

DRAFT: 4530 July 2014

**INDICATIVE TERMS FOR
TERM LOAN FACILITY ARRANGED BY CHINA DEVELOPMENT BANK CORPORATION
FOR TRANSNET SOC LTD FOR THE ACQUISITION OF LOCOMOTIVES**

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| Borrower | Transnet SOC Ltd |
| Group | The Borrower and its subsidiaries |
| Mandated Lead Arranger | China Development Bank Corporation ("CDB") |
| Lenders | As selected and appointed by the Mandated Lead Arranger in consultation with the Borrower |
| Facility Agent | China Development Bank Corporation |
| Security Agent | [] ¹ |
| Hedge Counterparty | [] ² |
| Finance Parties | The Mandated Lead Arranger, the Facility Agent, the Security Agent (and any delegate or receiver), the Hedge Counterparty and the Lenders |
| Facility Type | Secured term loan facility (the " Term Facility ") |
| Term Facility Agreement | The facility agreement entered into or to be entered into between the Borrower and the Lenders to finance the acquisition of the Locomotives by the Borrower. |
| Currency | US Dollars (USD) |
| Currency and Facility Amount | Up to US\$ 2 USD2,500,000,000 ³ |
| Commercial Vendors | Friedshelf 1507 Proprietary Limited (and, subject to a name change, to be known and registered as CNR Rolling Stock South Africa Proprietary Limited) (" CNR ") (under the CNR Contract) and CSR E-LoCo Supply |

¹ CDB to confirm.

² CDB to confirm.

~~³ CDB to confirm if there will be a separate rand tranche to be provided by a member of the syndicate.~~³ [Please note that CDB is only able to fund in USD and repayment obligations are also in USD. However CDB or one of the other members of the syndicate are able to act as a hedge counterparty to convert the proceeds of the USD loan into randZAR pursuant to an ISDA Master Agreement, with the economic terms of each trade to be negotiated separately at the time of each such trade \(given that the times of payment for the Locomotives \(and hence the timing of each drawdown\) cannot be pre-determined at the date of the Term Facility Agreement. Another alternative may be for a member of the syndicate to fund a separate rand tranche.](#)

(Pty) Ltd ("**CSR**") (under the CSR Contract)

Commercial
Contracts

Means the contracts between:

- (a) CSR and the Borrower for the design, manufacture, test and supply of up to ~~4~~59 new dual voltage electric locomotives ("**Electric Locomotives**") dated 17 March 2014 (the "**CSR Contract**"); and
- (b) CNR and the Borrower for the design, manufacture, test and supply of up to 232 diesel locomotives ("**Diesel Locomotives**") dated 17 March 2014 (the "**CNR Contract**"),

(the Electric Locomotives and the Diesel Locomotives, collectively known as the "**Locomotives**").

Purpose

The proceeds of the Term Facility shall be used to finance up to 85% (~~eighty five percent~~) of the contract value of each of the ~~locomotives~~Commercial Contract.

Availability Period

Means, the period commencing from the date of the Term Facility Agreement and ending on the day before the date falling 36 (~~thirty six~~) months after the date of the Term Facility Agreement. ⁴

Any amount not drawn during the Availability Period shall automatically be cancelled on the last day of the Availability Period.

Final Maturity Date

~~480~~180 (~~one hundred and eighty~~) months from the date of the Term Facility Agreement.

Margin

~~2.75 per cent~~557%~~65%~~ (~~two point fivesixty fiveseven percent~~) per annum⁵

JIBAR

Means, in relation to any loan,

(c) the 3 (three) month Johannesburg interbank agreed rate administered by the Johannesburg Stock Exchange (or any other person which takes over the administration of that rate) for ZAR displayed on the appropriate page of the Reuters screen ("**Screen Rate**"), or

(d) (if no Screen Rate is available for the currency or Interest Period of that loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request quoted

⁴ Please confirm that the Availability Period of 36 months corresponds to the period when payment becomes due for the Locomotives under the Commercial Contracts.

⁵ Please note that for transactions of this nature for a borrower of a similar credit rating, CDB usually charges a margin of not less than 350 basis points.

Commented [A1]: Need to have a bit of margin as any problem (be it technical) from the suppliers part may delay the planned drawdown.

by the agreed reference banks;

and if any such rate is below zero, JIBAR will be deemed to be zero.

LIBOR

Means, in relation to any loan,

~~(e)~~ (e) the ~~36 (threesix)~~ month London interbank offered rate administered by the ICE Benchmark Administration Limited (or any other person which takes over the administration of that rate) for USD displayed on the appropriate page of the Reuters screen (“**Screen Rate**”), or

~~(f)~~ (f) (if no Screen Rate is available for the currency or Interest Period of that loan) the arithmetic mean of the rates (rounded upwards to four decimal places) as supplied to the Facility Agent at its request quoted by the agreed reference banks;

and if any such rate is below zero, LIBOR will be deemed to be zero.

Interest Rate

Loans under the Term Facility shall bear interest at a rate per annum equal to the aggregate of (a) the Margin and (b) ~~36 (threesix)~~ month LIBOR.

Default Interest Rate

1.20 ~~per cent~~ (one point twentytwo) percent per annum above the applicable Interest Rate whilst any Event of Default is continuing.

Minimum amount of each utilisation

To be determined at the documentation stage.

Disbursement

Subject to compliance with the Conditions Precedent to first utilisation and 10 (ten) business days² prior written notice to the Facility Agent, all loans shall be disbursed directly to the account of the relevant Commercial Vendor under each Commercial Contract, or other designated account as agreed between the borrower and the lender,- in accordance with the duly submitted disbursement instructions of the Borrower.

Disbursement shall be in accordance with a disbursement schedule agreed between CDB and Transnet and incorporated into the loan documents signed by the parties

Financial Closing Date:

The date on which the Facility Agent (acting on the written instructions of all the Lenders) confirms that the Conditions Precedent to first utilisation of the Term Facility have been satisfied.

Facility agency fee

~~US\$60,0000~~ USD60,000 (sixty thousand) per annum

Commented [A2]: What about the refunding of the amounts that have been paid to suppliers by Transnet?

| | |
|------------------------|--|
| Security agency fee | [] ⁶ per annum |
| Arrangement Fee | 1.5 per cent. 1.1051.18% <u>1.18% (one point one five eight percent)</u> of the amount of the total commitments under the Term Facility Agreement, payable on the earlier of (i) 30 (<u>thirty</u>) business days following the date of the Term Facility Agreement and (ii) the Financial Closing Date. ⁷ |
| Commitment Fee | The Borrower shall pay to the Lenders a commitment fee in US Dollars computed at the rate of 1 per cent. 0.8% <u>0.8% (zero point eight percent)</u> per annum on each Lender's <u>remaining</u> available commitment under the Term Facility for the Availability Period. For the avoidance of doubt, the commitment fee shall start to accrue from the date of the Term Facility Agreement <u>and shall be calculated on the balance of the committed loan value not yet drawn as at the calculation date.</u> ⁷ The accrued commitment fee is payable in arrears on each successive period of <u>6 (six)</u> months which ends during the Availability Period, on the last day of the Availability Period and, if the commitment is cancelled in full, on the cancelled amount of the relevant Lender's commitment at the time the cancellation is effective. |
| Interest Period | Each loan shall commence on the last day of its preceding Interest Period and end on the immediate following Interest Payment Date, except for the initial Interest Period of each loan which shall commence on the utilisation date and end on the immediate following Interest Payment Date. If two or more loans end on the same date, the loans will be consolidated into, and treated as, a single <u>L</u> loan on the last day of the Interest Period. |
| Interest Payment Date | 12 <u>March, 12 June, 12 September</u> and 12 December of each calendar year. If the Interest Payment Date is not a <u>Business Day</u> business day , the interest shall be paid on the preceding <u>Business Day</u> business day . The final Interest Period shall end on the Final Maturity Date. |
| Interest Payment | Interest will accrue on the <u>L</u> loans based on the Interest Rate. Interest will be payable on each Interest Payment Date in arrears. |
| Repayment of Principal | There will be no amortization of the principal payment during the period from the date of the Term Facility Agreement to the day before the date falling 54 36 (fifty four thirty six) <u>36 (thirty six)</u> months after the date of the Term Facility Agreement (the " Grace Period "). During the Grace Period only interest will be accrued and paid on each Interest Payment Date. After the Grace |

⁶ CDB to confirm.

⁷ Please note that this fee is likely to be shared with other members of the syndicate as an upfront fee for their participation. CDB requires this rate of arrangement fee to provide it with flexibility during the syndication process.

Period, ~~42 (forty two) equal and consecutive quarterly repayments will be made towards interest and capital repayment principal shall be repaid in 43225 (forty three twenty twofive) equal and consecutive quarterly semi-annual installments, together with the accrued interest being paid at the same time as each such installment.~~ The first installment shall be made on the date falling ~~5457 (fifty seven) 36~~ months ~~(54 months grace period and lapsing of the first 3 months)~~ after the date of the Term Facility Agreement, and each subsequent installment shall be made on each Interest Payment Date thereafter. All amounts due or to become due under the Term Facility Agreement shall be paid or repaid in full by the Final Maturity Date.

Mandatory
Prepayment

Prepayment (with corresponding reductions to and cancellation of commitments) will be mandatory in full upon a change of control of the Borrower, ~~ratings downgrade~~ or sale of all or a material part of the business/assets of the Borrower or the Group (i.e., where the higher of the market value or consideration receivable (when aggregated with other disposals by the Borrower or the Group) is equal to or exceeds an amount equal to ~~US\$40~~USD 40,000,000 (or its equivalent in another currency or currencies) in any financial year of the Borrower).⁸ Disposals permitted by the Lenders (to be further defined at documentation stage) shall not trigger the mandatory prepayment provisions.

Voluntary
Prepayment

The Borrower may prepay the ~~L~~loan in whole or in part (if in part by a minimum of ~~US\$50~~USD 50,-000,000) (fifty million) at the end of any Interest Period subject to 30 ~~Business Days~~(thirty) business days of prior written notice to the Facility Agent. All prepayments shall be subject to a prepayment fee of 1% ~~(one percent)~~ of the amount of the prepayment, and if not occurring on an Interest Payment Date, the payment of break costs, if any.⁹

Set-off

All amounts payable in connection with the Term Facility to be made by the Borrower will be made without set-off or counterclaim.

Taxes

All amounts payable in connection with the Term Facility will be made free and clear of all present and future taxes, other deductions, levies, imposts and withholdings of whatever nature (other than income taxes in the jurisdiction of each Lender's applicable lending office).

The Borrower will be required to gross up in the event that any such withholdings, taxes and/or deductions are required to be made.

⁸ Please note that these mandatory prepayment provisions were set out in Transnet's precedent facility agreement provided to CDB.

⁹ Please note that it is standard for CDB to charge a prepayment fee in deals of this nature.

Security Documents The Lenders' security package shall include, but not be limited to the following:

- (a) a security agreement granting a first ~~fixed legal mortgage and a first fixed and floating charge~~ranking security over the Locomotives in favour of the Security Agent (acting on behalf of the Finance Parties) on and from the transfer of title of such Locomotives and each part thereof to the Borrower¹⁰;
- (b) all notices and acknowledgements relating to the security listed in (a) above; and
- (c) *[other security requested by the Mandated Lead Arranger as necessary]*.

Finance Documents Documentation will be based on the Loan Market Association (the "LMA") provisions customary for facilities of this nature. The documentation will include, but not be limited to the following:

- (a) a ~~term facility agreement~~Term Facility Agreement entered between, amongst others, the Lenders and the Borrower ~~(the "Term Facility Agreement")~~;
 - (b) an ISDA Master Agreement, any accompanying schedules and each subsequent confirmation between the Borrower and the Hedge Counterparty¹¹;
 - (c) the Security Documents; and
 - (d) any Fee Letters,
- (together the "**Finance Documents**").

Conditions Precedent to first utilisation Satisfaction of certain conditions precedent as are customary for a transaction of this nature or considered appropriate by the Lenders, each in form and substance satisfactory to the Lenders, including but not limited to the following:

- (a) execution and delivery of all of the Finance Documents;
- (b) legal opinions issued by the external legal advisors to the Lenders

¹⁰ Form of security package subject to confirmation by South African / PRC counsel. Please note that security over the locomotives is imperative for CDB to provide this facility.

¹¹ Please note that this will be in respect of any hedging arrangements relating to the conversion of proceeds under any Loan from USD to rand.

satisfactory to the Lenders;

- (c) a certified copy of the constitutional documents of the Borrower, board resolutions, authorized signatory certificates and any relevant governmental approvals;
- (d) the latest consolidated financial statements of the Borrower;
- (e) no Event of Default has occurred and is continuing and all repeating representations are true and correct;
- (f) receipt of all relevant approvals and authorizations (corporate, regulatory, governmental and shareholder) in respect of the Commercial Contracts and the Finance Documents);
- (g) payment in full of all fees and expenses due and payable by the Borrower; and
- (h) copies of the executed Commercial Contracts.

Further Conditions
Precedent

Each utilisation, when aggregated with the amount of all Loans that have been drawn under the Term Facility (whether outstanding or not), shall not exceed 85% (eighty five percent) of the amounts that have been or will be incurred and paid on or prior to the date of such utilization (or will be paid with the proceeds of such utilisation) by the Borrower under each Commercial Contract.

Representations

Representations customarily given for facilities of this nature, in respect of the Borrower, and if appropriate, any member of the Group, including but not limited to the following:

- (a) status;
- (b) binding obligations;
- (c) non conflict with other obligations;
- (d) power and authority;
- (e) validity and admissibility in evidence;
- (f) governing law and enforcement;
- (g) no deduction of tax;
- (h) no filing or stamp taxes;

- (i) no default or insolvency;
- (j) no misleading information;
- (k) financial statements;
- (l) pari passu ranking;
- (m) no proceedings pending or threatened which has a material adverse effect;
- (n) no immunity;
- (o) compliance with sanctions;
- (p) environmental compliance and no environmental claims; and
- (q) [*others*].

Covenants

Covenants customarily given for facilities of this nature, in respect of the Borrower, and if appropriate, any member of the Group, including but not limited to the following:

- (a) authorisations;
- (b) compliance with laws;
- (c) negative pledge subject to agreed exceptions;
- (d) restriction on disposals subject to agreed exceptions;
- (e) restriction on merger;
- (f) maintenance of insurance;
- (g) restriction on loans (subject to agreed exceptions) and guarantees;
- (h) environmental compliance and notification of environmental claims;
- (i) pari passu ranking;
- (j) compliance with sanctions;
- (k) further assurance;
- (l) no change of business; and
- (m) [*others*].

Financial
Covenants¹²

~~Consolidated Tangible Net Worth at least US\$[] at any time;~~

~~Gearing ratio to be less than xx% Consolidated Debt to Revenue to be less than 80% of annual turnover or EBITDA to be less than [] semi-annual;~~

Consolidated Interest Cover Ratio at least [1.5 times] ~~semi-annual~~.

Events of Defaults

Events of Default customarily included for facilities of this nature, in respect of the Borrower, and if appropriate, any member of the Group, including but not limited to the following:

- (a) non-payment unless failure to pay is caused by administrative or technical error and payment is made within ~~{3} Business Days~~ (three) business days of its due date;
- (b) any financial covenant not satisfied;
- (c) failure to comply with any other obligations subject to agreed remedy periods if capable of remedy;
- (d) misrepresentation;
- (e) cross default;
- (f) insolvency;
- (g) insolvency proceedings;
- (h) creditors' process;
- (i) unlawfulness of Finance Documents and Commercial Contracts;
- (j) repudiation/termination of Finance Documents and Commercial Contracts;
- (k) material adverse change; and
- (l) [others].

Grace periods, thresholds and exceptions (as applicable) will be agreed at the documentation stage.

Costs and Expenses: ~~All costs and expenses (including without limitation travel expenses and~~

¹²~~Borrower to propose.~~ Borrower to propose. Pursuant to funding plan provided by the Borrower to CDB, we understand that Transnet has provided loan covenants to other lenders, for example gearing ratio is 50% and cash interest cover ratio is 3:1. Please note that CDB requires compliance with certain financial covenants by the Borrower as a standard credit requirement.

~~legal fees) incurred by the Facility Agent, the Security Agent and the Mandated Lead Arranger in connection with the preparation, negotiation, printing, execution and syndication of the Term Facility Agreement and any other Finance Document shall be paid by the Borrower promptly on within 30 (thirty) days of demand whether or not the Finance Documents are signed.~~

- Assignments and Transfers The Lenders may assign any of ~~its~~their rights or transfer by novation any of ~~its~~their rights and obligations to another bank or financial institution or to a trust, fund or other entity which is regularly engaged in or established for the purpose of making, purchasing or investing in loans, securities or other financial assets. Consent of the Borrower is not required for such assignment or transfer, [provided such entity (the transferee) is not a competitor of the Borrower¹³], but the Lenders shall give written notice to the Borrower of any such assignment or transfer.
- Clear market During the period from the date of ~~the Term Sheet~~this term sheet and the date of the Term Facility Agreement, the Borrower shall not, and shall ensure that no other member of the Group shall raise or attempt to raise finance in respect of the Commercial Contracts in the international or domestic loan or capital markets without the prior written consent of the Mandated Lead Arranger.
- Syndication: The Mandated Lead Arranger reserves the right to syndicate the Facility in whole or in part to other banks and financial institutions.- The Borrower shall give such assistance as the Mandated Lead Arranger may reasonably require in relation to the syndication of the Facility, including giving of presentations by members of their management and assisting in relation to the preparation of an information memorandum.
- Market Flex: The Mandated Lead Arranger shall be entitled to change, in consultation with the Borrower, the pricing, terms and/or structure of the Term Facility if the Mandated Lead Arranger determines that such changes are advisable in order to ensure a successful syndication of the Term Facility.
- Market Conditions: The terms set out in this ~~Term Sheet~~term sheet are subject to there being no material adverse change in either (a) the financial condition or the socio-political and economic situation of the Republic of South Africa, or (b) the international or any relevant domestic syndicated loan market, up to the date of the Term Facility Agreement.
- Miscellaneous Provisions The Finance Documents shall also contain standard terms including without limitation in respect of costs and expenses, amendments and waivers, illegality, break costs, market disruption, increased costs, indemnities to the Finance Parties, ~~FATCA~~the Foreign Account Tax Compliance Act (the

¹³ Please clarify what this means. Would a financial institution constitute a competitor of the Borrower?

"FATCA") provisions, reimbursement of stamp duty and VAT payable in connection with the facility documentation.

CDB shall transact a cross-currency swap transaction in order to convert the USD based loan to a local currency ZAR loan.

CDB shall ensure by virtue of the transacted cross-currency swap that Transnet is able to service the loan in local currency (ZAR)

CDB shall ensure that, save with the express permission of Transnet the cost of the cross-currency swap (inclusive of any fees to be paid to Regiments Capital) shall not exceed a total cost of eighty basis points (80bps). For the avoidance of any doubt, the total interest rate to be paid by Transnet in the servicing of this loan shall be the sum of the agreed margin plus the cost of the cross currency swap as a rate to be added to the South African JIBAR rate.

Waiver of sovereign immunity The Borrower shall irrevocably waive any immunity from suit, execution, attachment or legal process to the fullest extent permitted by the applicable law.

Governing Law All agreements will be governed by English law. If there is any dispute arising out of the Finance Documents, the parties shall submit the dispute to the London Court of International Arbitration ("LCIA") for arbitration in accordance with the then applicable LCIA Arbitration Rules.

Validity: The terms set out in this term sheet are available for acceptance by the Borrower until close of business in Beijing, China on 31 December 2014, after which time they will expire unless extended in writing by the Lenders.