
FURTHER AFFIDAVIT

I, the undersigned,

CHRISTOPHER FRANCIS NEALE TODD

do hereby make oath and state that:

1. I am an adult male attorney and am a director of Bowman Gilfillan Inc. I have been a director of the firm since March 1998.
2. The facts deposed to in this affidavit are, save where otherwise stated or apparent from the context, within my personal knowledge and are, to the best of my belief, true and correct.
3. I depose to this further affidavit at the request of the Commission of Inquiry into State Capture. The purpose of this further affidavit is to supplement what I stated in paragraph 62 of the affidavit which I deposed to on 25 September 2020 ("**my second affidavit**"),
4. In that paragraph I stated that I did not know what amount was ultimately arrived at to settle the undertaking to pay the legal costs of Abalozi.
5. Since I deposed to that affidavit I have been provided with certain documents by Transnet, whose authenticity I have no reason to doubt, which indicate that Transnet ultimately agreed to pay an amount of R20 million rand to Abalozi.
6. In this regard, I attach –
 - a. marked "**PP**", a copy of a memorandum dated 30 January 2015, addressed by the Group Executive, Legal and Compliance, to the Group Chief Financial Officer,



ACF.

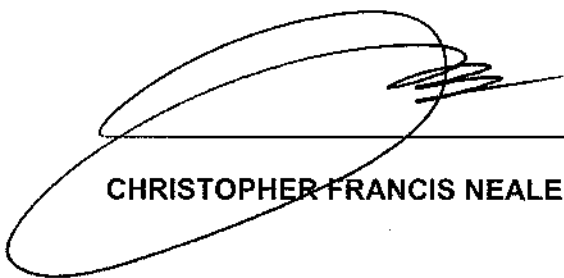
requesting payment of that amount, together with its annexures B and C. (Annexure A to that memorandum was the letter from Abalozi dated 16 October 2014, a copy of which was attached as Annexure "OO" to my second affidavit.

- b. marked "QQ", a copy of a document indicating payment of that amount into the trust account of apparently newly appointed attorneys to Abalozi, Tim Sukazi Inc.
- 7. The deed of settlement concluded between Transnet and Abalozi dated 4 August 2014, attached as Annexure "MM" to my second affidavit, contemplated the settlement of all disputes between the parties under case number 10/43494.
 - a. Under paragraph 2 of the deed of settlement, Abalozi withdrew its counterclaim in that litigation. On any reasonable assumption, the deed of settlement compromised each of the elements of the counterclaim that were set out in paragraphs 26 to 31 of the Abalozi plea and counterclaim (Annexure "R" to my second affidavit).
 - b. Under paragraph 4 of the deed of settlement, Transnet undertook to pay legal costs on the terms set out there.
- 8. In my view, on reasonable assumptions, the taxed costs of Abalozi in that litigation would not have exceeded R1 million. They would probably have been significantly less than R1 million.
- 9. In these circumstances, the sum of R20 million paid by Transnet to Abalozi constituted either an absurdly inflated assessment of legal costs due to Abalozi, or alternatively was paid to settle claims by Abalozi that had already been compromised or, to the extent that any of those claims had not been compromised (if it were to have been contended that they were new claims that had not been included in Abalozi's counterclaim that had been settled), any such claims would certainly, by January 2015, have prescribed.

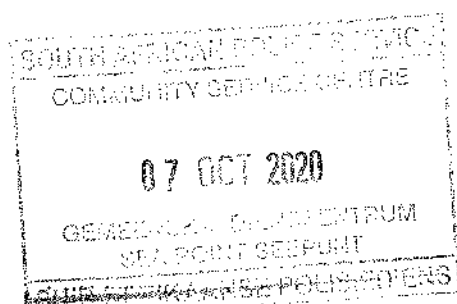


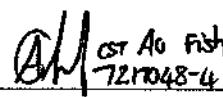
ACF.

10. The memorandum motivating for the payment of the amount of R20 million provides no explanation for Transnet's decision to conclude an agreement (by exchange of letters) to pay that amount to Abalozi. I respectfully state, on the strength of the evidence that has been made available to me by Transnet, that there was no legitimate commercial rationale for concluding that agreement or paying that amount.


CHRISTOPHER FRANCIS NEALE TODD

I CERTIFY that this affidavit was signed and sworn to before me at SAPS Seapoint on this the 07th day of **OCTOBER 2020**, by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and who uttered the following words: "I swear that the contents of this affidavit are true, so help me God".




COMMISSIONER OF OATHS

Name: AC. Fish

Address: Corner of Bay Road & Bill Peter's Dr.
Moullie Point.

Capacity: Constable

Transnet SOC Ltd
Registration
Number
1999/000900/06

Carlton Cent
150 Commissioner
Stg. Johannesburg
2001

P.O. Box 72501
Parkview
South Africa, 2120
T +27 11 308 2250
F +27 11 308 1269

"PP"
TRANSNET



www.transnet.net

MEMORANDUM

To : Mr. Anoj Singh: Group Chief Financial Officer

From : Mr. Ndiphiwe Silinga: Group Executive, Legal and Compliance

Date : 30 January 2015

SUBJECT : **TRANSNET SOC LTD / ABALOZI RISK ADVISORY SERVICES (ABALOZI)**

PURPOSE:

1. The purpose of this submission is to request the Group Chief Financial Officer ("GCFO") to authorize the payment of an amount of R20 million (Twenty Million Rand) in full and final settlement of the legal disputes between Transnet and Abalozi.

BACKGROUND

2. During 2011 Abalozi sued Transnet for damages of R487 682 346,00 arising out of various claims including loss of business, loss of profit, defamation of character and others.
3. During 2014 the parties engaged in settlement negotiations, which resulted in Abalozi offering to accept an amount of R60 million in full and final settlement of all its claims and legal costs against Transnet, per letter dated 16 October 2014.

A copy of the aforesaid letter is enclosed herewith, marked "A".

4. Transnet made a counter offer of R20 million, per letter dated 16/01/2015.

A copy of the aforesaid letter is enclosed herewith, marked "B".

5. Abalozi have since accepted the counter-offer of R20million per letter dated 22/01/2015.

A copy of the aforesaid letter is enclosed herewith, marked "C".

19-124169



TRANSNET

DISCUSSION

6. The offered and accepted amount of R20 million is now due for payment, the effect of which will be to settle all legal disputes between the parties that were pending before the South Gauteng High Court, including costs.
7. Such payment should be made into the bank account provided in Annexure "C" hereto.

FINANCIAL IMPLICATIONS

8. Transnet will pay an amount of R20 million in full and final settlement.

BUDGET IMPLICATIONS

9. The settlement amount was not budgeted for, but payment thereof will be made from a Corporate Cost Centre. *AND will be funded from overall cost savings.*

RECOMMENDATIONS

10. It is recommended that the GCFO approves and authorizes the payment of the aforesaid amount.

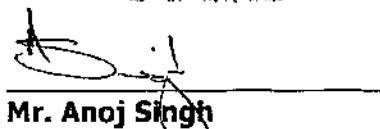
Recommended by

**Ndiphiwe Silinga**

Group Executive: Legal & Compliance

Date: 30/01/2015

Approved by

**Mr. Anoj Singh**

Group Chief Financial Officer

Date: 30/01/15

**TRANSNET
PAID**

19-124169



Brian Molefe, Group Chief Executive

"B"

TRANSNET



Our Ref No: BM/18178
Your Ref: Mr S Mahangu / Miss M Kamuche

Abalozi Risk Advisory Services
61 Boundary Road
Robindale, Ext 1
RANDBURG

Fax Number: (011) 880 9723

"Without Prejudice"

Dear Sirs

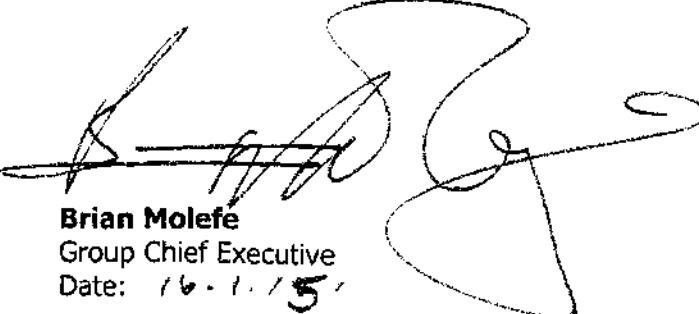
TRANSNET / ABALOZI RISK ADVISORY SERVICES

Your letter dated 16 October 2014 herein refers.

Without admission of liability Transnet SOC Ltd hereby offers you an amount of R20 million in full and final settlement of all legal claims and costs against the Company.

We would be pleased to receive your response to the aforementioned offer within seven days of receipt hereof.

Kind regards


Brian Molefe
Group Chief Executive
Date: 16.10.15

**TRANSNET
PAID**

14-124164

Transnet SOC Ltd
Registration Number
1990/000900/30

Carlton Centre
150 Commissioner
Street
Johannesburg
2001

P.O. Box 72501
Parkview, Johannesburg
South Africa, 2122
T +27 11 308 2309
F +27 11 308 2315

Directors: LC Mabaso (Chairperson) B Molefe* (Group Chief Executive) Y Forbes GJ Mahalela PEB Mathokga N Moola ZA Nagdee VM Nkonyane MR Seleke SD Shane
BG Stagman PG Williams A Singh* (Group Chief Financial Officer)
*Executive

Group Company Secretary: ANC Ceba

www.transnet.net



"C"



Our Ref: Mr S Mahlangu/ Miss M Kamuche
Your Ref: Mr Brian Molefe

"WITHOUT PREJUDICE"

Transnet
Per email: Komilla.Moodley@transnet.net

22 January 2015

Dear Sirs,

TRANSNET / ABALOZI RISK ADVISORY SERVICES

We refer to the above matter and in particular to your letter dated 16 January 2015. We confirm our acceptance of your offer of R20 000 000.00 (Twenty million rands) in full and final settlement of all legal claims and costs by our company.

Kindly please deposit the said amount into the following account number mentioned below within 7 (seven) days of receipt of this letter and we further attach a letter from the bank to confirm the account number.

Account Name: Tim Sukazi Incorporated Trust Account
Account Number: 021560293
Bank: Standard Bank
Branch Name: Sandton City
Branch Code: 018105
Reference Number: ABALOZI /001/2015

We await to hear from you.

Yours faithfully

Abalozi Risk Advisory Services
Tel: 011 477 0035
Fax: 011 4770146

**TRANSNET
PAID**

19-124169





Sandton City Branch

Tim Sukazi Inc

Business Banking

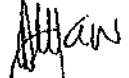
16 May 2013

Tim Sukazi Inc
2013/068075/21
Attorneys Trust Account
021 660 293

To whom this concerns

We confirm that the above business has been conducting an account with us since 16 May 2013.
The above account is controlled at Sandton City - 018105.

Yours faithfully


Lebohang Jan
Business Manager
011 805 8090

**TRANSNET
PAID**

19-12-2013

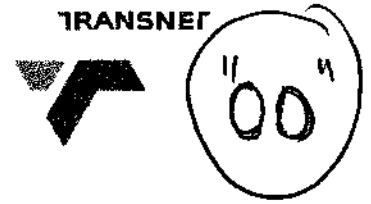
Sandton City Shopping Centre Shop 25 Level 5 Banking Mall Cnr Rivonia and Fifth Streets Sandton 2146
PO Box 78066 Sandton 2146 SWIFT address: SBZA 7A JJ www.standardbank.co.za
Tel: 0860 101 341 Fax: 011 883 8623

The Standard Bank of South Africa Limited (Reg. No. 1962/000738/06) An authorised financial services and registered credit provider (NCRCP15)

Directors: T M F Phaswana (Chairman), S K Thababala* (Chief Executive), D D B Band, R M W Dunne*, T S Gcabashe, X P Kalyan, S J Macozoma, J H Masee*,
Adv K O Moroka, A C Nissen, M C Ramaphosa, S P Ridley*, M J D Ruck, Liza Smith of Kabin, Kk*, E M Woods
Secretary: L Wollsohn *Executive Director #Brisish 13/04/2012



"OO"



Mr Brian Molefe
Group Chief Executive
Transnet SOC Ltd

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SUBJECT

18178 L.m

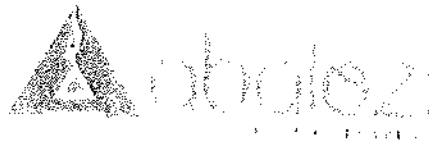
TRANSNET SOC LTD / ABALOZI RISK ADVISORY SERVICES ("ABALOZI")*For your attention, please***COMMENTS / NOTES:**

Adiphiwe
Can we discuss please
[Signature]
25-10-14

18178/2014

FROM: Abalozi Security Risk Advisory

[Signature]
25/10/14



Our Ref: Mr S Mahlangu/ Miss M Kamuche

Your Ref: Mr Brian Molefe

"WITHOUT PREJUDICE"

16 October 2014

RE: Transnet/ Abalozi Risk Advisory Services

Dear Brian

Your letter dated 29 September 2014 refers.

1. In reference to our letter dated 8 September 2014 we have indicated that we would request our attorney to issue the bill of cost and proceed with the review application, the defamation claims and the directors/ employees pain and suffering claims should our proposed settlement not be acceptable.
2. As this matter has been dragging for so long, our consideration was that a lump sum would eliminate any further legal processes and thus swiftly conclude this matter.
3. In light of Transnets' own admissions after appointing an external law firm which conducted a vigorous and exhaustive investigation and concluded that we were unjustly persecuted.
4. Restitution and compensation would be a due remedy for the defamation of Abalozi, its employees and directors.
5. It should also be noted that prejudice was also carried over to companies which had the directors of Abalozi as members or directors in their companies. As all those companies were placed on Transnets' list of excluded tenderers. This could pose further litigation against Transnet.
6. The consequences of Transnets' actions, including the criminal charges have caused irreversible effects which Abalozi and its directors have suffered in the business arena. Reputations of its directors and officials were severely tainted, rendering them unemployable and not trustworthy in the sphere of security services; the nature of the companies' core services requires integrity and honesty.

7. The following were taken into account when considering the proposed amount, and exclude the counterclaims that were subject to the settlement agreement signed on the 4th of August 2014;
- Loss of revenue on the TFR contract as the contract was on a month to month basis until a tender process would appoint a winning bidder. It is our belief that we were in good standing to be awarded the contract after the adjudication processes were fulfilled, but we were unjustly prejudiced. We are also of the understanding that the services we were rendering were subsequently granted to another company on a month to month basis. We would have continued to render the said services as per our month to month contract stipulated. The said services are currently being done on a confinement basis. Thus leaving us to believe that we would still be rendering such services to Transnet considering that Transnet was deriving full benefit from all contracts with Abalozi. The revenue generated over the four years would have been no less than R 250 million. See attached "Annexure A".
 - At that time Abalozi was also contracted to render services to the South African Secret Services (now known as the State Security Agency). This contract was terminated partly due to the negative publicity arising out of the dispute between Abalozi and Transnet. The value of this contract was no less than R 387 million. See attached "Annexure B".
 - G Fleet had also contracted Abalozi and subsequently terminated the services after the above mentioned accusations. The value of the losses is estimated at R 82 million. See attached "Annexure C".
 - After calculating the value of defamation claims and pain and suffering claims, the globular estimates amount to over R 700 million.
8. The R 40 million proposal of settlement was believed to be a fair restitution and compensation inclusive of the legal costs incurred in all matters with Transnet. Given the extra information required by Transnet in response (letter dated 29 September 2014) and the detail of lost revenue provided in this communication, we think that a settlement of R 60 million would be justifiable. It would be prudent to have this matter concluded expeditiously so as to avoid any further legal and consequential costs.
9. We await to hear from you.

Yours faithfully

Abalozi Risk Advisory Services

Note our new telephone number: 011 477 0035

Fax: 011 477 0147

Abalozi
9723 E-mail
Abalozi
1 880
Fax #2

TRANSNET PREDICTED INCOME

	2010	2011	2012	2013	2014	TOTAL
January		R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 18 161 913.60
February	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 22 702 392.00
March	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 22 702 392.00
April	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 22 702 392.00
May	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 22 702 392.00
June	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 22 702 392.00
July	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 22 702 392.00
August	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 22 702 392.00
September	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 22 702 392.00
October	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 22 702 392.00
November	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 18 161 913.60
December	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40	R 4 540 478.40		R 18 161 913.60
TOTAL	R 49 945 262.40	R 54 485 740.80	R 54 485 740.80	R 54 485 740.80	R 40 864 305.60	R 254 266 790.40

ANNEXURE A

PROJECT ROUNDABOUT PREDICTED INCOME

Predicted Income	
2011	R 96 000 000.00
2012	R 102 000 000.00
2013	R 108 000 000.00
2014 (January - September)	R 81 000 000.00
TOTAL	<u>R 387 000 000.00</u>

ANNEXURE B

G-FLEET PREDICTED INCOME

	2010	2011	2012	2013	2014	TOTAL
January		R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 6 384 000.00
February		R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 6 384 000.00
March		R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 6 384 000.00
April		R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 6 384 000.00
May		R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 6 384 000.00
June		R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 6 384 000.00
July		R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 7 980 000.00
August		R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 7 980 000.00
September		R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 7 980 000.00
October		R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 7 980 000.00
November		R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 6 384 000.00
December		R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 1 596 000.00	R 6 384 000.00
TOTAL	R 11 172 000.00	R 19 152 000.00	R 19 152 000.00	R 19 152 000.00	R 14 364 000.00	R 82 992 000.00

ANNEXURE C

"QQ"

11 QQ 11

TRANSNET

Payee:

**Tim Sukazi Incorporated Trust
Account**

~~40~~ 61 Boundary Road
Robinsdale Est 1
Randburg.

Date : 2015-01-30

Description	Invoice no.	Date	R	C
Transnet SOC Ltd / Abalozi Risk Advisory	Ref: ABALOZI/001/2015	22/01/2015	20 000 000	00
Services settlement				
TRANSNET PAID			20 000 000	00
			20 000 000	00

**TRANSNET
PAID**

Per/Per hand: EFT Tel. No.: 2374

Ref.: Group Taxation

Compiled by: [Signature]

Approved: _____

Account **X1 HEAD 03200**

Depot

General ledger

C

					1	0	0	3	0	1	3
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6	9	0	0	0	2
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20 000 000	00
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VAT

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Account

Depot

General Ledger

FOR OFFICE USE

Verified:

Approved

Vendor No:

TB 01 No.:

Date:

TB 05 No.:

Cheque No.:

2005294

1900124169
2015-02-03

"MM"

**IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG
(REPUBLIC OF SOUTH AFRICA)**

CASE NO. 10/43494

In the matter between:

TRANSNET LIMITED

Plaintiff

And

ABALOZI RISK ADVISORY SERVICES (PTY) LIMITED

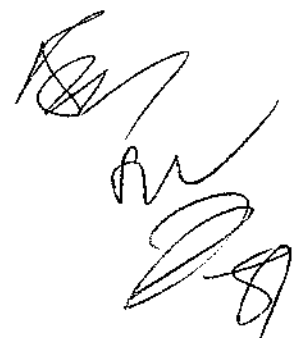
Defendant

DEED OF SETTLEMENT

WHEREAS Transnet SOC Ltd ("Transnet") issued a summons against Abalozi Risk Advisory Services (PTY) Limited ("Abalozi"), previously known as General Nyanda Security Risk Advisory Services (PTY) Limited ("GNS") in connection with Security Services rendered to Transnet by GNS in the period 2007 to 2009 ("the service"); and

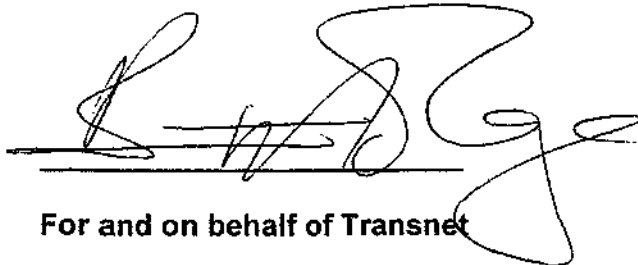
WHEREAS Abalozi issued a counter claim against Transnet in connection with the services;

NOW THEREFORE, Transnet and Abalozi have agreed to settle all disputes between them in this litigation on the following terms:

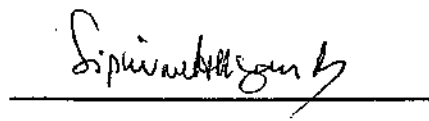


1. Transnet hereby withdraws its action against Abalozi;
2. Abalozi hereby withdraws its counter claim against Transnet;
3. Transnet will, upon signature hereof, issue a media statement in the form as agreed, and attached hereto marked "A";
4. Transnet will pay all the legal costs incurred by Abalozi, its Directors and the co-founders and Directors of GNS on an Attorney and Own client scale.
5. The terms of this settlement agreement are confidential and shall not be disclosed by any one of the parties to any third party.

Dated at Johannesburg on this 4th day of August 2014



For and on behalf of Transnet



For and on behalf of Abalozi

"R"PKMVJ
GNSR12756.8
#904345v1**PH344****IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG****(REPUBLIC OF SOUTH AFRICA)****CASE NO. 10/43494**

In the matter between :

TRANSNET LIMITED

Plaintiff

and

ABALOZI RISK ADVISORY SERVICES (PTY) LTD

Defendant

DEFENDANT'S SPECIAL PLEAS, PLEA AND COUNTERCLAIMS

SPECIAL PLEA**1 Mis-joinder and/or non-joinder**

- 1.1 The Plaintiff in its particulars of claim cites the Defendant as Abalozi Risk Advisory Services (Pty) Limited.
- 1.2 To the knowledge of the Plaintiff, the Defendant is not the party to which it awarded the contracts alleged by the Plaintiff in paragraphs 10 and 13 of its Particulars of Claim.

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1.3 To the knowledge of the Plaintiff, the Defendant was approached by the Plaintiff to submit a proposal for rendering a comprehensive total security package to the Plaintiff. Having considered the Plaintiff's requirements, the Defendant submitted such a proposal as part of a consortium with 2 (two) other companies, Revert Risk Management Solutions (Pty) Ltd and Nayle Outsourcing (Pty) Ltd, known as "the GNS Consortium".

1.4 The submission was followed by a presentation by the GNS Consortium, at the request of the Plaintiff. Quotations were called upon by the Plaintiff from the GNS Consortium and same were negotiated and agreed upon.

1.5 On the 22 November 2007, the GNS Consortium was advised by the Plaintiff that it had been appointed to render the services as per the consortium's submissions, presentation and the quotation agreed upon and furnished to the Plaintiff.

1.6 *The contract was entered into with General Appender Security Risk Advisory Services and not with GNS Consortium*
Subsequent to that, the GNS Consortium and the Plaintiff through their duly authorised officials concluded a binding security services agreement.

This agreement was extended from time to time by the parties through their representatives who had the necessary capacity and authority to bind the parties.

1.7 On these basis, the GNS Consortium followed all the necessary procedures and processes which it was required to follow as represented and made known to it through the Plaintiff's duly authorised officials.

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1.8 As a result, the Plaintiff has failed to join and/or sue the correct party. In addition, the Plaintiff, in these proceedings, is suing and/or seeking relief against an incorrect Defendant.

1.9 On this point alone, the Plaintiff's claim must be dismissed with costs as the Defendant did not conclude any agreements with the Plaintiff.

2 Estoppel

2.1 The Defendant persist that Gama, Senamela and Khanye possessed the necessary authority and capacity when awarding contracts to the GNS Consortium and/or when extending the said contracts.

2.2 In the event, however, that this Honourable Court finds that the above three (3) mentioned officials of the Plaintiff were not duly authorised and/or lacked the capacity and/or authority to award and/or extend the contracts to the GNS Consortium, the Defendant then pleads that the Plaintiff is estopped from denying their authority for the following reasons:-

2.2.1 Gama, who is alleged to have conducted himself without the necessary authority, is a Chief Executive Officer and an Accounting Officer in terms of the PFMA in the employ of the Plaintiff which are positions of authority, and acts on behalf of the Plaintiff with the necessary authority and capacity to bind it. The

#904315v1

4

Plaintiff has at all times held him out to be an authorised person to act on its behalf.

2.2.2

Senamela, who is alleged to have conducted himself without the necessary authority, was a Senior Manager in the employ of the Plaintiff, which is a position of authority, and acted on behalf of the Plaintiff with the necessary authority and capacity to bind it. The Plaintiff has at all times held him out to be an authorised person to act on its behalf.

2.2.3

Khanye, who is alleged to have conducted himself without the necessary authority, was a Contracts Manager in the employ of the Plaintiff, which is a position of authority, and acts on behalf of the Plaintiff with the necessary authority and capacity to bind it. The Plaintiff has at all times held him out to be an authorised person to act on its behalf.

2.2.4

The alleged decisions by Gama, Senamela and Khanye are binding administrative actions taken by the Plaintiff, they have not been set aside and/or reviewed and thus remain valid and binding against the Plaintiff.

*is this
required*

2.2.5

The GNS Consortium rendered its services to the Plaintiff from December 2007 to January 2010, a period of more than 2 (two)

#904345v1

5

years without the Plaintiff alleging that the said 3 (three) officials acted without any authority and/or capacity to bind it.

2.2.6

The Plaintiff, with the knowledge of it's Board, approved and made payments to the GNS Consortium for services rendered to it under the agreements in question over a period of more than 2 (two) years, which payments were made without any allegations being made that such payments were made pursuant to acts of officials who did not possess the necessary authority and/or capacity to do so.

2.2.7

The services which were rendered by the GNS Consortium were rendered over a period of approximately 2 (two) years to the knowledge of the senior officials of the Plaintiff and its board members who, at no stage, prior to the institution of these proceedings had intimated that the contract and/or extensions thereto were concluded by officials who lacked the necessary authority and/or capacity to bind the Plaintiff and/or were contrary to the Constitution, PFMA and the DPP Policy of the Plaintiff.

2.2.8

Gama, Senamela and Khanye acted within the course and scope of their employment with the Plaintiff, the Plaintiff having represented to the GNS Consortium that they had the necessary authority and/or capacity to bind the Plaintiff, such representations

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were not at any stage refused and/or denied by the Plaintiff and the GNS Consortium relied thereon in its dealings with the Plaintiff.

2.3 Acting on the belief of the correctness of the representations made by the Plaintiff, the GNS Consortium, to its detriment, entered into the alleged agreements with the Plaintiff.

2.4 Accordingly, the Plaintiff is estopped from denying the authority of Gama, Senamela and Khanye, its senior employees.

DEFENDANT'S PLEA

3 AD PARAGRAPHS 1 AND 2

3.1 The Plaintiff has cited an incorrect party and/or is seeking relief against a wrong party in these proceedings.

3.2 The Defendant did not enter into any agreement with the Plaintiff. The agreement upon which the Plaintiff premises its claims was entered into by the Plaintiff and the GNS Consortium, as represented by the Defendant. See the 'Merkur' letter dd 13/03/2011 to French Chairman

3.3 To the extent that the Plaintiff seeks any relief based on the agreement annexed to its Particulars of Claim, or the agreements alleged in paragraphs 10 and 13 of its Particulars of Claim, such relief should be directed at the GNS Consortium and not the Defendant.

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3.4 Save as aforesaid, the Defendant admits the remaining allegations in these paragraphs.

4 **AD PARAGRAPH 3.1**

The allegations contained therein are admitted.

5 **AD PARAGRAPH 3.2**

5.1 The allegations contained therein are denied as if specifically traversed and the Plaintiff is put to the proof thereof.

5.2 The Defendant specifically pleads that Siyabonga Gama who is alleged to have been dismissed by the Plaintiff and upon whose dismissal the Plaintiff seeks to justify its claims for restitution, is in the employ of the Plaintiff as a Chief Executive Officer and an Accounting Officer in terms of the PFMA.

6 **AD PARAGRAPHS 3.3 TO 3.4**

Save to admit that Senamela was the Plaintiff's Manager: Security and Khanye was the Plaintiff's Contracts Manager: Security, the Defendant has no knowledge of the remaining allegations, does not admit them and puts the Plaintiff to the proof thereof.

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7 AD PARAGRAPHS 3.5, 3.6 AND 3.7

The allegations contained therein are admitted.

8 AD PARAGRAPHS 3.8 AND 3.9

8.1 The allegations contained therein are admitted.

8.2 The Defendant pleads further that the award of the contract to the GNS Consortium by the Plaintiff which was made on confinement was awarded in line with the provisions of the Constitution of the Republic of South Africa ("the Constitution"), the Treasury Regulations and the Plaintiff's DPP Policy.

9 AD PARAGRAPHS 3.10 AND 3.11

The Plaintiff has failed to annex the said DPP Policy and Gama's Special Delegation of Authority to its Particulars of Claim, accordingly, the Defendant has no knowledge of the allegations contained therein, does not admit them and puts the Plaintiff to the proof thereof.

10 AD PARAGRAPH 4

10.1 The allegations contained therein are denied as is specifically traversed and the Plaintiff is put to the proof thereof.

10.2 On 3 October 2007 the Defendant submitted its profile to the Plaintiff introducing its services in general.

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10.3 To the knowledge of the Plaintiff, the Defendant was approached by the Plaintiff to submit a proposal for rendering a comprehensive total security package to the Plaintiff. Having considered the Plaintiff's requirements, the Defendant submitted such a proposal as part of a consortium with 2 (two) other companies, Revert Risk Management Solutions (Pty) Ltd and Nayle Outsourcing (Pty) Ltd, known as the "GNS Consortium".

10.4 The submission was followed by a presentation by the GNS Consortium, which was at the request of the Plaintiff. Quotations were called upon by the Plaintiff from the consortium and same were negotiated and agreed upon.

10.5 The Defendant was the lead member of the GNS Consortium, as was requested by the Plaintiff.

11 AD PARAGRAPHS 5

The allegations contained therein are admitted.

12 AD PARAGRAPH 6

The allegations contained therein are denied as if specifically traversed and the Plaintiff is put to the proof thereof.

13 AD PARAGRAPHS 7 AND 8

The allegations contained therein are unknown to the Defendant and are thus noted.

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14 AD PARAGRAPH 9

14.1 Save as stated in paragraph 14.2 below, the allegations contained therein are not within the Defendant's knowledge and are thus denied and the Plaintiff is put to the proof thereof.

14.2 The Defendant specifically pleads that the GNS Consortium was awarded the contract on confinement which is allowed by the Constitution, the Treasury Regulations and the Plaintiff's DPP Policy.

14.3 The Defendant specifically denies that the award was not in compliance with the Plaintiff's DPP Policy. From the Plaintiff's Particulars of Claim, it is clear that:

14.3.1 the contract was awarded on confinement;

14.3.2 the award was approved by the Transnet Freight Rail Acquisition Council, which acts as a Tender Board;

14.3.3 the award was approved by Gama, being the Chief Executive Officer in the employ of the Plaintiff.

14.4 The Defendant specifically denies further that the Plaintiff was obliged to follow an open tender process.

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15 AD PARAGRAPH 10

15.1 The allegations therein are denied as if specifically traversed and the Plaintiff is put to the proof thereof.

15.2 The Defendant specifically pleads that no written contract either in the form of Annexure "A" to the Plaintiff's Particulars of Claim or at all was concluded between it and the Plaintiff as alleged.

15.3 Annexure "A" is an Agreement entered into between the Plaintiff and the GNS Consortium, represented as alleged.

In their correspondence they refer to Abaloji GNS Risk Assess. Serv. (now known as Abaloji). Also see their court application to set aside party of Cosmin - findings

16 AD PARAGRAPH 11

16.1 Save to deny that Senamela acted without authority, the remaining allegations are unknown to the Defendant, are thus denied and the Plaintiff is out to the proof thereof.

16.2 The Defendant specifically pleads that the Plaintiff is estopped from alleging that Senamela acted without authority. Senamela, who is alleged to have conducted himself without the necessary authority, was a Senior Manager in the employ of the Plaintiff which is a position of authority, and acted on behalf of the Plaintiff with the necessary authority and capacity to bind it. The Plaintiff has at all times held him out to be an authorised person to act on its behalf.

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16.3 The scope extension was requested and approved by the Plaintiff's officials who the Plaintiff held out to be the persons authorised to enter into contracts on its behalf and upon which the GNS Consortium relied in agreeing to the scope extensions.

17 AD PARAGRAPH 12

17.1 The Defendant has no knowledge of the allegations contained therein, thus does not admit them and puts the Plaintiff to the proof thereof.

17.2 The Plaintiff fails to attach the said resolution to its Particulars of Claim.

18 AD PARAGRAPHS 13 TO 17

18.1 The allegations contained therein are denied as if specifically traversed and the Plaintiff is put to the proof thereof.

18.2 The Defendant specifically pleads that no contracts exist between it and the Plaintiff either as alleged or at all.

18.3 The Defendant specifically pleads that all payments made to it by the Plaintiff were payments to the GNS Consortium for services rendered by the GNS Consortium to the Plaintiff and were received as such by the Defendant on behalf of the consortium.

18.4 At no stage during the subsistence of the agreement between the consortium and the Plaintiff did the Plaintiff allege any defective

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performance from the members of the consortium which was not remedied. The services were diligently, professionally and with the utmost skill provided to the Plaintiff and that is why payment was made by the Plaintiff therefor.

This is no Plaintiff's cost

19 **AD PARAGRAPH 18**

All allegations contained therein are denied as if specifically traversed and the Plaintiff is put to the proof thereof.

20 **AD PARAGRAPHS 18.1 TO 18.3**

20.1 The allegations contained therein are denied as if specifically traversed and the Plaintiff is put to the proof hereof.

20.2 The Defendant specifically pleads that:

20.2.1 the Plaintiff followed a confined procurement process which is in line with the provisions of the Constitution and the DPP Policy in awarding the contract to the GNS Consortium;

20.2.2 the award was approved by the Transnet Freight Rail Acquisition Council, which acts as a Tender Board;

20.2.3 the award was approved by Gama, being the Chief Executive Officer in the employ of the Plaintiff.

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21 AD PARAGRAPH 18.4

21.1 The allegations contained therein are denied as if specifically traversed and the Plaintiff is put to the proof thereof.

21.2 The Transnet Board never delegated any powers to the Defendant or the GNS Consortium.

22 AD PARGARAPH 18.5 TO 18.7

22.1 The allegations contained therein are denied as if specifically traversed and the Plaintiff is put to the proof thereof.

22.2 The GNS Consortium rendered services to the Plaintiff, the said services were accepted by the Plaintiff and the Plaintiff duly remunerated the GNS Consortium as it was required in law to do so.

22.3 Gama is employed by the Plaintiff which continues to hold him out as a person with authority to act on its behalf and thereby representing that all the conduct which the Plaintiff complains of about him is ratified by it, him being an Accounting Officer in terms of the PFMA.

22.4 The Defendant specifically denies that the conclusion of the agreement between the Plaintiff and the consortium was in any manner irregular and/or payment thereof constitutes an irregular and/or fruitless and/or wasteful expenditure.

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23 AD PARAGRAPH 18.8 TO 18.10

23.1 The allegations contained therein are denied as if specifically traversed and the Plaintiff is put to the proof thereof.

23.2 The Defendant specifically pleads that it never rendered any services to the Plaintiff for its own account either as alleged or at all.

23.3 At all material times, the Plaintiff was aware that the services which were required in terms of the agreements were to be rendered by the GNS Consortium and not the Defendant.

23.4 The GNS Consortium consisted of members, some of whom were duly registered as security services providers at the time of contract.

24 AD PARAGRAPHS 18.11 TO 18.13

24.1 The allegations contained therein are denied as if specifically traversed and the Plaintiff is put to the proof thereof.

24.2 The Defendant made the representations in paragraph 5 of the Plaintiff's Particulars of Claim but denies that these were misrepresentations.

24.3 The agreements between the GNS Consortium and the Plaintiff were entered based on the representations made by the consortium to the Plaintiff in relation to services which the consortium executed for the Plaintiff.

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24.4 The Defendant specifically pleads further that there was no misrepresentation, material or otherwise, which was made by the Defendant which induced the Plaintiff to enter into the agreement between it and the GNS Consortium.

25 **AD PARAGRAPH 19**

25.1 The Defendant denies that the Plaintiff is entitled to restitution in the sum alleged from the Defendant and the Plaintiff is put to the proof thereof.

25.2 The Defendant specifically pleads that the Plaintiff is not entitled to claim restitution against the GNS Consortium either.

25.3 The Plaintiff has, in any event, failed to tender the expenses incurred by the GNS Consortium in the rendering of the services under the agreement.

WHEREFORE the Defendant prays that the Plaintiff's claim be dismissed with costs.

DEFENDANT'S COUNTERCLAIMS

26 The Defendant in convention is the Plaintiff in reconvention.

27 The Plaintiff in convention is the Defendant in reconvention.

28 CLAIM 1 (Underlying facts)

28.1 During the course of 2009, the Defendant instituted disciplinary enquiries against Gama, Senamela and Khanye.

28.2 Advocate Nazeer Cassim SC ("Cassim") was appointed by the Defendant to Chair the disciplinary proceedings initiated by the Defendant against Khanye and Senamela.

28.3 On or about the 5th March 2010, Cassim dispatched his findings to the Defendant.

28.4 The findings of Cassim were brought to the attention of the Plaintiff. *How*

28.5 The Plaintiff after having perused Cassim's award realised that the award contained unfounded, false and unsubstantiated allegations of a damaging and defamatory nature towards the reputation, goodwill and character of the Plaintiff and its officials.

28.6 On the 9th March 2010, the Plaintiff dispatched a letter to the Defendant's attorneys seeking an undertaking that the said findings should not be publicised, in the light of the false, unsubstantiated, damaging and defamatory allegations made therein against the Plaintiff and its officials. Annexed hereto marked "A1", is a copy of the said letter.

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28.7 On the 10th March 2010, the Defendant responded through its attorneys and undertook not to publicise the findings but only to use the findings for its own internal purposes. Annexed hereto marked "A2" is a copy of the said letter.

28.8 On the 12th of March 2010, the Defendant through its attorneys dispatched a letter to the Plaintiff wherein the Defendant withdrew its undertaking not to publish the findings outside Transnet. *Just a copy*

28.9 On or about 1 April 2010, the Defendant who was in custody of Cassim's findings, caused the said findings to be published in the Mail & Guardian newspaper of 1 April 2010 and in the IOL News Portal on 4 April 2010. Copies of the published articles are annexed hereto marked "A3" and "A4". *GNE as already in possession through either Khan or Simamela*

28.10 The Mail & Guardian newspaper is a paper widely distributed in South Africa and the IOL News portal is widely read by the general public.

28.11 The said articles quoted extensively from the findings of Cassim, as appears from the annexures hereto.

28.12 The said quotations from the findings, in the context of the articles, are wrongful, false and defamatory of the Plaintiff in that they were intended and were understood by the readers of the said newspaper and portal to mean that the Plaintiff and its officials are dishonest, corrupt and involved

in acts which contravene the law in order to obtain unfair advantages in their dealing and in tender processes.

- 28.13 At the time when these allegations were caused to be published by the Defendant, the Plaintiff was engaged in the following contracts:-

Contract A (The Mpumalanga Provincial Government in its Department of Co-operative Governance and Traditional Affairs)

- 28.14 The duration of this agreement was for a period of 3 (three) years from 15 November 2009 to 14 November 2012.
- 28.15 In terms of this agreement, the Plaintiff was to conduct Risk Management and to provide overall Risk Advisory Services for the Mkhondo, Mbombela and Thaba Chweu local municipalities.
- 28.16 The Plaintiff honoured its obligation and rendered its services as envisaged in the agreement.
- 28.17 The value of the said contract for the duration of the contract, was an amount of R51,033,240.00.
- 28.18 As a result of the wrongful conduct by the Defendant in causing Cassim's findings to be publicised, negative publicity about the Plaintiff circulated

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as a result of which the Mpumalanga Provincial Government terminated this agreement in May 2010.

- 28.19 As a result of the termination of the said agreement, the Plaintiff suffered damages in the sum of R45,362,880.00 being an amount which the Plaintiff would have been entitled to, but for the untimely cancellation of the agreement as a result of the negative publicity instigated by the Defendant.

Contract B (The Department of Public Transport, Roads and Works (G-Fleet) and General Nyanda Risk Security)

- 28.20 The duration of this agreement was for a period of 3 (three) years from 1 June 2009 to 31 May 2012.
- 28.21 In terms of this agreement, the Plaintiff was to provide an integrated Security and Risk Management System including strategic support to the Department of Public Transport Roads and Works.
- 28.22 The Plaintiff honoured its obligation and rendered its services as envisaged in the agreement.
- 28.23 The contract amount agreed upon to be paid for the duration of the contract, was an amount of R60,000,000.00.

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28.24 As a result of the wrongful conduct by the Defendant in causing Cassim's findings to be publicised, negative publicity about the Plaintiff circulated as a result of which the Department of Transport Roads & Works terminated this agreement 2 (two) years prematurely.

28.25 As a result of the termination of the agreement, the Plaintiff suffered damages to the amount of R40,000,000.00 being an amount which the Plaintiff would have been entitled to, but for the untimely cancellation of the agreement as a result of the negative publicity instigated by the Defendant.

Contract C (The Department of Public Transport, Roads and Works Urban Transport Fund and GNS Risk Advisory Services)

28.26 The duration of this agreement was for a period of 2 (two) years from 1 February 2010 to 31 January 2012.

28.27 In terms of this agreement, the Plaintiff was to provide security consulting and advisory services to the Department of Public Transport, Roads and Works and its Urban Transport Fund in relation to the implementation of the Intelligent Number Plates (iNP) Project.

28.28 The Plaintiff honoured its obligation and rendered its services as envisaged in the agreement.

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- 28.29 The contract amount agreed upon to be paid for the duration of the contract, was an amount of R10,508,800.00.
- 28.30 As a result of the wrongful conduct by the Defendant in causing Cassim's findings to be publicised, negative publicity about the Plaintiff circulated as a result of which the Department of Public Transport, Roads and Works terminated this agreement 19 months prematurely.
- 28.31 As a result of the termination of the agreement, the Plaintiff suffered damages to the amount of R8,319,466.50 being an amount which the Plaintiff would have been entitled to, but for the untimely cancellation of the agreement as a result of the negative publicity instigated by the Defendant.

29 **CLAIM 2**

- 29.1 The Defendant in reconvention has instituted action against the Plaintiff in reconvention.
- 29.2 In that claim, the Defendant is seeking restitution and to be paid all the money it paid to the GNS Consortium, being the amount of R95,691,368.80.
- 29.3 In servicing the agreement and honouring its obligations in terms of the agreement, the Plaintiff, as part of the GNS Consortium, incurred the following expenses for the entire period of the contracts:

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- 29.3.1 equipment in the amount of R60,000,000.00;
- 29.3.2 personnel in the amount of R27,000,000.00;
- 29.3.3 overheads in the amount of R1,000,000.00.

29.4 In the event that the above Honourable Court finds for the Plaintiff in convention, then the Plaintiff in convention will be unduly enriched and benefited from the performance and services rendered to it under the alleged void agreements.

29.5 Accordingly, in the event that this Honourable Court finds that the agreements between the Plaintiff in convention and the Defendant in convention and/or the GNS Consortium are void then the Plaintiff in reconvention and/or GNS Consortium is entitled to be reimbursed in the amount of R88,000,000.00 it incurred as necessary expenses in the rendering of services to the Defendant in reconvention.

30 **CLAIM 3**

30.1 On or about 1 April 2010, the Defendant who was in custodian of Cassim's award, caused the said award to be published in the Mail & Guardian newspaper of 1 April 2010 and in the IOL News of 4 April 2010. Copies of the published articles are annexed hereto marked "A3" and "A4".

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- 30.2 The Mail & Guardian newspaper is a paper widely distributed in South Africa and the IOL News portal is widely read by the general public.
- 30.3 The said articles quoted extensively from the findings of Cassim, as appears from the annexures hereto.
- 30.4 The said quotations from the findings in the context of the articles, are wrongful, false and defamatory of the Plaintiff in that they were intended and were understood by the readers of the said newspaper and portal to mean that the Plaintiff and its officials are dishonest, corrupt and involved in acts which contravene the law in order to obtain unfair advantages in their dealing and in tender processes.
- 30.5 As a result of the said defamation, the Plaintiff has been damaged in its reputation, goodwill and character in the amount of R6,000,000.00 (six million rands).

31 **CLAIM 4**

- 31.1 During the period October 2010 to December 2010, the Defendant dispatched a blacklisting letter to the Plaintiff and other companies it called entities associated with the Plaintiff and/or its officials.
- 31.2 In the aforesaid letter, the Defendant stated that the Plaintiff and its associates will be blacklisted for a period of 5 years, including their Directors in their personal capacities and all other companies in which

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their Directors may have an interest as well as any future companies which may be created by such Directors. Annexed hereto marked "A5" is a copy of the aforesaid letter.

31.3 The said letter was dispatched, in bad faith, by the Defendant to other Government institutions and departments in order to ensure that none of those entities engage in further business with the Plaintiff.

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home*

31.4 As a result of the Defendant's *mala fide* conduct, all the State departments and/or entities which were intending to conduct business with the Plaintiff ceased from considering the Plaintiff as a preferred service provider.

31.5 As a result of the Defendant's conduct, the Plaintiff lost business opportunities and potential profit it could have gained, but for the conduct of the Defendant.

31.6 As a result of the Defendant's conduct, the Plaintiff suffered damages in respect of lost business, lost potential business, lost potential profits and profits estimated at R300,000,000.00 (three hundred million rands). This amount represents a globular figure and a much more certain figure will be computed through the Plaintiff's experts and, if necessary, an amendment will be sought.

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Signed: P K MABASO

WERKSMANS ATTORNEYS

Defendant's Attorneys

155 - 5th Street

Sandton

Tel: +27 (0)11 535 8475

Ref: Ms PK Mabaso/GNSR12756.9

c/o Suite 1714,

17th Floor, Marble Towers

208-212 Jeppe Street

JOHANNESBURG

TO:
THE REGISTRAR OF THE
ABOVE HONOURABLE COURT
JOHANNESBURG

AND TO:
BOWMAN GILFILLAN INC.
Attorneys for the Plaintiff
165 West Street
SANDTON
Tel: 011 669 9000
Ref: G Higgins/ 1198618

Copy hereof received on this day of JUNE 2011

For: Defendant's Attorneys

ACCEPTED WITHOUT PREJUDICE.	
Signed	<i>N Mlegwana</i>
Name	Nandipha
Date	02.06.11
Time	17:45