco. The deliverable will be a document that summarise the value of the opportunity, the baseline for the opportunity, the KPI to measure future impact, the proposed strategy to capture the value, the priority initiatives aligned with the strategy, the pre-requisites for implementation, high level implementation plan and expected period to proof the opportunity.

62,5% of payment when priority future claims are rejected by either the Eskom commercial team or with acceptance notices from the Contractor, or future potential claims reduced, or determined priority claims to a lower number for valid claims. The deliverable will be a document that summarise the impact measured from rejecting the claim by either the Eskom commercial team or Contractor, or future potential claims reduced, or determined priority claims to a lower number for

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valid claims. The period of proof will be between 1-5 months and will be agreed at the definition of the approach or initiative.

Employers claims

60% of payment when the proposed strategy to prosecute the employers claim, pre-requisites that needs to be met agreed and potential value for the employer is signed off by Steerco. The deliverable will be a document summarising the potential value of the employer claims opportunity, the proposed strategy to capture the value, the priority initiatives aligned with the strategy and high level implementation plan.

40 % of payment when Eskom commercial start processing claims or contractor settlement, or Eskom trigger claim to the contractors. The deliverable will be a document that summarise the expected impact from the claims or contractor settlement, or Eskom triggering claim to the contractors and the calculated net impact for the project.

ESKOM PREREQUISITES

Eskom needs to fulfil a couple of important prerequisites to allow for work on the Claims and Commercial Management value package to start

Team

Continuity of critical team resources throughout the development and implementation of the initiatives

Team members for the initiatives should be agreed with Project Directors, in the event of disagreement will be escalated to Steerco

Alignment of performance management (compact) for the 3 focus areas between McKinsey and Eskom team - all parties should be measured against the same savings and volume targets

McKinsey leadership provides feedback to Eskom team members and input into performance reviews and the other way around

Appropriate Eskom resourcing with support from the Group Capital Head and Project Directors:

A full-time senior manager leading the programme and manage stakeholder relations

Three experienced managers plus supporting Eskom resources from Medupi, Kusile, CMO, Engineering, Finance and Legal

Senior Eskom Top Engineers (C1 or C2)

Eskom or sub-contractor resources to process the claims

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Decision making process

Clear willingness across organization to expedite governance process when required to capture opportunities

Explicit 100% support and leadership from Group Capital and Project Directors

Clear ownership from Eskom and willingness to engage key stakeholders if required

Commitment to participate in regular review meetings

Fortnightly sessions with overall programme leadership

Weekly site team leadership meeting

Access to data

Full access to construction and commercial information related to the 3 focus areas (including access to all contracts and data owned by Eskom)

Willingness to pursue access to data not owned by Eskom - as long is the data request is legally compliant

Eskom stakeholder engagement and decisions

- Willingness to take to steerco any opportunities/contracts that may be outside current Eskom standards – technical and transformational

McKINSEY'S ROLE DURING CONTRACTOR NEGOTIATIONS

McKinsey support Eskom in the pre-negotiation phase through a variety of classroom-based modules, war game simulation exercises and direct coaching.

As discussed during negotiations it will be McKinsey's role to facilitate the negotiation back-office and to not form part of the actual negotiation team facing the contractors to prevent any conflict situations. In rare occasions Eskom would like to seek McKinsey's support in the negotiation room. In these cases McKinsey will on a case-by-case basis consult its governance committees and support Eskom in case the approval by the respective McKinsey governance committee is granted.

Our typical role during negotiations will therefore be:

Support during the pre-negotiation phase through a variety of classroom-based modules, war game simulation exercises and direct coaching

Facilitate the negotiation back-office including negotiation analytics (e.g., bottom-up costing, negotiation strategy), identification of external negotiators that Eskom can contract

McKinsey will not be part of the actual negotiation team facing the contractors to prevent any conflict situations

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In rare occasions Eskom would like to seek McKinsey's support in the negotiation room. In these cases McKinsey will on a case-by-case basis consult its governance committees and support Eskom in case the approval by the respective McKinsey governance committee is

DOWNPAYMENT

The down-payment for the workstream will be R 100 mn over a period of 12 months. Where, at any relevant time, aggregate instalments are less than the net benefits then McKinsey is not entitled to any subsequent down-payments until such a time this reverses within the down-payment period.

ADDITIONAL STEPS TO BE CONCLUDED

In parallel to Eskom seeking approval for the MSA and value package to take effect, Eskom and McKinsey together will conclude the following steps :

Develop the baseline for the 3 value areas

Further define the project and development plan

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Annex E

GENERATION TURNAROUND WORK PACKAGE SCHEDULE

[*To be updated*]

This memorandum summarises the outcome of negotiations between Eskom and McKinsey & Company on the Generation value package based on the Master Service Agreement that has been negotiated in parallel. It contains chapters for the initiatives that were prioritised by the negotiation teams, namely:

Reduce Partial Load Losses (PLLs)

UCLF reduction

Generation Project factory

Each chapter covers the scope of work, baseline, benefit to Eskom, payment triggers, prerequisites to be in place prior to starting the work, down-payments, and any additional steps for conclusion.

This memorandum represents the current status of the Generation workstream negotiation as presented in the respective documentation and parts of the MSA tracker. We are happy to take further guidance from Eskom and incorporate changes as they are resulting from the ongoing negotiations.

The negotiation status as presented in this document is subject to further approval and potential refinement by McKinsey's relevant governance committees.

REDUCED PARTIAL LOAD LOSSES (PLL)

Scope of work

The scope of work for this value package is to r educe the persistent partial load losses for specific root causes as agreed to with Gx. The scope will exclude PLL where a capital plan is in place and already approved.

Baseline

The PLL baseline will comprise of the following key elements:

Sustained partial load losses (longer than 7 days, estimated at ~1200MW - to be verified) as compiled by Shireen Prince

Seasonal load losses are excluded

Any adjustments to the baseline must be approved by Eskom (Shireen Prince/ Willy Majola, and Kobus Steyn) and McKinsey (Peter Safarik and Lorenz Jüngling)

In order to agree on the exact baseline figures for each of the above, it would be important for Eskom and McKinsey to develop the baseline ahead of the

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work starting. This can be done by Eskom providing McKinsey with the relevant coal fleet PLL data by power plant in order to develop a first draft of the baseline to be signed off with Eskom.

Benefits to Eskom

The MSA defines general rules about the measurement of benefits to Eskom and the subsequent payment of performance incentives to McKinsey. These also apply to this value package. Specifically the benefit to Eskom has been defined as reduced UCLF attributable to PLL.

Payment triggers

Linked to the above definition of Benefits to Eskom the following payment triggers (as defined by MSA) apply:

Impact will be measured initiative by initiative and will be considered recurring

Impact is deemed to occur when MW improvement for an initiative is observed over a 7 day period (adjusted for conditions outside of McKinsey's control)

Where an initiative requires capital, impact is deemed to occur when:

- The cost of the capital investment has been quantified
- Initiative execution included into the outage schedule and outage plan
- Workstream lead and Finance agree that the MW improvement is probable
- Approved by relevant committee (IFC or ICAS or Steering Committee, if decision being protracted)

Impact payment values are calculated per initiative in annualised MW and converted to a Rand value using the value of the energy sold ~R650/MWh and the result is then adjusted using an EUF proxy of 90%

Impact will be considered recurring as per the MSA

Impact payments require sign off by the Eskom value package lead (Willy Majola/ Shireen Prince, and Kobus Steyn), Eskom Generation Finance (Stefaan Cronje), and an Eskom Capital efficiency representative (where applicable)

Eskom prerequisites

Eskom must fulfil a number of important prerequisites before work on the Partial Load Losses value package may start. Prior to commencing the work, Eskom must ensure:

Access to capex based on business case and trade-off considerations

Explicit support from the PSM and Engineering managers at Stations

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Eskom allocate a senior manager to lead PLL efforts

Willingness to engage the labour unions if required (e.g., on change of incentive system, enforcing compliance with operating procedures)

Flexibility to launch an outage if space exists e.g., short-term outage should another outage be completed ahead of schedule

Access to all necessary data

Access/entry to all power stations. Full collaboration with all existing initiatives including but not limited to people initiatives e.g., Ops Recovery, Maintenance Recovery, Generation Top manager Programme, process initiatives such as On-Line Monitoring, Gx CAP Management, Spares management, OMO roll-out, contract management and Care groups and Study committees (SCOT) e.g., Boiler study SCOT, Turbine SCOT and ACC Care Group

In addition to the above, the specific prerequisites for team setup and decision making processes are detailed below.

Team setup

Full support of the GE Generation

A clear leader for the turnaround effort (GM – Generation)

Eskom team members proposed by Eskom should be appointed based on clear role descriptions; McKinsey has right of refusal

Ensuring explicit 100% support and leaderships of the PSMs understanding that this is not another initiative but a “turn-around” way of management

Approval of McKinsey leadership providing feedback to Eskom team members and with bearing on their individual performance reviews (and the other way around in case requested)

Alignment of performance management (compact) between McKinsey, the stream leads and the line managers; all parties should be measured against the same intent

Appropriate Eskom resourcing for each module and its work streams

- An E-band manager to lead overall effort and manage stakeholder relations
- 1-2 experienced generation managers (M16/M17 level) to drive workstreams on a day-to-day basis
- Support from the stations to quantify risks and provide insights into the technical status of power station
- 2-3 engineers with focus on the most prevalent PLL
- Support from engineering on as needed basis
- 3-5 senior Eskom Top Engineers

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Decision making process and access to data

Clear willingness across organization to expedite governance process when required to attain opportunities

Ensuring explicit 100% support and leadership from Generation departments

Clear ownership from Eskom and willingness to engage key stakeholders if required (e.g., regulator for statutory/ environmental dispensations)

Review meetings

Fortnightly sessions with overall programme leadership

Weekly partial load loss team leadership meeting

McKinsey will need access to all data (GCSS), Partial load loss reports

Timely decision capacity of Eskom management in order to avoid loss of opportunistic savings

Down-payments

Eskom and McKinsey agree to down-payments of R50 million over a period of 6 months payable at a monthly rate. Where, at any relevant time, aggregate instalments are less than the net benefits then McKinsey is not entitled to any subsequent down-payments until such a time this reverses within the down-payment period.

Additional steps to be concluded

Eskom and McKinsey together will conclude the following steps

Confirm addressable PLL baseline with Eskom (Shireen Prince)

Include into impact "pull-forward" of a solution that is already planned however due to the project can be executed earlier

UCLF REDUCTION (STATION TURNAROUND)

Scope of work

Over the last 10 years the EAF of the Eskom fleet has deteriorated at a rate of 1.5 percentage points per annum. In the past 5 years the rate of deterioration has increased to 3 percentage points per annum with an EAF projection for FY16 of 69-70% versus EAF of 84% in FY11. The five year budget for EAF in FY16 is 74% and is required to ramp up to 78% by 2020

This value package will run two fully-fledged power station turnarounds. The two stations are selected by installed capacity and underperformance in terms of EAF.

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The turnaround will be undertaken by setting up a Turnaround Office at each station and deploying 3-5 teams per station focusing on:

Operating

Maintenance

Outages

Enablement/ support functions, e.g. Engineering, HR, Procurement, Finance

Technical Projects

The turnaround of each station includes all aspects of the station operating model i.e. the management infrastructure (incl. governance structures, KPIs); the technical systems (e.g. operating and maintenance SOPs); and the mind sets and capabilities of all roles and people.

Provisionally the turnaround candidate at this point in time are Kendal and Matla due to the significance of installed capacity, underperformance in EAF, and their perceived good standing with organised labour when compared with other potential candidate stations.

Baseline

The station turnaround baseline will comprise of the following key elements:

Station level EAF adjusted for rate of deterioration based on the last 5 years of fleet EAF deterioration (i.e. 4% per annum) taking out exceptional events ("noise'), and forecasted for three-years

Not adjusted for technical plans or existing programs as the trend is observed with these having been in occurrence for the past 5 years

Total Cost of Ownership approach to capex investment, per the MSA, is chosen to ensure alignment of incentives

Catastrophic Events are excluded both from the baseline and for the impact calculation:

A Catastrophic Event is defined as an unforeseeable and unavoidable event that ceases generating capacity of a unit or station for 3 or more months; it is agreed that this definition is to be revisited in 6 months.

If a Catastrophic Event occurs within the first 6 months the SteerCom will decide on the approach to deal with the event and adjustments to the baseline

Baseline can only be adjusted per boundary conditions and procedures in the MSA

Benefits to Eskom

The MSA defines general rules about the measurement of benefits to Eskom and the subsequent payment of performance incentives to McKinsey. These also apply to this value package.

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Specifically the following types of benefits to Eskom have been defined for the turnaround stations:

Sustained levels of EAF

Improved levels of EAF and reduced UCLF

Improved financial contribution

Improved workforce engagement and organisational health

Payment triggers

McKinsey fees are calculated based on benefit to Eskom as per MSA agreed mechanism, rates and payment terms. Linked to the above definition of Benefits to Eskom the following payment triggers (as defined by MSA) apply:

Impact is measured in percentage points against the baseline using a 12 month moving average

Financial value calculated based on value of energy sold i.e., ~ R650 MWh on annualised basis

Impact trigger will be actual EAF relative to baseline measured every 6 months from start of each turnaround program

Impact on the baseline is considered recurring

Payments are due when sign-off by Head of Gx and PSM is received

Eskom prerequisites

Eskom must fulfil a number of important prerequisites before work on the UCLF reduction value package may start. Prior to commencing the work, Eskom must ensure:

Explicit agreement from Eskom with the partnership principle whereby all initiatives relating to performance improvement above baseline will be included, irrespective of the idea originator, timing or level of support required for execution

Explicit agreement from Eskom that outages scheduled for the turnaround stations cannot be re-scheduled, curtailed or prejudiced in any way that could limit the impact potential at turnaround stations

Eskom to align with labour before the program and then actively engage throughout the program (esp. where changes to SOPs, KPIs, etc.)

“Turnaround PSM peer” staffed by McKinsey to be a full member of the power station leadership team and have access to all meetings and materials

Turnaround sites afforded carte blanche and be treated as exceptional cases withstanding that all regulatory and statutory requirements remain in full effect (agreed with full support at both station and corporate centre levels)

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Changes to governance, operating model and organizational structure to be fully in the scope

A working model that fully focuses the organisation on value identification and delivery

Incentives of the management team to be aligned with the impact measurement

Capex/outage space to be prioritised provided positive business case exists

Down-payments

Eskom and McKinsey agree to down-payments of R20 million per month per station over a period of 6 months. Where, at any relevant time, aggregate instalments are less than the net benefits then McKinsey is not entitled to any subsequent down-payments until such a time this reverses within the down-payment period.

Additional steps to be concluded

Eskom and McKinsey together will conclude the following steps

Formulating a baseline for the two candidate stations

Eskom Gx Negotiation representative to present proposal to Gx Exco

Further clarify definitions for unforeseeable and unavoidable events

Eskom Negotiation team to understand and feedback the Executive for Technology and Commercial viewpoint on the optimisation of the outage scheduling

GENERATION PROJECT FACTORY

Scope of work

Scrub and optimise the Generation Technical and Maintenance Plan (excluding outages) that is uncommitted for the period 2016-2018, estimated at R6,2bn budget spend (32 projects). The scope would include any other projects approved and funded in the future or that Eskom want's to include in the work. The workstream ends, when all projects (current pipeline and later added ones) are optimized.

For the portfolio scrubbing, projects will be assessed according to the following criteria: 1) Legal/safety requirement; 2) Business rational (which includes adherence to maintenance philosophy and risk assessments). Portfolio optimisation is a hygiene step, and given previous engagements the opportunity is expected to be limited.

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For project optimisation, individual projects are analysed to determine whether the desired impact can be achieved at a lower cost. This would involve investigating and costing minimum technical solutions, alternate solutions amongst other levers.

Baseline

The baseline is:

- Current Generation Technology plan for the period 2016-2018 that has been approved but not committed (R6,2bn budget spend, 32 projects)
- Where additional projects are approved, they will be added to the baseline at the budget at which they were approved. Any adjustments to the baseline must be approved by: Nigel Volk/ Willy Majola, Kobus Steyn, Lorenz Jüngling and Peter Safarik
- Baseline values will not include contingencies which are generally calculated as a percentage of project cost

Benefits to Eskom

Reduced budget for individual projects, thus creating budget space for more projects to reduce UCLF.

Payment triggers

McKinsey fees are calculated based on benefit to Eskom as per MSA agreed mechanism, rates and payment terms. Linked to the above definition of Benefits to Eskom the following payment triggers (as defined by MSA) apply:

- Reduction in the budget through optimization (ZAR) of each project; impact is deemed to occur on a project by project basis. Benefits to Eskom are recognized when optimized project schedules get signed off. Estimated savings must be agreed to by: Project sponsors, Workstream lead (Nigel Volk/ Willy Majola), Finance (Stefaan Cronje)
- Where the project sponsor refuses to sign off savings, which the optimization team considers legitimate, the optimization team will have right to appeal to the overall Steering Committee for determination
- Savings will be considered once-off savings as per the MSA

Eskom prerequisites

Eskom must fulfil a number of important prerequisites before work on the outage schedule optimisation value package may start. Prior to commencing the work, Eskom must ensure:

Willingness to provide all the data, support with technical skills to optimise and engage with contractors

Draft 22. 10. 15

Project teams to work with Capital factory for the duration their project is being optimized

All projects exceeding R35m have to undergo, jointly agreed by Eskom and McKinsey, a prioritization filter to decide if the projects need to undergo scrubbing before passing ERA.

Make available both financial and technical skilled people from Eskom to support the optimisation projects

Full collaboration with all existing initiatives including but not limited to people initiatives e.g., Ops Recovery, Maintenance Recovery, Generation Top manager Programme, process initiatives such as On-Line Monitoring, Gx CAP Management, Spares management, OMO roll-out, contract management and Care groups and Study committees (SCOT) e.g., Boiler study SCOT, Turbine SCOT and ACC Care Group

In addition to the above, the specific prerequisites for team setup and decision making processes are detailed below.

Team setup

Full support of the GE Generation

A clear leader for the turnaround effort (GM – Generation)

Eskom team members proposed by Eskom should be appointed based on clear role descriptions; McKinsey has right of refusal

Willingness to escalate to ExCo readily should ExCo approval be needed

Ensuring explicit 100% support and leaderships of the PSMs understanding that this is not another initiative but a “turn-around” way of management

McKinsey leadership provides feedback to Eskom team members and input into performance reviews

Alignment of performance management (compact) between McKinsey, the stream leads and the line managers; all parties should be measured against the same intent

Appropriate Eskom resourcing for each module and its work streams

- An E-band manager to lead overall effort and manage stakeholder relations
- Two experienced generation managers to drive workstreams on a day-to-day basis
- 2 senior Eskom Top Engineers (C1 or C2)
- Project teams whose project is under review should be based at MWP with optimization team for the 8-10 weeks their project is under review

Decision making process and access to data

Draft 22.10.15

Clear willingness across organization to expedite governance process when required to attain opportunities

Ensuring explicit 100% support and leadership from Generation departments

Clear ownership from Eskom and willingness to engage key stakeholders if required (e.g., regulator for statutory/ environmental dispensations)

Fortnightly sessions with overall programme leadership

Weekly optimization team leadership meeting

McKinsey will need access to all data: budgets, business cases, demand forecasts, incident reports

McKinsey will need access to the project teams for the duration of the review

Access to all necessary data

Access/entry to all power stations

Down-payments

Eskom and McKinsey agree to down-payments of R50 million over a period of 6 months. Where, at any relevant time, aggregate instalments are less than the net benefits then McKinsey is not entitled to any subsequent down-payments until such a time this reverses within the down-payment period.

Draft 22.10.15

Annex F

TOP ENGINEER WORK PACKAGE SCHEDULE

[To be revised and updated]

This memorandum summarizes the outcome of negotiation between Eskom and McKinsey & Company on the evolution of the Top Engineers programme into a fully functioning internal consultancy unit. It is structured as follows:

Desired end state

Key programme elements

McKinsey contribution

Eskom prerequisites

This memorandum represents the current status of the negotiation as presented in the respective documentation and parts of the MSA tracker. We are happy to take further guidance from Eskom and incorporate changes as they are resulting from the ongoing negotiations.

This memorandum represents the current status of the negotiation as presented in the respective documentation and parts of the MSA tracker. We are happy to take further guidance from Eskom and incorporate changes as they are resulting from the ongoing negotiations.

The negotiation status as presented in this document is subject to further approval and potential refinement by McKinsey's relevant governance committees.

Draft 22.10.15

DESIRED END STATE

Eskom has set the goal to build the current Top Engineers programme up to a fully functioning internal consulting unit with roughly 150 people staff. This consulting unit should be capable to support Eskom in all of its areas of business and by that be a viable alternative to the external consulting support that Eskom is currently contracting.

In order to achieve the above outlined capability the Top Engineers programme will have to grow from currently 24 consultants and senior consultants with exclusively engineering background into a group that features all the capabilities, roles, tools and structures usually found in a world class management consulting firm.

Achieving this goal will firstly require Eskom to broaden the recruiting focus from engineering background to other academic studies and advance its current 25 consultants to higher levels of seniority, i.e. project managers and junior partners. In addition to a functioning pyramid of professional staff, Eskom's Top Engineers programme is currently lacking all critical support functions like staffing, people development, IT and secretarial support as well as an institutional knowledge repository.

Eskom aims at developing the above together with McKinsey & Company through a combination of classroom training, on the job experience as well as intellectual property transfer where support function setup and core knowledge elements are concerned. The envisioned duration of this evolutional journey is three years.

KEY PROGRAMME ELEMENTS

Growing the number of people in the programme

In order to grow the number of people in the programme to over 100, Eskom and McKinsey will jointly recruit three additional cohorts of up to 40 people to take part in the existing first year curriculum that teaches basic consulting skills. This curriculum includes three weeks of class room training as well as three "rotations" where the participants work on ongoing McKinsey projects at Eskom as junior consultants to receive full methodological apprenticeship in a realistic environment.

The current plan is to recruit one cohort each year over the next three years to allow the pool of potentially candidates to rebuild over time. Based on past experience recruiting 40 candidates for the programme requires a pipeline of roughly 1000 applications before the screening and interview process. Application criteria that allow for a wider scope of academic backgrounds and prior Eskom employment history will have to be developed as soon as the programme starts.

Advancing people in the programme to senior roles

Building a fully functioning internal consultancy will require Eskom to advance programme participants from current basic consulting roles to project managers and beyond. This will be achieved by setting up a people development plan as well as a people committee that reviews programme participant performance on a regular basis, gives guidance on development and affects promotions to more senior roles.

In order for these senior roles to be effective in the Eskom environment, they will have to be adequately graded within the existing Eskom HR system and have sufficient delegation of authority to lead people within the internal consultancy as well as drive impact within the broader Eskom environment.

Based on experience, a pyramid of 120 internal consultants should feature a minimal configuration of the following senior leadership roles

1 managing senior partner that represents the unit as overall leader,

4 partners (covering Eskom's key areas of business: generation, transmission & distribution, customer service and support functions, like finance, HR, etc)

Draft 22.10.08

1 people development manager (responsible for staffing, trainings, evaluation, etc)

6 senior project managers (capable of leading multiple projects at the same time)

12 (junior) project managers

Building up the required support function back bone

Eskom's internal consulting unit will need specific support in terms of funding model, staffing, logistics, IT as well as personal development in order to be competitive with external companies. As a consequence Eskom will have to build up a back bone of required support functions within the new unit.

Setting up an knowledge repository

Methodological knowledge and institutional memory are core assets of any consulting company. Eskom will have to develop and implement a knowledge platform that allows to store and share knowledge items, benchmarking information as well as best practices amongst its internal consultants.

Capability building in the programme

- All scope of work defined under the MSA will encompass development
- Programme participants will be involved in all value packages developed under the MSA
- All measures will include a description of required governance
- Overall performance of the programme will be measured based on critical development milestones
- The consultant shall have full access to study related IP
- The class room training will for the senior tenure roles will be tailored to the individual scope of work of their value packages

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MCKINSEY CONTRIBUTION

McKinsey will support Eskom in all key aspects of developing the internal consultancy over the next three years. In detail this includes

Develop Top consultant vision, mission and mandate.

Develop end state of the Top consulting Programme (Internal vs External)

Setting up and driving the recruitment and initial training of cohort 3,4, and 5

Defining senior internal consulting roles and setting up and running the above described review committee

On the job training of up to 150 internal consultants through McKinsey project and programme leadership

Individual mentoring for up to 150 programme participants through senior McKinsey people

Outlining structure, required skills and resourcing of the support function backbone

Temporary IT support to allow a smooth work flow when jointly working on teams

Developing an knowledge repository and populating it with knowledge items jointly developed during the programme

Develop a generic change management/sustainability frame for implementation.

Structure the consultant department to have pre-determined centers of specialisation, with consultants forming SMEs for that area

In order to achieve these aspirational items McKinsey will run a medium sized project team solely dedicated to the above work packages for the entire time of the programme. We propose that Eskom release all the senior Top Engineers to co-create the evolutional journey of their programme.

Over and above McKinsey will commit its entire project and programme leadership working for Eskom as coaches and mentors to spend a significant amount of their time.

We also propose to set up a joint steering committee to take key decisions around design and resourcing that is led by at least one ExCo member who also acts as a sponsor to the programme.

While all McKinsey work on this programme will be free of charge and funded through other work packages, we estimate that the total value of all the McKinsey services, support and intellectual property provided to Eskom in the programme over three years equals ZAR 1.8 billion.

Draft 22.10.15

ESKOM PREREQUISITES

Evolving the current Top Engineers programme into the targeted internal consultancy will require resources and commitment from Eskom to be successful. Especially Eskom will have to provide

ExCo sponsor for the programme

The commitment of Eskom's entire leadership to make its most talented junior people available to the programme

A dedicated Steercom with sufficient delegation of authority to effect required governance changes where individual measures are concerned

Senior Eskom managers to join steering and review committee

Budget/funding model to cover cost for recruiting, logistics, office space, specialised IT

Internal and external recruitment of senior internal consultancy roles (managing partner, partners and junior partners)

Dedicated support function resources

McKinsey will provide temporary support with resources and senior leadership during the ramp up phase wherever possible but a sustainable solution requires substantial Eskom involvement.

Draft 22.10.15

Annex G

FORM OF GUARANTEE

[To be revised and updated]

DRAFT FOR DISCUSSION PURPOSES ONLY

_____

(hereinafter referred to as 'the Beneficiary')

Date (2711) 636-

Our Advance Payment Guarantee Number: **Page 1**

1. We, The Standard Bank of South Africa Limited (Registration Number 1962/000738/06) (hereinafter referred to as 'the Bank') have been informed that _____ of (hereinafter referred to as 'the Principal') has entered into a contract for _____ under contract reference number _____ (hereinafter referred to as 'the Contract').

2. Furthermore, the Bank understands that, according to the conditions of the Contract, an advance payment in the sum of _____ (hereinafter referred to as 'the Guaranteed Amount') is to be made against a bank guarantee.

3. At the request of the Principal, the Bank hereby irrevocably undertakes to pay to the Beneficiary any amount up to the Guaranteed Amount upon presentation to the Bank of the Beneficiary's first written complying demand in paper form at the Bank's address referred to in paragraph 8 below above stating:

   3.1 that the Principal is in breach of his obligation(s) under the underlying Contract, and

   3.2 the respect in which the Principal is in breach.

4. It is a condition for any claim and any payment under this guarantee to be made, that the advance payment referred to above must have been received by the Principal in their account number _____ at the Bank's _____branch.

5. The Bank's liability under this guarantee will expire on the _____ (hereinafter referred to as 'the Expiry date'), after which date this guarantee will automatically be cancelled whether returned to the Bank or not and any claim received in respect thereof should reach the Bank not later than the above Expiry Date at the Bank's address referred to in paragraph 1 above. Any claim received after the above Expiry Date will not be entertained by the Bank.

6. This guarantee is subject to the Uniform Rules for Demand Guarantees (URDG) 2010 revision, ICC publication No 758.

7. No variations to the terms and/or conditions on this guarantee including this paragraph are permitted without prior written consent of the Beneficiary, the Principal and the Bank who are legally bound thereby.

Commented [O2U7]: Insert physical address of Applicant/ Principal

Commented [O2U8]: Insert Amount & Currency.

Commented [PI9]: Fixed Expiry Date required

Draft 22.10.15

8. Payment under this Guarantee will only be made upon presentation of the demand and original Guarantee at the Bank's Corporate and Investment Banking, Trade Services Division, 1st Floor, No. 25 Sauer Street, Johannesburg, Republic of South Africa.

9. This guarantee is neither negotiable nor transferable and is restricted to the payment of money only.

Signed at Johannesburg for and on behalf of The Standard Bank of South Africa Limited, this ____ day of _____ 2015.

……..…….. ……..……..

AS WITNESSES:

1. ……

2. ……

Draft 22.10.15

Annex H

STEP ILLUSTRATION OF CONTRACT OPERATION

Item #	*Step Explanation*	*Agreement Clause Reference*	*Party / body responsible for fulfilment of step*
Pre-Contract Effectiveness			
1.	Appointment of auditors		Employer in consultation with contractor
2.	Furnish Guarantee		Contractor
3.	Confirmation of payment of mobilisation / initiation payments		Employer
During Contract Performance			
4.	Confirm applicable Eskom Top Engineer		Employer
5.	Confirm applicable McKinsey Supporting Consultant		Contractor
6.	Confirm applicable McKinsey Partner in respect of the relevant Work Package		Contractor
7.	Appoint Eskom Work Package Lead		Employer
8.	Appoint Eskom Initiative Lead		Employer
9.	Agree Baseline Value in Work Package Schedule		Work Package Team
10.	Agree Baseline Parameters		Work Package Team
11.	Agree Work Package Initiatives		Work Package Team
12.	Agree scope of services to be performed by the contractor (and any material revisions thereto) under the relevant Work Package Schedule and any workplans in respect thereof		Work Package Team
13.	Agree Deliverables in respect of the relevant Work Package Schedule		Work Package Team
14.	Confirmation from employer that the performance compact and/or short term incentives for each of its staff members assigned to the Work Package are aligned with the objects of the respective Work Package		Employer
15.	Confirmation that the employer has made financial resources and staff available for the effective performance of the relevant services		Employer in consultation with the contractor
16.	Confirmation that the accountable Executive Committee member of the employer has confirmed his or her support for the services to be provided under the relevant Work Package Schedule		Employer
17.	Regular meetings by Work Package Team		Work Package Team

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18.	Agree progress of each relevant Work Package Initiative through Implementation Levels 1 and 2		Eskom Work Package Lead and McKinsey Supporting Consultant
19.	Agree progress of each relevant Work Package Initiative through Implementation Levels 3 and 4		Eskom Work Package Lead and McKinsey Partner
20.	Agree Identified Impact Amount including methodology and assumptions for calculation		Eskom Initiative Lead, Eskom Work Package Lead and McKinsey Supporting Consultant
21.	Presentation of Work Package Initiative to the Steering Committee		Eskom Work Package Lead and the relevant McKinsey Partner
22.	Steering Committee confirmation of Impact Amount		Steering Committee
23.	Agree Realised Impact Amount / Recurring Realised Impact Amount, as applicable		Eskom Work Package Lead and the relevant McKinsey Partner
24.	Auditors confirm Payment Trigger, Realised Impact Amount / Recurring Realised Impact Amount, as applicable		Auditors
25.	Issuing of Invoice to Eskom		McKinsey
26.	Payment to McKinsey		Eskom

Draft 22.10.15

Annexure 13

Innocentia Ngubeni

From: Clive Angel <clive@integratedcapital.co.za>
Sent: Monday, 02 November 2015 17:32
To: Eric Wood
Subject: Meeting Weds

Hi Tumi
Please confirm if Eric available to meet Weds 8.30 - 10.30 with myself, Vikas and Salim in Melrose Arch @ Inca Energy offices

Thanks
Clive

Sent by iPhone.

Annexure 14

Innocentia Ngubeni

Subject:	Meeting with Salim/Vikas/Clive
Location:	Melrose Arch
Start:	Wed 2015/11/04 10:00
End:	Wed 2015/11/04 12:00
Show Time As:	Tentative
Recurrence:	(none)
Meeting Status:	Not yet responded
Organizer:	Eric Wood
Required Attendees:	Clive Angel (clive@integratedcapital.co.za)

Annexure 15

Innocentia Ngubeni

From: Clive Angel <clive@integratedcapital.co.za>
Sent: Monday, 16 November 2015 10:19
To: vikas_sagar@mckinsey.com; Eric Wood
Cc: salimessa@gmail.com
Subject: Trillian next steps?

Morning Vic,
Hope you had a great WD.
Just wanted to touch base on a few things.

We are still waiting for the financial spreadsheet re the proposed "aggregate" 50/50 fee split and timelines. As mentioned last week Salim needs this in advance of setting up a meeting for you and Alex with Brian.

Alex mentioned in our meeting last Thursday that Mckinsey had detailed project scope and specifications for each of the current agreed mandates.

We need to receive copy of these in order to plan our staffing for each project. Further to this once we have had an opportunity to review the specifications Bianca needs to meet with each of your specific project leaders to discuss and plan the project implementation, staffing and timelines.

You mentioned that Lawrence and Peter? your generation team leaders were meeting with Eskom this week to define the generation project scope. After this meeting we need to schedule a conference call with our generation experts in India and Bianca so we better understand resourcing requirements as well as an implementation plan.

We also need to schedule a meeting with your head of procurement, Jan?, Bianca and our partners Cutting Edge to discuss the implementation of the procurement plan and how we will work together in this regard given the diagnostic expertise that Cutting Edge brings to the partnership.

Aside from the generation conference call which I want to schedule for this week, Bianca is available from next week to attend meetings with the Mckinsey team leaders in each area. Please advise how best we co-ordinate this with each of your team leaders?

It is essential that we receive the detailed project scope documents soonest for her to prepare accordingly and to start planning our resourcing.

Looking fwd
Regards
Clive

Sent by iPhone.

Annexure 16

Innocentia Ngubeni

From: Angel, Clive <clive@integratedcapital.co.za>
Sent: Thursday, 19 November 2015 15:22
To: Eric Wood
Subject: Fwd:
Attachments: 20151101_ cash flow rampup_partnerv2.xlsx

fyi

---------- Forwarded message ----------
From: **Vikas Sagar** <amalahle@gmail.com>
Date: 2015-11-18 13:45 GMT+02:00
Subject:
To: Clive <clive@integratedcapital.co.za>, Business Man <infoportal1@zoho.com>

PROGRAMME OVERVIEW

Start date	Oct-15
End date	Oct-18
Duration	36

		Months				
		Oct-15	Nov-15	Dec-15	Jan-16	Feb-16
	Totals (Rm)	1	2	3	4	5
Programme cash flow (negative number means inflow)						
Top Engineer	340.59	-	-	-	8.54	8.54
PMO	320.14	-	-	-	8.03	8.03
Gx*	-3,072.89	-	-	-	-56.67	-56.67
Procurement	-1,602.90	-	-	-	-8.33	-8.33
PED	-1,677.30	-	-	-	-12.50	-12.50
Claims	-709.80	-	-	-	-8.33	-8.33
New build (estimate)	-1,500.00					
Financing & funding	-1,200.00				-50.00	-50.00
Corporate plan	-98.00	-16.33	-16.33	-16.33	-16.33	-16.33
Fixed- finance, strategy, o	-450.00					
Nuclear	-300.00					
Total cash inflow	-10,310.89	-16.33	-16.33	-16.33	-152.17	-152.17
Net cash flow	-9,650.17					

Gx payments baselined on 4 power plants; proof of concept on how to sustainably reduc

Share	
Top Engineer	30%
PMO	30%
Gx	40%
Procurement	35%
PED	30%
Claims	35%
New build	35%
Financing & funding	100%
Corporate plan	30%
Fixed- strategy; regulatior	55%
Nuclear	30%

Partner cash flow- ***timing and down payment mechanism needs be worked out; timing ne***						
Top Engineer	102.18	-	-	-	2.56	2.56
PMO	96.04	-	-	-	2.41	2.41
Gx	-1,229.16	-	-	-	-22.67	-22.67
Procurement	-561.02	-	-	-	-2.92	-2.92
PED	-503.19	-	-	-	-3.75	-3.75
Claims	-248.43	-	-	-	-2.92	-2.92
New build	-542.50	-	-	-	-	-
Financing & funding	-1,200.00	-	-	-	-50.00	-50.00

Corporate plan	-29.40	-4.90	-4.90	-4.90	-4.90	-4.90
Fixed- finance, strategy, o	-247.50	-	-	-	-	-
Nuclear	-90.00	-	-	-	-	-
Total net cash flow	-4,651.19					
Cuml. net cash flow	-4,452.98					
Weighted average share	46%					

McKinsey resourcing (WIP; in Gx in particular, McKinsey resourcing will ramp down and partner resourcing will rampup)	***Partner resourcing to be worked out in detail in working session bc***					
No of teams	8	-	-	-	13	13
Total FTEs	62	-	-	-	85	85
Directors	*12*	*-*	*-*	*-*	*17*	*17*
Partner/ AP	*27*	*-*	*-*	*-*	*36*	*36*
Team	*23*	*-*	*-*	*-*	*31*	*31*
Top Engineer	6	-	-	-	6	6
PMO	6	-	-	-	6	6
Gx	31	-	-	-	40	40
Procurement	8	-	-	-	8	8
PED	8	-	-	-	12	12
Claims	10	-	-	-	12	12

Report on the laundering of Regiments' proceeds of contracts alongside McKinsey for the benefit of Essa / the Guptas

13 November 2020

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

13 November 2020

REPORT ON THE LAUNDERING OF REGIMENTS' PROCEEDS OF CONTRACTS ALONGSIDE MCKINSEY FOR THE BENEFIT OF ESSA / THE GUPTAS

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2. Findings	Page 3
3. Conclusion	Page 4

Annexures

Annexure Number	Description
Annexure 1	Joint McKinsey / Regiments proposal to Transnet for the Coal Line contract (GSM/14/04/1037) June 2014
Annexure 2	Joint McKinsey / Regiments proposal to Transnet for the NMPP contract (GSM/14/04/1040) June 2014
Annexure 3	Regiments email to McKinsey 13 June 2014
Annexure 4	Regiments Spreadsheet SD Calculation-Feesper Mck.xlsx attached to email to McKinsey 13 June 2014
Annexure 5	Regiments ledger accounts summary for the Advisory unit for the 2015/16 financial year
Annexure 6	Extract from Regiments Advisory Invoice Tracking spreadsheet 7 December 2015
Annexure 7	Email from Wood to Singh 18 May 2015
Annexure 8	Email from Wood to Pita 5 August 2015

1. Introduction

1. The Commission's report on Vikas Sagar's relationships with Regiments, Trillian, Iqbal Sharma and Salim Essa ("Essa") shows how Essa orchestrated the incorporation of Regiments Capital ("Regiments") as McKinsey's supplier development partner at Transnet in 2012.

2. Niven Pillay ("Pillay") and Litha Nyhonyha ("Nyhonyha") of Regiments have repeatedly testified in civil litigation that the original arrangement reached between Regiments and Essa in this regard was that an entity nominated by Essa would receive 30% of all amounts received by Regiments flowing from its position as McKinsey's supplier development partner at Transnet and an additional 5% would be paid to Albatime (Pty) Ltd, the company of Kuben Moodley ("Moodley") who had introduced Regiments to Essa. It is not clear whether this

30% / 5% arrangement was ever implemented by Regiments. The cash flows analysed by the Commission show that the arrangement actually implemented by Regiments for most of the lifespan of its relationship with McKinsey was that Essa's entities were ordinarily paid 50% of Regiments' revenue from Transnet with Albatime being paid 5% of the Transnet revenue (leaving Regiments with only 45% of the Transnet revenue). Pillay and Nyhonyha suggest that this was the product of a later agreement reached by Eric Wood ("Wood") of Regiments with Essa without consulting them.

3. In some cases, Regiments' laundering arrangements with Essa and Albatime on joint McKinsey / Regiments contracts with Transnet were fraudulently presented by Regiments in in joint McKinsey / Regiments bid submissions as Regiments' supplier development arrangements. In other cases, the laundry payments were made without any pretext for such payments in the proposals submitted by McKinsey / Regiments.

4. Through these laundry arrangements, hundreds of millions of rands were laundered through shell companies nominated by Essa out of fees paid by Transnet to Regiments on McKinsey / Regiments appointments at Transnet.

2. Findings

5. Regiments has publicly admitted that it had an arrangement with Essa and Moodley that they paid Essa and Albatime 50% and 5% respectively of the income they received from Transnet in respect of contracts on which they worked alongside McKinsey. They claim that these payments were "business development" fees due to Essa who introduced them to McKinsey and to Moodley who introduced them to Essa. (Regiments also paid these fees to Essa and Albatime on a range of public sector contracts that did not involve McKinsey, but these are not relevant for present purposes).

6. The "business development" fees paid to Essa were simply money laundering payments. The shell companies designated by Essa to receive these "business development" fees changed over time. They included

    a. Chivita Trading (Pty) Ltd;

    b. Homix (Pty) Ltd;

    c. Forsure Consultants (Pty) Ltd;

    d. Fortime Consulting (Pty) Ltd;

    e. Medjoul (Pty) Ltd;

f. Haustaff (Pty) Ltd; and

g. Maher Strategy Consulting (Pty) Ltd.

7. All of these shell companies operated as out and out money laundering vehicles without any legitimate business activities. Revenue received from Regiments by these shell companies was, within days, laundered on to lower level money laundering entities. Apart from inflows from Regiments and other corrupt associates of Essa and the Guptas, the shell companies had no income. Apart from outflows to lower level laundry entities, the shell companies had no expenses of consequence. None of the shell companies paid PAYE (employees' tax) to SARS.

8. The joint McKinsey / Regiments proposals in June 2014 for the Coal Line contract (GSM/14/04/1037) (**Annexure 1**) and the NMPP contract (GSM/14/04/1040) (**Annexure 2**) stated that Regiments would be using Homix and Albatime as supplier development partners.

9. The Coal Line and NMPP contracts were awarded to McKinsey and Regiments without any competitive bidding process. At the same time, Transnet also awarded to McKinsey and Regiments, without any competitive bidding process, contracts for the Kumba Iron Ore (GSM/14/04/1038) and Manganese (GSM/14/04/1039) contracts.

10. In the context of preparing joint proposals for these four contracts, Regiments emailed to McKinsey on 13 June 2014 a spreadsheet containing a detailed breakdown of fees that were to be paid by Regiments to Homix and Albatime in their guise as supplier development partners of Regiments on the four contracts (**Annexure 3**). The spreadsheet attached to Regiments' email of 13 June 2014 provided for aggregate amounts in excess of R100 million to be paid to Homix and Albatime on the four contracts (**Annexure 4**).

11. McKinsey has confirmed through David Fine's statement to Parliament that neither Homix nor Albatime were involved in providing services on any project in which McKinsey were involved. However, as is detailed below, millions of rands were paid to Homix and Albatime from the amounts paid by Transnet to Regiments in respect of these four contracts and other Regiments / McKinsey contracts at Transnet. Fine has testified that he was unaware of any payments made by McKinsey to Homix and Albatime. The Commission accepts that, with the possible exception of Vikas Sagar, no person at McKinsey would have been aware of the payments to Homix and Albatime that actually did take place from amounts paid by Transnet to Regiments in respect of the relevant contracts, despite the fact that neither Homix, nor Albatime, provided any services on these contracts.

12. In February 2016, Regiments produced an internal valuation of its Advisory unit for the purposes of determining what payments should be made between Wood and Pillay and Nyhonyha when Wood, with a 32% interest in Regiments, took the Advisory unit with him to

Trillian but gave up his interest in all other business units within Regiments. In the course of that exercise, Regiments generated a ledger accounts summary for the Advisory unit for the 2015/16 financial year **(Annexure 5)**. That summary listed aggregate payments to Albatime and Essa's laundry entities under the column "BD Payments". It showed that Regiments had paid total payments to these "business development partners" of R274 154 718.11 in the financial year, including payments aggregating over R100 million on contracts alongside McKinsey.

13. Regiments maintained a running reconciliation of the payments it had received from Transnet and the corresponding payments it had made to Essa's laundry entities and Albatime. The spreadsheet containing this reconciliation was named "Advisory Invoice Tracking". The copy of the Advisory Invoice Tracking spreadsheet generated on 7 December 2015 (**Annexure 6**) shows that these laundry payments included payments on every contract with McKinsey, and that, in addition to the payments in the 2015/16 financial year, just under another R90 million worth of laundry payments had been made in respect of Regiments / McKinsey contracts in the 2014/15 financial year.

14. Regiments forwarded copies of the "Advisory Invoice Tracking" spreadsheet to Anoj Singh ("Singh") when he was CFO of Transnet (see for example **Annexure 7** - email of Wood to Singh on 18 May 2015) and to his successor as Transnet CFO, Garry Pita ("Pita") (see for example **Annexure 8** - email of Wood to Pita on 5 August 2015). The CFO's of Transnet were aware of the payments being made by Regiments to Essa's laundry entities.

3. Conclusions

15. Over the period March 2014 to February 2016, Regiments paid hundreds of millions of rands to money laundering vehicles designated by Essa in return for his role in corruptly procuring their appointment to contracts with State Owned Enterprises.

16. More than R200 million of these laundry payments derived from fees paid to Regiments on contracts where they worked as McKinsey's supplier development partner at Transnet. Laundry payments were also made by Regiments to an Essa shell company from the fees paid to Regiments on the SAA contract where it worked alongside Regiments.

17. In some of its joint proposals with McKinsey, Regiments fraudulently provided for these laundry payments by describing Essa's laundry vehicle, Homix, as Regiments' supplier development partner.

18. A detailed breakdown of the laundering fees was provided by Regiments to successive Transnet CFOs, Singh and Pita.

Annexure 1

FOF-08-405

RFP GSM/14/04/1037: Provision of Professional Services to Support Transnet in Increasing the Coal Line with a breakthrough of 2Mt (two million tonnes) per week for a period of 12 months

Transnet

Closing date 17 June 2014 June 2014 @ 12:00

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Memorandum to
The Secretariat, Transnet Acquisition Council

RFP GSM/14/04/1037: Provision of Professional Services to Support Transnet in Increasing the Coal Line with a breakthrough of 2Mt (two million tonnes) per week for a period of 12 months

McKinsey & Company and Regiments Capital are pleased to submit this proposal in response to Transnet's solicitation regarding the provision of professional services to support Transnet in increasing the coal line with a breakthrough of 2mt (two million tonnes) per week for a period of 12 months (RFP GSM/14/04/1037)

This memorandum outlines our proposed approach and credentials, and should be read in conjunction with the attached exhibits. Please do not hesitate to contact us if you require clarification or further information.

This main proposal document is structured into six sections:

- Our understanding of the situation and importance of coal volumes
- Our value proposition
- Our approach
- Our team
- Proposed project governance
- Our supplier development commitments

Professional arrangements are included in a separate document within the proposal attachments.

OUR UNDERSTANDING OF THE SITUATION AND THE IMPORTANCE OF THE COAL VOLUMES

Transnet is now in the third year of its Market Demand Strategy (MDS). This strategy defines Transnet's growth plans across all operating divisions and includes a number of ambitious targets:

- Invest more than R300bn in order to grow its volumes by more than 70% by 2019/2020, including commodities export and domestic coal, iron ore, manganese and containers
- Contribute 5% to total GDP by 2019/2020
- Help create ~580,000 jobs per year economy wide by 2019/2020
- Enable ~R240bn a year in export revenue by 2019/2020 through global thermal coal supply, iron ore exports to China, and becoming the world's largest exporter of manganese

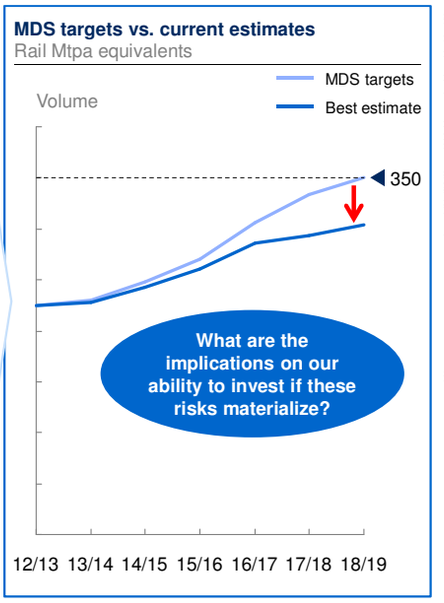
Achieving the MDS requires simultaneous infrastructure investment and volume growth to create the cashflow required to fund the infrastructure. Given the cashflow-funded nature of this strategy, shifting customer expansion plans and delays to individual infrastructure projects that enable volumes can have a dramatic effect on Transnet's finances, including its ability to stay within board-mandated cash interest cover and gearing parameters. Current risk estimates indicate that Transnet faces a capital funding gap in 2014/2015 of approximately R24bn.

EXHIBIT 1

Risks facing Transnet's capital programmes will affect volumes and cash available for investment

VERSION AS AT JULY 2013

	Likely impact to current programme
Regulation & compliance	▪ Delays in EIA processes could push out project timelines ▪ Ports Act / PFMA applications
Execution timelines	▪ Top down project execution timelines are not always achievable
Approvals	▪ Multiple internal and external approval points and quality document submissions could slow progress through gates
Procurement	▪ Lead times for rail, rolling stock, key port equipment, etc. could be longer than expected
Supply	▪ Private sector expansion plans could result in lower than expected volumes ▪ Power generation capacity to supply – Mines – Rail and port infrastructure
Cost estimates	▪ Capital and borrowing cost escalations ▪ Budgeting accuracy ▪ Forex and macro-economic impacts



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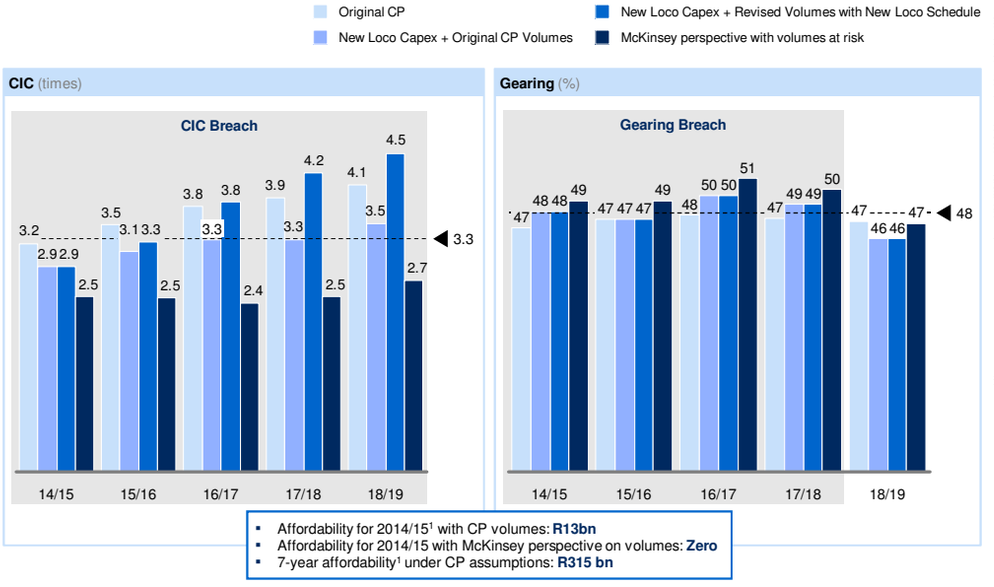
SOURCE: Team analysis; TCP Project Director discussions; MDS volume file

EXHIBIT 2

Even if Transnet delivers original Corporate Plan volumes, it will breach CIC and Gearing parameters through 2018



- Affordability for 2014/15[1] with CP volumes: **R13bn**
- Affordability for 2014/15 with McKinsey perspective on volumes: **Zero**
- 7-year affordability[1] under CP assumptions: **R315 bn**

1 Not considering impact of volumes at risk

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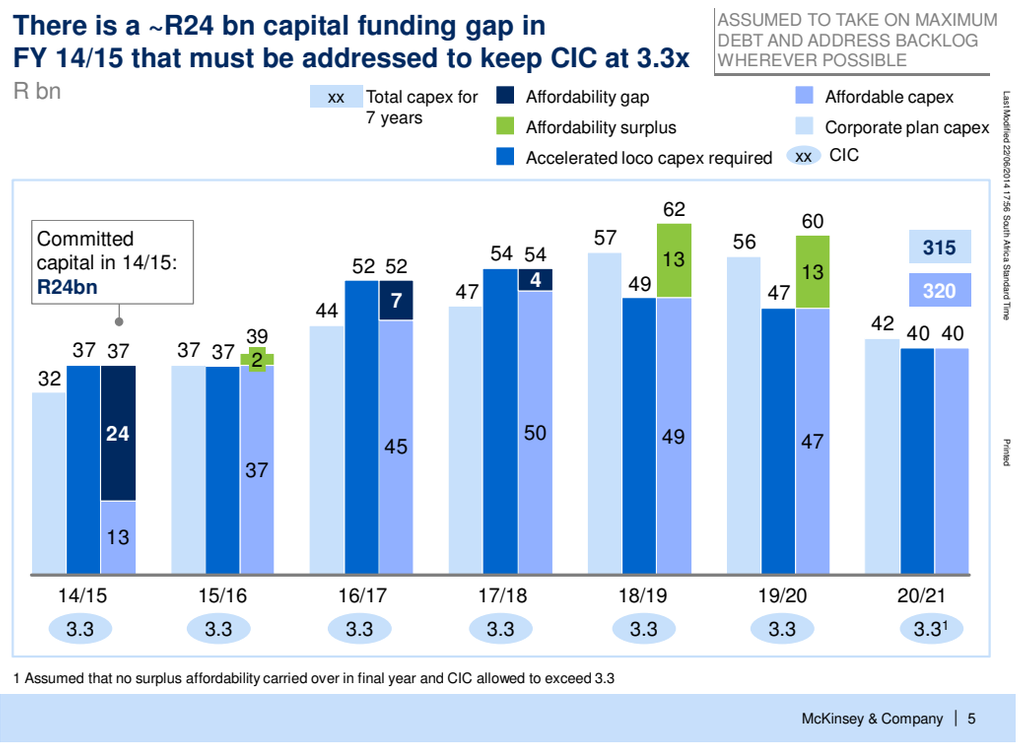
SOURCE: 2014/2015 CP; GFP/GCIA analysis

EXHIBIT 3

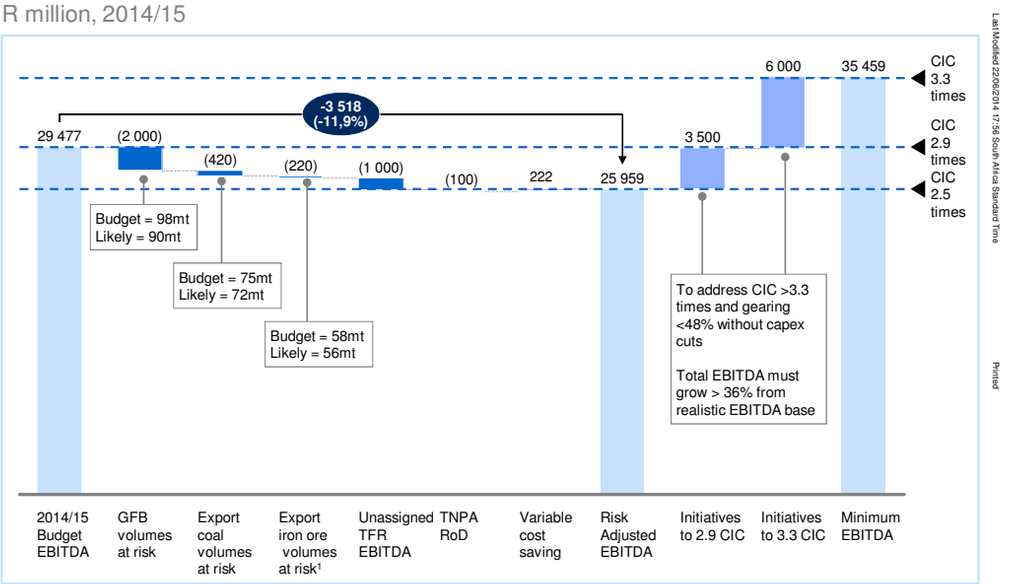


In order to mitigate this risk, Transnet is urgently seeking levers to generate additional cash flow from its existing businesses. Currently, Transnet is targeting R9.5bn in EBITDA initiatives, including additional volumes from the coal line.

EXHIBIT 4

EBITDA initiatives of R9.5bn are required to remain within financial parameters

R million, 2014/15



1 Kumba's ability to deliver is at risk

McKinsey & Company | 7

Therefore, the Coal business unit has set a stretch target for export volumes of 77Mt and for domestic volumes of 19Mt in 2014/15. While the early weeks of the year were very successful, the Export Coal line has since struggled with challenges that have caused its performance to fall below target:

- Following the annual infrastructure maintenance shutdown, there have been a range of locomotive and infrastructure-related disruptions that have slowed volumes to RBCT
- Persistent cable theft has caused numerous failures of the OHTE system, necessitating the use of Diesels and slowing traffic
- Resource constrains e.g. shortages of locomotives resulted in Transnet Freight Rail ("TFR") being unable to capitalise on demand from mines
- Variations in the timing of trains arriving at Ermelo and issues with the reliability of the infrastructure entering and leaving Ermelo yard has made it difficult to realize the target number of Shongololos and their anticipated improvement in cycle times

The Coal business unit currently has a budget of 75Mt in Export Coal and 17Mt Domestic Coal in 2014/2015, though based on performance registered in the

second half of 2013/2014 and the first two months of 2014/2015, these figures may be aspirational. To bridge the gap between current performance and the required target, Transnet has asked for dedicated external support.

OUR VALUE PROPOSITION

McKinsey & Company

McKinsey and Company is uniquely positioned to help Transnet deliver additional volumes on the coal line:

- McKinsey has twice assisted Transnet in driving coal line operations previously (in 2005 and 2009), each time resulting in 15-20% operational improvement gains
- Our previous work has given us a clear indication of which levers are most likely to create impact (see Our Approach section below), which will allow us to start working with the Coal line team to drive change from day one
- In addition to our experience helping Transnet, we have also served many rail clients globally, and will bring this expertise to bear. Experts that will support our work with you are listed below, with detailed CVs available in the supporting Powerpoint exhibits:
  - Catherine O'Connor, Kevin Neher and Mike Crowley (North America-based rail operations and maintenance experts)
  - Gregoire Hirtz, Jurgen Muller, Anselm Ott (Europe-based rail operations and maintenance experts)
  - Prashant Jani (India-based rail scheduling expert)
  - Jan Weydringer (South Africa-based Mine/Rail and Rail/Port interface expert)
  - Marc van Olst and Pravesan Govinder (South Africa-based rail operations experts, including previous experience serving Transnet on coal line operations)
- Beyond rail operations experience, McKinsey has helped Transnet craft the implementation plans for the MDS, created the Results Management Office to support the execution of required initiatives, and worked with you to build the Group Capital Integration and Assurance function to improve effectiveness, transparency and accountability in capital spending. No other third party has such a detailed understanding of Transnet's strategy, its current operational

concerns, and its uniquely complex links between cashflow and capital planning

- From a market perspective, McKinsey also understands the economics of the global and local coal industry in detail, including strategic trends, and has supported Transnet on multiple occasions in validating its demand forecasts for commodities including coal

Regiments Capital

Regiments Capital is also uniquely placed to assist Transnet on the Coal line:

- Regiments has conducted several engagements at Transnet in Strategy formulation, Financial Risk Management, Business Case validation, Programme Management Office design and Transaction Advisory Service.
- Through its Consulting division, Burlington Strategy Advisors, Regiments Capital has been involved in operational improvement assignments in numerous industries, from high volume industrial manufacturing to underground mining and banking.
- Regiments take a heavily analytical yet practical approach to identifying opportunities for improvement. Its product offerings include overhead and input cost optimisation, optimal equipment and resource utilisation and process re-engineering.

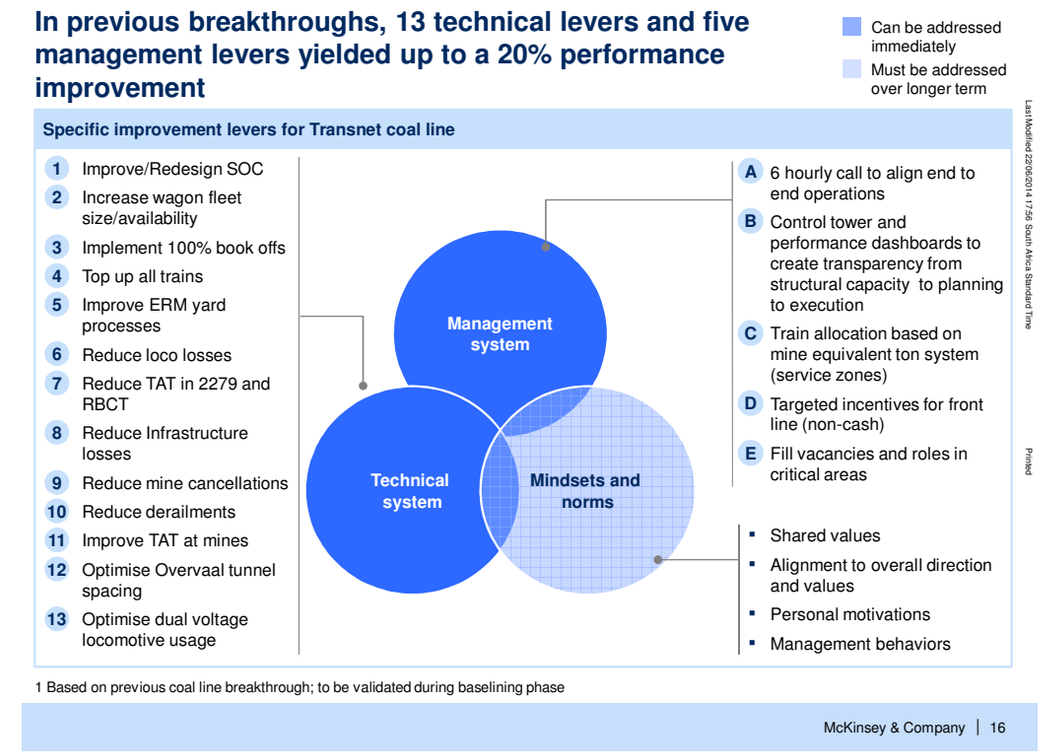
OUR APPROACH

Achieving breakthrough performance in 2014/2015 will not be easy. Technical solutions alone are likely to fall short because they do not consider the bigger picture, for example. Achieving sustainable volume increases will require solutions that address technical systems, the management systems, and mindsets and behaviours.

Based on our experience in rail operations and with the Coal line in particular, we have identified 18 levers (13 technical and 5 management levers) that are likely to allow the Coal line to deliver the appropriate volume. In addition to the technical levers shown below, success depends on effective management systems: collaboration across the coal line, effective and easy to use tools, such as control tower and performance dashboards, and filling critical vacancies and roles. In the longer term, we must also focus on mindsets and behaviours: clear and shared direction, personal motivation and management behaviours.

We will review and refine this set of levers through a rapid re-baselining phase.

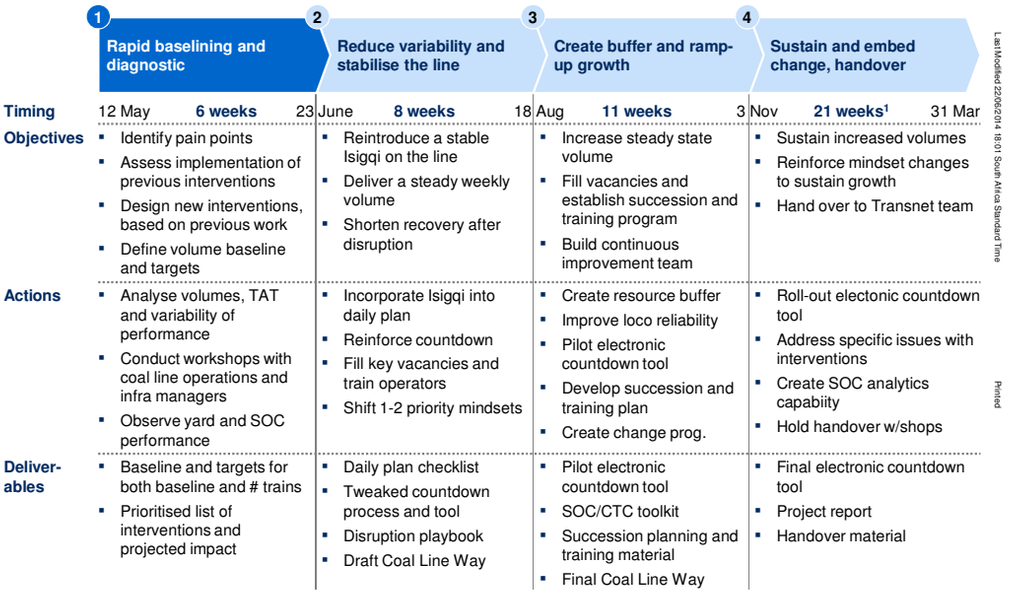
EXHIBIT 5



We will work directly with your operations teams to run this project, which will be split into two phases. The first phase will include support from McKinsey and Regiments teams and will run from May until November 2014. The second phase will be run by Transnet with continued support from Regiment, and will continue to work on sustaining performance until March 2015. The attached chart outlines the McKinsey and Regiments support plan and deliverables. All work will be incorporated into the ongoing TFR continuous improvement plans. New operating plans will be compiled in parallel with our work and operators will be trained in each phase.

EXHIBIT 6

Proposed workplan



1 Includes 2 weeks holiday break

McKinsey & Company | 17

- **Phase 1 (May-June 2014): Rapid rebaselining and initiative prioritisation**
  - Engage coal line management – create joint purpose and co-create improvement program
  - Define structural capacity constraints
  - Prioritise issues (technical, management systems) and accompanying volume levers
  - Develop targets for operational KPIs
  - Identify constraining mindsets and behaviours
  - Define implementation plan, including stakeholder engagement plan
  - Provide shutdown support
  - Create a shutdown post-mortem with recommendations to mitigate risks in future shutdowns
- **Phase 2 (July - Aug 2014): Reduce variability and stabilize the line**
  - Reduce variability and stabilize the line within existing operating philosophy by re-implementing essential tools, processes and embedding these into the TFR continuous improvement process; focus on quick wins

- Create and operationalise priority management system changes, including aligning reporting to decision making and strengthening partner management
- Address required shifts for 1-2 priority mindsets, starting with the coal line management team
- Fill high-priority vacancies and identify additional needs
- Stabilise system and reduce weekly volume variance
- Implement training to reinforce key roles
- Begin development of "the Coal Line way"

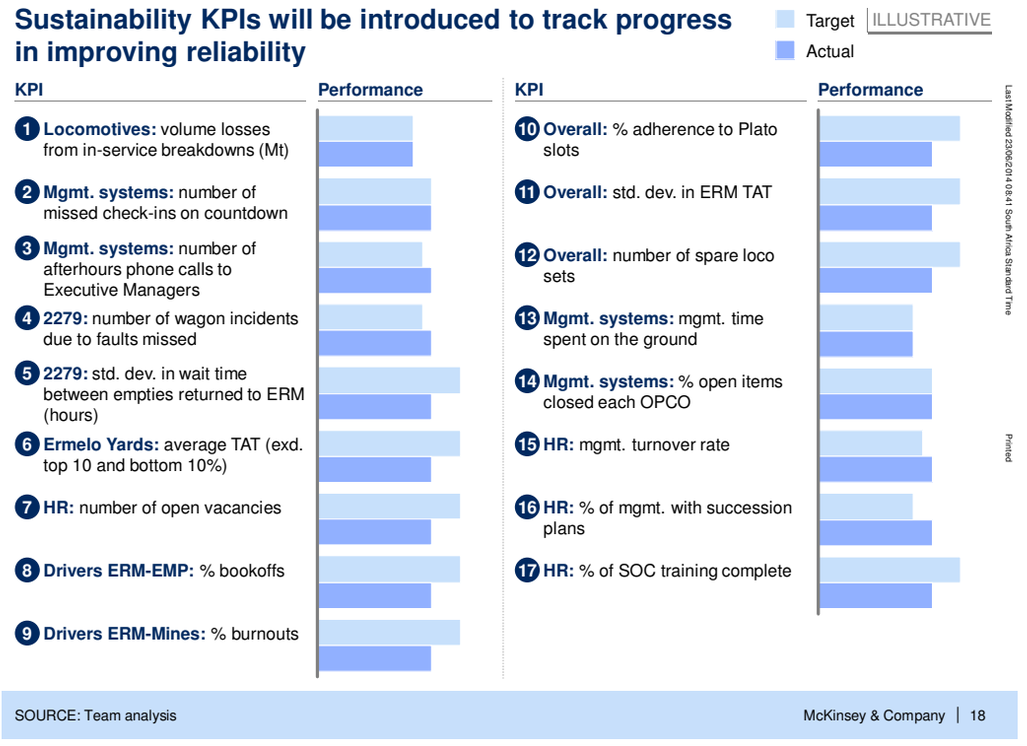
- **Phase 3 (Sept-Nov 2014): Create buffer and ramp-up growth**
  - Complete implementation of prioritized initiatives and ensure all Phase 2 changes are stable
  - Improve reliability and utilization of locomotives, wagons and crew to create buffer and increase capacity to capture growing mine demand
  - Develop tools and system support to reinforce the new way of working and enable sustainability, e.g. piloting a tech-enabled yard management tool
  - Develop a succession plan and planning process for all key roles, including short-term substitution, and recruit and train people for remaining vacancies(subject to Transnet and market availability constraints)
  - Codify "the Coal Line way" and create a change program to roll-out and reinforce the required mindset across the Coal line team
- **Phase 4 (Nov 2014 – March 2015): Sustain and embed new behaviours through mindsets, tools and processes and handover to Transnet**
  - Roll-out specific tailored interventions to support sustainability, e.g. tech-enabled tools
  - Monitor penetration of the Coal Line Way mindset change program, management systems changes and operating plan changes, with remedial interventions as required
  - Revise KPIs and targets embedded in SPOs/incentives to align with the Coal Line Way and support stable volumes
  - Create analytics capability in the SOC team to enable continuous improvement and sustain growth

– Finalise documentation of new operating principles, ensure all operators are trained and establish a training process and plan for the future

Where funding is required to drive interventions (e.g. rental of combis to test the impact of faster crew replacement), the team will present a business case to the GM Coal BU for approval. Should the business case be approved, it is expected that Transnet will provide the necessary funding to implement the proposed intervention.

In addition to improving volumes, sustainability will be a key focus of this work. On a monthly basis, we will track sustainability progress across the system according to a set of KPIs to be agreed with the Coal line team. For illustrative purposes, some of the proposed KPIs are shown below.

EXHIBIT 7



OUR TEAM

Our team leadership will consist of Norbert Dorr (Director, McKinsey), Vikas Sagar (Director, McKinsey), Christina Planert (Principal, McKinsey), Ashvin Sologar (Associate Principal, McKinsey), Eric Wood (Executive Director,

Regiments), Indheran Pillay (Head of Operations, Regiments), and Shingai Ngara (Project Manager, Regiments). CVs for each individual can be found in the attached Powerpoint exhibits.

The full time team on the ground will be as shown in the table below:

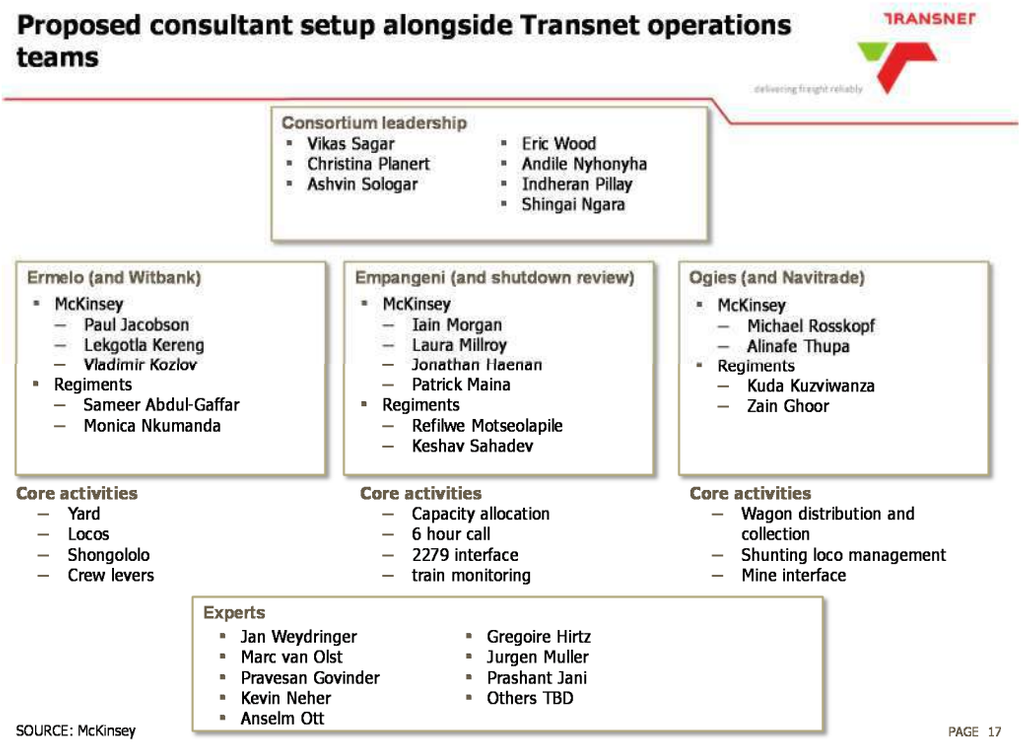
		McKinsey		Regiments		Total
Phase	Month	Mgr	Consultants	Mgr	Consultants	Full team
1	May	1	4	-	6	11
	Jun*	3	8	-	9	20
2	Jul	3	7	-	8	17
	Aug	2	5	1	8	16
3	Sep	2	5	1	8	16
	Oct	1	2	2	10	15
	Nov	1	2	2	10	15
4	Dec	1	1	3	11	16
	Jan	1	1	3	11	16
	Feb	1	1	3	11	16
	Mar	1	1	3	11	16

*In June, two rail scheduling experts will also support the team

To begin, one team will be stationed in each of Empangeni, Ermelo and Ogies to support the operational teams there. As levers and initiatives are refined, individuals will be stationed at the areas where they can drive greatest impact.

We will also utilize a team of rail and operations experts (e.g., Marc van Olst) to support the teams on an as needed basis, as described in the “Our Value Proposition” section. We have proposed below the team structure to work alongside the Transnet operations teams.

EXHIBIT 8



Success depends upon working together to build the capability of the Coal line team to sustain this breakthrough. Hence, we will need to select ~15 people from your organisation to work alongside our team on a dedicated basis. These individuals will help implement and drive initiatives, and eventually own them so that these initiatives can continue to deliver value for Transnet year after year. Should these 15 people not be available to mirror and support our team, we will need to provide additional resources to drive value in this year, with a commensurate increase in costs.

In addition, we will need ad hoc support, particularly in the following areas:

- Coal line management –Operations managers in each of the three areas
- SOC and CTC teams – Execution manager in each
- Planning teams – Planning manager in the SOC and 1-2 planners
- Resource management teams – Locomotive and wagon monitors in SOC
- Yard operations teams – Yard and Depot operations managers
- TFR continuous improvement teams

Each member of the Transnet client team will need to work closely with us to define the necessary changes and to use their role in the organization to implement

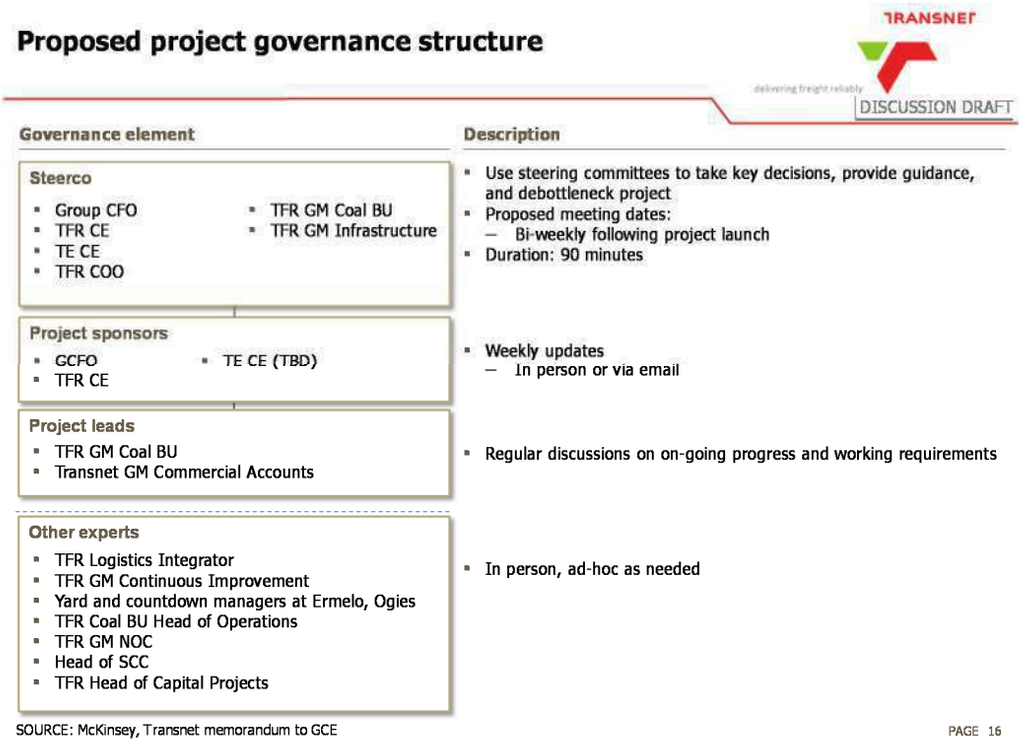
them. They will also be responsible for reporting on these changes to the steering committee, with support from the McKinsey/Regiments team. This support will be required from May until project completion in March and is pivotal to delivering a sustainable change. Without dedicated participation by these teams a sustainable breakthrough will not be possible.

PROJECT GOVERNANCE

The project will be governed by a steering committee drawn from Coal line, TFR and Transnet senior management, combined with leaders from McKinsey and Regiments, and external experts.

We have proposed a project governance structure below, including suggested individuals from Transnet. These teams will meet on a bi-weekly to monthly basis to review progress and take decisions to shape the direction of our work.

EXHIBIT 9



OUR SUPPLIER DEVELOPMENT COMMITMENTS

McKinsey & Company

Our supplier development plans include training for Transnet, Regiments and McKinsey employees, as well as local procurement initiatives:

- We will train at least 40 SOC and Operations personnel above the basic requirements of this engagement. These individuals will be able to provide evidence of having attended training sessions as well as exposure to on-the-job training in problem solving fundamentals, structuring problems, and applying lean tools to operational challenges
- In addition, we expect to train 20-24 Regiments consultants on topics including problem solving, rail operations and general operations improvement techniques. Each individual will be provided with a development plan, and an evaluation of progress for formal tracking purposes
- Funds from this engagement will also be used to support the training of McKinsey Leadership Programme Fellows and McKinsey Business Analysts
- Where possible, our procurement will prefer local, black-owned businesses

The aggregate spend by McKinsey & Company on Supplier Development will meet or exceed 70% of the fees it obtains as a result of this engagement, inclusive of fees shared with Regiments Capital. Exclusive of fees shared with our consortium partner, our Supplier Development will constitute >19% of fees obtained as a result of this engagement.

In addition to all of the initiatives described above, 25% of our total profit in any year is directed towards the South Africa Foundation, a non-profit organization dedicated to driving transformation in South Africa. Specific valuation and details on our supplier development commitments may be found in the formal Supplier Development Plan template accompanying this document.

Regiments Capital

Regiments Capital is fully committed to supplier development, and will support it through this engagement by supporting the following Supplier Development Partners:

- We will source IT support services from Seth Consulting, and provide mentorship and growth strategy expertise to its owner
- We will purchase technology hardware and software from Preferred IT

- We will sub-contract consultants and services from Accompany Advisory, Homix and Albatime, and provide them with skills development opportunities, and IPR for processes and methodology that they can use in future assignments
- We will subcontract legal services from Pule for the execution of the project
- We will subcontract engineering resources from DEC for the execution of the project

The aggregate spend by Regiments capital on Supplier Development will meet or exceed 20% of the fees it obtains as a result of this engagement. Specific valuation and details on Regiments Capital supplier development commitments may be found in the formal Supplier Development Plan template accompanying this document.

□ □ □

McKinsey & Company and Regiments have a track record of partnering successfully with Transnet and possess unparalleled experience of driving operational transformations in South Africa and around the globe. Furthermore, the partnership between McKinsey and Regiments offers Transnet a local, established collaboration, with global reach, which brings the best expertise and reach to the programme from both entities, offers industry-leading empowerment credentials and which is committed to skills transfer and development.

We remain highly committed to the success of Transnet and South Africa, and would consider it a privilege to support you in implementing this important strategic endeavor.

Sincerely,

C. Planert

Christina Planert Eric Wood

Enclosure

Summary of Professional Practices

McKinsey & Company, Inc.[1], traditionally has followed several professional practices, summarized below, that are at the heart of our approach to client service. We consider it essential that our clients understand these practices.

PROTECTING CONFIDENTIAL INFORMATION

Effective client service usually requires our access to confidential information. We recognize that you will entrust such information to us with the expectation that we handle it carefully and professionally. We are committed to meeting the highest professional standards.

We will never disclose your confidential information, materials that we develop for you from your confidential sources or information that we believe conveys significant competitive advantage, to anyone outside our Firm without your prior consent, except in the unusual circumstance when we are legally compelled to do so. We will only use such information in connection with our consulting services for you, and only those staff members with a "need to know" will have access to such information.

All McKinsey personnel are apprised of their professional obligations to our clients. Among these obligations is the vigorous protection of confidential client information. In addition, all McKinsey personnel must acknowledge their understanding of this responsibility by signing a confidentiality agreement with McKinsey.

The work that we do with you also may include information developed from non-confidential sources and conceptual frameworks, approaches, and generic industry perspectives that do not contain your confidential information. We bring such information, frameworks, approaches, and perspectives to each new assignment, and any such information may be shared within our Firm and with other clients. We are able to do this because we have retained ownership of such information, frameworks, approaches, and perspectives (and of any enhancements thereto) while serving our clients.

[1] These practices apply to services rendered by McKinsey & Company, Inc. or any of its affiliates.

We aspire to a relationship based on trust and confidence, and we welcome the opportunity to discuss any areas of particular sensitivity you may have regarding the handling of confidential information. Where appropriate, we will enter into explicit confidentiality agreements.

COLLABORATING AND GETTING YOUR FEEDBACK

To ensure a structured and systematic dialogue about our joint collaboration and impact, it is our standard practice to ask for formal feedback from key client individuals (usually the Steering Committee) at the end of each engagement. We typically use our proprietary online tool to solicit feedback on our contributions towards the project's vision and goals. All data are secure and are used only as a basis for a dialogue with you on how to serve you better. The feedback is not used for evaluating individuals (neither McKinsey nor client team members).

SERVING COMPETING CLIENTS

It is the longstanding policy of McKinsey to serve competing clients and clients with potentially conflicting interests (including in connection with merger, acquisition, and alliance opportunities) and to do so without compromising our professional responsibility to maintain the confidentiality of client information. We place primary reliance on the integrity of our professional staff to maintain such confidences. Nonetheless, we ensure that consultants who develop important insights about your company are not later placed in a situation of potential conflict. To assure this, consultants who had access to your confidential information will not be assigned, for a significant period following an assignment for your company, to a study for another client where such confidential information could be used to your material competitive disadvantage.

Consistent with our confidentiality obligations, the consultants who work with you are unlikely to know that other McKinsey consultants serve one of your competitors or another party involved in a potential transaction that you are considering or effecting. Similarly, you should not expect to be advised or consulted about our serving your competitors or such other parties.

MANAGING RELATIONS WITH OUTSIDE PARTIES

As a basic policy, we do not make public client names, client materials, or reports prepared for clients without their permission. We similarly require that clients not use our name, refer to our work, or make our work products available outside their

organization without our prior permission. In those cases when disclosure from either side may be appropriate, we will discuss this first and only proceed if we reach agreement.

Occasionally, we become involved in legal actions as witnesses, sources of information, or as a party because of our work with a client. If this should occur, we will advise you promptly and work closely with you and your legal counsel to coordinate our response. We ask that you hold us harmless and indemnify us in connection with associated damages and costs, including legal costs, except to the extent they are found to have resulted from our gross negligence or willful misconduct. Also, in the event that a substantial amount of McKinsey professional time is required to respond to the action, the cost of such time will be discussed with you and billed accordingly.

TERMINATION

We believe that either party should have the freedom to terminate the relationship at any time if it becomes evident that the potential value of the work does not warrant further effort. In the event that a project is stopped before completion, only the professional fees and costs incurred to that date are billed.

□ □ □

The practices summarized above reflect key aspects of our basic approach to client service and reflect our commitment to maintain the highest professional standards. We would welcome the opportunity to discuss our professional practices with you.

Annexure 2

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TRANSNET SOC LTD
01 - 14 -06- 24
CHAIRMAN
TRANSNET ACQUISITION COUNCIL

RFP GSM/14/04/1040: Provision of Professional Services to Support Transnet in De-risking and Acceleration of the New Multi-Product Pipeline (NMPP)

Transnet

Closing date 24 June 2014 @ 12:00

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Issue: 2019-05-03_12:04:34

COMMISSION OF INQUIRY INTO STATE CAPTURE

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TRANSNET SOC LTD
01 - - - - - 14 -06- 24
CHAIRMAN
TRANSNET ACQUISITION COUNCIL

CONFIDENTIAL

Memorandum to
The Secretariat, Transnet Acquisition Council

RFP GSM/14/04/1040 : Provision of Professional Services to Support Transnet in De-risking and Acceleration of the New Multi-Product Pipeline (NMPP)

McKinsey & Company and Regiments Capital are pleased to submit this proposal in response to Transnet's solicitation regarding the provision of professional services to support Transnet in de-risking and acceleration of the new multi-product pipeline (NMPP) (RFP GSM/14/04/1040).

This memorandum outlines our proposed approach and credentials, and should be read in conjunction with the attached exhibits. Please do not hesitate to contact us if you require clarification or further information.

This main proposal document is structured into five sections:

- Our understanding of the situation
- Our approach
- Our value proposition
- Our team
- Our supplier development commitments

OUR UNDERSTANDING OF THE SITUATION

The New Multi-Product Pipeline ("NMPP") is Transnet's largest programme in execution with actual budgeted cost of R23.4 billion. The555km 24" trunk line, together with pump stations and terminals will enable the future inland fuel demand to be met through greater pipeline capacity (increase volume from 4.4 billion litres to 8.7 billion litres) and flexibility as well as allow the existing Durban Johannesburg Pipeline (DJP) to be decommissioned.

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NMPP has experienced delays in project execution in the past. This has historically resulted in significant cost escalation and reputational risk exposure for Transnet. Historically issues identified by Transnet included:

- Integration with EPCM led to disruptions as late in 2012/2013, including de-scoping of AWP and change of Transnet Project Managers.
- Project Management and Project Controls in particular are fundamental and imperative to ensure that key risks are effectively mitigated and reported accordingly.
- TM2 management detected the incorrect progress reporting by Group Five during mid- November 2013 and verbally instructed Group Five to review and rectify their reported progress figures.
- Ongoing poor performance and re-work by Group Five.
- Progress as per the Constructability schedule as at 31 October 2013 showed additional slippages to the MC date, compared to the PSR and NMPP OPCO reported dates.
- The October 2013 risk modeling reflected a most likely delay beyond the latest approved milestone dates.
- The TM2 Final Forecast Cost (FFC) at R2.977bn exceeds the project budget of R2.777bn. There is a risk that this FFC will be breached should there be further schedule slippage past mid-June 2014 and the overall ETC (R23.4bn) is at risk.
- A site visit Group Capital Integration and Assurance (GCIA) to TM1 in February 2014 identified potential opportunities for improvement.

Currently, TM1 and TM2 engineering, construction and commissioning/ramp-up remain to be finalized – therefore the volumes and EBITDA contained in the 2014/15 Corporate Plan are at risk. The Regulatory Asset Base (RAB) is also at risk (currently only ~50% of the project is in the RAB with the regulator investigating any non-prudent increase in the overall Estimated Total Cost (ETC)). NERSA has appointed an independent consultancy to assist in its study to formulate an independent view on the prudency with which the NMPP was built.

Moreover, due economic crises the original business case assumptions changed resulting in 2014 actuals being half of what was expected in the original business case. The significantly lower estimated inland demand will lead to significant operational adjustments when NMPP moves to multiproduct delivery. The issues include: increased size of interfaces (~4x larger), required slug sizes for a bigger pipeline (~2x bigger) and significantly longer lead times (~3x longer).

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Cost and schedule overruns, coupled with operational difficulties that have currently not been adequately addressed or considered, will lead to a difficult few years ahead for the project. Our understanding is that TPL and TCP would further benefit from increased joint collaboration. This cross-functional team should also include Prudency, Group 5 and Legal to ensure the optimal system solution is found, instead of the optimal technical solution. Accordingly, to ensure optimal completion of the project the de-risking and acceleration of the project is required.

OUR APPROACH

Overall we propose a three-phase approach that addresses the abovementioned issues. Please see Enclosure no.1 for supporting exhibits.

Phase 1 (6 weeks): Re-baselining

In the first phase we will focus on two workstreams:

- **Re-baselining of the execution of project**: Realistic estimation of a completion date and required budget by (for illustrative :
  - Cross-checking actual quantities completed with on-site observations, QS team and site interviews
  - Analysing contractor productivity comparing actual vs planned quantities completed, quantities to go (including scope/design changes) and earned vs burned man-hours
  - Identification of risks caused by disruptive events such as inclement weather and strikes
  - Understanding outstanding claims and organizational capacity to manage
  - Checking cost recovery assumptions with site team
  - Evaluating historical quality issues and understanding future risk of reworks
- **Re-baselining of the commercial assumptions of project**
  - Understanding of the original business case assumptions understand what had changed with regards to NMPP requirements in last 6 years especially verification of the demand forecast and assumed operational philosophy
  - Clarification of boundary conditions to understand what can be optimised
  - Deep dives on demand forecasts for inland fuel and operational viability of options was necessary

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- Cross-functional workshop held to understand the high-level options available to fulfill requirements
- High-level NPV analysis of options and understanding of risks were required to ensure the options were directionally correct
- Range of options delivered to Steerco
- Formation of a cross-functional team put together to ensure business cases could be refined and delivered to board

Phase 2 (~ 8 weeks): Detailing and optimizing business cases

Phase 2, follows immediately after Phase 1. While the baseline establishes the factual status quo and identifies high level strategic options, detailed remaining scope, related operational philosophy, priority sequence for construction, regulatory and legal implications have to be defined.

To fast-track the delivery of detailed business cases we propose to use "pressure-cooker" approach, i.e., multidisciplinary collocated team to address the outstanding questions in a focused structured way. After the preparation, the core of the effort happens during one week in which the whole business case is reviewed .The executive decisions are taken at the end of each day. Any outstanding open questions and their implications are ring-fenced for further deep dives.

We will set up an integrated, multi-disciplinary scrubbing team (including Group 5) in the first 3 weeks to:

- Develop the detailed engineering for alternative options (e.g. tightlining vs four tanks vs full scope) in order to determine engineering, constructability, operability, cost and schedule implications of each option
- Identify levers to scrub, descope or defer components of each option, and verify contract terms to optimize the solution(s), i.e., detailing out and signing off with TPL the minimum technical requirements for beneficial operation (e.g. temporary CP on the pipeline, tightlining vs four tanks at TM1, ring-fencing of deprioritized components at TM2, etc.)
- Identifying the requirements for capitalization of assets and tariff recovery; identifying potential split of the project/asset base that would enable earlier capitalization of separate components and/or deprioritisation of non-capitalizable assets

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- Review regulatory implications of the options as well as the alignment with the public commitments; and necessary mitigation actions of reputational risk
- Define the interdependencies between TM1, TM2 and S&A
- Revise the construction schedule
- Recommend one option to proceed with given the above considerations

Phase 3 (12 weeks): Setting-up execution front-line support

This phase will start immediately after Phase 1 for TM2 and after phase 2 for TM1 and overall project. Phase 3 will focus on the following elements:

- **Control Tower** will create transparency on construction progress, costs, claims and upcoming risks on site. It is a basis for tightly managing construction progress on sit. This will include:
  - Develop/confirm the re-baselined schedule with realistic milestones
  - Set up the Control Tower room on site, including dashboards for same-day view of project progress, upcoming workfronts per discipline, next milestones, issues, risks and action items, and commissioning sequence
  - Support client and contractor teams to conduct site observations, record daily progress and identify and report constraints on site to the Control Tower team. Streamline progress reporting by fostering closer collaboration on between Planning, Construction and QS, including
    - Directly involve foremen in the weekly work planning session
    - Integrate weekly work plan for all the related activities, to identify and prevent coordination problems
    - Daily plan review on the field, with attendance of all the related foremen, to foresee / solve potential coordination issues
  - Report site observations and escalate priority issues to central project Control Tower for high level decision-making and resolution. Build capabilities of project team to run Control Tower
    - Syndicate and refine Control Tower setup with site team input
    - Refine meeting cycle and decision-making forums (e.g. daily check-in, weekly forums per discipline)
    - Assist Control Tower lead and team to manage issues, risks and action item deliverables with daily progress report-backs

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- Work with Engineering and client team to freeze scope and keep further design changes to a minimum (only design changes affecting safety or critical operations)
- Start daily performance and issue resolution dialogues in the Control Tower from the 2nd week, even with limited facts, to train the construction and commissioning teams to engage with the Control Tower
- Start site observations from the 2nd week, even with limited refinement of the schedule, in order to uncover root cause issues and emerging potential risks and constraints

- **Contractor management:** Review contracts to develop claims and counter-claims strategy, and identify levers to incentivize contractor performance
  - Support, coach and build up capabilities of contract management team in prioritizing, processing and closing claims
  - Work with contract management team to create a claims strategy both at a site level and for the whole project
  - Set up a contracting SWAT team to identify, prepare and institute counter-claims against the contractor
  - Review the Group 5 contract to identify mechanisms to incentivize performance for the remainder of the project (both damages and rewards)
  - Determine potential to impose early delay damages on G5 to demonstrate willingness to manage performance strongly
- **Reporting:** Ensuring senior visibility and engagement, i.e., monthly GCE and GCFO on-site progress review (via VC)
- **Cash flow at risk monitoring:** Monitor regularly that the cash flow expenditures are in line with the agreed budget as well as perform quantitative risk assessment including: revenue impact; EBITDA impact; Cost vs benefit analysis; and Monte Carlo analysis if applicable.
- **Commissioning management**
  - Establish the commissioning sequence to identify critical path systems in the schedule
  - Stress-test commissioning process with internal and external experts to identify potential to streamline commissioning activities and reduce time to beneficial operation
  - Align Commissioning and Construction schedules and add Commissioning dashboard to the Control Tower

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- Run Commissioning Excellence and Readiness workshops with commissioning teams, facilitated by McKinsey experts

Phase 4 (8-10 months): Implementation

Phase 4 starts will start after Phase 3 and will focus on implementation of the execution support set-up in Phase 3.

OUR VALUE PROPOSITION

McKinsey & Company

McKinsey and Company is uniquely positioned to help Transnet to de-risk and accelerate the New Multi-Product Pipeline (NMPP):

- McKinsey & Company is the only consultancy firm with a dedicated global capital productivity practice, bringing (see Enclosure no.2)
  - **Holistic top management perspective,** i.e., independent holistic viewpoints based on relevant best-practice experience on the project and ability to join forces with external firms
  - **Global reach and capability:** engagements in a broad range of industries and geographies leveraging functional and industry practice know-how; ability to integrate across strategy, organization, and operations and a set of proprietary tools and frameworks
  - **Unequalled client relations:** 60 Fortune Global 500 clients in last 4 years; Proven track record of value creation (~ 30% as NPV improvement as % of original estimate on average), problem solving jointly with the client team, emphasizing capability building and skill transfer, >75 engagements per year
  - **Unrivalled talent:** > 45 active senior capital productivity practitioners globally, leading industry-specific (e.g., automotive) and field experts (operations, procurement)
- In addition we bring
  - **Proven value improvement approaches** – see Enclosure no.3
  - **Set of proprietary tools** – see Enclosure no.4

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- Our previous interactions have given us a clear indication of which levers are most likely to create impact (see Our Approach section below), which will allow us to start working from day one
- In addition to our experience helping Transnet, we have also served many clients on CAPEX globally, and will bring this expertise to bear. Non-exhaustive list of experts that will support our work with you is provided below, with detailed CVs available in the supporting Powerpoint exhibits in Enclosure no.5:
  - Markus Rebman, Principal, Toronto (capex diagnostic)
  - Charles Dumont, Associate Principal, Montreal (control tower)
  - Davide Gronchi, Senior Expert, Hamburg (design optimization)
  - Emanuele Rive, Associate Principal, Milan (lean construction)
  - James E. Banaszak, Senior Expert, Canada (capex execution)
  - Lukasz Abramowicz, Associate Principal, Warszaw (contracting)
  - Rocco Colassante, Associate Principal, Milan (lean construction)
  - Edward Zaayman, Engagement Manager, Johannesburg (execution)
  - Gerhard Nel, Senior Expert, Johannesburg (execution)
  - Homayoun Zarrinkoub, Expert, Montreal (contracting)
  - Carlos Mendes, Specialist, Johannesburg (control tower)
- McKinsey has helped Transnet craft the implementation plans for the MDS, create the Results Management Office to support the execution of required initiatives, and build the Group Capital Integration and Assurance function to improve effectiveness, transparency and accountability in capital spending. No other third party has such a detailed understanding of Transnet's strategy, its current operational concerns, and its uniquely complex links between cash flow and capital planning.
- From a market perspective, McKinsey also understands the economics of the global and local oil industry in detail, including strategic trends, and has supported Transnet on multiple occasions in validating its demand forecasts for commodities.

Regiments Capital

Regiments Capital is also uniquely placed to assist Transnet:

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- Regiments has a conducted several engagements at Transnet in Strategy formulation, Financial Risk Management, Business Case validation, Programme Management Office design and Transaction Advisory Service.
- Through its Consulting division Burlington Strategy Advisors, Regiments Capital has been involved in operational improvement assignments in numerous industries, ranging from high volume industrial manufacturing to underground mining and banking.
- Regiments take a heavily analytical yet practical approach to identifying opportunities for improvement. Its product offerings include overhead and input cost optimisation, optimal equipment and resource utilisation and process re-engineering.

OUR TEAM

Our team leadership will consist of Norbert Dorr (Director, McKinsey), Vikas Sagar (Director, McKinsey), Prakash Parbhoo (Principal, McKinsey), Peter Safarik (Principal, McKinsey), Eric Wood (Executive Director, Regiments), Indheran Pillay (Head of Operations, Regiments), and Vimal Ichharam (Project Manager, Regiments). CVs for these individuals can be found in the attached Powerpoint exhibits (Enclosure no. 5).

The full-time working teams will consist of

- For **Phase 1: Re-baselining of the execution of project,** the full time team on the ground will consist of McKinsey project manager and 5 consultants and Regiments project manager and 5 consultants
- For **Phase 1: Re-baselining of the commercial assumptions** of project, the full time team on the ground will consist of McKinsey project manager and 2 consultants
- For **Phase 2: Detailing and optimizing business cases,** the full time team on the ground will consist of McKinsey project manager and 2 McKinsey and 1-2 Regiments consultants
- For **Phase 3: Setting-up execution front-line support,** the full time team on the ground will consist of McKinsey project manager and 3 McKinsey consultants and a Regiments project manager and 3-5 consultants
- For **Phase 4: Implementation,** the full time team composition will be finalized based on the specific needs as defined in previous phases, however

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it will correspond to McKinsey project manager and 2 consultants and Regiments project manager and 3-5 consultants.

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Teams will be mostly stationed TM1 and TM2 to optimally support the project execution.

We will also utilize a team of experts (e.g., Edward Zaayman, Gerhard Nel, Lukasz Abramovicz, Emanuele Riva) to support the teams on an as needed basis, as described in the "Our Value Proposition" section. We have proposed below the team structure to work alongside the Transnet operations teams.

Each member of the Transnet client team will need to work closely with us to define the necessary changes and to use their role in the organization to implement them. They will also be responsible for reporting on these changes to the steering committee, with support from the McKinsey/Regiments team. This support will be required from May until project completion and is pivotal to delivering a sustainable change. Without dedicated participation by these teams a sustainable breakthrough will not be possible.

OUR SUPPLIER DEVELOPMENT COMMITMENTS

McKinsey & Company

McKinsey & Company is fully committed to localisation and transformation within our organisation and in South Africa. Over the past years, we have been dedicated to finding ways to have meaningful and sustainable impact on the community and we will continue doing so. We are supportive of the objectives of the Government's New Growth Plan and are committed to developing a robust Supplier Development Plan to assist in meeting these objectives

We will demonstrate how we will dedicate our resources within & outside the scope of this Transnet contract to ensure the creation and preservation of jobs, skills transfer and small business promotion

Please see details in Annexure B: Supplier Development Plan: McKinsey and Company.

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Regiments Capital

Regiments Capital is fully committed to supplier development, and will support it through this engagement by supporting the following Supplier Development Partners:

- We will source IT support services from Seth Consulting, and provide mentorship and growth strategy expertise to its owner
- We will purchase technology hardware and software from Preferred IT
- We will sub-contract consultants and services from companies such as Accompany Advisory, Homix and Albatime, and provide them with skills development opportunities, and IPR for processes and methodology that they can use in future assignments
- We will subcontract legal services from Pule for the execution of the project
- We will subcontract engineering resources from DEC for the execution of the project

The aggregate spend by Regiments capital on Supplier Development will meet or exceed 20% of the fees it obtains as a result of this engagement. Specific valuation and details on Regiments Capital supplier development commitments may be found in the formal Supplier Development Plan template accompanying this document.

PROFESSIONAL ARRANGEMENTS

Please see separate document on professional arrangements.

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McKinsey & Company and Regiments have a track record of partnering successfully with Transnet and possess unparalleled experience of driving operational transformations in South Africa and around the globe. Furthermore, the partnership between McKinsey and Regiments offers Transnet a local, established collaboration, with global reach, which brings the best expertise and reach to the programme from both entities, offers industry-leading empowerment credentials and which is committed to skills transfer and development.

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We remain highly committed to the success of Transnet and South Africa, and would consider it a privilege to support you in de-risking and acceleration of NMPP.

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We aspire to a relationship based on trust and confidence, and we welcome the opportunity to discuss any areas of particular sensitivity you may have regarding the handling of confidential information. Where appropriate, we will enter into explicit confidentiality agreements.

COLLABORATING AND GETTING YOUR FEEDBACK

To ensure a structured and systematic dialogue about our joint collaboration and impact, it is our standard practice to ask for formal feedback from key client individuals (usually the Steering Committee) at the end of each engagement. We typically use our proprietary online tool to solicit feedback on our contributions towards the project's vision and goals. All data are secure and are used only as a basis for a dialogue with you on how to serve you better. The feedback is not used for evaluating individuals (neither McKinsey nor client team members).

SERVING COMPETING CLIENTS

It is the longstanding policy of McKinsey to serve competing clients and clients with potentially conflicting interests (including in connection with merger, acquisition, and alliance opportunities) and to do so without compromising our professional responsibility to maintain the confidentiality of client information. We place primary reliance on the integrity of our professional staff to maintain such confidences. Nonetheless, we ensure that consultants who develop important insights about your company are not later placed in a situation of potential conflict. To assure this, consultants who had access to your confidential information will not be assigned, for a significant period following an assignment for your company, to a study for another client where such confidential information could be used to your material competitive disadvantage.

Consistent with our confidentiality obligations, the consultants who work with you are unlikely to know that other McKinsey consultants serve one of your competitors or another party involved in a potential transaction that you are considering or effecting. Similarly, you should not expect to be advised or consulted about our serving your competitors or such other parties.

MANAGING RELATIONS WITH OUTSIDE PARTIES

As a basic policy, we do not make public client names, client materials, or reports prepared for clients without their permission. We similarly require that clients not use our name, refer to our work, or make our work products available outside their

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organization without our prior permission. In those cases when disclosure from either side may be appropriate, we will discuss this first and only proceed if we reach agreement.

Occasionally, we become involved in legal actions as witnesses, sources of information, or as a party because of our work with a client. If this should occur, we will advise you promptly and work closely with you and your legal counsel to coordinate our response. We ask that you hold us harmless and indemnify us in connection with associated damages and costs, including legal costs, except to the extent they are found to have resulted from our gross negligence or willful misconduct. Also, in the event that a substantial amount of McKinsey professional time is required to respond to the action, the cost of such time will be discussed with you and billed accordingly.

TERMINATION

We believe that either party should have the freedom to terminate the relationship at any time if it becomes evident that the potential value of the work does not warrant further effort.

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The practices summarized above reflect key aspects of our basic approach to client service and reflect our commitment to maintain the highest professional standards. We would welcome the opportunity to discuss our professional practices with you.

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RFP GSM/14/04/1040: Provision of Professional Services to Support Transnet in De-risking and Acceleration of the New Multi-Product Pipeline (NMPP) -

Transnet

Closing date 24 June 2014 @ 12:00

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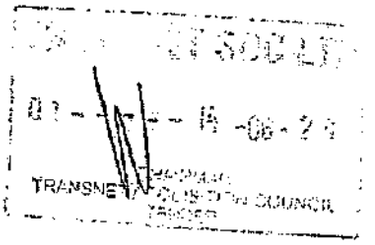

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Memorandum to
The Secretariat, Transnet Acquisition Council

RFP GSM/14/04/1040 : Provision of Professional Services to Support Transnet in De-risking and Acceleration of the New Multi-Product Pipeline (NMPP)

McKinsey & Company and Regiments Capital are pleased to submit this proposal in response to Transnet's solicitation regarding the provision of professional services to support Transnet in de-risking and acceleration of the new multi-product pipeline (NMPP) (RFP GSM/14/04/1040).

This memorandum outlines our proposed professional arrangements. An overview of our approach, team, value proposition and understanding of the context is included in a separate technical document.

PROFESSIONAL ARRANGEMENTS

The total fees for this engagement will be a maximum of 175 million ZAR (90 million fixed, 85 million milestone delivery based), excluding expenses and VAT. McKinsey's standard expenses are 15% of its professional fees. Regiments expenses will be calculated at 10% of its professional fees. Regarding fixed fees, McKinsey will be apportioned 50% of the fees, and Regiments 50%.

Consortium Partner	Fee basis	Professional Fees	Expenses	Total (excluding VAT)
McKinsey & Company	Fixed (Phases 1-3)	45,000,000	6,750,000	51,750,000
Regiments Capital	Fixed (Phases 1-3)	45,000,000	4,500,000	49,500,000
McKinsey & Company	Milestone delivery based (Phase 4)	42,500,000	6,375,000	48,875,000
Regiments Capital	Milestone delivery based (Phase 4)	42,500,000	4,250,000	46,750,000
Total		175,000,000	21,875,000	196,875,000

The fee allocations described above may shift if both Transnet and the consortium partners feel that a different allocation of resources from consortium members would materially improve impact for Transnet.

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The fixed fees above are for the re-baselining , detailing and optimizing business cases and setting-up front-line execution support (Phase 1-3 described in the "Approach" section), and will be invoiced on a monthly basis.

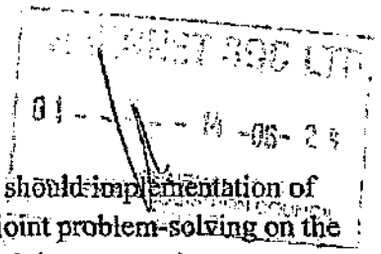
Basis for the milestone delivery based fees should be determined after completion of Phase 2 and before starting of Phase 4. We should jointly define the criteria and principles. Risk milestone delivery based fees will be invoiced monthly.

The criteria should be defined jointly, however they could include e.g.:

- Delivery of the project according to the milestone as defined at Phase 3
- Delivery of tighlining solution within estimated budget
- Maintain detailed project transparency
- Managing claims to the level estimated in Phase 3
- Delivery of scope of optimized business cases

Progress against the criteria shall be presented monthly at the NMPP Steering Committee and signed-off by GCiA in consultations with key NMPP Steering Committee members.

- The following guardrails should also apply:
  - The programme will take a "one programme, one baseline, one impact" approach
  - KPIs of relevant Transnet executives must be aligned with the impact targets for which the consortium is held accountable
  - Transnet will commit resources and leadership time as described above to make the effort successful.
  - In the event of unforeseen circumstances in material situations such as management change leading to project termination, significant shifts in strategy or operational philosophy, etc.: fixed fees will be paid in full, and contingent fees will be paid as a direct proportion of the planned project duration (e.g. if 50% of the project duration has elapsed prior to the material situation, 100% of fixed fees will be paid, and 50% of the total value of contingent fees will be paid)
  - Work may be terminated with one month's notice by either Transnet or the consortium. If work is terminated by Transnet (but the work is deemed satisfactory), outstanding fees are to be determined upon termination



- Transnet is obliged to notify the consortium should implementation of agreed initiatives be delayed, and allow for joint problem-solving on the rationale and alternatives to recover the deficit in opportunity
- The consortium will be compensated for material delays caused by Transnet

Invoicing and confidentiality

We would invoice you at the end of each month and payments are due immediately at the date of issue of the invoice. Interest (at prime) will be charged on past-due payments.

Unless expressly agreed otherwise, we treat all our client relationships and reports as strictly confidential (with the exception of material already in the public domain). We do not publish our clients' names, materials, or reports without their permission and request that our clients do not use our name, refer to our work, or make our products available outside their organisation without our prior consent. In the rare cases that disclosure by either side is appropriate we discuss this with our clients and only proceed by mutual agreement.

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We remain highly committed to the success of Transnet and South Africa, and would consider it a privilege to support you in implementing this important project.

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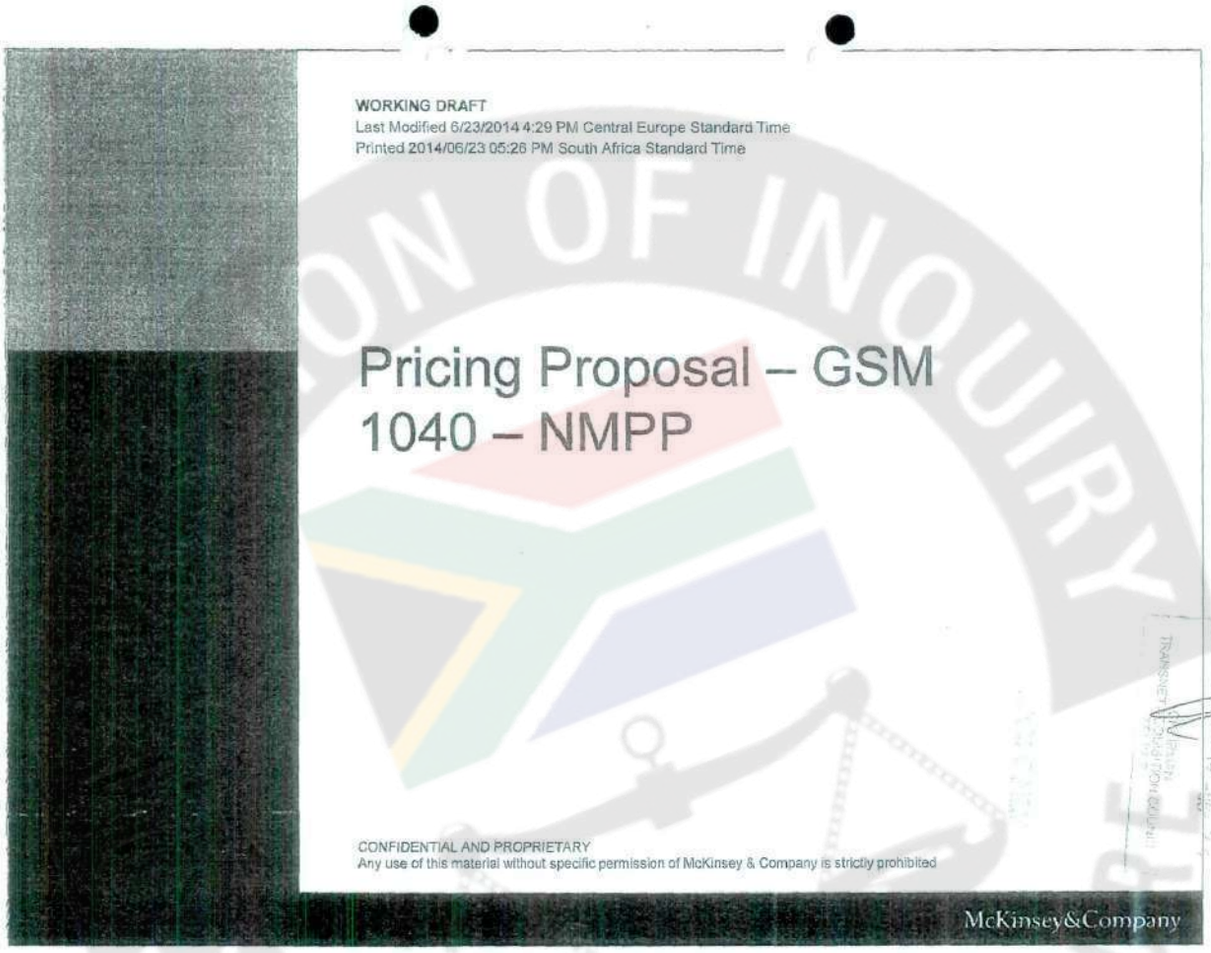

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Pricing Proposal – GSM 1040 – NMPP

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Pricing and Delivery Schedule – Rate per hour (*only Fixed phases*)

Title of the Resource	Resource Level (DPSA Salary Band)	Resources - Phase 1	Resources - Phase 2	Resources - Phase 3	No. of hours	Per diem rate (ZAR)
Director	Band 16	2	1	2	1188	2,942
Partner	Band 16	2	1	2	1188	2,942
Associate Principal	Band 16	3	1	3	2611	2,942
Engagement manager	Band 16	2	1	1	2160	2,942
Associates	Band 16	7	2	3	6345	2,942
MLP Fellow	Band 16	2	1	2	2970	2,942
Research Analysts	Band 16	2	2	1	810	2,942
Specialists and Experts	Band 16	4	2	3	2052	2,942
Production specialists	Band 16	3	2	2	783	2,942
Analystics specialist	Band 16	2	1	2	891	2,942
Regiments - Director	Band 16	2	1	2	297	2,942
Regiments- Partner	Band 16	1	1	1	351	2,942
Regiments- Associate Principal	Band 16	1	1	1	702	2,942
Regiments - Associate	Band 16	5	2	5	7155	2,942
Regiments - Research analysts	Band 16	2	1	2	1188	2,942

Estimated Total cost for Phase 1-3 – fixed fees (excl. expenses and VAT) **ZAR 89,999,700**

Last Modified 6/3/2014 4:29 PM Central Europe Standard Time
Printed: 2014/06/03 05:30 PM South Africa Standard Time

0080-0981-0001-0338

Issue: 2019-05-03_12:04:34

SCC-_UmVsYXRpdml0eV9NSVNDRUxMQU5FT1VTXzAxCg==

Pricing and Delivery Schedule – Project Fees

Phase of Project	Deliverable	Number of hours	Fees (ZAR)
Phase 1 (fixed)	As described in the Technical part of the proposal, chapter "Approach"	9,882	29,072,844
Phase 2 (fixed)	As described in the Technical part of the proposal, chapter "Approach"	5,724	16,840,008
Phase 3 (fixed)	As described in the Technical part of the proposal, chapter "Approach"	14,985	44,085,870
Phase 4 (milestone based)	Monthly progress report against criteria to be defined after Phase 2	28,874	84,946,918
Estimated Total cost of the project (excl. expenses and VAT)		59,465	174,945,640

Last Modified 6/4/2014 4:29 PM Central Europe Standard Time Printed 2014/06/23 05:28 PM South Africa Standard Time

Issue: 2019-05-03_12:04:34

Annexure 3

Innocentia Ngubeni

From: Indheran Pillay
Sent: Friday, 13 June 2014 18:43
To: Janine_Kamaar@mckinsey.com
Cc: Kgomotso Mogomotsi; Shashank Sood
Subject: RE: SD Committment
Attachments: SD Calculation-FeesperMck.xlsx; TRX SD Value Summary_FeesperMck.xlsx

Hi Janine,

Attached please find the calculations based on your numbers. Thanks.

Regards,

From: Janine_Kamaar@mckinsey.com [mailto:Janine_Kamaar@mckinsey.com]
Sent: Friday, June 13, 2014 6:27 PM
To: Indheran Pillay
Cc: Kgomotso Mogomotsi; Shashank Sood
Subject: Re: SD Committment

Hi Indheran

Thanks for your response.
I received my numbers from the ED's responsible for each contract.

@ Shashank, would you be able to send us a summary of all contract values based on the final LoP's you are putting together? Just want to ensure we are all using the correct values.

Many Thanks
Janine

_____

From: Indheran Pillay [IndheranP@regiments.co.za]
Sent: 06/13/2014 03:50 PM GMT
To: Janine Kamaar
Cc: Kgomotso Mogomotsi <KgomotsoM@regiments.co.za <mailto:KgomotsoM@regiments.co.za> >
Subject: RE: SD Committment

Hi Janine,

The numbers that I am using is based on the anoj memos to brian regarding these projects. Does not include expenses. Are you sure that your numbers are correct?

Regards,

From: Janine_Kamaar@mckinsey.com <mailto:Janine_Kamaar@mckinsey.com>
[mailto:Janine_Kamaar@mckinsey.com]
Sent: Friday, June 13, 2014 3:24 PM
To: Indheran Pillay
Cc: Kgomotso Mogomotsi
Subject: RE: SD Committment
Importance: High

Hi Indheran

Hope you are well.

Thanks for putting this together.
I have noticed that the contract values you are using are different to the contract values I have on my side. I have attached a spreadsheet highlighting the differences.
Please let me know if you are able to scale the values proportionately (up or down as needed), to ensure we have consistency in our reporting.

Once this has been done, please could you resend us the SD Value Summaries and your SD Plans for inclusion in the RFP's.

Many Thanks
Janine

(See attached file: McK vs Regiments contract values for TRX RFP'sv2.zip)

Janine Kamaar | Transformation Manager
McKinsey & Company | Sandown Mews, East, 88 Stella Street | 2196 Sandown | Republic of South Africa Direct +27 11 506-8306 | Fax +27 11 506-8306 | Mobile +27 82 329-8121 | Internal 327-8306 janine_kamaar@mckinsey.com <mailto:janine_kamaar@mckinsey.com>

Indheran Pillay ---2014/06/12 02:52:04 PM---Hi, Attached please find the SD commitments in both my original format and the TRX one. Thanks.

From: Indheran Pillay <IndheranP@regiments.co.za <mailto:IndheranP@regiments.co.za> >
To: "ashvin_sologar@mckinsey.com <mailto:ashvin_sologar@mckinsey.com> " <ashvin_sologar@mckinsey.com <mailto:ashvin_sologar@mckinsey.com> >,
Cc: "Janine_Kamaar@mckinsey.com <mailto:Janine_Kamaar@mckinsey.com> " <Janine_Kamaar@mckinsey.com <mailto:Janine_Kamaar@mckinsey.com> >, "Kgomotso Mogomotsi" <KgomotsoM@regiments.co.za <mailto:KgomotsoM@regiments.co.za> >
Date: 2014/06/12 02:52 PM
Subject: RE: SD Committment

_____

Hi,
Attached please find the SD commitments in both my original format and the TRX one. Thanks.

Regards,

From: ashvin_sologar@mckinsey.com <mailto:ashvin_sologar@mckinsey.com> [mailto:ashvin_sologar@mckinsey.com]
Sent: Wednesday, June 11, 2014 6:56 PM
To: Indheran Pillay
Cc: Janine_Kamaar@mckinsey.com <mailto:Janine_Kamaar@mckinsey.com>
Subject: RE: SD Committment

Thanks Indheran!

Ashvin Sologar
McKinsey & Company | 88 Stella Street, 3rd Floor, Sandown Mews East, South Africa Direct +27 11 506 8094 | Mobile +27 82 329 8094
Assistant: Martyna Grzeda, +27 11 506 8801 martyna_grzeda@mckinsey.com <mailto:martyna_grzeda@mckinsey.com>
Please bear in mind the environmental impact of printing this email or any attachments.

Indheran Pillay ---11/06/2014 18:50:31---Awesome! I'll get this converted into the SD Value Summary Template.
Regards,

From: Indheran Pillay <IndheranP@regiments.co.za <mailto:IndheranP@regiments.co.za> >
To: "Janine_Kamaar@mckinsey.com <mailto:Janine_Kamaar@mckinsey.com> " <Janine_Kamaar@mckinsey.com <mailto:Janine_Kamaar@mckinsey.com> >, "ashvin_sologar@mckinsey.com <mailto:ashvin_sologar@mckinsey.com> " <ashvin_sologar@mckinsey.com <mailto:ashvin_sologar@mckinsey.com> >
Date: 11/06/2014 18:50
Subject: RE: SD Committment

_____

Awesome! I'll get this converted into the SD Value Summary Template.

Regards,

From: Janine_Kamaar@mckinsey.com <mailto:Janine_Kamaar@mckinsey.com> [mailto:Janine_Kamaar@mckinsey.com <mailto:Janine_Kamaar@mckinsey.com>]
Sent: Wednesday, June 11, 2014 4:39 PM
To: ashvin_sologar@mckinsey.com <mailto:ashvin_sologar@mckinsey.com>
Cc: Indheran Pillay
Subject: Re: SD Committment

Hi Ash

The below should work. It does however need to fit into the SD Value Summary template, as attached.
It is also important to note that 20% SD Value is required for Coal (GSM 1037), however 50% SD Value is required for the other 3 RFP;s, of which 30% must be focussed on Enterprise & Supplier Developemnt to SMME's, black owned, black woman owned ect. The supplier development partners listed below, should therefore fit into these categories.

Hope this helps.

Kind Regards
Janine

(See attached file: TRX SD Value Summary_template.zip)

Janine Kamaar | Transformation Manager
McKinsey & Company | Sandown Mews, East, 88 Stella Street | 2196 Sandown | Republic of South Africa Direct +27 11 506-8306 | Fax +27 11 506-8306 | Mobile +27 82 329-8121 | Internal 327-8306 janine_kamaar@mckinsey.com <mailto:janine_kamaar@mckinsey.com>

Ashvin Sologar---2014/06/11 03:05:57 PM---Hi Janine, Do you think the below will work according to Transnet's SD requirements?

From: Ashvin Sologar/JOH/Africa/MCKINSEY
To: "Indheran Pillay" <IndheranP@regiments.co.za <mailto:IndheranP@regiments.co.za> >,
Cc: "Janine Kamaar" <Janine_Kamaar@mckinsey.com <mailto:Janine_Kamaar@mckinsey.com> >
Date: 2014/06/11 03:05 PM
Subject: Re: SD Committment

_____

Hi Janine,

Do you think the below will work according to Transnet's SD requirements?

_____

From: Indheran Pillay [IndheranP@regiments.co.za]
Sent: 06/11/2014 12:42 PM GMT
To: Ashvin Sologar
Subject: SD Committment

Hi Ash,
Does this work? If yes, I will generate similar tables for the rest of the projects.

Supplier Development Partner

SD Category

Description

Value

Seth Consulting

Enterprise and Supplier Development

source IT support services, provide mentorship and growth strategy expertise to owner of business

1,500,000.00

Preferred IT

Enterprise and Supplier Development

purchase technology hardware and software

500,000.00

Accompany Consulting

IPR, new skills development, job creation/preservation

subcontract consultants from accompany consulting for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.

4,000,000.00

Homix

Job creation/preservation, new skills development, IPR

subcontract services from Homix for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.

6,000,000.00

Albatime

Job creation/preservation, new skills development, IPR

subcontract services from Albatime for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.

1,000,000.00

Pule

Job creation/preservation

subcontract legal services from Pule for the execution of the project

1,500,000.00

DEC

Job creation/preservation

subcontract engineering resources from DEC for the execution of the project

2,000,000.00

SD Total

16,500,000.00

SD Total as a % of Total Fees

20%

Regards,

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Annexure 4

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Total Fees	168 375 000,00
Success Fee	
Total Fixed Fee	

fixed Fee	Mckinsey	60%	-
	Regiments	40%	-
Success Fee	Mckinsey	40%	-
	Regiments	60%	-
Total	Mckinsey	46%	77 625 000,00
	Regiments	54%	90 750 000,00

Commitment	50%	45 375 000,00

Supplier Development Partn	**SD Category**	**Description**	**% of Total**	**Value**
Seth Consulting	Enterprise and Supplier Development	source IT support services, provide mentorship and growth strategy expertise to owner of business	5,0%	4 537 500,00
Preferred IT	Enterprise and Supplier Development	purchase technology hardware and software	2,5%	2 268 750,00
Accompany Consulting	IPR, new skills development, job creation/preservation	subcontract consultants from accompany consulting for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	10,0%	9 075 000,00
Homix	Job creation/preservation, new skills development, IPR	subcontract services from Homix for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	29,5%	26 771 250,00
Albatime	Job creation/preservation, new skills development, IPR	subcontract services from Albatime for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	3,0%	2 722 500,00
Pule	Job creation/preservation	subcontract legal services from Pule for the execution of the project		-
DEC	Job creation/preservation	subcontract engineering resources from DEC for the execution of the project		-
SD Total				***45 375 000,00***
SD Total as a % of Total Fees				***50%***

Total Fees	185 185 000,00
Success Fee	146 685 000,00
Total Fixed Fee	38 500 000,00

fixed Fee	Mckinsey	60%	23 100 000,00
	Regiments	40%	15 400 000,00
Success Fee	Mckinsey	40%	58 674 000,00
	Regiments	60%	88 011 000,00
Total	Mckinsey	44%	81 774 000,00
	Regiments	56%	103 411 000,00

Commitment	20%	20 682 200,00

Supplier Development Partner	SD Category	Description		Value
Seth Consulting	Enterprise and Supplier Development	source IT support services, provide mentorship and growth strategy expertise to owner of business	1,0%	1 034 110,00
Preferred IT	Enterprise and Supplier Development	purchase technology hardware and software	0,5%	517 055,00
Accompany Consulting	IPR, new skills development, job creation/preservation	subcontract consultants from accompany consulting for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	6,0%	6 204 660,00
Homix	Job creation/preservation, new skills development, IPR	subcontract services from Homix for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	10,5%	10 858 155,00
Albatime	Job creation/preservation, new skills development, IPR	subcontract services from Albatime for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	2,0%	2 068 220,00
Pule	Job creation/preservation	subcontract legal services from Pule for the execution of the project	0,0%	-
DEC	Job creation/preservation	subcontract engineering resources from DEC for the execution of the project	0,0%	-
SD Total				***20 682 200,00***
SD Total as a % of Total Fees				***20%***

145200

Fee	133 100 000,00	
Commitment	50%	66 550 000,00

Supplier Development Partner	SD Category	Description		Value
Seth Consulting	Enterprise and Supplier Development	source IT support services, provide mentorship and growth strategy expertise to owner of business	1,5%	1 996 500,00
Preferred IT	Enterprise and Supplier Development	purchase technology hardware and software	0,5%	665 500,00
Accompany Consulting	IPR, new skills development, job creation/preservation	subcontract consultants from accompany consulting for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	10,0%	13 310 000,00
Homix	Job creation/preservation, new skills development, IPR	subcontract services from Homix for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	24,5%	32 609 500,00
Albatime	Job creation/preservation, new skills development, IPR	subcontract services from Albatime for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	3,0%	3 993 000,00
Pule	Job creation/preservation	subcontract legal services from Pule for the execution of the project	4,0%	5 324 000,00
DEC	Job creation/preservation	subcontract engineering resources from DEC for the execution of the project	6,5%	8 651 500,00
SD Total				***66 550 000,00***
SD Total as a % of Total Fees				***50%***

Total Fees	238 760 000,00
Success Fee	
Total Fixed Fee	

fixed Fee	Mckinsey	40%	-
	Regiments	60%	-
Success Fee	Mckinsey	40%	-
	Regiments	60%	-
Total	Mckinsey	43%	102 580 000,00
	Regiments	57%	136 180 000,00

Commitment	50%	68 090 000,00

Supplier Development Partner	SD Category	Description	% of Contract	Value
Seth Consulting	Enterprise and Supplier Development	source IT support services, provide mentorship and growth strategy expertise to owner of business	2,5%	3 404 500,00
Preferred IT	Enterprise and Supplier Development	purchase technology hardware and software	1,5%	2 042 700,00
Accompany Consulting	IPR, new skills development, job creation/preservation	subcontract consultants from accompany consulting for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	10,0%	13 618 000,00
Homix	Job creation/preservation, new skills development, IPR	subcontract services from Homix for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	24,5%	33 364 100,00
Albatime	Job creation/preservation, new skills development, IPR	subcontract services from Albatime for the project and provide them with skills development opportunities and process and methodology IPR that they can use in future assignments.	3,0%	4 085 400,00
Pule	Job creation/preservation	subcontract legal services from Pule for the execution of the project	4,0%	5 447 200,00
DEC	Job creation/preservation	subcontract engineering resources from DEC for the execution of the project	4,5%	6 128 100,00
SD Total				***68 090 000,00***
SD Total as a % of Total Fees				***50%***

Annexure 5

Ledger Accounts Summary

Regiments Capital (Pty) Ltd

From : March 2015 To : February 2017

Ledger Accounts

Account	Description	Movement	BD Partners	Net	2016
Account Type :					
5000>004>RC040 (Service Income - Reg Securities)	Service Income - Reg Securities	30 185 821,77		30 185 821,77	15 092 911
5000>008>RC040 (Service Income - Denel)	Service Income - Denel	4 000 000,00	2 200 000,00	1 800 000,00	900 000
5000>015>RC040 (Service Income - Other)	Service Income - Other	5 475 000,00	3 011 250,00	2 463 750,00	1 231 875
5000>019>RC040 (Service income-Transnet NMPP)	Service income-Transnet NMPP	29 061 371,35	15 983 754,24	13 077 617,11	6 538 809
5000>020>RC040 (Service income-Transnet COAL)	Service income-Transnet COAL	64 342 291,56	35 388 260,36	28 954 031,20	14 477 016
5000>021>RC040 (Service income - Transnet Iron Ore)	Service income - Transnet Iron Ore	5 807 000,00	3 193 850,00	2 613 150,00	1 306 575
5000>022>RC040 (Service income - TransManganese)	Service income - TransManganese	42 255 888,85	23 240 738,87	19 015 149,98	9 507 575
5000>023>RC040 (Service income-Trans MaputoCorridor)	Service income-Trans MaputoCorridor	290 678,40	159 873,12	130 805,28	65 403
5000>028>RC040 (Transnet - GCIA Protfolio)	Transnet - GCIA Protfolio	14 347 354,78	7 891 045,13	6 456 309,65	3 228 155
5000>032>RC040 (Service Income - Tran HR Recruitmen)	Service Income - Tran HR Recruitmen	1 108 894,86	609 892,17	499 002,69	249 501
5000>033>RC040 (Service Income - Trans DCTS)	Service Income - Trans DCTS	1 887 424,00	1 038 083,20	849 340,80	424 670
5000>034>RC040 (Service Income - GCIA SWAT2 IES)	Service Income - GCIA SWAT2 IES	22 410 029,40	12 325 516,17	10 084 513,23	5 042 257
5000>035>RC040 (Service Income-Transnet GFB)	Service Income-Transnet GFB	55 984 621,00	30 791 541,55	25 193 079,45	12 596 540
5000>036>RC040 (Service Income - Trans GCIA Saldanh)	Service Income - Trans GCIA Saldanh	4 613 715,04	2 537 543,27	2 076 171,77	1 038 086
5000>037>RC040 (Income - Trans FR ChinaDev)	Income - Trans FR ChinaDev	166 000 000,00	129 480 000,00	36 520 000,00	18 260 000
5000>038>RC040 (Service Income - Trans ADOBE)	Service Income - Trans ADOBE	341 309,98	187 720,49	153 589,49	76 795
5000>039>RC040 (Service Income - SWAT2 GFB Case)	Service Income - SWAT2 GFB Case	10 980 247,89	6 039 136,34	4 941 111,55	2 470 556
5000>040>RC040 (SWAT2 Change Manangement)	SWAT2 Change Manangement	139 114,91	76 513,20	62 601,71	31 301
Sage Evolution (Registered to Regiments Capital (Pty) Ltd)		**459 230 763,79**	**274 154 718,11**	**185 076 045,68**	92 538 023
		452 447 810,00			
		6 782 953,79			

Discount rate	**30%**				71 183 094		
Growth rate	**10%**						
	Version 1	1	2	3	4	5	
Costs	**50%**	**2016**	**2017**	**2018**	**2019**	**2020**	TV LTGR
	Cash flows	92 538 023	101 791 825	111 971 008	123 168 108	135 484 919	6%
	Costs	46 269 011	50 895 913	55 985 504	61 584 054	67 742 460	299 195 863
	Net cash flows	46 269 011	50 895 913	55 985 504	61 584 054	67 742 460	80 582 145
	PV Cash flows	**R 35 591 547**	30 115 925	25 482 705	21 562 289	18 245 014	
	NPV	**R 130 997 480**					
	NPV (incl. TV)	**R 211 579 625**					

							TV LTGR
	Version 2		**10%**				6%
	Net Cash Flow	R 90 000 000	R 99 000 000	R 108 900 000	R 119 790 000	R 131 769 000	R 581 979 750
	PV Net cash flow	R 69 230 769	R 58 579 882	R 49 567 592	R 41 941 809	R 35 489 223	R 156 744 067
	NPV	**R 254 809 275**					
	NPV (incl. TV)	**R 411 553 342**					

Annexure 6

Transnet

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Chivita/Homix			Albatime	Bank	Outstanding	Bank date
Transnet	31-Oct-14	oct	TRXGCIA001(INV0055)	GCIA Portfolio - TRXGCIA002	3 934 510,27		1 967 255,14				3 934 510,27	-	24/11/2014
Transnet	Dec-14	15-Jan-15	TRXHR20002	Capital Projects -HR Recruitment TRXHR20002	402 799,83						402 799,83	-	22/05/2015
Transnet	Dec-14	15-Jan-15	TRXHR1002	Capital Project - HR strategy TRXHR1002	1 249 029,60		624 514,80			62 451,48	1 249 029,60	-	22/05/2015
							2 591 769,94			62 451,48		-	

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Chivita/Homix	Kupanua		Albatime	Bank	Outstanding	Bank date
Transnet	Jan-15	31-Jan-15	TRXGCIA005(INV0092)	GCIA Portfolio - TRXGCIA005	664 820,64					33 241,03	664 820,64	-	27/03/2015
Transnet	Jan-15	31-Jan-15	TRXDCT00001 (INV0096)	Durban Container Terminal - TRXDCT00001	878 000,64					43 900,03	878 000,64	-	27/03/2015
Transnet	Jan-15	31-Jan-15	TRX-IES0001 (INV0095)	GCIA SWAT2 IES - TRXIES0001	903 055,56					45 152,78	903 055,56	-	27/03/2015
Transnet	Jan-15	31-Jan-15	TRXMCO114	Maputo Corridor - TRXMCO114	2 218 123,26			665 436,98			2 218 123,26	-	27/05/2015
							-	665 436,98		122 293,84		-	

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Chivita/Homix	Kupanua		Albatime	Bank	Outstanding	Bank date
Transnet	Feb-15	28-Feb-15	TRXGCIA006	GCIA Portfolio - TRXGCIA006	3 065 478,24					153 273,91	3 065 478,24	-	27/03/2014
Transnet	Feb-15	28-Feb-15	TRXDCT00002	Durban Container Terminal - TRXDCT00002	2 483 120,64					124 156,03	2 483 120,64	-	27/03/2015
Transnet	Feb-15	28-Feb-15	TRX-IES0002	GCIA SWAT2 IES - TRXIES0002	2 895 109,80					144 755,49	2 895 109,80	-	27/03/2015
							-			422 185,43			

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Homix	Kupanua		Albatime	Bank	Outstanding	Bank date
Transnet	Mar-15	30-Mar-15	TRXCOAL010	Coal - TRXCOAL011	1 337 599,99		668 800,00			66 880,00	1 337 599,99	-	03/07/2015
Transnet	Mar-15	30-Mar-15	TRXGCIA007	GCIA Portfolio - TRXGCIA007	2 753 513,14		1 376 756,57			137 675,66	2 753 513,14	-	22/05/2015
Transnet	Mar-15	30-Mar-15	TRXNMPP012	NMPP - TRXNMPP012	3 947 833,55		1 973 916,78			197 391,68	3 947 833,55	-	22/05/2015
Transnet	Mar-15	30-Mar-15	TRXDCT00003	Durban Container Terminal - TRXDCT00003	2 151 663,36		1 075 831,68			107 583,17	2 151 663,36	-	22/05/2015
Transnet	Mar-15	30-Mar-15	TRX-IES0003	GCIA SWAT2 IES - TRXIES0003	2 231 702,42		1 115 851,21			111 585,12	2 231 702,42	-	22/05/2015
							6 211 156,23			621 115,62		-	

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Chivita/Homix	Kupanua		Albatime	Bank	Outstanding	Bank date
Transnet	Apr-15	30-Apr-15	TRXCOAL012	Coal - TRXCOAL012	14 264 250,00		7 132 125,00			713 212,50	14 264 250,00	-	03/07/2015
Transnet	Apr-15	30-Apr-15	TRXGCIA008	GCIA Portfolio - TRXGCIA008	**3 327 344,79**		1 663 672,40			**166 367,24**	3 327 344,79	-	01/07/2015
Transnet	Apr-15	30-Apr-15	TRXNMPP013	NMPP - TRXNMPP013	3 947 833,55		1 973 916,78			197 391,68	3 947 833,55	-	22/05/2015
Transnet	Apr-15	30-Apr-15	TRX-IES0004	GCIA SWAT2 IES - TRXIES0004	**2 132 647,70**		1 066 323,85			**106 632,39**	2 132 647,70	-	01/07/2015
Transnet	Apr-15	30-Apr-15	TRXIO005	Kumba Iron Ore	1 341 780,00		670 890,00			67 089,00	1 341 780,00	-	03/07/2015
Transnet	Feb-15	28-Feb-15	TRX-MC	Maputo Corridor - TRXMCO115	331 373,38			157 713,98		-	331 373,38	-	11/06/2015
Transnet	Apr-15	30-Apr-15	TRX-HR20005	HR Hiring - Recruitment	436 956,43						436 956,43	-	22/05/2015
Transnet	Jan-15	31-Jan-15	TRXHR20003	HR Hiring - Recruitment	409 268,52						409 268,52	-	22/05/2015
Transnet	Feb-15	28-Feb-15	TRXHR20004	HR Hiring - Recruitment	417 915,20						417 915,20	-	22/05/2015
							12 506 928,02					-	

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Forsure	Haustaff		Albatime	Bank	Outstanding	Bank date
Transnet	May-15	31-May-15	TRXCOAL	Coal -	4 232 250,00		**2 116 125,00**			211 612,50	4 232 250,00	-	03/07/2015
Transnet	May-15	31-May-15	TRXGCIA009	GCIA Portfolio - TRXGCIA009	3 425 462,52			**1 712 731,26**		171 273,13	3 425 462,52	-	03/07/2015
Transnet	May-15	31-May-15	TRXNMPP	NMPP - TRXNMPP	4 275 000,00			**2 137 500,00**		213 750,00	4 275 000,00	-	03/07/2015
Transnet	May-15	31-May-15	TRX-IES0005	GCIA SWAT2 IES - TRXIES0005	2 079 410,89			**1 039 705,45**		103 970,54	2 079 410,89	-	03/07/2015
Transnet	May-15	31-May-15	TRXIO006	Kumba Iron Ore - TRXO006	5 278 200,00		**2 639 100,00**			263 910,00	5 278 200,00	-	03/07/2015
Transnet	May-15	31-May-15	TRX-GFB00001	GFB	3 711 840,00		1 855 920,00			185 592,00	3 711 840,00	-	21/08/2015
Transnet	May-15	31-May-15	TRX-SAL0001	GCIA - Saldanha Support	2 334 576,82		1 167 288,41			116 728,84	2 334 576,82	-	03/07/2015
Transnet	May-15	31-May-15	TRX-MAN001	Manganese-Megaproject Exc.Org	6 881 673,33			**3 440 836,67**		344 083,67	6 881 673,33	-	03/07/2015
							7 778 433,41			**1 610 920,68**		-	

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Forsure	Haustaff		Albatime	Bank	Outstanding	Bank date
		02-Jun-15	TRXFR00001	China Development Bank	189 240 000,00					147 607 200,00	189 240 000,00	-	
Transnet	Jun-15	30-Jun-15	TRXCOAL014	Coal -	12 477 509,00		6 238 754,50			623 875,45	12 477 509,00	-	18/08/2015
Transnet	Jun-15	30-Jun-15	TRXGCIA010	GCIA Portfolio - TRXGCIA010	1 778 817,81			889 408,91		88 940,89	1 778 817,81	-	18/08/2015
Transnet	Jun-15	30-Jun-15	TRXNMPP015	NMPP - TRXNMPP015	3 620 667,10			1 810 333,55		181 033,36	3 620 667,10	-	18/08/2015
Transnet	Jun-15	30-Jun-15	TRX-IES0006	GCIA SWAT2 IES - TRXIES0006	3 815 932,03			1 907 966,02		190 796,60	3 815 932,03	-	18/08/2015
Transnet	Jun-15	30-Jun-15	TRX-GFB00002	GFB Breakthrough TRXGFB00002	5 016 000,00		2 508 000,00			250 800,00	5 016 000,00	-	21/08/2015
Transnet	Jun-15	30-Jun-15	TRX-SAL0002	GCIA - Saldanha Support	2 925 058,33		1 462 529,17			146 252,92	2 925 058,33	-	18/08/2015
Transnet	Jun-15	30-Jun-15	TRX-MAN002	Manganese-Megaproject Exc.Org	6 881 673,33			3 440 836,67		344 083,67	6 881 673,33	-	18/08/2015
												-	

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Forsure	Haustaff		Albatime	Bank	Outstanding	Bank date
Transnet	Jul-15	31-Jul-15	TRXCOAL015	Coal -	28 691 520,00		14 345 760,00			1 434 576,00	28 691 520,00	-	31/08/2015

Transnet	Jul-15	31-Jul-15	TRXGCIA011	GCIA Portfolio - TRXGCIA011	2 036 003,18			1 018 001,59		101 800,16	2 036 003,18	-	02/09/2015
Transnet	Jul-15	31-Jul-15	TRXNMPP015	NMPP - TRXNMPP015				-		-	-	-	
Transnet	Jul-15	31-Jul-15	TRX-IES0007	GCIA SWAT2 IES - TRXIES0006	4 829 541,49			2 414 770,75		241 477,07	4 829 541,49	-	02/09/2015
Transnet	Jul-15	31-Jul-15	TRXIO002	Iron Ore renegotiation			-			-		-	
Transnet	Jul-15	31-Jul-15	TRX-GFB00003	GFB Breakthrough TRXGFB00003	8 151 000,00		4 075 500,00			407 550,00	8 151 000,00	-	16/09/2015
Transnet	Jul-15	31-Jul-15	TRX-SAL0002	GCIA - Saldanha Support			-			-		-	
Transnet	Jul-15	31-Jul-15	TRX-MAN003	Manganese-Megaproject Exc.Org	6 881 673,33			3 440 836,67		344 083,67	6 881 673,33	-	18/09/2015
												-	

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	DEC	Transnet partners				Bank	Outstanding	Bank date
							Fortime	Medjoul		Albatime			
Transnet	Jul-15	31-Aug-15	TRXCOAL015	Coal -	5 411 427,93		2 705 713,97		2 373 433,30	270 571,40	5 411 427,93	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRXGCIA011	GCIA Portfolio - TRXGCIA011	1 932 126,83			966 063,42	847 424,05	96 606,34	1 932 126,83	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRXNMPP015	NMPP - TRXNMPP015	4 798 629,13		2 399 314,57		2 104 661,90	239 931,46	4 798 629,13	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRX-IES0007	GCIA SWAT2 IES - TRXIES0006	4 110 178,12			2 055 089,06	1 802 709,70	205 508,91	4 110 178,12	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRXIO002	Iron Ore renegotiation			-		-	-	-	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRX-GFB00003	GFB Breakthrough TRXGFB00003	9 405 000,00		4 702 500,00		4 125 000,00	470 250,00	9 405 000,00	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRX-SAL0002	GCIA - Saldanha Support			-		-	-	-	-	01/10/2015
Transnet	Jul-15	31-Aug-15	TRX-MAN003	Manganese-Megaproject Exc.Org	6 881 673,33			3 440 836,67	3 018 277,78	344 083,67	6 881 673,33	-	01/10/2015

Date of Invoice	Invoice no	Mandate	Invoice Amount		Transnet partners				Bank	Outstanding	Bank date
					Fortime	Medjoul	Maher	Albatime			
30-Sep-15	TRXCOAL017	Coal	5 411 427,93		2 705 713,97			270 571,40	5 411 427,93	-	
30-Sep-15	TRXGCIA013	GCIA Portfolio Optimisation	1 102 716,19			551 358,10		55 135,81	1 102 716,19	-	02/11/2015
30-Sep-15	TRXIES0009	SWAT2-IES	2 041 014,41			1 020 507,21		102 050,72	2 041 014,41	-	02/11/2015
30-Sep-15	TRXGFB0005	GFB	9 405 000,00		4 702 500,00			470 250,00		9 405 000,00	
30-Sep-15	TRXMANG005	Manganese	6 881 673,33				3 440 836,67	344 083,67	6 881 673,33	-	02/11/2015
30-Sep-15	TRXNMPP017	NMPP Acceleration	5 016 000,00		2 508 000,00			250 800,00	5 016 000,00	-	02/11/2015
30-Sep-15	TRXSWIBC0001	SWAT 2 GFB CASE	3 511 232,10			1 755 616,05		175 561,61	3 511 232,10	-	02/11/2015
30-Sep-15	TRXSW2CM001	TRXSW2CM001	107 702,93		53 851,47			5 385,15	107 702,93	-	02/11/2015
			33 476 766,89		**9 916 213,97**	**3 327 481,35**	**3 440 836,67**	**1 673 838,34**	24 071 766,89	**9 405 000,00**	

Date of Invoice	Invoice no	Mandate	Invoice Amount		Transnet partners				Bank	Outstanding	Bank date
					Fortime	Medjoul	Maher	Albatime			
30-Oct-15	TRXIES0010	SWAT2-IES	2 280 241,50			1 140 120,75		114 012,08	2 280 241,50	-	30/11/2015
30-Oct-15	TRXGFB0006	GFB	12 540 000,00		6 270 000,00			627 000,00		12 540 000,00	
30-Oct-15	TRXMANG006	Manganese	6 881 673,33				3 440 836,67	344 083,67	6 881 673,33	-	30/11/0215
30-Oct-15	TRXNMPP018	NMPP Acceleration	5 016 000,00		2 508 000,00			250 800,00	5 016 000,00	-	30/11/2015
30-Oct-15	TRXSWIBC0001	SWAT 2 GFB CASE	3 549 916,00			1 774 958,00		177 495,80	3 549 916,00	-	30/11/2015
30-Oct-15	TRXSW2CM001	TRXSW2CM001	72 703,50							72 703,50	
			12 612 703,50		**8 778 000,00**	**2 915 078,75**	**3 440 836,67**	**1 513 391,54**	-	**12 612 703,50**	

	GL	**18 793 650,00** **6 242 560,00**
	Diff	**45 584,57** **-0,10**

SAFCOL	**1 761 300,00**
SAA	**2 793 000,00**
Total Outstanding	**22 017 703,50**

SAFCOL	1 761 300,00
Grand Total	23 779 003,50

SAFCOL

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	Homix	Albatime	Bank	Outstanding	Bank date
				SAFCOL - SAFFPL1001	957 600,00	478 800,00	47 880,00			
				SAFCOL - SAFFPL1002	2 992 500,00	1 496 250,00	149 625,00			
	Feb-15	12/03/2015	Regiments Capital	SAFCOL - SAFFPL1003	1 761 300,00	880 650,00	88 065,00		1 761 300,00	
						880 650,00	88 065,00		**1 761 300,00**	

Nedbank

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)	ProGrace		Bank	Outstanding	Bank date
	Mar-15	31/03/2015	NED 03/15	Nebank Capital - ACSA Swap R1.5bln	1 515 799,00			1 515 799,00	-	31/03/2015
						-				
									-	

SAA

Client	Month	Date of Invoice	Invoice no	Project	Amount (incl vat)			Bank	Outstanding	Bank date
	Mar-15	31/03/2015	MK/SAA1001	Working Capital Optimisation project(Mar-Oct 2014)	6 241 500,00	2 496 600,00	312 075,00	6 241 500,00	-	
	Oct-15	30/10/2015	SAA-010		2 793 000,00				2 793 000,00	
									2 793 000,00	

YTD Total	E13+E18

Client	Month	Date of Invoi	Project	Amount (incl vat)	Expected Paymer	Chivita	Albatime	Outstanding	Bank date
Transnet	Mar-14	31-Mar-14	Capital Room	**3,494,145.60**	1-May-14	1,747,072.80	162,518.40	0.00	
Transnet	Mar-14	31-Mar-14	1064 - Transaction Advisory	6,127,500.00	1-May-14	3,063,750.00	285,000.00	-	
Transnet	Mar-14	31-Mar-14	2nd Defined Benefit	7,980,000.00	1-May-14	3,990,000.00	399,000.00		
Transnet	Mar-14	31-Mar-14	Project Factory	**2,353,940.40**	1-May-14	1,176,970.20	109,485.60		
Transnet	Mar-14	31-Mar-14	1064 - TCO	1,225,500.00	1-May-14	612,750.00	57,000.00		
Transnet	Mar-14	31-Mar-14	1064 - FRM	3,676,500.00	1-May-14	1,838,250.00	171,000.00		
Transnet		18-Mar-14	Swot	12,540,000.00		11,913,000.00	583,255.81	-	
		5-Mar-14	War Room	2,588,256.00		1,294,128.00	120,384.00		
		5-Mar-14	Project Factory	1,205,892.00		602,946.00	56,088.00		
				41,191,734.00					
PPC	Mar-14	31-Mar-14	Transaction Advisory	285,000.00	1-May-14	no			
Transnet			Maputo Corridor	5,732,680.32				**5,732,680.32**	
Transnet			Maputo Corridor	4,999,834.80		21.81		-	
				10,732,515.12				**5,732,680.32**	

Client	Month	Date of Invoi	Project	Amount (incl vat)	Expected Paymer	Chivita	Albatime	Outstanding	Bank date
Transnet	Apr-14	30-Apr-14	2nd Defined Benefit TRA005	7,980,000.00		3,990,000.00	399,000.00	-	23/05/2014
Transnet	Apr-14	30-Apr-14	Project factory- TRXPF0003	2,721,590.40		1,360,795.20	126,585.60	2,721,590.40	
Transnet	Apr-14	30-Apr-14	Capital Room- TRXWR0003	3,360,566.00		1,680,283.00	156,305.40	3,360,566.00	
Transnet	Apr-14	30-Apr-14	Maputo Corridor - TRXMC006	4,602,921.80				-	04/06/2014
Transnet	Apr-14	30-Apr-14	Risk Share -Outperformance	79,230,000.00		45,856,500.00	2,573,550.00	-	30/04/2014
				97,895,078.20		**52,887,578.20**	**3,255,440.99**	**6,082,156.40**	

Client	Month	Date of Invoi	Project	Amount (incl vat)	Homix	Chivita	Albatime	Outstanding	Bank date
Transnet	May-14	21-May-14	TRXSWOT03	22,800,000.00	21,660,000.00		228,000.00	-	26/05/2014
Transnet	May-14	30-May-14	2nd Defined BenefitTRA006	7,980,000.00		3,990,000.00	399,000.00	7,980,000.00	
Transnet	May-14	30-May-14	Coal - TRXCOAL001	3,268,000.00		1,634,000.00	163,400.00	3,268,000.00	
Transnet	May-14	30-May-14	NMPP - TRXNMPP001	3,676,500.00		1,838,250.00	183,825.00	3,676,500.00	
Transnet	May-14	30-May-14	Project factory- TRXPF0004	3,661,331.45		1,830,665.73	170,294.49	3,661,331.45	
Transnet	May-14	30-May-14	Capital Room - TRXWR0004	4,382,698.33		2,191,349.17	219,134.92	4,382,698.33	
Transnet	May-14	30-May-14	Iron Ore - TRXO001	4,902,000.00		2,451,000.00	245,100.00	4,902,000.00	
Transnet	May-14	30-May-14	Manganese - TRXMG0002	6,127,500.00		3,063,750.00	306,375.00	6,127,500.00	
				56,798,029.78				**33,998,029.78**	

Annexure 7

From: Eric Wood <EricW@regiments.co.za>
Sent: Monday, May 18, 2015 11:46 AM
To: Anoj Singh Corporate JHB
Subject: FW: RE: Revised Outstanding Revenue
Attachments: Advisory Invoice Tracking - 2015-2016.xlsx

Hi Anoj
I have attached the list of o/s invoices as requested
Thanks

Eric Wood
Executive Director
+27 83 626 0857

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91 Central Str, Houghton, 2198 Postnet Suite 25, Private Bag X11, Birnam Park, 2015

From: Yvonne Mokone
Sent: 18 May 2015 11:44 AM
To: Eric Wood
Cc: Indheran Pillay; Perry Tambatamba
Subject: RE: Revised Outstanding Revenue

Good Day Mr Wood,

Attached is the updated schedule.

Regards,

Yvonne Mokone
Junior Accountant
+27 83 284 0825

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T +27 11 715 0300 D +27 11 715 0351 F +27 11 715 0352 E yvonnem@regiments.co.za W www.regiments.co.za
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Annexure 8

From: Eric Wood <EricW@regiments.co.za>
Sent: Wednesday, August 5, 2015 2:35 PM
To: Garry Pita Transnet Corporate JHB
Subject: Outstanding Invoices
Attachments: Advisory Outstanding Invoices August 2015.xls

Hi Garry
Please could you assist with the attached list of outstanding invoices (in particular the May and June 2015 invoices are overdue). Should you require the underlying invoices and supporting memos (as delivered to Transnet at the time of invoicing), please let me know.

Your assistance in this regard is much appreciated
Thank You
Eric Wood

Eric Wood
Executive Director
+27 83 626 0857

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91 Central Str, Houghton, 2198 Postnet Suite 25, Private Bag X11, Birnam Park, 2015

From: Perry Tambatamba
Sent: 05 August 2015 01:17 PM
To: Eric Wood <EricW@regiments.co.za>
Subject: Advisory Outstanding Invoices August 2015.xls

Hi Eric,

Please find the up-dated schedule for Transnet. Please ignore the last one that I sent.

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Annexure 16

McKinsey income from State-Owned Enterprises

State-Owned Enterprises	Payments	Deposits
Eskom	1 128 333 907.71	1 755 360 356.46
• 2012	-	109 085 443.32
• 2013	-	165 051 977.85
• 2014	-	182 859 836.71
• 2015	-	35 259 662.93
• 2016	-	806 368 988.58
• 2017	-	456 734 447.07
• 2018	1 002 015 530.31	-
• 2019	126 318 377.40	-
Transnet	-	881 435 364.80
• 2012	-	78 084 244.00
• 2013	-	123 607 353.72
• 2014	-	276 615 519.55
• 2015	-	345 167 756.49
• 2016	-	57 960 491.04
SAA	-	16 721 796.48
• 2013	-	19 086 .48
• 2014	-	4 218 000.00
• 2015	-	12 484 710.00
	1 128 333 907.71	**2 653 517 517.74**

Eskom

Entity Name	Paid To Name	Amount	Date	Acc No
ESKOM - PFS - 1100	MCKINSEY & COMPANY	4 580 815.26	2012/02/15	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	1 710 000.00	2012/02/15	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	684 000.00	2012/03/20	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	5 244 000.00	2012/03/30	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	684 000.00	2012/04/26	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	7 759 161.48	2012/05/04	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	18 826 527.72	2012/05/09	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	684 000.00	2012/05/30	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	12 302 492.35	2012/05/30	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	684 000.00	2012/06/29	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	7 530 610.68	2012/07/06	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	684 000.00	2012/07/20	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	11 295 915.54	2012/09/07	421061812

Entity Name	Paid To Name	Amount	Date	Acc No
ESKOM - PFS - 1100	MCKINSEY & COMPANY	684 000.00	2012/09/21	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	2 451 000.00	2012/10/17	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	1 700 046.20	2012/10/31	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	5 785 143.41	2012/10/31	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	2 832 258.10	2012/11/02	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	684 000.00	2012/11/30	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	2 781 600.00	2012/12/19	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	4 974 590.64	2012/12/21	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	14 523 281.94	2012/12/28	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	14 523 281.94	2013/02/13	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	6 815 988.18	2013/02/15	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	684 000.00	2013/03/13	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	8 637 957.84	2013/04/17	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	4 218 000.00	2013/06/28	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	17 081 799.90	2013/07/12	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	5 556 755.66	2013/07/19	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	13 175 561.40	2013/07/31	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	3 340 953.54	2013/08/07	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	11 349 707.17	2013/08/30	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	3 340 953.54	2013/09/04	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	10 619 681.40	2013/09/11	421061812
ESKOM - PFS - 1100	ONE TIME VENDOR	643 621.77	2013/09/20	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	2 555 880.00	2013/10/02	421061812
ESKOM - PFS - 1100	MCKINSEY & COMPANY	3 340 953.54	2013/10/11	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	10 619 681.40	2013/10/18	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	4 923 164.97	2013/10/30	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	11 725 715.10	2013/11/15	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	6 085 428.57	2013/11/22	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	11 725 715.10	2013/11/29	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	2 785 399.62	2013/12/06	421061812
ESKOM - PFS - 8500	MCKINSEY AND COMPANY	11 301 777.21	2013/12/13	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	5 570 799.24	2014/01/29	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	11 725 715.10	2014/02/05	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	2 850 000.00	2014/02/26	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	7 761 405.00	2014/03/05	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	14 109 473.47	2014/03/26	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	9 483 660.00	2014/03/28	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	8 390 064.84	2014/04/09	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	11 725 715.10	2014/04/30	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	14 881 408.61	2014/05/21	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	11 725 715.10	2014/07/09	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	8 710 170.00	2014/07/25	421061812
ESKOM - PFS - 8500	MCKINSEY AND COMPANY	9 070 375.80	2014/07/29	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	22 322 112.23	2014/08/15	421061812

Entity Name	Paid To Name	Amount	Date	Acc No
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	5 063 788.82	2014/09/26	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	6 835 990.62	2014/10/17	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	706 230.00	2014/11/05	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	25 396 499.34	2014/12/02	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	6 530 713.44	2014/12/17	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	1 368 000.00	2015/01/15	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	5 056 844.87	2015/02/19	421061812
ESKOM - PFS - 8600	MCKINSEY AND COMPANY	7 230 593.64	2015/02/24	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	2 011 150.44	2015/03/31	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	6 531 024.66	2015/10/06	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	13 062 049.32	2015/10/29	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	47 272 049.40	2016/01/26	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	44 405 029.20	2016/03/03	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	31 015 318.80	2016/03/10	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	3 151 712.18	2016/03/31	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	680 524 879.00	2016/08/15	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	348 067 620.72	2017/02/22	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	44 397 345.03	2017/06/08	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	29 934 188.40	2017/06/15	421061812
ESKOM - PFS - 1100	MCKINSEY AND COMPANY	34 335 292.92	2017/06/22	421061812
		1 755 360 356.46		

McKinsey repayments to Eskom

Entity Name	Paid To Name	Amount	Date	Acc No
MCKINSEY AND COMPANY	Eskom	902 274 123.31	2018/07/07	4084477132
MCKINSEY AND COMPANY	Eskom	99 741 407.00	2018/07/23	421061812
MCKINSEY AND COMPANY	Eskom	126 318 377.40	2019/04/18	4084477132
		1 128 333 907.71		

Transnet

Entity Name	Paid To Name	Amount	Date	Acc No
TRANSNET	MCKINSEY INCORPORATED	2 872 800.00	2012/05/10	421061812
TRANSNET	MCKINSEY AND CO	42 980 542.20	2012/07/04	421061812
TRANSNET	MCKINSEY INCORPORATED	1 026 000.00	2012/07/30	421061812
TRANSNET	MCKINSEY AND CO	9 296 836.80	2012/08/08	421061812
TRANSNET	MCKINSEY AND CO	3 313 980.00	2012/09/19	421061812
TRANSNET	MCKINSEY AND CO	7 500.00	2012/11/14	421061812
TRANSNET	MCKINSEY AND CO	10 000.00	2012/11/30	421061812
TRANSNET	MCKINSEY AND CO	18 576 585.00	2012/12/03	421061812
TRANSNET	MCKINSEY AND CO	4 332 000.00	2013/03/06	421061812

Entity Name	Paid To Name	Amount	Date	Acc No
TRANSNET	MCKINSEY AND CO	16 667 559.75	2013/05/02	421061812
TRANSNET	MCKINSEY AND CO	7 217 593.58	2013/05/22	421061812
TRANSNET	MCKINSEY AND CO	3 204 879.72	2013/06/05	421061812
TRANSNET	MCKINSEY AND CO	3 204 879.72	2013/07/03	421061812
TRANSNET	MCKINSEY AND CO	30 443 099.98	2013/07/31	421061812
TRANSNET	MCKINSEY INCORPORATED SOUTH AFRICA	1 700 000.00	2013/08/08	421061812
TRANSNET	MCKINSEY AND CO	5 841 524.67	2013/09/25	421061812
TRANSNET	MCKINSEY AND CO	4 323 265.04	2013/10/02	421061812
TRANSNET	MCKINSEY AND CO	10 055 514.00	2013/12/04	421061812
TRANSNET	MCKINSEY AND CO	36 617 037.26	2013/12/18	421061812
TRANSNET	MCKINSEY AND CO	5 768 172.00	2014/01/08	421061812
TRANSNET	MCKINSEY AND CO	5 768 172.00	2014/02/05	421061812
TRANSNET	MCKINSEY AND CO	59 980 885.11	2014/05/23	421061812
TRANSNET	MCKINSEY AND CO	12 076 800.90	2014/06/04	421061812
TRANSNET	MCKINSEY AND CO	52 118 748.00	2014/07/14	421061812
TRANSNET	MCKINSEY AND CO	34 492 620.62	2014/07/16	421061812
TRANSNET	MCKINSEY AND CO	40 703 065.02	2014/08/06	421061812
TRANSNET	MCKINSEY AND CO	16 131 000.00	2014/09/29	421061812
TRANSNET	MCKINSEY AND CO	33 943 475.30	2014/11/12	421061812
TRANSNET	MCKINSEY AND CO	4 161 330.60	2014/11/24	421061812
TRANSNET	MCKINSEY AND CO	6 555 000.00	2014/11/25	421061812
TRANSNET	MCKINSEY AND CO	2 622 000.00	2014/12/03	421061812
TRANSNET	MCKINSEY AND CO	2 294 250.00	2014/12/05	421061812
TRANSNET	MCKINSEY AND CO	33 587 820.00	2015/01/12	421061812
TRANSNET	MCKINSEY AND CO	16 552 727.56	2015/03/11	421061812
TRANSNET	MCKINSEY AND CO	33 408 402.13	2015/05/22	421061812
TRANSNET	MCKINSEY AND CO	5 691 240.13	2015/05/22	421061812
TRANSNET	MCKINSEY AND CO	22 919 340.90	2015/05/25	421061812
TRANSNET	MCKINSEY AND CO	48 764 350.17	2015/07/03	421061812
TRANSNET	MCKINSEY AND CO	32 568 573.90	2015/08/18	421061812
TRANSNET	MCKINSEY AND CO	61 518 285.01	2015/11/02	421061812
TRANSNET	MCKINSEY AND CO	42 009 000.00	2015/12/11	421061812
TRANSNET	MCKINSEY AND CO	48 148 016.69	2015/12/18	421061812
TRANSNET	MCKINSEY AND CO	6 941 487.36	2016/04/13	421061812
TRANSNET	MCKINSEY AND CO	15 109 003.68	2016/08/02	421061812
TRANSNET	MCKINSEY AND CO	27 360 000.00	2016/09/07	421061812
TRANSNET	MCKINSEY AND CO	8 550 000.00	2016/09/14	421061812
		881 435 364.80		

SAA

Entity Name	Paid To Name	Amount	Date	Acc No
SAA - SAA Corporate & PAX	McKINSEY, INCORPORATED	19 086.48	2013/12/06	421061812
SAA - SAA Corporate & PAX	McKINSEY, INCORPORATED	2 530 800.00	2014/05/09	421061812
SAA - SAA Corporate & PAX	McKINSEY, INCORPORATED	1 687 200.00	2014/08/08	421061812
SAA - SAA Corporate & PAX	McKINSEY, INCORPORATED	12 484 710.00	2015/03/13	421061812
		16 721 796.48		

FOF-08-480

McKinsey&Company

Firm Policies







Anti-Corruption Policy

December 2013



Purpose

The following sections and annexes explain more about what activities are covered by our prohibition on bribery, and set out practical guidance on how to manage corruption risks faced by the Firm

This policy supports the Firm's commitment to the highest ethical, professional, and legal standards by providing practical guidance to Firm members on steps we must take to address corruption risks in our daily work.

Living up to these standards of course means that we will not participate in any form of corruption. Neither we, nor outside parties acting on our behalf, will bribe another party to gain an engagement or any other type of benefit. Similarly, we will not accept bribes, or be used by any other party to facilitate bribery. This prohibition on bribery extends to benefits in all forms, including monetary payments and kickbacks, lavish meals, gifts, travel, entertainment, and other items of value. Though these basic requirements may seem straightforward, applicable anti-corruption laws require us to take special steps to address corruption risks in many of our daily activities – particularly in our interactions with government officials (defined below).

In all cases, we must fully comply with the anti-corruption laws of all of the jurisdictions in which we operate. We should always act in accordance with the higher standard – ours as articulated in this policy or the most stringent applicable legal requirements. Please contact your Office Manager or Firm Legal regarding questions about any part of this policy, or to report concerns.

PROHIBITION AGAINST BRIBERY

The Firm and applicable anti-corruption laws prohibit us and other parties working on our behalf ("third parties") from:

- Giving, paying, promising, offering, or authorizing;
- The payment of anything of value (such as money, gifts, travel, entertainment);
- Directly or indirectly (through another party);
- To any party, including any government official (defined below);
- To persuade that party to help the Firm (or anyone else) secure an improper advantage (such as preferential treatment in securing an engagement, favorable immigration or customs treatment, lower tax assessment, expedited payment for services).

Though preventing corruption on our behalf is a primary concern, our prohibition extends to any participation in bribery, even on behalf of another party. In particular, we face corruption risks in dealing with outside parties such as suppliers and vendors who may seek to influence Firm members to gain an improper advantage (for example, a supplier may seek to influence or obtain preference in the Firm's procurement process through bribery). We must also always follow our strict policy against advocacy and lobbying, and never assist a client in an act of corruption (for additional detailed guidance in this area, please see our Public Sector Policy and Interactions with Regulators and Other Government Officials Policy).

FOCUS ON GOVERNMENT OFFICIALS

The Firm's prohibition on bribery covers dealings with any party. However, interactions with government officials present heightened risk, and thus receive special attention in this policy and in many international and domestic anti-corruption laws – including the U.S. Foreign Corrupt Practices Act, or "FCPA," the U.K. Bribery Act, and other applicable laws. For purposes of this policy, the term "government official" includes:

- Any employee, or elected or appointed official of a local, state, provincial, regional or national government, at any level;
- Anyone "acting in an official capacity" (on behalf of a government to carry out government responsibilities);
- Any political party, party official, or candidate for political office;
- Any official or employee of a public international organization such as the World Bank or United Nations;
- Any employee of a company that is owned or control by a government (such as employees of state-owned entities).

Accordingly, we must be especially vigilant in dealing with government entities and government officials, so that any warning signs of corruption are promptly identified and addressed.

RISK AREAS

The Firm's primary corruption risk areas are listed below. Guidance on each area can be found in annexes to this policy or in separate policies.

- Providing and receiving gifts, meals, and hospitality (Annex A)
- Retaining and working with third parties (Annex B)
- Facilitating payments, and health and safety payments (Annex C)
- Charitable and political contributions (Annex D)
- Internships and recruiting (*Internship & Referral Policy*)
- Interactions with government entities and officials (*Public Sector Policy*, *Interactions with Regulators and Other Government Officials Policy*)

Beyond these specific risk areas, Firm members are encouraged to seek guidance from relevant Office Managers, Firm Functions Leaders, or Firm Legal any time questions arise about appropriate interactions with government entities and officials. For example, Firm members must seek guidance before pursuing engagements and opening offices in locations where the Firm does not have an established presence, to ensure the Firm complies with local legal requirements and considers specific corruption risks in the location.

RESPONDING TO REQUESTS FOR IMPROPER PAYMENTS

Requests for bribes may not always be overt – for example, an agent may suggest that a special "fee" will speed up a government approval. In such circumstances, check with Firm Legal as to whether the "fee" is legitimate.

Firm members receiving a request for an improper payment or a facilitating payment (discussed in Annex C) must:

- Immediately refuse to make the payment; explain that the Firm does not make such payments
- If a third party is involved, explain that they are not authorized to make the payment on the Firm's behalf, instruct them not to do so and explain that the Firm cannot continue to work with them if they make the payment
- Be clear that refusals are absolute and do not come with a "wink and a nod"
- Immediately report the request to Firm Legal; wait for guidance on next steps.

If someone suggests a potentially improper transaction (e.g., if there is reason to suspect a person may be suggesting a bribe, overtly or not, or if a third party offers to obtain a government approval in a surprisingly short time for an additional fee), Firm members must:

- Explain that it will be necessary to check with the relevant partner, cell leader, or supervisor before giving an answer

- Immediately contact Firm Legal for guidance.

SEEKING GUIDANCE AND REPORTING CONCERNS

The Legal Toolkit on our Professional Standards intranet site includes a list of Legal Department contacts by region

Any questions or concerns regarding topics covered in this policy should be directed to your Office Manager or Firm Legal. Reports of concerns will be treated confidentially upon request. Every Firm member has the right to address ethical concerns in good faith without fear of retribution, including punishment or harassment from co-workers, supervisors, or Firm management. The Firm forbids retaliation of any kind against employees who in good faith report potential or actual ethics or legal violations. We highly value your commitment to our ethical and professional standards.

ACCOUNTING AND RECORDKEEPING

Accurate records and strong internal controls are essential to any well-run organization, and they are a key element of the Firm's anti-corruption controls. Proper accounting practices ensure that we maintain accurate information and help prevent funds from being used for bribery. It is essential to ensure that all of the Firm's transactions – including third party transactions, gifts, meals, hospitality, and other expenditures – are properly authorized and recorded.

In particular, gifts, meals, and hospitality provided to a client must not be charged to the WIP and/or billed to the client unless it is directly related to an engagement the Firm is performing for the client (e.g., a team dinner with the client). These requirements apply regardless of the expense-charge arrangement (e.g., all-in, fixed amount, fixed % of fees or usage-based). Charitable contributions must never be charged to a client WIP.

MONITORING AND TESTING

Organizations charged with corruption violations have suffered serious reputational damage and incurred hundreds of millions of dollars in investigation costs and penalties. Individual defendants have received long prison terms.

To protect against and promptly detect potential corruption issues, the Firm's Finance and Internal Audit Departments will monitor transactions on an ongoing basis, and conduct periodic testing and audits. In doing so, the Finance and Internal Audit Departments will evaluate patterns and trends in conduct, and where necessary, escalate issues to our Professional Standards Committee, Office Managers, Firm Legal, or other appropriate oversight functions.

CONSEQUENCES FOR VIOLATIONS

Participating in bribery can result in serious criminal and civil, as well as reputational, consequences for the Firm and for individual Firm members. In addition, any Firm member failing to follow this policy will be subject to disciplinary action up to and including separation from the Firm, and may be punished by government enforcement agencies with large fines and imprisonment.

Date of adoption: December 2013

Annex A

Gifts, Meals, and Hospitality

PROVIDING GIFTS, MEALS, AND HOSPITALITY

Our prohibition on bribery goes beyond the payment of money. It prohibits giving "anything of value" to gain an improper advantage. Gifts, meals, entertainment, travel, accommodations, event tickets, and other professional are some examples of things of value that can, if provided for an improper purpose, qualify as bribery. We must be careful to ensure that all gifts, meals, and hospitality are legitimate (e.g., without a corrupt purpose, reasonable, not too frequent), and does not create bribery concerns.

Gifts, meals, and hospitality provided on behalf of the Firm – to clients, potential clients, non-U.S. government officials, or other parties – must meet the following basic criteria and approval requirements. Other Firm policies may be applicable (e.g., more stringent requirements apply to gifts, meals, and hospitality for U.S. government officials, as detailed in our Public Sector Policy and DCG Code of Ethics and Conduct) and Firm members should ensure compliance with other applicable policies.

BASIC REQUIREMENTS

Gifts, meals, and hospitality provided on behalf of the Firm **must be**:



- Openly incurred, that is, there is no effort made to conceal it;
- Reasonable (in the context of the local economy where it is to be provided), customary and appropriate;
- Consistent with our ethical and professional standards;
- to create a legitimate opening for explaining our services, making arrangements regarding an engagement, working on an engagement, or building or maintaining relationships in good faith;
- Where possible, paid to service providers (e.g., airlines, hotels, or restaurants);

- For travel expenses, consistent with the Firm's standards for travel by Firm members, as detailed in the Global Travel Policy;
- Accurately recorded in the Firm's books and records and supported by adequate documentation (e.g., invoices, receipts, descriptions);
- Consistent with applicable local standards for gifts, meals, and hospitality (discussed below) – Firm members are responsible for familiarizing themselves with such requirements.

And not:



- Offered or provided in return for any favor or benefit to the Firm or to improperly influence a decision;
- Imposing a sense of obligation on the recipient;
- Lavish, excessive, or too frequent;
- Giving any appearance of impropriety (for example, gifts, meals, and hospitality should not be offered to decision makers in the context of an open or anticipated procurement process);
- Cash gifts or advance payments;
- Provided in violation of local law.

The Firm generally discourages gifts, meals, and hospitality provided to spouses, children, or other close relatives of prospective clients, current clients, and government officials. The Firm nevertheless recognizes that there may be circumstances where such gifts, meals, and hospitality are appropriate. Therefore, the Firm allows such gifts, meals, and hospitality where it is consistent with the criteria above, occasional, and in-line with social custom in the context where it is to be provided. For general questions about circumstances where it may be appropriate to invite such relatives, Firm members are encouraged to confer with relevant Office Managers or Firm Functions Leaders.

REQUIRED APPROVALS

To ensure effective control over significant expenditures, Firm members must get prior approval for gifts, meals, and hospitality in excess of certain amounts. Please see the following chart for details:

TYPE	VALUE PER RECIPIENT[1]	REQUIRED APPROVALS
Gifts and Meals	Over $500	**Office Manager** (or his/her designee) must approve/deny the proposed expenditure after obtaining input from **Firm Legal**. Requests for approval must provide the basic information required on the Hospitality Request Form [link: http://home.intranet.mckinsey.com/intcomms/profstandards/FCPA-Forms]
Other Hospitality (Entertainment, Travel, etc.)	Over $1,000	

Beneath these global standards for prior approval, Office Managers may wish to set more stringent local standards for hospitality for Firm members based in their offices, such as value limits on particular types of hospitality, and office-specific approval requirements. Office Managers may choose to apply standards on an office, country or regional basis (e.g., one set of standards for the NEO, U.S. or North America). Firm Functions Leaders may wish to set more stringent standards for their staff who are not located in consulting offices. Office Managers and Firm Functions Leaders must notify the Firm's shared service center and Firm Legal of any local or Function-specific standards – please see the Local Standards Form [link: http://home.intranet.mckinsey.com/intcomms/profstandards/FCPA-Forms], which may be used to facilitate this communication. Firm members are encouraged to seek guidance from their Office Managers, relevant Firm Functions Leaders, or Firm Legal regarding general questions about the appropriateness of gifts, meals, and hospitality under consideration.

Where unforeseen circumstances make it impossible to obtain prior approval for gifts, meals, and hospitality that meets the thresholds for Office Manager and Firm Legal review, report the expenditure immediately thereafter to the relevant Office Manager (or designee) and Firm Legal.

HOSPITALITY PAID DIRECTLY BY FIRM

Though many types of gifts, meals, and hospitality are typically provided by individual Firm members who will claim reimbursement for expenses, certain hospitality for outside parties, such as sporting event tickets and Firm-hosted events, may be paid directly by the Firm. Such hospitality must meet the basic standards set out in the

[1] These values are per individual recipient, per gift, meal, or other hospitality expenditure- hotel expense threshold is $1,000 per night. In addition, these values apply regardless of whether a Firm member plans to pay for any portion of the hospitality personally (i.e., without seeking reimbursement).

previous section, though different approval requirements apply (there are no value thresholds for approval).

Gifts, meals, and hospitality for outside parties to be paid directly by the Firm must be pre-approved by the relevant Regional Leader (responsible for the location where the expenditure will take place) when the expenditure will involve:

- **Government officials;**
- **Travel expenses for outside parties; or**
- **Expenses for spouses, significant others, or family members of current or potential clients or government officials.**

Requests for approval must provide the basic information required on the Hospitality Request Form [Link: http://home.intranet.mckinsey.com/intcomms/profstandards/FCPA-Forms]. Before deciding whether to approve or deny the proposed expenditure, the Regional Leader must obtain input from Firm Legal.

In addition, for any Firm-hosted event (regardless of pre-approval requirements) expenses must be paid to service providers and vendors (not to individual attendees), and Firm Legal must be consulted on the form of invitation, certifications, or other measures that may be needed to ensure that attendees are allowed to accept the gift, meal or hospitality under rules and regulations to which they are subject (such as codes of conduct for government officials).

For event-related gift, meals, or hospitality where the individual recipients are not known when the expenditure is made, such as the purchase of gifts in bulk or season tickets to a sports team or theater, the relevant Regional Leader (in consultation with Firm Legal) may require special conditions for administering the gift, meal, and hospitality. For example, for season tickets that may be used by government officials, approval may be subject to appointing responsible personnel to ensure that use of the tickets complies with the basic requirements set out above, and special reporting requirements to track recipients of the tickets.

RECEIVING GIFT, MEALS, OR HOSPITALITY

When gifts, meals, or hospitality are offered to us – for example, by a client, supplier, or vendor – we must meet the same high general ethical standards that apply when we provide gifts, meals, or hospitality. In particular, no Firm member may accept gifts, meals, or hospitality if it:

- Is offered or provided in return for any favor or benefit to another party, or to improperly influence a decision (for example, gifts, meals, and hospitality must not be accepted in exchange for awarding a contract to a supplier or vendor);
- Imposes a sense of obligation on the Firm member;
- Is lavish, excessive, or too frequent;
- Gives any appearance of impropriety (for example, gifts, meals, and hospitality must not be accepted if it could reasonably be expected to affect the outcome of our discussions with a supplier or vendor, or during a procurement process in which the supplier or vendor is participating);
- Is in the form of cash or cash equivalent.

To ensure that we meet these standards, the following requirements apply:

TYPE	VALUE PER RECIPIENT	REQUIREMENTS
Gifts and Meals	Over $100 (per instance or cumulatively from the same source per year)	Notify supervisor, or, if in the context of a client service team, the ED*
Other Hospitality (Entertainment, Travel, etc.)	Over $500 (per instance or cumulatively from the same source per year)	Seek prior approval from supervisor, or, if in the context of a client service team, the ED*

If a supervisor or ED believes the gifts, meals, or hospitality may create a conflict of interest, consult with a relevant Office Manager, Firm Functions Leader, or Firm Legal for guidance.

Annex B

Retaining and Working with Third Parties

We may be liable for the misconduct of a third party if the Firm knows or has reason to know that the third party will engage in bribery when acting on our behalf, even if we do not have a formal agreement with that party to act on our behalf. It is very important for us – from a reputational as well as a compliance standpoint – to understand the qualifications and associations of third parties with whom we work (particularly any relationships with government officials), and to have a good grasp of their activities and the basis for their compensation. For these reasons, the Firm has identified the following types of third parties ("Covered Parties") as high risk, with special requirements for due diligence reviews, written agreements, and monitoring:

- Parties that will independently interact with current or potential clients on the Firm's behalf (i.e., meet/communicate with clients without Firm members present, even if the Firm will not compensate the third party);

- Parties that will interact with government officials on the Firm's behalf (e.g., immigration agents, customs brokers, lawyers interacting with judicial or other government officials, tax advisors interacting with tax authorities, security providers interacting with military and police); and

- To the extent not covered by the preceding categories, consortia partners, partners required by local laws, joint venture partners, and partners in similar relationships where the partner either acts for both itself and the Firm in exploring client service opportunities or where the partner and the Firm agree to jointly assume responsibility for providing client services and share financial interests (given the risk that the partner may be affiliated with clients or government officials, and the risk that they may be perceived as acting on our behalf, even if not authorized to do so).

The following sets out requirements for due diligence, written agreements, and ongoing monitoring for these types of third parties.

DUE DILIGENCE PROCESS FOR COVERED PARTIES

Covered Parties may only be retained by Partners or Firm Function Leaders. To ensure that we work only with suitable third parties, any Firm member proposing to work with a Covered Party must carry out due diligence on the third party and the proposed relationship. Specifically, we must make documented inquiries sufficient for the relevant Partner or Firm Function Leader to evaluate:

- The Firm's need to engage the third party;
- The third party's qualifications and reputation (in particular, signs that the party is in any respects unsuitable, or may engage in improper practices);
- The third party's relationships with clients, government officials, and government entities that are relevant to our work (for example, any ownership by a client or government official, or former employment by a client or government entity);
- The reasonableness of the third party's proposed compensation.

The Purchasing function supports the review process by maintaining a list of Covered Parties that have successfully undergone due diligence (discussed further below). Purchasing may also assist in carrying out due diligence inquiries.

Firm Legal maintains a Due Diligence Questionnaire to help Firm Members gather information from the Covered Party (such as information on its background, qualifications, and associations). Firm Legal can also provide guidance on making additional inquiries, such as local media/internet searches, site visits, local government records searches, and ordering background checks from outside due diligence providers.

CONTRACTUAL ARRANGEMENTS

Firm Legal must be consulted on all agreements with Covered Parties. Legal has available model contract terms to ensure appropriate anti-corruption safeguards are included in agreements (such as prohibitions on improper payments, audit rights, and termination rights).

PRE-APPROVED LIST

Purchasing will maintain a "pre-approved" list of Covered Parties, which will include trusted parties proposed by Firm Functions Leaders and vetted by Purchasing (e.g., parties that have extensive working relationships with the Firm across offices) and

other Covered Parties that have successfully undergone due diligence. Therefore, to avoid unnecessary duplication of efforts and to keep the list current, check with Purchasing as to whether a suitable party is available before starting due diligence on a new Covered Party, and notify Purchasing when due diligence is completed on a new Covered Party. Purchasing will also reach out to Firm Functions Leaders at least annually to solicit proposals for Covered Parties to include on the list.

ONGOING MONITORING OF "COVERED PARTIES"

Once retained, the Partner or Firm Functions leader responsible for the retention must monitor the third party's activities and expenses to ensure continued compliance with all applicable laws and Firm policies. If a third party makes an improper payment, the Firm may be held criminally liable even if it did not authorize the payment. To guard against such liability, we must:

- Insist on documentation before paying expenses;
- Check whether all charges or fees are supported by the contract or other relevant documentation;
- Question unusual or excessive charges – engage Purchasing if you need help asking questions about bill rates and questionable charges;
- Refuse to pay the third party and notify Firm Legal if the Firm Member suspects that the third party has or will make illicit or questionable payments; and
- Where appropriate in light of the specific risks posed by the third party:
  - Obtain periodic anti-corruption compliance certifications;
  - Emphasize the importance of anti-corruption compliance to the third party in informal discussions, or in formal anti-corruption training;
  - Exercise contractual rights (where available) to audit the third party's books, records and business activities related to the Firm.

UPDATING DUE DILIGENCE

Due diligence covers a finite time period and must be periodically updated to identify new red flags that may have developed since the original due diligence was approved. Due diligence must also be updated upon a change in the third party's

status (e.g., the party begins providing new services). Absent any change in status, due diligence must be updated every three years.

RED FLAGS

Circumstances that signal anti-corruption risks, or suggest a reason to know of an illegal payment by a third party, are commonly referred to as "red flags." We must be vigilant for red flags in all transactions, but especially those involving a country known for corrupt payments[2]. **If due diligence or monitoring uncovers any red flags, seek guidance from Firm Legal.** Common red flags include:

- Excessive compensation paid to the third party, or compensation above the "going rate";
- Agreements that include only vaguely described services;
- The third party is in a different line of business than that for which it is being engaged;
- The third party is suggested by a client or government official, particularly one with discretionary authority over the Firm's work;
- The third party has a close personal or family relationship, or a business relationship, with a client or government official, or relative of such individuals;
- The third party requests unusual contract terms or payment arrangements that raise local law issues, such as payment in cash, payment in another country's currency, or payment to an offshore bank account;
- Payment for most or all of a third party's services in advance (as a pre-payment);
- The third party is located in an offshore jurisdiction (i.e., in a country outside of where the services will take place).

In general, any circumstance that puts into question whether the third party is providing a necessary service at a reasonable price is a red flag. Where a red flag is identified, Firm Legal and Purchasing will confer to determine an appropriate response, which may include controls to prevent payments to the relevant vendor, or other safeguards.

[2] See Transparency International's Corruption Perceptions Index: http://www.transparency.org/policy_research/surveys_indices/cpi.

Annex C

Facilitating Payments and Health & Safety Payments

FACILITATING PAYMENTS

U.S. law provides for a very narrow exception for payments made to low-level government officials in order to expedite or secure routine government actions, such as processing paperwork. However, many other anti-corruption laws, including the U.K. Bribery Act, make facilitating payments illegal. Because of the many legal and ethical issues they pose, facilitating payments are prohibited by the Firm. Firm members must report any requests for facilitating payments to Firm Legal to determine an appropriate response.

HEALTH AND SAFETY PAYMENTS

In very rare circumstances, Firm members may deem it necessary to make a payment to a government official to avoid an imminent threat to personal health, safety, or freedom. Payments demanded in these types of situations are made under duress or extortion and therefore may be legal. Immediately report any payment under these circumstances to Firm Legal.

Annex D

Charitable and Political Contributions

CHARITABLE CONTRIBUTIONS

We support charities to help the communities where we live and work. In doing so, we must have assurances that the contribution will be used for its stated purpose and will not be used as a bribe. In particular, all charitable contributions (other than providing services free of charge) must be:

- Reviewed and approved in advance according to the following requirements:
  - Contributions over $5,000 must be approved in advance by the relevant Office Manager (or designee), who must obtain input from Firm Legal.
  - Similar to requirements for gifts, meals, and hospitality, discussed in Annex A, the relevant Office Manager may set local standards for contributions up to $5,000, and must communicate any such standards to the Firm's shared services center and Firm Legal.
- Made to a charity with a track record demonstrating a commitment to its charitable mission, or other documented proof of legitimacy
- Made by check, purchasing card, or wire transfer (not cash), accompanied by a cover letter on McKinsey's letterhead confirming the Firm's understanding of the contribution's legitimate purpose. Where appropriate, representations and warranties may be required from the recipient concerning the proposed use of donated funds. In addition, monitoring of the donated funds may be required
- Documented accurately in the Firm's records and properly receipted
- Not charged to a client WIP.

Any request by a client employee or government official for a contribution to a specific organization is a red flag. It is also a red flag if an owner or executive of the proposed recipient is a client employee or government official (or relative of such individuals) in a position of influence over McKinsey's work on an engagement. Such red flags must be reported to Firm Legal.

POLITICAL CONTRIBUTIONS

McKinsey does not allow Firm members to make contributions on the Firm's behalf or using the Firm name, whether cash or in-kind, to political parties, party officials, or candidates for office. Such contributions are restricted by applicable anti-corruption laws to the same extent as payments to government officials, and would compromise our reputation for independence and our strict prohibition on lobbying. Firm members may, however, make personal contributions, volunteer for campaigns, etc., provided that it is exclusively on the Firm member's personal time and does not involve Firm resources (e.g., a Firm computer or email account, KNOW, or Associate beach resources). Firm members must not engage in any political activities in a private capacity for any purpose related to the Firm, or if there is a reasonable expectation for it to be viewed externally as acting on behalf of the Firm. Please see our Outside Activities Policy for additional requirements for participating in political activities in a personal capacity.

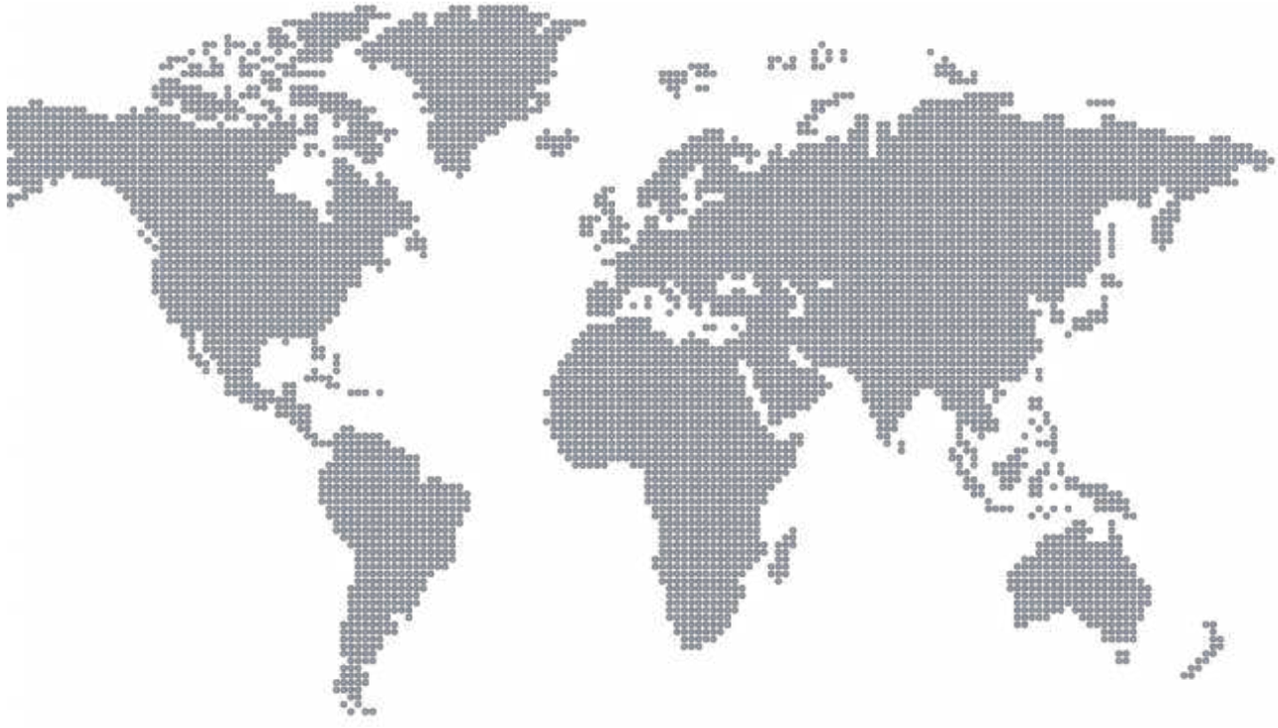
McKinsey&Company

Firm Policies



Public Sector Policy

December 2012



Background

Adherence to the policy will help the Firm comply with laws with transparency and integrity, reinforce our ethical standards, and help maintain our reputation

This policy describes global standards for the Firm's work with national, regional, state, provincial, and local government departments and agencies, multilateral organizations, and other public bodies ("public sector organizations"). It also covers interactions with government officials[1]. The policy applies:

- To all work for public sector organizations, whether the work is for a fee or pro bono, and whether for a formal engagement or a less formal interaction, such as a workshop
- Irrespective of which cell is leading the work, e.g., the Public Sector Practice (PSP), Healthcare Systems and Services (HSS), Social Sector Office (SSO), Sustainability and Resource Productivity (SRP), Infrastructure, or others
- To work contracted directly with a government or through a third party (e.g., a nonprofit) for the benefit of a public sector organization (either of which is described in this policy as "work in the public sector")
- To interactions with government officials, even if for social- or private-sector clients or as part of knowledge or reach & relevance activities.

The Firm has adopted this policy to reflect specific risks associated with work in the public sector. Adherence to the policy will help the Firm comply with laws governing public procurement, transparency, and integrity, reinforce our ethical standards, and maintain our reputation. Non-compliance can lead to severe legal, reputational, and financial consequences for the Firm and individuals. The Client Service Risk Committee (CSRC) must approve any exceptions to this policy.

POLICY IN GENERAL

The policy covers 10 areas listed below, each with detailed requirements described in the following pages of this policy. Firm members interested in working in the public sector should seek counsel from regional Public Sector Practice managers and Partners with relevant experience and expertise to ensure they understand these and any jurisdiction-specific requirements.

[1] For further detail, see the *Interaction With Regulators & Other Government Officials* policy

1. Pre-LOP risk registration and review of all tenders by PSP and Legal, with escalation as needed to the CSRC
2. Adherence to public procurement rules
3. Contracts
4. Partnering with other firms or individuals
5. Gifts and gratuities restrictions
6. Hourly or daily rates and expenses
7. Use of name and work product and Freedom of Information
8. Limitations on public policy recommendations
9. Interactions with regulators and government officials and prohibition on lobbying
10. Limitations on political activity.

REQUIREMENT DETAILS

1. Pre-LOP risk registration and review of all tenders by PSP and Legal, with escalation as needed to the CSRC. To ensure effective management of risks relating to work in the public sector, EDs[2] must carry out the following five steps before they respond to a public tender[3] or otherwise commit the Firm to carry out any work in the public sector:

- **Register** and review the proposed work with a public sector risk manager, with input from Legal, External Relations and other experts as needed[4]
- **Obtain Legal review** of any RFP (or other tender document) that includes legal terms or obligations

[2] Throughout this document, the term "ED" refers to the *Partner* who is leading an engagement. Even if an AP is playing the ED or co-ED role, it is the lead Partner's non-delegable responsibility to fulfill the policy's requirements

[3] In this document, we use the terms public tender, request for proposal, RFP, and procurement synonymously

[4] The term "public sector risk manager" describes colleagues with responsibility for registering public sector proposals. These colleagues may work for the PSP, Legal, the SSO, or the HSS. The names of the risk manager for different geographies are listed at http://home.intranet.mckinsey.com/practicespaces/ps/publicsector/RiskManagement.html.

- **Use the correct McKinsey legal entity,** as identified by Legal, from which to submit the proposal[5]

- **Use the correct fee structure for the jurisdiction**, where applicable[6]

- **Gain CSRC advice or approval** if a relevant practice or office, Legal, External Relations, or other Firm function recommends further syndication, or if the CST is seeking an exception to this policy.

The registration requirement applies to some but not all work for state-owned enterprises and Crown Corporations ('SOEs'). It applies to work for SOEs that act or are treated like public sector organizations – for example, by delivering public services or carrying out a policy or regulatory function, receiving government funding, or having executives who are or are treated like public officials. It does not apply to work for SOEs that act or are treated like private sector organizations – for example, by operating independently from government, carrying out commercial activities rather than policy functions, receiving no government funding, and having executives who are not treated as public officials. Determining whether an SOE is acting like a public sector organization can require judgment. Colleagues should reach out to public sector risk managers to discuss boundary cases.

2. Adherence to public procurement rules. Public sector organizations have strict procurement rules to promote fairness, transparency, competition, and appropriate use of public funds. Violating these rules can result in legal challenges by competitors, termination from government contracts, debarment, wider civil sanctions, and significant reputational implications. Any Firm member who intends to propose work in response to a public tender must:

- Learn from Legal what the most important procurement rules are in their jurisdiction, including the limitations on contractor influence on public procurements, and follow the letter and spirit of those rules

- Receive explicit approval from Legal before accepting a sole source award, since many jurisdictions have specific rules, and sometimes prohibitions, on such awards

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[5] For example, all work in the public sector in the United States (federal, state, or local) must be opened in McKinsey & Company Inc., Washington D.C. ("DCG"). All work requiring U.S. security clearances must also be opened in DCG.

[6] In some jurisdictions, the PSP has established a public sector pricing schedule to ensure consistency and mitigate risk. EDs should ask the PSP risk manager if there is a standard pricing schedule for work they are proposing. If so, EDs must use the schedule unless the regional PSP leader and office manager provide an exception. In the U.S., all work for states and local governments, including public universities, must be at full commercial prices, and it is impermissible to work for any state, local, or federal government organization on a pro bono basis.

- Not communicate with the procuring public sector organization during an open RFP process about that RFP, except as the RFP explicitly allows (typically a formal Q&A process or a discussion between contract managers)

- Confirm with the DCS, PSP leaders, and, in the U.S.[7], with Legal that the work does not create a conflict of interest for the Firm or a personal conflict for anyone on the team, including partners and experts.

3. Contracts. The Firm requires written contracts for all public sector engagements, including pro bono engagements. The ED must obtain Legal review of the contract before signing it (in addition to Legal review of legal terms or obligations contained in RFPs), and open the work out of the correct legal entity within McKinsey. The ED must return a fully executed copy of the contract to Legal to ensure we hold necessary documentation centrally in case of a government audit or investigation. In addition, if the nature of a project changes significantly (e.g., if the duration or scope significantly shift), the ED must work with Legal to obtain an appropriate contract modification. We must abide completely by the terms of our contracts: This means that EDs must read and understand their contracts, communicate contractual requirements to their teams, and ensure that their teams comply with requirements during and after an engagement. Teams should not begin work without a contract without prior consultation with Legal and the relevant office manager.

4. Partnering with other firms or individuals. We occasionally partner with other firms and outside advisors on public sector engagements – arrangements that carry risks as well as benefits. To mitigate these risks, EDs must conduct due diligence on external firms and advisors and adhere to the Firm's External Workers policy. EDs must also work with Legal to put in place approved legal documents (e.g., nondisclosure agreements, teaming agreements, subcontracts) and return executed copies of such documents to Legal before sharing Firm information or beginning work. EDs should invest sufficient time establishing effective, sustainable relationships with partner firms and seek advice from other McKinsey partners and practice colleagues with prior experience of such relationships if they are new to partnering.

5. Gifts and gratuities restrictions. Most jurisdictions have laws that restrict and, in some cases, completely prohibit giving anything of value (e.g., gifts, food, entertainment, books) to public officials. This applies in particular for any gifts that could be perceived as assisting in obtaining or retaining government business, but in some countries applies even more broadly. Accordingly, Firm members – regardless of whether they are serving public, social, or private sector clients – may not give anything of value (however small) to public officials or invite public officials to any conference (McKinsey- or third party-hosted) or other event without prior Legal

[7] Because of stricter U.S. rules, the Firm has a U.S.-specific *Organizational Conflicts of Interest* policy

approval. In addition, in many jurisdictions, pro bono work is considered a gift. Teams may therefore not provide free services to a government organization without Legal approval. Even more than in the private sector, EDs should consider how any gifts, including meals, could be perceived externally.

6. Hourly or daily rates and expenses. Some public sector tenders ask for hourly or daily rates to facilitate pricing comparisons during a competition. However, incorrect use of hourly or daily rates could expose the Firm to allegations of fraud. Provision of daily rates requires an exception under the Firm's Financial Disclosure Policy. Teams must seek approval to use hourly or daily rates from the Global PSP Leader and the Firm's CFO. If they receive an exception, teams must use the Legal Department's approved caveats, explanations, and formulas for calculating such rates. Even if teams use approved per diems in a proposal, if awarded the work, they must invoice on a fixed-price basis. In addition, teams must include expenses in their fees for work in the public sector unless Legal approves an exception for a particular client or geography.

7. Use of name and work product and Freedom of Information. Our work for public sector clients is for their internal use only.[8] However, most jurisdictions have public release or freedom of information (FOI) laws that require public sector organizations to provide documents (e.g., proposals, contracts, emails) in their possession to those who request it, including the press and members of the general public. To protect our name and work product as much as possible, teams must:

- Inform clients before beginning an engagement they may not release our work product or attribute work to us outside their own organization (e.g., with other stakeholders or to the media), without our prior written approval.[9]

- Notify the public sector risk manager and External Relations if they learn that a client intends to disclose publicly our name or work product or attribute information to the Firm.

- Anticipate that any documents they give clients (on paper or electronically), including emails, could be subject to public release under FOI, and communicate the importance of appropriate, fact-based language in all documents to team members as part of team kick-offs on every project.

- Consider preparing all documents that will be shared with the client in the client's name and format, and with no reference to the Firm, unless so doing

[8] See the *Use of Name* policy

[9] Although, in some cases, disclosure may be required by law, it is still important to communicate our *Use of Name* policy to clients, so that they understand the policy and our desire to keep our name and work product out of the public domain.

would jeopardize our intellectual property rights; teams must also use the appropriate document legend (available from Legal) to protect against disclosure.

- Exercise caution about the number and types of documents they give clients.

- Notify Legal and External Relations immediately when they learn that a client has received an FOI request related to our work.

8. Limitations on public policy recommendations. The Firm will not serve political parties or engage in any aspect of partisan politics. The Firm also does not serve legislatures. In work that relates to public policy, teams may develop a fact base to inform clients' decisions, provide a fact-based assessment of the implications of alternative policy options, and help implement policies that a government has adopted. However, they may not make policy recommendations or take policy positions. Policy recommendations and positions can jeopardize the Firm's reputation for neutrality, create client conflicts, and involve us in inherently political tradeoffs. Teams engaging in work relating to public policy are strongly advised to work closely with External Relations and to seek counsel from partners with relevant experience and expertise.

9. Interactions with regulators and government officials and prohibition on lobbying.[10] Individuals and teams may not lobby public sector organizations on our clients' behalf, serve firms that engage only in lobbying, or agree to engagements that create a perception of lobbying. Some governments define lobbying broadly to include not only advocacy of policy, legal, or regulatory changes, but also having any meetings with government officials on a client's behalf or preparing materials for a client to use to influence public officials. In addition, teams interested in serving organizations that are significantly involved in lobbying (including, but not limited to, industry associations) should consult with Firm Legal and External Relations before committing to or beginning work to ensure that our work does not constitute lobbying under applicable laws. As set out in the Interactions with Regulators and Other Government Officials policy, Firm members must receive approval from Firm Legal or External Relations before they share McKinsey documents from work for private sector clients with government officials or attend meetings with the government either with or on behalf of a private sector client.[11] Additional safeguards apply in the U.S., including a requirement for Partners to seek advice from a Firm lawyer before meeting, emailing, sending documents to or speaking to a US regulator or other government official on behalf of a private-sector client.

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[10] See the *Interactions with Regulators and Other Government Officials* policy for further detail

[11] Teams do not have to contact Legal if they are serving a public sector organization and meeting with public officials as part of the public sector engagement itself (e.g., holding meetings, conducting interviews).

10. Limitations on political activity. Firm members may not engage in any aspect of political activities in a Firm capacity or using Firm resources (e.g., a Firm computer, a McKinsey email account, KNOW, Associate beach resources, or Firm meeting rooms). The Outside Activities policy sets out limits on the political activities in which Firm members may personally engage.

Date of adoption: December 2012
Date of last update: September 2014

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Meeting report

The Chairperson read the oath to Dr David Fine and asked if he wanted to take an oath or an affirmation.

Dr David Fine took the oath.

The Chairperson called on Adv Vanara to lead the discussion. She saw that Members had raised their hands and asked him to wait while Members' matters were attended to.

Dr Z Luyenge (ANC): I apologise for interrupting the process but I want to register concerns about people whose names have been called in this process who have already begun to attack Adv Vanara. I want to make this categorically clear that Adv Vanara is doing this work on our behest. He is here and he is doing what he is doing in the name of Parliament so an attack on him is an attack on Parliament. There is a laid-down process and that process can be produced and given to those people but it is not right and it is unconstitutional and it is demagogical for perceived leaders to attack a process that they know, a process that they were part of constituting. And some of them may not even be aware that letters are already on their way to them so they must be calm in this process. There is a laid down process which is democratic and honest.

Mr P Gordhan (ANC): I want to support Dr Luyenge's comments. I think that we should formally move, and if possible, adopt a motion of confidence in Adv Vanara and the manner in which he has been conducting himself and that is a manner which reflects absolute integrity in the best tradition of a lawyer and you get many types of lawyers these days, but he has proved himself to be an excellent public servant who should, in fact, be emulated by others. That was the first point. The second is that we need to be a little bit more direct. There is a statement by Deputy Minister Martins and I agree with Dr Luyenge that it is a blatant attack on Parliament's work and completely unjustified in the circumstances. Under the Chairpersonship of Ms Rantho, it was very clearly stated that everyone who was implicated in one way or another, or mentioned in one way or another, would have the opportunity to present their case here after which we will present a report to Parliament itself in the National Assembly.

Mr M Gungubele (ANC) Chairperson, under your leadership, we must look at a possibility of a statement for those who are not able to listen to what the Members are saying so they understand our stance because there is an insinuation that some of those who appear aggrieved in public will be called because they complain, otherwise they were not going to appear here. And I think that must be dismissed with the contempt that it deserves. The very, supposedly, senior people who speak in pubic know the terms of reference of the Commission. But when they speak in public, they pretend as if they do not know the terms of reference. I hope the insinuations from the Minister with regard to this being a kangaroo court are false and I think that we need to find out if they are true. Parliament is independent; it is an established institution on its own. There are those who are beginning to teach the public what the powers of this Committee are. We know what the powers of this Committee are. We know what we are capable of doing and what we are supposed to do. People must be clear that we know what we are doing and we are determined to do it and we are here to do it in the interest of our country. There is nothing that is going to make us waver.

Ms N Mazzone (DA): I would like to second the vote of confidence in Adv Vanara proposed by Mr Gordhan. I am very much covered by Mr Gungubele. I was also going to suggest that we put out a statement from this Committee outlining our terms of reference which are very clearly set out in the Constitution and we are simply executing a mandate that the Constitution insists we must adhere to.

Chairperson: I just want to remind Members that in all the statements issued on behalf of this Committee, the first sentence deals, since I joined this Committee some two weeks ago, the statement starts with the assurance that the ordinary members of the public, or in higher offices, in government or Eskom Board members or former Board members, are going to be given the opportunity to come before the inquiry and give their own version of the events. But, over and above that, I have noted the proposals by the Members. We can now resume our interaction. Advocate, you may lead us.

Iv Ntuthuzelo Vanara: I must confess that I am humbled and encouraged by the confidence shown by e Committee in my capabilities. Dr Fine, before I start with you, I just need to indicate to the ommittee, this is the only witness for the day, and depending on the time available to interrogate the

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witness, I'd do anticipate that we should be finished by 13:00.

Witness: David Fine

Adv Vanara: Dr Fine, before you proceed, can you please state your full names?

Witness: My full name is David Robert Fine.

Adv Vanara: Can you share with the Committee your current employment?

Dr Fine: I am currently employed with McKinsey and Company as a senior partner in the London Office.

Adv Vanara: You have made a 17-page statement with annexures, ranging from Annexure A to F (G). Do you confirm that this is your statement and that represents your account of the events as accurately as possible?

Dr Fine: I do.

Adv Vanara: I confirm that with your permission the statement with its annexures have been shared with Committees members. It is my understanding that the Committee members are in possession of your statement with annexures. Do you have any objection to that?

Dr Fine: I don't.

Adv Vanara: In the interest of time, we are not going to traverse every word in your statement. I do guarantee you that I have read the statement and annexures and I am sure that Members have done the same. Who is McKinsey and Co?

Dr Fine: McKinsey and Co is a global management consultant. It was started 90 years ago in the US, in Chicago. It has offices in over 122 countries and has over 36 000 employees. It is a privately-owned partnership. It is fully owned by the partners worldwide.

Adv Vanara: In South Africa, you would want to share with the Committee pro bono work that McKinsey provides?

Dr Fine: McKinsey has a long history of providing pro bono support in South Africa. We take 26% of our profits per year and invest them directly for black South Africans, historically disadvantaged. We have worked in South Africa with 100 police stations to help them turn around. We are currently working in Knysna with the reconstruction efforts after the fire. We have a long history of investing in the leadership of this country and as part of our commitments to black economic empowerment, we also have a black leadership program, bringing leaders and people across the spectrum to help them to develop into productive leaders in South Africa, and that is a very strong commitment that we have had over time. In addition, people will also know that we have done research on behalf of South Africa and Africa about the potential for South Africa and Africa and communicated that broadly in the world.

Adv Vanara: You had a working relationship with Transnet between the periods 2005 to 2016. Can you take the Committee down memory lane? What was your involvement with Transnet?

Dr Fine: We have served Transnet, almost continually, as an institution since 2005. We have worked for multiple chief executives and multiple executives at Transnet. It began in 2005 on a project called Vulindlela. At the time Vulindlela was focused on Transnet, particularly around operational matters and procurement. That work involved more than 100 consultants continuously. We had the 94 international people come in to help Transnet. We have extensive expertise in railways and ports around the world which we brought to bear. This work, in our view, was audited by internal auditors at Transnet at the time and had significant benefits for Transnet. My understanding is that over R5.6 billion worth of benefits were signed off by the auditors at the time and it also included other non-financial benefits. The improvement of locomotive and wagon availabilities, which was very important, the expansion of the harbour through better operational improvements and an important part of this work, which we did between 2005 and 2011, was developing and working with a small management consultancy called Intsema Consulting, in supply and development obligations to help them grow and develop into a

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vibrant and successful company.

Adv Vanara: Can you tell the Committee about your support for Transnet's new Market Demand Strategy?

Dr Fine: As the Committee would know, in 2011 Government policy talked about the developmental state and so in 2012 we began working with Transnet in a more substantive way, again on what was, at that time, called the Market Demand Strategy. At the time, as you may recall, South Africa had not benefited from the commodity boom globally and had, in fact, lost market share, particularly in commodities like coal and iron ore. And so, the objective of the Market Demand Strategy, it was owned by Brian Molefe at the time, was to change the philosophy of how Transnet would think of projects. So, in the past Transnet always needed to confirm customer demand and confirmation from customers before it invested in infrastructure, but the Market Demand Strategy was based on the philosophy of actually investing in infrastructure ahead of demand so that infrastructure was not a bottleneck to South Africa's growth. The work we did there was initially, predominantly around the capital project portfolio, helping Transnet to understand all the projects that they were doing then and whether they had real benefits or not. How to think through and sharpen the project portfolio was the first piece. We helped Transnet to avoid or defer projects of about R100 million. Some of those included the Durban dig-out port. People may recall, where we, after having done the analysis, felt that it was not necessary, at that moment in time, to actually proceed with that project and that it could be delayed. The second piece of work that we did was related to the locomotives' extensive business case which was submitted to the Board as in the annexure. The issue of locomotive was important because the number of locomotives was declining because of the age of the fleet at Transnet. The safety record at Transnet meant that locomotives were being written off and it was actually required in terms of the capacity plan to acquire locomotives. What McKinsey did with that was to do a few things. First, it was to understand what the future demand was likely to be in South Africa and abroad. Secondly, to help Transnet to then identify how many locomotives would be required. The third thing we did, which was a policy of McKinsey, and I want to stress that it was a policy of ours, was to make sure that the way in which Transnet would consider the procurement event would be in a flexible way so that if the volumes dropped, they would then not incur all the costs for the locomotives. The fourth thing related to locomotives was putting in place and making sure we had recommendations on governance and security given the size of the transaction. So that was the second piece of work. The third piece of work related to operational improvements.

Adv Vanara: Talk to the Committee around your supplier development partners at Transnet.

Dr Fine: So, I first want to start off by saying that McKinsey is committed to supply and development in South Africa. We are a BBBEE Level 1 contributor. That has not only been based on supply development but it has also been based on the procurement we made based on BBBEE codes. I, personally, was part of the formation as our response as McKinsey and the spirit in which we did this, which was to help and develop South Africans who had been historically disadvantaged, participate meaningfully in the economy. And therefore, I first of all just want to state that the comments that are attributed to Mr Jüngling, which, as I have said in my statement, which Bianca Goodson referred to, are deeply upsetting to me, and are not in line with our values, and are not in line with the spirit in which we have embarked in our supply and development efforts. At Transnet, we started working with Letsema Consulting. As I said before, this was a small consulting firm, and over the course of our work with Transnet, we invested in helping them both with their recruitment, with the development of their consultants, giving them access to our training, on-the-job training, etc. And over time, they actually built a very vibrant and capable consultancy which even competed against McKinsey and, I will say, it did cause some tension at some point in time because they built a very successful firm, which I am proud of, but they also sometimes competed against us and, in fact, won. This wasn't necessarily always an easy journey. It was a challenging journey at times. There were conflicts, there were issues sometimes on the resources that Letsema sometimes put on the project, and sometimes the international consultants from McKinsey didn't understand supply and development and they needed to be reminded of what we were trying to do. And these issues were normal issues and we would sit down with Isaac Shongwe at the time and resolve them. It worked very well. So that concluded our work with Letsema at the end of the project that was called Vulindlela. We did continue to work with Letsema again. In 2012 we were going to partner with them on the locomotive transaction. Unfortunately, we were told by Transnet that there was a conflict of interest because Letsema was serving General Electric who was a potential bidder for locomotives, and while a consortium would be awarded the

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tender, we were asked to provide an alternative. At that point, we asked Transnet who was an approved supplier on their supply and development base and they gave us the name of Regiments.

We did some due diligence on Regiments, which I shall talk to in a moment, and we included them therefore as part of our consortium on locomotives and subsequently on other projects, but we did work with Letsema thereafter and, in fact, even Regiments, when they did not have the required resources and outsourced some of their work to Letsema. I have attached in the Annexure the document from 2012 which was the document which extensively talks to the qualifications of Regiments at the time. It talks to the individuals. They have extensive experience in the public sector. They had worked at Transnet. The individuals, Litha Nyhonyha, had an impressive resume, Niven Pillay has two degrees from Princeton and Eric Wood has a cum laude degree from Wits. These were impressive resumes. I reached out with my personal contacts to people who actually spoke highly of Litha and Eric Wood's capabilities. And I did a Google search and you can see that we did come up with an issue at the time. It was related to a contract with the City of Johannesburg and the answer that they gave us was that this was work done at risk and the City was contesting their fees which seemed like a reasonable issue at the time and nothing of significance was raised. And then, finally I would say that they brought a very a particular set of capabilities because of their investment banking experience to the projects that we were going to do which required quite sophisticated mathematical and financial modelling. Do you want me to pause or continue?

Adv Vanara: I just want to confirm that the annexure in respect of Regiments, that is the first annexure?

Dr Fine: That is Annexure A, correct.

Adv Vanara: You may proceed.

Dr Fine: The work with Regiments started in early 2013 on a project which we had won related to supporting the MDS strategy to make sure that the various elements of the strategy were being implemented. The project proceeded. I would say that the beginning of the relationship with Regiments was not straightforward. There were concerns from some of our consultants that the quality of people that had been allocated was not necessarily up to scratch. There were concerns from the Regiments' people that we weren't, or our international people were not, treating them properly. We decided to proceed with the relationship and see where it went because this was very similar to the kind of experiences that we had had in building Letsema Consulting. We got an external facilitator to work with us and, thereafter, actually things improved. Most of the projects that we did with them in 2013 and 2014, were capital projects. They were related to taking projects and looking to see if they could be improved in pace and speed and cost or looking at the project portfolio, and the quality of their modelling skills was very, very high and very complementary to McKinsey. They added value to our projects. They brought capabilities that we didn't have in some instances and there were examples where they took on particular pieces of work and delivered them well. For example, in Durban, at the pipeline container terminal, that construction was behind and they took leadership of that project and delivered it well. There were challenges and I just want to talk to those if I could. The first one was a Mail & Guardian article in 2014 which alleged that Mr Pillay had had an improper relationship in a project that was related to Gauteng Health. We, immediately, after we had read the article, wrote to Mr Pillay and to Regiments, requesting that they confirm that they were compliant with the US Foreign Corrupt Practices Act, the UK Foreign Corrupt Practices Act, and the South African laws, which they did. The letter and the responses are in Annexure B. We also asked that Mr Pillay be separated from all work that Regiments did with McKinsey, which they did and it was at that time that Mr Woods became the primary contact between Regiments and McKinsey. Mr Pillay has confirmed this recently in the press that he had been removed from the project with McKinsey.

I think that the second challenge was in the middle of 2015. There were challenges in working with Regiments. We found that the quality of Regiments work had declined and the ability of them to meet commitments declined. It got to the point where McKinsey was having weekly meetings with the Regiments leadership, particularly Eric Wood, to talk about this underperformance. In one case McKinsey had to put resources on the ground in order to deliver what had been committed, and so by the end of 2015, the McKinsey partners on the project met and decided that we would have to look at other partners because we were uncomfortable with the performance of Regiments at that point in time, the end of 2015. Of course, and I want state this, the concerns grew in 2016 when there was a newspaper article, or media article, by Africa Confidential, which alleged that Mr Bobat was somehow

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connected to the Guptas and that concerned us enormously. We did not give Regiments a second chance and so on 23 February 2016, we wrote to Transnet and that letter is in Annexure C. We wrote to Mr Garry Pita and Mr Siyabonga Gama to say that we were ending our relationship with Regiments. You will see in that letter that we would not consider Trillian as an alternative unless there had been a detailed due diligence of their ownership and, in addition, that we had comfort in terms of the demographics of their leadership. One of the big concerns we had towards the end of the relationship with Regiments was that we felt that we were interacting with a leadership team from Regiments, Eric Wood and others, that was not representative of the demographics of this country and it concerned us that if this was a supply and development partner, it should have that representation.

We wrote to Regiments and we met with Regiments and terminated our relationship with Regiments. I want to draw people's attention on page 9 of the statement to some information that I became aware of as I was conducting the preparation for this Committee, and there are a couple of points that are explicit. Firstly, there have been media reports alleging that Regiments paid a portion of their fees to companies, Albatime, Forsure and Fortime, companies that had alleged links to the Gupta family. At no time was I aware of those payments, firstly, and, in fact, McKinsey had a policy with Transnet that Transnet would pay McKinsey and McKinsey would check that Regiments had done the work but that Transnet would pay Regiments directly. This was explicitly done so that McKinsey did not receive the credit for procurement from black-owned companies. That was for Transnet's benefit. So, if those payments happened, I think the Committee needs to ask Transnet about them.

Secondly, I am aware also of reports that Mr Pillay has said that there was a relationship in some way, that Kuben Moodley's company, Albatime, was in a relationship with McKinsey. First of all, I have no evidence of that and, in fact, there is a press article which I have referenced on page 9 where Mr Moodley said, "I don't know McKinsey," and there were some expletives after that. The third thing that I want to make you aware of, is that, as I was preparing, I looked through the documents going back all the way to 2014 and I found in our responses to Transnet, there were proposals from McKinsey to Transnet and included in the documentation provided by Regiments, were references to Albatime, Homix and another company called A Company Consulting. I am convinced that they were copied and pasted into the supply and development section of Regiments. They had obligations to Transnet. At the time of these submissions, Albatime and Homix were not names that we would have seen as familiar. The third thing was that Regiments had to deliver on their capabilities. How they decided to do it, was their choice. I did also check with colleagues over the past week if we had ever seen or worked with or seen people from Albatime or Homix or A Company, and I confirm that the only people that were on projects with Regiments or McKinsey that we saw were Accompany Advisory, which was a company started by an ex-McKinsey employee that we know well and the work was good work.

Adv Vanara: Just clarity. In the three paragraphs, you speak in your personal capacity. There is reference to "I".

Dr Fine: Correct. This is my testimony. I talk about "we" but it is in my personal capacity based on what I know, what I have been told and the conversations that I have had. This is the testimony before you.

Adv Vanara: And that you are not speaking on behalf of McKinsey, at least in these three areas. Is that correct?

Dr Fine: Yes, that is correct.

Adv Vanara: McKinsey's due diligence on Trillian. Can you take the Committee through that process?

Dr Fine: Yes, and I am going to take a little bit of time because I think that it is probably not entirely clear to everyone how Trillian was formed and its connection to Regiments, and these are obviously based on my understanding of what happened at the time. In late 2015 when we raised our concerns about the partnership with Regiments, Mr Vikas Sagar said that they were splitting. The Regiments partnership was splitting and that the investment banking and property business, as I understood it at ' e time, was going to stay with Regiments and the consulting business was actually going to come out Regiments and be formed into a company called Trillian. My understanding at the time from the :planation given by Mr Eric Wood who was going with Trillian, was that the partners were not all nvinced that the consulting business was a priority. The Regiments people did not want to invest rther in the consultancy business and therefore by taking it out of Regiments and starting a new

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company, Mr Wood would have access to the investment resources and investors to start a truly large and significant black-owned consulting firm in South Africa. At the time, that did also sound like an attractive proposition because we had worked well up until that point in time and we want to build strong black-owned consultancies in South Africa. We think that is important. And so, we did consider Trillian. I cannot speak on all the events in the press as I was never involved in work at Eskom but I can talk about my interactions with Mr Wood and the time until the end of the potential relationship with Trillian. But I just want to confirm that Trillian was a company being formed, being split up out of Regiments. So, you need to think about this. It was Regiments which included consulting and it was going to be Regiments which did not have consulting and Trillian which took the consulting business of Regiments.

In early 2016, I became aware that there was a substantial working relationship between McKinsey and Trillian and when I enquired about this externally with some of my contacts, "Who was Trillian? What was Trillian? What was going on here?" they raised concerns. You could say, "Why did I have concerns in the first place?" Well, the first question was that we had Eric Wood, a white South African starting a black advisory firm, and the only person that I could see that was part of this consulting firm in its inception, was Mr Wood. It wasn't clear to me who were these other owners. Who were they going to be? Were they going to be reputable people? I think those are normal questions that somebody would have at the time. I enquired externally. I never heard the name, Salim Essa, at the time in any way associated with Trillian or any other of the names that we have heard: Mark Chipkin, Clive Angel, Mark Pamensky and others. I enquired at the time. There was nothing that I saw but others had concerns and I immediately raised concerns within McKinsey, strongly. Other colleagues of mine also did and we then instituted an external due diligence of Trillian which was then fed into a risk review. At that risk review, in which I participated, we terminated the relationship with Trillian.

Perhaps though, if it is useful, I can join the dots, as I have heard before. The first thing that I would say is that I did meet with Mr Wood, twice in March. The first time that I met with Mr Wood, I asked, "Who are these owners? Who are these people?" The answer is: He said, "I'm talking to people, but one of the investors is somebody called Max Yusef." I went onto LinkedIn; I went onto Facebook; I tried to find Max Yusef but I did not find on Google a Max Yusef. I found a Max Yusefs but I did not find anyone that I would associate with a serious (and perhaps, I don't know Max Yusefs, and if I don't I apologise) but a serious investor with a kind of stature that we were imagining was going to build this firm.

The second time I met with Mr Wood, with Mr Sagar, at the Melrose Arch Hotel at Tasha's for breakfast, I said to him again, "Who are these investors?" By then he said, "Well, it's going to be Linda Makatini, it's going to be Jimmy Manyi, it's going to be Max Yusef." He talked about Clive Angel. At that moment, I got concerned as, when I googled them, I found that they are people that we call potentially politically exposed people. The second thing was that it did not give me any comfort that we were going to build a pre-eminent, black-owned consulting firm. I fed that information into the external due diligence process. I also went personally and spent an entire weekend going through the CIPC database for all the Trillian companies. I googled every single director of those Trillian companies. There were multiple of these companies and in one of them, I did find the directorship, S Essa, which I fed into the external due diligence process, which was the basis for my very strong conviction that we could not be associated with Trillian and it was the basis by which we terminated. We terminated our discussions with Trillian.

I also want to say that at no time during this process, and in the conversations, that I had with Mr Vikas Sagar, and there were many, was any connection made between either his relationship with Salim Essa, which we know from the Gupta-leaked email or the potential relationship he may have had, which is suggested by Ms Goodson in her public testimony. That was not disclosed to me and it was not disclosed to McKinsey. It would have been an immediate red flag. I also just want to confirm that the relationship with Trillian, was always subject to a review of this ownership issue, and if you read the letter to Mr Pita and Mr Gama in Annexure C, you will see that we are very explicit that we have not yet got comfort and that we will not work with Trillian, unless the ownership issue is raised.

The last element that I want to draw your attention to is related to the letters that you see in the final Annexure G. In Annexure G, you see that there was another issue that arose with Trillian that gave us ave concern, which is that they were supposedly part of a consortium bidding for the Duvha Boiler id, at the same time, were working alongside us in Eskom, advising Eskom on procurement. We ote to them twice, expressing our very deepest concern and asking them to respond, and they never d, which was also the basis on which we terminated our potential relationship with Trillian. Those are e facts that I know as David Fine and communicate to the Committee.

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Adv Vanara: The last aspect relating to Duvha and the work that you guys were doing with Trillian. Why did you guys find that troubling?

Dr Fine: Well, I was not part of the Eskom situation, but the troubling part was that there was a clear conflict of interest, and an undisclosed conflict of interest between the Hubei consortium, that included Trillian, bidding for the Duvha Boiler while at the same time, they were advising Eskom how to engage with various procurement processes and that, for me, was a clear conflict of interest, and of great concern to many of my colleagues.

Adv Vanara: Why was it so important for your company to do all the due diligence with Regiments and Trillian? Do you do all this due diligence with all companies that you will be associated with, or where there is a potential association?

Dr Fine: In fact, we did one more diligence and then I shall come to your question. When we ended our work with Regiments, we instituted, at our discretion and with caution, a full external review of all our contracts at Transnet and with Regiments to give us comfort that there were no concerns. The question you ask is a very good question. I would say that McKinsey, which would sound surprising to the Committee, has historically not done many partnerships. So, if you went back five years in McKinsey's history, you would find that the number of partnerships we had were very few and most of them were based in South Africa because of the requirement that we had to partner and develop people like Letsema.

Over the last five years, McKinsey's philosophy has changed to we don't have all the skills in house and we have many partnerships all round the world. But what you will see is that the due diligence that we did on Regiments at the time was reading their documents, speaking to a few external contacts and actually doing google searches and getting some comfort. That philosophy has changed within McKinsey and we now have very clear guidelines about how we should deal with those relationships, particularly in the public sector. In this particular case, if you read the testimony, you would say why was due diligence not done upfront.

Why did you not do due diligence before you started to work with these Trillian people? And that is a reasonable question to ask. And the answer to that is two-fold. At the time, state-owned enterprises were not part of our public sector risk policies. That has changed but at the time they were not part of our public sector risk policies and therefore, the relationship began in good faith that these issues would be resolved. At the time that concerns came to light about the potential relationship, it was pure speculation of a potential relationship and it was based on the word "S Essa" in the CIPC database. At the time that we became aware of those concerns, we acted very quickly and very aggressively to do the external due diligence. Was it pre-emptive and should it have happened earlier? "Yes." At this time, in the public sector, we would certainly do a detailed due diligence of any external provider.

Adv Vanara: I want to tap into your skills as business leader. Let me rephrase. Would you agree with me, for the reputation of your company, it is very important to know who you would be associated with?

Dr Fine: I would agree.

Adv Vanara: Amongst the lessons learnt, the Budlender Report is scathing about McKinsey's uncooperative behaviour. What is your view?

Dr Fine: First of all, we have apologised to Adv Budlender about the way in which we engaged with him, and I got the initial call which I passed onto our internal legal team. The investigation that Adv Budlender was doing was on behalf of Trillian. The questions that he had related to information which was confidential between McKinsey and our clients and that I understand caused severe consternation internally about how we should cooperate with an investigation without our clients' consent. Having said that, we should have met with Adv Budlender and we should have had a conversation with him to explain these matters. And I am embarrassed that we did not do that and I have apologised to Adv Budlender for the way in which we worked with him.

Adv Vanara: On the turnaround programme, I see that you have personal points that you want to clarify the Committee. Can we deal with those?

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Dr Fine: Of course. First of all, I want to state that the letter of 9 February that Adv Budlender sent through was not a letter that I was aware of nor my colleagues were aware of, when it was released. The at-risk arrangement, and these are my own personal views, based on what I have seen around the world, and also my personal views of what has been put in the press. I think, first of all, I was not party to negotiation of the at-risk arrangement on the turnaround programme, but in order to prepare myself for this parliamentary inquiry, I did go in and see if McKinsey offered value and based on the information I was given, I felt that value was added on this turnaround programme and that it was audited by Oliver Wyman. However, in my view, we should have had a fee structure that was capped. The total fees in absolute terms are a high number and when I reflect on what's in the media on the capacity of Eskom's management, in terms of the breadth and depth of its management, the idea that Eskom could absorb that much change that quickly is obviously a question for me. The third thing that I would say is that, as a South Africa citizen I ask if those benefits were there, why then has the price of electricity gone up and the liquidity position of Eskom deteriorated? And that is something I reflect on. And that is also a question to Eskom. If all these benefits were delivered, was McKinsey working on the wrong problem? And that is a question that we debated internally. If the issues were liquidity and balance sheet and we were working on operations, were we working on the right issue is a question that I am reflecting on a lot. And as a public sector person, working with my colleagues globally, we are spending quite a lot of time, reflecting on how to think about these arrangements because, the other factor that is not clear to the public, is exactly how were these benefits measured and how do citizens in South Africa have comfort that benefits were derived, and the way the contract is structured is not clear to South Africans. And so, with the benefit of hindsight, of course, we would structure the contract differently with clear gates so that it would give to South African citizens, for a contract of this size, the comfort that the benefits were actually delivered. That the change was actually absorbed and embedded by the organisation would be one of the other reflections that I would have on that large contract. It is a large contract and it would be viewed in McKinsey as a large contract. I do have questions about whether Eskom would have had the capacity to absorb that much change.

Adv Vanara: We know that Eskom paid McKinsey in excess of R1 billion for the turnaround programme. What is McKinsey's position in the light of the recent development, in the light of the issues you raised, in the light of the price of electricity having gone up?

Dr Fine: So, the first thing is that McKinsey does not want any tainted money and McKinsey may be vague but we do not want tainted money. Our understanding is that we went into a relationship with Eskom in good faith. We entered that relationship. They gave us verbal confirmation that they had National Treasury approval. That is in Steering Committee Minutes, which we have in our possession. They did not get that approval. They have obviously written to us to ask for the money back. McKinsey does not want tainted money so if the court decides that the McKinsey contract was valid, and McKinsey is entitled to that payment, McKinsey will still give the money back to South Africa. And it doesn't matter whether or not the contract was valid, we will give that money back to South Africa and not because there is guilt associated with anything that we have done. I am not aware of anything that we should be guilty of. The reason we will give the money back, even if the court rules that the contract was valid, is that it still didn't have National Treasury approval. It still didn't have the requisite approvals in place and therefore we don't feel that we should keep that money.

Adv Vanara: In South Africa, you would know that people are very poor. Waiting for a court ruling to determine whether or not, you should pay back or not, may be too late. What is stopping you now from returning the money to the state's coffers?

Dr Fine: What we want is to avoid paying the money twice. So, at the moment, we have received a letter saying that the contract was invalid and we should pay the money. So, do we pay the money to Eskom, or do we pay the money to the South African citizens? Well, that depends on whether the contract is invalid or valid. And one of the appeals that I have to this Committee is to help McKinsey to resolve this impasse. Because we want to pay the money back, we have reserved the money as McKinsey. It is completely separate and we have accounted for it internally, we have discussed it with ·· e global partners, and the only question is who should receive the money and how that money should · delivered? We would certainly find it extremely useful to have the requisite authorities, including arliament, help us give the money back to South Africa in a way that is lawful and will benefit those izens that you talk about.

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Adv Vanara: Let's go back to how you ... the transitions between Regiments and Trillian where there was a break up and you went with the consultancy services of Trillian. And I'm asking this question because I'm concerned about Eskom. Did you get any resolution passed by the Boards of the two entities and, indeed, this particular component Regiments had foregone to Trillian, and that you could work with Trillian and get paid the fee? The reason for my question is: How did you make sure that Eskom, later on, does not sit with a bill from Trillian, which it pays. Then later on, Regiments comes and says, "But why did you pay Trillian?"

Dr Fine: We did not get a resolution from the board of Regiments. We understood, or perhaps I understood, in my conversations with Vikas Sagar that the separation of the Trillian business out of Regiments was amicable. We did not do that, and it was an omission.

Adv Vanara: You appear to go into associations with individuals not knowing who they are. But there was this relationship, working relationship of Trillian, McKinsey, and there is a letter from McKinsey to Eskom, saying pay Trillian directly on condition that we confirm value for money. I know that the payments made were not consistent with that letter. The question that I am having is: Why did you proceed against your company's way of doing business, or vetting people that you work with, when you had this relationship?

Dr Fine: Well, there was quite a lot in what you said so, if you don't mind, I am just going to rewind a little bit, so that the statements are explained. I think that the first is that there was no information at the time that conversations were happening with Mr Wood (that I was aware of, or that I believe McKinsey was aware of) and that there was a relationship between Eric Wood and Salim Essa. The experience that we had had working with Eric Wood, was that he was a straight guy that when we gave him feedback, he resolved issues. So, at least the assumption at the time, was that we were dealing with a bone fide person who had access to investment resources that was going to build this large consulting firm. I did not know, at the time, that Vikas Sagar had a relationship with Salim Essa or that Eric Wood was going to be in partnership with Salim Essa and, from what you see in my statement, it is very clear that as soon as I had any intuition that there was an issue, I acted very forcibly and that McKinsey acted forcibly.

Now, the question is, which was your question, why did you enter into this relationship on the basis that you hadn't done any due diligence? I would argue that there had been some diligence as there had been a history with this person, Eric Wood, and it had not been a bad history. At the time, because state-owned entities were not part of the risk processes of the public sector, which we have changed now, they didn't follow the same requirements in vetting Trillian as a supply development partner. The focus of the risk process early on, were the commercial risks of the risk-based contract with Eskom, and not on the partnership risk, which we normally would have picked up through our public sector processes. So, I think that it was one of these policies within McKinsey where this was not subject to the kind of rigour that we would have done in the public sector.

Adv Vanara: I am aware that McKinsey and Co, subsequent to these developments, had instituted an internal investigation. What did that investigation find, and were there any individuals fingered internally for the lapses you alluded to earlier?

Dr Fine: Thank you. I just want to clarify one other point from the previous question, if you wouldn't mind. I just want to clarify our relationship with Trillian, one has to reflect on that. If you look at the letter which is in Annexure C where we write to Garry Pita and Siyabonga Gama and we express our concerns about issues that would need to be resolved in order for us to partner with Trillian. So, there was no doubt, certainly in my mind that Trillian still had to go through that process, and it was very clear because we told Mr Wood they would have to go through that process. So, it was not done... there was no bad faith. I think McKinsey was very clear on that.

Now to your question on the internal investigation, McKinsey has conducted and is continuing to conduct investigations. We conducted the Norton Rose investigation, which is in the public domain. We, id I initiated and then handed to our Africa colleagues and our general counsel, the external review of our contracts with Transnet with Regiments, to make sure that they were properly procured, that we livered value, etc. Both those investigations have been led by our general counsel. I understand that ey are attorney privilege, client privilege, and I haven't seen those reports. We do have a professional nduct committee within McKinsey which met, which reviewed that information, and which took some

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decisions, two of which you would be aware of. One was the fact that Mr Vikas Sagar left McKinsey, and the second is that one of our partners was sanctioned. That doesn't mean, by the way, that our investigations have stopped. Of course, we are aware of the concerns that have been raised in the public domain, also by people like Corruption Watch and we have external counsel in the US also reviewing all of the investigations that we have done to make sure that there is no stone left unturned. And, if there is something that needs to be reported, it will be reported to the relevant authorities.

Adv Vanara: I accept that you were not too heavily involved operationally at Eskom. At Transnet, who were the executives that you worked closely with?

Dr Fine: So, the executives at Transnet that I would have worked closely with included Anoj Singh, Garry Pita, Mohamed Mahomedy who at the time was the Head of Group Capital. The four finance people would have been the primary people that I would have interacted with. My colleagues would have interacted with Mr Gama and various executives with Transnet FreightRail and the Port Authority. That would be in the recent time. Of course, historically, I worked extensively with other executives in the previous years when we were doing the project Vulindlela.

Adv Vanara: In Eskom, who were your colleagues who were charged with servicing Eskom?

Dr Fine: There were five colleagues. Mr Vikas Sagar, Dr Alexander Weiss, Mr George Desvaux, Mr Michael Clos, Mr Henri Cavedi.

Adv Vanara: In your interactions with your colleagues at McKinsey, who were they working with at Eskom?

Dr Fine: I know that Dr Weiss and Mr Clos, and a previous colleague, Mr Dawe, have been working with a number of executives. It would have included people in the various capital projects that existed. I don't know the names because I wasn't there; but with all the capital projects, they would have worked with previous leaders of Eskom, including Brian Dames, and others. In the more recent time, my understanding is that they worked with Anoj Singh and I don't know to what extent with Brian Molefe.

Adv Vanara: Who is Vikas Sagar?

Dr Fine: Vikas is an Indian national who came to South Africa first to work with McKinsey in 1997 for two years. He left the firm and came back two years later and has been living in South Africa ever since. At the time that he left McKinsey, he was a senior partner at McKinsey.

Adv Vanara: In all that you have told the Committee of your relationship between McKinsey and Trillian, are there any observations, or things that you know that you did not approve of, that relates to the conduct of Mr Sagar?

Dr Fine: Well, part of the challenge with Mr Sagar is his operating model was to have meetings alone with Anoj Singh and Eric Wood without any McKinsey colleagues present. This was an issue that I raised with him and my other colleague, Dawes, had raised with him. We even had a dinner to discuss this matter and he felt that we were not trusting enough. So, it was very hard for me to know what he was doing in those meetings, and I think that other colleagues of mine had a similar experience because I know that the initial meetings that he had with Mr Molefe at Eskom, were also alone. So, I am not aware of what would have absolutely transpired in that context. I certainly did not know that he had a relationship with, or connection, to Salim Essa. The Gupta-leaks email which relates to 2014 was not known to anyone that I am aware of in McKinsey. The relationship with Salim Essa and the meetings that supposedly happened according to the sworn testimony of Ms Goodson, were never discussed with me, nor were available for anyone to know. And, as you notice in those diary entries in her affidavit, there is nobody else from McKinsey who is present in those meetings, which is consistent with the operating model, so I am not aware of... It is hard for me to answer that there were things that Mr Sagar did while employed with McKinsey that could have been done. It would be pure speculation.

Adv Vanara: You are referring to an email. What was this email? What is its significance?

Dr Fine: The significance of the email is that in August 2014 – it was published in the Gupta Leaks recently – and email was sent by Vikas Sagar from his McKinsey email to his home email and then onto

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Mr Essa. It had two McKinsey documents attached, one relating to mining of coal and coal-related matters and the second one related to uranium. I have not seen the documents; I have no idea what the basis of those documents was; I haven't had a conversation with Vikas Sagar for quite some time, and I am not sure that anyone has any understanding as to what the basis of those might be. I have no information as to why he would have sent that email. The reason that it is significant, which is part of your question, is because, by August 2015, Salim Essa was already in the newspaper related to the VR Laser transaction and the locomotive transaction. So, by that time already he was in the newspaper and I would certainly have been concerned if we were working, or had a close relationship, with him at that point in time. So, the significance is that already in 2014, Salim Essa was in the newspaper related to the locomotive transaction and VR Laser. I think it is July 2014 if my recollection is right.

Adv Vanara: Let's move to the 1 064 locomotives. What do you want to tell the Committee about this strategy?

Dr Fine: Well, I just want to make the Committee aware as I have been requested, in the subpoena, to share the 1 064 locomotives business case that McKinsey helped to prepare with Transnet executives for the procurement of locomotives. The recommendation inside that business case was to spend R38.6 billion and not the R54 billion that I have seen in the press. On the basis of that request, I want to take you through, quickly, the process by which the consortium was created, the work that was done, and the specific recommendations we made, which seemed to be different to the recommendations that were followed. I think that the Committee, should, after they have read the document, and have read the submission, then they should have a conversation with Transnet to get clarity.

So, the first thing that I wanted to say is that it started off as a consortium where McKinsey was the prime contractor in the tender that we submitted. It included Letsema Consulting as a supply and development partner but also because they had been involved in various procurement processes at Transnet related to locomotive components, like couplings etc. It included ART and Nedbank because some work was going to be done about how the funding and structuring was going to be done for these locomotive transactions. A company called Advanced Railways Technology (ART), run by David Potter from the UK. He is an ex-British Rail executive. He has worked extensively in the rail industry and had worked in South Africa and we needed someone with the technical expertise to debate with and challenge the relevant managers.

There were four workstreams. The first workstream was the business case, which you see in the attachment in Annexure D. It is an extensive document. It is the culmination of many discussions, a lot of work. It projected the potential scenarios of demand in South Africa. It looked at the locomotives that you would need to move that freight around. It looked at a variety of things. It financially modelled what the implications would be and whether it was actually a good thing to do, what the benefit of efficiencies might be if Transnet implemented efficiencies etc. The second was obviously a very complicated process that would have to be managed and that was the Programme Management which Letsema was supposed to do. Nedbank and WeberWentzel were involved with McKinsey in a workstream called the Transaction Advisory part, which was going to be the final procurement part of the transaction. And, as I said ART and McKinsey were going to make sure that the technical assessment and challenges were in place.

As I said earlier, the first thing that happened was a conflict of interest was raised, and there were a few. The first one was with Letsema working with GE and potentially a bidder, and so we considered working with Regiments. The second thing was that Nedbank, as I understand it, wanted to participate in the fundraising part after the contract was completed and therefore wanted to withdraw from the consortium, and Regiments had all their modelling skills and derivatives experience – which I'll get to in a moment. And so, the consortium changed to be McKinsey with Regiments and ART which was the consortium that actually did the work.

The work proceeded according to the timelines for the business case. It worked very well and the executives were engaged in the case and debated discussions and gave inputs, which were taken into :count. There was a proper governance structure in place with a regular steering committee which as chaired by Brian Molefe, if I recall correctly, and also included Siyabonga Gama and Anoj Singh. iat led to a business casebeing concluded and submitted to the Board. The document in the annexure the document as it left McKinsey and our understanding was that it was the document that went to e Transnet Board and was signed off on and went into the subsequent approvals that would have to

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been sought from the Department of Public Enterprises, amongst others. The timelines thereafter drifted. The internal Transnet timelines drifted so that the work was supposed to be started in early 2013. It was supposed to be concluded by October 2013 when the tender would have been awarded to the successful bidders. The internal processes were delayed. There were delays in getting the relevant Board approvals and technical approvals. There was a process which Transnet had to vet and look at the potential suppliers in terms of their technical competence and their ability to deliver, their BBBEE etc. McKinsey was not part of that and there were other approvals that had to be sourced from the Ministers involved, which I assume would have involved the Department of Public Enterprise and National Treasury, given the size of the transaction.

Given that historically we had had experience where Transnet took time to wrap up and provide the necessary information in time, and given that they wanted to accelerate the procurement to January 2014, we wrote a letter, which isn't attached in our annexure, on 31 January expressing our concerns and we wanted some information otherwise we couldn't do the work. On 4 February 2014, we withdrew from that part of the work as we were not getting the data and we felt that the timeline was too short in order for us to add value and discuss a transaction of this size. It was a very heated discussion in McKinsey but we felt that we should withdraw from that part of the work as there was not sufficient time to apply our minds. The work was handed over to Regiments.

- I want to be very explicit about the recommendations that are in that business casewhich seems to be different from what was concluded at the end of the negotiation with the four locomotive suppliers, CSR, CNR, GE and I can't remember the fourth at the moment. The first thing was, when we assessed this, it was absolutely necessary for Transnet to buy locomotives. That was not under debate and when you looked at the age of the locomotives and you projected out to 2022, there was going to be, in our view, a 59% shortfall between the locomotives that were needed and the freight volume. Now you could say that the volumes went down in 2015, etc but there still would have been a substantial shortfall of locomotives, and we confirmed that.

The second thing is we were very explicit that the most sensitive variable in the volume, so in terms of our standard McKinsey practice, as I have said before, our advice was contracting with the supplier had to include flexibility so if the volumes dropped, or if the volumes went up, the arrangement with the suppliers could be adjusted. We were very explicit about that. The third thing was that we looked at the supplier and local content part, and we said, for an increase of 2%, you could do 50% of the work in South Africa and there would be a substantial benefit of about R68 billion to the economy. Whether that is high or low, we could argue, but the fact is that it would be beneficial. In our view, this transaction should cost R38.6 billion, including inflation of 2.2% in the US, 5% in South Africa and it also included the Rand-Dollar adjustments that you see in Annexure D, page 38, and that would be over a seven-year timeframe.

- It was over a seven-year timeframe and the transaction was concluded at R54 billion over a three-year timeframe. So, different timeframe, different amount; it was not in line with our recommendations and I think that the Committee should understand those details. Now that you have the details and the documents, you can compare those details against some of the judgements that people made.

We also looked at efficiency and said that you may not need 1 064 locomotives. Or, what we state in my submission, keep the 1 064 locomotives but our estimation in that seven-year timeframe is, you might need only 784 locomotives if you implemented efficiency improvements and other things that are in the business case. Having said that, we also projected forward that Transnet would need between 60 and 80 locomotives per year and on the basis of that, they should still continue with the transaction but have the flexibility on when they actually got to the 1 064. Lastly, we gave very detailed recommendations on the security and governance issues for it to happen and that it was not subject to any issues.

When we heard about the R54 billion price change, we did ask questions as to why the number and timeframe was different and the answer we got back from Mr Singh and Mr Pita, I think it was Mr Pita, the time, was that they had a different view on the inflation and on the hedging and on the contractual ms and therefore they negotiated a different arrangement. McKinsey was paid R8.4 million, cluding VAT. There is an article by amaBhungane called "How to eat a parastatal chunk by chunk". e project ballooned from R34 billion to R54 billion and I can't explain how that happened. We handed er the work on 4 February 2014 and we don't know how these allegations in the media happened or

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not. Lastly, it is about something we saw in the press. The OCCRP (Organized Crime and Corruption Reporting Project) article was published on 3 November and is referenced in point 21 on page 15 of my submission, that talks about the complicated investment bank swops and derivatives that were related to inflation on this locomotive transaction. I don't understand them but there is some press speculation as to whether or not, and how those derivative contracts were structured and what's embedded in them. The Committee should explore those and see if they have comfort on what was done.

Adv Vanara: As a parting shot, you worked with Regiments very closely. What was their business model in your understanding? How do they go about doing the work?

Dr Fine: How do they go about doing the work? Regiments? Well, it is hard for me to speculate about how they do their work. I can say that they were a supply and development partner of McKinsey. They did credible, real, hard work over the time that they worked with us. This was not what I would call a sham. This was not just, "We give you the 30% and you walk away." This was hard work with people on the ground. They worked with McKinsey. Of course, they had the benefit of McKinsey brand, expertise and capabilities to draw on. They were comfortable to talk about that. I am told that when Mohamed Bobat left Regiments and went to National Treasury, he talked extensively about the work with McKinsey at Transnet, I am told. I also understand that because they have these other parts to their business, a property portfolio, they have investment banking skills and understand how to do the currency swops. Am I answering your question? I assume that is how one would have to think about it.

Adv Vanara: No further questions

Questions from the Committee

Dr Luyenge: Thank you for your input to the Portfolio Committee on a number of aspects taking place in the SoEs and the information that is in the public domain is that there is deliberate looting by the SoEs of the country. So, these SoEs are actually the sources of such. In what you have presented to use, what would be your say around that?

Dr Fine: Are we going to go one-by-one, or do you want ... OK. One by one. I think that that would be speculation. I think that the quality of journalism that we have seen in the last couple of years, particularly from the likes of amaBhungane and Daily Maverick, has been excellent. It has been detailed. I think that it lays out quite clearly a hypothesis, a possibility and there are three parts to this, and this is in the media so, this is what the media said, I think this is what the Committee needs to get comfort on, that first of all, there is a governance structure that may or may not have been compromised and that includes from the Boards all the way down into the various executives; that there are in some cases, companies that get set up with very complicated structures that look legitimate but behind are moving money, legitimate money out into other locations. They partner then with a legitimate company that has a brand, a strong brand, and they do potentially real work but the benefits of that work then move outwards. And on top of that, as I mentioned in my submission, the recent article on 3 November in the OCCRP around derivatives and Treasury-related matters. These are all in the press. I think the model has been laid out in the press and I would encourage the Committee to probe those four areas and confirm whether or not that hypothetical model is the model or not.

Dr Luyenge: The ballooning of figures from R38.6 billion to R54 billion, and another one from R36 billion to R200 billion, how then do you present a case where such is happening? You as a representative of McKinsey, as a company with all the expertise, how do you view that in the operation of an SoE, whose responsibility (and in your belief, there is a common view between you two) to the developmental state of South Africa, will be best achieved through that?

Dr Fine: I can't answer the question of how the R38.6 billion goes to R54 billion or how R35 billion goes to R200 billion. I can say that I am surprised and concerned about that because the basis of the locomotive business case was thorough and conservative. It looked at a number of factors in great detail. I stand by that work as good work that McKinsey did on the business case. How it goes from R38.6 billion to R54 billion, and instead of over seven years, over three years, is exactly the question that I think needs to be asked. When we asked the question, we were told by management, first of all, it was a confidential process because these procurement things are, but that's fine, so I haven't seen all the details, but we were told that based on a set of considerations, they got a different outcome. When I read the press articles, it does make me ask questions, but these are the questions best put to Transnet.

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Dr Luyenge: The role of Transnet working with McKinsey and Letsema, would you think that you did achieve your goal as McKinsey in how financial management and decision-making was taking place? There is a Moodley that you spoke about. Do you remember the name of Moodley's company or the first name of the Moodley because I believe this is a Sammy? Were you ever invited to the Gupta wedding, which I believe, if the emails are anything to go by? Did you receive an invitation? Did you attend? If you did not, what was the reason? Do you smell any rat behind all these as they relate to the Gupta family? What actually made you suspicious? And do you believe the decision by McKinsey to pay back the money is justified? And let me advise and appreciate that view that you want to pay back, that it must not, and I will lobby this Committee, that it must not be paid to consultancies. These consulting companies have done damage, and damaging the whole name of consulting work, which is an expertise that is highly needed. Now, in the rural areas, in my place there as a rural boy from Gxididi, you know that people are hungry there and that single billion, if this Committee says take that billion to Gxididi so that it can benefit the poorest of the poor, what would you say?

Dr Fine: OK. There were quite a few questions so I'll go one by one. I am very proud of the work done by McKinsey at Transnet. I am very proud of the fact that we took a small consultancy firm, Letsema, and invested in them. We gave them resources, we gave them training, we gave them access to resumes of people that perhaps did not fit with McKinsey's profile that they should consider. We had... I personally engaged many times in robust discussions with the leadership there and at the end it was a high performing, substantially larger firm and it could compete with McKinsey. Was it painful when it competed with McKinsey? Yes, it was painful, but, for me, that was the test of supply development. It passed the test of supply development and I am proud of it, personally.

Kuben Moodley is the Moodley that I am referring to and Albatime is the company as I understand it in the press. By the way, I just want to say that that is based on my recollection, so if it is incorrect, you must just tell me.

I was invited to the Gupta wedding. I was invited to the Gupta wedding, as I understand it, but this is pure speculation, because I led the South African office at the time. I received a big box. It was a big thing with lots of jars inside but I did not go to the wedding. I do not know the Guptas and I have never met them. I did not go to the wedding.

Smelling a rat, and what makes you so suspicious? What made me so suspicious? McKinsey is a firm, in my view, and I don't want this to come across as glib or trite, McKinsey is a firm that doesn't make decisions based only on commercial decisions. I have been involved in situations where McKinsey has walked away from contracts, substantial contracts because they were not aligned with our values. The fact that we would be associated in any way whatsoever, with what was being reported in the press at the time, that the Guptas were benefitting from contracts. This is what was reported in the press, that in some way they had undue influence as reported in the press. That they had a relationship with Salim Essa was reported in the press. The fact that McKinsey would be within a mile of anything that could affect our reputation which had been hard earned in South Africa and I have been responsible for building the company in South Africa, and it has been hard earned, and that is why I get emotional about these things, very emotional. That is the basis by which got anxious and the basis by which I got emotional, and the basis on which I went into my super investigation mode.

Why pay back the money? We are not paying back the money because we think that we have done anything wrong. I just want to be quite explicit. We went into a relationship with Eskom in good faith. They said that they had the requisite approvals, all those sorts of things. We invested in good faith, upfront. At one point in time, as I say in the document, we had 108 consultants on the ground and another group of people which took it up to almost 138 people, before we even had a contract in place. So, you can therefore say, "Did you know that you were going to get a contract?" and I can tell you that in McKinsey there was concern that we would not. So, we went in with good faith and they told us that they had the National Treasury approvals for the risk arrangement. The fact that they didn't is why we don't want the money. Now to the question of how to apply the money, I think that that is where we as McKinsey need help and this is where I appeal to Parliament: i) To get resolution with Eskom and we can also try and trigger that to resolve whether or not the money has to go back to Eskom because the contract was invalid. As I state now, I think that the contract is valid because we did real work and something was done. But we will give back the money. Now the question is how Parliament can help us solve that impasse and find a productive way to deploy that money. If, and the requisite authorities

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say give the money to your constituency, if that is the decision of Parliament, then that is the decision that we will abide by.

Dr Luyenge: I am running out of my time. The Market Demand Strategy at Transnet and during the era of Mr Brian Molefe. How long was the duration of the contract that McKinsey had, and within that period, what would you say in pursuance of his duties, Mr Molefe, as a CEO, at the time – how did he manage the processes? Do you believe that he is Mr Fix-it because on his arrival at Transnet, there was commendable improvement and the Market Demand strategy was actually one of the methods that was used and also, on his arrival, there was some improvement? Was it real or was it a fake?

Dr Fine: I met Brian Molefe very few times. Once we were sitting on a joint panel in Tokyo. We were at one social event where I said, "Hello," but I didn't get involved with Brian and watch him in executive meetings. I do understand that he was an active participant in the Locomotive Steering Committee and colleagues who were thee told me that he took those discussions very seriously and pushed the relevant executives hard to get to the business case that you see in the document. But I certainly think if I look at the work that we were doing with Transnet, they were highly committed managers at Transnet where real impact happened and that this is an organisation that has done good work. If I take, for example, the coal line, the coal line improved its throughput by almost 1.5 million tons a week, which is about R8 billion to Transnet's bottom line when I was there. I have talked about the capitalisation to optimise the portfolio where the executive team did make decisions to either remove projects, or defer projects. And those were not easy decisions. If you take the Durban Dig-out decision – that was not an easy decision to take, and political debate to have, but they were prepared to take that decision to defer that project for a period of time because there were other operational improvements that would happen. So, if you said to me, did I feel that the organisation had clear numbers, had a management system in place that they were managing themselves to those numbers, that they took these performance objectives seriously, and tried to deliver on them, I think that the answer is, yes.

Ms N Mazzone (DA): Chair, South Africa operates under the Prevention and Combating of Corrupt Activities Act and it is an Act specifically in place so that South African money is kept safe and that illicit transactions don't happen. To our witness, Mr Fine, I find it disturbing that you yourself find that the money that you have is tainted and that McKinsey would pay the money back, regardless of what a court finds, because you don't want any association with anything tainted. Would you, as McKinsey, be laying charges against anyone according to the Prevention and Combating of Corrupt Activities Act?

Dr Fine: I want to be clear on what I mean by tainted. This is money that South Africa is uncomfortable with because we received the money, whether we did the right work or not, without National Treasury approval. I am not aware that this money was, in any way, involved in corruption, that any payments were made to get this work or do this work in any way whatsoever. I have a high bar for what I mean is tainted. However, in answer to your second question, those investigations are ongoing. I have not heard anything at this point in time that would make me concerned or that I have been made aware of an illegality that has to be reported. But I have, before coming to this Committee, written to my colleagues, I have written to my legal counsel and I spoke to them again yesterday and I said that I was going into this Committee and I want to have comfort that if anything comes out of these investigations, that we will report them to the relevant authorities and they have given me the assurance that they would do that. There is nothing at this moment that would give me a concern that that won't happen.

Ms Mazzone: In the Geoff Budlender Report, now colloquially known as the Budlender Report, I am sure that you will agree that his finding against McKinsey is damning and he classifies many of the deals as scams, which you yourself have spoken against. Then there was a leaked document from an ex-employee, someone who was suspended by McKinsey, in which they noted McKinsey's risk of being criticised for exorbitant fees and that McKinsey's mistake was short-lived, and less blatant, but wrong nevertheless because nine months' work resulted in $73 million and there was an anticipated $370 million income over a period of four years. Now, here's where my problems come in. Eskom accounted, and accounts for at least, half of McKinsey's income in South Africa, your South African revenue. Now McKinsey instructed Eskom to pay Gupta-linked companies described by McKinsey as sub-contractors for work never performed. But I find it almost disingenuous that you say that you had no idea that Salim Essa was involved, and that when you were dealing with Clive (Eric) Wood that you did not know that he had involvements in all of these companies because you yourself have told us that you googled, and that you google quite frequently. Now I just happened to google Clive, sorry Eric, Wood and the first

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things that came up are his associations with Homix, which is a letterbox company which could possibly have laundered millions of Rand for companies doing business with Gupta companies, so I find it strange that a company the size and importance of McKinsey would not have done this kind of due diligence immediately. While I accept the fact that you say when it came to your attention, you started this investigation, but surely your colleagues should have done this before there was a leaked letter which is now known as the Sagar leaked letter. I find it a very difficult pill to swallow that this kind of due diligence isn't done as I say. Salim Essa has a 60% stake in Trillian. It is not a small stake. It is a huge stake. And I find it hard to understand that a department of McKinsey would not have seen this and how the London office is now stepping in and doing the investigation. In the Gupta Leaks, there is documentation that as far back as 2015, in fact, some of the documentation suggests as far back as 2013, your South African offices wrote to your America offices and said that there were problems here. What is your take on that?

Dr Fine: There is quite a lot of ground to cover so I'll start with the question of Budlender and I have not seen a scam or a sham. I can tell you that in the supply and development relationships that I have been involved in and worked on, those have been serious efforts. There were serious projects done with serious work. The fact that we actually wrote to Regiments with our concerns about Niven Pillay at the time, the fact that there were external attempts to come and help fix up our relationship, the fact that we had regular meetings with them to manage their people, is not a sham. A sham is where you say to people, "Take your 30% and go but don't bother me and don't make any effort." McKinsey made an effort. I made an effort, my colleagues made an effort in these relationships. They were not a sham. I am also aware of the statement of Mr Jüngling, and I referred to it, that talks about Trillian, saying "Take your 30% and go." I don't know if he made that statement or not. All I can tell you is that is not a statement that is coherent with McKinsey's values. It is an unacceptable statement. It is a statement that made South Africans angry, and you can hear by the pace of my tone, that it makes me really, really angry, and I think if I was sitting with Mr Jüngling today, and if he was still in McKinsey, we would be having a very difficult discussion. So, there is absolutely no doubt in my mind that it was not a sham, this was not a scam and that his comments were completely out of any realm in what McKinsey would do, and that I have confidence in.

On the letter that instructed. That is being reviewed by McKinsey Legal, it is being reviewed by Eskom's legal. That letter did not instruct. That letter said, "Subject to certain things that you confirm yourself, Eskom, you should consider payment." We did not know about that letter until Adv Budlender's review. That the letter was not disclosed. And just to explain to you the level of disclosure that I would have expected. I sat in a meeting at National Treasury on 31 May where McKinsey, myself, Head of the Africa Office, and one other colleague went to talk to National Treasury about our history with Regiments and why we terminated this. We went and had that meeting. Mr Sagar went to that meeting. Even in that process that letter was not disclosed and I can't explain to you why someone would not have disclosed it. Even at that point in time, there was no information that Regiments was in any way linked, in my mind, to Salim Essa.

If you googled Eric Wood today, you may find that. If you had googled Eric Wood in late 2015, you would not have found that. I can tell you that I personally dug into this thing with a very, very sharp shovel. And I'll give you an example, because if you look at Ms Goodson's testimony and her affidavit, in the tender is a corporate structure and in that corporate structure is the Yusef Family Trust 60%. So, the only question I have is that if Salim Essa is 60% and the Yusef Family Trust 60% - well, you can't have 120% shareholding so the one must be equal to the other, but at no time when I was in discussions was it clear that the Yusef Family Trust or Salim Essa was linked to this entity, from my own personal perspective, and I promise you I applied my mind very, very hard to this matter.

This is not a London-based initiative. I was requested to come and testify as I used to lead the public sector in South Africa and that was the basis. The Africa Office was very involved in looking into these matters, as are others. Of course, McKinsey is taking this very, very seriously. Of course, a number of people are spending a great deal of time looking at this and making sure that we are 100% clear on the facts, and being transparent, and I hope that the submission that I made today is detailed, thorough and ves you comfort that we are not trying to hide something here, and I am not trying to hide something.

n exorbitant fees, a few things, everyone talks about nine months. I am not saying that helps, but for e record, it was not nine months, but 11 months. I just want record that. And, by the way, I made an ror earlier on, Mr Arwedi was not involved in Eskom. I apologise for that. That was my recollection.

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But on exorbitant fees issue, I said that, in retrospect... So, first of all, I did not know about the size of that number. The number is large. I am not going to deny that it is large. What worries me more in retrospect, and I look at the performance of Eskom, firstly, were we working on the right issues? Was Eskom using us in the right way and on the right topics because liquidity is compromised and the numbers have gone up? Number 2, I think that resources on the ground, I don't think that Eskom could absorb that amount of change. I am not going to sit here and defend that number. I think that number is large. It was a number that if it had come into the public domain was concerning. I think, and this is the last thing, that if we had much stronger governance in place to give the South African citizens comfort, that the way we could been paid, could have been directly linked to value for money, delivered initiatives in the bottom line and that we would have governed that process in a different way in retrospect.

Ms Mazzone: I am pushed for time as we only have a limited time in which we can ask you questions. In March 2016, Salim Essa was the majority shareholder of Trillian. What concerns me, is that only after the Sagar letter was leaked in July 2016, did an investigation start. That is four months after. Is there an explanation for the four months delay before the investigation started because employees who have now been suspended are leaking documents to the media, especially in Europe, saying that they were specifically suspended because they have now come out openly and said that they had alerted that there had been Gupta-linked ties and it took a four-month period for the investigation to start?

Dr Fine: First of all, I have heard about the allegations that that information had been leaked by a colleague and I can't answer that question. I certainly can say the following: that over the course of 2016, I did raise concerns as the situation was unfolding in South Africa, as the press articles came to light, as the Thuli Madonsela Report was released about our association, not only with Trillian, but with some of the people that were named in that Report. I know, and I have evidence, that my colleagues did write, did engage and did apparently have discussions about this last year. I can't explain why the pace of that investigation was so slow. I have said in my submission that we should have started the investigation much earlier. I certainly wish we had because we would have been able to answer Budlender's requests or statements in a few days instead of a few months. I don't think that there was any mal-intent but I think that in McKinsey, it is a partnership, and we have robust and difficult debates that go back and forth and are messy before they get resolved.

Ms Mazzone: Brian Molefe and Anoj Singh were at Transnet together and then they left together and went to Eskom together. McKinsey had done work with Transnet and Molefe; McKinsey then does work with Brian Molefe and Anoj Singh at Eskom. Do you see a pattern that I am seeing?

Dr Fine: I don't see the pattern that you are seeing because McKinsey had been working at Transnet from 2005 until today, and we have before been working at Eskom from 2005 until today. We worked before Molefe arrived at Eskom. We worked with multiple executives on multiple topics. We worked at Transnet with multiple executives on multiple topics. The fact that Brian moved across there – I don't think there is a pattern. Certainly, Vikas Sagar had a close working relationship with Anoj Singh at Transnet and a close working relationship with Anoj Singh at Eskom and that is all I can say. It is not like there is a pattern. It is not like McKinsey moved around with Anoj Singh and Brian Molefe because as I said before that, we didn't work with Brian Molefe.

I want to talk a little about Anoj for a second because I can tell you that I met Anoj at Vulindlela. He worked for a very, very capable CFO, Chris Wells, some of the Committee Members here may have met him. He was hired as a competent guy from a competent and well-regarded auditing firm. I think it was either Deloitte or KPMG. He never struck me when I worked with him, when he worked with Chris Wells, he never struck me as a person who had any nefarious or concerning objectives to me, at the time. How that may have evolved and what perspective you get, that is up to you. But there was no pattern between McKinsey and Anoj Singh and Brian Molefe.

Ms Mazzone: My last question. I want to say that I find it deeply disturbing, deeply disturbing, and I am on record as saying it, that you were invited to the Gupta wedding. Now while I understand that Sun City is a big place and accommodates a lot of people, I wasn't invited to the Gupta wedding. Plenty of people here were not invited to the Gupta wedding. Why were you invited to the Gupta wedding?

Dr Fine: I have no idea why I was invited to the Gupta wedding and I want to state categorically that I have never met the Guptas. I've never met Salim Essa; I've never met Clive Angel, Mark Pamensky or

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any of these people, Moodley, etc and the people referred to in the press. I have no idea why I was invited and the only rationale, and it is the reason that I could imagine, and that was because, at the time, I led the McKinsey practice in South Africa. I have no idea why I received the invite and I did not go to the wedding. That is the truth and there is nothing else I can say. I have no idea why I was invited to the Gupta wedding, but if you apply that approach to the entire spreadsheet, which I have seen, which is an extensive spreadsheet, there were lots of people who were invited to the Gupta wedding. I have no idea why I was invited to the wedding.

Mr E Marais (DA): I have only two short questions, Mr Fine. For the record purposes, I would like you to state the amount that you categorically stated previously that McKinsey is willing to pay back if needed. For the record, what is the amount that we are talking about in this whole conversation, either to Eskom, although I would prefer it must go back to the Treasury? What is the amount that we are talking about here?

Dr Fine: The amount we are talking about is the R1 billion that McKinsey was paid by Eskom, for as I understand it, the MSA contract. The amount is R1 billion.

Mr Marais: I just want to have it on record. That is why I am asking you. The second question that I want to ask you: Now, currently, do you have any outstanding business with one, Transnet or two, Eskom. And what is it for?

Dr Fine: My understanding is that the last project we did for Transnet was in April 2016. I cannot answer the question on Eskom. I don't think we're doing any work. In fact, I know that we are not doing any work at Eskom because McKinsey has taken a decision in principle not to work with Eskom for a period of time until we have comfort that the governance processes are in place that allow us to do that, if I recall correctly, but this is coming from the deep recesses of my brain.

Chairperson: Thank you for saving time, Mr Marais.

Mr P Gordhan (ANC): Thank you, Dr Fine, for your testimony and your frankness. Tell us a little more about Mr Sagar. Why did Sagar leave McKinsey? If everything that had been done, and McKinsey had done, was honourable, so to speak, why did he leave?

Dr Fine: We have a professional conduct committee that does a review, so I don't know what goes into that review and on what basis decisions are made. I do think that the material issue with Mr Sagar is that he did not disclose any connection or relationship with Mr Essa, going back to 2014. It is unclear, to me, and he denied to me, and he denied to others, that he had a relationship with Salim Essa. But I was not part of that professional conduct review. I understand that they looked at all the testimony that had been provided as part of our legal review; they looked at all the letters and emails; they interviewed all the members of both the McKinsey Transnet leadership team and the McKinsey Eskom leadership team. On the basis of that and other considerations they took the decision.

Mr Gordhan: Let me link that to my second question. Firms like McKinsey, KPMG, some legal firms more recently in other matters that are relevant as well, tend to, and these are international firms, treat the South African situation scantily and poorly. Secondly, they duck behind legalese and obfuscation. Thirdly, they show no leadership at all in terms of telling us who is behind a statement which says 'we are very sorry' - but there is no face behind that. They tend to hide themselves. Is this because they are particularly shy, or particularly arrogant, South Africa being a small contributor to the international revenue that they might well be gathering. And it is an observation that a number of people are making about the way in which these big firms behave. Even the McKinsey statement, at the outset, did not have any leadership figure who was mentioned, to say that, "I take responsibility,"

Dr Fine: There were a lot of statements and I was wondering what the question was, and maybe if you could just clarify that.

· Gordhan: Why is there this tendency for your international senior people not being prepared to come the country, be seen as the face of the company, and face the South African public and tell us what truthful and what is not, what they are apologising for, and what they stand for?

· Fine: Firstly, I hope that you are getting some confidence from the fact that I am standing in front of

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the South African public.

Mr Gordhan interjected: But you are a South African.

Dr Fine: I will also say there have been many of my international colleagues who have been spending an enormous amount of time in South Africa and were taking the matter very seriously. I'll come to answer your question.

Mr Gordhan interjected: That is in the best tradition that we used to have in the underground in South Africa.

Dr Fine: I think that this is not a situation that McKinsey is used to and deals with frequently. This is, obviously, also part of a political debate, or a political narrative, which is not that the firm is not comfortable to do. We are not a firm that is in the press, and we are not a firm that is comfortable in the press. And I think part of the situation that you are having, is inexperience in a situation like this. It is a very difficult situation. I can tell you internally the extent of the discussion and the debate is very deep, very wide. We had our senior partner meeting a few weeks ago. This was a topic of open discussion and it was not hidden behind an obfuscated wall. It was a very open discussion with deep reflection happening by McKinsey. We do not see South Africa as irrelevant or small or any of those things. We see South Africa as important and important to the firm. We've had a commitment to Africa and a commitment to South Africa. We committed globally our personal reputation as McKinsey that Africa is a place we are actually excited about.

Mr Gordhan: I understand all that.

Dr Fine: And so, South Africa is a key, the anchor point of that. But I don't want to undermine, South Africa is not irrelevant, it is highly relevant and important. I don't think that we had all the facts at hand, and I think we should have. It comes back to the question earlier: why didn't you investigate this in more detail earlier, and I think that is a valid question, and as a consequence, we were caught up in a situation where we were trying to gather information and be transparent at the same time to the South African public without the right information, and, as a conservative firm, that does not want to make statements that are incorrect. I think that is the experience that you would have received. I will also say, though, that we get mixed together with other companies, McKinsey, KPMG and all. We have never worked with a Gupta company, we have never served a Gupta company. The closest connection here is Trillian that may have a connection, that may have an ownership, that we did not know at the time because we did not have disclosed information. I am not saying, therefore, that I am proud, I am not saying, therefore, that I am comfortable, I am not saying that we should be as an institution. What I am saying is we were not involved in auditing weddings and moving money and all these kind of things, but we are associated with this and it is terribly embarrassing.

Mr Gordhan: Sorry, because of shortage of time, if you don't mind I am going to interrupt you. The third is related to what you have just said. You very cautiously say "may be" but if you sit back and now have the opportunity to connect the dots, it is fascinating, is it not, that the names, Wood, Bobat, Essa, Gupta etc., arise in this context so there is no doubt Trillian, the 60% ownership by Mr Essa, his role in the Gupta empire and schemes and the idea that we are, in fact, subject to state capture in South Africa. But yet you are very cautious about how you approach this.

Dr Fine: I am cautious because there is what I know, fact-based, and what I see and read. What I see and read sounds plausible. I am not trying to be cute or obfuscate. It is true that Wood and Essa and Gupta come up in multiple places, and you see that in the newspaper and you see that in Transnet, Eskom and other entities. There was nothing that I have read that made me say that it did not sound right, but is purely based on the reading and investigation that we have done. I really can't... If you said to me that is the work of the Committee important to get to the bottom of this, to confirm the various component, and if the testimony of David Fine is part of that, giving you information that adds extra dots so that the dots get closer and you can draw the lines, and that is good, then I say fine, that is good, but ... at is what I am hoping the Committee is going to do.

... Gordhan: Well, you are the consultant. We'll come back to that.

... airperson: I can see that Members are rushing. You will observe that I have given the first two

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speakers beyond 10 minutes to 13 something, and Mr Marais has saved me some, thank you for that. It is because there is an indication that we can continue as long as we report to the House that we are continuing. We have been given the green light, so Members I will allow you, unless you are having other commitments. Shall we proceed? Whoever has a commitment can just sneak out and come back when it is possible. You can proceed, Mr Gordhan.

Mr Gordhan: In the documentation, Mr Bobat's name appears, as you correctly point out, in the Regiments context and then as a so-called advisor to Mr van Rooyen. What else do you know about Mr Bobat that might be relevant to our inquiry?

Dr Fine: Mohamed Bobat worked with Regiments at Transnet. He was one of the leaders who was on the project we were on. He was a capable person who worked hard. The feedback that I had from other colleagues was that he was a serious person who had deep expertise. He was also ex-Investec, as I understand it, as was Mr Wood ex-Investec, and I assumed that that was how he ended up at Regiments. What I found curious was, and I remember the day very well. We used to have a regular Friday meeting with all the group executives at Transnet to review the work that we were doing, which Mohamed Bobat used to attend on behalf of Regiments, with Eric Wood, as I would and other colleagues of mine from McKinsey, including Mr Sagar and others. It was always a robust discussion to see if there had been progress. I remember arriving at one of these and saying, "Where is Mohamed Bobat?" and Eric Wood said that he was Mr van Rooyen's advisor. This must have been, I guess, after 12 December 2015. It was in that sort of timeframe.

Mr Gordhan: 9th December.

Dr Fine: 9 December. Apologies. And it must have been the last meeting we had and I remember saying, "Wow! That really strange." I didn't, therefore, make any connect to the Guptas at that moment in time. A couple of weeks earlier, I was at a 40th party with an ex-colleague of mine from a company who had been working with Regiments – they were subcontracted to Regiments. I said to him, "Is Regiments okay?" Have you noticed anything that I should be worried about, or concerned about?" So, I did not make the connection between Mr Bobat and that move and the Guptas until January 2016. You may say, "You are a very naïve guy, David Fine," and I will take that as criticism, but at that moment in time, I did not know and as soon as, let me call it, the January timeframe arrived and the questions arose about Mr Bobat and Mr van Rooyen and then the Africa Confidential piece, then I got very concerned.

I don't know much about his history but he was a hardworking guy at the time, and it wasn't obvious to me that he was the networked guy in the network system.

Mr Gordhan: Transnet is a multi-billion entity, as is Eskom, and yet they spend, it would appear, billions of Rand on consultants on what are elementary issues: how do you improve the efficiency of the locomotives; how do you increase their availability. I am sure that you agree that those are bread and butter issues for someone who knows how these sorts of entities work. How does one explain to the South African public that billions of Rand were spent on consultants whereas these are basic operational issues that competent people in the entities should be able to do themselves?

Dr Fine: I can't speak for all consultants. I can speak for McKinsey. As McKinsey, the work that we did was on projects that were difficult, challenging, and I am comfortable where we had impact. If I use your example on availability and reliability, that sounds like a simple thing, but you have to think about it in the context of the system and railway systems are extremely complicated. They are networked systems. There are inter-relationships that happen between when a train arrives and when it leaves; when a customer has a product, and the product isn't ready and what that does to the overall schedule; if a locomotive breaks down, what are the implications; rail maintenance is done, so that it is done with the right quality, and at the right speed; and how that locomotive is re-commissioned, whether those checks are done and how it is linked up to the various pieces in a distributed system, where you have a system where lots of people...

r Gorhan: That is your business and you should know your business.

· Fine: I'm just saying that it is not a trivial problem and I can tell you that you may not have comfort it we work with railways around the world, and they come to us for advice, high performing rail

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companies that do know their work and do great work and they use our analytical expertise, our problem-solving capabilities to make their systems even better. And I have absolute comfort in that. Are there consultants that some state-owned enterprises may use which may not provide the benefits? I am sure. Do I feel like I have been working on projects, where we have not had benefits? Can I explain those? I can.

Mr Gordhan: Last point. I refer to the point that my colleagues made about the so-called inflation of numbers – R38 billion to R54 billion as you pointed out. I think you mentioned that Mr Pita said that they were linked to a) a different set of indicators and b) a different calculation, if you like, of those indicators. Just tell us a little bit more about the rationale, please, and whether they sound credible, since you had worked on the original numbers.

Dr Fine: Let me start with explaining the complexity. With a project of this size, there are obviously a number of parameters. The first one is the price that you agree with the provider and the local content and where different components will be manufactured and how they will be assembled and all those pieces. I think that is relatively straight forward. The second piece we have, and which we have seen in South Africa with a volatile Rand, and where 50% of the components are being sourced internationally and so depend on currency movements, and also on inflation, and those currencies might also include Chinese, because they had in their portfolio Chinese locomotives. Managing those risks and accounting for those is the work of investment banks, and how they hedge those risks is work that investment banks like Regiments would do and I assume that that is the work that they did. My understanding, at least, is that there were a number of these derivatives that were used. There were interest rate derivatives, there were currency derivatives and then you have to raise the funds for these and the cost of funds depends on what you can get in the market. The explanation that was given to us (because it had to be confidential, and to Transnet's credit, they ran a very confidential process) was because of all these effects, the currency, the inflation costs, blah, blah, blah and how those were structured that the costs ballooned. That is the explanation given when we asked, "How is it possible?" And these are the questions that I think Parliament needs to put to Transnet and understand in detail because what you will see in that annexure is the detail. The detail is all there. What were the expectations on currency, what were the expectations on inflation, were they reasonable, were they not? And so, you should be able to get a very detailed explanation from Transnet, comparing on one side of the page, what was in the business case, and what was on the other side of the page, what were their assumptions that led to a different number.

Mr Gordhan: One point. So, you actually got paid, whatever your fee was, to make amongst other things, this calculation, taking exactly the same indicators into account and offering the same professionalism that an investment bank might have used. You said there were four work streams. So, when we do get Transnet, if we do, you will have to stand on the other side and argue why your calculation was right at the time and Transnet's wasn't.

Dr Fine: So, what we did not have in the calculation, is the exact hedging cost, which, if you look in the annexure, the hedging costs were not included in the R38.6 billion but on page 38 of the business case, we give you what assumptions we used for the Rand-Dollar costs over time. So, while we didn't factor in the cost of hedging, we certainly reflected a decline in the Rand-Dollar, which was factored into the business case.

Mr Gordhan: At the most, what would those hedging costs involve? R1 billion or R50 billion? R1 billion or R16 billion?

Dr Fine: I could not give you a competent answer. My suggestion to the Committee is to get advice from people who are competent on these matters to come and sit and do that comparison and allow the Committee to ask the necessary questions. That would be my advice to the Committee.

Mr T Rawula (EFF) I hope, Chair, with all due respect to Mr David Fine, we are not going to find ourselves in the situation where we are being patronised in anyway. I see that in your statement on ıge 10 and 11, you indicate a number of regrets and given the fact that you are a global company, I ink some of the regrets are petty, for the lack of a better word. For example, you say that you regret at you partnered with Trillian. You regret that you had not insisted that Eskom receive Treasury proval. You also say that you regret having associated with a company that was led by Essa, given s Gupta links. You make quite a number of regrets, which, I think as a reputable global company,

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could have been arrested in your vetting process of whomever you engage with. That brings me to the point where you can take us through the vetting process with any company that you engage with, because in my view, if you have a comprehensive vetting process, on the basis of the credibility of the company that you are working with, and also the credibility of its own directors, because part of the evidence that the Committee has received, is that Trillian did not have the necessary capacity. In fact, in terms of personnel provision, it had only two employees, which was the CEO and the COO. I want to check with you, given the regrets that you have, what was your own vetting process to determine whether you could do the work with Trillian, given the regrets that you have.

Dr Fine: I want to start, I am not trying to patronise anyone. I came here alone. I don't have a bench of lawyers. I'm not here with thousands of McKinsey people. I am here alone to stand before this Committee. So, this is not an exercise in patronising anyone. This is something I truly believe in. In answer to your question, first of all, I did ask my colleagues, in preparation for this. I watched the testimony and Ms Goodson said that there were two employees. The two employees were working on setting up the company. They didn't do any work. So, I said, "How is it possible, therefore, that any work was being done?" The answer that I was given was that there were obviously all these Regiments people that were moving out of Regiments and moving into Trillian. In addition, there was lots of email traffic with lots of email names. I have ascertained, for myself, that there were at least 38 email addresses that had the word "Trillian" in them, so they were doing work, I understand, and I have checked and investigated that part of those were from Cutting Edge, which we know in retrospect, is a Gupta company, and the other one was eGateway, but those were not known to my colleagues at the time because they had a Trillian email address and were part of the people doing real work. So, I hear you and I had the same question, and I am telling you factually on the basis of Goodson's testimony and my own questions, what I can answer.

On the vetting process, McKinsey has a very strong vetting process, and the process was applied to Trillian, albeit too late. The vetting process that we followed in March using external providers, and these were not just some general external providers, this was an external due diligence. I fed the information, that I gave the Committee earlier, about my investigations and the information from the database that Salim Essa was potentially a shareholder, into the process. I said to the Committee earlier that when I was with Eric Wood and he gave me the names of Makatini, Jimmy Manyi and Clive Angel and Max Yusef, I fed that information into the external due diligence. They gave us a report and we terminated the discussions with Trillian. I also want to be very clear, if you read the letter in the annexure to Garry Pita and Siyabonga Gama in February 23, 2016, it is very clear the concerns and the expectations that we have from Trillian in terms of 1) their beneficial ownership that they had not provided, and 2) the fact that we still didn't have comfort that we would be working with a black-owned, black-managed, and black management team with this company. We did not misrepresent ourselves to Trillian in that way, whatsoever.

Mr Rawula: OK. Now moving forward, when the news broke out about McKinsey and Trillian milking out Eskom, both McKinsey and Trillian were quiet. None of you came out into the public and engaged in any investigation into those allegations until the media, together with the Public Protector, began to make a noise about the relationship of McKinsey with Eskom and Trillian. So now, because the news is already out, you are willing to pay back the excessive payment of R1 billion. But how are we supposed to trust McKinsey if that is a genuine gesture because we don't know, other than what was exposed by the media because R1 billion is what has been exposed to have been the excessive payment. However, we don't know, before that, how much money was received. Can you confirm, besides the R1 billion, how much excessive money has been paid to McKinsey? The R1 billion is what was exposed. It is what is in the public now. Hence, you will be able to pay back. You want to help, so tell us, besides the R1 billion, how much excessive money has been paid to McKinsey?

Dr Fine: I want to reiterate what I said earlier, which was that McKinsey should have done its investigation earlier. There were concerns raised as the media came up with issues. It was not only with Adv Budlender. It is one of the reflections that I have in my notes that I am quite explicit on. We should have acted and investigated more quickly. I can only apologise for that because if we had done that, the answer to the South African public on the day that the Budlender Report was released, would have been clear and concise and I don't think I would be sitting here today with you.

Having said that, I want to explain the payment again. First of all, I am not aware of any excessive other payments. I want to be clear though. I am not saying, though, that the R1 billion was excessive

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payment. I am not saying that it wasn't a large number, and it may not have been the right project to have been done, but it was not the wrong number. In preparation for this Committee, I sat with my colleagues and they gave me comfort that there was value delivered for the money. Having said that, the reason we want to give the money back, is not because we are guilty, but we want to give back the money because Eskom gave us the assurance that National Treasury had approved the contract. Eskom has that in its minutes. It is minuted that they said to McKinsey that they had approval from National Treasury. They did not. They lied. The fact that they did not have approval from National Treasury is the basis by which we will give the money back to South Africa; not because we have done anything illegal in our view or, let me rephrase that: I am not aware that we have done anything illegal. We will give the money back because we do not want money that in any way is tainted. And tainted means, including did not get the requisite approvals from the right people.

Mr Rawula: McKinsey was expected to build capacity to Trillian and that would have been through what was called a master service agreement, which would have included Trillian, Letsema, and the objective of it was supposed to be one of those leading black economic empowerment programmes, and as a result of that Trillian would employ a CEO which was a competent black lady to fit the profile of black economic empowerment, but the lady has led evidence here that 1) she was never involved in any of the negotiation processes. She further confirmed that there was never a master service agreement that was signed. But she had managed to secure the work from McKinsey. Now my question is: there is no agreement and this supposed to be an initiative of black economic empowerment but the agreement is not signed, yet the work is given. Why did the matter not raise alarms with you if there is no agreement, yet you still give the work? And also, the CEO of the company is supposed to fit the profile of black economic empowerment as per the primary objective to build capacity, but also to ensure that you advance the transformation agenda but McKinsey continued to work, despite those gaps. Can you talk to that. How did they secure the work when there were blurring lines in terms of the primary agenda of the agreement?

McKinsey: Chair, as I put in my submission that because I was not involved with Eskom, I never had business meetings with anyone involved in Eskom or this contract, it is very difficult for me to answer that question. But, let me start off by saying that my understanding, at least by the end of 2015, that the objective of Trillian was to create a serious and significant black-owned management consulting firm in South Africa, that Eric would get access to resources to invest, purchase and get other consulting firms, which I think personally, would be a terrific answer and a terrific thing in South Africa. The reason, that, as I explained earlier, I started to raise concerns about Trillian, was because, before the Essa thing came up, it was the ownership issue because it was unclear to me, how Eric Wood, himself, without credible and serious black industrialist people, was going to build the firm. I wanted to know the names. What were the names of these black people that he was going to build this firm with? Who were they? Where were they? How was this all going to work? I was not involved in the negotiation, and I can't answer that question.

I understand from McKinsey that we do have a signed contract or an MSA. We did not have a relationship with Trillian. We never consummated that relationship with Trillian. There may have been dating but there was no marriage. The fact that Eskom has paid Trillian, is a question that you need to put to Eskom. Eskom has sat here in Parliament and said that they were a supply and development partner of McKinsey, they were not. They said that they have not paid Trillian, they have. I can't answer the question for you. And, by the way, McKinsey's modus operandi with Letsema and with Regiments, was always that the client should pay the supply and development partner directly, and not through McKinsey, otherwise McKinsey would unduly benefit from the BEE credits, and we did not want that, we wanted that for the clients' benefit. So, how Trillian got paid, what they got paid, for what reason, under what contract structure, you need to ask Eskom.

Mr Rawula: That is exactly what I was going to follow up on and I am glad that you have answered that because, indeed, almost R600 million was paid by Eskom to Trillian, despite the fact that there was no contract. The contract was between Eskom and McKinsey. Now, would you agree with me that money was stolen from Eskom by Trillian because if Trillian did not have a contract with Eskom, but Eskom had a contract with yourselves, and under the guise of that contract, Trillian managed to get about R600 million. Would you then agree with me, as a principal of McKinsey, that Trillian has stolen money from Eskom of that magnitude which is almost R600 million?

Fine: I would agree that Trillian and Eskom should be sitting in this chair and answering that

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question. That is all I can say as I do not know how much work they had done. And I am not trying to avoid it. I think that that question is for those people.

Mr Rawula: My second last question. As I indicated your responsibility was to build capacity to Trillian. Now I have indicated that there were only these two employees and the witness indicated that all her efforts to make advances to McKinsey were ignored. She tried as a CEO that had just joined the company, Trillian, which was supposed to be capacitated by McKinsey, so all the initiatives that she made to ensure that McKinsey was able to relate with Trillian and expose the plans of McKinsey to build that capacity, they were shot down. Now that did not raise alarms with you guys as McKinsey. Now, would you agree with me, that it means that Trillian used a black lady as window dressing in terms of the transformation agenda of South Africa and therefore flouted the legal framework that South Africa has set up to advance its own transformation agenda through a medium called black economic empowerment. And in that process, they have done it under the guise that they are working with you.

Dr Fine: As I said earlier, I have participated in the development of black supply development partners and I am proud of some of those efforts. I am very proud of the work that I did with Letsema and I am proud of the work that we did with, and the investment we made in, some of Regiments' people. I have read Ms Goodson's testimony on the interactions that she had with McKinsey, which were deeply concerning to me, in the Budlender Report and which I say in my document are not reflective of our values at all. At all. I want to be very clear. These are not our values. We are a Level One compliant company. McKinsey did not do it by window dressing. We did it by real initiatives within our supply chain, with real initiatives with our people, with real initiatives in South Africa, with real supply development. McKinsey did not do this with window dressing. McKinsey took it seriously, and I was part of saying: "We are doing this because this matters to South Africa, this is important to South Africa to transform the economy." So, I want to start with that statement. The fact that one of my colleagues, I have only read of one, Mr Jüngling, the way that he behaved with her does not represent the values of McKinsey and that spirit. Whether Trillian was window dressing, whether they felt that they were dealing with a capable person, that is unclear to me. I can just tell you that, as a firm, McKinsey takes this very seriously. We would not be Level One in South Africa if we were just window dressing. We do not do window dressing. I am deeply embarrassed by the statement of the witness on Mr Jüngling. She stated it on the record, and she might not be correct, I am deeply embarrassed by it.

Mr Rawula: You have denied that you met with the Guptas but we have it on good record that your partners have met with Guptas. You yourself have said in your statement that on hindsight, you would have terminated the relationship if you had known about their relationship with the Guptas. But you were invited to the Gupta's wedding and you say that you declined but the same person who declined says to the same Committee that you accepted a gift from the Guptas, which was a big box that was a gift. Why did you accept the gift and why would the Guptas have the audacity to invite you if you had never met them? I assume that they don't know you, there is nothing that links you, but they send you an invite. Why were you invited? And why did they give you the gift, and why did you accept the gift?

Dr Fine: First of all, it was not a gift, it was the actual invitation which came in a box. Inside were some bottles with some dried fruit inside. This is not what I would call a gift. This was the invitation – it came in a box. So, you could say why did I accept the invitation because the invitation arrived? I did not accept the invitation because I declined to go to the wedding. Why would they have the audacity to invite me? I don't know. I have been to many Indians weddings around the world. They tend to be very large affairs with thousands of people invited. Some people are close relatives, some are just people who are known in the community. I want to state categorically: I do not know the Guptas. I don't know why they invited me. I didn't accept a gift from the Guptas. I received an invitation to the wedding. Should I have sent the invitation back? I don't know. It was an invitation I declined. I don't see that as abnormal behaviour. There is no connection that I am aware of, between myself and the Guptas. If people have other information, let them come forward. I stated that categorically to the press but no one has provided me with any information. I am absolutely comfortable with my statement on this: that I do not know the Guptas, I have no idea why I was invited to the wedding and I declined to go. So that is all I can say.

r S Swart (ACDP): Thank you for coming, Dr Fine, thank you for not bringing a bank of lawyers. bviously, you can understand our discomfort with McKinsey, particularly when one looks at the dlender Report and one looks at other issues. One of the points that you made was that why cKinsey did not respond to Budlender was that it was information about clients, and you used the

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plural, but I've looked at the questions and most of it related to Trillian itself. If you could explain to me, because you have got Budlender representing Trillian, and asking you about Trillian, why would there have not been a better cooperation? Yes, you have indicated now that you should have cooperated, but looking at that stage, there was a lot, in hindsight is better, clearly there was a lot of information, and keeping it away from a Trillian investigator?

Dr Fine: The letter that you are referring to, was a letter from McKinsey to Eskom. So, it is not correct to say that this was only between, let me call it, Trillian. I am not going to defend McKinsey because we should have met with Budlender and had a conversation and it would have been a reasonable conversation and he is a highly respected advocate who has the highest ethics in this country and we should have just had a meeting and resolved this. I think that one of the other factors that probably came into this discussion, but I wasn't part of them, at least, by the time the Budlender matter was happening, there was a lot of information that had been put into the public domain by Regiments and Trillian, as part of some court case that they had and was being litigated, or at least there was certainly a lot of press around this, so I am not sure what the considerations were but Mr Budlender is a well-regarded man and we should have met with him and had a reasonable conversation with a highly regarded man. That is all I can say.

Mr Swart: I appreciate that. But that is now with hindsight. But that was now, 29 June this year, with all the information. There was a very clear lack of cooperation, and you have apologised and said there could have been better cooperation and I accept that. However, if you also look at the response of Ms Goodson, and you have reported that Mr Lorenz Jüngling's comments about the 30% were unacceptable and against all your values. She says in paragraph 106, in response to Mr Jüngling's comment. "It doesn't really matter as long as you get your percentage," that it was in response to her complaint that McKinsey was not engaging with Trillian in the supply and development programme, with the result that Trillian was not receiving the exposure and experience that it required. She reported that a general theme from the McKinsey leadership down was that Trillian was simply a necessary, but an unwanted, piece of baggage in the contract. That is scathing. That is not just by the way. There are two aspects. Firstly, it was very clear that Trillian was a part of the contract and the deal. Not legally, but it was part of the package. Secondly, of course, it was basically, "Get your 30% and we'll be happy." To me, it is not only Mr Jüngling that was involved. You obviously were not involved. You said that, but there seems to be leadership as well at McKinsey that had that view. Are you able to comment on that?

Dr Fine: I'm not but there are two additional pieces of information that I have read, and I can't remember if it was in the press or part of her affidavit. So, one was that Trillian and Ms Goodson participated in steering committee meetings at the client, that there were extensive discussions and she would have participated in them. Secondly, after those comments were made that she raised her concerns, adjustments were made. I can't explain. What I would say, and I can't speak because I was not an observer there but there also inconsistencies in some of her testimony, and I am not saying, therefore that her testimony is not correct, but if you look at the letter which is in the annexure here, Annexure F, where we wrote and asked Eric Wood about Mohamed Bobat and his connection to the Africa Confidential article and there is a letter in Appendix F from Ms Goodson which says that there is no connection between Trillian and Bobat at all whatsoever. Yet at the same time, there is additional information that says that Ms Goodson was meeting with Mr Bobat, and Oliver Wyman with Mr van Rooyen. So, I hear you and I am not trying to defend and I am definitely not trying to undermine her testimony, which I think she stated on the record and I have to take it at face value but, at least in my sense, there is more in that than just a simple statement.

Mr Swart: I appreciate that and part of this process is to engage with all evidence that we have received and test that. It doesn't mean that we accept everything that is said here and that is why those people who have been implicated will be given the opportunity to come and contest what has already been put before us. So, there is no problem with that, and that is helpful. Ms Mothepu, CEO of Trillian Financial Advisory, in her affidavit speaks about the R600 million that was paid to Trillian by Eskom and she is willing to assist Eskom to recover the fees that it paid to Trillian. Now we are very grateful for the fact that McKinsey has offered to pay that R1 billion, and we hope Eskom and ourselves are able to assist National Treasury to finalise that without the use of any more consultants and further fees. That is a massive concession and it's not made with any acknowledgement of wrong doing. I appreciate that. However, you have the issue of the payment to Trillian where, and it is nothing to do with you, but it just indicates the relationship of McKinsey, Trillian and Eskom where she says of the payments made to Trillian: "I am of the view that these payments were made in contravention of the PFMA and the

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Companies Act," Now that's criminal action, plus civil action "and are therefore unlawful. I do not think that the fees that Eskom paid Trillian were reasonable to the value created as the work performed could have been performed by the Internal Treasury Division of Eskom." Now I appreciate that Regiments could have done a lot of work but we see that a lot of the work done by Trillian was either done by Regiments or was not done at all, or could have been done by Eskom. Are you able to comment on that at all?

Dr Fine: I am not able to comment on that because I don't know what work they were doing. Suffice to say from McKinsey's perspective, I was on the phone with our global counsel last night and said, "I'm coming into this meeting, I want to have comfort that we will continue our investigation and if we uncover issues, that we will file the relevant submissions to the authorities in this regard." I also tried to find out from colleagues if there was value in the work that McKinsey did, and one always has to be careful because I can always throw out numbers and everyone will say those are big and maybe it was a tenth or whatever, but I got comfort after those discussions that there were benefits that could be measured that would at least explain the fee. I'm not comfortable that Eskom could make the change but I have comfort from what my colleagues have shown me, and it was audited by Oliver Wyman. Whether or not, Trillian's R600 million was reviewed for what benefit, I can't answer that question, unfortunately.

Mr Swart: I want to just ask you about a point in your statement, where you talk about the R1 billion fee and you indicate there that you didn't think that Eskom had the management capacity for the 11-month work. Please check on that page because I don't want to misunderstand you. In other words, 100-odd consultants were doing work, plus work that would go forward if Eskom management implemented that. And is that what you say under c) "Even though the fees were an agreed percentage of saving, the benefits to Eskom were large." Are those the benefits in the long-term? Or are you saying that the fee of R1 billion for only 11 months' work, or was it benefit to Eskom as well? I am misunderstanding you slightly there, because to me, it's a very exorbitant fee and that's why you said, "We should have capped the fees structure". So, I am not so sure that there was value, although an external auditor, Wyman, says it was. But you are saying here, in hindsight, that you should have capped the fee. The benefit going forward, is that captured in that R1 billion or not?

Dr Fine: Well, let me give one example of some of the information that was given to me. The fact that we worked on generation facilities and improved availability meant that R8.4 billion worth of diesel costs which we were burning in 2015, if everyone remembers 2015, were reverted. Now if you ask if I can stand behind it because I have seen it and done the calculations, I haven't. Half of that or quarter of that, it doesn't matter, if you compare that to the fee. I can stand here and say that that was benefit and that was one example, and there were others. And I don't want to go through that because I don't have comfort at this moment in time. One of the challenges that McKinsey was going through was that because, of the significant resources on the ground, and you can say that was your own choice McKinsey, the way in which we came into the commercial negotiation, was from a very conservative perspective, meaning that we wanted to make sure that we got paid because we had already invested in substantial resources on the ground. The consequence is that the way in which those benefits are measured, as compared to how I would like to see them measured, it is harder to explain to the South African public that one-to-one relationship. So, I would have had, and that is one of my reflections, a much more detailed gate process, where we would have been paid on the flow, from idea to proven, to plan, to income statement. And that was not in place at the time.

Mr Swart: I'd like, in my remaining time, a quick comment on the locomotive action and where you were involved in the process as McKinsey with Transnet, up to a certain point, the calculation was R25 million for a diesel locomotive and R34 million for an electric locomotive. And then you got to that figure of R38.6 billion over a seven year period, and now it is R54 billion over a three year period at the 17 March 2014. We have almost a R15 billion difference from what was quoted there. You spoke about hedging and how there could have been a bit of a difference there, you spoke to Mr Gordhan about that. But when you engaged with Mr Anoj Singh who said that Eskom had done funding costs and, looking at exchange rates, had come to the conclusion that it was better to secure the deal that they ...d. We also know, from the OUTA documents, that Tequesta entered the Chinese deal for the fifth and ...ddenly the locomotive is R50 million per locomotive, of which R10 million ... We also see a contract. ...ave you had sight of this document from amaBhungane and OUTA, the contract with the locomotives, ...equesta and China South Rail? Have you had sight of that and does that explain at least a R5.3 billion ...crease in the contract fee that you initially thought was viable and that was for 300-odd locomotives.

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Dr Fine: I have read those articles, and I had not seen those numbers before I read the articles and that could explain the difference. I think that that is exactly what the Committee needs to do, is to take those facts and you need to understand. I can tell you how locomotive costs were determined and that is in the business case. 1. It was based on the price that Transnet had paid for a locomotive in the 18 months prior to when we were doing the project. So, it wasn't just a number. It was based on actual procurement that had been done. It was adjusted for what inflation would be and we also had David Potter's expertise. The question you need to ask Transnet is how do you get from 25 and 34 to 50 and how does this data change. I think they need to come and explain to you the differences.

Mr Swart: We will and that will be the second part of this inquiry but what is astounding to me is this contract, and of course those implicated can come and explain the contract, but it basically sets out a clause that allows for that R5.6 billion for the pure introduction of the parties of Transnet and South China Rail by Tequesta, which is Salim Essa's company. And it says on this contract: "It is noted and agreed between the parties that the services are provided as a pre-contract service and will conclude on the signing of the contract." That clause is worth R5.4 billion. No services thereafter. Introduce two parties and get R5.4 billion. And I can promise you that that is something we will be engaging when we look at the Transnet issue.

Chairperson: I want to make sure that Members do have all the annexures. You talked about Annexure F. Is that about termination of interactions between Trillian and McKinsey when you were responding to Mr Swart?

Dr Fine: I am referring to the letter in Annexure F: Letter from Trillian concerning involvement of Mohamed Bobat. It's addressed to Vikas Sagar and signed by Bianca Smith.

Mr R Tseli (ANC): From my side, I have a few issues that I want you to clarify. I want to ask about the locomotive contract that my colleagues spoke about earlier, the tender that you won with five other partners. The testimony says all these parties had specific functions to perform with the tender and in the process. Nedbank no longer wanted to participate in the finance transactions and therefore no longer wanted to participate in the advisory part of the process. Ultimately that happens. Could it happen that a company had been awarded a tender, certain functions are now shifted along the way when it was already certain what each of the parties would be doing? From what you were, Nedbank shifting the responsibility.

I want to go back to the turnaround program. I understand you are saying that Eskom now says, because there was no National Treasury approval, you are supposed to pay the money back. Is there a dispute about that money because of the lack of Treasury approval?

There is a letter at the end written on 30 March 2016 that you wrote to Group CFO of Eskom, where you were indicating certain criteria that had to be met and you were not going to work with Trillian until certain criteria had been met – shareholding of holding company, beneficiary shares, ultimate beneficiary shares, related parties and a whole lot of other things and you ultimately pull out of Trillian in terms of partnership. Did you get any response from Eskom on this particular letter?

Dr Fine: If I don't address them correctly, please let me know. The tender that we won, we started with, if I recall McKinsey, Nedbank, Letsema and Automotive Rail Transport. There were four parties. A conflict of interest was identified to us by the client with Letsema and General Electric and they said we needed to consider an alternative supplier. We said that we needed to have an approved supplier and they suggested Regiments. You can see in my document that we did due diligence and they accepted Regiments as a replacement for Letsema. Nedbank came to McKinsey and said that they would like to change their participation. That was Nedbank's decision because Nedbank wanted to participate in the downstream funding and they would be conflicted. We engaged with Transnet and it was accepted that Regiments could do the work of Nedbank. In addition, Transnet asked us to use WeberWentzel as legal advisors because they needed legal input on this contract. They had as I recall run a separate tender. We were very happy to use them as they are a widely known, well recognised law firm and there would be legal technicalities involved in this process. And so, on the basis of that, the final consortium was McKinsey, Regiments, WeberWentzel and ART. That was the consortium on the locomotive business case.

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The turnaround strategy, is there a dispute? Well, I think there is a dispute because McKinsey entered into contract with Eskom and it has it in the minutes that they had National Treasury approval but we now know that they did not get National Treasury approval. But, at the time we did not know and we continued the work. We got payment for the work. The work was reviewed by Oliver Wyman and that was the basis for payment. More recently, Eskom has written to McKinsey and said that because they did not get Treasury approval, the contract is invalid and therefore McKinsey has to pay back the money. There is a dispute. So, if you ask me what is a dispute, I'm not a lawyer. We need to get resolution on this quickly because we want to give the money back and we are going to need the right authorities to sit down with McKinsey and Eskom and National Treasury and relevant parties and that is my appeal to Parliament, to sit down and say, "Does the money go there or does it go somewhere else, and if it goes somewhere else, what do we believe as South Africa is the best allocation of those funds? Is it going to the fiscus? Is it back to a project?" That is the debate that we need guidance on.

On the letter of 30 March at the end of the annexure, what was the response from Eskom? I am not aware of the response from Eskom. I don't know. I know absolutely that I was involved in a McKinsey risk meeting on 23 March where we absolutely decided definitively that we would not work with Trillian. At the end, I said, "Therefore we are not proceeding?" and the answer was that we were not proceeding.

Mr Tseli: Just for the record, so, you speak with authority on behalf of McKinsey about this repayment of the money?

Dr Fine: Yes. I speak on behalf of McKinsey on the commitment because I debated that before I came and, in the public statement it sounds like, well, we're not going to keep the money. That is not the spirit in how it was made. I have the absolute commitment of McKinsey and Company partners, globally, to pay the money back to South Africa.

The Chairperson: You requested to say something, Dr Fine?

Dr Fine: I just want to say a few things in a closing statement. I joined McKinsey in 1995. I was a South African. I stood against apartheid and I did not do as much as many of you did but I stood against apartheid and I stood for a democratic South Africa, a non-racial, non-sexist South Africa that would benefit all people. I joined McKinsey because I was really inspired by the capabilities that we could bring to this country and I was also proud at the time that McKinsey did not enter South Africa until after we had had a free democratic election. I was very proud to join McKinsey and I have been proud to be part of building McKinsey in South Africa and we have done some things that I am really excited about and I have talked about a few but Iscor Iron and Steel was an amazing story. I was proud to be part of that, helping companies like SAB Miller expand globally, and how they have shown the world, and the publications describing Africa as an investment destination, showing the world our 2015 Report, showing what is possible in South Africa and having confidence in South Africa. And helping with the turnaround, which I have talked about.

But I want to reiterate a few points. For the record, we were not required or forced to work with Regiments. We did a thorough due diligence process with Trillian with external people. I was part of the investigation. You heard my testimony about how passionate I was to get to the bottom of it and to terminate this relationship because there were concerns. We found the concerns and we terminated the relationship. This was not a sham with Regiments. It was difficult, we applied ourselves, we had arguments, we did work. I was part of that. I have no doubt that that was not a sham. Regiments only got one bite of the apple. There was the Niven Pillay matter in the press. The second time, Bobat was in the press, we terminated this.

I was not involved in any bribery or corruption. I have not seen this. I have not personally seen this. I do not know the Guptas. I do not know the Gupta family. I don't know Salim Essa. I don't know Kuben Moodley. I don't know Mark Pamensky. I don't know Stanley Shane, Mark Chipkin or Clive Angel or any of the people named in the press reports. And I can't answer your questions on them or what they are ated in the press as doing. That is for you. As soon as I had a speculative smell that Essa was volved with Trillian, we terminated. I personally think that I acted with great strength and fortitude. I ok great risk internally myself to raise these concerns and McKinsey listened and we acted. Mr Vikas gar did not disclose the information about Salim Essa, he did not disclose the relationship with Salim ssa as a result, it took too long for McKinsey to act.

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The last few months had been difficult and I have felt ashamed to be associated, and for my firm to be associated, with state capture and I have seen the anger and disappointment in people's eyes, I have seen the anger and disappointment in my clients' eyes. I have experienced rejection from people that I really love and trust, and that has been hard. And I have seen the fear in the eyes of our young consultants. 80% are black, historically disadvantaged South Africans. They are amazing people and want to do amazing things for South Africa and for the world.

I hope that you feel that I have been transparent, that my submission is detailed. I have answered all your questions, which I have tried to do to the best of my ability. The firm that I work for is a force for good in the world. I have seen this firm say no to big contracts because they are the right decisions to be made, and I have seen them make those decisions. But it is also a firm that makes mistakes, and in this case, we made mistakes. For the sake of the young South Africans, if you want to punish people, punish people like myself, punish leaders like myself, but do not punish young South Africans who are so talented and can bring amazing skills to this country and make it a better place.

Lastly, I just want to say again, please accept that we will pay the money back to South Africa. We do not want any tainted money, even if the court finds the contract with Eskom was valid, we will pay back the money. And we really need your help as a Committee to find a mechanism to resolve this issue and to pay the money back to South Africa. And thank you very much for your time.

The Chairperson: Adv Vanara, do you want to say something?

Adv Vanara: No, thank you.

The Chairperson: Thank you, Mr Fine, for coming to the inquiry and having an interaction with the Committee. Your contribution had assisted us to understand what was happening.

COMMISSION OF INQUIRY INTO STATE CAPTURE

Council tender haunts Gauteng mayor's wife

Tabelo Timse & 5 Oct 2012



Johannesburg mayor Parks Tau and his wife

Johannesburg mayor Parks Tau faces tough questions over his wife's R10-million shareholding in an empowerment consortium put together by a politically connected company that won a lucrative contract from the metropolitan council.

Last week the *Mail & Guardian* reported that Pilisiwe Twala-Tau is one of the beneficiaries of Coral Lagoon, the consortium that acquired shares in Capitec Bank in 2006 now worth about R1-billion, with the help of a R285-million loan from the state's Industrial Development Corporation.

It has now emerged that the company that helped to assemble the Coral Lagoon consortium in 2006, Regiments Capital, won a highly lucrative contract to manage the Johannesburg council's R2-billion liability redemption fund, or "sinking fund", in the same year as Tau's wife was made part of the consortium. Her 1% stake equates to shares worth about R10-million now.

At the time, her husband was the head of the mayoral committee in charge of financial strategy and economic development and was therefore politically responsible for the contract awarded to Regiments. Twala-Tau was director of community development for the metro.

According to a notice for the renewal of the tender, published on the Johannesburg city council website last year, the sinking fund is designed to enable the municipality to "redeem liabilities when they fall due".

The city created the fund for the redemption of R2-billion raised from investors through a bond issue in 2004. One source has claimed that Regiments has earned more than R100-million from the contract, but this could not be corroborated. Regiments, without quantifying the amount, said it earned "a management fee of 35 basis points per annum of assets under management. Correspondingly, Regiments ... consistently delivered returns that were above the mandate expectations."

Prohibited

Responding to *M&G* questions about what could be perceived as a conflict of interest, Tau's spokesperson, Fred Mokoko, said that in terms of the Municipal Finance Management Act councillors were prohibited from participating in any tender process.

"In the city of Johannesburg, councillors, including the executive mayor, councillor Parks Tau, do not participate in any committees evaluating or approving tenders," Mokoko said.

"There is no conflict of interest, nor could it arise, because councillors do not and cannot participate in procurement and supply-chain management processes."

Mokoko added that Tau "is prepared for the matter of alleged conflict of interest to be opened up for scrutiny by the public protector".

Mokoko did not answer *M&G* questions relating to when the tender was advertised or what tender processes were followed.

By the time the *M&G* went to print, Twala-Tau, who is chief executive of the Gauteng Enterprise Propeller, a provincial government entity, had not responded to questions.

Regiments denied that any conflict of interest had arisen as a result of it benefiting from the Johannesburg council contract while Tau's wife was cut into Coral Lagoon.

Independent

Without giving details, it said: "The two transactions were initiated and concluded over different time frames by different divisions within Regiments Capital in the normal course of business. They are completely independent of each other."

It also said it had won the council contract fairly. "Regiments Capital has structured numerous value-added funding and risk management solutions for a full spectrum of public sector clients. We have recently been recognised by our peers ... as the best emerging financial services company for 2012. In mid-2005, Regiments Fund Managers was

appointed through an open tender process by the city of Johannesburg to implement and manage its sinking fund."

Although it is not clear what criteria were used to select the members of the Coral Lagoon consortium, most were well-known businesspeople connected to the ruling party.

The mastermind behind Coral Lagoon is controversial ANC fund-raiser Zwelibanzi Miles Nzama, who attracted attention in 2003 when a Johannesburg printing company alleged in court that it had lost a Transnet tender because it had rebuffed his attempts to extort shares for the ANC.

Nzama roped in Regiments chief executive Litha Nyhonyha to help with corporate financing for the Capitec deal. Capitec issued 10million shares to the consortium in February 2007 at R30 a share, which means the total value of the shares was R300-million. The purchase was financed through a R285-million loan from the Industrial Development Corporation and a R15-million loan from Capitec itself.

Coral Lagoon this year sold off sufficient shares to the Public Investment Corporation to pay off all debt incurred by the original purchase. The corporation said it would warehouse the shares for a future black economic empowerment sale. At the current JSE price, the remaining shares are worth about R1-billion.

Other beneficiaries of Coral Lagoon include Batho Batho, a funding trust set up by ANC leaders, and individual beneficiaries, including the life partner of Deputy President Kgalema Motlanthe, Gugu Mtshali, and Lotto boss Bongani Khumalo.

Clarification

Three of our articles dealing with the fund management tender won by a division of Regiments Capital from the City of Johannesburg (Council tender haunts mayor's wife,Jo'burg mayor proclaims innocence over tender, and Regiments deal costs taxpayers many millions) stated that the tender was awarded in 2006 or "in the same year" that the Johannesburg mayor's wife, Pilisiwe Twala-Tau, was included in the Coral Lagoon consortium also involving Regiments.

In fact, as some of our articles reflected, the Johannesburg tender was awarded in 2005, roughly a year before Twala-Tau was included in Coral Lagoon, and commenced in early 2006.

The first two articles also stated that Regiments had "put together" or "helped to assemble" Coral Lagoon, from which readers could have understood that Regiments was responsible for Twala-Tau's inclusion. Regiments has clarified that while it participated as an investor in Coral Lagoon, did its financial structuring and raised capital for it from state institutions, it did not select its members.

** Got a tip-off for us about this story? Email amabhungane@mg.co.za*



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Tabelo Timse &

Guest Author

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Tabelo Timse & 26 Oct 2012



Parks Tau.

This came as Regiments went into damage control mode after the Democratic Alliance went public with an anonymous tip-off, which claimed that Regiments had "siphoned" R1-billion from the city fund.

The *Mail & Guardian* has been aware of the R1-billion claim for some time, but found no evidence to support it. However, the fee of R200-million to manage the fund since 2006, provided by Regiments at a press conference on Thursday, is arguably very high. It also raises new questions about the city selecting the company four months ago as preferred bidder to manage the fund for another five years.

The *M&G* revealed last week how the new tender had allegedly been rigged. Whereas it should have been decided on price (90 points) and empowerment (10 points), all 11 other bidders were eliminated on technicalities or for supposedly lacking a "track record". This left Regiments, whose quote was among the highest, the only bidder standing.

The *M&G* exposed earlier how Tau's wife, Pilisiwe Twala-Tau, had got rich from a Capitec empowerment deal in which Regiments was a key partner. Tau himself was the mayoral committee member responsible for finance and therefore politically responsible for the Regiments contract with the city, before he became mayor. Tau and the city have denied

impropriety, saying he had not participated in the tender adjudication. He has asked the public protector to investigate.

Regiments also denied impropriety, saying the Capitec deal was put together a year after Regiments got the original tender in 2006 and that it had not been responsible for composing the empowerment consortium that included it and Twala-Tau.

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At the press conference Regiments confirmed that since 2006 it had earned R27-million from a basic annual fee of 0.35% of city funds under management, plus 25% of fund performance above benchmark – a whopping extra R175-million, for a total of just over R200-million.

The company maintained, however, that this represented value for money. It had "consistently delivered returns that were above the mandate expectations – to the benefit of the city and its people as a whole".

Regiments denied being close to the ANC, saying: "Regiments Capital has no direct links with the ANC or the ANC treasury" and claims of links could not be justified "just because [our] chairman, Litha Nyhonyha, co-founded Thebe Investments in which the Batho Batho Trust [founded by ANC leaders] was a significant shareholder".

Clarification

Three of our articles dealing with the fund management tender won by a division of Regiments Capital from the City of Johannesburg (Council tender haunts mayor's wife,Jo'burg mayor proclaims innocence over tender, and Regiments deal costs taxpayers many millions) stated that the tender was awarded in 2006 or "in the same year" that the Johannesburg

mayor's wife, Pilisiwe Twala-Tau, was included in the Coral Lagoon consortium also involving Regiments.

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The *M&G* Centre for Investigative Journalism (amaBhungane) produced this story. All views are ours. See www.amabhungane.co.za for our stories, activities and funding sources.

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Tabelo Timse &

Guest Author

More on Parks Tau Regiments Stefaans Brmmer

NEWS

File image

R1bn health contract claim seized

By SAPA Jul 25, 2014

Johannesburg - Over R1 billion in contract claims upon the Gauteng health department has been seized, the National Prosecuting Authority said on Friday.

“The freezing order of R1.4bn is the biggest ever obtained by the NPA asset forfeiture unit (AFU),” spokesman Nathi Mncube said in a statement.

The seizures were related to two tenders awarded by the department in 2007.

The first tender was for the setting up of a project management unit (PMU).

“The tender was fraudulently rigged in favour of 3P Consulting (Pty) Ltd (3P) and 3P was a party to the rigging,” Mncube said.

He said 3P's CEO Richard Payne was a friend of Brian Hlongwa, the health MEC at the time.

The PMU procured goods and services for the department without competitive quotes or bidding, and beyond controls covered by the Public Finance Management Act (PFMA).

3P allegedly awarded contracts to friends and family, defrauding the department of R35m in the process, and allegedly provided Hlongwa R3 million in cash, Mncube said.

In January 2008, Payne, Hlongwa, plus 3P employees and department officials went on a holiday in Cuba paid for by 3P.

One of the contracts awarded by the PMU was to Regiments Healthcare (Pty), with the company's CEO being Niven Pillay, Mncube said.

The second tender was for a health information system and electronic health records (HIS-eHR). It was awarded to Baoki Consortium, who were party to the tender being rigged.

The CEO of one of the Baoki companies was Heinz Smidek.

During 2007 to 2008, Payne and Pillay paid a R3.3m deposit for a house for Hlongwa at 163 Eccleston Crescent, Bryanston, with the purchase price being R7.2m.

“The balance was to be made up by the sale of Mr Hlongwa's house at 26A College Drive, Bryanston,” Mncube said.

Smidek allegedly arranged the purchase of the College Drive house for R4.6m by a Cypriot company registered in South Africa, Kemsing Services (Pty) Ltd.

Both houses were refurbished by a company controlled by Payne, with the refurbishment paid for by 3P, Payne and Pillay.

“Kemsing Services let Mr Hlongwa stay in the College Drive house rent-free while the Eccleston Crescent house was refurbished,” Mncube said.

In late 2008, the value of the 3P tender was increased to around R221m, from the original two-year R60m agreement.

In 2009, the department then extended the contract for another three years, with Mncube stating Hlongwa influenced the decision in 3P's favour.

Regarding the HIS-eHR contract, in late 2008 Baoki were awarded the final contract worth R1.2bn for its roll-out over three years.

This was even though the department did not have the money, infrastructure or appropriately trained staff for the HIS-eHR.

Mncube said the contract was approved even though the finance MEC at the time refused to sign it.

The contract also required the department to pay Baoki every month, regardless of delivery, which did not take place, with Boaki receiving a total of around R460m.

Following the appointment of a new health MEC in 2009 after the elections, Hlongwa's replacement terminated both contracts, with 3P and Baoki suing for damages.

Allegations of fraud and corruption were then investigated by the Special Investigating Unit and the Hawks, Mncube said.

Based on the investigation, on Monday the NPA AFU obtained three preservation orders under the Prevention of Organised Crime Act, freezing the contractual rights of 3P and Baoki.

The contractual claims of the two tenders, 3P's being worth around R300m and Boaki's being worth around R1.1bn, were seized.

The property at Eccleston Crescent, now worth R1.5m with the house in the process of being rebuilt, was also frozen and preserved.

Should the NPA be successful with its final forfeiture application, the government would be saved from paying out the money.

Sapa

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Cc: Norbert Dörr[norbert_doerr@mckinsey.com]; Mich ael Kloss[michael_kloss@mckinsey.com]; Vikas Sa gar[vikas_sagar@mckinsey.com]; Sean Geyer[sea n_geyer@mckinsey.com]; Safroadu Yeboah-Amankwah[safroadu_yeboah-amankwah@mckinsey.com]; Marlyn ie Moodley[marlynie_moodley@mckinsey.com]; Patr icia Geyer[patricia_geyer@external.mckinsey.co m]; Benedict Phiri[benedict_phiri@mckinsey.com]; Norbert Dörr[norbert_doerr@mckinsey.com]; Mich ael Kloss[michael_kloss@mckinsey.com]; Vikas Sa gar[vikas_sagar@mckinsey.com]; Sean Geyer[sea n_geyer@mckinsey.com]; Safroadu Yeboah-Amankwah[safroadu_yeboah-amankwah@mckinsey.com]; Marlyn ie Moodley[marlynie_moodley@mckinsey.com]; Patr icia Geyer[patricia_geyer@external.mckinsey.co m]; Benedict Phiri[benedict_phiri@mckinsey.com]
From: David Fine <david_fine@mckinsey.com> on behalf of david fine <david_fine@mckinsey.com>
Sent: Fri 7/25/2014 4:06:57 PM
Subject: Re:

Yes this is an issue. We are dealing this ASAP

Sent from my iPhone

On Jul 25, 2014, at 4:49 PM, "Henrik Arwidi" <henrik_arwidi@mckinsey.com> wrote:

Friends, I have been asking for a integrated perspective, including risks, linked to the our increasing exposure and involvement with Regiment Capital (Transnet, SAA and Eskom). Please see attached link from today. This article obviously makes me feel very uncomfortable and increases the urgency of this matter. Can you please come up with some perspectives ASAP and set up a call to discuss what our exposure is and what plans/thoughts we have in place wrt Regiments!

Cheers, H

http://mg.co.za/article/2014-07-24-the-house-of-graft-and-lies

*Confidential: Regiments

From:
"christina_planert/joh/africa/mckinsey"
To:
patrick maina <patrick_maina@mckinsey.com>, alinafe thupa <alinafe_thupa@mckinsey.com>, jonathan bown <jonathan_bown@mckinsey.com>, Paul Jacobson <paul_jacobson@mckinsey.com>, michael rosskopf <michael_rosskopf@mckinsey.com>, iain morgan <iain_morgan@mckinsey.com>, jonathan haenen <jonathan_haenen@mckinsey.com>, laura millroy <laura_millroy@mckinsey.com>, lekgotla kereng <lekgotla_kereng@mckinsey.com>, vladimir kozlov <vladimir_kozlov@mckinsey.com>, ashvin sologar <ashvin_sologar@mckinsey.com>, pravesan_govinder@mckinsey.com, vanolstmarc@gmail.com, umar bagus <umar_bagus@mckinsey.com>, bhavna lalla-sewgoolam <bhavna_lalla-sewgoolam@mckinsey.com>, miehleketo baloyi <miehleketo_baloyi@mckinsey.com>, jan weydringer <jan_weydringer@mckinsey.com>
Cc:
vikas sagar <vikas_sagar@mckinsey.com>, norbert dörr <norbert_doerr@mckinsey.com>, David Fine <david_fine@mckinsey.com>, nomfanelo magwentshu <nomfanelo_magwentshu@mckinsey.com>
Date:
Mon, 28 Jul 2014 02:53:04 -0400

Dear all,

I hope you are all well. You might have seen the recent news articles on Regiments Healthcare / Niven Pillay. I wanted to assure you that we as TRX and SAA CSTs and McKinsey overall are taking these allegations seriously [redacted] We will keep you updated.

In the meantime, I will request you to

1) not to comment and discuss the matter with clients but refer any client inquiries to any of the Partners

2) be aware that we are looking into the matter and are in discussions with the client as well as with Regiments and we will keep everyone updated

Thanks for your support with this important matter,

Christina

Christina Planert | Principal

McKinsey & Company | Sandown Mews, East, 88 Stella Street | 2196 Sandown | Republic of South Africa

Direct +27 11 506-8138 | Fax +27 11 506-9138 | Mobile +27 82 329-8138 | Internal 327-8138

christina_planert@mckinsey.com

Assistant **Faye Gounder** | Direct +27 11 506-8319 | Fax +27 11 506-9319 | Mobile +27 83 321 8213 | Internal 327-8319

FOF-08-549

faye_gounder@mckinsey.com

Re: Fw: Press Articles

From:
Christina Planert <"cn=christina planert/ou=joh/ou=africa/o=mckinsey">
To:
norbert_doerr@mckinsey.com
Cc:
Avril Lubbe <"cn=avril lubbe/ou=joh/ou=africa/o=mckinsey@mckinsey">, David Fine <"cn=david fine/ou=joh/ou=africa/o=mckinsey@mckinsey">, Nomfanelo Magwentshu <"cn=nomfanelo magwentshu/ou=joh/ou=africa/o=mckinsey@mckinsey">
Date:
Mon, 28 Jul 2014 09:05:26 +0200

Thx, have already emailed the team. Will speak to Phetolo.

Christina Planert | Principal

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faye_gounder@mckinsey.com

Norbert Dörr---2014/07/28 09:04:19 AM---Hi guys, Please see attached an email from Regiments regarding the article in the newspaper. We ar

From: Norbert Dörr/JOH/Africa/MCKINSEY

To: Christina Planert/JOH/Africa/MCKINSEY@MCKINSEY, Nomfanelo Magwentshu/JOH/Africa/MCKINSEY@MCKINSEY, David Fine/JOH/Africa/MCKINSEY@MCKINSEY

Date: 2014/07/28 09:04 AM

Subject: Fw: Press Articles

Sent by: Avril Lubbe

Hi guys,

Please see attached an email from Regiments regarding the article in the newspaper. [redacted] David also alerted MK to the fact that we are taking the matter seriously and we'll reach out to him after we have come to a conclusion on next steps.

Christina, can you please talk to the team and tell them they should not discuss any of these issues with the client and should refer any queries to the leadership.

It might also be a good idea if Christina calls Phetolo and also makes him aware that we are investigating the matter.

Cheers,

Norbert

Norbert Dörr | Director and Social Sector Practice Leader

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avril_lubbe@mckinsey.com

----- Forwarded by Avril Lubbe/JOH/Africa/MCKINSEY on 2014/07/28 08:53 AM -----

From: Eric Wood <EricW@regiments.co.za>

To: "vikas_sagar@mckinsey.com" <vikas_sagar@mckinsey.com>, "norbert_doerr@mckinsey.com" <norbert_doerr@mckinsey.com>

Date: 2014/07/28 07:57 AM

Subject: Press Articles

Hi Vikas and Norbert

As discussed on Friday (and Saturday morning), I wish to contextualise the current press articles related to Regiments Healthcare and Niven Pillay:

- Niven Pillay and Brian Hlongwa are personal friends, and this friendship predates the establishment of Regiments Group (Regiments has been going for 10 years). This friendship was established when Niven was non-executive chairman of City Power and Brian was an MMC for the City of Johannesburg.
- Niven and Brian have together invested in a number of residential property developments (including a Hyde Park residential development, and the Singaraja-Benmore development). As we understand some of these investments made money (Hyde Park), but others lost money (Singaraja).
- Any monies paid by Niven to Brian relate solely to these investments, and are entirely unrelated to Regiments Group (including Regiments Healthcare).
- Regiments Healthcare was established by Regiments Capital to make proprietary investments in, and perform advisory work for the South African healthcare sector (public and private. At the time mentioned in the articles the CEO of Regiments Healthcare was Dr Shane Dorfman (a medical doctor with an MBA).
- Regiments Healthcare was appointed by 3P consulting to examine the feasibility and economic viability of the Pholateng PPP's in the Gauteng Public Hospitals, a small piece of consulting for which Regiments Healthcare was paid R3.2m. A portion of the required work was sub-contracted to KPMG by Regiments Healthcare. In consideration of this consulting work, Regiments submitted a detailed assessment of the Pholateng PPP's to 3P consulting, and a copy of this detailed report has been submitted to the SIU (there was significant work done to more than adequately justify the relatively small fee charged by Regiments Healthcare).
- Regiments Healthcare is a respected healthcare advisor and healthcare provider (current CEO is Dr Izak Fourie), and it has a controlling interest in the Risk Monitor Group (SA's leading group of healthcare actuaries), as well as a controlling interest in M-Care (a private group of Sub-acute hospitals).
- The Regiments Capital group has never been party to any payments to Brian Hlongwa at any time.

I think this adequately captures Regiments involvement in these press articles. Should you require any further information please do not hesitate to contact myself

Thank You

Eric Wood

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GSM/14/04/1052: Request for extension of bid closure

From:
"fabio_pedrazzi/joh/africa/mckinsey"
To:
Luqmaan Noor Moosa Transnet Corporate JHB <luqmaan.noormoosa@transnet.net>
Cc:
anoj.singh@transnet.net, mohammed.mahomedy@transnet.net, garry.pita@transnet.net, david fine <david_fine@mckinsey.com>, norbert dörr <norbert_doerr@mckinsey.com>, vikas sagar <vikas_sagar@mckinsey.com>, prakash parbhoo <prakash_parbhoo@mckinsey.com>
Date:
Mon, 28 Jul 2014 09:49:18 -0400
Attachments:
20140726 Request for extension of bid closure - pending internal risk committee approval re Regiments Capital (FINAL).pdf (259.91 kB)

Dear Luqmaan,

Please find attached a request for extension of bid closure regarding GSM/14/04/1052.

Kindly confirm.

Thanks,

Fabio

(See attached file: 20140726 Request for extension of bid closure - pending internal risk committee approval re Regiments Capital (FINAL).pdf)

Fabio Pedrazzi

McKinsey & Company

88 Stella Street Sandown Mews East Johannesburg South Africa

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fabio_pedrazzi@mckinsey.com

Executive Assistant: Nadine Moodie

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Memorandum to
Luqmaan Noor Moosa, Senior Buyer, Group Procurement, Transnet SOC

cc
Anoj Singh, Group CFO, Transnet SOC
Garry Pita, Group CPO, Transnet SOC
Mohammed Mahomedy, Group Capital Integration & Assurance, Transnet SOC

From
David Fine, Director, McKinsey & Company
Vikas Sagar, Director, McKinsey & Company
Norbert Doerr, Director, McKinsey & Company

July 28, 2014

Request for extension of submission deadlines: GSM/14/04/1052 - Provision of Capital Optimisation and Implementation Support Services

Dear Luqmaan,

We hereby request an extension of the submission due date regarding GSM/14/04/1052, due 29 July 2014.

We intended to respond to GSM/14/04/1052 with Regiments Capital as a proposed implementation partner. However due to two concerning newspaper articles mentioning Regiments which were brought to our attention late last week, we would like time to perform a review and based on that outcome determine the way forward with Regiments.

Therefore any potential agreement between McKinsey and Regiments Capital on GSM/14/04/1052 is subject to formal approval from McKinsey's Global Firm Legal and Risk Functions.

To allow time for our internal risk management processes we kindly ask for a 2-week extension (i.e., bid submission on August 12). Depending on the outcome of our internal processes, we may decide to either seek a different implementation partner, or, proceed with Regiments Capital as was originally intended.

We appreciate your understanding.

Sincerely yours,

Norbert Doerr

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

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Liza L. Muller

From: Luqmaan Noor Moosa Transnet Corporate JHB <Luqmaan.NoorMoosa@transnet.net>
Sent: Monday, 11 August 2014 16:05
To: vikas_sagar@mckinsey.com
Cc: Anoj Singh Corporate JHB; Mohammed Mahomedy Transnet Corporate JHB; Garry Pita Transnet Corporate JHB; david_fine@mckinsey.com; norbert_doerr@mckinsey.com; prakash_parbhoo@mckinsey.com
Subject: RE: GSM/14/04/1052: Request for extension of bid closure

Dear Vikas,

Your request has been granted.

The revised deadline for submission is Tuesday, 26 August 2014 at 12h00.

Kind regards,
Luqmaan Noor Moosa
Senior Buyer
Procurement
Tel: (011) 308 3507
Email: Luqmaan.NoorMoosa@transnet.net<mailto:Luqmaan.NoorMoosa@transnet.net>

[Description: Description: cid:image005.png@01CD95BA.AE4007E0]

From: rabia_ebrahim@mckinsey.com [mailto:rabia_ebrahim@mckinsey.com] On Behalf Of vikas_sagar@mckinsey.com
Sent: 11 August 2014 03:23 PM
To: Luqmaan Noor Moosa Transnet Corporate JHB
Cc: Anoj Singh Corporate JHB; Mohammed Mahomedy Transnet Corporate JHB; Garry Pita Transnet Corporate JHB; david_fine@mckinsey.com; norbert_doerr@mckinsey.com; prakash_parbhoo@mckinsey.com; vikas_sagar@mckinsey.com
Subject: GSM/14/04/1052: Request for extension of bid closure

Dear Luqmaan,

Please find attached a request for extension of bid closure regarding GSM/14/04/1052.

(See attached file: Request for extension of bid closure.pdf)

Kindly confirm.

_____

Vikas Sagar
Director
McKinsey & Company, Johannesburg
Tel: +27 11 506 8149
Cell: +27 82 329 8149
Fax: +27 11 506 9149

+==+

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Memorandum to
Luqmaan Noor Moosa, Senior Buyer, Group Procurement, Transnet SOC

cc
Anoj Singh, Group CFO, Transnet SOC
Garry Pita, Group CPO, Transnet SOC
Mohammed Mahomedy, Group Capital Integration & Assurance, Transnet SOC

From
Vikas Sagar, Director, McKinsey & Company
Norbert Doerr, Director, McKinsey & Company
David Fine, Director, McKinsey & Company

August 11, 2014

Request for extension of submission deadlines: GSM/14/04/1052 - Provision of Capital Optimisation and Implementation Support Services

Dear Luqmaan,

We hereby request a further extension of the submission due date regarding GSM/14/04/1052, originally due 29 July 2014 and extended to 12 August 2014.

We intended to respond to GSM/14/04/1052 with Regiments Capital as a proposed implementation partner. However due to two concerning newspaper articles mentioning Regiments which were brought to our attention, we would like time to perform a review and based on that outcome determine the way forward with Regiments.

Therefore any potential agreement between McKinsey and Regiments Capital on GSM/14/04/1052 is subject to formal approval from McKinsey's Global Firm Legal and Risk Functions.

To allow time for our internal risk management processes we kindly ask for a 2-week extension (i.e., bid submission on August 26). Depending on the outcome of our internal processes, we may decide to either seek a different implementation partner, or, proceed with Regiments Capital as was originally intended.

We appreciate your understanding.

Sincerely yours,



Vikas Sagar

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 LJH Arwidi (Swedish) W Choi (South Korean) IRA Munshi PM Parbhoo SH Wu

Liza L. Muller

From: Garry Pita Transnet Corporate JHB <Garry.Pita@transnet.net>
Sent: Monday, 25 August 2014 16:54
To: vikas_sagar@mckinsey.com; Luqmaan Noor Moosa Transnet Corporate JHB
Cc: Anoj Singh Corporate JHB; Mohammed Mahomedy Transnet Corporate JHB; david_fine@mckinsey.com; norbert_doerr@mckinsey.com; prakash_parbhoo@mckinsey.com; Edward Thomas Transnet Corporate JHB
Subject: RE: GSM/14/04/1052: Request for extension of bid closure

Hi Vikas

Please note that the extension has been granted but that this will be the last extension granted before we move for non-award, unless there are exceptional circumstances.

Can you please provide me with the information requested on the other RFPs as a matter of urgency.

Regards

[cid:image001.gif@01CE563D.4E0C3620]

Garry Pita
Group Chief Supply Chain Officer

Transnet SOC Ltd

[cid:image002.gif@01CE563D.4E0C3620](011)308 1282

[cid:image003.gif@01CE563D.4E0C3620]083 447 1209

[cid:image004.gif@01CE563D.4E0C3620](011)308 2601

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www.transnet.net<http://www.transnet.net/>

From: rabia_ebrahim@mckinsey.com [mailto:rabia_ebrahim@mckinsey.com] On Behalf Of vikas_sagar@mckinsey.com
Sent: 25 August 2014 04:43 PM
To: Luqmaan Noor Moosa Transnet Corporate JHB
Cc: Anoj Singh Corporate JHB; Mohammed Mahomedy Transnet Corporate JHB; Garry Pita Transnet Corporate JHB; david_fine@mckinsey.com; norbert_doerr@mckinsey.com; prakash_parbhoo@mckinsey.com; vikas_sagar@mckinsey.com
Subject: GSM/14/04/1052: Request for extension of bid closure

Dear Luqmaan,

Please find attached a request for extension of bid closure regarding GSM/14/04/1052.

(See attached file: 20140825162217865.pdf)

Warm regards

_____

Vikas Sagar
Director
McKinsey & Company, Johannesburg
Tel: +27 11 506 8149
Cell: +27 82 329 8149
Fax: +27 11 506 9149

+==========+
+=+
This email is confidential and may be privileged. If you have received it in error, please notify us immediately and then delete it. Please do not copy it, disclose its contents or use it for any purpose.
+==========+
+=+

McKinsey&Company

CONFIDENTIAL

Memorandum to
Luqmaan Noor Moosa, Senior Buyer, Group Procurement, Transnet SOC

cc
Anoj Singh, Group CFO, Transnet SOC
Garry Pita, Group CPO, Transnet SOC
Mohammed Mahomedy, Group Capital Integration & Assurance, Transnet SOC

From
Vikas Sagar, Director, McKinsey & Company
Norbert Doerr, Director, McKinsey & Company
David Fine, Director, McKinsey & Company

August 25, 2014

Request for extension of submission deadlines: GSM/14/04/1052 - Provision of Capital Optimisation and Implementation Support Services

Dear Luqmaan,

We hereby request an extension of the submission due date regarding GSM/14/04/1052, originally due 29 July 2014 and extended to 26 August 2014.

We intended to respond to GSM/14/04/1052 with Regiments Capital as a proposed implementation partner. However due to two concerning newspaper articles mentioning Regiments which were brought to our attention, we would like to perform a review and based on that outcome determine the way forward with Regiments.

Therefore any potential agreement between McKinsey and Regiments Capital on GSM/14/04/1052 is subject to formal approval from McKinsey's Global Firm Legal and Risk Functions.

To allow time for our internal risk management processes we kindly ask for a 2-week extension (i.e., bid submission on September 9). Depending on the outcome of our internal processes, we may decide to either seek a different implementation partner, or, proceed with Regiments Capital as was originally intended.

We appreciate your understanding

Sincerely yours,

Norbert Doerr

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 LJH Arwidi (Swedish) W Choi (South Korean) IRA Munshi PM Parbhoo SH Wu

McKinsey&Company

August 7, 2014

BY EMAIL

Attn: Eric Wood
Regiments Capital (Pty) Ltd
91 Central St
Johannesburg 2198, South Africa

Dear Mr. Wood;

In light of recent attention related to Niven Pillay and Regiments Capital and its affiliated and associated entities (collectively, "Regiments") related to Mr. Pillay's relationship with Brian Hlongwa, we provide this letter to reconfirm your statements regarding the matter and to provide additional terms with regard to Regiments' relationships with McKinsey Incorporated and affiliated entities (collectively, "McKinsey").

In an email to Norbert Dorr and Vikas Sagar dated July 28, 2014, you stated the following and hereby reconfirm that to the best of your knowledge:

- Niven Pillay and Brian Hlongwa are personal friends, and this friendship predates the establishment of Regiments Group (Regiments has been going for 10 years). This friendship was established when Mr. Pillay was non-executive chairman of City Power and Mr. Hlongwa was an MMC for the City of Johannesburg.

- Messrs. Pillay and Hlongwa have together invested in a number of residential property developments (including a Hyde Park residential development, and the Singaraja-Benmore development). As we understand some of these investments made money (Hyde Park), but others lost money (Singaraja).

- Any monies paid by Mr. Pillay to Mr. Hlongwa relate solely to these investments and are entirely unrelated to Regiments Group (including Regiments Healthcare).

- Regiments Healthcare was established by Regiments Capital to make proprietary investments in, and perform advisory work for, the South African healthcare sector, both public and private. At the time mentioned in the articles, the CEO of Regiments Healthcare was Dr. Shane Dorfman (a medical doctor with an MBA).

- Regiments Healthcare was appointed by 3P Consulting to examine the feasibility and economic viability of the Pholateng PPP's in the Gauteng Public Hospitals, a small piece of consulting for which Regiments Healthcare was paid R3.2m. A portion of the required work was sub-contracted to KPMG by Regiments Healthcare. In consideration of this consulting work, Regiments submitted a detailed assessment of the Pholateng PPP's to 3P Consulting, and a copy of this detailed report has been submitted to the Special

We hope the above provisions will allow us to continue our relationship with Regiments and provide services to our Clients. If you have further questions, please contact our Associate General Counsel Melissa Milstead at 202-662-3153 or Melissa_Milstead@McKinsey.com.

Regards,

Virginia Molino
General Counsel

Agreed to this ___ day of August, 2014
Regiments Capital (Pty) Ltd
By:

_____
By: Eric Wood
Title: Executive Director

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REGIMENTS CAPITAL

BY EMAIL

Ms V Molino
General Counsel
McKinsey and Company
1200, 19th Street, Northwest
Washington
United States

22 August 2014

Dear Ms Molino

REGIMENTS CAPITAL (PTY) LTD / ASSURANCE LETTER

1. I refer to your letter dated 7 August 2014 and wish to advise that we have now had an opportunity to consider the contents a request made to agree to certain trms. Despite your deadline, thank you for the indulgence of further time extended.

2. We are mindful of the concerns expressed and wish to reassure you of our commitment to maintain and enhance our working relationship

3. The allegations in the media have no doubt created an impression of improper conduct on the part of Niven Pillay ("Niven"), an executive director of Regiments Capital (Pty) Ltd ("Regiments") and the Regiments Group. It has equally cast negative aspersions on Regiments.

4. Our law, like that in the United States has a presumption of innocence until proven guilty. Whilst these press allegations have cast aspersions, please be mindful of the fact that these articles had been prepared on information selectively obtained. Attempts by both Regiments as well as Niven to engage directly with the law enforcement authorities are ongoing to address the allegations.

5. Whilst you may not be aware, Regiments has over the last decade worked tirelessly in order to build its business brand and reputation. The press reports are therefore of huge concern to us as a business and to Niven, one of its founding members.

6. Before dealing with your request that we agree to certain terms, I feel that it is necessary to share with you certain information so that you are also aware of the steps being taken by Regiments and Niven.

7. Having conducted an initial internal investigation, both parties remain of the view that the allegations in the press are baseless and ill-conceived. However, to ensure that these allegations are objectively and independently considered, Regiments is in the process of appointing a legal firm and a forensic investigation firm to independently conduct a review in respect of the allegations and advise the Regiments Board accordingly. Such investigation will take into consideration the press reports as well as the Court papers involving the Special Investigations Unit's investigation. This investigation is to commence shortly and we anticipate that it will take 2 – 3 weeks for completion.

8. We further wish to advise that independent of steps being taken by Regiments, that Niven is also seeking independent counsel in order to take steps to exonerate his name and standing which has been impaired as a consequence of the press reporting.

9. In relation to my email exchange with Norbert Dorr and Vikas Sagar dated 28 July 2014 the contents set out therein are self-explanatory and I reconfirm the contents to the extent that your bullet points (1 to 7 on pages 1 and 2) in your abovementioned letter accurately records this.

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Yours faithfully

Mr Eric Wood
Executive Director

COMMISSION OF INQUIRY INTO STATE CAPTURE

McKinsey&Company

August 28, 2014

WITHOUT PREJUDICE

BY EMAIL

Attn: Eric Wood
Regiments Capital (Pty) Ltd
91 Central St
Johannesburg 2198, South Africa

Dear Mr. Wood;

Thank you for your letter dated August 22, 2014 (the "Letter") responding to our request for certain assurances related to the Consortium Agreement between McKinsey Incorporated ("McKinsey") and Regiments Capital (Pty) Ltd ("Regiments") dated June 23, 2014 (the "Consortium"), related projects, as well as additional activities on behalf of Regiments and McKinsey. We appreciate that you have taken the time to help us understand your internal investigation, anti-corruption framework and position with relation to our request. We have carefully reviewed your Letter and respectfully provide our response.

We certainly understand that the current investigatory actions and media reports related to Mr. Pillay, Regiments Capital and related entities (the "Regiments Entities") are of great concern to you. As you note, Mr. Pillay and the associated Regiments Entities continue to operate under a legal presumption of innocence, which we also respect and recognize.

Our concern, as I am sure you can understand, relates first to our legal obligation to review and react when such public allegations are levied against an entity and/or person with which we have a relationship, and second to mitigate any legal and/or reputational risk to McKinsey. Therefore, while we understand that, in your view, the allegations are unassociated to the Consortium and related project, in order for us to fully meet our aforementioned legal obligations, we request that you kindly confirm the following with regard to the Letter:

Paragraph 7: As discussed in Paragraph 7 of your Letter, you have begun an initial internal investigation, and are appointing a legal firm to independently review the allegations. We request that you inform us of the findings of the internal investigation once completed, as well as any subsequent determinations that may result if and when an additional review commences.

Section 11.1: We appreciate that you have a "framework in place governing the promotion of honest and ethical behavior" and that your framework "specifically addresses issues such as bribery, corruption, conflict of interest and disclosure of interest." We appreciate your offer to review your policies and procedures related to the framework and we welcome a chance to do so. While, as you note, Regiments has not as yet incorporated the U.S. Foreign Corrupt Practices Act (FCPA) or the U.K. Bribery Act into its governance framework, we appreciate that you "will be conducting a review of [the] framework to insure its incorporation." With respect to this, we seek the following:

1) Agreement that by September 15, 2014 Regiments will provide McKinsey with confirmation that its governance framework complies with applicable laws, including the FCPA and the UK Bribery Act, in addition to the Prevention and Combating of Corrupt Activities Act or that Regiments is promptly taking appropriate steps to ensure that its governance framework incorporates and complies with the applicable laws, including the FCPA and the UK Bribery Act. In the latter instance, Regiments agrees to provide McKinsey with a reasonable timeframe by which the governance framework shall incorporate the applicable laws.

2) Confirmation that Regiments, including its officers, employees, affiliates, agents, subcontractor and third parties, agrees and commits to abide by all applicable laws and regulations, including, but not limited to, the Prevention and Combating of Corrupt Activities Act, the U.S. Foreign Corrupt Practices Act, and the U.K. Bribery Act, and represents that it has implemented, or will implement by September 15, 2014, and maintains within its organization appropriate policies and internal controls that prohibit any actions in violation of any such laws by it and its officers, employees, affiliates, agents, subcontractors and third parties. Regiments also agrees to cooperate with any review by McKinsey (whether instigated by McKinsey or as part of a review by an investigatory authority or the Client) of an associated concern and shall promptly provide relevant records and information to support McKinsey's review. Further, Regiments agrees to immediately notify McKinsey of any actual or potential violation of applicable law with relation to the Consortium, projects related to the Consortium or any other McKinsey-Regiments projects.

Section 11.2: We agree to, and accept, Mr. Wood's assumption of the lead role with regard to clause 6.3 of the Consortium Agreement and appreciate your cooperation in this regard. Please also confirm that Mr. Pillay shall not perform services related to any agreement and/or relationship with McKinsey, including, but not limited to, the projects associated with the above mentioned Consortium Agreement, any additional proposals, nor shall he represent or act on behalf of McKinsey or any McKinsey-Regiments Consortium, if and until that time when it is mutually agreed per Section 12 below that Mr. Pillay shall resume a role in the Consortium, related projects and/or other McKinsey-Regiments projects.

Section 11.4: As noted above, we respect and recognize that Mr. Pillay and the Regiments entities are operating under a presumption of innocence and we did not intend to imply otherwise. As discussed, McKinsey looks to continue the business relationship with Regiments but must acknowledge the current review related to alleged activities by Mr. Pillay and Regiments Entities. We are neither close to nor privy to developments by the investigatory authorities, and are at risk to suffer damages related to an investigation or an unfavorable outcome. As such, we do continue to ask that Regiments agree to indemnify and hold McKinsey harmless from and against all loss, liability, damage, cost or expense (including reasonable attorney fees and any related costs of McKinsey's professional time, and losses asserted by Clients or third parties ("Losses")) relating to any improper activities of Regiments, its partners, board members, employees, agents or subcontractors, including but not limited to any alleged criminal conduct of Regiments, Regiments Entities, and/or Mr. Pillay, or activities that adversely affect the good name and reputation of McKinsey.

Section 12: We acknowledge and understand that your Letter should not be construed as an admission of wrongdoing or impropriety on behalf of Mr. Pillay or Regiments. Additionally we appreciate your right to review your position related to Mr. Pillay's involvement once the issue has been resolved, but seek your agreement that any reinstatement of Mr. Pillay to the Consortium, projects related to the Consortium, and/or any other McKinsey-Regiments projects shall be as mutually agreed in writing between McKinsey and Regiments.

We understand that this must be a challenging time for Regiments and Mr. Pillay, and we are not seeking to add to your burden. Rather, as we are sure you can understand, we are obligated on behalf of McKinsey to secure reasonable assurances designed to address the current circumstances, mitigate risk, and ensure a constructive and positive relationship going forward. We are available to discuss the above clarifications with your and/or your counsel at your convenience and again hope that the above provisions will allow us to continue our relationship with Regiments and provide services to our Clients. If you have further questions, please contact our Associate General Counsel Melissa Milstead at 202-662-3153 or Melissa_Milstead@McKinsey.com.

Regards,

Jean Molino
General Counsel

Agreed to this ___ day of _____, 2014
Regiments Capital (Pty) Ltd
By:

_____
By: Eric Wood
Title: Executive Director

REGIMENTS CAPITAL™

12 September 2014

BY EMAIL

Ms V Molino
General Counsel
McKinsey and Company
United States

Per Email

Dear Ms Molino,

REGIMENTS CAPITAL (PTY) LTD / ASSURANCE LETTER

1. We refer to your letter dated 28 August 2014, as well as the correspondence referred to therein which has been comprehensively set out.

2. In relation to your letter and specifically your request for confirmation, Regiments sets out its response below.

3. For easy reference, we refer to the paragraph numbers as referred to in your abovementioned letter:

3.1. Paragraph 7

Regiments will inform you of the findings of the internal investigation once completed as well as any subsequent determinations that may result arising therefrom if and when an additional review commences.

3.2. Section 11.1

3.2.1. As mentioned previously, whilst we remain of the view that our current framework is adequate, we do acknowledge the need to incorporate the US Foreign Corrupt Practices Act ("FCPA") and the UK Bribery Act into our governance framework. In relation to your request, I am sure you will understand that this is not a perfunctory exercise but one that requires careful attention and consideration to ensure adequate integration into our framework and to understand the impact thereof on our business, employees and transaction partners.

3.2.2. We will not be in any position to confirm with you by September 15, 2014 that our governance framework complies with applicable laws, including the FCPA and the UK Bribery Act (in addition to the Prevention and Combating of Corrupt Activities Act).

Physical Address
91 Central Street, Houghton 2198

Postal Address
Postnet Suite 25, Private Bag x11, Birnam Park 2015

Telephone
+27 11 715 0300

Facsimile
+27 11 715 0352

Email
info@regiments.co.za

Regiments Capital (Pty) Ltd

Reg No (2004/023761/07)

Directors : Litha Nyhonyha, Niven Pillay, Eric Wood

www.regiments.co.za

Regiments Capital (Pty) Ltd is an authorised financial services provider: FSP No 16831

3.2.3. We respectfully submit that this request to ensure compliance in approximately 2 (two) weeks, to the extent that it has been advanced and for which you have expectation is unreasonable.

3.2.4. Regiments has embarked upon an exercise to ensure integration of the above legislation into its framework and in this regard will be seeking out best practice in relation to other South African companies and in addition will be guided by consultants. This process has already commenced and we will be in a position in the course of the next month (October) to provide you on a report back on steps towards compliance.

3.2.5. Insofar as your sub-paragraph 2 is concerned, except for Regiments officers and employees, we cannot confirm on behalf of other parties whom we interact with such as "affiliates, agents, sub-contractors and third parties" that they agree and commit to abide by all applicable laws and regulations including but not limited to the Prevention and Combating of Corrupt Activities Act, the FCPA, and the UK Bribery Act. Our relationships with some of these entities referred to above predates our relationship with McKinsey and Company and so do our contractual commitments . We will however endeavour to having this commitment obtained going forward and in relation to the appointment or conclusion of new contractual relationships with the above constituency.

3.2.6. Upon introduction, Regiments agrees to immediately notify McKinsey of any actual or potential violation of applicable law with relation to the Consortium, projects related to the Consortium or any other McKinsey/Regiments projects.

3.3. Section 11.2

We confirm that Mr Pillay shall not perform services related to any agreement and/or relationship with McKinsey, including, but not limited to, the projects associated with the abovementioned Consortium Agreement, any additional proposals nor shall he represent or act on behalf of McKinsey or any McKinsey/Regiments Consortium if and until the time when it is mutually agreed. For the avoidance of any doubt, Mr Pillay shall not be involved in any McKinsey-Regiments relationships until further notice.

3.4. Section 11.4

As set out in our previous communication, we see no basis to extend an indemnity as sought within the context of allegations set out in the media. The expectation of an indemnity under the circumstances is ill-conceived and we see no basis to accede to such request. We note your respect for a legal presumption of innocence and as

such in the absence of any Court making a finding to the contrary do not see a need to address this issue any further.

3.5. Section 12
Regiments hereby agrees that any reinstatement of Mr Pillay to the Consortium, projects related to the Consortium, and/or any other McKinsey/Regiments projects shall be as mutually agreed in writing between McKinsey and Regiments.

4. General

4.1. We have in good faith and having considered your communications attempted to address and allay your concerns. We have done so at a time, notwithstanding our own focus and pressures arising from such press reports. We have also interacted with you in respect of your request without being provided with details as to the legal/reputational risk that you make reference to or the requirement to meet your "legal obligations".

4.2. However, we are rather perturbed by the general tone and content in your correspondence seeking such "confirmations" - especially since the writer's communications already constitute a matter of official record.

4.3. We also have concern with your communication marked "without prejudice" and at the same time seeking our agreement to the further confirmation requested by signing your letter.

4.4. We reaffirm that Regiments remains committed to ensuring full, proper and professional delivery as part of the Consortium as well as to seek and enhance McKinsey/Regiments relationship going forward.

4.5. Whilst you may seek to desire and secure reasonable assurances, we respectfully submit that the request for confirmations are unreasonable and presupposes that Regiments and Mr Pillay have been found guilty in a court of law.

4.6. Finally, our communications in our view, constitute a matter of formal record. A Consortium Agreement already exists and we do not seek to introduce further ambiguity by the conclusion of side agreements. Should you seek to introduce new terms into the relationship, vis a viz the Consortium, we suggest that you propose these changes within the context of the Consortium Agreement.

Yours faithfully

Mr Eric Wood
Executive Director

FOF-08-571

NATIONAL PROSECUTING AUTHORITY
South Africa

Annual Report 2014/2015

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

IN TERMS OF THE NPA ACT 32 of 1998

The Judicial Matters Amendment Act, 2012 which came into effect on 2 October 2012 corrected this oversight, but since then NPA's financial constraints prevented the issue from being addressed.

This has a significant impact as cases cannot be taken to court unless a proper financial profile and asset tracing has been done. At present, in some offices, lawyers now have to perform this function although they are ill-equipped to do so, and it does not make sense to use very expensive legal resources to do so.

More recently, the AFU was granted permission to fill its investigator vacancies, but on condition that only entry level posts are filled. The NPA has embarked on a work study for the entire organisation and AFU has been prioritised after the rationalisation process is complete. It is not clear at this point when the outcome of the work study will be available but until then, the AFU will be unable to fill critical senior investigator positions.

This continues to have a significant impact on its ability to meet the increased need for its services and to improve performance further.

Noteworthy cases – AFU

Corruption-related cases

In the past year, the AFU was especially successful in corruption related cases and obtained freezing orders to the value of R2.24 billion. This almost as much as the total amount it has frozen in the previous four years.

This was especially due to excellent work of the Anti-corruption Task Team (ACTT) which was set up by Cabinet in July 2010. Working together with the Hawks, the Special Investigating Unit (SIU), National Treasury, the Financial Intelligence Centre (FIC) has resulted in investigations being completed significantly faster, thus enabling the AFU to take cases to court more speedily.

NDPP versus Gauteng Health (corrupt contracts involving R1.8 billion)

This is the largest and most complex case done by the AFU and involved several years of preparation. An alleged corrupt relationship between the Member of the Executive Committee (MEC) for Health in Gauteng, Brian Hlongwa, and a businessman Richard Payne, led to the Gauteng Department of Health granting a tender to 3P Consulting (Pty) Ltd to establish a Project Management Unit.

The bid was fraudulently rigged by officials to favour 3P. One of the functions of the Unit was to procure for the Department free from the constraints of the Public Finance Management Act (PFMA). 3P thus entered into contracts with service providers to the value of approximately R300 million for the Department without compliance with the principles for public procurement in the PFMA.

During the course of the contract, Payne paid the deposit of R1.6 million on a new house for Hlongwa at Eccleston Crescent, Bryanston, owned through one of Hlongwa's companies, Golden Pond 363 (Pty) Ltd. Payne also facilitated a payment of a further R1 million from Niven Pillay, the CEO of Regiments Capital (Pty) Ltd and Regiments Health Care (Pty) Ltd, the latter having obtained a contract through 3P to render services to the Department.

The balance of the purchase price for the Eccleston Crescent house was provided through the sale of another property owned by Golden Pond in College Drive, Bryanston. The property was bought by a company under the control of Heinz Smidek, the chief executive officer of AME International GmbH and a director of AME Africa Healthcare (Pty) Ltd. AME Africa Healthcare formed part of the Baoki Consortium, which had fraudulently won a tender to provide a health information system to the Department to the value of R1.1 billion.

Following the elections in April 2009, Hlongwa was not re-appointed as MEC for Health. The new MEC terminated the 3P and Baoki contracts, and they sued the Department.

The AFU brought three sets of interrelated proceedings under chapter 6 of the POCA in July 2014, relying on bid rigging, fraud and corruption:

- The Eccleston house was frozen. Hlongwa is opposing a final forfeiture order, claiming that the payments he received from Payne and Pillay were lawful.
- 3P's contractual rights were frozen. 3P (now in liquidation) and PriceWaterhouseCoopers (PWC) are opposing the matter. PWC claims it was an innocent service provider that believed that 3P could contract as it did for the Department.
- Baoki admitted that Smidek had bought Hlongwa's house, and did not oppose the forfeiture of its rights under its contract with the state. This terminated its litigation against the Department to the value of approximately R 1.4 billion.

NDPP versus Mde (land reform)

The SIU had investigated this land redistribution matter at the request of the Minister of Rural Development, and found that Mde had a dairy farm transferred into his own private company with the assistance of a Land Affairs official.

The farm was intended for a community trust to empower a number of previously disadvantaged persons. The AFU froze and forfeited the farm worth about R8 million.

Jacobs Trust farm (land reform)

The AFU forfeited a farm worth R1.5 million in the Free State that had been corruptly obtained by a SAPS detective.

Other land reform cases

The AFU has been working closely with the SIU and the Hawks at the ACTT, and the Department of Land Reform for some years to recover farms that have been lost through corruption. In 2014/15 it finalised proceedings and forfeited farms worth a total of R52 million:

- Boschhoek farm worth about R19.5 million
- Greenlands farm worth about R14.9 million
- Elizabeth farm worth about R7 million
- Guelderland farm worth about R6 million
- Mbulwane land trust worth about R5 million

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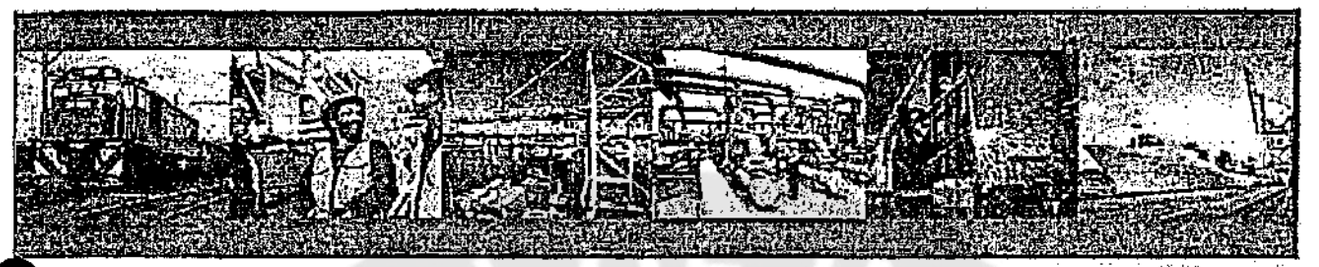
Procurement of 1064 Locomotives for the General Freight Business



Date of Submission to Board	18th April, 2013
Addressed To	Board of Directors
Title of Submission	Procurement of 1064 Locomotives for the General Freight Business
Date of Review	25th April, 2013

Issue: 2019-01-25_15:08:31

0056-0361-0001-0085

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A. PURPOSE

This business case provides the rationale to invest in the profitable General Freight Business (GFB) by procuring 1064 new locomotives (465 diesel, 599 electric). This business case demonstrates a clear need to *accelerate locomotive deployment* to enable delivery against Transnet's Market Demand Strategy (MDS) and achieve South Africa's broader socioeconomic objectives. The new locomotive purchase will:

- Create value for Transnet by enabling TFR to deliver 170 mt by 2018/19 and thereby achieve its MDS target. This will result in a positive NPV (R2.7 billion at the TFR hurdle rate of 18.56 percent and R34.1 billion at the TFR WACC of 12.56 percent), top-line growth, enhanced return on assets (ROA), and an improved environmental footprint.
- Lower the cost of doing business in South Africa by enabling operational efficiencies that will increase customer satisfaction and facilitate a shift from road to rail.
- Create and preserve 28,000[1] direct and indirect South African jobs, and R68 billion in economic impact through local supplier development.

A robust procurement strategy that is aligned with Government socio-economic policies and appropriate governance processes have been designed and instituted to ensure transparency, fairness, and value maximisation for Transnet and South Africa. A funding plan and forex management strategy are detailed in the business case.

The risks that are inherent in a procurement event of this nature have been identified and mitigation strategies are in place. Accordingly, it is recommended that the 1064 Locomotives Business Case be approved at a cost of R38.6 billion excluding borrowing costs.

[1] Proportional to MDS-related job creation of 288,000

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B. EXECUTIVE SUMMARY

Business need

Transnet Freight Rail (TFR) is moving from a strategy of "responding to confirmed demand" to creating "capacity to unlock demand". The MDS is informed by future planned investments that support the move from road to rail by targeting rail-friendly traffic currently on the road as well as other volume growth opportunities. As part of Transnet's MDS, TFR has committed to grow its volumes by 143 million tonnes, from 208 million tonnes to 350 million tonnes; over 60 percent of this growth is expected to be delivered by the General Freight Business (GFB), which will grow from the current 82.6 million tonnes to 170 million tonnes by 2019. TFR plans to invest R194 billion in capital to deliver this growth in total volumes; of this, R143 billion is planned to be invested in GFB, R19 billion in export iron ore and R32 billion in export coal. Of the total capital invested in GFB, 53 percent will be expansionary and 47 percent sustaining capital.

This investment in growing GFB volumes make business sense, as it lowers the cost of doing business and accelerates a modal shift from road to rail. The majority (85 percent) of the growth in GFB demand is generated by: rail-friendly bulk commodities that need to be transported long distances such as manganese, magnetite, and domestic iron ore; bulk commodities with certain demand, like coal needed for Eskom's power stations; and container-based commodities for which existing demand moves on road and will shift to rail. Moreover, South Africa is well-positioned on global cost curves for GFB commodities that are exported, such as manganese, magnetite, and thermal coal, which mitigates the volume downside due to inevitable global commodity volatility.

Current and new fleet requirements

The average age of the TFR GFB fleet is currently 32 years and comprises 1889 locomotives, which are broadly divided into workhorses and shunters, with the workhorses being the prime income generators. There was a major procurement of over 1000 locally manufactured electric locomotives in the 1970s and 1980s, which became the workhorses of the current fleet. No new locomotives were purchased for GFB from 1992 through to 2008 when the GFB fleet was augmented by a series of purchases that included 50 "like new" diesels, 100 diesels, and 43 diesels; currently, 95 new electrics are on order from China. These purchases were not sufficient to meet market demand and achieve a road to rail migration.

The economic design life of a locomotive is 30 years. In the absence of new locomotives, the workhorse fleet was given life-extending upgrades where possible that extended the working life to 45 years. However, this has resulted in increased maintenance costs as well as difficulty in obtaining spares. As the most cost-effective and technology-compatible options for extending the life of a locomotive are exhausted, further extensions are no longer economically cost-effective or technologically practical.

Proposed way forward on locomotive fleet expansion-related economic impact

The recommended way forward is for TFR to proceed with programmatic procurement of new locomotives. TFR has explored two options: continuing with the status quo, which is economically unviable and does not support the volume ramp-up envisaged by the MDS, putting the entire MDS at risk; new locomotive acquisition is the only viable and recommended option:

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- **A status quo scenario.** The current fleet has already begun to run out. Based on TFR's current Locomotive Fleet Plan, the number of locomotives in the GFB fleet will decline from 1889 in 2014 to 1592 by 2019, with further run-out thereafter as the oldest and costliest assets in the fleet are retired. Half the fleet will be retired within 10 years and nearly the entire fleet within 20 years. If this run-out is not addressed, TFR would only have capacity to transport 85 million tonnes in 2019 – 85 million tonnes short of its MDS commitment, representing a cumulative revenue shortfall versus the MDS plan of R73 billion over this period. MDS will not be executed and there will be a negative impact on cash interest cover (CIC) and gearing.
- **A new locomotive procurement scenario.** TFR has to invest in new locomotives to replace its current aged fleet and to support its planned volume ramp-up. To achieve this, TFR needs to procure of 1064 locomotives (465 diesel and 599 electric) over the next 7 years. Procuring 1064 new locomotives between 2013/2014 and 2018/2019 would have a positive NPV of R2.7 billion (discounted using TFR's hurdle rate of 18.56 percent; NPV would be R34.1 billion if discounted using TFR's WACC of 12.56 percent). Accordingly, the only viable solution to deliver on GFB's R53.8 billion revenue MDS target in 2019 is to procure new locomotives.

Benefits of the 1064 locomotive acquisition programme

The 1064 locomotive acquisition will benefit Transnet, South Africa and South African business.

For Transnet, the locomotive acquisition programme will:

- Enhance locomotive operational efficiency thereby increasing asset utilisation.
  - TFR will leverage new technology specification locomotive efficiencies. The new locomotives increase the rate of the fleet's availability and reliability. In addition, further operational efficiencies may be possible by leveraging increased tractive effort to limit the number of locos needed for a given flow or redesign of flows altogether (e.g., some flows have both AC and DC lines, which currently require stops and changeovers between different locomotive types but will not with dual-electric locomotives).
  - The programme offers TFR an opportunity to standardise its locomotive fleet by procuring a limited number of locomotive types. This will result in a host of benefits including simplified maintenance.
- Create business opportunities for Transnet Engineering (TE) to substantially participate in the localisation programme and thereby retain a portion of the locomotives' spend within Transnet.
- Significantly impact TE with respect to maintenance practices and consolidation of maintenance depots where the new locomotives have extended service intervals and on-board diagnostic health monitoring systems where full advantage is to be taken of the currently available technology and international best practice. This is the result of a full deployment plan developed by business unit, year, class of locomotive and depot.
- Enhance Transnet's return on assets and increase financial sustainability. This will be driven by volume growth and declining unit costs of production and will be achieved despite the increase in depreciation.

For South Africa, this large-scale procurement programme will:

- Create R68 billion in localisation benefits for the South African economy. Transnet stipulates local content of 55 percent for diesel and 60 percent for electric locomotives. Given the economies of scale on the purchase of 1064 locomotives with the stipulated localisation

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requirements, desired localisation can be achieved for only a 2 percent average cost of localisation – an additional investment of R400 million. This equates to a highly attractive benefit cost ratio of 170 to 1.

- Catalyse the sustainable development of a South African locomotive production industry based on the procurement of 1064 locomotives over approximately 7 years and an estimated on-going annual need of 80 locomotives driven by TFR's 30-year replacement life policy.
- Develop manufacturing skills, which will ultimately support not only the locomotive industry but also South Africa's manufacturing sector more broadly.
- 28,000 indirect and direct South African jobs, created and preserved.
- Achieve greater road safety and fewer road fatalities by supporting the shift from road to rail
- Energy savings will be achieved, with 8- 10% lower fuel consumption for diesels and 18% energy savings for electrics. For the diesel locomotives alone, this will result in savings of over 31,000 tonnes of CO2 and R5 million per year by 2018/2019.

For South African business, the locomotive acquisition will:

- Increase customer satisfaction and enhance the ease of doing business as higher locomotive reliability results in better adherence to schedules.
- Lower the cost of doing business by catalysing a shift from road to rail, which is a more cost-effective mode of transportation for distances over 300 kilometres. Given the spatial dispersion of South African centres of economic activity and the distances between the centres of production and ports, this will benefit most businesses.
- Lower infrastructure repair costs driven by the road to rail shift as damage to roads from the current trucking of commodities like coal is reduced. In addition, it will contribute towards a reduction in road traffic fatalities.

Programmatic procurement strategy and evaluation criteria

Transnet's procurement strategy for the acquisition of 1064 new locomotives, approved by the Board, includes the following key aspects:

- Alignment with the Government of South Africa's socioeconomic policy framework, including CDSP, NGP, NDP, SSI, and IPAP2.
- Increasing local content through developing skills, creating jobs, and transferring technology. Transnet's programmatic procurement strategy follows threshold requirements for locomotive localisation, in line with those designated by the National Treasury (i.e., 55 percent for diesel, 60 percent for electrical locomotives).
- Approaching the market through an open tender process to attract the broadest possible supplier base and maximise value for South Africa and Transnet. Tenders have been issued for both locomotive types. The RFP closure date is April 28th, 2013.
- A six-step evaluation methodology will be applied based on the evaluation criteria: price 60 percent; supplier development 20 percent; and Broad-Based Black Economic Empowerment (B-BBEE) 20 percent.

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Managing sensitivities and risks

Procuring Transnet's 1064 new locomotives in the most capital-efficient way requires a detailed understanding of inherent volatilities, risks, and mitigation plans. The locomotive requirement and the pace at which Transnet needs to deploy its capital in the base case scenario is shaped by two factors:

- **Volume volatility.** TFR's overall locomotive procurement programme is based on current, validated MDS GFB volumes. However, given the volatility in the global and domestic economy, the realisation of these volumes may be different than planned. If volumes grow faster or, vice versa, slower than the MDS plan, Transnet must adjust its locomotive procurement accordingly. This flexibility needs to be built into its procurement and contracting strategy to enable it to accelerate or throttle back the pace of locomotive purchases without penalties.
- **Operational efficiency potential.** TFR's current Fleet Plan estimates the number of locomotives including the potential efficiencies that can be captured from technology improvements and operational flexibility of new locomotives. Further operational efficiencies may be possible by leveraging increased tractive effort to limit the number of locomotives needed for a given flow or redesign of flows altogether. These operational efficiencies have not been incorporated in the business case- capturing them could reduce the number of locomotives needed and improve the upside of this business case. The aforementioned flexibility Transnet builds into its procurement strategy will also address this sensitivity.

The following are some of the key risks and sensitivities that are important to consider and mitigate:

- **Volumes.** Of all variables, volume risk has the greatest potential to impact NPV. For example, with a slight underperformance (7 percent versus MDS targets), Transnet would experience revenue shortfalls of R16.4 billion and a reduction in NPV of R1.7 billion. However, under the worst case scenario (growth of volumes in line with GDP as opposed to MDS), NPV would be reduced by over R20 billion. This reinforces the aforementioned need for a flexible procurement and contracting strategy, allowing locomotives to be brought online as they are needed.
- **Delivery schedule.** TFR already has a shortfall of DC electrics, with the electric locomotive shortfall projected to grow to approximately 122 electrics and 32 diesels by 2015. Given the previously expected timelines to procure new locomotives locally, TFR may not be able to close this shortfall until the end of the MDS period. Under the base case (procurement in line with schedules stipulated in the RFP), R13.3 billion in MDS revenues would be at risk; this would more than double under a moderately delayed scenario with further downside under the worst-case scenario. As a result, procurement and production timelines are being tightly managed to ensure the swiftest possible locomotive delivery, and immediate mitigation strategies are being explored. These include front-loading orders with international suppliers and exploring leasing options.
- **Tariffs.** The MDS GFB tariffs are expected to increase faster than CPI through 2020 (7 percent versus 6 percent). Given that the pricing on almost all GFB commodities is below the cost of full economic recovery even after taking into account all efficiencies, the pricing corridor in TFR's plan is achievable. However, should global and local economic conditions create challenges and tariffs above CPI cannot be implemented, the implication would be a reduction in the NPV of the business case by upwards of R4 billion.
- **Foreign exchange exposure.** Assuming target levels of localisation, a change in the Rand to US dollar exchange rate of 10 percent would represent a ~R1.2 billion impact on capital expenditure. Given 15 percent devaluation of the rand against the US dollar over the past year

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alone, such volatility is not unrealistic. See the Treasury Section below for the mitigation strategy.

- ***Locomotive purchase price.*** *Closely linked to foreign exchange fluctuations are additional* locomotive price risks that need to be actively managed during contracting and negotiations (e.g., change order risks related to detailed specifications). A purchase price increase of 10 percent would have a -R1.5 billion impact on NPV.

Transnet Treasury requirements relating to the locomotive acquisition

Funding plan. The acquisition of 1064 locomotives will cost R38.6 billion and has been included in the overall MDS funding amount of R86.5 billion over the next 6 years. Consequently, the funding options will include those in the borrowing plan as contained in the approved Transnet Corporate Plan 2013/2014. A mixture of cash generated by operations and external borrowing will be used to fund the acquisition. Two-thirds are assumed to be financed using cash generated by operations, and about R13 billion will need to raised externally. The external funding will be raised utilising both the Global Medium Term Note programme for dollar funding and established domestic sources for Rand funding – e.g., the Domestic Medium Term Note programme. In addition, options like development finance institutions (DFIs) and export credit agencies (ECAs) will be considered to lower the cost of funding.

Foreign exchange exposure management. Transnet's Group policy on Financial Risk Management requires that all contracts must be either Rand-based or effectively hedged to minimise the risk of financial loss due to exchange rate fluctuations. Should a Rand-based contract not be possible, hedge accounting will be applied to manage any foreign exchange volatility. The project will be hedged according to the Group Financial Risk Management Framework.

Robust governance

Given the magnitude of this transaction, Transnet has developed a clear governance framework, including:

- The highest standards of confidentiality, reinforced through a High-Value Tender process with oversight from Transnet Internal Audit.
- A 1064 Locomotive Steering Committee meeting, chaired by the Group Chief Executive Officer, has been instituted. This Steering Committee is constituted as a sub-committee of Group ExCo.
- A PMO has been established at TFR with specific responsibilities for: tracking progress towards milestones; establishing and owning a virtual data room based on best practice; scheduling Steering Committee meetings at the request of the Chair and following up on action items; and ensuring that confidentiality protocols are in place.

Ensuring operational readiness

TFR has operational readiness plans in place to ensure efficient deployment of its new locomotives:

- **Critical path interdependencies – integrating locomotives, demand, wagons, infrastructure and operations.** Wagons are tightly linked to the commodities they transport, while locomotives relate to the mass but not the commodity itself; thus, locomotives are allocated according to the tons transported over the particular operating section.

  The proposed diesel locomotives can operate over most of the network with the notable exception of long tunnels. Current single voltage electric locomotives (AC or DC) are confined

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according to the current electrification network. This imposes operational inefficiencies due to the traction changes. The new electric locomotives will be dual voltage, eliminating the need to change tractive power and enabling trains to bypass yards.

In addition to the flexibility afforded by the locomotive standardisation above, the 1064 locomotive dependencies with megaprojects, such as Manganese and Waterberg, have been considered and addressed. Human Resources planning is equally critical to execute a programme of this magnitude. For example, to support the overall TFR fleet ramp-up, TFR will need to train 3065 train drivers and assistants. To address current driver shortfalls and increasing requirements over time, TFR will need to begin training drivers immediately.

- Maintenance regime. TE will be significantly impacted with respect to maintenance practices and the consolidation of maintenance depots. New locomotives have extended service intervals and on-board diagnostic health monitoring systems, requiring a different maintenance regime than TE currently delivers (e.g., larger "super depots" for large-scale maintenance, with smaller stations for refuelling and other basic services).

Conclusion

Transnet's purchase of 1064 locomotives is a critical procurement event that will facilitate Transnet's delivery against its MDS targets, transform the business, increase operational efficiencies and support local supplier development. Transnet's procurement strategy will be flexible enough to adapt to actual locomotive demand that is realised over time.

Recommendation

Transnet recommends to the Board of Directors for approval:

- The acquisition of 1064 locomotives for the General Freight Business
- Estimated total costs of the acquisition of R38.6 billion as per the Corporate Plan (excluding the potential effects from forex hedging, forex escalation, other price escalations and borrowing costs).

Signed by:

Brian Molefe	Siyabonga Gama	Anoj Singh
Group Chief Executive	TFR Chief Executive	Group Chief Financial Officer

Johannesburg, 25th April, 2013

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C. BUSINESS CASE

1. Context

Transnet's MDS is driven by Transnet's shift in strategic focus from "responding to confirmed demand" to creating "capacity to unlock demand". In addition, it is a response to the National Development Plan and National Growth Plan imperatives seeking to contribute to South African economic growth and create jobs on an unprecedented scale.

Shift in Transnet's strategic focus and resulting infrastructure needs

The TFR MDS was borne of a number of strategic drivers. These include:

- The intent to make a significant contribution to national objectives embedded in the New Growth Path and the National Development Plan – to create capacity, to enable an export-led strategy, to develop infrastructure and to create jobs and develop skills.
- To address the legacy structural imbalances in the freight transport system. Significant tonnages of freight are conveyed by road rather than rail which contribute to high logistics costs (and compromises country competitiveness) and to the cost of externalities. Greater tonnages of traffic being transported by rail would make a significant contribution to reducing the number of heavy trucks on roads; overall transport and logistics costs; cost of externalities i.e., road damage, road accidents, road congestion, noise pollution, carbon emissions, the impact of rising fuel prices.
- To pursue opportunities for growth in transportable GDP by targeting rail-friendly opportunities.

The MDS is informed by future planned investments that generate rail-friendly traffic and target rail-friendly traffic currently on the road. As part of this strategy, TFR has committed to grow its volumes by 142 million tonnes to 350 million tonnes by 2018/19. Over 60 percent of this growth is expected to be delivered by the General Freight Business (GFB), which will grow from the current 82.6 million tonnes to 170 million tonnes by 2019 and is the focus of this business case. To enable this strategy, Transnet plans to invest R308 billion over the next 7 years. The total investment directed to TFR will be R194 billion to deliver on its significant volume growth targets; of this R143 billion is planned to be invested in GFB, R19 billion in export iron ore, and R32 billion in export coal. Of the total capital invested in GFB, 53 percent will be in expansionary projects.

GFB's current situation is an important point of departure to fully understand the business case. While TFR has steadily ramped up investments since 2004/05, these have been largely directed at the export iron ore and export coal businesses. By contrast, little has been spent on expanding GFB capacity and infrastructure since 1992. Even in more recent years, as per the Exhibit below, the focus of GFB capex has been maintenance rather than expansion.

Even in more recent years, as seen in the exhibit below, the focus of GFB capex has been maintenance rather than expansion.

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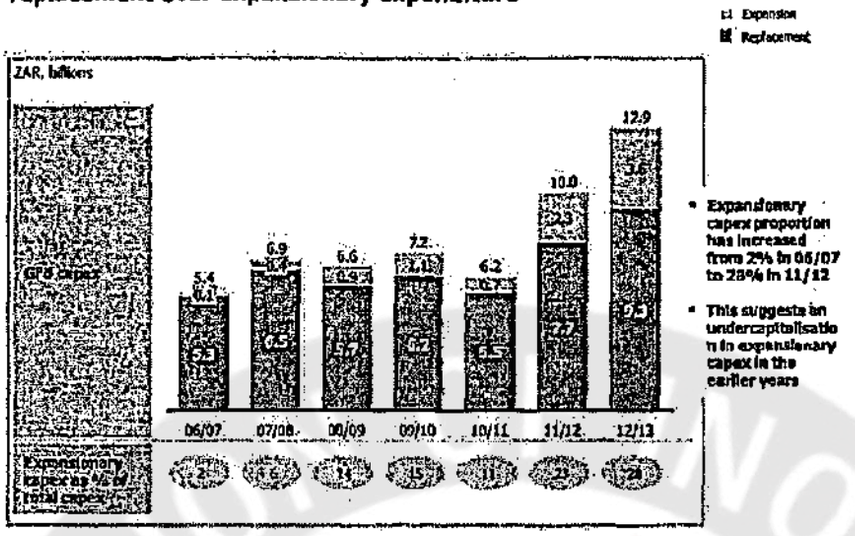
EXHIBIT 1

GFB expansionary has historically been undercapitalised with focus on replacement over expansionary expenditure



This has left GFB highly undercapitalised, with its aging infrastructure unable to meet current market demand let alone generate and service new freight demand in sectors where South Africa has a comparative advantage. This not only limits the growth of Transnet but more importantly hampers the growth of South Africa's economy and leaves the cost of doing business in South Africa uncompetitive, particularly as the road share of total freight transport has increased over time at the expense of rail. It is therefore imperative to rectify this and to enable TFR to service current rail-friendly demand, stimulate further demand, and catalyse a shift from road to rail.

The MDS will address these issues, laying out a plan to improve financial stability, productivity, and operational efficiency and to shift demand from road to rail. Through this strategy, Transnet will: reduce its cost of doing business while becoming more carbon efficient; enable economic growth, job creation, and skills development; and create opportunities for localisation, empowerment, and transformation.

Investing in GFB is a sound business decision. The growth in GFB volumes is driven by commodities and flows that are rail-friendly and attractive for TFR. The majority (85 percent) of the growth in GFB demand is generated by rail-friendly bulk commodities that need to be transported long distances – manganese, magnetite, domestic iron ore, containers; with certain demand – e.g., coal needed for Eskom's power stations; and commodities for which existing demand moves on road and will shift to rail. Moreover, South Africa is well-positioned on global cost curves for GFB commodities such as manganese, magnetite, and thermal coal, which mitigates the volume downside due to inevitable global commodity volatility.

Although global growth has been constrained by the slowdown in global and local economic activity, the strategic intent of the MDS remains, and volumes are projected to grow from 82.6 million tonnes in 2012/13 to 170 million tonnes in 2018/19.

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National Development Plan (NDP) and National Growth Plan (NGP) Imperatives

Transnet is an important enabler of South Africa's NDP and NGP.

Alignment with priority infrastructure initiatives for South Africa

The NDP aims to address poverty and inequality by creating a favourable environment for public and private investment to create jobs and increase disposable incomes. Its imperatives include economic growth, job creation and skills transfer, infrastructure investment in rail, power, and other industry, a reduction of GHG emissions, and positioning South Africa positively. To achieve full employment, the economy will have to create 11 million jobs by 2030, requiring economic growth of 5.4 percent. The South African government has made infrastructure a major priority, recently announcing the establishment of a Presidential Infrastructure Coordinating Commission and planning investments of more than R800 billion over the next 3 years. Transnet's major infrastructure projects are important pillars of Strategic Integrated Projects (SIPS) and playing their role in delivering on economic growth and job creation objectives.

GHG emission commitments

As a state-owned enterprise and one of the top 10 carbon emitters in South Africa, Transnet has placed reducing carbon emissions high on its agenda. South Africa – having set aggressive targets for carbon mitigation (a 34 percent reduction by 2020 committed at COP 15[2] in Copenhagen) and hosting COP 17[3] in Durban in 2011 – will count on state-owned entities to be role models in this regard.

With the National Treasury making significant strides towards implementing a carbon tax, and the Department of Environmental Affairs developing national marginal abatement cost curves (MACCs) and carbon budgets, carbon reduction will become a strategic imperative for major emitters like Transnet.

2. Business need

To deliver on MDS, GFB will need to grow its volumes transported from 82.6 million tonnes to 170 million tonnes between 2012/13 and 2018/19.

2.1 The shift from road to rail

One of the drivers of this shift is TFR's stated objective to capture market share from road. The rationale for this is that:

- Rail is cheaper than road for long-haul transportation of large parcel sizes, thus reducing the cost of doing business and making South African goods more competitive. The exhibit below shows the cost saving of rail over road per given route and commodity.
- Rail produces lower emissions per gross tonne kilometre than road, thus assisting South Africa's GHG emissions reduction effort.

[2] The 15th Conference of the Parties (COP 15) to the United Nations Framework Convention on Climate Change (UNFCCC) – Copenhagen.

[3] The 17th Conference of the Parties (COP 17) to the United Nations Framework Convention on Climate Change (UNFCCC) – Durban, South Africa.

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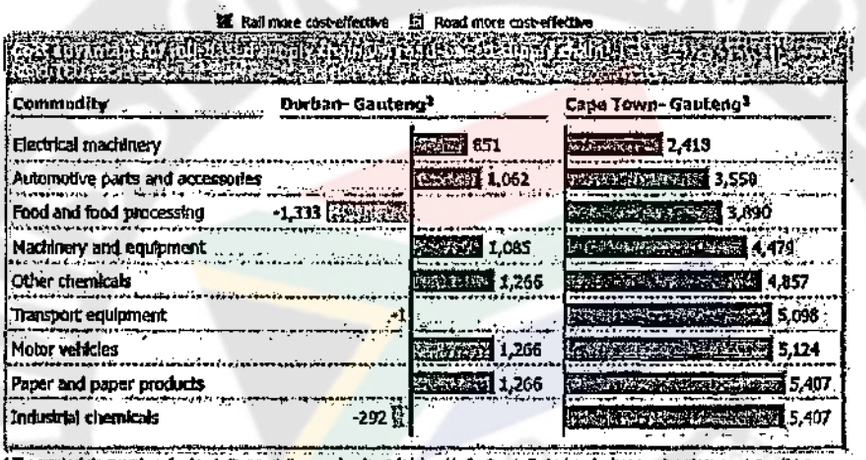
- Haulage by road damages road infrastructure, requiring a significant investment to repair the roads.

Furthermore, for developing economies like South Africa, economic growth results in a relatively higher increase in trade volumes – and therefore freight demand – than GDP growth rates would otherwise imply (i.e., a higher container volume multiplier, which measures the marginal effect of economic growth on freight volumes).

Therefore, given the clear impetus for volume growth and a shift from road to rail, delivering on the MDS depends on TFR's ability to capture volumes. TFR plans to capture rail-friendly volumes from road by developing a comprehensive value proposition based on customer needs. Rail-friendly goods are typically mineral and mining commodities and some manufactured goods, as well as raw material inputs to manufactured goods (such as steel and cement) that are conveyed from siding to siding in large parcel sizes, over relatively long distances.

EXHIBIT 2

Road to rail shift has a cost advantage in most commodities in key corridors at long distances



1 The supply chain comprises direct costs (transportation, warehousing, admin) and indirect costs (lost sales, obsolescence, inventory carrying cost) for exports from Gauteng to relevant port in 2008
2 Land distance of ~700km from Gauteng to Durban
3 Land distance of ~1200km from Gauteng to Cape Town

SOURCE: Stellenbosch University; Transnet quotes, NBC; LOGOS model

2.2 GFB demand increase by commodity

From the TFR Corporate Plan, freight rail volume projections per commodity from 2013-2019 are summarised in the following exhibit. The projections represent a market demand view of volumes in support of South Africa's New Growth Path (moderated in line with port capacity and Eskom electricity supply), and they reflect a significant growth in volume for the overall general freight commodities.

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EXHIBIT 3

MDS volumes by commodity

Business Unit	2013/14 Budget	2014/15	2015/16	2016/17	2017/18	2018/19
Agriculture & Bulk Liquid	12.66	14.39	15.63	18.02	18.66	19.26
Coal	16.86	19.92	24.93	36.34	44.61	48
Manganese	8.7	8.72	11.57	13.05	15.56	17.03
Containers and Automotive	12.63	14.27	18.32	19.94	15.25	16.71
Mineral Mining & Chrome	18.53	20.32	24.45	28.89	30.11	30.57
Steel & Cement	21.84	26.66	32.37	35.23	36.47	38.89
General Freight (mt)	**91.21**	**104.27**	**127.27**	**151.46**	**160.66**	**170.45**
Coal (Export Coal)	77	81	81	84	95	97.5
Export Iron Ore	61.5	62.3	62.3	70.3	78.3	82.5
TFR Total (mt)	**229.71**	**247.57**	**270.57**	**305.76**	**333.96**	**350.45**

To capture these increases in freight demand, GFB has developed a commodity-level commercial strategy. The next two exhibits show the sources of growth from the major commodity flows and the various strategies developed to address them. See Supporting Documentation section E1 for the full 7-year commodity growth. Growth in coal volumes will be driven by Eskom's shift from road to rail on the Eskom-Tutuka and Eskom-Majuba flows and the development of new power stations. Steel and cement will be driven by a competitive pricing strategy aiming to capture domestic coal, and iron ore volume growth from the government infrastructure development plan. The focus on unlocking capacity for junior miners will capture volume growth from manganese export. Mineral volume growth will be secured through penetrative pricing strategies in the growing market.

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EXHIBIT 4

Rationale for 79mt increased commodity demand for GFB from 91mt in 2013/14 to 170mt in 2018/19 (1/2)

Flow	Commercial strategy	Key flows	Growth (Δ mt)	Rationale
Coal	• Capture increasing coal export volumes • Eskom move from road to rail • Secure volumes through take or pay contracts	• Export TCM/ Maputo	8.1	• TCM to expand due to Limpopo projects (Vele and Makhado)
		• Eskom – Tutuka	6.5	• Transition from rail containers to tippler solutions in 2 years
		• Eskom – Majuba	5.2	• Eskom road to rail migration plan
		• Coal - Other	11.3	• Sustained strong demand for SA coal due to China and India emerging as net thermal coal importers
Steel and Cement	• Customer-focused value proposition to secure volumes • Revision of pricing strategy • Exploring markets ex-SA	• Coal (domestic)	3.0	• Driven by growth in other industries (e.g., Steel, timber)
		• Iron ore (domestic Sishen)	2.8	• Domestic and regional consumption of steel fuelling demand for iron-ore & new iron ore export from Thabazimbi to Richards Bay/Maputo
		• : SNC - Other	10.4	• Cement volumes to increase in line with SA's GDP growth (4% on average) • Freight rail is also targeting rail-friendly volumes in this sector
Manganese	• Unlock capacity for junior miners • Capacity review process	• Manganese	8.3	• SA's share of world output set to grow with expansion projects planned by both traditional miners and junior miners

EXHIBIT 5

Rationale for the 79mt increased commodity demand for GFB from 91mt in 2013/14 to 170mt in 2018/19 (2/2)

Flow	Commercial strategy	Key flows	Growth (Δ mt)	Rationale
Mineral refining and chrome	• Pricing aimed at market penetration	• Magnetite (Export Maputo)	2.4	• Demand from China driven by steel production
		• MMC - Other	3.6	• Gold ore and other minerals enjoy healthy demand
Intermodal	• Containerise mineral products • Develop Freight hubs in key areas	• Coal (Eskom – Camden)	2.6	• Demand increase driven by increased electricity usage
		• Containers	1.6	• Rail container volumes to increase in line with Freight rail's objective of increasing market share along key intermodal routes such as the Natcor
Agriculture and bulk liquids	• Transnet Rail and Port capacity support for agri-logistics and rural infrastructure • Demand shift from road to rail	• Grain, maize, wheat and foodstuffs	2.1	• Demand increase driven by increased electricity usage
		• Other	4.5	• Increased over border demand from Botswana and Mozambique • Sappi expansion
Total			79.2	

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2.3 Investment history and locomotive fleet run-out in GFB

Overview

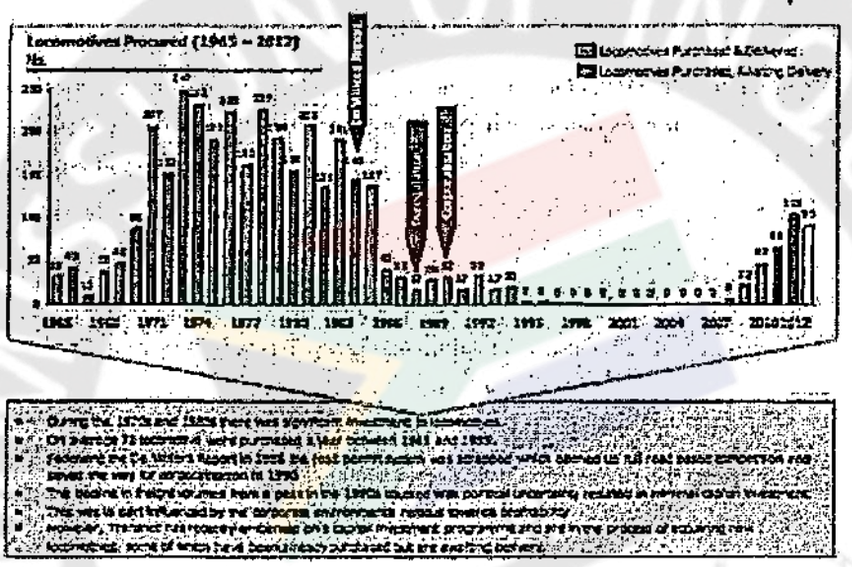
This section demonstrates that the current fleet is incapable of meeting demand. Half the fleet will need to be retired within 10 years and nearly the entire fleet within 20 years.

Investment history

TFR is generally considered to be under capitalised with an aging infrastructure unable to deliver and consequently hampering South Africa's economic growth. TFR has three distinct areas of operations, namely General Freight, Coal Export and Iron Ore Export. The Coal and Iron Ore Export operations are ring-fenced operations with assets dedicated to a single commodity. Since 2004/05, they have been upgraded and expanded to take advantage of the commodity boom. By contrast, little has been spent on General Freight since 1992, as can be seen in the next exhibit.

EXHIBIT 6

The decline in general freight volumes, political uncertainty and corporatisation of rail led to a significant fall in investment



Remedial actions to mitigate locomotive run-out

The expected useful life of a locomotive is 30 years with a full mid-life intervention at approximately 16 to 18 years, which is part of the normal life cycle of the locomotive. The average age of the TFR General Freight Locomotives is 32 years and current programs have extended the life if the workhorse locomotives to a maximum of 45 years. All the locomotives that were suitable for life extending interventions have already been targeted and the remaining locomotives are technologically incompatible.

Locomotive mid-life interventions are part of the normal life-cycle process to achieve the design life of a locomotive. The mechanical components have a life of 30 years but the electrical and electronic

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components and systems have a shorter life based on natural degradation and the rapid evolution of control technology. Electrical spares generally have a ten year guaranteed availability after which they become obsolete and often unavailable. Component replacement within the design life of a locomotive is not life extending but part of the planned total cost of ownership.

However, although Transnet policy assumes a locomotive lifecycle of 30 years, two primary strategies were adopted to mitigate locomotive run-outs and extend the useful locomotive life to 45 years.

The first implementation was to upgrade the workhorse 6E series of locomotives to the 18E series through a partial redesign, a rebuild and upgrade of components, and the replacement of the electro-mechanical control system with an electronic control system. These upgrades improved locomotive output from 170kN to 200kN and extended locomotive life by 15 years. The first of the upgraded locomotives will run out in 2017/18.

The second implementation was an upgrade program to the class 34D and 37D locomotives supplied by General Electric (GE) and General Motors (GM). These upgrade programs comprise a mix of extensive routine maintenance, rewiring and partial body repair. The differentiating upgrade feature is replacing the outdated and obsolete control systems with state of the art electronic control systems which improve control and prevent driver abuse. By analogy, it can be compared to traction control on a modern motor car that prevents wheel spin.

The impact of undercapitalisation on locomotive performance

The extension to 45 years was a consequence of not being able to afford new locomotives at the time and was not a formal restatement of policy. By extending a locomotive's life to 45 years, TFR has suffered higher faults per million kilometres, lower gross tonne kilometres, and substantially higher maintenance costs. This has decreased customer satisfaction, leading to a shift from rail to road, increased the Total Cost of Ownership (TCO) of locomotives and reduced TFR's ROA.

Life extension programmes normally range from 10 to 15 years. Beyond the 15-year period the technology becomes outdated. Although refurbishment options may seem cost-effective on the surface, as the life of a locomotive is extended, failures increase. As locomotives age, maintenance becomes increasingly difficult. Spares become difficult to obtain because of shrinking markets and outdated technologies. There are also fewer skills to maintain dated technologies, as newer entrants are unwilling to skill themselves on previous technologies. These operational inefficiencies and failure rates have compromised TFR's ability to increase its volumes and have contributed to a rail-to-road shift.

Purchasing new locomotives would allow TFR to depreciate its costs over a 30-year useful life. More importantly, due to the increased reliability that new locomotives provide, Transnet would be able to significantly increase the volumes it transports. This would drive substantially higher ROA for the business.

Through past refurbishment strategies, ***TFR has exhausted almost all meaningful rebuild opportunities.*** Thus, even if it were decided to extend the life of current assets once again (and suffer continued operational inefficiencies and lower ROA), TFR would not be able to do so. The next exhibit shows life extension options are limited to 6 percent of the fleet, as the aged locomotives have gone through extensive refurbishment over time to a point where they can no longer be refurbished. Even the

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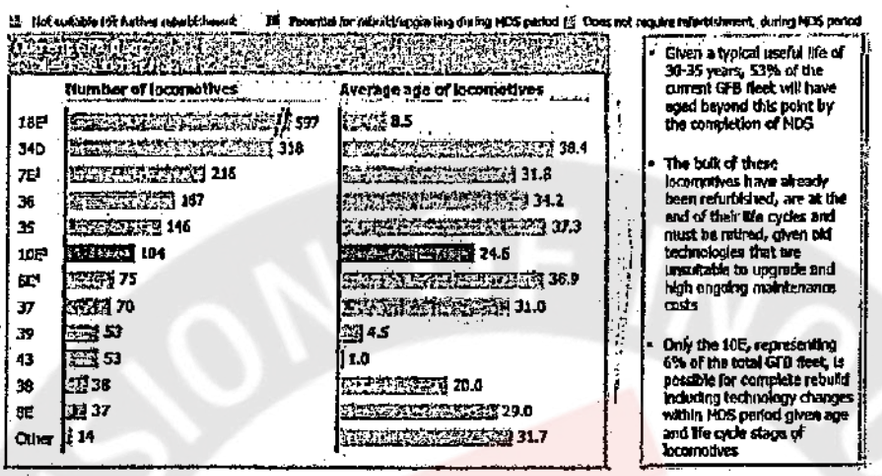
"young" locomotives in the fleet are refurbished versions of older models. For example, although the 18E is listed at an average age of 8.5 years, it is, in reality, an upgraded version of the 6E, a locomotive that was purchased in the 1970s.

EXHIBIT 7

The current GFB fleet is aged – life extending options have been exhausted - only 6% targeted for a complete rebuild



1 18Es show "young age" however are an upgraded version of 6E, which was purchased in the 1970s
2 Includes 7E, 7E1, 7E2, and 7E3
3 10E is included in fleet plan estimate
4 Includes 6E, 6E1

Conclusion: TFR will experience a R73 billion revenue shortfall if the procurement option is not exercised. The next exhibit shows that, unless new locomotives are purchased, the fleet will lose 85million tonnes per annum in capacity by 2018/19.

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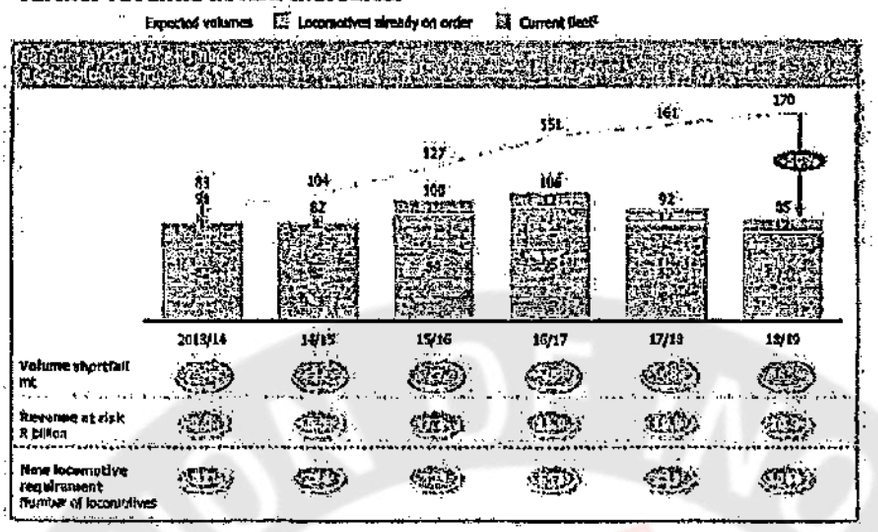
EXHIBIT 8

Given the current trajectory of TFR's fleet runout plan, cumulative revenues of R73bn will be at risk by the end of MDS in 2019, with further revenue at risk thereafter



1 Includes decoding from Export Ore and Export Coal lines to GFB

3. Proposed solution

3.1 Overview

To meet the fleet requirements necessary to support the MDS volumes, TFR needs to procure 1064 new locomotives. However, flexibility must be built into procurement to account for two factors – demand fluctuations and operational efficiencies captured – that will ultimately affect the timing of locomotive requirements.

3.2 Locomotives required to service market demand

TFR's Locomotive Fleet Plan was presented to the Transnet Board in April 2011 and was approved. This plan provided details on the fleet's composition; how it would run-out subject to the availability of funding; the locomotive upgrades; and the new locomotives required to achieve volumes of 110 million tonnes per annum. Since then, the plan has been updated to reflect the fleet GFB requires to meet the revised MDS volumes, which ramp up from 82.6 million tonnes in 2012/2013, to 127 million tonnes in 2015/16, to 170 million tonnes in 2018/19.

The plan's key objectives are to:

- Maintain and expand current capacity to meet the increasing demand:
  - New locomotives required to sustain the current fleet.
  - New locomotives required to deliver the increase in volumes.

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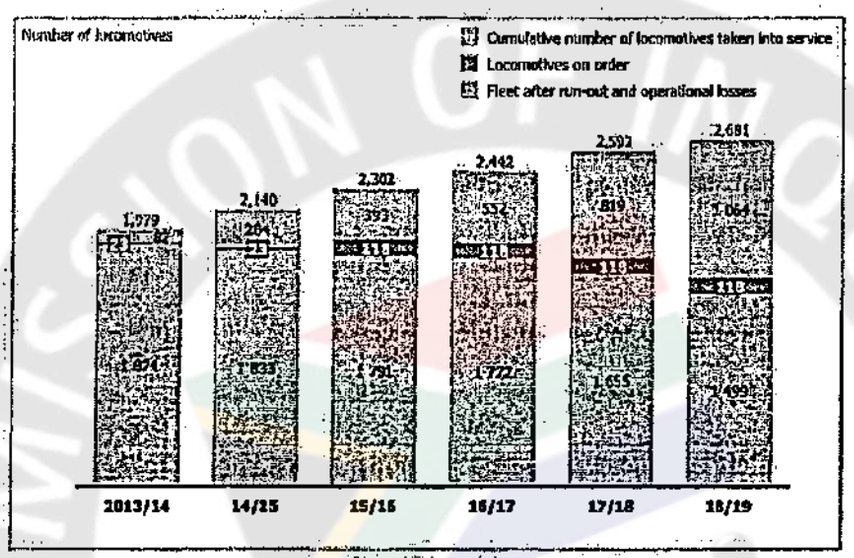
- Standardise the fleet to resolve both operational and maintenance difficulties – such as training drivers, planning route designs, and maintaining locomotives – that arise with a diverse fleet of multiple locomotive types.
- Capture improved operational efficiencies provided by new generation locomotives.

The following exhibit summarises the current and proposed locomotive fleet for general freight up to 2018/19.

The Fleet Plan is Transnet's current estimate of the number of locomotives it will require to meet its MDS commitments.

EXHIBIT 9

Locomotives required according to fleet plan



New locomotive procurement is a catalyst to unlock this demand through standardisation which increases flexibility to deliver increased operational efficiencies. This will increase customer satisfaction and enable the shift from road to rail. For example, the exhibit below shows how locomotive efficiency and wagon turnaround times would improve with a renewed fleet. Refer note below.

However, the ultimate number of locomotives needed could change over time depending on the operational efficiencies captured and volumes realised.

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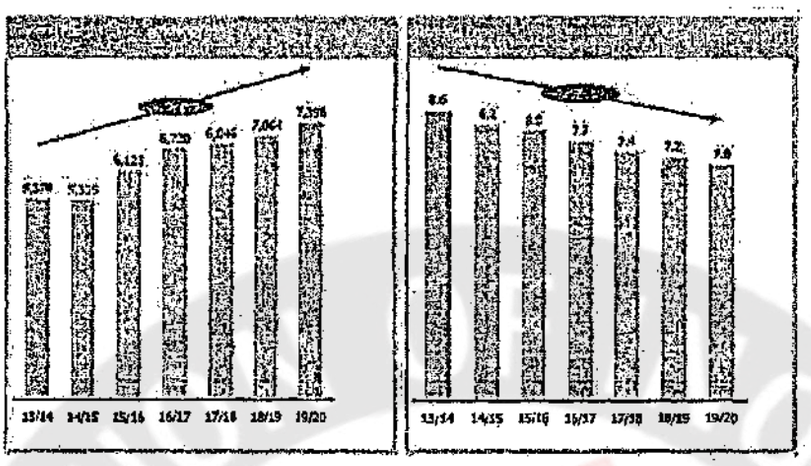
EXHIBIT 10

Improved operational performance and increased customer satisfaction from the upgraded fleet



SOURCE: 2013/2016 Transnet Corporate Plan

The increase in locomotive efficiency is based on three factors; firstly, an inherent improvement in utilisation of the current fleet; secondly, in greater tractive effort per locomotive of the proposed procurements; and thirdly, operational flexibility.

Volumes

Increasing volumes during the MDS period are a primary driver of locomotive requirements. However, Transnet's ability to meet the targets set out in the MDS will depend on external market conditions, including the growth of the South African economy and changes in the demand for commodities shipped. Should conditions change (e.g., modifications to Eskom's new build timelines would have a significant impact on domestic coal requirements, and a slowdown in GDP growth would result in fewer containers shipped), locomotive demand will change. As a result, locomotive procurement timelines must be flexible enough to adapt to potential changes in volumes based on macroeconomic and demand conditions.

Operational efficiencies

The Fleet Plan will be affected by the operational efficiencies captured from new locomotive technology. The plan takes the position that new locomotives' improved performance will enable operational efficiencies to be captured (e.g., increased availability, reliability and operational flexibility and lower maintenance). Rightly – and conservatively – the Fleet Plan does not estimate unproven potential additional operational efficiencies that could be achieved from optimisation of flows based on the new technologies (e.g., running dual-electric locomotives across routes that previously required multiple changeovers from AC to DC technologies).

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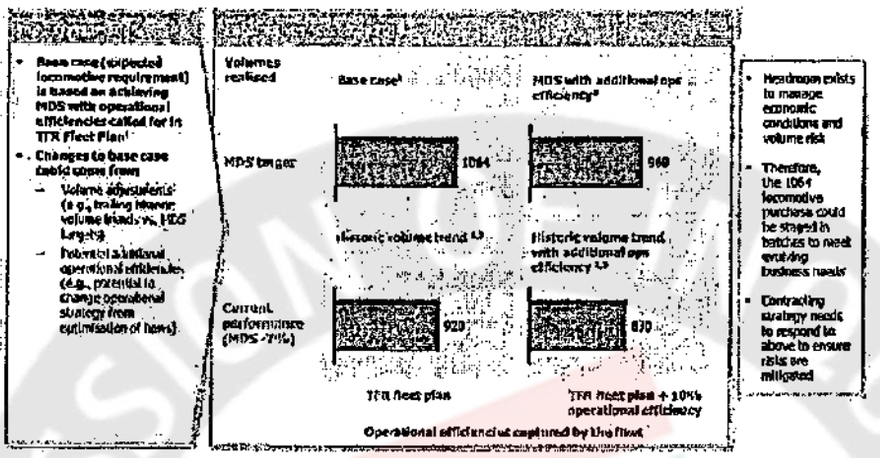
The following exhibit shows how different assumptions of volume and operational efficiency could ultimately lead to different locomotive requirements. Thus, to account for factors that could affect how quickly locomotives are needed, Transnet must pursue a flexible procurement schedule, building in trigger points that will be staged throughout the MDS period.

EXHIBIT 11

The need for 1064 locomotives is determined by the realisation of volumes and operational efficiencies – which informs the procurement strategy



1 TFR incorporates benefits from increased availability and reliability, standardisation of the fleet and lower maintenance costs
2 Assumes potential additional 10% increase in operational efficiency as a result of a flexible new operating strategy
3 Based on 2011-2013 shortfall vs. MDS of 7.37%

3.3 Role of Transnet Engineering (TE)

TE maintains the TFR fleet and in the past it has partnered with OEMs to provide local content. TE will be significantly impacted by the procurement of the 1064 locomotives – shifting from a maintenance-oriented organisation with relatively smaller builds to a manufacturing-oriented organisation. See the impact on maintenance in the section Impact of the new Deployment Plan, below.

The procurement of the 1064 is a TFR strategy to support MDS. The positioning of TE as a manufacturing entity with one or more OEMs will be influenced by the procurement as articulated in the RFP. The extent of TE's involvement with regards to its strategy will be determined by TE during its negotiation the relevant OEMs appointed as an outcome of the bidder evaluation and negotiations.

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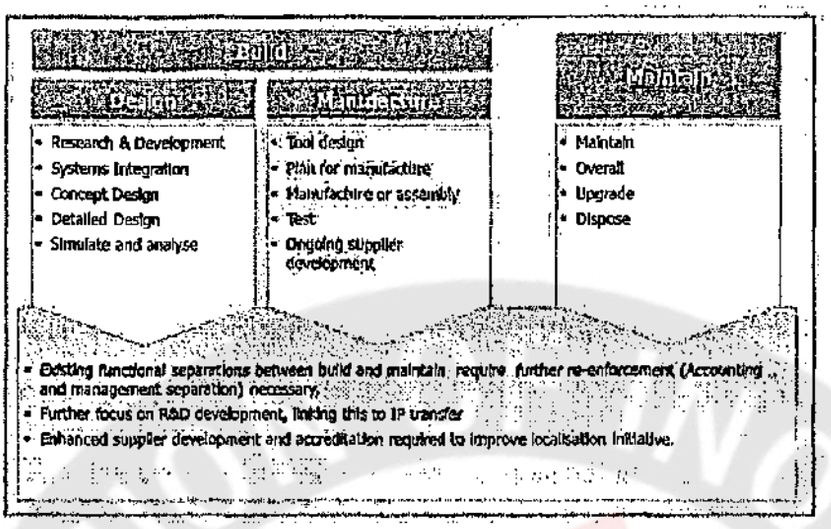
EXHIBIT 12

Greater specialisation and focus by splitting Build and Maintain functions within Transnet Engineering



Impact of the new deployment plan

Locomotive deployment is never static and changes dynamically in accordance with commodity and market requirements. It is also influenced by standardisation of maintenance facilities and crew trained in operating a particular type of locomotive. The proposed new locomotives are however specified to enhance standardisation and be deployed over the entire core network with the exception of diesels going through long tunnels.

The new deployment plan will also significantly alter the way TE operates. It will have an impact on:

- **Locomotive maintenance strategy and practices.** The new locomotives will have added features that will reduce maintenance and increase reliability, requiring a contemporary maintenance regime to exploit these features. For example, the Class 34 diesels generally have a 28-day intervention where the locomotive travels to a depot, with major interventions taking place at specific depots. The new Class 43 diesels, however, have a service interval of 90 days that can possibly be extended to 180 days. Where an intervention may be required between service intervals, this would entail the technician coming to the locomotive rather than the locomotive going to the depot. As TFR improves its efficiencies, it will result in lower downtime and increased availability of locomotives.
- **Maintenance technologies.** New maintenance technologies are anticipated, include:
  - LCMS. A Locomotive Control Monitoring System continuously reports the locomotive status to a central Locomotive Control, helping achieve optimum locomotive utilisation.
  - Acoustic Bearing Monitor. This wayside equipment acoustically monitors the rolling stock bearings as they pass the wayside station, analysing the bearing "noise signature" for signs of failure. The signature provides sufficient warning that the locomotive can be

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diverted to a depot for bearing replacement in a timely fashion. This extracts the maximum possible life out of the bearing as opposed to the conservative time-centred replacement that is the current practice.

- **Skills and staffing.** The skills needed will change from a mechanical maintenance paradigm (electrical and diesel fitter) to one of an electronic diagnostician. Should this change not be contextualised and internalised and old maintenance practices continue, reliability and availability will be compromised and locomotive life will be lessened. Although maintenance staffing requirements will be reduced, potential exists to reallocate these resources to build-based activities.
- **Depot evaluation.** Current, older locomotives must be serviced for several weeks at a time. Even for some of the heaviest maintenance, a new locomotive is expected to be in a workshop for no more than 72 to 96 hours. This will bring about a shift in the way TE conducts maintenance operations. Today, Transnet has over 130 locations throughout the country. In the future, TE will require a smaller number of very large super-depots that can handle a range of activities, including all types of major component exchange for both diesel and electric locomotives. Additional smaller facilities will still be required for servicing, fuelling, preparation, and vehicle recovery in case of breakdown.

See the Supporting Documentation section E5 (Deployment Plan) for more detail on TE's new maintenance philosophy and proposed changes.

3.4 Other benefits to South Africa

Lower costs of transportation

As described in the Business Needs Section, a more efficient and reliable fleet will support the transition from road to rail, which is typically more cost-effective for transporting goods more than 300 kilometres. This shift will lower infrastructure repair costs (given the damage to roads from the current trucking of commodities like coal) and contribute towards a reduction in road traffic fatalities.

Lower costs of emissions per tonne

Modern locomotive technologies will also result in energy savings – (8- 10% lower consumption for diesels and 18% energy savings for electrics). Therefore, this will result in savings of over 31,000[4] tonnes of CO_2 and R5[5] million per year by 2018/19 for diesel locomotives and potential additional savings in electrics. Today's diesel fleet is more than 30 years old and therefore not emission-efficient. The electric locomotives, which haul approximately 86 percent of the total gross tonne kilometres moved per annum, are not considered heavy polluters. However, given the coal pollution from Eskom electricity generation, total emissions attributable to the locomotives are higher. The new electricity-increased energy efficiency would lessen their environmental impact, as well as the demand on the power grid.

Although meeting Transnet's MDS targets would naturally entail increased locomotive use – and thus increased emissions – the new locomotives' greater energy efficiency will help offset this. The new diesels and electrics would, at a minimum, meet United States Environmental Protection Agency Tier 3 and Tier 4 standards when they come into effect. For diesels, the new locomotives are expected to be

[4] Savings over the current locomotive emissions per MGTK

[5] Given the expected tariff structure from 2015

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10 percent more efficient in energy conversion than current diesels. In electrics, the Ore Line 9E and the new 15E series are at least 18 percent more efficient in energy conversion. A similar improvement is expected in the new general freight electric workhorse with AC traction motors that will replace the 18E series with DC traction motors.

4. Detailed analysis of recommended option

4.1 Financial analysis overview

4.1.1 Overview

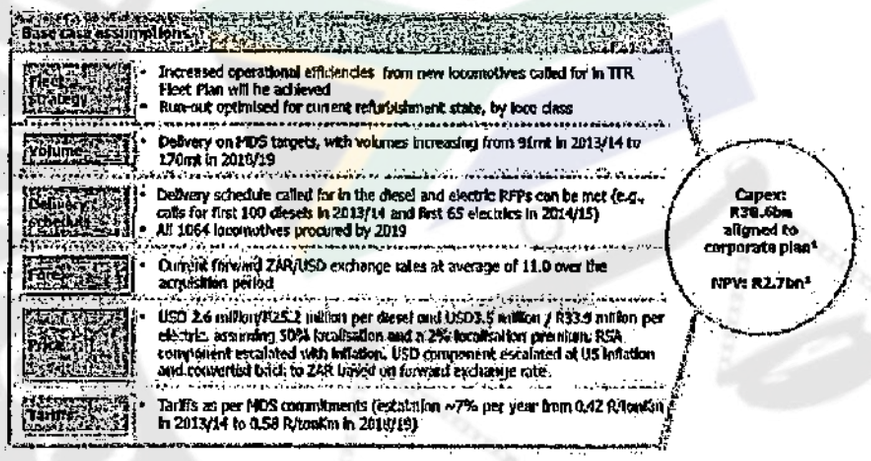
The capital expenditure for the 1064 locomotive procurement transaction is expected to be R38.6 billion, assuming current exchange rate assumptions hold. Using TFR's hurdle rate of 18.56 percent, the NPV of the transaction is R2.7 billion; applying TFR's WACC of 12.56%, would increase the NPV to R34.1 billion. The following sections describe the approach used to calculate the NPV and expected capital expenditure.

4.1.2 Base case NPV

Key assumptions into this base case NPV calculation are in the exhibit below.

EXHIBIT 13

The NPV of the 1064 locomotives transaction is R2.7bn (hurdle rate) or R34.1bn (WACC)



1 Escalated capex for the acquisition of 1064 locomotives in 2013/14 - 2018/19
2 Calculated using hurdle rate of 18.56%; NPV would be R34.1bn if TFR's WACC of 12.56% is used

4.1.3 Fleet plan versus RFP delivery timelines

The number of locomotives required to deliver MDS is based on TFR's Fleet Plan and planned run-out strategy. It is based on the assumption that TFR will capture operational efficiencies from new

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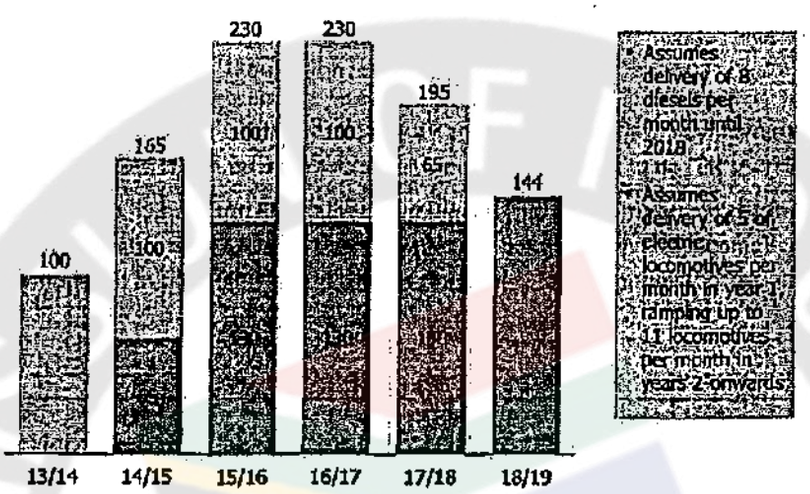
locomotives (e.g., increased availability, reliability and operational flexibility, lower maintenance costs). This fleet requirement is also driven by volumes, which are assumed to be TFR's MDS targets for GFB.

The 465 diesel and 599 electric RFP delivery timelines, which are currently in the market, were used to understand the timing of the locomotives. The exhibit below details the locomotive delivery timelines that were modelled as per the RFPs and used as the base case assumption.

EXHIBIT 14

Annual locomotives to be delivered according to the Diesel and Electric RFPs

Total = 1064 locomotives procured



4.2 Approach to revenue calculations

Revenues were calculated based on the incremental volumes attributed to the 1064 procured locomotives and the average forecasted GFB tariffs from the MDS 2012/13. Volumes to be attributed to the 1064 locomotives were calculated using a bottom-up approach, which used historical GFB productivity (million gross tonne kilometres, MGTK) for each of the locomotive types and the number of locomotives within each type aggregated to a fleet level productivity capacity. The incremental volumes for the 1064 procured locomotives were calculated on the difference between the capacity required to achieve the MDS and the existing fleet capacity, subject to the maximum capacity of the procured locomotives.

Bottom-up volume calculations based on locomotive productivity

The total MGTK was transformed into net tonnes volumes using a historical GTK/NTK ratio and forecasted average distance using the MDS forecasts. Locomotive productivity assumptions for locomotives without an applicable historical productivity were based on similar locomotive types within the fleet. The productivity estimates for the new procured locomotives were based on the historical

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average productivity levels achieved by the TFR fleet. The existing fleet breakdown and productivity for 2013/14 is detailed in the exhibit below.

EXHIBIT 15

Existing fleet GFY 2013/14

Fleet type	Number of locos	GTKm per loco	Cumulative GTKM
6E	75	33	2 507
7E	58	130	7 520
7E1	48	107	5 137
7E2	45	94	4 217
7E3	65	98	6 351
8E	37	1	19
10E	104	133	13 795
14E	8	41	330
18E	597	57	34 026
33D	5	8	38
34D	318	24	7 689
35D	146	7	1 006
36D	167	1	244
37D	70	20	1 372
38D	38	22	827
39D	53	54	2 852
43D	55	80	4 395
Total	1 889	49	92 324

Volume capacity was calculated and split across three different categories:

- TFR fleet requirement capacity (based on TFR fleet requirements, Supporting Documentation Section E4-7-Year Locomotive Requirement).
- Existing TFR fleet capacity (based on the TFR fleet run-out schedule and expected locomotives on order, Supporting Documentation Section E2 -General Fleet Runout).
- 1064 procured locomotives capacity (based on the procurement assumptions above).

The incremental volumes for the 1064 procured locomotives were calculated on the difference between the capacity required to achieve the MDS and the existing fleet capacity, subject to the maximum capacity of the procured locomotives. The existing fleet capacity also accounts for lost capacity due to locomotive write-offs due to incidents, with 7 diesels and 8 electric locomotives assumed to be written off each year. The productivity lost was based on average locomotive productivity for diesel and electric locomotives.

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EXHIBIT 16

Productivity MGTK (2013/14 to 2018/19)						
	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
MDS required capacity	86,401	98,479	120,811	138,409	148,467	158,434
Existing fleet capacity	79,403	79,697	98,478	101,730	90,848	86,130
Written-off (lost) capacity	1,101	2,201	3,302	4,446	5,591	6,736
Required capacity	8,099	20,983	25,634	41,126	63,211	79,040

Translation into volumes required

The aforementioned required capacity amount is converted into required net tonnes based on the average distance travelled for GFB traffic and the historical ratio of GTK to NTK.

The table below represents the incremental volumes attributed to the 1064 locomotives. TFR experience a large volume shortfall in the first 3 years due to DC locomotive shortfalls. Without planned mitigation strategies, this shortfall will persist till 2018/19 given that TFR fleet requirements are assessed as of the beginning of the fiscal year but locomotives would be delivered throughout the year (e.g., in 2018/19, 1064 locomotives are required at the start of the year, but the 1064th locomotive will only be expected later that year). Refer to Section 5 on Risks for a description of TFR's planned mitigation strategy.

These volumes can be combined with the expected tariffs for GFB during the MDS period, as per the exhibit below:

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EXHIBIT 17

Volumes (net tonnes)						
	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
MDS target	91	104	127	151	161	170
Existing fleet	83	82	100	106	92	85
1064 locomotives	1	7	21	41	60	77
Volume shortfall	7	15	6	4	9	8

As per the exhibit below, putting volumes and tariffs together yields a view of revenues – MDS targets, revenues allocated to the existing fleet, revenues derived from the new locomotives, and potential shortfalls.

EXHIBIT 18

GFB tariff average (R/Net tonKm)					
2013/14	2014/15	2015/16	2016/17	2017/18	2018/19
0.42	0.45	0.48	0.50	0.54	0.58

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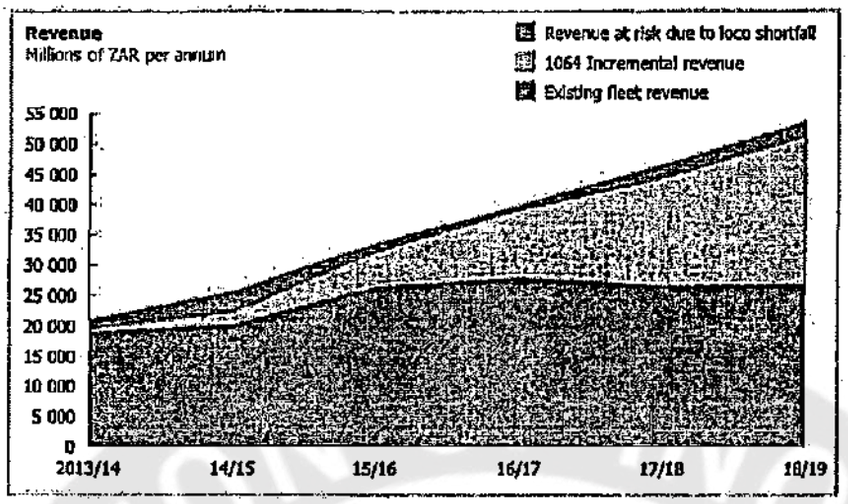
EXHIBIT 19

The 1064 locomotives are instrumental in capturing MDS target revenues, but a revenue shortfall will persist due to procurement timelines lagging target demand



4.3 Approach to cost calculations

Cost schedules were calculated for the entire life cycle of the 1064 fleet split into the categories listed below, including: a) Total cost of ownership (TCO); and b) capital and other costs, including wagon cost, infrastructure cost, overheads, and tax.

4.3.1 Total cost of ownership of new locomotives

The TCO of locomotives was calculated using bottom up analysis and expert input and has the following components:

- Purchase price. As mentioned above, the purchase price is assumed to be R25 million (US $2.6 million) for a diesel locomotive and R34 million (US $3.5 million) for an electric locomotive in 2013/14. The purchase price of both diesel and electric locomotives assumes a conservative 50 percent localisation component with a 2 percent localisation premium applied. The localisation component ramps up over time. The USD price component was forecasted by escalating at USD inflation and converting back to ZAR using forward ZAR/USD hedge rates. The local price component was escalated at South African PPI. Refer to Exhibit 20 for the TCO breakdown and Exhibit 21 for the purchase price cost breakdown. An important consideration in the negotiation of the purchase price is the amortisation of the development costs over the quantity ordered demonstrated in Exhibit 22. The analysis indicates that the procurement order quantity for the 1064 locomotives will significantly reduce the development costs component of the locomotive price and has been factored into determine the price estimates.

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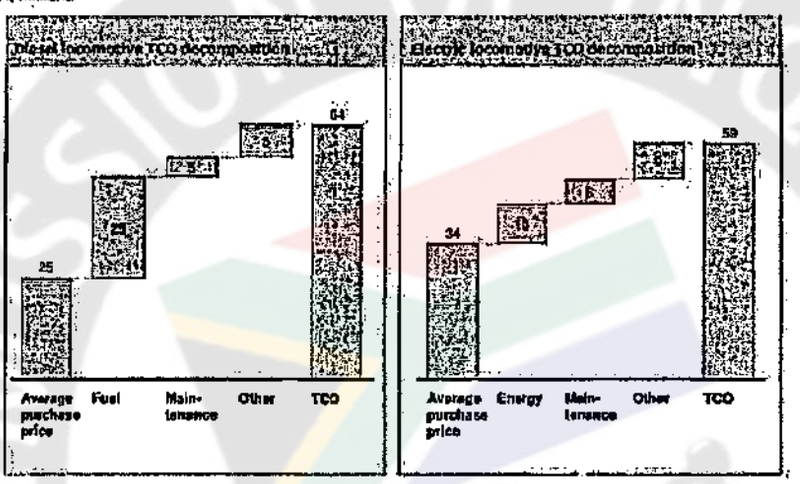
- **Diesel costs.** The diesel costs for the 465 locomotives were based on the GTK of the locomotives and diesel consumption per GTK. Prices were escalated from a 2013/14 price of R11 per litre escalated at R/USD forward rate percentage change and US inflation.
- **Electricity costs.** The electricity costs for the 599 locomotives were based on the GTK of the locomotives and consumption per GTK. Electricity costs were escalated at forecasted Eskom tariff rate increases of 8 percent up to 2017/18 and an average of forecasted CPI and PPI thereafter.
- **Maintenance costs.** Expected maintenance cycles over the lifecycle of locomotives were calculated. The cash flow profiles for diesel and electric locomotives are presented in Exhibit 23.
- **Insurance.** Assumes an expected wreck cost per year escalated at the average of CPI and PPI.

EXHIBIT 20

Electric locomotives have a lower TCO than diesels, but their upfront cost is higher than diesel locos

ZAR, millions



SOURCE: Transnet 1064 Loco Business Case, Expert interviews

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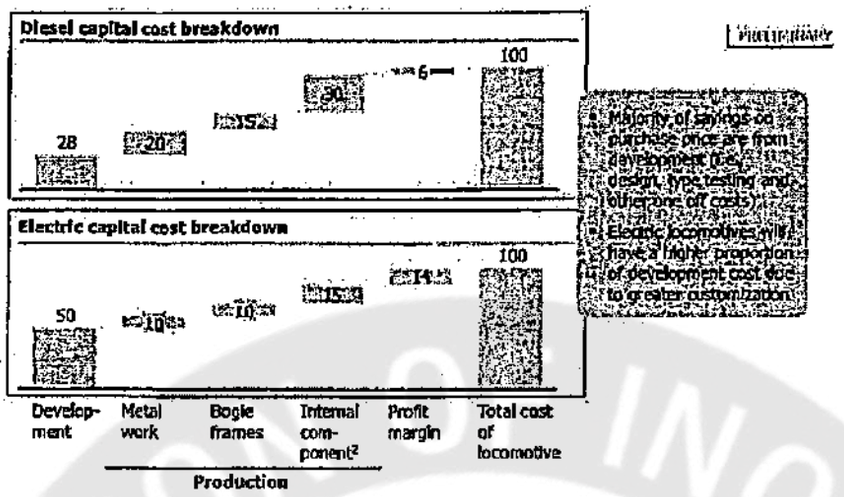
EXHIBIT 21

Development costs are the largest components of total capital cost of both diesel and electric locomotivemotives



1 Based on standard locomotivemotives with an order of 100 locomotives delivered
2 Traction motor, wiring, alternator, control system, etc.

EXHIBIT 22

Electric locomotive price is more sensitive to order size than diesel locomotives

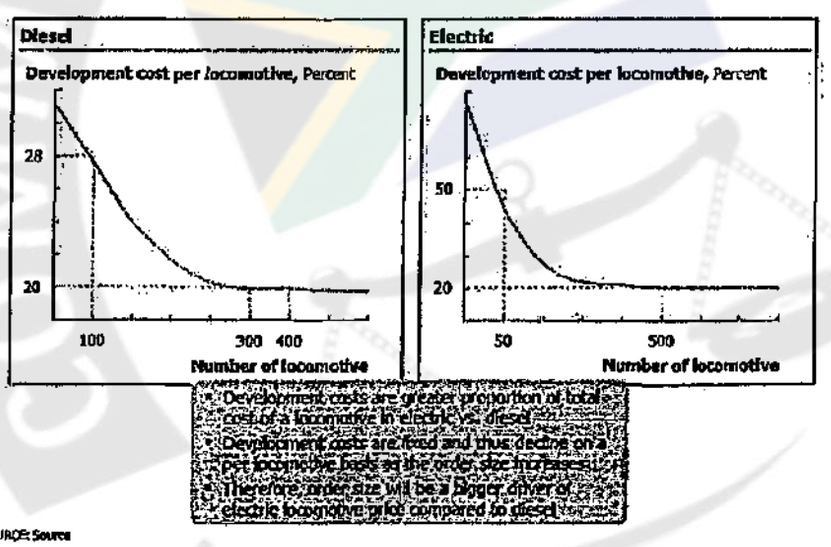


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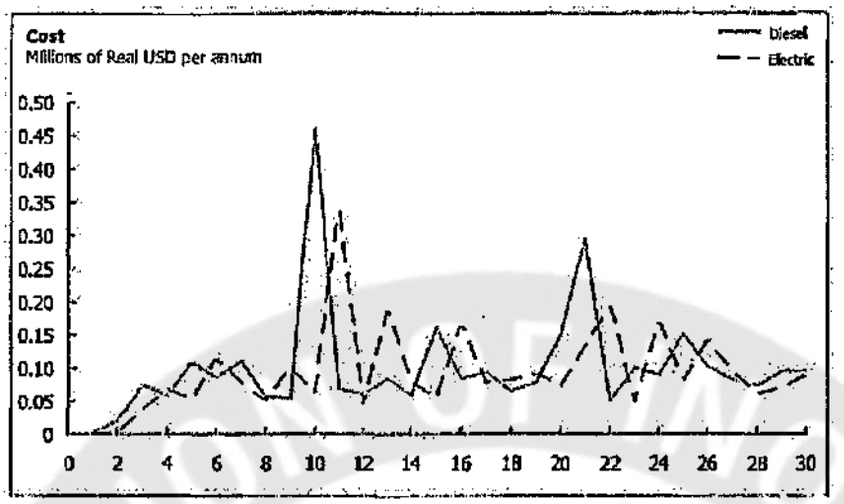
EXHIBIT 23

Maintenance TCO for Diesel and Electric locomotives for a 30 year lifecycle



4.3.2 Capital and other costs

Capital cost outflows for the procured locomotives have been structured with an aggressive payment strategy of 90 percent of the locomotive purchase is paid on delivery of the locomotive and 10 percent on acceptance. Upfront costs of R250 million for diesel locomotives and R300 million for electric locomotives will be paid on signing the supplier contract and will offset against the cost of the first batch purchased. The purchase price of both diesel and electric locomotives assumes a 50 percent localisation component, with a 2 percent localisation premium applied.

In addition to modelling the capital costs for locomotives to be procured for the 1064, associated wagon and infrastructure costs have been allocated as per the 2013 Transnet Corporate Plan – the exhibit below shows the capital costs for diesel and electric locomotives, wagons, and infrastructure.

EXHIBIT 24

Capital expenditure schedule

Rm Cashflow	PV	13/14	14/15	15/16	16/17	17/18	18/19	19/20
Diesels	8 314	2 433	2 552	2 709	2 881	2 064	0	0
Electrics	12 252	300	1 860	4 665	5 042	5 360	6 284	217
Wagon capex	10 017	3 022	3 417	3 462	3 228	2 559	649	0
Wagon copex	1 583	3	23	70	151	242	339	420
Infra capex	9 513	1 026	2 787	3 379	3 023	3 092	4 967	0
Infra copex	8 978	60	384	795	1 249	1 627	1 837	2 253
Total	50 656	6 844	11 023	15 079	15 575	14 944	14 075	2 890

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- **Wagon costs:** Costs were calculated based on the expansionary number of wagons required to achieve 170 million tonnes (16,459 wagons) based on the proposed capex budget in the Supporting Documentation Section E12 (Wagon Requirements). Opex and copex costs are incurred according to incremental volumes moved.
- **Infrastructure costs.** Costs were calculated using the total required expansionary GFB infrastructure to deliver 170 million tonnes based on the latest corporate plan. Infrastructure copex costs are incurred according to incremental volumes moved.
- **Overhead costs.** GFB overhead costs were calculated using actual 2011/12 TFR overhead costs allocated according to the ratio of GFB personnel to total TFR personnel. Procured 1064 overhead costs were allocated from the GFB overhead costs on the ratio of 1064 incremental volumes to GFB volume required.
- **Tax costs.** Tax costs were based on an assumed tax rate of 28 percent and calculated against net cash flows (revenues – costs) and adjusted for capital cost distributions of locomotive, wagons, and infrastructure expansion. The capital costs for locomotives and wagons were depreciated over 5 years since the purchase date and infrastructure has been depreciated over 30 years. Tax credit income has been included as a cash inflow in the following year of accrual.

4.4 Breakeven points for NPV: volumes and tariffs

The business case proves to be neutral at the following volumes and tariffs:

- Volume (everything else fixed). CAGR of 11.7 percent from 2013/14 to 2018/19(160 mt p.a. realised in 2018/19 vs. 170 mt p.a. as per MDS), which is below the MDS target of 13.3 percent.
- Tariffs (everything else fixed). CAGR of 6.1 percent from 2013/14 to 2018/19, which falls directly between CPI (5.6 percent) and the MDS target (6.6 percent).

5. Treasury Considerations

The acquisition of 1064 locomotives will cost R38.6 billion and has been included in the overall MDS funding amount of R86.5 billion over the next 6 years. Consequently, the funding options will include those in the borrowing plan as contained in the approved Transnet Corporate Plan 2013/2014. A mixture of cash generated by operations and external borrowing will be used to fund the acquisition. Two-thirds are assumed to be financed using cash generated by operations, and about R13 billion will need to raised externally. The external funding will be raised utilising both the Global Medium Term Note programme for dollar funding and established domestic sources for Rand funding – e.g., the Domestic Medium Term Note programme. In addition, options like development finance institutions (DFIs) and export credit agencies (ECAs) will be considered to lower the cost of funding.

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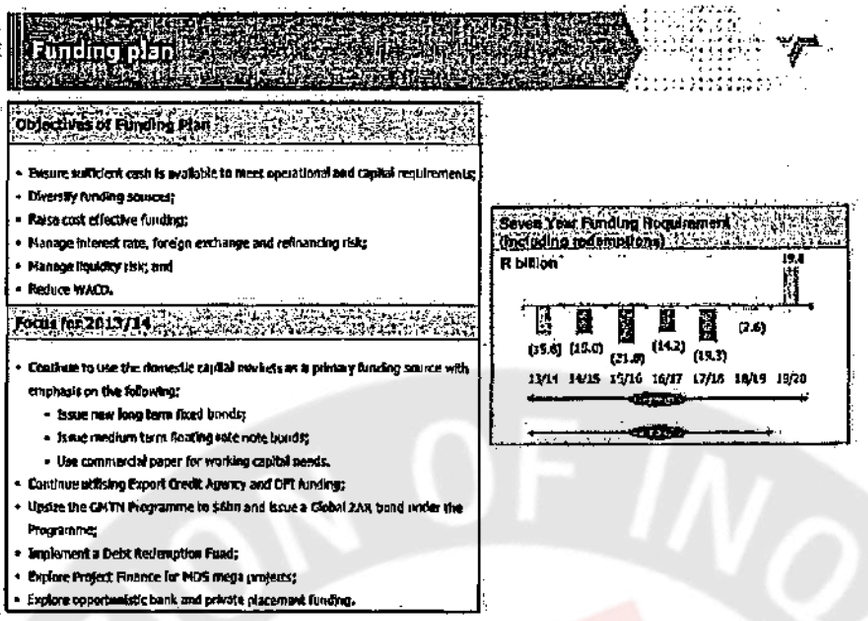
EXHIBIT 25



The planned new fleet is estimated to cost R38.6 billion using escalated calendar year 2013 prices. The acquisition of the 1064 locomotives will be funded using a mixture of cash generated by operations and external borrowings. Assuming that two-thirds will be financed using cash generated by operations, about R13 billion will need to be raised externally.

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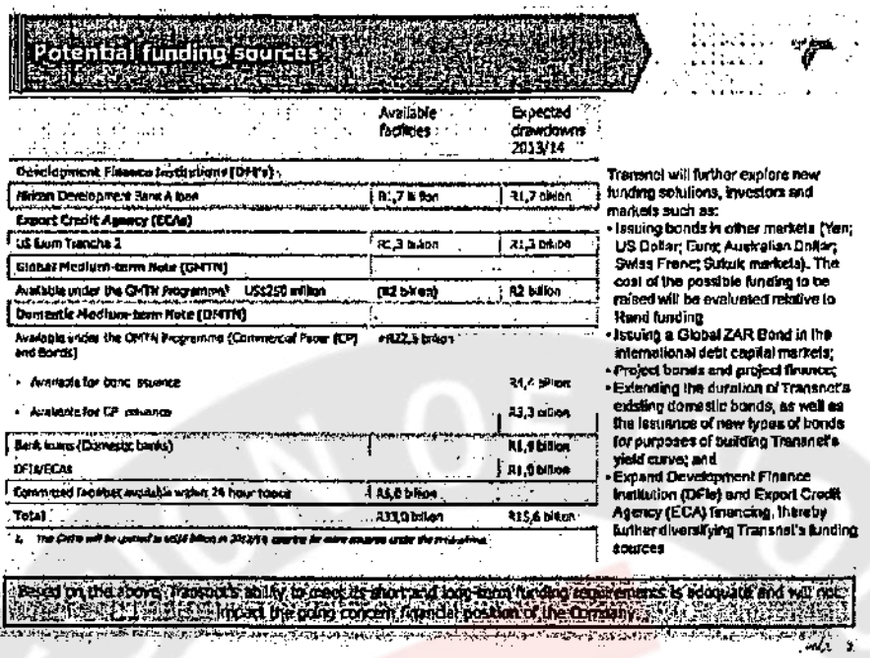
5.1 Funding options

EXHIBIT 26: POTENTIAL FUNDING SOURCES FOR MDS



Potential funding sources

	Available facilities	Expected drawdowns 2013/14
Development Finance Institutions (DFI's)		
Nirkan Development Bank A loan	R1,7 billion	R1,7 billion
Export Credit Agency (ECAs)		
US Exim Tranche 2	R1,3 billion	R1,3 billion
Global Medium-term Note (GMTN)		
Available under the GMTN Programme[1] US$250 million	(R2 billion)	R2 billion
Domestic Medium-term Note (DMTN)		
Available under the DMTN Programme (Commercial Paper (CP) and Bonds)	+R22,5 billion	
• Available for bond issuance		R4,4 billion
• Available for CP issuance		R3,3 billion
Bank loans (Domestic banks)		R1,9 billion
DFIs/ECAs		R1,0 billion
Committed facilities available within 24 hour notice	R5,0 billion	
Total	R33,0 billion	R15,6 billion

1. The GMTN will be opened to US$4 billion in 2013/14 [illegible]

Transnet will further explore new funding solutions, investors and markets such as:
- Issuing bonds in other markets (Yen; US Dollar; Euro; Australian Dollar; Swiss Franc; Sukuk markets). The cost of the possible funding to be raised will be evaluated relative to Rand funding
- Issuing a Global ZAR Bond in the international debt capital markets;
- Project bonds and project finance;
- Extending the duration of Transnet's existing domestic bonds, as well as the issuance of new types of bonds for purposes of building Transnet's yield curve; and
- Expand Development Finance Institution (DFIs) and Export Credit Agency (ECA) financing, thereby further diversifying Transnet's funding sources

Based on the above, Transnet's ability to meet its short and long-term funding requirements is adequate and will not impact the going concern financial position of the Company.

EXHIBIT 27

Amount in R billions

	13/14	14/15	15/16	16/17	17/18	18/19	19/20	Total expenditure
Diesel locomotives - 465	2.43	2.55	2.71	2.88	2.06	-	-	12.63
Electric locomotives - 599	0.30	1.86	4.67	5.04	5.36	6.28	0.22	23.73
Locomotive contingency	0.17	0.27	0.45	0.49	0.46	0.39	0.01	2.24
Total	2.90	4.68	7.83	8.41	7.88	6.67	0.23	38.60

5.1.1 Funding risks

The fleet cost is based on a set of assumptions including the timing of contracting, ZAR/USD exchange rate, and the mix between local and foreign content, interest rate, volume growth, revenue growth, inflation, operational efficiencies, and steel prices. Any negative movement on the base assumptions exposes TFR to a potential risk. In addition to the abovementioned risks and sensitivities (see Section 7), the following risks and implications need to be closely monitored:

- Implications to funding of actual versus planned cash flows.
- The implications of Basel III on swap costs, terms and conditions of derivative transactions, and availability and quantum of credit lines, monitor ETC and impacts on cash interest cover, gearing and S&P liquidity ratio.

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5.2 Forex risk mitigation

Forex risk mitigation will be imperative for a transaction of this size. A change in the Rand to US dollar exchange rate of 10 percent would represent a R1.2 billion impact based on the amount of localization assumed. Given 15 percent devaluation of the rand against the US dollar over the past year alone, such volatility is not unrealistic. Forward exchange rate projections suggest a devaluation of the Rand versus the US dollar over the next few years.

Transnet's hedging approach

Transnet's preferred option is to enter into Rand based supplier agreements with OEMs, with the hedges undertaken by the OEMs themselves. However, even when hedging is conducted by the OEM, Transnet ultimately pays for the cost of hedging, which is factored into the purchase price. The main advantage of a Rand based supplier agreement is the elimination of volatility in the Group's financials and the non-utilisation of bank credit lines for hedging purposes.

Should Transnet not be in a position to enter into a Rand based agreement, all foreign exchange exposures will have to be hedged as per the Board approved Financial Risk Management Framework (FRMF). It is anticipated that Transnet should be in a position to obtain the necessary credit lines to hedge the FX risk exposures. However, this cannot be guaranteed, as a number of banks will have to be approached to diversify their risk exposures and the banks will have to obtain approval from their respective credit committees. However, there is a risk that the magnitude of this transaction will add pressure to the availability of hedging lines for future MDS requirements.

Long dated hedges as anticipated in this transaction are expensive due to banks' capital requirements. The exhibit below shows Transnet Treasury's view of a ZAR/USD forward curve including the cost of hedging, used in the business case.

EXHIBIT 28

Spot	1 Year	2 Year	3 Year	4 Year	5 Year	6 Year	7 Year
$R9.13	$R9.59	$R10.04	$R10.52	$R11.00	$R11.48	$R11.98	$R12.55

Impact of localisation

Localisation of production is a natural hedge. Exposure would increase with lower a lower level of localisation (and, by extension, decrease with a higher level of localisation). The exhibit below shows foreign currency exposure for a 10 percent devaluation scenario to be ~R1.2 billion given 70% localisation of component manufacture. Without any localisation, exposure under this scenario would be ~R4 billion, suggesting a localisation benefit of ~R2.8 billion.

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EXHIBIT 29

	Forward Rate at time of tender for imported components at current market rates	Impact of 15% weakening of Rand against USD	Impact of 10% weakening of Rand against USD
Assuming a 60% localisation	R15.4 bn	R0.8 bn	R1.5 bn
Assuming a 70% localisation	R11.6 bn	R0.6 bn	R1.2 bn
Assuming a 80% localisation	R7.7 bn	R0.4 bn	R0.8 bn

Thus, hedge accounting will be used to minimise exchange rate volatility on the Group income statement, but localisation is a critical lever to reduce the ultimate cost of the hedge.

6. Operational readiness

6.1 HR plan

A procurement event of this magnitude will require a significant increase in in GFB's workforce. GFB's 7-year human resource requirements are part of a TFR-wide workforce plan as train drivers and assistants are often interchangeable across TFR's businesses. All train personnel are sourced from Transnet's School of Rail.

According to TFR's 7-Year Man Plan (see Section E10)2012 figures, TFR has a driver shortfall of 529. It is also estimated that over the life of MDS, TFR will require an additional 3 065 drivers from current levels. However, TFR only has capacity to train on average 500 drivers per year and, at its peak in 2015-2016, TFR will require an additional 791 drivers, resulting in shortages.

TFR has transitioned from a mandatory Refresher Training every 2 years to a Continuous Professional Learning programme, cutting training time from 22 days every 2 years at the School of Rail to 6 days every 2 years on site. This will effectively free up capacity at the School for additional training of new recruits.

The exhibit above shows the drivers required every year over the MDS period, highlighting how many additional drivers need to be trained. It also shows the School's capacity requirements over the period. The new training philosophy will give an additional 6,820 man weeks (80 percent increase) of capacity to the facility, allowing it to meet TFR requirements. However, TFR will need to start training new drivers immediately to close the driver shortfall before the peak demand period in 2015/16.

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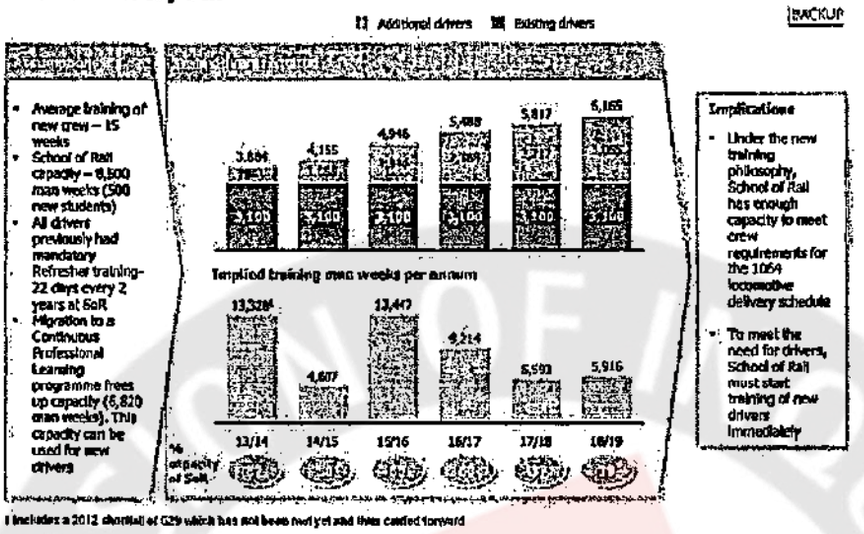
EXHIBIT 30

Under the new training philosophy, Transnet's School of Rail can supply enough train drivers and assistants to sustain the 1064 delivery schedule



1 Includes a 2012 shortfall of 629 which has not been met yet and thus carried forward

6.2 Infrastructure dependencies

To deliver against MDS volumes, the 1064 locomotives must perform as part of a railway system well equipped to move such volumes. Therefore, sustaining and expanding investment in infrastructure and other key projects within the system will be critical to support MDS delivery.

Infrastructure dependencies

Locomotive deployment is tightly mapped to the railway infrastructure and routes. Route characteristics (e.g., power source on route, axle loading capacity, and the presence of long tunnels or tight bends) largely determine the type of locomotive that can be used on a particular route.

As part of the MDS' planned R308 billion spend, TFR will also invest in projects to sustain and expand rail network capacity and footprint. The strategy pursued by the Rail Network over the 9-year planning horizon covers two key strategic focus areas to enable volume growth and systemically improve the safety of operations. Programmes aim to:

- **Expand infrastructure**, creating capacity ahead of demand. Supporting Information Section E12 (Infrastructure Plans) depicts the current status of the network in terms of axle loading and electrification, respectively, and Section FII depicts the future status of the network in terms of axle loading and electrification are also depicted in Section E11.
- **Sustain existing infrastructure** through accelerated maintenance programmes. In addition to the railway network, there are also programmes for the sustenance and expansion of supporting

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infrastructure. The tables in the Supporting documentation Section E11 are extracted from the TFR Business Plan 2013/14 – 2018/19 and detail both the expansion and the sustaining maintenance programmes for Perway, Electrical, Signalling, and Telecommunications.

The exhibit below shows key strategic projects planned over the 7-year period involving both the extension of the electrified network and the axle loading of specific routes.

EXHIBIT 31

Key infrastructure programmes will enable the 1064 locomotives' delivery of expected volumes

ZAR, billions

Rail line section	Total seven year spend (ZAR bn)	Timeline
Eskom and coal line to 91mtpa+	8	2012-2019
Waterberg	5	2012-2020
Ore line to 90mtpa	6	2012-2019
Swazi rail link (SA Portion only)	0	2012-2015
Manganese General Freight 16mtpa	1	2012-2019
Gauteng Freight ring	0	2018-2019
Terminals	0	2012-2018
Maputo link	1	2012-2016
Natcor	0	2013-2017
Grand total	**31**	

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EXHIBIT 32

Expansionary infrastructure expenditure timeline

Bold text = interdependencies with GFB volume expansion

BACK

Business focus	Preparation for growth (zero to two years)	Sustained growth (two to five years)	Consolidate (five to seven years)
Infrastructure expansions Perway/Axle loading	• Increase axle loading • Increase coal line capacity to 81mt • Eskom 32mt project • Partial doubling of RCB-Nkezi line • Waterberg – Phases 2-5 additional passing loops • Manganese 16mtpa (Hotazel – Coega) • Swazi rail link 15mt • Increase axle loading on Groenbult – Hoodspruit	• Increase axle loading • Increase coal line capacity to 81mt • Coal 91mt project (including Overall tunnel doubling) • Eskom 32mt project • Gelvispians grade separation • Line tripling Broodsnyerspiaas-Ermelo • Waterberg – Phases 2-5 additional passing loops • Manganese 16mtpa (Hotazel – Coega) • One line Phase 2A to 82.5mtpa • Swazi rail link 15mt	• Increase axle loading • Overall tunnel doubling • Coal 91mt project (including Overall tunnel doubling) • Eskom 32mt project • Line tripling Broodsnyerspiaas-Ermelo • Swazi rail link 15mt • Doubling of all critical deviations
Infrastructure expansions Electrical	• Increase electrical capacity on the AC section on the coal line • Upgrade section Rooikop-Newcastle. Manganese 16 mtpa New and Upgraded sub-stations and OHTE	• Manganese 16mtpa New and Upgraded substations • Ore line Phase 2A to 82.5mtpa power upgrade (including of OHTE) • Increase electrical capacity on the AC section on the coal line • Coal 91mt project • Upgrade substations and electrical equipment • Commence with the conversion of 3kV DC to 25kVAC Ermelo-Pyramid South	• Completion of the conversion of 3kVDC to 25kVAC Ermelo-Pyramid South • Coal 91mt project • Eskom 32mt project • Upgrade substations and electrical equipment • Waterberg – Phase 5 (13 mtpa) commence with the electrification of Thabazimbi-Lephalale • Conversion of 3kVDC to 25kVAC on Ermelo-Pyramid South
Infrastructure expansions Signalling	• Manganese 16mtpa	• Pyramid South – Lephalale Communication based authorisation (CBA) pilot installation • Manganese 16mtpa	• Commence with the re-signaling of the coal line (CBA)

Considering the existing network capacity and the expectation that these projects will be competed according to plan, network capacity is not seen as a constraint to achieving the MDS targets.

6.3 Wagons

Transporting the volumes envisaged in the MDS requires sufficient an appropriate rolling stock in wagons and locomotives. TFR has three distinct operations; General Freight Business, and the heavy haul operations of the Coal Export and Iron Ore Export Lines. Each of these has their own unique set of wagons and locomotives. This business case addresses the General Freight locomotive requirements only though they are lightly interlinked with the other operations.

The MDS predicates growth over a number of flows and which extend over a number of operating areas where locomotives are changed because of traction changes dictated by the rail network infrastructure. Wagons are tightly linked to the commodities they transport while locomotives relate to the mass but not the commodity itself; accordingly locomotives are allocated according to the tons transported over the particular operating section.

To meet MDS volumes, wagon capacity needs to expand for all TFR businesses. In addition to producing new wagons through TE, there are various life extension strategies are in place to sustain capacity within the business.

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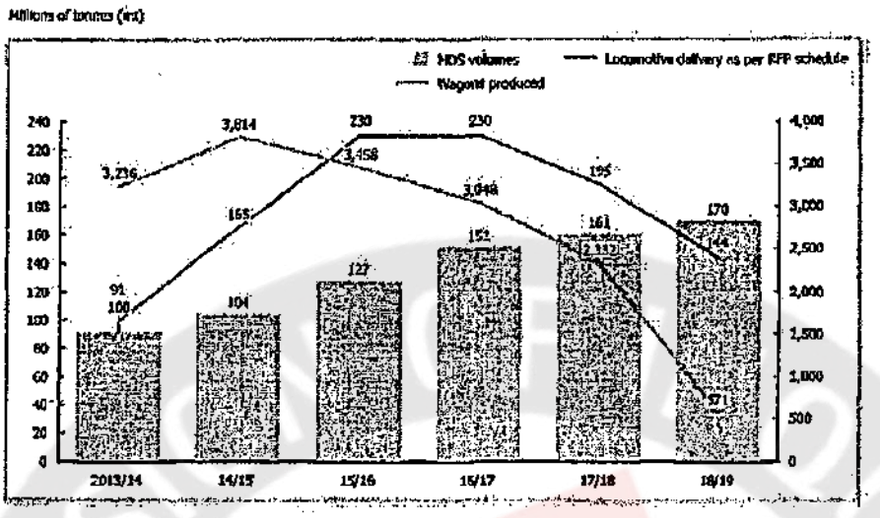
Wagon production

EXHIBIT 33

The wagon build programme will deliver wagons in advance of demand thus enabling the delivery of MDS volumes



The exhibit above shows that wagon production will peak well in advance of MDS volumes and locomotive delivery. Therefore, wagon capacity will likely not be a constraint in the delivery of MDS volumes.

7. Risk management

7.1 Risk overview

A transaction of this magnitude in the public sector has inherent risks that should be addressed. Some of the main categories of risks are planning risk, market risk, exchange rate risk, operational readiness risk, transaction governance, legal risk, and exogenous risk. Transnet uses a CURA framework to categorise and assess risks, as per the exhibit below.

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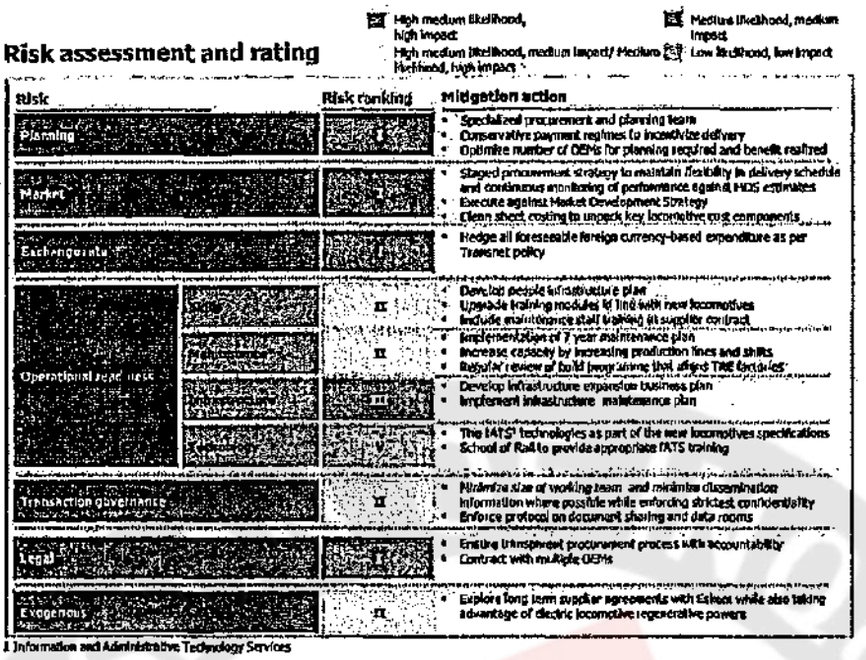
EXHIBIT 34

Risk assessment and rating



1 Information and Administrative Technology Services

7.2 Planning and delivery risk

There are three elements of delivery risk: approval delays, procurement process delays, and production delays. First, a lack of the appropriate approvals at the required time could result in delays in the transaction process. A major risk is TFR's current PPPFA exemption status that has lapsed. TFR is currently awaiting a PPPFA exemption for the 1064 locomotive procurement that will allow it to procure using the 60:20:20[6] criteria as planned. Second, procurement delays during the tender and negotiation processes may also cause delivery risk and will be managed by the TFR procurement team with a robust procurement strategy, processes, and contingency plans. Third, production risk may arise if a supplier is unable to meet its delivery targets for the 1064 locomotives. Delays of the delivery schedule are a critical risk to Transnet's ability to meet its MDS commitments and the sensitivities are modelled below..

7.2.1 Delivery schedule sensitivities

Given expected production and procurement timelines, it is unclear whether the quantities demanded by the RFP (100 diesel locos in 2013/14) are achievable.

Even assuming that the RFP procurement schedules are achieved, as per the base case in Exhibit 35, TFR would experience locomotive shortfalls from 2014 to 2019, peaking at approximately 150 locomotives in 2014-2015, because of the procurement delivery lagging the required fleet demand. This results in a cumulative volume shortfall of 49 million tonnes for the MDS period.

6 Breakdown of bid evaluation criteria: 60 percent price, 20 percent local supplier development , and 20 percent B-BBEE.

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Delivery schedule sensitivity 1 and 2, which factor in delays in procurement and production, show significant impact on volume shortfalls (110 million tonnes and 155 million tonnes respectively), highlighting the importance of expediting delivery schedule to meet MDS targets.

Delivery schedules impact the cash interest cover CIC ratio significantly, decreasing the ratio for 3.6X to 3.0X.

To mitigate the risk of delays, TFR will pursue a number of strategies simultaneously, including contracting multiple suppliers; staging procurement by using international suppliers for initial batches as local supplier development ramps up; and pursuing a conservative payment strategy[7] to incentivise delivery. TFR will also examine mitigation strategies to address the immediate locomotive shortfalls, including leveraging existing contracts, front-loading orders with international suppliers, exploring leasing options, and revising the fleet run-out strategy.

7.3 Market risk

The inherent risk is that the commercial sectors that the wagons and locomotives are built for will not achieve the anticipated market growth. This is dependent on South Africa's economic growth and the growth of its trading partners. Realisation of this risk could result in underutilised assets and diminished financial performance given the high-fixed-cost nature of the business. In addition, given that tariffs are projected to grow at a faster rate than CPI under the MDS plan, there is a risk that tariff increases are not fully realised. Other key business risks include inflated purchase prices (not related to forex changes) and cost increases exceeding forecasts.

7.3.1 Volume

Purchasing 1064 locomotives without matched volume demand will lead to a significant loss of value on the transaction. Sensitivities 1 and 2 in Exhibit 35 indicate the large swings in NPV due to MDS volumes not materialising with NPV dropping to R1.0 billion and –R20 billion, respectively. Volume sensitivities have the biggest impact on CIC, with Sensitivity 1 decreasing the cash interest cover ratio (CIC) from 3.3X to 3.1X in 2013/14 and Sensitivity 2 decreasing the CIC from 4.1X to 2.7X from 2015/16 onwards. To mitigate this risk, as mentioned in Section 3, Proposed Solution, TFR should stage procurement to maintain flexibility.

7.3.2 Tariffs

Exhibit 35 demonstrates that tariff growth impacts the NPV value significantly, with CPI-related growth 1 percent lower than the MDS base case of 7 percent, results in an NPV of –R1.5 billion. Accelerated tariff growth 1 percent above MDS results in a positive NPV of R7.8 billion. Tariffs have a marginal impact on CIC with the biggest impact in 2015/16, dropping from 4.0X to 3.9X. To mitigate the value at risk, TFR will execute against its Market Development Strategy, building strong customer satisfaction that will enable it to deliver target volumes.

[7] Bulk of payment made on delivery and acceptance.

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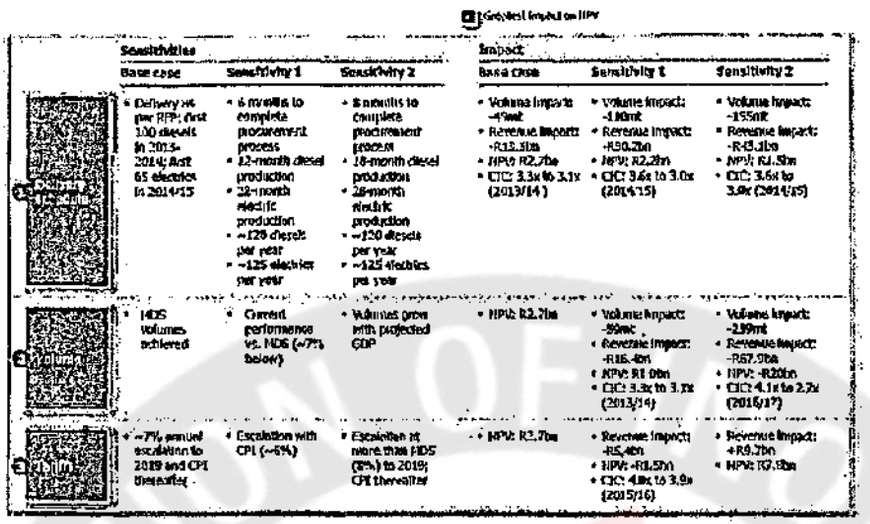
EXHIBIT 35

Demand, tariffs, and delivery schedule risks must be managed (1/2)



7.3.3 Purchase price

Purchase price sensitivities detailed in Exhibit 36 indicate a moderate impact on NPV with a 10 percent increase in base price resulting in a –R1.5 billion movement in NPV. To mitigate the risk of inflated purchase prices, clean sheet costing should be performed to unpack components of the locomotive price and support effective commercial negotiations.

7.3.4 Costs

Exhibit 36 indicates that cost base movements will have a moderate impact on NPV, decreasing it by R3.5 billion for a 5 percent increase in base costs. Costs have been budgeted according to Transnet's Corporate Plan.

7.4 Forex risk

Forex movement sensitivities in Exhibit 35 indicate a moderate impact on NPV with a 10 percent devaluation in Rand versus USD resulting in a -R2.4 billion movement in NPV. To mitigate the risk of exchange rate fluctuations, the project will be hedged according to the Group policy.

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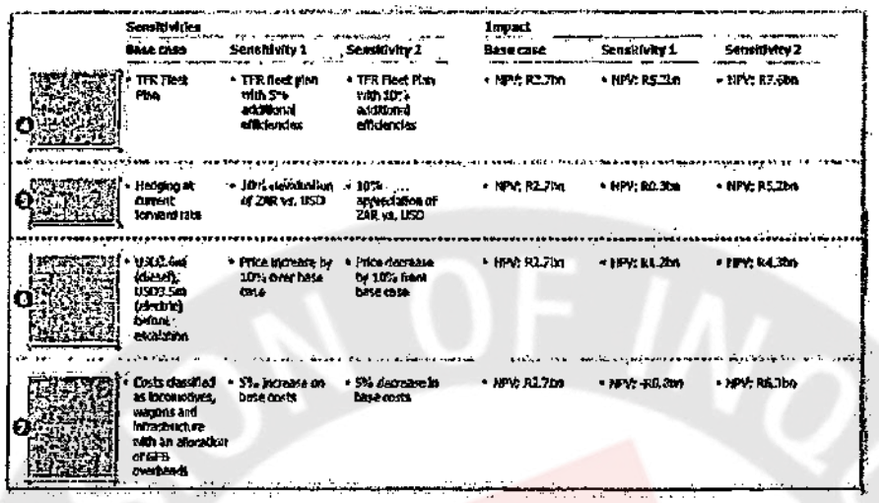
EXHIBIT 36

Demand, tariffs, and delivery schedule risks must be managed (2/2)



7.5 Transaction governance risk

For a transaction such as this, confidentiality is of the utmost importance to maintain the integrity of the procurement process and prevent unwanted media interest. Failure to uphold strict confidentiality may result in procurement delays or even compromise the entire transaction. This risk has been mitigated by ensuring a minimise size of the working team and minimizing the dissemination of information where possible while enforcing strictest confidentiality.

7.6 Operational readiness risk

Operational readiness risk refers to TFR's potential inability to integrate the new fleet into its operations because of a lack of skills, infrastructure capacity, long-term maintenance strategy, and poor technology integration in the fleet. Operational readiness, as well as Transnet's preparations, are detailed in the operational readiness section below.

7.7 Exogenous risks

7.7.1 Energy security

Eskom supply remains constrained as South Africa's reserve margins have dropped to as low as just over 1 percent in the past 6 months compared to best practice of 15 percent. It is almost certain that South Africa will experience electricity shortages in the next few years. The resulting power outages will likely have knock-on effects on industry and slow down economic growth in the medium term as electricity

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supply continues to lag demand. Transnet faces at least four inter-related major risks related to energy security that must be appropriately mitigated:

- Delays could occur in Eskom's IRP build programme, resulting in a shortage of electricity for South Africa. South Africa hopes to meet forecasted demand by adding 21 GW of new capacity by 2030 through the IRP build programme. However, the programme is running behind schedule. Strike action and equipment failure earlier this year has made it likely that the Medupi plant will miss its deadline of coming online at the end of 2013. IPPs and nuclear power plants will most likely not have the capacity to have any meaningful impact on the supply shortfall in the medium term given the current lack of regulatory frameworks and procurement delays. Furthermore, Eskom has only been granted about 50 percent of the tariff increases it requires to finance infrastructure investment, which may also have long-term implications for Eskom's ability to meet demand.
- Energy costs could increase should the IRP's planned capacity be commissioned on schedule but at a cost much higher than in the initial plan. The cost of electricity is expected to rise at 8 percent per annum in the next 5 years to finance the required infrastructure investment. The planned migration to relatively more expensive clean energy will cause energy costs to rise even further.
- Timely decisions may not be made for electricity supply beyond Kusile capacity, resulting in a shortage of power beyond 2017.
- Electrification infrastructure may not be installed in the appropriate geographies to enable Transnet to capture volumes from new regions as planned.

7.7.2 Potential strike action

Given recent history, there is some risk of strike action along the local supply chain over the life of the transaction (i.e., at locomotive assembly factories, TFR, coal mines, and Eskom). Strike action at any point in the supply chain could delay delivery of locomotives, increase costs, and compromise operations of the fleet, resulting in lower volumes moved.

8. Governance

To ensure effective governance of the 1064 locomotives transaction, a number of structures have been implemented:

- A Steering Committee with the primary purpose of providing oversight of the transaction, including developing a business case, submitting this business case to the appropriate governing bodies, and overseeing the procurement process.
- A high-value tender process managed in conjunction with Transnet Internal Audit (TIA) with the mandate to protect against fraud and corruption.
- A Project Management Office (PAO) to manage processes and timelines related to the transaction, including a confidential data room and the management of non-disclosure agreements (NDAs) and access to information.

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8.1 Steering Committee

The 1064 Locomotives Steering Committee, which is chaired by the Transnet Group Chief Executive, has taken overall ownership of the final draft business case for locomotive investment and the procurement process. Key activities that have been overseen by the Steering Committee include:

- Developing the business case and approval for submission to Transnet's governing bodies.
- Submission of the business case to the Department of Public Enterprise (DPE)
- Appointment of working team members and accountabilities.
- Understanding operational requirements and alignment to business case
- Recommending a procurement strategy, including goals related to environmental issues, supplier development and localisation.
- Understanding and recommending strategies to address all legal ramifications of the locomotive procurement process.
- Ensuring procurement process transparency.

8.2 High-Value Tender Process (HVT)

Objective of the HVT

- A key objective of the High-Value Tender (HVT) Gateway Review Process is to provide real-time guidance, support and assurance against the PPM, tender management control framework, and procurement best practice at each gateway on tenders above R50 million.
- The purpose of the HVT Gateway Review Process is to increase the likelihood that the processes undertaken for these tenders are fair, transparent, equitable, competitive and cost-effective.
- The High-Value Tender (HVT) Gateway Review Process provides a platform for:
  - Providing assurance to BAC and other key stakeholders within Transnet on the effectiveness of the processes followed for high-value tenders.
  - Providing input into updating of procurement procedures and supporting controls, thereby strengthening the overall control environment for high-value tenders over time.
  - Fewer queries/challenges raised by DACs and/or bidders during high-value tenders
  - Reduction in timelines due to reduction in number of re-tenders resulting in faster capacity creation.
  - Rolling out and sharing of best practice across all ODs to improve the efficiency of procurement processes.
  - Long term up-skilling of procurement staff.

Design principles of the HVT

- Drawing on recent lessons learnt from 85 electric and 43 diesel locomotives tenders, enhance the overall tender process for improved efficiency, effectiveness and enhanced control.
- Play a greater role in the planning and coordinating activities to support the PMO.

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- Ensure full integration with the Corruption Risk (Forensic) management plan developed for the 1064 locomotive acquisition.
- Introduce an international peer-review mechanism to bolster the team structure in the evaluation and negotiation stages to make the award "bullet-proof".
- Provide end-to-end support including the contracting stage to ensure there is no "leakage" between negotiations and contracting stages.
- Generally place added emphasis on ensuring that TIA is proactively involved at all stages of the gateway review process and are able to fully share best practices and insights with the evaluation, negotiation and acquisition council review teams.

EXHIBIT 37

Approach to the 1064 Locos HVT

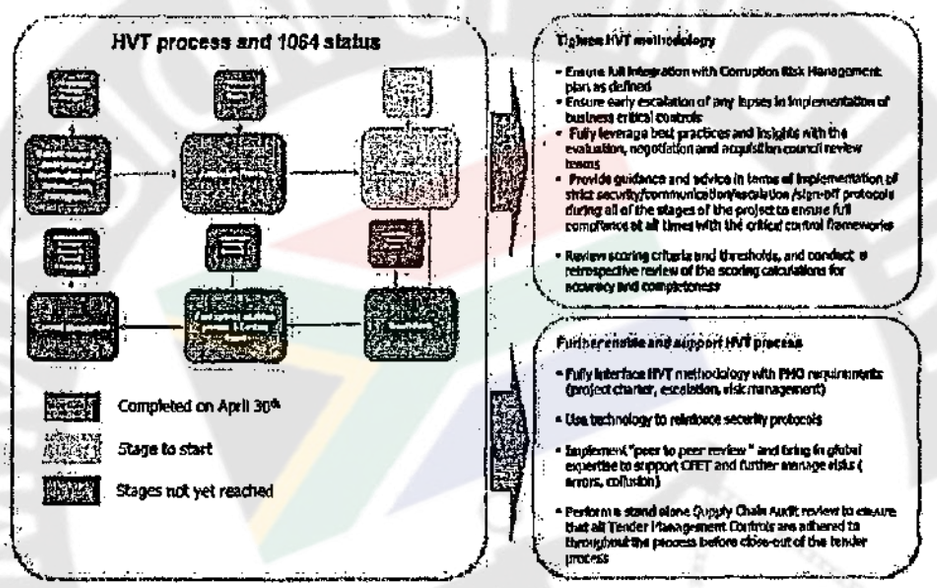

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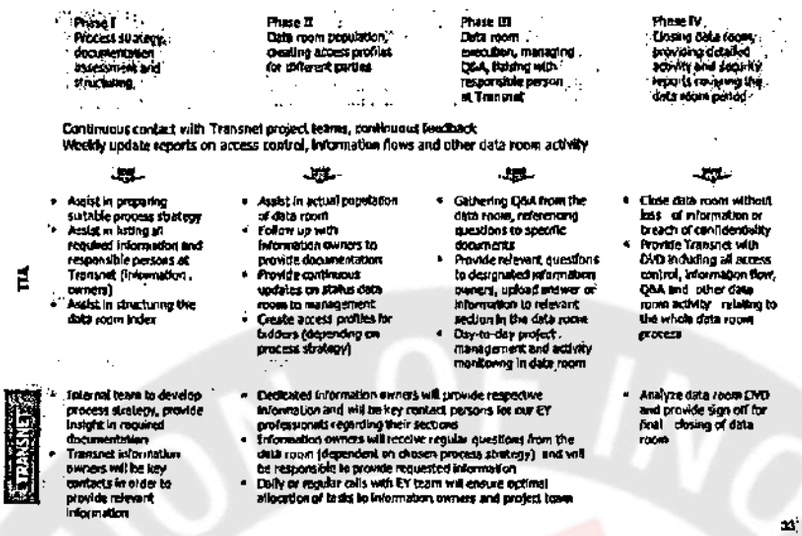
EXHIBIT 38

Data Room Project Management Process



8.3 Project Management Office (PMO)

A PMO has been established to monitor process and timelines related to the 1064 locomotives transaction, including the following items:

- Tracking project milestones and critical path and ensuring that progress is on-track against key deliverables.
- Scheduling Steering Committee meetings at the request of the Chair (GCE).
- Following up on action items emerging from SteerCo meetings.
- Ensure implementation of key confidentiality protocols/requirements (e.g., NDAs signed by all parties, data room access is restricted to a small group, etc.).

The PMO is also responsible for owning and managing the transaction's central data repository ("data room"). This includes:

- Maintaining and regularly work with content owners to ensure availability of latest final deliverables (e.g., RFP, Business Case, etc.) and working documents (industry analyses, cost build ups, etc.).
- Categorising and standardising file names to enable easy tracking.
- Most critically, the data room will also provide transparency (as needed) to enable tracking of downloads (who, when, frequency) and assist in internal auditing.

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9. Conclusion

Having explored all options, Transnet's purchase of 1064 locomotives is a critical procurement event that will transform the business, increase operational efficiencies, support local supplier development, and enable Transnet to meet its MDS targets.

Key risks are being mitigated: volume volatility will be addressed through flexible procurement, foreign exchange risks are being mitigated through hedging and potential shortfalls are being mitigated through efficient procurement and accelerated locomotive orders. The business will be operationally ready to take on new locomotives and interdependencies are being planned for.

Therefore, Transnet recommends the purchase of 1064 new locomotives (465 diesel, 599 electric) at an estimated purchase price of R38.6 billion.

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D. PROCUREMENT STRATEGY

The benefits in this section are contingent on:

- Responses from bidders
- PPPFA exemption
- Post-tender negotiations

1. Procurement overview

In accordance with Transnet's Board approved Supply Chain Policy Transnet shall apply Section 217 of the Constitution of the Republic of South Africa, (Act No 108 of 1996, as amended) by contracting for goods and services in accordance with a system which is fair, equitable, transparent, competitive and cost effective.

Transnet shall reform all its procurement activities in order to align them in an integrated manner with national developmental goals, relevant legislation that enforces the goals and relevant governmental supply chain management approaches that are cost-effective.

Transnet has been mandated by government to assist in lowering the cost of doing business in South Africa, enabling economic growth and security of supply through appropriate ports, rail and pipeline infrastructure as well as operations in a cost effective and efficient manner within acceptable benchmark standards.

The aim of the Supply Chain Policy is to ensure that Transnet gets value for money in the procurement of goods and services in order to fulfil its mandate while redressing the economic imbalances that have been caused by unfair discrimination in the past.

The focus for Transnet with respect to its SD activities will involve, among others, the leveraging of its procurement to increase local content through the development of skills, job creation and technology transfer. This will lead to decreased costs in its supply chain and an overall increase in its competitiveness. Transnet's aim is to build stronger and more meaningful relationships with its suppliers, to find mutually beneficial mechanisms to extract maximum value.

Transnet's procurement of rolling stock and in particular the 1064 locomotives provides a unique opportunity for both localised assembly and localised manufacture of component parts, but in addition an opportunity to strategically re-position the rolling stock industry. This is particularly true of the role and function of the largest incumbent rolling stock manufacturer in South Africa, Transnet Engineering as well as players in the private sector.

There is a drive by Government to increase the localisation of rolling stock. Government has strong leverage over the procurement of these assets as they reside almost completely within state owned companies, predominantly in Transnet and PRASA. Other sectors such as mining and the power sector bear close similarities in the production processes and heavy engineering requirements associated with rolling stock and thus the manufacturing sector would benefit substantially through the additional manufacturing capability and demand that this order would provide.

The Department of Trade and Industry (DTI) have identified the localisation opportunities in rolling stock as part of a number of key sectors within the industrialisation programme of South Africa as contained within the Industrial Policy Action Plan (2011/12). Transnet has identified the same opportunities as part

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of its MDS and through its Supplier Development Plan seeks to develop and empower local business providing goods and services to the parastatal.

2. Procurement strategy

Transnet promotes open competitive bidding as its default procurement mechanism since this is the best means of obtaining value for money. All Transnet procurement shall be done in a way that ensures that Transnet obtains quality goods and services at competitive prices. It was therefore decided to follow an open tender process for the locomotives acquisitions. In crafting the procurement strategy, which informed the RFPs, the following aspects were focussed on and considered.

Transformation and Empowerment

In order to address economic imbalances that have been caused by unfair discrimination, government developed the black economic empowerment policy.

- Black economic empowerment is broad-based;
- Black economic empowerment is an inclusive process;
- Black economic empowerment is associated with good governance; and
- Black economic empowerment is part of the country's growth strategy.

Government uses a number of instruments to achieve black economic empowerment. It has developed a "balanced scorecard" to measure progress made in achieving B-BBEE objectives by enterprises and sectors. This has been included in the tender.

In evaluating and awarding the locomotive tenders, Transnet shall award preference points in regard to the contribution that a supplier makes towards the achievement of broad-based black economic empowerment objectives, namely.

- Ownership and Control;
- Management;
- Skills Development;
- Employment Equity;
- Preferential Procurement;
- Enterprise Development; and
- Socio-economic Development.

Additionally, Transnet will award further recognition points for B-BBEE based on the extent to which a supplier commits to improving its B-BBEE status over the contract period. This is referred to as Further Recognition Criteria (FRC).

B-BBEE has been set as 20 points in the overall scoring for the tenders assuming PPPFA exemption is given.

Job creation

Transnet must be a major contributor to job creation. Therefore, Transnet's procurement shall focus consistently on areas that have the potential for creating employment on a large scale in order to

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contribute substantially to the national employment creation effort. As the main economic agent in the South African transport and logistics infrastructure, Transnet's planned capital expenditure forms the big bulk of Transnet's procurement spend. This is the single largest procurement spend of the MDS and as such has been planned on a programmatic basis so as to obtain maximum benefit to achieve industrialisation which will in turn create long- term sustainable job opportunities particularly among the previously disadvantaged members of the South African society.

Local Content

This procurement has been designed in a manner that builds industry capacity around its build programme. Transnet has identified this as its key programmatic procurement and consequently developed a long-term procurement and local content plan. Tender requirements include local procurement and supplier development (SD), which will also address the transformation agenda.

Transnet has included the local content percentages as detailed in the National Treasury Instruction Note issued on 16th July 2012 that highlights a local content percentage of 55 percent for diesel and 60 percent for electric locomotives. This is in line with the DTI's Industrial Policy Action Plan II in driving strategic fleets. Local content is included as a threshold.

Current local content for diesel locomotives and for electric locomotives has increased over the recent acquisitions due to the CSDP. The technology and competence in the production of locomotives occupy a different space in the challenge to localise in comparison to wagons. Globally, there are few large suppliers or OEMs of locomotives and their market dominance of the technology, the supply chain, and the know-how require nuanced and technology capture localisation strategies in order to create real sustainable local manufacturing benefits.

The approach adopted by Transnet has been to stipulate the following required minimum threshold requirements for locomotive localisation that are in line with those designated by National Treasury as highlighted above:

1. 55 percent for diesel locomotives; and
2. 60 percent for electric locomotives.

Transnet's assessment of this opportunity is that the economies of scale in purchasing 1064 locomotives are sufficiently large so as to create localisation opportunities that could elevate percentage localisation above these minimum thresholds at very little additional price premium to Transnet.

South African component suppliers are not yet able to produce the inputs and require build-up to reach substantial levels of localisation. Transnet estimates that this will take at least a full 3 years to complete, even though there may be certain components (particularly those used in electric locomotives) that can be localised much earlier.

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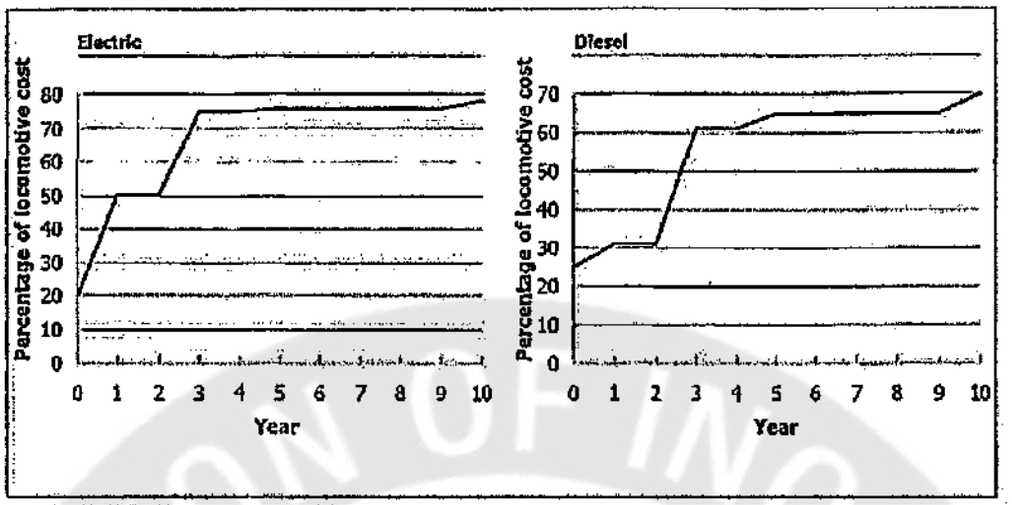
EXHIBIT 39

Estimated time to localise localisable components across diesel and electric locomotive platforms



A detailed component analysis undertaken by Transnet demonstrates that price premium is not static across the percentage rise in local content, but rather is informed by the cost of production of the individual components making up a locomotive.

In certain areas, particularly in assembly and fabrication, South African localisation is economic especially given the order size of 465 diesels and 599 electric locomotives.

For other components, although not yet localised, a relatively small price premium is evident. In these cases similar industrial production capability is already available in South Africa and needs to be re-aligned to the production needs of locomotive components. The capital equipment setup cost is low for components such as under-frames, radiators, transformers, etc.

However, as localisation requirements increase, certain components begin to have substantial price premiums associated with their local production. Examples include engines, control systems, specialised braking equipment, etc.

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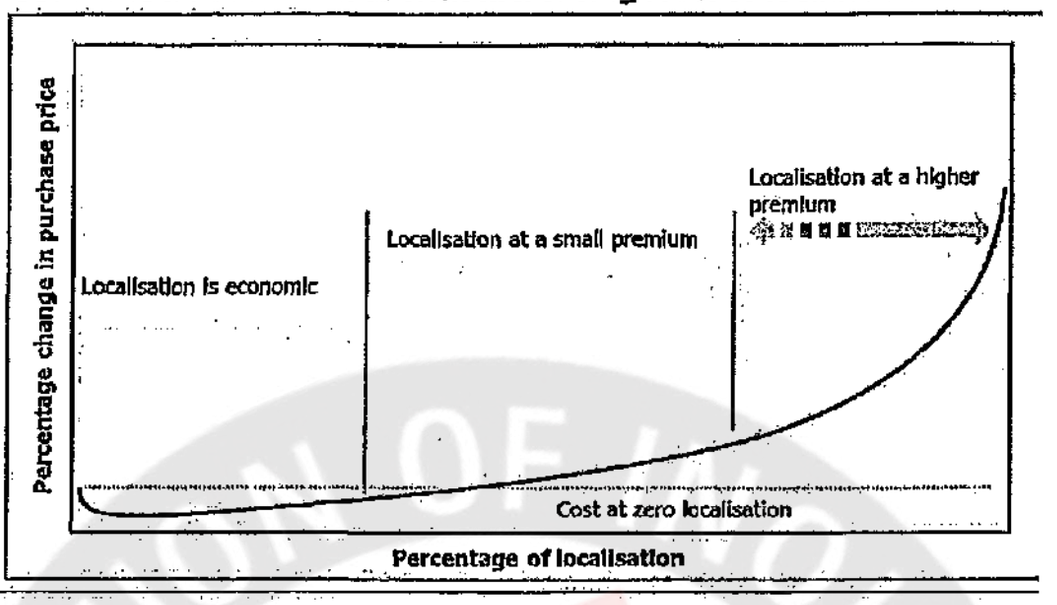
EXHIBIT 40

Cost to localise increases with increasing level of localisation



A grey zone exists where the limit of localisation is dependent on OEM investment in manufacturing in South Africa. Part of the way the Transnet RFP is structured is to attempt to capture as much localisation as possible within the grey zone without overly inflating the price premium paid.

As each component within a locomotive has its own price to localisation curve, Transnet could expect to pay different premiums for each sub-set of local component manufacture. By way of an example:

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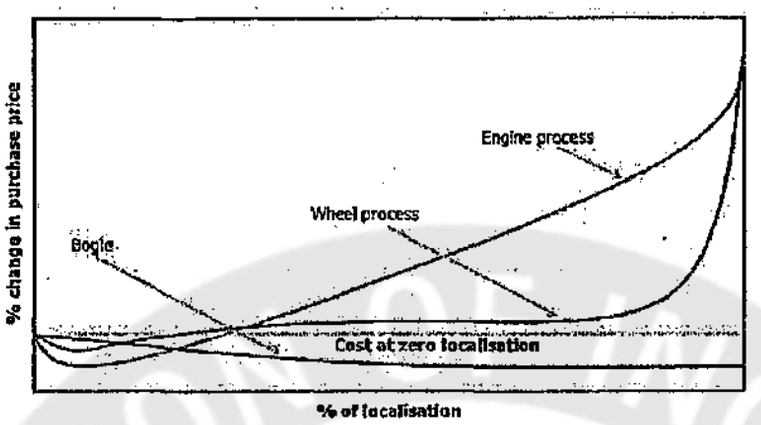
EXHIBIT 41

Each component within a locomotive has its own price verse localisation curve



1. ***Engine process.*** Initial benefits are achieved through utilising cheaper skilled labour in assembly. Increased localisation comes at a high cost as specialised parts could only be manufactured locally in small production runs with insufficient economies of scale to bring down the unit costs of such parts.
2. ***Wheel process.*** Small benefits are achieved through some local assembly and a slight premium is paid as forging is undertaken locally. As the manufacture of a complete bearing moves locally, the costs increase steeply due to small, highly technical bearing production runs; and
3. ***Bogie.*** Benefits are achieved through utilising a competitive manufacturing process and reduced transport costs of not having to bring bulky items such as bogies to SA.

One of the characteristic of the curves for many component items analysed is that the price-premium grows rapidly at high levels of local content requirements (80 percent to 100 percent). By way of an example, for wheel assembly, much of the wheel could be localised at relatively low cost, including the bearings. However, the rollers within each bearing are parts that cannot be economically localised and are produced at just a few global sites. This is due to technological complexity in the production process, safety criticality of the item, and the need for high production volumes to make the production runs cost-efficient. By implication, forcing high localisation requirements on such components will result in uneconomic price premiums as well as possible compromises in safety critical items such as braking systems, wheel assemblies, etc.

Transnet's detailed component analysis is summarised into 14 component groups for both diesel and electric locomotives. The cost structure is based on 18 separate bills of materials obtained from the current assembly and maintenance of locomotives and thus closely emulates current market pricing.

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Target localisation is based on a component by component assessment of localisation potential for each particular component within a component group. Because of the complexity and high cost to localise certain individual components (often small components), the analysis seldom reaches full 100 percent local content as is evident in the tables below. The cost to localise is based on an assessment of the capital cost to set up a production plant for the various components within each category. The time frame to localise is based on a similar approach. The findings demonstrate the potential to localise overall local content in excess of the Treasury Note requirements of 55 percent and 60 percent for a diesel and electric locomotive.

EXHIBIT 42

Electric locomotive pricing per component set, current and target localisation, and estimated cost to localise

Percent

Categories	Total cost %	Current local %	Target local %	Percentage of Cost to local	Accum local
Locomotive assembly	21	19	20	0.29	20
Main transformer	16	0	13	1.33	33
Main power traction system incl. aux systems	15	0	8	0.87	41
Main power traction motors	14	0	11	6.33	53
Propulsion switch gear	9	0	6	1.53	58
Bogie	4	0	4	0.25	62
Cooling, ventilation, and filtration systems	4	0	3	0.80	65
Locomotive control systems	4	0	2	4.90	67
Drivers cab	3	1	3	0.15	70
Auxiliary supply	3	0	3	2.12	73
Wheel system	2	0	2	9.10	74
Pneumatic supply system	1	0	1	5.81	76
Braking system	1	0	0	3.94	76
Coupling system	1	0	1	1.00	77
Other	1	0	0		
Grand total	**100%**	**21%**	**77%**		

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EXHIBIT 43

Diesel locomotive pricing per component set, current and target localisation, and estimated cost to localise

Percent

Categories	Total cost %	Current local %	Target local %	Percentage of Cost to local	Percentage of Accum local
Drivers cab	2	0	2	0.27	2
Bogie	4	3	4	0.27	6
Locomotive assembly	22	20	22	0.32	28
Cooling, ventilation, and filtration systems	5	0	4	0.68	32
Main power traction system incl. aux systems	23	0	10	0.82	42
Coupling system	1	0	1	1.03	43
Underframe (I-beams)	1	0	1	1.25	44
Locomotive control systems	6	0	3	3.44	47
Braking system	2	0	0	5.59	47
Main power traction motors	17	0	14	6.33	61
Wheel system	3	0	3	6.45	64
Pneumatic supply system	2	0	1	7.38	65
Engine system	13	0	5	8.07	70
Other	1	0	0		
Grand total	100%	24%	70%		

As is demonstrated in these tables, the difference between current and expected 3- to 5-year localisation requirements are significant. The relatively easy localisation opportunities have already largely been taken and further localisation will require not only additional capital investment but also the appropriate testing and quality control of both the production facility and the parts produced.

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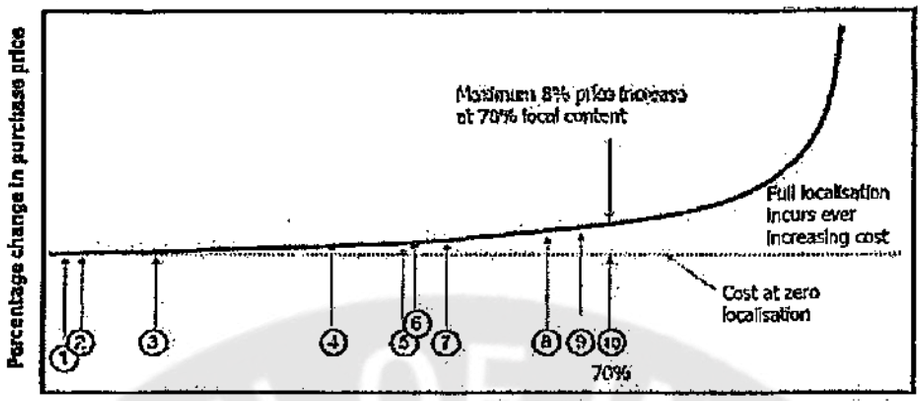
EXHIBIT 44

Local content of 70 percent overall incurs up to an 8 percent increase in purchase price



Item #	Category	% increase	Item #	Category	% increase
1	Drivers cab	0.27	6	Aux supply	2.1
2	Bogie	0.27	7	Control system	3.4
3	Loco assembly	0.33	8	Traction motors	6.3
4	Main transformer	1.3	9	Wheel system	6.5
5	Propswitch gear	1.5	10	Engine system	8.0

A key finding of the analysis is that the nature of the price premium curve as shown above for a generic locomotive is such that Transnet could achieve a high level of localisation at relatively small price premiums. For diesel and electric locomotives, localisation of 70 percent and 77 percent respectively could be achieved at an average price premium of less than 2 percent. This percentage is calculated as the average price premium paid for a locomotive – i.e., including some items with no price premium and others such as engine assembly with an estimated 8 percent price premium.

This is provided that three conditions are met:

1. That components are localised up to a level that is economically viable (i.e., that price premiums for each set of component are economic);
2. That realistic time frame targets are set to reach full localisation potential. Shortening these time periods would in itself result in considerable uneconomic price premiums; and
3. That some minimum annual order size for locomotive production is guaranteed to the market over the life of the 1064 locomotive supply contracts. The analysis indicates that a guaranteed minimum order size of 50 diesel and 70 electric locomotives is required annually for the life of the contract.

The Benefits of Localisation

The benefits associated with localisation are considerable and, based on the estimates for 70 percent localisation for diesel locomotives and 77 percent for electric locomotives, the following benefits are evident:

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Enterprise benefits to Transnet are considerable and include the design and integration capabilities that would be passed to Transnet Engineering through a structured programme of localisation; an enhanced Research and Development base in conjunction with the selected OEMs to develop and refine technologies for both the South African and African locomotive market; and re-engineering capability to design and provide technologies aligned to the needs of the South African rail market.

Benefits to the manufacturing sector will include key industrial capability in:

- Traction motors and traction control equipment;
- Locomotive control system capability;
- Locomotive electrical systems; and
- Large diesel engine capability.

In addition, there will be considerable benefits in related industries such as: heavy engineering, component manufacture such as found in the auto sector; electromechanical, electrical machinery, and software systems and design.

Benefits to the South African economy include benefits to a number of related sectors that would enhance capability and export potential. There would be R68 billion in economic impact for South Africa at a small localisation premium of 2 percent, implying a cost of localisation of 2 percent given expected levels of local supplier development. The resulting benefit-to-cost ratio of localisation is thus 170 to 1 in favour of localisation. Multiplier benefits would be substantial and for each Rand of localised production there is an expected average multiplier of R2.74 across the economy.

Procurement strategy summary

- Issue open tenders for both locomotive types.
- Local content thresholds of 55 percent and 60 percent for diesel and electric locomotives respectively as per PPPFA and National Treasury Instruction Note.
- SD/BBBEE (40 percent) threshold.
- Technical threshold.
- Stage 2 will comprise price (60 percent), Supplier Development (20 percent), and B-BBEE (20 percent).
- B-BBEE included for scorecard (10 points) and FRC (10 points).

Reasons for following an open tender programmatic process

To ensure the bidding process is as fair and transparent as possible. As a long-term procurement event, open tender will identify suppliers with whom TFR can partner, to ensure value for money and compliance with Transnet's support for the NGP and government objectives. The programmatic nature of this purchase requires TFR to find suppliers who can commit to delivering on governments industrialisation objectives, which include:

- Localisation and industrialisation
- The creation of jobs
- The transfer of technical skills, IP, and know-how to the South African industry

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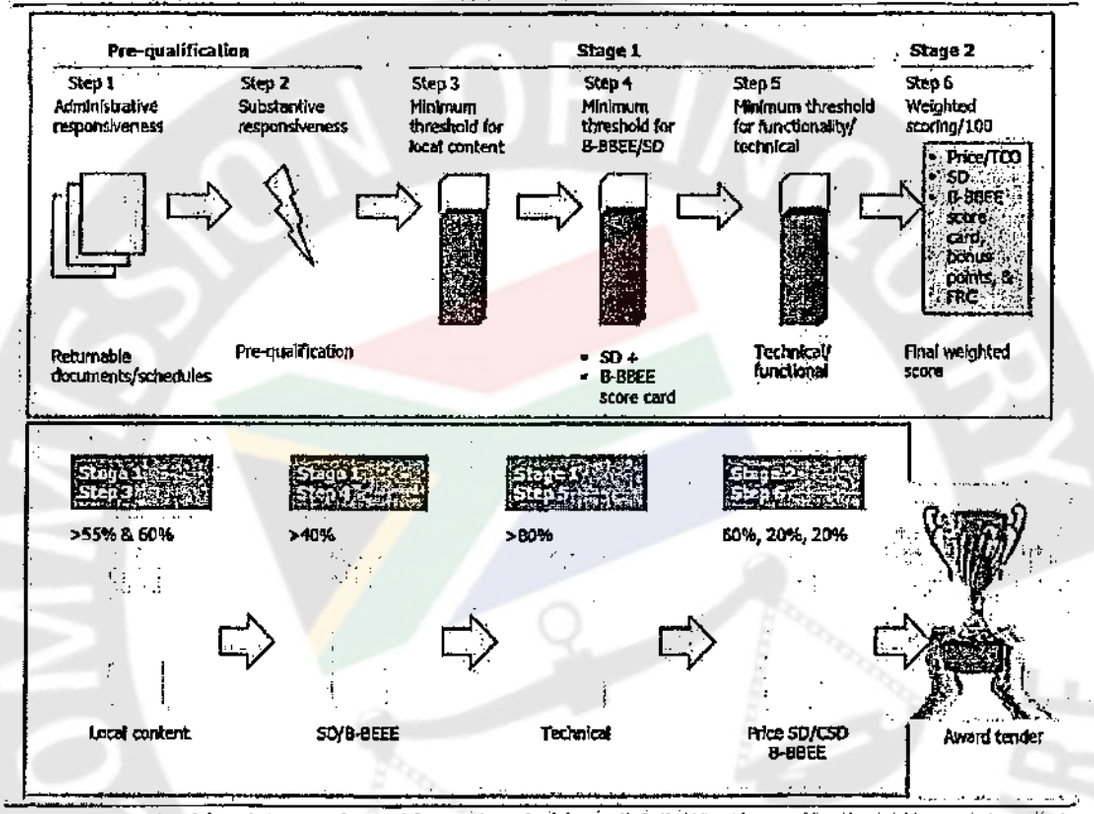
- Increasing the capability and capacity of the South African rolling stock industry
- Reducing capital leakage
- Increasing South Africa's exports
- Integrating of South African suppliers into the locomotive OEMs' global supply chains
- Long-term security of demand will allow suppliers to commit to investing in SA operations
- Suppliers must commit to transferring skills to SA suppliers to allow for the long-term maintenance of the locomotives post warranty period.

Evaluation methodology

EXHIBIT 45



- Stage 1 with minimum disqualifying thresholds, will follow a three-step process, starting with the Local Content (Step 3), followed by the SD/B-BBEE (Step 4) evaluation, and finally the Technical (Step 5) evaluation. Stage 2 will comprise the commercial (Step 6) evaluation including price (60 percent) and supplier development (20 percent) and B-BBEE (20 percent)
- In line with categories for local content identified by the DTI, 55 percent and 60 percent minimum threshold of local content will be applicable to diesel and electric locomotives, respectively. These thresholds will need to be equalled or exceeded for the submission to qualify for SD/B-BBEE evaluation.

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- A minimum threshold of 40 percent will be set for the SD/B-BBEE criteria evaluation. This threshold needs to be equalled or exceeded for the submission to qualify for Step 5.
- A minimum threshold of 80 percent will be set for the technical criteria evaluation. This threshold needs to be equalled or exceeded for the submission to qualify for Step 6.
- Once the minimum criteria thresholds are both met or exceeded, the supplier's submissions will be evaluated against price, SD, and B-BBEE.

3. Localisation

Since 2010, there have been significant changes in the South African policy environment, as well as to Transnet's strategic objectives. The New Growth Path (NGP) was launched in 2010 and at the end of 2011, the National Development Plan (NDP). Transnet realised the need and opportunity to develop a more holistic approach to supplier development, incorporating changes to the policy environment, lessons learned from previous SD initiatives, and Transnet's development of a holistic Supply Chain Policy and Framework, as well as its new corporate strategy, the MDS.

The South African government has highlighted supplier development as one of the ways with which to improve the local economy. SD is achieved by "procuring in such a way as to increase the competiveness, capacity and capability of the local supply base, where there are comparative advantages and potential competitive advantages of local supply" and is derived from the Competitive Supplier Development Programme (CSDP), which is a government initiative run by the Department of Public Enterprises. At Transnet, SD is driven through procurement with a focus on delivering transformation and empowerment as well as economic growth.

The transformation element ensures that procurement transactions bring historically disadvantaged individuals (HDIs) into the economic mainstream through the advancement of HDI ownership. It addresses economic disparities and entrenched social inequalities through the use of the B-BBEE scorecard and the seven pillars which make up the score card.

Growth of the local supply base is achieved through leveraging high-value procurement to achieve (where applicable) industrialisation, localisation, technology transfer, job creation and preservation, developing industry specific skills, enterprise development (ED), and rural integration.

The above has been factored into the locomotive tenders as has been highlighted in the Procurement Strategy Section and as is evidenced in the evaluation methodology.

Transnet has extracted SD value through some benchmark Competitive Supplier Development Programme (CSDP) locomotive acquisition contracts. These include:

- 100 X General Electric Locomotives – 54 percent SD commitment
- General Electric Long Term Parts Agreement – 12 percent SD commitment
- Electo-motive Diesel Long Term Parts Agreement – 41 percent SD commitment
- 32 X Mitsui/Venus Locomotives – 40 percent SD commitment
- 50 X Electro-motive Diesel Locomotives – 67 percent SD commitment
- 44 X Mitsui/Venus Locomotives – 39 percent SD commitment
- 43 X General Electric Locomotives – 65 percent SD commitment.

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These commitments have been achieved with purchases being made sporadically and on a transactional basis; therefore, we expect greater benefit to be achieved from a programmatic procurement of this nature given the size and stable pattern of demand it creates. The benefit will obviously be limited if PPPFA exemption is not obtained.

Government envisages SOC expenditure as one of the key levers to achieve transformation and growth. The 1064 locomotive procurement provides a great opportunity to fulfil government's SD aspirations.

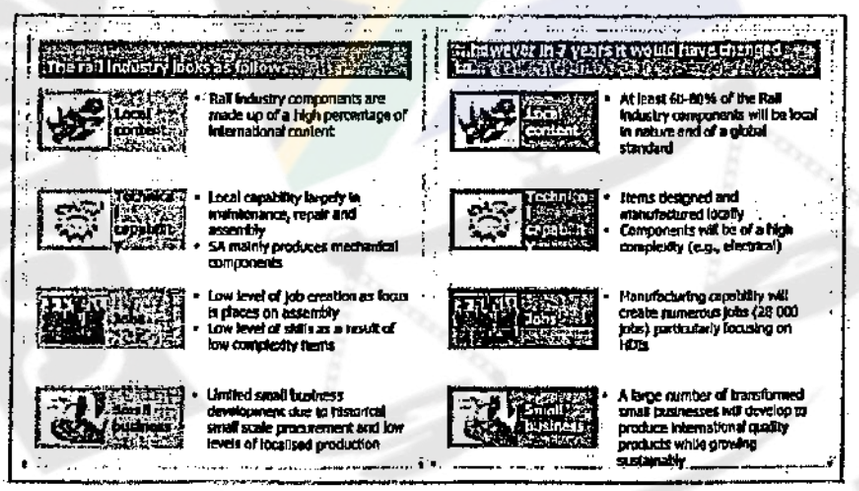
This spend will be leveraged to extract SD value in a manner that increases employment and also facilitates diversification beyond South Africa's current reliance on traditional commodities and non-tradable services. It will address the shortfall in artisan and technical skills by increasing the education level and skills capability. An equitable socio-economic society will be promoted through the integration of HDIs into the mainstream economy within the rail industry. Small businesses will be enabled in a manner that allows them to successfully compete in the South African economy. There will also be rural development throughout the country ensuring the sustainability of these communities.

Transnet's main focus with regards to these two tenders will be around the industrialisation of the rail industry. This spend can be leveraged in order to industrialise this sector and create sustainability. A large number of jobs will be created while ensuring that the local industry produces world-class products that can be exported. The will also be a large portion of spend on maintenance and upgrading of new and existing locomotives and wagons, which will ensure sustainability.

Our intention is to take the rail industry as it stands and fundamentally shift it within 7 years. This shift is illustrated in below.

EXHIBIT 46

Fundamental shift of the Rail industry over the next 7 years



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E. SUPPORTING DOCUMENTATION

1. 7-year commodity growth

	SELECTED GENERAL FREIGHT FLOWS	YEAR - TONS							ASSUMPTIONS/INITIATIVES
		2013/14 Budget	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	7 Year Tot Difference
AGRICULTURE & BULK LIQUIDS	COMMODITIES NOT CLASSIFIED IN GROUPS	2.762	3.022	3.101	2.795	4.030	4,147	4.335	1.573	The category includes OTHER AGRICULTURE PRODUCE (ie betance grains, TMC65 (SUGAR cane) as well as GASSES. Demand projections indicate increased volumes by rail in support of the NMPP. Also, there has been increased overtime for cement from Botswana and Mozambique
	GRAIN, MAIZE, WHEAT & FOODSTUFFS	4.104	4.479	4.56	5.044	6.055	6.304	6.825	2.452	Domestic harvests average between 10 mtpa - 14mtpa, weather permitting. Demand projections captured in TFR's projected segment of total market demand as well as historic trends over a period. Demand based and port capacity support agri-logistics and rural infrastructure including a TFR section dedicated to grain line development.
	TIMBER	3.49	3.676	3.934	3.343	5.405	5.646	5.518	2.028	Sappi Ngodwana – Production expansion of increase demand in 2013 by 119,000 tons from Pole Relief and Other Areas. The plant will be completed in 2012. The expansion of the Sappi SAICCOR Mond pulp mill is expected to increase timber intake by 75,000 m³ by 2013. Mondi is building new pellets siding at Rosspa.
	AGRICULTURE & BULK LIQUIDS	12.656	14.346	15.428	15.935	19.966	20.399	23.324	8.668	
COAL	COAL (DOMESTIC + OTHERS)	1.881	2.096	2.825	2.860	3.047	3.047	3.388	1.507	Coal deliveries to the Majuba and SAPPI power stations, will increase based on the growth in electricity usage over the next year.
	COAL (ESKOM – ARNOT)	0	0	0	1	2	3	3	3	Commissioning and conclusion of the Arnot Power station
	COAL (ESKOM – GROOTVLEI)	0	0	0	0	5	5	5	5	Grootvlei will use container rail solutions for the next two years and open markets there after. TFR Siyanda is capable for the above mentioned.
	COAL (ESKOM – MAJUBA)	8.791	9.392	12.454	13.816	13.816	14	14	5.206	Eskom road to rail expansion plan, Eskom Majuba power has line coming on stream in 2014 + increase tons to 14mt
	COAL (ESKOM – TUTUKA)	6	6	0	5.5	6	6.5	7.5	1.5	Tutuka will use container rail solutions for the next two years and open markets there after. TFR Siyanda is capable for the above mentioned.
	COAL (EXPORT DURBAN WESTS)	1.434	1.771	2.377	2.94	2.94	2.94	2.705	1.272	Transnet SA Coal transportation system development, Export coal line, Waterberg developments, Saul Rail link, Coal backbone capacity, Eskom road to rail, Cross-border corridors.
	COAL (EXPORT RICHARDS BAY MAINLINE)	0.838	1.046	1.103	1.854	1.854	1.854	1.958	1.36	Transnet SA Coal transportation system development, Export coal line, Waterberg developments, Saul Rail link, Coal backbone capacity, Eskom road to rail, Cross-border corridors
	COAL (EXPORT RICHARDS BAY NEWCASTLE)	2.68	4.376	5.925	6.421	9.849	11.795	12.964	7.284	TFR expansion plan is to grow to 16mt in the next five years due to Ungoi projects (Vale and Tronox).
	COAL	19.738	20.818	24.827	26.343	44.696	47.697	48.825	26.088	
STEEL & CHROME	MANGANESE (EXPORT – NEWCASTLE)	5.3	5.1	8	9.897	13.329	14.367	15	10.9	SA's share of world output set to grow with lower volumes and capacity growth of international rivals. New projects are expected to come into their respective production in 2013/14. Global economy recovers from the current slump and demand from China does not subside. Eskom Manganese expansion in Hotazel potential tax. South Eastern node & corridor development – Newcastle: Riggus Transhipment Hub, Integrated CDC development and Manganese Export Corridor.
	EXPORT MANGANESE LINE & MANGANESE	8.7	8.916	11.578	13.049	17.56	17.033	18.9	10.2	
INTERMODAL	COAL (ESKOM – CANDOR COAL (RECONSTRUCTED))	2.647	2.2	2.966	4.272	4.776	5.272	5.798	3.151	Coal delivers to the Powerstations will remain based on the growth in electricity usage over the next years. Ongoing rail use container rail solutions for the next two years and open markets there after. TFR Siyanda road to rail expansion plan.
	CONTAINERS (SH, GA, CSH & NON-ISO STANDARD)	8.892	8.896	8.373	10.793	10.258	10.883	15.647	2.755	Upward in GDP growth, the attainment and sustainment of terminal, containerised products at key trading nodes. Development of freight hubs in areas such as Polokwane and Rosslyn, New Castle Transnet Cultivate Strategy, Kingsrest Yard Rail Track, Re-configuring Wagon Yard in Cape Gateway, Durban – Free State – Gauteng Logistics and Industrial Corridor – Transnet Port of Durban expansion, new deep sea port, Rubber rail capacity expansion, Cooling hubs and cold chain development. Transnet Integrated Container Strategy in consultation with owners and potential customers.
	INTERMODAL	11.539	11.096	11.339	15.065	15.035	16.155	21.445	5.906	
STEEL & CHROME	COMMODITIES NOT CLASSIFIED IN GROUPS	4.261	3.555	4.825	5.766	6.810	7.007	7.477	3.216	Included in this group is Ball Clay & Other Metals Minerals and Ore Mining. These commodities naturally enjoy a greater demand.
	MAGNETITE (EXPORT RICHARDS BAY)	2.405	3.659	4.35	4.465	4.639	4.639	6	3.595	Demand mainly from China – driven by increasing steel production. Export growth indicates modest increase and domestic consumption is flat. No new coal beneficiation projects are planned.
	MAGNETITE (EXPORT RICHARDS BAY)	4.17	4.283	4.782	5.3	5.3	5.3	5.3	1.13	Demand mainly from China – driven by increased steel production. Export growth indicates modest increase and domestic consumption is flat. No new coal beneficiation projects are planned.
	ROCK PHOSPHATE (DOMESTIC RICHARDS BAY NAMPUTA/ROC)	2.787	1.825	2.212	2.618	2.872	2.872	3	0.285	Building Line 3 to support current 7 year demand
	MINERAL MINING & CHROME	18.523	20.319	24.454	28.893	30.13	30.547	32.063	14.521	
STEEL & CEMENT	CEMENT	4.163	5.284	5.868	6.113	6.745	6.271	6.743	2.758	Volumes to increase in line with SA's GDP growth (4% on average). TFR shortage by rail-friendly volumes in the sector. There is roughly 4mt of targeted cement currently on road. The need to build strategy rail is to be at 300,000 tons in the 1st year and possibly capture more over the 7 year period.
	COAL (EXPRESSOC + OTHERS)	5.34	7.638	7.65	8.425	9.024	9.024	9.311	4.371	Driven by production other industries, e.g. food, process, timber etc.
	COMMODITIES NOT CLASSIFIED IN GROUPS	1.774	1.898	1.939	2.338	2.487	2.784	2.879	1.105	These include dolomite, iron slag etc used in the production processes of the Steel Manufacturers and is linked to increased output in the production processes.
	IRON ORE (DOMESTIC SISHEN)	1.862	2.679	3.629	3.731	3.839	3.836	3.84	1.778	Responds to downstream production supported by government infrastructure development plan. Domestic and regional consumption of steel making demand for Iscor's & new export project by Anglo Iron Thabazimbi to Maputo.
	LIME	1.451	1.838	2.186	2.417	2.501	2.907	2.975	1.194	Lime is used in the production processes of the Steelmakers/Miners and is linked to the steel output in the production processes.
	STEEL & CEMENT	21.836	24.457	25.457	26.228	26.499	26.864	29.859	17.204	
Total	General Freight	84.222	104.395	117.273	128.463	150.636	156.456	181.311	88.848	

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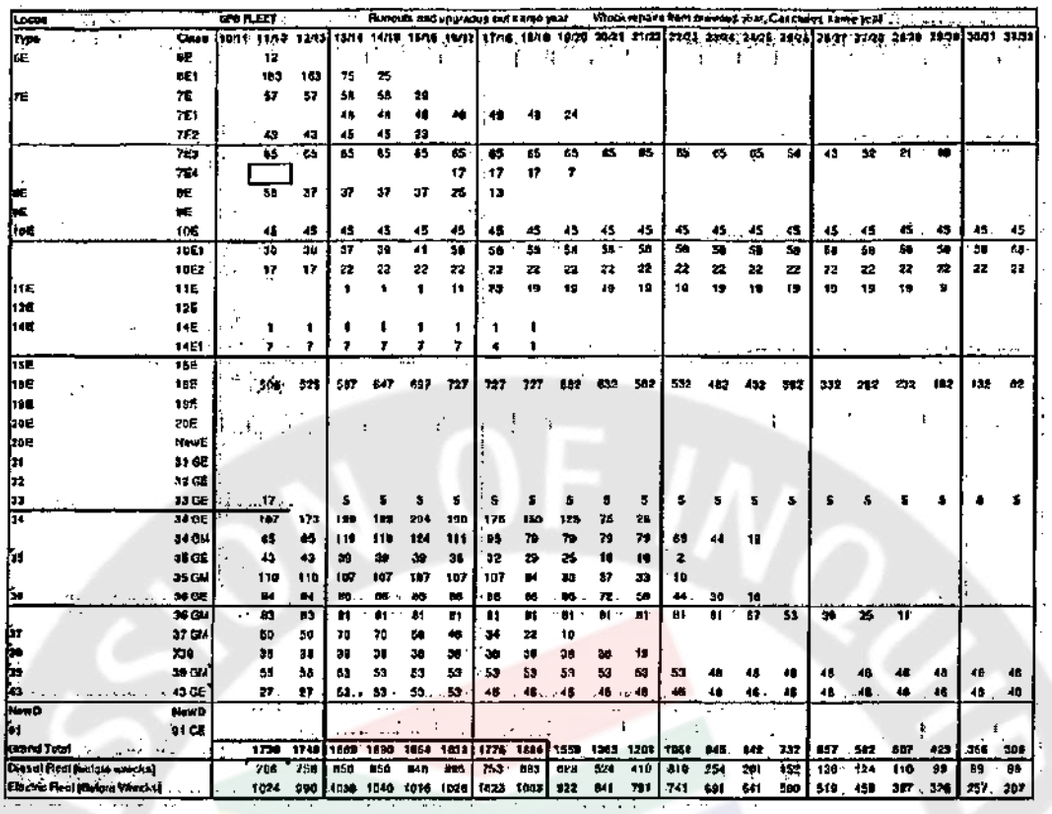
2. General Freight fleet runout



Locos		GPS FLEET			Runouts and upgrades out in same year					Wheels replace from previous year, Cast wheel, same year											
Type	Class	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	24/25	25/26	26/27	27/28	28/29	29/30	30/31	31/32
GE	6E		12																				
	6E1		163	163	75	25																	
7E	7E		57	57	56	56	28																
	7E1				46	46	46	46	46	46	24												
	7E2		43	43	45	45	39																
	7E3		65	65	65	65	65	65	65	65	65	65	65	65	65	65	54	43	32	21	10		
	7E4							17	17	17	7												
9E	9E		58	37	37	37	37	25	13														
9E	9E																						
10E	10E		46	46	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45	45
	10E3		30	30	37	38	41	38	58	58	58	58	58	58	58	58	58	58	58	58	58	58	58
	10E2		17	17	22	22	22	22	22	22	22	22	22	22	22	22	22	22	22	22	22	22	22
11E	11E				1	1	1	19	29	19	19	19	19	19	19	19	19	19	19	19	9		
12E	12E																						
14E	14E		1	1	0	1	1	1	1	1													
	14E1		7	7	7	7	7	7	4	1													
15E	15E																						
18E	18E		506	525	597	647	697	727	727	727	682	632	582	532	482	432	382	332	282	232	182	132	82
19E	19E																						
20E	20E																						
20E	NewE																						
31	31 GE																						
32	32 GE																						
33	33 GE		17		5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5	5
34	34 GE		187	173	139	139	204	139	175	150	125	75	25										
	34 GM		65	65	119	119	184	119	99	79	79	79	79	69	44	19							
35	35 GE		43	43	39	39	39	39	32	29	25	19	19	2									
	35 GM		110	110	107	107	107	107	107	84	63	37	33	10									
36	36 GE		84	84	86	86	86	86	86	66	66	72	59	44	30	16							
	36 GM		83	83	81	81	81	81	81	86	81	81	81	81	81	67	53	39	25	11			
37	37 GM		50	50	70	70	58	46	34	22	10												
38	38		38	38	38	38	38	38	38	38	38	38	19										
39	39 GM		55	55	53	53	53	53	53	53	53	53	53	53	48	48	48	48	48	48	48	48	48
43	43 GE		27	27	53	53	53	53	48	48	48	48	48	48	48	48	48	48	48	48	48	48	48
NewD	NewD																						
91	91 GE																						
Grand Total		1750	1748		1669	1690	1654	1613	1776	1686	1559	1363	1208	1060	845	642	332	857	582	607	429	356	308
Diesel Fleet [Multiple Units]		706	758		850	850	841	805	753	683	608	526	410	810	254	201	452	130	124	110	99	89	89
Electric Fleet [Multiple Units]		1024	990		1040	1040	1016	1026	1023	1003	922	841	798	741	691	641	280	519	458	387	326	257	207

3. Locomotive run-out mitigation

Total Maintenance cost for Wagons and Locomotives

By inspection the cost per annum increase of locomotive maintenance is significantly greater than that of wagon maintenance. Locomotive maintenance increase from R2 377m to R3 335 over the five year period 2007/08 – 2011/12; an increase of 40 percent. By contrast wagon maintenance, which does not have the same level of technology, increased from R2 044 to R2 234 over the same period: an increase of 9.3 percent. All maintenance is performed by Transnet Engineering.[8]

Locomotive class comparison Maintenance cost vs. NTK for the last 5 years

This figure shows the average cost of maintenance per class of locomotive over the past five years against its performance measured in Net Ton Kilometres.

[8] The increasing proportion of copex to opex in locomotive maintenance is a function of changes in accounting procedures as a greater proportion of maintenance is capitalised according international accounting standards.

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The new locomotives such as the 15E, 19E and 43D cannot be directly compared to the older locomotives as the new locomotives have not seen five full years of service but even making allowance for the shorter service, the savings in maintenance costs is evident.

The three locomotives (excluding the new locomotives) with the best ratio of NTK/Cost of Maintenance are the heavy haul locomotives 9E, 11E and 7E1.

The workhorse locomotives that have a poor NTK/Cost of Maintenance ratio include the 18E, 6E 34-000, 34-400 series.

The locomotives that have the worst NTK/Cost of Maintenance ratio include the 37-000, 7E2, 34-800, and the 33, 35 and 36 classes. These are amongst the oldest locomotives.

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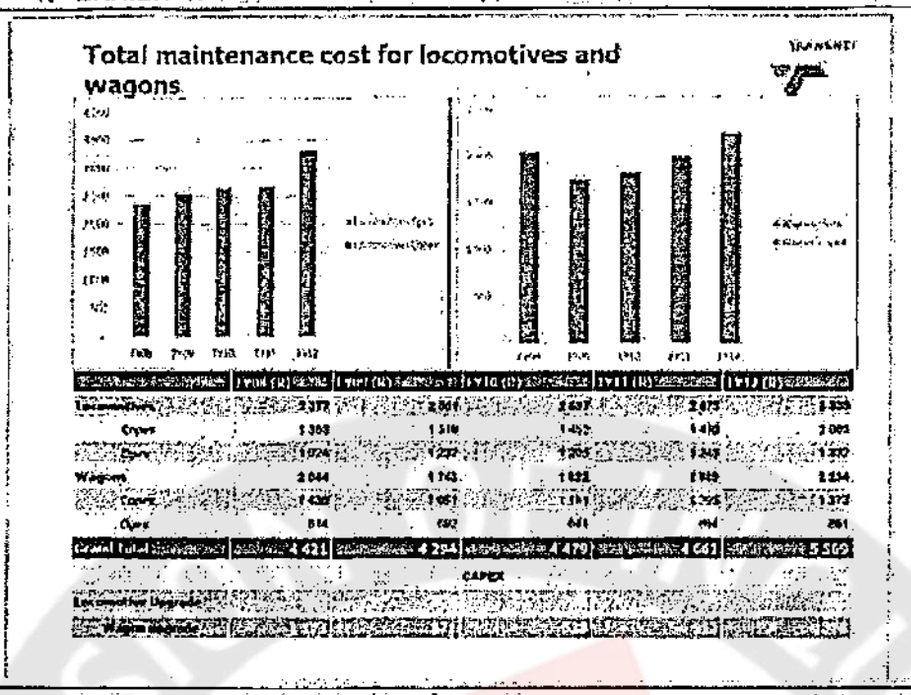
1. EXHIBIT 47



TFR has exhausted the life extension possibilities of its current "workhorse" fleet which are the primary contributors to GTK / NTK. Extending the life of "shunters" and "haulers" does not contribute to increasing GTK / NTK as the locomotives are not used and cannot be used for the heavy loads of main line operations.

The SMILIP programme for new traction power was developed circa 2002. When this programme was not accepted TFR responded by extending the life of the current workhorse fleet.

The life extension / upgrade programme included:

- 650 6E1 series upgrade to new class 18E providing a 12-15 year life extension. 120 upgrades are still be completed by March 2016. By 2018 the first of the upgrades will start to runout.
- 150 class 34 GE locomotives programmed for fitting with new Britestar Contol systems with 55 still to be completed. As the locomotives are already over 35 years old this is a palliative.
- 75 class 34 GM locomotives fitted with new Nexsys Control Systems. A further 20 are programmed for 2013. As these locomotives are already 38 years old, this decision will be reconsidered in anticipation of the new locomotives.
- Other interventions were more essential maintenance than life extension strategies. The above programs result in extend the run out age from a designed 30 years to 45 years.
- The locomotives suitable for upgrade / life extension have already all being targeted. The balance of the fleet does not lend itself to similar interventions.

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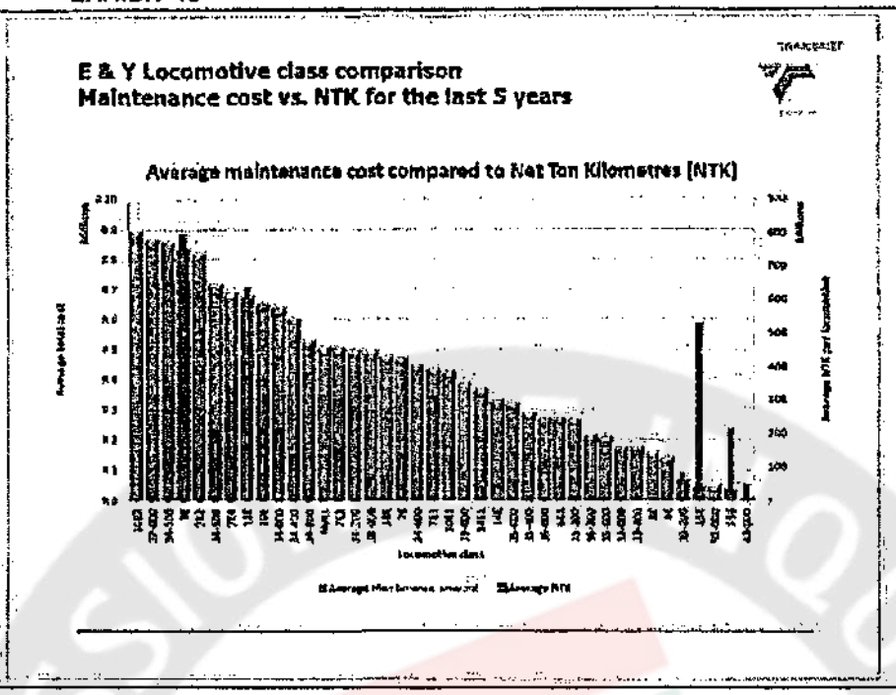
EXHIBIT 48



4. Locomotive 7-year locomotive requirement

		GFB 7 YEAR LOCOMOTIVE REQUIREMENT											
GFB	GROUP	2011/2012	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021	2021/2022	2022/2023
4E/6E1	6E	188	172	134	43								
10E	10E	506	521	662	744	760	725	715	665	615	565	515	465
7E	7E	64	66	42	42	42							
7E1	7E1	0	-	21	21	21	46	46	46	46	46	46	46
7E2	7E	32	34	34	34	34	34						
7E3	7E	11	65	65	65	65	65	65	65	65	65	65	65
9E	9E	58	54	37	33	24	12	12					
9E	9E		30	4	4								
10E1	10E	23	26	36	36	36	53	62	45	45	45	45	45
10E2	10E	59	58	62	62	62	62	62	62	62	62	62	62
14E1	14E	1	8	8									
33	GM	17											
34	GM	115	188	188	188	188	142	142	142	120	120	120	120
34	GM	82	90	94	94	94	94	94	94	94	94	94	94
35	GM	65	69	74	77	79	79	79	79	79	79	79	79
35	GM	78	86	92	93	96	96	96	96	96	96	96	96
36	GM	87	90	90	98	98	98	98	98	98	98	98	98
36	GM	81	84	84	92	92	92	92	92	92	92	92	92
37	GM	48	50	50	50	25	25						
38	GM	34	38	38	38	38	38	38	38	38	38	38	38
38	GM	55	50	50	50	50	50	50	50	50	50	50	50
43	GE	94	62	113	113	113	126	113	113	113	113	113	113
44D NEW		0	-	-	82	179	279	362	393	465	515	535	545
20E		0	-	-	81	282	332	462	599	671	721	771	821
Total		1641	1841	1978	2140	2302	2442	2592	2681	2763	2803	2823	2833

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5. Deployment plan

EXHIBIT 49

Table of Contents

- ☐GLOSSARY
- ☐DEPLOYMENT PLAN 143X43D
- ☐DOMESTIC AND EXPORT COAL BU
- ☐STEEL AND CEMENT BU
- ☐MINERAL MINING AND CHROME BU
- ☐IRON ORE AND MANGANESE BU
- ☐CONTAINERS AND AUTOMOTIVE BU
- ☐AGRICULTURE, TIMBER, BULK LIQUID AND AFRICA TRADE BU
- ☐BACKUP SLIDES
- ☐IMPACT ON TFR & TRE

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EXHIBIT 50

TRANSNET

GLOSSARY

MUS – MUSSINA
PRZ – PYRAMID SOUTH
PHW – PHALABORWA
NLP – NELSPRUIT
KNG – KAAPMUIDEN
KTR – KOMATIPOORT
HLF – HALFWEG
SLD – SALDANHA
BLE – BELLVILLE
KGR – KRUGERSDORP
ELN – EAST LONDON
NAS – NATALSPRUIT
WEG – WELGEDACHT
KAZ – KASERNE
SBG – SASOLBURG
ME – MAFIKENG
SPR – SPRINGS
TIT – TRICHARDT
BPR – BRAKPAN
ISO – ISANDO
BFX – BLOEMFONTEIN
NWT – NOUPOORT
HZL – HOTAZEL
PMG – POSTMASBURG
BEC – BEACONSFIELD
PCM – POTCHEFSTROOM
BIJ – BULKOR
MTN – MEYERTON
NCS – NEWCASTLE
USL – DANSKRAAL
DNR – DURBAN
DER – DE AAR
PE – PORT ELIZABET

EXHIBIT 51

TRANSNET

43D Deployment Plan

Efficiency and Volume Growth

Financial year 11/12 – 13/14

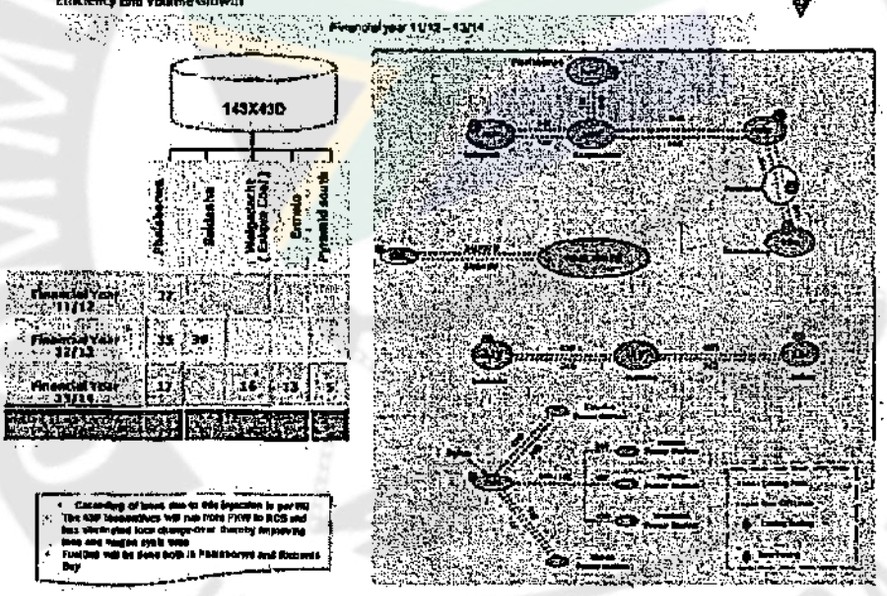

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EXHIBIT 52

Cascading of 55x34D's from the Ore Line to GFB

period: Aug 2012 - Jan 2013

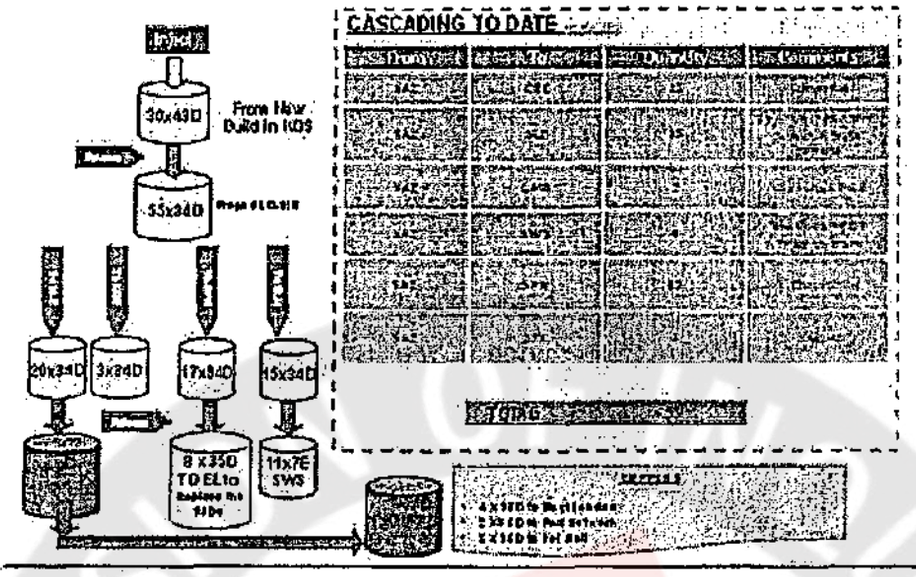

EXHIBIT 53

Schematic view of the deployment of new locomotives into the Coal Business Unit

Financial year 12/13 – 20/21

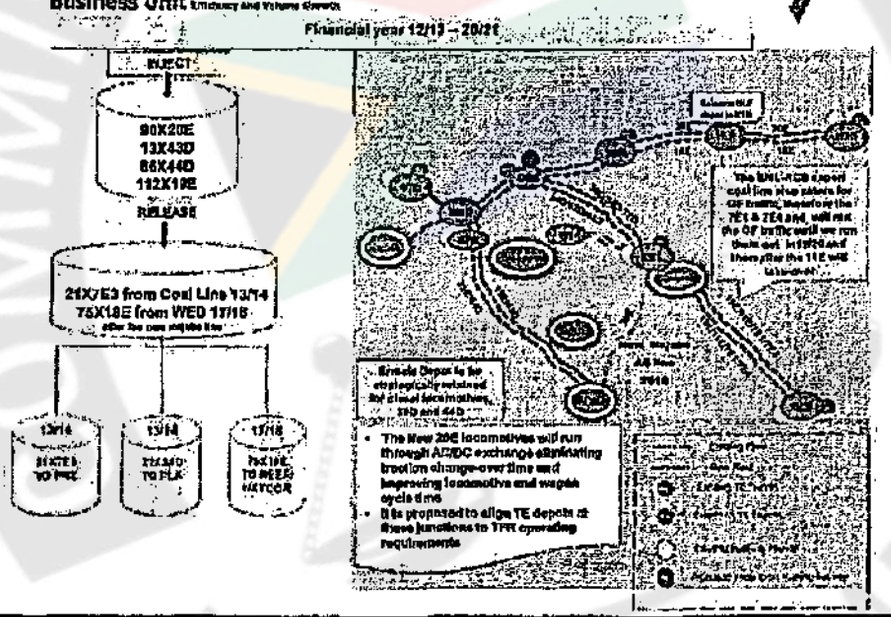

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EXHIBIT 54

New Locomotives Deployment Plan

Efficiency and Volume Growth

Financial year 12/13 – 20/21

High Level Delivery, Cascading and Run out Plan for the Domestic and Export Coal Business Unit

TRANSNET

	Current Profile 11/12	Fin Yr 13/14	Fin Yr 14/15	Fin Yr 15/16	Fin Yr 16/17	Fin Yr 17/18	Fin Yr 18/19	Fin Yr 19/20	Fin Yr 20/21

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EXHIBIT 56

Deployment Strategy & Benefits : Coal

TRANSNET

General Freight

- General Freight traffic on the Coal line will be injected with 21 x 7E1 from the 1 May 2013. The figure will be increased to 48 by 2015/2016.
- The 7E1 and 7E4 that are ring-fenced for the Coal line general freight traffic will run-out in 2019/2020, however if the efficiencies from PRZ are realized this run-out will be earlier.
- The 7E3 will be cascaded to Pyramid South to capture the growth in Coal, Chrome and Ferrochrome from the Rustenburg area.
- All 7E3's will be cascaded to Pyramid South by 2015/2016.
- Note that with dual power processing, the 7E type locomotives will also be eliminated from the Coal line.
- All traffic from Waterburg area will be dual powered thereby removing the need for Pyramid South.

EXHIBIT 57

Deployment Strategy & Benefits : Coal

TRANSNET

- The following are the benefits:
  - Reduced fuel consumption with new diesel locomotives being introduced
  - Improved cycle times for rolling stock
  - Improved reliability
  - Better utilisation of crews
  - Reduced handling and shunting
- Impact on Crew and Maintenance depot
  - Richards Bay to be the Super Locomotive Maintenance depot
  - Standardise the Ermelo depot to few locomotive types, specifically diesels (39200's, 43D's and 44D's)
  - Training crew on the new locomotives
  - Ermelo yard strength and crew strength will be reviewed to the new operating standards
  - Book off at Ermelo will be reviewed as some loading station can take 200 wagon trains straight in
- Necessitated required changes
  - System cannot afford to run a 41 hour and a 66 hour cycle as it will not be seamless and will be somewhat counter-productive.
  - This will then require the 19E1's to be converted to dual power for a one type 41 hour operation.
- Financial Impact Analysis
  - Savings due the introduction of the new operating model from 1 September:

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EXHIBIT 58

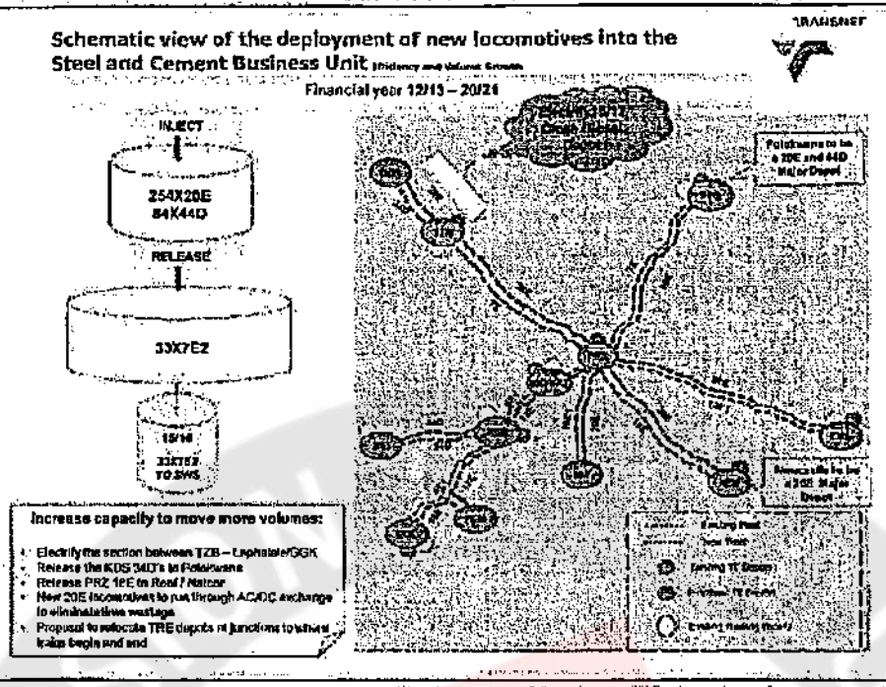

EXHIBIT 59

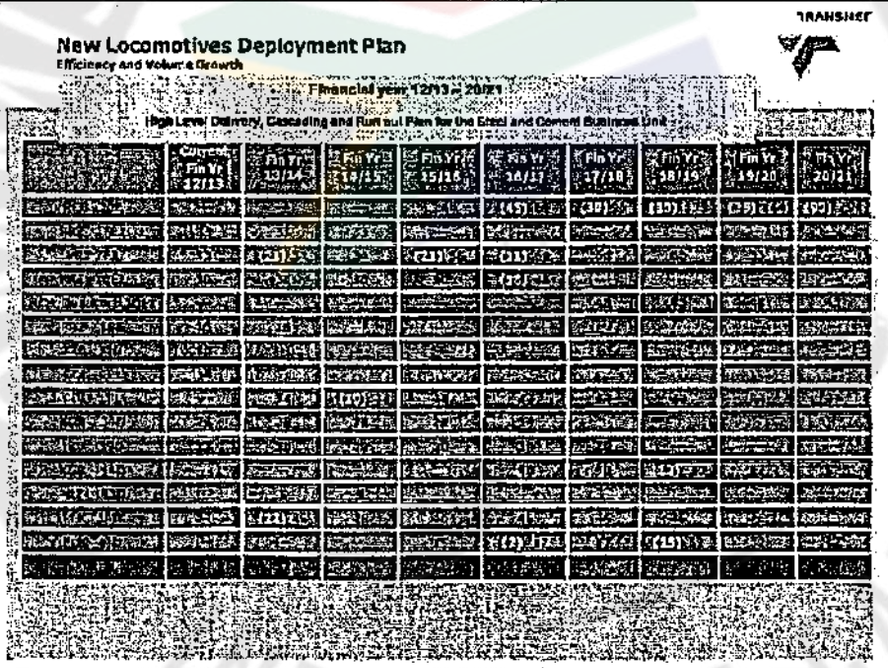

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EXHIBIT 60

TRANSNET

Deployment Strategy & Benefits : SAC

General Freight

- The introduction of the dual locomotives at Pyramid South will see all flows from origin to destination on the AC&DC route running with single type of locomotive. Flows such as Chrome to Richards bay; Coal & Iron Ore to Newcastle and Vereeniging, Cement to Potokwane and including over border traffic. This will eliminate traction change over at Pyramid South and Emelo there by improving cycle time and enhancing asset utilisation.
- The efficiency of 20E's will play an important role in the release of 7E locomotives to areas where they are needed or for early run-out to reduce the cost of maintenance.
- Electrification of the section between Thabazimbi and Groetageluk become vital for dual loco system, hence the need to fast tracked to 2015/2016
- The expectation is that once the dual 20E's are deployed it will negate the need for 10E1's in its current form, this calls for the 10E1's to be upgraded to dual powered.

Impact on Crew and maintenance depot

- Koedoespoort diesel depot required to be down scaled as the number of diesels will be reduced.
- Thabazimbi no longer required as a maintenance depot
- Retraining of crew on new routes.
- Introduce new book-off practices.
- Pyramid South to be a run through yard with minimum processing for mixe trains, cement trains etc.
- The new electric locomotive will be running to Richards Bay, Newcastle, Elikor and Durban, therefore these areas need to prepare for the maintenance of these locomotives.
- Upgrade the collgny depot to increase its scope of work and down-scale activities in Sentrarand depot.
- Potokwane to be a 20E and 44D depot
- Newcastle to be a 20E depot
- The yard capacity at Pyramid will require to be reviewed

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EXHIBIT 61

Deployment Strategy & Benefits : SAC

TRANSNET

Financial Impact Analysis

- Pyramid yard strength to be addressed
- Cycle time from Lephalale to Richardsbay will be reduced conservatively by 36 hours
- This impacts on wagon requirements for the these lines to be calculated
- Fuel savings from replacing old diesels with new
- Pyramid South and Rustenburg yard no longer needed as holding yards, parking of Pyramid South 7E2's and 7E3's, Krugersdorp 34D and the Polokwane 34D's; SAVINGS

EXHIBIT 62

Schematic view of the deployment of new locomotives into the Mineral Mining and Chrome Business Unit Efficiency and Volume Growth

TRANSNET

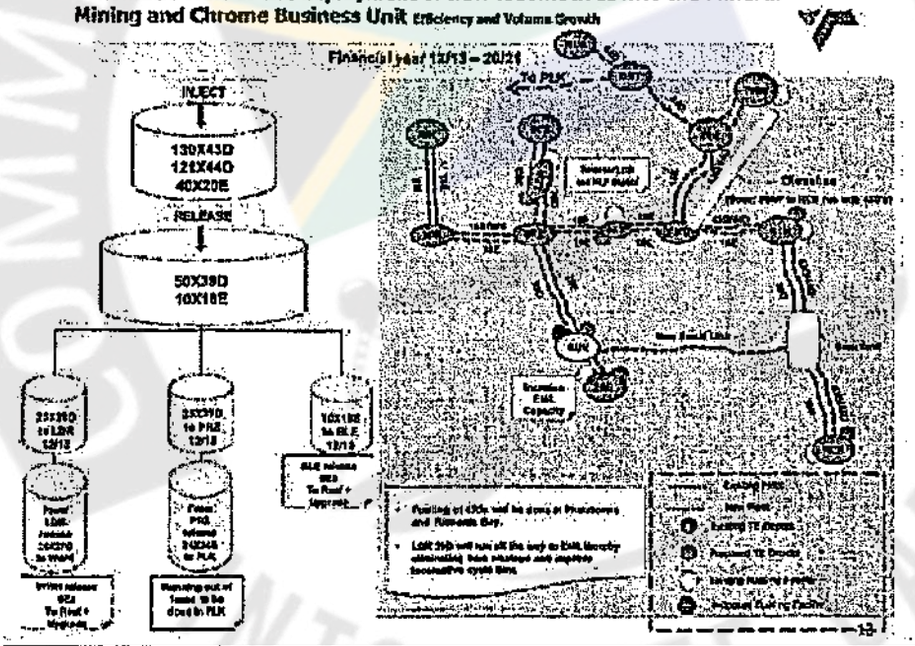

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EXHIBIT 63

TRANSNET

New Locomotives Deployment Plan

Efficiency and Volume Growth

Financial year 12/13 – 20/21

High Level Delivery, Cascading and Run out Plan for the Minerals Mining and Chrome Business Unit

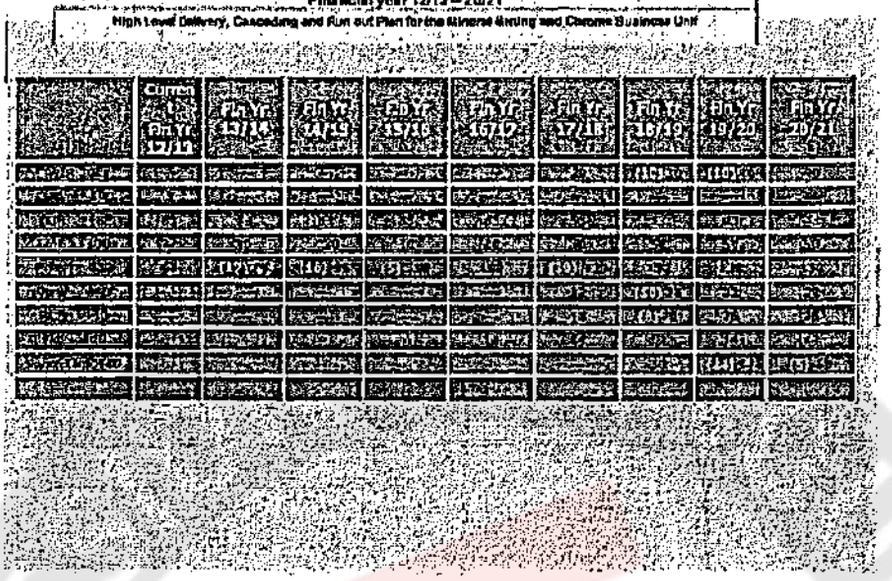

EXHIBIT 64

TRANSNET

Deployment Strategy & Benefits : MMC

General Freight

- Note the original deployment was 69 locomotives for required MDS tons, based on th efficiencies achieved this was dropped to 79 locomotives for the same tons. The GTKs was achieved in advance of what the business case stated.
- Increase the 62 x 43D's at Phalaborwa to 79 to capture the growth in Magnetite and coal from Musina by 2013/2014.
- The locomotive cycle time has improved from 72 hours to 56 hours with the injection of the 43D's
- Wagon cycle time has improved from 7 days to 5 days on the corridor.
- Deployed 39D's at Lydenburg
- Eliminated locomotive change over at Belfast. Running the 39D's all the way to Ermelo.
- A 100 wagon train was tested successfully between Lydenburg and Ermelo.
- Steelpoort to be 104 wagon RDP train
- Investigate the future growth plans for the Roossenekal area and keep Witbank depot in the meantime

Impact on Crew and Maintenance depot

- Nelspruit
  - Relocate the crew and maintenance depot at Nelspruit to Komatipoort

Komatipoort

- Komatipoort to have a 12 ton crane and a drop-pit.

- Waterval Boven
  - Relocate the crew depot Witbank and Komatipoort
- Lydenburg
  - The corridor has been standardised to 39D's only
  - Future maintenance to be done at Ermelo
  - Relocate Lydenburg as a Loco and Crew depot to Steelpoort

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EXHIBIT 65

TRANSNET

Schematic view of the deployment of new locomotives into the Iron Ore and Manganese Business Unit Efficiency and Volume Growth

Financial year 12/13 – 20/21

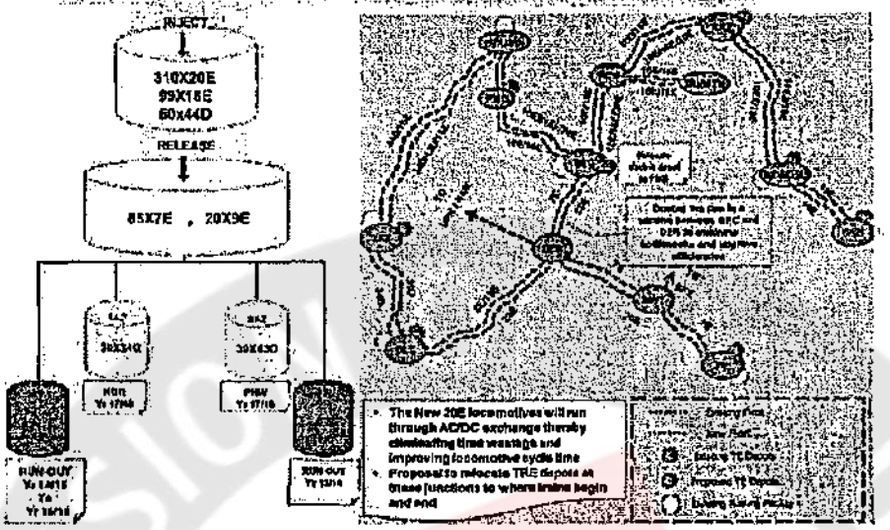

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EXHIBIT 66

TRANSNET

New Locomotives Deployment Plan

Efficiency and Volume Growth

Financial year 12/13 – 20/21

GFB	Current Fin Yr 12/13	Fin Yr 13/14	Fin Yr 14/15	Fin Yr 15/16	Fin Yr 16/17	Fin Yr 17/18	Fin Yr 18/19	Fin Yr 19/20	Fin Yr 20/21
Grand Total	383	374	367	429	472	513	542	587	589

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EXHIBIT 67

TRANSNET

Deployment Strategy & Benefits : IOM

Ore Line

- The Ore line 15E will increase from the current 44 x 15E to 78 x 15E by 2013/2014 financial. This will further be increase by 24 x 15E to meet the MDS volume budgets.
- The 30 x 8E will be reduce to a rough figure of 4 to cater for GF traffic on the Ore Line and mine shunting requirement. This will address the Saldanha Coal service and the containerised manganese to Saldanha.
- An injection of 30 x 43D's will be used to on the long trains due to power supply constraint. This will also improve reliability and fuel consumption.
- The 34 class diesels will reduce to 30 x 34D's to cater for other GF traffic, mine and shunting purposes.
- By 2017/2018 all diesels on the Ore Line to be replaced by the new 44D diesels

General Freight Lines

- The deployment of the new electric dual powered locomotives will bring benefit in the manner in which trains are operated. The new AC/DC locomotives will have the capability to run through the interchange at Beaconsfield and Beaufort West thereby eliminating traction change over time.
- The dual powered locomotives for Postmasburg depot will service both the PMG-PE route and the Gauteng-Cape Town/PE route with Swartkops being the super depot.
- Swartkops 7E's retired in 2015/2016, 33XPRZ 7EZ cascaded to Swartkops to be retired in Swartkops the 2016/2017.
- 10E/2 to be converted to dual power locomotives and this will impact positively on the cycle times.

Impact on Crew and Maintenance depot

- Beaconsfield maintenance depot no longer required
- Investigate the possibility of De Aar as a back-off place
- Postmasburg to be the a critical turn around locomotive maintenance depot.

EXHIBIT 68

TRANSNET

Deployment Strategy & Benefits : IOM

Financial Impact Analysis

- Car and container trains to Kaalfontein and Kazerne from PE will have an improvement in cycle time of 10 hours.
- Further fuel saving will be achieved with moving the combination of 10E and 34e to 15E and 43000. this is approximated to be around 1M litres
- Yard capacity to be reviewed at Kimberly due to run through and only hot seat changes.
- Parking of SWS 7E by 2015/2016:

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EXHIBIT 69

Deployment Strategy & Benefits : IOM

TRANSNET

Financial Impact Analysis

- Cor and container trains to Kaalfontein and Kazerne from PE will have an improvement in cycle time of 10 hours.
- Further fuel saving will be achieved with moving the combination of 15E and 34s to 16E and 43000. this is approximated to be around 1M litres
- Yard capacity to be reviewed at Kimberly due to run through and only hot seat changes.
- Parking of SWS 7E by 2015/2016:

EXHIBIT 70

TRANSNET

New Locomotives Deployment Plan

Efficiency and Volume Growth

Financial year 12/13 – 20/21

High Level Delivery, Cascading and Run out Plan for the Container and Automotive Business Unit

	Current FinYr 12/13	FinYr 13/14	FinYr 14/15	FinYr 15/16	FinYr 16/17	FinYr 17/18	FinYr 18/19	FinYr 19/20	FinYr 20/21

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COMMISSION OF INQUIRY INTO STATE CAPTURE

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EXHIBIT 71

Deployment Strategy & Benefits : CAB

TRANSNET

General Freight

- **Kazerne/City Deep**
  - Pietermaritzburg/Swartkops 20E locomotive fleet will cater and for the corridor to Cape Town. This will improve the container services between Gauteng and Cape Town
  - Reviewing the containers to Port Elizabeth to run via Beaconsfield, including the motorcars.
  - This will improve on the assets cycle time thereby eliminating traction change overs at Beaconsfield and Beaufort West.
- **Impact on Crew and maintenance depot**
  - Retraining of crew on the new locomotives.
  - Introduce back-off where feasible.
  - Bellville to be major depot while Kaserne becomes a supporting depot for the new electric locomotives.
  - Review viability of Wentworth maintenance depot considering maintenance cycle times of 44D's versus 37D's and the 37D failures rates.
- **Financial Impact Analysis**
  - Fuel savings when replacing 34/37 with 44Ds
  - Parking of Wentworth 37D by 2017/2018 and Bloemfontein 34D by 2017/2018: SAVING

EXHIBIT 72

Schematic view of the deployment of new locomotives into the Agriculture, Timber, Bulk Liquids and Africa Trade Business Unit Efficiency and Volume Growth

TRANSNET

Financial year 12/13 – 20/21

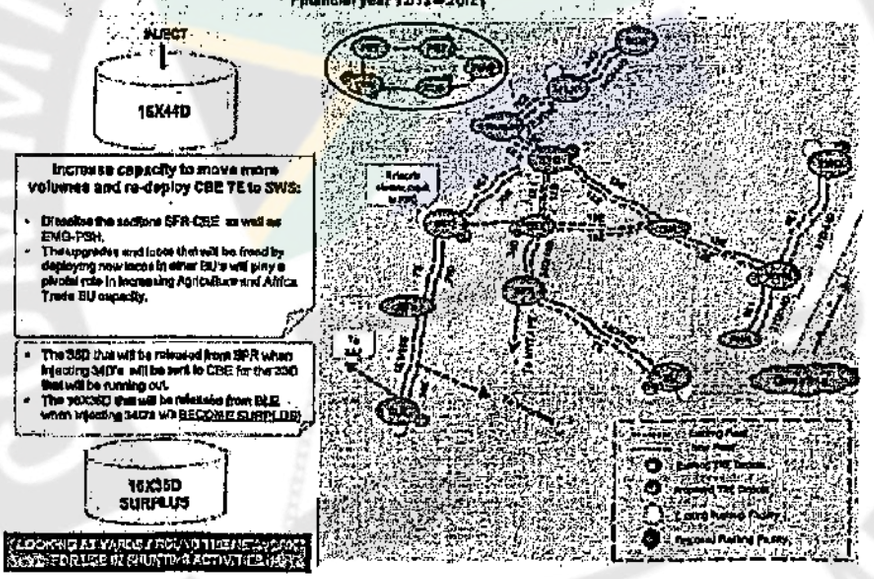

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EXHIBIT 73

TRANSNET

New Locomotives Deployment Plan

Efficiency and Volume Growth

Financial year 12/13 – 20/21

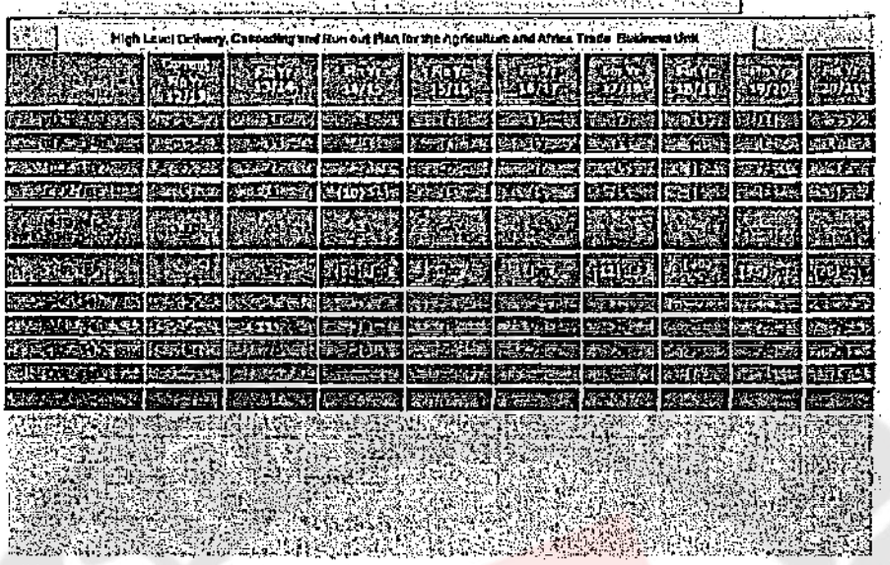

EXHIBIT 74

TRANSNET

Deployment Strategy & Benefits : ABL

General Freight

- The Sentrarad depot will start to receive 19E's from 2013/2014.
- The 6E locomotives will be phased out by 2016/2017, with the rest upgraded to 19Es.
- Dieselise the Springfontein to East London and make Springfontein a run through yard.
- The depots under ABL will be standardised to 19E's on DC areas.
- The Potchwase 34D retired in 2020/2021 as we receive new diesels.
- Beaufort West no longer required as a change –over yard

Impact on Crew and maintenance depot

- Retraining of crew on the new locomotives.
- Introduce book-off were feasible.

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6. Business unit power sheets

See attached power sheer excel file "20130418 Supporting Document F6 Business Unit Power Sheets"

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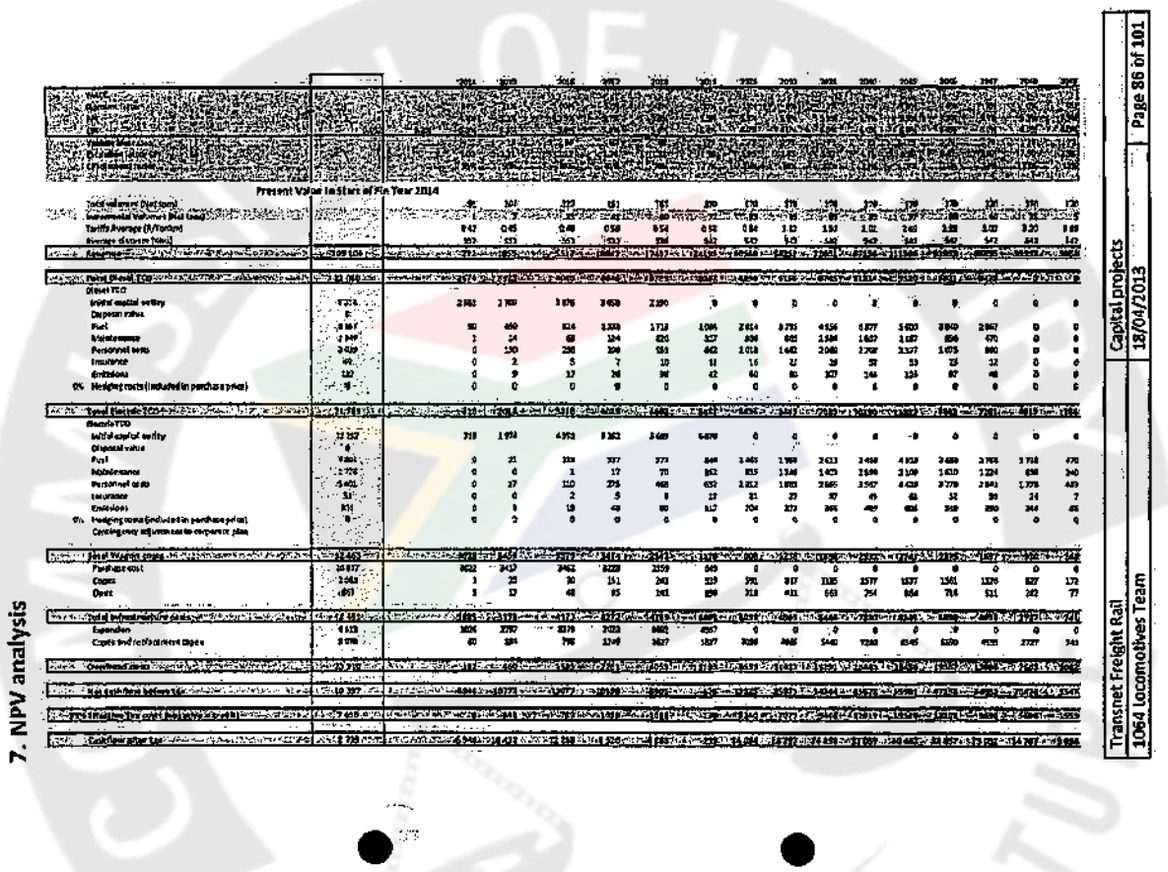

7. NPV analysis

Present Value in Start of Fin Year 2014

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8. Risk register

No.	Key Dynamic	Risk Description	Impacts	Causes	Controls
1	Change Management Risk	Ineffective change management in implementing the strategies as encompassed in the	> Lack of buy in from labour > Low or employee morale > Employee resistance > Relocation of people	> Lack of understanding as to the business need for the changes > Ineffective communication resulting from the communication	None. Pending deployment plan approval
2	Volumes Risk	Volumes Risk associated with the late delivery (1064	> Loss of Revenue (R70.9bn) > Loss of Tonnages	> Current planned timelines may be at risk for local production1 and suggest annual locomotive shortages peaking at 150 electrics and 70 diesels in 2015	> Close monitoring of the delivery schedule > 1064 steerco
3	Planning Risk	Incorrect fleet life cycle planning	> tonnages not materialising as a result of the unavailability and unreliability of the fleet > projects falling behind schedule. > underutilised assets > Inability to deliver the fleet as per the plan	> Severely underestimating the contractual complexities > Adding additional requirements and complexities to the contract > Lengthy approval processes causing delays and mismatch between scheduled deployment and operational requirements > Non alignment between rolling stock planning, network planning and technology planning > There is an inherent risk with the increase in number of OEMs. The number of OEMs used for locomotives increases the acquisition time for design and testing, and increases the contractual complexities > Unrealistic timelines creating undue pressure on fast tracking the time taken for design and testing > Lack of co-ordination and integration between the various Capital projects > Protracted negotiations > TFR lack of capacity to manage contracts > Lack of capacity / capability from the supplier to execute contracts within the required time frame > Ineffective lifecycle planning	> Standard agreement & standardised technical specifications > 1064 loco steer committee > Improved approval process of prototypes prior to planned builds ahead of demand (Wagons & loco's upgrade) > Signed off user requirement specifications (Wagons) > Alignment of fleet deployment plan according to traffic fits > Procurement controlled by current procurement strategy. > Aggressive delivery forced by conservative payment regimes > None > None > Contract management process > Project Management, contractual terms for terminating and contract penalty clauses > Resuscitate of the fleet plan > Deployment plan

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No	Key Risk	Risk Description	Impact	Cause	Control
4	Market Risk	Inherent risk that the commercial freebors that the wagons and locomotives are built for do not achieve the anticipated market growth	> tonnages not materialising as a result of the unavailability and unreliability of the fleet > projects falling behind schedule > underutilised assets	> lower than anticipated customer demand > The anticipated customer demand do es not materialise > The customer demand exceeds planned demand > not obtaining the right wagons etc for the right volumes of commodities at the right time	> Annual budget review of the demand (Demand file) > Logistic integration function (monitors asset performance & allocate resources)) > Annual budget review of the demand (Demand file) > Financial KPI focusing on asset utilisation (Revenue/total assets) > Annual/ Quarterly review of the build programme to align TE factories (wagon fleet)
5	Skills Risk	Lack of required skills to build, maintain, project manage and utilise the new fleet	> Delay in the execution of the fleet plan > Delay in project schedule/ delay work > Underutilised assets > Poor assets handing overs	> Insufficient maintenance skills (leasure, technicians) > Insufficient new generation technology maintenance jobs > Train drivers not adequately equipped to utilize the new fleet > Inadequate transfer of knowledge of skills from the OEM to Transnet > Lack of project management skills	> Maintenance staffing plan > Succession plan & training with SCR > Train Drivers are trained in accordance with training plan > Training is built in the contract with the suppliers to train the maintainer (TRE) on the new technology > Project management training plan
6	Exogenous Risks	Impact of Eskom generation capacity shortage on the fleet plan Impact of strike action at major supplier plants	> Projects delay commissioning > Power shortages > Cost overruns > Scope creep	> Eskom's inability to secure long term sourcing contracts > Industrial action from major suppliers > Earthquake > Floods > War > Sanctions or trade restrictions like world countries > Component price going up	> Efficiency improvement initiatives > Energy Saving Initiatives > Establish Energy Efficiency Forum > High level engagement with Eskom as to plans to address shortage of capacity (including contractual agreements with Eskom) > Complete list of TFR projects submitted to Eskom > Contracts clauses > Contract - under the force majeure clauses > The force majeure is valid for six months of which afterwards Transnet can terminate contract or apply breach of contract terms. >SLA with suppliers of TRE >TFR and TRE annual price review and escalation to TFR

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No	Key Elements	Description of Risk	Impacts	Causes	Controls
7	Governance Risk	Langdry Approval processes Treasury note on supplier development has introduced uncertainty	> Delay in the execution of the tie	> long lead time in obtaining approval as per PFMA requirements by DPE	> Project approval governance process
8	Operational Readiness	Inability to integrate new fleet into operations (readiness of the entire supply chain)	> loss of revenue > Poor return on investment > Delay in deployment > Underutilised capacity	> Lack of capacity by School Of Rail, School Of Engineering & curriculum readiness (Skills) > Lack of maintenance capacity (Facilities and Personnel) at TS > Lack of capacity & facility alignment with TPT & Customers > Lack of fully integrated technology plan > Lack of Rail network maintenance capacity, poor condition of the track > Inadequate systems to support the operability of the fleet post deployment (Existing IT related systems) > Lack of proper handover of the asset to operations and maintenance > Impact of the deployment plan on the organisation (i.e. fleet & IP once the deployment plan has approved.	> OR implementation guideline and Training approach & guideline > Maintenance Philosophy and Deployment Plan > Customer relations management > Technology plan > Rail Network Maintenance Plan > IT Plan and contracts > Draft Handover policy > Change Impact Assessment
9	Maintenance Risk	Inability to align maintenance and build plan to the fleet plan	> Not meeting the delivery schedule > Exceeding planned unit price > Work not performed according to works instructions	> Supplier to deliver on the TFR mandate (normal scheduled maintenance; new build programme, major fleet overhaul	> 7 year maintenance plan (TRE) > Delivery of material is planned ahead of demand > Annual Quarterly review of build programme that align TRE factories > Production lines at TRE doubled > Additional material suppliers sourced > Some factories operating 24 hour shifts to mitigate risk of delay to schedule > Fix unit prices for major components
10	Technology Implementation Risk	No clear identification of the technology functional needs and user requirements specifications	> Inadequate functionality of the fl	> Inadequate process to define the URS > Lack of fleet ownership to identify the technology functional needs (no clear URS)	> Project management process > Signed off URS
11	Technology risk	Inappropriate technology	> Wrong technology deployed Non optimal functional of the fleet	Lack of knowledge and expertise to provide correct specified technologies	Technology management sessen with experts

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9. Fraud risk management plan

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]							
Fraud Ethics							
Rollout Awareness Education training sessions to internal stakeholders involved in the 1064 Locomotive Acquisition process, which includes Fraud, Ethics & Information Security		Forensic Champion / TIA Forensic OD Leader				• Employees involved in the Locomotive acquisition process become aware of fraud and are able to identify incidents of possible fraud and report their allegations effectively	• Training to be aligned to 1064 Locomotive Acquisition plan / strategy.
Monitor the subject of Supplier Integrity Pacts for suppliers bidding for the supply of the Locomotives.		Forensic Champion / TIA Forensic OD Leader				• Ensure that suppliers bidding for the supply of locomotives are being made aware of the Supplier Integrity Pact, and its content • Ensure that suppliers bidding for the supply of locomotives sign the Supplier Integrity Pact as part of their contractual obligations with Transnet	• Feedback provided at monthly Locomotives Acquisition Steering Committee
Perform a Fraud Risk Assessment on the 1064 Locomotive Acquisition process		Forensic Champion / TIA Forensic OD Leader				• Identify fraud risks associated with the Locomotive acquisition process. • Ensure controls and action plans are in place to recognise fraud and corruption risks relevant to acquisition process	• Workshops to be scheduled with stakeholders timeously and • Fraud Risk document distributed to all key Stakeholders involved in the acquisition process.
Governance							
• Establishment of a Locomotive Acquisition Steering Committee (LSC) • Finalise the Handbook and terms of reference for the LSC.		Forensic Champion				• Ensure that there is oversight and that key stakeholders are held accountable in terms of their obligations in the locomotive acquisition process.	• Finalise terms of reference and mandate for the Locomotive Acquisition Steering committee.
High Value Gateway Review process		Forensic Champion				• Provide assurance that the process is complied with in the acquisition of the Locomotives.	• Timely delivery of assurance reports to Locomotives Acquisition Steering committee.
Conduct a Conflict of Interest compliance check for employees involved in the 1064 Locomotive Acquisition process		Forensic Champion / TIA Forensic OD Leader				• Determine compliance with the Declaration of Interest and Related Party Disclosures Policy • Identify possible conflicts of interest	• Timeous delivery of the final report to Steering Committee.
Conduct a Gifts compliance check for stakeholders involved in the 1064 Locomotive Acquisition process		Forensic Champion / TIA Forensic OD Leader				• Determine compliance with the Gifts Policy • Identify possible incidents of non compliance	• Timeous delivery of the final report to Steering Committee.
Conduct a Delegation of Authority compliance check for stakeholders involved in the 1064 Locomotive Acquisition process		Forensic Champion / TIA Forensic OD Leader				• Determine compliance with the Delegation of Authority framework • Identify possible incidents of non compliance	• Timeous delivery of the final report to Steering Committee.
Perform Vendor Due Diligence on all entities that proposed for 1064 locomotives, including site visits, 3rd tier business interests against Transnet restricted vendors and their directors		Forensic Champion / TIA Forensic OD Leader				• Determine compliance with all Transnet related Policies	• Timeous delivery of the final report to Steering Committee.
Conduct Homecast and Handbook Analysis on all internal stakeholders involved in the 1064 Locomotive Acquisition process.		Forensic Champion / TIA Forensic OD Leader				Identify possible fraud / corruption being committed by stakeholders in the 1064 Locomotive Acquisition process.	• Timely delivery of reports to Management and the Locomotives Acquisition Steering Committee.
Review and enhance OEM site visit guidelines		Forensic Champion / TIA Forensic OD Leader				• To ensure that dealings with OEMs are kept at arms length during site visits by Transnet employees or agents	• Timeous delivery of the enhanced OEM site visit guidelines to the Steering Committee for adoption.

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10. 7-year man plan

	Yr12/13	Yr13/14	Yr14/15	Yr15/16	Yr16/17	Yr17/18	Yr18/19
Natcor							
Required	752	805	861	1025	1137	1205	1278
Available	408	408	408	408	408	408	408
Delta	344	397	453	617	729	797	870
Natcor2							
Required	216	231	247	294	327	346	367
Available	146	146	146	146	146	146	146
Delta	70	85	101	148	181	200	221
Coalline							
Required	783	838	896	1067	1184	1255	1330
Available	417	417	417	417	417	417	417
Delta	366	421	479	650	767	838	913
Ore line							
Required	156	167	179	213	236	250	265
Available	107	107	107	107	107	107	107
Delta	49	60	72	106	129	143	158
Capecor1&2							
Required	598	640	685	815	904	959	1016
Available	426	426	426	426	426	426	426
Delta	172	214	259	389	478	533	590
Hockeystick							
Required	278	297	318	379	420	446	472
Available	191	191	191	191	191	191	191
Delta	87	106	127	188	229	255	281
Westcor							
Required	128	137	147	174	194	205	217
Available	109	109	109	109	109	109	109
Delta	19	28	38	65	85	96	108
Northcor							
Required	236	253	270	322	357	378	401
Available	158	158	158	158	158	158	158
Delta	78	95	112	164	199	220	243
Sentracor							
Required	270	289	309	368	408	433	459
Available	208	208	208	208	208	208	208
Delta	62	81	101	160	200	225	251
Eastcor							
Required	212	227	243	289	321	340	360
Available	180	180	180	180	180	180	180
Delta	32	47	63	109	141	160	180
	Yr12/13	Yr13/14	Yr14/15	Yr15/16	Yr16/17	Yr17/18	Yr18/19
Required	**3629**	**3884**	**4155**	**4946**	**5488**	**5817**	**6165**
Available	**3100**	**3100**	**3100**	**3100**	**3100**	**3100**	**3100**
Delta	**529**	**784**	**1055**	**1846**	**2388**	**2717**	**3065**

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11. Infrastructure plans

EXHIBIT 75

Track / Perway – Axle loading (Current status)

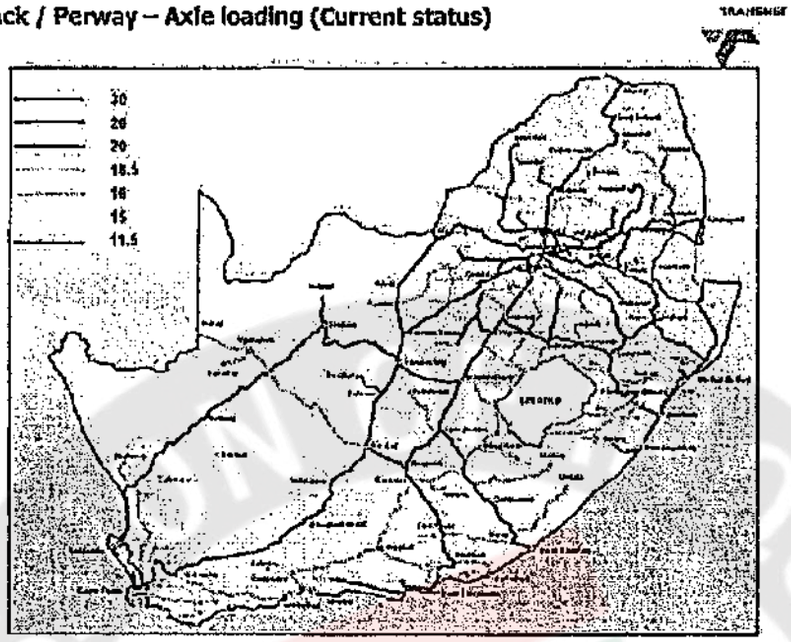

EXHIBIT 76

Electrification (Current status)

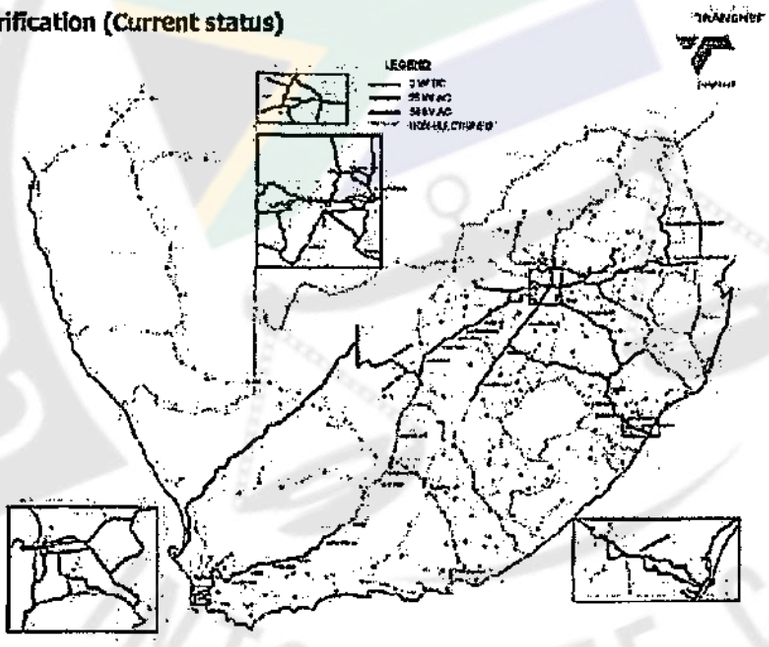

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EXHIBIT 77

Expansionary infrastructure expenditure timeline

Business focus	Preparation for growth (zero to two years)	Sustained growth (two to five years)	Consolidate (five to seven years)
Infrastructure expansion: Perway/axle loading	▪ Increase axle loading ▪ Increase coal line capacity to 81mt ▪ Eskom 32mt project ▪ Partial doubling of RCB-Nseni line ▪ Waterberg – Phases 2-5 additional passing loops ▪ Manganese 16mtpa (Hotazel – Coega) ▪ Swazi rail link 15mt. ▪ Increase axle loading on Groenbult– Hoedspruit	▪ Increase axle loading ▪ Increase coal line capacity to 81mt ▪ Coal 91mt project (including Overall tunnel doubling) ▪ Eskom 32mt project ▪ Geluksplaas grade separation ▪ Line tripling Broodsnyersplaas-Ermelo ▪ Waterberg – Phases 2-5 additional passing loops ▪ Manganese 16mtpa (Hotazel – Coega) ▪ Ore line Phase 2A to 82.5mtpa ▪ Swazi rail link 15mt	▪ Increase axle loading ▪ Overall tunnel doubling ▪ Coal 91mt project (including Overveal tunnel doubling) ▪ Eskom 32mt project ▪ Line tripling Broodsnyersplaas-Ermelo ▪ Swazi rail link 15mt ▪ Doubling of all critical deviations
Infrastructure expansion: Electrical	▪ Increase electrical capacity on the AC section on the coal line ▪ Upgrade section Rooikop-Newcastle, Manganese 16mtpa New and Upgraded sub-stations and OHTE	▪ Manganese 16mtpa New and Upgraded substations ▪ Ore line Phase 2A to 82.5mtpa power upgrade (including of OHTE) ▪ Increase electrical capacity on the AC section on the coal line ▪ Coal 91mt project ▪ Upgrade substations and electrical equipment ▪ Commence with the conversion of 3kV DC to 25kVAC Ermelo-Pyramid South	▪ Completion of the conversion of 3kVDC to 25kVAC Ermelo-Pyramid South ▪ Coal 91mt project ▪ Eskom 32mt project ▪ Upgrade substations and electrical equipment ▪ Waterberg – Phase 5 (22mtpa) commence with the electrification of Thabazimbi-Lephalale ▪ Conversion of 3kVDC to 25kVAC on Ermelo-Pyramid South
Infrastructure expansion: Signaling	▪ Manganese 16mtpa	▪ Pyramid South – Lephalale: Communication based authorisation (CBA) pilot installation ▪ Manganese 16mtpa	▪ Commence with the re-signaling of the coal line (CBA)

EXHIBIT 78

Track / Perway – Axle loading (Future status)

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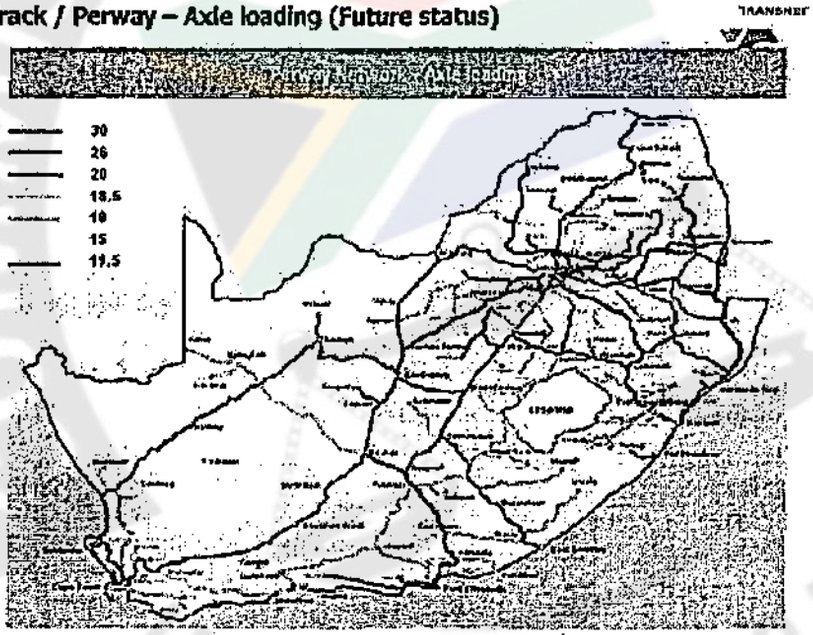

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EXHIBIT 79

Electrification (Future status)

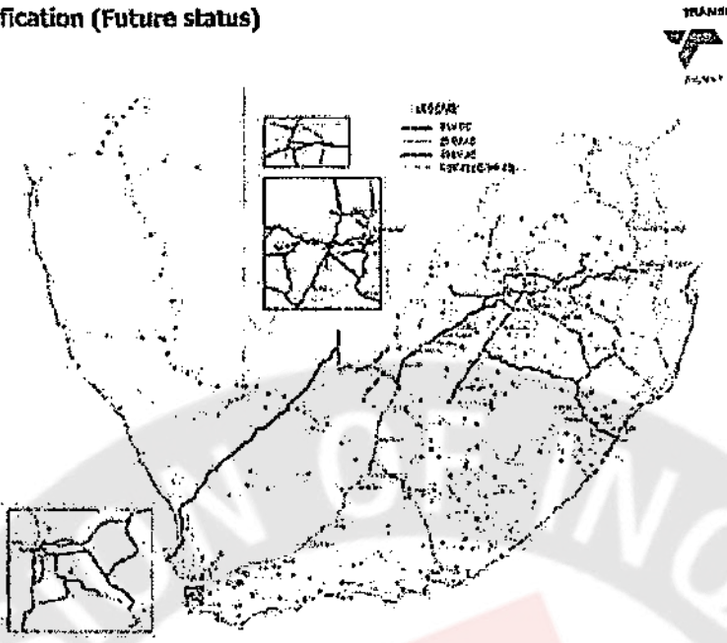

EXHIBIT 80

Maintenance infrastructure expenditure timeline (1/3)

Business focus	Preparation for growth (one to two years)	Sustained growth (two to five years)	Consolidate (five to seven years)
Infrastructure maintenance sustaining Parway	• Increase on-track machines capacity and productivity • Accelerated rail replacement (765km to 865km) • Increase sleeper replacement (490 000 – 550 000/year) • Increase ballast screening (650km – 750km) • Ore line rail break mitigation plan, Wayside Intelligent Longstress measurement System (WILMA), Ultrasonic Broken Rail Detector System (UBRD) • Longstress measurement system (WILMA) – Natcor and coal line • Infrastructure sustains (General Freight business) tunnels and bridges • Additional three rail trains • Level crossing elimination/Level crossing protection (new bridges/protection systems) • Drainage rehabilitation • Formation rehabilitation • Install wheel impact monitoring and weigh-in motion (WIM-WIM) system	• Increase on-track machines capacity and productivity • Accelerated rail replacement (865km to 1 065km) • Increase sleeper replacement (550 000 to 650 000/year) • Increase ballast screening (750 – 800km) • Longstress measurement systems (WILMA) for core lines • Infrastructure sustains (General Freight business) tunnels and bridges • UBRD systems on General Freight business core lines • Level crossing elimination/Level crossing protection (new bridges/protection systems) • Drainage rehabilitation • Formation rehabilitation • Install wheel impact monitoring and weigh-in motion (WIM-WIM) system	• Increase on-track machines capacity and productivity • Accelerated rail replacement (1 065km to 1 200km) • Maintain sleeper replacement at 650 000/year • Increase ballast screening (800km – 850km) • Longstress measurement systems (WILMA) for core lines • Infrastructure Sustain (General Freight business) tunnels and bridges • UBRD systems on General Freight businesses core lines • Level crossing elimination/level crossing protection (new bridges/protection systems) • Drainage rehabilitation • Formation rehabilitation

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EXHIBIT 81

Maintenance infrastructure expenditure timeline (2/3)

Business focus	Preparation for growth (two to two years)	Sustained growth (two to five years)	Consolidate (five to seven years)
Infrastructure maintenance: Sustaining electrical	• Primary circuit breaker replacement • Track breaker replacement • Upgrade and replace switchgear (distribution subs) • Traction substations 25-year lifecycle intervention • Traction substations 50-year lifecycle intervention • Sabotage/vandalism/theft projects	• Primary circuit breaker replacement • Track breaker replacement • Upgrade and replace switchgear (distribution subs) • Traction substations 25-year lifecycle intervention • Traction substations 50-year lifecycle intervention • Sabotage/vandalism/theft projects	• Traction substations 25-year lifecycle intervention • Traction substations 50-year lifecycle intervention • Sabotage/vandalism/theft projects
Infrastructure maintenance: Sustaining signalling	• Consolidation of single manned cabins • Centralisation of CTCs • Subsystem replacement to extend life (e.g., replace track circuits, remote control systems, power equipment) • Migrate systems from copper to optic fibre (coal line, Manganese corridor, Natcor, Sentrarand area, Houtbaai – Klerksdorp) • Installation of electronic interlocking systems (three pilot sites) • Resignalling of Kaffersdam – Postmasburg • Resignalling of Bellville – Wellington • Resignalling of Umgeni – Stanger • In-motion weighbridges • Upgrade/replace measurement systems	• Centralisation of CTCs • Subsystem replacement to extend life (e.g., replace track circuits, remote control systems, power equipment) • Migrate systems from copper to optic fibre (Port Elizabeth – De Aar, De Aar – Wellington, Empangeni, Ogies) • Rationalisation of signaling systems in the central region (Gauteng area) • Remodeling track layout and resignalling Gauteng area (Elsburg – Imala – Jupiter – Watties) • Resignalling of Bellville – Wellington • Resignalling of Umgeni – Stanger • Replace PEL interlockings in the Karoo and Port Elizabeth • Upgrade/replace measurement systems	• Subsystem replacement to extend life (e.g., replace track circuits, remove control systems, power equipment) • Migrate systems from copper to optic fibre • Replace PEL interlockings in the Karoo and Port Elizabeth • Coal line: Upgrade/replace the Vehicle Identification System (VIS) • Resignalling projects on General Freight business lines commence

EXHIBIT 82

Maintenance infrastructure expenditure timeline (3/3)

Business focus	Preparation for growth (two to two years)	Sustained growth (two to five years)	Consolidate (five to seven years)
Infrastructure maintenance: Sustaining telecoms	• Upgrade national optical fibre cable network • Upgrade and replace access multiplexers • Improve train communication in rail tunnels countrywide • Provision of new telecommunication backbone infrastructure • Train radios Phase 4 • Replace unstable masts and towers • De-copper in Empangeni, Erweio and Ogies	• Upgrade national optical fibre cable network • Upgrade and replace access multiplexers • Improve train communication in rail tunnels countrywide • Provision of new telecommunication backbone infrastructure • Train radios Phase 4 • Replace unstable masts and towers	• Upgrade national optical fibre cable network • Upgrade and replace access multiplexers

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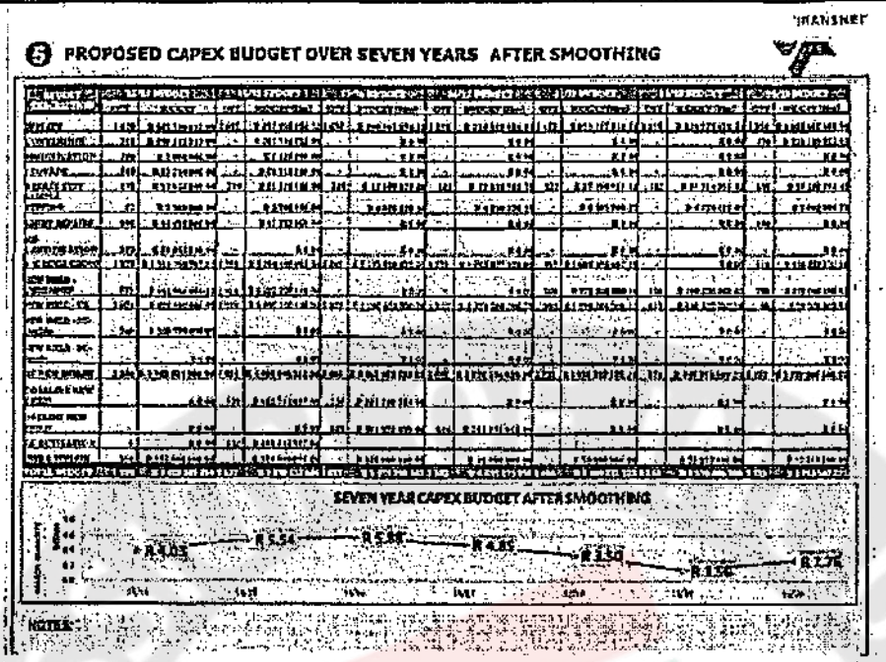
12. Wagon requirements

EXHIBIT 83

TRANSNET

PROPOSED CAPEX BUDGET OVER SEVEN YEARS AFTER SMOOTHING



SEVEN YEAR CAPEX BUDGET AFTER SMOOTHING

NOTES:

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13. Locomotive types and capacity

EXHIBIT 84

The GFB fleet currently has a total capacity of ~92 MGTK per year

Electric

Loco type	Number in fleet	Total capacity (MGTK p.a.)
6E	75	2,507
7E	216	23,224
8E	37	19
9E	0	0
10E	104	13,795
11E	1	130
14E	8	330
18E	597	34,026
Total	**1038**	**74,031**

Diesel

Loco type	Number in fleet	Total capacity (MGTK p.a.)
33	5	38
34	318	7,689
35	146	1,006
36	167	244
37	70	1,372
38	38	827
39	53	2,852
43	53	4,235
Total	**850**	**18,626**

The current fleet is made up of 66 percent electric and 34 percent diesel with a total fleet size of 1,888 locomotives and capacity of 92 million gross ton kilometres per year. The active GFB fleet includes both the operational fleet and the fleet undergoing maintenance, but excludes mothballed locomotives. The operational fleet consists of the locomotives available for operations. Typically, 12 percent of the active fleet's locomotives are undergoing maintenance or minor repairs, but this varies depending on the level of reliability of individual locomotives and locomotive classes at any point in time.

The operational fleet is categorised into "shunters" and "workhorses." Workhorses are the prime movers, hauling loads between hubs, and generate the income earning net ton kilometres. They are TFR's inputs in locomotive efficiency measures. Shunters are primarily used to place and clear loaded wagons and compile trains before departure. Although shunters are not prime income earners, they are an essential component of operations and an overhead cost that must be covered.

14. Locomotive specifications

Locomotives have a long lifespan and the technology is constantly evolving. Therefore, to maintain efficiencies and capacity, TFR needs to procure recently designed locomotive types that not only enable it to deliver on the Fleet Plan but also capture the aforementioned operational efficiencies.

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EXHIBIT 85

General locomotive specifications

TRANSNET

PRELIMINARY

Locomotive feature	Electric	Diesel
Energy source	• 25 kv AC and 3 kv DC	Diesel
Maximum axle load (tonnes)	22	22
Continuous tractive effort[1]	Bo-Bo: 267 / Co-Co: 400	Bo-Bo: 267 / Co-Co: 400
Base speed	34	34
Maximum operating speed (km/hr)	100	100

[1] Bo-Bo: 2521 kw at 34 km/hr and Co-Co: 3278 kw at 34 km/hr

SOURCE: 1064 Loco Business Case Annexure K- Locomotive Specifications

Exhibit 9, above, shows the high-level specifications of the locomotives to be procured. A major feature of the procurement is that it offers suppliers the choice of providing either Bo-Bo[9] or Co-Co[10] wheel configurations. It also requires the electric locomotives to run on both AC and DC lines given South Africa's gridline structure.

The proposed locomotives have significant improvements in engine design and lower pollutants per tonne kilometre. They are 8 percent more fuel efficient and are also more powerful, with a continuous tractive effort of 349 kN compared to the 218 kN of the class 34 diesels in dry conditions.

A direct comparison of class 6E and 18E to the proposed new locomotive is not possible. However, our knowledge of and experience with the recently delivered 19E and 15E suggest TFR can expect an electrical efficiency improvement of at least 18 percent, as well as regenerative capability that feeds power back into the Eskom grid. The design calls for a tractive effort between 267 and 400 kN, which is considerably higher than the 170 kN of the 6E series or the 200 kN of the 18E series.

15. Technology

The new locomotives will all be equipped with new technology which is currently being retrofitted to the existing fleet. The technologies are summarised below.

[9] Two-wheel configuration

[10] Three-wheel configuration

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- Integrated Asset Tracking to track locomotives and wagons using a combination of tracking technologies including GPS and GPRS.
- Electronic Control Pneumatic Braking (ECPB). This enhances the current pressurised air brake system by sending an electric signal via a control cable simultaneously to all wagons to apply their brakes. This eliminates the propagation delay encountered in the traditional system where the signal is pneumatically transmitted from the locomotive down the length of the train. A result of this system trains brake more responsively and more evenly and safer. It is being implemented on all 200 wagon trains.
- Radio Distributed Power enables driverless locomotives to be placed within the length of the train and remotely control them from the lead locomotive. This enables longer and safer trains as the tractive forces are more evenly distributed along the length of the train. Coupler breakages because are reduced to being eliminated as the tractive forces are no longer concentrated at the leading locomotive consist.

This technology was pioneered on the Iron Ore Export Line and will be used in other heavy haul operations but will not be universally fitted.

- Cab based authorisation, control and communication systems. This cab mounted equipment provides an unobtrusive visual display to the driver with easy and intuitive controls and inputs. There are also interfaces to the locomotive controls providing automatic stop features in the event of over speeding or failure to adhere to a valid command.

All new locomotive designs will incorporate the design ergonomics of these systems and interfaces to the locomotive controls conception through to commissioning.

Retrofitting this equipment to existing locomotives almost always results in suboptimal ergonomic designs and control interfaces.

- Electronic Fuel Injection Engine Technology provides better green fuel efficiencies and higher power output using micro controllers that intelligently switches the engine on and off to eliminate excessive idling. Indications are that these could reduce the energy bill for these locomotives with up to 10 percent.
- Data Loggers report on the condition (health) of the locomotive fleet, thereby optimising maintenance and improving efficiencies in the maintenance of the locomotive fleet. It is planned that this information is transmitted back to the central locomotive control for maintenance planning and to analytically develop preventative maintenance measures.
- Trip Optimisers are being tested and evaluated for diesels and are being considered for electric locomotives. The Trip Optimiser results in significant fuel and energy savings as it computes the best match for the throttle / notch position of the locomotive to preloaded profile for the trip and running time to be achieved. Using the trip optimiser ensures that only the optimum power is applied at any one time and integrated over the trip, the minimum energy is consumed. As a stand-alone system with automatic throttle control, energy savings of 3 percent - 17 percent are indicated in the commercial literature depending on the locomotive type, track conditions and driver behaviour. Further savings are possible depending on the degree of integration into other systems such as Dynamic

Issue: 2019-01-25_15:08:31

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Brake Control, Integration with Train Authorisation Systems and ultimately Movement Planning.

COMMISSION OF INQUIRY INTO STATE CAPTURE

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Project Authorisation Signatures

Transnet Freight Rail

Submission supported:

Rita Roper **General Manager, Capital Projects**	**Date**

Submission supported:

Mlamuli Buthelezi **Chief Operating Officer**	**Date**

Submission recommended:

Siyabonga Gama **Chief Executive: Freight Rail**	**Date**

Transnet Group

Submission recommended:

Anoj Singh **Chief Financial Officer**	**Date**

Submission recommended:

Brian Molefe **Group Chief Executive**	**Date**

Issue: 2019-01-25_15:08:31

0056-0361-0001-0185

Liza L. Muller

From: ashvin_sologar@mckinsey.com
Sent: Monday, 27 January 2014 22:31
To: Mohammed Mahomedy Transnet Corporate JHB
Cc: christina_planert@mckinsey.com
Subject: 1064 Locomotives Phase II - Prerequisites, scope and team.pptx

Hi Mohammed,
Per your request this morning, please find attached an overview of what we think could meaningfully be delivered on the 1064 locomotive transaction by McKinsey within the four weeks beginning Monday.

Due to the intensity of the work and the time scale, we have adjusted the team composition and will commit additional leadership time to manage the work accordingly. However, to ensure impact in such a short period, the prerequisites detailed in the attached pages would also need to be in order prior to Monday. This document has been prepared based on our best understanding of the situation, but I would be happy to discuss further as required.

Hope this is helpful,
Ash

Ashvin Sologar

McKinsey & Company | 88 Stella Street, 3rd Floor, Sandown Mews East, South Africa
Direct +27 11 506 8094 | Mobile +27 82 329 8094
Assistant: Yunus Rocker +27 11 506 8205, yunus_rocker@mckinsey.com
Please bear in mind the environmental impact of printing this email or any attachments.

(See attached file: 1064 Locomotives Phase II - Prerequisites, scope and team.pptx)

+==========+
This email is confidential and may be privileged. If you have received it in error, please notify us immediately and then delete it. Please do not copy it, disclose its contents or use it for any purpose.
+==========+

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1064 Locomotive Transaction Advisory

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Phase 2 scope – for discussion

Several prerequisites must be met in order to effectively support the transaction

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	Prerequisites for delivery
Stakeholders and team	▪ All stakeholders agree to a well defined scope of activities and process ▪ Transaction lead appointed with clear mandate ▪ Weekly steering committees scheduled ▪ Full time working team from Transnet including transaction lead and specialists including technical, finance and procurement resources ▪ Joint working environment for Transnet and McKinsey team, as well as any other advisors e.g. financial, legal
Data and analysis	▪ Day one (or prior) access to necessary data including: original RFP, shortlisted bids, technical evaluation report and TCO model for each bid ▪ Analysis using existing vendor date: further vendor interaction in the timeframe is unlikely to be productive i.e. all comparable evaluation and flexibility proposals will be based on data included in the RFP and bids ▪ Update demand volumes and associated fleet plan
Timelines	▪ Deliverables will be ready at the end of the 4 week period, with interim steering committees to discuss and shape drafts of final deliverables

The scope of work would focus on commercial negotiations and contracting strategy

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		Deliverable
Commercial negotiations	TCO modeling of bids	• Refine existing Transnet TCO model for comparing bids • Estimate supplier cost/benefit of various localisation options i.e. make localisation proposals comparable • Recommend further questions to ask bidders to refine model assumptions and close comparability gaps
	Demand modeling	• Work with Transnet to update demand model based on latest volumes and fleet plan • Develop demand scenarios and calculate associated locomotive requirements for each scenario
	ART support (David Potter)	• Provide benchmark pricing for major locomotive components • Recommend primary areas for price/margin negotiation
	Supplier intelligence	• Investigate supplier localisation track record • Provide supplier specific intelligence for use as negotiation levers, based on publicly available data (capacity, standard locomotive design vs. proposed bid, maintenance record etc.)
	Negotiation strategy and process	• Outline pre- and post-negotiation process and timelines • Detail either "auction" or "best and final offer" (BAFO)[1] process, including process visualisation, input and success requirements at each stage, risk mitigation plans, timelines and logistics requirements • Structure and develop a list of expected supplier arguments and potential responses (if using auction process) • Facilitate preparation workshop for negotiation team (if using auction process)
Contracting strategy		• Estimate top down acceptable locomotive cost under different delivery scenarios e.g., early, on time, late • Determine contract terms required to ensure maximum timing /delivery volume flexibility • Establish penalties and incentives required to ensure appropriate ROI and timely delivery • Determine payment terms and corresponding milestones

1 A BAFO(Best and final offer) process would not include negotiation rounds

Proposed team structure – Transnet team should be in place before the project starts

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- Define direction
- Lead processes
- Interface with senior management
- Guarantee quality of deliverables and project impact
- Integrate expert contributions

McKinsey core leadership

- Vikas Sagar
- Norbert Dörr
- Christina Planert
- Ashvin Sologar
- Jan Weydringer

Steering Committee

Members and meetings to be agreed prior to Day 1

- Discuss issues of strategic importance and evaluate the different options
- Provide guidance on initial hypotheses
- Decide on final recommendations

- Lead solution development process
- Create end deliverables
- Perform analysis
- Collect data

Joint project team

McKinsey

- 2 Full time project managers
- 3 full-time consultants
- McKinsey Leadership Fellow
- McKinsey research analytics support and infrastructure
- Administrative support

Full time team from Transnet

- Transaction lead
- Technical resource
- Finance resource
- Business/technical interface resource
- Procurement/negotiation resource

Must be in place before start

- Supports problem solving and overall support to the process
- Aid data collection and analysis
- Join key interviews, workshops, and activities

- Leverage global experience on similar projects
- Supply insights, frameworks, tools and methodologies

McKinsey global experts panel

- Global procurement and contracting experts

Transnet stakeholders & SMEs

- Subject matter experts and business/operations representation to be available to the team

- Answer specific data requests
- Provide specific insights and directions

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Award of Tender for 1064 (599 Electric and 465 Diesel) Locomotives

Presentation to the Board Acquisition and Disposal Council (BADC)

Date: February 2014

20 YEARS OF FREEDOM

Purpose of the Submission

This submission is to obtain approval from the Board Acquisition and Disposal Committee (BADC) for the award of 465 Diesel Locomotives and 599 Electric Locomotives

Award of 465 Diesel Locomotive Contract - Approval by BADC

Award of 465 Diesel Locomotive Contract - Approval by BADC				
		Bidder 1	Bidder 4	
		232 (50%)	233 (50%)	
Best and Final Offer per Board submission		**27 360 000**	**24 312 000**	12.5%
Adjusted for changes to:				
Escalation up to signature date (from close of tender to Feb 14)				
Longer delivery schedule impact due to production rate tempo of 12 per month				
Forex adjustment to spot rate at 24 Feb 2014				
Batch pricing adjustment for reduction of batch size to 50 %				
Best and Final Offer updated to 24 Feb 2014		**36 577 723**	**30 073 800**	21.6%
Adjustments for:				
Additional TE Scope				
Negotiated discounts				
New Price including TE scope		**34 000 000**	**31 646 300**	7.4%
Cost to fix escalation to end of contract		5 400 000	5 094 638	
Cost of Hedging		2 605 000	1 914 756	
Final Locomotive cost		**42 005 000**	**38 655 694**	8.7%
Estimated Total Cost excluding Hedging and Escalation	**15 261 587 900**	**7 888 000 000**	**7 373 587 900**	
Estimated Total Cost including Hedging and Escalation	**18 751 936 702**	**9 745 160 000**	**9 006 776 702**	
Estimated total cost and locomotive pricing is subject to change pending confirmation of final TE scope and any further potential discount negotiations				
Recommendation:				
BADC to approve the 50/50 (232/233) allocation and the award of business to each supplier on that basis.				

Award of 599 Electric Locomotive Contract - Approval by BADC

Award of 599 Electric Locomotive Contract - Approval by BADC				
		Bidder 1	Bidder 2	
		240 (40%)	359 (60%)	
Best and Final Offer per Board submission		**28 788 150**	**28 900 000**	-0.4%
Adjusted for changes to:				
Escalation up to signature date (from close of tender to Feb 14)				
Longer delivery schedule impact due to production rate tempo of 12 per month				
Forex adjustment to spot rate at 24 Feb 2014				
Batch pricing adjustment for reduction of batch size to 40 % / 60 %				
Best and Final Offer updated to 24 Feb 2014		**42 560 000**	**42 615 553**	-0.1%
New price after negotiations		**42 560 000**	**39 129 901**	8.8%
Cost to fix escalation to end of contract		9 111 000	9 870 099	
Cost of Hedging		3 659 000	1 899 647	
Final Locomotive cost excluding TE scope		**55 330 000**	**50 899 647**	8.7%
Estimated Total Cost excluding Hedging, Escalation & TE scope	**19 605 576 240**	**10 214 400 000**	**9 391 176 240**	
Estimated Total Cost including Hedging & Escalation and excluding TE scope	**31 552 173 273**	**13 279 200 000**	**18 272 973 273**	
Estimated total cost and locomotive pricing is subject to change pending confirmation of final TE scope and any further potential discount negotiations				
Recommendation:				
BADC to approve the 40/60 (240/359) allocation and the award of business to each supplier on that basis.				

Summary ETC calculation

Summary of ETC calculation		Electrics	
	Total	Bidder 1	Bidder 2
		240 (40%)	359 (60%)
	A		
Estimated Total Cost excluding Hedging, Escalation & TE scope(electrics only)	19 605 576 240	10 214 400 000	9 391 176 240
Estimated Total Cost including Hedging & Escalation and excluding TE scope (electrics only)	31 552 173 273	13 279 200 000	18 272 973 273
		Diesels	
	Total	Bidder 1	Bidder 4
		232 (50%)	233 (50%)
	B		
Estimated Total Cost excluding Hedging and Escalation	15 261 587 900	7 888 000 000	7 373 587 900
Estimated Total Cost including Hedging and Escalation	18 751 936 702	9 745 160 000	9 006 776 702
	Diesel + Electric Grand Total		
	1 064		
Estimated Total Cost excluding Hedging, Escalation & TE scope(electrics only)	34 867 164 140		
Potential Cost of additional TE scope	1 753 406 280		
Estimated Total Cost excluding Hedging, Escalation	36 620 570 420		
Estimated Total Cost including Hedging & Escalation and excluding TE scope (electrics only)	50 304 109 975		
Potential Cost of additional TE scope	1 753 406 280		
Estimated Total Cost including Hedging & Escalation	52 057 516 255		

Estimated total cost and locomotive pricing is subject to change pending confirmation of final TE scope and any further potential discount negotiations

Recommendation:

BADC to approve the 40/60 (240/359) allocation and the award of business to each supplier on that basis.

17 March 2014

Transnet awards largest-ever locomotive supply contract in South Africa's history

South Africa's state-owned freight transport and logistics company, Transnet, today announced that it had awarded a R50 billion contract for the building of 1064 locomotives to four global original equipment manufacturers (OEMs).

Transnet said on Monday it had awarded CSR Zhuzhou Electric Locomotive and Bombardier Transportation South Africa contracts for the supply of 599 electric locomotives, while General Electric South Africa Technologies and CNR Rolling Stock South Africa (Pty) Ltd will build and supply 465 diesel locomotives. The multi-billion rand acquisition is South Africa's single biggest infrastructure investment initiative by a corporate.

Announcing the bidders in Johannesburg, Transnet Group Chief Executive, Mr Brian Molefe said: "This marks a significant milestone in the company's history together with substantial socio-economic benefits for South Africa. The drive to modernise our fleet is intended to improve reliability and availability of locomotives. This will improve customer satisfaction, ultimately leading to our crucial goal of road-to-rail migration of cargo in line with government's objectives."

The award has stringent local content, skills development and training commitments as dictated by the Supplier Development Programme, a government initiative led by the Ministry of Public Enterprises whose main goal is to localise the production of imported machinery and equipment.

In line with South Africa's commitment to boost its manufacturing capacity, all the locomotives except 70 will be built at Transnet Engineering's plants in Koedoespoort, Pretoria and Durban, driving South Africa's regional integration objectives. Transnet Engineering is the company's engineering, manufacturing and rolling stock maintenance division.

Transnet Engineering's role in the agreement has been defined to ensure that it transforms into an OEM over time. Transnet Engineering will share approximately 16% of the total build programme – about a third of which will be outsourced to local emerging engineering and manufacturing firms. This will enable it to create export capability for locomotives and related products. In total, the localisation elements are expected to contribute over R90 billion to the economy.

"This transaction is intended to transform the South African rail industry by growing existing small businesses and creating new ones. We are going to create and preserve approximately 30 000 jobs," Mr Molefe said.

The suppliers have complied with and exceeded the minimum local content criteria for rolling stock of 60% for electric locomotives and 55% for diesel locomotives.

Once all these locomotives are delivered, Transnet would have met all its rolling stock requirements needed to successfully execute the Market Demand Strategy – our record-breaking R307 billion infrastructure investment programme.

The award follows an open and public tender process overseen by the Board of Directors through a sub-committee of independent directors. In addition, the evaluation of the bids was monitored by Transnet Internal Audit to ensure that the process complied with the highest standards of governance as required by the Public Finance Management Act.

The evaluation had six stages, including Broad Based Black Economic Empowerment and Supplier Development; technical ability - including details of technical offers from the potential suppliers; and commercial. The latter included pricing, total cost of ownership and contractual terms and compliance to the supply agreement.

In terms of the agreements signed with the successful bidders, the last locomotive will roll off the production line within three and a half years. In other words, at the programme's peak, we will be producing 480 locomotives per year at 48 per month.

Commenting on the rationale for splitting the work, Mr Molefe said: "Ability to stick to an extremely tight delivery schedule was one of the key considerations in assessment of the bids. It is our view that no single supplier would have the capacity or resources to deliver within the timelines we had envisaged."

The majority of the locomotives will be deployed in Transnet Freight Rail's general freight business (GFB), which is all cargo - excluding the dedicated heavy haul lines for iron ore and coal. Freight Rail, which accounts for roughly 50% of Transnet's revenue and capital expenditure requirements, will grow its volumes to 350 million tonnes from the current 207 million tonnes. Just over 60% of the growth will be from the GFB.

Issued on behalf of Transnet Group Chief Executive, Mr Brian Molefe
By: Mboniso Sigonyela, Spokesman
011 308 2458/083 463 7701
Mboniso.sigonyela@transnet.net

For further queries, please call Viwe Tlaleane on 011 308 2384 or 083 979 0707
Viwe.tlaleane@transnet.net

Notes to editors
About bidders

<u>Bombardier Transportation South Africa</u>

- Bombardier Transportation Global;
- Current and future employees; and
- The following South African suppliers.
  - Sadiphiri Transport Services;
  - Jabatha Stationers; and
  - Masana Hygiene Services

CNR Rolling Stock South Africa (Pty) Ltd:

- Kopano Ke Matla Investment company - representing the interests of nearly 2 million workers in South Africa;
- Linontando Investments and Azon Rail to champion, amongst others, women participating meaningfully in the economy of the country;
- Lineta Investments; and
- Makana investments.

CSR Zhuzhou Electric Locomotive

Matsete Basadi Consortium (MBC):
The shareholders of MBCs four (4) entities are:

- Basadi Dirang Systems Development;
- Matsete Industrial Services;
- Matla a Sechaba Community Trust; and
- Adoword Motivational & Life Coaching.

GE

Broad-based black economic empowerment group the Mineworkers Investment Company (MIC)

TRANSNET

TRANSNET SOC LTD

[Registration No. 1990/000900/30]

REQUEST FOR PROPOSAL [RFP]

FOR THE PROVISION OF SERVICES, CAPABILITIES AND RESOURCES TO SUPPORT THE MARKET DEMAND STRATEGY (MDS) FOR PROCUREMENT AND CAPITAL EXCELLENCE AND PRODUCTIVITY

FOR A PERIOD OF 9 MONTHS

RFP NUMBER	**GSM/12/05/0445**
ISSUE DATE:	**28 May 2012**
CLOSING DATE:	**19 June 2012**
CLOSING TIME:	**12:00**
BID VALIDITY PERIOD:	**90 days from closing date**

McKinsey&Company

Transnet Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177
Supplier code: 72063827

McKinsey and Company
VAT no: 4710150048

Tax invoice: 4959

Charge code: TRX058

Payment due within 30 days of invoice date

31 May 2012

Professional fees: May 2012	R	7,091,408.70
Out of pocket expenses and support services: May 2012	R	1,063,711.30
Sub Total	R	8,155,120.00
Vat at 14%	R	1,141,716.80
TOTAL	R	9,296,836.80

PR: 10251518
PO: 4502538
TRANSNET
PAID 02/08/12
Paid

Payment may be made by direct transfer to:
Account Name: McKinsey Incorporated
Account Number: 421061812
Branch: 019205
Bank name and address: The Standard Bank of South Africa Ltd.
Sandton Branch
156 Fifth Street
Sandton, 2196
South Africa

1003005

2/8/2012

Please quote invoice number and charge code reference on transfer and remittance.

Please note:
Standard terms provide for invoice payment upon receipt. Interest will be charged on balances outstanding 30 days after the invoice date, at a rate of 1% per month or as otherwise agreed.

COPY

52-284791

2012 -08- 03

FOF-08-690

McKinsey&Company

31 May 2012

Anoj Singh
Transnet Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg

Dear Anoj,

Please find attached invoice 4959 for our professional fees, out of pocket expenses and support services in May 2012 as per the agreed schedule for the Transnet – "Delivering the Market Demand Strategy" project.

Please note that this invoice include professional fees for both McKinsey & Company and Letsema Consulting.

TRANSNET
PAID

Kind regards,

Vikas Sagar
Principal

COPY

52-284791

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

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Registered in South Africa No 1995/002398/10 Directors S Bear (Canadian) NJ Dörr (German) Virginia L. Molino (American)

G O O D S R E C E I P T S L I P 5000321058/0001

Goods receipt date : 03.08.2012
Current date : 03.08.2012

Plant : 4000
Description : Group Services

Vendor : 0001000316 Delivery note: 4959
Name : MCKINSEY AND CO
PO : 4500162538/00010
Buyer Name : Luqmaan Noor Moosa Telephone : 011 308 2269

Material :
MPN :
Description : McKinsey Professional fees May 2012

Quantity : 1 EA

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

Recipient : Wolfie
Unloadg. point: R4529, Carlton Centre
Cost center : 0001003005

Issued by : KORBEW004 S I G N A T U R E

FOF-08-692

TRANSNET

Anoj Singh
Group Chief Financial Officer
Transnet SOC Limited

Brian Molefe
Group Chief Executive
Transnet SOC Limited

TRANSNET
2012 -10- 19
Office of the Group Chief Executive
RECEIVED

SUBJECT:
CONFINEMENT AND AWARD OF SERVICES, CAPABILITIES AND RESOURCES TO SUPPORT THE MARKET DEMAND STRATEGY FOR PROCUREMENT AND CAPITAL EXCELLENCE AND PRODUCTIVITY ("SWAT TEAMS")

Anoj:
Can we discuss please.
Thx.
2-11-12

From: Garry Pita

22/10/2012
Received 17/10/12

FOF-08-693

Transnet SOC Limited 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

Date: 18 October 2012

SUBJECT: CONFINEMENT AND AWARD OF SERVICES, CAPABILITIES AND RESOURCES TO SUPPORT THE MARKET DEMAND STRATEGY FOR PROCUREMENT AND CAPITAL EXCELLENCE AND PRODUCTIVITY ("SWAT TEAMS")

PURPOSE

1. The purpose of this memorandum is:

   1.1. to obtain approval for the confinement and award of services, capabilities and resources to support the Market Demand Strategy for procurement and capital excellence and productivity to McKinsey & Company.

   1.2. to request approval for an increase in budget by R100 million due to the finalization of the scope and deliverables, to R200 million.

BACKGROUND

2. Transnet SOC Ltd announced that it expects to sustain 588 000 indirect jobs across the economy through its Market Demand Strategy (MDS), which will see the company spend R300 billion on capital projects over a seven-year period.

3. The MDS is aimed at expanding South Africa's rail, port and pipelines infrastructure, resulting in a significant increase in freight volumes, especially in commodities such as iron ore, coal and manganese. It will also lead to a significant modal shift from road to rail.

4. The main objective of the strategy is for Transnet to invest in building capacity to meet validated market demand that will enable economic growth.

5. Following an open tender process, the GCE approved, the appointment of the McKinsey Consortium and the Deloitte Consortium to provide resources, services and capabilities to support MDS for procurement and capital, for a budget of R100 million, refer to Annexure A.

DISCUSSION

6. Over the last couple of months, Transnet and McKinsey & Company spent a considerable amount of time on the scope of work, deliverables and allocation of responsibilities amongst the consortium members. This process resulted in the finalization of clearly defined and amplified scope and deliverables for the engagement to ensure better implementation and management of both internal and external resources.

7. In addition, the scope and deliverables are structured to ensure key skills transfer to Transnet at the end on the engagement.

8. During these post tender negotiations (PTN), McKinsey & Company claimed that there was a conflict of intellectual property between McKinsey & Company and Deloitte Consulting as they are two international competitors. The intellectual property issue arises from the fact that Deloitte's would be exposed to McKinsey's methodologies and practives which constitute McKinsey's proprietary information. However, Deloitte's sub-contractor, PD Naidoo and Associates has no intellectual property related issues and McKinsey is willing to work with them to ensure the skills transfer objectives are met. The Transnet Acquisition Council has therefore been requested to approve a non-award of the business as originally proposed (See Annexure C).

9. In order to ensure that Transnet receives the most comprehensive appointment of services, capabilities and resources to support the MDS for procurement and capital excellence and productivity, it is recommended that this project be confined and awarded to McKinsey & Company. Mckinsey has undertaken to sub-contract a portion of the contract to Letsema Consulting, Regiments Capital and PD Naidoo, which are black empowered companies.

10. Preliminary deliverables are articulated in annexure B.

    10.1. The overall objective of the SWAT teams is to enable Transnet to deliver its capital project portfolio in an effective and efficient manner by ensuring that:

        10.1.1. Projects are aligned with the overall strategy and properly prioritized across the portfolio;

        10.1.2. Each project within the portfolio is the right one, addressing the right business need, in the most cost and resource-effective way;

        10.1.3. Reduce the quantum of the unfunded capital by scrubbing and optimizing the portfolio;

        10.1.4. Each project is executed in the most effective and efficient way through application of a revised organizational structure;

        10.1.5. Setting up the required structures and governance to ensure capital projects are appropriately supported;

        10.1.6. Capital procurement is not a bottleneck to project delivery by supporting a subset of high value procurement events; and

10.1.7. The right tools and systems are available in a sustainable way.

11. To achieve these objectives, a number of short and longer term initiatives will be launched to ensure Transnet delivers on MDS, and reduce the current capital by ~R40bn-R50bn in the first wave and leave Transnet with the ability to continue to drive improvements.

12. Short term initiatives

12.1. Set up a 'project factory' – a SA first to leverage limited resources and build a sustainable way of developing our capital project business cases. This will cover the biggest commodities and account for > 80% of the capex spends in the first wave (based on the capital spend of R412bn, which comprises the Corporate Plan 2012/13 Capital Spend (R300bn) plus Group Planning and Monitoring identified R112bn capital deficit). We expect this to deliver 12.5% (~R41bn) in capital savings. It will also be a kick start to building the institutional capacity (teams) that can take this process forward.

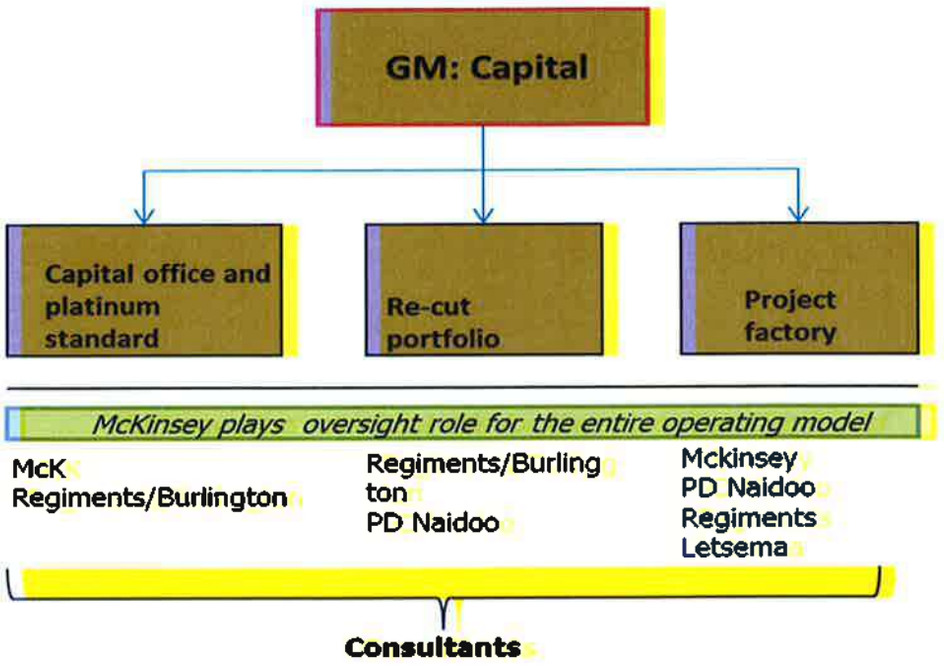
12.2. Re-cut the project portfolio – create projects which reflect the intended business outcomes (e.g. volumes, IRR, socio-economic etc.) and all of the capital and operating inputs required to achieve those outcomes. We expect this to deliver ~R10bn savings. As part of this process a dedicated portfolio management team will be established.

12.3. Accelerate capital procurement – ensuring that capital procurement is not a bottleneck to project delivery. The pipeline of 400 procurement events will need to be supported- the support will be targeted to a subset of these events.

13. Long term initiatives

13.1. Set up the capital organization and implement the capital platinum standard at Transnet – Setting up the required structures and governance to ensure capital projects are appropriately supported. In the long run this will increase our capacity by ~1200 people (to be determined).

14. An operating model, headed up by the GM: Capital (to be appointed), and McKinsey playing an oversight role for a period of nine months, has been proposed as follows:



GROUNDS FOR CONFINEMENT:

15. Appended below, for ease of reference, is an extract from paragraph 15.1.2 of the latest PPM, stipulating the grounds for confinement. We are of the view that this matter complies with grounds (a) and (d) and the request for confinement is therefore fully supported –

    a) Where a genuine unforeseeable urgency has arisen which is not attributable to bad planning;
    There is a definite urgency for this project to proceed as it is key to rapidly fulfilling the MDS strategy. Transnet has previously gone out on open tender for this work but due to factors listed above were not able to award. As this assignment is of a professional services nature (as opposed to the tendering for a simple product purchase, for example), a number of issues including detailed scope, intellectual property concerns, were only fully clarified, illuminated and identified during the open tender.

    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 organization 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.

16. In addition, with regard to reason (d) above, it may be mentioned that McKinsey supported

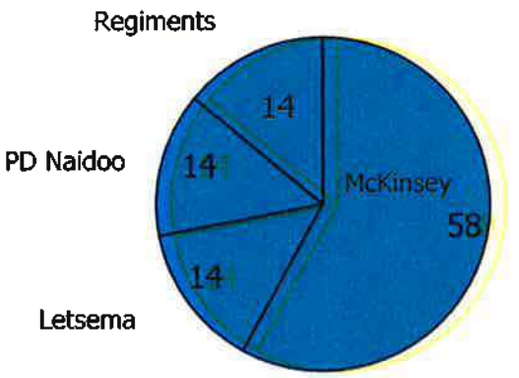
Transnet during the 2012/13 Corporate Plan approval process by refining the MDS, developing supporting documentation and communicating with stakeholders. They assisted with the scrubbing and prioritization of areas for consideration in the plans. They furthermore developed the MDS implementation framework and the principles. This framework and principles will now be executed in this procurement event. McKinsey also provide detailed support on procurement and Capital events which will be continued in this procurement event.
To issue another open tender will not address the intellectual property issues; On the other hand, a confinement will eliminate fruitless and wasteful expenditure of money both from a Transnet perspective and supplier perspective. In addition, if Transnet chooses another supplier at this stage, time would be required for the new supplier to adequately come to understand the scope and Transnet's business, thus extending the start and end date of the assignment.

FINANCIAL IMPLICATIONS

17. The estimated cost of the final scope for the resources, services and capabilities to support MDS for procurement and capital (SWAT teams) is R200 million, against the initially approved amount of R100 million.

18. Accordingly, an additional amount of R100 million is required to achieve the deliverables as set out above.

19. A preliminary view of which consultants will do work is provided in Annexure C. The % split of fees amongst the services providers is set out below:



BUDGET IMPLICATIONS

20. Sufficient funds are available in the 2012/13 budget as it is estimated that only a third to a half of the R200 million will be expensed in the 2012/13 budget. The 2013/14 budget will need to be updated within the current budget cycle to account for the 2013/14 expenditure. It should be noted that there is a possibility that a portion of this R200 million may be eligible for capitalisation to specific assets rather than being expensed.

21. Any carry over into the 2013/14 year will be budgeted for in the next budgeting cycle.

22. R100 million was set-aside and previously approved by the GCE in the Memorandum: "Source of Funding for Strategic Project for 2012/13".

APPROVALS AND DELEGATIONS:

23. The confinement of business falls within the jurisdiction of the Group Chief Executive in terms of paragraph 5.4.3 of the Transnet DOA Framework dated 25 April 2012 (effective 1 May 2012).

24. An approval to confine and award is sought given the urgency of the matter and the fact that the confinement is made to only one supplier (See PPM 15.1.3(b)

RECOMMENDATIONS

25. It is recommended that the Group Chief Executive approves:

25.1. the confinement and award of services, capabilities and resources to support the market demand strategy for procurement and capital excellence and productivity to McKinsey & Company with the proviso that McKinsey & Company sub-contracts a portion of the contract to Regiments Capital, PD Naidoo and Associates and Letsema Consulting.

25.2. an increase in budget by R100 million due to the finalization of the scope and deliverables, to R200 million.

Requested by:

Thabo Lebelo
General Manager: Group Financial Planning
Date:

Recommended/~~Not recommended~~:

Wynand Esterhuizen
Manager (Policy, Standards & Governance)
Date: 19/10/2012

Recommended/~~Not recommended~~:

Peter Volmink
Executive Manager (Governance), iSCM
Date: 19 October 2012

Recommended/~~Not recommended~~:

Edward Thomas
Acting Group Chief Supply Chain Officer
Date: 19/10/2012

Recommended/~~Not recommended~~:

Anoj Singh
Group Chief Financial Officer
Date: 19/10/12

Approved/Not approved:

Brian Molefe
Group Chief Executive
Date:

Transnet SOC Ltd
Registration
Number
1990/000900/30

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MEMORANDUM

To: Brian Molefe
Group Chief Executive

From: Anoj Singh
Chief Financial Officer

Subject: **APPOINTMENT OF SWAT TEAMS TO ASSIST WITH THE ROLL OUT OF CAPITAL**

PURPOSE

1. The purpose of this memorandum is to request approval to split the award for the appointment of the capital and procurement SWAT Teams to McKinsey and Company and Deloitte Consulting.

BACKGROUND

2. Transnet's current capital organisation is under tremendous pressure and will need a step change in 3 main areas to manage the increased capital portfolio required by the Market Demand Strategy

3. The fundamental transparency needed to manage and optimise Transnet's capital portfolio is lacking:

   3.1. Projects are not linked to business or socio-economic outcomes, therefore insufficiently aligned to Transnet's strategy
   3.2. No holistic and consistent view of the project portfolio due to data collection and integrity issues

4. The organisation structure lacks required focus, and a significant number of resources are required to drive delivery
   4.1. The capital organisation lacks dedicated functions and capabilities in portfolio management, project scrubbing and quality assurance.
   4.2. Project are inconsistently split between ODs, TCP and Planning and Monitoring functions.
   4.3. No single point of accountability for projects throughout their lifecycle.
   4.4. The existing organisation is significantly smaller than required to execute timely and cost efficient delivery.

5. Key processes exist but need to be changed to include a stronger business perspective, a higher degree of simplification and tighter adherence
   5.1. Transnet's capital projects Project Lifecycle Process captures many aspects of best practice but it reflects the organisation's resource problems and implementation is inconsistent
   5.2. Gate reviews are not adhered to, and their benefits of reducing uncertainty and improving outcomes are therefore not realised
   5.3. Business cases are expected to pass at least 7 committees/forums while there is limited visibility of project performance and project delays across the project lifecycle

6. Accordingly resources, services and capabilities are required to work with Transnet to develop standards and roll out best practices.

DISCUSSION

7. Procurement

7.1. The procurement function has been identified as a critical area within the business to enable the additional requirements of MDS. In particular; the enablement of additional spend, on budget and on schedule, is paramount to the success of the strategy.

7.2. Additional resources are therefore needed in particular areas of the procurement function in order to ensure successful delivery of transactions which may require intervention. These transactions will be determined on an on-going basis determined by business needs.

7.3. Support requirements include:

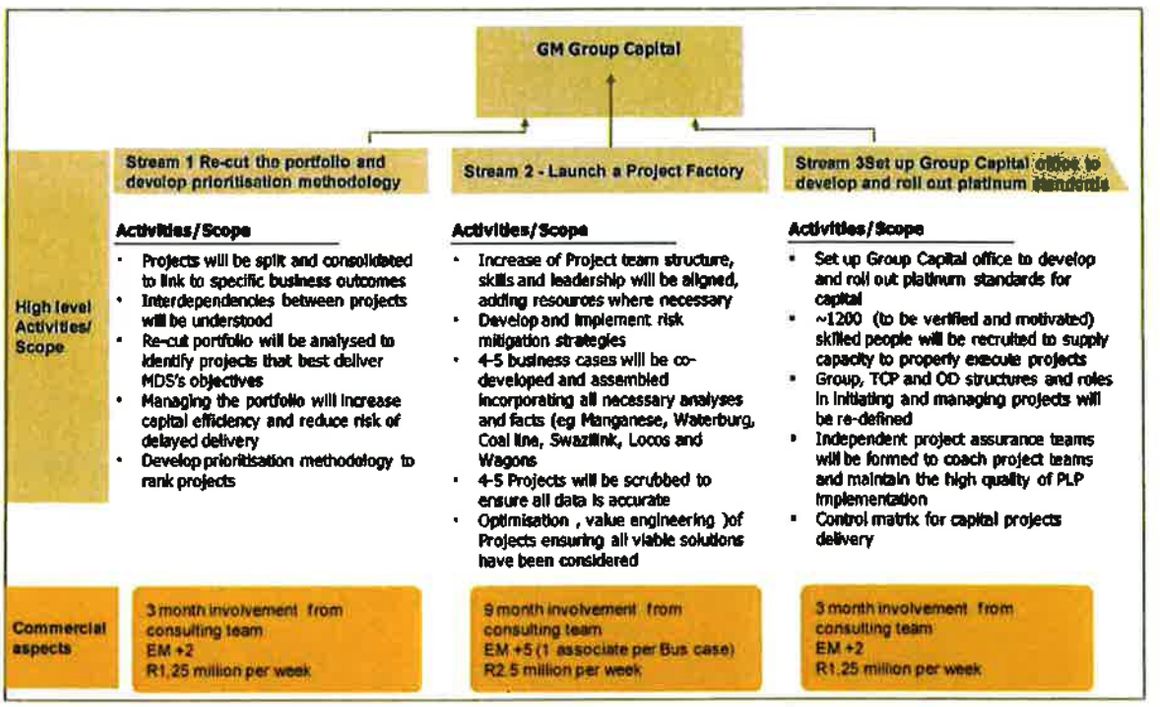
7.3.1. The provision of resources with supply chain expertise and experience
7.3.2. Thorough knowledge of Transnet's supply chain policies and procedures
7.3.3. A thorough understanding and experience with Transnet's, other SOC's and the DPE's Supplier Development plans, policies and expectations
7.3.4. Suitable knowledge of the Rail and Port related industries
7.3.5. Experience with supporting the various stages of procurement transaction's (including strategy development, RFP development, Bid evaluation, Negotiation, Award)
7.3.6. Track history of performance improvements within operations and procurement
7.3.7. Experience with development of contracting strategies (e.g. programmatic procurement) and the ability to extract value and savings.
7.3.8. Track history with the development of procurement control and assurance processes including key gateway reviews.
7.3.9. A thorough understanding and experience with the socio-economic issues (CSDP, Broad based Black Economic Empowerment, industrialization and localisation, environmental issues etc.); and
7.3.10. Thorough understanding of the PFMA, PPPFA, IPAPII, NGP etc, requirements.

8. Capital

8.1. Support requirements include:

8.1.1. Thorough knowledge of best practice capital projects policies and procedures (PLP - including gate review check lists, approval processes, systems and tools)
8.1.2. Global expertise in accelerating timelines for business case approvals (benchmark timelines, quality requirements)
8.1.3. Experience with linking business cases to strategic objectives, and ability to link individual projects to business outcomes
8.1.4. Proven experience of creating and optimising project business cases in Transnet specific asset classes, e.g., rail, port, pipeline (including validation of operating cost requirements, capital cost requirements, financing costs, and overall affordability based on cash flows)
8.1.5. Understanding of the South African context, e.g., how socio-economic benefits are linked to projects, and proven ability to quantify these in business cases
8.1.6. Proven experience in optioneering, risk analyses and investment readiness assessments of a project to highlight execution risks, e.g., how to inform the contracting strategy, pre-requisites for procurement specifications and implementation plans;
8.1.7. Proven methods for building capabilities in business case optimisation and approvals process acceleration; and
8.1.8. Thorough understanding of the PFMA, SOC and DPE requirements as well as construction pieces of legislations such as CIDB

Three lighthouse projects are proposed to address key challenges with Transnet's capital execution for the next 9 months as part of the transformation journey



EVALUATION

9. Six proposals were received via open tender:
   9.1. Deloitte – Deloitte and sub contractors PD Naidoo and Associates and Procurement Solutions
   9.2. PWC and Isambulo Ami JV (Joint Venture),
   9.3. McKinsey and Company– McKinsey and Company and sub contractors Letsema
   9.4. Boston Consulting Group
   9.5. Volition Consulting Services

10. The results of the Stage three evaluations were as follows:

Bidder's Name	Stage 3 Score	Result
1. PricewaterhouseCoopers/Isambulo Ami JV (Joint Venture)	82.00%	Progress to Stage 4
2. Volition Consulting Services	62.80%	Progress to Stage 4
3. Accenture	70.00%	Progress to Stage 4
4. The Boston Consulting Group	46.40%	Disqualified
5. Deloitte Consulting	80.80%	Progress to Stage 4
6. McKinsey & Company	68.00%	Progress to Stage 4

10.1. Only five (5) bidders met the minimum threshold of 60% for Stage Three evaluations and proceeded to Stage Four for further evaluation.

11. The results of Stage Four evaluations are as follows

Bidder's Name	Stage 4 Score	Result
1. PricewaterhouseCoopers/Isambulo Ami JV (Joint Venture)	58.99%	Disqualified
2. Volition Consulting Services	50.05%	Disqualified
3. Accenture	57.10%	Disqualified
4. Deloitte Consulting	70.08%	Progress to Stage 5
5. McKinsey & Company	80.92%	Progress to Stage 5

11.1. Only Two (2) bidders met the minimum threshold of 70% for Stage Four evaluations and proceeded to Stage Five for final evaluation.

12. The Stage Five Evaluations are tabled below:

Stage Five Evaluation - Final	Weighting	Deloitte Consulting	McKinsey & Company
Technical	30%	21.02	24.28
Price	30%	27.05	30.00
B-BBEE Scorecard	10%	9.15	8.00
B-BBEE Further Recognition Criteria	20%	2.55	0.53
Supplier Development	10%	3.80	2.00
Total	**100.00**	**63.57**	**64.81**
Ranking		**2**	**1**

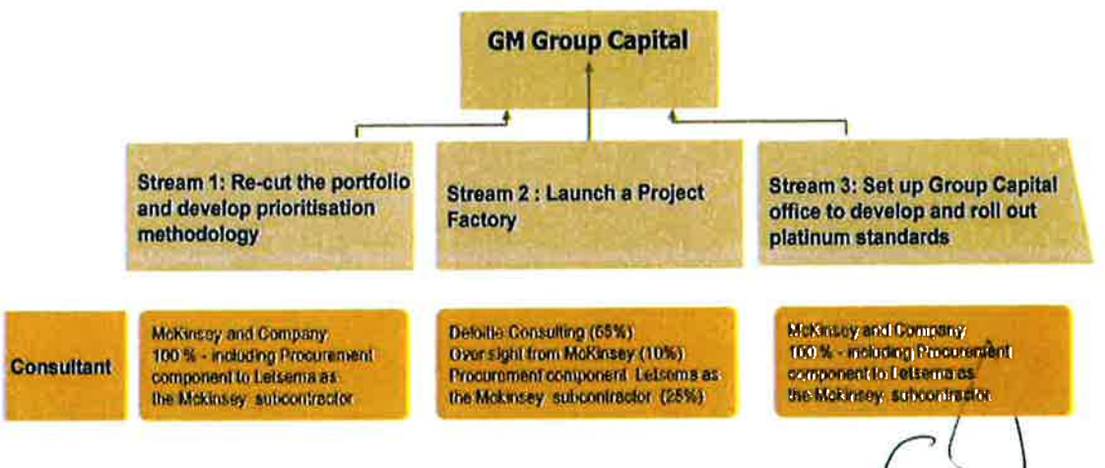
13. The Tender evaluation process was concluded whereby McKinsey and Company were the preferred bidder for both procurement and capital.

14. The Transnet Acquisition Council (TAC) awarded McKinsey and Company the complete advisory services for both procurement and capital. Refer to attached TAC resolution.

15. In the spirit of ensuring no over reliance on any one set of consultants it is suggested that the advisory services be split between Deloitte Consulting and McKinsey and Company.

16. Although the difference in overall scores for Deloitte Consulting and McKinsey and Company are marginal, the B-BEEE, FRC and SD elements for Deloitte Consulting are far more superior.

17. Accordingly it is suggested the work be spilt as follows:



FINANCIAL IMPLICATIONS

18. The estimated value for all the SWAT teams is R100 million for a duration of 9 months.

BUDGET IMPLICATIONS

19. Although these costs were not explicitly budgeted for, sufficient budget exists in the 2012/13 Corporate Centre budget.

RECOMMENDATIONS

20. It is recommended that the Group Chief Executive approve the split the award for the appointment of the capital and procurement SWAT Teams to McKinsey and Company and Deloitte Consulting.

COMPILED BY:

Yusuf Mahomed
Group Finance
Date: 14/8/2012

RECOMMENDED/~~NOT RECOMMENDED~~:

Garry Pita
GM: Integrated Supply Chain Management
Date: 15/8/12

RECOMMENDED/~~NOT RECOMMENDED~~:

Anoj Singh
Chief Financial Officer
Date: 20/08/12

APPROVED BY:

Brian Molefe
Group Chief Executive
Date: 22.8.12

TRANSNET

TRANSNET ACQUISITION COUNCIL

Meeting: 26/07/2012

Agenda Item 8

RFP GSM/12/04/0445:
PROVISION OF SERVICES, CAPABILITIES AND RESOURCES TO SUPPORT THE MARKET DEMAND STRATEGY FOR PROCUREMENT AND CAPITAL EXCELLENCE AND PRODUCTIVITY
AWARD OF BUSINESS VIA OPEN TENDER PROCESS (CONSIDERATION) R86.40M

RESOLUTION/MINUTE 183/2012TAC

THE TAC APPROVED THE RECOMMENDATION

Remarks:

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

In response to questions by Mr. van Niekerk, the Secretary confirmed that Mr. Thomas' signature has been obtained and that permission was granted to Procurement to communicate with the bidders.

The TAC, after discussion was comfortable with the submission and subsequently approved the award of business as recommended.

TRANSNET

Disclaimer:

The TAC's decision is based on the facts that are presented in the submission only, due to the fact that the last five items were presented very late to the Secretariat and there was no time for the Secretariat to verify each and every figure.

SECRETARY

Date: 30/07/2012

CHAIRPERSON

Date: 30 July 2012

ANNEXURE B: PRELIMINARY DELIVERABLES

The scope of the project is listed below.

For the purposes of these deliverables below Swat Projects are defined as: "A minimum of 10 Capital projects, which need to cover at least R330bn worth of capital projects (including the sustaining portion). In addition these projects need to support and be linked to volumes of at least 80% of the forecast Market Demand Strategy Port, Rail (350mtpa) and Pipelines volumes) and at minimum include 6 General Freight Business (GFB) (end -to-end), non-GFB projects (export iron ore, export coal) port and pipeline projects."

The key objective and measurable (in addition to those listed below) is that the Section 1-3 Capital Work listed below, achieves a total capital reduction of least R51bn (in the context of R412bn capital program - the R412 billion capital is made up R300 billion as per Corporate Planning 2012/13 plus R112 billion funding gap identified by Group Planning). The minimum reduction is to comprise the following:

1) A minimum reduction of R10bn from discretionary projects (i.e., not safety and compulsory projects) and not critical to achieve MDS Port, Rail, Pipeline volumes and Long term infrastructural requirements as contained in the Long Term Planning Framework (LTPF).
2) A minimum of R41 billion reduction in capital expenditure for Swat Projects through work performed in the Project Factories.

Platinum standard organisation - deliverables	
Key deliverables	**Measurable evidence**
Section 1 Capital Work: Platinum standard organisation - New capital delivery organisation with a ramp-up in capacity needed to de-risk and deliver portfolio	

Platinum standard organisation - deliverables	
Key deliverables	**Measurable evidence**

• Operationalized phase 1 recommendations by GM Capital, including operationalized mandate, i.e.,
  • A 100 day activity plan (for 2012/13 and 2013/14) with GM, including prioritised set of initiatives with KPIs to be tracked and executed for his department (restructure dept. - refer Eskom example)
  • Detailed SPOs on how direct reports will be measured on performance (KPIs)
  • Detailed interaction model - how the restructured department including scrubbing and portfolio management team will interface with the rest of the organisation and how their operating model needs to link to the corporate calendar (planning cycles, approval forums, reports, information required – what/when)
  • Detailed interaction model for Operating
	• For 2012/13 and 2013/14 100 day plan with priorities and milestones signed off by GCFO

Platinum standard organisation - deliverables	
Key deliverables	**Measurable evidence**
Divisions ("OD") scrubbing and assurance teams will interface with the ODs and Group • Detailed approach for the best option to transition into the new organisation (stakeholder engagement and change management plan, roll-out and syndication process with ODs, milestones) • Detailed operating model for "single point of accountability" throughout FEL phases and how it work in practice • Recut portfolio to take information obtained from budgeting cycle 2013/14 and identified capital shortfalls (R112bn plus PSP) • Link to portfolio - how which projects in Planning and Monitoring. All FEL 1,2,3 from ODs to be co-ordinated through the factory including Planning and Monitoring	• Stakeholder management and change management plan for implementation of new organisation signed off by GCE • Completed job descriptions, structures for GM capital function team • FEL 1,2,3 from Planning and Monitoring linked to Portfolio
• Detailed resourcing requirements for the capital organisation understanding difference between procurement and construction contracts (how many FTE by skills category, by function and linked to re-cut portfolio): Group Capital, ODs, GM capital function and understanding the role of TRE) and where they will be housed (1,200 FTEs). This must be developed in the context of method of contracting (EPCM vs. owners teams)	• Transition matrix (from current - to new capital organisation): number of resources required by skills category, by ODs/TCP/TRE on an n-X level (as detailed as possible depending on data availability)

Platinum standard organisation - deliverables	
Key deliverables	**Measurable evidence**
• Developed detailed capital organisation options for Transnet's overall delivery model (mandates, roles and responsibilities of Group Capital/TCP vs. ODs vs. GM Capital functions regarding: ownership logic of projects, single point of accountability throughout FEL phases, project team size and governance, approval forums and escalation models, contracting strategy) for ExCo/Board approval (GCE and GCFO to drive approval process with support from Capital GM) by Consultant; Consultant support (managed/ signed off by consultant) to implement the new organisation (incorporate input from the organisation on interface issues, detail job descriptions, skills set structure, RACI, implementing stakeholder management) Detailed operating division (TFR, TPT, TNPA, TPL, TRE) capital structures (including number of people required over the 7 years) linked to recut portfolio including scrubbing, assurance, optimisation	• Approved capital organisation by ExCo/Board for implementation supported by new mandates for Group Capital/TCP, ODs and GM Capital function, including implementation • Approved contracting strategy policies and procedures (supported by templates) • For roll-out: survey to stakeholders in Group Capital and ODs to measure level of enthusiasm and inclusiveness in the roll-out process (rationale clear, objectives clear, what is expected from the clear, empowered to execute mandate in their functions) • Key implementation milestones and roll out achieved
• Resourcing strategy (options for sourcing talent based on recut portfolio and project execution types-contracts, hire, contracting strategy (EPCM vs. owners team) temporary, re-allocation of existing Transnet resources to match priority projects) for how to address the FTE gap (1,200 requirement to be refined and quantified in detail) in the capital organisation by consultants	• Signed off action plan for how to close the gap by GCE (# people for hiring by skills category, next steps on potential partnerships, re-allocation of existing Transnet resources to match priority projects)
• Set up resourcing team and action plan set-up, hiring of people commenced with support from	• On boarded resource team with clear action plan and milestones

Platinum standard organisation - deliverables	
Key deliverables	**Measurable evidence**
consulting team	• Issues raised to GM capital against delivery of milestones

• Trained FTEs on platinum standard provided to ensure Transnet can replicate work completed
  • Portfolio optimisation team that works with Transnet on re-cutting portfolio
  • Project scrubbing and optimisation: 40-50 cross functional team members working on SWAT Projects
  • Processes including revised PLP, commercial strategy and contracting strategy, includes best practice gate review frameworks from MIRA and PDRI - which need to be linked to PWC control frameworks
  • Setup project assurance team (both group, and OD members) that take part in the project factory process
 	
NB: consultant resources only allocated when Transnet is ready to start projects
	• Satisfaction (if unsatisfied then more training) survey of experience conducted with trained Transnet project team FTEs, scrubbing team, assurance team related to platinum standard (rationale clear, objectives clear, methodology useful/valuable, expectations clear)

	• Training material and train the trainer • Coverage of R330bn worth of capital projects and comprising at minimum 80% of MDS Port, Rail (350mtpa) and Pipelines volumes)
	• 100% pass rate from formal business case approval forums for Swat Projects and optimised projects • Project factory (physical space) with developed tools, templates and guidelines • Trained permanent Project Factory Transnet FTEs

Platinum standard organisation - deliverables	
Key deliverables	**Measurable evidence**
• Contracting strategy policies and templates will be incorporated in the project factory and PLP. These will be linked to the re-cut portfolio and number of project execution types - and in the context of the new operating model	• Policies and templates created • Contracting strategy embedded in the project factory work, i.e., full stage gate adherence • Contracting strategy (starting point) linked to projects included in the re-cut project portfolio (as means to inform resourcing strategy and number of staff, and timing over the seven year period) in the context of the new operating model

• Refined PLP and linked to project factory methodology
  • Document learnings from project factory and develop a 10 page document with addressed weaknesses identified for PLP in phase 1 and other identified weaknesses
  • PLP lite process defined and developed for smaller types of projects: guidelines published (10-15 page level).
  • Detailed PLP process reviewed and all weaknesses addressed (including all templates). This must be done in the context of the new
	• Documented refined PLP for Transnet to roll-out integrated with PWC controls
	• PLP integrated with business case templates
	• All PLP weaknesses addressed and updated in revised PLP and PLP Lite procedures (templates and procedures)

Platinum standard organisation - deliverables	
Key deliverables	**Measurable evidence**
operating model; new portfolio and contracting • All PLP weaknesses addressed and 4GB PLP file aligned and updated. PLP to be supported by full range of templates, annexures. • PLP fully Integrated into Control work undertaken by PWC (ICPAF and IAM)	• Embedded in the project factory work, i.e., full stage gates adherence for Swat Projects and optimised projects ExCo approved Project methodology (including PLP and PLP Lite)for all projects
• Revised systems, monitoring, reporting and governance (at portfolio, programme and, project level): • Governance and monitoring: reporting templates with clarity on where data will be sourced, forums, and responsibilities for putting together/presenting will be developed incorporating best practice benchmarks, phase 1 output and linked to pipeline view and proposed new Delegations of Authority ("DOA")	• Templates in place • Revised modus operandi for governance and reporting forums (when, what, how) • Updated Capic/Exco DOA (for approval by GCE) and changes of mandates/ elimination of various approval bodies - linked to pipeline view and proposed new DOA for 7 years, including redesigned approval process.
• Systems: develop an RFP with required functionality/evaluation criteria to generate the above electronic reports (working off existing Transnet data platforms - understanding role of primavera, PPM, IM, PS) – in order to appoint an implementation partner, at portfolio, programme and project level.	• Completed RFP and Business requirements document that incorporates platinum standard recommendations from detailed organisation and refined PLP/reporting, other platinum standards, resulting in completed RFP including portfolio, programme, project level for primavera, PPM, IM, PS
Re-cut portfolio - key deliverables	

Platinum standard organisation - deliverables	
Key deliverables	**Measurable evidence**
Section 2 Capital Work: Re-cut portfolio - New agile capital portfolio linked to the MDS Rail, Port, Pipeline Volumes (including, but not limited to 350mtpa TFR + Long Term Planning Framework (LTPF)) with a Transnet Capability developed to further optimise the portfolio/deliver further capital reduction, and ability to react to external factors, including delivery of the following: - 1st view unscrubbed, 2nd view (post scrub including Swat Projects), Prioritisation matrix, Scalable to the LTPF/ different volume levels, Ability to select projects (turn on or off)	
• Project portfolio linked to business outcomes, interdependencies understood, with eliminated duplications; • 90% of the capex spend R440bn (i.e. 90% of (R412bn plus PSP projects (R76bn))) will be re-cut into sensible projects that are clearly linked to outcomes. • Any remaining gaps to reach MDS volumes (Rail, Port, Pipeline) will be identified • Detailed volume validation (at Manganese business case level) for all Swat Projects • Volume validation linked to economic forecasts/cycles	• A re-cut portfolio consisting of projects clearly linked to business objectives • Tangible input into the formulation of the next seven year plan with the unscrubbed re-cut portfolio as a basis • Portfolio cut using inter alia, safety, execution, discretionary characteristics • Volume validation (linked to economic cycles) for all Swat Projects (covering volumes of at minimum 80% of all Port, Rail and Pipeline Projects) • Alignment with Transnet's 1064 Locomotive Transaction Advisory Project

Platinum standard organisation - deliverables	
Key deliverables	**Measurable evidence**
• Standardised Business Cases- Identify projects of developmental nature for government subsidy- Identify commercial projects requiring private sector / external funding • Results of above work to be integrated, aligned with 1064 Locomotive Transaction Advisory Project • Plan scalable to the LTPF/ different volume levels	

• Ability to make decisions based on
  • Detailed level understanding of the benefit of the new portfolio pre and post scrubbing (Swat Projects)
  • Trade-offs and project prioritisation (benefit realisation), e.g., eliminate non-critical projects, identify and close gaps in the portfolio (project so far not identified to deliver MDS), re-sequence capital spend based on inter-dependencies (which are not currently visible), prioritise and turn projects on / off to suit the macro environment
  • Adjusted 2013/14 and seven year capital spend targets based on pre and post scrubbed (Swat Projects) portfolio optimisation - within context of new budget cycle
  • Identify funding gaps and identify PSP to ensure MDS financial ratios are maintained
	• Tool and templates that do prioritisation and effects on return can be modelled based on changes in
	  • Reduced resources (capex)
	  • Volume demand changes (excel models to support changes in volumes)
	• Benefit realisation models
	Decision tools will address Transnet's criteria of return on investment: financial, volume, BBEEE, and socio economic metrics

Platinum standard organisation - deliverables	
Key deliverables	**Measurable evidence**
• Capex reduction from (discretionary) identified spend which is not critical to MDS volumes (including TFR and ports). Further capital spend may be identified through the portfolio optimisation process	• R10bn reduced capex from discretionary projects (i.e., not safety and compulsory projects) and not critical to achieve MDS Port, Rail, Pipeline volumes and Long term infrastructural requirements as contained in Long Term Planning Framework (LTPF).
• Capability for further portfolio optimisation and capex reduction – Portfolio optimisation tools and methodologies implemented – Portfolio management team (7 FTEs) trained to optimise – Existing systems to be enhanced if applicable	• Sign-off from portfolio management team that methodology is clear and tools are understood/workable
Project factory performed on SWAT projects - key deliverables	
Section 3 Capital Work: **Project factory - Capital reduction based on chosen projects, and a replicable capability for Transnet to scrub and optimise the entire portfolio**	
• Setup project factory (modus operandi, tools, templates, report metrics, link to PLP process) to ensure Transnet's capability of replicating work and deliver de-risked projects in the future • Link to organisational work as this must include procurement work, etc. • Create project scrubbing team and processes	• Identified projects for scrubbing and optimisation (assessment of project readiness for factory) • Physical room and sign off by project factory Transnet owner that tools and methodology works
• Reduction in total capex of Swat Projects scrubbed and optimised projects	• 12.5% (R41 billion) reduction in capex for Swat Projects

Platinum standard organisation - deliverables	
Key deliverables	**Measurable evidence**
• All Swat Projects to be progressed to FEL3 state - ready for approval and execution - Sustaining capital taken into account - Commercial strategy and contracting strategy taken into account • Results of above work to be integrated, aligned with Transnet's 1064 Locomotive Transaction Advisory Project	• Swat Projects in FEL3 ready state – suitable for approval of business cases • Covered 80% volume and R330bn capital • Development of Training manual • Understand project interdependencies including impact on other ODs and MDS volumes (end-to-end) • Alignment with Transnet's 1064 Locomotive Transaction Advisory Project
• 40-50 Transnet project FTEs trained on platinum standard and capable of scrubbing, optimising projects – ready to de-risk and unlock value in the remaining portfolio • Manage project factory	• 40-50 Transnet project FTEs gone through the process building, scrubbing and optimising the Swat Projects using the platinum standard way • Simplified guide for project factory conduct, procedures and manuals
• Setup and train available resources in the new assurance team - methods - practices - link to PWC controls - Operating Model	• Gate reviews conducted with assurance team FTEs in the lead in wave 1 and 2 on all Swat Projects • Standard operating procedures and manuals from the revised PLP process - simplified for project factory environment - methods - practices - link to PWC - Operating model

Procurement	
SWAT Procurement Command Centre (includes but not limited to):	
• Create a command centre which will manage the various procurement events that the SWAT teams will deliver	
• The methodology of the command centre must be created: o Pipeline templates o Prioritisation mechanisms o Operating protocols o Reporting templates: ▪ Consolidated status ▪ OD status ▪ Initiative status ▪ Forward plan including schedule o Monthly/weekly/daily operating and reporting processes	
• Creation of the initial pipelines of MDS procurement requirements	
• Maintaining pipelines	
• Pipeline performance	
• Prioritisation of events	
• Maintaining visibility of events sitting in pre-	

procurement	
• Planning resource requirements for these events: o Assessing and agreeing business capacity to perform the event o Capability and capacity from strategic sourcing o Capability and capacity from Supplier Development o Planning the constitution of the CSFT	
SWAT team functionality (includes but not limited to):	
• Performing procurement initiatives per the end to end procurement process	
• Focused team delivery	
• Accelerate procurement transactions	
• Provide support resources to assist transactions	
• Utilise best practice procurement methodologies	
• Leverage user experts of tools and templates	
• Share IP amongst key functional roles within and across divisions	
• Transactional performance	

Procurement process (includes but not limited to):	
• Prepare complete sourcing strategy which includes the SD strategy	
• Verification of sourcing strategy	
• Preparation of RFX documentation	
• Obtain review sign-off of the strategy and RFX documentation	
• Prepare necessary documentation for approvals based on the applicable DOA level	
• Manage advertisement and bid submission process through the TAC secretary	
• Manage CFST evaluation process	
• Manage SD evaluation process	
• Prepare Tender Evaluation and Award report for submission to the AC	
• Engage in and finalise negotiations	
• Prepare final award and obtain approval	
• Prepare and finalise contract	

Prerequisites (includes but not limited to):	
• The provision of resources with supply chain expertise and experience	
• Thorough knowledge of The Public Sector's supply chain policies and procedures	
• A thorough understanding and experience with Transnet's, other SOC's and the DPE's Supplier Development plans, policies and expectations	
• Suitable knowledge of the Rail and Port related industries	
• Experience with supporting various stages of procurement transaction's (including Strategy development, RFP development, Bid evaluation, Negotiation, Award)	
• Track history of performance improvements within operations and procurement	
• Experience with development of contracting strategies (e.g. programmatic procurement)	
• Track history with the development of procurement control and assurance processes including key gate reviews	
• A thorough understanding and experience with the socio-economic issues (CSDP, Broad Based Black Economic Empowerment, industrialization and localisation, environmental issues etc.)	

• Thorough understanding of the Public Finance Management Act, Preferential Procurement Policy Framework Act, Industrial Policy Action Plan etc requirements	

TRANSNET

TRANSNET ACQUISITION COUNCIL

Meeting: 12/10/2012

C

Agenda Item 2

RFP GSM/12/04/0445:
PROVISION OF SERVICES, CAPABILITIES AND RESOURCES TO SUPPORT THE MARKET DEMAND STRATEGY FOR PROCUREMENT AND CAPITAL EXCELLENCE AND PRODUCTIVITY
NON-AWARD OF BUSINESS (CONSIDERATION) R N/A

RESOLUTION/MINUTE 201/2012TAC

THE TAC APPROVED THE NON-AWARD OF BUSINESS AS RECOMMENDED

Remarks:

The reasons for the non-award of business were deliberated by the TAC and considered to be valid reasons.

The TAC, however, considered it prudent to highlight the following important issues:

- The aspect of the intellectual property disputes will presumably be addressed in the new RFP document.
- The revised scope for the services be confirmed before issuing of the new RFP.
- The revised budget be finalized before issuing of the new RFP.
- Consideration be given to refunding the R7 500.00 tender fee to the bidders who submitted proposals.
- That it be stated that Transnet reserves the right to do a split award of the business, at their sole discretion (standard disclaimer).

SECRETARY

Date: 15 October 2012

CHAIRPERSON

Date: 15 October 2012

TRANSNET

TRANSNET ACQUISITION COUNCIL

Meeting: 12/10/2012

Agenda Item 2

RFP GSM/12/04/0445:
PROVISION OF SERVICES, CAPABILITIES AND RESOURCES TO SUPPORT THE MARKET DEMAND STRATEGY FOR PROCUREMENT AND CAPITAL EXCELLENCE AND PRODUCTIVITY
NON-AWARD OF BUSINESS (CONSIDERATION) R N/A

Resolution/Minute /2012TAC

SECRETARY

Date:

CHAIRPERSON

Date:

Transnet Corporate Centre
RFP Evaluation And Recommendation: Non-Award
GSM/12/05/0445

TRANSNET

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MDS is not just about Transnet, but key to South Africa's growth objectives. This strategy aims to deliver a lasting economic, social and environmental value to society. A combination of partnerships with its stakeholders and the successful execution of MDS will enable economic growth for the country.

This is a huge challenge for the company, but Transnet has developed a comprehensive implementation plan to ensure a successful delivery of the strategy.

1.2 Project Details:

Resources, services and capabilities are required to work with Transnet to systematically scrub and optimise projects, ensuring complete and accurate information and ensure optimal use of resources.

Procurement resources, services and capabilities to address the requirements articulated above.

It is estimated that these requirements will be for an estimated period of 9 (nine) months.

1.3 Project Deliverables:

Procurement:

The projected spend is significantly more than in previous years and will require a step change in performance within the procurement function in order to deliver on these plans.

The procurement function has been identified as a critical area within the business to enable the additional requirements of MDS. In particular; the enablement of additional spend, on budget and on schedule, is paramount to the success of the strategy.

Additional resources, services and capabilities are therefore needed in particular areas of the procurement function in order to ensure successful delivery of transactions which may require intervention. These transactions will be determined on an on-going basis based on business needs.

Furthermore, successful support of these requirements will be in alignment with the overall operating model of the procurement organisation whilst ensuring adherence to The Public Sector's policies and procedures.

Support requirements will include but not limited to:

- The provision of resources with supply chain expertise and experience;
- Thorough knowledge of The Public Sector's supply chain policies and procedures;
- A thorough understanding and experience with Transnet's, other SOC's and the DPE's Supplier Development plans, policies and expectations;

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Transnet Corporate Centre
RFP Evaluation And Recommendation: Non-Award
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TRANSNET

1.4 Project Timeline:

Project Start Date	:01/08/2012
Project Completion Date	:30/04/2013

1.5 Tender Details and Tenders Received

RFP Number	:GSM 12/05/0445
RFP Issue Date	:28/05/2012
RFP Closing Date	:19/06/2012
RFP Validity Period	:90 days (19 September 2012)
Extended RFP Validity Period	:30 days (19 October 2012)
Procurement Procedure	:Open RFP
Purchase price of RFP	:R7500.00
Date of Advertisement	:From 23/05/2012
Place where Advertised	:The Star, Sowetan, The New Age, Mail & Guardian, Business Day, Business Times
Method of RFP Evaluation	:B-BBEE and Supplier Development Threshold – Stage 3 (60%) Technical Threshold – Stage 4 (70%) **Final Evaluation:** Technical – 30% Price – 30% B-BBEE • Scorecard – 10% • Further Recognition Criteria (Current) – 20% Supplier Development Initiatives – 10%
Number of Bids Received	:6
Number of Responsive Bids	:6
Scheduled Award Date	:26 July 2012
Revised Scheduled Award Date	:Not Applicable
Reason for Revised Scheduled Date	:Not Applicable

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2. RFP EVALUATION

2.1 Stage One – Administrative Responsiveness

All bidders passed the test for administrative responsiveness and progressed to Stage Two for further evaluation.

2.2 Stage Two – Substantive Responsiveness

All bidders passed the test for substantive responsiveness and progressed to Stage Two for further evaluation.

2.3 Stage Three – B-BBEE and SD Evaluation

Stage Three Evaluation – B-BBEE and SD Evaluations	Weighting	Minimum Criteria
B-BBEE:		**60%**
- Scorecard	80%	
Supplier Development:		
- New Skills Development	10%	
- Technology and Skills Transfer	10%	
Total	**100%**	
Note: An overall minimum threshold of 60% for Stage Three evaluation criteria must be met or exceeded for Respondent's proposal to progress to Stage Four for further evaluation.		

The results of the Stage Three evaluations are as follows:

Bidder's Name	Stage 3 Score	Result
1. PricewaterhouseCoopers/Isambulo Ami JV (Joint Venture)	82.00%	Progress to Stage 4
2. Volition Consulting Services	62.80%	Progress to Stage 4
3. Accenture	70.00%	Progress to Stage 4
4. The Boston Consulting Group	46.40%	Disqualified
5. Deloitte Consulting	80.80%	Progress to Stage 4
6. McKinsey & Company	68.00%	Progress to Stage 4

Refer to **Annexure E** for detailed Stage Three B-BBEE and SD evaluation results.

Only five (5) bidders met the minimum threshold of 60% for Stage Three evaluations and proceeded to Stage Four for further evaluation.

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contracting strategy, pre-requisites for procurement specifications and implementation plans	
Proven methods for building capabilities in business case optimisation and approvals process acceleration	5%
Thorough understanding of the SOC and DPE requirements as well as construction pieces of legislation or regulatory frameworks such as CIDB	5%
Detailed CV's of proposed resources with relevant experience in line with requirements	5%
Total	**100%**
Note: An overall minimum threshold of 70% for Stage Four evaluation criteria must be met or exceeded for a Respondent's proposal to progress to Stage Five for final evaluation.	

The results of the Stage Four evaluations are as follows:

Bidder's Name	Stage 4 Score	Result
1. PricewaterhouseCoopers/Isambulo Ami JV (Joint Venture)	58.99%	Disqualified
2. Volition Consulting Services	50.05%	Disqualified
3. Accenture	57.10%	Disqualified
4. Deloitte Consulting	70.08%	Progress to Stage 5
5. McKinsey & Company	80.92%	Progress to Stage 5

Refer to **Annexure F** for detailed Stage Four evaluation results.

Only Two (2) bidders met the minimum threshold of 70% for Stage Four evaluations and proceeded to Stage Five for final evaluation.

2.5 Stage Five – Final Evaluation

Criteria

Stage Five Evaluation - Final	Weighting
Technical	30%
Price	30%
B-BBEE Scorecard	10%
B-BBEE Further Recognition Criteria	20%
Supplier Development Initiatives	10%
Total	**100.00**

The results of the Stage Five evaluations are as follows:

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Transnet Corporate Centre
RFP Evaluation And Recommendation: Non-Award
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D. Supplier Development Evaluations:

	Deloitte Consulting	McKinsey & Company
Supplier Development Points (New Skills Development and Technology & Skills Transfer)	3.80	2.00
Total Preference Points (10)	**3.80**	**2.00**

Refer to **Annexure E** for the detailed calculations on the Supplier Development evaluations.

The consolidated Stage Five Evaluations are tabled below:

Stage Five Evaluation - Final	Weighting	Deloitte Consulting	McKinsey & Company
Technical	30%	21.02	24.28
Price	30%	27.05	30.00
B-BBEE Scorecard	10%	9.15	8.00
B-BBEE Further Recognition Criteria	20%	2.55	0.53
Supplier Development	10%	3.80	2.00
Total	**100.00**	**63.57**	**64.81**
Ranking		**2**	**1**

Refer to **Annexure I** for the consolidated score sheet.

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Transnet Corporate Centre
RFP Evaluation And Recommendation: Non-Award
GSM/12/05/0445

TRANSNET

7. INITIAL TAC RECOMMENDATION

Based on the evaluation of the tenders, in accordance with the agreed RFP evaluation requirements and scoring as set out above, it is recommended that Transnet SOC Ltd awards the business and enters into negotiations with **McKinsey & Company** as the preferred vendor.

The TAC approved the award of business to McKinsey & Company on 30 July 2012.

Refer to **Annexure O** for the TAC resolution minute 183/2012.

8. REVISED RECOMMENDATION

During the post tender negotiations (PTN) the GCE raised a concern that Transnet has been awarding business excessively to McKinsey & Company and as a result this will expose Transnet to insurmountable risks should any unsavoury circumstances occur. A decision was then taken to award a portion of the business to Deloitte Consulting (Refer to **Annexure P** for the memo approved by the GCE and GCFO).

Over the last couple of weeks, Transnet and McKinsey & Company spent a considerable amount of time on the scope of work, deliverables and allocation of responsibilities amongst the consortium members. This process resulted in the finalization of clearly defined and amplified scope and deliverables for the engagement to ensure better implementation and management of both internal and external resources. In addition, the scope and deliverables are structured to ensure key skills transfer to Transnet at the end on the engagement. The revision of the scope has resulted in an expected project cost of R200m, from the initial R100m.

Thereafter, it was identified that there was a conflict of intellectual property between McKinsey & Company and Deloitte Consulting as they are two international competitors. However, Deloitte's sub-contractor, PD Naidoo and Associates has no intellectual property related issues and McKinsey is willing to work with them to ensure that the NGP objectives are met.

Due to the significant change in scope, fees and the intellectual property disputes, our procurement processes require that the previously approved tender process be non-awarded and a new tender be issued with the revised scope and budget.

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Transnet Corporate Centre
RFP Evaluation And Recommendation: Non-Award
GSM/12/05/0445

TRANSNET

It is recommended that TAC approves the non-award of this tender.

APPROVALS				
	NAME	DESIGNATION	DATE	SIGNATURE
Originator:	Luqmaan Noor Moosa	Senior Buyer	09/10/2012	
Supported by:	Christopher Govender	Commodity Manager	09/10/2012	
	Shantell Mackay	Chief Procurement Manager: Corporate Centre	09/10/2012	
	Yusuf Mahomed	Executive Manager: Special Projects	9/10/2012	
	Luis Gillman	Executive Manager: Group Financial Planning	9/10/2012	
Acquisition Council Approval:	Helen Walsh	Chair Person	15/10/2012	

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TRANSNET

MEMORANDUM

www.transnet.net

To: Brian Molefe
Group Chief Executive

From: Anoj Singh
Group Chief Financial Officer

Date: 18 October 2012

SUBJECT: CONFINEMENT AND AWARD OF SERVICES, CAPABILITIES AND RESOURCES TO SUPPORT THE MARKET DEMAND STRATEGY FOR PROCUREMENT AND CAPITAL EXCELLENCE AND PRODUCTIVITY ("SWAT TEAMS")

PURPOSE

1. The purpose of this memorandum is:

   1.1. to obtain approval for the confinement and award of services, capabilities and resources to support the Market Demand Strategy for procurement and capital excellence and productivity to McKinsey & Company.

   1.2. to request approval for an increase in budget by R100 million due to the finalization of the scope and deliverables, to R200 million.

BACKGROUND

2. Transnet SOC Ltd announced that it expects to sustain 588 000 indirect jobs across the economy through its Market Demand Strategy (MDS), which will see the company spend R300 billion on capital projects over a seven-year period.

3. The MDS is aimed at expanding South Africa's rail, port and pipelines infrastructure, resulting in a significant increase in freight volumes, especially in commodities such as iron ore, coal and manganese. It will also lead to a significant modal shift from road to rail.

4. The main objective of the strategy is for Transnet to invest in building capacity to meet validated market demand that will enable economic growth.

5. Following an open tender process, the GCE approved, the appointment of the McKinsey Consortium and the Deloitte Consortium to provide resources, services and capabilities to support MDS for procurement and capital, for a budget of R100 million, refer to Annexure A.

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DISCUSSION

6. Over the last couple of months, Transnet and McKinsey & Company spent a considerable amount of time on the scope of work, deliverables and allocation of responsibilities amongst the consortium members. This process resulted in the finalization of clearly defined and amplified scope and deliverables for the engagement to ensure better implementation and management of both internal and external resources.

7. In addition, the scope and deliverables are structured to ensure key skills transfer to Transnet at the end on the engagement.

8. During these post tender negotiations (PTN), McKinsey & Company claimed that there was a conflict of intellectual property between McKinsey & Company and Deloitte Consulting as they are two international competitors. The intellectual property issue arises from the fact that Deloitte's would be exposed to McKinsey's methodologies and practives which constitute McKinsey's proprietary information. However, Deloitte's sub-contractor, PD Naidoo and Associates has no intellectual property related issues and McKinsey is willing to work with them to ensure the skills transfer objectives are met. The Transnet Acquisition Council has therefore been requested to approve a non-award of the business as originally proposed (See Annexure C).

9. In order to ensure that Transnet receives the most comprehensive appointment of services, capabilities and resources to support the MDS for procurement and capital excellence and productivity, it is recommended that this project be confined and awarded to McKinsey & Company. McKinsey has undertaken to sub-contract a portion of the contract to Letsema Consulting, Regiments Capital and PD Naidoo, which are black empowered companies.

10. Preliminary deliverables are articulated in annexure B.

10.1. The overall objective of the SWAT teams is to enable Transnet to deliver its capital project portfolio in an effective and efficient manner by ensuring that:

10.1.1. Projects are aligned with the overall strategy and properly prioritized across the portfolio;

10.1.2. Each project within the portfolio is the right one, addressing the right business need, in the most cost and resource-effective way;

10.1.3. Reduce the quantum of the unfunded capital by scrubbing and optimizing the portfolio;

10.1.4. Each project is executed in the most effective and efficient way through application of a revised organizational structure;

10.1.5. Setting up the required structures and governance to ensure capital projects are appropriately supported;

10.1.6. Capital procurement is not a bottleneck to project delivery by supporting a subset of high value procurement events; and

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10.1.7. The right tools and systems are available in a sustainable way.

11. To achieve these objectives, a number of short and longer term initiatives will be launched to ensure Transnet delivers on MDS, and reduce the current capital by ~R40bn-R50bn in the first wave and leave Transnet with the ability to continue to drive improvements.

12. Short term initiatives

12.1. Set up a 'project factory' – a SA first to leverage limited resources and build a sustainable way of developing our capital project business cases. This will cover the biggest commodities and account for > 80% of the capex spends in the first wave (based on the capital spend of R412bn, which comprises the Corporate Plan 2012/13 Capital Spend (R300bn) plus Group Planning and Monitoring identified R112bn capital deficit). We expect this to deliver 12.5% (~R41bn) in capital savings. It will also be a kick start to building the institutional capacity (teams) that can take this process forward.

12.2. Re-cut the project portfolio – create projects which reflect the intended business outcomes (e.g. volumes, IRR, socio-economic etc.) and all of the capital and operating inputs required to achieve those outcomes. We expect this to deliver ~R10bn savings. As part of this process a dedicated portfolio management team will be established.

12.3. Accelerate capital procurement – ensuring that capital procurement is not a bottleneck to project delivery. The pipeline of 400 procurement events will need to be supported- the support will be targeted to a subset of these events.

13. Long term initiatives

13.1. Set up the capital organization and implement the capital platinum standard at Transnet – Setting up the required structures and governance to ensure capital projects are appropriately supported. In the long run this will increase our capacity by ~1200 people (to be determined).

14. An operating model, headed up by the GM: Capital (to be appointed), and McKinsey playing an oversight role for a period of nine months, has been proposed as follows:

COMMISSION OF INQUIRY INTO STATE CAPTURE

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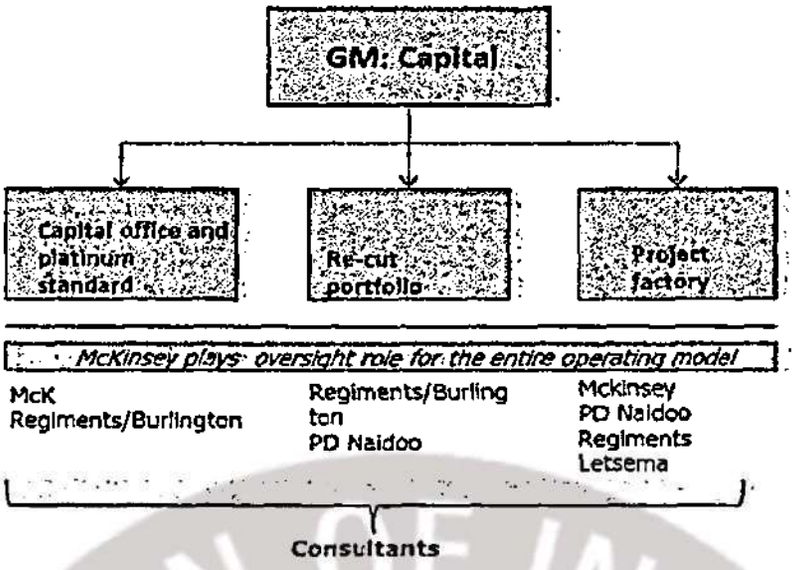

GROUNDS FOR CONFINEMENT:

15. Appended below, for ease of reference, is an extract from paragraph 15.1.2 of the latest PPM, stipulating the grounds for confinement. We are of the view that this matter complies with grounds (a) and (d) and the request for confinement is therefore fully supported –

a) Where a genuine unforeseeable urgency has arisen which is not attributable to bad planning;
There is a definite urgency for this project to proceed as it is key to rapidly fulfilling the MDS strategy. Transnet has previously gone out on open tender for this work but due to factors listed above were not able to award. As this assignment is of a professional services nature (as opposed to the tendering for a simple product purchase, for example), a number of issues including detailed scope, intellectual property concerns, were only fully clarified, illuminated and identified during the open tender.

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 organization 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.

16. In addition, with regard to reason (d) above, it may be mentioned that McKinsey supported

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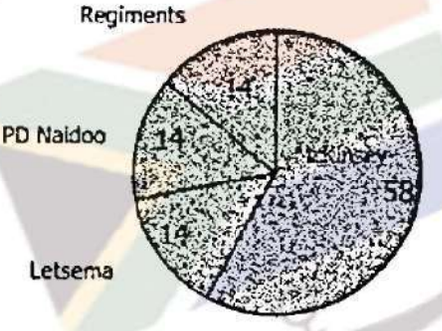
Transnet during the 2012/13 Corporate Plan approval process by refining the MDS, developing supporting documentation and communicating with stakeholders. They assisted with the scrubbing and prioritization of areas for consideration in the plans. They furthermore developed the MDS implementation framework and the principles. This framework and principles will now be executed in this procurement event. McKinsey also provide detailed support on procurement and Capital events which will be continued in this procurement event.
To issue another open tender will not address the intellectual property issues; On the other hand, a confinement will eliminate fruitless and wasteful expenditure of money both from a Transnet perspective and supplier perspective. In addition, if Transnet chooses another supplier at this stage, time would be required for the new supplier to adequately come to understand the scope and Transnet's business, thus extending the start and end date of the assignment.

FINANCIAL IMPLICATIONS

17. The estimated cost of the final scope for the resources, services and capabilities to support MDS for procurement and capital (SWAT teams) is R200 million, against the initially approved amount of R100 million.

18. Accordingly, an additional amount of R100 million is required to achieve the deliverables as set out above.

19. A preliminary view of which consultants will do work is provided in Annexure C. The % split of fees amongst the services providers is set out below:



BUDGET IMPLICATIONS

20. Sufficient funds are available in the 2012/13 budget as it is estimated that only a third to a half of the R200 million will be expensed in the 2012/13 budget. The 2013/14 budget will need to be updated within the current budget cycle to account for the 2013/14 expenditure. It should be noted that there is a possibility that a portion of this R200 million may be eligible for capitalisation to specific assets rather than being expensed.

21. Any carry over into the 2013/14 year will be budgeted for in the next budgeting cycle.

22. R100 million was set-aside and previously approved by the GCE in the Memorandum: "Source of Funding for Strategic Project for 2012/13".

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APPROVALS AND DELEGATIONS:

23. The confinement of business falls within the jurisdiction of the Group Chief Executive in terms of paragraph 5.4.3 of the Transnet DOA Framework dated 25 April 2012 (effective 1 May 2012).

24. An approval to confine and award is sought given the urgency of the matter and the fact that the confinement is made to only one supplier (See PPM 15.1.3(b)

RECOMMENDATIONS

25. It is recommended that the Group Chief Executive approves:

25.1. the confinement and award of services, capabilities and resources to support the market demand strategy for procurement and capital excellence and productivity to McKinsey & Company with the proviso that McKinsey & Company sub-contracts a portion of the contract to Regiments Capital, PD Naidoo and Associates and Letsema Consulting.

25.2. an increase in budget by R100 million due to the finalization of the scope and deliverables, to R200 million.

Requested by:

Thabo Lebelo
General Manager: Group Financial Planning
Date:

Recommended/~~Not recommended~~:

Wynand Esterhuizen
Manager (Policy, Standards & Governance)
Date: 19/10/2012

Recommended/~~Not recommended~~:

Peter Volmink
Executive Manager (Governance), iSCM
Date: 19 October 2012

Recommended/~~Not recommended~~:

Edward Thomas
Acting Group Chief Supply Chain Officer
Date: 19/10/2012

Recommended/~~Not recommended~~:

Anoj Singh
Group Chief Financial Officer
Date: 19/10/12

Approved/~~Not approved~~:

Brian Molefe
Group Chief Executive
Date: 22 · 11 · 12 .

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AND ONLY

RFP FOR THE PROVISION OF SERVICES, CAPABILITIES AND RESOURCES TO SUPPORT THE MARKET DEMAND STRATEGY (MDS) FOR PROCUREMENT AND CAPITAL EXCELLENCE AND PRODUCTIVITY FOR A PERIOD OF NINE (9) MONTHS

Section 3: PRICING AND DELIVERY SCHEDULE

Respondents are required to complete the table below for each of the deliverable bullet points specified in the scope. In addition respondents need to specify level of skills (front end and back-office) (Capital Work Sections 1-3 and Procurement).

Ref No	Description of Service	No of Resources	Level of Skill per Resource	Estimated Hours	Hourly Rate	TOTAL PRICE [ZAR]
1	PLEASE REFER TO THE DETAILED			PRICING	PROPOSAL	
2						
3						
4						
5						
6						
					TOTAL PRICE, exclusive of VAT:	

Notes to Pricing:

8.6.1. Prices must be quoted in South African Rand, exclusive of VAT

8.6.2. Prices quoted must be held valid for a period of 120 days from closing date of this RFP

8.6.3. Currency rate of exchange utilised: ZAR 1.00 [as applicable]

Disbursements must be based on actual disbursements but will not exceed ____% of the total cost for services proposed. (Respondents to insert percentage).

Respondents are required to submit their 3-year audited financial statements with their Proposal in order to enable Transnet to evaluate financial stability.

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Respondent's Signature

2012 -12- 18
McKINSEY & COMPANY

Date & Company Stamp

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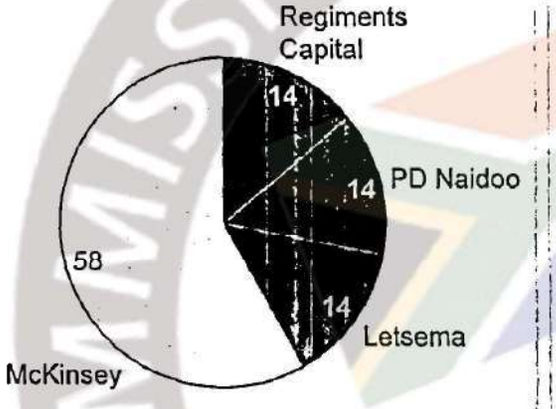
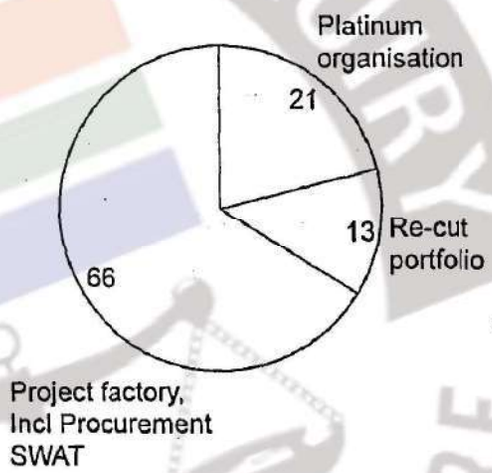
42% of the contract will be sub-contracted to black-owned companies (>51% ownership)

EXCLUDING EXPENSES
EXCLUDING VAT

Fees excluding expenses, excluding VAT are R154.6 million



The value of the contract will be divided between the three modules



TRANSNET SOC LTD
CHAIRMAN
TRANSNET ACQUISITION COUNCIL
TENDER

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Scope and budget per service provider

EXCLUDING EXPENSES
EXCLUDING VAT

	Key output	Who does it[2]	Fees as per calculation[1]	
Capital office and platinum standard	Setup Capital office + org design options for decision making and implementation plan	McK	R8.7m	McKinsey accountable for integration and delivery
	Resourcing strategy + action plan + setup team	McK	R17.5m	
	Org roll-out: refined detail + processes + stakeholder management + develop job profiles, grading etc.	Regiments Capital	R3.8m	
	HR support: tracking resource engine delivery	Regiments Capital	R2.4m	
Re-cut portfolio	Re-cut portfolio into standardised projects + prioritisation methodology + capability building + unscrubbed optimised portfolio	McK	R20.9m	
Project factory	Set up factory: operating model and controls	McK	R5.6m	
	Build, scrub and optimise business cases with McKinsey oversight	PD Naidoo Regiments Capital McK	R21.0m R15.0m R37.7m	
	Accelerated procurement events (pre-selected)	Letsema	R22.0m	Letsema accountable for delivery
	Total SWAT		**R154.6m**	

1 Professional fees, excluding expenses, and excluding VAT
2 Number of resources detailed on the next page

McKinsey & Company

TRANSNET SOC LTD
CHAIRMAN
TRANSNET ACQUISITION COUNCIL
TENDER

SCC-WG18.08-0251

COMMISSION OF INQUIRY INTO STATE CAPTURE

FOF-08-741

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Resource breakdown by service provider

EXCLUDING EXPENSES
EXCLUDING VAT

Consortium partner	Team bundle / # of FTEs[1]	Full/part time	Total hours per week	Total team weeks	Average hourly rate	Total budget
McKinsey	Director 2 Partner 2 Associate Principal 1 Engagement Expert support 9 Engagement Manager 6 Associates/Analysts 14	Part time Part time Part time Part time Full time Full time	~429[2]	81	R2600[3]	R90.3m
Letsema	Director 1 Associate Partner 1 SC Expert 1 Engagement Manager 2 Senior Consultant 2 Consultant 4	Part time Part time Part time Full time Full time Full time	376	40	R1250	R20.2m
Regiments Capital	Partner 3 Project Managers 5 Consultants 10 Support 5	Part time Full time Full time Full time	372	36	R1583	R21.2m
PD Naidoo	Project Director Chief Engineers Senior Engineers Junior Engineers	Part time Full time Full time Full time	26 233 300 420	16 16 16 16	R2000 R1800 R1400 R1000	R21.0m

1 The estimated number of individuals in each team composition may vary depending on the scope and expertise required, but the hours worked will reflect those show in the table
2 Teams typically work 12 hour days, so full time equivalents work 12 hours/day
3 Combined team cost is lower than the sum of separate team options due to leadership and specialist synergies

AND ONLY
TRANSNET SOC LTD
CHAIRMAN
TRANSNET ACQUISITION COUNCIL
TENDER

SCC-WG18.08-0252

Issue: 2019-01-25_22:42:24

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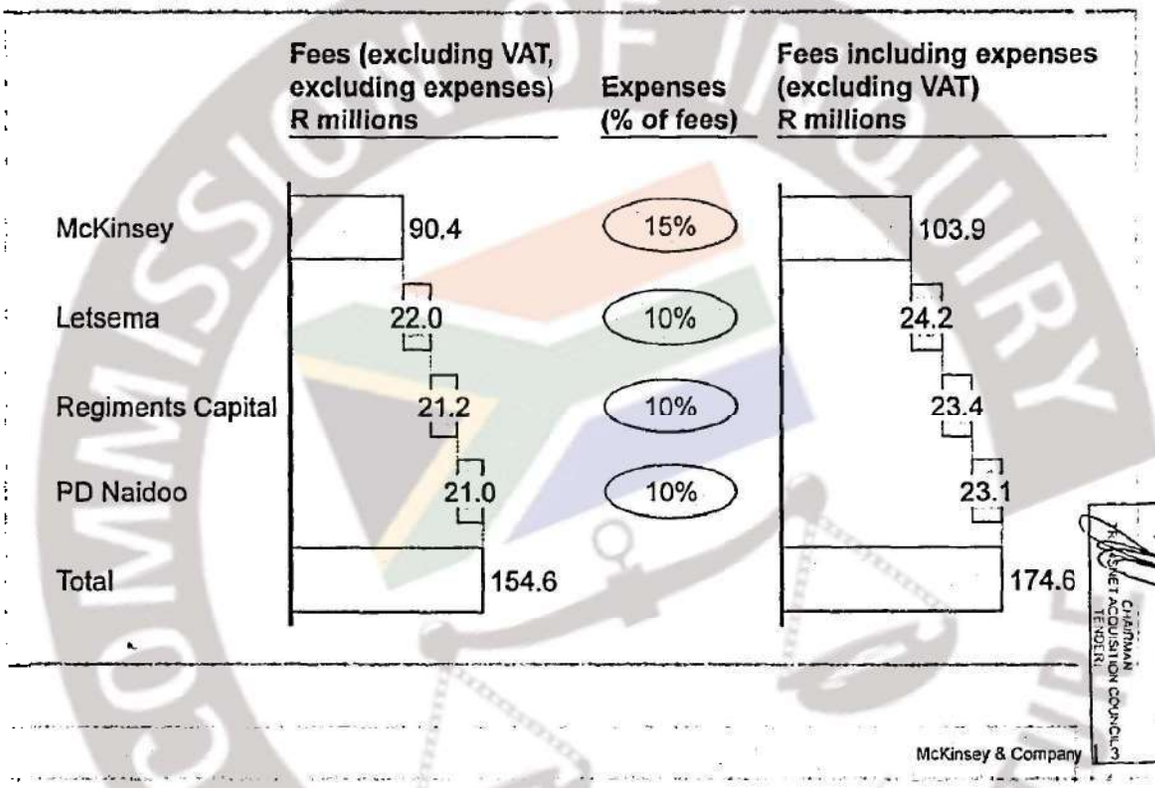
Total fees breakdown



TRANSNET SOC LTD
CHAIRMAN
ACQUISITION COUNCIL(S)
TENDER

Issue: 2019-01-25_22:42:24

FOF-08-743

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: 22/05/13

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TRANSNET

Execution Version

AGREEMENT

Entered into by and between

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

And

McKINSEY INCORPORATED (Reg. Nr. 1995/002398/10)

FOR THE PROVISION OF SERVICES:
CAPABLITIES, AND RESOURCES TO SUPPORT THE MARKET DEMAND STRATEGY (MDS) FOR PROCUREMENT AND CAPITAL EXCELLENCE AND PRODUCTIVITY ("SWAT TEAMS")

Agreement Number	**GSM 12/08/0578**
Commencement Date	**1 FEBRUARY 2013**
Expiry Date	**31 MARCH 2015**

Issue: 2019-01-25_22:42:24

COMMISSION OF INQUIRY INTO STATE CAPTURE

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SCHEDULE 1 – WORK ORDER(s)

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1 INTRODUCTION

This Agreement is entered into by and between:

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

And

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

NOW THEREFORE, IT IS AGREED:

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

1.2 The Service Provider hereby undertakes to render the Services provided for herein, as formally agreed between the Parties and in accordance with the Work Order(s) issued as schedules to this Agreement.

2 DEFINITIONS

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

2.1 **AFSA** means the Arbitration Foundation of South Africa;

2.2 **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, including the Work Order(s), specifications for the Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed in writing between the Parties], which collectively and exclusively govern the provision of Services by the Service Provider to Transnet;

2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by Transnet to give effect to its obligations under this Agreement owned in whole or in part by or licensed to Transnet or its affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement;

2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;

2.5 **Commencement Date** means 5 January 2013, notwithstanding the signature date of this Agreement;

2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs,

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

a) Information relating to methods of operation, data and plans of the disclosing Party;

b) The contents of this Agreement;

c) Private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;

d) Any information disclosed by either Party and which is clearly marked as being confidential or secret;

e) Information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;

f) Information relating to the past, present and future research and development of the disclosing Party;

g) Information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;

h) Information contained in the software and associated material and documentation belonging to the disclosing Party;

i) Technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;

j) Copyright works;

k) Commercial, financial and marketing information;

l) Data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;

m) Plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;

n) Information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and

o) Information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

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

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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 this Agreement and in respect of which such Party is liable to the other;

2.9 **Deliverable(s)** means any and all reports, analyses or other such materials furnished by the Service Provider to Transnet in relation to the Services;

2.10 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;

2.11 **Fee(s)** shall mean the agreed Fees for the Services to be purchased from the Service Provider by Transnet, as detailed in the Work Order(s), issued in accordance with this Agreement;

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

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

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

2.15 **Materials** means the Deliverables, the Service Provider Materials;

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

2.17 **Party** means either one of the Parties;

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

2.19 **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;

2.20 **Personnel** means any partner, employee, agent, consultant, independent associate or supplier, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;

2.21 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services;

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2.22 **Service(s)** means the setup and operation of the MDS Execution support office, the Service(s) provided to Transnet by the Service Provider, pursuant to Schedule 1 "Work Order"(s) in terms of this Agreement;

2.23 **Subcontract** means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof;

2.24 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;

2.25 **Service Provider Materials** means including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques analyses, know-how, tools, frameworks, models and industry perspectives used and/or developed by the Service Provider in connection with the Services;

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

2.27 **Third Party Material** means software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Service Provider in the performance of the Services;

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

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

2.30 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, including timeframes, Deliverable, Fees and costs for the supply of the Service to Transnet, which shall be appended to this Agreement.

3 INTERPRETATION

3.1 Clause headings in this Agreement are included for ease of reference only and do not form part of this Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.

3.2 Any term, word, acronym or phrase used in this Agreement, other than those defined under the clause heading "Definitions" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in this Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.

3.3 A reference to the singular incorporates a reference to the plural and *vice versa*.

3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.

3.5 A reference to a particular gender incorporates a reference to the other gender.

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4 NATURE AND SCOPE

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

4.2 Such Purchase Orders shall be agreed between the Parties from time to time, subject to the terms of the relevant Work Order(s).

4.3 Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.

4.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Work Order(s), in accordance with procedures set out in clause 29 *[Amendment and Change Control]* below. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.

4.5 Insofar as any term, provision or condition in the Work Order(s) conflicts with a like term, provision or condition in this Agreement and/or a Purchase Order, or where this Agreement is silent on the matter, the term, provision or condition in this Agreement shall prevail, unless such term or provision or condition in this Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

4.6 The Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

5 AUTHORITY OF PARTIES

5.1 Nothing in this Agreement will constitute or be deemed to constitute a partnership between the Parties, or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.

5.2 Neither Party shall be entitled to, or have the power or authority to enter into an agreement in the name of the other; or give any warranty, representation or undertaking on the other's behalf; or create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

6 WARRANTIES

6.1 The Service Provider warrants to Transnet that:

a) It has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representatives of the Service Provider;

b) It will discharge its obligations under this Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;

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c) It will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations; and

d) The use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.

6.2 The Service Provider warrants that it will perform its obligations under this Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its reasonable discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services or the manner in which the Service Provider ordinarily conducts business. Without prejudice to clause 6.3 below, in the event that the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke retention of Fees as detailed in the relevant schedule and/or Work Order.

6.3 The Service Provider shall, in accordance with the Service Provider's document retention policies, establish and maintain a secure file containing a copy of any presentation, progress review, report or other document furnished to Transnet by the Service Provider in connection with the Services, together with any working papers necessary to support its conclusions or analyses (collectively, the "Working Papers File"). Transnet may, at its own cost, inspect the Working Papers File at any time, during the five (5) year period from the end of the calendar year in which the relevant Services are completed or terminated, solely for the purpose of determining whether the Service Provider performed the Services in accordance with the Work Order. Any information furnished in connection with this provision shall be kept confidential in accordance with this Agreement.

6.4 The Service Provider warrants that for a period of 90 [ninety] 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] days of notification by Transnet.

6.5 The Service Provider will remedy any defect within 30 [thirty] days of being notified of that defect by Transnet in writing.

6.6 The Service Provider will not be liable to remedy any problem arising from or caused by Transnet's use of the Deliverables in any way not intended by the Work Order or any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.

6.7 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.6 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 29 *[Amendment and Change Control]*.

6.8 The Service Provider warrants that:

a) It has, using the most up-to-date software practicably and reasonably available to it, tested for [and deleted] all viruses identified by the Service Provider in the Materials at the date of the relevant Work Order; and

b) At the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.

The Service Provider agrees that, in the event that a virus is found, it will use its reasonable endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.

6.9 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with this Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

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

6.11 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall make senior Personnel available to Transnet, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

7 TRANSNET'S OBLIGATIONS

7.1 Transnet undertakes to promptly comply with any reasonable request by the Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Services as may be necessary for the Service Provider to perform the Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Service Provider of its confidentiality obligations under this Agreement.

7.2 The Service Provider shall give Transnet reasonable notice of any information it requires in accordance with clause 7.1 above.

7.3 Subject to clause 14 *[Service Provider's Personnel]*, Transnet agrees to :

a) provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under this Agreement; and

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b) perform any tasks or responsibilities assigned to Transnet and notify the Service Provider of any issues or concerns Transnet may have relating to the Services..

8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

8.1 The Service Provider shall:

a) Respond promptly to all complaints and reasonable enquiries from Transnet;

b) Inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services;

c) Conduct its business in a professional manner that will reflect positively upon the Service Provider and the Service Provider's Services;

d) Keep full records clearly indicating all transactions concluded by the Service Provider relating to the performance of the Services and keep such records for at least 5 [five] years from the date of each such transaction;

e) Obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Service Provider;

f) Observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993;

g) Comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance that are applicable to the Service Provider and performance of the Services; and

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

8.2 The Service Provider acknowledges and agrees that it shall at all times:

a) Render the Services and perform all its duties with honesty and integrity;

b) Communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;

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

d) Use its reasonable endeavours and make every diligent effort to meet agreed deadlines;

e) Treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;

f) Practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination [as further referred to in clause 23 – *Equality and Diversity*];

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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 accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;

j) Not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;

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

l) Immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services.

9 SERVING COMPETITORS

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

10 FEES AND EXPENSES

10.1 In consideration of the provision of the Services, Transnet will pay to the Service Provider the Fees detailed in the relevant schedule or Work Order.

10.2 Transnet will not be invoiced for materials used in the provision of the Services save for those materials (if any) set out in the Work Order and accepted by Transnet or in any relevant Work Order (which will be invoiced to Transnet at cost).

10.3 The Parties have agreed that the value of the Service Provider's expenses in connection with the provision of the Services shall be fixed at 15% of the total Fees which amount shall be paid by Transnet to the Service Provider.

10.4 All Tax Invoices relating to Fees, and expenses and, where appropriate, shall include VAT as a separate item.

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11 INVOICING AND PAYMENT

11.1 Transnet shall pay the Service Provider the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of this Agreement.

11.2 Transnet shall pay such amounts to the Service Provider, upon receipt of a valid and undisputed Tax Invoice as specified in the Work Order appended hereto, once the undisputed Tax Invoices, or such portion of the Tax Invoices which are undisputed become due and payable to the Service Provider for the provision of the Services, in terms of clause 11.4 below.

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

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

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

12 FEE ADJUSTMENTS

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

13 INTELLECTUAL PROPERTY RIGHTS

13.1 Title to Confidential Information and Intellectual Property

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

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

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

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13.2 Unauthorised Use of Confidential Information

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

13.3 Unauthorised Use of Intellectual Property

a) The Service Provider agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Service Provider acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.

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

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

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

14 SERVICE PROVIDER'S PERSONNEL

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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 this Agreement.

14.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a suitable replacement.

15 LIMITATION OF LIABILITY

15.1 Neither Party excludes or limits liability to the other Party for:

a) Death or personal injury due to negligence; or

b) Fraud

15.2 Each of the Parties shall indemnify and keep the other Party (the **"Indemnified Party"**) indemnified from and against liability for damage to any of the Indemnified Party's property [whether tangible or intangible] or any other loss, costs or damage suffered by the Indemnified Party to the extent that it results from any act of or omission by such Party or its Personnel in connection with this Agreement. Each of the Party's liability arising out of this clause 15.2 shall be

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limited to a maximum amount payable in respect of any one occurrence or a series of related occurrences in a single calendar year, such amount to be agreed in writing by the Parties.

15.3 Subject always to clauses 15.1 and 15.2 above, the liability of either the Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.

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

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

16 INSURANCES

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

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

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

16.4 In the event that the Service Provider receives written notice from its insurers advising of the termination of its insurance cover referred to in clause 16.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify

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Transnet in writing of such termination and/or unavailability, where after either the Service Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 (thirty) days prior written notice to that effect.

17 CONFIDENTIALITY

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

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

b) Not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;

c) Not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information, without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;

d) Not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;

e) Not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;

f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such Party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;

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g) The Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;

h) Each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or internal consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or internal consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or internal consultants honour such obligations;

i) Each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;

j) Each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by the person or entity; and

k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

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

a) A Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Personnel; or

b) Was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or

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c) Can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or

d) Is independently developed by a Party as proven by its written records.

17.3 The Service Provider's work for Transnet is confidential and intended for Transnet's internal use only. The Service Provider does not make public client names, client materials or reports prepared for clients without their prior written permission. Similarly, Transnet agrees that it will not use Service Provider's name, refer to Service Provider's work, or make the Deliverables or the existence or terms of this Agreement available outside its organization without the Service Provider's prior written permission.

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

18 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

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

19 TERM AND TERMINATION

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

a) this Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or

b) This Agreement is extended at Transnet's option for a further period to be agreed by the Parties.

19.2 Either Party may terminate this Agreement forthwith by notice in writing to the other Party where the other Party has committed a material Default and, where such Default is capable of remedy,

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has failed to remedy such Default within 30 [thirty] days of receiving notice specifying the Default and requiring its remedy.

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

a) A voluntary arrangement or composition or reconstruction of its debts;

b) Its winding-up or dissolution;

c) The appointment of a liquidator, trustee, receiver, administrative receiver or similar officer; or

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

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

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

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

20 CONSEQUENCE OF TERMINATION

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

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

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

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Deliverables furnished to Transnet by Service Provider in connection with the Services, together with any working papers necessary to support its conclusions or recommendations.

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

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

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

20.7 Should:

a) The Service Provider effect or attempt to effect a compromise or composition with its creditors; or

b) Either Party be provisionally or finally liquidated or placed under judicial management, whether provisionally or finally; or

c) Either Party cease or threaten to cease to carry on its normal line of business or default or threaten to default in the payment of its liabilities generally, or commit any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time];

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

21 ASSIGNMENT

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

22 FORCE MAJEURE

22.1 Neither Party shall have any claim against the other Party arising from any failure or delay in the performance of any obligation of either Party under this Agreement caused by an act of *force majeure* such as acts of God, fire, flood, war, strike, lockout, industrial dispute, government action, laws or regulations, riots, terrorism or civil disturbance, defaults, delays or discontinuance

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on the part of independent contractors, suppliers, or other circumstances or factors beyond the reasonable control of either Party, and to the extent that the performance of obligations of either Party hereunder is delayed by virtue of the a foregoing, any period stipulated for any such performance shall be reasonably extended.

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

23 EQUALITY AND DIVERSITY

23.1 The Service Provider will not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.

23.2 Both Parties to this Agreement undertake that they will not, and shall procure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

24 NON-WAIVER

24.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of this Agreement, shall not, in any manner, be construed to be a waiver of any of that Party's rights in that regard and in terms of this Agreement.

24.2 Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.

25 PARTIAL INVALIDITY

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

26 DISPUTE RESOLUTION

26.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.

26.2 If the dispute has not been resolved by such negotiation, either of the Parties may refer the dispute to AFSA and notify the other Party accordingly, which proceedings shall be held in Johannesburg.

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26.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

26.4 This clause constitutes an irrevocable consent by the Parties to any proceedings in terms hereof, and neither of the Parties shall be entitled to withdraw from the provisions of this clause or claim at any such proceedings that it is not bound by this clause 26.

26.5 This clause 26 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

26.6 This clause 26 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

27 ADDRESSES FOR NOTICES

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

a) **Transnet**

(i) For legal notices:

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

(ii) For commercial matters:

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

b) **The Service Provider**

(i) For legal notices:

McKinsey Incorporated
Sandown Mews East
88 Stella Street
Sandown
Sandton

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Fax No. 011 506 9000

Attention: Christina Planert – Partner

(ii) For commercial matters: McKinsey Incorporated

Sandown Mews East

88 Stella Street

Sandown

Sandton

2196

Fax No. 011 506 9000

Attention: Christina Planert – Partner

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

27.3 Any notice shall be deemed to have been given:

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

b) If posted by prepaid registered post, 10 [ten] days after the date of posting thereof; or

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

28 WHOLE AND ONLY AGREEMENT

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

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

29 AMENDMENT AND CHANGE CONTROL

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

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

30 GOVERNING LAW

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

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30.1 Change of Law

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Fees, Deliverables, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 26 *[Dispute Resolution]* above.

31 COUNTERPARTS

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

COMMISSION OF INQUIRY INTO STATE CAPTURE

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

For and on behalf of **TRANSNET SOC LTD** duly authorised hereto	For and on behalf of **MCKINSEY INCORPORATED** duly authorised hereto
Name:	Name: DAVID FENN
Position:	Position: DIRECTOR
Signature:	Signature:
Date: 11/07/14	Date: 21/02/14
Place:	Place: SANDTON

AS WITNESS: Name: Signature:	**AS WITNESS:** Name: [illegible] Signature:

AS WITNESS: Name: Signature:	**AS WITNESS:** Name: ASHVIN SOLOMON Signature:

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SCHEDULE 1 – Work Order No W.O.12/07/0578

SEVICES, CAPABLITIES, AND RESOURCES TO SUPPORT THE MARKET DEMAND STRATEGY (MDS) FOR PROCUREMENT AND CAPITAL EXCELLENCE AND PRODUCTIVITY ("SWAT TEAMS")

With reference to the Master Agreement, Reference Number GSM 12/10/0578 [the **Agreement**] between Transnet SOC Ltd [**Transnet**] and McKinsey Incorporated [**the Service Provider**] pursuant to which the Service Provider has agreed to perform certain to Transnet subject to such Agreement, the defined terms in the Agreement will, unless otherwise indicated, have the same meaning in this Work Order.

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

1 DESCRIPTION OF THE SERVICES

In support of Transnet's Market Demand Strategy, Transnet has embarked on acquiring the provision **of Services, Capabilities and Resources to Support the Market Demand Strategy (MDS) for Procurement and Capital Excellence and Productivity** which are included in the Key Deliverables.

2 KEY DELIVERABLES

The key project deliverables for a period of 13 (thirteen) months is the provision of **Services, Capabilities and Resources to Support the Market Demand Strategy (MDS) for Procurement and Capital Excellence and Productivity** which includes:

For the purposes of these deliverables below Swat Projects are defined as: "A minimum of 10 Capital projects, which need to cover at least R330bn worth of capital projects (including the sustaining portion). In addition these projects need to support and be linked to volumes of at least 80% of the forecast Market Demand Strategy Port, Rail (350mtpa) and Pipelines volumes) and at minimum include 6 General Freight Business (GFB) (end -to-end), non-GFB projects (export iron ore, export coal) port and pipeline projects."

The key objective and measurable (in addition to those listed below) is that the Section 1-3 Capital Work listed below, achieves a total capital reduction of least R51bn (in the context of R412bn capital program - the R412 billion capital is made up R300 billion as per Corporate Planning 2012/13 plus R112 billion funding gap identified by Group Planning). The minimum reduction is to comprise the following:

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1) A minimum reduction of R10bn from discretionary projects (i.e., not safety and compulsory projects) and not critical to achieve MDS Port, Rail, Pipeline volumes and Long term infrastructural requirements as contained in the Long Term Planning Framework (LTPF).
2) A minimum of R41 billion reductions in capital expenditure for Swat Projects through work performed in the Project Factories.

Platinum standard organisation – deliverables	
Key deliverables	**Measurable evidence**
Section 1 Capital Work: Platinum standard organisation - New capital delivery organisation with a ramp-up in capacity needed to de-risk and deliver portfolio	

• Operationalized phase 1 recommendations by GM Capital, including operationalized mandate, i.e.,
  • A 100 day activity plan (for 2012/13 and 2013/14) with GM, including prioritised set of initiatives with KPIs to be tracked and executed for his department (restructure dept. - refer Eskom example)
  • Detailed SPOs on how direct reports will be measured on performance (KPIs)
  • Detailed interaction model - how the restructured department including scrubbing and portfolio management team will interface with the rest of the organisation and how their operating model needs to link to the corporate calendar (planning cycles, approval forums, reports, information
	• For 2012/13 and 2013/14 100 day plan with priorities and milestones signed off by GCFO

COMMISSION OF INQUIRY INTO STATE CAPTURE

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Platinum standard organisation – deliverables	
Key deliverables	**Measurable evidence**
required – what/when) • Detailed interaction model for Operating Divisions ("OD") scrubbing and assurance teams will interface with the ODs and Group • Detailed approach for the best option to transition into the new organisation (stakeholder engagement and change management plan, roll-out and syndication process with ODs, milestones) • Detailed operating model for "single point of accountability" throughout FEL phases and how it work in practice • Recut portfolio to take information obtained from budgeting cycle 2013/14 and identified capital shortfalls (R112bn plus PSP) • Link to portfolio - how which projects in Planning and Monitoring. All FEL 1,2,3 from ODs to be co-ordinated through the factory including Planning and Monitoring	• Stakeholder management and change management plan for implementation of new organisation signed off by GCE • Completed job descriptions, structures for GM capital function team • FEL 1,2,3 from Planning and Monitoring linked to Portfolio
• Detailed resourcing requirements for the capital organisation understanding difference between procurement and construction contracts (how many FTE by skills category, by function and linked to re-cut portfolio): Group Capital, ODs, GM capital function and understanding the role of TRE) and where they will be housed (1,200 FTEs). This must be developed in the context of method of contracting (EPCM vs. owners teams)	• Transition matrix (from current - to new capital organisation): number of resources required by skills category, by ODs/TCP/TRE on an n-X level (as detailed as possible depending on data availability)
• Developed detailed capital organisation options for Transnet's overall delivery model (mandates, roles and responsibilities of Group Capital/TCP vs. ODs vs. GM Capital functions regarding: ownership logic of projects, single point of accountability throughout FEL phases, project team size and governance, approval forums and escalation models, contracting strategy) for ExCo/Board approval (GCE and GCFO to drive approval process with support from Capital GM) by	• Approved capital organisation by ExCo/Board for implementation supported by new mandates for Group Capital/TCP, ODs and GM Capital function, including implementation • Approved contracting strategy policies and procedures (supported by templates)

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Platinum standard organisation – deliverables	
Key deliverables	**Measurable evidence**
Consultant; Consultant support (managed/ signed off by consultant) to implement the new organisation (incorporate input from the organisation on interface issues, detail job descriptions, skills set structure, RACI, implementing stakeholder management) Detailed operating division (TFR, TPT, TNPA, TPL, TRE) capital structures (including number of people required over the 7 years) linked to recut portfolio including scrubbing, assurance, optimisation	• For roll-out: survey to stakeholders in Group Capital and ODs to measure level of enthusiasm and inclusiveness in the roll-out process (rationale clear, objectives clear, what is expected from the clear, empowered to execute mandate in their functions) • Key implementation milestones and roll out achieved
• Resourcing strategy (options for sourcing talent based on recut portfolio and project execution types- contracts, hire, contracting strategy (EPCM vs. owners team) temporary, re-allocation of existing Transnet resources to match priority projects) for how to address the FTE gap (1,200 requirement to be refined and quantified in detail) in the capital organisation by consultants	• Signed off action plan for how to close the gap by GCE (# people for hiring by skills category, next steps on potential partnerships, re-allocation of existing Transnet resources to match priority projects)
• Set up resourcing team and action plan set-up, hiring of people commenced with support from consulting team	• On boarded resource team with clear action plan and milestones • Issues raised to GM capital against delivery of milestones
• Trained FTEs on platinum standard provided to ensure Transnet can replicate work completed • Portfolio optimisation team that works with Transnet on re-cutting portfolio • Project scrubbing and optimisation: 40-50 cross functional team members working on SWAT Projects • Processes including revised PLP, commercial strategy and contracting strategy, includes best practice gate review frameworks from MIRA and PDRI - which need to be linked to PWC control frameworks	• Satisfaction (if unsatisfied then more training) survey of experience conducted with trained Transnet project team FTEs, scrubbing team, assurance team related to platinum standard (rationale clear, objectives clear, methodology useful/valuable, expectations clear) • Training material and train the trainer • Coverage of R330bn worth of capital projects and comprising at minimum 80% of MDS Port, Rail (350mtpa) and Pipelines volumes)

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Platinum standard organisation – deliverables	
Key deliverables	**Measurable evidence**
• Setup project assurance team (both group, and OD members) that take part in the project factory process NB: consultant resources only allocated when Transnet is ready to start projects	• 100% pass rate from formal business case approval forums for Swat Projects and optimised projects • Project factory (physical space) with developed tools, templates and guidelines • Trained permanent Project Factory Transnet FTEs
• Contracting strategy policies and templates will be incorporated in the project factory and PLP. These will be linked to the re-cut portfolio and number of project execution types - and in the context of the new operating model	• Policies and templates created
	• Contracting strategy embedded in the project factory work, i.e., full stage gate adherence • Contracting strategy (starting point) linked to projects included in the re-cut project portfolio (as means to inform resourcing strategy and number of staff, and timing over the seven year period) in the context of the new operating model
• Refined PLP and linked to project factory methodology • Document learning's from project factory and develop a 10 page document with addressed weaknesses identified for PLP in phase 1 and other identified weaknesses • PLP lite process defined and developed for smaller types of projects: guidelines published (10-15 page level). • Detailed PLP process reviewed and all weaknesses addressed (including all templates). This must be done in the context of the new operating model; new portfolio and contracting • All PLP weaknesses addressed and 4GB PLP file aligned and updated. PLP to be supported by full range of templates, annexures. • PLP fully integrated into Control work	• Documented refined PLP for Transnet to roll-out integrated with PWC controls • PLP integrated with business case templates • All PLP weaknesses addressed and updated in revised PLP and PLP Lite procedures (templates and procedures)
	• Embedded in the project factory work, i.e., full stage gates adherence for Swat Projects and optimised projects ExCo approved Project methodology (including PLP and PLP Lite)for all projects

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Platinum standard organisation – deliverables	
Key deliverables	**Measurable evidence**
undertaken by PWC (ICPAF and IAM)	
• Revised systems, monitoring, reporting and governance (at portfolio, programme and, project level): • Governance and monitoring: reporting templates with clarity on where data will be sourced, forums, and responsibilities for putting together/presenting will be developed incorporating best practice benchmarks, phase 1 output and linked to pipeline view and proposed new Delegations of Authority ("DOA")	• Templates in place • Revised modus operandi for governance and reporting forums (when, what, how) • Updated Capic/Exco DOA (for approval by GCE) and changes of mandates/ elimination of various approval bodies - linked to pipeline view and proposed new DOA for 7 years, including redesigned approval process.
• Systems: develop an RFP with required functionality/evaluation criteria to generate the above electronic reports (working off existing Transnet data platforms - understanding role of primavera, PPM, IM, PS) – in order to appoint an implementation partner, at portfolio, programme and project level.	• Completed RFP and Business requirements document that incorporates platinum standard recommendations from detailed organisation and refined PLP/reporting, other platinum standards, resulting in completed RFP including portfolio, programme, project level for primavera, PPM, IM, PS
Re-cut portfolio - key deliverables	
Section 2 Capital Work: Re-cut portfolio **- New agile capital portfolio linked to the MDS Rail, Port, Pipeline Volumes (including, but not limited to 350mtpa TFR + Long Term Planning Framework (LTPF)) with a Transnet Capability developed to further optimise the portfolio/deliver further capital reduction, and ability to react to external factors, including delivery of the following: - 1st view unscrubbed, 2nd view (post scrub including Swat Projects), Prioritisation matrix, Scalable to the LTPF/ different volume levels, Ability to select projects (turn on or off)**	

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Platinum standard organisation – deliverables	
Key deliverables	**Measurable evidence**
• Project portfolio linked to business outcomes, interdependencies understood, with eliminated duplications; • 90% of the capex spend R440bn (i.e. 90% of R412bn plus PSP 90% of PSP projects (R76bn)) will be re-cut into sensible projects that are clearly linked to outcomes. • Any remaining gaps to reach MDS volumes (Rail, Port, Pipeline) will be identified • Detailed volume validation (at Manganese business case level) for all Swat Projects • Volume validation linked to economic forecasts/cycles • Standardised Business Cases- Identify projects of developmental nature for government subsidy- Identify commercial projects requiring private sector / external funding • Results of above work to be integrated, aligned with 1064 Locomotive Transaction Advisory Project • Plan scalable to the LTPF/ different volume levels	• A re-cut portfolio consisting of projects clearly linked to business objectives • Tangible input into the formulation of the next seven year plan with the unscrubbed re-cut portfolio as a basis • Portfolio cut using inter alia, safety, execution, discretionary characteristics • Volume validation (linked to economic cycles) for all Swat Projects (covering volumes of at minimum 80% of all Port, Rail and Pipeline Projects) • Alignment with Transnet's 1064 Locomotive Transaction Advisory Project

• Ability to make decisions based on
  • Detailed level understanding of the benefit of the new portfolio pre and post scrubbing (Swat Projects)
  • Trade-offs and project prioritisation (benefit realisation), e.g., eliminate non-critical projects, identify and close gaps in the portfolio (project so far not identified to deliver MDS), re-sequence capital spend based on inter-dependencies (which are not currently visible), prioritise and turn projects on / off to suit the macro environment
  • Adjusted 2013/14 and seven year capital spend targets based on pre and post scrubbed (Swat Projects) portfolio optimisation - within context of new budget cycle
  • Identify funding gaps and identify PSP to ensure
	• Tool and templates that do prioritisation and effects on return can be modelled based on changes in
	  • Reduced resources (capex)
	  • Volume demand changes (excel models to support changes in volumes)
	• Benefit realisation models
	Decision tools will address Transnet's criteria of return on investment: financial, volume, BBEEE, and socio economic metrics

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Platinum standard organisation – deliverables	
Key deliverables	**Measurable evidence**
MDS financial ratios are maintained	
• Capex reduction from (discretionary) identified spend which is not critical to MDS volumes (including TFR and ports). Further capital spend may be identified through the portfolio optimisation process	• R10bn reduced capex from discretionary projects (i.e., not safety and compulsory projects) not critical to achieve MDS Port, Rail, Pipeline volumes
• Capability for further portfolio optimisation and capex reduction – Portfolio optimisation tools and methodologies implemented – Portfolio management team (7 FTEs) trained to optimise – Existing systems to be enhanced if applicable	• Sign-off from portfolio management team that methodology is clear and tools are understood/workable
Project factory performed on SWAT projects - key deliverables	
Section 3 Capital Work: Project factory - Capital reduction based on chosen projects, and a replicable capability for Transnet to scrub and optimise the entire portfolio	
• Setup project factory (modus operandi, tools, templates, report metrics, link to PLP process) to ensure Transnet's capability of replicating work and deliver de-risked projects in the future • Link to organisational work as this must include procurement work, etc. • Create project scrubbing team and processes	• Identified projects for scrubbing and optimisation (assessment of project readiness for factory) • Physical room and sign off by project factory Transnet owner that tools and methodology works
• Reduction in total capex of Swat Projects scrubbed	• 12.5% (R41 billion) reduction in capex

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Platinum standard organisation – deliverables	
Key deliverables	**Measurable evidence**
and optimised projects	for Swat Projects
• All Swat Projects to be progressed to FEL3 state - ready for approval and execution - Sustaining capital taken into account - Commercial strategy and contracting strategy taken into account • Results of above work to be integrated, aligned with Transnet's 1064 Locomotive Transaction Advisory Project	• Swat Projects in FEL3 ready state – suitable for approval of business cases • Covered 80% volume and R330bn capital • Development of Training manual • Understand project interdependencies including impact on other ODs and MDS volumes (end-to-end) • Alignment with Transnet's 1064 Locomotive Transaction Advisory Project
• 40-50 Transnet project FTEs trained on platinum standard and capable of scrubbing, optimising projects – ready to de-risk and unlock value in the remaining portfolio • Manage project factory	• 40-50 Transnet project FTEs gone through the process building, scrubbing and optimising the Swat Projects using the platinum standard way • Simplified guide for project factory conduct, procedures and manuals
• Setup and train available resources in the new assurance team - methods - practices - link to PWC controls - Operating Model	• Gate reviews conducted with assurance team FTEs in the lead in wave 1 and 2 on all Swat Projects • Standard operating procedures and manuals from the revised PLP process - simplified for project factory environment - methods - practices - link to PWC - Operating model
Procurement	
SWAT Procurement Command Centre (includes but not limited to):	
• Create a command centre which will manage the various procurement events that the SWAT teams will deliver	• Command Centre fully setup at Transnet premises, housing all full time resources as proposed.

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Platinum standard organisation – deliverables	
Key deliverables	**Measurable evidence**
• The methodology of the command centre must be created: • Pipeline templates • Prioritisation mechanisms • Operating protocols • Reporting templates: • Consolidated status • OD status • Initiative status • Forward plan including schedule • Monthly/weekly/daily operating and reporting processes	• Document including methodology which includes: • Templates • Mechanisms • Protocols • Reporting Templates • Monthly/Weekly/Daily operating reporting process
• Creation of the initial pipelines of MDS procurement requirements	• Creation of MDS Pipeline Documentation including all divisional MDS requirements.
• Maintaining pipelines	• Monthly/Weekly/Daily operating reporting process
• Pipeline performance	• Develop evaluation template of Pipeline • Weekly update and reporting on performance.
• Prioritisation of events	• Develop events prioritisation template. • Weekly update and reporting performance
• Maintaining visibility of events sitting in pre-procurement	• Included in MDS Pipelines and weekly reporting
• Planning resource requirements for these events: • Assessing and agreeing business capacity to perform the event • Capability and capacity from strategic sourcing • Capability and capacity from Supplier Development • Planning the constitution of the CSFT **SWAT team functionality (includes but not**	• Planning resource document, including detailed resources and their allocation to project streams, as per proposal.

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Platinum standard organisation – deliverables	
Key deliverables	**Measurable evidence**
limited to):	
• Performing procurement initiatives per the end to end procurement process	• Pipeline reporting, detailed for each procurement stage.
• Focused team delivery	• Team performance reports.
• Accelerate procurement transactions	• Accelerated transaction template and proof of on-time completion • Report on initial and accelerated timelines.
• Provide support resources to assist transactions	• Team Structures as per proposals.
• Utilise best practice procurement methodologies	• Best Practice Procurement Methodologies • Must be included in Methodology document.
• Leverage user experts of tools and templates	• Tools and templates must be included in methodology documents.
• Share IP amongst key functional roles within and across divisions	• Development of IP Transfer document. • Weekly update of the document.
• Transactional performance	• Transactional performance to be included into MDS pipelines and weekly reporting template.
Procurement process (Includes but not limited to):	
• Prepare complete sourcing strategy which includes the SD strategy	• Deliverable: Go-to-Market sourcing strategy which includes Supplier Development for the specific commodity.
• Verification of sourcing strategy	• Stakeholder Sign-off
• Preparation of RFX documentation	• Completed RFX document. • Stakeholder Sign-off.
• Obtain review sign-off of the strategy and RFX documentation	• Completed documents. • Stakeholder Sign-off.
• Prepare necessary documentation for approvals based on the applicable DOA level	• Completed documents. • Stakeholder Sign-off.
• Manage advertisement and bid submission process through the TAC secretary	• Completed documents. • Stakeholder Sign-off.
• Manage CFST evaluation process	• Completed documents. • Stakeholder Sign-off.
• Manage SD evaluation process	• Completed documents. • Stakeholder Sign-off.

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Platinum standard organisation – deliverables	
Key deliverables	**Measurable evidence**
• Prepare Tender Evaluation and Award report for submission to the AC	• Completed documents. • Stakeholder Sign-off.
• Engage in and finalise negotiations	• Completed documents. • Stakeholder Sign-off.
• Prepare final award and obtain approval	• Completed documents. • Stakeholder Sign-off.
• Prepare and finalise contract	• Completed documents. • Final signed contract.
Prerequisites (includes but not limited to):	
• The provision of resources with supply chain expertise and experience	• Overall minuted weekly performance meeting (including staff), with mutual agreement between Transnet and the Supplier.
• Thorough knowledge of The Public Sector's supply chain policies and procedures	• Overall minuted weekly performance meeting (including staff), with mutual agreement between Transnet and the Supplier.
• A thorough understanding and experience with Transnet's, other SOC's and the DPE's Supplier Development plans, policies and expectations	• Overall minuted weekly performance meeting (including staff), with mutual agreement between Transnet and the Supplier.
• Suitable knowledge of the Rail and Port related industries	• Overall minuted weekly performance meeting (including staff), with mutual agreement between Transnet and the Supplier.
• Experience with supporting various stages of procurement transaction's (including Strategy development, RFP development, Bid evaluation, Negotiation, Award)	• Overall minuted weekly performance meeting (including staff), with mutual agreement between Transnet and the Supplier.
• Track history of performance improvements within operations and procurement	• Overall minuted weekly performance meeting (including staff), with mutual agreement between Transnet and the Supplier.
• Experience with development of contracting strategies (e.g. programmatic procurement)	• Overall minuted weekly performance meeting (including staff), with mutual agreement between Transnet and the Supplier.
• Track history with the development of procurement control and assurance processes including key gate reviews	• Overall minuted weekly performance meeting (including staff), with mutual agreement between Transnet and the Supplier.
• A thorough understanding and experience with the socio-economic issues (CSDP, Broad Based Black Economic Empowerment, industrialization and localisation, environmental issues etc.)	• Overall minuted weekly performance meeting (including staff), with mutual agreement between Transnet and the Supplier.

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Platinum standard organisation – deliverables	
Key deliverables	**Measurable evidence**
• Thorough understanding of the Public Finance Management Act, Preferential Procurement Policy Framework Act, Industrial Policy Action Plan etc. requirements	• Overall minuted weekly performance meeting (including staff), with mutual agreement between Transnet and the Supplier.

3 ACCEPTANCE CRITERIA FOR DELIVERABLES

Transnet's Project Manager or his/her nominated delegate will sign off the authorised approval for the Deliverables as detailed in clause 2 above.

4 PROGRESS REPORTS AND REVIEW MEETINGS

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

5 FEES AND DISBURSEMENTS

5.1 The value for the duration of the contract is capped at R 154.6 Million (one hundred (100) and fifty four (54) Million and 600 thousand) excluding expenses and VAT.

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

SIGNED for and on behalf of: **McKinsey Incorporated**	**SIGNED** for and on behalf of: **Transnet SOC Ltd**
Signature David June	Signature
Name: David June	Name:
Position: Director	Position:
Date: 21/2/14	Date:
Place: Sandton	Place:

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ANNEXURE A – Project Fees

Resource	No of Resources	Total Dedicated Resources	Part Time/Full Time	Contract value including expenses, but excluding VAT
McKINSEY		20		
Director	2		PT	
Partner	2		PT	
Associate Principal	1		PT	R103.9 Million
Engagement Expert Support	9		PT	
Engagement Manager	6		FT	
Associates/Analysts	14		FT	
LETSEMA		8		
Director	1		PT	
Associate Partner	1		PT	
SC Expert	1		PT	R24.2 Million
Engagement Manager	2		FT	
Senior consultant	2		FT	
Consultant	4		FT	
REGIMENTS CAPITAL		20		
Partner	3		PT	R23.4 Million
Project Managers	5		FT	
Consultants	10		FT	
Support	5		FT	
PD NAIDOO		N/A		
Project Director	N/A		PT	
Chief Engineers	N/A		FT	R23.1 Million
Senior Engineers	N/A		FT	
Junior Engineers	N/A		FT	

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TRANSNET

MEMORANDUM

www.transnet.net

TO : **Brian Molefe**
Group Chief Executive

FROM : **Anoj Singh**
Group Chief Financial Officer

SUBJECT : **COAL – BREAKTHROUGH OF 2 MT**

PURPOSE OF SUBMISSION

1. The purpose of the submission is to request approval of the Group Chief Executive (GCE) to approve:
   - 1.1 The resourcing strategy and remuneration model for the Coal Line – breakthrough of 2 mt initiative to mitigate the EBITDA at risk.
   - 1.2 Confine and award services for support to the internal team to McKinsey and Company and its BBBEE Consortium partners.

BACKGROUND

2. The 2014/15 EBITDA at risk was presented at the March Group Exco (refer to Annexure A). At that meeting the Exco accepted the risks and requested the GCFO to identify mitigating strategies to address the risks presented in order to achieve the financial performance and seven year MDS targets contained in the Corporate Plan.
3. One of the initiatives to mitigate the risk, contained in Annexure A, is increasing the Coal line – breakthrough of 2 mt initiative.
4. The export coal business has been facing numerous challenges that resulted in volume targets not being achieved (refer to Annexure B– weekly volumes).
5. The performance has been hampered by tippler performance and tippler unreliability, as well as customer infrastructure reliability.
6. Low demand from Coal customers impacted Export Maputo/TCM and West coal flows.
7. Resource constrains e.g. shortages of wagon sets resulted TFR being unable to capitalise on increased demand.
8. The implementation of Project Shongololo has not yet yielded the required reduction in cycle times, improvements in resource utilisation, efficiency improvements and resultant volume growth.
9. In 2014/15, Transnet aspires to transport 2 Mt weekly across the overall coal system, including the export coal line and other coal (Eskom, Maputo, Durban), up from current performance.
10. Significant investments have recently been made to increase capacity, including 110 new 19E locomotives, and extensive track refurbishment. Additional structural capacity increases are limited in the near term by the Overvaal tunnel, and limited substation capacity in certain sections.
11. Electricity constraints on the TFR Coal network impact ability to achieve projected volumes.
    - 11.1. The shortage of Eskom electrical capacity limits the throughput on the Coal Line to 75 Mtpa when operating trains with electric locomotives.

11.2. According to the current schedule, the electrical capacity between Ermelo and RBCT will be resolved in 2017/2018.
11.3. No timelines for the upgrade of electrical capacity between the mines and Ermelo has been received.
11.4. In order to increase capacity beyond 75 Mtpa while the Eskom electrical constraint exists, the trains must be operated with a mixture of electric and diesel locomotives.
11.5. The Class 43D locomotives do not have the necessary functionality.

12. Logistical complexity is driven by the need to:
12.1. Accommodate GFB traffic on the same lines.
12.2. Manage coal collection from 32 separate mines across the Mpumulanga coal basin and aggregate it at Ermelo.
12.3. Manage export distribution via rail-port interfaces at three port terminals not owned by Transnet (Maputo, Durban West, RBCT).
13. Based on the achievement of weekly volumes it is estimated that Export coal volumes are likely not to exceed 72 mtpa compared to a budget of 75 mtpa contained in the 2014/15 Corporate plan.
14. This will thus result in 3 mtpa at risk and a concomitant EBITDA at risk of R400 million for 2014/15.

DISCUSSION

15. A significant portion of the incremental value likely lies in maximising the export coal line making it the ideal starting point for the breakthrough effort. The programme can be scaled across the rest of the coal system as a second step using the same principles and tools.
16. 13 specific technical levers combined with 5 management levers could potentially deliver up to a 20% increase in tempo on the export coal line alone.
17. Technical levers
17.1. Improve/Redesign SOC
17.2. Increase wagon fleet size/availability
17.3. Implement 100% book offs
17.4. Top up all trains
17.5. Improve ERM yard processes
17.6. Reduce loco losses
17.7. Reduce TAT in 2279 and RBCT
17.8. Reduce Infrastructure losses
17.9. Reduce mine cancellations
17.10. Reduce derailments
17.11. Improve TAT at mines
17.12. Optimise Overvaal tunnel spacing
17.13. Optimise dual voltage locomotive usage
18. Management levers
18.1. 6 hourly call to aligned to end operations
18.2. Control tower and performance dashboards to create transparency from structural capacity to planning to execution
18.3. Train allocation based on mine equivalent ton system (service zones)
18.4. Targeted incentives for front line (non-cash)
18.5. Fill vacancies and roles in critical areas
19. To drive impact immediately, we would quickly develop a baseline, followed by rapid application of performance interventions.
20. Rapid baselining
20.1. Analyse maximum structural capacity available.

20.2. Identify cycle time leakage using the Wagon Performance Model and information from Sprint.
20.3. Confirm the specific levers most likely to have impact given current operating challenges.
20.4. Run a health check on vacancies, roles, shift coverage and processes.

21. Targeted interventions
21.1. Re-institute the six-hourly calls.
21.2. Re-institute weekly and daily management dashboards.
21.3. Put in partial or full time coverage in high opportunity spots for each of the 13 technical improvement levers.

22. Build capability for sustainability
22.1. Based on the outcome of short term performance improvement using technical and management levers, we would:
22.2. Fill gaps in the organisational structure
22.2.1. Implement redesigned processes as needed.
22.2.2. Re-implement tools e.g. wagon performance model.
22.2.3. Run broad-based training for front line supervisors and personnel.

23. Based on the above an expected 77mt is expected to be achieved – in excess of the Corporate Plan targets.
24. This approach has been discussed and agreed with Mr Siyabonga Gama: TFR CE.

GROUNDS FOR CONFINEMENT:

25. McKinsey and Company have the Intellectual property, experience and knowledge to provide these services to Transnet. McKinsey and Company have a detailed knowledge of Transnet, its operating divisions and MDS.
25.1. McKinsey understands the underlying economics of the global and local industry in detail as well as the strategic trends in the coal industry,
25.2. McKinsey understands Transnet's underlying economics in detail and have been an advisor in breakthrough projects across a number of clients.
25.3. McKinsey has in its global practice supported many clients and a tool kit of best practices that can be leveraged.
25.4. Previous application of these techniques resulted in rapid performance improvements of 15-20%.

26. 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.

27. We are of the view that this matter complies with grounds (a) and (d) as set out below, and the request for confinement is therefore fully supported.
28. Specific emphasis is placed on ground (a) and (d) due to the potential business risks associated with approaching the market on an open tender process as well as the credentials listed above.

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;	• The EBIDA at risk was only identified after the 2014/2015 Corporate plan had been completed; taking into account the impact of the locomotive deposits. • These risks were presented to Transnet Group EXCO in March 2014. • If the mitigation plans are not put in place immediately the 2014/2015 Corporate plan, capital plan and funding pre-requisites will not be met placing the entire MDS at risk. • Mitigating the impact of lower than plan throughput tempo requires an urgent and immediate mitigation action which has an opportunity to deliver the required results in the 2014/15 Corporate Plan.
d. Goods and services being procured is highly specialised and largely identical to work previous performed	• Managing and optimising the Coal line is a highly specialised skill. • This skill requires technical knowledge of Coal rail equipment and environment, as well as technical limitations of the infrastructure. • This skill requires specialised management skill in managing operations within a coal rail environment. • McKinsey has a proprietary coal demand and supply models as well as key operating philosophies that Transnet can use. • This tool is available from only one supplier i.e McKinsey. We have satisfied ourselves that there is no new entrant who can perform the work through the following manner. • These philosophies and tools have been implemented and delivered increases in volume tempo at desired levels in the past • McKinsey has provided this type service in the past to Transnet Freight Rail.
d. Approaching the market would result in wasted money and time	• Any new service provider would have to develop its own methodologies and tools as well as obtain operational experience within a coal rail environment. • Due to the specialised nature of the work a new service provider will be required to understand the intricacies of Transnet's operations, capital

	programme and overall MDS.

29. Additionally, due to the confidential nature of the information, the engagement cannot be subject to an open tender process. In terms of para 15.1.4 (c) of the revised PPM, in instances where a confinement is confidential, the GCE may approve such confinement without it being routed via any other signatory.

ENTERPRISE AND SUPPLIER DEVELOPMENT AND BBBEE

30. The work will be carried out internally supported with a team of consultants (McKinsey & Company and its Consortium partners). The external consultants fees for the scope above will be based on a fixed fee of R20 million.
31. Mckinsey and Company will engage a Consortium Partner who is Black owned and this Consortium partner will perform a percentage of the work under the guidance of Mckinsey and Company.
32. The Consortium partner will share 40% of the fixed fee and 60% of the contingent fee/fee at risk (excluding VAT and expenses). The initial fixed fee of R20 million excluding expenses and VAT will be shared on a 40%/60% split with Consortium partners, who will be allocated 40% of the fees. The contingent/at-risk portion of R110 million excluding VAT and expenses will be shared a 40/60% split with the Consortium partners, who will be allocated 60% of the fees at risk.
33. McKinsey and company will be required to provide a supplier development plan whereby they commit 70% of the contract value for the fixed fee and 70% of the contingent fee to enterprise and supplier development value, which will be set out in an agreed supplier development plan. Preferential procurement and use of empowered consortium partners will contribute to this value. This will subject to negotiation with the service providers.
34. The consortium partner will be required to provide a supplier development plan whereby they commit 20% of their contract value for the fixed fee and the contingent fee to enterprise and supplier development value, which will be set out in an agreed supplier development plan. This should be targeted at downstream supplier development to SMME's (EME's and QSE's), preferably black owned, Black women owned, youth owned and owned by people living with disabilities. This will subject to negotiation with the service providers.
35. McKinsey and Company and the consortium partner will be required to provide an acceptable BBBEE improvement plan.

FINANCIAL IMPLICATIONS

36. The fees for the service provider will be based on a combination of a fixed fee and contingent fee. The fixed fee is to cover their cost to deliver the planned Transnet net revenue/volumes and the contingent fee will remunerate them based on the increase in actual net revenue/volumes over and above Transnet expected and planned net revenue/volumes.
37. The additional net revenue/volumes over and above the planned net revenue/volumes will be clear revenue for Transnet and thus will have no additional costs except for the contingent fee
38. The total fee will be capped at R130 million rand excluding VAT and expenses and split as follows:
    38.1. The fixed fee will be R20 million excluding VAT and expenses.
    38.2. If the engagement is successful and the risks are mitigated, the service provider will be remunerated at 20% of incremental net revenue benefit generated by the

delivering net revenue/volumes above the agreed baseline, this portion of the fee will be capped at R110 million.

39. The baseline proposed is 72mt, which is based on the weekly tempo achieved in 2013/14.
40. The amount of R130 million can be treated maximum ceiling and will be negotiated to maximise benefit for Transnet after the conclusion of the rapid baselining.
41. At this level of delivery of 5mt (77 mt vs 72mt) additional tonnes, the total incremental revenue benefit to Transnet will be R520 million (R650 million in revenues less R130 million paid to the consortium partners).
42. The fixed fee and expenses will be in accordance with the National Treasury instruction note. The expenses will be on actual costs incurred aligned with the instruction note.
43. Transnet's interpretation of contingent fees paid to consultants is that contingent fees only become due once a predetermined event has occurred, such as Transnet earning additional net revenue or receiving net cost savings less the contingent fee that Transnet would not have had unless the consultant was engaged . Thus Transnet will always be in a net cash positive position.

BUDGET IMPLICATIONS

44. The amount of R20 million has been budgeted for in the 2014/15 Group Finance budget.
45. The additional at risk fees of R110 million has not been included in the budget but due to the contingent nature of the payment, however, if the fees are paid, significant incremental revenue of R520 million (R650 million in revenues less R130 million paid to consortium partners) will accrue to Transnet.
46. Typically work of this nature based on internationally accepted norms, where fees are at risk, are between 15%-25% of the net savings or additional net revenue achieved.

RECOMMENDATION

47. It is recommended that the of Group Chief Executive approve:
    47.1. The resourcing strategy and remuneration model for the Coal Line – breakthrough of 2 mt initiative to mitigate the EBITDA at risk.
    47.2. Confine and award services for support to the internal team to McKinsey and Company and its BBBEE Consortium partners.

Compiled by

Anoj Singh
Group Chief Financial Officer
Date: 31/03/14

Approved/ ~~Not Approved~~

Brian Molefe
Group Chief Executive
Date:

TRANSNET SOC LTD

[Registration No. 1990/000900/30]

REQUEST FOR PROPOSAL [RFP]

FOR THE PROVISION OF PROFESSIONAL SERVICES TO SUPPORT TRANSNET IN INCREASING THE COAL LINE WITH A BREAKTHROUGH OF 2MT (TWO MILLION TONNES) PER WEEK

FOR A PERIOD OF 12 MONTHS

RFP NUMBER	**GSM/14/04/1037**
ISSUE DATE:	**28 MAY 2014**
CLOSING DATE:	**10 JUNE 2014**
CLOSING TIME:	**12:00**
BID VALIDITY PERIOD:	**90 days from Closing Date**

PR: 1040 48.50

McKinsey&Company

PO: 4500 250294

Transnet SOC Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177
Supplier code: 72063827

McKinsey and Company
VAT no: 4710150048

Invoice: 5755

Charge code: TRX077

Payment due within 30 days of invoice date

2 June 2014

Professional fees: 28 April – 30 May 2014	R	10,400,000.00
Out of pocket expenses and support services	R	780,000.00
Sub Total	R	11,180,000.00
Vat at 14%	R	1,565,200.00
TOTAL	R	12,745,200.00

TRANSFERRED PAID

Payment may be made by direct transfer to:

Account Name:	McKinsey Incorporated
Account Number:	421061812
Branch:	019205
Bank name and address:	The Standard Bank of South Africa Ltd. Sandton Branch 156 Fifth Street Sandton, 2196 South Africa

Please quote invoice number and charge code reference on transfer and remittance.

Please note:
Standard terms provide for invoice payment upon receipt. Interest will be charged on balances outstanding 30 days after the invoice date, at a rate of 1% per month or as otherwise agreed.

5200467389

100818

2014 -07- 14

McKinsey&Company

30 May 2014

Anoj Singh
Group Chief Financial Officer
Transnet SOC Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg

Dear Anoj,

Please find attached invoice 5755, issued on 30 May 2014 for our professional fees and out of pocket expenses (@7.5%) and support services for the period 28 April 2014 to 30 May 2014 relating to our work on Coal Line – Sustainable Operations Breakthrough. This engagement was requested by Transnet in your letter to McKinsey (David Fine) issued on April 10th.

The total value for McKinsey of the baselining phase, finishing 20 June 2014, is expected to be R26.7 million including expenses but excluding VAT, of which R11.2 million (42%) has been invoiced to date, including this invoice.

The deliverables for this engagement are listed below, with percentage completion. This is the first invoice for this engagement.

Deliverable	**% completed as of this invoice**	**% completed as of previous invoice**
Provide support to mitigate slip risk during annual coal line shutdown	100	0
Provide recommendations to mitigate slip and optimise working time in future shutdowns	75	0
Identify levers to create 5 Mtpa of additional volume above baseline (to be agreed)	15	0
Identify and design initial interventions to support sustainable operation at an 81 Mtpa tempo, allowing for shutdowns, accidents and seasonal cyclicality	5	0

At present, no bottlenecks need to be addressed by Transnet in order to ensure continued progress.

467389

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 LJH Arwidi (Swedish) W Choi (South Korean) IRA Munshi PM Perbhoo SH Wu

McKinsey&Company

Since the last invoice, the McKinsey resources allocated to this engagement included:

Name	Role
Norbert Dorr	Director
Vikas Sagar	Principal
Christina Planert	Principal
Ashvin Sologar	Associate Principal
Paul Jacobson	Engagement Manager
Iain Morgan	Engagement Manager
Michael Rosskopf	Engagement Manager
Vladimir Kozlov	Senior Business Analyst
Alinafe Thupa	Associate
Jonathan Haenen	Associate
Laura Millroy	Associate
Patrick Maina	Associate
Lekgotla Kereng	Associate
Pravesan Govinder	Expert
Jan Weydringer	Expert
Marc van Olst	Expert (External)

In addition various executive assistants, researchers and visual graphics specialists have supported the team remotely.

For your reference, the physical original of this invoice and memo have been couriered to Mamorena Monare (Mamorena.Monare@transnet.net, 0121 308 1782, 33rd Floor Carlton Centre) on 2 June 2014.

Kind regards,

C. Planert

Christina Planert
Principal

□ □ □

467389

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Telephone +27 (0) 11 506 8000 Fax +27 (0) 11 506 9000

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Registered in South Africa No 1995/002398/10 Directors LJH Arwidi (Swedish) W Choi (South Korean) IRA Munshi PM Parbhoo SH Wu

FOF-08-794

G O O D S R E C E I P T S L I P 5000515641/0001

Goods receipt date : 14.07.2014
Current date : 14.07.2014

Plant : 4000
Description : Group Services

Vendor : 0001000316 Delivery note: 5755
Name : MCKINSEY AND CO
PO : 4500250294/00010
Buyer Name : Duran Balbathur Telephone : 011 308 1087

Material :
MPN :
Description : Professional fees: 28Apr to 30May14

Quantity : 1 EA

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

Recipient : Mamorena
Unloadg. point: Floor 33
Cost center : 0001003013

Issued by : 0137696 S I G N A T U R E

467389

FOF-08-795

G O O D S R E C E I P T S L I P 5000515641/0002

Goods receipt date : 14.07.2014
Current date : 14.07.2014

Plant : 4000
Description : Group Services

Vendor : 0001000316 Delivery note: 5755
Name : MCKINSEY AND CO
PO : 4500250294/00020
Buyer Name : Duran Balbathur Telephone : 011 308 1087

Material :
MPN :
Description : Out of pocket expenses and support ser

Quantity : 1 EA

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

Recipient : Mamorena
Unloadg. point: Floor 33
Cost center : 0001003013

Issued by : 0137696 S I G N A T U R E

FOF-08-796

RFP GSM/14/04/1037: Provision of Professional Services to Support Transnet in Increasing the Coal Line with a breakthrough of 2Mt (two million tonnes) per week for a period of 12 months

Transnet

Closing date 17 June 2014 June 2014 @ 12:00

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McKinsey&Company

CONFIDENTIAL

Memorandum to
The Secretariat, Transnet Acquisition Council

RFP GSM/14/04/1037: Provision of Professional Services to Support Transnet in Increasing the Coal Line with a breakthrough of 2Mt (two million tonnes) per week for a period of 12 months

McKinsey & Company and Regiments Capital are pleased to submit this proposal in response to Transnet's solicitation regarding the provision of professional services to support Transnet in increasing the coal line with a breakthrough of 2mt (two million tonnes) per week for a period of 12 months (RFP GSM/14/04/1037)

This memorandum outlines our proposed approach and credentials, and should be read in conjunction with the attached exhibits. Please do not hesitate to contact us if you require clarification or further information.

This main proposal document is structured into six sections:

- Our understanding of the situation and importance of coal volumes
- Our value proposition
- Our approach
- Our team
- Proposed project governance
- Our supplier development commitments

Professional arrangements are included in a separate document within the proposal attachments.

OUR UNDERSTANDING OF THE SITUATION AND THE IMPORTANCE OF THE COAL VOLUMES

Transnet is now in the third year of its Market Demand Strategy (MDS). This strategy defines Transnet's growth plans across all operating divisions and includes a number of ambitious targets:

- Invest more than R300bn in order to grow its volumes by more than 70% by 2019/2020, including commodities export and domestic coal, iron ore, manganese and containers
- Contribute 5% to total GDP by 2019/2020
- Help create ~580,000 jobs per year economy wide by 2019/2020
- Enable ~R240bn a year in export revenue by 2019/2020 through global thermal coal supply, iron ore exports to China, and becoming the world's largest exporter of manganese

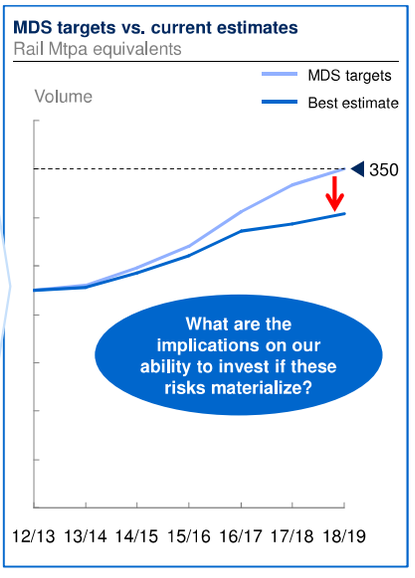
Achieving the MDS requires simultaneous infrastructure investment and volume growth to create the cashflow required to fund the infrastructure. Given the cashflow-funded nature of this strategy, shifting customer expansion plans and delays to individual infrastructure projects that enable volumes can have a dramatic effect on Transnet's finances, including its ability to stay within board-mandated cash interest cover and gearing parameters. Current risk estimates indicate that Transnet faces a capital funding gap in 2014/2015 of approximately R24bn.

EXHIBIT 1

Risks facing Transnet's capital programmes will affect volumes and cash available for investment

VERSION AS AT JULY 2013

	Likely impact to current programme
Regulation & compliance	▪ Delays in EIA processes could push out project timelines ▪ Ports Act / PFMA applications
Execution timelines	▪ Top down project execution timelines are not always achievable
Approvals	▪ Multiple internal and external approval points and quality document submissions could slow progress through gates
Procurement	▪ Lead times for rail, rolling stock, key port equipment, etc. could be longer than expected
Supply	▪ Private sector expansion plans could result in lower than expected volumes ▪ Power generation capacity to supply – Mines – Rail and port infrastructure
Cost estimates	▪ Capital and borrowing cost escalations ▪ Budgeting accuracy ▪ Forex and macro-economic impacts



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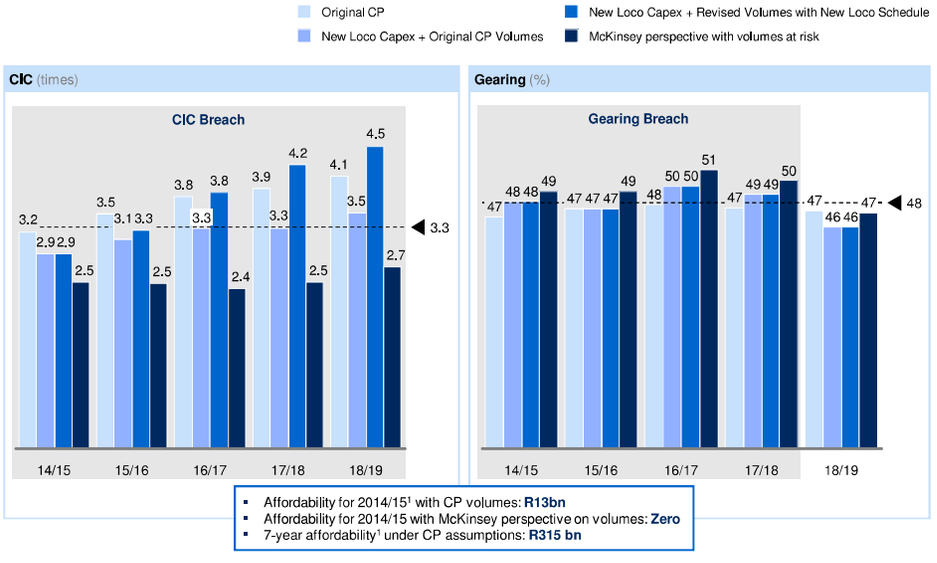
SOURCE: Team analysis; TCP Project Director discussions; MDS volume file

EXHIBIT 2

Even if Transnet delivers original Corporate Plan volumes, it will breach CIC and Gearing parameters through 2018



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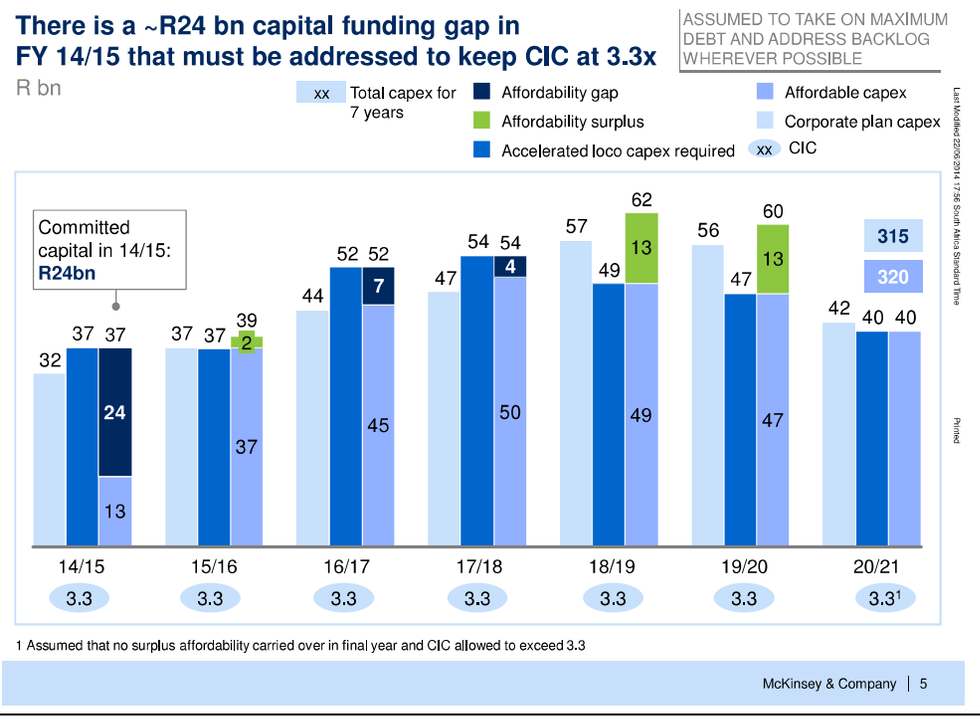
Printed

- Affordability for 2014/15[1] with CP volumes: **R13bn**
- Affordability for 2014/15 with McKinsey perspective on volumes: **Zero**
- 7-year affordability[1] under CP assumptions: **R315 bn**

1 Not considering impact of volumes at risk

SOURCE: 2014/2015 CP; GFP/GCIA analysis

EXHIBIT 3

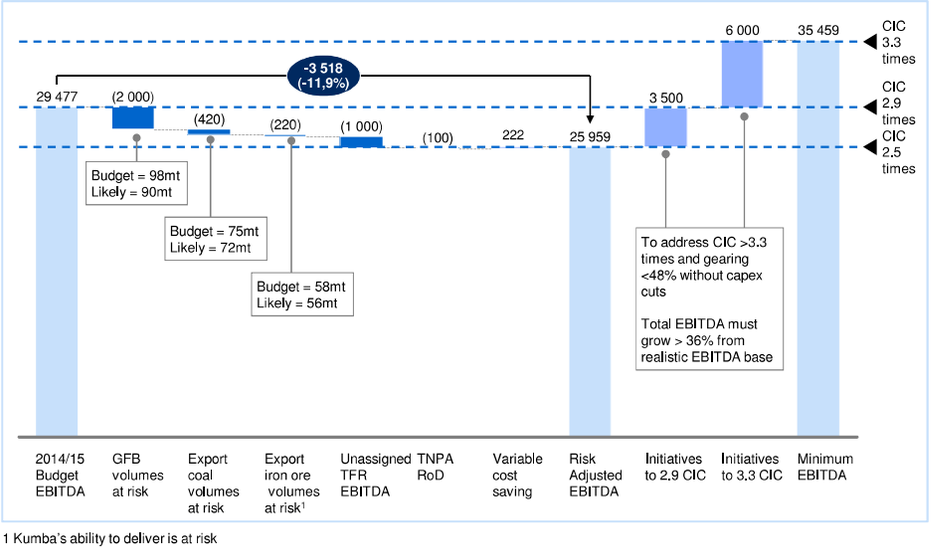


In order to mitigate this risk, Transnet is urgently seeking levers to generate additional cash flow from its existing businesses. Currently, Transnet is targeting R9.5bn in EBITDA initiatives, including additional volumes from the coal line.

EXHIBIT 4

EBITDA initiatives of R9.5bn are required to remain within financial parameters

R million, 2014/15



1 Kumba's ability to deliver is at risk

McKinsey & Company | 7

Therefore, the Coal business unit has set a stretch target for export volumes of 77Mt and for domestic volumes of 19Mt in 2014/15. While the early weeks of the year were very successful, the Export Coal line has since struggled with challenges that have caused its performance to fall below target:

- Following the annual infrastructure maintenance shutdown, there have been a range of locomotive and infrastructure-related disruptions that have slowed volumes to RBCT
- Persistent cable theft has caused numerous failures of the OHTE system, necessitating the use of Diesels and slowing traffic
- Resource constrains e.g. shortages of locomotives resulted in Transnet Freight Rail ("TFR") being unable to capitalise on demand from mines
- Variations in the timing of trains arriving at Ermelo and issues with the reliability of the infrastructure entering and leaving Ermelo yard has made it difficult to realize the target number of Shongololos and their anticipated improvement in cycle times

The Coal business unit currently has a budget of 75Mt in Export Coal and 17Mt Domestic Coal in 2014/2015, though based on performance registered in the

second half of 2013/2014 and the first two months of 2014/2015, these figures may be aspirational. To bridge the gap between current performance and the required target, Transnet has asked for dedicated external support.

OUR VALUE PROPOSITION

McKinsey & Company

McKinsey and Company is uniquely positioned to help Transnet deliver additional volumes on the coal line:

- McKinsey has twice assisted Transnet in driving coal line operations previously (in 2005 and 2009), each time resulting in 15-20% operational improvement gains
- Our previous work has given us a clear indication of which levers are most likely to create impact (see Our Approach section below), which will allow us to start working with the Coal line team to drive change from day one
- In addition to our experience helping Transnet, we have also served many rail clients globally, and will bring this expertise to bear. Experts that will support our work with you are listed below, with detailed CVs available in the supporting Powerpoint exhibits:
  - Catherine O'Connor, Kevin Neher and Mike Crowley (North America-based rail operations and maintenance experts)
  - Gregoire Hirtz, Jurgen Muller, Anselm Ott (Europe-based rail operations and maintenance experts)
  - Prashant Jani (India-based rail scheduling expert)
  - Jan Weydringer (South Africa-based Mine/Rail and Rail/Port interface expert)
  - Marc van Olst and Pravesan Govinder (South Africa-based rail operations experts, including previous experience serving Transnet on coal line operations)
- Beyond rail operations experience, McKinsey has helped Transnet craft the implementation plans for the MDS, created the Results Management Office to support the execution of required initiatives, and worked with you to build the Group Capital Integration and Assurance function to improve effectiveness, transparency and accountability in capital spending. No other third party has such a detailed understanding of Transnet's strategy, its current operational

concerns, and its uniquely complex links between cashflow and capital planning

- From a market perspective, McKinsey also understands the economics of the global and local coal industry in detail, including strategic trends, and has supported Transnet on multiple occasions in validating its demand forecasts for commodities including coal

Regiments Capital

Regiments Capital is also uniquely placed to assist Transnet on the Coal line:

- Regiments has conducted several engagements at Transnet in Strategy formulation, Financial Risk Management, Business Case validation, Programme Management Office design and Transaction Advisory Service.
- Through its Consulting division, Burlington Strategy Advisors, Regiments Capital has been involved in operational improvement assignments in numerous industries, from high volume industrial manufacturing to underground mining and banking.
- Regiments take a heavily analytical yet practical approach to identifying opportunities for improvement. Its product offerings include overhead and input cost optimisation, optimal equipment and resource utilisation and process re-engineering.

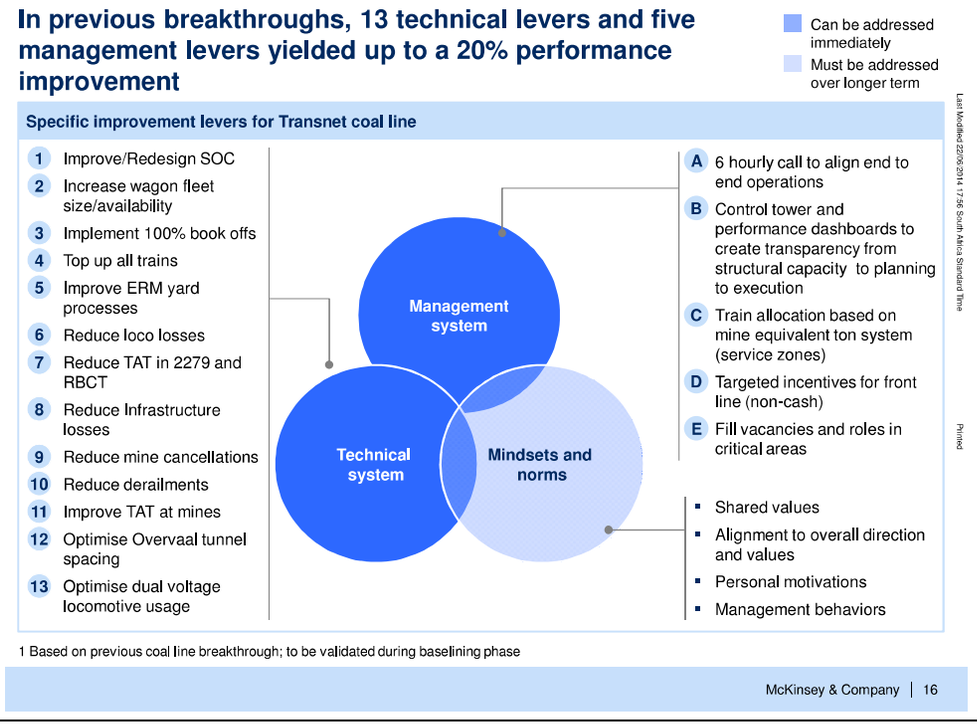
OUR APPROACH

Achieving breakthrough performance in 2014/2015 will not be easy. Technical solutions alone are likely to fall short because they do not consider the bigger picture, for example. Achieving sustainable volume increases will require solutions that address technical systems, the management systems, and mindsets and behaviours.

Based on our experience in rail operations and with the Coal line in particular, we have identified 18 levers (13 technical and 5 management levers) that are likely to allow the Coal line to deliver the appropriate volume. In addition to the technical levers shown below, success depends on effective management systems: collaboration across the coal line, effective and easy to use tools, such as control tower and performance dashboards, and filling critical vacancies and roles. In the longer term, we must also focus on mindsets and behaviours: clear and shared direction, personal motivation and management behaviours.

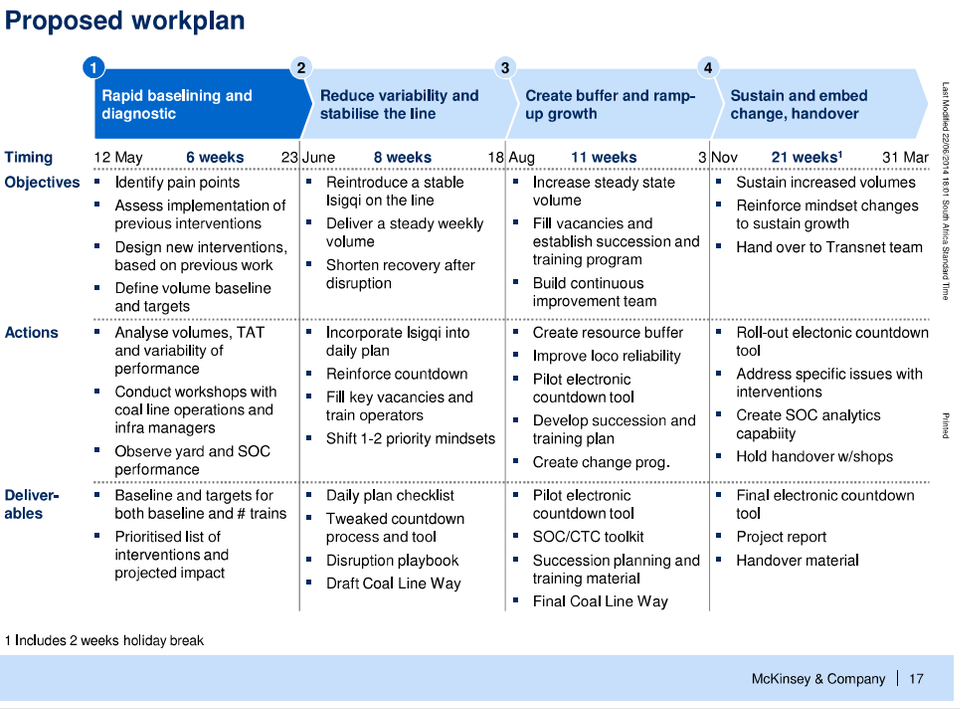
We will review and refine this set of levers through a rapid re-baselining phase.

EXHIBIT 5



We will work directly with your operations teams to run this project, which will be split into two phases. The first phase will include support from McKinsey and Regiments teams and will run from May until November 2014. The second phase will be run by Transnet with continued support from Regiment, and will continue to work on sustaining performance until March 2015. The attached chart outlines the McKinsey and Regiments support plan and deliverables. All work will be incorporated into the ongoing TFR continuous improvement plans. New operating plans will be compiled in parallel with our work and operators will be trained in each phase.

EXHIBIT 6



- **Phase 1 (May-June 2014): Rapid rebaselining and initiative prioritisation**
  - Engage coal line management – create joint purpose and co-create improvement program
  - Define structural capacity constraints
  - Prioritise issues (technical, management systems) and accompanying volume levers
  - Develop targets for operational KPIs
  - Identify constraining mindsets and behaviours
  - Define implementation plan, including stakeholder engagement plan
  - Provide shutdown support
  - Create a shutdown post-mortem with recommendations to mitigate risks in future shutdowns
- **Phase 2 (July - Aug 2014): Reduce variability and stabilize the line**
  - Reduce variability and stabilize the line within existing operating philosophy by re-implementing essential tools, processes and embedding these into the TFR continuous improvement process; focus on quick wins

- Create and operationalise priority management system changes, including aligning reporting to decision making and strengthening partner management
- Address required shifts for 1-2 priority mindsets, starting with the coal line management team
- Fill high-priority vacancies and identify additional needs
- Stabilise system and reduce weekly volume variance
- Implement training to reinforce key roles
- Begin development of "the Coal Line way"

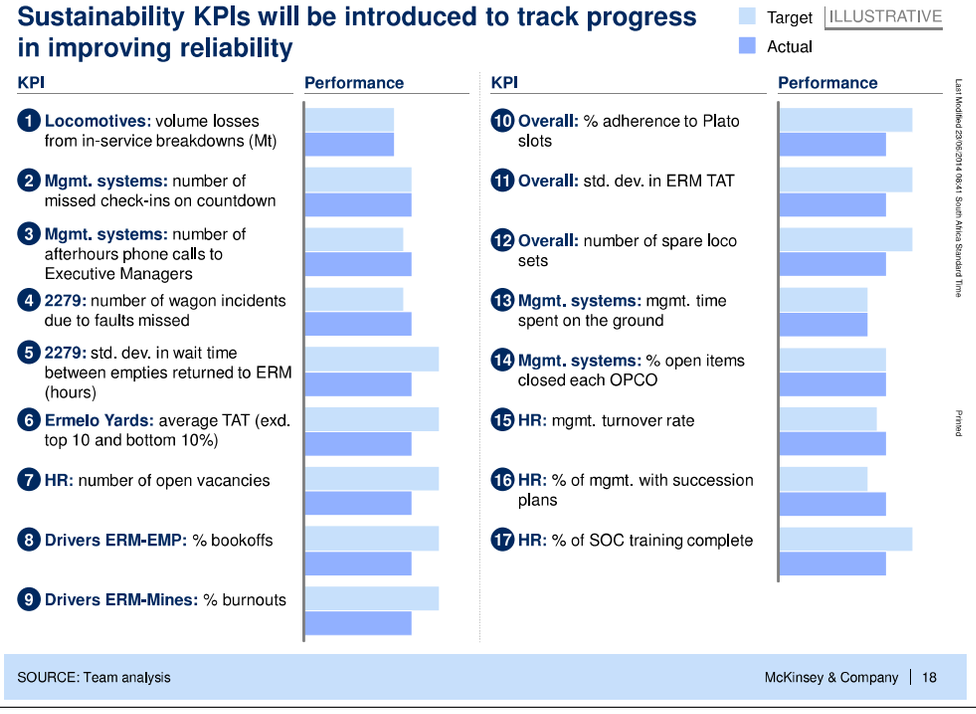
- **Phase 3 (Sept-Nov 2014): Create buffer and ramp-up growth**
  - Complete implementation of prioritized initiatives and ensure all Phase 2 changes are stable
  - Improve reliability and utilization of locomotives, wagons and crew to create buffer and increase capacity to capture growing mine demand
  - Develop tools and system support to reinforce the new way of working and enable sustainability, e.g. piloting a tech-enabled yard management tool
  - Develop a succession plan and planning process for all key roles, including short-term substitution, and recruit and train people for remaining vacancies(subject to Transnet and market availability constraints)
  - Codify "the Coal Line way" and create a change program to roll-out and reinforce the required mindset across the Coal line team
- **Phase 4 (Nov 2014 – March 2015): Sustain and embed new behaviours through mindsets, tools and processes and handover to Transnet**
  - Roll-out specific tailored interventions to support sustainability, e.g. tech-enabled tools
  - Monitor penetration of the Coal Line Way mindset change program, management systems changes and operating plan changes, with remedial interventions as required
  - Revise KPIs and targets embedded in SPOs/incentives to align with the Coal Line Way and support stable volumes
  - Create analytics capability in the SOC team to enable continuous improvement and sustain growth

– Finalise documentation of new operating principles, ensure all operators are trained and establish a training process and plan for the future

Where funding is required to drive interventions (e.g. rental of combis to test the impact of faster crew replacement), the team will present a business case to the GM Coal BU for approval. Should the business case be approved, it is expected that Transnet will provide the necessary funding to implement the proposed intervention.

In addition to improving volumes, sustainability will be a key focus of this work. On a monthly basis, we will track sustainability progress across the system according to a set of KPIs to be agreed with the Coal line team. For illustrative purposes, some of the proposed KPIs are shown below.

EXHIBIT 7



OUR TEAM

Our team leadership will consist of Norbert Dorr (Director, McKinsey), Vikas Sagar (Director, McKinsey), Christina Planert (Principal, McKinsey), Ashvin Sologar (Associate Principal, McKinsey), Eric Wood (Executive Director,

Regiments), Indheran Pillay (Head of Operations, Regiments), and Shingai Ngara (Project Manager, Regiments). CVs for each individual can be found in the attached Powerpoint exhibits.

The full time team on the ground will be as shown in the table below:

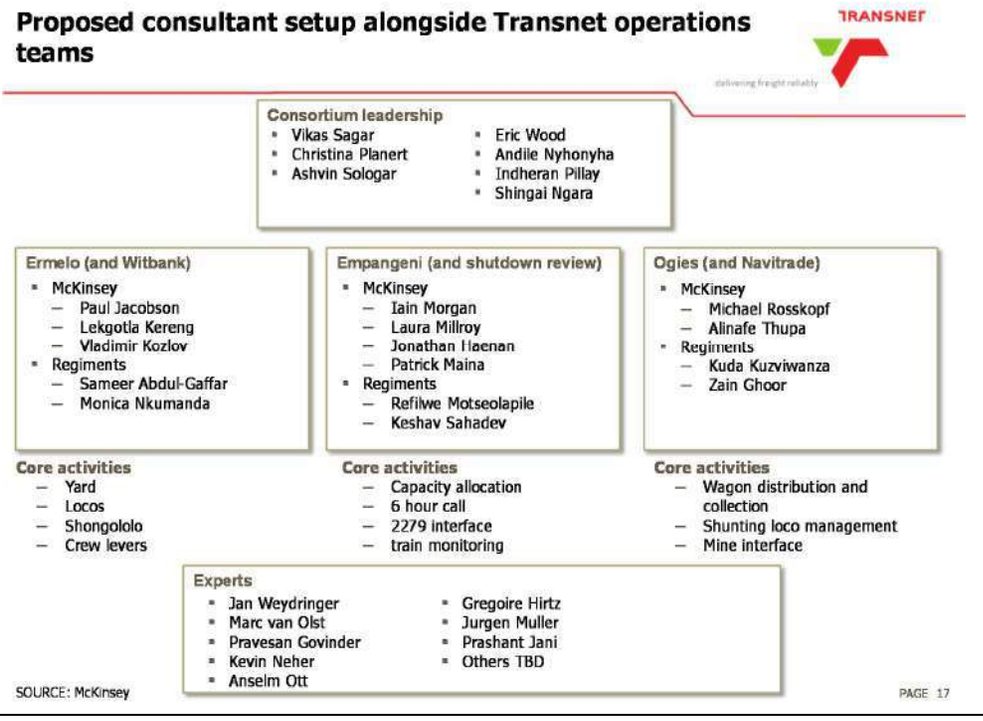
		McKinsey		Regiments		Total
Phase	Month	Mgr	Consultants	Mgr	Consultants	Full team
1	May	1	4	-	6	11
	Jun*	3	8	-	9	20
2	Jul	3	7	-	8	17
	Aug	2	5	1	8	16
3	Sep	2	5	1	8	16
	Oct	1	2	2	10	15
	Nov	1	2	2	10	15
4	Dec	1	1	3	11	16
	Jan	1	1	3	11	16
	Feb	1	1	3	11	16
	Mar	1	1	3	11	16

*In June, two rail scheduling experts will also support the team

To begin, one team will be stationed in each of Empangeni, Ermelo and Ogies to support the operational teams there. As levers and initiatives are refined, individuals will be stationed at the areas where they can drive greatest impact.

We will also utilize a team of rail and operations experts (e.g., Marc van Olst) to support the teams on an as needed basis, as described in the “Our Value Proposition” section. We have proposed below the team structure to work alongside the Transnet operations teams.

EXHIBIT 8



Success depends upon working together to build the capability of the Coal line team to sustain this breakthrough. Hence, we will need to select ~15 people from your organisation to work alongside our team on a dedicated basis. These individuals will help implement and drive initiatives, and eventually own them so that these initiatives can continue to deliver value for Transnet year after year. Should these 15 people not be available to mirror and support our team, we will need to provide additional resources to drive value in this year, with a commensurate increase in costs.

In addition, we will need ad hoc support, particularly in the following areas:

- Coal line management –Operations managers in each of the three areas
- SOC and CTC teams – Execution manager in each
- Planning teams – Planning manager in the SOC and 1-2 planners
- Resource management teams – Locomotive and wagon monitors in SOC
- Yard operations teams – Yard and Depot operations managers
- TFR continuous improvement teams

Each member of the Transnet client team will need to work closely with us to define the necessary changes and to use their role in the organization to implement

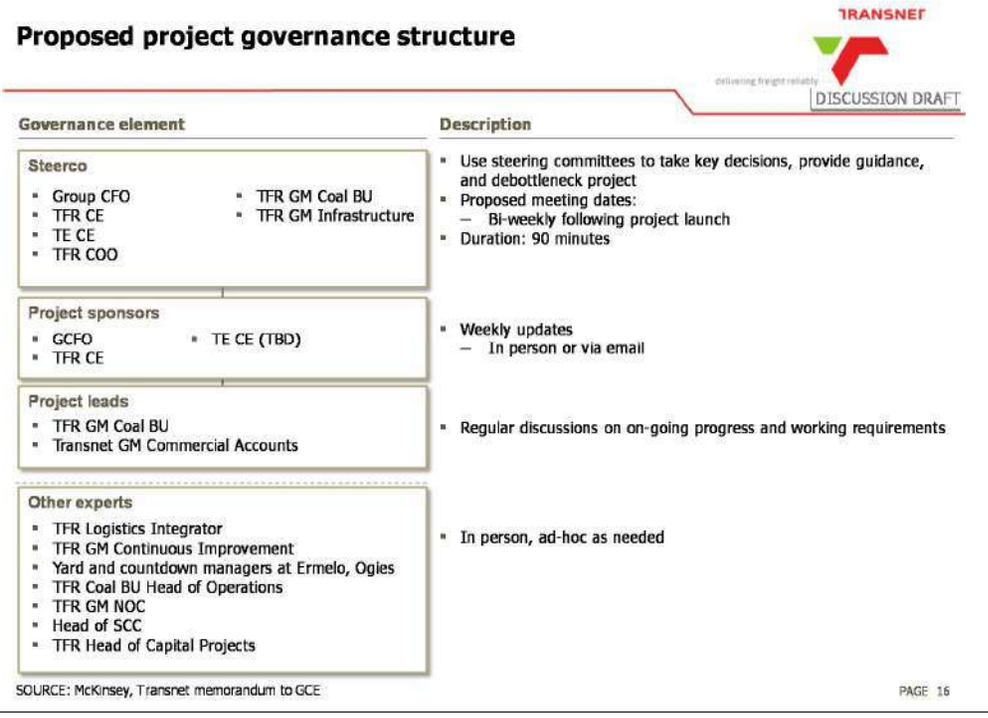
them. They will also be responsible for reporting on these changes to the steering committee, with support from the McKinsey/Regiments team. This support will be required from May until project completion in March and is pivotal to delivering a sustainable change. Without dedicated participation by these teams a sustainable breakthrough will not be possible.

PROJECT GOVERNANCE

The project will be governed by a steering committee drawn from Coal line, TFR and Transnet senior management, combined with leaders from McKinsey and Regiments, and external experts.

We have proposed a project governance structure below, including suggested individuals from Transnet. These teams will meet on a bi-weekly to monthly basis to review progress and take decisions to shape the direction of our work.

EXHIBIT 9



OUR SUPPLIER DEVELOPMENT COMMITMENTS

McKinsey & Company

Our supplier development plans include training for Transnet, Regiments and McKinsey employees, as well as local procurement initiatives:

- We will train at least 40 SOC and Operations personnel above the basic requirements of this engagement. These individuals will be able to provide evidence of having attended training sessions as well as exposure to on-the-job training in problem solving fundamentals, structuring problems, and applying lean tools to operational challenges
- In addition, we expect to train 20-24 Regiments consultants on topics including problem solving, rail operations and general operations improvement techniques. Each individual will be provided with a development plan, and an evaluation of progress for formal tracking purposes
- Funds from this engagement will also be used to support the training of McKinsey Leadership Programme Fellows and McKinsey Business Analysts
- Where possible, our procurement will prefer local, black-owned businesses

The aggregate spend by McKinsey & Company on Supplier Development will meet or exceed 70% of the fees it obtains as a result of this engagement, inclusive of fees shared with Regiments Capital. Exclusive of fees shared with our consortium partner, our Supplier Development will constitute >19% of fees obtained as a result of this engagement.

In addition to all of the initiatives described above, 25% of our total profit in any year is directed towards the South Africa Foundation, a non-profit organization dedicated to driving transformation in South Africa. Specific valuation and details on our supplier development commitments may be found in the formal Supplier Development Plan template accompanying this document.

Regiments Capital

Regiments Capital is fully committed to supplier development, and will support it through this engagement by supporting the following Supplier Development Partners:

- We will source IT support services from Seth Consulting, and provide mentorship and growth strategy expertise to its owner
- We will purchase technology hardware and software from Preferred IT

- We will sub-contract consultants and services from Accompany Advisory, Homix and Albatime, and provide them with skills development opportunities, and IPR for processes and methodology that they can use in future assignments
- We will subcontract legal services from Pule for the execution of the project
- We will subcontract engineering resources from DEC for the execution of the project

The aggregate spend by Regiments capital on Supplier Development will meet or exceed 20% of the fees it obtains as a result of this engagement. Specific valuation and details on Regiments Capital supplier development commitments may be found in the formal Supplier Development Plan template accompanying this document.

□ □ □

McKinsey & Company and Regiments have a track record of partnering successfully with Transnet and possess unparalleled experience of driving operational transformations in South Africa and around the globe. Furthermore, the partnership between McKinsey and Regiments offers Transnet a local, established collaboration, with global reach, which brings the best expertise and reach to the programme from both entities, offers industry-leading empowerment credentials and which is committed to skills transfer and development.

We remain highly committed to the success of Transnet and South Africa, and would consider it a privilege to support you in implementing this important strategic endeavor.

Sincerely,

C. Planert

Christina Planert Eric Wood

Enclosure

Summary of Professional Practices

McKinsey & Company, Inc.[1], traditionally has followed several professional practices, summarized below, that are at the heart of our approach to client service. We consider it essential that our clients understand these practices.

PROTECTING CONFIDENTIAL INFORMATION

Effective client service usually requires our access to confidential information. We recognize that you will entrust such information to us with the expectation that we handle it carefully and professionally. We are committed to meeting the highest professional standards.

We will never disclose your confidential information, materials that we develop for you from your confidential sources or information that we believe conveys significant competitive advantage, to anyone outside our Firm without your prior consent, except in the unusual circumstance when we are legally compelled to do so. We will only use such information in connection with our consulting services for you, and only those staff members with a "need to know" will have access to such information.

All McKinsey personnel are apprised of their professional obligations to our clients. Among these obligations is the vigorous protection of confidential client information. In addition, all McKinsey personnel must acknowledge their understanding of this responsibility by signing a confidentiality agreement with McKinsey.

The work that we do with you also may include information developed from non-confidential sources and conceptual frameworks, approaches, and generic industry perspectives that do not contain your confidential information. We bring such information, frameworks, approaches, and perspectives to each new assignment, and any such information may be shared within our Firm and with other clients. We are able to do this because we have retained ownership of such information, frameworks, approaches, and perspectives (and of any enhancements thereto) while serving our clients.

[1] These practices apply to services rendered by McKinsey & Company, Inc. or any of its affiliates.

We aspire to a relationship based on trust and confidence, and we welcome the opportunity to discuss any areas of particular sensitivity you may have regarding the handling of confidential information. Where appropriate, we will enter into explicit confidentiality agreements.

COLLABORATING AND GETTING YOUR FEEDBACK

To ensure a structured and systematic dialogue about our joint collaboration and impact, it is our standard practice to ask for formal feedback from key client individuals (usually the Steering Committee) at the end of each engagement. We typically use our proprietary online tool to solicit feedback on our contributions towards the project's vision and goals. All data are secure and are used only as a basis for a dialogue with you on how to serve you better. The feedback is not used for evaluating individuals (neither McKinsey nor client team members).

SERVING COMPETING CLIENTS

It is the longstanding policy of McKinsey to serve competing clients and clients with potentially conflicting interests (including in connection with merger, acquisition, and alliance opportunities) and to do so without compromising our professional responsibility to maintain the confidentiality of client information. We place primary reliance on the integrity of our professional staff to maintain such confidences. Nonetheless, we ensure that consultants who develop important insights about your company are not later placed in a situation of potential conflict. To assure this, consultants who had access to your confidential information will not be assigned, for a significant period following an assignment for your company, to a study for another client where such confidential information could be used to your material competitive disadvantage.

Consistent with our confidentiality obligations, the consultants who work with you are unlikely to know that other McKinsey consultants serve one of your competitors or another party involved in a potential transaction that you are considering or effecting. Similarly, you should not expect to be advised or consulted about our serving your competitors or such other parties.

MANAGING RELATIONS WITH OUTSIDE PARTIES

As a basic policy, we do not make public client names, client materials, or reports prepared for clients without their permission. We similarly require that clients not use our name, refer to our work, or make our work products available outside their

organization without our prior permission. In those cases when disclosure from either side may be appropriate, we will discuss this first and only proceed if we reach agreement.

Occasionally, we become involved in legal actions as witnesses, sources of information, or as a party because of our work with a client. If this should occur, we will advise you promptly and work closely with you and your legal counsel to coordinate our response. We ask that you hold us harmless and indemnify us in connection with associated damages and costs, including legal costs, except to the extent they are found to have resulted from our gross negligence or willful misconduct. Also, in the event that a substantial amount of McKinsey professional time is required to respond to the action, the cost of such time will be discussed with you and billed accordingly.

TERMINATION

We believe that either party should have the freedom to terminate the relationship at any time if it becomes evident that the potential value of the work does not warrant further effort. In the event that a project is stopped before completion, only the professional fees and costs incurred to that date are billed.

□ □ □

The practices summarized above reflect key aspects of our basic approach to client service and reflect our commitment to maintain the highest professional standards. We would welcome the opportunity to discuss our professional practices with you.

TRANSNET

AGREEMENT

Entered into by and between

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

And

McKINSEY INCORPORATED (Reg. Nr. 1995/002398/10)

FOR THE PROVISION OF SERVICES RELATED TO: RFP GSM/14/04/1037: Provision of Professional Services to Support Transnet in Increasing the Coal Line with a breakthrough of 2Mt (two million tonnes) per week for a period of 17 months

Agreement Number	**GSM/14/04/1037**
Commencement Date	**April 09, 2014**
Expiry Date	**30 September 2015**

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1 INTRODUCTION

This Agreement is entered into by and between:

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

And

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

NOW THEREFORE, IT IS AGREED:

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

1.2 The Service Provider hereby undertakes to render the Services provided for herein, as formally agreed between the Parties and in accordance with the Work Order(s) issued as schedules to this Agreement.

2 DEFINITIONS

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

2.1 **AFSA** means the Arbitration Foundation of Southern Africa;

2.2 **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, including the Work Order(s), specifications for the Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed in writing between the Parties], which collectively and exclusively govern the provision of Services by the Service Provider to Transnet;

2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by Transnet to give effect to its obligations under this Agreement owned in whole or in part by or licensed to Transnet or its affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement;

2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;

2.5 **Commencement Date** means **09 April 2014**, notwithstanding the signature date of this Agreement;

2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

a) Information relating to methods of operation, data and plans of the disclosing Party;

b) The contents of this Agreement;

c) Private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;

d) Any information disclosed by either Party and which is clearly marked as being confidential or secret;

e) Information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;

f) Information relating to the past, present and future research and development of the disclosing Party;

g) Information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;

h) Information contained in the software and associated material and documentation belonging to the disclosing Party;

i) Technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;

j) Copyright works;

k) Commercial, financial and marketing information;

l) Data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;

m) Plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;

n) Information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and

o) Information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

2.7 **Contract Manager** means the person/s appointed by either party to manage the implementation of the agreement;

2.8 **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;

2.9 **Default** means any breach of the obligations of either Party [including but not limited to fundamental breach or breach of a fundamental term] or any Default, act, omission, negligence or statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of this Agreement and in respect of which such Party is liable to the other;

2.10 **Deliverable(s)** means any and all reports, analyses or other such materials furnished by the Service Provider to Transnet in relation to the Services;

2.11 **Designs** mean registered Designs and/or Design applications as defined in the Designs Act, 195 of 1993, and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;

2.12 **Fee(s)** shall mean the agreed Fees for the Services to be acquired from the Service Provider by Transnet, as detailed in the Work Order(s), issued in accordance with this Agreement;

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

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

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

2.16 **Materials** means the Deliverables and, the Service Provider Materials;

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

2.18 **Party** means either one of the Parties;

2.19 **Patents** mean registered Patents and Patent applications as defined in the Patents Act, 57 of 1978, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;

2.20 **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;

2.21 **Personnel** means any partner, employee, agent, consultant, independent associate or supplier, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;

2.22 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services;

2.23 **Service(s)** means scope of services as defined in Schedule 1;

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 including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques analyses, know-how, tools, frameworks, models and industry perspectives used and/or developed by the Service Provider in connection with the Services;

2.27 **South Africa** means The Republic of South Africa as constituted from time to time

2.28 **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;

2.29 **Third Party Material** means software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Service Provider in the performance of the Services;

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

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

2.32 **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, a specimen of which shall be appended to this Agreement.

3 INTERPRETATION

3.1 Clause headings in this Agreement are included for ease of reference only and do not form part of this Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.

3.2 Any term, word, acronym or phrase used in this Agreement, other than those defined under the clause heading "Definitions" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in this Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.

3.3 A reference to the singular incorporates a reference to the plural and *vice versa*.

3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.

3.5 A reference to a particular gender incorporates a reference to the other gender.

4 NATURE AND SCOPE

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

4.2 Such Purchase Orders shall be agreed between the Parties from time to time, subject to the terms of the relevant Work Order(s).

4.3 Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.

4.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Work Order(s), in accordance with procedures set out in clause 30 *[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, failing which the proposed amendment shall lapse forthwith.

4.5 Insofar as any term, provision or condition in the Work Order(s) conflicts with a like term, provision or condition in this Agreement, or where this Agreement is silent on the matter, the term, provision or condition in this Agreement shall prevail, unless such term or provision or

condition in this Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

4.6 The Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

5 AUTHORITY OF PARTIES

5.1 Nothing in this Agreement will constitute or be deemed to constitute a partnership between the Parties, or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.

5.2 Neither Party shall be entitled to, or have the power or authority to enter into an agreement in the name of the other; or give any warranty, representation or undertaking on the other's behalf; or create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

6 WARRANTIES

6.1 The Service Provider warrants to Transnet that:

a) It has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representatives of the Service Provider;

b) It will discharge its obligations under this Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;

c) It will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations; and

d) The use or possession by Transnet of any Service Provider Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.

6.2 The Service Provider warrants that it will perform its obligations under this Agreement in accordance with the service levels as defined in the relevant schedule. Transnet may at its reasonable discretion audit compliance with the service sevels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services or the manner in which the Service Provider ordinarily conducts business. Without prejudice to clause 6.3 below, in the event that the Service Provider fails to meet the service sevels, Transnet may claim appropriate service credits or invoke retention of Fees as detailed in the relevant schedule and/or Work Order.

6.3 The Service Provider shall, in accordance with the Service Provider's document retention policies, establish and maintain a secure file containing a copy of any presentation, progress review, report or other document furnished to Transnet by the Service Provider in connection with the Services, together with any working papers necessary to support its conclusions or analyses (collectively, the "Working Papers File"). Transnet may, at its own cost, inspect the Working Papers File at any time, during the five (5) year period from the end of the calendar year in which the relevant Services are completed or terminated, solely for the purpose of determining whether the Service

Provider performed the Services in accordance with the Work Order. Any information furnished in connection with this provision shall be kept confidential in accordance with this Agreement.

6.4 The Service Provider warrants that for a period of 90 [ninety] 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] days of notification by Transnet.

6.5 The Service Provider will remedy any defect within 30 [thirty] days of being notified of that defect by Transnet in writing.

6.6 The Service Provider will not be liable to remedy any problem arising from or caused by Transnet's use of the Deliverables in any way not intended by the Work Order or any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.

6.7 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.6 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 30 *[Amendment and Change Control]*.

6.8 The Service Provider further warrants that:

a) it has, using the most up-to-date software practicably and reasonably available to it, tested for [and deleted] all viruses identified by the Service Provider in the Service Provider Materials at the date of the relevant Work Order; and

b) At the time of delivery to Transnet, the Service Provider Materials and Deliverables do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.

6.9 The Service Provider agrees that, in the event that a virus is found, it will use its reasonable endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that 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.

6.10 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with this Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

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

6.12 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a

review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall make senior Personnel available to Transnet, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

7 TRANSNET'S OBLIGATIONS

7.1 Transnet undertakes to promptly comply with any reasonable request by the Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Services as may be necessary for the Service Provider to perform the Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Service Provider of its confidentiality obligations under this Agreement.

7.2 The Service Provider shall give Transnet reasonable notice of any information it requires in accordance with clause 7.1 above.

7.3 Subject to clause 15 *[Service Provider's Personnel]*, Transnet agrees to :

a) provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under this Agreement; and

b) perform any tasks or responsibilities assigned to Transnet and notify the Service Provider of any issues or concerns Transnet may have relating to the Services.

8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

8.1 The Service Provider shall:

a) Respond promptly to all complaints and reasonable enquiries from Transnet;

b) Inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services;

c) Conduct its business in a professional manner that will reflect positively upon the Service Provider and the Services;

d) Keep full records clearly indicating all transactions concluded by the Service Provider relating to the performance of the Services and keep such records for at least 5 [five] years from the date of each such transaction;

e) Obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Service Provider;

f) Observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993;

g) Comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance that are applicable to the Service Provider and performance of the Services; and

h) Ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Verification Certificate, for the duration of this Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it

may have in terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.

8.2 The Service Provider acknowledges and agrees that it shall at all times:

a) Render the Services and perform all its duties with honesty and integrity;

b) Communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;

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

d) Use its reasonable endeavours and make every diligent effort to meet agreed deadlines;

e) Treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;

f) Practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination [as further referred to in clause 24 – *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 therefore 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 accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;

j) Not mislead Transnet or its Personnel, whether by act or omission;

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

l) Immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services.

9 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 Request for Proposal GSM/14/04/1037 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, upon request by Transnet, submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE

Act and proof thereof at the beginning of March each year during the currency of this Agreement.

c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:

(i) a change in the Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and

(ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Service Provider's B-BBEE status.

d) In the event there is a change in the Service Provider's B-BBEE status, then the provisions of clause 9.1 (c) 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 provided Transnet with a B-BBEE Improvement Plan to indicate the extent to which their B-BBEE status and the elements of the B-BBEE scorecard will be maintained or improved over the contract period, as per Annexure D of the RFP.

b) The Service Provider shall, for the duration of this Agreement, comply with the B-BBEE Improvement Plan.

c) The terms of the B-BBEE Improvement Plan and monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in such B-BBEE Improvement Plan.

d) Notwithstanding the aforegoing, the Service Provider may request that certain initiatives in the plan be replaced with other initiatives if the planned initiatives are found to be impossible, impractical or unduly burdensome to deliver. The black ownership percentages committed may not be changed. Such a request must show that the replacement initiatives must still strive to achieve the same levels of transformation and empowerment as the initial initiative and may not be less in terms of monetary or deemed monetary value of the original initiative. Transnet must agree to the change in writing which must be approved by the Transnet Group Chief Supply Chain Officer.

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) days from the signature date of the contract.

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) days as aforesaid (or such later date as Transnet may consent to in writing if delays are caused by unforeseen factors or delays caused by Transnet).

c) The Service Provider's Implementation Plan shall include, but not be limited to Transfer of Technology & Intellectual Property Rights, New skills development, Job creation and Enterprise and Supplier Development.

d) The Service Provider must use an alternate Subcontractor or Subcontractors if the primary selected Subcontractor fails to deliver the required services or at the required quality level. Transnet must agree to the alternate Subcontractor in writing.

e) The Service Provider must provide a list, as part of the Supplier Development Implementation Plan, of the alternate Subcontractors that they will utilise if the primary selected Subcontractor fails to deliver the required services or at the required quality level.

f) 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 Implementation Plan

g) The end date of the Implementation Plan may be later than the end date of the Services provided in terms of this contract.

h) The Service Provider may request that certain initiatives in the Implementation Plan be replaced with other initiatives if the agreed initiatives are found to be impossible, impractical or unduly burdensome to deliver, or will not meet the desired intention of the initiative. Such a request must show that the replacement initiatives will still strive to achieve the same levels of transformation and empowerment and economic development as the initial initiative and may not be less in terms of monetary or deemed monetary value of the original initiative. Such a replacement initiative will not reduce the overall percentage of Supplier Development value as in the original Implementation Plan. Transnet must agree to the replacement initiative in writing. There will be no additional cost for Transnet with regards to any replacement initiative.

i) Transnet Group Chief Supply Chain Officer will sign the Implementation Plan and any amendments to it.

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

b) The above will be provided in terms of quarterly reporting on the Service Providers commitment to Green Economy and their Carbon Footprint measured against this contract.

9.5 **Reporting**

a) The Service Provider shall monitor, audit, and record in an auditable manner, its own implementation and compliance with the B-BBEE Improvement Plan and the Implementation Plan and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning the implementation of the B-BBEE Improvement Plan and the Implementation Plan.

b) The information that shall be made available will be all the information that relates to any initiative in the Implementation Plan, the B-BBEE improvement plan and the Current and Future B-BBEE certificates of the Service Provider.

c) The Service Provider shall, every 3(three) months from the Commencement Date and within 7 (seven) days of the end of the calendar month of that 3 (three) months period, provide Transnet with a report (for monitoring purposes only) in respect of each of the undertakings stipulated in this clause.

d) Transnet, through its Supplier Development division, shall, every 3 (three) 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.

e) The Service Provider shall attach adequate proof to enable Transnet to verify compliance with the B-BBEE Improvement Plan and Implementation Plan.

f) 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 Integrated Supply Chain Management Department (Supplier Development specialist), 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 Implementation Plan and the extent, if any, to which the Service Provider has not so complied.

g) Without prejudice to the Transnet's rights under this Agreement:

(i) if the Contract Manager and/or Transnet's Supplier Development specialist reasonably considers that the Service Provider is not at any time complying with 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 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.

h) In the event the Service Provider is found to be fraudulent in submitting the B-BBEE Improvement Plan and/or the Implementation Plan, 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 clause 19.

i) 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 Implementation Plan 3 (three) 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 Implementation Plan, the Service Provider shall, subject to Clause 9.6 d) ***[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) below.

(i) Non Compliance Penalties shall be calculated as a percentage of the Contract Value and accrue at the Applicable Rate per month until:

- the date on which the Service Provider has remedied such Non Compliance by complying with the Implementation Plan and/or the B-BBEE Improvement Plan (as applicable); or if earlier
- the Agreement being terminated.

Applicable Rates of Non Compliance Penalties (for Large Enterprises Only):

b) In relation to the Implementation Plan, Non Compliance Penalties shall apply as follows:

(i) 100% of the undelivered portion of Supplier Development commitments to be set off against any current or future payments due to the Service Provider.

(ii) The Service Provider may request that certain Supplier Development value in terms of subcontracting be waived from the value of the penalty if the Subcontractor fails to deliver the required Services at the right level of quality and the Service Provider utilised an alternate Subcontractor and this caused delays in the delivery of the Implementation plan which would cause Non Compliance Penalties to be raised. The Service provider should make such representations in writing and provide suitable evidence, based on the conditions set out above, for Transnet to waive the requested portion of penalties of the undelivered Supplier Development value relating to subcontracting. The Service Provider must have made every effort to have brought the alternate Subcontractor on board as soon as possible to avoid unnecessary delays and the associated penalties.

c) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall accrue at the following Applicable Rates:

(i) for the first month after the deliverables of the B-BBEE Improvement plan are due (or part thereof), a rate of 1.0% (one percent);

(ii) for the second month after the deliverables of the B-BBEE Improvement plan are due (or part thereof), a rate of 1.5% (one and a half percent);

(iii) for the third month after the deliverables of the B-BBEE Improvement plan are due (or part thereof), a rate of 2.0% (two percent);

(iv) for the fourth month after the deliverables of the B-BBEE Improvement plan are due (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 after the deliverables of the B-BBEE Improvement plan are due, a rate of 3% (three percent).

Non Compliance Penalty Cap (for Large Enterprises):

d) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties under this clause shall not exceed:

(i) in the case of the B-BBEE Improvement Plan, 5% (five percent) of the Fees, (each a Non Compliance Cap);

Non Compliance Penalty Certificate:

e) 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.

f) 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 Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non Compliance Penalties:

g) Subject to Clause 9.6 (e) and Clause 9.6 (f)(ii), 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.

h) Subject to Clause 9.6 (e) and Clause 9.6 (f), the Service Provider shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.

i) Should the Service Provider fail to pay any Non Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.

j) The Non Compliance penalties set forth in this clause are stated exclusive of VAT. Any VAT payable on Non Compliance penalties will be for the account of the Service Provider.

10 SERVING COMPETITORS

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

11 FEES AND EXPENSES

11.1 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.

11.2 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 reasonably evidenced and invoiced to Transnet at cost].

11.3 The Parties have agreed that the fees are inclusive of expenses.

11.4 All Tax Invoices relating to Fees, and expenses and, where appropriate, shall include VAT as a separate item.

12 INVOICING AND PAYMENT

12.1 Transnet shall pay the Service Provider the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of this Agreement.

12.2 Transnet shall pay such amounts to the Service Provider, upon receipt of a valid and undisputed Tax Invoice as specified in the Work Order appended hereto, once the undisputed Tax Invoices, or such portion of the Tax Invoices which are undisputed become due and payable to the Service Provider for the provision of the Services, in terms of clause 12.4 below.

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

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

12.5 Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 12, 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.

12.6 Should the Service Provider require that Transnet pay the Subcontractor directly, the Service Provider must request this from Transnet in writing. If Transnet agrees to pay the Subcontractor directly the Service Provider still remains responsible for all obligations related to this contract including the management of, and the performance of the Subcontractor. The Service Provider shall verify the correctness of the Subcontractors invoice and confirm that all the deliverables have been delivered.

13 FEE ADJUSTMENTS

13.1 Subject to Clause 11.1, the Fee is fixed for the duration of the Agreement at a capped value as detailed in the relevant schedule or Work Order.

14 INTELLECTUAL PROPERTY RIGHTS

14.1 **Title to Confidential Information and Intellectual Property**

a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Service Provider acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual

Property that is proprietary to Transnet. For the avoidance of doubt, all the Service Provider Materials shall remain vested in the Service Provider.

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

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

14.2 **Unauthorised Use of Confidential Information**

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

14.3 **Unauthorised Use of Intellectual Property**

a) The Service Provider agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Service Provider acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.

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

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

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

15 SERVICE PROVIDER'S PERSONNEL

15.1 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.

15.2 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.

15.3 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.

15.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under this Agreement.

15.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a suitable replacement.

16 LIMITATION OF LIABILITY

16.1 Neither Party excludes or limits liability to the other Party for:

a) Death or personal injury due to negligence; or

b) Fraud

16.2 Each of the Parties shall indemnify and keep the other Party (the "**Indemnified Party**") indemnified from and against liability for damage to any of the Indemnified Party's property [whether tangible or intangible] or any other loss, costs or damage suffered by the Indemnified Party to the extent that it results from any act of or omission by such Party or its Personnel in connection with this Agreement. Each of the Party's liability arising out of this clause 16.2 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 limited to the value of the total fees.

16.3 Subject always to clauses 16.1 and 16.2 above, the liability of either the Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.

16.4 Subject to clause 16.1 above, and except as provided in clauses 16.2 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.

16.5 Nothing in this clause 16 shall be taken as limiting the liability of the Service Provider in respect of clause 14 *[Intellectual Property Rights]* or clause 18 *[Confidentiality]*.

17 INSURANCES

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

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

17.3 Subject to clause 17.4 below, if the Service Provider fails to affect adequate insurance under this clause 17, 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.

17.4 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 17.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, where after either the Service Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] days prior written notice to that effect.

18 CONFIDENTIALITY

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

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

b) Not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;

c) Not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information, without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;

d) Not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;

e) Not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;

f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such Party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;

g) The Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;

h) Each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or internal consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or internal consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or internal consultants honour such obligations;

i) Each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;

j) Each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by the person or entity; and

k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

18.2 The duties and obligations with regard to Confidential Information in this clause 18 shall not apply where:

a) A Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Personnel; or

b) Was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or

c) Can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or

d) Is independently developed by a Party as proven by its written records.

18.3 The Service Provider's work for Transnet is confidential and intended for Transnet's internal use only. The Service Provider does not make public client names, client materials or reports prepared for clients without their prior written permission. Similarly, Transnet agrees that it will not use Service Provider's name, refer to Service Provider's work, or make the Deliverables or the existence or terms of this Agreement available outside its organization without the Service Provider's prior written permission.

18.4 This clause 18 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 [five] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

19 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

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

20 TERM AND TERMINATION

20.1 Notwithstanding the date of signature hereof, the Commencement Date of this Agreement is **09 April 2014** and the expiry thereof shall occur on**30 September 2015**, unless:

a) this Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or

b) This Agreement is extended at Transnet's option for a further period to be agreed by the Parties in writing.

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

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

a) A voluntary arrangement or composition or reconstruction of its debts;

b) Its winding-up or dissolution;

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.

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

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

20.6 Notwithstanding this clause 20, either Party may cancel this Agreement without cause by giving 30 [thirty] days prior written notice thereof to the other Party.

21 CONSEQUENCE OF TERMINATION

21.1 Termination in accordance with clause 20 *[Term and Termination]* shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.

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

21.3 To the extent that any of the Deliverables and property referred to in clause 21.2 above is in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with encrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held. Notwithstanding the foregoing, Service Provider shall be permitted to retain, subject to the terms of this Agreement and for professional archival purposes only, a copy of any Deliverables furnished to Transnet by Service Provider in connection with the Services, together with any working papers necessary to support its conclusions or recommendations.

21.4 In the event that this Agreement is terminated by the Service Provider under clause 20.2 *[Term and Termination]*, or in the event that a Work Order is terminated by Transnet under clause 20.5 *[Term and Termination]*, Transnet will pay to the Service Provider all outstanding Fees [apportioned on a *pro rata* basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.

21.5 The provisions of clauses 2 *[Definitions]*, 6 *[Warranties]*, 14 *[Intellectual Property Rights]*, 16 *[Limitation of Liability]*, 18 *[Confidentiality]*, 21 *[Consequence of Termination]*, 27 *[Dispute Resolution]* and 31 *[Governing Law]* shall survive termination or expiry of this Agreement.

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

21.7 Should:

a) The Service Provider effect or attempt to effect a compromise or composition with its creditors; or

b) Either Party be provisionally or finally liquidated or placed under judicial management, whether provisionally or finally; or

c) Either Party cease or threaten to cease to carry on its normal line of business or default or threaten to default in the payment of its liabilities generally, or commit any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time];

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

22 ASSIGNMENT

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

23 FORCE MAJEURE

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

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

24 EQUALITY AND DIVERSITY

24.1 The Service Provider will not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.

24.2 Both Parties to this Agreement undertake that they will not, and shall procure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

25 NON-WAIVER

25.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of this Agreement, shall not, in any manner, be construed to be a waiver of any of that Party's rights in that regard and in terms of this Agreement.

25.2 Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.

26 PARTIAL INVALIDITY

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

27 DISPUTE RESOLUTION

27.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.

27.2 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.

27.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

27.4 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 27.

27.5 This clause 27 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

27.6 This clause 27 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

28 ADDRESSES FOR NOTICES

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

a) **Transnet**

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

Attention: General Manager Group Legal Services

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

b) **The Service Provider**

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

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

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

28.3 Any notice shall be deemed to have been given:

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

b) If posted by prepaid registered post, 10 [ten] days after the date of posting thereof; or

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

29 WHOLE AND ONLY AGREEMENT

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

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

30 AMENDMENT AND CHANGE CONTROL

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

30.2 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 27 *[Dispute Resolution]*.

31 GOVERNING LAW

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

31.1 **Change of Law**

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Fees, Deliverables, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 27 *[Dispute Resolution]* above.

32 COUNTERPARTS

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

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

For and on behalf of **TRANSNET SOC LTD** duly authorised hereto	For and on behalf of **MCKINSEY INCORPORATED** duly authorised hereto
Name: ANDY SMITH	Name: VIKAS SAGAR.
Position: CCRO.	Position: DIRECTOR.
Signature:	Signature:
Date: 6/10/2015	Date: 10/3/15
Place: JHB	Place: SANDTON

AS WITNESS:	**AS WITNESS:**
Name: GARRY PITA	Name: BENEDICT PETER
Signature:	Signature:

AS WITNESS:	**AS WITNESS:**
Name: Edward Thomas	Name: Nomfanelo Magwentshu
Signature:	Signature:

SCHEDULE 1 – Work Order No:

For the Provision of Services Related to RFP GSM/14/04/1037: Provision of Professional Services to Support Transnet in Increasing the Coal Line with a breakthrough of 2Mt (two million tonnes) per week for a period of 17 months

With reference to the Master Agreement, Reference Number **GSM/14/04/1037** [the **Agreement**] between Transnet SOC Ltd [**Transnet**] and McKinsey, Incorporated (Pty) Ltd [**the Service Provider**] pursuant to which the Service Provider has agreed to perform certain services to Transnet subject to such Agreement, the defined terms in the Agreement will, unless otherwise indicated, have the same meaning in this Work Order.

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

1 DESCRIPTION OF THE SERVICES

The Service Provider will support Transnet in the following areas:

- May 2014 shutdown execution support, 5 May-20 May 2014: work with Transnet Freight Rail to help coordinate shutdown execution and issue escalation/resolution, minimizing risk of slip wherever possible
- Rapid baselining from 20 May 2014 – 6 July 2014: define levers available to improve operational productivity, including sustainability levers. This will include an examination of planning and scheduling, wagons, locomotives, crews, yards, and infrastructure opportunities. From this work, the consortium will recommend specific initiatives to help Transnet Freight Rail reach its 77Mt export coal stretch target for the 2014/15 financial year, and make operational changes sustainable. Initiatives must then be approved by the GM Coal BU, who will also assign owners from within his team to ensure each initiative is driven by the business.
- Realisation of 77Mt target for the export coal business over the 12 month period from the beginning of day 7 July 2014 and ending at the end of day on 6 July 2015 based on operational improvements and sustainability initiatives. This work will include:
  - Process improvement for planning, scheduling, operations and deviation management activities
  - Sustainability initiatives to change mindsets and behaviours, create role models across the Coal BU, develop technology-enabled interventions, and provide documentation of principles, processes, and ways of working to help institutionalise these changes
  - Direct operational support to mitigate daily operations issues
  - Additional ad hoc analysis where team capacity permits to support long term challenges critical to Coal BU success e.g. Shongololos, co-location of Coal functions, etc.
- Monitoring and guidance of operational sustainability, 1 April 2014 – 30 Sept 2015: The consortium will continue to monitor execution progress of initiatives and provide high level support to ensure that processes and tools introduced over the previous year continue to be embedded and actively used. This phase will also include ad hoc support to help the Coal BU set itself up for success for the 2015/16 financial year.
- The focus of the support will be limited to export coal business

2 PROJECT DELIVERABLES

- Identification of levers to deliver 77Mt of export coal over the period 7 July 2014 to 6 July 2015
- Operational support to clearly define and launch levers, with handover to TFR owners once in flight and owners have been trained on any new processes, tools, or mindset shifts required to own the levers
- Creation of relevant process documentation, tools and technology-enabled interventions to support sustainable operational improvements ie. the Coal Line Way
- Change management and facilitation support for the Coal Line Way (e.g. training of role models)
- Volume and sustainability targets as noted in the conditions of payment in Annexure A: Project Fees

3 PRE-REQUISITES

- Rampup plan to get to 77mt will need to be based on Coal line team volumes (aligned with GM coal line)
- The annual coal line shutdown is planned for 12 days. The consortium will support the shutdown execution to minimise any risk of slip during this time.
- TFR will sign off any volumes losses (based on average daily volumes in the 4 weeks prior) for additional planned length of shutdown will be subtracted from 77mt target or the time frame extended to account for the additional days.
- TFR to agree to prior recommendations to be implemented to ensure impact (these are highlighted because they are owned by executives outside the coal BU):
  - Budget must be approved for infrastructure weekend and night shifts to reduce incident response time;
  - An infrastructure budget to ensure maintenance backlog is shrinking (it is growing at present) as approved for 2015/16;
  - Funds for OHTE task force initiatives and sufficient security staff to reduce cable theft are approved; and
  - Twice-daily shedding at Nsezi continues with full leadership support.
- Resourcing of new initiatives continues to be supported by TFR.
- Initiatives to generate additional volumes take precedence over TFR- and Transnet-wide cost-cutting efforts specifically.
  - Summer break resourcing particularly from 15-31 December
  - Travel bans
  - Overtime restrictions
- In the event that Coal Line operations are halted (e.g. due to significant infrastructure or rolling stock breakdown for any reason) for a period of greater than 7 consecutive days, the consortium shall have the right to terminate the contract immediately, or to work with Transnet to agree
  - a) A lower total volume target that can still be achieved within the agreed timeframe (e.g. a proportion of the target reduced by the number of days lost assuming average daily volume for the prior four weeks)
  - b) An extension to the time frame (e.g. by the number of days of operations stoppage, plus 2-3 days additional time for the system to resume normal operations and balance)With respect to (b) above, the time frame may be extended by up to 14 days with no penalty to Transnet. Any extension beyond this would require a renegotiation of fees.

4 PROJECT MANAGERS

Transnet Project Manager	**Lloyd Tobias**
Designation	GM Coal Business Unit
Operating Division	Transnet Freight Rail
Address	Inyanda House, 15 Girton Road, Parktown, 2193
Cell Phone	+27-83-444-0155
Telephone	+ 27 35 906 7075
Fax	+27 35 906 7255
Email	lloyd.tobias@transnet.net

Service Provider's Project Manager	Lohini Moodley
Designation	Principal, McKinsey & Co
Address	88 Stella Street, Sandown Mews, Sandton, 2198
Cell Phone	+27 82 329 8132
Telephone	+ 27 11 506 8132
Fax	+27 22 506 9132
Email	lohini.moodley@mckinsey.com

5 ACCEPTANCE CRITERIA FOR DELIVERABLES

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

6 PROGRESS REPORTS AND REVIEW MEETINGS

Project management and review meetings will be held every six weeks at Transnet Freight Rail offices in Empangeni, or as otherwise directed by Transnet's Project Manager.

7 FEES AND DISBURSEMENTS

7.1 Any authorised expenses / disbursements will be reimbursed, subject to the provisions of clause 10 *[Fees and Expenses]* of the Agreement as read with Annexure A hereto.

7.2 Payment terms are subject to clause 11 *[Invoicing and Payment]* of the Agreement as read with Annexure A hereto.

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

SIGNED for and on behalf of: **McKinsey, Incorporated**	**SIGNED** for and on behalf of: **Transnet SOC Ltd**
Signature	Signature .....
Name: VIVAK SAGAR.	Name: Anoj Singh
Position: DIRECTOR.	Position: CCO.
Date: 10/03/15	Date: 06/03/15
Place: SANDTON	Place: JHB.

ANNEXURE A – Project Fees

The total value of this contract, including expenses and excluding VAT, is R 216.7 million (Two hundred and sixteen million seven hundred thousand Rand). These fees break down and shall be subject to conditions of payment as follows:

- **Fixed fee of R43,5 million**, including expenses shutdown and baselining. Fees shall be paid on a monthly basis in May and June 2014, so long as Transnet Freight Rail agrees that shutdown support has been conducted, and rapid baselining has been conducted, resulting in a recommendation of levers required to support volume improvements.
- **Contingent fee of R143.2 million** including expenses payable as follows:
  - **31% (R44,4 million including expenses) upon achievement of quarterly volumes targets to deliver 77mt,** payable quarterly from based on cumulative year to date volumes delivered. Quarterly volume achievements. Fees shall be paid as a proportion of the target volumes achieved in each quarter. The periods and targets for each quarter will be as follows :
    - 7 July to 5 October 2014: 19,437,614.57 tons
    - 6 October 2014 to 4 January 2015: 19,653,141 tons
    - 5 January to 5 April 2015: 20,408,406.21 tons
    - 6 April 2015 to 6 July 2015: 17,500,838.22 tons

    Should volumes higher than quarterly targets be delivered in any quarter, the proportion of fees equal to over-delivery in that quarter will be invoiced. Under-delivery in any quarter may also be offset by over-delivery in a future quarter, within the period 7 July 2014 to 6 July 2015.
  - **19%(R27,2 million including expenses) on sliding scale for achievement of volumes from 75mt to 77mt,** payable in July 2015. Fees will be paid as a proportion of the volume achieved between 75 and 77Mt over the period 7 July 2014 to 6 July 2015. For example, if a total of 76Mt was achieved over this period, 50% of the stretch target volume achievement fees would be paid.
  - **50% (R71,6 million) on a monthly basis from 07 July 2014 to 6 July 2015 for the value add in increasing weekly tempos as well as the implementation of sustainability measures**. Each month, the consortium shall present a set of sustainability activities and/or metrics for the following month for agreement by Transnet. Once agreed, these sustainability activities and/or metrics shall be the base of measurement for the following month. The following month, performance against this plan shall be measured. The consortium shall be paid for the proportion of achievements realised, provided that delays caused by Transnet shall not be counted against the consortium's achievements, such delays must be agreed by Transnet to have been caused by Transnet. For example, if a month has 10 sustainability actions, of which 8 are completed, and 1 is delayed by Transnet, the consortium shall be paid 90% of the monthly fee. The consortium shall also be provided the opportunity to recoup unrealized sustainability fees in future months up to the end of September 2015 through either completion of agreed activities (where delays are Transnet-driven) or additional sustainability activities agreed by Transnet.
- **Fixed fee of R30 million including expenses to monitor and embed sustainability measures** for the period from 1 April 2015 to 30 September 2015 which will assist in Transnet achieving the 2015/16 volumes of 81mt. Fees will be paid monthly, with R6.67m due each month from April-June 2015, and R3.33m due each month from July-September 2015.

The total value of the contract will be subject to the following split:

Fixed Fee (May-June 2014)		Contingent Fee (July 2014-March 2015)		Fixed fees (March 2015-September 2015)	
McKinsey	Subcontractor	McKinsey	Subcontractor	McKinsey	Subcontractor
60%	40%	45%	55%	45%	55%

SUPPLIER DEVELOPMENT VALUE SUMMARY

Enterprise and Supplier Development Value	
McKinsey	Subcontractor
Fixed fee - 70%	Fixed fee - 20%
Contingent fee - 70%	Contingent fee - 20%

FOF-08-850

Transnet SOC Ltd
Registration
Number
1990/000900/30

Carlton Centre
150 Commissioner
Str. Johannesburg
2001

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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 : **RENEGOTIATING THE KUMBA CONTRACT**

PURPOSE OF SUBMISSION

1. The purpose of the submission is to request approval of the Group Chief Executive to:
   - 1.1 Approve the resourcing strategy and remuneration model for the Iron ore initiative to mitigate the EBITDA at risk by mobilising a team to:
     - 1.1.1 Assessing the current Kumba iron ore contract to determine a collaborative approach that will yield benefits for both Transnet and Kumba by quantifying different negotiation levers and the reasons for a revised tariff and impact for both parties (strategic, tactical)
     - 1.1.2 Identifying negotiation levers and craft a negotiation strategy
     - 1.1.3 Renegotiating the Kumba iron ore contact.
   - 1.2 Confine and award services for support to the internal team to McKinsey and Company and its BBBEE Consortium partners.

BACKGROUND

2. The 2014/15 EBITDA at risk was presented at the March Group Exco (refer to Annexure A). At that meeting the Exco accepted the risks and requested the GCFO to identify mitigating strategies to address the risks presented in order to achieve the financial performance and seven year MDS targets contained in the Corporate Plan.
3. One of the initiatives to mitigate the risks, in Annexure A, is assessing the options to renegotiate the Kumba iron ore contract.
4. Based on the achievement of weekly volumes it is estimated that Iron ore volumes are likely not to exceed 56 mtpa compared to a budget of 58 mtpa contained in the 2014/15 Corporate plan.
5. This will thus result in 2 mtpa at risk and a concomitant EBITDA at risk of R170 million for 2014/15.
6. The current Kumba iron ore contract has been signed for a 20 year period until the year 2027.
   - 6.1. Furthermore, the current price differential between the two customers (i.e., Kumba: 100 R/t; Assmang: 135 R/t) on a 1a contract (35.5mtpa) is significant. The rates on the 1a contract will be reviewed in 2015. The 1c contract has a current tariff of R118/t (9mtpa) and currently being reviewed in terms of the contract and is anticipated that no challenges will be experienced to achieve R128/t for this financial year.
   - 6.2. The current contract does not appropriately cater for allocating capacity to junior miners although Kumba has made available 3mtpa on an annualised basis recently. Transnet has not made and does not have loading facilities available and hence there is a dependency on Kumba.

6.3. Further, Kumba has first right of refusal for any new capacity (at the same tariff) made available to a limit of ~75% of total capacity. However, Kumba has indicated that they are willing to remove this onerous clause.

6.4. The current contract could potentially cause economic hardship for Transnet on the 1a Contract. Earlier commercial analysis indicates that the incremental EBITDA from equalising Assmang and Kumba pricing could be ~R1,0 billion. Further increases based on realising economic cost would further increase revenue.

7. A legal opinion was sought and delivered previously. However, a review of the opinion is required to thoroughly investigate the options for reopening the contract including:
   7.1. Economic hardship for Transnet,
   7.2. Whether the contracts signed preserved the interests of Transnet and its Shareholder,
   7.3. Investigate and lay out the implications of a legal challenge.
8. In addition, with effect from 2013/14 Kumba has experienced production problems at one of its mines and will not be in a position to deliver guaranteed tonnages in the short term. The take or pay penalty for under-delivery is not sufficient to compensate Transnet for the EBITDA lost related to lost tonnage.
9. A further concern is the life of mine for Sishen. At the results presentation of Kumba in July last year, it was stated that remaining life of mine is 18 years.
   9.1. Meeting the 2014/15 revenue targets are under significant pressure given the reasons articulated above

DISCUSSION

10. Although the rates on the 1a contract will be reviewed in 2015, the following are the potential grounds for re-opening the 1a contract:
    10.1. Potential economic hardship for Transnet: under the 1a contract, the ore line infrastructure is valued at ~R300 million, less than the depreciated optimised replacement cost, which should be included in the lower bound for acceptable pricing. At this valuation, required infrastructure maintenance investments may not be affordable, potentially putting future revenue streams for both Transnet and Kumba at risk. This exercise will allow us to understand the risk.
    10.2. Capacity for junior miners: Currently, two incumbent miners (Kumba and Assmang) have a lock on iron ore capacity. Further, the capacity allocation approach, which grants Kumba the right of refusal of 75% of the total iron ore channel capacity is biased against new entrants. Although Kumba has indicated that they willing to remove that clause.
    10.3. Cabinet's condition that expansion agreement with Kumba must provide for ore supply to local beneficiation at development prices.
    10.4. Legality of terms: Given the arguments above, a review to establish the validity of all terms in the contract is advisable.
    10.5. Good faith: Without a formal review, it is unclear whether all parties acting on Transnet's behalf acted in good faith.
    10.6. The Ports Act gives TNPA the authority to require that the operator of the Iron Ore Terminal at Saldanha (TPT) ensure the allocation of terminal capacity is aligned with Transnet and government mandates, i.e. ensure an appropriate share of capacity is allocated to junior miners. This request for a review can be triggered by the port regulator of TNPA.
    10.7. Furthermore, the Ports Regulator has commented that the iron ore tariff is too low, however this cannot be rectified without renegotiating the contract (refer to Annexure for the latest tariff determination form the Ports Regulator.)
11. An annual additional cash flow of ~R250 million – ~R1,0 billion is possible based on a revised tariff for Kumba Sishen volume of ~35.5 mtpa on the 1(a) contract.

SUGGESTED APPROACH

12. Determine a collaborative approach that will yield benefits for both Transnet and Kumba.
    12.1. Quantify different negotiation levers and the reasons for a revised tariff and impact for both parties (strategic, tactical)
    12.2. Assess the adequacy of the sustaining capital to sustain the iron ore line
    12.3. Make cost-benefit trade-off assessment for different scenarios.
13. Review the accuracy and assumptions included in the models that will be used by management to inform the renegotiation and make recommendation in this regard.
14. Outline the overall negotiation game plan and develop negotiation scenarios and potential responses
15. A steering Committee will be constituted to review the findings of the above and recommend the way forward in terms of redrafting of contracts.
16. The Steering Committee will comprise:
    16.1. Group Chief Financial Officer
    16.2. Group Executive: TFR
    16.3. Group Executive: TNPA
    16.4. Group Executive : TPT
    16.5. Group Executive: Group Commercial
    16.6. Group Executive : Legal
17. The fees will be based on a guaranteed and non-guaranteed portion. Approval to proceed to remunerate the consultant will be obtained from the GCE, based on the recommendation of the Steering Committee.
18. This approach has been discussed and agreed with Mr Divyesh Kalan from Group Commercial.

GROUNDS FOR CONFINEMENT:

19. McKinsey and Company have the Intellectual property, experience and knowledge to provide these services to Transnet. McKinsey and Company have a detailed knowledge of Transnet, its operating divisions and MDS.
    19.1. McKinsey understands the underlying economics of the global and local iron ore industry in detail as well as the strategic trends in the iron ore industry, e.g., through it's proprietary iron ore demand and supply model and dedicated practitioners in Minerals & Mining services line
    19.2. McKinsey understands Transnet's underlying economics and pricing methodology in detail and have been an advisor in establishing a pricing methodology across GFB
    19.3. McKinsey understands the operation on the iron ore line and hence potential operation negotiation levers
    19.4. Deep involvement in pricing for Transnet including a thorough understanding of applicability of Competition Act and other legislative frameworks
    19.5. McKinsey has in its global practice supported many major contract re-negotiations and a proven tool kit of negotiation best practices that can be leveraged
20. Appended below, for ease of reference, is an extract from the latest directive, stipulating 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.

21. Specific emphasis is placed on ground (a) and (d) due to the potential business risks associated with approaching the market on an open tender process as well as the credentials listed above.

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;	• The EBIDA at risk was only identified after the 2014/2015 Corporate plan had been completed; taking into account the impact of the locomotive deposits. • These risks were presented to Transnet Group EXCO in March 2014. • If the mitigation plans are not put in place immediately the 2014/2015 Corporate plan, capital plan and funding pre-requisites will not be met placing the entire MDS at risk. • Mitigating the impact of lower than plan throughput tempo requires an urgent and immediate mitigation action which has an opportunity to deliver the required results in the 2014/15 Corporate Plan.
d. Goods and services being procured is highly specialised and largely identical to work previously done	• This component of Ground D relates to the specialised work required to establish grounds and determine options to make an informed decisions to open the contract. The models used are highly complex and due to the work done on the capital SWAT process in re-cutting the portfolio extensive knowledge has been gained in understanding the sustaining capital requirements. • McKinsey has a proprietary iron ore demand and supply model that Transnet has used previously to determine its pricing methodology. • This tool is available from only one supplier i.e McKinsey. • McKinsey and Company have provided work relating to iron ore tariffs before.
d. Approaching the market would	• Due to the specialised nature of the work a new

result in wasted money and time	service provider will be required to understand the intricacies of Transnet pricing strategy, capital programme and overall MDS.

22. Additionally, due to the confidential nature of the information, the engagement cannot be subject to an open tender process. In terms of para 15.1.4 of the revised PPM (effective 1 October 2013), in instances where a confinement is confidential, the GCE may approve such confinement without it being routed via any other signatory.

ENTERPRISE AND SUPPLIER DEVELOPMENT AND BBBEE

23. The work will be carried out internally supported with a team of consultants (McKinsey & Company and its Consortium partners). The external consultants fees for the scope above will be based on a potential maximum fee of R20 million.
24. McKinsey and Company will engage a Consortium Partner who is Black owned and this Consortium partner will perform a percentage of the work under the guidance of Mckinsey and Company.
25. The Consortium partner will share 60% of the potential maximum fee and 60% of the contingent fee/fee at risk (excluding VAT and expenses). The initial potential maximum fee of R20 million excluding expenses and VAT will be shared on a 40%/60% split with Consortium partners, who will be allocated 60% of the fees. The potential maximum contingent/at-risk portion of R193 million excluding VAT and expenses will be shared a 40/60% split with the Consortium partners, who will be allocated 60% of the fees at risk.
26. McKinsey and company will be required to provide a supplier development plan whereby they commit 70% of the contract value for the potential maximum fee and 70% of the contingent fee to enterprise and supplier development value, which will be set out in an agreed supplier development plan. Preferential procurement and use of empowered consortium partners will contribute to this value. This will subject to negotiation with the service providers.
27. The consortium partner will be required to provide a supplier development plan whereby they commit 50% of their contract value for the fixed fee and the contingent fee to enterprise and supplier development value, which will be set out in an agreed supplier development plan. 30% of the contract value should be targeted at downstream supplier development to SMME's (EME's and QSE's), preferably black owned, Black women owned, youth owned and owned by people living with disabilities. This will subject to negotiation with the service providers.
28. McKinsey and Company and the consortium partner will be required to provide an acceptable BBBEE improvement plan.

FINANCIAL IMPLICATIONS

29. The work will be carried out internally supported with a team of consultants (McKinsey & Company and its Consortium partners). The external consultants fees for the scope above will be based on a fixed fee of R20 million. The Phase 1 fee is to cover their cost to deliver the planned Transnet net revenue/volumes and the contingent fee will remunerate them based on the increase in actual net revenue/volumes over and above Transnet expected and planned net revenue/volumes.
30. If the negotiation is successful and a revised tariff in excess of 115 R/t (total for all ODs) is agreed, the external consultants will be remunerated at 2% of the annualised additional net revenue capped a potential maximum of R193 million in total, even if a tariff in excess of 135 R/t is successfully negotiated. The annualised additional revenue is based on a 95% volume update

31. The fees are payable over a three year period, despite the fact that the calculation is made on revenues earned over the full contract life. A sliding scale showing the potential range of payments is as follows:

New rate per ton, R	Additional annual revenue, R	2% over the remaining period of the 1(a) contract, R	R, NPV - Cumulative Fees payable over a 3 yr period
115.00	Entry position		
120.00	700 000 000	154 000 000	110 240 050
125.00	875 000 000	192 500 000	137 800 060
130.00	1 050 000 000	231 000 000	165 360 071
130.00	1 225 000 000	269 500 000	192 920 081

32. A separate memo informing the GCE of this will be drafted at the time if a revised tariff in excess of 115 R/t (total for all ODs) is successfully renegotiated resulting in a payment to be made to the consultants. The overall expected annual net revenue at R135 per ton over the duration of the contract is ~R13,5 billion.
33. The potential maximum fee and expenses will be in accordance with the National Treasury instruction note. The expenses will be on actual costs incurred aligned with the instruction note.
34. Transnet's interpretation of contingent fees paid to consultants is that contingent fees only become due once a predetermined event has occurred, such as Transnet earning additional net revenue or receiving net cost savings less the contingent fee that Transnet would not have had unless the consultant was engaged . The instruction note does not specifically exclude contingency fees. Thus Transnet will always be in a net cash positive position.

BUDGET IMPLICATIONS

35. The amount of R20 million has been budgeted for in the 2014/15 Group Finance budget.
36. The additional fees of 2% of the annualised additional net revenue settled over a three year period capped a potential maximum of R193 million in total on a sliding scale has not been included in the budget but due to the contingent nature of the payment, however, if the fees are paid, on recommendation of the steering committee, significant additional revenue would have been attained.
37. The additional net revenue/volumes over and above the planned net revenue/volumes will be clear revenue for Transnet and thus will have no additional costs except for the contingent fee
38. Typically work of this nature based on internationally accepted norms, where 100% of fees are at risk, are between 2%-10% of the savings or additional net revenue achieved;

RECOMMENDATION

39. It is recommended that the of Group Chief Executive approve:
    - 39.1. Approve the resourcing strategy and remuneration model for the Iron ore initiative to mitigate the EBITDA at risk by mobilising a team to:
        - 39.1.1. Assessing the current Kumba iron ore contract to determine a collaborative approach that will yield benefits for both Transnet and Kumba by quantifying different negotiation levers and the reasons for a revised tariff and impact for both parties (strategic, tactical)
        - 39.1.2. Identifying negotiation levers and craft a negotiation strategy
        - 39.1.3. Renegotiating the Kumba iron ore contact.
    - 39.2. Confine and award services for support to the internal team to McKinsey and Company and its BBBEE Consortium partners.

Compiled by

Anoj Singh
Group Chief Financial Officer
Date: 8/10/2014

Approved/ ~~Not Approved~~

Brian Molefe
Group Chief Executive
Date: 1.4.14.

TRANSNET SOC LTD

[Registration No. 1990/000900/30]

REQUEST FOR PROPOSAL [RFP]

FOR THE PROVISION OF PROFESSIONAL SERVICES TO SUPPORT TRANSNET WITH RENEGOTIATING THE KUMBA IRON ORE CONTRACT

FOR A PERIOD OF 12 MONTHS

RFP NUMBER	**GSM/14/04/1038**
ISSUE DATE:	**28 MAY 2014**
CLOSING DATE:	**10 JUNE 2014**
CLOSING TIME:	**12:00**
BID VALIDITY PERIOD:	**90 days from Closing Date**

PR: 10 40 6[illegible]5
PO: 4500[illegible]297

McKinsey&Company

Transnet SOC Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177
Supplier code: 72063827

McKinsey and Company
VAT no: 4710150048

Tax invoice: 5757

Charge code: TRX079

Payment due within 30 days of invoice date

30 May 2014

Professional fees: May 2014	R	6,000,000.00
Out of pocket expenses	R	900,000.00
Subtotal	R	6,900,000.00
Vat at 14%	R	966,000.00
TOTAL	R	7,866,000.00

Payment may be made by direct transfer to:

Account Name:	McKinsey Incorporated
Account Number:	421061812
Branch:	019205
Bank name and address:	The Standard Bank of South Africa Ltd. Sandton Branch 156 Fifth Street Sandton, 2196 South Africa

Please quote invoice number and charge code reference on transfer and remittance.

Please note:
Standard terms provide for invoice payment upon receipt. Interest will be charged on balances outstanding 30 days after the invoice date, at a rate of 1% per month or as otherwise agreed.

5200467386

2014-07-14

1000516

McKinsey&Company

30 May 2014

Anoj Singh
Group Chief Financial Officer
Transnet SOC Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg

Dear Anoj,

Please find attached invoice 5757, issued on 30 May 2014 for our professional fees and out of pocket expenses (@15%) and support services for the period 16 April 2014 to 31 May Month 2014 relating to our work on "Supporting the Renegotiation of the Kumba Iron Ore Contract". This engagement was requested by Transnet in your letter to McKinesy (David Fine) issued on April 10th..

The value of the baselining phase of this contract is R12.075 million, of which R6.90 million (57%) has been invoiced to date, including this invoice.

The deliverables for this contract are listed below, with percentage completion:

Deliverable	% completed as of this invoice	% completed as of previous invoice
Obtain independent legal opinion on grounds for re-opening contract	90	-
Perform high-level validation of Orex line capital (opening valuation and sustaining capital estimates)	10	-
Develop perspective on KIO counter-argumentation	50	-
Recommend target tariff level for Sishen 1a contract	20	-
Prepare negotiating strategy, including detailed description/quantification of negotiating levers	35	-
Initiate contract re-negotiation process	0	-

The project is currently running 2-3 weeks behind schedule given delays in accessing key Transnet stakeholders and information. The following bottlenecks need to be addressed by Transnet in order to ensure progress:

- Brief Transnet steering committee members on intention of project

467386

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 LJH Arwidi (Swedish) W Choi (South Korean) IRA Munshi PM Parbhoo SH Wu

McKinsey&Company

- Finalise steering committee dates and required attendees (Outstanding since 23/4)
- Enabling access to jointly identified Transnet stakeholders and information

Since the last invoice, the McKinsey resources allocated to this engagement included:

Name	Role
Pamela Wade-Lehmann	Project Manager
Olivier de Quelen	Consultant
Lesego Letlape	Consultant
Pratik Pokharel	Consultant
Christina Planert (part time)	Project Leadership
Vikas Sagar (part time)	Project Leadership
Bernd Schmidt (part time)	Rail Expert

In addition various executive assistants, researchers and visual graphics specialists have supported the team remotely.

For your reference, the physical original of this invoice and memo have been couriered to Mamorena Monare (Mamorena.Monare@transnet.net, 0121 308 1782, 33rd Floor Carlton Centre) on May 30, 2014.

Kind regards,

C. Planert

Christina Planert
Principal

□ □ □

467386

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G O O D S R E C E I P T S L I P 5000515651/0001

Goods receipt date : 14.07.2014
Current date : 14.07.2014

Plant : 4000
Description : Group Services

Vendor : 0001000316 Delivery note: 5757
Name : MCKINSEY AND CO
PO : 4500250297/00010
Buyer Name : Duran Balbathur Telephone : 011 308 1087

Material :
MPN :
Description : Professional fees: May14

Quantity : 1 EA

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

Recipient : Mamorena
Unloadg. point: Floor 33
Cost center : 0001003013

Issued by : 0137696 S I G N A T U R E

52/467386

FOF-08-862

%SAPWIN%

G O O D S R E C E I P T S L I P 5000515651/0002

Goods receipt date : 14.07.2014
Current date : 14.07.2014

Plant : 4000
Description : Group Services

Vendor : 0001000316 Delivery note: 5757
Name : MCKINSEY AND CO
PO : 4500250297/00020
Buyer Name : Duran Balbathur Telephone : 011 308 1087

Material :
MPN :
Description : Out of pocket expenses

Quantity : 1 EA

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

Recipient : Mamorena
Unloadg. point: Floor 33
Cost center : 0001003013

Issued by : 0137696 S I G N A T U R E

TRANSNET

AGREEMENT

Entered into by and between

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

And

McKINSEY INCORPORATED (Reg. Nr. 1995/002398/10)

FOR THE PROVISION OF SERVICES RELATED TO: RFP GSM/14/04/1038: Provision of Professional Services to support Transnet with the renegotiating the Kumba Iron Ore contract for a period of 12 months

Agreement Number	**GSM/14/04/1038**
Commencement Date	**09 April 2014**
Expiry Date	**08 April 2015**

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1 INTRODUCTION

This Agreement is entered into by and between:

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

And

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

NOW THEREFORE, IT IS AGREED:

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

1.2 The Service Provider hereby undertakes to render the Services provided for herein, as formally agreed between the Parties and in accordance with the Work Order(s) issued as schedules to this Agreement.

2 DEFINITIONS

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

2.1 **AFSA** means the Arbitration Foundation of Southern Africa;

2.2 **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, including the Work Order(s), specifications for the Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed in writing between the Parties], which collectively and exclusively govern the provision of Services by the Service Provider to Transnet;

2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by Transnet to give effect to its obligations under this Agreement owned in whole or in part by or licensed to Transnet or its affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement;

2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;

2.5 **Commencement Date** means **09 April 2014**, notwithstanding the signature date of this Agreement;

2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

a) Information relating to methods of operation, data and plans of the disclosing Party;

b) The contents of this Agreement;

c) Private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;

d) Any information disclosed by either Party and which is clearly marked as being confidential or secret;

e) Information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;

f) Information relating to the past, present and future research and development of the disclosing Party;

g) Information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;

h) Information contained in the software and associated material and documentation belonging to the disclosing Party;

i) Technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;

j) Copyright works;

k) Commercial, financial and marketing information;

l) Data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;

m) Plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;

n) Information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and

o) Information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

2.7 **Contract Manager** means the person/s appointed by either party to manage the implementation of the agreement;

2.8 **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;

2.9 **Default** means any breach of the obligations of either Party [including but not limited to fundamental breach or breach of a fundamental term] or any Default, act, omission, negligence or statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of this Agreement and in respect of which such Party is liable to the other;

2.10 **Deliverable(s)** means any and all reports, analyses or other such materials furnished by the Service Provider to Transnet in relation to the Services;

2.11 **Designs** mean registered Designs and/or Design applications as defined in the Designs Act, 195 of 1993, and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;

2.12 **Fee(s)** shall mean the agreed Fees for the Services to be acquired from the Service Provider by Transnet, as detailed in the Work Order(s), issued in accordance with this Agreement;

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

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

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

2.16 **Materials** means the Deliverables and, the Service Provider Materials;

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

2.18 **Party** means either one of the Parties;

2.19 **Patents** mean registered Patents and Patent applications as defined in the Patents Act, 57 of 1978, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;

2.20 **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;

2.21 **Personnel** means any partner, employee, agent, consultant, independent associate or supplier, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;

2.22 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services;

2.23 **Service(s)** means scope of services as defined in Schedule 1;

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 including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques analyses, know-how, tools, frameworks, models and industry perspectives used and/or developed by the Service Provider in connection with the Services;

2.27 **South Africa** means The Republic of South Africa as constituted from time to time

2.28 **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;

2.29 **Third Party Material** means software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Service Provider in the performance of the Services;

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

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

2.32 **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, a specimen of which shall be appended to this Agreement.

3 INTERPRETATION

3.1 Clause headings in this Agreement are included for ease of reference only and do not form part of this Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.

3.2 Any term, word, acronym or phrase used in this Agreement, other than those defined under the clause heading "Definitions" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in this Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.

3.3 A reference to the singular incorporates a reference to the plural and *vice versa*.

3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.

3.5 A reference to a particular gender incorporates a reference to the other gender.

4 NATURE AND SCOPE

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

4.2 Such Purchase Orders shall be agreed between the Parties from time to time, subject to the terms of the relevant Work Order(s).

4.3 Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.

4.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Work Order(s), in accordance with procedures set out in clause 30 *[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, failing which the proposed amendment shall lapse forthwith.

4.5 Insofar as any term, provision or condition in the Work Order(s) conflicts with a like term, provision or condition in this Agreement, or where this Agreement is silent on the matter, the term, provision or condition in this Agreement shall prevail, unless such term or provision or

condition in this Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

4.6 The Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

5 AUTHORITY OF PARTIES

5.1 Nothing in this Agreement will constitute or be deemed to constitute a partnership between the Parties, or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.

5.2 Neither Party shall be entitled to, or have the power or authority to enter into an agreement in the name of the other; or give any warranty, representation or undertaking on the other's behalf; or create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

6 WARRANTIES

6.1 The Service Provider warrants to Transnet that:

a) It has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representatives of the Service Provider;

b) It will discharge its obligations under this Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;

c) It will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations; and

d) The use or possession by Transnet of any Service Provider Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.

6.2 The Service Provider warrants that it will perform its obligations under this Agreement in accordance with the service levels as defined in the relevant schedule. Transnet may at its reasonable discretion audit compliance with the service sevels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services or the manner in which the Service Provider ordinarily conducts business. Without prejudice to clause 6.3 below, in the event that the Service Provider fails to meet the service sevels, Transnet may claim appropriate service credits or invoke retention of Fees as detailed in the relevant schedule and/or Work Order.

6.3 The Service Provider shall, in accordance with the Service Provider's document retention policies, establish and maintain a secure file containing a copy of any presentation, progress review, report or other document furnished to Transnet by the Service Provider in connection with the Services, together with any working papers necessary to support its conclusions or analyses (collectively, the "Working Papers File"). Transnet may, at its own cost, inspect the Working Papers File at any time, during the five (5) year period from the end of the calendar year in which the relevant Services are completed or terminated, solely for the purpose of determining whether the Service

Provider performed the Services in accordance with the Work Order. Any information furnished in connection with this provision shall be kept confidential in accordance with this Agreement.

6.4 The Service Provider warrants that for a period of 90 [ninety] 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] days of notification by Transnet.

6.5 The Service Provider will remedy any defect within 30 [thirty] days of being notified of that defect by Transnet in writing.

6.6 The Service Provider will not be liable to remedy any problem arising from or caused by Transnet's use of the Deliverables in any way not intended by the Work Order or any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.

6.7 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.6 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 30 *[Amendment and Change Control]*.

6.8 The Service Provider further warrants that:

a) It has, using the most up-to-date software practicably and reasonably available to it, tested for [and deleted] all viruses identified by the Service Provider in the Service Provider Materials at the date of the relevant Work Order; and

b) At the time of delivery to Transnet, the Service Provider Materials and Deliverables do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.

6.9 The Service Provider agrees that, in the event that a virus is found, it will use its reasonable endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that 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.

6.10 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with this Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

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

6.12 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a

review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall make senior Personnel available to Transnet, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

7 TRANSNET'S OBLIGATIONS

7.1 Transnet undertakes to promptly comply with any reasonable request by the Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Services as may be necessary for the Service Provider to perform the Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Service Provider of its confidentiality obligations under this Agreement.

7.2 The Service Provider shall give Transnet reasonable notice of any information it requires in accordance with clause 7.1 above.

7.3 Subject to clause 15 *[Service Provider's Personnel]*, Transnet agrees to :

a) provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under this Agreement; and

b) perform any tasks or responsibilities assigned to Transnet and notify the Service Provider of any issues or concerns Transnet may have relating to the Services.

8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

8.1 The Service Provider shall:

a) Respond promptly to all complaints and reasonable enquiries from Transnet;

b) Inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services;

c) Conduct its business in a professional manner that will reflect positively upon the Service Provider and the Services;

d) Keep full records clearly indicating all transactions concluded by the Service Provider relating to the performance of the Services and keep such records for at least 5 [five] years from the date of each such transaction;

e) Obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Service Provider;

f) Observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993;

g) Comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance that are applicable to the Service Provider and performance of the Services; and

h) Ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Verification Certificate, for the duration of this Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it

may have in terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.

8.2 The Service Provider acknowledges and agrees that it shall at all times:

a) Render the Services and perform all its duties with honesty and integrity;

b) Communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;

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

d) Use its reasonable endeavours and make every diligent effort to meet agreed deadlines;

e) Treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;

f) Practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination [as further referred to in clause 24 – *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 therefore 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 accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;

j) Not mislead Transnet or its Personnel, whether by act or omission;

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

l) Immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services.

9 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 Request for Proposal GSM/14/04/1038 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, upon request by Transnet, submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE

Act and proof thereof at the beginning of March each year during the currency of this Agreement.

c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:

(i) a change in the Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and

(ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Service Provider's B-BBEE status.

d) In the event there is a change in the Service Provider's B-BBEE status, then the provisions of clause 9.1 (c) 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 provided Transnet with a B-BBEE Improvement Plan to indicate the extent to which their B-BBEE status and the elements of the B-BBEE scorecard will be maintained or improved over the contract period, as per Annexure D of the RFP.

b) The Service Provider shall, for the duration of this Agreement, comply with the B-BBEE Improvement Plan.

c) The terms of the B-BBEE Improvement Plan and monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in such B-BBEE Improvement Plan.

d) Notwithstanding the aforegoing, the Service Provider may request that certain initiatives in the plan be replaced with other initiatives if the planned initiatives are found to be impossible, impractical or unduly burdensome to deliver. The black ownership percentages committed may not be changed. Such a request must show that the replacement initiatives must still strive to achieve the same levels of transformation and empowerment as the initial initiative and may not be less in terms of monetary or deemed monetary value of the original initiative. Transnet must agree to the change in writing which must be approved by the Transnet Group Chief Supply Chain Officer.

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) days from the signature date of the contract.

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) days as aforesaid (or such later date as Transnet may consent to in writing if delays are caused by unforeseen factors or delays caused by Transnet).

c) The Service Provider's Implementation Plan shall include, but not be limited to Transfer of Technology & Intellectual Property Rights, New skills development, Job creation and Enterprise and Supplier Development.

d) The Service Provider must use an alternate Subcontractor or Subcontractors if the primary selected Subcontractor fails to deliver the required services or at the required quality level. Transnet must agree to the alternate Subcontractor in writing.

e) The Service Provider must provide a list, as part of the Supplier Development Implementation Plan, of the alternate Subcontractors that they will utilise if the primary selected Subcontractor fails to deliver the required services or at the required quality level.

f) 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 Implementation Plan

g) The end date of the Implementation Plan may be later than the end date of the Services provided in terms of this contract.

h) The Service Provider may request that certain initiatives in the Implementation Plan be replaced with other initiatives if the agreed initiatives are found to be impossible, impractical or unduly burdensome to deliver, or will not meet the desired intention of the initiative. Such a request must show that the replacement initiatives will still strive to achieve the same levels of transformation and empowerment and economic development as the initial initiative and may not be less in terms of monetary or deemed monetary value of the original initiative. Such a replacement initiative will not reduce the overall percentage of Supplier Development value as in the original Implementation Plan. Transnet must agree to the replacement initiative in writing. There will be no additional cost for Transnet with regards to any replacement initiative.

i) Transnet Group Chief Supply Chain Officer will sign the Implementation Plan and any amendments to it.

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

b) The above will be provided in terms of quarterly reporting on the Service Providers commitment to Green Economy and their Carbon Footprint measured against this contract.

9.5 **Reporting**

a) The Service Provider shall monitor, audit, and record in an auditable manner, its own implementation and compliance with the B-BBEE Improvement Plan and the Implementation Plan and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning the implementation of the B-BBEE Improvement Plan and the Implementation Plan.

b) The information that shall be made available will be all the information that relates to any initiative in the Implementation Plan, the B-BBEE improvement plan and the Current and Future B-BBEE certificates of the Service Provider.

c) The Service Provider shall, every 3(three) months from the Commencement Date and within 7 (seven) days of the end of the calendar month of that 3 (three) months period, provide Transnet with a report (for monitoring purposes only) in respect of each of the undertakings stipulated in this clause.

d) Transnet, through its Supplier Development division, shall, every 3 (three) 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.

e) The Service Provider shall attach adequate proof to enable Transnet to verify compliance with the B-BBEE Improvement Plan and Implementation Plan.

f) 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 Integrated Supply Chain Management Department (Supplier Development specialist), 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 Implementation Plan and the extent, if any, to which the Service Provider has not so complied.

g) Without prejudice to the Transnet's rights under this Agreement:

(i) if the Contract Manager and/or Transnet's Supplier Development specialist reasonably considers that the Service Provider is not at any time complying with 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 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.

h) In the event the Service Provider is found to be fraudulent in submitting the B-BBEE Improvement Plan and/or the Implementation Plan, 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 clause 19.

i) 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 Implementation Plan 3 (three) 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 Implementation Plan, the Service Provider shall, subject to Clause 9.6 d) ***[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) below.

(i) Non Compliance Penalties shall be calculated as a percentage of the Contract Value and accrue at the Applicable Rate per month until:

- the date on which the Service Provider has remedied such Non Compliance by complying with the Implementation Plan and/or the B-BBEE Improvement Plan (as applicable); or if earlier
- the Agreement being terminated.

Applicable Rates of Non Compliance Penalties (for Large Enterprises Only):

b) In relation to the Implementation Plan, Non Compliance Penalties shall apply as follows:

(i) 100% of the undelivered portion of Supplier Development commitments to be set off against any current or future payments due to the Service Provider.

(ii) The Service Provider may request that certain Supplier Development value in terms of subcontracting be waived from the value of the penalty if the Subcontractor fails to deliver the required Services at the right level of quality and the Service Provider utilised an alternate Subcontractor and this caused delays in the delivery of the Implementation plan which would cause Non Compliance Penalties to be raised. The Service provider should make such representations in writing and provide suitable evidence, based on the conditions set out above, for Transnet to waive the requested portion of penalties of the undelivered Supplier Development value relating to subcontracting. The Service Provider must have made every effort to have brought the alternate Subcontractor on board as soon as possible to avoid unnecessary delays and the associated penalties.

c) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall accrue at the following Applicable Rates:

(i) for the first month after the deliverables of the B-BBEE Improvement plan are due (or part thereof), a rate of 1.0% (one percent);

(ii) for the second month after the deliverables of the B-BBEE Improvement plan are due (or part thereof), a rate of 1.5% (one and a half percent);

(iii) for the third month after the deliverables of the B-BBEE Improvement plan are due (or part thereof), a rate of 2.0% (two percent);

(iv) for the fourth month after the deliverables of the B-BBEE Improvement plan are due (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 after the deliverables of the B-BBEE Improvement plan are due, a rate of 3% (three percent).

Non Compliance Penalty Cap (for Large Enterprises):

d) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties under this clause shall not exceed:

(i) in the case of the B-BBEE Improvement Plan, 5% (five percent) of the Fees, (each a Non Compliance Cap);

Non Compliance Penalty Certificate:

e) 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.

f) 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 Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non Compliance Penalties:

g) Subject to Clause 9.6 (e) and Clause 9.6 (f)(ii), 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.

h) Subject to Clause 9.6 (e) and Clause 9.6 (f), the Service Provider shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.

i) Should the Service Provider fail to pay any Non Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.

j) The Non Compliance penalties set forth in this clause are stated exclusive of VAT. Any VAT payable on Non Compliance penalties will be for the account of the Service Provider.

10 SERVING COMPETITORS

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

11 FEES AND EXPENSES

11.1 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.

11.2 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 reasonably evidenced and invoiced to Transnet at cost].

11.3 The Parties have agreed that the fees are inclusive of expenses.

11.4 All Tax Invoices relating to Fees, and expenses and, where appropriate, shall include VAT as a separate item.

12 INVOICING AND PAYMENT

12.1 Transnet shall pay the Service Provider the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of this Agreement.

12.2 Transnet shall pay such amounts to the Service Provider, upon receipt of a valid and undisputed Tax Invoice as specified in the Work Order appended hereto, once the undisputed Tax Invoices, or such portion of the Tax Invoices which are undisputed become due and payable to the Service Provider for the provision of the Services, in terms of clause 12.4 below.

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

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

12.5 Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 12, 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.

12.6 Should the Service Provider require that Transnet pay the Subcontractor directly, the Service Provider must request this from Transnet in writing. If Transnet agrees to pay the Subcontractor directly the Service Provider still remains responsible for all obligations related to this contract including the management of, and the performance of the Subcontractor. The Service Provider shall verify the correctness of the Subcontractors invoice and confirm that all the deliverables have been delivered.

13 FEE ADJUSTMENTS

13.1 Subject to Clause 11.1, the Fee is fixed for the duration of the Agreement at a capped value as detailed in the relevant schedule or Work Order.

14 INTELLECTUAL PROPERTY RIGHTS

14.1 Title to Confidential Information and Intellectual Property

a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Service Provider acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual

Property that is proprietary to Transnet. For the avoidance of doubt, all the Service Provider Materials shall remain vested in the Service Provider.

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

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

14.2 Unauthorised Use of Confidential Information

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

14.3 Unauthorised Use of Intellectual Property

a) The Service Provider agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Service Provider acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.

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

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

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

15 SERVICE PROVIDER'S PERSONNEL

15.1 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.

15.2 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.

15.3 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.

15.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under this Agreement.

15.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a suitable replacement.

16 LIMITATION OF LIABILITY

16.1 Neither Party excludes or limits liability to the other Party for:

a) Death or personal injury due to negligence; or

b) Fraud

16.2 Each of the Parties shall indemnify and keep the other Party (the **"Indemnified Party"**) indemnified from and against liability for damage to any of the Indemnified Party's property [whether tangible or intangible] or any other loss, costs or damage suffered by the Indemnified Party to the extent that it results from any act of or omission by such Party or its Personnel in connection with this Agreement. Each of the Party's liability arising out of this clause 16.2 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 limited to the value of the total fees.

16.3 Subject always to clauses 16.1 and 16.2 above, the liability of either the Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.

16.4 Subject to clause 16.1 above, and except as provided in clauses 16.2 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.

16.5 Nothing in this clause 16 shall be taken as limiting the liability of the Service Provider in respect of clause 14 *[Intellectual Property Rights]* or clause 18 *[Confidentiality]*.

17 INSURANCES

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

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

17.3 Subject to clause 17.4 below, if the Service Provider fails to affect adequate insurance under this clause 17, 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.

17.4 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 17.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, where after either the Service Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] days prior written notice to that effect.

18 CONFIDENTIALITY

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

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

b) Not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;

c) Not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information, without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;

d) Not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;

e) Not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;

f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such Party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;

g) The Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;

h) Each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or internal consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or internal consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or internal consultants honour such obligations;

i) Each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;

j) Each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by the person or entity; and

k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

18.2 The duties and obligations with regard to Confidential Information in this clause 18 shall not apply where:

a) A Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Personnel; or

b) Was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or

c) Can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or

d) Is independently developed by a Party as proven by its written records.

18.3 The Service Provider's work for Transnet is confidential and intended for Transnet's internal use only. The Service Provider does not make public client names, client materials or reports prepared for clients without their prior written permission. Similarly, Transnet agrees that it will not use Service Provider's name, refer to Service Provider's work, or make the Deliverables or the existence or terms of this Agreement available outside its organization without the Service Provider's prior written permission.

18.4 This clause 18 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 [five] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

19 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

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

20 TERM AND TERMINATION

20.1 Notwithstanding the date of signature hereof, the Commencement Date of this Agreement is **09 April 2014** and the expiry thereof shall occur on **8 April 2015**, unless:

a) this Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or

b) This Agreement is extended at Transnet's option for a further period to be agreed by the Parties in writing.

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

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

a) A voluntary arrangement or composition or reconstruction of its debts;

b) Its winding-up or dissolution;

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.

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

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

20.6 Notwithstanding this clause 20, either Party may cancel this Agreement without cause by giving 30 [thirty] days prior written notice thereof to the other Party.

21 CONSEQUENCE OF TERMINATION

21.1 Termination in accordance with clause 20 *[Term and Termination]* shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.

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

21.3 To the extent that any of the Deliverables and property referred to in clause 21.2 above is in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with encrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held. Notwithstanding the foregoing, Service Provider shall be permitted to retain, subject to the terms of this Agreement and for professional archival purposes only, a copy of any Deliverables furnished to Transnet by Service Provider in connection with the Services, together with any working papers necessary to support its conclusions or recommendations.

21.4 In the event that this Agreement is terminated by the Service Provider under clause 20.2 *[Term and Termination]*, or in the event that a Work Order is terminated by Transnet under clause 20.5 *[Term and Termination]*, Transnet will pay to the Service Provider all outstanding Fees [apportioned on a *pro rata* basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.

21.5 The provisions of clauses 2 *[Definitions]*, 6 *[Warranties]*, 14 *[Intellectual Property Rights]*, 16 *[Limitation of Liability]*, 18 *[Confidentiality]*, 21 *[Consequence of Termination]*, 27 *[Dispute Resolution]* and 31 *[Governing Law]* shall survive termination or expiry of this Agreement.

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

21.7 Should:

a) The Service Provider effect or attempt to effect a compromise or composition with its creditors; or

b) Either Party be provisionally or finally liquidated or placed under judicial management, whether provisionally or finally; or

c) Either Party cease or threaten to cease to carry on its normal line of business or default or threaten to default in the payment of its liabilities generally, or commit any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time];

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

22 ASSIGNMENT

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

23 FORCE MAJEURE

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

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

24 EQUALITY AND DIVERSITY

24.1 The Service Provider will not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.

24.2 Both Parties to this Agreement undertake that they will not, and shall procure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

25 NON-WAIVER

25.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of this Agreement, shall not, in any manner, be construed to be a waiver of any of that Party's rights in that regard and in terms of this Agreement.

25.2 Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.

26 PARTIAL INVALIDITY

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

27 DISPUTE RESOLUTION

27.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.

27.2 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.

27.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

27.4 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 27.

27.5 This clause 27 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

27.6 This clause 27 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

28 ADDRESSES FOR NOTICES

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

a) **Transnet**

(i) For legal notices:

Transnet SOC Ltd
47TH Floor
Carlton Centre
150 Commissioner Street
Johannesburg 2001
Fax No. 011 308 2348

Attention: General Manager Group Legal Services

(ii) For commercial matters:

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

b) **The Service Provider**

(i) For legal notices:

McKinsey Incorporated
Sandown Mews East
88 Stella Street
Sandown
Sandton
2196
Fax No. 011 506 9000
Attention: Christina Planert – Partner

(ii) For commercial matters:

McKinsey Incorporated
Sandown Mews East
88 Stella Street
Sandown
Sandton
2196
Fax No. 011 506 9000
Attention: Christina Planert – Partner

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

28.3 Any notice shall be deemed to have been given:

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

b) If posted by prepaid registered post, 10 [ten] days after the date of posting thereof; or

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

29 WHOLE AND ONLY AGREEMENT

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

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

30 AMENDMENT AND CHANGE CONTROL

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

30.2 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 27 *[Dispute Resolution]*.

31 GOVERNING LAW

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

31.1 **Change of Law**

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Fees, Deliverables, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 27 *[Dispute Resolution]* above.

32 COUNTERPARTS

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

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

For and on behalf of **TRANSNET SOC LTD** duly authorised hereto	For and on behalf of **MCKINSEY INCORPORATED** duly authorised hereto
Name: ANOJ SINGH	Name: VIKAS SAGAR.
Position: CFO.	Position: DIRECTOR.
Signature:	Signature:
Date: 06/03/15	Date: 1 APRIL 2015
Place: JHB.	Place: JOHANNESBURG

AS WITNESS:	**AS WITNESS:**
Name: GARRY PITA	Name: VN MAGWENTSHU
Signature:	Signature:

AS WITNESS:	**AS WITNESS:**
Name: Edward Thomas	Name: M. BOBAT
Signature:	Signature:

SCHEDULE 1 – Work Order No

For the Provision of Services Related to RFP GSM/14/04/1038: Provision of Professional Services to support Transnet with renegotiating the Kumba Iron Ore contract for a period of 12 months

With reference to the Master Agreement, Reference Number **GSM/14/04/1038** [the **Agreement**] between Transnet SOC Ltd [**Transnet**] and McKinsey, Incorporated (Pty) Ltd [**the Service Provider**] pursuant to which the Service Provider has agreed to perform certain services to Transnet subject to such Agreement, the defined terms in the Agreement will, unless otherwise indicated, have the same meaning in this Work Order.

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

1 DESCRIPTION OF THE SERVICES

Phase 1 of the project will create the **fact base** on the KIO 1a Contract and will outline the overall renegotiation approach.

Phase 2 will **set up for success** and create alignment with Transnet's Executive and the Shareholder on the overall negotiation strategy and mandate. Furthermore it will develop an **operational improvement plan** for creating additional throughput in the export iron ore channel.

Phase 3 will then support the **actual negotiation preparation and negotiation**.

2 PROJECT DELIVERABLES

In Phase 1: The following questions will be addressed:

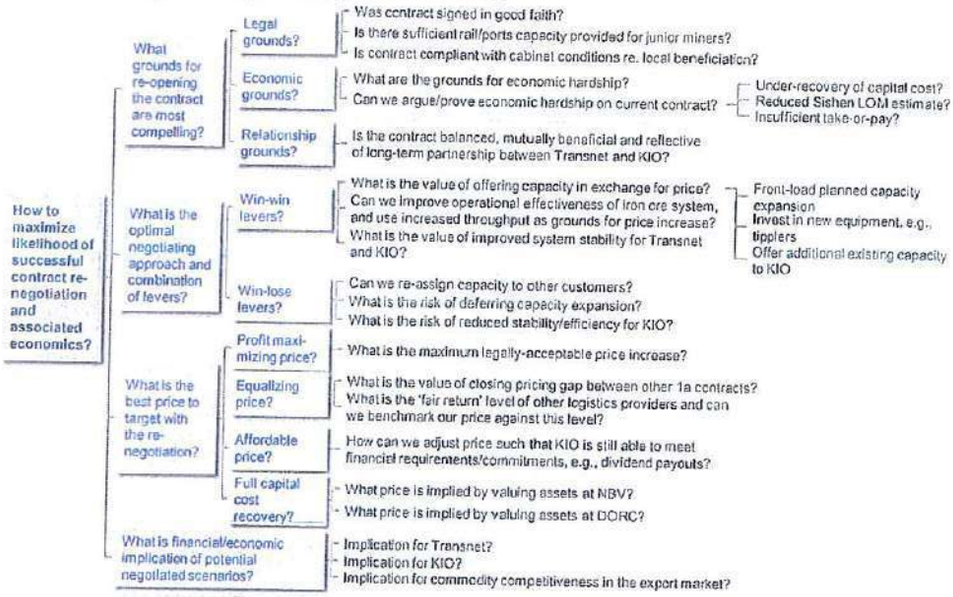
- What grounds for re-opening the contract are most compelling?
  - Legal, e.g., is there sufficient rail/ports capacity provided for junior miners? Is the contract compliant with cabinet conditions regarding local beneficiation? Is the price differentiation in line with Competition Law?
  - Economic, e.g., what are the grounds for economic hardship? Can we argue/prove economic hardship on current contract, e.g., under-recovery of capital costs? What is the shortfall of the affordable sustaining capital given the current tariff?
  - Relationship, Is the contract balanced, mutually beneficial and reflective of long-term partnership between Transnet and Kumba Iron Ore (KIO)?
- What is the optimal negotiating approach and combination of negotiation levers?
  - What win-win levers exist (if any)? E.g., additional capacity, operational improvements, improved stability/reliability?
  - What Win-lose levers exist? E.g., deferring capacity expansion
- What is the best price to target with the re-negotiation?
  - Profit maximizing?
  - Equalizing price? E.g., What is the 'fair return' level of other logistics providers and can we benchmark our price against this level?
  - Affordable price? E.g., how can we adjust price such that KIO is still able to meet financial requirements/commitments, e.g., dividend payouts?
  - Full capital cost recovery? E.g., based on Net Book Value (NBV)? Based on Depreciated Optimized Replacement Costs (DORC)?

- What are financial/economic implications of potential negotiated scenarios?
  - Implications for Transnet?
  - Implications for KIO?
  - Implications for commodity competitiveness in export markets?

The Exhibit below summarizes the approach:

EXHIBIT 1

We are exploring a comprehensive set of levers to increase likelihood of successfully re-negotiating the contract



SOURCE: Team

REGIMENTS CAPITAL McKinsey & Company | 11

Phase 2 (Setting up for Success & Operational plan) will deliver the following:

- Create alignment among key Transnet Executives on the fact-base for re-opening the contract (go-/no-go decision)
- Create alignment with the Shareholder on the requirements for re-opening the contract and the overall "business case" for South Africa
- Develop an operational improvement plan to create additional capacity of 1mt in the iron ore channel based on operational levers:
  - Rapid Operational Diagnostic from pit to port; diagnostic to be conducted collaboratively with concerned Transnet divisions (especially TFR, TPT, TNPA, TE), as well as customers and other potential partners in the channel
  - Identification of operational improvement levers and their expected capacity uplift
  - Identification of pre-requisites (e.g., opex/capex estimates), and feasibility timeline
  - Prioritization of levers and development of overall ops improvement road map
  - Sign-off of improvement plan by TPT COO or CFO and TFR GM of Iron ore business unit
- Develop negotiation tactics, including sign-off a negotiation mandate; set up of negotiation "war room" (like EPCM contract for manganese)
- Good setup for the negotiation through initial engagement with KIO (by Regiments)

We expect this Phase to last about 6-8 weeks, depending on the speed of engagement within Transnet and the Shareholder and the accessibility of key stakeholders for the operational diagnostic.

Phase 3 (Negotiation and signing of revised tariff agreement) will focus on supporting the preparation and execution of specific negotiation milestones and deliver the following:

- Ongoing leadership and expert support and guidance throughout the negotiation preparation and actual negotiation. This includes negotiation "role plays" to test the effectiveness of the overall negotiation approach and to anticipate potential counter arguments.
- More detailed analytics / modeling support for individual critical negotiation elements (e.g., developing the "open book" pricing model, should that strategy be followed). This support can range from a few days to a few months depending on the specific task at hand
- Ad hoc support (e.g., during negotiation) to quantify new negotiation levers that might come up throughout the negotiations and to support adjusting the overall strategy "on the go"

3 PRE REQUISITES

- Deliverable: Operations debottlenecking plan:
  - Alignment between all relevant Transnet stakeholders (e.g., TFR CE, TPT CE, TNPA CE, Head of IOM BU) with regard to the objective and approach of the Operational Diagnostic, and the support provided by the Consortium
  - Alignment with KIO (and if relevant other customers) with regard to the objective and approach of the Operational Diagnostic, and the support provided by the Consortium
  - Full access to relevant stakeholders and information on the ground
  - Regular (e.g., bi-weekly) steering committees incl. key Transnet stakeholders (e.g., GCFO, TFR CE, TPT CE, TNPA CE, Group Executive: Commercial) to align and unlock bottlenecks
- Deliverable: Setting up for success:
  - Planning based on a 6 months negotiation process
  - Monthly negotiation milestones presented (e.g., "open book" financial model developed, initial engagement with KIO held) to the Review Committee
  - Should the agreed milestones be executed in a satisfactory way, the setting up for success fee will be considered earned.
  - In the event that a portion of the contingent fee at stake is not earned in a given month, the consortium may propose additional future initiatives to recover the unearned portions in later months
- Deliverable: Contract negotiation
  - Commitment to follow the jointly developed negotiation strategy and engagement plan
  - There is only one negotiation outcome – we will not split out any efforts outside of this engagement and their contributions to achieving the negotiation outcome
  - Commitment by Transnet Executives to re-open the discussion and act within the requirements of the jointly agreed negotiation strategy, e.g., accepting short term volume losses on the iron ore line, and involve other stakeholders (e.g., DPE) on the negotiation strategy and the required support
  - In line with McKinsey' standard professional practices, McKinsey will stay in the background during the negotiations; at no point can Transnet disclose the support provided by McKinsey to its customer
- Overall governance
  - A review committee to be set up to review the performance of the contract; composition of review committee-two Transnet representatives (e.g. GCFO, CE TFR), one McKinsey representative, and one Regiments representative.
  - The Review Committee can agree to change the overall commercial arrangements underlying this engagement if required

- In the event that the pre-requisites are not put in place by Transnet at all or within a reasonable time frame calculated at the discretion of the Consortium (e.g., the Review Committee meeting is not being held), the respective fees are considered earned for the Consortium without further burden of proof
- In the event of unforeseen circumstances in material situations leading to project termination, significant shifts in strategy or operational philosophy, government interventions, fixed fees will be paid in full. Contingent fees will be paid as follows:
  - In respect of the Operational improvement plan: McKinsey has the right to complete this deliverable and have it signed off. Conditions for payment remain as per the below set forth in Annexure A;
  - In respect of the negotiation strategy: Payment is linked to achieving of milestones as outlined below set forth in Annexure A;.
  - Contract signing fee: Should Transnet sign the revised contract with KIO within 12 months of termination of this contract, payment will be a negotiated settlement based on where the termination occurred in the process. Contingent fees will be paid as a direct proportion of the planned project duration and the jointly agreed contribution of the consortium's contribution to achieving KIO contract sign off
  - Work may be terminated with one month's notice by either Transnet or the consortium. If work is terminated by Transnet (but the work is deemed satisfactory), outstanding fees are to be determined upon termination
- Transnet is obliged to notify the consortium should implementation of agreed initiatives be delayed, and allow for joint problem-solving on the rationale and alternatives to recover the deficit in opportunity.
- The consortium will be compensated for material delays caused by Transnet, limited to fixed fees.

4 PROJECT MANAGERS

Transnet Project Manager	**Divyesh Kalan**
Designation	GM: Corporate Accounts
Operating Division	Group Commercial
Address	38th Floor, 150 Commissioner Street, Johannesburg
Cell Phone	+27832625146
Telephone	
Fax	
Email	Divyesh.Kalan@transnet.net

Service Provider's Project Manager	Christina Planert
Designation	Principal, McKinsey & Company
Address	88 Stella Street, Sandown, Sandton 2198
Cell Phone	+27 82 329 8138
Telephone	+27 11 506 8138
Fax	+27 22 506 9138
Email	Christina_planert@mckinsey.com

5 ACCEPTANCE CRITERIA FOR DELIVERABLES

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

6 PROGRESS REPORTS AND REVIEW MEETINGS

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

7 FEES AND DISBURSEMENTS

7.1 Any authorised expenses / disbursements will be reimbursed, subject to the provisions of clause 10 *[Fees and Expenses]* of the Agreement as read with Annexure A hereto.

7.2 Payment terms are subject to clause 11 *[Invoicing and Payment]* of the Agreement as read with Annexure A hereto.

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

SIGNED for and on behalf of: **McKinsey, Incorporated**	**SIGNED** for and on behalf of: **Transnet SOC Ltd**
Signature	Signature .....
Name: VIKAS SEHGAL.	Name: ANOJ SINGH
Position: DIRECTOR.	Position: GCFO.
Date: 1 APRIL 2015	Date: 06/04/15
Place: JOHANNESBURG.	Place: JHB.

ANNEXURE A – Project Fees

The total value of this contract, including expenses and excluding VAT, is R 239 million (Two hundred and thirty nine million Rands). These fees break down and shall be subject to conditions of payment as follows:

- **Fixed fees of R34 million (including expenses, excl. VAT) for the successful delivery of Phase 1**
- **Contingent fees of R205 million (including expenses, excl. VAT) for the successful delivery of Phase 2 and 3** which break down as follows and shall be subject to the following conditions:
  - **R20 million (including expenses, excluding VAT) for satisfaction linked delivery of levers, negotiation 'war room' and negotiation set up.** The fees will be dependent on the achievement of negotiation-related milestones to satisfactory levels ('Setting up for success'), which the Review Committee will jointly agree.
    - The consortium will present a plan for negotiation milestones (e.g., "open book" financial model developed, initial engagement with KIO held). These will then be agreed by the Review Committee
    - Should the agreed milestones be executed in a satisfactory way based on pre-defined evaluation criteria, the contingent fee will be considered earned. If failure to deliver against the milestones can be clearly attributed to bottlenecks at Transnet (such bottleneck must be agreed by Transnet that Transnet was the cause thereof), rather than through the fault of the consortium, the contingent fee will also be considered earned.
    - Each month, a proportional amount of the milestone-related contingent fee for each party will be at stake. For this purpose the contingent-related engagement is considered to last 6 months.
    - In the event that a portion of the contingent fee at stake is not earned in a given month, the consortium may propose additional future initiatives to recover the unearned portions in later months. These recovery options would need to be agreed by the Review Committee
  - **R165 million (including expenses, excl. VAT) for the successful signing of a revised tariff agreement:** This fee portion is derived as a percentage of the upside over and above the baseline achieved through the contract re-negotiation over the remaining course of the contract duration (until FY2026/27).
    - Entry position of R115/t with payout of R165 million achieved at R145/t. The baseline tariff is determined as R115/t for FY14/15. This baseline will not be subject to escalation. The contract volume baseline is the current guaranteed volume level of 32 million tons (95% of contracted 33.7 million tons). The remaining contract lifetime is 12 years (from FY15/16 to FY26/27)
    - The calculation for up to a re-negotiated tariff for the 1a Contract of R145/t is based on 2.5% of the NPV of the upside calculated using the following formula: ([New tariff per ton] – [Contract tariff baseline per ton])* [Contract volume baseline] * [Contract lifetime years]
    - Specifically this means for the upside: (R145-R115)* 32 million tons * 12 years = R11.52 billion.
    - We will discount this upside using a discount rate of Transnet's cost of borrowing of 10%, using the SWAP curve to 2027. The resulting discounted upside is R6.544 billion
    - The consortium share is 2.52% of the discounted upside; i.e., specifically R165 million (incl. expenses, excl. VAT)
  - **Success fee of R20 million (including expenses, excl. VAT) to deliver an operational plan signed by TPT and TFR to deliver/unlock 1mt of additional export iron ore capacity**
    - Operational improvements to unlock 1mt that results in a revised tariff will be the responsibility of the consortium to plan and propose and for operational management at TFR/TPT to sign off and deliver

- The consortium will work with the respective Transnet stakeholders on conducting an operations diagnostic along the Iron Ore line to identify levers to increase capacity and volume performance, and will quantify the expected volume uplift
- The operational plan needs then to be signed off by TFR GM Iron Ore BU and TPT COO or CFO
- Payment is due on sign off of this plan
- Should a potential failure to achieve sign off be clearly attributed to bottlenecks at Transnet (such bottleneck must be agreed by Transnet that Transnet was the cause thereof), rather than through the fault of the consortium, the contingent fee will also be considered earned.

Contingent fees are due when the re-negotiated tariff has been signed; every R/t over and above the baseline is eligible for contingent fees as illustrated in the table below, which also includes all elements of the fees

Baseline R/t	Contracted volumes at 95% (mt)	New tariff R/t	Addl revenue pa baseline of R115/t	NPV addl revenue @ 10% over remaining period of the 1(a) contract – 12 years (R billion)	2.5% of addl NPV (R million)	Fixed fees (R million)	Satisfaction for successful negotiation set up (R million)	Success fees for signed off operational plan for 1 mt (R million)	Total (R million)
115	32.015	120	160.075	1.090	27.26	34	20	20	101.26
115	32.015	125	320.15	2.181	54.53	34	20	20	128.54
115	32.015	130	480.22	3.272	81.80	34	20	20	155.80
115	32.015	135	640.30	4.362	97.38	34	20	20	183.07
115	32.015	140	800.38	5.453	136.33	34	20	20	210.34
115	32.015	145	960.45	6.544	165.24	34	20	20	239.24

The total value of the contract will be subject to the following split:

Fixed Fee		Contingent fees	
McKinsey	Subcontractor	McKinsey	Subcontractor
58%	42%	41%	59%

The combined contract value fee split between McKinsey: Subcontractor is 43:57 (assuming achievement of full contingent fee level up to R145/t).

The fee allocations described above may shift if both Transnet and the consortium partners feel that a different allocation of resources from consortium members would materially improve impact for Transnet.

SUPPLIER DEVELOPMENT VALUE SUMMARY

Enterprise and Supplier Development Value	
McKinsey	Subcontractor
Fixed fee - 70%	Fixed fee - 50%
Contingent fee - 70%	Contingent fee - 30%

FOF-08-899

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 : **MANGANESE EXECUTION SUPPORT**

PURPOSE OF SUBMISSION

1. The purpose of the submission is to request approval of the Group Chief Executive to:
   1.1 Approve the resourcing strategy and remuneration model for the Manganese execution by accelerating and optimising thereby supporting the initiative to mitigate the EBITDA at risk by mobilising a team,
   1.2 Confining and awarding the services to support the internal team to McKinsey and Company and its BBBEE Consortium partners.

BACKGROUND

2. Anticipated volume recovery envisaged for the month of February and March 2014 is not materialising as evident in weekly performance reports and this is likely to continue into the medium term (2014/15 financial year) and will negatively impact achievement of budgeted EBITDA for 2014/15.
3. Based on the achievement of weekly volumes it is estimated that GFB volumes are likely not to exceed 89 mtpa compared to a budget of 95 mtpa contained in the 2014/15 Corporate plan.
4. This will thus result in 6 mtpa at risk and a concomitant EBITDA at risk of R1,5 billion for 2014/15.
5. The 2014/15 EBITDA at risk was presented at the March Group Exco (refer to Annexure A). At that meeting the Exco accepted the risks and requested the GCFO to identify mitigating strategies to address the risks presented in order to achieve the financial performance and seven year MDS targets contained in the Corporate Plan.
6. One of the initiatives to mitigate the risk, in Annexure A, is the Manganese execution support.
7. Great progress has been made on Manganese so far to ensure that Transnet creates and captures value from this business opportunity.
8. However, this is the largest programme in recent Transnet (R27 billion ETC) history and the team is inexperienced in delivering a project of this magnitude.
9. Furthermore, the contractor market has become more commercially sophisticated and technically weak, resulting in massive risk to the owner – e.g., claims at Medupi.
10. Managing Manganese entails hundreds of interfaces and managing an EPCM/Transnet organisation of up to 400-500 people at its peak of construction.

DISCUSSION

11. We believe that it will be critical to support the Programme Director to ensure that Transnet starts the programme successfully - Failure as the first mega project execution under MDS is not an option.
12. The value proposition of this support is as following:
    - 12.1. **Set up owner's team & manage performance**
        - 12.1.1. Select suitable Owner/EPCM relationship model based on global benchmarks and local context to develop an effective Owner's team
        - 12.1.2. Assist with selection of staff for key roles in the structure
        - 12.1.3. Develop interaction models, define roles & responsibilities, set up and track personnel KPIs
    - 12.2. **Optimise procurement & contracting strategy for time and cost**
        - 12.2.1. Optimise lengthy approvals & governance for high spend contracts & improve CapEx material procurement/delivery processes
        - 12.2.2. Leverage global sourcing centres to identify and shortlist suppliers to improve on price and supplement short material supply
        - 12.2.3. Optimise for price by pressure-testing RFQs to eliminate redundant items and leveraging volumes
        - 12.2.4. Translate aligned set of best practices into a contracting strategy aligned with incentives, that drives behaviour to the project level
        - 12.2.5. Set up a contract management infrastructure that will include a "best practices claims and change management process"
    - 12.3. **Optimise execution and transition to operations**
        - 12.3.1. Pressure test pre-execution and execution schedules against international benchmarks and norms from 1000+ projects
        - 12.3.2. Identify and solve potential implementation roadblocks in the execution schedule
        - 12.3.3. Implement control tower and project performance management systems
        - 12.3.4. Set-up a world-class risk and issue management strategy and processes
        - 12.3.5. Set up operational transition planning
    - 12.4. **Bring transparency and visibility that will allow management decisions and risk management through**
        - 12.4.1. Best practice approaches, tools and people, proven in mega-project delivery from 100's of clients with 1,000's of projects; an understanding of how the largest companies on earth do projects
        - 12.4.2. Unparalleled view of what to do right from the start - Seen the "good" and the "bad"; helped clients recover "disaster" projects
13. The following project execution support in the short and medium term is therefore required:

14. Pre execution support

- 14.1. Procurement
    - 14.1.1. Process development/optimization
    - 14.1.2. OD procurement optimisation
    - 14.1.3. Large packages procurement optimisation
    - 14.1.4. Tracking templates
    - 14.1.5. Prioritise major categories based on spend and critical path
    - 14.1.6. Pre-qualify alternative suppliers up to LOI

15. Contracting

- 15.1.1. Optimize tender and due diligence process to evaluate and appoint EPCM and/or EPCs and subcontractors in order to accelerate selection/appointment
- 15.1.2. Contract structuring to include unit costs and incentives for tracking

15.1.3. Setup of contract management infrastructure, e.g., team, tools, processes
15.1.4. Finalise customer volume commitments and contracting (MECA)

16. Organisation set up

16.1.1. Set-up and capacitate owners team
16.1.2. Define roles and responsibilities
16.1.3. Define KPIs and reporting
16.1.4. Define internal and external interfaces supported by structured dialogues
16.1.5. Identify stakeholders and execute plan
16.1.6. Set-up capability building processes
16.1.7. Key roles identification and assessment

17. This approach has been discussed and agreed with Mr Siyabonga Gama: TFR CE and Mr. Tau Morwe: TNPA CE.
18. There is a strong rationale for sole sourcing McKinsey and Company
    - 18.1. A service provider to support the Manganese execution is needed immediately.
    - 18.2. A new service provider would delay the project – appointing McKinsey will mitigate risks and eliminate delays.
    - 18.3. Proven track record at Transnet of reducing capital cost on large capital projects
    - 18.4. Proven track record in a number of international large scale rail and other infrastructure projects during execution
19. In addition, McKinsey's mega-project client service in last 3 years totals USD731 Bn of total project cost in 84 projects across industry sectors
    - 19.1. Their capital productivity practice has had 61 Fortune Global 500 clients in the last 3 years, and about 300 engagements last year in a broad range of industries and geographies
    - 19.2. Has >100 experienced senior capital productivity practitioners globally
    - 19.3. Has a proven track record of value creation (~ 30%* on average)
    - 19.4. Offers an independent view of the project on business issues (vs. suppliers) based on fact-based analysis and broad experience
    - 19.5. Integrates the technical, market, and managerial aspects of the project into a consolidated business plan
    - 19.6. Systematically brings different concepts at plant, system and unit level, pushing for their objective assessment
    - 19.7. Incorporates experience from capital projects with comparable scale and complexity
    - 19.8. Acts as the trusted owner's representative with a top-management view, and can also work equally well at the project manager level
    - 19.9. Has the ability to join forces with external firms (e.g., technical consultants)
20. McKinsey understands the underlying economics of the global and local industry in detail as well as the strategic trends in the iron ore and manganese industry.
21. McKinsey also understands Transnet's underlying infrastructure program and has assisted in the development and roll out of the project factory and capital prioritisation tools.
22. In addition, Transnet has limited options to deliver manganese completely in-house:
    - 22.1. Under-resourced owners team. This remains an issue and capacity will have to be bridged until a fully functioning team is set up (in accordance with Platinum Standard)
    - 22.2. Lack of established standards and methodologies to run effective control tower and KPI tracking, counter claims management, and managing EPCM interfaces

GROUNDS FOR CONFINEMENT:

23. 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;

a) 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;
b) 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
c) 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.

24. Specific emphasis is placed on ground (b) and (d) due to the potential business risks associated with approaching the market on an open tender process as well as the credentials listed above.

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;	• The EBIDA at risk was only identified after the 2014/2015 Corporate plan had been completed; taking into account the impact of the locomotive deposits. • These risks were presented to Transnet Group EXCO in March 2014. • If the mitigation plans are not put in place immediately the 2014/2015 Corporate plan, capital plan and funding pre-requisites will not be met placing the entire MDS at risk. • Mitigating the impact of lower than plan throughput tempo requires an urgent and immediate mitigation action which has an opportunity to deliver the required results in the 2014/15 Corporate Plan.
d. Goods and services being procured is highly specialised and largely identical to work done before	• A service provider to support the Manganese execution is needed immediately. o Based on the current project plan, immediate ramp-up of the owners team is on the critical path, therefore no time for further delay that will result in volume and revenue loss o Being the first and the largest of Transnet's mega projects going through execution, it is critical that this project is flawlessly executed – sets an example –

	and reduce risk of further impact on Transnet's capital portfolio affordability o Based on the owners team requirement instituted by Platinum Standard (implementation led by McKinsey), Transnet's identified skills gap shortage of 1,200 specialised resources needed for capital delivery significantly need to be addressed – and therefore ramping up manganese owners team with special skills is of utmost importance. • McKinsey has jointly worked with Transnet in creating and approving the business case and therefore understands all the value drivers and risks contained therein. The time required for a new provider will delay the execution • McKinsey has extensive understanding of the Manganese programme and its interdependencies in the context of Transnet's broader capital portfolio, i.e., locomotives, Eskom and common user facility • McKinsey has established working relationships with asset owners (TFR, TNPA) and detailed understanding of their schedule and volume requirements • McKinsey has a proprietary iron ore and manganese demand and supply model that Transnet has used previously to determine its pricing methodology. This tool is available from only one supplier i.e., McKinsey.
d. Approaching the market would result in wasted money and time	• Any new service provider would have to develop its own methodologies and tools as well as obtain operational experience within a capital execution environment. • Due to the specialised nature of the work a new service provider will be required to understand the intricacies of Transnet's operations, capital programme and overall MDS.

25. Additionally, due to the confidential nature of the information, the engagement cannot be subject to an open tender process. In terms of para 15.1.4 (c) of the revised PPM, in instances where a confinement is confidential, the GCE may approve such confinement without it being routed via any other signatory.

ENTERPRISE AND SUPPLIER DEVELOPMENT AND BBBEE

26. The work will be carried out internally supported with a team of consultants (McKinsey & Company and its Consortium partners). The external consultants fees for the scope above will be based on a potential maximum fee of R100 million for the first phase and a potential maximum fee of R50 million for the second phase. The total potential fee will not exceed R150 million.

27. McKinsey and Company will engage a Consortium Partner who is Black owned and this Consortium partner will perform a percentage of the work under the guidance of Mckinsey and Company.
28. The first phase fee of R100 million excluding expenses and VAT will be shared on a 40%/60% split with Consortium partners, who will be allocated 60% of the fees. The second phase portion of R50 million excluding VAT and expenses will be shared a 40/60% split with the Consortium partners, who will be allocated 60% of the fees .
29. McKinsey and company will be required to provide a supplier development plan whereby they commit 70% of the contract value for the phase 1 fee and 70% of the phase 2 fee to enterprise and supplier development value, which will be set out in an agreed supplier development plan. Preferential procurement and use of empowered consortium partners will contribute to this value. This will subject to negotiation with the service providers
30. The consortium partner will be required to provide a supplier development plan whereby they commit 50% of their contract value for the fixed fee and the contingent fee to enterprise and supplier development value, which will be set out in an agreed supplier development plan. 30% of the contract value should be targeted at downstream supplier development to SMME's (EME's and QSE's), preferably black owned, Black women owned, youth owned and owned by people living with disabilities. This will subject to negotiation with the service providers
31. McKinsey and Company and the consortium partner will be required to provide an acceptable BBBEE improvement plan.

FINANCIAL IMPLICATIONS

32. The external service provider's fees for the scope above will be based on a maximum potential fee of R150 million for a period covering 2014/15 to the completion of the program.
33. This will comprise of R100 million excluding VAT in fees estimated for the first 12 months and R50 million excluding VAT in estimated fees for the next 18 months or until completion of the project.
34. The fees will be aligned to specific delivery and commissioning milestones.
35. The total fixed fees of R150 million will be shared on a split 40/60% with the Consortium partners, who will be allocated 60% of the total fees.
36. This split of fees for McKinsey and consortium partners will be as follows:

Period	McKinsey	Consortium partner
First 12 months of support (till EPC contractor appointment) – larger team	R40m	R60m
Next 18 months or until the end of the project - smaller team	R20m	R30m
Total	**R60m**	**R90m**

37. The fee and expenses will be in accordance with the National Treasury instruction note. The expenses will be on actual costs incurred aligned with the instruction note.

BUDGET IMPLICATIONS

38. The amount of R50 million has been budgeted for in the 2014/15 Group Finance capex budget.
39. The additional fees of R100 million has not been budgeted, However, given the nature of the external support and FEL4 status of the project, the balance of the capex budget will be funded through the project budget and be secured through efficiencies delivered through the support.

RECOMMENDATION

40. It is recommended that the of Group Chief Executive:
    - 40.1. Approve the resourcing strategy and remuneration model for the Manganese execution by accelerating and optimising thereby supporting the initiative to mitigate the EBITDA at risk by mobilising a team,
    - 40.2. Confining and awarding the services to support the internal team to McKinsey and Company and its BBBEE Consortium partners.

Compiled by

Anoj Singh
Group Chief Financial Officer
Date: 2/6/2014

Approved/ ~~Not Approved~~

Brian Molefe
Group Chief Executive
Date: 3.4.14.

TRANSNET SOC LTD

[Registration No. 1990/000900/30]

REQUEST FOR PROPOSAL [RFP]

FOR THE PROVISION OF PROFESSIONAL SERVICES TO SUPPORT TRANSNET WITH THE MANGANESE EXECUTION INITIATIVE

FOR A PERIOD OF 30 MONTHS

RFP NUMBER	**GSM/14/04/1039**
ISSUE DATE:	**28 MAY 2014**
CLOSING DATE:	**10 JUNE 2014**
CLOSING TIME:	**12:00**
BID VALIDITY PERIOD:	**90 days from Closing Date**

McKinsey&Company

Transnet SOC Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177
Supplier code: 72063827

McKinsey and Company
VAT no: 4710150048

Invoice: 5756

Charge code: TRX078

Payment due within 30 days of invoice date

30 May 2014

Professional fees: 05 May 2014 to 30 May 2014	R 5,419,838.00
Out of pocket expenses and support services	R 812,976.00
Sub Total	R 6,232,814.00
Vat at 14%	R 872,593.96
TOTAL	R 7,105,407.96

TRANSNET
PAID

Payment may be made by direct transfer to:

Account Name:	McKinsey Incorporated
Account Number:	421061812
Branch:	019205
Bank name and address:	The Standard Bank of South Africa Ltd. Sandton Branch 156 Fifth Street Sandton, 2196 South Africa

Please quote invoice number and charge code reference on transfer and remittance.

Please note:
Standard terms provide for invoice payment upon receipt. Interest will be charged on balances outstanding 30 days after the invoice date, at a rate of 1% per month or as otherwise agreed.

5200467775

15/07/14

McKinsey&Company

30 May 2014

Anoj Singh
Group Chief Financial Officer
Transnet SOC Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg

CC: Mohammed Mahomedy

Dear Anoj,

Please find attached invoice 5756, issued on 30 May 2014 for our professional fees and out of pocket expenses (@15%) and support services for the period 05 May 2014 to 30 May 2014 relating to our work on Manganese owners team support. This engagement was requested by Transnet in your letter to McKinsey (David Fine) issued on April 10th.

The value of the Manganese Execution Support initial phase until end of July 2014 is anticipated to R18.7 million including expenses but excluding VAT, of which R6.2 million (33%) has been invoiced to date, including this invoice.

The deliverables for this engagement are listed below, with percentage completion. This is the first invoice for this engagement.

Deliverable	% completed as of this invoice	% completed as of previous invoice
Review and adjustment of EPCM tender documents	100%	N/A
Develop owners team organisation structure	100%	N/A
Global benchmark on contract performance bonds	100%	N/A
Supply chain/procurement diagnostic with recommended changes	30%	N/A
Integrated Mn control tower and governance support	30%	N/A
Staffing up the owners team: define process and identify risks	30%	N/A
Contracting due diligence and EPCM evaluation support	5%	N/A

The following bottlenecks also need to be addressed by Transnet in order to ensure continued progress:

- Urgently approve Manganese owners team budget

52/467773

McKinsey, Incorporated, trading as McKinsey & Company
Sandown Mews East 66 Stella Street Sandown Sandton 2196 PO Box 652767 Benmore 2010 South Africa
Telephone +27 (0) 11 506 6000 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 1995/002396/10 Directors LJH Arwidi (Swedish) W Choi (South Korean) IRA Munshi PM Parbhoo SH Wu

McKinsey&Company

- Urgently approve PD formal position and get commitment from ExCo to support the PD on the integrated Manganese Programme
- Urgently allocate a full time HR person on the Manganese team to drive secondment/hiring process for key roles

Since the last invoice, the resources allocated to this engagement included:

Name	Role
Jim Banaszak	Expert – contracting, owners team, control tower
Lukasz Abramovicz	Expert - contracting
Homayoun Zarrinkoub	Expert - contracting
Stuart Shilson	Expert – mega project support
Vikas Sagar	Principal
Prakash Parbhoo	Principal
Fabio Pedrazzi	Associate Principal
Alex Katsanos	Engagement Manager
Falco Meuser	Consultant
Uhuru Malebo	Consultant
Mandisa Mazibuko	Consultant
Yaseen Jhaveri	Consultant

In addition various executive assistants, researchers and visual graphics specialists have supported the team remotely.

For your reference, the physical original of this invoice and memo have been couriered to Mamorena Monare (Mamorena.Monare@transnet.net, 0121 308 1782, 33rd Floor Carlton Centre) on 2 June 2014.

Kind regards,

Prakash Parbhoo
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 LJH Arwidi (Swedish) W Choi (South Korean) IRA Munshi PM Parbhoo SH Wu

McKinsey&Company

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Homayoun Zarrinkoub	Expert - contracting
Stuart Shilson	Expert – mega project support
Vikas Sagar	Principal
Prakash Parbhoo	Principal
Fabio Pedrazzi	Associate Principal
Alex Katsanos	Engagement Manager
Falco Meuser	Consultant
Uhuru Malebo	Consultant
Mandisa Mazibuko	Consultant
Yaseen Jhaveri	Consultant

In addition various executive assistants, researchers and visual graphics specialists have supported the team remotely.

For your reference, the physical original of this invoice and memo have been couriered to Mamorena Monare (Mamorena.Monare@transnet.net, 0121 308 1782, 33rd Floor Carlton Centre) on 2 June 2014.

Kind regards,

Prakash Parbhoo
Principal

FOF-08-911

G O O D S R E C E I P T S L I P 5000516179/0001

Goods receipt date : 15.07.2014
Current date : 15.07.2014

Plant : 4000
Description : Group Services

Vendor : 0001000316 Delivery note: 5756
Name : MCKINSEY AND CO
PO : 4500250319/00010
Buyer Name : Duran Balbathur Telephone : 011 308 1087

Material :
MPN :
Description : Professional Fees: 05 May 2014 to 30 May

Quantity : 1 EA

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

Recipient : Mamorena
Unloadg. point: Floor 33
Cost center : 0001002040

Issued by : 0137696 S I G N A T U R E

TRANSNET

AGREEMENT

Entered into by and between

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

And

McKINSEY INCORPORATED (Reg. Nr. 1995/002398/10)

FOR THE PROVISION OF SERVICES RELATED TO: RFP GSM/14/04/1039: Provision of Professional Services to Support Transnet with the Manganese Execution Initiative for a period of 30 months

Agreement Number	**GSM/14/04/1039**
Commencement Date	**09 April 2014**
Expiry Date	**08 October 2016**

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1 INTRODUCTION

This Agreement is entered into by and between:

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

And

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

NOW THEREFORE, IT IS AGREED:

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

1.2 The Service Provider hereby undertakes to render the Services provided for herein, as formally agreed between the Parties and in accordance with the Work Order(s) issued as schedules to this Agreement.

2 DEFINITIONS

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

2.1 **AFSA** means the Arbitration Foundation of Southern Africa;

2.2 **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, including the Work Order(s), specifications for the Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed in writing between the Parties], which collectively and exclusively govern the provision of Services by the Service Provider to Transnet;

2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by Transnet to give effect to its obligations under this Agreement owned in whole or in part by or licensed to Transnet or its affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement;

2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;

2.5 **Commencement Date** means **09 April 2014**, notwithstanding the signature date of this Agreement;

2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

a) Information relating to methods of operation, data and plans of the disclosing Party;

b) The contents of this Agreement;

c) Private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;

d) Any information disclosed by either Party and which is clearly marked as being confidential or secret;

e) Information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;

f) Information relating to the past, present and future research and development of the disclosing Party;

g) Information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;

h) Information contained in the software and associated material and documentation belonging to the disclosing Party;

i) Technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;

j) Copyright works;

k) Commercial, financial and marketing information;

l) Data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;

m) Plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;

n) Information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and

o) Information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

2.7 **Contract Manager** means the person/s appointed by either party to manage the implementation of the agreement;

2.8 **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;

2.9 **Default** means any breach of the obligations of either Party [including but not limited to fundamental breach or breach of a fundamental term] or any Default, act, omission, negligence or statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of this Agreement and in respect of which such Party is liable to the other;

2.10 **Deliverable(s)** means any and all reports, analyses or other such materials furnished by the Service Provider to Transnet in relation to the Services;

2.11 **Designs** mean registered Designs and/or Design applications as defined in the Designs Act, 195 of 1993, and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;

2.12 **Fee(s)** shall mean the agreed Fees for the Services to be acquired from the Service Provider by Transnet, as detailed in the Work Order(s), issued in accordance with this Agreement;

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

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

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

2.16 **Materials** means the Deliverables and, the Service Provider Materials;

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

2.18 **Party** means either one of the Parties;

2.19 **Patents** mean registered Patents and Patent applications as defined in the Patents Act, 57 of 1978, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;

2.20 **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;

2.21 **Personnel** means any partner, employee, agent, consultant, independent associate or supplier, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;

2.22 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services;

2.23 **Service(s)** means scope of services as defined in Schedule 1;

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 including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques analyses, know-how, tools, frameworks, models and industry perspectives used and/or developed by the Service Provider in connection with the Services;

2.27 **South Africa** means The Republic of South Africa as constituted from time to time

2.28 **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;

2.29 **Third Party Material** means software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Service Provider in the performance of the Services;

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

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

2.32 **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, a specimen of which shall be appended to this Agreement.

3 INTERPRETATION

3.1 Clause headings in this Agreement are included for ease of reference only and do not form part of this Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.

3.2 Any term, word, acronym or phrase used in this Agreement, other than those defined under the clause heading "Definitions" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in this Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.

3.3 A reference to the singular incorporates a reference to the plural and *vice versa*.

3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.

3.5 A reference to a particular gender incorporates a reference to the other gender.

4 NATURE AND SCOPE

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

4.2 Such Purchase Orders shall be agreed between the Parties from time to time, subject to the terms of the relevant Work Order(s).

4.3 Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.

4.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Work Order(s), in accordance with procedures set out in clause 30 *[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, failing which the proposed amendment shall lapse forthwith.

4.5 Insofar as any term, provision or condition in the Work Order(s) conflicts with a like term, provision or condition in this Agreement, or where this Agreement is silent on the matter, the term, provision or condition in this Agreement shall prevail, unless such term or provision or

condition in this Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

4.6 The Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

5 AUTHORITY OF PARTIES

5.1 Nothing in this Agreement will constitute or be deemed to constitute a partnership between the Parties, or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.

5.2 Neither Party shall be entitled to, or have the power or authority to enter into an agreement in the name of the other; or give any warranty, representation or undertaking on the other's behalf; or create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

6 WARRANTIES

6.1 The Service Provider warrants to Transnet that:

a) It has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representatives of the Service Provider;

b) It will discharge its obligations under this Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;

c) It will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations; and

d) The use or possession by Transnet of any Service Provider Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.

6.2 The Service Provider warrants that it will perform its obligations under this Agreement in accordance with the service levels as defined in the relevant schedule. Transnet may at its reasonable discretion audit compliance with the service sevels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services or the manner in which the Service Provider ordinarily conducts business. Without prejudice to clause 6.3 below, in the event that the Service Provider fails to meet the service sevels, Transnet may claim appropriate service credits or invoke retention of Fees as detailed in the relevant schedule and/or Work Order.

6.3 The Service Provider shall, in accordance with the Service Provider's document retention policies, establish and maintain a secure file containing a copy of any presentation, progress review, report or other document furnished to Transnet by the Service Provider in connection with the Services, together with any working papers necessary to support its conclusions or analyses (collectively, the "Working Papers File"). Transnet may, at its own cost, inspect the Working Papers File at any time, during the five (5) year period from the end of the calendar year in which the relevant Services are completed or terminated, solely for the purpose of determining whether the Service

Provider performed the Services in accordance with the Work Order. Any information furnished in connection with this provision shall be kept confidential in accordance with this Agreement.

6.4 The Service Provider warrants that for a period of 90 [ninety] 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] days of notification by Transnet.

6.5 The Service Provider will remedy any defect within 30 [thirty] days of being notified of that defect by Transnet in writing.

6.6 The Service Provider will not be liable to remedy any problem arising from or caused by Transnet's use of the Deliverables in any way not intended by the Work Order or any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.

6.7 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.6 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 30 *[Amendment and Change Control].*

6.8 The Service Provider further warrants that:

a) it has, using the most up-to-date software practicably and reasonably available to it, tested for [and deleted] all viruses identified by the Service Provider in the Service Provider Materials at the date of the relevant Work Order; and

b) At the time of delivery to Transnet, the Service Provider Materials and Deliverables do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.

6.9 The Service Provider agrees that, in the event that a virus is found, it will use its reasonable endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that 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.

6.10 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with this Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

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

6.12 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a

review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall make senior Personnel available to Transnet, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

7 TRANSNET'S OBLIGATIONS

7.1 Transnet undertakes to promptly comply with any reasonable request by the Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Services as may be necessary for the Service Provider to perform the Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Service Provider of its confidentiality obligations under this Agreement.

7.2 The Service Provider shall give Transnet reasonable notice of any information it requires in accordance with clause 7.1 above.

7.3 Subject to clause 15 *[Service Provider's Personnel]*, Transnet agrees to :

a) provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under this Agreement; and

b) perform any tasks or responsibilities assigned to Transnet and notify the Service Provider of any issues or concerns Transnet may have relating to the Services.

8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

8.1 The Service Provider shall:

a) Respond promptly to all complaints and reasonable enquiries from Transnet;

b) Inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services;

c) Conduct its business in a professional manner that will reflect positively upon the Service Provider and the Services;

d) Keep full records clearly indicating all transactions concluded by the Service Provider relating to the performance of the Services and keep such records for at least 5 [five] years from the date of each such transaction;

e) Obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Service Provider;

f) Observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993;

g) Comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance that are applicable to the Service Provider and performance of the Services; and

h) Ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Verification Certificate, for the duration of this Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it

may have in terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.

8.2 The Service Provider acknowledges and agrees that it shall at all times:

a) Render the Services and perform all its duties with honesty and integrity;

b) Communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;

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

d) Use its reasonable endeavours and make every diligent effort to meet agreed deadlines;

e) Treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;

f) Practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination [as further referred to in clause 24 – *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 therefore 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 accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;

j) Not mislead Transnet or its Personnel, whether by act or omission;

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

l) Immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services.

9 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 Request for Proposal GSM/14/04/1039 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, upon request by Transnet, submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE

Act and proof thereof at the beginning of March each year during the currency of this Agreement.

c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:

(i) a change in the Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and

(ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Service Provider's B-BBEE status.

d) In the event there is a change in the Service Provider's B-BBEE status, then the provisions of clause 9.1 (c) 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 provided Transnet with a B-BBEE Improvement Plan to indicate the extent to which their B-BBEE status and the elements of the B-BBEE scorecard will be maintained or improved over the contract period, as per Annexure D of the RFP.

b) The Service Provider shall, for the duration of this Agreement, comply with the B-BBEE Improvement Plan.

c) The terms of the B-BBEE Improvement Plan and monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in such B-BBEE Improvement Plan.

d) Notwithstanding the aforegoing, the Service Provider may request that certain initiatives in the plan be replaced with other initiatives if the planned initiatives are found to be impossible, impractical or unduly burdensome to deliver. The black ownership percentages committed may not be changed. Such a request must show that the replacement initiatives must still strive to achieve the same levels of transformation and empowerment as the initial initiative and may not be less in terms of monetary or deemed monetary value of the original initiative. Transnet must agree to the change in writing which must be approved by the Transnet Group Chief Supply Chain Officer.

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) days from the signature date of the contract.

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) days as aforesaid (or such later date as Transnet may consent to in writing if delays are caused by unforeseen factors or delays caused by Transnet).

c) The Service Provider's Implementation Plan shall include, but not be limited to Transfer of Technology & Intellectual Property Rights, New skills development, Job creation and Enterprise and Supplier Development.

d) The Service Provider must use an alternate Subcontractor or Subcontractors if the primary selected Subcontractor fails to deliver the required services or at the required quality level. Transnet must agree to the alternate Subcontractor in writing.

e) The Service Provider must provide a list, as part of the Supplier Development Implementation Plan, of the alternate Subcontractors that they will utilise if the primary selected Subcontractor fails to deliver the required services or at the required quality level.

f) 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 Implementation Plan

g) The end date of the Implementation Plan may be later than the end date of the Services provided in terms of this contract.

h) The Service Provider may request that certain initiatives in the Implementation Plan be replaced with other initiatives if the agreed initiatives are found to be impossible, impractical or unduly burdensome to deliver, or will not meet the desired intention of the initiative. Such a request must show that the replacement initiatives will still strive to achieve the same levels of transformation and empowerment and economic development as the initial initiative and may not be less in terms of monetary or deemed monetary value of the original initiative. Such a replacement initiative will not reduce the overall percentage of Supplier Development value as in the original Implementation Plan. Transnet must agree to the replacement initiative in writing. There will be no additional cost for Transnet with regards to any replacement initiative.

i) Transnet Group Chief Supply Chain Officer will sign the Implementation Plan and any amendments to it.

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

b) The above will be provided in terms of quarterly reporting on the Service Providers commitment to Green Economy and their Carbon Footprint measured against this contract.

9.5 **Reporting**

a) The Service Provider shall monitor, audit, and record in an auditable manner, its own implementation and compliance with the B-BBEE Improvement Plan and the Implementation Plan and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning the implementation of the B-BBEE Improvement Plan and the Implementation Plan.

b) The information that shall be made available will be all the information that relates to any initiative in the Implementation Plan, the B-BBEE improvement plan and the Current and Future B-BBEE certificates of the Service Provider.

c) The Service Provider shall, every 3(three) months from the Commencement Date and within 7 (seven) days of the end of the calendar month of that 3 (three) months period, provide Transnet with a report (for monitoring purposes only) in respect of each of the undertakings stipulated in this clause.

d) Transnet, through its Supplier Development division, shall, every 3 (three) 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.

e) The Service Provider shall attach adequate proof to enable Transnet to verify compliance with the B-BBEE Improvement Plan and Implementation Plan.

f) 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 Integrated Supply Chain Management Department (Supplier Development specialist), 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 Implementation Plan and the extent, if any, to which the Service Provider has not so complied.

g) Without prejudice to the Transnet's rights under this Agreement:

(i) if the Contract Manager and/or Transnet's Supplier Development specialist reasonably considers that the Service Provider is not at any time complying with 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 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.

h) In the event the Service Provider is found to be fraudulent in submitting the B-BBEE Improvement Plan and/or the Implementation Plan, 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 clause 19.

i) 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 Implementation Plan 3 (three) months before the Termination Date.

9.6 **Penalties**

Non Compliance Penalties:

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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 Implementation Plan, the Service Provider shall, subject to Clause 9.6 d) ***[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) below.

(i) Non Compliance Penalties shall be calculated as a percentage of the Contract Value and accrue at the Applicable Rate per month until:

- the date on which the Service Provider has remedied such Non Compliance by complying with the Implementation Plan and/or the B-BBEE Improvement Plan (as applicable); or if earlier
- the Agreement being terminated.

Applicable Rates of Non Compliance Penalties (for Large Enterprises Only):

b) In relation to the Implementation Plan, Non Compliance Penalties shall apply as follows:

(i) 100% of the undelivered portion of Supplier Development commitments to be set off against any current or future payments due to the Service Provider.

(ii) The Service Provider may request that certain Supplier Development value in terms of subcontracting be waived from the value of the penalty if the Subcontractor fails to deliver the required Services at the right level of quality and the Service Provider utilised an alternate Subcontractor and this caused delays in the delivery of the Implementation plan which would cause Non Compliance Penalties to be raised. The Service provider should make such representations in writing and provide suitable evidence, based on the conditions set out above, for Transnet to waive the requested portion of penalties of the undelivered Supplier Development value relating to subcontracting. The Service Provider must have made every effort to have brought the alternate Subcontractor on board as soon as possible to avoid unnecessary delays and the associated penalties.

c) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall accrue at the following Applicable Rates:

(i) for the first month after the deliverables of the B-BBEE Improvement plan are due (or part thereof), a rate of 1.0% (one percent);

(ii) for the second month after the deliverables of the B-BBEE Improvement plan are due (or part thereof), a rate of 1.5% (one and a half percent);

(iii) for the third month after the deliverables of the B-BBEE Improvement plan are due (or part thereof), a rate of 2.0% (two percent);

(iv) for the fourth month after the deliverables of the B-BBEE Improvement plan are due (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 after the deliverables of the B-BBEE Improvement plan are due, a rate of 3% (three percent).

Non Compliance Penalty Cap (for Large Enterprises):

d) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties under this clause shall not exceed:

(i) in the case of the B-BBEE Improvement Plan, 5% (five percent) of the Fees, (each a Non Compliance Cap);

Non Compliance Penalty Certificate:

e) 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.

f) 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 Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non Compliance Penalties:

g) Subject to Clause 9.6 (e) and Clause 9.6 (f)(ii), 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.

h) Subject to Clause 9.6 (e) and Clause 9.6 (f), the Service Provider shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.

i) Should the Service Provider fail to pay any Non Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.

j) The Non Compliance penalties set forth in this clause are stated exclusive of VAT. Any VAT payable on Non Compliance penalties will be for the account of the Service Provider.

10 SERVING COMPETITORS

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

11 FEES AND EXPENSES

11.1 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.

11.2 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 reasonably evidenced and invoiced to Transnet at cost].

11.3 The Parties have agreed that the fees are inclusive of expenses.

11.4 All Tax Invoices relating to Fees, and expenses and, where appropriate, shall include VAT as a separate item.

12 INVOICING AND PAYMENT

12.1 Transnet shall pay the Service Provider the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of this Agreement.

12.2 Transnet shall pay such amounts to the Service Provider, upon receipt of a valid and undisputed Tax Invoice as specified in the Work Order appended hereto, once the undisputed Tax Invoices, or such portion of the Tax Invoices which are undisputed become due and payable to the Service Provider for the provision of the Services, in terms of clause 12.4 below.

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

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

12.5 Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 12, 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.

12.6 Should the Service Provider require that Transnet pay the Subcontractor directly, the Service Provider must request this from Transnet in writing. If Transnet agrees to pay the Subcontractor directly the Service Provider still remains responsible for all obligations related to this contract including the management of, and the performance of the Subcontractor. The Service Provider shall verify the correctness of the Subcontractors invoice and confirm that all the deliverables have been delivered.

13 FEE ADJUSTMENTS

13.1 Subject to Clause 11.1, the Fee is fixed for the duration of the Agreement at a capped value as detailed in the relevant schedule or Work Order.

14 INTELLECTUAL PROPERTY RIGHTS

14.1 **Title to Confidential Information and Intellectual Property**

a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Service Provider acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual

Property that is proprietary to Transnet. For the avoidance of doubt, all the Service Provider Materials shall remain vested in the Service Provider.

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

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

14.2 **Unauthorised Use of Confidential Information**

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

14.3 **Unauthorised Use of Intellectual Property**

a) The Service Provider agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Service Provider acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.

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

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

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

15 SERVICE PROVIDER'S PERSONNEL

15.1 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.

15.2 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.

15.3 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.

15.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under this Agreement.

15.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a suitable replacement.

16 LIMITATION OF LIABILITY

16.1 Neither Party excludes or limits liability to the other Party for:

a) Death or personal injury due to negligence; or

b) Fraud

16.2 Each of the Parties shall indemnify and keep the other Party (the "**Indemnified Party**") indemnified from and against liability for damage to any of the Indemnified Party's property [whether tangible or intangible] or any other loss, costs or damage suffered by the Indemnified Party to the extent that it results from any act of or omission by such Party or its Personnel in connection with this Agreement. Each of the Party's liability arising out of this clause 16.2 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 limited to the value of the total fees.

16.3 Subject always to clauses 16.1 and 16.2 above, the liability of either the Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.

16.4 Subject to clause 16.1 above, and except as provided in clauses 16.2 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.

16.5 Nothing in this clause 16 shall be taken as limiting the liability of the Service Provider in respect of clause 14 *[Intellectual Property Rights]* or clause 18 *[Confidentiality]*.

17 INSURANCES

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

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

17.3 Subject to clause 17.4 below, if the Service Provider fails to affect adequate insurance under this clause 17, 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.

17.4 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 17.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, where after either the Service Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] days prior written notice to that effect.

18 CONFIDENTIALITY

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

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

b) Not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;

c) Not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information, without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;

d) Not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;

e) Not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;

f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such Party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;

g) The Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;

h) Each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or internal consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or internal consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or internal consultants honour such obligations;

i) Each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;

j) Each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by the person or entity; and

k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

18.2 The duties and obligations with regard to Confidential Information in this clause 18 shall not apply where:

a) A Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Personnel; or

b) Was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or

c) Can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or

d) Is independently developed by a Party as proven by its written records.

18.3 The Service Provider's work for Transnet is confidential and intended for Transnet's internal use only. The Service Provider does not make public client names, client materials or reports prepared for clients without their prior written permission. Similarly, Transnet agrees that it will not use Service Provider's name, refer to Service Provider's work, or make the Deliverables or the existence or terms of this Agreement available outside its organization without the Service Provider's prior written permission.

18.4 This clause 18 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 [five] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

19 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

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

20 TERM AND TERMINATION

20.1 Notwithstanding the date of signature hereof, the Commencement Date of this Agreement is **09 April 2014** and the expiry thereof shall occur on **8 October 2016**, unless:

a) this Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or

b) This Agreement is extended at Transnet's option for a further period to be agreed by the Parties in writing.

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

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

a) A voluntary arrangement or composition or reconstruction of its debts;

b) Its winding-up or dissolution;

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.

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

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

20.6 Notwithstanding this clause 20, either Party may cancel this Agreement without cause by giving 30 [thirty] days prior written notice thereof to the other Party.

21 CONSEQUENCE OF TERMINATION

21.1 Termination in accordance with clause 20 *[Term and Termination]* shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.

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

21.3 To the extent that any of the Deliverables and property referred to in clause 21.2 above is in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with encrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held. Notwithstanding the foregoing, Service Provider shall be permitted to retain, subject to the terms of this Agreement and for professional archival purposes only, a copy of any Deliverables furnished to Transnet by Service Provider in connection with the Services, together with any working papers necessary to support its conclusions or recommendations.

21.4 In the event that this Agreement is terminated by the Service Provider under clause 20.2 *[Term and Termination]*, or in the event that a Work Order is terminated by Transnet under clause 20.5 *[Term and Termination]*, Transnet will pay to the Service Provider all outstanding Fees [apportioned on a *pro rata* basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.

21.5 The provisions of clauses 2 *[Definitions]*, 6 *[Warranties]*, 14 *[Intellectual Property Rights]*, 16 *[Limitation of Liability]*, 18 *[Confidentiality]*, 21 *[Consequence of Termination]*, 27 *[Dispute Resolution]* and 31 *[Governing Law]* shall survive termination or expiry of this Agreement.

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

21.7 Should:

a) The Service Provider effect or attempt to effect a compromise or composition with its creditors; or

b) Either Party be provisionally or finally liquidated or placed under judicial management, whether provisionally or finally; or

c) Either Party cease or threaten to cease to carry on its normal line of business or default or threaten to default in the payment of its liabilities generally, or commit any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time];

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

22 ASSIGNMENT

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

23 FORCE MAJEURE

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

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

24 EQUALITY AND DIVERSITY

24.1 The Service Provider will not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.

24.2 Both Parties to this Agreement undertake that they will not, and shall procure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

25 NON-WAIVER

25.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of this Agreement, shall not, in any manner, be construed to be a waiver of any of that Party's rights in that regard and in terms of this Agreement.

25.2 Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.

26 PARTIAL INVALIDITY

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

27 DISPUTE RESOLUTION

27.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.

27.2 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.

27.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

27.4 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 27.

27.5 This clause 27 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

27.6 This clause 27 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

28 ADDRESSES FOR NOTICES

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

a) **Transnet**

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

Attention: General Manager Group Legal Services

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

b) **The Service Provider**

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

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

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

28.3 Any notice shall be deemed to have been given:

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

b) If posted by prepaid registered post, 10 [ten] days after the date of posting thereof; or

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

29 WHOLE AND ONLY AGREEMENT

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

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

30 AMENDMENT AND CHANGE CONTROL

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

30.2 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 27 *[Dispute Resolution]*.

31 GOVERNING LAW

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

31.1 **Change of Law**

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Fees, Deliverables, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 27 *[Dispute Resolution]* above.

32 COUNTERPARTS

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

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

For and on behalf of **TRANSNET SOC LTD** duly authorised hereto	For and on behalf of **MCKINSEY INCORPORATED** duly authorised hereto
Name: [illegible]	Name: VIKAS SAGAR
Position: CCO	Position: DIRECTOR
Signature:	Signature:
Date: 09/03/15	Date: 10/03/15
Place: JHB	Place: SANDTON

AS WITNESS:	**AS WITNESS:**
Name: GARRY PITA	Name: [illegible]
Signature:	Signature:

AS WITNESS:	**AS WITNESS:**
Name: Edward Thomas	Name: Nomfanelo Magwentshu
Signature:	Signature:

SCHEDULE 1 – WORK ORDER

For the Provision of Services Related to RFP GSM/14/04/1039: Provision of Professional Services to Support Transnet with the Manganese Execution Initiative

With reference to the Master Agreement, Reference Number **GSM/14/04/1039** [the **Agreement**] between Transnet SOC Ltd [**Transnet**] and McKinsey, Incorporated (Pty) Ltd [**the Service Provider**] pursuant to which the Service Provider has agreed to perform certain services to Transnet subject to such Agreement, the defined terms in the Agreement will, unless otherwise indicated, have the same meaning in this Work Order.

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

The Service Provider shall provide the following services:

1. EPCM tender risk review, contract structuring and commercial support in negotiation of the EPCM contracts (ongoing, EPCM negotiations to start Oct 2014)
2. Develop and implement TCP operating model for Manganese
3. Assisting Transnet Procurement with optimisation of bulk materials and large equipment work packages, i.e., identifying opportunities for savings and mitigate risks of late delivery from suppliers. We would build on the supply chain diagnostic related to material delivery and supplier market intelligence to work jointly with Group Procurement and TCP in defining material quantities, lead times and availability from current Transnet contracts. Obtaining cost savings and availability includes leveraging McKinsey's global sourcing centres in China and India to improve price and supplement short material supply
4. Setting up contract and claims management analyses and reporting infrastructure, and build capabilities for claims and variation order management ahead of construction. We aim to implement a TCP Contracts and Contractor performance unit (ideally directly reporting to TCP CE, or under the Centre of Excellence), with mandate to
    a. Develop cost-to-complete insights on package and contractor level, and lead negotiations with contractors on behalf of Transnet (across sites, packages)
    b. Deploy resources to support site commercial teams in standardizing reporting of claims, manage and resolve VOs/claims/employer claims backlogs
    c. Ensure best practice contracting strategy and structuring with EPC contractors in key packages. Each contract will be aligned with incentives that aim to drive productive contractor behaviour, In addition contracts will reflect clear key dispute resolution processes that improve the interface and operating model between EPCM, EPCs and Transnet. Post EPCM award, we would help Transnet create a best practice contract structures before appointment of EPCs and construction of Phase II
5. Support establishment of TCP as the PMO of the Manganese Programme (effectively taking hands on responsibility for integration), which includes re-establishing the control tower, integrated master plan, introducing GCiA/TCP/McK led Value Intervention Teams, and onboarding critical TCP capabilities, e.g.,

a. Dedicated planner team to own integrated schedule and control tower – for complete, accurate and prompt reporting across all performance indicators - challenging EPCMs, site managers

b. Dedicated risk management team – for quantification, prioritisation and ensuring risk owners take action

c. Dedicated supply chain manager – to ensure procurement, ODs and site team interfaces are managed and material delivery happens on time

d. Financial modeling team to monitor implications from cost, schedule and quality risk exposure and performance

Budget permitting: continue with value intervention teams through TCP's PMO and setup new capabilities in TCP that will serve Manganese (and eventually other programmes):

6. Support TCP managers through value intervention teams focusing on

   a. Drive engineering productivity to mitigate delay risks of reaching 75% completed (or as stipulated in contracts) before construction starts

   b. Support dedicated supply chain manager to optimise delivery of materials to site – ballast as the pilot for phase 1 construction

   c. Support site managers with planning and execution (pull planning, control tower) to mitigate slippages on critical path of selected key packages

   d. Support site commercial and execution teams with standardised reporting on VOs/claims/employer claims, identifying claims risk exposure and mitigation actions

   e. Drive first cost-to-complete analyses for selected key packages) to build capabilities of Contracts and Contractor performance unit and develop Transnet's negotiation/settlement strategy

7. Ongoing support to TCP PMO on control tower/risk management, stakeholder management and integrated reporting

As mega projects often have changing needs as the project evolves, we agree to amend this scope by mutual agreement to best meet Transnet's needs as and when required.

PROJECT MANAGERS

Transnet Project Manager	**TBD**
Designation	
Operating Division	
Address	
Cell Phone	
Telephone	
Fax	
Email	

Service Provider's Project Manager	Prakash Parbhoo
Designation	Principal
Address	88 Stella Street, Sandown, Sandton, South Africa
Telephone	+27 11 506 8000
Fax	+27 11 506 9016
Email	Prakash_Parbhoo@mckinsey.com

ACCEPTANCE CRITERIA FOR DELIVERABLES

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

PROGRESS REPORTS AND REVIEW MEETINGS

Project management and review meetings will be held every six weeks, or as otherwise directed by Transnet's Project Manager.

FEES AND DISBURSEMENTS

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

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

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

SIGNED for and on behalf of: **McKinsey, Incorporated**	**SIGNED** for and on behalf of: **Transnet SOC Ltd**
Signature	Signature .....
Name: VIKAS SAGAR	Name: Anoj Singh
Position: DIRECTOR	Position: CCO.
Date: 10/03/15	Date: 06/03/15
Place: SANDTON	Place: JHB.

ANNEXURE A – Project Fees

Professional fees and expenses for the scope of services laid out above are detailed in the table below:

Scope	Duration	McKinsey share of fees	Professional Fees	Expenses	Total (including expenses, excluding VAT)
Owners team and PMO setup/diagnostic (HR, Control tower, Supply chain, Contracting)	*Completed*	*50%*	*31.2m*	*3.9m*	*35.1m*
EPCM risk evaluation, contracting and neg. support	*Completed mid Oct*	*90%*[1]	*17.5m*	*1.9m*	*19.4m*
Implement TCP model	2 months	90%	9.0m	0.9m	9.9m
Procurement optimisation	2.5 months	40%	14.7m	1.5m	16.2m
Implement contractor and claims management infrastructure	2 months	40%	27.3m	2.7m	30m
Implementation and running of TCP PMO focusing on risk, control tower, supply chain, integrated schedule	6-9 months depending on team size	33%	63.0m	6.3m	69.3m
Total for 12 months		**45%**	**162.7m**	**17.2m**	**179.9m**

Notes:

1. 10% of fees will be disbursed to a specialist small/medium legal Firm with B-BBEE rating of 2 or better, who specialise in NEC contracts

VS

SUPPLIER DEVELOPMENT VALUE SUMMARY

Enterprise and Supplier Development Value	
McKinsey	Subcontractor
72.7% *(of which 54% will be subcontracted to Regiments Capital)*	50% *[of which 30% is targeted at downstream supplier development of SMMEs (EMEs and QSEs)]*

FOF-08-945

Transnet SOC Ltd
Registration
Number
1990/000900/30

Carlton Centre
150 Commissioner
Str. Johannesburg
2001

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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 : **NMPP ACCELERATION – DE-RISKING THE WAY FORWARD**

PURPOSE OF SUBMISSION

1. The purpose of the submission is to request approval of the Group Chief Executive to:
   1.1. Approve the resourcing strategy and remuneration model for the NMPP Acceleration initiative to mitigate the EBITDA at risk;
   1.2. Confine and award services for support to the internal team to McKinsey and Company and its BBBEE Consortium partners.

BACKGROUND

2. The NMPP is Transnet's largest programme in execution with an estimated cost of R22.4 billion. This NMPP trunk line, pump stations and terminals scope will increase volume from 4.4 billion litres to 8.7 billion litres through the construction of a 555km 24-inch diameter trunk line.

DISCUSSION

3. The NMPP has experienced delays in project execution in the past. This has historically resulted in significant cost escalation and reputational risk exposure for Transnet.
4. Efforts to integrate with EPCM led to disruptions as late in 2012/2013, including de-scoping of AWP and change of Transnet Project Managers.
5. TIA have conducted an audit and the high level findings are as follows(refer Annexure B):
   5.1. Project Management and Project Controls in particular are fundamental and imperative to ensure that key risks are effectively mitigated, and reported accordingly.
   5.2. TM2 management detected the incorrect progress reporting by Group Five during mid- November 2013 and verbally instructed Group Five to review and rectify their reported progress figures.
   5.3. Ongoing poor performance and re-work by Group Five;
   5.4. Progress as per the Constructability schedule as at 31 October 2013 showed additional slippages to the MC date, compared to the PSR and NMPP OPCO reported dates;
   5.5. The October 2013 risk modelling reflected a most likely delay beyond the latest approved milestone dates;
   5.6. The TM2 Final Forecast Cost (FFC) at R2,977 billion exceeds the project budget of R2,777 billion. There is a risk that this FFC will be breached should there be further schedule slippage past mid-June 2014 and the overall ETC (R23.4bn) is at risk.

5.7. Completion of both TM1 and TM2 engineering and construction, and commissioning/ramp-up remain to be finalized – therefore the volumes and EBITDA contained in the 2014/15 Corporate Plan are at risk.

6. The RAB is also a risk as the regulator will not allow any non-prudent increase in the overall ETC. Nersa has appointed an independent consultancy to assist in its study to formulate an independent view on the prudency with which the NMPP was built.
7. GCiA conducted a site visit to the NMPP coastal accumulator terminal construction site (TM1) in Island View (Port of Durban, KZN) on 17 February 2014 and identified potential opportunities for improvement. The site visit included a briefing and progress update from the on-site owner's team, and a guided walk through the TM1 construction site footprint. The visit was supported by a project team and select Capital Productivity experts.
8. Furthermore significant reputational loss will be sustained by Transnet.
9. Accordingly, efforts to track construction costs, timelines and risks closer to actual activities, requires capacity to follow up effectively to reduce risk of further cost overrun / revenue loss – which Transnet does not have.

SUGGESTED APPROACH

10. To de-risk further schedule and cost escalations that will affect Transnet's reputation and capital affordability. This includes supporting Transnet's NMPP's owners team with a Control Tower combined with specialized intervention teams – to drive construction productivity, cost efficiency, and manage interfaces and risks during final phase of completion / commissioning & ramp-up
11. To bring transparency and visibility that will allow management decisions and risk management, notably through
    - 11.1. Re-baselining completion rates and cost estimates, including risks associated with completion of critical path items and potential claims
    - 11.2. Run control towers and collecting primary on site data for real time tracking of KPIs (e.g., schedule, on-site resources vs. resource plan, supervision levels, resource efficiency like scaffolding utilisation, critical issue tracking, visual tracking of progress and work area etc.)
    - 11.3. Deploy targeted intervention teams to manage contractor interfaces and protect value (e.g., claims, material management, commissioning management)
    - 11.4. To bring best practice approaches, tools and people – proven in distressed project situations globally and in South Africa (e.g., Cairn pipeline, SBG, Medupi claims management, Big Dig Boston, and in road, rail, port, oil & gas projects)
12. Performed revised baseline project costs and schedule;
    - Review alignment with the public commitments;
    - Mitigation of reputational risk;
13. Analysis of cashflow at risk;
14. Claims management process;
15. Quantitative risk assessment to incorporate:
    - Revenue impact
    - EBITDA impact
    - Cost vs benefit analysis
    - Monte Carlo analysis
16. Institute daily, weekly, monthly issue resolutions (technical AND management issues) with Project Team and Contractor teams onsite.

17. Recommended: senior visibility and engagement, i.e., monthly GCE and GCFO on-site progress review (via VC).
18. On-site intervention teams.
19. Specialised teams focusing 100% of their attention on critical path issues that drive cost and schedule.
20. Based on the above the Corporate Plan targets will be met.
21. This approach has been discussed and agreed with Mr Charl Moller: TCPCE.
22. McKinsey and Company have the Intellectual property, experience and knowledge to provide these services to Transnet. McKinsey and Company have a detailed knowledge of Transnet, its operating divisions and MDS.
    22.1. McKinsey understands the underlying economics of the global and local industry in detail as well as the strategic trends in the oil and gas industry.
    22.2. McKinsey understands Transnet's underlying infrastructure program in detail and have been an advisor to many clients to mitigate against similar risks experienced on the NMPP.
    22.3. McKinsey has in its global practice supported many oil and gas experts and a tool kit of best practices that can be leveraged and has a proven track record at Transnet of reducing capital cost on large capital projects.
    22.4. McKinsey has a proven track record of de-risking and improving outcomes of distressed projects in execution.
23. In addition, Transnet has limited options to do this with in-house capabilities.
    23.1. To do an independent review requires an independent party. Current NMPP owners team capabilities would be insufficient for a self-assessment and further distract resources from execution.
    23.2. Transnet has constrained availability of skills and know-how required to intervene in NMPP execution to mitigate further cost and schedule overruns.
    23.3. Lack of established standards and methodologies to run effective control tower and KPI tracking, counter claims management, and managing EPCM interfaces. Resulting in scope creep and unfinished.

GROUNDS FOR CONFINEMENT:

24. 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.

25. We are of the view that this matter complies with grounds (a) and (d) as set out below, and the request for confinement is therefore fully supported.
26. Specific emphasis is placed on ground (a) and (d) due to the potential business risks associated with approaching the market on an open tender process as well as the credentials listed above. There is additional reputational damages that would be risked if Transnet went on an open tender process as this would indicate to the open market that there are further issues on the NMPP.

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;	• The EBIDA at risk was only identified after the 2014/2015 Corporate plan had been completed; taking into account the impact of the locomotive deposits. • These risks were presented to Transnet Group EXCO in March 2014. • If the mitigation plans are not put in place immediately the 2014/2015 Corporate plan, capital plan and funding pre-requisites will not be met placing the entire MDS at risk. • There is also a major risk that the capital expenditure will be disallowed in the tariffs to be charged. • Mitigating the impact of higher than expected capital expenditure and potential delays in the delivery of the NMPP requires an urgent and immediate mitigation action which has an opportunity to deliver the required results in the 2014/15 Corporate Plan.
d. Goods and services being procured is highly specialised and largely identical to those provided previously	• This component of Ground D relates to the specialised work to make informed decisions to de-risk the NMPP. • The models used are highly complex and due to the work done on the capital SWAT process in re-cutting the portfolio, extensive knowledge has been gained in understanding the expansionary capital requirements. • McKinsey has a deep understanding of the NMPP as well as the oil and gas industry. • McKinsey is leading the development and implementation of the platinum standard, including the operating model for projects in execution, includes NMPP review of lessons learned • McKinsey is rolling out the platinum standard, including training of 150 project directors and managers (including NMPP team members) in workshops across the organisation • McKinsey has strengthened risk mitigation framework for large capital projects which will be applied to NMPP

	• McKinsey has gathered an intimate understanding of NMPP on-site issues, stakeholder concerns and reputational risks since de-scoping of AWP in 2012. Since that time, McKinsey has concluded ▪ Ongoing coaching of Sue Govender in 2012, including best practice contractor selection / due diligence process and risk assessment prior to post AWP de-scoping (not implemented) ▪ Facilitated conversations between NMPP and client teams in India (Cairn) ▪ Lessons learned workshops with the NMPP owners team ▪ Site visit to TM1 and observations made by international experts • McKinsey has an intimate understanding of the NMPP programme in the context of Transnet's broader capital portfolio and overall affordability.
d. Approaching the market would result in wasted money and time	• A service provider to support the NMPP project needs to be appointed immediately. Every week of delayed operations significantly increases tariff risks due to non-recognition of capital. In addition every week of delay also significantly increases the reputation and credibility of executing the overall capital portfolio (which compounds into a risk for MDS)

27. Additionally, due to the confidential nature of the information, the engagement cannot be subject to an open tender process especially from a reputational risk perspective. In terms of para 15.1.4 (c) of the revised PPM, in instances where a confinement is confidential, the GCE may approve such confinement without it being routed via any other signatory.

ENTERPRISE AND SUPPLIER DEVELOPMENT AND BBBEE

28. The work will be carried out internally supported with a team of consultants (Mckinsey & Company and its Consortium partners).
29. McKinsey and Company will engage a Consortium Partner who is Black owned and this Consortium partner will perform a percentage of the work under the guidance of Mckinsey and Company.
30. The Consortium partner will share 40% of the phase 1 fee and 60% of the phase 2 fee (excluding VAT and expenses). The phase 1 fee of a potential maximum of R10 million excluding expenses and VAT will be shared on a 60%/40% split with Consortium partners, who will be allocated 40% of the fees. The phase 2 portion of a potential maximum R90 million excluding VAT and expenses will be shared a 60/40% split with the Consortium partners, who will be allocated 60% of the fees.
31. McKinsey and company will be required to provide a supplier development plan whereby they commit 70% of the contract value for the phase 1fee and 70% of the phase 2 fee to enterprise and supplier development value, which will be set out in an

agreed supplier development plan. Preferential procurement and use of empowered consortium partners will contribute to this value. This will subject to negotiation with the service providers.

32. The consortium partner will be required to provide a supplier development plan whereby they commit 50% of their contract value for the total fee to enterprise and supplier development value, which will be set out in an agreed supplier development plan. 30% of the contract value should be targeted at downstream supplier development to SMME's (EME's and QSE's), preferably black owned, Black women owned, youth owned and owned by people living with disabilities. This will subject to negotiation with the service providers.
33. McKinsey and Company and the consortium partner will be required to provide an acceptable BBBEE improvement plan.

FINANCIAL IMPLICATIONS

34. The external service provider's fees for the scope above will be based on a potential maximum potential fee of R100 million.
35. A fee of R10m is payable for the phase 1 re-baselining exercise and will be shared on a 60/40% split with the Consortium partners, who will be allocated 40% of the fees.
36. At the end of a 5 week phase 1 re-baselining exercise a portion of the fees will be linked to specific deliverables agreed upon after the re-baseline sign-off.
37. The balance of the phase 2 fee will be based linked to delivery of mutually agreed outcomes between Transnet and the consortium based on the outcomes of the re-baselining exercise. This will be based on specific delivery milestones. This will not exceed R90 million and will be shared on a 60/40% split with the Consortium partners, who will be allocated 60% of the total fees.
38. The fee and expenses will be in accordance with the National Treasury instruction note. The expenses will be on actual costs incurred aligned with the instruction note.

BUDGET IMPLICATIONS

39. The amount of R10 million has been budgeted for in the 2014/15 Group Finance capex budget. This will cover the re-baselining exercise.
40. The additional fees of a maximum of R90 million has not been included in the capex budget. Given that the NMPP is capital project in build phase, these fees will be allocated to the project and capitalised. It is the expected that the efficiencies introduced by the consultants, relative to finalised and revised baseline, will be sufficient to cover these fees.

RECOMMENDATION

41. It is recommended that the of Group Chief Executive:
    41.1. Approve the resourcing strategy and remuneration model for the NMPP Acceleration initiative to mitigate the EBITDA at risk;
    41.2. Confine and award services for support to the internal team to McKinsey and Company and its BBBEE Consortium partners.

Compiled by

Anoj Singh
Group Chief Financial Officer
Date: 3/04/14.

Approved/ ~~Not Approved~~

Brian Molefe
Group Chief Executive
Date: 3.4.14.

TRANSNET SOC LTD

[Registration No. 1990/000900/30]

REQUEST FOR PROPOSAL [RFP]

FOR THE PROVISION OF PROFESSIONAL SERVICES TO SUPPORT TRANSNET IN DE-RISKING AND ACCELERATION OF THE NEW MULTI-PRODUCT PIPELINE (NMPP)

FOR A PERIOD OF 18 MONTHS

RFP NUMBER	**GSM/14/04/1040**
ISSUE DATE:	**28 MAY 2014**
CLOSING DATE:	**10 JUNE 2014**
CLOSING TIME:	**12:00**
BID VALIDITY PERIOD:	**90 days from Closing Date**

FOF-08-953

PR: 10412554
PO: 4500253796

McKinsey&Company

Transnet SOC Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177
Supplier code: 72063827

McKinsey and Company
VAT no: 4710150048

Tax invoice: 5808

Charge code: TRX080

Payment due within 30 days of invoice date

1 July 2014

Professional fees: May 2014	R	14,191,667.00
Out of pocket expenses	R	2,128,750.00
Subtotal	R	16,320,417.00
Vat at 14%	R	2,284,858.38
TOTAL	R	18,605,275.38

TRANSNET
PAID

Refer memo for details.

Payment may be made by direct transfer to:

Account Name:	McKinsey Incorporated
Account Number:	421061812
Branch:	019205
Bank name and address:	The Standard Bank of South Africa Ltd. Sandton Branch 156 Fifth Street Sandton, 2196 South Africa

Please quote invoice number and charge code reference on transfer and remittance.

Please note:
Standard terms provide for invoice payment upon receipt. Interest will be charged on balances outstanding 30 days after the invoice date, at a rate of 1% per month or as otherwise agreed.

04/08/14.

2103380

McKinsey&Company

1 July 2014

Anoj Singh
Group Chief Financial Officer
Transnet SOC Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg

Dear Anoj,

Please find attached invoice 5808, issued on 1 July 2014 for our professional fees and out of pocket expenses (@15%) and support services for the 1 May 2014 to 30 May 2014 relating to our work on NMPP – Minimum Technical Specification. This engagement was requested by Transnet in your letter to McKinsey (David Fine) issued on April 10th.

The deliverables for this engagement are listed below, with percentage completion. This is the first invoice for this engagement.

Deliverable	**% completed as of this invoice**	**% completed as of previous invoice**
Analysis of latest schedule, used assumptions and estimation of realistic completion date	75	N/A
Analysis of budget, used assumptions and estimation of realistic final cost of completion considering estimated completion date	75	N/A
Assesment of potential risk of the projects	75	N/A
Assessment of claims and their potential impact on schedule and budget	75	N/A
Providing transparency on change orders, which may further delay the project	50	N/A

The following bottlenecks also need to be addressed by Transnet in order to ensure continued progress:

- Alignment required between TCP, TPE and service providers – we suggest a pressure-cooker set of workshops

TRANSNET
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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

82-408830

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 LJH Arwidi (Swedish) W Choi (South Korean) IRA Munshi PM Parbhoo SH Wu

McKinsey&Company

Since the last invoice, the resources allocated to this engagement included:

Name	Role
Vikas Sagar	Director
Peter Safarik	Principal
Prakash Parbhoo	Principal
Pavel Jonczy	Project Manager
Shayne Vervoort	Project Manager
Edward Zaayman	Expert
Gerhard Nel	Expert
Rendani Mauda	Associate
Daniele Stenico	Associate
Evgeny Proskurnya	Associate
Praveen Matta	Associate
Siyabonga Madondo	Junior Associate
Faizel Logday	Business Analyst
Dmitry Zubanov	Business Analyst

In addition various executive assistants, researchers and visual graphics specialists have supported the team remotely.

For your reference, the physical original of this invoice and memo have been couriered to Mamorena Monare (Mamorena.Monare@transnet.net, 011 308 1782, 33rd Floor Carlton Centre) on 31 July 2014.

Kind regards,

Prakash Parbhoo
Principal

TRANSNET
PAID

52-473830

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 LJH Arwidi (Swedish) W Choi (South Korean) IRA Munshi PM Parbhoo SH Wu

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TRANSNET SOC LTD
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CHAIRMAN
TRANSNET ACQUISITION COUNCIL

RFP GSM/14/04/1040: Provision of Professional Services to Support Transnet in De-risking and Acceleration of the New Multi-Product Pipeline (NMPP)

Transnet

Closing date 24 June 2014 @ 12:00

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McKinsey&Company

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STATE CAPTURE COMMISSION OF INQUIRY

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TRANSNET SOC LTD
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CHAIRMAN
TRANSNET ACQUISITION COUNCIL

CONFIDENTIAL

Memorandum to
The Secretariat, Transnet Acquisition Council

RFP GSM/14/04/1040 : Provision of Professional Services to Support Transnet in De-risking and Acceleration of the New Multi-Product Pipeline (NMPP)

McKinsey & Company and Regiments Capital are pleased to submit this proposal in response to Transnet's solicitation regarding the provision of professional services to support Transnet in de-risking and acceleration of the new multi-product pipeline (NMPP) (RFP GSM/14/04/1040).

This memorandum outlines our proposed approach and credentials, and should be read in conjunction with the attached exhibits. Please do not hesitate to contact us if you require clarification or further information.

This main proposal document is structured into five sections:

- Our understanding of the situation
- Our approach
- Our value proposition
- Our team
- Our supplier development commitments

OUR UNDERSTANDING OF THE SITUATION

The New Multi-Product Pipeline ("NMPP") is Transnet's largest programme in execution with actual budgeted cost of R23.4 billion. The555km 24" trunk line, together with pump stations and terminals will enable the future inland fuel demand to be met through greater pipeline capacity (increase volume from 4.4 billion litres to 8.7 billion litres) and flexibility as well as allow the existing Durban Johannesburg Pipeline (DJP) to be decommissioned.

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NMPP has experienced delays in project execution in the past. This has historically resulted in significant cost escalation and reputational risk exposure for Transnet. Historically issues identified by Transnet included:

- Integration with EPCM led to disruptions as late in 2012/2013, including de-scoping of AWP and change of Transnet Project Managers.
- Project Management and Project Controls in particular are fundamental and imperative to ensure that key risks are effectively mitigated and reported accordingly.
- TM2 management detected the incorrect progress reporting by Group Five during mid- November 2013 and verbally instructed Group Five to review and rectify their reported progress figures.
- Ongoing poor performance and re-work by Group Five.
- Progress as per the Constructability schedule as at 31 October 2013 showed additional slippages to the MC date, compared to the PSR and NMPP OPCO reported dates.
- The October 2013 risk modeling reflected a most likely delay beyond the latest approved milestone dates.
- The TM2 Final Forecast Cost (FFC) at R2.977bn exceeds the project budget of R2.777bn. There is a risk that this FFC will be breached should there be further schedule slippage past mid-June 2014 and the overall ETC (R23.4bn) is at risk.
- A site visit Group Capital Integration and Assurance (GCIA) to TM1 in February 2014 identified potential opportunities for improvement.

Currently, TM1 and TM2 engineering, construction and commissioning/ramp-up remain to be finalized – therefore the volumes and EBITDA contained in the 2014/15 Corporate Plan are at risk. The Regulatory Asset Base (RAB) is also at risk (currently only ~50% of the project is in the RAB with the regulator investigating any non-prudent increase in the overall Estimated Total Cost (ETC)). NERSA has appointed an independent consultancy to assist in its study to formulate an independent view on the prudency with which the NMPP was built.

Moreover, due economic crises the original business case assumptions changed resulting in 2014 actuals being half of what was expected in the original business case. The significantly lower estimated inland demand will lead to significant operational adjustments when NMPP moves to multiproduct delivery. The issues include: increased size of interfaces (~4x larger), required slug sizes for a bigger pipeline (~2x bigger) and significantly longer lead times (~3x longer).

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Cost and schedule overruns, coupled with operational difficulties that have currently not been adequately addressed or considered, will lead to a difficult few years ahead for the project. Our understanding is that TPL and TCP would further benefit from increased joint collaboration. This cross-functional team should also include Prudency, Group 5 and Legal to ensure the optimal system solution is found, instead of the optimal technical solution. Accordingly, to ensure optimal completion of the project the de-risking and acceleration of the project is required.

OUR APPROACH

Overall we propose a three-phase approach that addresses the abovementioned issues. Please see Enclosure no.1 for supporting exhibits.

Phase 1 (6 weeks): Re-baselining

In the first phase we will focus on two workstreams:

- **Re-baselining of the execution of project**: Realistic estimation of a completion date and required budget by (for illustrative :
  - Cross-checking actual quantities completed with on-site observations, QS team and site interviews
  - Analysing contractor productivity comparing actual vs planned quantities completed, quantities to go (including scope/design changes) and earned vs burned man-hours
  - Identification of risks caused by disruptive events such as inclement weather and strikes
  - Understanding outstanding claims and organizational capacity to manage
  - Checking cost recovery assumptions with site team
  - Evaluating historical quality issues and understanding future risk of reworks
- **Re-baselining of the commercial assumptions of project**
  - Understanding of the original business case assumptions understand what had changed with regards to NMPP requirements in last 6 years especially verification of the demand forecast and assumed operational philosophy
  - Clarification of boundary conditions to understand what can be optimised
  - Deep dives on demand forecasts for inland fuel and operational viability of options was necessary

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CHAIRMAN
TRANSNET ACQUISITION COUNCIL

- Cross-functional workshop held to understand the high-level options available to fulfill requirements
- High-level NPV analysis of options and understanding of risks were required to ensure the options were directionally correct
- Range of options delivered to Steerco
- Formation of a cross-functional team put together to ensure business cases could be refined and delivered to board

Phase 2 (~ 8 weeks): Detailing and optimizing business cases

Phase 2, follows immediately after Phase 1. While the baseline establishes the factual status quo and identifies high level strategic options, detailed remaining scope, related operational philosophy, priority sequence for construction, regulatory and legal implications have to be defined.

To fast-track the delivery of detailed business cases we propose to use "pressure-cooker" approach, i.e., multidisciplinary collocated team to address the outstanding questions in a focused structured way. After the preparation, the core of the effort happens during one week in which the whole business case is reviewed .The executive decisions are taken at the end of each day. Any outstanding open questions and their implications are ring-fenced for further deep dives.

We will set up an integrated, multi-disciplinary scrubbing team (including Group 5) in the first 3 weeks to:

- Develop the detailed engineering for alternative options (e.g. tightlining vs four tanks vs full scope) in order to determine engineering, constructability, operability, cost and schedule implications of each option
- Identify levers to scrub, descope or defer components of each option, and verify contract terms to optimize the solution(s), i.e., detailing out and signing off with TPL the minimum technical requirements for beneficial operation (e.g. temporary CP on the pipeline, tightlining vs four tanks at TM1, ring-fencing of deprioritized components at TM2, etc.)
- Identifying the requirements for capitalization of assets and tariff recovery; identifying potential split of the project/asset base that would enable earlier capitalization of separate components and/or deprioritisation of non-capitalizable assets

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- Review regulatory implications of the options as well as the alignment with the public commitments; and necessary mitigation actions of reputational risk
- Define the interdependencies between TM1, TM2 and S&A
- Revise the construction schedule
- Recommend one option to proceed with given the above considerations

Phase 3 (12 weeks): Setting-up execution front-line support

This phase will start immediately after Phase 1 for TM2 and after phase 2 for TM1 and overall project. Phase 3 will focus on the following elements:

- **Control Tower** will create transparency on construction progress, costs, claims and upcoming risks on site. It is a basis for tightly managing construction progress on sit. This will include:
  - Develop/confirm the re-baselined schedule with realistic milestones
  - Set up the Control Tower room on site, including dashboards for same-day view of project progress, upcoming workfronts per discipline, next milestones, issues, risks and action items, and commissioning sequence
  - Support client and contractor teams to conduct site observations, record daily progress and identify and report constraints on site to the Control Tower team. Streamline progress reporting by fostering closer collaboration on between Planning, Construction and QS, including
    - Directly involve foremen in the weekly work planning session
    - Integrate weekly work plan for all the related activities, to identify and prevent coordination problems
    - Daily plan review on the field, with attendance of all the related foremen, to foresee / solve potential coordination issues
  - Report site observations and escalate priority issues to central project Control Tower for high level decision-making and resolution. Build capabilities of project team to run Control Tower
    - Syndicate and refine Control Tower setup with site team input
    - Refine meeting cycle and decision-making forums (e.g. daily check-in, weekly forums per discipline)
    - Assist Control Tower lead and team to manage issues, risks and action item deliverables with daily progress report-backs

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- Work with Engineering and client team to freeze scope and keep further design changes to a minimum (only design changes affecting safety or critical operations)
- Start daily performance and issue resolution dialogues in the Control Tower from the 2nd week, even with limited facts, to train the construction and commissioning teams to engage with the Control Tower
- Start site observations from the 2nd week, even with limited refinement of the schedule, in order to uncover root cause issues and emerging potential risks and constraints

- **Contractor management:** Review contracts to develop claims and counter-claims strategy, and identify levers to incentivize contractor performance
  - Support, coach and build up capabilities of contract management team in prioritizing, processing and closing claims
  - Work with contract management team to create a claims strategy both at a site level and for the whole project
  - Set up a contracting SWAT team to identify, prepare and institute counter-claims against the contractor
  - Review the Group 5 contract to identify mechanisms to incentivize performance for the remainder of the project (both damages and rewards)
  - Determine potential to impose early delay damages on G5 to demonstrate willingness to manage performance strongly
- **Reporting:** Ensuring senior visibility and engagement, i.e., monthly GCE and GCFO on-site progress review (via VC)
- **Cash flow at risk monitoring:** Monitor regularly that the cash flow expenditures are in line with the agreed budget as well as perform quantitative risk assessment including: revenue impact; EBITDA impact; Cost vs benefit analysis; and Monte Carlo analysis if applicable.
- **Commissioning management**
  - Establish the commissioning sequence to identify critical path systems in the schedule
  - Stress-test commissioning process with internal and external experts to identify potential to streamline commissioning activities and reduce time to beneficial operation
  - Align Commissioning and Construction schedules and add Commissioning dashboard to the Control Tower

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– Run Commissioning Excellence and Readiness workshops with commissioning teams, facilitated by McKinsey experts

Phase 4 (8-10 months): Implementation

Phase 4 starts will start after Phase 3 and will focus on implementation of the execution support set-up in Phase 3.

OUR VALUE PROPOSITION

McKinsey & Company

McKinsey and Company is uniquely positioned to help Transnet to de-risk and accelerate the New Multi-Product Pipeline (NMPP):

- McKinsey & Company is the only consultancy firm with a dedicated global capital productivity practice, bringing (see Enclosure no.2)
  - **Holistic top management perspective**, i.e., independent holistic viewpoints based on relevant best-practice experience on the project and ability to join forces with external firms
  - **Global reach and capability:** engagements in a broad range of industries and geographies leveraging functional and industry practice know-how; ability to integrate across strategy, organization, and operations and a set of proprietary tools and frameworks
  - **Unequalled client relations:** 60 Fortune Global 500 clients in last 4 years; Proven track record of value creation (~ 30% as NPV improvement as % of original estimate on average), problem solving jointly with the client team, emphasizing capability building and skill transfer, >75 engagements per year
  - **Unrivalled talent:** > 45 active senior capital productivity practitioners globally, leading industry-specific (e.g., automotive) and field experts (operations, procurement)
- In addition we bring
  - **Proven value improvement approaches** – see Enclosure no.3
  - **Set of proprietary tools** – see Enclosure no.4

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- Our previous interactions have given us a clear indication of which levers are most likely to create impact (see Our Approach section below), which will allow us to start working from day one
- In addition to our experience helping Transnet, we have also served many clients on CAPEX globally, and will bring this expertise to bear. Non-exhaustive list of experts that will support our work with you is provided below, with detailed CVs available in the supporting Powerpoint exhibits in Enclosure no.5:
  - Markus Rebman, Principal, Toronto (capex diagnostic)
  - Charles Dumont, Associate Principal, Montreal (control tower)
  - Davide Gronchi, Senior Expert, Hamburg (design optimization)
  - Emanuele Rive, Associate Principal, Milan (lean construction)
  - James E. Banaszak, Senior Expert, Canada (capex execution)
  - Lukasz Abramowicz, Associate Principal, Warszaw (contracting)
  - Rocco Colassante, Associate Principal, Milan (lean construction)
  - Edward Zaayman, Engagement Manager, Johannesburg (execution)
  - Gerhard Nel, Senior Expert, Johannesburg (execution)
  - Homayoun Zarrinkoub, Expert, Montreal (contracting)
  - Carlos Mendes, Specialist, Johannesburg (control tower)
- McKinsey has helped Transnet craft the implementation plans for the MDS, create the Results Management Office to support the execution of required initiatives, and build the Group Capital Integration and Assurance function to improve effectiveness, transparency and accountability in capital spending. No other third party has such a detailed understanding of Transnet's strategy, its current operational concerns, and its uniquely complex links between cash flow and capital planning.
- From a market perspective, McKinsey also understands the economics of the global and local oil industry in detail, including strategic trends, and has supported Transnet on multiple occasions in validating its demand forecasts for commodities.

Regiments Capital

Regiments Capital is also uniquely placed to assist Transnet:

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- Regiments has a conducted several engagements at Transnet in Strategy formulation, Financial Risk Management, Business Case validation, Programme Management Office design and Transaction Advisory Service.
- Through its Consulting division Burlington Strategy Advisors, Regiments Capital has been involved in operational improvement assignments in numerous industries, ranging from high volume industrial manufacturing to underground mining and banking.
- Regiments take a heavily analytical yet practical approach to identifying opportunities for improvement. Its product offerings include overhead and input cost optimisation, optimal equipment and resource utilisation and process re-engineering.

OUR TEAM

Our team leadership will consist of Norbert Dorr (Director, McKinsey), Vikas Sagar (Director, McKinsey), Prakash Parbhoo (Principal, McKinsey), Peter Safarik (Principal, McKinsey), Eric Wood (Executive Director, Regiments), Indheran Pillay (Head of Operations, Regiments), and Vimal Ichharam (Project Manager, Regiments). CVs for these individuals can be found in the attached Powerpoint exhibits (Enclosure no. 5).

The full-time working teams will consist of

- For **Phase 1: Re-baselining of the execution of project,** the full time team on the ground will consist of McKinsey project manager and 5 consultants and Regiments project manager and 5 consultants
- For **Phase 1: Re-baselining of the commercial assumptions** of project, the full time team on the ground will consist of McKinsey project manager and 2 consultants
- For **Phase 2: Detailing and optimizing business cases,** the full time team on the ground will consist of McKinsey project manager and 2 McKinsey and 1-2 Regiments consultants
- For **Phase 3: Setting-up execution front-line support,** the full time team on the ground will consist of McKinsey project manager and 3 McKinsey consultants and a Regiments project manager and 3-5 consultants
- For **Phase 4: Implementation,** the full time team composition will be finalized based on the specific needs as defined in previous phases, however

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it will correspond to McKinsey project manager and 2 consultants and Regiments project manager and 3-5 consultants.

Teams will be mostly stationed TM1 and TM2 to optimally support the project execution.

We will also utilize a team of experts (e.g., Edward Zaayman, Gerhard Nel, Lukasz Abramovicz, Emanuele Riva) to support the teams on an as needed basis, as described in the "Our Value Proposition" section. We have proposed below the team structure to work alongside the Transnet operations teams.

Each member of the Transnet client team will need to work closely with us to define the necessary changes and to use their role in the organization to implement them. They will also be responsible for reporting on these changes to the steering committee, with support from the McKinsey/Regiments team. This support will be required from May until project completion and is pivotal to delivering a sustainable change. Without dedicated participation by these teams a sustainable breakthrough will not be possible.

OUR SUPPLIER DEVELOPMENT COMMITMENTS

McKinsey & Company

McKinsey & Company is fully committed to localisation and transformation within our organisation and in South Africa. Over the past years, we have been dedicated to finding ways to have meaningful and sustainable impact on the community and we will continue doing so. We are supportive of the objectives of the Government's New Growth Plan and are committed to developing a robust Supplier Development Plan to assist in meeting these objectives

We will demonstrate how we will dedicate our resources within & outside the scope of this Transnet contract to ensure the creation and preservation of jobs, skills transfer and small business promotion

Please see details in Annexure B: Supplier Development Plan: McKinsey and Company.

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Regiments Capital

Regiments Capital is fully committed to supplier development, and will support it through this engagement by supporting the following Supplier Development Partners:

- We will source IT support services from Seth Consulting, and provide mentorship and growth strategy expertise to its owner
- We will purchase technology hardware and software from Preferred IT
- We will sub-contract consultants and services from companies such as Accompany Advisory, Homix and Albatime, and provide them with skills development opportunities, and IPR for processes and methodology that they can use in future assignments
- We will subcontract legal services from Pule for the execution of the project
- We will subcontract engineering resources from DEC for the execution of the project

The aggregate spend by Regiments capital on Supplier Development will meet or exceed 20% of the fees it obtains as a result of this engagement. Specific valuation and details on Regiments Capital supplier development commitments may be found in the formal Supplier Development Plan template accompanying this document.

PROFESSIONAL ARRANGEMENTS

Please see separate document on professional arrangements.

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McKinsey & Company and Regiments have a track record of partnering successfully with Transnet and possess unparalleled experience of driving operational transformations in South Africa and around the globe. Furthermore, the partnership between McKinsey and Regiments offers Transnet a local, established collaboration, with global reach, which brings the best expertise and reach to the programme from both entities, offers industry-leading empowerment credentials and which is committed to skills transfer and development.

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We remain highly committed to the success of Transnet and South Africa, and would consider it a privilege to support you in de-risking and acceleration of NMPP.

COMMISSION OF INQUIRY INTO STATE CAPTURE

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We aspire to a relationship based on trust and confidence, and we welcome the opportunity to discuss any areas of particular sensitivity you may have regarding the handling of confidential information. Where appropriate, we will enter into explicit confidentiality agreements.

COLLABORATING AND GETTING YOUR FEEDBACK

To ensure a structured and systematic dialogue about our joint collaboration and impact, it is our standard practice to ask for formal feedback from key client individuals (usually the Steering Committee) at the end of each engagement. We typically use our proprietary online tool to solicit feedback on our contributions towards the project's vision and goals. All data are secure and are used only as a basis for a dialogue with you on how to serve you better. The feedback is not used for evaluating individuals (neither McKinsey nor client team members).

SERVING COMPETING CLIENTS

It is the longstanding policy of McKinsey to serve competing clients and clients with potentially conflicting interests (including in connection with merger, acquisition, and alliance opportunities) and to do so without compromising our professional responsibility to maintain the confidentiality of client information. We place primary reliance on the integrity of our professional staff to maintain such confidences. Nonetheless, we ensure that consultants who develop important insights about your company are not later placed in a situation of potential conflict. To assure this, consultants who had access to your confidential information will not be assigned, for a significant period following an assignment for your company, to a study for another client where such confidential information could be used to your material competitive disadvantage.

Consistent with our confidentiality obligations, the consultants who work with you are unlikely to know that other McKinsey consultants serve one of your competitors or another party involved in a potential transaction that you are considering or effecting. Similarly, you should not expect to be advised or consulted about our serving your competitors or such other parties.

MANAGING RELATIONS WITH OUTSIDE PARTIES

As a basic policy, we do not make public client names, client materials, or reports prepared for clients without their permission. We similarly require that clients not use our name, refer to our work, or make our work products available outside their

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organization without our prior permission. In those cases when disclosure from either side may be appropriate, we will discuss this first and only proceed if we reach agreement.

Occasionally, we become involved in legal actions as witnesses, sources of information, or as a party because of our work with a client. If this should occur, we will advise you promptly and work closely with you and your legal counsel to coordinate our response. We ask that you hold us harmless and indemnify us in connection with associated damages and costs, including legal costs, except to the extent they are found to have resulted from our gross negligence or willful misconduct. Also, in the event that a substantial amount of McKinsey professional time is required to respond to the action, the cost of such time will be discussed with you and billed accordingly.

TERMINATION

We believe that either party should have the freedom to terminate the relationship at any time if it becomes evident that the potential value of the work does not warrant further effort.

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The practices summarized above reflect key aspects of our basic approach to client service and reflect our commitment to maintain the highest professional standards. We would welcome the opportunity to discuss our professional practices with you.

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CHAIRMAN
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RFP GSM/14/04/1040: Provision of Professional Services to Support Transnet in De-risking and Acceleration of the New Multi-Product Pipeline (NMPP) -

Transnet

Closing date 24 June 2014 @ 12:00

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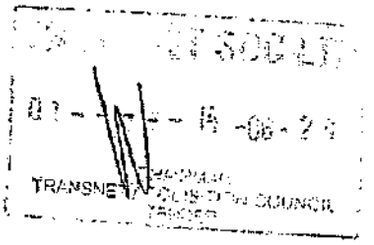

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Memorandum to
The Secretariat, Transnet Acquisition Council

RFP GSM/14/04/1040 : Provision of Professional Services to Support Transnet in De-risking and Acceleration of the New Multi-Product Pipeline (NMPP)

McKinsey & Company and Regiments Capital are pleased to submit this proposal in response to Transnet's solicitation regarding the provision of professional services to support Transnet in de-risking and acceleration of the new multi-product pipeline (NMPP) (RFP GSM/14/04/1040).

This memorandum outlines our proposed professional arrangements. An overview of our approach, team, value proposition and understanding of the context is included in a separate technical document.

PROFESSIONAL ARRANGEMENTS

The total fees for this engagement will be a maximum of 175 million ZAR (90 million fixed, 85 million milestone delivery based), excluding expenses and VAT. McKinsey's standard expenses are 15% of its professional fees. Regiments expenses will be calculated at 10% of its professional fees. Regarding fixed fees, McKinsey will be apportioned 50% of the fees, and Regiments 50%.

Consortium Partner	Fee basis	Professional Fees	Expenses	Total (excluding VAT)
McKinsey & Company	Fixed (Phases 1-3)	45,000,000	6,750,000	51,750,000
Regiments Capital	Fixed (Phases 1-3)	45,000,000	4,500,000	49,500,000
McKinsey & Company	Milestone delivery based (Phase 4)	42,500,000	6,375,000	48,875,000
Regiments Capital	Milestone delivery based (Phase 4)	42,500,000	4,250,000	46,750,000
Total		175,000,000	21,875,000	196,875,000

The fee allocations described above may shift if both Transnet and the consortium partners feel that a different allocation of resources from consortium members would materially improve impact for Transnet.

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The fixed fees above are for the re-baselining , detailing and optimizing business cases and setting-up front-line execution support (Phase 1-3 described in the "Approach" section), and will be invoiced on a monthly basis.

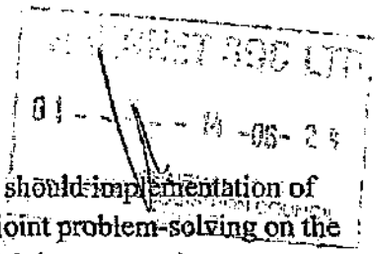
Basis for the milestone delivery based fees should be determined after completion of Phase 2 and before starting of Phase 4. We should jointly define the criteria and principles. Risk milestone delivery based fees will be invoiced monthly.

The criteria should be defined jointly, however they could include e.g.:

- Delivery of the project according to the milestone as defined at Phase 3
- Delivery of tighlining solution within estimated budget
- Maintain detailed project transparency
- Managing claims to the level estimated in Phase 3
- Delivery of scope of optimized business cases

Progress against the criteria shall be presented monthly at the NMPP Steering Committee and signed-off by GCiA in consultations with key NMPP Steering Committee members.

- The following guardrails should also apply:
  - The programme will take a "one programme, one baseline, one impact" approach
  - KPIs of relevant Transnet executives must be aligned with the impact targets for which the consortium is held accountable
  - Transnet will commit resources and leadership time as described above to make the effort successful.
  - In the event of unforeseen circumstances in material situations such as management change leading to project termination, significant shifts in strategy or operational philosophy, etc.: fixed fees will be paid in full, and contingent fees will be paid as a direct proportion of the planned project duration (e.g. if 50% of the project duration has elapsed prior to the material situation, 100% of fixed fees will be paid, and 50% of the total value of contingent fees will be paid)
  - Work may be terminated with one month's notice by either Transnet or the consortium. If work is terminated by Transnet (but the work is deemed satisfactory), outstanding fees are to be determined upon termination



- Transnet is obliged to notify the consortium should implementation of agreed initiatives be delayed, and allow for joint problem-solving on the rationale and alternatives to recover the deficit in opportunity
- The consortium will be compensated for material delays caused by Transnet

Invoicing and confidentiality

We would invoice you at the end of each month and payments are due immediately at the date of issue of the invoice. Interest (at prime) will be charged on past-due payments.

Unless expressly agreed otherwise, we treat all our client relationships and reports as strictly confidential (with the exception of material already in the public domain). We do not publish our clients' names, materials, or reports without their permission and request that our clients do not use our name, refer to our work, or make our products available outside their organisation without our prior consent. In the rare cases that disclosure by either side is appropriate we discuss this with our clients and only proceed by mutual agreement.

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We remain highly committed to the success of Transnet and South Africa, and would consider it a privilege to support you in implementing this important project.

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Pricing Proposal – GSM 1040 – NMPP

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Pricing and Delivery Schedule – Rate per hour (*only Fixed phases*)

Title of the Resource	Resource Level (DPSA Salary Band)	Resources - Phase 1	Resources - Phase 2	Resources - Phase 3	No. of hours	Per diem rate (ZAR)
Director	Band 16	2	1	2	1188	2,942
Partner	Band 16	2	1	2	1188	2,942
Associate Principal	Band 16	3	1	3	2611	2,942
Engagement manager	Band 16	2	1	1	2160	2,942
Associates	Band 16	7	2	3	6345	2,942
MLP Fellow	Band 16	2	1	2	2970	2,942
Research Analysts	Band 16	2	2	1	810	2,942
Specialists and Experts	Band 16	4	2	3	2052	2,942
Production specialists	Band 16	3	2	2	783	2,942
Analystics specialist	Band 16	2	1	2	891	2,942
Regiments - Director	Band 16	2	1	2	297	2,942
Regiments- Partner	Band 16	1	1	1	351	2,942
Regiments- Associate Principal	Band 16	1	1	1	702	2,942
Regiments - Associate	Band 16	5	2	5	7155	2,942
Regiments - Research analysts	Band 16	2	1	2	1188	2,942

Estimated Total cost for Phase 1-3 – fixed fees (excl. expenses and VAT) **ZAR 89,999,700**

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Pricing and Delivery Schedule – Project Fees

Phase of Project	Deliverable	Number of hours	Fees (ZAR)
Phase 1 (fixed)	As described in the Technical part of the proposal, chapter "Approach"	9,882	29,072,844
Phase 2 (fixed)	As described in the Technical part of the proposal, chapter "Approach"	5,724	16,840,008
Phase 3 (fixed)	As described in the Technical part of the proposal, chapter "Approach"	14,985	44,085,870
Phase 4 (milestone based)	Monthly progress report against criteria to be defined after Phase 2	28,874	84,946,918
Estimated Total cost of the project (excl. expenses and VAT)		59,465	174,945,640

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TRANSNET

AGREEMENT

Entered into by and between

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

And

McKINSEY INCORPORATED (Reg. Nr. 1995/002398/10)

FOR THE PROVISION OF SERVICES RELATED TO: RFP GSM/14/04/1040: Provision of Professional Services to Support Transnet in De-risking and Acceleration of the New Multi-Product Pipeline (NMPP) for a period of 18 months

Agreement Number	**GSM/14/04/1040**
Commencement Date	**09 April 2014**
Expiry Date	**08 October 2015**

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1 INTRODUCTION

This Agreement is entered into by and between:

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

And

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

NOW THEREFORE, IT IS AGREED:

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

1.2 The Service Provider hereby undertakes to render the Services provided for herein, as formally agreed between the Parties and in accordance with the Work Order(s) issued as schedules to this Agreement.

2 DEFINITIONS

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

2.1 **AFSA** means the Arbitration Foundation of Southern Africa;

2.2 **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, including the Work Order(s), specifications for the Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed in writing between the Parties], which collectively and exclusively govern the provision of Services by the Service Provider to Transnet;

2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by Transnet to give effect to its obligations under this Agreement owned in whole or in part by or licensed to Transnet or its affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement;

2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;

2.5 **Commencement Date** means **09 April 2014**, notwithstanding the signature date of this Agreement;

2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

a) Information relating to methods of operation, data and plans of the disclosing Party;

b) The contents of this Agreement;

c) Private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;

d) Any information disclosed by either Party and which is clearly marked as being confidential or secret;

e) Information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;

f) Information relating to the past, present and future research and development of the disclosing Party;

g) Information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;

h) Information contained in the software and associated material and documentation belonging to the disclosing Party;

i) Technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;

j) Copyright works;

k) Commercial, financial and marketing information;

l) Data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;

m) Plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;

n) Information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and

o) Information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

2.7 **Contract Manager** means the person/s appointed by either party to manage the implementation of the agreement;

2.8 **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;

2.9 **Default** means any breach of the obligations of either Party [including but not limited to fundamental breach or breach of a fundamental term] or any Default, act, omission, negligence or statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of this Agreement and in respect of which such Party is liable to the other;

2.10 **Deliverable(s)** means any and all reports, analyses or other such materials furnished by the Service Provider to Transnet in relation to the Services;

2.11 **Designs** mean registered Designs and/or Design applications as defined in the Designs Act, 195 of 1993, and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;

2.12 **Fee(s)** shall mean the agreed Fees for the Services to be acquired from the Service Provider by Transnet, as detailed in the Work Order(s), issued in accordance with this Agreement;

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

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

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

2.16 **Materials** means the Deliverables and, the Service Provider Materials;

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

2.18 **Party** means either one of the Parties;

2.19 **Patents** mean registered Patents and Patent applications as defined in the Patents Act, 57 of 1978, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;

2.20 **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;

2.21 **Personnel** means any partner, employee, agent, consultant, independent associate or supplier, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;

2.22 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services;

2.23 **Service(s)** means scope of services as defined in Schedule 1;

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 including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques analyses, know-how, tools, frameworks, models and industry perspectives used and/or developed by the Service Provider in connection with the Services;

2.27 **South Africa** means The Republic of South Africa as constituted from time to time

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2.28 **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;

2.29 **Third Party Material** means software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Service Provider in the performance of the Services;

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

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

2.32 **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, a specimen of which shall be appended to this Agreement.

3 INTERPRETATION

3.1 Clause headings in this Agreement are included for ease of reference only and do not form part of this Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.

3.2 Any term, word, acronym or phrase used in this Agreement, other than those defined under the clause heading "Definitions" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in this Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.

3.3 A reference to the singular incorporates a reference to the plural and *vice versa*.

3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.

3.5 A reference to a particular gender incorporates a reference to the other gender.

4 NATURE AND SCOPE

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

4.2 Such Purchase Orders shall be agreed between the Parties from time to time, subject to the terms of the relevant Work Order(s).

4.3 Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.

4.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Work Order(s), in accordance with procedures set out in clause 30 *[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, failing which the proposed amendment shall lapse forthwith.

4.5 Insofar as any term, provision or condition in the Work Order(s) conflicts with a like term, provision or condition in this Agreement, or where this Agreement is silent on the matter, the term, provision or condition in this Agreement shall prevail, unless such term or provision or

condition in this Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

4.6 The Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

5 AUTHORITY OF PARTIES

5.1 Nothing in this Agreement will constitute or be deemed to constitute a partnership between the Parties, or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.

5.2 Neither Party shall be entitled to, or have the power or authority to enter into an agreement in the name of the other; or give any warranty, representation or undertaking on the other's behalf; or create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

6 WARRANTIES

6.1 The Service Provider warrants to Transnet that:

a) It has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representatives of the Service Provider;

b) It will discharge its obligations under this Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;

c) It will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations; and

d) The use or possession by Transnet of any Service Provider Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.

6.2 The Service Provider warrants that it will perform its obligations under this Agreement in accordance with the service levels as defined in the relevant schedule. Transnet may at its reasonable discretion audit compliance with the service sevels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services or the manner in which the Service Provider ordinarily conducts business. Without prejudice to clause 6.3 below, in the event that the Service Provider fails to meet the service sevels, Transnet may claim appropriate service credits or invoke retention of Fees as detailed in the relevant schedule and/or Work Order.

6.3 The Service Provider shall, in accordance with the Service Provider's document retention policies, establish and maintain a secure file containing a copy of any presentation, progress review, report or other document furnished to Transnet by the Service Provider in connection with the Services, together with any working papers necessary to support its conclusions or analyses (collectively, the "Working Papers File"). Transnet may, at its own cost, inspect the Working Papers File at any time, during the five (5) year period from the end of the calendar year in which the relevant Services are completed or terminated, solely for the purpose of determining whether the Service

Provider performed the Services in accordance with the Work Order. Any information furnished in connection with this provision shall be kept confidential in accordance with this Agreement.

6.4 The Service Provider warrants that for a period of 90 [ninety] 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] days of notification by Transnet.

6.5 The Service Provider will remedy any defect within 30 [thirty] days of being notified of that defect by Transnet in writing.

6.6 The Service Provider will not be liable to remedy any problem arising from or caused by Transnet's use of the Deliverables in any way not intended by the Work Order or any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.

6.7 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.6 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 30 *[Amendment and Change Control]*.

6.8 The Service Provider further warrants that:

a) it has, using the most up-to-date software practicably and reasonably available to it, tested for [and deleted] all viruses identified by the Service Provider in the Service Provider Materials at the date of the relevant Work Order; and

b) At the time of delivery to Transnet, the Service Provider Materials and Deliverables do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.

6.9 The Service Provider agrees that, in the event that a virus is found, it will use its reasonable endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that 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.

6.10 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with this Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

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

6.12 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a

review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall make senior Personnel available to Transnet, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

7 TRANSNET'S OBLIGATIONS

7.1 Transnet undertakes to promptly comply with any reasonable request by the Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Services as may be necessary for the Service Provider to perform the Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Service Provider of its confidentiality obligations under this Agreement.

7.2 The Service Provider shall give Transnet reasonable notice of any information it requires in accordance with clause 7.1 above.

7.3 Subject to clause 15 *[Service Provider's Personnel]*, Transnet agrees to :

a) provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under this Agreement; and

b) perform any tasks or responsibilities assigned to Transnet and notify the Service Provider of any issues or concerns Transnet may have relating to the Services.

8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

8.1 The Service Provider shall:

a) Respond promptly to all complaints and reasonable enquiries from Transnet;

b) Inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services;

c) Conduct its business in a professional manner that will reflect positively upon the Service Provider and the Services;

d) Keep full records clearly indicating all transactions concluded by the Service Provider relating to the performance of the Services and keep such records for at least 5 [five] years from the date of each such transaction;

e) Obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Service Provider;

f) Observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993;

g) Comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance that are applicable to the Service Provider and performance of the Services; and

h) Ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Verification Certificate, for the duration of this Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it

may have in terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.

8.2 The Service Provider acknowledges and agrees that it shall at all times:

a) Render the Services and perform all its duties with honesty and integrity;

b) Communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;

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

d) Use its reasonable endeavours and make every diligent effort to meet agreed deadlines;

e) Treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;

f) Practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination [as further referred to in clause 24 – *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 therefore 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 accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;

j) Not mislead Transnet or its Personnel, whether by act or omission;

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

l) Immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services.

9 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 Request for Proposal GSM/14/04/1040 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, upon request by Transnet, submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE

Act and proof thereof at the beginning of March each year during the currency of this Agreement.

c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:

(i) a change in the Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and

(ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Service Provider's B-BBEE status.

d) In the event there is a change in the Service Provider's B-BBEE status, then the provisions of clause 9.1 (c) 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 provided Transnet with a B-BBEE Improvement Plan to indicate the extent to which their B-BBEE status and the elements of the B-BBEE scorecard will be maintained or improved over the contract period, as per Annexure D of the RFP.

b) The Service Provider shall, for the duration of this Agreement, comply with the B-BBEE Improvement Plan.

c) The terms of the B-BBEE Improvement Plan and monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in such B-BBEE Improvement Plan.

d) Notwithstanding the aforegoing, the Service Provider may request that certain initiatives in the plan be replaced with other initiatives if the planned initiatives are found to be impossible, impractical or unduly burdensome to deliver. The black ownership percentages committed may not be changed. Such a request must show that the replacement initiatives must still strive to achieve the same levels of transformation and empowerment as the initial initiative and may not be less in terms of monetary or deemed monetary value of the original initiative. Transnet must agree to the change in writing which must be approved by the Transnet Group Chief Supply Chain Officer.

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) days from the signature date of the contract.

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) days as aforesaid (or such later date as Transnet may consent to in writing if delays are caused by unforeseen factors or delays caused by Transnet).

c) The Service Provider's Implementation Plan shall include, but not be limited to Transfer of Technology & Intellectual Property Rights, New skills development, Job creation and Enterprise and Supplier Development.

d) The Service Provider must use an alternate Subcontractor or Subcontractors if the primary selected Subcontractor fails to deliver the required services or at the required quality level. Transnet must agree to the alternate Subcontractor in writing.

e) The Service Provider must provide a list, as part of the Supplier Development Implementation Plan, of the alternate Subcontractors that they will utilise if the primary selected Subcontractor fails to deliver the required services or at the required quality level.

f) 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 Implementation Plan

g) The end date of the Implementation Plan may be later than the end date of the Services provided in terms of this contract.

h) The Service Provider may request that certain initiatives in the Implementation Plan be replaced with other initiatives if the agreed initiatives are found to be impossible, impractical or unduly burdensome to deliver, or will not meet the desired intention of the initiative. Such a request must show that the replacement initiatives will still strive to achieve the same levels of transformation and empowerment and economic development as the initial initiative and may not be less in terms of monetary or deemed monetary value of the original initiative. Such a replacement initiative will not reduce the overall percentage of Supplier Development value as in the original Implementation Plan. Transnet must agree to the replacement initiative in writing. There will be no additional cost for Transnet with regards to any replacement initiative.

i) Transnet Group Chief Supply Chain Officer will sign the Implementation Plan and any amendments to it.

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

b) The above will be provided in terms of quarterly reporting on the Service Providers commitment to Green Economy and their Carbon Footprint measured against this contract.

9.5 **Reporting**

a) The Service Provider shall monitor, audit, and record in an auditable manner, its own implementation and compliance with the B-BBEE Improvement Plan and the Implementation Plan and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning the implementation of the B-BBEE Improvement Plan and the Implementation Plan.

b) The information that shall be made available will be all the information that relates to any initiative in the Implementation Plan, the B-BBEE improvement plan and the Current and Future B-BBEE certificates of the Service Provider.

c) The Service Provider shall, every 3(three) months from the Commencement Date and within 7 (seven) days of the end of the calendar month of that 3 (three) months period, provide Transnet with a report (for monitoring purposes only) in respect of each of the undertakings stipulated in this clause.

d) Transnet, through its Supplier Development division, shall, every 3 (three) 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.

e) The Service Provider shall attach adequate proof to enable Transnet to verify compliance with the B-BBEE Improvement Plan and Implementation Plan.

f) 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 Integrated Supply Chain Management Department (Supplier Development specialist), 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 Implementation Plan and the extent, if any, to which the Service Provider has not so complied.

g) Without prejudice to the Transnet's rights under this Agreement:

(i) if the Contract Manager and/or Transnet's Supplier Development specialist reasonably considers that the Service Provider is not at any time complying with 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 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.

h) In the event the Service Provider is found to be fraudulent in submitting the B-BBEE Improvement Plan and/or the Implementation Plan, 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 clause 19.

i) 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 Implementation Plan 3 (three) 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 Implementation Plan, the Service Provider shall, subject to Clause 9.6 d) ***[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) below.

(i) Non Compliance Penalties shall be calculated as a percentage of the Contract Value and accrue at the Applicable Rate per month until:

- the date on which the Service Provider has remedied such Non Compliance by complying with the Implementation Plan and/or the B-BBEE Improvement Plan (as applicable); or if earlier
- the Agreement being terminated.

Applicable Rates of Non Compliance Penalties (for Large Enterprises Only):

b) In relation to the Implementation Plan, Non Compliance Penalties shall apply as follows:

(i) 100% of the undelivered portion of Supplier Development commitments to be set off against any current or future payments due to the Service Provider.

(ii) The Service Provider may request that certain Supplier Development value in terms of subcontracting be waived from the value of the penalty if the Subcontractor fails to deliver the required Services at the right level of quality and the Service Provider utilised an alternate Subcontractor and this caused delays in the delivery of the Implementation plan which would cause Non Compliance Penalties to be raised. The Service provider should make such representations in writing and provide suitable evidence, based on the conditions set out above, for Transnet to waive the requested portion of penalties of the undelivered Supplier Development value relating to subcontracting. The Service Provider must have made every effort to have brought the alternate Subcontractor on board as soon as possible to avoid unnecessary delays and the associated penalties.

c) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall accrue at the following Applicable Rates:

(i) for the first month after the deliverables of the B-BBEE Improvement plan are due (or part thereof), a rate of 1.0% (one percent);

(ii) for the second month after the deliverables of the B-BBEE Improvement plan are due (or part thereof), a rate of 1.5% (one and a half percent);

(iii) for the third month after the deliverables of the B-BBEE Improvement plan are due (or part thereof), a rate of 2.0% (two percent);

(iv) for the fourth month after the deliverables of the B-BBEE Improvement plan are due (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 after the deliverables of the B-BBEE Improvement plan are due, a rate of 3% (three percent).

Non Compliance Penalty Cap (for Large Enterprises):

d) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties under this clause shall not exceed:

(i) in the case of the B-BBEE Improvement Plan, 5% (five percent) of the Fees, (each a Non Compliance Cap);

Non Compliance Penalty Certificate:

e) 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.

f) 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 Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non Compliance Penalties:

g) Subject to Clause 9.6 (e) and Clause 9.6 (f)(ii), 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.

h) Subject to Clause 9.6 (e) and Clause 9.6 (f), the Service Provider shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.

i) Should the Service Provider fail to pay any Non Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.

j) The Non Compliance penalties set forth in this clause are stated exclusive of VAT. Any VAT payable on Non Compliance penalties will be for the account of the Service Provider.

10 SERVING COMPETITORS

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

11 FEES AND EXPENSES

11.1 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.

11.2 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 reasonably evidenced and invoiced to Transnet at cost].

11.3 The Parties have agreed that the fees are inclusive of expenses.

11.4 All Tax Invoices relating to Fees, and expenses and, where appropriate, shall include VAT as a separate item.

12 INVOICING AND PAYMENT

12.1 Transnet shall pay the Service Provider the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of this Agreement.

12.2 Transnet shall pay such amounts to the Service Provider, upon receipt of a valid and undisputed Tax Invoice as specified in the Work Order appended hereto, once the undisputed Tax Invoices, or such portion of the Tax Invoices which are undisputed become due and payable to the Service Provider for the provision of the Services, in terms of clause 12.4 below.

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

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

12.5 Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 12, 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.

12.6 Should the Service Provider require that Transnet pay the Subcontractor directly, the Service Provider must request this from Transnet in writing. If Transnet agrees to pay the Subcontractor directly the Service Provider still remains responsible for all obligations related to this contract including the management of, and the performance of the Subcontractor. The Service Provider shall verify the correctness of the Subcontractors invoice and confirm that all the deliverables have been delivered.

13 FEE ADJUSTMENTS

13.1 Subject to Clause 11.1, the Fee is fixed for the duration of the Agreement at a capped value as detailed in the relevant schedule or Work Order.

14 INTELLECTUAL PROPERTY RIGHTS

14.1 Title to Confidential Information and Intellectual Property

a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Service Provider acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual

Property that is proprietary to Transnet. For the avoidance of doubt, all the Service Provider Materials shall remain vested in the Service Provider.

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

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

14.2 **Unauthorised Use of Confidential Information**

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

14.3 **Unauthorised Use of Intellectual Property**

a) The Service Provider agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Service Provider acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.

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

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

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

15 SERVICE PROVIDER'S PERSONNEL

15.1 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.

15.2 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.

15.3 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.

15.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under this Agreement.

15.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a suitable replacement.

16 LIMITATION OF LIABILITY

16.1 Neither Party excludes or limits liability to the other Party for:

a) Death or personal injury due to negligence; or

b) Fraud

16.2 Each of the Parties shall indemnify and keep the other Party (the "**Indemnified Party**") indemnified from and against liability for damage to any of the Indemnified Party's property [whether tangible or intangible] or any other loss, costs or damage suffered by the Indemnified Party to the extent that it results from any act of or omission by such Party or its Personnel in connection with this Agreement. Each of the Party's liability arising out of this clause 16.2 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 limited to the value of the total fees.

16.3 Subject always to clauses 16.1 and 16.2 above, the liability of either the Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.

16.4 Subject to clause 16.1 above, and except as provided in clauses 16.2 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.

16.5 Nothing in this clause 16 shall be taken as limiting the liability of the Service Provider in respect of clause 14 *[Intellectual Property Rights]* or clause 18 *[Confidentiality]*.

17 INSURANCES

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

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

17.3 Subject to clause 17.4 below, if the Service Provider fails to affect adequate insurance under this clause 17, 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.

17.4 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 17.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, where after either the Service Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] days prior written notice to that effect.

18 CONFIDENTIALITY

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

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

b) Not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;

c) Not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information, without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;

d) Not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;

e) Not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;

f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such Party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;

g) The Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;

h) Each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or internal consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or internal consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or internal consultants honour such obligations;

i) Each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;

j) Each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by the person or entity; and

k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

18.2 The duties and obligations with regard to Confidential Information in this clause 18 shall not apply where:

a) A Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Personnel; or

b) Was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or

c) Can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or

d) Is independently developed by a Party as proven by its written records.

18.3 The Service Provider's work for Transnet is confidential and intended for Transnet's internal use only. The Service Provider does not make public client names, client materials or reports prepared for clients without their prior written permission. Similarly, Transnet agrees that it will not use Service Provider's name, refer to Service Provider's work, or make the Deliverables or the existence or terms of this Agreement available outside its organization without the Service Provider's prior written permission.

18.4 This clause 18 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 [five] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

19 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

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

20 TERM AND TERMINATION

20.1 Notwithstanding the date of signature hereof, the Commencement Date of this Agreement is **09 April 2014** and the expiry thereof shall occur on **9 October 2015**, unless:

a) this Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or

b) This Agreement is extended at Transnet's option for a further period to be agreed by the Parties in writing.

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

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

a) A voluntary arrangement or composition or reconstruction of its debts;

b) Its winding-up or dissolution;

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.

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

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

20.6 Notwithstanding this clause 20, either Party may cancel this Agreement without cause by giving 30 [thirty] days prior written notice thereof to the other Party.

21 CONSEQUENCE OF TERMINATION

21.1 Termination in accordance with clause 20 *[Term and Termination]* shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.

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

21.3 To the extent that any of the Deliverables and property referred to in clause 21.2 above is in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with encrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held. Notwithstanding the foregoing, Service Provider shall be permitted to retain, subject to the terms of this Agreement and for professional archival purposes only, a copy of any Deliverables furnished to Transnet by Service Provider in connection with the Services, together with any working papers necessary to support its conclusions or recommendations.

21.4 In the event that this Agreement is terminated by the Service Provider under clause 20.2 *[Term and Termination]*, or in the event that a Work Order is terminated by Transnet under clause 20.5 *[Term and Termination]*, Transnet will pay to the Service Provider all outstanding Fees [apportioned on a *pro rata* basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.

21.5 The provisions of clauses 2 *[Definitions]*, 6 *[Warranties]*, 14 *[Intellectual Property Rights]*, 16 *[Limitation of Liability]*, 18 *[Confidentiality]*, 21 *[Consequence of Termination]*, 27 *[Dispute Resolution]* and 31 *[Governing Law]* shall survive termination or expiry of this Agreement.

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

21.7 Should:

a) The Service Provider effect or attempt to effect a compromise or composition with its creditors; or

b) Either Party be provisionally or finally liquidated or placed under judicial management, whether provisionally or finally; or

c) Either Party cease or threaten to cease to carry on its normal line of business or default or threaten to default in the payment of its liabilities generally, or commit any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time];

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

22 ASSIGNMENT

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

23 FORCE MAJEURE

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

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

24 EQUALITY AND DIVERSITY

24.1 The Service Provider will not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.

24.2 Both Parties to this Agreement undertake that they will not, and shall procure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

25 NON-WAIVER

25.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of this Agreement, shall not, in any manner, be construed to be a waiver of any of that Party's rights in that regard and in terms of this Agreement.

25.2 Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.

26 PARTIAL INVALIDITY

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

27 DISPUTE RESOLUTION

27.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.

27.2 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.

27.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

27.4 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 27.

27.5 This clause 27 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

27.6 This clause 27 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

28 ADDRESSES FOR NOTICES

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

a) **Transnet**

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

Attention: General Manager Group Legal Services

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

b) **The Service Provider**

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

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

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

28.3 Any notice shall be deemed to have been given:

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

b) If posted by prepaid registered post, 10 [ten] days after the date of posting thereof; or

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

VS

29 WHOLE AND ONLY AGREEMENT

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

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

30 AMENDMENT AND CHANGE CONTROL

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

30.2 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 27 *[Dispute Resolution]*.

31 GOVERNING LAW

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

31.1 **Change of Law**

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Fees, Deliverables, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 27 *[Dispute Resolution]* above.

32 COUNTERPARTS

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

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

For and on behalf of **TRANSNET SOC LTD** duly authorised hereto	For and on behalf of **MCKINSEY INCORPORATED** duly authorised hereto
Name: [illegible]	Name: VIKAS SAGAR.
Position: CCFO.	Position: DIRECTOR.
Signature:	Signature:
Date: 06/03/15	Date: 10/03/15
Place: JHB	Place: SANDTON

AS WITNESS: Name: GARRY PITA	**AS WITNESS:** Name: BENEDICT PIERZ
Signature:	Signature:

AS WITNESS: Name: Edward Thomas	**AS WITNESS:** Name: Nonfonelo Mgiventsha
Signature:	Signature:

SCHEDULE 1 – Work Order

For the Provision of Services Related to RFP GSM/14/04/1040: Provision of Professional Services to Support Transnet in De-risking and Acceleration of the New Multi-Product Pipeline (NMPP) for a period of 18 months

With reference to the Master Agreement, Reference Number **GSM/14/04/1040** [the **Agreement**] between Transnet SOC Ltd [**Transnet**] and McKinsey, Incorporated (Pty) Ltd [**the Service Provider**] pursuant to which the Service Provider has agreed to perform certain services to Transnet subject to such Agreement, the defined terms in the Agreement will, unless otherwise indicated, have the same meaning in this Work Order.

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

Services to be provided by the Service Provider

1. To re-baseline the NMPP project in terms of schedule and cost to provide a more realistic outlook on completion date and budget for approval by the Transnet Board of Directors
2. Should the projected completion cost exceed the available budget, to establish options for reducing the project scope and cost while still delivering most of the stated business objectives of the NMPP:
    a. Review market conditions, demand, operational requirements and already-built assets
    b. Create a common understanding within Transnet of the constraints and options for scope change with a view to schedule and cost optimisation
    c. Develop an approach for taking the project forward to minimise risk, schedule and cost while meeting most business objectives
3. To improve on-site construction productivity at TM1
    a. Creating control towers to create transparency of progress, productivity and contractor performance
    b. Piloting the Last Planner or alternative productivity improvement programmes
4. To improve on-site construction productivity at TM2
    a. Creating control towers to create transparency of progress, productivity and contractor performance
    b. Piloting the Last Planner or alternative productivity improvement programmes
5. To set up and run an executive control tower to provide executive oversight and decision-making support for the entire NMPP programme
6. To review and optimise the project organisation as required
    a. Organisations structure
    b. Roles and responsibilities
    c. Review of capabilities required and capabilities available and suggestions on how to close the gap

7. To streamline the governance of the NMPP
    a. Recommendations on meeting structures, frequency and attendees
    b. Recommendations on decision-making authority and structures
    c. Recommendations on reports and information to be provided to support decision-making in governance forums in line with the executive control tower (item 5 above)
8. To provide access to globally experienced project directors as a sounding board to the Transnet Capital Projects executives from time to time.

Project Phases and Timeline

Phase	Phase Description	Duration
1	Re-baselining of project execution and commercial assumptions	6 weeks
2	Detailing and optimizing business cases	11 weeks
3	Setting-up execution front-line support	12 weeks
4a) b) c)	Implementation of execution support as provided for in Phase 3	12 months

PROJECT MANAGERS

Transnet Project Manager	**TBD**
Designation	
Operating Division	
Address	
Cell Phone	
Telephone	
Fax	
Email	

Service Provider's Project Manager	Prakash Parbhoo
Designation	Principal
Address	88 Stella Street, Sandown, Sandton
Telephone	+27 11 506 8000
Fax	+27 11 506 9000
Email	Prakash_Parbhoo@mckinsey.com

ACCEPTANCE CRITERIA FOR DELIVERABLES

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

PROGRESS REPORTS AND REVIEW MEETINGS

Project management and review meetings will be held every six weeks, or as otherwise directed by Transnet's Project Manager.

FEES AND DISBURSEMENTS

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

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

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

SIGNED for and on behalf of: **McKinsey, Incorporated**	**SIGNED** for and on behalf of: **Transnet SOC Ltd**
Signature	Signature .....
Name: VIKAS SAGAR.	Name: [illegible]
Position: DIRECTOR	Position: [illegible]
Date: 10/03/15	Date: [illegible]
Place: JOHANNESBURG	Place: JHB.

ANNEXURE A – Project Fees

Professional fees & expenses, workstream timing and roles are laid out in the table below for McKinsey and its Subcontractor:

TRANSNET

Scope and fees for NMPP execution support

Scope item	Commence mid-	Duration	Transnet role	McKinsey role	Resource role	Cost
				Role	People	Rm
• Re-baselining NMPP schedule and cost • Generating options for completing the project within cost and schedule • Setting up on-site productivity improvements at TM1 and TM2	April 2014	Until Nov 2014 Complete	Provide team members and workshop participants	Overall leadership for option generation and setting up productivity improvement	Team resources and support	R116m
• Productivity improvement support to TM1	Dec 2014	9 months	Provide access to data and people On-site team lead	Leadership support Training	On-the ground full time implementation team	
• Productivity improvement support to TM2	Dec 2014	6 months	Provide access to data and people On-site team lead	Leadership support Training	On-the ground full time implementation team	R74m
• Central executive control tower	Dec 2014	6 months		Set up and leadership support	Lead & run once set up	
• Governance, organisation & access to expertise	Dec 2014	12 months		Governance and expertise lead	Organisation lead	
					Total	R190m

Notes:

1. Detailed scope and deliverables to be reviewed regularly (monthly or quarterly as required) and may be adjusted by mutual agreement to best meet Transnet's needs
2. Resources and costs may be reallocated between programme items depending on urgency, level of depth required, changing needs within Transnet, etc.
3. Fee split is nominally 54:46 McK:Partners, but may be adjusted to meet Transnet's needs and resourcing requirements
4. Total cost includes expenses

SUPPLIER DEVELOPMENT VALUE SUMMARY

Enterprise and Supplier Development Value	
McKinsey	Subcontractor
Phase 1: Re-baselining - 70%	Phase 1: Re-baselining - 50% *[of which 30% is targeted at downstream supplier development of SMMEs (EMEs and QSEs)]*
Phase 2, 3, 4a), b) and c): Milestone Delivery - 70%	Phase 2, 3, 4a), b) and c): Milestone Delivery - 50% *[of which 30% is targeted at downstream supplier development of SMMEs (EMEs and QSEs)]*

FOF-08-1011

Transnet SOC Ltd
Registration
Number
1990/000900/30

Carlton Centre
150 Commissioner
Str. Johannesburg
2001

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Parkview
South Africa, 2122
T +27 11 308 2250
F +27 11 308 1269

TRANSNET

MEMORANDUM

www.transnet.net

To: Brian Molefe
Group Chief Executive

From: Anoj Singh
Group Chief Financial Officer

Date: 7 October 2013

SUBJECT: CAPITAL OPTIMISATION AND IMPLEMENTATION SUPPORT

PURPOSE

1. The purpose of this memo is to request the Group Chief Executive to approve a confinement and award in respect of the Capital Excellence programme to a consortium of Regiments & Company and McKinsey and Company ("Team") to:
    a. Further value optimise the capital investment portfolio by a minimum of R100 billion for maximum fee of R173 million (excluding expenses and VAT) in excess of the ~R49bn optimisation expected from scrubbing and optimization by the Project Factory;
    b. Implementation and embedding of the platinum standard developed by Capital Integration for a fixed fee of R72 million.

BACKGROUND

2. Transnet's capital programme is one of the most ambitious initiatives in the world. By now, we all understand that South Africa's growth and the success of MDS are closely interlinked and depend on our ability to execute capital projects efficiently and effectively. The programme also provides opportunities to achieve the transformation objectives of job creation, skills development, localisation, supplier development and empowerment.

3. Transnet has recognised the importance of strengthening its capital delivery system (organisation structure, skills, capacity, systems, processes, and governance) and has previously appointed the consortium, led by McKinsey & Company, to assist Transnet to deliver its capital portfolio in an effective and efficient manner, through a Capital Excellence Programme. The programme consists of four Lighthouse Projects which have been launched to reduce the current capital spend by ~R49bn:
    a. Set up a "Project Factory" – a world first to systematically scale limited resources and build a sustainable way of developing robust capital project business cases, optimized for socio-economic outcomes and improved execution readiness, thereby de-risking Transnet's project delivery.
    b. The Project Factory is expected to cover at least eight of the biggest commodities, accounting for ~80% of the capital spend and volumes

over the first 3 waves, with anticipated capital savings of ~R39bn;

c. Re-cut the project portfolio – ensure that Transnet only creates capital projects that deliver the intended business outcomes (volumes) in line with Transnet's strategy, and that these projects accurately reflect all of the capital and operating inputs to achieve these outcomes. We expect this to deliver ~R10 billion in capital savings, as well as establishing the internal capabilities and methodologies in the portfolio management team to sustain this going forward.
d. Accelerate capital procurement – ensure that capital procurement is not a bottleneck to project delivery, with support targeted to procurement events that are critical for the large projects.
e. Set up a "Platinum Standard" capital organization - build the very foundation that will strengthen and sustain Transnet's capital investment levels beyond the seven year plan; including creating the structures, processes and governance to ensure capital projects are appropriately supported. In the long run this will increase our capacity by ~1200 people.

4. The projects as listed above are contained in the current LOI, dated 23 January 2013. The current fee split for this engagement (excluding expenses and VAT) for McKinsey and its subcontractors is as follows:
    a. McKinsey & Company: 58%
    b. Regiments: 28%
    c. Letsema: 14%

5. The Capital Excellence Programme has already picked up momentum:
    a. Project Factory - the concept, methodology, floor plan and skeleton organisation have been developed and pilot projects identified;
        i. A rapid review of the Manganese business case has been commissioned and includes a focused validation of key assumptions in the business case as well as a review of financial models and monte carlo risk analysis.
        ii. We have compiled the list of project sponsors and directors for the five mega programmes as approved by EXCO and presented at the Board of Directors strategy session. The processes to appoint the relevant teams are in progress.
        iii. Transnet has been unable to put the required pre-requisites in place, so the Capital Excellence Programme has not ramped up as quickly as expected. For example:
            1. Getting leadership alignment on the Platinum Standard principles across Transnet has taken significantly longer than expected;
            2. The key area requiring significant resource commitment from Transnet, creation of appropriately resourced owner's teams, has been lacking to date and requires additional focus and momentum in the immediate few weeks;
            3. The Portfolio Manager has only been appointed effective 2nd October 2013, and the filling of the remaining structure is still underway;
    b. Portfolio Recut – the R307 billion MDS capital budget has been recut into 30 programmes, creating the first portfolio view for Transnet, supported by a prioritisation tool. R17 billion capital savings have been identified (with an additional R10 billion from the locos business case).

c. Platinum Standard – the Group Capital Integration team has been ramped up, with capability building for the 5 existing team members and 5-10 Graduates-In-Training. The programme owner's team blueprint and governance model has also been defined, along with the programme sponsor and programme director roles. The CAPIC mandate has been refined to include the steering of mega-projects, and a capital allocation process has been developed.

DISCUSSION

6. The original contract was confined to the consortium. The contract fee payable, of R174.6 million (including expenses, excluding VAT) is dependent on the achievement of all the deliverables and the capital savings targets on the following basis:
    a. Programme set-up: R78.9 million guaranteed fee (including expenses, excluding VAT) to build the base capabilities within Transnet and to lay the foundations for the scrubbing and optimization work;
    b. At risk: R95.7 million (including expenses, excluding VAT), contingent on the realization of R49 billion capital savings from scrubbing and optimization.

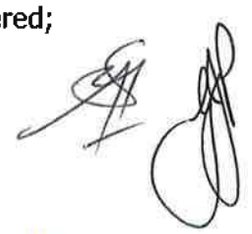
7. The complexity and risk associated with the capital portfolio has increased since the contract was negotiated, thereby increasing the requirement for capital savings from R49 billion to ~R150 billion:
    a. The MDS investment portfolio of R307.5 billion over the next seven years does not incorporate all projects to delivery 360 Mtpa, as identified by the Capital Planning team in compiling the Long Term Planning Framework. If all opportunities are considered (in the unlikely instance of unlimited capital) the investment plan would be in the region of ~R450 billion;
    b. Transnet can only afford ~R230-280 billion due to volumes at risk, and factors such as increasing labour costs and regulatory pressure. The range is driven by the level of cost savings (e.g. procurement) and revenue enhancement (e.g. Africa) initiatives that can be realised;
    c. Public Sector Partnerships (PSPs) currently being developed independently from the capital programme have critical inter-linkages with Transnet funded programmes, and must be closely integrated to ensure delivery of MDS volumes;
    d. Given the changing market conditions, under-staffed owner's teams and discovery of additional risks, several mega-projects are further behind schedule than expected, and require additional support to ensure they deliver within the MDS horizon. Overruns, delays and estimation errors could be significant given the issues on the NMPP project and global trends in infrastructure projects;
    e. Exchange rate risk resulting from the import component of the capital investment programme quantified at ~R30 billion;
    f. The ability for Transnet to successfully execute the capital investment programme, on time, at cost, and within the required quality standards has been raised extensively by the credit rating agencies;
    g. The Corporate Plan requires amending to reflect this improved understanding of the capital portfolio, and recent changes in demand.

8. One of the initiatives tabled at the Board Strategy Session was the Portfolio optimisation as well as the Project factory driven optimisation of mega projects

with total capital savings estimated at ~R100 billion.

9. The Platinum Standard has been developed, however, a clear implementation and embedding plan must still be developed and rolled out for Group as well as operating divisions. Furthermore, additional focus areas are required in the following areas to create a sustainable solution across Transnet for the embedding of the Platinum Standard:
    a. Resourcing strategies of TCP and Operating Divisions and filling of key roles identified through the process;
    b. Embedding the Capital Allocation principles for the future budgeting cycles to create a dynamic Capital investment Plan;
    c. Development of a Financial model that will assist Transnet with the single view of Capital with links to volumes, demand and strategic objectives;
    d. Change management across Transnet of the modified methodologies and principles of the Capital Platinum Standard. The focus on delivering Capital Programmes to yield the strategic and business objectives of Transnet. This will require
        i. Formulation of an implementation plan
        ii. Training programs across Transnet incorporating all Operating Divisions and all relevant functions within the ODs
        iii. Refresher training programs over a sustained period of time
    e. Development and implementation of a stakeholder engagement program to incorporate requirements of the DPE, PICC and other stakeholders
    f. Creation of a "Top Talent" program for Transnet with a focus on becoming a world-class Capital Organisation

10. Transnet does not have the capacity to achieve these additional capital savings and drive the implementation of the platinum standards, as the capability will only be created towards the end of the programme. It must be emphasised that iGC department was formed in January 2013 and to date only a further two management team members have been appointed.
    a. We propose engaging a team of consultants to ensure the embedding of a sustainable solution of the platinum standard. This will significantly reduce the reliance on consultant in the medium to long term by creating the capacity internally within Transnet
    b. Value optimise the capital investment portfolio by a further R100 billion for fee of maximum fee of R173 million (excluding expenses and VAT) that is contingent on the realization of the capital savings from scrubbing and optimization by the Project Factory in the short term, next 12 – 24 months.; Value optimisation is defined as follows
        i. Savings identified in optimisation covering both technical and financial solutions to deliver the 360mt volumes;
        ii. Reduction in value in the Capital Portfolio to deliver 350mt and bringing all mega programmes to FEL 3 stage;
        iii. Removal and deferment of projects will not be considered;





11. The contingent fee will apply on the following scale linked to optimisation targets:

Further Optimisation target	**Contingency fee payable**
1 000 000 000	1 726 531
10 000 000 000	17 265 306
20 000 000 000	34 530 612
30 000 000 000	51 795 918
40 000 000 000	69 061 224
50 000 000 000	86 326 531
60 000 000 000	103 591 837
70 000 000 000	120 857 143
80 000 000 000	138 122 449
90 000 000 000	155 387 755
100 000 000 000	172 653 061

12. Implementation and embedding of the platinum standard developed by Capital Integration for a fixed fee of R 72 million.

13. A separate memo informing the GCE will be drafted once the optimisation is complete and before payment is made to the consultants.

GROUNDS FOR CONFINEMENT

14. For ease of reference, below is an extract from the latest approved Procurement Procedures Manual, stipulating the relevant grounds for confinement par (c) and (d) for this case, which we believe remain relevant:

    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.

15. Specific emphasis is placed on grounds (c) and (d) due to the potential business risks associated with approaching the market on an open tender process and are illustrated in the following table:

c. Standardization or compatibility with existing products, deviation will cause major operational disruption	This component of Ground C relates to the physical operations of capital execution. Following an open tender process and the potential appointment of another provider will result in major operational disruption of the portfolio recut, project factory and capital organisation work which has been rolled out across all ODs resulting in work done since January 2013 needing to be redone. This has all been done within a standardised process and the additional work is compatible with existing products being provided by the Consortium.
d. Goods and services being procured is highly specialised and largely identical	This component of Ground D relates to the specialised work conducted in the re-cutting of the capital investment portfolio and the optimisation of programmes in the project factory. The tools and methodologies have been developed and will be applied across the Transnet investment portfolio and then the same to be applied to the portion of investment that's not in the current 7 year plan but part of the long term planning framework.
d. Approaching the market would result in wasted money and time	Due to the specialised nature of the work a new service provider will be required to start from scratch and basically move the initiative back to January 2013 and as a result will require similar amount of hours to reach a level of where CI has currently progressed to. This will result in funding the same work already conducted by the original service provider. Additionally the amendment to contract does not guarantee any additional fees unless savings are achieved.

FINANCIAL IMPLICATIONS, B-BBEE AND SUPPLIER DEVELOPMENT

16. Similar to the optimization and scrubbing target of R49 billion, only once the FEL2/3 stages gate review and/or governance processes are passed will the consortium team qualify for the contingency fee of R173 million including:
    a. Robust gate reviews;
    b. Review and approval by CAPIC in line with the new CAPIC mandate.
    c. Achieving the value optimisation targets as defined as
        i. Savings identified in optimisation covering both technical and financial solutions to deliver the 350mt volumes
        ii. Reduction in value in the Capital Portfolio to deliver 350mt and bringing all mega programmes to FEL 3 stage
    d. Removal and deferment of projects will not be considered

17. The total fee of R245 million – at risk of R173 million and guaranteed fixed fee of R72 million will be shared with the Team as agreed by the consortium in conjunction with the Transnet sponsoring executive, with a minimum of a 70%

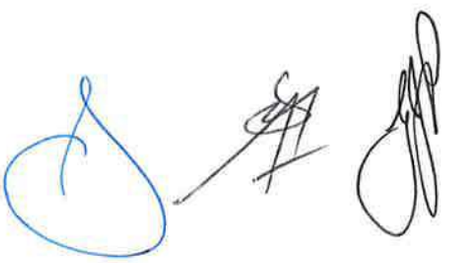
share going to Regiments and 30% to Mckinsey and Company .

BUDGET IMPLICATIONS

18. The at risk of R173 million has not been included in the budget, but due to the contingent nature of the payment, if additional fees are paid, a significant saving would have been attained on the capital investment plan of 100 times the additional fees to be paid.
19. The guaranteed fee of R73 million has not been included in the 2013/14 budget as the work will be executed over the 2014/15 financial year, and will be budgeted accordingly in the 2014/15 Corporate Plan.

APPROVALS AND DELEGATIONS

20. The GCE's delegation for confinements is R250 million per paragraph 5.4.3 of the Delegation of Authority Framework (DOA), effective 1 June 2013. Therefore, as per the PPM and the DOA, this request for approval is being sought from the GCE.



RECOMMENDATION

21. It is recommended the Group Chief Executive approve a confinement and award in respect of the Capital Excellence programme to a consortium of Regiments & Company and McKinsey and Company ("Team") to:
    a. Further value optimise the capital investment portfolio by a minimum of R100 billion for maximum fee of R173 million (excluding expenses and VAT) in excess of the ~R49bn optimisation expected from scrubbing and optimization by the Project Factory;
    b. Implementation and embedding of the platinum standard developed by Capital Integration for a fixed fee of R72 million.

Prepared by

Mohammed Mahomedy
GM: Capital Integration
Date: 11.10.13.

Recommended by

Peter Volmink
EM: Governance(iSCM)
Date: 14/10/13

Recommended by

→SD plan to be negotiated

Garry Pita
Group Chief Supply Chain Officer
Date: 14/10/13

Recommended by

Anoj Singh
Group Chief Financial Officer
Date: 14/10/13.

Approved/~~Not approved by~~

Brian Molefe
Group Chief Executive
Date: 17.10.13

Presentation to BOD Workshop- Overview of 14 initiatives and related benefits expectation

TRANSNET

delivering freight reliably

X Higher impact lever x Lower impact lever

X Downside protection lever

	Initiatives	Revenue Rbn p.a	Cost Rbn p.a	EBITDA[1] Rbn p.a	Capital Cum. Rbn 2014-20
Capital	1 Portfolio optimisation, efficiencies and cutting the tail				60-70
	2 Project factory driven optimisation of mega projects				20-30
	3 Acceleration of Manganese and Coal programmes	3.0-4.4[7]		1.0-1.5	4.0-5.0
	4 Loco 2 programme – diesel acceleration	1.1-3.7[4]		0.4-1.2	7.0-9.0
Revenue	5 Kumba tariff renegotiation	0.8-1.7		0.8-1.7	
	6 Drive incremental volume through operational efficiency and targeted capital spend	1.2-1.7			
Alternate income-generation	7 Africa strategy (TE and overborder volumes)	2.3-5.0		0.3-1.4	
	8 Property portfolio revenue optimisation	0.3-0.7		0.3-0.7	
Operating cost productivity	9 Procurement		0.8-1.5	0.8-1.5	
	10 Maintenance based on fleet refresh		0.5-1.0	0.5-1.0	
	11 IT cost streamlining		0.1-0.2	0.1-0.2	
	12 Discretionary spend reduction		0.5-1.0	0.5-1.0	
	Total (Rbn)	**8-17**	**2-4**	**5-11**	**90-114**
Enabling initiatives	13 Refined business planning process for 2014/15				
	14 Ratings and liquidity management		0.2-1.5[3]		

1 Assumes FY12/13 EBITDA margins for revenue initiatives, 100% EBITDA margins for cost initiatives and enabling initiatives
2 Once off annual revenue impact in next 6 years
3 Based on 1-2 notch downgrade prevention
4 Revenue downside avoidance

Anoj Singh, Group Chief Financial Officer

TRANSNET

WITHOUT PREJUDICE OF RIGHTS

McKinsey Incorporated
88 Stella Street
Sandown Mews East
Sandton
2196

Dear Sir/Madam

Initial discussions on services required

This letter serves to inform you that the Group Chief Executive of Transnet SOC Ltd has approved an assignment to McKinsey Incorporated and its consortium partners, subject to the successful conclusion of a Master Services Agreement.

As you are aware, Transnet is bound by regulatory policies, procedures and processes in respect of procurement. These processes require amongst others, a request for proposal to be issued for approved transactions, evaluation of the final bid proposals and subject to meeting Transnet's requirements in terms of the full scope of work as set out in the request for proposal, a final Master Service Agreement may be concluded.

The approvals received from the Group Chief Executive are for the following services:

The support of identifying additional capital savings as well as the implementation of the Platinum Standards which will include the following:

1.1 A consulting team to ensure the embedding of the sustainable solution of the Platinum Standard which will reduce the reliance on consultants in the medium to long-term and as required in terms of the National Treasury instruction note relating to consultancy reduction plans. The deliverables will include: -

a) Filling of key positions per approved resourcing strategy;

b) Embedding of portfolio recut and capital allocation principles;

c) Rolling out capital rooms at Operating divisions;

d) Rolled out approved financial model showing Transnet's single view of capital;

e) GCIA implementation and embedding support;

f) Change management of methodologies and principles of the Capital Platinum Standard;

g) Implementation of an external stakeholder engagement plan; and

h) Rollout of a Top Talent programme within GCIA.

All embedding must be evidenced by new capabilities created in the operating divisions to fully apply the Capital Platinum Standard in their area, and a formal sign off from each operating division's CAPIC.

1.2 Value optimisation of the Capital Investment Portfolio by a further R 100 billion (in addition to SWAT 1 of R39 billion) defined as complying with all of the following:

a) Savings identified in optimisation covering both technical and financial solutions with bankable FEL 3 final business case approved by Capital Investment Committee and signed off by owners' team;

b) Reduction in value in the Capital Portfolio to deliver 350 Mt and bringing all mega programmes to the end of FEL3 stage; and

c) Project optimisation must address strategic projects as listed per Annexure F of the Shareholder's compact.

Please note that removal and deferment of projects will not be considered.

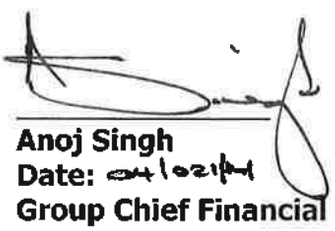
1.3 Implementation and embedding of the Platinum Standard.

While our teams expedite the issuing of the request for proposals for the above assignments, due to the urgency of the services required, I kindly request that you mobilise your team to have the initial discussions with our teams. In the unlikely event that we may not successfully conclude the above-mentioned assignments, Transnet SOC Ltd will reimburse all costs incurred by yourselves.

Please note that as service provider to Transnet providing consulting services the fees and expenses will be subject to the instruction note issued by National treasury relating to cost containment measures.

I am looking forward to working with your teams on these critical assignments.

Yours Sincerely,



Anoj Singh
Date: 04/02/21
Group Chief Financial Officer

PR: 10406764. PO: 4500250239

McKinsey&Company

Transnet SOC Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177
Supplier code: 72063827

McKinsey and Company
VAT no: 4710150048

Tax invoice: 5754

Charge code: TRX073

Payment due within 30 days of invoice date

30 May 2014

Professional fees: May 2014	R	5,333,200.00
Out of pocket expenses and support services	R	800,000.00
Sub Total	R	6,133,200.00
Vat at 14%	R	858,648.00
TOTAL	R	6,991,848.00

11/07/14

Payment may be made by direct transfer to:

Account Name:	McKinsey Incorporated
Account Number:	421061812
Branch:	019205
Bank name and address:	The Standard Bank of South Africa Ltd. Sandton Branch 156 Fifth Street Sandton, 2196 South Africa

Please quote invoice number and charge code reference on transfer and remittance.

Please note:
Standard terms provide for invoice payment upon receipt. Interest will be charged on balances outstanding 30 days after the invoice date, at a rate of 1% per month or as otherwise agreed.

5200467394

2014-07-14

1000316

FOF-08-1023

McKinsey&Company

30 May 2014

Mohammed Mahomedy
General Manager Capital Integration
Transnet SOC Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg

Dear Mohammed,

Please find attached invoice 5754 for our professional fees and out of pocket expenses (@15%) and support services for the period May 2014 of the Transnet – Project Factory 2014 H1.

Kind regards,

Prakash Parbhoo
Principal

52/467394
674

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 LJH Arwidi (Swedish) W Choi (South Korean) IRA Munshi PM Parbhoo SH Wu

FOF-08-1024

G O O D S R E C E I P T S L I P 5000515490/0001

Goods receipt date : 14.07.2014
Current date : 14.07.2014

Plant : 4000
Description : Group Services

Vendor : 0001000316 Delivery note: 5754
Name : MCKINSEY AND CO
PO : 4500250239/00010
Buyer Name : Duran Balbathur Telephone : 011 308 1087

Material :
MPN :
Description : Professional Fees: May 14

Quantity : 1 EA

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

Recipient : Mamorena
Unloadg. point: Floor 33
Cost center : 0001002040

Issued by : 0137696 S I G N A T U R E

FOF-08-1025

PR 10406762
PO: 4500 250 328

McKinsey&Company

Transnet SOC Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177
Supplier code: 72063827

McKinsey and Company
VAT no: 4710150048

Invoice: 5758

Charge code: TRX076

Payment due within 30 days of invoice date

30 May 2014

Professional fees: 05 May 2014 to 30 May 2014	R 2,835,525.00
Out of pocket expenses and support services	R 425,328.75
Sub Total	R 3,260,853.75
Vat at 14%	R 456,519.53
TOTAL	R 3,717,373.00

11/07/14.

Payment may be made by direct transfer to:

Account Name:	McKinsey Incorporated
Account Number:	421061812
Branch:	019205
Bank name and address:	The Standard Bank of South Africa Ltd. Sandton Branch 156 Fifth Street Sandton, 2196 South Africa

11/07/14

Please quote invoice number and charge code reference on transfer and remittance.

Please note:
Standard terms provide for invoice payment upon receipt. Interest will be charged on balances outstanding 30 days after the invoice date, at a rate of 1% per month or as otherwise agreed.

50/467773

McKinsey&Company

30 May 2014

Anoj Singh
Group Chief Financial Officer
Transnet SOC Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg

CC: Mohammed Mahomedy

Dear Anoj,

Please find attached invoice 5758, issued on 30 May 2014 for our professional fees and out of pocket expenses (@15%) and support services for the period 05 May 2014 to 30 May 2014 relating to our work on the Capital Affordability Model support to the GCIA team. This work was driven by the Loco 1064 deal acceleration.

The key objective was to:

- Develop a flexible scenario planning tool that enables decision-making around the affordability of capital over the MDS period, including:
  - Independent perspective of volume targets and volumes at risk for MDS period
  - Identification and implementation scoping for EBITDA improvement initiatives
  - Deep-dive into TFR-TE pricing with a focus on actual capex costs, including
    - Create transparency on Opex, Copex and Capex flows between TFR-TE to understand group financial implications of TE's margins
    - Assess value potential created through fleet (and maintenance) modernization in terms of Opex/Copex savings and additional revenue that is currently not budgeted
    - Assess what it would take to capture that value potential, e.g., through changes in KPIs and incentive schemes, changes in service agreement, review of maintenance strategy, etc.

McKinsey&Company

This invoice amount of R3,260,854 is the final invoice for this project, with a value of the total R6.66 million, of which R3,402,630 has been invoiced to date.

The deliverables for this contract are listed below, with percentage completion:

Deliverable	% completed as of this invoice	% completed as of previous invoice
Rough check of affordability gap	100%	N/A
Identify EBITDA levers	100%	N/A
Develop volume outlook	100%	N/A
Revised affordability estimate	100%	N/A
Develop perspective on value potential at stake on the TFR/TE pricing	50%	N/A
Develop perspective on what it takes to capture value	50%	N/A

The following bottlenecks also need to be addressed by Transnet in order to ensure continued progress:

- Align with Group Financial Planning to use the affordability scenario model for monthly Exco progress updates
- Enable access to detailed TE-financials in order to assess actual costs and margins of the different TE services towards TFR and external clients
- Meeting with Richard Vallihu, TE CEO, in order to create access to TE to finalize TE-TFR deep dive

Since the last invoice, the resources allocated to this engagement included:

Name	Role
Vikas Sagar	Principal
Prakash Parbhoo	Principal
Nomfanelo Magwentshu	Principal
Fabio Pedrazzi	Associate Principal
Pravesan Govender	Engagement Manager
Daniel Theurig	Consultant
Adrian Cox	Consultant
Ra' ees Mahmood	Consultant
Mpho Sedibe	Consultant

In addition various executive assistants, researchers and visual graphics specialists have supported the team remotely.

McKinsey&Company

For your reference, the physical original of this invoice and memo have been couriered to Mamorena Monare (Mamorena.Monare@transnet.net, 0121 308 1782, 33rd Floor Carlton Centre) on 2 June 2014.

Kind regards,

Nomfanelo Magwentshu
Principal

□ □ □

McKinsey, Incorporated, trading as McKinsey & Company
Sandown Mews East 88 Stella Street Sandown Sandton 2196 PO Box 652767 Benmore 2010 South Africa
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Registered in South Africa No 1995/002398/10 Directors LJH Arwidi (Swedish) W Choi (South Korean) IRA Munshi PM Parbhoo SH Wu

G O O D S R E C E I P T S L I P 5000516178/0001

Goods receipt date : 15.07.2014
Current date : 15.07.2014

Plant : 4000
Description : Group Services

Vendor : 0001000316 Delivery note: 5758
Name : MCKINSEY AND CO
PO : 4500250328/00010
Buyer Name : Duran Balbathur Telephone : 011 308 1087

Material :
MPN :
Description : Professional fees: 05May14 to 30May14

Quantity : 1 EA

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

Recipient : Mamorena
Unloadg. point: Floor 33
Cost center : 0001002040

Issued by : 0137696 S I G N A T U R E

TRANSNET SOC LTD

[Registration No. 1990/000900/30]

REQUEST FOR PROPOSAL [RFP]

FOR THE PROVISION OF CAPITAL OPTIMISATION AND IMPLEMENTATION SUPPORT SERVICES FOR A PERIOD OF 24 MONTHS

RFP NUMBER	**GSM/14/04/1052**
ISSUE DATE:	**10 JULY 2014**
CLOSING DATE:	**22 JULY 2014**
CLOSING TIME:	**12:00**
BID VALIDITY PERIOD:	**90 days from Closing Date**

TRANSNET

AGREEMENT

Entered into by and between

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

And

McKINSEY INCORPORATED (Reg. Nr. 1995/002398/10)

FOR THE PROVISION OF SERVICES RELATED TO: RFP GSM/14/04/1052: Provision of Capital Optimisation and Implementation Support Services for a period 24 months

Agreement Number	**GSM/14/04/1052**
Commencement Date	**April 9, 2014**
Expiry Date	**April 8, 2016**

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1 INTRODUCTION

This Agreement is entered into by and between:

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

And

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

NOW THEREFORE, IT IS AGREED:

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

1.2 The Service Provider hereby undertakes to render the Services provided for herein, as formally agreed between the Parties and in accordance with the Work Order(s) issued as schedules to this Agreement.

2 DEFINITIONS

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

2.1 **AFSA** means the Arbitration Foundation of Southern Africa;

2.2 **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, including the Work Order(s), specifications for the Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed in writing between the Parties], which collectively and exclusively govern the provision of Services by the Service Provider to Transnet;

2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by Transnet to give effect to its obligations under this Agreement owned in whole or in part by or licensed to Transnet or its affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement;

2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;

2.5 **Commencement Date** means **09 April 2014**, notwithstanding the signature date of this Agreement;

2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

a) Information relating to methods of operation, data and plans of the disclosing Party;

b) The contents of this Agreement;

c) Private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;

d) Any information disclosed by either Party and which is clearly marked as being confidential or secret;

e) Information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;

f) Information relating to the past, present and future research and development of the disclosing Party;

g) Information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;

h) Information contained in the software and associated material and documentation belonging to the disclosing Party;

i) Technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;

j) Copyright works;

k) Commercial, financial and marketing information;

l) Data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;

m) Plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;

n) Information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and

o) Information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

2.7 **Contract Manager** means the person/s appointed by either party to manage the implementation of the agreement;

2.8 **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;

2.9 **Default** means any breach of the obligations of either Party [including but not limited to fundamental breach or breach of a fundamental term] or any Default, act, omission, negligence or statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of this Agreement and in respect of which such Party is liable to the other;

2.10 **Deliverable(s)** means any and all reports, analyses or other such materials furnished by the Service Provider to Transnet in relation to the Services;

2.11 **Designs** mean registered Designs and/or Design applications as defined in the Designs Act, 195 of 1993, and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;

2.12 **Fee(s)** shall mean the agreed Fees for the Services to be acquired from the Service Provider by Transnet, as detailed in the Work Order(s), issued in accordance with this Agreement;

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

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

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

2.16 **Materials** means the Deliverables and, the Service Provider Materials;

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

2.18 **Party** means either one of the Parties;

2.19 **Patents** mean registered Patents and Patent applications as defined in the Patents Act, 57 of 1978, once the latter have proceeded to grant, and includes a right granted for any inventions, products or processes in all fields of technology;

2.20 **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;

2.21 **Personnel** means any partner, employee, agent, consultant, independent associate or supplier, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;

2.22 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services;

2.23 **Service(s)** means scope of services as defined in Schedule 1;

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 including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques analyses, know-how, tools, frameworks, models and industry perspectives used and/or developed by the Service Provider in connection with the Services;

2.27 **South Africa** means The Republic of South Africa as constituted from time to time

2.28 **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;

2.29 **Third Party Material** means software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Service Provider in the performance of the Services;

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

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

2.32 **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, a specimen of which shall be appended to this Agreement.

3 INTERPRETATION

3.1 Clause headings in this Agreement are included for ease of reference only and do not form part of this Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.

3.2 Any term, word, acronym or phrase used in this Agreement, other than those defined under the clause heading "Definitions" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in this Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.

3.3 A reference to the singular incorporates a reference to the plural and *vice versa.*

3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa.*

3.5 A reference to a particular gender incorporates a reference to the other gender.

4 NATURE AND SCOPE

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

4.2 Such Purchase Orders shall be agreed between the Parties from time to time, subject to the terms of the relevant Work Order(s).

4.3 Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.

4.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Work Order(s), in accordance with procedures set out in clause 30 *[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, failing which the proposed amendment shall lapse forthwith.

4.5 Insofar as any term, provision or condition in the Work Order(s) conflicts with a like term, provision or condition in this Agreement, or where this Agreement is silent on the matter, the term, provision or condition in this Agreement shall prevail, unless such term or provision or

condition in this Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

4.6 The Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

5 AUTHORITY OF PARTIES

5.1 Nothing in this Agreement will constitute or be deemed to constitute a partnership between the Parties, or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.

5.2 Neither Party shall be entitled to, or have the power or authority to enter into an agreement in the name of the other; or give any warranty, representation or undertaking on the other's behalf; or create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

6 WARRANTIES

6.1 The Service Provider warrants to Transnet that:

a) It has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representatives of the Service Provider;

b) It will discharge its obligations under this Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;

c) It will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations; and

d) The use or possession by Transnet of any Service Provider Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.

6.2 The Service Provider warrants that it will perform its obligations under this Agreement in accordance with the service levels as defined in the relevant schedule. Transnet may at its reasonable discretion audit compliance with the service sevels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services or the manner in which the Service Provider ordinarily conducts business. Without prejudice to clause 6.3 below, in the event that the Service Provider fails to meet the service sevels, Transnet may claim appropriate service credits or invoke retention of Fees as detailed in the relevant schedule and/or Work Order.

6.3 The Service Provider shall, in accordance with the Service Provider's document retention policies, establish and maintain a secure file containing a copy of any presentation, progress review, report or other document furnished to Transnet by the Service Provider in connection with the Services, together with any working papers necessary to support its conclusions or analyses (collectively, the "Working Papers File"). Transnet may, at its own cost, inspect the Working Papers File at any time, during the five (5) year period from the end of the calendar year in which the relevant Services are completed or terminated, solely for the purpose of determining whether the Service

Provider performed the Services in accordance with the Work Order. Any information furnished in connection with this provision shall be kept confidential in accordance with this Agreement.

6.4 The Service Provider warrants that for a period of 90 [ninety] 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] days of notification by Transnet.

6.5 The Service Provider will remedy any defect within 30 [thirty] days of being notified of that defect by Transnet in writing.

6.6 The Service Provider will not be liable to remedy any problem arising from or caused by Transnet's use of the Deliverables in any way not intended by the Work Order or any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.

6.7 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.6 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 30 *[Amendment and Change Control]*.

6.8 The Service Provider further warrants that:

a) it has, using the most up-to-date software practicably and reasonably available to it, tested for [and deleted] all viruses identified by the Service Provider in the Service Provider Materials at the date of the relevant Work Order; and

b) At the time of delivery to Transnet, the Service Provider Materials and Deliverables do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.

6.9 The Service Provider agrees that, in the event that a virus is found, it will use its reasonable endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that 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.

6.10 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with this Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

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

6.12 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a

review of the capability of the proposed Subcontractor to comply with the specified railway safety requirements and/or regulations. The Service Provider and/or its Subcontractor shall make senior Personnel available to Transnet, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

7 TRANSNET'S OBLIGATIONS

7.1 Transnet undertakes to promptly comply with any reasonable request by the Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Services as may be necessary for the Service Provider to perform the Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Service Provider of its confidentiality obligations under this Agreement.

7.2 The Service Provider shall give Transnet reasonable notice of any information it requires in accordance with clause 7.1 above.

7.3 Subject to clause 15 *[Service Provider's Personnel]*, Transnet agrees to :

a) provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under this Agreement; and

b) perform any tasks or responsibilities assigned to Transnet and notify the Service Provider of any issues or concerns Transnet may have relating to the Services.

8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

8.1 The Service Provider shall:

a) Respond promptly to all complaints and reasonable enquiries from Transnet;

b) Inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services;

c) Conduct its business in a professional manner that will reflect positively upon the Service Provider and the Services;

d) Keep full records clearly indicating all transactions concluded by the Service Provider relating to the performance of the Services and keep such records for at least 5 [five] years from the date of each such transaction;

e) Obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Service Provider;

f) Observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993;

g) Comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance that are applicable to the Service Provider and performance of the Services; and

h) Ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Verification Certificate, for the duration of this Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it

may have in terms of the Agreement, to terminate this Agreement forthwith without any liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.

8.2 The Service Provider acknowledges and agrees that it shall at all times:

a) Render the Services and perform all its duties with honesty and integrity;

b) Communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;

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

d) Use its reasonable endeavours and make every diligent effort to meet agreed deadlines;

e) Treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;

f) Practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination [as further referred to in clause 24 – *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 therefore 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 accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;

j) Not mislead Transnet or its Personnel, whether by act or omission;

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

l) Immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services.

9 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 Request for Proposal GSM/14/04/1052 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, upon request by Transnet, submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE

Act and proof thereof at the beginning of March each year during the currency of this Agreement.

c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:

(i) a change in the Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and

(ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Service Provider's B-BBEE status.

d) In the event there is a change in the Service Provider's B-BBEE status, then the provisions of clause 9.1 (c) 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 provided Transnet with a B-BBEE Improvement Plan to indicate the extent to which their B-BBEE status and the elements of the B-BBEE scorecard will be maintained or improved over the contract period, as per Annexure D of the RFP.

b) The Service Provider shall, for the duration of this Agreement, comply with the B-BBEE Improvement Plan.

c) The terms of the B-BBEE Improvement Plan and monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in such B-BBEE Improvement Plan.

d) Notwithstanding the aforegoing, the Service Provider may request that certain initiatives in the plan be replaced with other initiatives if the planned initiatives are found to be impossible, impractical or unduly burdensome to deliver. The black ownership percentages committed may not be changed. Such a request must show that the replacement initiatives must still strive to achieve the same levels of transformation and empowerment as the initial initiative and may not be less in terms of monetary or deemed monetary value of the original initiative. Transnet must agree to the change in writing which must be approved by the Transnet Group Chief Supply Chain Officer.

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) days from the signature date of the contract.

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) days as aforesaid (or such later date as Transnet may consent to in writing if delays are caused by unforeseen factors or delays caused by Transnet).

c) The Service Provider's Implementation Plan shall include, but not be limited to Transfer of Technology & Intellectual Property Rights, New skills development, Job creation and Enterprise and Supplier Development.

d) The Service Provider must use an alternate Subcontractor or Subcontractors if the primary selected Subcontractor fails to deliver the required services or at the required quality level. Transnet must agree to the alternate Subcontractor in writing.

e) The Service Provider must provide a list, as part of the Supplier Development Implementation Plan, of the alternate Subcontractors that they will utilise if the primary selected Subcontractor fails to deliver the required services or at the required quality level.

f) 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 Implementation Plan

g) The end date of the Implementation Plan may be later than the end date of the Services provided in terms of this contract.

h) The Service Provider may request that certain initiatives in the Implementation Plan be replaced with other initiatives if the agreed initiatives are found to be impossible, impractical or unduly burdensome to deliver, or will not meet the desired intention of the initiative. Such a request must show that the replacement initiatives will still strive to achieve the same levels of transformation and empowerment and economic development as the initial initiative and may not be less in terms of monetary or deemed monetary value of the original initiative. Such a replacement initiative will not reduce the overall percentage of Supplier Development value as in the original Implementation Plan. Transnet must agree to the replacement initiative in writing. There will be no additional cost for Transnet with regards to any replacement initiative.

i) Transnet Group Chief Supply Chain Officer will sign the Implementation Plan and any amendments to it.

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

b) The above will be provided in terms of quarterly reporting on the Service Providers commitment to Green Economy and their Carbon Footprint measured against this contract.

9.5 **Reporting**

a) The Service Provider shall monitor, audit, and record in an auditable manner, its own implementation and compliance with the B-BBEE Improvement Plan and the Implementation Plan and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning the implementation of the B-BBEE Improvement Plan and the Implementation Plan.

b) The information that shall be made available will be all the information that relates to any initiative in the Implementation Plan, the B-BBEE improvement plan and the Current and Future B-BBEE certificates of the Service Provider.

c) The Service Provider shall, every 3(three) months from the Commencement Date and within 7 (seven) days of the end of the calendar month of that 3 (three) months period, provide Transnet with a report (for monitoring purposes only) in respect of each of the undertakings stipulated in this clause.

d) Transnet, through its Supplier Development division, shall, every 3 (three) 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.

e) The Service Provider shall attach adequate proof to enable Transnet to verify compliance with the B-BBEE Improvement Plan and Implementation Plan.

f) 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 Integrated Supply Chain Management Department (Supplier Development specialist), 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 Implementation Plan and the extent, if any, to which the Service Provider has not so complied.

g) Without prejudice to the Transnet's rights under this Agreement:

(i) if the Contract Manager and/or Transnet's Supplier Development specialist reasonably considers that the Service Provider is not at any time complying with 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 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.

h) In the event the Service Provider is found to be fraudulent in submitting the B-BBEE Improvement Plan and/or the Implementation Plan, 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 clause 19.

i) 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 Implementation Plan 3 (three) 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 Implementation Plan, the Service Provider shall, subject to Clause 9.6 d) ***[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) below.

(i) Non Compliance Penalties shall be calculated as a percentage of the Contract Value and accrue at the Applicable Rate per month until:

- the date on which the Service Provider has remedied such Non Compliance by complying with the Implementation Plan and/or the B-BBEE Improvement Plan (as applicable); or if earlier
- the Agreement being terminated.

Applicable Rates of Non Compliance Penalties (for Large Enterprises Only):

b) In relation to the Implementation Plan, Non Compliance Penalties shall apply as follows:

(i) 100% of the undelivered portion of Supplier Development commitments to be set off against any current or future payments due to the Service Provider.

(ii) The Service Provider may request that certain Supplier Development value in terms of subcontracting be waived from the value of the penalty if the Subcontractor fails to deliver the required Services at the right level of quality and the Service Provider utilised an alternate Subcontractor and this caused delays in the delivery of the Implementation plan which would cause Non Compliance Penalties to be raised. The Service provider should make such representations in writing and provide suitable evidence, based on the conditions set out above, for Transnet to waive the requested portion of penalties of the undelivered Supplier Development value relating to subcontracting. The Service Provider must have made every effort to have brought the alternate Subcontractor on board as soon as possible to avoid unnecessary delays and the associated penalties.

c) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall accrue at the following Applicable Rates:

(i) for the first month after the deliverables of the B-BBEE Improvement plan are due (or part thereof), a rate of 1.0% (one percent);

(ii) for the second month after the deliverables of the B-BBEE Improvement plan are due (or part thereof), a rate of 1.5% (one and a half percent);

(iii) for the third month after the deliverables of the B-BBEE Improvement plan are due (or part thereof), a rate of 2.0% (two percent);

(iv) for the fourth month after the deliverables of the B-BBEE Improvement plan are due (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 after the deliverables of the B-BBEE Improvement plan are due, a rate of 3% (three percent).

Non Compliance Penalty Cap (for Large Enterprises):

d) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties under this clause shall not exceed:

(i) in the case of the B-BBEE Improvement Plan, 5% (five percent) of the Fees, (each a Non Compliance Cap);

Non Compliance Penalty Certificate:

e) 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.

f) 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 Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non Compliance Penalties:

g) Subject to Clause 9.6 (e) and Clause 9.6 (f)(ii), 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.

h) Subject to Clause 9.6 (e) and Clause 9.6 (f), the Service Provider shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.

i) Should the Service Provider fail to pay any Non Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.

j) The Non Compliance penalties set forth in this clause are stated exclusive of VAT. Any VAT payable on Non Compliance penalties will be for the account of the Service Provider.

10 SERVING COMPETITORS

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

11 FEES AND EXPENSES

11.1 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.

11.2 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 reasonably evidenced and invoiced to Transnet at cost].

11.3 The Parties have agreed that the fees are inclusive of expenses.

11.4 All Tax Invoices relating to Fees, and expenses and, where appropriate, shall include VAT as a separate item.

12 INVOICING AND PAYMENT

12.1 Transnet shall pay the Service Provider the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of this Agreement.

12.2 Transnet shall pay such amounts to the Service Provider, upon receipt of a valid and undisputed Tax Invoice as specified in the Work Order appended hereto, once the undisputed Tax Invoices, or such portion of the Tax Invoices which are undisputed become due and payable to the Service Provider for the provision of the Services, in terms of clause 12.4 below.

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

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

12.5 Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 12, 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.

12.6 Should the Service Provider require that Transnet pay the Subcontractor directly, the Service Provider must request this from Transnet in writing. If Transnet agrees to pay the Subcontractor directly the Service Provider still remains responsible for all obligations related to this contract including the management of, and the performance of the Subcontractor. The Service Provider shall verify the correctness of the Subcontractors invoice and confirm that all the deliverables have been delivered.

13 FEE ADJUSTMENTS

13.1 Subject to Clause 11.1, the Fee is fixed for the duration of the Agreement at a capped value as detailed in the relevant schedule or Work Order.

14 INTELLECTUAL PROPERTY RIGHTS

14.1 **Title to Confidential Information and Intellectual Property**

a) Transnet will retain all right, title and interest in and to its Confidential Information and Background Intellectual Property and the Service Provider acknowledges that it has no claim of any nature in and to the Confidential Information and Background Intellectual

Property that is proprietary to Transnet. For the avoidance of doubt, all the Service Provider Materials shall remain vested in the Service Provider.

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

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

14.2 **Unauthorised Use of Confidential Information**

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

14.3 **Unauthorised Use of Intellectual Property**

a) The Service Provider agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Service Provider acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.

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

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

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

15 SERVICE PROVIDER'S PERSONNEL

15.1 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.

15.2 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.

15.3 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.

15.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under this Agreement.

15.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a suitable replacement.

16 LIMITATION OF LIABILITY

16.1 Neither Party excludes or limits liability to the other Party for:

a) Death or personal injury due to negligence; or

b) Fraud

16.2 Each of the Parties shall indemnify and keep the other Party (the "**Indemnified Party**") indemnified from and against liability for damage to any of the Indemnified Party's property [whether tangible or intangible] or any other loss, costs or damage suffered by the Indemnified Party to the extent that it results from any act of or omission by such Party or its Personnel in connection with this Agreement. Each of the Party's liability arising out of this clause 16.2 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 limited to the value of the total fees.

16.3 Subject always to clauses 16.1 and 16.2 above, the liability of either the Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.

16.4 Subject to clause 16.1 above, and except as provided in clauses 16.2 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.

16.5 Nothing in this clause 16 shall be taken as limiting the liability of the Service Provider in respect of clause 14 *[Intellectual Property Rights]* or clause 18 *[Confidentiality]*.

17 INSURANCES

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

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

17.3 Subject to clause 17.4 below, if the Service Provider fails to affect adequate insurance under this clause 17, 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.

17.4 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 17.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, where after either the Service Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] days prior written notice to that effect.

18 CONFIDENTIALITY

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

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

b) Not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;

c) Not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information, without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;

d) Not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;

e) Not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;

f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such Party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;

g) The Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;

h) Each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or internal consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or internal consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or internal consultants honour such obligations;

i) Each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;

j) Each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by the person or entity; and

k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

18.2 The duties and obligations with regard to Confidential Information in this clause 18 shall not apply where:

a) A Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Personnel; or

b) Was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or

c) Can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or

d) Is independently developed by a Party as proven by its written records.

18.3 The Service Provider's work for Transnet is confidential and intended for Transnet's internal use only. The Service Provider does not make public client names, client materials or reports prepared for clients without their prior written permission. Similarly, Transnet agrees that it will not use Service Provider's name, refer to Service Provider's work, or make the Deliverables or the existence or terms of this Agreement available outside its organization without the Service Provider's prior written permission.

18.4 This clause 18 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 [five] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet including, without limitation all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

19 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

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

20 TERM AND TERMINATION

20.1 Notwithstanding the date of signature hereof, the Commencement Date of this Agreement is **09 April 2014** and the expiry thereof shall occur on **8 April 2016**, unless:

a) this Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or

b) This Agreement is extended at Transnet's option for a further period to be agreed by the Parties in writing.

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

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

a) A voluntary arrangement or composition or reconstruction of its debts;

b) Its winding-up or dissolution;

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.

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

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

20.6 Notwithstanding this clause 20, either Party may cancel this Agreement without cause by giving 30 [thirty] days prior written notice thereof to the other Party.

21 CONSEQUENCE OF TERMINATION

21.1 Termination in accordance with clause 20 *[Term and Termination]* shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.

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

21.3 To the extent that any of the Deliverables and property referred to in clause 21.2 above is in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with encrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held. Notwithstanding the foregoing, Service Provider shall be permitted to retain, subject to the terms of this Agreement and for professional archival purposes only, a copy of any Deliverables furnished to Transnet by Service Provider in connection with the Services, together with any working papers necessary to support its conclusions or recommendations.

21.4 In the event that this Agreement is terminated by the Service Provider under clause 20.2 *[Term and Termination]*, or in the event that a Work Order is terminated by Transnet under clause 20.5 *[Term and Termination]*, Transnet will pay to the Service Provider all outstanding Fees [apportioned on a *pro rata* basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.

21.5 The provisions of clauses 2 *[Definitions]*, 6 *[Warranties]*, 14 *[Intellectual Property Rights]*, 16 *[Limitation of Liability]*, 18 *[Confidentiality]*, 21 *[Consequence of Termination]*, 27 *[Dispute Resolution]* and 31 *[Governing Law]* shall survive termination or expiry of this Agreement.

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

21.7 Should:

a) The Service Provider effect or attempt to effect a compromise or composition with its creditors; or

b) Either Party be provisionally or finally liquidated or placed under judicial management, whether provisionally or finally; or

c) Either Party cease or threaten to cease to carry on its normal line of business or default or threaten to default in the payment of its liabilities generally, or commit any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time];

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

22 ASSIGNMENT

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

23 FORCE MAJEURE

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

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

24 EQUALITY AND DIVERSITY

24.1 The Service Provider will not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.

24.2 Both Parties to this Agreement undertake that they will not, and shall procure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

25 NON-WAIVER

25.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of this Agreement, shall not, in any manner, be construed to be a waiver of any of that Party's rights in that regard and in terms of this Agreement.

25.2 Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.

26 PARTIAL INVALIDITY

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

27 DISPUTE RESOLUTION

27.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.

27.2 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.

27.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

27.4 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 27.

27.5 This clause 27 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

27.6 This clause 27 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

28 ADDRESSES FOR NOTICES

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

a) **Transnet**

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

Attention: General Manager Group Legal Services

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

b) **The Service Provider**

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

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

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

28.3 Any notice shall be deemed to have been given:

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

b) If posted by prepaid registered post, 10 [ten] days after the date of posting thereof; or

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

29 WHOLE AND ONLY AGREEMENT

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

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

30 AMENDMENT AND CHANGE CONTROL

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

30.2 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 27 *[Dispute Resolution]*.

31 GOVERNING LAW

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

31.1 **Change of Law**

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Fees, Deliverables, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 27 *[Dispute Resolution]* above.

32 COUNTERPARTS

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

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

For and on behalf of **TRANSNET SOC LTD** duly authorised hereto	For and on behalf of **MCKINSEY INCORPORATED** duly authorised hereto
Name: [illegible]	Name: VIKAS SAGHAR
Position: [illegible]	Position: DIRECTOR.
Signature:	Signature:
Date: [illegible]	Date: 10/03/15
Place: [illegible]	Place: SANDTON

AS WITNESS:	**AS WITNESS:**
Name: GARRY PITA	Name: BENEDICT HART
Signature:	Signature:

AS WITNESS:	**AS WITNESS:**
Name: Edward Thomas	Name: Nonfanelo Mafwentshu
Signature:	Signature:

SCHEDULE 1 – Work Order

For the Provision of Services Related to RFP GSM/14/04/1052: Provision of Capital Optimisation and Implementation Support Services

With reference to the Master Agreement, Reference Number **GSM/14/04/1052** [the **Agreement**] between Transnet SOC Ltd [**Transnet**] and McKinsey, Incorporated (Pty) Ltd [**the Service Provider**] pursuant to which the Service Provider has agreed to perform certain services to Transnet subject to such Agreement, the defined terms in the Agreement will, unless otherwise indicated, have the same meaning in this Work Order.

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

Services to be provided by the Service Provider

1. To ensure that Transnet captures maximum value and minimizes capex from its big programmed, the Service Provider will undertake Portfolio optimization and project factory business case development, for example:
    a. Copex
    b. Durban Port system
    c. Coal system
    d. GFB integrated business case
2. Implement solutions that have already been developed and develop new systems, frameworks and tools as needed. These are to be embedded within the organization at Group and OD level as agreed by Transnet and the Service Provider upon access to the relevant management teams. This is to ensure the sustainability of the solutions that have been developed. These include, for example:
    a. Strategy, policies and processes to OD
    b. Contracting strategy policy to OD
    c. Mandates and governance end to end
    d. Process flows and training manuals
    e. PS/BCV/GR principal alignment
    f. PS/BCV rollout to ODs, training
    g. PLP/ Lite
    h. Risk mgt
    i. Benchmarking model
3. Assist the ODs with capital allocation and prioritization in line with tools and methodologies already developed at Group level.
4. To develop an integrated capital and volume model which clearly links volumes and capital spend across asset classes on a year by year basis. The model should have the flexibility to see the impact of shifting the timing of capital spend on volume delivery from the capital programme as well as providing key metrics which show the efficacy of the capital such as Rands invested per tonne of annual volume.

5. To implement "Capital Rooms" at the ODs based on existing prototypes. This is to create transparency on OD-level capital programmes and allow the ODs to more effectively manage these.
6. To put in place a number of programmes / systems to ensure that the overall capital management process at Transnet is sustainable. These include:
    a. Contingency and risk management
    b. Document control
    c. Top Talent development programme
    d. Leadership development programme
    e. Change Management
    f. Stakeholder engagement and management plan

This scope may be amended from time to time by mutual agreement of Transnet and the Service Provider.

PROJECT MANAGERS

Transnet Project Manager	**TBD**
Designation	
Operating Division	
Address	
Cell Phone	
Telephone	
Fax	
Email	

Service Provider's Project Manager	Prakash Parbbhoo
Designation	Principal
Address	88 Stella Street, Sandown, Sandton 2198
Telephone	+27 11 506 8000
Fax	+27 11 506 9016
Email	Prakash_Parbhoo@mckinsey.com

ACCEPTANCE CRITERIA FOR DELIVERABLES

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

PROGRESS REPORTS AND REVIEW MEETINGS

Project management and review meetings will be held every six weeks, or as otherwise directed by Transnet's Project Manager.

FEES AND DISBURSEMENTS

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

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

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

SIGNED for and on behalf of: **McKinsey, Incorporated**	**SIGNED** for and on behalf of: **Transnet SOC Ltd**
Signature	Signature .....
Name: VIKAS SAGAR	Name: Anoj Singh
Position: DIRECTOR.	Position: CCO
Date: 10/03/15	Date: 06/03/15
Place: JHB	Place: JHB.

ANNEXURE A – Project Fees

Professional fees & expenses, workstream timing and roles are laid out in the table below for McKinsey and its Subcontractor (Implementation partner role):

TRANSNET

Appendix A: Scope split : Engagement model between GCiA, McKinsey & Implementation partners

Scope item	Commencement	Duration	GCiA / Transnet role	McKinsey role	Implementation partner role	Change partner role	Cost
				Role	People		Rm
• Portfolio optimisation- project factory business case development, for example: – Copex – Durban Port system – Coal system – GFB integrated business case	Upon agreement from OD Exco and access to OD resources required for business case development	8-12 wks per business case	Team lead Team members	Team lead & team members for first 1 or 2 business cases, thereafter lighter support	Team lead & team members. Full leadership after McKinsey rampdown	OD engage ment	R86m
• Implementation, embedding and sustainability – Strategy, policies and processes to OD – Contracting strategy policy to OD – Mandates and governance end to end – Process flows and training manuals – PS/BCV/GR principal alignment – PS/BCV rollout to ODs, training – PLP/ Life – Risk mgt – Benchmarking model	GCiA internal work upon award OD work upon GCiA agreement with OD	18 months	Lead	Leadership support Team member support where required	Full time team & leadership	OD engage ment	R65.5m
• Capital Allocation / portfolio at OD embedding	OD by OD once GCiA have negotiated start dates & access	12 wks	Lead per OD and supportin g team members	Leadership support Team member support where required	On-the ground full time implementation team	Manage overall change story	R41m
• Super capital portfolio model	Upon award	12 wks			Full lead		
• Capital rooms	OD by OD once GCiA have negotiated start dates and access	24 wks	Lead per OD	Leadership support	On-the ground full time implementation team	Manage overall change story	

To be read in conjunction with notes on next page

TRANSNET

Appendix A: Scope split : Engagement model between GCiA, McKinsey & Implementation partners

Scope item	Commencement	Duration	GCiA / Transnet role	McKinsey role	Implementation partner role	Change partner role	Cost
				Role	People		Rm
• Contingency management risk	Upon award			Support	Lead + team as required		R5.2m
• GCIA Intranet/Document Control	Upon award	12 wks			Full lead, team as required		
• Top talent programme	Upon award	18 months		Lead		Support	R27.3
• Leadership development programme	Upon award	18 months		Lead	–	Support	
• Change management	Upon award	18 months	Lead	Guidance	Guidance	Lead	
• Stakeholder engagement plan	Upon award	18 months	Lead	Guidance	Guidance	Lead	
						Total	R225m

Notes:

1. Detailed scope and deliverables to be reviewed regularly (monthly or quarterly as required) and may be adjusted by mutual agreement to best meet Transnet's needs
2. Resources and costs may be reallocated between programme items depending on urgency, level of depth required, changing needs within Transnet, etc.
3. Fee split is nominally 30:70 to 40:60 McK:Partners, to be adjusted to meet Transnet's needs and resourcing requirements
4. Total cost includes expenses

3

SUPPLIER DEVELOPMENT VALUE SUMMARY

Enterprise and Supplier Development Value	
McKinsey	Subcontractor
30%	30%

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 : Mr. Brian Molefe, Group Chief Executive

SUBJECT : REQUEST FOR THE CONFINEMENT AND AWARD FOR THE PROVISION OF PROFESSIONAL SERVICES TO SUPPORT TRANSNET IN INCREASING GENERAL FREIGHT BUSINESS WITH A BREAKTHROUGH TO REACH THE PLANNED VOLUME TARGETS FOR THE FINANCIAL YEAR 2015/2016 AND 2016/2017

PURPOSE OF SUBMISSION:

1. The purpose of the submission is to request the Acquisitions and Disposals Committee (ADC) to:
   1.1. Approve the confinement and award for the General Freight Business breakthrough to achieve the volume targets initiative, which includes an initiative for sales and commercial capabilities, processes and solutions, to Regiments Capital for R375 million.
   1.2. Delegate authority to the GCE to approve all documentation and contract amendments related to this transaction including process approval and award.

BACKGROUND:

2. The latest OD submissions indicate that cash flows from operating activities will be significantly lower than the Corporate Plan due to market conditions, pressure on GFB volumes and cost increases. As a result, parameters for cash interest cover and gearing could be breached.

3. The GFB volume target for 2015/16 is 106Mt, however, to date GFB has not exceeded 87Mt per annum.

4. To mitigate this and to plan for the delivery of 1,064 new locomotives over the next 5-6 years, there will need to be a step change in GFB volumes.

5. This step change will entail, but not be limited to the following:
   5.1. Securing volumes and enabling execution capabilities on key flows,
   5.2. Capture additional revenue through pricing, mix optimisation and surcharge capture,
   5.3. Ensure sustainability through tools and capability building.

DISCUSSION:

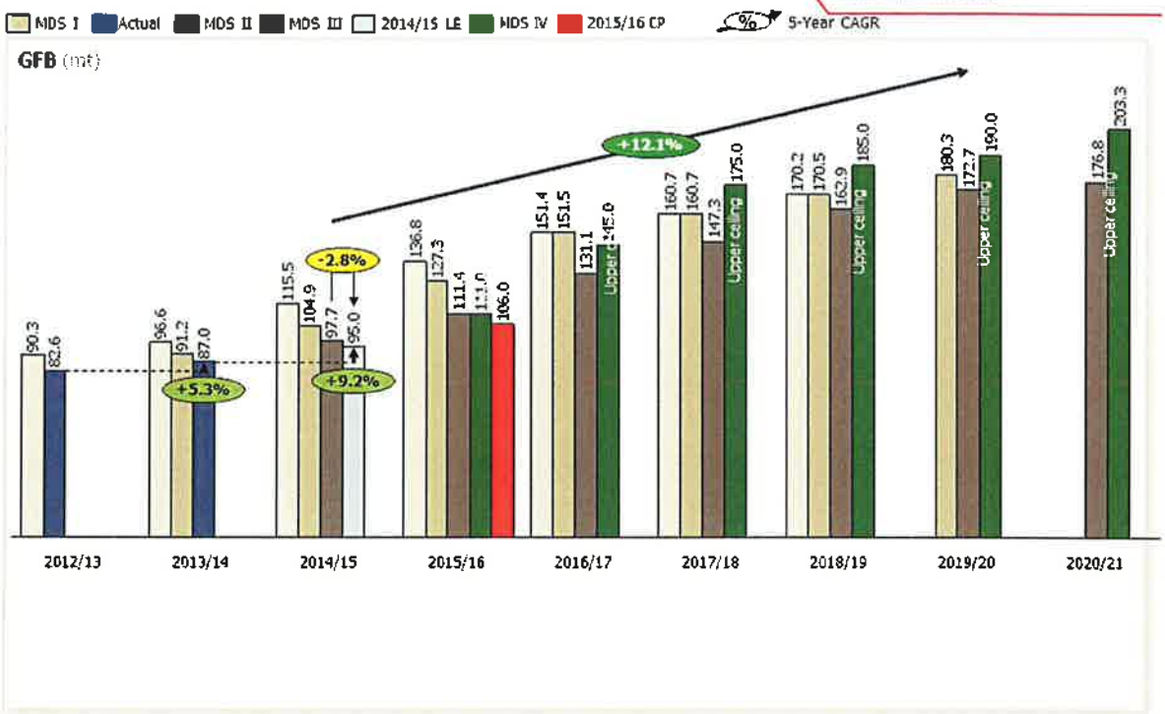
6. In the planning cycles since the inception of the MDS, a large emphasis has been placed on the growth of GFB volumes and the programmes to move freight from road to rail.

7. The delivery of volumes in the MDS program is critical to make the MDS investments affordable and to deliver cash flow into the organisation.

8. The GFB volume targets are not being met and the planned volumes are reducing with every planning cycle.

Context: A step change will be required to meet 2015/16 target for GFB

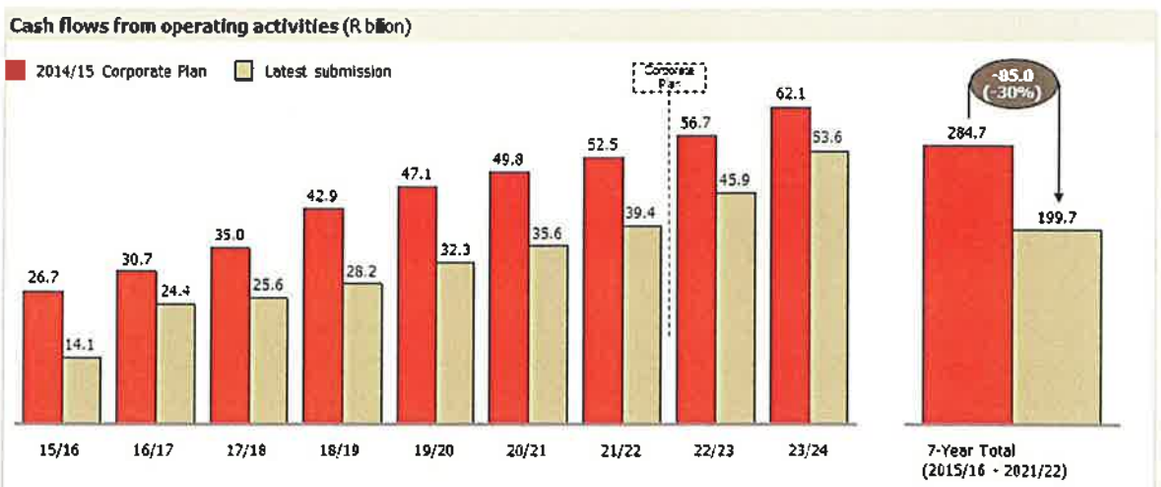
TRANSNET
delivering freight reliably



PAGE 1

Context: the latest OD submission (3rd iteration) sees drastically reduced cash flows from operating activities

TRANSNET
delivering freight reliably



Drivers of the decrease include:

- Decrease in GFB volumes;
- Increase in TFR operating expenses (including additional infra opex)

PAGE 1

9. Transnet currently has a similar program underway on the coal line to deliver the breakthrough to achieve the planned coal volumes. Regiments Capital, a black owned business, was appointed as the sub-contractor to the coal programme through the supplier development program with the aim of the main contractor (Mckinsey) transferring skills and knowledge for Regiments to potentially lead future programmes for Transnet and other industry players. Regiments has gained the necessary experience to be able to perform this service as lead contractor (75%) for GFB, with Mckinsey being the sub-contractor (25%) so as to ensure continuity based on the lessons learnt on the coal programme.

10. The appointment of Regimens Capital as the main contractor for the GFB programs shows that Transnet's Supplier Development is delivering on the Transformation and Empowerment objectives.

11. Status of the coal program:

    11.1. The historical performance of 69-72 Mt left a gap of 4-9 Mt to the target and stretch target for 2014/15, and the management team that was being formed at the time was not aligned on target and how to achieve it. There was a focus on daily push versus a systematic focus on driving scheduled operations as a means to driving growth by leveraging new tools and processes and filling in the many vacancies that were hampering operations.

    11.2. To date the Coal line team has achieved significant successes and unprecedented volumes:
    - Best December in the history of the Coal Line (6.9Mt vs. 6.1Mt in 2013)
    - Weekly average increased from 1.29Mt in 2013 to 1.44Mt in 2014 to 1.51Mt after project launch
    - YTD volumes of 67.93 Mt with an additional five week remaining to year end and an average tempo of 1.61 Mt for the last 3 weeks (excluding double line occupation)

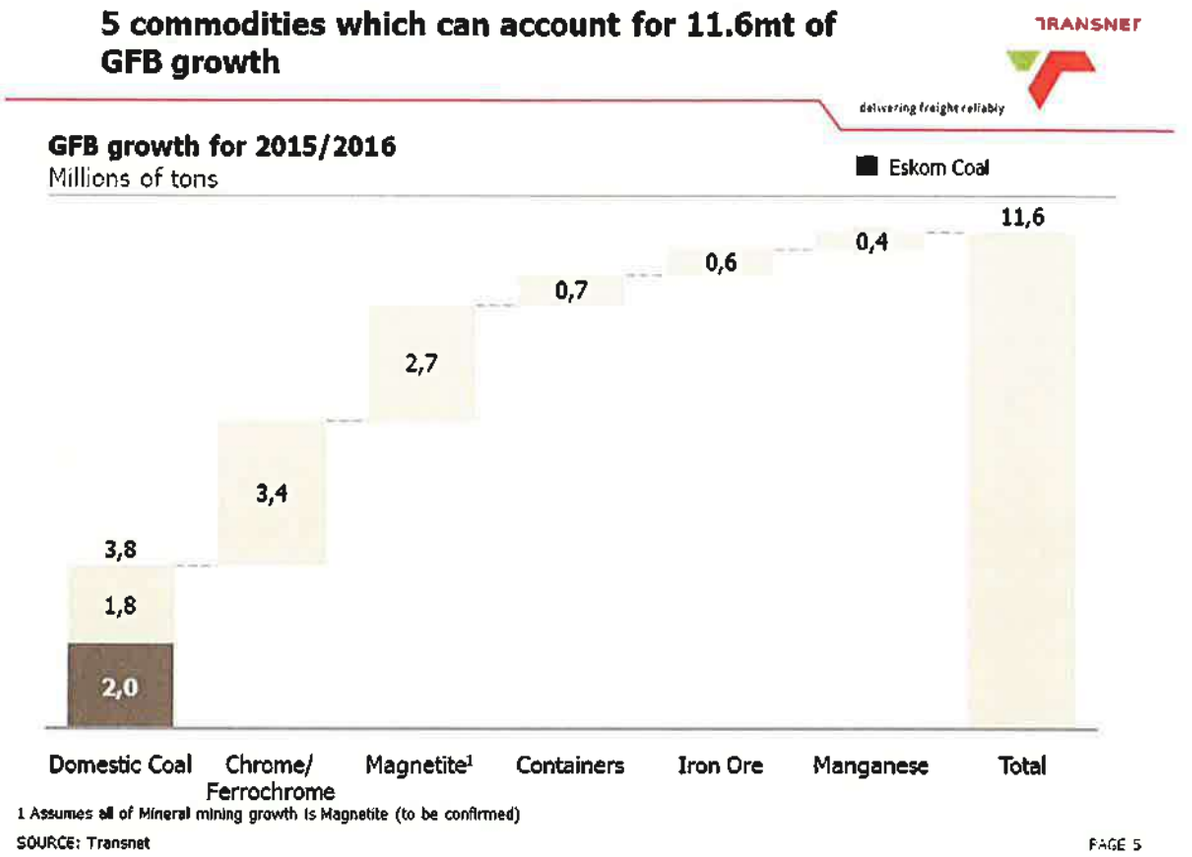
    11.3. This has been achieved through:
    - Establishing a new philosophy around system balance
    - Team buy-in and ownership of the stretch target of 77Mt
    - Filling of critical vacancies
    - Reducing driver travel time
    - Reducing infra related cable theft and hook-ups
    - Introducing tools and technology to improve transparency and decision making, e.g. yard visibility, operational dashboards, cantilever tool
    - Joint working team consisting of representatives of TE and TFR to address key issues and improve communication

    11.4. A further step up will be required to ensure delivery of the 2015/16 target of 79Mt. This would include:
    - A commercial transformation of the sales function to ensure that demand does not become the constraint to future growth
    - Scaling up the technology solutions
    - Managing loco availability during the commissioning of the 21Es
    - Taking scheduling and planning to the next level in the SOC

    11.5. Because there has been a systematic approach to growth and a focus on sustainability, much of what was learnt on the Coal line can be scaled to other flows such as domestic coal, chrome/ferrochrome, magnetite, containers, etc. in the GFB space.

12. The same principal needs to be applied on GFB.

13. A preliminary investigation has indicated that only on five commodities on GFB 11.6 Mt per annum that was not previously secured can be added to the GFB volumes.



14. The volumes produced in the GFB program must create sustainable processes, systems, people capacity and mind-sets for Transnet. Thus this program should run over a two year period.

15. The Sales, marketing and commercial initiative will entail, but not be limited, to the following:

    15.1. Set up sales nerve centres focusing on volumes making up 80% of growth in key business area's
        15.1.1. Identification of specific GFB flows with short-term growth potential (e.g., flow volumes in traffic file exceed volumes in resource file, lost volumes to road, addressable volumes on road);
        15.1.2. Identification of barriers to securing demand and incentives/service levels needed to capture demand;

    15.2. Investigation and validation of new markets, including new markets identified by TFR e.g. FMCG market;

    15.3. Targeted and structured programs and routines to capture the additional volumes by flow and customer, incl. rigorous performance tracking, sales execution support, short-term incentive schemes;

    15.4. Identification of critical commercial capabilities and tools to capture growth;

15.5. Perspective of where take or pay contracts must be utilised and key contract elements that must be included;

15.6. Targeted capability building programme to address gaps (e.g., concise key account plans, road-to-rail migration pitch);

15.7. Piloting of sales enabling tools and roll out if value has been proven; and

15.8. Any marketing thought leadership required.

16. The model that was applied to Coal programme will also be applied to the GFB programme:

16.1. Fixed pricing for the implementation of the processes and tools and the identification of commodities that can be leveraged to produce additional GFB volumes and the sales and commercial initiatives. There should be a fixed component for each of the two years but the first year will be more significant given the emphasis on creating sales, marketing and commercial capabilities.

16.2. An 'at-risk' portion (outcomes based price) to the pricing which is linked to the delivery of the desired volumes. This will be based on volumes actually delivered per year.

17. The pricing and return for Transnet is discussed under Financial Implications.

GROUNDS FOR CONFINEMENT:

18. 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.

19. We are of the view that this matter complies with ground (a) and (d) 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;	• Genuine unforeseeable urgency has arisen as Transnet is not meeting its planned GFB targets due to economic circumstances.
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.	• The work required is highly specialised and the supplier, working as subcontractor on the coal programme, has developed tools in the rail industry that is currently in use at Transnet. The coal programme is awarded to Mckinsey and Regiments Capital is the appointed SD subcontractor on a 60:40 split. As discussed in point 10 above the coal programme is proving to be successful. • It is not in the public interest as there would be additional cost and time wasted to develop the required tools and also to gain a deep understanding of Transnet Freight Rails infrastructure and operating model.

ENTERPRISE AND SUPPLIER DEVELOPMENT AND BBBEE

20. Supplier development will continue to be a key factor and there will be a requirement for a BBBEE improvement plan as well as a SD plan with commitments of 30% to be negotiated with Regiments Capital, being the lead contractor. With Regiments being the lead contractor Transnet is delivering on its Supplier Development objectives of driving new entrants into markets to become suitably skilled to take on the lead for complex projects as well as delivering on its mandate to drive Transformation and Empowerment objectives.

21. Regiments Capital is a level two contributor with 68% black ownership, Mckinsey, who will be subcontracted by Regiments Capital is a level two contributor with 26% black ownership.

DELEGATIONS

22. The GCE has delegations to approve confinements up to R250 million.

23. The ADC's delegations to approve confinements is from R250 million to R1 billion.

24. This value of the confinement is R375 million and thus is in the delegation of the ADC.

FINANCIAL IMPLICATIONS

25. There is an expected increase in revenue for the first year of R2.9bn, which will flow into the second year plus there will be additional revenue unlocked in year two which is currently unknown as no analysis is available within that time span.

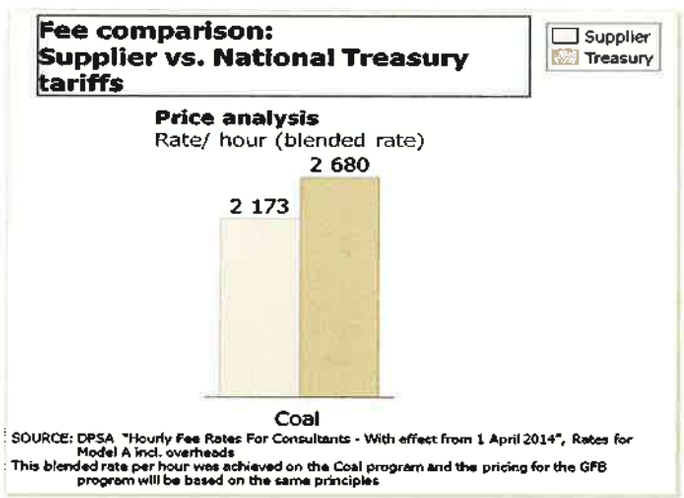
26. The GFB Fees are set-out below:
    26.1. Fixed fee 2015/2016 – R50m
    26.2. Outcomes based fee 2015/2016 – R155m
    26.3. Probable fixed fee 2016/2017 – R20m
    26.4. Probable outcomes based fee 2016/2017 – R150m

27. The total expected fee for GFB for two years is estimated at R375m.

28. The outcomes based fee are based on the outcome and is thus not based on hourly tariffs.

29. The fixed fee is based on tariffs and these are in line with the National Treasury instruction note on professional fees.

30. The following table compares the fixed fee utilising the type of resource and the estimated time allocation to provide the service based on the service providers tariffs and the tariffs allowed in terms of the National Treasury Instruction note on professional fees.



BUDGET IMPLICATIONS

31. The fixed costs have been budgeted for and the outcomes based fee will be funded from the additional revenue received.

RECOMMENDATION:

32. That the Acquisitions and Disposals Committee (ADC):
    32.1. Approves the confinement and award for the General Freight Business breakthrough to achieve the volume targets initiative, which includes an initiative for sales, marketing and commercial capabilities, processes and solutions, to Regiments Capital for R375 million.
    32.2. Delegates authority to the GCE to approve all documentation and contract amendments related to this transaction including process approval and award.

Compiled by:

Siyabonga Gama
Chief Executive Transnet Freight Rail
Date: 2015.03.23

Recommended / ~~Not Recommended~~:

Anoj Singh
Group Chief Financial Officer
Date: 23/03/15

Recommended / ~~Not Recommended:~~

Brian Molefe
Group Chief Executive
Date: 24.3.15

CONFIDENTIAL

MINUTES OF THE MEETING OF THE ACQUISITIONS AND DISPOSALS COMMITTEE NO. 11-14/15FY HELD ON 30 MARCH 2015 AT 10:10 IN BOARDROOM 4902, 49th FLOOR, CARLTON CENTRE, 150 COMMISSIONER STREET, JOHANNESBURG

Resolution No/ For Attention

1 **CONSTITUTION OF MEETING**

1.1 **Present**

Mr SD Shane	Chairperson
Ms LC Mabaso	Member
Mr ZA Nagdee	Member
Mr MR Seleke	Member

1.2 **In Attendance**

Mr B Molefe	Group Chief Executive
Mr G Pita	Group Supply Chain Officer
Mr N Silinga	Group Executive: Legal and Compliance
Mr A Singh	Group Chief Financial Officer
Ms B Ndlovu	Company Secretary

1.3 **Partial Attendance**

Mr SI Gama	Chief Executive: Transnet Freight Rail (*via video conference*)
Ms N Monama	General Manager: Legal, Compliance, Risk & Insurance – Transnet Capital Projects
Mr LMH Msagala	Group Executive: Transnet Capital Projects
Ms R Roper	Head of EIMS: Transnet Freight Rail

1.4 **Apologies**

Ms NE Khumalo	Deputy Group Company Secretary

1.5 **Welcoming and Signing of Attendance Register**

1.5.1 The Chairperson welcomed all members and attendees present at the meeting, and having noted that there was a quorum, declared the meeting duly constituted. The Attendance Register was circulated for signature.

should engage the Shareholder Minister for recourse in recouping *Eskom's* shared portion of R565m, borne by the Company.

Ms Roper was excused from the meeting at 12:50.

5.2 **General Freight Business (GFB) Confinement**

5.2.1 Management took the Committee through the submission as contained in the meeting pack. The submission was taken as read and noted. The purpose of the submission was to request the Committee to approve the following:

- The confinement and award for the General Freight Business breakthrough to achieve the volume targets initiative, which included an initiative for sales and commercial capabilities, processes and solutions, to *Regiments Capital* for R375m; and
- Authority is delegated to the GCE to approve all documentation and contract amendments related to this transaction including process approval and award.

5.2.2 Management informed the Committee that the latest OD/SU submissions indicated that cash flows from operating activities would be significantly lower than the Corporate Plan due to market conditions, pressure on GFB volumes and cost increases. As a result, parameters for cash interest cover and gearing could be breached.

5.2.3 Management indicated that the GFB volumes target for the 2015/16FY was 106Mt. However, to date the GFB did not exceed 87Mt per annum. Management was of the view that, to mitigate this, and to plan for the delivery of 1064 new Locomotives over the next 6 years, there should be a step change in GFB volumes. The step change entailed, but was not limited, to the following:

- Securing volumes and enabling execution capabilities on key flows;
- Capturing additional revenue through pricing, mix optimisation and surcharge capturing; and
- Ensuring sustainability through tools and capability building.

5.2.4 It was critical to achieve the GFB budgeted volumes which impacted directly on EBIDTA. Management reported that 55-65% of the MDS was underpinned by the investment in the GFB. Furthermore, the Company's performance in the 2014/15FY had cash flow-at-risk in the GFB of approximately R3bn due to the pricing risks. However, Coal was successful and had a sustainable programme, whilst Iron Ore was relatively embedded. Cash flow-at-risk could therefore be protected through the GFB.

5.2.5 The financial implication pertaining to the GFB Fees was noted as follows:

• Fixed Fee for the 2015/16FY	R50m
• Outcomes based fee for the 2015/16FY	R155m
• Probable fixed fee for the 2016/17FY	R20m
• Probable outcomes based fee for the 2016/17	R150
Total over the 2 years	**R375m**

Management confirmed that the total fees were at a maximum of R375m for the 2015/16FY and 2016/17FY.

5.2.6 It was further noted that upfront intervention would ensure that the locomotives from the 1064 Locomotive Programme, which would be used to move the General Freight be implemented once commissioned to move the said general freight. This was a self-funding programme. In response to a member's enquiry, Management confirmed that *Regiments Capital* was the main contractor and would sub contract *McKinsey*.

RESOLVED that the Committee approved the following:

- The confinement and award for the General Freight Business breakthrough to achieve the volume targets initiative, which included an initiative for sales and commercial capabilities, processes and solutions, to *Regiments Capital* for a maximum amount of R375m; and
- Authority is delegated to the Group Chief Executive to approve all documentation

Resolution No/ For Attention

11-14/15FY/2

and contract amendments related to this transaction including process approval and award.

Mr Gama was excused from the meeting at 13:06.

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McKinsey&Company

TAX INVOICE

Transnet SOC Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg
2195

VAT no: 4720103177

GFS Contract.

Sandown
88 Stella
Sandown
Sandton
2196
Reg No: 19..

VAT no: 4710150048
Tax invoice: 6222
Charge code: TRX100

Payment due within 30days of invoice date

30 June 2015

GFB CAB_ All in professional fees July 2015	18 May to 10	ZAR	5,690,000.00
GFB ABI_ All in professional fees July 2015	18 May to 10	ZAR	5,690,000.00
GFB Central Team_ All in professional fees July 2015	18 May to 10	ZAR	5,690,000.00
GFB Volume Validation_ All in professional fees 18 May to 10 July 2015		ZAR	5,690,000.00
GFB SAC_ All in professional fees July 2015	18 May to 10	ZAR	5,690,000.00
Subtotal		ZAR	28,450,000.00
VAT		ZAR	3,983,000.00
TOTAL		ZAR	32,433,000.00

TRANSNET
PAID

Please Wire Transfer to:

Account Name:	McKinsey Incorporated
Account Number:	421061812
Branch Code:	019205
Bank name and address:	The Standard Bank of South Africa Ltd. Sandton Branch 156 Fifth Street Sandton Gauteng South Africa

Released 11/12/15

R. NAIK

Please quote invoice number and charge code reference on transfer and remittance.

Please note:
Standard terms provide for invoice payment upon receipt. Interest will be charged on balances outstanding 30 days after the invoice date, at a rate of 1% per month or as otherwise agreed.

Response for Approval

10/12/15

OK to pay

McKinsey and Company Africa Proprietary Limited
Sandown Mews East 88 Stella Street, Sandown Sandton 2196 PO Box 652797 Benmore 2010 South Africa
Telephone +27 (0) 11 806 6000 Fax +27 (0) 11 806 6000
Incorporated and registered in South Africa no 2003/009134/07 Directors List available on request. The fees mentioned are fully inclusive of VAT.

52-133036

SCC-WG18.30-0193

SCC-_RGlnaXRpc2VkX1JlbGF0aXZpdHlfZGF0YV9UUkFOU05FVF9fSE9STkVSXwo=

G O O D S R E C E I P T S L I P [redacted]49187/0001

Goods receipt date : 11.12.2015
Current date : 11.12.2015

Plant : 4000
Description : Group Services

Vendor : 0001000316 Delivery note: 6222
Name : MCKINSEY AND CO
PO : 4500310024/00010
Buyer Name : Eugene Engelbrecht & Engelbrecht Telephone : 011306108

Material :
MPN :
Description : GFB CAB: JUN15

Quantity : 1 AU

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

Recipient :
Unloadg. point:
Cost center : 0001003013

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

SCC-WG18.30-0194

Issue: 2019-01-25_22:48:03

TRANSNET

AGREEMENT

Entered into by and between

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

And

REGIMENTS CAPITAL (Pty) Ltd (Reg. Nr. 2004/023761/07)

FOR THE PROVISION OF SERVICES RELATED TO: RFP GSM/15/03/1255:
PROVISION OF PROFESSIONAL SERVICES TO SUPPORT TRANSNET IN INCREASING GENERAL FREIGHT BUSINESS WITH A BREAKTHROUGH TO REACH THE PLANNED VOLUME TARGETS FOR THE FINANCIAL YEAR 2015/2016 AND 2016/2017.

Agreement Number	**GSM/15/03/1255**
Commencement Date	**19 May 2015**
Expiry Date	**18 May 2017**

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1 INTRODUCTION

This Agreement is entered into by and between:

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

And

Regiments Capital (Pty) Ltd [Registration Number 2004/023761/07] whose principal place of business is at 91 Central Street, Houghton, 2198, Gauteng, South Africa [**the Service Provider**].

NOW THEREFORE, IT IS AGREED:

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

1.2 The Service Provider hereby undertakes to render the Services provided for herein, as formally agreed between the Parties and in accordance with the Work Order(s) issued as schedules to this Agreement.

2 DEFINITIONS

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

2.1 **AFSA** means the Arbitration Foundation of South Africa;

2.2 **Agreement** means this Agreement and its associated schedules and/or annexures and/or appendices, including the Work Order(s), specifications for the Services and such special conditions as shall apply to this Agreement, together with the General Tender Conditions and any additional provisions in the associated bid documents tendered by the Service Provider [as agreed in writing between the Parties], which collectively and exclusively govern the provision of Services by the Service Provider to Transnet;

2.3 **Background Intellectual Property** means all Intellectual Property introduced and required by Transnet to give effect to its obligations under this Agreement owned in whole or in part by or licensed to Transnet or its affiliates prior to the Commencement Date or developed after the Commencement Date otherwise pursuant to this Agreement;

2.4 **Business Day(s)** means Mondays to Fridays between 07:30 and 16:00, excluding public holidays as proclaimed in South Africa;

2.5 **Commencement Date** means **19 May 2015**, notwithstanding the signature date of this Agreement;

2.6 **Confidential Information** means any information or other data, whether in written, oral, graphic or in any other form such as in documents, papers, memoranda, correspondence, notebooks, reports, drawings, diagrams, discs, articles, samples, test results, prototypes, designs, plans, formulae, patents, or inventor's certificates, which a Party discloses to the other Party [intentionally or unintentionally, or as a result of one Party permitting the representative of the

other Party to visit any of its premises], or which otherwise becomes known to a Party, and which is not in the public domain and includes, without limiting the generality of the term:

a) Information relating to methods of operation, data and plans of the disclosing Party;

b) The contents of this Agreement;

c) Private and personal details of employees or clients of the disclosing Party or any other person where an onus rests on the disclosing Party to maintain the confidentiality of such information;

d) Any information disclosed by either Party and which is clearly marked as being confidential or secret;

e) Information relating to the strategic objectives and planning of the disclosing Party relating to its existing and planned future business activities;

f) Information relating to the past, present and future research and development of the disclosing Party;

g) Information relating to the business activities, business relationships, products, services, customers, clients and Subcontractors of the disclosing Party where an onus rests on the disclosing Party to maintain the confidentiality of such information;

h) Information contained in the software and associated material and documentation belonging to the disclosing Party;

i) Technical and scientific information, Know-How and trade secrets of a disclosing Party including inventions, applications and processes;

j) Copyright works;

k) Commercial, financial and marketing information;

l) Data concerning architecture, demonstrations, tools and techniques, processes, machinery and equipment of the disclosing Party;

m) Plans, designs, concepts, drawings, functional and technical requirements and specifications of the disclosing Party;

n) Information concerning faults or defects in goods, equipment, hardware or software or the incidence of such faults or defects; and

o) Information concerning the charges, Fees and / or costs of the disclosing Party or its authorised Subcontractors, or their methods, practices or service performance levels actually achieved;

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

2.8 **Default** means any breach of the obligations of either Party [including but not limited to fundamental breach or breach of a fundamental term] or any Default, act, omission, negligence or statement of either Party, its employees, agents or Subcontractors in connection with or in relation to the subject of this Agreement and in respect of which such Party is liable to the other;

2.9 **Deliverable(s)** means any and all reports, analyses or other such materials furnished by the Service Provider to Transnet in relation to the Services;

2.10 **Designs** mean registered Designs and/or Design applications and will include the monopoly right granted for the protection of an independently created industrial design including designs dictated essentially by technical or functional considerations as well as topographies of integrated circuits and integrated circuits;

2.11 **Fee(s)** shall mean the agreed Fees for the Services to be purchased from the Service Provider by Transnet, as detailed in the Work Order(s), issued in accordance with this Agreement;

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

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

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

2.15 **Materials** means the Deliverables, the Service Provider Materials;

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

2.17 **Party** means either one of the Parties;

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

2.19 **Permitted Purpose** means any activity or process to be undertaken or supervised by Personnel or employees of one Party during the term of this Agreement, for which purpose authorised disclosure of the other Party's Confidential Information or Intellectual Property is a prerequisite in order to enable such activity or process to be accomplished;

2.20 **Personnel** means any partner, employee, agent, consultant, independent associate or supplier, Subcontractor and the staff of such Subcontractor, or other authorised representative of either Party;

2.21 **Purchase Order(s)** means official orders issued by an operating division of Transnet to the Service Provider for the provision of Services;

2.22 **Service(s)** means scope of services as defined in Schedule 1;

2.23 **Subcontract** means any contract or agreement or proposed contract or agreement between the Service Provider and any third party whereby that third party agrees to provide to the Service Provider the Services or any part thereof;

2.24 **Subcontractor** means the third party with whom the Service Provider enters into a Subcontract;

2.25 **Service Provider Materials** means including, but not limited to, data, diagrams, charts, reports, specifications, studies, inventions, software, software development tools, methodologies, ideas, methods, processes, concepts and techniques analyses, know-how, tools, frameworks, models and industry perspectives used and/or developed by the Service Provider in connection with the Services;

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

2.27 **Third Party Material** means software, software development tools, methodologies, ideas, methods, processes, concepts and techniques owned by, or licensed to a third party and used by the Service Provider in the performance of the Services;

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

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

2.30 **Work Order(s)** means a detailed scope of work for a Service required by Transnet, including timeframes, Deliverable, Fees and costs for the supply of the Service to Transnet, which shall be appended to this Agreement.

3 INTERPRETATION

3.1 Clause headings in this Agreement are included for ease of reference only and do not form part of this Agreement for the purposes of interpretation or for any other purpose. No provision shall be construed against or interpreted to the disadvantage of either Party hereto by reason of such Party having or being deemed to have structured or drafted such provision.

3.2 Any term, word, acronym or phrase used in this Agreement, other than those defined under the clause heading "Definitions" shall be given its plain English meaning, and those terms, words, acronyms, and phrases used in this Agreement will be interpreted in accordance with the generally accepted meanings accorded thereto.

3.3 A reference to the singular incorporates a reference to the plural and *vice versa*.

3.4 A reference to natural persons incorporates a reference to legal persons and *vice versa*.

3.5 A reference to a particular gender incorporates a reference to the other gender.

4 NATURE AND SCOPE

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

4.2 Such Purchase Orders shall be agreed between the Parties from time to time, subject to the terms of the relevant Work Order(s).

4.3 Each properly executed Purchase Order forms an inseparable part of this Agreement as if it were fully incorporated into the body of this Agreement.

4.4 During the period of this Agreement, both Parties can make written suggestions for amendments to the Work Order(s), in accordance with procedures set out in clause 30 *[Amendment and Change Control]* below. A Party will advise the other Party within 14 [fourteen] Business Days, or such other period as mutually agreed, whether the amendment is acceptable.

4.5 Insofar as any term, provision or condition in the Work Order(s) conflicts with a like term, provision or condition in this Agreement and/or a Purchase Order, or where this Agreement is silent on the matter, the term, provision or condition in this Agreement shall prevail, unless such

term or provision or condition in this Agreement has been specifically revoked or amended by mutual written agreement between the Parties.

4.6 The Service Provider will perform its obligations under this Agreement in accordance with the timeframe(s) [if any] set out in the relevant schedule, save that the Service Provider will not be liable under this clause if it is unable to meet such obligation within the time required as a direct result of any act or omission by Transnet and it has used its best endeavours to advise Transnet of such act or omission. In the event of such delay, any time deadlines detailed in the relevant schedule shall be extended by a period equal to the period of that delay.

5 AUTHORITY OF PARTIES

5.1 Nothing in this Agreement will constitute or be deemed to constitute a partnership between the Parties, or constitute or be deemed to constitute the Parties as agents or employees of one another for any purpose or in any form whatsoever.

5.2 Neither Party shall be entitled to, or have the power or authority to enter into an agreement in the name of the other; or give any warranty, representation or undertaking on the other's behalf; or create any liability against the other or bind the other's credit in any way or for any purpose whatsoever.

6 WARRANTIES

6.1 The Service Provider warrants to Transnet that:

a) It has full capacity and authority to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representatives of the Service Provider;

b) It will discharge its obligations under this Agreement and any annexure, appendix or schedule hereto with all due skill, care and diligence;

c) It will be solely responsible for the payment of remuneration and associated benefits, if any, of its Personnel and for withholding and remitting income tax for its Personnel in conformance with any applicable laws and regulations; and

d) The use or possession by Transnet of any Materials will not subject Transnet to any claim for infringement of any Intellectual Property Rights of any third party.

6.2 The Service Provider warrants that it will perform its obligations under this Agreement in accordance with the Service Levels as defined in the relevant schedule. Transnet may at its reasonable discretion audit compliance with the Service Levels, provided that any such audit is carried out with reasonable prior notice and in a reasonable way so as not to have an adverse effect on the performance of the Services or the manner in which the Service Provider ordinarily conducts business. Without prejudice to clause 6.3 below, in the event that the Service Provider fails to meet the Service Levels, Transnet may claim appropriate service credits or invoke retention of Fees as detailed in the relevant schedule and/or Work Order.

6.3 The Service Provider shall, in accordance with the Service Provider's document retention policies, establish and maintain a secure file containing a copy of any presentation, progress review, report or other document furnished to Transnet by the Service Provider in connection with the Services, together with any working papers necessary to support its conclusions or analyses (collectively, the "Working Papers File"). Transnet may, at its own cost, inspect the Working Papers File at any time, during the five (5) year period from the end of the calendar year in which the relevant Services are completed or terminated, solely for the purpose of determining whether the Service

Provider performed the Services in accordance with the Work Order. Any information furnished in connection with this provision shall be kept confidential in accordance with this Agreement.

6.4 The Service Provider warrants that for a period of 90 [ninety] 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] days of notification by Transnet.

6.5 The Service Provider will remedy any defect within 30 [thirty] days of being notified of that defect by Transnet in writing.

6.6 The Service Provider will not be liable to remedy any problem arising from or caused by Transnet's use of the Deliverables in any way not intended by the Work Order or any modification made by Transnet to the Deliverables, or any part thereof, without the prior approval of the Service Provider.

6.7 The Service Provider shall advise Transnet of the effects of any steps proposed by Transnet pursuant to clause 6.6 above, including but not limited to any cost implications or any disruption or delay in the performance of the Services. The Parties agree that any changes to the Services, including the charges for the Services or any timetables for delivery of the Services, will be agreed in accordance with the change control procedure, as set out in clause 30 *[Amendment and Change Control]*.

6.8 The Service Provider warrants that:

a) it has, using the most up-to-date software practicably and reasonably available to it, tested for [and deleted] all viruses identified by the Service Provider in the Materials at the date of the relevant Work Order; and

b) At the time of delivery to Transnet, the Materials do not contain any trojan horse, worm, logic bomb, time bomb, back door, trap door, keys or other harmful components.

The Service Provider agrees that, in the event that a virus is found, it will use its reasonable endeavours to assist Transnet in reducing the effect of the virus and, particularly in the event that a virus causes loss of operational efficiency or loss of data, to assist Transnet to the same extent to mitigate such losses and to restore Transnet to its original operating efficiency.

6.9 The Service Provider undertakes to comply with South Africa's general privacy protection in terms of Section 14 of the Bill of Rights in connection with this Agreement and shall procure that its Personnel shall observe the provisions of Section 14 [as applicable] or any amendments and re-enactments thereof and any regulations made pursuant thereto.

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

6.11 In compliance with the National Railway Safety Regulator Act, 16 of 2002, the Service Provider shall ensure that the Services, to be supplied to Transnet under the terms and conditions of this Agreement, comply fully with the specifications as set forth in Schedule 1 hereto, and shall thereby adhere [as applicable] to railway safety requirements and/or regulations. Permission for the engagement of a Subcontractor by the Service Provider [as applicable] shall be subject to a review of the capability of the proposed Subcontractor to comply with the specified railway safety

requirements and/or regulations. The Service Provider and/or its Subcontractor shall make senior Personnel available to Transnet, during the term of this Agreement, to review any safety-related activities, including the coordination of such activities across all parts of its organisation.

7 TRANSNET'S OBLIGATIONS

7.1 Transnet undertakes to promptly comply with any reasonable request by the Service Provider for information, including information concerning Transnet's operations and activities, that relates to the Services as may be necessary for the Service Provider to perform the Services, but for no other purpose. However, Transnet's compliance with any request for information is subject to any internal security rules and requirements and subject to the observance by the Service Provider of its confidentiality obligations under this Agreement.

7.2 The Service Provider shall give Transnet reasonable notice of any information it requires in accordance with clause 7.1 above.

7.3 Subject to clause 15 *[Service Provider's Personnel]*, Transnet agrees to :

a) provide the Service Provider or its Personnel such access to and use of its facilities as is necessary to allow the Service Provider to perform its obligations under this Agreement; and

b) perform any tasks or responsibilities assigned to Transnet and notify the Service Provider of any issues or concerns Transnet may have relating to the Services..

8 GENERAL OBLIGATIONS OF THE SERVICE PROVIDER

8.1 The Service Provider shall:

a) Respond promptly to all complaints and reasonable enquiries from Transnet;

b) Inform Transnet immediately of any dispute or complaint arising in relation to the provision of the Services;

c) Conduct its business in a professional manner that will reflect positively upon the Service Provider and the Service Provider's Services;

d) Keep full records clearly indicating all transactions concluded by the Service Provider relating to the performance of the Services and keep such records for at least 5 [five] years from the date of each such transaction;

e) Obtain, and at all times maintain in full force and effect, any and all licences, permits and the like required under applicable laws for the provision of the Services and the conduct of the business and activities of the Service Provider;

f) Observe and ensure compliance with all requirements and obligations as set out in the labour and related legislation of South Africa, including the Occupational Health and Safety Act, 85 of 1993;

g) Comply with all applicable environmental legislation and regulations, and demonstrate sound environmental policies, management and performance that are applicable to the Service Provider and performance of the Services; and

h) Ensure the validity of all renewable certifications, including but not limited to its Tax Clearance Certificate and B-BBEE Verification Certificate, for the duration of this Agreement. Should the Service Provider fail to present Transnet with such renewals as they become due, Transnet shall be entitled, in addition to any other rights and remedies that it may have in terms of the Agreement, to terminate this Agreement forthwith without any

liability and without prejudice to any claims which Transnet may have for damages against the Service Provider.

8.2 The Service Provider acknowledges and agrees that it shall at all times:

a) Render the Services and perform all its duties with honesty and integrity;

b) Communicate openly and honestly with Transnet and demonstrate a commitment to performing the Services timeously, efficiently and to the required standards;

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

d) Use its reasonable endeavours and make every diligent effort to meet agreed deadlines;

e) Treat its own Personnel, as well as all Transnet's officers, employees, agents and consultants, with fairness and courtesy and respect for their human rights;

f) Practice and promote its own internal policies aimed at prohibiting and preventing unfair discrimination [as further referred to in clause 24 – *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 therefore 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 accept or offer, nor allow, induce or promote the acceptance or offering of any gratuity, enticement, incentive or gift that could reasonably be regarded as bribery or an attempt to otherwise exert undue influence over the recipient;

j) Not mislead Transnet or its officers, employees and stakeholders, whether by act or omission;

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

l) Immediately report to Transnet any unethical, fraudulent or otherwise unlawful conduct of which it becomes aware in connection with Transnet or the provision of Services.

9 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 Request for Proposal GSM/15/03/1255 that the Service Provider also contributes to the Supplier Development Programme, as applied by Transnet.

b) In response to this requirement, the Service Provider shall submit to Transnet's Contract Manager or such other designated person details of its B-BBEE status in terms of the latest Codes of Good Practice issued in terms of the B-BBEE Act and proof thereof at the beginning of March each year during the currency of this Agreement.

c) The Service Provider undertakes to notify and provide full details to Transnet in the event there is:

(i) a change in the Service Provider's B-BBEE status which is less than what it was at the time of its appointment including the impact thereof; and

(ii) a corporate or internal restructure or change in control of the Service Provider which has or likely to impact negatively on the Service Provider's B-BBEE status.

d) Notwithstanding any other reporting requirement in terms hereof, the Service Provider undertakes to provide any B-BBEE data (underlying data relating to the Service Provider which has been relied upon or utilised by a verification agency or auditor for the purposes of issuing a verification certificate in respect of the Service Provider B-BBEE status) which Transnet may request on written notice within 30 (thirty) 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 9.6.

e) In the event there is a change in the Service Provider's B-BBEE status, then the provisions of clause 9.1 (c) 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 provided Transnet with a B-BBEE Improvement Plan to indicate the extent to which their B-BBEE status and the elements of the B-BBEE scorecard will be maintained or improved over the contract period, as per Annexure D of the RFP.

b) The Service Provider shall, for the duration of this Agreement, comply with the B-BBEE Improvement Plan.

c) The terms of the B-BBEE Improvement Plan and monetary value of the commitments thereunder shall not (unless otherwise agreed in writing) be less or less favourable than the commitments made by the Service Provider in such B-BBEE Improvement Plan.

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) days from the signature date of the contract.

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) 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 9.6 shall apply.

d) The Service Provider's Implementation Plan shall include, but not be limited to Transfer of Technology & Intellectual Property Rights, New skills development, Job creation, Job Preservation, Small Business Promotion and Rural Integration and Regional Integration. With reference to Small Business Promotion, the Service Provider must ensure that at least 20% of the 30% SD commitment will be directed to subcontracting to preferably black owned, black woman owned, black youth owned and/or people with disabilities owned.

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

b) The above will be provided in terms of quarterly reporting on McKinsey Incorporated commitment to Green Economy and their Carbon Footprint measured against this contract.

9.5 **Reporting**

a) The Service Provider shall monitor, audit, and record in an auditable manner, its own implementation and compliance with the B-BBEE Improvement Plan and the Supplier Development Implementation Plan and provide the Contract Manager with such information as the Contract Manager may reasonably request concerning the implementation of the B-BBEE Improvement Plan and the Supplier Development Implementation Plan.

b) The Service Provider shall, every 3 (three) months from the Commencement Date and within 7 (seven) days of the end of the calendar month of that 3 (three) months period, 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 3 (three) 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 Integrated Supply Chain Management Department (Supplier Development specialist), 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 this Agreement:

(i) if the Contract Manager and/or Transnet's Supplier Development specialist reasonably considers that the Service Provider is not at any time complying with 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 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 or shall be entitled to terminate in terms of clause 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 (three) 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 Clause 9.6 *[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 9.6b)(i) below.

b) The payment of the non-compliance penalty shall be without prejudice to Transnet's right to terminate the contract, if it so elects.

(i) Non Compliance Penalties shall be calculated as a percentage of the Contract Value and accrue at the Applicable Rate per month until:

- 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
- the Agreement is terminated.

Applicable Rates of Non Compliance Penalties:

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

(i) 100% of the undelivered portion of SD commitments to be set off against any current or future payments due to Regiments Capital. The imposition of penalties shall be without prejudice to Transnet's rights to terminate the contract if it so elects.

d) In relation to the B-BBEE Improvement Plan, Non Compliance Penalties shall accrue at the following Applicable Rates:

(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);

(v) for any period of Non Compliance after the fourth month, a rate of 3% (three percent); and

(vi) For any period of Non-Compliance after the fifth month after the deliverables of the BBBEE Improvement Plan are due, a rate of 5% (five percent)

Non Compliance Penalty Cap:

e) The maximum amount of the Service Provider's liability to pay Non Compliance Penalties under this clause 9.6, shall not exceed:

(i) in the case of the Supplier Development Implementation Plan, 5% (five percent) of the Contract Value; and

(ii) in the case of the B-BBEE Improvement Plan, 5% (five percent) of the Contract Value, (each a Non Compliance Cap).

Non Compliance Penalty Certificate:

f) 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.

g) A Non Compliance Penalty Certificate shall be prima facie proof of the matters to which it relates. If the Service Provider disputes any of the amounts set out in a Non Compliance Penalty Certificate:

(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 Service Provider shall pay such amount to Transnet within 10 (ten) Business Days of the determination made pursuant to such determination and an accompanying valid Tax Invoice.

Payment of Non Compliance Penalties:

h) Subject to Clause (e), the Service Provider shall pay the Non Compliance Penalty indicated in the Non Compliance Penalty Certificate within 10 (ten) Business Days of Transnet issuing a valid Tax Invoice to the Service Provider for the amount set out in that certificate. If Transnet does not issue a valid Tax Invoice to the Service Provider for Non Compliance Penalties accrued during any relevant period, those Non Compliance Penalties shall be carried forward to the next period.

i) The Service Provider shall pay the amount due within 10 (ten) days after receipt of a valid Tax Invoice from Transnet, failing which Transnet shall, without prejudice to any other rights of Transnet under this Agreement, be entitled to call for payment which may be in any form Transnet deems reasonable and/or appropriate.

j) Should the Service Provider fail to pay any Non Compliance Penalties within the time indicated above (as applicable), Transnet shall be entitled to deduct the amount not paid by the Service Provider from the account of the Service Provider in the ensuing month.

k) The Non Compliance Penalties set forth in this clause 9.6 are stated exclusive of VAT. Any VAT payable on Non Compliance Penalties will be for the account of the service provider.

10 SERVING COMPETITORS

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

11 FEES AND EXPENSES

11.1 The Parties have agreed that the fees are inclusive of expenses and that the value of the Service Provider's expenses in connection with the provision of the Services shall be based on actuals and shall be fixed at a maximum of 10% of the total Fees.

11.2 All Tax Invoices relating to Fees, and expenses and, where appropriate, shall include VAT as a separate item.

12 INVOICING AND PAYMENT

12.1 Transnet shall pay the Service Provider the amounts stipulated in the relevant schedule or Work Order, subject to the terms and conditions of this Agreement.

12.2 Transnet shall pay such amounts to the Service Provider, upon receipt of a valid and undisputed Tax Invoice as specified in the Work Order appended hereto, once the undisputed Tax Invoices, or such portion of the Tax Invoices which are undisputed become due and payable to the Service Provider for the provision of the Services, in terms of clause 12.4 below.

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

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

12.5 Where the payment of any Tax Invoice, or any part thereof which is not in dispute, is not made in accordance with this clause 12, 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.

13 FEE ADJUSTMENTS

13.1 Subject to Clause **Error! Reference source not found.**, the Fee is fixed for the duration of the Agreement at as detailed in the relevant schedule or Work Order.

14 INTELLECTUAL PROPERTY RIGHTS

14.1 Title to Confidential Information and Intellectual Property

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

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

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

14.2 Unauthorised Use of Confidential Information

The Service Provider shall not authorise any party to act on or use in any way any Confidential Information belonging to Transnet whether or not such party is aware of such Confidential Information, and shall promptly notify Transnet of the information if it becomes aware of any party so acting, and shall provide Transnet the information with such assistance as Transnet

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

14.3 **Unauthorised Use of Intellectual Property**

a) The Service Provider agrees to notify Transnet in writing of any conflicting uses of, and applications of registrations of Patents, Designs and Trade Marks or any act of infringement, unfair competition or passing off involving the Intellectual Property of Transnet of which the Service Provider acquires knowledge and Transnet shall have the right, as its own option, to proceed against any party infringing its Intellectual Property.

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

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

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

15 SERVICE PROVIDER'S PERSONNEL

15.1 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.

15.2 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.

15.3 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.

15.4 Transnet reserves the right to refuse to admit or to remove from any premises occupied by or on behalf of it, any Service Provider Personnel whose admission or presence would, in the reasonable opinion of Transnet, be undesirable or who represents a threat to confidentiality or security or whose presence would be in breach of any rules and regulations governing Transnet's Personnel, provided that Transnet notifies the Service Provider of any such refusal [with reasons why]. The reasonable exclusion of any such individual from such premises shall not relieve the Service Provider from the performance of its obligations under this Agreement.

15.5 The Service Provider agrees to use all reasonable endeavours to ensure the continuity of its Personnel assigned to perform the Services. If any re-assignment by the Service Provider of those Personnel is necessary, or if Transnet advises that any such Personnel assigned are in any respect unsatisfactory, including where any such Personnel are, or are expected to be or have been absent for any period, then the Service Provider will promptly supply a suitable replacement.

16 LIMITATION OF LIABILITY

16.1 Neither Party excludes or limits liability to the other Party for:

a) Death or personal injury due to negligence; or

b) Fraud

16.2 Each of the Parties shall indemnify and keep the other Party (the "**Indemnified Party**") indemnified from and against liability for damage to any of the Indemnified Party's property [whether tangible or intangible] or any other loss, costs or damage suffered by the Indemnified Party to the extent that it results from any act of or omission by such Party or its Personnel in connection with this Agreement. Each of the Party's liability arising out of this clause 16.2 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.

16.3 Subject always to clauses 16.1 and 16.2 above, the liability of either the Service Provider or Transnet under or in connection with this Agreement, whether for negligence, misrepresentation, breach of contract or otherwise, for direct loss or damage arising out of each Default or series of related Defaults shall not exceed 100% [one hundred per cent] of the Fees paid under the schedule or Work Order to which the Default(s) relates.

16.4 Subject to clause 16.1 above, and except as provided in clauses 16.2 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.

16.5 Nothing in this clause 16 shall be taken as limiting the liability of the Service Provider in respect of clause 14 *[Intellectual Property Rights]* or clause 18 *[Confidentiality]*.

17 INSURANCES

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

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

17.3 Subject to clause 17.4 below, if the Service Provider fails to affect adequate insurance under this clause 17, 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.

17.4 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 17.1 above or if the insurance ceases to be available upon commercially reasonable terms, the Service Provider shall immediately notify Transnet in writing of such termination and/or unavailability, where after either the Service Provider or Transnet may terminate this Agreement on giving the other Party not less than 30 [thirty] days prior written notice to that effect.

18 CONFIDENTIALITY

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

a) Not to divulge or disclose to any person whomsoever in any form or manner whatsoever, either directly or indirectly, any Confidential Information of the other, without the prior written consent of such other Party, other than when called upon to do so in accordance

with a statute, or by a court having jurisdiction, or by any other duly authorised and empowered authority or official, in which event the Party concerned shall do what is reasonably possible to inform the other of such a demand and each shall assist the other in seeking appropriate relief or the instituting of a defensive action to protect the Confidential Information concerned;

b) Not to use, exploit, permit the use of, directly or indirectly, or in any other manner whatsoever apply the Confidential Information, disclosed to it as a result of this Agreement, for any purpose whatsoever other than for the purpose for which it is disclosed or otherwise than in strict compliance with the provisions in this Agreement;

c) Not to make any notes, sketches, drawings, photographs or copies of any kind of any part of the disclosed Confidential Information, without the prior written consent of such other Party, except when reasonably necessary for the purpose of this Agreement, in which case such copies shall be regarded as Confidential Information;

d) Not to de-compile, disassemble or reverse engineer any composition, compilation, concept application, item, component de-compilation, including software or hardware disclosed and shall not analyse any sample provided by Transnet, or otherwise determine the composition or structure or cause to permit these tasks to be carried out except in the performance of its obligations pursuant to this Agreement;

e) Not to exercise less care to safeguard Transnet Confidential Information than the Party exercises in safeguarding its own competitive, sensitive or Confidential Information;

f) Confidential Information disclosed by either Party to the other or by either Party to any other party used by such Party in the performance of this Agreement, shall be dealt with as "restricted" or shall be dealt with according to any other appropriate level of confidentiality relevant to the nature of the information concerned, agreed between the Parties concerned and stipulated in writing for such information in such cases;

g) The Parties shall not make or permit to be made by any other person subject to their control, any public statements or issue press releases or disclose Confidential Information with regard to any matter related to this Agreement, unless written authorisation to do so has first been obtained from the Party first disclosing such information;

h) Each Party shall be entitled to disclose such aspects of Confidential Information as may be relevant to one or more technically qualified employees or internal consultants of the Party who are required in the course of their duties to receive the Confidential Information for the Permitted Purpose provided that the employee or internal consultant concerned has a legitimate interest therein, and then only to the extent necessary for the Permitted Purpose, and is informed by the Party of the confidential nature of the Confidential

Information and the obligations of the confidentiality to which such disclosure is subject and the Party shall ensure such employees or internal consultants honour such obligations;

i) Each Party shall notify the other Party of the name of each person or entity to whom any Confidential Information has been disclosed as soon as practicable after such disclosure;

j) Each Party shall ensure that any person or entity to which it discloses Confidential Information shall observe and perform all of the covenants the Party has accepted in this Agreement as if such person or entity has signed this Agreement. The Party disclosing the Confidential Information shall be responsible for any breach of the provisions of this Agreement by the person or entity; and

k) each Party may by written notice to the other Party specify which of the Party's employees, officers or agents are required to sign a non-disclosure undertaking.

18.2 The duties and obligations with regard to Confidential Information in this clause 18 shall not apply where:

a) A Party can demonstrate that such information is already in the public domain or becomes available to the public through no breach of this Agreement by that Party, or its Personnel; or

b) Was rightfully in a Party's possession prior to receipt from the other Party, as proven by the first-mentioned Party's written records, without an infringement of an obligation or duty of confidentiality; or

c) Can be proved to have been rightfully received by a Party from a third party without a breach of a duty or obligation of confidentiality; or

d) Is independently developed by a Party as proven by its written records.

18.3 The Service Provider's work for Transnet is confidential and intended for Transnet's internal use only. The Service Provider does not make public client names, client materials or reports prepared for clients without their prior written permission. Similarly, Transnet agrees that it will not use Service Provider's name, refer to Service Provider's work, or make the Deliverables or the existence or terms of this Agreement available outside its organization without the Service Provider's prior written permission.

18.4 This clause 18 shall survive termination for any reason of this Agreement and shall remain in force and effect from the Commencement Date of this Agreement and 5 [five] years after the termination of this Agreement. Upon termination of this Agreement, all documentation furnished to the Service Provider by Transnet pursuant to this Agreement shall be returned to Transnet

including, without limitation all corporate identity equipment including dyes, blocks, labels, advertising matter, printing matter and the like.

19 TOTAL OR PARTIAL FAILURE TO PERFORM THE SCOPE OF SERVICES

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

20 TERM AND TERMINATION

20.1 Notwithstanding the date of signature hereof, the Commencement Date of this Agreement is **19 May 2015** and the expiry thereof shall occur on **18 May 2017**, unless:

a) this Agreement is terminated by either Party in accordance with the provisions incorporated herein or in any schedules or annexures appended hereto, or otherwise in accordance with law or equity; or

b) This Agreement is extended at Transnet's option for a further period to be agreed by the Parties.

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

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

a) A voluntary arrangement or composition or reconstruction of its debts;

b) Its winding-up or dissolution;

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.

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

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

20.6 Notwithstanding this clause 20, either Party may cancel this Agreement without cause by giving 30 [thirty] days prior written notice thereof to the other Party.

21 CONSEQUENCE OF TERMINATION

21.1 Termination in accordance with clause 20 *[Term and Termination]* shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either Party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and in effect.

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

21.3 To the extent that any of the Deliverables and property referred to in clause 21.2 above is in electronic form and contained on non-detachable storage devices, the Service Provider will provide Transnet with encrypted copies of the same on magnetic media and will irretrievably destroy and delete copies so held. Notwithstanding the foregoing, Service Provider shall be permitted to retain, subject to the terms of this Agreement and for professional archival purposes only, a copy of any Deliverables furnished to Transnet by Service Provider in connection with the Services, together with any working papers necessary to support its conclusions or recommendations.

21.4 In the event that this Agreement is terminated by the Service Provider under clause 20.2 *[Term and Termination]*, or in the event that a Work Order is terminated by Transnet under clause 20.5 *[Term and Termination]*, Transnet will pay to the Service Provider all outstanding Fees [apportioned on a *pro rata* basis] relating to the work undertaken by the Service Provider up until the date of such termination. Transnet will also pay the costs of any goods and materials ordered by the Service Provider in relation to such work for which the Service Provider has paid or is legally obliged to pay, in which case, on delivery of such goods or materials, the Service Provider will promptly deliver such goods and materials to Transnet or as it may direct.

21.5 The provisions of clauses 2 *[Definitions]*, 6 *[Warranties]*, 14 *[Intellectual Property Rights]*, 16 *[Limitation of Liability]*, 18 *[Confidentiality]*, 21 *[Consequence of Termination]*, 27 *[Dispute Resolution]* and 31 *[Governing Law]* shall survive termination or expiry of this Agreement.

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

21.7 Should:

a) The Service Provider effect or attempt to effect a compromise or composition with its creditors; or

b) Either Party be provisionally or finally liquidated or placed under judicial management, whether provisionally or finally; or

c) Either Party cease or threaten to cease to carry on its normal line of business or default or threaten to default in the payment of its liabilities generally, or commit any act or omission which would be an act of insolvency in terms of the Insolvency Act, 24 of 1936 [as may be amended from time to time];

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

22 ASSIGNMENT

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

23 FORCE MAJEURE

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

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

24 EQUALITY AND DIVERSITY

24.1 The Service Provider will not victimise, harass or discriminate against any employee of either Party to this Agreement or any applicant for employment with either Party to this Agreement due to their gender, race, disability, age, religious belief, sexual orientation or part-time status. This provision applies, but is not limited to employment, upgrading, work environment, demotion, transfer, recruitment, recruitment advertising, termination of employment, rates of pay or other forms of compensation and selection for training.

24.2 Both Parties to this Agreement undertake that they will not, and shall procure that its employees, agents and Subcontractors will not breach any applicable discrimination legislation and any amendments and re-enactments thereof.

25 NON-WAIVER

25.1 Failure or neglect by either Party, at any time, to enforce any of the provisions of this Agreement, shall not, in any manner, be construed to be a waiver of any of that Party's rights in that regard and in terms of this Agreement.

25.2 Such failure or neglect shall not, in any manner, affect the continued, unaltered validity of this Agreement, or prejudice the right of that Party to institute subsequent action.

26 PARTIAL INVALIDITY

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

27 DISPUTE RESOLUTION

27.1 Should any dispute of whatsoever nature arise between the Parties concerning this Agreement, the Parties shall try to resolve the dispute by negotiation within 10 [ten] Business Days of such dispute arising.

27.2 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.

27.3 Such dispute shall be finally resolved in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

27.4 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 27.

27.5 This clause 27 is severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

27.6 This clause 27 shall not preclude either Party from seeking urgent relief in a court of appropriate jurisdiction, where grounds for urgency exist.

28 ADDRESSES FOR NOTICES

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

a) **Transnet**

(i) For legal notices:

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

(ii) For commercial matters:

Transnet SOC Ltd
44TH Floor
Carlton Centre
150 Commissioner Street
Johannesburg 2001
Fax No. 011 308 2348

Attention: Executive Manager: Group Finance

b) **The Service Provider**

(i) For legal notices: Regiments Capital (Pty) Ltd
91 Central Street
Houghton
2198
Fax No. (011) 715 0535
Attention: Eric Wood - Director

(ii) For commercial matters: Regiments Capital (Pty) Ltd
91 Central Street
Houghton
2198
Fax No. (011) 715 0535
Attention: Eric Wood – Executive Director

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

28.3 Any notice shall be deemed to have been given:

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

b) If posted by prepaid registered post, 10 [ten] days after the date of posting thereof; or

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

29 WHOLE AND ONLY AGREEMENT

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

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

30 AMENDMENT AND CHANGE CONTROL

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

30.2 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 27 *[Dispute Resolution]*.

31 GOVERNING LAW

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

31.1 Change of Law

In this Agreement, unless the context otherwise requires, references to a statutory provision include references to that statutory provision as from time to time amended, extended or re-enacted and any regulations made under it, provided that in the event that the amendment, extension or re-enactment of any statutory provision or introduction of any new statutory provision has a material impact on the obligations of either Party, the Parties will negotiate in good faith to agree such amendments to this Agreement as may be appropriate in the circumstances. If, within a reasonable period of time, the Service Provider and Transnet cannot reach agreement on the nature of the changes required or on modification of Fees, Deliverables, warranties, or other terms and conditions, either Party may seek to have the matter determined in accordance with clause 27 *[Dispute Resolution]* above.

32 COUNTERPARTS

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

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

For and on behalf of **TRANSNET SOC LTD** duly authorised hereto	For and on behalf of **REGIMENTS CAPITAL (Pty) Ltd** duly authorised hereto
Name: Siyabonga Jawad Gama	Name: ERIC WOOD
Position: Acting Group Chief Executive	Position: EXEC. DIRECTOR
Signature:	Signature:
Date: 2015.11.30	Date: 30/11/2015
Place: Johannesburg	Place: JOHANNESBURG

AS WITNESS:	**AS WITNESS:**
Name: GARRY JASON PITA	Name: KEENAN WELLS
Signature:	Signature:

AS WITNESS:	**AS WITNESS:**
Name: Edward Thomas	Name: Edward Thomas
Signature:	Signature:

SCHEDULE 1 – Work Order No:

FOR THE PROVISION OF PROFESSIONAL SERVICES TO SUPPORT TRANSNET IN INCREASING GENERAL FREIGHT BUSINESS WITH A BREAKTHROUGH TO REACH THE PLANNED VOLUME TARGETS FOR THE FINANCIAL YEAR 2015/2016 AND 2016/2017

With reference to the Master Agreement, Reference Number **GSM/15/03/1255** [the **Agreement**] between Transnet SOC Ltd [**Transnet**] and Regiments (Pty) Ltd [**the Service Provider**] pursuant to which the Service Provider has agreed to perform certain services to Transnet subject to such Agreement, the defined terms in the Agreement will, unless otherwise indicated, have the same meaning in this Work Order.

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

1 DESCRIPTION OF THE SERVICES

The Consortium will support Transnet in the following areas:

1.1 Realisation of the GFB volume targets for 2015/2016 and 2016/2017.

1.2 Implementation of the processes and tools to ensure sustainability and capacity building; upgrade and embed operational capabilities on key flows to ensure execution as per plan (Replicate coal line approach).

1.3 Validate long term demand as basis for the GFB business case.

1.4 Build key account plans, commercial capabilities and technology solutions to drive the road to rail shift beyond 2015/2016.

1.5 Identification of new markets and commodities that can be leveraged to produce additional GFB volumes including new markets identified by TFR such as FMCG;

1.6 Sales, marketing and commercial initiatives;

1.7 Cost Sweep and Cash Lab;

1.8 Driver based budgeting;

1.9 Project Management Office.

The details deliverables are set out in the table in Annexure A, Project fees.

2 PROJECT MANAGERS

Transnet Project Manager	**Yusuf Mahommed**
Designation	GM in the office of the GCFO
Operating Division	Transnet Corporate Centre
Address	150 Commissioner Street, 48th Floor, Carlton Centre, Johannesburg, 2001
Cell Phone	083 412 7645
Telephone	(011) 308 2431
Fax	-
Email	Yusuf.mahommed@transnet.net

Service Provider's Project Manager	Eric Wood
Designation	Executive Director
Address	91 Central Street, Houghton, 2198
Cell Phone	+27 82 329 8132
Telephone	(011) 715 0300
Fax	(011) 715 0535
Email	ericw@regiments.co.za

3 ACCEPTANCE CRITERIA FOR DELIVERABLES

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

4 PROGRESS REPORTS AND REVIEW MEETINGS

Project management and review meetings will be held every six weeks at 09h00 in the Carlton Centre, or as otherwise directed by Transnet's Project Manager.

5 FEES AND DISBURSEMENTS

5.1 Any authorised expenses / disbursements will be reimbursed, subject to the provisions of clause 11 *[Fees and Expenses]* of the Agreement as read with Annexure A hereto.

5.2 Payment terms are subject to clause 12 *[Invoicing and Payment]* of the Agreement as read with Annexure A hereto.

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

SIGNED for and on behalf of: **Regiments Capital (Pty) Ltd**	**SIGNED** for and on behalf of: **Transnet SOC Ltd**
Signature	Signature .....
Name: ERIC WOOD	Name: Siyabonga Innocent Gama
Position: EXEC. DIRECTOR.	Position: Acting Group Chief Executive
Date: 30/11/2015	Date: 2015.11.30
Place: JOHANNESBURG	Place: Johannesburg

ANNEXURE A – Project Fees

The total value of this contract, including expenses and excluding VAT, is R375 million (Three hundred and seventy five million rand) including expenses. The fee break down shall be subject to the conditions of payment as follows:

- Fixed fee 2015/2016 – R125 million
- Outcomes based fee 2015/2016 – R130 million
- Fixed fee 2016/2017 – R10 million
- Outcomes based fee 2015/2017 – R110 million

The outcomes based fee is based on the outcome and is thus not based on hourly tariffs. The fixed fee is based on tariffs that are in line with the National Treasury Instruction note on Professional fees.

Outcome based fees will be payable quarterly from based on cumulative year to date volumes delivered. Fees shall be paid as a proportion of the target volumes achieved in each quarter. The periods and targets for each quarter are set out in the schedule below.

Under-delivery in any quarter may also be offset by over-delivery in a future quarter, Where under delivery continues for two quarters the previous fees paid will be refunded to Transnet within 30 days and the final reconciliation for the financial period where there has been payments made that exceed the delivery this overpayment will be refunded to Transnet within 30 days of the reconciliation.

The total value of the contract will be subject to the following split:

Fixed Fee		**Contingent Fee**	
Regiments	McKinsey	Regiments	McKinsey
50%	50%	50%	50%

The Detailed table of fees, deliverables, measures, Baselines and targets are set out below.

FOF-08-1109

Volume validation	Fixed 2015/2016	Jan-15 Jul-15 Aug-15 Oct-15	Tons of GFB volumes validated	Volume validation analysis in progress Volume validation analysis complete Volume validation analysis syndicated Volume validation report handed over	N/A	N/A	N/A	5.00 5.00 4.00 1.00	15.00
Volume delivery	Variable: Volume-linked 2015/16	Sep-15 Dec-15 Mar-16	Volumes above trend	Volumes actualised Volumes actualised Volumes actualised	GFB volumes GFB volumes GFB volumes	41 285 117 63 885 103 84 709 617	41 946 133 66 409 277 95 069 033	7.30 19.48 37.72	65.00
	Variable: Volume-linked 2016/17	Jun-16 Sep-16		Volumes actualised Volumes actualised	GFB volumes GFB volumes	33 002 478 42 334 783	33 043 478 44 834 783	45.00 45.00	90.00
	Fixed 2015/2016	Jun-15 Jul-15 Aug-15 Sep-15		Diagnostic of operational improvements in progress Diagnostic of operational improvements aligned with relevant stakeholders Implementation launched for operational improvements Implementation complete / handed over for some operational initiatives	N/A	N/A	N/A	9.00 10.00 10.00 6.00	35.00
	Fixed 2016/2017	Apr-16 May-16 Jun-16 Jul-16		Handbooks developed for key processes, SOC interfaces Handbooks workshopped with key role-players Handbooks workshopped with key role-players Handbooks workshopped with key role-players	N/A	N/A	N/A	5.00 5.00 5.00 5.00	20.00
	Variable: Sustainability 2015/2016	Sep-15 Oct-15 Nov-15 Dec-15 Jan-16 Feb-16		Sales funnel embedded for 15/16 and KAM routines established Value propositions for key B2B commodities Customer engagement plan developed Customer engagement under way Opportunities confirmed in new segments Opportunities confirmed in new segments	Total opportunities tracked Size of opportunity Size of opportunity Size of opportunity Confirmed opportunities Confirmed opportunities	0	20 Mt 2-3 Mt 2-3 Mt 2-3Mt 500t 100t	5.00 5.00 5.00 3.00 5.00 2.00	25.00
	Variable: Sustainability 2016/2017	Apr-16 May-16 Jun-16 Jul-16		Sales funnel embedded for 16/17 Project plans defined for key opportunities and tracking established Opportunities confirmed in new segments Opportunities confirmed in new segments	Size of opportunity Size of opportunity Confirmed opportunities Confirmed opportunities	0	10-15Mt 1-2 Mt 0.1-0.2Mt 0.2-0.5Mt	5.00 5.00 5.00 5.00	20.00
								270.00	270.00

Cost sweep and cash lab	Fixed 2015/2016	Oct-15 Nov-15 Dec-15	Budgeted EBITDA for FY15/16	Baseline established (incl. validation of savings up to Sept 2015) and Opportunity Sized per OD Detailed initiatives per OD to back up targets Project plans defined for key opportunities and tracking established	N/A Confirmed opportunities	N/A	N/A	5.00 5.00 5.00	15.00
	Variable 2015/2016	Dec-15 Jan-16 Feb-16 Mar-16		New initiatives with project plans Realised Savings/ Banked Opportunities Realised savings/ Banked Opportunities Realised savings/ Banked Opportunities	Savings identified Savings captured Savings captured Savings captured	TBD	TBD	5.00 5.00 5.00 5.00	20.00
Driver-based budgeting	Fixed 2016/2017	Oct-15 Nov-15 Dec-15 Jan-16	Budgeted EBITDA for FY16/17	process with OD, align costs with Volumes Banked Opportunities embedded in new budgets Revised budgets signed-off by OD's Revised budgets signed-off by Group and included in Corporate Plan	N/A	N/A	N/A	5.00 5.00 3.00 2.00	15.00
	Variable 2016/2017	Jan-16 Feb-16		2016/17 initial budget that closes gap to CP 2016/17 Budget that closes gap to CP and delivers on key financial ratios (CIC) as per rating agency thresholds	N/A	N/A	N/A	5.00 15.00	20.00
								70.00	70.00

Project Office	Fixed 2015/2016	Sep-15 Oct-15 Nov-15 Dec-15 Jan-16 Feb-16 Mar-16	Integrated reporting	Operating model for project office Comprehensive list of all initiatives (centre and OD's) Stakeholder reporting Forecasting model and impact on key ratios Content support to key initiatives across OD and Group Stakeholder reporting Tracking tool Dynamic management of financials / key ratios Content support to key initiatives across OD and Group Stakeholder reporting Dynamic management of financials / key ratios Content support to key initiatives across OD and Group Stakeholder reporting Dynamic management of financials / key ratios Content support to key initiatives across OD and Group Stakeholder reporting Dynamic management of financials / key ratios Content support to key initiatives across OD and Group Stakeholder reporting Dynamic management of financials / key ratios	N/A	N/A	N/A	5.00 5.00 5.00 5.00 5.00 5.00 5.00	35.00
								35.00	35.00
Total								375.00	375.00

SUPPLIER DEVELOPMENT VALUE SUMMARY

Enterprise and Supplier Development Value
Regiments
Fixed fee - 30% of contract value
Contingent fee - 30% of contract value

SERVICES LEVEL AGREEMENT

Between

Eskom Holdings SOC Limited

And

McKinsey and Company Africa (Proprietary) Limited

Maxwell Drive
Sunninghill
Attention _____

25 3 The Parties choose the physical address set out opposite their names in Clause 25.2 as their *domicilium citandi et executandi* for all purposes of and in connection with this Agreement Notwithstanding anything to the contrary herein, a written legal notice or process actually received by a Party shall be an adequate written notice or process, notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*

25 4 Either Party may change its nominated physical or postal address to another physical or postal address, as the case may be, in South Africa (and not in any other country) or its contact details by giving at least 15 (fifteen) days prior written notice to the other Party.

25.5 Each Party agrees to execute, acknowledge and deliver such further instruments, and do all further similar acts as may be necessary or appropriate to carry out the purposes and intent of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorised representatives as of the date first written above.

MCKINSEY AND COMPANY AFRICA
PROPRIETARY LIMITED
By: ALEXANDER WEISS / McKinsey
Name
Title SENIOR PARTNER
Date 11 Jan 2016

ESKOM HOLDINGS SOC LIMITED
Name Edwin Mabelane
Title Chief Procurement Officer (ACTING)
Date 07 January 2016

2016/01/07

3992 1 OCT 15

REFERENCE DOCUMENT
11.16

Eskom	Feedback Report	Unique Identifier	240-53463042
		Revision	Rev. 1
		Revision Date	August 2015
		Group Technology and Commercial	

TO:	**The Chairman** **EXCO Procurement Sub-Committee** **Board of Directors** **Tender Committee**	**Date: 08 October 2015** **Date: 22 October 2015**
COMPILER:	**Ntombizodwa Mokoatle**	**Tel: 011 800 2177**
BUSINESS UNIT & NAME OF END- USER	**Commodity Sourcing** **Matshela Koko**	**Rev: 0**
DESCRIPTION	**Feedback on negotiated outcome with McKinsey & Co to develop the current Top Engineers programme into an Internal Consulting Unit that can provide world class management consulting services capable of resolving emerging company-wide risks by unlocking cash, without prior tendering.**	
ENQUIRY NO.:	**Sole Source**	

1. INTRODUCTION

In accordance with a mandate approved by the Board Tender Committee via Round Robin on the 06th July 2015 to negotiate with McKinsey & Co to develop the current Top Engineers programme into an Internal Consulting Unit that can provide world class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash, this report reflects the results thereof and requests ratification of the negotiation feedback.

The mandate provided was as follows:
Mandate to negotiate with McKinsey & Co to develop the current Top Engineers programme into an Internal Consulting Unit that can provide world-class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash is hereby approved subject to the following:

1.1 The contract value will be R0.00 as this initiative is self-funding and the project duration be limited to a maximum of (3) three years. Consulting fees, expenses and performance incentives will be paid out of realised savings to a maximum of 12% per project. The contract will include an exit clause after first 12 months from start of the contract if no benefits are realised.

1.2 The BPP value package on optimisation of Eskom's total external spend, currently located within Group Commercial be used as a base project to generate savings for the whole of Eskom that will fund projects set-up costs;

1.3 The development of packages relating to the unlocking of cash by optimising the balance sheet, the unlocking of funding sources through additional financial opportunities and claim management at Medupi. Kusile and Ingula, be approved. These

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projects together with any other projects as may be identified in the future, maybe included in the program at Eskom's sole discretion on a case by case basis depending on value to Eskom.

1.4 That a Negotiating Team that will also serve as a Steering Committee for the development of Eskom's Top Engineers consulting unit be authorised under the Chairmanship of the Group Executive: Technology and Commercial to develop, negotiate and implement the above, subject to Eskom Delegation of Authority.

It is anticipated that the enabling contract will commence on the 01 October 2015 or as soon as possible after the contract has been signed by both parties.

Negotiations were held with McKinsey & Co from the 28th July 2015 to 29th September 2015 at Megawatt Park. The contract is based on a Services Level Agreement, of which the terms and conditions have been substantially agreed. The value packages included in the negotiations were Top Engineering Programme, Procurement (including inventory management), Primary Energy, Generation and Claims Management. SD&L was to be cross-cutting element in all the work packages.

2. APPROVED MANDATE PARAMETERS AND NEGOTIATION RESULTS

The table below reflects the approved mandate parameters and the results of the negotiations.

Approved Mandate Objectives	Results Achieved
Conditions of contract Terms and conditions remain the same as per the previous NEC contract	**Negotiated Terms and Conditions:** A Service Level Agreement (SLA) - with terms and conditions is to be used for this type of contract because the NEC 3 Professional Services Contract framework was not suitable for this type of contract. 1. The SLA, is a contractual document that incorporates general conditions, that will govern all activities associated with the development and implementation of various value packages; 2. Key principles of the SLA have substantially been agreed in the Master Services Agreement 3. Negotiations of the individual value packages for Top Engineers Programme and Procurement (including Inventory Management), Primary Energy, Generation and Claims Management have been concluded. However, there are few but significant open items and actions to be approved by the SteerCom and/or actioned by

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	the various teams. Value Package Memorandums are attached as Appendixes 5, 6, 7, 8 and 9 respectively. The value packages associated with funding sources and additional financing opportunities will resume once direction is provided by the Chief Financial Officer.
The Mandate to negotiate with McKinsey & Co to develop the current Top Engineers programme into an Internal Consulting Unit that can provide world class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash was approved subject to the following:	Accepted. The negotiated principles of the programme are attached as Appendix 5 of this document.
• The contract value will be R0.00 as this initiative is self-funding and the project duration be limited to a maximum of 3 years. Consulting fees, expenses and performance incentives will be paid out of realised savings to a maximum of 12% per project	• That the contract will be based on the R0,00 and self-funding principle, and will be for a period of three (3) years. • However, payment will be made to McKinsey on work packages approved by a SteerCom. The envisaged end state or implementation level of the work packages for benefit/impact calculations will be at Implementation Level (IL) between IL3 and IL4 (see Appendix 2 and 3) and will be to a maximum of 10.80% of the savings benefits or impact calculated. • The self-funding principle will potentially be realised at some point in the future process, which will vary from package to package. For example, self-funding on the Procurement stream is envisaged to be realised by month 12 (twelve).
	• The negotiation results summarising key parameters associated with the payment regime is attached as Appendix 2. The negotiation results need to be read together with Appendix 3 (The different implementation levels defined by McKinsey). – With reference to the table attached as Appendix 3, the intended implementation level for all packages will be between levels 3 and 4. This will be the package/stream deliverable points and thus trigger points for all payments will be agreed at the negotiated benefit percentage. The exact trigger events for

	payment will be negotiated for every workstream/value package. – Only when a workstream/value package has passed IL2 and been approved by the SteerCom, will it be considered for the arrangement under this agreement. If a package/workstream is not approved, no fees will be paid to McKinsey other than the upfront down payments. The presence of McKinsey to ensure a higher level of implementation (e.g. up to IL5) could result in the following: • Significantly inflated use of expensive resources while potentially not improving the expected benefits for Eskom. • Disempowerment of Eskom's own resources involved in the project work and by that significantly reducing the sustainability of activities. The above proposal is due to the fact that McKinsey would require significant involvement to ensure that all savings are banked. It is envisaged that the Top Engineers together with other trained Eskom personnel will drive all measures to bottom line impact viz implementation Level 5.
• The BPP value package on optimisation of Eskom's total external spend, currently located within Group Commercial be used as a base project to generate savings for the whole of Eskom that will fund projects set-up costs;	• McKinsey has not accepted Eskom's initial position concerning project set-up costs and expenses payments only being paid from realised savings (money in the bank). • McKinsey would require project setup and fees for value packages as a down payment as McKinsey is of the view that they will be exposed to a higher than acceptable cashflow risk. This risk would not be acceptable to McKinsey as a company.
	• McKinsey has therefore proposed they receive down payments in lieu of project set up costs as consulting fees for each work stream that they will work on, payable after commencement of each work package. The down payments will be paid equally over a pre-determined duration (6 or 12 months depending on the individual

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	workstream). The size and the duration of the down payments will depend on the nature and scope of work of each individual work stream. • McKinsey will issue Eskom with a bank guarantee in lieu of the down payments. The bank guarantee value will include the down payments made plus the interest that will be incurred on the down payments at the potential termination point of 12 months after contract start. The interest shall be fixed at 12% p.a. • The proposed set-up costs plus consulting fees to be paid as a down payment for the Procurement stream is R50 000 000, 00, payable after commencement of each work package at equal tranches of R8 300 000.00 over a 6 month period. Refer Appendix 1.
	• If McKinsey defaults, **i) immediately initiate a refund process**, failing which, **ii) will have the right to call-up the bank guarantee**. Thus, ensuring that the principle of a R 0.00 value contract is maintained for Eskom. • There will however be a timing difference from a cash flow perspective in terms of realising the R0.00 value principle. The model is illustrated in Appendix 1.
	• After a 6 month period for each work stream, there will be a "true up" calculation (netting off benefits accrued against down payments already made) process. • At the point of the "true up" the accumulated benefits of all the streams are multiplied by the agreed benefit percentage and compared to the down payments paid. In the case that the accumulated benefits of all the streams multiplied by the agreed benefit percentage exceed the down payments made, the excess fees become payable to McKinsey. In case that the accumulated benefits for all the stream multiplied by the fees payable is less than the down payments made after 6 months, McKinsey does not receive a payment for that month. This process repeats itself monthly.

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	• After month 12, Eskom has an option to cancel this agreement if no savings have been realised. At that stage, should Eskom elect to terminate the agreement, a "true up" process will take place. • The Termination clauses of the contract will apply and settlement of monies owed to either party will take place, if there is money owed to either party. Thus if the financial benefit to Eskom is smaller than the down payments made to McKinsey, McKinsey will have to pay back the difference to Eskom. • The payments/fees due to McKinsey will be paid over the terms as described in Appendix 1 and Appendix 2. Essentially Eskom will receive payment terms as follows for all payment due and Payable to McKinsey i.e. 60% within 30 days of "true up" process. 30% of "true up" process within 1 year of "true up" process and 10% within 2 years of initial "true up" process. The deferred payments do not attract any interest.
• The contract will include an exit clause after first 12 months from start of contract if no benefits are realised	• Accepted • The following four termination scenarios are to apply:
	• Eskom has the right to terminate, either the full contract or individual workstreams after 12 months of contract start or start of the workstream in case the benefits for either the whole contract or an individual workstream does not outweigh the down payments made until this point.
	• In case the contract is terminated after 12 months of either contract or workstream start the true-up at the point of termination shall be the down payments net of the "realised measures" and the respective value shares for those measures between IL2 (approved by SteerCom) and IL "realised"
	• Either of the parties may terminate if any of the events mentioned in the section "boundary conditions" arise and Eskom will be liable to

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	provide full payment of all initiatives approved by SteerCom in line with the stage gate process. In each event, a true up will be undertaken following a termination.
	• If a termination is due to any events outside any of the parties' control, (Force Majeure) Eskom shall pay to McKinsey: (1) any amounts due to McKinsey pursuant to a true up; or (2) 75% of any relevant down payment if impact does not exceed down payments received at the relevant time.
• The development of packages relating to the unlocking of cash by optimising the balance sheet, the unlocking of funding sources through additional financial opportunities and claim management at Medupi. Kusile and Ingula, be approved. These projects together with any other projects as may be identified in the future may be included in the program at Eskom's sole discretion on a case by case basis depending on value to Eskom.	• Accepted. • Negotiations of the individual value packages for Top Engineers Programme and Procurement (including Inventory Management), Primary Energy, Generation and Claims Management have been concluded. However, there are few but significant open items and actions to be approved by the SteerCom and/or actioned by the various teams. Value Package Memorandums are attached as Appendixes 5, 6, 7 & 8 respectively. • The value packages associated with funding sources and additional financing opportunities will resume once direction is provided by the Chief Financial Officer.
• That a Negotiating Team that will also serve as a Steering Committee for the development of Eskom's Top Engineers consulting unit be authorised under the Chairmanship of the Group Executive: Technology and Commercial to develop, negotiate and implement the above, subject to Eskom Delegation of Authority.	• Accepted • The terms of reference of this committee will be finalised once the required delegation of powers for this committee has been approved.
• SD&L and Skills development matrix	A Supplier Development and Localisation (SD&L) proposal that deals with skills development, local partner capacitation and the development of Top Engineers is attached as Appendix 4.
Travel and Subsistence expenses shall be in accordance with the National Treasury Guideline	**McKinsey require expenses payments outside the "at risk" portion of its fees.** McKinsey is willing to comply with the National Treasury guideline for expense payments. McKinsey however retains the right to apply its own

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	travel guidelines. The cap on expenses is at 10% of the Mckinsey's share of benefits realised. See Appendix 2. The expenses are also not available for scrutiny.
Approved Negotiation Team:	**Negotiation Team Participants:**
Lead Negotiator: Prish Govender	Lead Negotiator Prish Govender
Commercial Ntombizodwa Mokoatle	Commercial Ntombizodwa Mokoatle
Technical Johnstone Makhubu Freddy Ndou Snehal Nagar Mandla Gobingca	Business Enablement - Johnstone Makhubu Finance - Snehal Nagar SD&L - Mandla Gobingca Andile Dikana Top Engineers - Dunn Mukosa Bruno Correia Lyle Timm Freddy Ndou was not available for the negotiations due to prior engagements.

3. FINANCIAL EVALUATION OF NEGOTIATED CONTRACT PRICE

Due to the fact that the contract value will be R0.00 as this initiative is self-funding Eskom's financial evaluation was initially not done. However, the proposed down payment necessitated that the financial evaluation be done. The process is currently in progress and the financial report will be submitted to the members at the meeting. Furthermore, the principles relating to the execution of the programme (i.e. performance based), as negotiated, has been supported by the Finance representative on the negotiating team and the CFO.

4. RECOMMENDATION

To ratify minor differences between negotiated outcomes and approved mandate parameters as contained in sub-clause 4.1 to 4.4:

4.1 That the proposed down payments to be paid in lieu of project start-up cost as consulting fees be supported. To give effect to this principle, a positive-value contract be setup and the associated budget for this be ring-fenced and sourced. An indication of the extent of the down payments is as follows:

- Top Engineers - R0.0m
- Module "Procurement" – R50.0m
- Module "PED" – R75.0m
- Module "Generation (PLL only) R50.0m;
- Module "Generation (UCLF) R200.0m
- Module "Generation (Project factory) R50.0m
- Module "Claims Management" – R50.0m
- **Total – R475 000 000.00**

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4.2 Payment trigger points Regime as per Appendix 2 be approved (not on the basis of realised savings)

4.3 Payment of expenses (travel and accommodation) be made outside of realised savings; but it be noted that the expenses have been capped at 10% of the 10.80% benefit sharing percentage resulting in the combined success fee and expenses being 11.88% which conforms with the 12% mandate. That it be noted that the rate of the expenses that McKinsey will charge Eskom will be based on National Treasury rates;

4.4 The SLA format of contracting be approved with its associated conditions;

4.5 That the Generation, Primary Energy and Claims Management value packages as contained in Appendix 7, 8 and 9 be accepted and included as part of this transaction.

02/10/15

CHARLES KALIMA
COMMODITY SOURCING GM (ACTING)
GROUP CAPITAL

DATE

02/10/2015

PRISH GOVENDER
PROGRAMME DIRECTOR
GROUP CAPITAL

DATE

02/10/2015

MANDLA GOBINGCA
GENERAL MANAGER: SD&L
GROUP TECHNOLOGY AND COMMERCIAL

DATE

6/10/15

MATSHELA KOKO
GROUP EXECUTIVE
GROUP TECHNOLOGY AND COMMERCIAL

DATE

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Appendix 1: Payment of project set up costs, incentives and normalisation to R0.0 contract value

Payment Scheme Recurring Benefits for McKinsey – Overview

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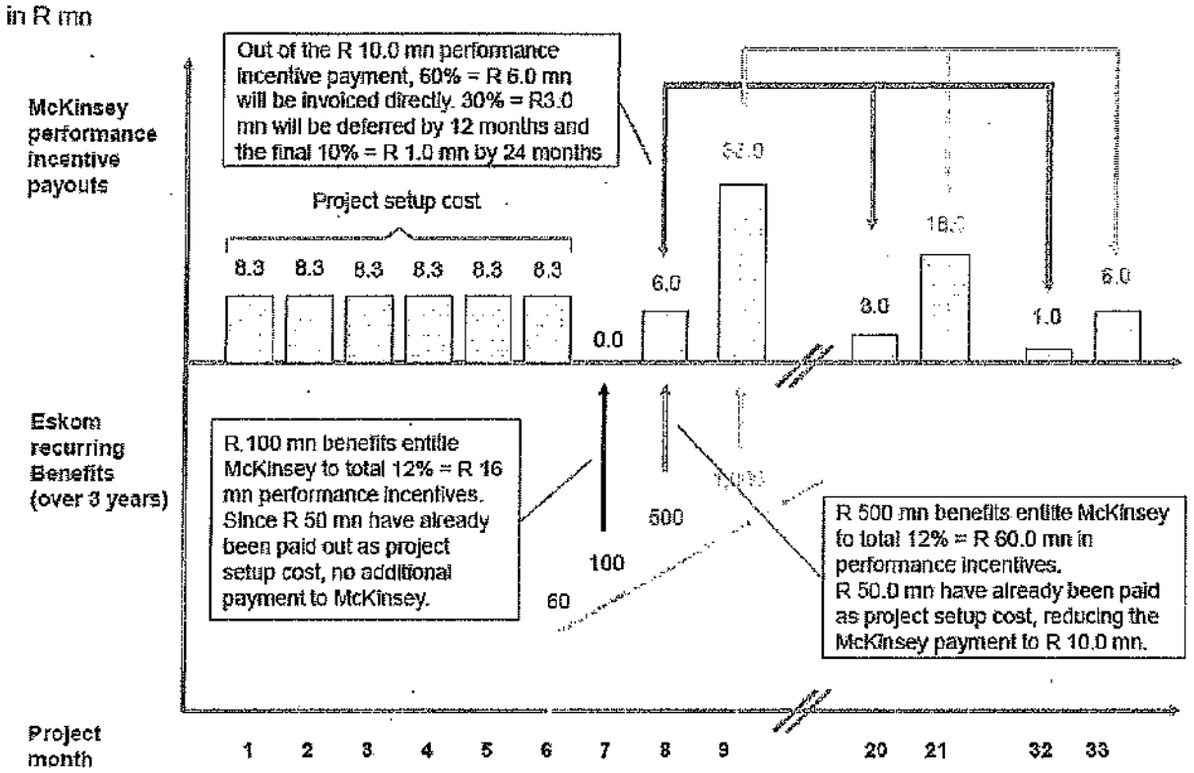

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Appendix 2: Summary of Negotiation Results on Key financial parameters

Commercial negotiation trace – McK offer post governance

	Current status	Initial McKinsey response	Offer Eskom	Final offer McKinsey	Latest Eskom offer	McKinsey offer post governance approval	Revised McKinsey offer
Share on once off benefits	12.0%	11.8%	10.5%	11.25%	10.75%	11.15%	10.80%
Share on recurring benefits[2]	12.0%	11.3%	10.0% (discounted by 12% p.a. for year 2 and 3)	10.65%	10.25% (discounted by PPI p.a. for year 2 and 3)	10.55% (impact calculation will not consider inflation)	10.55% (impact calculation will not consider inflation)
Payment in case of rejection[1] at IL2 or higher	IL2 = 65% IL3 = 80% >IL3 = 100%	IL2 = 63% IL3 = 78% >IL3 = 100%	IL2 = 50% IL3 = 70% >IL3 = 90%	IL2 = 60% IL3 = 70% >IL3 = 90%	IL2 = 55% IL3 = 70% >IL3 = 90%	IL2 = 55% IL3 = 70% >IL3 = 90%	IL2 = 55% IL3 = 70% >IL3 = 90%
Cashflow recurring benefits	Year1/Year2/ Year3 50%/25%/ 25%	Year1/Year2/ Year3 60%/30%/ 10%	Year1/Year2/ Year3 60%/30%/ 10%	Year1/Year2/ Year3 60%/30%/ 10%	Year1/Year2/ Year3 60%/30%/ 10%	Year1/Year2/ Year3 60%/30%/ 10%	Year1/Year2/ Year3 60%/30%/ 10%
Eskom bank guarantee	None	For deferred payments	None	None	None	None	None
Cap on expenses (travel and accommodation)	18%	15%	15%	15%	15%	15%	10%

1 Or termination of the workstream or the entire project

2 Recurring benefits to be paid 3 full years benefit multiplied by percentage

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		Group Technology and Commercial	

Appendix 3: Table on Implementation Levels

Implementation level definition

	Identified	Value assessed/confirmed	Approved	Implemented	Delivered
	IL 1	IL 2	IL 3	IL 4	IL 5
Criteria for completion	▪ Concrete improvement initiative developed and described in tracking tool ▪ Benefits to Eskom roughly quantified using baseline data (can still be ranges) ▪ Major implementation steps identified	▪ General feasibility cleared with SD&L and value package lead ▪ Benefits to Eskom evaluated in detail over 3 year period and cleared with cost center owner ▪ All implementation steps described and responsibles appointed ▪ Approved by Steercom	▪ All implementation steps have been signed off by responsibles ▪ Exco/SGM have authorized implementation ▪ Resources/ capital for implementations have been released	▪ All implementation steps have been completed ▪ New contract/ operating procedure/ equipment is in place and fully effective in day-to-day business ▪ Benefits for Eskom start to be collected (ramp-up) ▪ Implementation resources can be released	▪ Total benefits have been incurred for Eskom (over up to 3 year period) ▪ Bottom line effect on principle measurable on cost center ▪ No further tracking required

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Appendix 4: SD&L Proposal

Appendix 5: Evolution of the Top Engineers Programme

Appendix 6: Summary: Procurement Workstream Negotiation Results

Appendix 7: Summary: Generation Workstream Negotiation Results

Appendix 8: Summary: Primary Energy Workstream Negotiation Results

Appendix 9: Summary: Claims Management Workstream Negotiation Results

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APPENDIX 4

Summary SD&L negotiation results

This memorandum summarize the outcome of negotiation between Eskom and McKinsey & Company on Procurement Module based on Master Service Agreement. It structured into the following chapters:

- Top talent programme contribution to SD&L
- Development of McKinsey's ownership structure over the course of the programme
- Share of professional fees to BBBEE companies
- Development philosophy management consulting partner
- Development philosophy other partners

This memorandum represents the current status of the negotiation as presented in the respective documentation and parts of the MSA tracker. We are happy to take further guidance from Eskom and incorporate changes as they are resulting from the ongoing negotiations.

Top talent programme contribution to SD&L

Eskom and McKinsey aligned that the basis for this programme would be the further development of Eskom's Top Engineer programme that arose from a joined initiative between Eskom and McKinsey. The results of this negotiation are summarised in the "Top Engineers Memorandum".

With respect to the SD&L contribution Eskom requested McKinsey to quantify the financial impact that the Top Engineers programme would have with respect to the opportunity costs for McKinsey. This question was diligently assessed by McKinsey. The total opportunity costs of the Top Engineers Programme to McKinsey was estimated to approx. R 1.8 bn. These costs is the value that McKinsey would have with respect to supporting Cohort 1 and 2 and building Cohort 3 during the contract period of 3 years. In total 150 Top Engineers are resulting from that programme which would approximately will the size of McKinsey entire Johannesburg office.

This calculation includes the dimensions "class room training", "on the job training", "knowledge system design", "recruiting", "backoffice support", "evaluation and promotion", "mentoring", "IT support" and "governance design". The assumptions for the calculation have been made available to Eskom and are in the process of being reviewed.

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Development of McKinsey's ownership structure over the course of the programme

McKinsey is a proud contributor to the transformation of South Africa. In this context McKinsey during the past years has transformed into a B-BBEE Level 1 contributor. In this context the ownership structure of McKinsey has been transformed. McKinsey today is 26.0% black owned of which 10.0% are dedicated to Black Women Ownership (BWO).

McKinsey is a global partnership with approx. 1.600 partners who own McKinsey and thus determine the ownership structure of the entity. McKinsey intends to further develop the share of black partners in South Africa and therefore places a particular emphasis on the share of junior partners that it puts into the pipeline.

As per the current status there are 15 junior partners in the Johannesburg office of which 11 junior partners are previously disadvantaged individuals (PDIs). Out of these 11 PDIs 5 are black junior partners. And out of these 5 black junior partners are 3 junior partners are black females. We would therefore expect the number of black partners who own a share in the global McKinsey partnership go up over time.

Share of professional fees to BBBEE companies

McKinsey has a proven track record of developing self-sustaining management consultancies by sharing parts of its professional fees with them and providing training and development in manifold forms. Especially in the context of Eskom McKinsey developed Letsema, one of South Africa's first black-owned management consulting firms (established in 1995), to develop into a self-standing entity. Letsema grew since 2005 with a 40% p.a. and by now has more than 60% consultants. While McKinsey contributed over the lifetime of Letsema 20 to 66% of its annual revenue Letsema is since 2013 completely self-sustaining and serves Eskom as a self-standing consulting firm with an own supplier number and completely independent from McKinsey

McKinsey's skill development contribution will be centred around the Top Engineers programme. On top of the Top Engineers programme McKinsey is prepared to outsource 50% on average of the contract value to other parties. This share should be achieved by the end of the contract. The share of outsourcing can vary by workstream and over time (with some worksteams may underdeliver on this share if other workstream overcompensate for that). Our intention is to select small black owned consultancies wherever possible for this subcontracting. The subcontractor fees are going to be performance based by the same mechanism as specified in the Master Service Agreement. McKinsey reserves the right to pick the sub-contractors and to exchange sub-contractors in case of non-performance. The

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BBBEE credentials of the sub-contractors will be made accessible to Eskom upon request.

Development philosophy management consulting partner

In order to develop the new management consulting partners into a comparable success like Letsema McKinsey suggests to apply the following development philosophy:

- 2 weeks formal consulting training at McKinsey premises (e.g., Basic consulting readiness, Problem solving capability, Top down communication, Advanced analytics skill building, Visual design skill building)
- On the job training with experienced McKinsey consultants and highly qualified training staff
- Partnering on projects outside Eskom (e.g., Regiments at Transnet, Top Engineers at PetroSA, Letsema at SAA)
- Deployment of Top Talent at clients outside South Africa is considered, yet depending on the confirmation by outside clients
- Transfer of McKinsey infrastructure (e.g., McKinsey KNOW portal, McKinsey personnel processes, McKinsey feedback processes)
- Implementation of McKinsey mentorship programme

The selection of the management consulting partners will be fully aligned with Eskom. Besides Letsema McKinsey preconfirmed Regiments and Company Advisory as black management consulting partners. McKinsey is happy to qualify additional partners and will seek Eskom's advice and guidance in this matter. For an instance black consultancies listed on the Eskom consultancy panel could be considered viable partners in this context

Development philosophy other partners

The selection of "none management consulting" partners will happen in strong alignment with Eskom; McKinsey will consult with Eskom in the selection of the partners (e.g., from Eskom's engineering panel). The development plan will be related to the development of the management consulting partners:

- We intend to include the "none management consulting" partners into the McKinsey formal training programms
- The "none management consulting" partners will receive "on the job" training by experienced McKinsey consultants
- We intend to extend our support beyond the context of the contract with Eskom and engage them also on further work at other clients (as done with top

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engineers or partner such as Regiments consulting, Letsema consulting or Company Advisor consulting

Further development details shall be discussed between Eskom and McKinsey upon the conclusion of the contractual framework.

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Appendix 5

Evolution of the Top Engineers Programme

This memorandum summarizes the outcome of negotiation between Eskom and McKinsey & Company on the evolution of the Top Engineers programme into a fully functioning internal consultancy unit. It is structured as follows:

- Desired end state
- Key programme elements
- McKinsey contribution
- Eskom prerequisites

This memorandum represents the current status of the negotiation as presented in the respective documentation and parts of the MSA tracker. We are happy to take further guidance from Eskom and incorporate changes as they are resulting from the ongoing negotiations.

This memorandum represents the current status of the negotiation as presented in the respective documentation and parts of the MSA tracker. We are happy to take further guidance from Eskom and incorporate changes as they are resulting from the ongoing negotiations.

The negotiation status as presented in this document is subject to further approval and potential refinement by McKinsey's relevant governance committees.

DESIRED END STATE

Eskom has set the goal to build the current Top Engineers programme up to a fully functioning internal consulting unit with roughly 150 people staff. This consulting unit should be capable to support Eskom in all of its areas of business and by that be a viable alternative to the external consulting support that Eskom is currently contracting.

In order to achieve the above outlined capability the Top Engineers programme will have to grow from currently 24 consultants and senior consultants with exclusively engineering background into a group that features all the capabilities, roles, tools and structures usually found in a world class management consulting firm.

Achieving this goal will firstly require Eskom to broaden the recruiting focus from engineering background to other academic studies and advance its current 25 consultants to higher levels of seniority, i.e. project managers and junior partners. In

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addition to a functioning pyramid of professional staff, Eskom's Top Engineers programme is currently lacking all critical support functions like staffing, people development, IT and secretarial support as well as an institutional knowledge repository.

Eskom aims at developing the above together with McKinsey & Company through a combination of classroom training, on the job experience as well as intellectual property transfer where support function setup and core knowledge elements are concerned. The envisioned duration of this evolutional journey is three years.

KEY PROGRAMME ELEMENTS

Growing the number of people in the programme

In order to grow the number of people in the programme to over 100, Eskom and McKinsey will jointly recruit three additional cohorts of up to 40 people to take part in the existing first year curriculum that teaches basic consulting skills. This curriculum includes three weeks of class room training as well as three "rotations" where the participants work on ongoing McKinsey projects at Eskom as junior consultants to receive full methodological apprenticeship in a realistic environment.

The current plan is to recruit one cohort each year over the next three years to allow the pool of potentially candidates to rebuild over time. Based on past experience recruiting 40 candidates for the programme requires a pipeline of roughly 1000 applications before the screening and interview process. Application criteria that allow for a wider scope of academic backgrounds and prior Eskom employment history will have to be developed as soon as the programme starts.

Advancing people in the programme to senior roles

Building a fully functioning internal consultancy will require Eskom to advance programme participants from current basic consulting roles to project managers and beyond. This will be achieved by setting up a people development plan as well as a people committee that reviews programme participant performance on a regular basis, gives guidance on development and affects promotions to more senior roles.

In order for these senior roles to be effective in the Eskom environment, they will have to be adequately graded within the existing Eskom HR system and have sufficient delegation of authority to lead people within the internal consultancy as well as drive impact within the broader Eskom environment.

Based on experience, a pyramid of 120 internal consultants should feature a minimal configuration of the following senior leadership roles

- 1 managing senior partner that represents the unit as overall leader,

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- 4 partners (covering Eskom's key areas of business: generation, transmission & distribution, customer service and support functions, like finance, HR, etc)
- 1 people development manager (responsible for staffing, trainings, evaluation, etc)
- 6 senior project managers (capable of leading multiple projects at the same time)
- 12 (junior) project managers

Building up the required support function back bone

Eskom's internal consulting unit will need specific support in terms of funding model, staffing, logistics, IT as well as personal development in order to be competitive with external companies. As a consequence Eskom will have to build up a back bone of required support functions within the new unit.

Setting up an knowledge repository

Methodological knowledge and institutional memory are core assets of any consulting company. Eskom will have to develop and implement a knowledge platform that allows to store and share knowledge items, benchmarking information as well as best practices amongst its internal consultants.

Capability building in the programme

- All scope of work defined under the MSA will encompass development
- Programme participants will be involved in all value packages developed under the MSA
- All measures will include a description of required governance
- Overall performance of the programme will be measured based on critical development milestones
- The consultant shall have full access to study related IP
- The class room training will for the senior tenure roles will be tailored to the individual scope of work of their value packages

MCKINSEY CONTRIBUTION

McKinsey will support Eskom in all key aspects of developing the internal consultancy over the next three years. In detail this includes

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- Develop Top consultant vision, mission and mandate.
- Develop end state of the Top consulting Programme (Internal vs External)
- Setting up and driving the recruitment and initial training of cohort 3,4, and 5
- Defining senior internal consulting roles and setting up and running the above described review committee
- On the job training of up to 150 internal consultants through McKinsey project and programme leadership
- Individual mentoring for up to 150 programme participants through senior McKinsey people
- Outlining structure, required skills and resourcing of the support function backbone
- Temporary IT support to allow a smooth work flow when jointly working on teams
- Developing an knowledge repository and populating it with knowledge items jointly developed during the programme
- Develop a generic change management/sustainability frame for implementation.
- Structure the consultant department to have pre-determined centers of specialisation, with consultants forming SMEs for that area

In order to achieve these aspirational items McKinsey will run a medium sized project team solely dedicated to the above work packages for the entire time of the programme. We propose that Eskom release all the senior Top Engineers to co-create the evolutional journey of their programme.

Over and above McKinsey will commit its entire project and programme leadership working for Eskom as coaches and mentors to spend a significant amount of their time.

We also propose to set up a joint steering committee to take key decisions around design and resourcing that is led by at least one ExCo member who also acts as a sponsor to the programme.

While all McKinsey work on this programme will be free of charge and funded through other work packages, we estimate that the total value of all the McKinsey services, support and intellectual property provided to Eskom in the programme over three years equals ZAR 1.8 billion.

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ESKOM PREREQUISITES

Evolving the current Top Engineers programme into the targeted internal consultancy will require resources and commitment from Eskom to be successful. Especially Eskom will have to provide

- ExCo sponsor for the programme
- The commitment of Eskom's entire leadership to make its most talented junior people available to the programme
- A dedicated Steercom with sufficient delegation of authority to effect required governance changes where individual measures are concerned
- Senior Eskom managers to join steering and review committee
- Budget/funding model to cover cost for recruiting, logistics, office space, specialised IT
- Internal and external recruitment of senior internal consultancy roles (managing partner, partners and junior partners)
- Dedicated support function resources

McKinsey will provide temporary support with resources and senior leadership during the ramp up phase wherever possible but a sustainable solution requires substantial Eskom involvement.

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The position and offer reflected herein is subject to the approval and confirmation of, and by, the relevant McKinsey governance bodies". Nothing contained herein shall be binding on McKinsey until receipt of such confirmation and the conclusion of binding definitive agreements between Eskom and McKinsey

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APPENDIX 6

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Summary Procurement workstream negotiation results

This memorandum summarises the outcome of negotiation between Eskom and McKinsey & Company on the Procurement value package based on the Master Service Agreement. It is structured as follows:

- Scope of work
- Baseline
- Benefits to Eskom
- Payment triggers
- McKinsey role in the negotiation process
- Eskom pre-requisites
- Benefit calculation for inventory reduction – Articulation of positions still under discussion
- Down-payments
- Additional steps to be concluded

This memorandum represents the current status of the procurement workstream negotiation as presented in the respective documentation and parts of the MSA tracker. We are happy to take further guidance from Eskom and incorporate changes as they are resulting from the ongoing negotiations.

The negotiation status as presented in this document is subject to further approval and potential refinement by McKinsey's relevant governance committees.

SCOPE OF WORK

The scope of work for this value package is to deliver rapid bottom line savings and free up cash. As a consequence it will also deal with adapting Eskom's existing structures, resources, tools and skills where necessary to ensure a sustainable implementation. In order to achieve this goal, the work will focus on the following three work streams:

- *Procurement capability transformation* focused on Top Engineers, Commercial managers and sourcing specialists as needed for the project work.

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The value package will also address structures, systems, processes and tools and where needed determine implementation of improvement measures.

- *Third party cost reduction* by applying a variety of cost reduction techniques including demand-management, specification reduction, re-negotiations, pricing and commercial term measures to Eskom's entire third party spend of R 165 billion in 2014 except for explicitly excluded categories
- *Inventory management* from its current high level of R 13 billion by centralising spare parts and consumable warehousing across the power station fleet and Wires network. All inventory work is conditional to McKinsey and Eskom agreeing on an adequate compensation mechanism for cash flow benefits to Eskom in the MSA

Currently only categories subject to nuclear regulation and containing direct competitors of McKinsey & Company are excluded from the scope.

BASELINE

Eskom's spend data is stored on a number of separate systems and suffers from lack of proper codification. As a consequence, it is therefore difficult to produce an accurate baseline for the value package. In detail the challenges that will have to be addressed within the value package at a later stage are:

- Lack of codification and manual input compromises data integrity
- SAP standard reports/queries lack key information and therefore require customized queries. For example there is no clear link between vendor/ material group/ material and contract number which makes it difficult to determine total amount spent per material (category)
- A significant portion of materials/short text cannot be matched thereby making it difficult to fully determine what was purchased
- Off contract spend and cheque requisitions reduce Eskom's ability to determine what its category spend potential volume is

In order to not delay the start of the work package Eskom and McKinsey have agreed to start with a preliminary base line consisting of accounts payable, BPP and purchase order data. Based on this the preliminary list of categories to focus on in the first wave are

- Yellow equipment (R 1 billion)
- Boiler service (R 3 billion)
- Excess inventory (R 1.9 billion)
- ICT or diesel procurement (to be decided during baselining)

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The above list of categories for wave 1 as well as the estimated size of the categories will be refined in joint workshops held between McKinsey & Company and Eskom in the coming days.

BENEFITS TO ESKOM

The MSA defines general rules about the measurement of benefits to Eskom and the subsequent payment of performance incentives to McKinsey. These also apply to this value package. Specifically the following types of benefits to Eskom have been defined:

- Price reduction per unit in comparison to historical unit price after taking inflation into consideration. Therefore price reduction will be considered as a price below the historical unit price (plus inflation)
- Transaction cost reduced and budget adjusted compared to agreed-upon baseline (e.g., processing cost, lead time, logistic/handling costs, storage cost)
- Demand reduction resulting into corresponding budget reduction compared to pre-agreed baseline
- Optimised supplier payment terms including payment durations (for example, Eskom only having to pay after 90 days instead of 60 days) and cost price adjustment terms
- Reduction in overall stock used in comparison to budgeted requirements
- Other events leading to measurable benefits for Eskom

In addition the compensation of cash flow benefits to Eskom is still in general under negotiation and needs to be resolved before the inventory work can be started.

Improvement measures that include renegotiation of payment terms need to indicate what terms are being changed and what the expected impact is.

Finally it has been agreed to that measures that are presented to the Steerco for being accepted at implementation level 2 (IL2) should be specific about the respective baseline and the respective remuneration mechanism that translates the financial benefit to Eskom into the impact fee payable to McKinsey.

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PAYMENT TRIGGERS

Linked to the above definition of Benefits to Eskom the following payment triggers (as defined by MSA) apply:

- Receipt of an indicative (subject to explicit Steercom approval) or binding offer of minimum viable technical solution
- Transaction cost reduced and budget adjusted compared to agreed-upon baseline (e.g., processing cost, lead time, logistic/handling costs, storage cost)
- Demand reduction resulting into corresponding budget reduction compared to pre-agreed baseline
- Supplier agreement to optimised payment terms as approved by the person delegated to effect the contract as well as the finance business partner
- Other events leading to measurable benefits for Eskom

MCKINSEY ROLE IN THE NEGOTIATION PROCESS

McKinsey support Eskom in the pre-negotiation phase through a variety of classroom-based modules, war game simulation exercises and direct coaching.

As discussed during negotiations it will be McKinsey's role to facilitate the negotiation back-office and to not form part of the actual negotiation team facing the supplier/contractors to prevent any conflict situations. In rare occasions Eskom would like to seek McKinsey's support in the negotiation room. In these cases McKinsey will on a case-by-case basis consults its governance committees and support Eskom in case the approval by the respective McKinsey governance committee is granted.

Our typical role during negotiations will therefore be:

- Behind the scenes support in negotiation analytics backroom; or
- Identification of external negotiators that Eskom can contract with; or
- In the room once approved through governance and risk committees

ESKOM PREREQUISITES

Eskom needs to fulfil a couple of important prerequisites to allow for work on the procurement value package to start

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Scope

- A clear understanding that all spend is in scope except those spend elements explicitly mentioned in writing either during the negotiation phase or in the contract between Eskom and McKinsey

Team

- Full support of the GE Commercial and Technology
- A clear full time leader for the turnaround effort (GM - Commercial)
- Team members should be appointed based on clear role descriptions and interviews (led by McKinsey)
- McKinsey leadership will provide feedback to Eskom team members and input into their performance reviews and vice versa
- Alignment of performance management (compact) between McKinsey, the stream leads and the line managers; all parties should be measured against the same savings targets
- Appropriate Eskom resourcing for all initiatives through:
  - A full-time GM to lead overall effort and manage stakeholder relations
  - Six experienced commercial managers plus supporting Eskom resources from relevant areas like Generation, Distribution, Transmission, Technology and Finance
  - Four senior Eskom Top Consultants (C1 or C2)
  - A number of candidates to select five to ten Eskom Top Consultants (C3 Commercial)

Decision making process

- Clear willingness across organization to expedite governance process when required to attain opportunities
- Ensuring explicit 100% support and leadership from Commercial department and understanding that this is not another initiative but a "transformation turn-around" way of management
- Clear ownership from Eskom and willingness to engage key stakeholders if required (e.g., on change of incentive system, enforcing compliance with operating procedures, movement from a BBBEE supplier)
- Review meetings
  - Fortnightly sessions with overall programme leadership
  - Weekly procurement team leadership meeting

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Access to data

McKinsey will need access to all data, contracts, CMAX and any other relevant systems including BPP (except where it would provide McKinsey with a competitive advantage)

BENEFIT CALCULATION FOR INVENTORY REDUCTION OR IMPROVEMENT IN WORKING CAPITAL BALANCES – ARTICULATION OF POSITIONS STILL UNDER DISCUSSION

McKinsey position

There is agreement between Eskom and McKinsey on two types of benefits to Eskom when Inventory is reduced

- Reduction of Eskom's inventory levels reduces Eskom's financing need and as a consequence its interest payments. This impact is a recurring benefit to Eskom and should be compensated as such
- Sale of obsolete inventory triggers a profit for Eskom on an item that would have been a write down otherwise. This is profit a one-time benefit to Eskom and should be compensated as such

Over and above these two benefits it is McKinsey's position that given the current cash constrains within Eskom, sustained reduction of Eskom's inventory levels through own consumption hold significant value to Eskom. In detail McKinsey argues along the following case example

- Eskom is currently up to R 30 billion short of cash in this financial year
- Out of this roughly R 6 billion come from additional money required to complete planned outages
- If inventory can be redirected towards completing these outages and by that reducing the additional cash shortage of Eskom, it helps avoid a potential down grading of the company with significant implications on overall financing cost and borrowing capability – or even further, Eskom losing the status of a going concern

McKinsey therefore proposes to be compensated for the reduction of inventory by Eskom consumption. This is unlocking short-term cash as described above in line with other one time benefits, like direct cost savings. McKinsey suggests to be compensated for this inventory reduction as a one-time effect applying the compensation method as described in the Master Service Agreement (MSA). This comes in addition to the interest savings as described above.

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Eskom position

There is agreement between Eskom and McKinsey on two types of benefits to Eskom when Inventory is reduced or where there is improvement in the "working capital" of Eskom

- Reduction of Eskom's inventory levels reduces Eskom's working capital and financing needs and as a consequence its interest payments. This saving on the interest impact is a recurring benefit to Eskom and should be compensated as such in line with the MSA for recurring benefits which is limited to 3 years. Similarly, an improvement in payment terms of suppliers from 30 to 60 days would also be accounted as reflected above but the impact would only be once off.
- Sale of obsolete inventory triggers a profit for Eskom (or reduction of a loss) on an item that would have been a write down otherwise. Thus the identification and sale of obsolete inventory should be compensated at the selling price of the inventory in line with the terms agreed per the MSA.

Over and above these two benefits for the improvement in Eskom's "working capital" position, Eskom does not see further benefits accruing.

DOWN-PAYMENTS

Eskom and McKinsey agree to down-payments of R50 million over a period of 6 months. Where, at any relevant time, aggregate instalments are less than the net benefits then McKinsey is not entitled to any subsequent down-payments until such a time this reverses within the down-payment period.

ADDITIONAL STEPS TO BE CONCLUDED

In parallel to Eskom seeking approval for the MSA and value package to take effect, Eskom and McKinsey together will conclude the following steps

- Validate McKinsey client references for prior procurement work

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The position and offer reflected herein is subject to the approval and confirmation of, and by, the relevant McKinsey governance bodies". Nothing contained herein shall be binding on McKinsey until receipt of such confirmation and the conclusion of binding definitive agreements between Eskom and McKinsey

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APPENDIX 7
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Summary Generation Workstream Negotiation Results

This memorandum summarises the outcome of negotiation between Eskom and McKinsey & Company on the Generation value package based on the Master Service Agreement negotiated in parrallel. It contains chapters for the initiatives that were prioritised by the negotiation teams, namely:

- Reduce Partial Load Losses (PLLs)
- UCLF reduction
- Generation Project factory

Each chapter covers the scope of work, baseline, benefit to Eskom, payment triggers, prerequisites to be in place prior to starting the work, down-payments, and any additional steps for conclusion.

This memorandum represents the current status of the Generation workstream negotiation as presented in the respective documentation and parts of the MSA tracker. We are happy to take further guidance from Eskom and incorporate changes as they are resulting from the ongoing negotiations.

The negotiation status as presented in this document is subject to further approval and potential refinement by McKinsey's relevant governance committees.

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REDUCED PARTIAL LOAD LOSSES (PLL)

Scope of work

The scope of work for this value package is to reduce the persistent partial load losses for specific root causes as agreed to with Gx. The scope will exclude PLL where a capital plan is in place and already approved.

Baseline

The PLL baseline will comprise of the following key elements:

- Sustained partial load losses (longer than 7 days, estimated at ~1200MW - to be verified) as compiled by Shireen Prince
- Seasonal load losses are excluded

Any adjustments to the baseline must be approved by Eskom (Shireen Prince/ Willy Majola, and Kobus Steyn) and McKinsey (Peter Safarik and Lorenz Jüngling)

In order to agree on the exact baseline figures for each of the above, it would be important for Eskom and McKinsey to develop the baseline ahead of the work starting. This can be done by Eskom providing McKinsey with the relevant coal fleet PLL data by power plant in order to develop a first draft of the baseline to be signed off with Eskom.

Benefits to Eskom

The MSA defines general rules about the measurement of benefits to Eskom and the subsequent payment of performance incentives to McKinsey. These also apply to this value package. Specifically the benefit to Eskom has been defined as reduced UCLF attributable to PLL.

Payment triggers

Linked to the above definition of Benefits to Eskom the following payment triggers (as defined by MSA) apply:

- Impact will be measured initiative by initiative and will be considered recurring
- Impact is deemed to occur when MW improvement for an initiative is observed over a 7 day period (adjusted for conditions outside of McKinsey's control)
- Where an initiative requires capital, impact is deemed to occur when:

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  - The cost of the capital investment has been quantified
  - Initiative execution included into the outage schedule and outage plan
  - Workstream lead and Finance agree that the MW improvement is probable
  - Approved by relevant committee (IFC or ICAS or Steering Committee, if decision being protracted)
- Impact payment values are calculated per initiative in annualised MW and converted to a Rand value using the value of the energy sold ~R650/MWh and the result is then adjusted using an EUF proxy of 90%
- Impact will be considered recurring as per the MSA
- Impact payments require sign off by the Eskom value package lead (Willy Majola/ Shireen Prince, and Kobus Steyn), Eskom Generation Finance (Stefaan Cronje), and an Eskom Capital efficiency representative (where applicable)

Eskom prerequisites

Eskom must fulfil a number of important prerequisites before work on the Partial Load Losses value package may start. Prior to commencing the work, Eskom must ensure:

- Access to capex based on business case and trade-off considerations
- Explicit support from the PSM and Engineering managers at Stations
- Eskom allocate a senior manager to lead PLL efforts
- Willingness to engage the labour unions if required (e.g., on change of incentive system, enforcing compliance with operating procedures)
- Flexibility to launch an outage if space exists e.g., short-term outage should another outage be completed ahead of schedule
- Access to all necessary data
- Access/entry to all power stations. Full collaboration with all existing initiatives including but not limited to people initiatives e.g., Ops Recovery, Maintenance Recovery, Generation Top manager Programme, process initiatives such as On-Line Monitoring, Gx CAP Management, Spares management, OMO roll-out, contract management and Care groups and Study committees (SCOT) e.g., Boiler study SCOT, Turbine SCOT and ACC Care Group

In addition to the above, the specific prerequisites for team setup and decision making processes are detailed below.

Team setup

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- Full support of the GE Generation
- A clear leader for the turnaround effort (GM – Generation)
- Team members should be appointed based on clear role descriptions and interviews (led by McKinsey)
- Ensuring explicit 100% support and leaderships of the PSMs understanding that this is not another initiative but a "turn-around" way of management
- Approval of McKinsey leadership providing feedback to Eskom team members and with bearing on their individual performance reviews (and the other way around in case requested)
- Alignment of performance management (compact) between McKinsey, the stream leads and the line managers; all parties should be measured against the same savings targets
- Appropriate Eskom resourcing for each module and its work streams
  - An E-band manager to lead overall effort and manage stakeholder relations
  - 1-2 experienced generation managers (M16/M17 level) to drive workstreams on a day-to-day basis
  - Support from the stations to quantify risks and provide insights into the technical status of power station
  - 2-3 engineers with focus on the most prevalent PLL
  - Support from engineering on as needed basis
  - 3-5 senior Eskom Top Engineers

Decision making process and access to data

- Clear willingness across organization to expedite governance process when required to attain opportunities
- Ensuring explicit 100% support and leadership from Generation departments
- Clear ownership from Eskom and willingness to engage key stakeholders if required (e.g., regulator for statutory/ environmental dispensations)
- Review meetings
  - Fortnightly sessions with overall programme leadership
  - Weekly partial load loss team leadership meeting
- McKinsey will need access to all data (GCSS), Partial load loss reports
- Timely decision capacity of Eskom management in order to avoid loss of opportunistic savings

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Down-payments

Eskom and McKinsey agree to down-payments of R50 million over a period of 6 months payable at a monthly rate. Where, at any relevant time, aggregate instalments are less than the net benefits then McKinsey is not entitled to any subsequent down-payments until such a time this reverses within the down-payment period.

Additional steps to be concluded

Eskom and McKinsey together will conclude the following steps

- Confirm addressable PLL baseline with Eskom (Shireen Prince)
- Include into impact "pull-forward" of a solution that is already planned however due to the project can be executed earlier

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UCLF REDUCTION (STATION TURNAROUND)

Scope of work

Over the last 10 years the EAF of the Eskom fleet has deteriorated at a rate of 3% per annum. In the past 5 years the rate of deterioration has increased to 4% per annum with an EAF today of 69% versus EAF of 84% in 2011. The five year budget for EAF in FY16 is 74% and is required to ramp up to 78% by 2020.

This value package will run two fully-fledged power station turnarounds. The two stations are selected by installed capacity and underperformance in terms of EAF.

The turnaround will be undertaken by setting up a Turnaround Office at each station and deploying 3-5 teams per station focusing on:

- Operating
- Maintenance
- Outages
- Enablement/ support functions, e.g. Engineering, HR, Procurement, Finance
- Technical Projects

The turnaround of each station includes all aspects of the station operating model i.e. the management infrastructure (incl. governance structures, KPIs); the technical systems (e.g. operating and maintenance SOPs); and the mind sets and capabilities of all roles and people.

Provisionally the turnaround candidate at this point in time are Kendal and Matla due to the significance of installed capacity, underperformance in EAF, and their perceived good standing with organised labour when compared with other potential candidate stations.

Baseline

The station turnaround baseline will comprise of the following key elements:

- Station level EAF adjusted for rate of deterioration based on the last 5 years of fleet EAF deterioration (i.e. 4% per annum) taking out exceptional events ("noise'), and forecasted for three-years
- Not adjusted for technical plans or existing programs as the trend is observed with these having been in occurrence for the past 5 years
- Total Cost of Ownership approach to capex investment, per the MSA, is chosen to ensure alignment of incentives
- Catastrophic Events are excluded both from the baseline and for the impact calculation:

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  - A Catastrophic Event is defined as an unforeseeable and unavoidable event that ceases generating capacity of a unit or station for 3 or more months; it is agreed that this definition is to be revisited in 6 months.
  - If a Catastrophic Event occurs within the first 6 months the SteerCom will decide on the approach to deal with the event and adjustments to the baseline
- Baseline can only be adjusted per boundary conditions and procedures in the MSA

Benefits to Eskom

The MSA defines general rules about the measurement of benefits to Eskom and the subsequent payment of performance incentives to McKinsey. These also apply to this value package.

Specifically the following types of benefits to Eskom have been defined for the turnaround stations:

- Sustained levels of EAF
- Improved levels of EAF and reduced UCLF
- Improved financial contribution
- Improved workforce engagement and organisational health

Payment triggers

McKinsey fees are calculated based on benefit to Eskom as per MSA agreed mechanism, rates and payment terms. Linked to the above definition of Benefits to Eskom the following payment triggers (as defined by MSA) apply:

- Impact is measured in percentage points against the baseline using a 12 month moving average
- Financial value calculated based on value of energy sold i.e., ~ R650 MWh on annualised basis
- Impact trigger will be actual EAF relative to baseline measured every 6 months from start of each turnaround program
- Impact on the baseline is considered recurring
- Payments are due when sign-off by Head of Gx and PSM is received

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Eskom prerequisites

Eskom must fulfil a number of important prerequisites before work on the UCLF reduction value package may start. Prior to commencing the work, Eskom must ensure:

- Explicit agreement from Eskom with the partnership principle whereby all initiatives relating to performance improvement above baseline will be included, irrespective of the idea originator, timing or level of support required for execution
- Explicit agreement from Eskom that outages scheduled for the turnaround stations cannot be re-scheduled, curtailed or prejudiced in any way that could limit the impact potential at turnaround stations
- Eskom to align with labour before the program and then actively engage throughout the program (esp. where changes to SOPs, KPIs, etc.)
- "Turnaround PSM peer" staffed by McKinsey to be a full member of the power station leadership team and have access to all meetings and materials
- Turnaround sites afforded carte blanche and be treated as exceptional cases withstanding that all regulatory and statutory requirements remain in full effect (agreed with full support at both station and corporate centre levels)
- Changes to governance, operating model and organizational structure to be fully in the scope
- A working model that fully focuses the organisation on value identification and delivery
  - Incentives of the management team to be aligned with the impact measurement
  - Capex/outage space to be prioritised provided positive business case exists

Down-payments

Eskom and McKinsey agree to down-payments of R20 million per month per station over a period of 6 months. Where, at any relevant time, aggregate instalments are less than the net benefits then McKinsey is not entitled to any subsequent down-payments until such a time this reverses within the down-payment period.

Additional steps to be concluded

Eskom and McKinsey together will conclude the following steps

- Formulating a baseline for the two candidate stations
- Eskom Gx Negotiation representative to present proposal to Gx Exco

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- Further clarify definitions for unforeseeable and unavoidable events
- Eskom Negotiation team to understand and feedback the Executive for Technology and Commercial viewpoint on the optimisation of the outage scheduling

GENERATION PROJECT FACTORY

SCOPE OF WORK

Scrub and optimise the Generation Technical and Maintenance Plan (excluding outages) that is uncommitted for the period 2016-2020, estimated at R6,2bn budget spend (32 projects) of Technical scope and a further R1,3bn in maintenance for FY16. The scope would include any other projects approved and funded in the future or that Eskom want's to include in the work. The workstream ends, when all projects (current pipeline and later added ones) are optimized.

For the portfolio scrubbing, projects will be assessed according to the following criteria: 1) Legal/safety requirement; 2) Business rational (which includes adherence to maintenance philosophy and risk assessments). Portfolio optimisation is a hygiene step, and given previous engagements the opportunity is expected to be limited.

For project optimisation, individual projects are analysed to determine whether the desired impact can be achieved at a lower cost. This would involve investigating and costing minimum technical solutions, alternate solutions amongst other levers.

Baseline

The baseline is:

- Current Generation Technology plan for the period 2016-2020 that has been approved but not committed (R6,2bn budget spend, 32 projects)
- The additional maintenance budget approved for FY16 of R1,3bn
- Where additional projects are approved, they will be added to the baseline at the budget at which they were approved. Any adjustments to the baseline must be approved by: Nigel Volk/ Willy Majola, Kobus Steyn, Lorenz Jüngling and Peter Safarik
- Baseline values will not include contingencies which are generally calculated as a percentage of project cost

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Benefits to Eskom

Reduced budget for individual projects, thus creating budget space for more projects to reduce UCLF.

Payment triggers

McKinsey fees are calculated based on benefit to Eskom as per MSA agreed mechanism, rates and payment terms. Linked to the above definition of Benefits to Eskom the following payment triggers (as defined by MSA) apply:

- Reduction in the budget through optimization (ZAR) of each project; impact is deemed to occur on a project by project basis. Benefits to Eskom are recognized when optimized project schedules get signed off. Estimated savings must be agreed to by: Project sponsors, Workstream lead (Nigel Volk/ Willy Majola), Finance (Stefaan Cronje)
- Where the project sponsor refuses to sign off savings, which the optimization team considers legitimate, the optimization team will have right to appeal to the overall Steering Committee for determination
- Savings will be considered once-off savings as per the MSA

Eskom prerequisites

Eskom must fulfil a number of important prerequisites before work on the outage schedule optimisation value package may start. Prior to commencing the work, Eskom must ensure:

- Willingness to provide all the data, support with technical skills to optimise and engage with contractors
- Project teams to work with Capital factory for the duration their project is being optimized
- No project passes ERA without optimization report from joint Eskom and McKinsey team
- Make available both financial and technical skilled people from Eskom to support the optimisation projects
- Full collaboration with all existing initiatives including but not limited to people initiatives e.g., Ops Recovery, Maintenance Recovery, Generation Top manager Programme, process initiatives such as On-Line Monitoring, Gx CAP Management, Spares management, OMO roll-out, contract management and Care groups and Study committees (SCOT) e.g., Boiler study SCOT, Turbine SCOT and ACC Care Group

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In addition to the above, the specific prerequisites for team setup and decision making processes are detailed below.

Team setup

- Full support of the GE Generation
- A clear leader for the turnaround effort (GM – Generation)
- Team members should be appointed based on clear role descriptions and interviews (led by McKinsey)
- Willingness to escalate to ExCo readily should ExCo approval be needed
- Ensuring explicit 100% support and leaderships of the PSMs understanding that this is not another initiative but a "turn-around" way of management
- McKinsey leadership provides feedback to Eskom team members and input into performance reviews
- Alignment of performance management (compact) between McKinsey, the stream leads and the line managers; all parties should be measured against the same savings targets
- Appropriate Eskom resourcing for each module and its work streams
- A full-time GM to lead overall effort and manage stakeholder relations
- Two experienced generation managers to drive workstreams on a day-to-day basis
- 2 senior Eskom Top Engineers (C1 or C2)
- Project teams whose project is under review should be based at MWP with optimization team for the 8-10 weeks their project is under review

Decision making process and access to data

- Clear willingness across organization to expedite governance process when required to attain opportunities
- Ensuring explicit 100% support and leadership from Generation departments
- Clear ownership from Eskom and willingness to engage key stakeholders if required (e.g., regulator for statutory/ environmental dispensations)
- Fortnightly sessions with overall programme leadership
- Weekly optimization team leadership meeting
- McKinsey will need access to all data: budgets, business cases, demand forecasts, incident reports
- McKinsey will need access to the project teams for the duration of the review

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- Access to all necessary data
- Access/entry to all power stations

Down-payments

Eskom and McKinsey agree to down-payments of R50 million over a period of 6 months. Where, at any relevant time, aggregate instalments are less than the net benefits then McKinsey is not entitled to any subsequent down-payments until such a time this reverses within the down-payment period.

Additional steps to be concluded

- Agreement on start of this module
- Full list of projects and an agreement with which we start

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The position and offer reflected herein is subject to the approval and confirmation of, and by, the relevant McKinsey governance bodies". Nothing contained herein shall be binding on McKinsey until receipt of such confirmation and the conclusion of binding definitive agreements between Eskom and McKinsey

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APPENDIX 8
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Summary Primary Energy workstream negotiation results

This memorandum summarises the outcome of negotiation between Eskom and McKinsey & Company on the Primary Energy value package based on the Master Service Agreement. It is structured as follows:

- Scope of work
- Baseline
- Benefits to Eskom
- Payment triggers
- McKinsey role in the contract negotiation process (e.g., coal, logistics, etc.)
- Eskom pre-requisites
- Benefit calculation for coal stockyard reduction – Articulation of positions still under discussion
- Down payment
- Additional steps to be concluded

This memorandum represents the current status of the Primary Energy workstream negotiation as presented in the respective documentation and parts of the MSA tracker. We are happy to take further guidance from Eskom and incorporate changes as they are resulting from the ongoing negotiations.

The negotiation status as presented in this document is subject to further approval and potential refinement by McKinsey's relevant governance committees.

SCOPE OF WORK

The objective of this value package is to reduce coal costs. The scope will be conducted on a contract by contract level on a R/ton or R/GJ basis depending on the underlying contract. In addition, the work will aim to deliver a reduction in Eskom's capital costs per project and working capital related to coal with a net positive impact on Eskom's financial and technical performance and Generation performance (related to coal load losses). As a consequence it will also deal with

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adapting Eskom's existing coal contracting approach where necessary to ensure sustainable implementation. In order to achieve this goal, the work will focus on the following three work streams:

- *Cost-plus and Fixed price contracts* focused on increasing value from Eskom's current long term contracts through improved volumes within a manageable cost trajectory. The value package will also take a Total Cost of Ownership approach to understand the overall opportunity (including coal price, transport, handling and quality specifications). The package will also consider the conversion of cost-plus contracts to fixed price contracts on a contract by contract basis, based on NPV comparisons
- *Short/Medium term contract and logistics optimisation* that will focus on optimising current short and medium term contract prices and volumes by taking a total cost of ownership approach across the value chain applying a variety of contracting and technical levers to improve overall TCO (including coal price, transport, handling and quality specifications)
- *Critical bleeding topics* will focus on immediately launching efforts (or integrating into existing efforts) to resolve the current coal issues that are negatively impacting Eskom's financial situation and operations. These include topics such as the Medupi coal penalty, Arnot overall coal supply situation, the Hendrina coal contract with Optimum, the Kusile limestone problem etc. This value package will focus on immediately reducing the bleed from these issues and reducing the expected cost impact on Eskom's income statement as agreed on a case by case basis.
- *Strategic Topics* will focus on jointly developing a roadmap for the next 3 years that should enable PED to comply with the overall Design-to-Cost strategy. This roadmap will include a high-level set of hypothesis-driven business imperatives/principles, supply plan, savings & volume mix targets per station, hypotheses top-down levers & time-horizons on when this is anticipated to be achieved. McKinsey agrees to develop the top-down roadmap, as stated above, within the first 3-months of starting work in PED, and also agrees to further develop the detailed bottom-up PED business strategy (should it be required) after 12 months if savings that support R300 million in fees is achieved.

Currently all non-coal Primary Energy categories are directly excluded, except those that impact the coal TCO (e.g., fuel oil, limestone).

BASELINE

The coal baseline will comprise of the following key elements which are regarded as a guideline and is not exhaustive

- For cost plus contracts

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  - The baseline should be developed on a R/ton; total cost (Rm); and volume (Mtpa) basis. The baseline is tied back to the historical cost development. However by doing this there is always created a link to the corporate plan and the assumptions/developments that caused the delta between the two. Based on this information and potential future projections/assumptions (based on committed mine budgets or approved mine plans) a baseline is derived on a case-by-case basis.
  - The Total Cost of Ownership approach is taken as a principle
- For existing fixed price and short/medium term contracts
  - In case of existing fixed priced and short medium term contracts the existing base prices, volume, quality, tenure and the basket of weighted indices that comprised the historic price development
- For new contracts
  - In case of new contracts, set baseline based on the lowest technically acceptable delivered offer of the initial round of bids from suppliers based on an RFP process
  - Eskom has the right to exclude McKinsey from any contract negotiations if Eskom feels that the McKinsey value-add does not justify the potential fees-payable. In cases where McKinsey is requested to support a negotiating team, a "joint-spirit" approach will be used, and the lowest technically acceptable delivered offer of the initial round of bids from suppliers based on an RFP process will be used as the baseline, without any modification for historical negotiation performance.
  - If the lowest technically acceptable offer falls outside an acceptable pre-defined market-price tolerance, a case-by-case resolution will be agreed-upon by Eskom and McKinsey to reset the baseline to an agreed level (eg, reset to Export parity price.)
  - When determining the baseline where the lowest offer received does not satisfy the complete RFP volume requirement (eg, 30% of volumes required), Then each of the lowest RFP offers making up the total volume will be used as a baseline e.g. 1st offer making 30% of volume will be baseline for that negotiation, then the next-lowest offer that is within the volume requirement will form the next baseline for negotiation. This process repeats until the full RFP volume requirement is met.

- On working capital
  - The revised BPP level working capital (stockpile target levels) by power plant
- On logistics

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- Logistics costs by mode and plant over last 5 years (potential base dependent on package) e.g. value package looking at revising rail rates
- The baseline for logistics optimisation within existing contracts is Eskom PED's coal logistic model and the supply plan (including volume allocation, logistic modes, coal prices and logistic prices) from which transport contractors are paid on. Since the supply plan changes on monthly basis the baseline should be linked to a certain validity period.
- Rates are based on historical rates; volumes are based on the supply plan going forward
- In case of new road delivered contracts, set baseline based on the lowest technically acceptable delivered offer of the initial round of bids from road transport suppliers based on an RFP process and/or current logistics rates model.
- In case of new rail delivered contracts or mode changes, set baseline based on the lowest technically acceptable delivered offer of the initial round of bids from (Road transport, siding operators, coal handling) suppliers and Transnet based on an RFP process or sole source proposal (Transnet is a monopoly)

- On quality
  - Historical delivered qualities and contractual quality specifications by power plant (incl. quality driven load losses)
  - Any existing coal quality improvement projects (at the mines) that are already in the process of implementation as well as planned quality improvement projects.
  - Historical and future (Corporate plan or other measure) of station heat rates, cv's and burn rates, and coal-related OCLF
  - Revised "240" coal quality specification which is the current coal quality specification requirements of the Generation fleet.

In order to agree on the initial baseline figures for each of the above, it would be important for Eskom and McKinsey to develop the high-level baseline ahead of the work starting (approximately 1-2 weeks). This can be done by Eskom PED providing McKinsey with the relevant coal financial data by power plant in order to develop a first draft of the baseline to be signed off with PED. The high-level baseline can also be used to identify the priority contracts and stations to begin work at.

The bleeding topics stream will already begin immediately and its benefits will start fund the base lining effort

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BENEFITS TO ESKOM

The MSA defines general rules about the measurement of benefits to Eskom and the subsequent payment of performance incentives to McKinsey. These also apply to this value package. Specifically the following types of benefits to Eskom have been defined:

- Reduction in escalation of coal prices on a per ton basis by contract relative to agreed baseline.
- Transaction cost reduced and budget adjusted compared to agreed-upon baseline (e.g., logistic/handling costs, storage cost)
- Reductions in coal-related load losses due to improved delivered quality
- Reduction in overall coal stock levels without risk to Eskom security of energy supply
- Optimised supplier payment terms including payment durations (for example, Eskom only having to pay after 90 days instead of 60 days) and cost price adjustment terms
- Reduction in capital spend on cost-plus mines (relative to the baseline definition)
- Quality: Improved quality requirement leading to lower total cost without negatively impacting generation performance, or improvements in coal-related OCLF
- Reduction in logistics cost (e.g., lower rates, optimised coal dispatch, operational logistics excellence)

In addition, the compensation of cash flow benefits (working capital) to Eskom is still in general under negotiation and needs to be resolved before the stockpile work can be started.

Finally it has been agreed to that measures that are presented to the Steerco for being accepted at implementation level 2 (IL2) should be specific about the respective baseline and the respective remuneration mechanism that translates the financial benefit to Eskom into the impact fee payable to McKinsey. The measures need to be signed off by the McKinsey, the Eskom implementation owner, Finance business Partner and the area (cost centre owner and profit centre owner) where impact will be realized and budgets adjusted.

PAYMENT TRIGGERS

Linked to the above definition of Benefits to Eskom the following payment triggers (as defined by MSA) apply:

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- Binding term sheet received from supplier (subject to explicit Steercom approval)
- Transaction cost reduced and budget adjusted compared to agreed-upon baseline (e.g., logistic/handling costs, storage cost)
- Coal specification approved by steerco, relevant Gx representative (e.g., PSM) and Group Technology
- Capital approved by the respective Governance body and agreed to by the mine. (Capital project-based value packages/initiatives will only be considered for payment if the capital project is, at a minimum, at an ERA stage)
- For offers with outstanding technical approvals (water-use licences, mining rights, EMPR, quality certificate outstanding, safety systems outstanding, non-conformance to Department Of Energy's codes of good practice, PFMA approval required, or any other external hindrance that could render the mine unable to produce the offered coal) Eskom & McKinsey can apply for exemption on a case-by-case basis at Steerco only if an evidence base to justify that the outstanding approvals will be attained at a future date, within a mutually agreed confidence level can be provided

MCKINSEY ROLE IN THE NEGOTIATION PROCESS

McKinsey support Eskom in the pre-negotiation phase through a variety of classroom-based modules, war game simulation exercises and direct coaching.

As discussed during negotiations it will be McKinsey's role to facilitate the negotiation back-office and to not form part of the actual negotiation team facing the coal supplier/contractors to prevent any conflict situations. In rare occasions Eskom would like to seek McKinsey's support in the negotiation room. In these cases McKinsey will on a case-by-case basis consult its governance committees and support Eskom in case the approval by the respective McKinsey governance committee is granted.

Our typical role during negotiations will therefore be:

- Behind the scenes support in negotiation analytics backroom (e.g., coal pricing scenarios, bottom-up costing, negotiation strategy); or
- Identification of external negotiators that Eskom can contract with; or
- In the room once approved through governance and risk committees

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ESKOM PREREQUISITES

Eskom needs to fulfil a couple of important prerequisites to allow for work on the Primary Energy value package to start

Team

- Full support of the GE Commercial and SGM Primary Energy
- A clear leader for the turnaround effort (e.g., SGM – Primary Energy; to be determined by Eskom)
- Team members should be appointed based on clear role descriptions and interviews (led by McKinsey and Eskom leader)
- McKinsey leadership provides feedback to Eskom team members and input into performance reviews and the other way around
- Since this project is a full risk based project it is at McKinsey sole discretion to decide the quantity and qualification of resources deployed to the project
- Alignment of performance management (compact) between McKinsey, the stream leads and the line managers; all parties should be measured against the same savings and volume targets
- Appropriate Eskom resourcing for each module and its work streams
  - A full-time senior manager leading the programme and manage stakeholder relations
  - Four experienced PED managers plus supporting Eskom resources from relevant areas like Gx, Technology, Finance and Legal
  - Four senior Eskom Top Engineers (C1 or C2)
  - A number of candidates (as possible from Primary Energy) to join Eskom Top programme

Decision making process

- Clear willingness across organization to expedite governance process when required to capture opportunities
- Explicit 100% support and leadership from PED department and understanding that this is not another initiative but a new way of coal management – Eskom will change how it contracts coal and manages costs
- Clear ownership from Eskom and willingness to engage key stakeholders if required (e.g., on change of incentive system, enforcing compliance with operating procedures, movement from a BBBEE or Junior coal miner)

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- Willingness to develop clear plan on cost-plus mines based on robust business cases (e.g., convert to Fixed price vs. improve operations vs. enforce contract terms)
- Review meetings
  - Fortnightly sessions with overall programme leadership
  - Weekly PED team leadership meeting

Access to data

- Internal perspective on operational performance, cost drivers & Capex allocation for cost plus mines and S/M1 mines (including access to all contracts and data owned by Eskom) subject to all Non-disclosure agreements signed.
- Willingness to pursue access to data not owned by Eskom (e.g., mine operational data on site)

Eskom stakeholder engagement and decisions

- Willingness to engage cost-plus mines for access for operational diagnostics and willingness to drive turnaround
- Willingness to obtain Transnet support in building rail infrastructure where applicable
- Willingness to take to steerco any opportunities/contracts that may be outside current Eskom standards – technical and transformational

BENEFIT CALCULATION FOR COAL STOCKYARD REDUCTION – ARTICULATION OF POSITIONS STILL UNDER DISCUSSION

McKinsey position

There is agreement between Eskom and McKinsey on two types of benefits to Eskom when stockpiles are reduced

- Reduction of Eskom's stock levels reduces Eskom's financing need and as a consequence its interest payments. This impact is a recurring benefit to Eskom and should be compensated as such

Over and above these two benefits it is McKinsey's position that given the current cash constraints within Eskom, sustained reduction of Eskom's coal stock levels through own consumption hold significant value to Eskom. In detail McKinsey argues along the following case example

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- Eskom is currently up to R 30 billion short of cash in this financial year
- Out of this roughly R 6 billion come from additional money required to complete planned outages
- If stock levels can be redirected towards completing these outages and by that reducing the additional cash shortage of Eskom, it helps avoid a potential down grading of the company with significant implications on overall financing cost and borrowing capability – or even further, Eskom losing the status of a going concern

McKinsey therefore proposes to be compensated for the reduction of stock levels by Eskom consumption. This is unlocking short-term cash as described above in line with other one time benefits, like direct cost savings. McKinsey suggests to be compensated for this inventory reduction as a one-time effect applying the compensation method as described in the Master Service Agreement (MSA). This comes in addition to the interest savings as described above.

Eskom position

With regards to coal inventory holdings levels, McKinsey needs to consider the balance between the risk posed to obtaining supply and the price of future supply vs the cost of holding inventory. i.e. if the price of coal is escalating at costs that are higher than Eskom's interest cost, then it may be prudent to hold coal inventory until the price of coal stabilizes. Our future coal contract coverage, transport capacity and the readily available (lead times of) coal supply in the market needs to also be assessed.

There is also technically no obsolete coal within the Eskom system. Eskom does not define excess coal as obsolete.

There is agreement between Eskom and McKinsey on two types of benefits to Eskom when Inventory is reduced or where there is improvement in the "working capital" of Eskom

- Reduction of Eskom's inventory levels reduces Eskom's working capital and financing needs and as a consequence its interest payments. This saving on the interest impact is a recurring benefit to Eskom and should be compensated as such in line with the MSA for recurring benefits which is limited to 3 years. Similarly, an improvement in payment terms of suppliers from 30 to 60 days would also be accounted as reflected above but the impact would only be once off.
- Sale of obsolete inventory triggers a profit for Eskom (or reduction of a loss) on an item that would have been a write down otherwise. Thus the identification and sale of obsolete inventory should be compensated at the selling price of the inventory in line with the terms agreed per the MSA.

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Over and above these two benefits for the improvement in Eskom's "working capital" position, Eskom does not see further benefits accruing.

DOWNPAYMENT

Primary Energy downpayments are not included in the original Board agreement. Eskom and McKinsey agree to a R 75 mn downpayment payable in monthly rates over a period of 6 months (pending Eskom governance approval). Where, at any relevant time, aggregate instalments are less than the net benefits then McKinsey is not entitled to any subsequent down-payments until such a time this reverses within the down-payment period.

For those packages where the benefit/or trigger point for payment is likely to be realised only after 12 months of value package being approved, Eskom shall accommodate on a case-by-case discussion to agree on down-payments for that specific work package. The value of that additional down-payment is limited to 25% of the total expected benefit payable to McKinsey of that respective work package. McKinsey is required to provide a bank guarantee for the duration until the true up is expected to happen

ADDITIONAL STEPS TO BE CONCLUDED

In parallel to Eskom seeking approval for the MSA and value package to take effect, Eskom and McKinsey together will conclude the following steps

- Obtain the current PED contract-by-contract baseline data (R/ton prices and volumes by contract and power station)
- Further define the project and development plan
- Eskom negotiating team to get approval for impact and benefit payments to be made where the baseline is based on a cost avoidance scenario rather than a saving realised

OUTSTANDING NEGOTIATION ITEMS

The following items are still outstanding, and require further negotiations:

- Working capital payments (as per the procurement stream, a general disagreement)

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The position and offer reflected herein is subject to the approval and confirmation of, and by, the relevant McKinsey governance bodies. Nothing contained herein shall be binding on McKinsey until receipt of such confirmation and the conclusion of binding definitive agreements between Eskom and McKinsey

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APPENDIX 9

CONFIDENTIAL

Summary Claims and Commercial Management workstream negotiation results

This memorandum summarises the outcome of negotiation between Eskom and McKinsey & Company on the Claims and Commercial Management value package based on the Master Service Agreement. It is structured as follows:

- Scope of work
- Benefits to Eskom
- Baseline
- Operating model options
- Payment triggers
- McKinsey role in the contract negotiation process
- Prerequisites
- Down payment
- Additional steps to be concluded

This memorandum represents the current status of the Claims and Commercial Management workstream negotiation as presented in the respective documentation and parts of the MSA tracker.

The negotiation status as presented in this document is subject to further approval and potential refinement by McKinsey's relevant governance committees.

SCOPE OF WORK

The scope of work for this value package is to recover the project costs for the Medupi and Kusile projects from the 2015 updated P80 business case to as close as possible to the P50 business case by developing and implementing strategic project schedule and risks interventions to proactively manage the project risks and reduce future claims. The commercial risks will be reduced and the cashflows optimized through improved cost management practices, contract strategies and accelerated

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priority claims resolution. In order to achieve this goals, the work will focus on the following three work streams:

- Strategic services
  - Develop commercial strategies for main packages and support the commercial teams in the negotiation and implementation of these commercial strategies
  - Update and maintain the cost-to-completion models for the main packages to provide insights into the real cost drivers and actual costs for the main packages
  - Development and implement schedule and cost risk mitigation targeted interventions e.g., improve integrated planning and progress reporting, access management, resource tracking

  Provide project oversight and assurance function
- Future claims
  - Expedite the resolution of priority future claims based on the commercial strategy
  - Conduct real time root cause analysis to minimize the potential impact on schedule and costs
  - Develop clean sheet costings to test the claims costs estimates
  - Support the site teams with the implementation of the contract strategy for the main packages
- Employers claims
  - Identify high potential employers claims and develop strategy to recover the employers claims
  - Setup the process to capture the potential employers claims
  - Provide oversight on the progress with executing the employers claims

  Processing of employers claims by others

BENEFITS TO ESKOM

- Recover the project costs from the 2015 P80 business case to as close as possible to the P50 business case by proactively managing the project risks and reduce future claims
- Reduce the commercial risks through improved cost management practises, contract strategies and accelerated priority claims resolution
- Optimise project cash flows through claims strategies and improved risks management

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- Develop independent perspective on the actual contractor's cost to completion and use insights for negotiations
- Develop internal commercial capabilities to efficiently manage the commercial processes and minimise the costs impact on the projects

POTENTIAL BASELINE FOR THE THREE AREAS

- Strategic services
  - Construction progress, commissioning and contractor integration risk categories that will be managed with the 2015 updated P80 business case cost for these risk categories
  - Targeted interventions that will prevent cost increases from P50 to P80 by minimizing construction progress, commissioning and contractor integration risk categories
- Future claims
  - Priority contractors to pursue with the potential claims value based on 2015 business case assumptions
  - Targeted interventions that will move the construction progress, commissioning and contractor integration risk categories from the 2015 updated business case
- Employers claims
  - Priority employer claims to pursue and the cost recovered to date on these claims

PROPOSED APPROACH

The baselines for the specific interventions will be defined in a three step process by first assessing the current status, followed by definition and approval steps:

- Strategic services
  - Identify the priority packages, critical milestones and update the costs to completion models for the priority packages.
  - Identify costs and schedule opportunities to reduce the costs for these packages
  - Assess the size of the opportunities and develop a proposal to capture these opportunities
  - Setup the baseline and/or framework to capture the opportunity (baseline based on historic performance with real tangible KPIs e.g., insulation historic productivity measure)

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- Present the priority opportunities and baseline and/or framework to Steerco for approval
- Develop detail implementation plan

- Future claims
  - Identify main opportunities to reduce the claims costs
  - Develop clean sheet costing models for the main packages
  - Review the current business case assumptions and compare to the clean sheet costings
  - Define the baseline and/or framework to capture the opportunity (baseline based on historic performance with real tangible KPIs)
  - Present the priority opportunities, baseline and/or framework to Steerco for approval
  - Develop the detail implementation plans to renegotiate the costs with contractors
- Employers claims
  - Review the employers claims registers and identify the main opportunities
  - Work with Eskom legal to test the legality of the claims
  - Define the services required to capture the value
  - Finalise the priority employers claims, scope and services required with commercial teams
  - Set baseline based on what was processed for the contract and accepted by the contractor
  - Present the priority opportunities and baseline to Steerco for approval
  - Develop the implementation plans

PAYMENT TRIGGERS

- Strategic services
  - 40% of payment when strategy or initiative is agreed and sign off by Steerco. The deliverable will be a document that summarise the value of the opportunity, the baseline for the opportunity, the KPI to measure future impact, the proposed strategy to capture the value, the priority initiatives aligned with the strategy, the pre-requisites for implementation, high level implementation plan and expected period to proof the opportunity.
  - 60% of payment when the impact from the priority initiatives can be proven and future impact can be projected. The deliverable will be a document that summarise the impact measured from the priority initiatives, updated

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implementation plan for the remaining actions, the projected impact and calculated net impact for the project. The period of proof will be between 1-6 months and will be agreed at the definition of the strategy or initiative.

- Future claims
  - 40% of payment when approach or initiative is agreed and sign off by Steerco. The deliverable will be a document that summarise the value of the opportunity, the baseline for the opportunity, the KPI to measure future impact, the proposed strategy to capture the value, the priority initiatives aligned with the strategy, the pre-requisites for implementation, high level implementation plan and expected period to proof the opportunity.
  - 60% of payment when priority future claims are rejected by either the Eskom commercial team or with acceptance notices from the Contractor, or future potential claims reduced, or determined priority claims to a lower number for valid claims. The deliverable will be a document that summarise the impact measured from rejecting the claim by either the Eskom commercial team or Contractor, or future potential claims reduced, or determined priority claims to a lower number for valid claims. The period of proof will be between 1-6 months and will be agreed at the definition of the approach or initiative.
- Employers claims
  - 60% of payment when the proposed strategy to prosecute the employers claim and potential value for the employer is signed off by Steerco. The deliverable will be a document summarising the potential value of the employer claims opportunity, the proposed strategy to capture the value, the priority initiatives aligned with the strategy and high level implementation plan.
  - 40 % of payment when Eskom commercial start processing claims or contractor settlement, or Eskom trigger claim to the contractors. The deliverable will be a document that summarise the expected impact from the claims or contractor settlement, or Eskom triggering claim to the contractors and the calculated net impact for the project.

ESKOM PREREQUISITES

Eskom needs to fulfil a couple of important prerequisites to allow for work on the Claims and Commercial Management value package to start

Team

- Continuity of critical team resources throughout the development and implementation of the initiatives

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- Team members for the initiatives should be agreed with Project Directors, in the event of disagreement will be escalated to Steerco
- Alignment of performance management (compact) for the 3 focus areas between McKinsey and Eskom team - all parties should be measured against the same savings and volume targets
- McKinsey leadership provides feedback to Eskom team members and input into performance reviews and the other way around
- Appropriate Eskom resourcing with support from the Group Capital Head and Project Directors:
  - A full-time senior manager leading the programme and manage stakeholder relations
  - Three experienced managers plus supporting Eskom resources from Medupi, Kusile, CMO, Engineering, Finance and Legal
  - Senior Eskom Top Engineers (C1 or C2)
  - Eskom or sub-contractor resources to process the claims

Decision making process

- Clear willingness across organization to expedite governance process when required to capture opportunities
- Explicit 100% support and leadership from Group Capital and Project Directors
- Clear ownership from Eskom and willingness to engage key stakeholders if required
- Commitment to participate in regular review meetings
  - Fortnightly sessions with overall programme leadership
  - Weekly site team leadership meeting

Access to data

- Full access to construction and commercial information related to the 3 focus areas (including access to all contracts and data owned by Eskom)
- Willingness to pursue access to data not owned by Eskom - as long is the data request is legally compliant

Eskom stakeholder engagement and decisions

- Willingness to take to steerco any opportunities/contracts that may be outside current Eskom standards – technical and transformational

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McKINSEY'S ROLE DURING CONTRACTOR NEGOTIATIONS

McKinsey support Eskom in the pre-negotiation phase through a variety of classroom-based modules, war game simulation exercises and direct coaching.

As discussed during negotiations it will be McKinsey's role to facilitate the negotiation back-office and to not form part of the actual negotiation team facing the contractors to prevent any conflict situations. In rare occasions Eskom would like to seek McKinsey's support in the negotiation room. In these cases McKinsey will on a case-by-case basis consult its governance committees and support Eskom in case the approval by the respective McKinsey governance committee is granted.

Our typical role during negotiations will therefore be:

- **Support during the pre-negotiation** phase through a variety of classroom-based modules, war game simulation exercises and direct coaching
- **Facilitate the negotiation back-office** including negotiation analytics (e.g., bottom-up costing, negotiation strategy), identification of external negotiators that Eskom can contract
- **McKinsey will not be part of the actual negotiation team facing the contractors** to prevent any conflict situations
- In rare occasions Eskom would like to seek McKinsey's support in the negotiation room. In these cases McKinsey will on a case-by-case basis consult its governance committees and support Eskom in case the approval by the respective McKinsey governance committee is

DOWNPAYMENT

The down-payment for the workstream will be R 100 mn over a period of 12 months. Where, at any relevant time, aggregate instalments are less than the net benefits then McKinsey is not entitled to any subsequent down-payments until such a time this reverses within the down-payment period.

ADDITIONAL STEPS TO BE CONCLUDED

- In parallel to Eskom seeking approval for the MSA and value package to take effect, Eskom and McKinsey together will conclude the following steps :
  - Develop the baseline for the 3 value areas
  - Further define the project and development plan

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The position and offer reflected herein is subject to the approval and confirmation of, and by, the relevant McKinsey governance bodies". Nothing contained herein shall be binding on McKinsey until receipt of such confirmation and the conclusion of binding definitive agreements between Eskom and McKinsey

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Eskom	Financial Evaluation Report of McKINSEY INCORPORATED SOUTH AFRICAN BRANCH	Unique Identifier	322-20
		Revision	0
		Corporate Reporting	

Please note that this financial analysis was performed solely for the purpose of deciding whether McKINSEY INCORPORATED SOUTH AFRICAN BRANCH is financially sound enough to be awarded a contract to the value of R475 million to develop the Eskom Top Engineers consulting Unit over a period of 3 years, per reference Sole source.

At the time of the financial analysis McKinsey Incorporated South African Branch had outstanding contracts with Eskom amounting to R102 million. Therefore, the total exposure Eskom will have with the company will be limited to R577 million.

1. Background to the company

McKINSEY INCORPORATED SOUTH AFRICAN BRANCH

McKINSEY INCORPORATED SOUTH AFRICAN BRANCH is engaged in consulting services.

2. Comments on financial statements

McKINSEY INCORPORATED SOUTH AFRICAN BRANCH

Approved financial statements for the year ended 31 December 2014 and the 2013 comparative figures were obtained and analysed.

An Independent Reviewer's Review Report issued by PriceWaterhouseCoopers Inc. Registered Auditors, accompanied the financial statements.

3. Analysis (refer to Appendix)

McKINSEY INCORPORATED SOUTH AFRICAN BRANCH

Current Ratio: The ratio of current assets to current liabilities indicates that the company might be in a position to meet its short-term obligations if creditors request payment on demand.

Debt / Equity: The debt to equity ratio indicates that the company might not have difficulty raising long-term finance, if required.

Profit Ratios: The profit ratios were favourable for the period under review.

Return Ratios: The return ratios were favourable for the period under review.

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Interest Cover: The interest cover ratio could not be established, as the company did not record any interest bearing commitments during the year under review.

4. Other Considerations

McKINSEY INCORPORATED SOUTH AFRICAN BRANCH

The contract value is R475 million over a period 3 years which is equivalent to R158.3 million per annum. The company recorded a turnover of R1.755 billion. This indicates that, given the information at our disposal, the company might not have difficulty to deliver on this contract.

The company had cash generated from operations of R67 million and cash and cash equivalents of R414 million at the end of the year. These cash reserves might be sufficient to meet its working capital requirements to deliver on this contract.

However, taking into account that the reporting date of the financial statements was 31 December 2014, the associated risk is that the company might dispose of the cash and cash equivalents through withdrawals or declaration of dividends.

5. Areas of concern

The following are areas of concern:

- **Risk of cash and cash equivalent disposal**

  The company had cash generated from operations of R67 million and cash and cash equivalents of R414 million at the end of the year. However taking into account that the reporting date of the financial statements was 31 December 2014, the associated risk is that the company might dispose of the cash and cash equivalents through withdrawals or declaration of dividends.

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Eskom	Financial Evaluation Report of McKINSEY INCORPORATED SOUTH AFRICAN BRANCH	Unique Identifier	322-20
		Revision	0
		Corporate Reporting	

- **Advance payment**

  The financial analysis request was accompanied by "R475 million estimated advance payment for project setup costs" statement by the service requestor.

  We do not support the upfront payment and would suggest that payment be made only on the realisation of cash savings

- **Sole Source contract**

  It should also be noted we are not certain whether the 12% charge on the savings is fair because the contract is a sole source. This therefore implies that it could not be subject to the usual financial evaluation processes that would determine whether the charge is market related.

Recommendation(s)

We recommend the following:

- The company provide guarantees from its financiers to cover the incremental cash flows associated with this contract, and
- No advance payments are made

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Eskom	Financial Evaluation Report of McKINSEY INCORPORATED SOUTH AFRICAN BRANCH	Unique Identifier	322-20
		Revision	0
		Corporate Reporting	

6. Conclusion

In our opinion, **subject to the resolution of the issues raised under Note 5 above McKINSEY INCORPORATED SOUTH AFRICAN BRANCH may be considered** to be awarded a contract to the value of R475 million to develop the Eskom Top Engineers consulting Unit over a period of 3 years, per reference Sole source.

The following should be noted:

- **We do not recommend the payment in advance**
- **Owing to the sole source procurement approach, the reasonableness of the profit sharing ratio could not be tested.**

Compiled by
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Fin. Project Services
Date: 6/10/2015

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011 800 4411
Fin. Project Services
Date: 6/10/2015

Authorised by
Berniece Tzanakakis
011 800 4137
Fin. Project Services
Date: 6/16/2015

Project number: 3000

NB: The company was incorporated in the state of Delaware, United States of America

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Eskom	Financial Evaluation	Unique Identifier:	322-19
		Revision:	0
		Corporate Reporting	

McKINSEY INCORPORATED SOUTH AFI

Estimated contract Value:	R855 million
Contract Period:	3 years
Year-end :	31-Dec-2014
Reference number:	Sole Source

	2014	2013
STATEMENT OF FINANCIAL POSITION	R	R
Assets	**44 261 956**	**32 799 845**
Non-current assets	**886 746 923**	**912 017 050**
Current assets	414 095 061	570 719 263
Cash and cash equivalents	472 651 862	341 297 787
Other current assets	**931 008 879**	**944 816 895**
Total assets		
Equity and liabilities	**57 444 226**	**137 811 848**
Equity	**500 000**	**500 000**
Non-current liabilities	**873 064 653**	**806 505 047**
Current liabilities	**931 008 879**	**944 816 895**
Total equity & liabilities		
STATEMENT OF CASHFLOWS		
Cash (used in)/ generated in operations	66 685 770	396 925 354
Cash flows at the end of the year	414 095 061	570 719 263
STATEMENT OF COMPREHENSIVE INCOME		
Turnover	**1 755 170 223**	**1 474 409 361**
Operating Profit / (loss)	99 502 995	206 070 569
Investment revenue	10 029 999	8 798 044
Finance costs	-	-
Taxation	(52 088 768)	(77 056 765)
Profit for the year	**57 444 226**	**137 811 848**
Other Comprehensive income	30 584 857	52 864 894
Total Comprehensive Income for year	**88 029 083**	**190 676 742**
Ratio Analysis		
Current ratio	1.02	1.13
Debt / Equity	0.01	0.00
EBIT / Turnover	5.67%	13.98%
EAIT / Turnover	3.27%	9.35%
Return on Assets	10.69%	21.81%
Return on Equity	100.00%	100.00%
Interest cover*	N/A	N/A

* Not Applicable

Project number: 3000

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Eskom

SUBMISSION TO EXCOPS
08 OCTOBER 2015

Feedback on negotiated outcome with McKinsey & Co to develop the current Top Engineers programme into an Internal Consulting Unit

Resolution required

Eskom

1. To accept the feedback of the negotiations with McKinsey and Co to develop the current Top Engineers programme into an Internal Consulting Unit that can provide world class management consulting services capable of resolving emerging company-wide risks, without prior tendering, for a period of 3 (three) years, with an option to terminate after a 12 (twelve) month period if no savings are realized.

2. To ratify minor differences between negotiated outcomes and approved mandate parameters as contained in sub-clause 3.3 and 3.6.

3. To note the following negotiated conditions:

   3.1 That the negotiated results for the Top Engineers Programme, Procurement (including inventory), Generations, Primary Energy and Claims Management value packages and the Supplier Development and Localisation (SD&L) proposal as contained in the attached Appendix 4, 5, 6, 7, 8 and 9 be accepted;

   3.2 That the contract will be based on the R0.00 and self-funding principle,

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Resolution required

Eskom

3.3 That down payments, in lieu of project set-up cost as consulting fees at a total value of R475 000 000.00 (four hundred and seventy five million rand) broken down per value package as indicated below, be paid when they fall due after commencement of each value package, therefore requiring a positive value contract initially:

Value Package	Value
Module "Top Engineers"	R0.00
Module "Procurement"	R50 000 000.00
Module "PED"	R75 000 000.00
Module "Generation (PLL only)	R50 000 000.00
Module "Generation (Project Factory)	R50 000 000.00
Module "Generation (UCLF Reduction)	R200 000 000.00
Module "Claims Management" (not yet concluded)	R50 000 000.00
Total	R475 000 000.00

3.4 That the Mckinsey bank guarantee be issued to Eskom as security for the down payments approved in 3.3 above, the value of which will include the down payments made plus interest, fixed at 12% p.a. (twelve percent per annum), in line with the SLA's Terms and Conditions relating to the Bank Guarantee;

Resolution required

Eskom

3.5 Payment trigger points regime shall be between Implementation Level 3 and 4 (see Appendix 3) and payment on once-off and recurring benefits shall be at 10.80% and 10.55% (see Appendix 2) of projected savings respectively, and recurring benefits for impact calculation and for payment purposes is limited to 3 years;

3.5.1 That it be noted that the self-funding principle is envisaged to potentially be realised at some point in the future process, which will vary from package to package. The timing of the payments made to McKinsey and the potential benefits to be realized by Eskom will most probably be different;

3.6 To contract using an SLA format of contracting with its associated conditions;

4 That the Group Executive, Technology and Commercial is authorised to take all necessary steps to give effect to the above, including the signing of any agreements, consents or other documentation necessary or related thereto.

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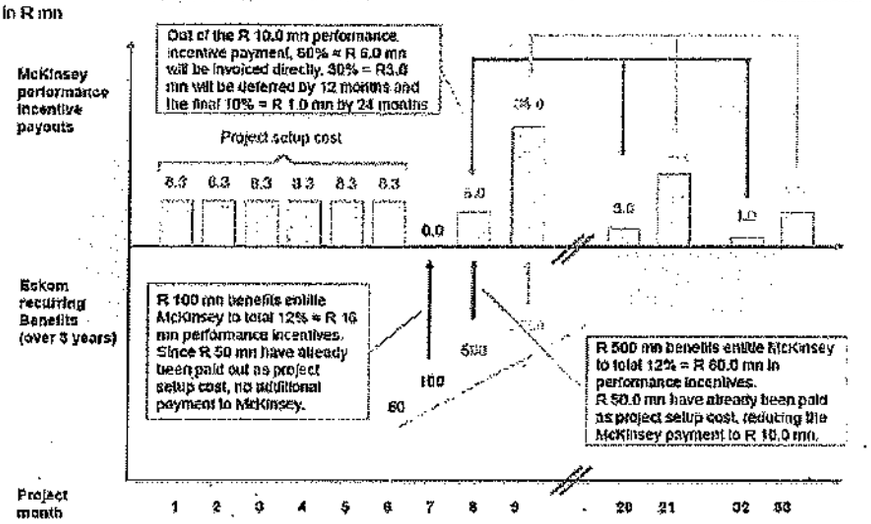
Appendix 1: Overview of proposed commercial terms and key financial parameters

Eskom

Payment Scheme Recurring Benefits for McKinsey – Overview

ILLUSTRATIVE

In R mn



Appendix 2: Summary of Negotiation Results on key financial parameters

Eskom

Commercial negotiation trace – McK offer post governance

	Current status	Initial McKinsey response	Offer Eskom	Final offer McKinsey	Latest Eskom offer	McKinsey offer post governance approval	Revised McKinsey offer
Share on once off benefits	12.0%	11.8%	10.5%	11.25%	10.75%	11.15%	10.80%
Share on recurring benefits[2]	12.0%	11.3%	10.0% (discounted by 12% p.a. for year 2 and 3)	10.65%	10.25% (discounted by PPI p.a. for year 2 and 3)	10.65% (impact calculation will not consider inflation)	10.65% (impact calculation will not consider inflation)
Payment in case of rejection at IL2 or higher	IL2 = 66% IL3 = 80% >IL3 = 100%	IL2 = 63% IL3 = 78% >IL3 = 100%	IL2 = 50% IL3 = 70% >IL3 = 90%	IL2 = 60% IL3 = 70% >IL3 = 90%	IL2 = 66% IL3 = 70% >IL3 = 90%	IL2 = 66% IL3 = 70% >IL3 = 90%	IL2 = 66% IL3 = 70% >IL3 = 90%
Cashflow recurring benefits	Year1/Year2/ Year3 60%/25%/ 25%	Year1/Year2/ Year3 60%/30%/ 10%	Year1/Year2/ Year3 60%/30%/ 10%	Year1/Year2/ Year3 60%/30%/ 10%	Year1/Year2/ Year3 60%/30%/ 10%	Year1/Year2/ Year3 60%/30%/ 10%	Year1/Year2/ Year3 60%/30%/ 10%
Eskom bank guarantee	None	For deferred payments	None	None	None	None	None
Cap on expenses (travel and accommodation)	18%	15%	15%	15%	15%	15%	10%

1 Or finalisation of the workstream or the entire project 2 Recurring benefits to be paid 3 full years benefit multiplied by percentage

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Eskom

Implementation level definition

	Identified	Value assessed/confirmed	Approved	Implemented	Delivered
	IL 1	IL 2	IL 3	IL 4	IL 5
Criteria for completion	• Concrete improvement initiative developed and described in tracking tool • Benefits to Eskom roughly quantified using baseline data (can still be ranges) • Major implementation steps identified	• General feasibility cleared with SD&L and value package lead • Benefits to Eskom evaluated in detail over 3 year period and cleared with cost center owner • All implementation steps described and responsibles appointed • Approved by Steercom	• All implementation steps have been signed off by responsibles • Exco/SGM have authorized implementation • Resources/ capital for implementations have been released	• All implementation steps have been completed • New contract/ operating procedure/ equipment is in place and fully effective in day-to-day business • Benefits for Eskom start to be collected (ramp-up) • Implementation resources can be released	• Total benefits have been incurred for Eskom (over up to 3 year period) • Bottom line effect on principle measurable on cost center • No further tracking required

2015/10/06

8

Eskom

Salient Facts

- The Board Tender Committee via Round Robin on the 06th. July 2015 approved the mandate to negotiate with McKinsey & Co, without prior tendering, to develop the current Top Engineers programme into an Internal Consulting Unit that can provide world class management consulting services capable of resolving emerging company-wide risks by driving savings and unlocking cash subject to the following:

Approved Mandate	Achieved Results
Terms and conditions remain the same as per the previous NEC contract	A Service Level Agreement (SLA) - with terms and conditions is to be used for this type of contract because the NEC 3 Professional Services Contract framework was not suitable for this type of contract
• The contract will include an exit clause after first 12 months from start of contract if no benefits are realised	• Accepted

2015/10/06

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Salient Facts

Eskom

Approved Mandate	Achieved Results
The contract value will be R0.00 as this initiative is self-funding and the project duration be limited to a maximum of 3 years. Consulting fees, expenses and performance incentives will be paid out of realised savings to a maximum of 12% per project	That the contract will be based on the R0.00 and self-funding principle, and will be for a period of three (3) years. However, payment will be made to McKinsey on work packages approved by a SteerCom. The envisaged end state or implementation level of the work packages for benefit/impact calculations will be at Implementation Level (IL) between IL3 and IL4 (see Appendix 2 and 3) and will be to a maximum of 10.80% of the savings benefits or impact calculated.

Salient Facts

Eskom

Approved Mandate	Achieved Results
The BPP value package on optimisation of Eskom's total external spend, currently located within Group Commercial be used as a base project to generate savings for the whole of Eskom that will fund projects set-up costs;	Not Accepted. McKinsey has proposed they receive down payments in lieu of project set up costs as consulting fees for each work stream that they will work on, payable after commencement of each work package. The down payments will be paid equally over a pre-determined duration (6 or 12 months depending on the individual workstream).
	If McKinsey defaults, i) immediately initiate a refund process, failing which, ii) will have the right to call-up the bank guarantee. Thus, ensuring that the principle of a R 0.00 value contract is maintained for Eskom.

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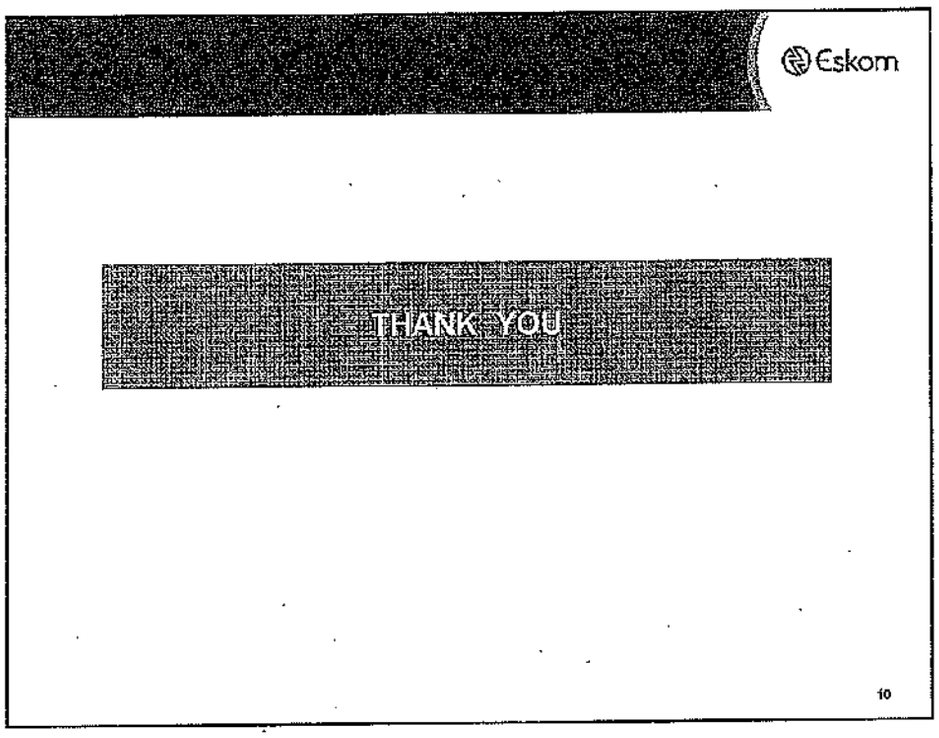

From: alexander_weiss@mckinsey.com
Sent: Wednesday, May 4, 2016 2:23 PM
To: prish.govender@eskom.co.za
Cc: lorenz_jungling@mckinsey.com; vikas_sagar@mckinsey.com; Benedict_Phiri@mckinsey.com
Subject: Appendix 4 - SD&L Document

Hi Prish,

Hope this email finds you well. As discussed I have taken a stab on the SD&L document and the formulation of the alternative SD&L approach. I've discussed this with Benedict and we are generally good to discuss on this basis.

Would you mind to organise a meeting with Edwin on this one in the coming days. I think we should have this discussion and agree on a joined position well ahead of our steerco on May 17th. I'm very happy to participate by phone or video as agreed last week to get this done in a speedy way.

Thanks for your comments and guidance

Alex

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(See attached file: 20160504 - Appendix 4 - SD&L_revised.docx)

+==========+
This email is confidential and may be privileged. If you have received it in error, please notify us immediately and then delete it. Please do not copy it, disclose its contents or use it for any purpose.
+==========+

CONFIDENTIAL

Summary SD&L discussion results

This memorandum summarize the outcome of negotiation between Eskom and McKinsey & Company in respect of the ~~Master Service Agreement~~Services Level Agreement that took place during July and November 2015. This memorandum additionally reflects the changes that were made in the context of the execution of the BBBEE partner strategy that took place during April and May 2016.

It is structured into the following chapters:

- Top talent programme contribution to SD&L
- Development of McKinsey's ownership structure over the course of the programme
- ~~Share of professional fees to BBBEE companies~~BBBEE partnership aspiration
- BBBEE partnership model and implementation plan
- Development philosophy management consulting partner
- Development philosophy other partners
- Quantified opportunity for other partners (external to Eskom)

This memorandum represents the current status of the negotiation as presented in the respective documentation and parts of the MSA tracker. We are happy to take further guidance from Eskom and incorporate changes as they are resulting from the ongoing negotiations.

The negotiation status as presented in this document is subject to further approval and potential refinement by McKinsey's relevant governance committees.

Top talent programme contribution to SD&L

Eskom and McKinsey aligned that the basis for this programme would be the further development of Eskom's Top Engineer programme that is currently a ~~joined~~ joint initiative between Eskom and McKinsey. The results of this negotiation are summarised in a separate memorandum.

With respect to the SD&L contribution Eskom requested McKinsey to quantify the value of the Top Engineers programme to Eskom. ~~Together with~~McKinsey and Eskom's SD&L representatives have agreed that~~,~~ the total value of the Top Engineers Programme ~~was estimated to be approx.~~is approximately R 1.3 bn. This includes McKinsey supporting Cohort 1 and 2 and building Cohort 3 during the

contract period of 3 years. In total 150 Top Engineers are resulting from that programme, which is roughly the size of McKinsey's entire Johannesburg office.

Development of McKinsey's ownership structure over the course of the programme

McKinsey is a proud contributor to the transformation of South Africa. In this context McKinsey, during the past years, has transformed into a B-BBEE Level 1 contributor (B-BBEE Level 2 after the revised rating system). In this context the ownership structure of McKinsey has been transformed. McKinsey today is 26.0% black owned of which 10.0% are dedicated to Black Women Ownership (BWO).

McKinsey is a global partnership with approx. 1.600 partners who own McKinsey and thus determine the ownership structure of the entity. McKinsey intends to further develop the share of black partners in South Africa and therefore places a particular emphasis on the share of junior partners that it puts into the pipeline.

As per the current status there are 15 junior partners in the Johannesburg office of which 11 junior partners are previously disadvantaged individuals (PDIs). Out of these 11 PDIs 5 are black junior partners. And out of these 5 black junior partners, 3 junior partners are black females. We would therefore expect the number of black partners who own a share in the global McKinsey partnership go up over time.

~~Share of professional fees to~~ BBBEE partnership aspiration~~companies~~

McKinsey has a proven track record of developing self-sustaining management consultancies by ~~sharing parts of its~~earmarking a share of its professional fees ~~with~~ for them in respect of work to be undertaken by them and providing training and development in manifold forms. Especially in the context of Eskom, McKinsey ~~developed~~ assisted Letsema, one of South Africa's first black-owned management consulting firms (established in 1995), ~~to develop~~in developing into a self-standing entity. Letsema grew ~~since 2005 with a 40% p.a~~at 40% p.a. from 2005~~.~~ and ~~by~~ now has more than 60 consultants. While McKinsey contributed, over the lifetime of Letsema, 20 to 66% of its annual revenue, Letsema is since 2013 completely self-sustaining and serves Eskom as a self-standing consulting firm with ~~an~~ its own supplier number and in a completely independent context from McKinsey

McKinsey's skill development contribution will be centred around the Top Engineers programme. On top of the Top Engineers programme McKinsey shall aspire to outsource up to 50% of the contract value to other parties. In order to achieve this aspiration the first discussions with potential BBBEE partners resulted into the following stream-specific allocations

Stream	BBBEE share	Comment
■ Top Engineers	0%	McKinsey obligation; cost accounted on BBBEE share
■ Programme PMO	0%	McKinsey obligation; cost accounted on BBBEE share
■ Generation Wave 1 (first 2 power stations)	25%	McKinsey trains BBBEE partner on general methodology
■ Remaining power stations	60%	BBBEE partner gets allocated "own" stations that he runs almost along; 20% share on "McKinsey run" station
■ Procurement	30%	BBBEE partner runs own categories and enablement
■ Claims	30%	BBBEE partner (or external partner) runs own elements/execution
■ Finances	95%	Stream run almost exclusively by BBBEE partner with only little McKinsey oversight

McKinsey's intention is to select small black owned consultancies wherever possible for this subcontracting. It has been agreed that BBBEE partners subcontracted under this agreement ~~The actual share will be subject to the availability to appropriately skilled and resourced potential partners that are~~ would have to be willing to enter into a performance contract with McKinsey that mirrors McKinsey's agreement with Eskom ~~and therefore distributes the contract risk fairly between McKinsey and its partners. The share of outsourcing can vary by work stream and over time~~. The subcontractor fees are going to be performance based by the same mechanism as specified in the ~~Master Service Agreement~~Services Level Agreement McKinsey reserves the right to pick the sub-contractors and to exchange sub-contractors in case of non-performance. The BBBEE credentials of the sub-contractors will be made accessible to Eskom upon request.

BBBEE partnership model and implementation plan

McKinsey executed on its BBBEE obligation from the start of work in January 2016. During the first quarter of the execution phase (Q1/2016) a number of particularities occurred that caused both Eskom and McKinsey re-considering the implementation of the BBBEE partnership model:

- Eskom raised questions with respect to the partner ~~allocated to~~identified for the programme (as per written communication of February 19th, 2016)
- McKinsey was able to reply to Eskom's requests (as per written communication of February 25th, 2016)
- McKinsey was not able to receive from the ~~allocated~~identified partner information about its ownership structure, its shareholding nor the composition of its leadership team. Consequently McKinsey was not able to prove to Eskom the validity of the ~~allocated~~identified BBBEE partner and thus informed Eskom as per written communication of March 30th, 2016 that its risk committee didn't allow McKinsey to cooperate with this partner in the context of the above cited BBBEE partnership

After consultation between Eskom and McKinsey both parties agreed to maintain the envisaged BBBEE partnership aspiration but apply a somewhat modified implementation strategy. Both parties have aligned on the following implementation strategy:

- McKinsey continues to comply with the above cited fee sharing quotas
- In order to execute the work in the respective workstreams/work packages Eskom and McKinsey will jointly decide, which BBBEE partner is best suited to partner with McKinsey on the respective workstream/work package
- The above cited BBBEE fee quotas will be accrued in a SD&L fund. This means that at every impact payment event McKinsey will invoice only to the amount of its quota with the remaining funds going "virtually" into the SD&L development fund
- The consulting fee for that BBBEE partner will be paid out of the SD&L fund; the same conditions as for the McKinsey impact payment apply

This implementation logic implies that different consulting partners can be assigned on different workstreams/work packages.

In the spirit of true partnership the implementation model can be reviewed and if necessary modified.

Development philosophy management consulting partner

McKinsey is committed to develop the BBBEE partners collectively selected. In the beginning of each partnership a development plan is aligned between

McKinsey, Eskom and the respective BBBEE partner. Depending on the size and duration of the engagement and the development status of the BBBEE partner the following elements maybe partly of fully considered for the development plan:

~~In order to develop the new management consulting partners into a comparable success like Letsema McKinsey suggests to apply the following development philosophy:~~

- 2 weeks formal consulting training at McKinsey premises (e.g., Basic consulting readiness, Problem solving capability, Top down communication, Advanced analytics skill building, Visual design skill building)
- On the job training with experienced McKinsey consultants and highly qualified training staff
- Partnering on projects outside Eskom (e.g., Regiments at Transnet, Top Engineers at PetroSA, Letsema at SAA)
- Deployment of Top Talent at clients outside South Africa is considered, yet depending on the confirmation by outside clients
- ~~Transfer of~~Access to McKinsey infrastructure (e.g., McKinsey KNOW portal, McKinsey personnel processes, McKinsey feedback processes)
- Implementation of McKinsey mentorship programme

The selection of the management consulting partners will be fully aligned with Eskom. ~~Besides Letsema McKinsey pre-confirmed Regiments and Accompany Advisory as black management consulting partners. In case required,~~ McKinsey ~~is happy to qualify additional partners and~~ will seek Eskom's advice and guidance in this matter. For ~~an~~ instance, black consultancies listed on the Eskom consultancy panel could be considered viable partners in this context

Development philosophy other partners

The selection of "none management consulting" partners will happen in strong alignment with Eskom; McKinsey will consult with Eskom in the selection of the partners (e.g., from Eskom's engineering panel). The development plan will be related to the development of the management consulting partners:

- We intend to include the "none management consulting" partners into the McKinsey formal training programs
- The "none management consulting" partners will receive "on the job" training by experienced McKinsey consultants
- We intend to extend our support beyond the context of the contract with Eskom and engage them also on further work at other clients (as done with top engineers or partner such as Regiments consulting, Letsema consulting or Company Advisor consulting

Further development details shall be discussed between Eskom and McKinsey upon the conclusion of the contractual framework.

Quantified value of McKinsey's development philosophy

In addition to outsourcing up to 50% of the contract value to qualifying development partners, the estimated value of the development philosophy steps taken by McKinsey to develop black management consultancies and other black non-management-consulting partners is approximately R305 million over the three year contract term.

□ □ □

The position and offer reflected herein is subject to the approval and confirmation of, and by, the relevant McKinsey governance bodies. Nothing contained herein – especially Eskom's position on the outsourcing share – shall be binding on McKinsey until receipt of such confirmation and the conclusion of binding definitive agreements between Eskom and McKinsey

From: alexander_weiss@mckinsey.com
Sent: Monday, May 16, 2016 5:09 PM
To: prish.govender@eskom.co.za; edwin.mabelane@eskom.co.za
Cc: vikas_sagar@mckinsey.com; agesan_rajagopaul@mckinsey.com; Jean-Claude_Gelle@mckinsey.com
Subject: McKinsey contract - Revised SD&L memo and board submission

Dear Prish, Dear Edwin,

Hope this email finds you well. As discussed last Friday we have adapted both the SD&L memo and the related board submission document. It would be great if you could review the documents and give us your advise whether they reflect or Friday's discussion or should be modified in any way.

Here comes the updated SD&L memo

(See attached file: 20160516 - Appendix 4 - SD&L_revised.docx)

Here comes the draft board submission

(See attached file: Executive_Summary SDL FUND_v5.docx)

Many thanks for your comments and all the best

Alex

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Summary SD&L discussion results

This memorandum summarize the outcome of negotiation between Eskom and McKinsey & Company in respect of the ~~Master Service Agreement~~Services Level Agreement that took place during July and November 2015. This memorandum additionally reflects the changes that were made in the context of the execution of the BBBEE partner strategy that took place during April and May 2016.

It is structured into the following chapters:

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- Development of McKinsey's ownership structure over the course of the programme
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- BBBEE partnership model and implementation plan
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- Development philosophy other partners
- Quantified opportunity for other partners (external to Eskom)

This memorandum represents the current status of the negotiation as presented in the respective documentation and parts of the MSA tracker. We are happy to take further guidance from Eskom and incorporate changes as they are resulting from the ongoing negotiations.

The negotiation status as presented in this document is subject to further approval and potential refinement by McKinsey's relevant governance committees.

Top talent programme contribution to SD&L

Eskom and McKinsey aligned that the basis for this programme would be the further development of Eskom's Top Engineer programme that is currently a ~~joined~~ joint initiative between Eskom and McKinsey. The results of this negotiation are summarised in a separate memorandum.

With respect to the SD&L contribution Eskom requested McKinsey to quantify the value of the Top Engineers programme to Eskom. ~~Together with~~McKinsey and Eskom's SD&L representatives have agreed that~~,~~ the total value of the Top Engineers Programme ~~was estimated to be approx.~~is approximately R 1.3 bn. This includes McKinsey supporting Cohort 1 and 2 and building Cohort 3 during the

contract period of 3 years. In total 150 Top Engineers are resulting from that programme, which is roughly the size of McKinsey's entire Johannesburg office.

The execution of the Top Talent programme has been started. During the first 5 months of cooperation Cohort 3 has been recruited (31 Top Consultants). The Top Consultants in this Cohort 3 have completed their first training modules and have been assigned to the respective work-streams under this Service Level Agreement.

Development of McKinsey's ownership structure over the course of the programme

McKinsey is a proud contributor to the transformation of South Africa. In this context McKinsey, during the past years, has transformed into a B-BBEE Level 1 contributor (B-BBEE Level 2 after the revised rating system). In this context the ownership structure of McKinsey has been transformed. McKinsey today is 26.0% black owned of which 10.0% are dedicated to Black Women Ownership (BWO).

McKinsey is a global partnership with approx. 1.600 partners who own McKinsey and thus determine the ownership structure of the entity. McKinsey intends to further develop the share of black partners in South Africa and therefore places a particular emphasis on the share of junior partners that it puts into the pipeline.

As per the current status there are 15 junior partners in the Johannesburg office of which 11 junior partners are previously disadvantaged individuals (PDIs). Out of these 11 PDIs 5 are black junior partners. And out of these 5 black junior partners, 3 junior partners are black females. We would therefore expect the number of black partners who own a share in the global McKinsey partnership go up over time.

~~Share of professional fees to~~ BBBEE partnership aspiration~~companies~~

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McKinsey's skill development contribution will be centred around the Top Engineers programme. On top of the Top Engineers programme McKinsey shall

aspire to outsource up to 50% of the contract value to other parties. In order to achieve this aspiration the first discussions with potential BBBEE partners resulted into the following stream-specific allocations

Stream	BBBEE share	Comment
■ Top Talent	0%	McKinsey obligation; cost accounted on BBBEE/SD&L share
■ Programme PMO	0%	McKinsey obligation; cost accounted on BBBEE/SD&L share
■ Generation Wave 1 (first 2 power stations)	25%	McKinsey trains BBBEE partner on general methodology
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■ Procurement	30%	BBBEE partner runs own categories and enablement
■ Claims	30%	BBBEE partner (or external partner) runs own elements/execution
■ Finances	95%	Stream run almost exclusively by BBBEE partner with only little McKinsey oversight

McKinsey's intention is to select small black owned consultancies wherever possible for this subcontracting. It has been agreed that BBBEE partners subcontracted under this agreement ~~The actual share will be subject to the availability to appropriately skilled and resourced potential partners that are~~ would have to be willing to enter into a performance contract with McKinsey that mirrors McKinsey's agreement with Eskom ~~and therefore distributes the contract risk fairly between McKinsey and its partners. The share of outsourcing can vary by work stream and over time~~. The subcontractor fees are going to be performance based by the same mechanism as specified in the ~~Master Service Agreement~~Services Level Agreement McKinsey reserves the right to pick the sub-contractors and to exchange sub-contractors in case of non-performance. The BBBEE credentials of the sub-contractors will be made accessible to Eskom upon request.

BBBEE partnership model and implementation plan

McKinsey executed on its BBBEE obligation from the start of work in January 2016. During the first months of the execution phase practical insights where gathered and discussed with Eskom's management team. Upon these insights and discussions a range of modifications to the execution of the BBBEE partnership model are suggested. While these changes will fully maintain the aspirations of the BBBEE partnership model/SD&L contribution they will ease the practical implementation and leave Eskom with significant higher flexibility to achieve its own SD&L targets. The following modifications are suggested: ~~identified foridentifiedidentified~~

- McKinsey continues to comply with the above cited fee sharing quotas
- In order to execute the work in the respective workstreams/work packages Eskom and McKinsey will jointly decide, which BBBEE partner is best suited to partner with McKinsey on the respective workstream/work package
- The above cited BBBEE fee quotas will be accrued in a SD&L fund, irrespectively if a BBBEE partner has been chosen on the respective workstream/work package. This means that at every impact payment event McKinsey will invoice only to the amount of its quota with the remaining funds going "virtually" into the SD&L development fund
- The consulting fee for that BBBEE partner will be paid out of the SD&L fund; the same conditions as for the McKinsey impact payment apply
- In case surplus funds are left in the fund then it is at Eskom's discretion to allocate these funds. This case might occur when McKinsey either didn't need a partner to the full extend or didn't need a partner at all for a specific workstream/work package to execute the work. In this case McKinsey will only share his quota of the impact payment and Eskom can allocate these funds to other SD&L initiatives

This implementation logic implies that different consulting partners can be assigned on different workstreams/work packages.

In the spirit of true partnership the implementation model can be reviewed and if necessary modified.

Development philosophy management consulting partner

McKinsey is committed to develop the BBBEE partners collectively selected. In the beginning of each partnership a development plan is aligned between McKinsey, Eskom and the respective BBBEE partner. Depending on the size and duration of the engagement and the development status of the BBBEE partner the following elements maybe partly of fully considered for the development plan:

~~In order to develop the new management consulting partners into a comparable success like Letsema McKinsey suggests to apply the following development philosophy:~~

- 2 weeks formal consulting training at McKinsey premises (e.g., Basic consulting readiness, Problem solving capability, Top down communication, Advanced analytics skill building, Visual design skill building)
- On the job training with experienced McKinsey consultants and highly qualified training staff
- Partnering on projects outside Eskom (e.g., Regiments at Transnet, Top Engineers at PetroSA, Letsema at SAA)
- Deployment of Top Talent at clients outside South Africa is considered, yet depending on the confirmation by outside clients
- ~~Transfer of~~Access to McKinsey infrastructure (e.g., McKinsey KNOW portal, McKinsey personnel processes, McKinsey feedback processes)
- Implementation of McKinsey mentorship programme

The selection of the management consulting partners will be fully aligned with Eskom. ~~Besides Letsema McKinsey pre-confirmed Regiments and Accompany Advisory as black management consulting partners. In case required,~~ McKinsey ~~is happy to qualify additional partners and~~ will seek Eskom's advice and guidance in this matter. For ~~an~~ instance, black consultancies listed on the Eskom consultancy panel could be considered viable partners in this context

Development philosophy other partners

The selection of "none management consulting" partners will happen in strong alignment with Eskom; McKinsey will consult with Eskom in the selection of the partners (e.g., from Eskom's engineering panel). The development plan will be related to the development of the management consulting partners:

- We intend to include the "none management consulting" partners into the McKinsey formal training programs
- The "none management consulting" partners will receive "on the job" training by experienced McKinsey consultants
- We intend to extend our support beyond the context of the contract with Eskom and engage them also on further work at other clients (as done with top engineers or partner such as Regiments consulting, Letsema consulting or Company Advisor consulting

Further development details shall be discussed between Eskom and McKinsey upon the conclusion of the contractual framework.

Quantified value of McKinsey's development philosophy

In addition to outsourcing up to 50% of the contract value to qualifying development partners, the estimated value of the development philosophy steps taken by McKinsey to develop black management consultancies and other black non-management-consulting partners is approximately R305 million over the three year contract term.

□ □ □

This modified approach to SD&L will strengthen Eskom's ability to drive SD&L at scale on the back of real impact achieved. At the same time McKinsey feels honored to be allowed supporting such effort and will do its utmost to deliver as much impact as possible which in return will allow for as big as possible supplier development and localization (SD&L).

Disclaimer

The position and offer reflected herein is subject to the approval and confirmation of, and by, the relevant McKinsey governance bodies. Nothing contained herein – especially Eskom's position on the outsourcing share – shall be binding on McKinsey until receipt of such confirmation and the conclusion of binding definitive agreements between Eskom and McKinsey

Eskom	SUBMISSION DOCUMENT	Unique Identifier	221-222
		Document Type	OCSDTE
		Revision	0
		Review Date	Dec 2015
		Office of the Company Secretary Department	

EXECUTIVE SUMMARY

SUBMISSION TO:

BOARD FINANCE AND INVESTMENT COMMITTEE **DATE: tbc**

1. TITLE OF THE SUBMISSION

Amended and improved McKinsey & Company SD&L and BBBEE partner execution strategy

2. RESOLUTION REQUIRED

The McKinsey BBBEE partner execution strategy will be amended such that the partnership strategy is not only limited to one partner but would allow for alternate BBBEE partners. Furthermore an SD&L fund will be created to accrue funds that are not immediately required by McKinsey but would allow for alternative Supplier Development and Localisation (SD&L) at Eskom's discretion.

RESOLVED THAT:

This is hereby approved subject to the following:

.

2.1 McKinsey continues to comply with the previously agreed fee sharing quota.
2.2 Eskom and McKinsey will jointly decide which BBBEE partner is best suited to execute the necessary work on each of the respective work packages.
2.3 The BBBEE fee quota will accrue in a SD&L fund; this means McKinsey will invoice fees only to the amount of its quota with the balance of the fees payable going into a “virtual” SD&L fund.
2.4 The consulting fees for the relevant BBBEE partners will subsequently be paid out of the SD&L fund, subject to the same conditions as for the McKinsey impact payments.
2.5 In the event of a surplus remaining in the fund, these funds will be allocated at the discretion of Eskom.
2.6 This implementation logic implies that different BBBEE consulting partners can be assigned on different workstreams/work packages.
2.7 This implementation model can be reviewed and if necessary modified to best fulfil the spirit of the original agreement.

Eskom	SUBMISSION DOCUMENT	Unique Identifier	221-222
		Document Type	OCSDTE
		Revision	0
		Review Date	Dec 2015
		Office of the Company Secretary Department	

3. SUMMARY OF FACTS

3.1 SALIENT FACTS

3.1.1 Eskom and McKinsey & Company have negotiated a three year partnership agreement for the development of the top consulting group within Eskom.This partnership agreement contains a number of Service Level Agreements and shall, unless terminated in accordance with its terms, continue for a period of three (3) years.

3.1.2 Eskom and McKinsey have aligned that the basis for this programme would be the further development of Eskom's Top Consultant programme that includes McKinsey supporting Cohort 1 and 2 and building Cohort 3 during the contract period of 3 years.

3.1.3 In addition to the Top Consultant programme McKinsey shall aspire to sub-contract up to 50% of the contract value to other parties over the entire contract lifespan.

3.1.4 McKinsey intends to select small black owned consultancies wherever possible for this sub-contracting. The BBBEE credentials of the sub-contractors will be made accessible to Eskom upon request.

3.1.5 McKinsey executed on its BBBEE obligation from the start of work in January 2016.

3.1.6 Early in the execution phase practical insights where gathered and discussed with Eskom's management team. For instance the ramp-up of the envisaged BBBEE partners were much longer than anticipated. The key insight was that a multi-partner approach may potentially be better fit the complex requirements of the programme.

3.1.7 These insights and discussions led to the suggestion of a range of modifications with regard to the execution of the BBBEE partnership model. These changes will fully maintain the aspirations of the original BBBEE partnership model/SD&L contribution while significantly easing the practical implementation. Critically these modifications will enable Eskom to have far greater flexibility to achieve its own SD&L targets.

3.1.8 The decision of which BBBEE partner is best suited to partner with McKinsey to execute the work on the various workstreams / work packages will be taken by Eskom and McKinsey jointly on a work package by work package basis.

3.1.9 The agreed BBBEE fee quotas will accrued in an SD&L fund. This means that at every impact payment event McKinsey will invoice only to the amount of its quota with the remaining funds going into the SD&L development fund.

3.1.10 The consulting fees for the respective BBBEE partners will be paid out of the proposed SD&L fund subject to the same payment conditions as for the McKinsey impact payment. In the spirit of true partnership the implementation model can be reviewed and if necessary modified.

3.1.11 In the event surplus funds are generated – for instance in a case in which McKinsey doesn't require a BBBEE partner to the full extent envisaged or at all in a specific workstream/work-package – then the BBBEE partner quota not incurred will be transferred to the SD&L fund and can be used at Eskom's discretion.

3.2 BACKGROUND

3.2.1 McKinsey's skill development contribution is centred on the Top Consultant programme by supporting Cohort 1 and 2 and building Cohort 3 during the contract period of 3 years.

3.2.2 McKinsey is a proud contributor to the transformation of South Africa. In this context McKinsey, during the past years, has transformed into a B-BBEE Level 2 contributor under the new codes.

3.2.3 McKinsey has a proven track record of developing self-sustaining management consultancies by earmarking a share of its professional fees for them in respect of work to be undertaken by them and providing training and development in manifold forms.

3.2.4 In the context of Eskom, McKinsey assisted Letsema, one of South Africa's first black-owned management consulting firms (established in 1995), in developing into a self-standing entity.

3.2.5 Letsema subsequently grew at 40% p.a. from 2005 and now has more than 60 consultants. McKinsey contributed over the lifetime of Letsema 20% to 66% of its annual revenue.

3.2.6 Letsema is completely self-sustaining (since 2013) and serves Eskom as a self-standing consulting firm with its own supplier number and in a completely independent context from McKinsey.

3.3 MOTIVATION FOR TYPE OF CONTRACTING

3.3.1 Not applicable.

3.4 KEY ASSUMPTIONS

3.4.1 The selection of the management consulting partners will be fully aligned with Eskom.

3.4.2 McKinsey will seek Eskom's advice and guidance in this matter. For instance, black consultancies listed on the Eskom consultancy panel could be considered viable partners in this context.

3.4.3 McKinsey will honour the spirit of the conditions with regard to the development of BBBEE partners as set out in the original memorandum.

3.4.4 McKinsey will essentially share fees through the mechanism of invoicing only its quota of impact payments, with the BBBEE partner share withheld by Eskom in an SD&L fund for the subsequent payment of said BBBEE partner consulting fees.

3.5 FINANCIAL IMPLICATIONS

3.5.1 McKinsey and Eskom's SD&L representatives have agreed that the total value of the Top Engineers Programme is approximately R 1.3 bn.

3.5.2 McKinsey will invoice only for its share of impact payments, with the remainder – being the BBBEE partner quota – accruing into a virtual SD&L fund

3.5.3 McKinsey will aspire to achieve a BBBEE contract share of up to 50% (fifty percent) of the value of the contract over its lifespan.

3.5.4 The value of this contribution over and about the value of the Top Engineers Programme is approximately R305 million over the three year contract term

3.6 RISKS[JG1]

RISK	MITIGATING FACTORS	LEVEL (HIGH/MEDIUM/LOW)
	•	

3.6 VERIFICATION BY INDEPENDENT PARTY (if applicable)

Not applicable.

4. OTHER APPROVALS REQUIRED

Board of Directors approval may be required.

PRISH GOVENDER
…

SIGNATURE **DATE**
Who hereby represents that the above Information is correct.

ANOJ SINGH
GROUP CHIEF FINANCIAL OFFICER

SIGNATURE **DATE**
Who hereby represents that the above Information is correct.

Eskom	SUBMISSION DOCUMENT	Unique Identifier	221-222
		Document Type	OCSDTE
		Revision	0
		Review Date	Dec 2015
		Office of the Company Secretary Department	

CHECKLIST 1

		N/A	Yes	No
1.	**INTERNAL PROCESS**			
1.1	**BUSINESS PLAN** Has the project/issue been included in the business plan? (If no, information/explanation to be highlighted in documentation/ presentation/attachment.)			
1.2	**BUDGET** If financial approval is required, is the project/matter within the approved budget? (If no, information/explanation to be highlighted in documentation/ presentation/attachment.)			
1.3	**HUMAN RESOURCE IMPLICATIONS** Does the project have any HR implications? (If yes, information/explanation to be highlighted in documentation/presentation/attachment.)			
1.4	**FINANCIAL EVALUATION** - Has the project/issue undergone a financial evaluation? (If yes, by whom) - Has the evaluation been verified? - By whom (internally or independent)?			
1.5	**LEGAL/CONTRACTUAL ISSUES** - Are there legal implications? - Has Corporate legal department input been obtained? - If so, is the approval sought consistent with the legal input?			
1.6	**TAX IMPLICATIONS** - Are there tax implications? - Has corporate tax department input been obtained? - If so, is the approval sought consistent with the tax input?			
1.7	**CAPITAL PROJECTS** If the project is of a capital nature the checklist 2 (attached) for the evaluation of capital projects should be completed as well.			

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		N/A	Yes	No
1.8	**TECHNICAL EVALUATION** - Has the project/issue undergone a technical evaluation? (If yes, by whom) - Has the evaluation been verified? - By whom (internally or independent)?			
1.9	**BLACK ECONOMIC EMPOWERMENT IMPLICATIONS**			
	Does the project have any BEE implications?			
1.10	**EMPLOYMENT EQUITY**			
	Was due consideration given to employment equity in terms of the following:			
	- Project team - Drafting of submission documentation - Individual(s) presenting to EXCO			
2.	**ADDITIONAL APPROVALS**			
2.1	**NERSA**			
	- Is NERSA approval/consultation required? - If approval or consultation is required, provide details and also highlight the time lines, deadlines, etc.			
2.2	**PUBLIC FINANCE MANAGEMENT ACT (PFMA)**			
	- Is any PFMA approval required?			
2.3	**ARE THERE ANY OTHER APPROVALS REQUIRED? IN PARTICULAR** - Reserve Bank - Competition Commission - National Treasury			

SIGNATURE:

PRISH GOVENDER

…

SIGNATURE **DATE**

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ANOJ SINGH

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GROUP CHIEF FINANCIAL OFFICER

_____ _____

SIGNATURE **DATE**

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