

"X" A 22/6/20

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

Case Number: 42355/15

22

Before the Honourable Acting Deputy Judge President Potterill on 17 June 2020

A

In the *Ex Parte* application of:



JOHAN PIETER HENDRIK PRETORIUS FIRST APPLICANT

MONTANA DAVID KWAPA

SECOND APPLICANT

TRANSPORT PENSION FUND

THIRD APPLICANT

TRANSNET SECOND DEFINED
BENEFIT FUND

FOURTH APPLICANT

TRANSNET SOC LIMITED

FIFTH APPLICANT

(Application to approve a settlement agreement in respect of a certified class action)

DRAFT ORDER

HAVING READ THE PAPERS FILED IN THE APPLICATION THE FOLLOWING
ORDER IS MADE:

1. the settlement agreement (including the Annexures thereto) concluded between the Applicants on or about 11 December 2019 and attached hereto marked "A" ("the Settlement Agreement") is made an order of court;


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2. it is declared that the Settlement Agreement is binding on all the members of the class certified by this Court on 31 July 2014 under case number 25095/2013 ("**the Class**") and the parties to the Settlement Agreement;
3. the action instituted on behalf of the class under case 42355/15 is hereby settled and concluded among the parties and the members of the Class on the terms of the Settlement Agreement.



BY ORDER

REGISTRAR

REGISTRAR OF THE HIGH COURT OF SOUTH AFRICA GAUTENG DIVISION, PRETORIA
PRIVATE BAO/PRIVAATSAK 387 PRETORIA 0001
2020 -06- 22 
JUDGE'S SECRETARY REGTEERS KLERK
GRIFFIER VAN DIE HOE HOP VAN SUID AFRIKA GAUTENG AFDELING, PRETORIA

22/6/20

110009



SETTLEMENT AGREEMENT

between

TRANSNET SOC LIMITED

TRANSNET SECOND DEFINED BENEFIT FUND

TRANSPORT PENSION FUND

JOHAN PIETER HENDRIK PRETORIUS

MONTANA DAVID KWAPA

GEYSER & COETZEE ATTORNEYS

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PARTIES:

This Agreement is made between:

- (1) **Transnet SOC Limited**, a state owned company registered in accordance with the laws of South Africa under registration number 1990/000900/30 (**Transnet**);
- (2) **Transnet Second Defined Benefit Fund**, a juristic person operating as a pension fund, established by the Transnet Pension Fund Act 62 of 1990 (**TSDBF**);
- (3) **Transport Pension Fund**, a juristic person operating as a pension fund, established by the Transnet Pension Fund Act 62 of 1990 (**TPF**);
- (4) **Johan Pieter Hendrik Pretorius**, an adult male with South African Identity number **460119 5013 082**, in his personal capacity and in his capacity as Class Representative (**Pretorius**);
- (5) **Montana David Kwapa**, an adult male with South African Identity number **321210 5126 088**, in his personal capacity and in his capacity as Class Representative (**Kwapa**);
- (6) **Wynanda Wilhelmina Coetzee**, identity number **620511 0100 087**, trading as a sole proprietor under the name **Geyser & Coetzee Attorneys (G&C Attorneys)**.

WHEREAS

- A. On the Certification Date the Court authorised the institution of the Class Action Litigation.
- B. The Class Action Litigation has been instituted against the Defendants by the Plaintiffs.
- C. The Plaintiffs and Defendants wish to settle the Class Action Litigation fully and finally.
- D. The Parties have engaged with each other with the objective of seeking a comprehensive solution that addresses the history giving rise to the Class Action Litigation and the Settled Claims, and that is reasonable and financially sustainable in the interests of the Class and the Defendants.
- E. This Agreement is made and entered into by and between the Defendants, the Class Representatives and G&C Attorneys in its capacity as Class Legal Representative. This Agreement sets out the terms upon which, and the conditions subject to which:
 - (i) the pensions that are payable to Pensioners will be improved;
 - (ii) certain lump-sum payments to Pensioners will be made; and
 - (iii) the Settled Claims will be fully and finally settled.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

For the purposes of this Agreement including the introduction above:

- 1.1.1 **Agreement** means this Settlement Agreement, including all Schedules hereto;
- 1.1.2 **Business Day** means any day other than a Saturday, Sunday or statutory public holiday in South Africa;
- 1.1.3 **Certification Court Order** means the Court's order that was granted on 31 July 2014 under case number 25095/13;
- 1.1.4 **Certification Date** means 31 July 2014, being the date that the Court, under case number 25095/13, authorised the institution of the Class Action Litigation;
- 1.1.5 **Class** means the class, including two sub-classes or class categories, as certified in paragraphs 51.1 to 51.3 of the Certification Court Order excluding all persons who elected to opt out of the Class Action Litigation;
- 1.1.6 **Class Action Litigation** means the class action under case number 42365/15 before the Court including the proceedings leading to, and relating to, the Certification Court Order;
- 1.1.7 **Class Legal Representative** means G&C Attorneys acting in that capacity;
- 1.1.8 **Class Representatives** means Kwapa, as the representative of all members of the TSDBF who did not elect to opt out of the Class Action Litigation, and Pretorius, as representative of all members of the TPF who did not elect to opt out of the Class Action Litigation;
- 1.1.9 **Conditions** means the suspensive conditions set out in clause 2, to which this Agreement is subject, and **Condition** shall mean any one of them as the context may require;
- 1.1.10 **Court** means the High Court of South Africa (Gauteng Division, Pretoria);
- 1.1.11 **CPI** means the change (expressed as a percentage) between (i) the Index numbers for the month from which CPI is being calculated (or, where the Index numbers for that month are not yet released, the latest available Index numbers for the month closest in time prior to that month); and (ii) the Index numbers for the month in which CPI is being determined (or, where the Index numbers for that month are not yet released, the latest available Index numbers for the month closest in time prior to that month); and for the purposes of this clause the Index refers to the headline Consumer Price Index (urban/metropolitan areas, all items) as published in the Statistical Release P0141.1 compiled by Statistics South Africa or, in the absence thereof, a similar index nominated by the valuers of the Funds for the time being, acting jointly;
- 1.1.12 **Defendants** means Transnet and the Funds;
- 1.1.13 **Effective Date** means the date on which the last Condition is fulfilled or waived, or such other date as the Parties may agree in writing, in accordance with this Agreement;

- 1.1.14 **Funds** means the TPF and the TSDBF;
- 1.1.15 **Parties** means the parties to this Agreement as referred to in the section titled "Parties", or several of them as the context may require and **Party** shall mean any one of them;
- 1.1.16 **Pensioner** means a person who is entitled to receipt of a monthly pension from the TSDBF or the TPF (in terms of the prevailing rules of the relevant Fund) at the time(s) that benefits become due in terms of clauses 3 and 4 of this Agreement;
- 1.1.17 **Plaintiffs** means Pretorius and Kwapa;
- 1.1.18 **Rules** means the rules of the TPF or the rules of the TSDBF as the context may require, and in relation to any sub-fund of the TPF, means the special rules applicable to that sub-fund as read with the TPF's general rules, in each case, as prevailing at the relevant time;
- 1.1.19 **Settled Claims** means the Class' claims, instituted on its behalf by the Class Representatives, as set out in the Plaintiffs' amended particulars of claim filed with the Court on 31 July 2015 under case number 42355/15, and all and any claims or actions, whether in South Africa or any other jurisdiction, brought or instituted or capable of being brought or instituted by or on behalf of, or otherwise available to, any member of the Class or any member of the Funds from time to time, against all or any of the Defendants or their respective successors-in-title arising, directly or indirectly, from or related to any fact or cause of action pleaded or alleged in the Class Action Litigation;
- 1.1.20 **Signature Date** means the date on which this Agreement is signed by or on behalf of the last of the Parties to do so;
- 1.1.21 **Transfer Date** means a date determined by the valuator of the TSDBF and TPF, and reasonably confirmed by an actuary nominated by Transnet, as the date as at which the values and transfers in terms of clause 6 are to be determined and effected;
- 1.1.22 **Transfer Value** means an amount determined by the valuator of the TSDBF and TPF, and reasonably confirmed by an actuary nominated by Transnet, as the amount required to be transferred from the TSF to the TSDBF on the Transfer Date in terms of clause 6 of this Agreement so that the funding levels of the TSDBF and the TSF as at the Transfer Date are the same, on the basis that the TSDBF and the TSF are deemed to have been legally obliged on the Transfer Date to pay the enhanced benefits described in clause 3 and clause 4 of this Agreement, including for the avoidance of doubt the targeted pension increases contemplated by clause 4.5.2;
- 1.1.23 **TSF** means the Transnet Sub-Fund of the TPF, established in terms of the Transnet Pension Funds Act 62 of 1990.

1.2 Interpretation

- 1.2.1 Unless expressly provided to the contrary or inconsistent with the context, a reference in this Agreement to:

- 1.2.1.1 this Agreement or any other agreement, document or instrument shall be construed as a reference to this Agreement or that other agreement, document or instrument as amended, varied, novated or substituted from time to time;
- 1.2.1.2 a clause, sub-clause or Schedule is to a clause, sub-clause or schedule of or to this Agreement;
- 1.2.1.3 a person includes any natural person, estate, firm, company, corporation, body corporate, juristic person, unincorporated association, government, state or agency of a state or any association, trust, partnership, syndicate, consortium, joint venture, charity or other entity (whether or not having separate legal personality);
- 1.2.1.4 any one gender, whether masculine, feminine or neuter, includes the other two;
- 1.2.1.5 the singular includes the plural and *vice versa*;
- 1.2.1.6 a word or expression given a particular meaning includes cognate words or expressions;
- 1.2.1.7 any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day is a day that is not a Business Day, the next Business Day;
- 1.2.1.8 a statutory provision includes any subordinate legislation made from time to time under that provision and a reference to a statutory provision includes that provision as from time to time amended or modified or re-enacted as far as such amendment or modification or re-enactment applies, or is capable of applying, to this Agreement or any transaction entered into in accordance with this Agreement;
- 1.2.1.9 the words including, include or in particular followed by specific examples shall be construed by way of example or emphasis only and shall not be construed, nor take effect, as limiting the generality of any preceding words, and the *ejusdem generis* rule shall not to be applied in the interpretation of such specific examples or general words; and
- 1.2.1.10 the words other or otherwise shall not be construed *ejusdem generis* with any foregoing words where a wider construction is possible.
- 1.2.2 All the headings and sub-headings in this Agreement are for convenience and reference only and shall be ignored for the purposes of interpreting it.
- 1.2.3 A term defined in a particular clause or Schedule in this Agreement, unless it is clear from the clause or Schedule in question that application of the term is to be limited to the relevant clause or Schedule, bears the meaning ascribed to it for all purposes of this Agreement, notwithstanding that that term has not been defined in clause 1.1, and where there is any inconsistency between any term defined in clause 1.1 and any term defined in any clause or Schedule in the Agreement, then, for the purposes of construing such clause or Schedule the term as defined in such clause or Schedule prevails.
- 1.2.4 No rule of construction may be applied to the disadvantage of a Party because that Party was responsible for or participated in the preparation of this Agreement or any part of it.

- 1.2.5 If a definition confers substantive rights or imposes substantive obligations on a Party, such rights and obligations shall be given effect to and are enforceable as substantive provisions of this Agreement, notwithstanding that they are contained in that definition.

2. SUSPENSIVE CONDITION

- 2.1 All the provisions of this Agreement except for the provisions of this clause 2, 3, 8, 9, 10, 11, 12, 13 and 14, all read with clause 1 and the Schedules required to give effect to or interpret such clauses (which shall take effect and become operative immediately on the Signature Date) shall be subject to the fulfilment (or, where waiver is permitted in terms of this Agreement, waiver), of the following suspensive conditions on or before 30 April 2020 ("Target Date"), or such date(s) as the Defendants and Class Legal Representative may agree in writing before the Target Date (it being agreed that the Defendants and Class Legal Representative may extend the date(s) for the fulfilment of any of the Conditions on more than one occasion and for such further period as reasonably necessary in order to facilitate the fulfilment of the particular suspensive condition):
- 2.1.1 The Court's granting an unconditional order --
- 2.1.1.1 making this Agreement an order of court;
- 2.1.1.2 binding the members of the Class and the Defendants to this Agreement;
- 2.1.2 Approval by the Minister of Public Enterprises, with the concurrence of the Minister of Finance, of the draft rule amendments to the respective rules of the TSF and the TSOBF as set out in Schedule 5;
- 2.1.3 Adoption (or confirmation of adoption) by the boards of the TSF and the TSOBF of the pension increase policies required to give effect to this Agreement, as set out in Schedule 6; and
- 2.1.4 The PRASA sub-fund of the TPF and the SAA sub-fund of the TPF receiving the necessary approvals in terms of their Rules to give effect to the benefit enhancements proposed in respect of those sub-funds in this Agreement.
- 2.2 The Condition in clause 2.1.1 is stipulated for the benefit of all the Parties and may be waived in full or partially by agreement in writing between the Defendants and the Class Legal Representative.
- 2.3 The Conditions in clauses 2.1.2, 2.1.3 and 2.1.4 are stipulated for the benefit of all the Defendants and, to the extent permissible in law, either or both of those Conditions may be waived in full or partially by written notice by all the Defendants to the Class Legal Representative free of or subject to any conditions particularised in such notice.
- 2.4 If any one or more of the Conditions is duly waived in accordance with the provisions of clauses 2.2 or 2.3, then the Condition so waived shall be deemed to have been fulfilled.
- 2.5 If any Condition is not timeously fulfilled or deemed to be fulfilled, then at any time on or following the Target Date, any Party may put the relevant other Party or Parties on notice to procure fulfilment or waiver of such Condition within a period that is reasonable and achievable in the circumstances, failing which all of the provisions of this Agreement which were suspended in terms of clause 2.1 shall not take effect and the provisions which have taken effect shall fall away - including for avoidance

of doubt any undischarged obligation to pay any unpaid amount under clause 3 - unless otherwise agreed in writing by the Defendants and the Class Legal Representative.

- 2.6 The Parties shall cooperate with one another and do everything reasonably required of them, including the furnishing of all such information as may be reasonably required, for the purposes of procuring the fulfilment of all the Conditions. Without derogation from the foregoing, for the purposes of fulfilment of the Condition referred to in clause 2.1.1, the Parties shall comply with the procedures set out in Schedule 1.
- 2.7 Unless otherwise specified, each Party shall bear its own costs of and incidental to procuring the fulfilment of the Conditions.

3. SPECIAL LUMP SUM AWARDS:

- 3.1 By the end of the calendar month following the month in which the Signature Date falls, TSDBF and TPF shall pay to each of their respective Pensioners an amount of R10 000.00 (ten thousand Rand). The payment to be made by the TSDBF and the TPF in terms of this clause 3.1 shall be made by the relevant Fund by or on the same date as the date on which that Fund makes payment of pensions to its Pensioners in the ordinary course.
- 3.2 By the end of the calendar month following the month in which the first anniversary of the Signature Date occurs, TSDBF and TPF shall pay to each of their respective Pensioners an amount of R10 000.00 (ten thousand Rand).
- 3.3 By the end of the calendar month following the month in which the second anniversary of the Signature Date occurs, TSDBF and TPF shall pay to each of their respective Pensioners an amount of R10 000.00 (ten thousand Rand).
- 3.4 Each payment to each Pensioner in terms of clauses 3.1 to 3.3 inclusive (each such amount being a "Special Lump Sum Award") shall be made less such tax as the relevant Fund is obliged to deduct and remit in respect of each Pensioner.
- 3.5 Clauses 3.1 to 3.3 inclusive shall not prevent the board(s) of either or both Funds (including the sub-funds of the TPF) from granting additional or greater lump sum awards to any Pensioner(s) during the periods contemplated in those clauses if the relevant board is empowered, and it is affordable, to do so in terms of the relevant fund's applicable rules and policies.
- 3.6 If a person who was a Pensioner ("the Deceased") has died or does die before the date on which a Special Lump Sum Award becomes due to Pensioners in terms of clause 3.1, 3.2 or 3.3, then for the avoidance of doubt, even if the Deceased was not a Pensioner as at the Certification Date, each of the Deceased's dependants and/or beneficiaries who becomes eligible as a Pensioner in terms of the Rules as a consequence of the Deceased's death, will consequently also be regarded as a Pensioner in terms of this Agreement for purposes of benefits subsequently becoming due to Pensioners, and the Deceased's estate will have no claim to any benefits under this Agreement or any such Rules.
- 3.7 If the Deceased has no dependant and/or beneficiary who becomes eligible as a Pensioner in terms of the Rules as a consequence of the Deceased's death, then the Deceased's estate will have no entitlements pursuant to this Agreement or otherwise against any of the Defendants.

3.8 Commencing from the financial year following the financial year in which the Special Lump Sum Award stipulated in clause 3.3 is due, the trustees of TSDBF and TPF will have the discretion to grant bonuses to Pensioners, subject to affordability, as certified by the relevant Fund's actuary, and on such terms and conditions that may be imposed by the trustees of the Fund, in accordance with the relevant Fund's bonus policy duly adopted and prevailing from time to time. Any such bonuses will be considered and, if awarded will be paid by the end of November each year, or such other time as determined in accordance with the relevant Fund's applicable Rules and policies.

3.9 For so long as this Agreement has been signed by all Parties but has not been made an order of court or otherwise taken effect in terms of clause 2, the provisions of this clause 3 shall be implemented by the Funds and the sub-funds of the TPF in accordance with, and as permitted by, their respective Rules.

3.10 Notwithstanding clause 3.8, the provisions of this clause 3 do not prohibit or limit the provision of benefits by either of the Funds or any of the sub-funds of the TPF in accordance with their respective Rules.

3.11 The obligation of the TPF to pay the amounts contemplated in this clause 3 to the Pensioners who receive Pensions from the SAA sub-fund of the TPF shall be suspended until such time as the SAA sub-fund has received the necessary employer approval in terms of its Rules to pay those amounts.

4. PENSION INCREASES

4.1 TSDBF and TPF shall continue to grant to Pensioners a minimum pension increase of 2% per annum in accordance with applicable law and their respective Rules. The special pension increases in clause 4.2, clause 4.3 and clause 4.4 are in addition to this minimum pension increase.

4.2 On or by the end of the second month following the month in which the Effective Date falls:

4.2.1 the TSDBF, the TSF and the PRASA sub-fund of the TPF, shall increase all pensions payable to each of their respective Pensioners by 11% (eleven percent); and

4.2.2 the SAA sub-fund of the TPF shall increase the pensions payable to each of its Pensioners to an amount determined by the valuator of the TPF in respect of each Pensioner as the pension to which that Pensioner would have been entitled on the date the increase takes effect had that Pensioner received an annual pension increase, since the pension was first paid, equal to 70% of inflation (year-on-year changes in CPI).

4.3 On the first anniversary of the date on which the enhancement referred to in clause 4.2 is effected, all pensions payable to Pensioners of the TSDBF, the TSF and the PRASA sub-fund of the TPF, shall be increased by 7% (seven percent).

4.4 On the second anniversary of the date on which the enhancement referred to in clause 4.2 is effected, all pensions payable to Pensioners of the TSDBF, the TSF and the PRASA sub-fund of the TPF shall be increased by 4% (four percent).

4.5 In all of TSDBF's and TPF's subsequent financial years following the financial year in which pensions are increased as stipulated in clause 4.4:

- 4.5.1 TSDBF and TPF shall continue to grant to Pensioners a minimum pension increase of 2% per annum in accordance with applicable law and their respective Rules;
- 4.5.2 In respect of the TSDBF and TSF:
- 4.5.2.1 the relevant pension increase policy will target pension increases of 70% (seventy percent) of CPI, calculated inclusive of the minimum increase referred to in clause 4.1; and
- 4.5.2.2 the relevant trustees will have the discretion to grant pension increases in excess of 70% (seventy percent) of CPI, subject to affordability, as certified by the relevant Fund's actuary, and on such terms and conditions that may be imposed by the trustees, in accordance with the relevant Fund's rules and its pension increase policy duly adopted and prevailing from time to time.
- 4.6 This Agreement does not affect the powers and obligations of the board of the TPF and the relevant sub-fund boards to determine the pension increase policy of the PRASA Sub-fund of the TPF and the SAA Sub-fund of the TPF in accordance with their respective rules and applicable law. The provisions of clause 4, in so far as they relate to the PRASA Sub-fund of the TPF and insofar as any rule amendments are required to be made to the special rules of the PRASA Sub-fund in order for it to provide the enhanced benefits in terms of clause 4 to its members, shall only take effect once the ministerial approval that is required for the necessary rule amendments, has been obtained. The members of the PRASA Sub-fund shall be entitled to such enhanced benefits from the PRASA sub-fund with effect from the same date as that from which all other members of the Class received such benefit enhancements. Including if the payment of increased pensions to PRASA Sub-fund members takes effect after the increases to other TPF members, a once-off payment to PRASA Sub-fund members equal to the amount of the increase to pensions that would have been paid had the required ministerial approval been obtained prior to the Effective Date.
- 4.7 The provisions of this Agreement that relate to the SAA sub-fund and the PRASA sub-fund of the TPF do not amount to an undertaking by Transnet to procure a specific outcome, nor a guarantee, confirmation, promise or warrant that a specific outcome can or will be achieved in a particular manner or within a particular timeframe or at all.
- 4.8 Clauses 4.1 to 4.4 inclusive shall not prevent the board of the TPF or a sub-fund from granting a pension increase in any of the years contemplated in those clauses, greater than the increase provided for in clause 4.2, 4.3 and/or 4.4 as the case may be (a "Greater Increase") to any Pensioner(s) if the board is empowered to do so in terms of its rules and policies, in which case such Greater Increase shall discharge and replace the obligation to pay the otherwise applicable increase for the year in question.

5. FULL AND FINAL SETTLEMENT

- 5.1 Without any admission of liability by the Defendants, with effect from the Effective Date, the Defendants and the Class Representatives (acting in their own capacity and for and on behalf of the members of the Class) and the Class Legal Representative, hereby settle fully and finally the Settled Claims and the costs and disbursements in regard to the Class Action Litigation, including any costs orders awarded by the appellate courts, on the basis set out in this Agreement.

5.2 It is the Parties' common intention that this Agreement will dispose of any and all claims by any member of a Class against any person relating to the historical funding of the Funds (or their predecessors in title), the Funds' respective abilities to grant pension increases greater than 2% per year historically, historical investment and other transactions that did affect or are perceived to have affected those abilities, and the existence or status of the so-called 'legacy debt' as referred to in the Class Action Litigation.

5.3 The Class Legal Representative records that to the best of her knowledge, only one person, the late Mr Gordon Meiring Thompson, a now-deceased former member of the TSDBF, had exercised the election to opt out of the Class Action Litigation. The Defendants rely on this recordal.

5.4 The Parties agree, and shall each co-operate with the others to ensure, that the order contemplated in clause 2.1.1 shall provide that an effect of this Agreement being made an order of court is that the Class Action Litigation will terminate on the Effective Date, being finally determined in terms of this Agreement.

6. DETERMINATION OF TRANSFER VALUE AND TRANSFER OF ALLOCATED ASSETS

6.1 The Parties agree that in order to give full effect to the undertakings in Clauses 3 and 4 on a financially sound and sustainable basis, it is necessary and therefore desirable for the steps described in clause 6.2 to be implemented on the following basis, without derogating from the times for payment and awarding of increases stipulated in clauses 3 and 4.

6.2 The following steps shall be completed by the fifth Business Day after the Effective Date:

6.2.1 the TPF shall instruct the valuator of the TPF to determine the amount of the "Actuarial Surplus" of the TSF in accordance with the Rules;

6.2.2 the TPF and the TSDBF shall instruct the valuator of the TPF and the TSDBF to determine the Transfer Date and the Transfer Value, in cooperation with an actuary nominated by Transnet;

6.2.3 Transnet shall appoint and nominate such an actuary;

6.2.4 the Transfer Date and the Transfer Value as at that date shall be determined;

6.2.5 the TSF shall allocate the Transfer Value to the "Employer Surplus Reserve" of the TSF (as defined in the special rules) in terms of rule 19.2 of the special rules;

6.2.6 In consultation with the valuator of the Funds, the TPF and the TSDBF shall identify the assets of the TSF to be transferred to the TSDBF (such assets, the "Allocated Assets") on account of the obligation of the TSF to transfer the Transfer Value to the TSDBF on the Transfer Date in terms of clause 6.3. The value of the Allocated Assets, as agreed by the TPF and the TSDBF, shall equal the Transfer Value.

6.3 The TSF shall transfer the Allocated Assets directly to the TSDBF in terms of Special Rule 19.5.2, as at the Transfer Date.

6.4 The TSDBF shall receive the Allocated Assets from the TSF on the Transfer Date as a once-off contribution from Transnet in terms of its Rule 3(5) as read with its Rule 9(2).

- 6.5 Transnet, the TSDBF, TPF and TSF undertake to table and adopt all such resolutions as may be necessary to implement the steps set out in clause 6.2, clause 6.3 and clause 6.4 timeously.
- 6.6 Transnet's signature of this Agreement constitutes (i) the consent contemplated in Special Rule 19.2 as well as (ii) Transnet's agreement to exercise its discretion in terms of Special Rule 19.5 so as to transfer all the monies standing to the credit of the "Employer Surplus Account" to the TSDBF, being another pension fund which Transnet is required wholly or partially to underwrite as contemplated in Special Rule 19.5.2.
- 6.7 In signing this Agreement the Parties agree that the provisions of the Transnet Pension Fund Act 62 of 1990, the provisions of the general rules of the TPF and the provisions of the special rules of each sub-fund of the TPF, in terms of which provisions each sub-fund of the TPF is required to fund the benefits payable by that sub-fund from the assets ring-fenced for the relevant sub-fund shall continue to apply to any pension or other benefit enhancements that may be granted by the relevant sub-fund from the Effective Date to members of that sub-fund of the TPF.

7. FUTURE CONSOLIDATION OF MEMBERS, ASSETS AND LIABILITIES OF TSDBF AND TSF

- 7.1 The Parties agree that it is desirable to consolidate the assets, liabilities and membership of the TSDBF and the TSF in due course in order to give full effect to the undertakings in Clauses 3 and 4 on a financially sound and sustainable basis. With a view to achieving this consolidation, within 10 (ten) Business Days of the implementation of the steps described in clause 6 above, the Defendants shall convene to agree the mechanism, process and timeline to be pursued for the consolidation of the TSDBF and the TSF as a single retirement fund or sub-fund as soon as practicably possible after the Effective Date.
- 7.2 None of the Class Representatives or Class Legal Representative shall oppose, frustrate, impede, delay or challenge any of the steps required to achieve the transfer contemplated above, nor any steps that may be required to be taken to consolidate the assets, liabilities and members of the TSDBF and the TSF in due course, including rule amendments, board resolutions, ministerial or parliamentary actions, including the enactment, amendment or repeal of legislation or regulations.
- 7.3 Transnet shall lay no claim against any or all of the actuarial surplus in either Fund:
- 7.3.1 prior to or during the consolidation of the assets, liabilities and members of the TSF and TSDBF described in clause 7.1; or
- 7.3.2 thereafter at any time except insofar as any surplus is in addition to that which is required to pay or fund the benefit enhancements contemplated by this Agreement and any guaranteed or targeted increase or ad hoc bonus or additional payments to Pensioners, including those contemplated by this Agreement and those contemplated by the pension increase and other benefits policies of the Funds from time to time. Any such future claim on any such surplus shall be made and determined in accordance with the Rules of the relevant Fund.
- 7.4 Nothing in this Agreement shall prevent either of the Funds or any sub-fund of the TPF from pursuing registration in terms of the Pension Funds Act, 24 of 1956, as amended, or similar or substitute legislation.

8. NOTICES

- 8.1 Without unreasonable delay after the Court has granted the rule nisi (as contemplated in Schedule 1) or on a date to be determined by the Court, the Defendants and the Class Legal Representative shall cause to be published a notice (substantially in accordance with the notice attached as Schedule 2 and subject to any amendments required by the Court (the **First Class Notice**)).
- 8.2 Without unreasonable delay after the Effective Date, the Defendants and the Class Legal Representative shall cause to be published another notice (the **Second Class Notice**) to: (i) announce the settlement of the Settled Claims as contemplated in this Agreement; and (ii) announce that this Agreement has become unconditional.
- 8.3 The First Class Notice and the Second Class Notice shall, at a minimum be:
- 8.3.1 published at the pension pay points where members of the Class draw their pensions for a period not less than 30 days;
- 8.3.2 published as part of the pay advice of each member of the Class;
- 8.3.3 published as advertisements in the newspapers listed in Schedule 3 (if those newspapers are still in operation as at the date of publication) and published in each such newspaper once per week for a period of 2 (two) weeks;
- 8.3.4 published on a prominent notice board at the offices of the Class Legal Representative for a period of not less than 30 days; and
- 8.3.5 published on the websites of Transnet and the Class Legal Representative for a period of not less than 30 days.
- 8.4 With the exception of the publication to be undertaken by the Class Legal Representative as contemplated in clauses 8.3.4 and 8.3.5, the costs in relation to the publication of the First Class Notice and the Second Class Notice shall be borne by the Defendants.

9. LEGAL COSTS

- 9.1 Transnet and the Class Legal Representative record that negotiations pertaining to the amount payable to the Class Legal Representative were, or as at the Signature Date were being, negotiated from a time after the Parties concluded negotiations in respect of the benefits that will accrue to Pensioners in accordance with this Agreement.
- 9.2 By their Signature thereto, the Class Representatives, the Class Legal Representative and each of the Defendants record in Schedule 7 that they are satisfied that the payment to be made to G&C Attorneys is fair and reasonable.
- 9.3 Unless and to the extent agreed otherwise between the Class Legal Representative and Transnet, within 30 (thirty) Days after it receives the written order of the Court contemplated in clause 2.1.1, Transnet shall pay to G&C Attorneys, on its behalf and that of the Funds (without recourse to the Funds), and in full and final settlement by the Defendants of, the Plaintiffs' legal costs and disbursements in relation to the Class Action Litigation and the Settled Claims, an agreed, once

amount (including disbursements and Inclusive of Value Added Tax to the extent applicable) by electronic transfer into the following trust account of the Class legal Representative:

Account Name:	Geysar & Coetzee Trust
Bank:	ABSA Bank
Branch Code:	632 005
Account Number:	406 083 0013

- 9.4 The Class Legal Representative agrees that, in exchange for the final payment in clause 9.3, she will not seek to recover any legal fees or disbursements or any other contribution from her individual clients pursuant to any contingency fee agreements entered into between them in respect of the Class Action Litigation or the settlement thereof and that she shall not seek to recover any fees or costs from, for or on behalf of any member of the Class in relation to the Class Action Litigation or the settlement thereof. The Class Legal Representative shall continue to provide the Class with all of the legal services required to implement this Agreement and to meet her and the Class' undertakings under this Agreement. This agreement in respect of fees and disbursements extends to any legal services provided after date of signature of this Agreement in that regard.

10. UNDERTAKINGS BY THE PARTIES

- 10.1 For purposes of this clause 10, **Confidential Information** means any and all information or data in whatever form (written, oral, visual, electronic or otherwise): (i) about the Defendants; and (ii) obtained by the Class Representatives and/or the Class Legal Representative in the course of the Class Action Litigation or pursuant to the settlement discussions and settlement negotiations between the Parties from time to time in connection with the Class Action Litigation or otherwise required for the purposes of and/or in connection with this Agreement.
- 10.2 Each of the Class Representatives and the Class Legal Representative undertakes to each of the Defendants that it shall, except to the extent the following provisions violate applicable rules of professional conduct:
- 10.2.1 treat all Confidential Information as strictly private and confidential and shall not disclose any of the Confidential Information to any third party in any manner whatsoever, save for in the circumstances contemplated in clause 10.3;
- 10.2.2 use the Confidential Information only for the purpose of implementing the settlement contemplated in this Agreement;
- 10.2.3 protect the Confidential Information using the same standard of care that it applies to its own proprietary, secret or confidential information (which shall be no less than a reasonable standard of care);
- 10.2.4 use its best endeavours to ensure that no person gains access to any Confidential Information from it/him, unless authorised by the relevant Fund or Transnet (as applicable) and to inform the relevant Fund or Transnet (as applicable) immediately on becoming aware, or suspecting, that an unauthorised person has become aware of any Confidential Information; and

- 10.2.5 In the case of the Class Legal Representative, procure that each of its directors, partners, employees, contractors, advisors, agents or representatives complies with the undertakings provided for in clauses 10.2.1 to 10.2.4.
- 10.3 The Class Representatives and/or the Class Legal Representative may only disclose and/or use the Confidential Information:
- 10.3.1 where required by any court of competent jurisdiction or any competent judicial, governmental, supervisory or regulatory body;
- 10.3.2 where required by the applicable laws or regulations; and
- 10.3.3 which is or becomes publicly known, otherwise than pursuant to a breach of this Agreement. For the avoidance of doubt, the documents discovered by the Defendants pursuant to the Class Action Litigation shall not be considered to be publicly known by the mere fact that they have been discovered by the Defendants.
- 10.4 Before the Class Representatives and / or the Class Legal Representative disclose any information under clause 10.3, each of the Class Representatives and / or the Class Legal Representative shall (to the extent permitted by law) use all reasonable endeavours to:
- 10.4.1 Inform the relevant Fund or Transnet (as applicable) of the full circumstances of the disclosure and the information that will be disclosed, and take all such steps as may be reasonable and practicable in the circumstances to agree the contents of such disclosure with the relevant Fund or Transnet (as applicable) before making the disclosure;
- 10.4.2 consult with the relevant Fund or Transnet (as applicable) as to possible steps to avoid or limit disclosure and take those steps where they would not result in significant adverse consequences to the relevant Fund or Transnet (as applicable);
- 10.4.3 gain assurances from the body to whom the information is to be disclosed that it will be treated confidentially; and
- 10.4.4 where the disclosure is by way of public announcement, agree the wording with the relevant Fund and/or Transnet in advance.
- 10.5 The Class Representatives and / or the Class Legal Representative shall co-operate with the relevant Fund and / or Transnet (as applicable), at the cost of the party requesting such co-operation, if either of the Funds or Transnet decide to bring any legal or other proceedings to challenge the validity of the requirement to disclose Confidential Information.
- 10.6 If the Class Representatives and / or the Class Legal Representative are unable to inform the relevant Fund and / or Transnet before Confidential Information is disclosed, the Class Representatives and / or the Class Legal Representative shall (to the extent permitted by law) promptly inform the relevant Fund and/or Transnet after the disclosure of the full circumstances of the disclosure and the information that has been disclosed.

11. DISPUTE RESOLUTION

- 11.1 In the event of any dispute arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, then any Party may give written notice to the other Parties to the dispute to initiate the procedure set out below (the **Dispute Notice**).
- 11.2 The Parties to the dispute shall first endeavour to settle the dispute by mediation.
- 11.3 The Parties to the dispute shall agree on a mediator within 5 (five) Business Days of the Dispute Notice.
- 11.4 If for any reason the Parties to the dispute do not agree on a mediator within 5 (five) Business Days of receipt of the Dispute Notice or the mediator agreed upon by the Parties to the dispute cannot or does not accept an invitation to mediate and the Parties to the dispute have for any reason failed to agree on another mediator within 10 (ten) Business Days of receipt of the Dispute Notice, then any Party to the dispute may ask the Chairman of the General Council of the Bar Association to appoint a mediator.
- 11.5 The Parties to the dispute shall agree on the mediation procedure and failing agreement within 5 (five) Business Days of receipt of the Dispute Notice (or such longer period of time as may be agreed to in writing) then, the mediation shall take place in accordance with the United Nations Commission on International Trade Law (**UNCITRAL**) Model Conciliation Rules in force at the time of the dispute.
- 11.6 If for any reason, including lack of co-operation by the Parties to the dispute, a dispute is not settled by mediation within 30 (thirty) days of receipt of the Dispute Notice or such longer period of time as may be agreed to in writing, then the dispute shall be settled by arbitration.
- 11.7 The Parties to the dispute may agree on the arbitration procedure and on the arbitrator and, failing agreement within 5 (five) days of the expiry of the period referred to in clause 11.6 (or such longer period as may be agreed to in writing), the arbitration shall take place in accordance with the Uniform Rules of Court in force at the time of the dispute.
- 11.8 The appointing authority in relation to an arbitration shall be the Association of Arbitrators (Southern Africa).
- 11.9 Unless agreed otherwise, the mediation and the arbitration shall be administered by the Parties to the dispute.
- 11.10 The number of mediators shall be 1 (one) and the number of arbitrators shall be 3 (three).
- 11.11 The place of the mediation and the arbitration shall be Sandton, South Africa.
- 11.12 The governing substantive law of the Agreement shall be the law of South Africa. The governing procedural law of the mediation and arbitration shall be the law of South Africa.
- 11.13 The arbitrators shall have the same remedial powers as a court of law in South Africa would have were it adjudicating the dispute. The arbitrators shall deliver an award together with written reasons within 30 (thirty) days from the date on which the arbitration ends.

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11.14 Nothing in this clause shall preclude any Party from applying to a duly constituted court of competent jurisdiction for urgent interim relief (including but not limited to): (i) to compel arbitration; (ii) to obtain interim measures of protection prior to or pending arbitration; (iii) to seek such injunctive relief as may be necessary and appropriate; (iv) to enforce any decision of the arbitrator, including the final award; (v) for judgment in relation to a liquidation claim; or (vi) to enforce any security granted in terms of, or relating to, this Agreement and to this end the Parties hereby consent to the jurisdiction of the Court.

12. ANNOUNCEMENTS AND CONFIDENTIALITY

12.1 Subject to clauses 12.2 and 12.3, no Party shall make any announcement or statement about this Agreement or its contents without first having obtained the other Parties' prior written consent to the announcement or statement and to its contents, provided that such consent may not be unreasonably withheld or delayed.

12.2 Each Party shall be entitled to make an announcement or statement about this Agreement or its contents if the announcement or statement is made in accordance with the rules and guidelines set out in Schedule 4. Without derogation from the foregoing, the Defendants and the Class Legal Representative may approve or organise joint publicity events in relation to the settlement contemplated in this Agreement.

12.3 The provisions of clauses 12.1 and 12.2 do not apply to any announcement or statement which any of the Parties is obliged to make in terms of any applicable law, or any other regulator having jurisdiction, provided that the Party in question, to the extent practical, shall consult with the other Parties before making any such announcement or statement.

13. GENERAL

13.1 Effect of specific Transnet undertakings

To the extent that any undertaking by Transnet in clauses 2.6, 2.7, 5.3, 6.2.3, 6.5, 6.6, 7.1, 7.3, 8.2, 8.4, 9.2 and 9.3, would, but for the signature of this Agreement by Transnet otherwise require an approval, consent or the exercise of a discretion by Transnet in terms of any law, any rules of the Funds or any other governance instrument, such approval, consent or discretion is given and/or exercised by Transnet by its signature of this Agreement. To the extent that Transnet's approval, consent or exercise of discretion is required for the Funds to give effect to any of the undertakings in clauses 3.1, 3.2, 3.3, 4.2, 4.3 and 4.4, such approval or consent is, by its signature of this Agreement hereby duly granted, and such discretion is hereby duly exercised, by Transnet. To the extent that any such approval, consent or exercise of discretion was given or made by Transnet prior to the signature of this Agreement by Transnet, this clause 13.1 serves as a confirmation of such approval or consent or exercise of discretion.

13.2 Communications between the Parties

All notices, demands and other oral or written communications given or made by or on behalf of any of the Parties to any other Party shall be in English or accompanied by a certified translation into English.

13.3 Remedies

No remedy conferred by this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, by statute or otherwise. Each remedy is cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, by statute or otherwise. The election of any one or more remedies by any of the Parties does not constitute a waiver by such Party of the right to pursue any other remedy.

13.4 Entire Agreement

13.4.1 This Agreement constitutes the entire agreement between the Parties in regard to its subject matter.

13.4.2 No Party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this Agreement.

13.5 Variations

No agreement to vary, add to or cancel this Agreement shall be of any force or effect unless recorded in writing and signed by or on behalf of all of the Parties.

13.6 No Waiver

13.6.1 A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and is not deemed a waiver of any subsequent breach or default.

13.6.2 A failure to exercise or a delay by a Party in exercising any right or remedy provided under this Agreement or by law does not constitute a waiver of that or any other right or remedy, nor does it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under this Agreement or by law prevents or restricts the further exercise of that or any other right or remedy.

13.7 Survival of Rights, Duties and Obligations

Termination or expiry of this Agreement for any cause does not release any Party from any liability which at the time of termination or expiry has already accrued to such Party or which thereafter may accrue in respect of any act or omission prior to such termination or expiry.

13.8 Severance

If any provision of this Agreement that is not material to its efficacy as a whole is rendered void, illegal or unenforceable in any respect under any law of any jurisdiction, the validity, legality and enforceability of the remaining provisions are not in any way affected or impaired thereby and the legality, validity and unenforceability of such provision under the law of any other jurisdiction are not in any way affected or impaired.

13.9 Assignment

13.9.1 Subject to clause 13.9.2 and unless otherwise permitted by the terms of this Agreement, none of the Defendants may cede any of its rights or delegate any of its obligations under this Agreement

to any person without the prior written consent of the Class Legal Representative, which consent shall not be unreasonably withheld or delayed.

13.9.2 Either Fund shall be entitled to cede its rights and/or delegate all or any of its obligations under and/or arising from this Agreement to any person to whom it transfers all or any of its assets and/or undertaking, provided: (f) that it has given Transnet advance written notice of the extent of such proposed cession or delegation before it has been agreed with the proposed recipient or unilaterally effected as the case may be, and (g) that Transnet's consent is obtained - on the basis that it may not be withheld unreasonably - in writing prior to conclusion of the proposed agreement or effective decision to cede and/or delegate. Any such transfer includes any consolidation of the assets, liabilities and members of the TSF and the TSOBF as contemplated in clause 7.

13.9.3 No Class Representative may cede any of his rights or delegate any of his obligations under this Agreement to any person without the prior written consent of the Defendants, which consent shall not be unreasonably withheld or delayed.

13.9.4 Unless otherwise contemplated by the terms of this Agreement, the Class Legal Representative may not cede any of its rights or delegate any of its obligations under this Agreement to any person without the prior written consent of the Defendants, which consent shall not be unreasonably withheld or delayed.

13.9.5 This assignment clause does not apply to either Class Representative or Plaintiff's rights and obligations attendant upon his status as a member of one of the Funds nor to any Fund's, rights and obligations under statute, regulation and its own rules.

13.10 **Counterparts**

This Agreement may be signed in any number of counterparts. Each counterpart is an original and all counterparts taken together constitute one and the same instrument. Any Party may enter into this Agreement by signing any such counterpart.

13.11 **Applicable law**

This Agreement is governed by and shall be construed in accordance with the laws of South Africa.

14. ADDRESSES FOR LEGAL PROCESSES AND NOTICES

14.1 The parties choose for the purposes of this Agreement the following addresses and email addresses:

14.1.1 **Transnet SOC Limited**

9 Country Estate Drive
 Waterfall Business Estate
 Juskel View
 Midrand
 Gauteng
 1662

028
 028

Email address: Ndiphiwe.Siliso@transnet.net

Marked for the attention of the Group Executive: Legal and Compliance

14.1.2 Transnet Second Defined Benefit Fund

Tower 2
 13th Floor
 102 Rivonia Road
 Sandton
 2146

Email address: peet.maritz@transnetfunds.co.za

Marked for the attention of the Principal Officer

14.1.3 Transport Pension Fund

Tower 2
 13th Floor
 102 Rivonia Road
 Sandton
 2146

Email address: peet.maritz@transnetfunds.co.za

Marked for the attention of the Principal Officer

14.1.4 Johan Pieter Hendrik Pretorius

101 Eerwaarde Du Plessisstraat
 Aandriif Wigehof
 Bloemfontein
 Free State

14.1.5 Montana David Kwapa

Stand 689 Mushung
 Polokwane
 Limpopo

14.1.6 Geysier and Coetzee Attorneys

9 Baobab Nook
Zwartkop
Centurion
Gauteng

Email address: lawteam@afrika.com and
wynanda@geysercoetzee.co.za

Marked for the attention of Wynanda Coetzee

- 14.2 Any legal process to be served on any of the Parties may be served on it at the address specified for it in clause 14.1 and it chooses that address as its *domicilium clandi et executandi* for all purposes under this Agreement, provided that service may be effected on the Class Representatives by service only to the address(es) of the Class Legal Representative.
- 14.3 Any notice or other communication to be given to any of the Parties in terms of this Agreement is valid and effective only if it is given in writing, provided that any notice given by email is regarded for this purpose as having been given in writing.
- 14.4 A notice to any Party which is delivered to the Party by hand at that address is deemed to have been received on the day of delivery, provided it was delivered to a responsible person during ordinary business hours.
- 14.5 Each notice by email to a Party at the email address specified for it in clause 14.1 is deemed to have been received within 24 (twenty four) hours of transmission if it is transmitted during normal business hours of the receiving Party or within 24 (twenty four) hours of the beginning of the next Business Day at the destination after it is transmitted, if it is transmitted outside those business hours.
- 14.6 A notice to any Party which is sent by overnight courier in a correctly addressed envelope to the address specified for it in clause 14.1 is deemed to have been received on the Business Day following the date it is sent.
- 14.7 Notwithstanding anything to the contrary in this clause 14, a written notice or other communication actually received by any Party is adequate written notice or communication to it notwithstanding that the notice was not sent to or delivered at its chosen address.
- 14.8 Any Party may by written notice to the other Parties change its address or email address for the purposes of clause 14.1 to any other address (other than a post office box number) provided that the change will become effective on the day following receipt of the notice.

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SIGNED at MIDRAND on this the 10th day of December 2019

For and on behalf of
TRANSNET SOC LIMITED

pp [Signature]
Signatory: MOHAMMED MAHOMEDY
Capacity: MANAGING GROUP CHIEF EXECUTIVE
Who warrants his/her authority hereto

SIGNED at PRETORIA on this the 11th day of December 2019

For and on behalf of
TRANSNET SECOND DEFINED BENEFIT FUND

[Signature]
Signatory: DEBORA POTGIETER
Capacity: EMPLOYEE TRUSTEE
Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 20__

For and on behalf of
TRANSNET SECOND DEFINED BENEFIT FUND

Signatory: _____
Capacity: _____
Who warrants his authority hereto

SIGNED at Pretoria on this the 11 day of December 2019

For and on behalf of
TRANSPORT PENSION FUND

[Signature]
Signatory: Kaïse Oenter
Capacity: Senior Manager Remuneration and Benefits
Who warrants his authority hereto
Prasa

[Handwritten marks and signatures]

SIGNED at _____ on this the _____ day of _____ 20__

For and on behalf of
TRANSNET SOC LIMITED

Signatory:
Capacity:
Who warrants his/her authority hereto

SIGNED at _____ on this the _____ day of _____ 20__

For and on behalf of
TRANSNET SECOND DEFINED BENEFIT FUND

Signatory:
Capacity:
Who warrants his authority hereto


SIGNED at _____ on this the _____ day of _____ 20__

For and on behalf of
TRANSNET SECOND DEFINED BENEFIT FUND

Signatory:
Capacity:
Who warrants his authority hereto

SIGNED at Kempton Park on this the 11th day of December 2019

For and on behalf of
TRANSPORT PENSION FUND



Signatory:
Capacity: Trustee
Who warrants his authority hereto



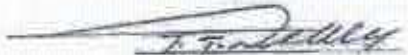

SIGNED of _____ on this the _____ day of _____ 20__

For and on behalf of
TRANSNET SOC LIMITED

Signatory:
Capacity:
Who warrants his/her authority hereto

SIGNED of WITIANO on this the 10th day of DECEMBER 17,

For and on behalf of
TRANSNET SECOND DEFINED BENEFIT FUND



Signatory:
Capacity: TRUSTEE
Who warrants his authority hereto

SIGNED of _____ on this the _____ day of _____ 20__

For and on behalf of
TRANSNET SECOND DEFINED BENEFIT FUND

Signatory:
Capacity:
Who warrants his authority hereto

SIGNED of _____ on this the _____ day of _____ 20__

For and on behalf of
TRANSPORT PENSION FUND

Signatory:
Capacity:
Who warrants his authority hereto






SIGNED at _____ on this the _____ day of _____ 20__

For and on behalf of
TRANSPORT PENSION FUND

Signatory:
Capacity:
Who warrants his authority hereto

SIGNED at Johannesburg on this the 11 day of December 2019


For and on behalf of
JOHAN PIETER HENDRIK PRETORIUS (in his personal capacity and in his capacity as Class Representative)



Signatory:
Identity Number: 4601195013082
J P H PRETORIUS

SIGNED at Johannesburg on this the 11 day of December 2019

For and on behalf of
MONTANA DAVID KWAPA (in his personal capacity and in his capacity as Class Representative)



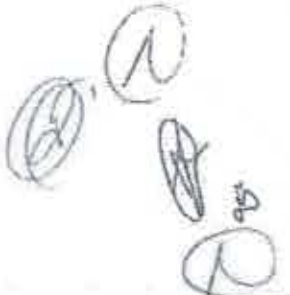
Signatory:
Identity Number:
WW Coetzee duly authorized

SIGNED at Johannesburg on this the 11 day of December 2019

For and on behalf of
WYNANDA WILHELMINA COETZEE (in her capacity as Class Legal Representative and as a direct party)



Signatory:
Identity Number:



SCHEDULE 1
COURT SANCTIONING APPLICATION PROCEDURE

In this Schedule 1, unless inconsistent with or otherwise indicated by the context, words and expressions defined in the Agreement entered into between the Defendants, the Class Representatives and their attorney, G&C Attorneys, to which this form of Court Sanctioning Application Procedure is Schedule 1, have the same meanings when used in this Schedule 1, as those ascribed to them in the Agreement; and

Approval Hearing means the hearing at which the fairness, reasonableness and adequacy of the Agreement will be deliberated upon before the Court as contemplated in this Schedule 1.

1. Promptly after the Signature Date, the Parties shall jointly prepare and file a two-staged application to the Court.
 2. In the first stage of the application, an order of Court will be sought in, substantially, the following terms:
 - 2.1 approving the First Class Notice and providing directions for its publication;
 - 2.2 issuing a *rule nisi* calling upon members of the Class and any interested parties to approach the Court within a specified period of time to state why a final order should not be made in the following terms:
 - 2.2.1 this Agreement is made an order of Court; and
 - 2.2.2 It is declared that this Agreement is binding on the members of the Class and the Defendants;
 - 2.3 that members of the Class and any other interested parties, if any, may participate in the Approval Hearing on the return day, and may address the Court on the reasonableness, fairness and adequacy of this Agreement;
 - 2.4 providing directions on the participation of members of the Class and any other interested parties at the Approval Hearing, including steps to be taken prior to the Approval Hearing;
 - 2.5 that the parties opposing the granting of the relief on the Approval Hearing (or such of them as the Court may determine) are directed to pay the costs of the application jointly and severally;
 - 2.6 determining a date for the Approval Hearing; and
 - 2.7 further and / or alternative relief, which the Court may deem necessary.
 3. In the second stage of the application, which is the Approval Hearing, an order of Court will be sought in, substantially, the following terms:
 - 3.1 this Agreement is made an order of Court;
 - 3.2 It is declared that this Agreement is binding on the members of the Class and the Defendants;
 - 3.3 directions for the publication of a summary of the Court's decision and this Agreement; and
 - 3.4 further and / or alternative relief, which the Court may deem necessary.

**SCHEDULE 2
FIRST CLASS NOTICE**

NOTICE OF PROPOSED CLASS SETTLEMENT

IF YOU ARE A PENSIONER OF THE TRANSNET SECOND DEFINED BENEFIT FUND (TSDBF) AND THE TRANSPORT PENSION FUND (TPF) (both will be collectively referred to as the "FUNDS"), PLEASE READ THIS NOTICE CAREFULLY AS IT AFFECTS YOUR RIGHTS.

If you are a party that is interested in the proposed settlement (an "Interested Party"), you should also read this notice.

Geysers & Coetzee Attorneys is the Class Legal Representative of the members of the TSDBF and the TPF (including the PRASA sub-fund of the TPF and the SAA sub-fund of the TPF) in the Class Action Litigation against those two Funds and Transnet SOC Ltd. The class action was initiated for claims arising from:

- An allegation that a representative of Transnet's predecessor and the predecessors of the Funds made a promise to the members of the Funds in 1989;
- An allegation that Transnet took over its predecessors' obligation to pay an amount into the old pension funds (these are the funds that were ultimately replaced by the Funds) that were necessary to maintain the old pension funds in a sound financial position; and
- An alleged unlawful donation made by one of the new pension funds to Transnet.

The Class Action Litigation was certified (authorised) by the High Court on 31 July 2014 (Certification Date). Pensioners of the TSDBF and the TPF are members of the Class. No current members of the two funds elected to opt out of the Class Action Litigation.

The Class Legal Representative has negotiated and signed a settlement agreement with the two funds and Transnet. It has also applied to the High Court for a court order that the settlement agreement should be made binding on the parties to the Class Action Litigation, including the members of the Class, Transnet and the two funds.

The relevant terms of the settlement agreement are summarised as follows:

Conditions

The settlement agreement must be made an order of the High Court.

The Minister of Public Enterprises and the Minister of Finance have to approve rule amendments in respect of the TSDBF and the TPF to allow the pension increases mentioned in the settlement agreement to be implemented.

The two Funds' boards must adopt pension increase policies that allow the pension increases mentioned in the settlement agreement to be implemented.

The PRASA sub-fund of the TPF and the SAA sub-fund of the TPF must obtain necessary approvals for the benefit enhancements proposed in the Agreement relating to those two sub-funds.

Lump sum payments

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Within two months of the settlement agreement being signed by the parties, even if all the conditions above are not yet met, each Pensioner will be paid an amount of R10 000.00 (ten thousand Rand). The exception is SAA Pensioners, who will be paid after the company approvals required for the payment have been given.

Approximately one year later, each Pensioner will be paid a second amount of R10 000.00 (ten thousand Rand).

Approximately one year later, each Pensioner will be paid a third amount of R10 000.00 (ten thousand Rand).

Each lump sum payment will be made by the relevant fund less such tax as the relevant fund is obliged to deduct or withhold in respect of each Pensioner.

The Funds retain discretion to grant bonuses in addition to these amounts subject to their rules and policies if that is affordable.

If a person who was a Pensioner has passed away, or does still pass away between the Certification Date and the date on which any lump sum payment becomes due, then one of two things will happen, depending on the Pensioner's circumstances:

If the late Pensioner leaves any dependants whom the rules recognise as a surviving spouse pensioner or as a child pensioner, then each of those 'new' pensioners will become entitled to the benefits set out in the agreement, from the Pensioner's date of passing going forward, including where applicable one or more pension increases and/or one or more special lump sum awards, and the deceased estate will not receive the lump sum(s).

If the late Pensioner leaves no dependants who qualify for pensions from one of the funds or sub-funds themselves, then the late Pensioner's estate will not have a claim against the TSDBF or the TPF or any sub-fund of the TPF or Transnet under the settlement agreement or otherwise.

In future, after the 3 lump sum payments have been made, the board of trustees of each of the two funds will have the power to grant lump sum payments as and when they consider it to be affordable, in such amounts as they consider to be affordable.

Pension enhancements

TSDBF and TPF shall continue to grant a minimum pension increase of 2% each year, at the usual time.

Pensioners will receive different pension increases depending on whether that pensioner is a member of (i) the TSDBF, the TSF or the PRASA sub-fund of the TPF; or (ii) the SAA sub-fund of the TPF.

These special pension increases will be granted in addition to the minimum pension increase of 2% granted each year.

Special increases for TSDBF, TSF and PRASA sub-fund pensioners:

Within two months of all the Conditions being met the funds will grant a special, across-the-board pension increase of 11% (eleven percent).

Approximately one year later, the funds will grant a second across-the-board pension increase of 7% (seven percent).

Approximately one year after the 7% increase, the funds will grant a third across-the-board pension increase of 4% (four percent).

Note that the PRASA sub-fund will need to amend its rules in order to be able to grant and pay the special increases to its Pensioners, and therefore the special increases to be granted by the PRASA Sub-fund will not take effect unless and until such time as the relevant employer and Ministerial approval in respect of such rule amendments has been obtained by the fund.

Special increases for SAA sub-fund pensioners

Within two months of all the Conditions being met the SAA sub-fund of the TPF will grant a special pension increase to each of its Pensioners to an amount determined by its valuator as the pension to which that Pensioner would have been entitled on the date the increase takes effect had that Pensioner received an annual pension increase, since the pension was first paid, equal to 70% of inflation (year-on-year changes in CPI).

Further pension increases

From the year following the special 4% increase, and going forward, the TSOBF's and the Transnet sub-fund of the TPF's pension increase policies will target pension increases of at least 70% (seventy percent) of CPI (including the 2% minimum increase in the calculation of 70% of CPI). The grant of targeted increases is subject to the increase being affordable.

The PRASA and SAA sub-funds' boards may grant increases to their Pensioners that are equal to or greater, but not less than, those special increases mentioned above.

The obligations of the relevant employer companies (Transnet, SAA and PRASA) in respect of the Funds, including the financial support obligations of these employers, continue to apply to the Funds and extend to the benefit enhancements contemplated by the settlement agreement.

Class' Legal Costs

Transnet will cover the Class' (pensioners') legal and actuarial costs in respect of the Class Action Litigation on terms negotiated with the Class Legal Representative.

Settlement and termination of Class Action Litigation

Once all of the Conditions are met, the Class Legal Representative will obtain an order from the Court that the Class Action Litigation and the Class' claims have been settled fully and finally and the Class Action Litigation is therefore terminated.

The settlement agreement, as confirmed in the High Court order, will dispose of any and all claims by any member of a Class against any person relating to the historical funding of the Funds (or their predecessors in title), the funds' abilities to grant pension increases greater than 2% per year historically, historical investment and other transactions that did affect or are perceived to have affected those abilities, and the existence or status of the so-called "legacy debt" as referred to in the Class Action Litigation.

Financial restructuring affecting the funds

Certain assets, as proposed by the actuaries of the two funds and agreed by the two funds, will be transferred from the Transnet Sub-fund of the TPF to the TSDBF to enable the TSDBF to make the necessary enhancements and payments as they fall due.

The two funds and Transnet may agree a process for the consolidation of the two funds and their memberships in the future, and none of the members or representatives of the Class may frustrate or prevent that.

Settlement approval hearing

The following information is applicable to members of the Class or any interested party.

- A hearing at which the High Court will consider whether to approve the proposed settlement agreement will be held on (INSERT DATE) at the High Court in Pretoria, Paul Kruger & Madiba St, Pretoria Central, Pretoria, at 10:00 a.m.
- Anyone can attend the settlement approval hearing. If you want the High Court to hear your views on whether the proposed settlement agreement is reasonable, fair and adequate, the High Court has issued a Court order that says what you must do if you want to take part in the hearing.
- You can get a copy of the Court order, the settlement agreement and copies of the papers that have been filed at the High Court by the Class Legal Representative, Transnet and the Funds from the Class Legal Representative (contact details at the end of this notice).
- Electronic copies of these documents will be available at (insert website).
- If you wish to provide the High Court with your comments on the proposed settlement agreement or if you want to object to the proposed Settlement, you must:
 - Deliver a notice of appearance and an affidavit to Geyser & Coetzee Attorneys and file them at the High Court before (insert date); and
 - Deliver written argument, if any, to Geyser & Coetzee Attorneys for purposes of the hearing, which must also be filed at the Court, before (insert date).
- The documents mentioned above can be delivered to Geyser & Coetzee Attorneys by hand or by fax or by email (details in box below).

The Court will consider all the affidavits and written arguments in deciding whether or not to approve the settlement. The Court will inform you if it intends to hear oral argument from you at the hearing.

If no members of the Class or any interested party files a notice to participate on or before (insert date), the Court will hear the matter on (insert date).

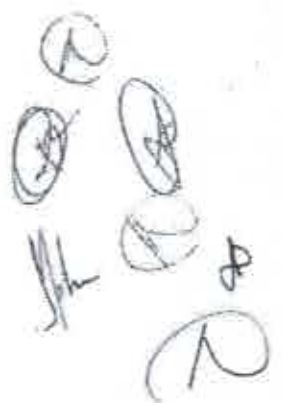
The final settlement

- If the Court approves the settlement, there will be publication in newspapers of a summary of the Court's decision.
- The full terms of the Court's decision and the final settlement will:
 - be made available at the offices of Geyser & Coetzee Attorneys (address below);

- be posted on the following website (INSERT); and
- be sent to each person that gave notice of appearance in the approval hearing by the Class Legal Representative

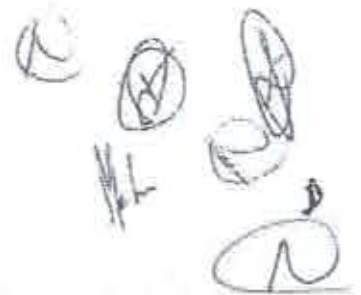
Geyser & Coetzee Attorneys' contact details are:

- Address: 9 Baobab Nook
Zwartkop
Centurion
Gauteng
- Tel: 012 663 5247
- Fax: 012 663 5719
- Email: lawteams@afrika.com; and wynanda@geysercoetzee.co.za



SCHEDULE 3:
NEWSPAPERS

Newspapers	
Newspapers	Language/s
Sunday Times	English
Rapport	Afrikaans
City Press	isiXhosa and isiZulu
Sowetan	Sesotho and isiZulu



**SCHEDULE 4:
ANNOUNCEMENT AND STATEMENT RULES AND GUIDELINES**

In this Schedule 4 unless inconsistent with or otherwise indicated by the context, words and expressions defined in the Agreement entered into between, among others, the Defendants, the Class Representatives and G&C Attorneys, to which this form of Announcement and Statement Rules and Guidelines is Schedule 4, have the same meanings when used in this Schedule 4, as those ascribed to them in the Agreement.

1. PERMITTED MESSAGES ABOUT THE SETTLEMENT FOR ANNOUNCEMENT AND STATEMENT PURPOSES

- 1.1 This is an historic settlement resulting from years of extensive negotiations. The settlement agreement entered into between Transnet, the Funds, the Class Representatives and their attorneys provides substantial benefits to all eligible members of the Funds.
- 1.2 The settlement agreement seeks to give recognition to the hard work of many of Transnet's former employees and the former employees of Transnet's predecessors. Even prior to the institution of the litigation, Transnet and the Funds have for many years considered multiple options to enhance the benefits payable to Transnet's pensioners and the pensioners of Transnet's predecessors. Some of those of the options that were considered were implemented but some, for reasons outside of the Parties' control, could not be implemented. This settlement will make it possible for the benefits payable to pensioners to be enhanced.
- 1.3 The Parties to this Agreement believe that a compromise settlement is far preferable to all concerned than an inevitably lengthy and expensive litigation process, allowing for affected pensioners to expeditiously receive compensation and relief for their conditions.
- 1.4 It must be emphasized, however, that the signing of the relevant documentation does not mean finality has been reached. The implementation of the settlement is subject to certain suspensive conditions, which include the agreement being approved by the Court, approval by the Minister of Public Enterprises, with the concurrence of the Minister of Finance, of draft rule amendments to the respective rules of the TPF and the TSOBF and the adoption (or confirmation of adoption) by the boards of the TPF and the TSOBF of pension increase policies required to give effect to this Agreement.
- 1.5 The parties' respective legal teams are working together to prepare for the court hearing. The members of the Class and other interested parties will be given the opportunity to make submissions to the Court, should they wish to do so.
- 1.6 The Parties believe the settlement represents a fair outcome for the Class.

The benefits of the settlement are summarized in Schedule 2 to the Agreement which shall be the sole source of description of such benefits relied upon by any Party.

Where questions arise from the media or third parties that cannot be answered with reference to the abovementioned statements or sources, the Parties will respond on the basis of the terms of the Settlement Agreement and clause 1 of this Schedule 4, and will avoid responses that are in breach of clause 2 below.

2. UNPERMITTED MESSAGES ABOUT THE SETTLEMENT FOR ANNOUNCEMENT AND STATEMENT PURPOSES

- 2.1 Each Party shall ensure that:
 - 2.1.1 no disrespectful communications are made about the other Parties, their officers or representatives;
 - 2.1.2 the integrity of the other Parties, their officers or representatives is not questioned; and
 - 2.1.3 confidential information is not disclosed.
- 3. Subject to paragraph 2 of this Schedule 4, this Schedule 4 does not purport to restrict any announcements or statements made by the parties to the Settlement Agreement but rather serves as a guideline for purposes of any announcement and/or statements pertaining to the settlement contemplated in the Settlement Agreement.

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SCHEDULE 5:
DRAFT RULE AMENDMENTS TO THE SPECIAL RULES OF THE TSF AND THE RULES OF THE TSD&F

PROPOSED AMENDMENTS TO THE SPECIAL RULES OF THE TSF

10.19 Annual Increase

10.19.1 The benefit received by a Pensioner or Dependant shall be increased by 2% (two per cent) compounded annually, for each completed year in respect of which the benefit has been or is received: Provided that in the case of a Dependant, the 2% (two per cent) enhancement of the benefit shall be calculated from the date on which the benefit first became payable to the Pensioner.

10.19.2 The Board may consider the granting of additional pension increases (in addition to the 2% outlined above) from time to time.

10.19.3 Any increase in pensions as provided in 10.19.2 shall be determined in line with the Fund's Pension Increase and Bonus Policy and shall be subject to:

10.19.3.1 the Fund being able to afford such increase according to the discretion of the Board;

10.19.3.2 the actuary's written confirmation that such increase is affordable by the Fund; and

10.19.3.3 the written approval by the Employer.

PROPOSED AMENDMENTS TO THE RULES OF THE TSD&F

24. Annual Increase

24.1 The pension received by a Pensioner or Beneficiary immediately before each anniversary of the date on which the pension commenced shall be increased by 2% on that anniversary, provided that in the case of a Beneficiary, the anniversary date shall be the anniversary of the date on which the pension first became payable to the Pensioner from whose membership the Beneficiary's claim is derived.

24.2 The Board may consider the granting of additional pension increases (in addition to the 2% outlined above) from time to time.

24.3 Any increase in pensions as provided in 24.2 shall be determined in line with the Fund's Pension Increase and Bonus Policy and shall be subject to:

24.3.1 the Fund being able to afford such increase according to the discretion of the Board;

24.3.2 the actuary's written confirmation that such increase is affordable by the Fund; and

24.3.3 the written approval by the Employer.

**SCHEDULE 6:
PROVISIONALLY APPROVED PENSION INCREASE POLICIES OF THE TSDBF AND THE TSF**

PROPOSED PENSION INCREASE POLICY AND BONUS POLICY OF THE TSDBF AND TSF

Introduction

The rules of the Fund make provision for the payment of non-vesting bonuses from time to time subject to approval.

In terms of a proposed amendment to the rules of the Fund there will in addition be provision for the granting of additional pension increases (over and above the statutory 2%) from time to time.

The following policy has been adopted by the Board of Trustees of the Fund with the objective of setting out a framework for the determination and approval of any bonus payment or additional pension increase.

The special lump sum awards and pension increases contemplated by the settlement agreement in respect of the Class Action certified on 31 July 2014 are payable in terms of that agreement. This policy does not apply to those awards and increases. This policy is subject to the provisions of that agreement.

Bonus policy

The Trustees of the Fund may consider the granting of a bonus payment where such payment, if approved, will be granted in November of any year. Any bonus payment will be subject to affordability and approval by the Employer. In determining such affordability, priority will be given to the assessment of the affordability of future pension increases in line with the Fund's pension increase policy, where a bonus will only be deemed affordable after it has been deemed that the targeted pension increases would be affordable and sustainable into the future.

Pension Increase Policy

The Trustees of the Fund shall each year consider the granting of an additional pension increase where such increase will be in addition to the statutory 2% per annum and will target an additional increase such that the total increase applicable is 70% of the change in CPI. Any additional pension increase will be subject to affordability and approval by the Employer.

In addition to the targeted pension increases of 70% of CPI, the trustees may grant additional increases subject to affordability and approval by the Employer.

Affordability

In assessing the affordability of any bonus payment or additional pension increase the following will apply:

The Trustees of the Fund may be required, based on affordability, to prioritise the consideration of either a bonus payment or additional pension increase as it may not be possible or affordable to consider both.

Any bonus or additional pension increase granted would be subject to affordability as certified by the Fund's

actuary where affordability will be considered in terms of the following:

- Account shall be taken of the solvency of the Fund where the solvency will be determined with reference to valuing pensions using the Fund's statutory actuarial valuation basis and allowing for appropriate contingency reserves as determined by the Fund's actuary;
- The bonus payment and/or expected present value of the additional pension increase shall never exceed the amount that can be afforded out of the excess assets determined in line with the above after provision for the appropriate actuarial liabilities and all recommended contingency reserves;
- Consideration must also be given to the potential sustainability of any bonus and/or additional pension increase and the impact on the future funding level of the Fund where such assessment may make use of any reasonable actuarial methodology and assumptions;
- No bonus or additional pension increase could be considered affordable if it would result in an increase in the actuarial liabilities of the Fund such that these liabilities were to exceed the assets available to the Fund.

Where the actuary certifies that the targeted bonus and/or additional pension increase is not affordable a lower bonus and/or additional pension increase may be considered based on the certified affordable level.

All bonus payments and additional pension increases shall require the approval of the Employer. Sufficient time must be afforded to the Employer to allow adequate assessment of the affordability of any proposed bonus and/or additional pension increase taking into account the administrative requirements of both the Employer and the Fund with reference to the targeted payment date/s.

This policy may be reviewed from time to time where any changes to the policy must be approved by the Employer.

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SCHEDULE 7:
AGREED SETTLEMENT AMOUNT FOR PLAINTIFFS' COSTS

The Class Representatives, the Class Legal Representative and Transnet have agreed in terms of clause 9.1 that the amount to be paid to the Class Legal Representative is R18,000,000.00 (eighteen million Rand) plus Value Added Tax.

SIGNED at Cape Town on this the 11 day of December 2019

For and on behalf of WYNANDA WILHELMINA COETZEE (in his capacity as Class Legal Representative and as a direct party)

Signatory: NW Coetzee

Capacity: Class Legal Representative

Who warrants her authority hereto

SIGNED at Wentworth on this the 11 day of December 2019

JOHAN PIETER HENDRIK PRETORIUS (in his personal capacity and in his capacity as Class Representative)

Signatory: J.P.H. Pretorius

Identity Number: 4601195013052

SIGNED at Johannesburg on this the 11 day of December 2019

MONTANA DAVID KWAPA (in his personal capacity and in his capacity as Class Representative)

Signatory: NW Coetzee

Identity Number: Duly authorized

SIGNED at MIDRAND on this the 10th day of December 2019

[Signature]
For and on behalf of
TRANSNET SOC LIMITED

Signatory: MOHAMMED MAHOMEDY
Capacity: ACTING GROUP CHIEF EXECUTIVE
Who warrants his authority hereto

SIGNED at PRETORIA on this the 11th day of DECEMBER 2019

[Signature]
For and on behalf of
TRANSNET SECOND DEFINED BENEFIT FUND

Signatory: DEBRA ROBINSON
Capacity: EMPLOYER TRUSTEE
Who is duly authorized to sign

For and on behalf of
TRANSNET SECOND DEFINED BENEFIT FUND
Signatory: _____

Capacity: _____
Who is duly authorized to sign

SIGNED at Pretoria on this the 11 day of December 2019

[Signature]
For and on behalf of
TRANSPORT PENSION FUND

Signatory: Lorise Venter
Capacity: Senior Manager Remuneration and Benefits Prusa
Who is duly authorized to sign

For and on behalf of
TRANSPORT PENSION FUND

Signatory: _____
Capacity: _____
Who is duly authorized to sign

[Handwritten initials and signatures]

SIGNED at _____ on this the _____ day of _____ 20____

For and on behalf of
TRANSNET SOC LIMITED

Signatory: _____

Capacity: _____
Who warrants his authority hereof

SIGNED at WITFAND on this the 10th day of December 1999

T.T. DUND
For and on behalf of
TRANSNET SECOND DEFINED BENEFIT FUND

Signatory: T.T. DUND

Capacity: TRUSTEE
Who is duly authorized to sign

For and on behalf of
TRANSNET SECOND DEFINED BENEFIT FUND

Signatory: _____
Capacity: _____
Who is duly authorized to sign

SIGNED at _____ on this the _____ day of _____ 20____

For and on behalf of
TRANSPORT PENSION FUND

Signatory: _____

Capacity: _____
Who is duly authorized to sign

For and on behalf of
TRANSPORT PENSION FUND

Signatory: _____

Capacity: _____
Who is duly authorized to sign

✓

Ⓜ

SIGNED at _____ on this the _____ day of _____ 20_____

For and on behalf of
TRANSNET SOC LIMITED

Signatory: _____

Capacity: _____
Who warrants his authority hereto

SIGNED at _____ on this the _____ day of _____ 20_____

For and on behalf of
TRANSNET SECOND DEFINED BENEFIT FUND

Signatory: _____

Capacity: _____
Who is duly authorized to sign

For and on behalf of
TRANSNET SECOND DEFINED BENEFIT FUND

Signatory: _____

Capacity: _____
Who is duly authorized to sign

SIGNED at Kempton Park on this the 11th day of December 2019

Johan Kotze
For and on behalf of
TRANSPORT PENSION FUND

Signatory: 

Capacity: Trustee
Who is duly authorized to sign

For and on behalf of
TRANSPORT PENSION FUND

Signatory: _____

Capacity: _____
Who is duly authorized to sign

