

ANNEXURE A

CESSION AND DELEGATION AGREEMENT

between

TRANSNET SOC LIMITED

(Registration Number 1990/000900/30)

("Transnet")

and

ZESTILOR (PTY) LTD

(Registration Number 2011/008985/07)

("Zestilor")

and

T-SYSTEMS SOUTH AFRICA (PTY) LTD

(Registration Number 1989/007547/07)

("T-Systems")


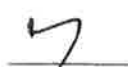





TABLE OF CONTENTS

1	DEFINITIONS AND INTERPRETATION.....	3
2	INTRODUCTION.....	5
3	CESSION AND DELEGATION	5
4	FURTHER AGREEMENT	5
5	CONFIDENTIALITY	5
6	DOMICILIUM AND NOTICES	8
7	REVOCATION RIGHTS.....	10
8	GENERAL.....	10






1 DEFINITIONS AND INTERPRETATION

1.1 In this Cession and Delegation Agreement the following words and phrases have the meanings assigned to them hereunder and derivative expressions have corresponding meanings:

1.1.1 "Business Day" means any day other than a Saturday, Sunday or any official public holiday in the Republic of South Africa;

1.1.2 "Ceded Agreement" means the separate Agreement that arises between Transnet and Zestilor after conclusion of this Cession and Delegation Agreement;

1.1.3 "Ceded Services" means the services that Zestilor must render to Transnet under the Ceded Agreement;


1.1.4 "Cession and Delegation Agreement" means this Cession and Delegation Agreement, including any amendments thereof;

1.1.5 "Confidential Information" means, without limiting the generality of the term, any information, discoveries, ideas, concepts, techniques, specifications, drawings, blueprints, diagrams, flow charts and data relating to products, designs, computer programs, business opportunities, customer lists, costing, marketing plans sales figures, technical and financial information, research, development and know-how, and information relating to a Party's business or affairs including that of its associated and affiliated companies (including any direct or indirect holding companies), whether disclosed in writing, orally or by any other means to a Receiving Party, whether before or after the commencement date of this Cession and Delegation Agreement and regardless of whether the information is expressly specified or marked as such or not, and shall include the content of this Cession and Delegation Agreement and any of a Party's Intellectual Property that does not fall within the exclusions in clause 5.7;


1.1.6 "Disclosing Party" means a Party that discloses Confidential Information to the other Party;

1.1.7 "Effective Date" means 1 December 2014;

1.1.8 "Intellectual Property" means any know-how that is not in the public domain, invention (whether or not patented), design, trade mark (whether or not registered), material subject to copyright, goodwill, trade or business name, pro-

Handwritten initials and signatures. The top signature is a cursive 'S' followed by a large flourish. Below it is another signature, possibly 'D', also in cursive. There are horizontal lines under each signature.

- cesses, process methodology and all other similar intellectual property as may exist anywhere in the world and any applications for registration of same;
- 1.1.9 "MSA" means the Master Services Agreement concluded between Transnet and T-Systems on 17 December 2009;
- 1.1.10 "Parties" means Transnet, T-Systems, and Zestilor, collectively, and "Party" means any one of them, as the context may indicate;
- 1.1.11 "Receiving Party" means a Party that receives Confidential Information from another Party;
- 1.1.12 "Transferred Agreement" means the Addendum to the MSA concluded between Transnet and T-Systems on 30 November 2010.
- 1.2 In this Cession and Delegation Agreement:
- 1.2.1 to the extent required by the context:
- 1.2.1.1 words denoting any gender will include the other two genders;
- 1.2.1.2 the singular will include the plural and vice versa;
- 1.2.1.3 a reference to natural persons will also be deemed to be a reference to created entities, whether incorporated or unincorporated (including partnerships, trusts, and functionaries acting for governmental, or similar, institutions), and vice versa;
- 1.2.2 if any provision in a definition is a substantive provision conferring rights or imposing obligations on any Party, the Parties must give effect to it as if it were a substantive provision in the body of this Cession and Delegation Agreement, notwithstanding that it is only in the definition clause;
- 1.2.3 the headings in this Cession and Delegation Agreement have been inserted for convenience only and will not be used in the interpretation of this Cession and Delegation Agreement;
- 1.2.4 the words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples is not to be construed as limiting the meaning of the general wording preceding it: the application of the *eiusdem generis* rule is excluded;
- 1.2.5 records are binding on the Parties and are not merely for information purposes.



2 INTRODUCTION

- 2.1 Transnet and T-Systems concluded the Transferred Agreement.
- 2.2 The Parties wish to transfer certain rights and obligations arising from the Transferred Agreement to Zestilor, while retaining certain of the rights and obligations therein as between Transnet and T-Systems.
- 2.3 Due to the interlinked nature of the rights and obligations that are transferred and those that are retained, the Parties have prepared a copy of the Transferred Agreement in which they have indicated, after each clause of the Transferred Agreement, the manner in which they intend to deal with the rights and obligations in that clause. Such copy is attached hereto as Attachment A.

3 CESSION AND DELEGATION

- 3.1 T-Systems hereby cedes its rights under the Transferred Agreement as indicated in Attachment A to Zestilor, who hereby accepts the cession.
- 3.2 T-Systems hereby delegates its obligations under the Transferred Agreement as indicated in Attachment A to Zestilor who hereby assumes such obligations, subject to clause 7 hereof, dealing with revocation rights.
- 3.3 The cession and delegation contained in clauses 3.1 and 3.2 take place at no consideration.
- 3.4 Transnet hereby consents to such cession and delegation.
- 3.5 Each of the Parties undertakes to co-operate in good faith with the other Parties to give practical effect to the cession and delegation contained in clauses 3.1 and 3.2.
- 3.6 The cession and delegation contained in clauses 3.1 and 3.2 take effect as from the Effective Date.

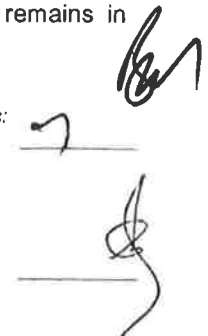
4 FURTHER AGREEMENT

Attachment A hereto contains terms relating to a number of additional matters, to which the Parties must agree to regulate the manner in which they will, on a practical level, give effect to the division of work under the Transferred Agreement that this Cession and Delegation Agreement introduces. The Parties hereby agree to be bound by such additional terms.

5 CONFIDENTIALITY

Confidentiality Obligations

- 5.1 The Parties must, as long as this Cession and Delegation Agreement remains in

Handwritten initials and signatures. The word 'Initials:' is followed by a line with a checkmark-like mark. To the right, there are two handwritten signatures. The top signature is a stylized 'B' or 'B' with a flourish. The bottom signature is a stylized 'S' or 'S' with a flourish.

force, and for a period of 5 (five) years thereafter, keep all Confidential Information they receive from each other in strict confidence and may not publish, employ, exploit or use the Confidential Information in any manner or make the Confidential Information available to third parties save to achieve the purposes of implementing this Cession and Delegation Agreement or to the extent permitted by the Disclosing Party.

- 5.2 A Receiving Party must restrict the dissemination of the Confidential Information only to employees or professional advisors (who may not be competitors of any of the other Parties) who are actively involved in the achievement of the objectives of this Cession and Delegation Agreement, and then only on a "need to know" basis to persons who are also subject to obligations of confidentiality no less stringent than contained in this Cession and Delegation Agreement.
- 5.3 A Receiving Party must take all reasonable steps to impress upon other persons coming into contact with another Party's Confidential Information the confidential nature thereof and to protect such Confidential Information in a manner no less stringent than the manner in which it protects its own confidential information.
- 5.4 Affiliates of T-Systems will not be deemed third parties insofar as Confidential Information is provided to them.
- 5.5 Each Party undertakes to the other Parties to advise the applicable Party promptly upon becoming aware of any actual, threatened or potential loss, disclosure, or duplication of such other Party's Confidential Information, or the actual, anticipated or potential breach of confidentiality or misappropriation of such Confidential Information.
- 5.6 Any unauthorised publication or other disclosure of Confidential Information may cause irreparable loss, harm and damage to the Disclosing Party. Accordingly, the Receiving Party hereby indemnifies and holds the Disclosing Party harmless against any loss, action, expense, claim, harm or damage of whatsoever nature suffered or sustained by the Disclosing Party pursuant to a breach by the Receiving Party of the provisions of this Cession and Delegation Agreement.

Exceptions

- 5.7 The confidentiality obligations in this Cession and Delegation Agreement do not apply to Confidential Information, which the Receiving Party can demonstrate:
- 5.7.1 was lawfully obtained from a third party who is not under obligation of confidentiality with regard thereto; or
- 5.7.2 was already in the public domain upon conclusion of this Cession and Dele-

Handwritten initials and signatures in black ink, including a large 'Y' and a signature that appears to be 'Ben'.

- gation Agreement or which becomes part of the public domain by publication or otherwise without any violation of the Receiving Party's obligations under this Cession and Delegation Agreement; or
- 5.7.3 is approved in advance for release by written authorization of the Disclosing Party; or
- 5.7.4 that constitutes technology, ideas, know-how and concepts of third parties (third party know-how), which the third party lawfully disclosed to the Receiving Party, even insofar as such third party know-how incidentally coincides with the Confidential Information; or
- 5.7.5 that must be disclosed to an assignee in case of assignment of claims to enable the assignee to enforce a claim, if necessary; or
- 5.7.6 that the Receiving Party provides to third parties for the purpose of protecting the Receiving Party's interests or to exercise its rights under this Cession and Delegation Agreement, provided that such third parties are obliged to maintain secrecy under their professional rules or in terms of a confidentiality Cession and Delegation Agreement no less stringent than in this Cession and Delegation Agreement.
- 5.8 The Receiving Party bears the burden of proof to establish that any information falls within the exceptions contained in clause 5.7.
- 5.9 Information disclosed in terms of this Cession and Delegation Agreement will not be deemed to be within the exceptions contained in clause 5.7 merely because such information is embraced by more general information in the public domain or in a Party's possession. Any combination of features will not be deemed to be within the foregoing exceptions merely because individual features are in the public domain or in a Party's possession, but only if the combination itself and its principle of operation are in the public domain or in a Party's possession.
- Forced Disclosure*
- 5.10 A Party may disclose Confidential Information to satisfy an order of a court or to comply with the provisions of any law or regulation in force from time to time (including a request in terms of the Promotion to Access to Information Act, No 2 of 2000, as amended), provided that such Party:
- 5.10.1 must inform the applicable other Party of its obligation to disclose before disclosure;

- 5.10.2 may disclose the Confidential Information only to the extent legally required;
- 5.10.3 must continue to apply the provisions of this Cession and Delegation Agreement to such Confidential Information for all other purposes.

Title

- 5.11 Each Party acknowledges that the other Parties' Confidential Information is proprietary to the other Parties and that its disclosure does not confer any rights in or associated with such Confidential Information to the Receiving Party.

Return of Information

- 5.12 A Disclosing Party may at any time request a Receiving Party to return any Confidential Information or other material containing, pertaining to, or relating to the Confidential Information and may, in addition, request the Receiving Party to furnish a written statement to the effect that upon such return, it has not retained in its possession, or under its control, either directly or indirectly, any such material.
- 5.13 Alternatively to clause 5.12, a Receiving Party must, if asked to do so by a Disclosing Party, destroy or irrevocably delete such material and furnish the Disclosing Party with a written statement to the effect that such material has been destroyed or irrevocably deleted (unless the Receiving Party is required by any law to retain a record of such material, but then only to the extent and strictly for the purposes embodied in such obligation).
- 5.14 The Receiving Party must comply with a request in terms of clauses 5.12 and 5.13 within 5 (five) days of receipt of such request.

Injunctive Relief

- 5.15 A breach of this clause 5 may cause a Disclosing Party loss for which a remedy in damages might not be adequate. Therefore, in addition to remedies otherwise available to a Party, a Party may seek injunctive relief to prevent or mitigate a breach or threatened breach of this clause 5, without having to demonstrate that it has no other adequate remedy in law.

6 DOMICILIUM AND NOTICES

- 6.1 The Parties choose the addresses as set out hereunder as the addresses where formal notices may be served on them ("Service Address"):

T-Systems:

Columbia Avenue,



International Business Gateway,
New Road,
Midrand,
South Africa

Attention: Head of Legal;

Transnet:

47th Floor, Carlton Centre,
150 Commissioner Street,
Johannesburg, 2001

Telefax: 011 – 308 2699

Marked for the attention of: General Manager, Group Legal

Zestilor:

7th Floor, Sandton Office Towers,
Sandton City,
Johannesburg 2196,

Attention: Santosh Kumar Choubey

- 6.2 A Party may vary its Service Address to any other address in the Republic of South Africa which is not a post office box or poste restante by written notice to the other Party. Such change will only become effective on the date of receipt thereof in accordance with clause 6.3.
- 6.3 Any formal notice served by a Party on another Party must be in writing. Any such notice which:
- 6.3.1 is delivered by hand will be deemed to have been received by the addressee on the first Business Day after the date of delivery;
- 6.3.2 is posted by pre-paid registered post from an address within the Republic of South Africa to the addressee at its then applicable Service Address;
- will be deemed to have been received on the 10th Business Day after the date of posting.
- 6.4 The Parties may correspond via email or telefax for operational reasons, but no Party



may give any notice relating to a dispute, demand, breach, legal proceedings, renewal, cancellation or termination by way of email or telefax. Such formal notice must be signed by hand on paper and either delivered by hand or by registered post as contemplated in clause 6.3.

7 REVOCATION RIGHTS

- 7.1 If Transnet lawfully terminates the Ceded Contract for reasons other than for Transnet's convenience, T-Systems must again provide the Ceded Services to Transnet, as from the day immediately following the day of termination of the Ceded Contract ("Resumption Date"). In such event the rights ceded to Zestilor and obligations assumed by Zestilor under this Cession and Delegation Agreement will revert to T-Systems and, from the Resumption Date, again become rights and obligations between Transnet and T-Systems, except to the extent that Transnet and T-Systems may agree differently in writing.
- 7.2 Zestilor agrees that in such event, it will co-operate with T-Systems in good faith to transfer Zestilor's employees who provided the Ceded Services during the period of thirty (30) days prior to the Resumption Date to T-Systems in terms of Section 197 of the Labour Relations Act.

8 GENERAL

- 8.1 This Cession and Delegation Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof. No amendment, alteration, variation, novation or consensual cancellation of this Cession and Delegation Agreement (including this clause 8.1) or addition thereto will be of any force or effect unless reduced to writing and signed by the Parties.
- 8.2 The rights and obligations of the Parties relating to the subject matter of this Cession and Delegation Agreement are provided for exclusively in this Cession and Delegation Agreement. General terms and conditions of the Parties are excluded even if they are contained in or reference is made to them in an order, order confirmation or other documents or in an oral agreement.
- 8.3 No waiver of, or failure, delay, relaxation or indulgence on the part of a Party in exercising any power or right conferred on such Party in terms of this Cession and Delegation Agreement will operate as a waiver of such right, unless it is expressed in writing and signed by the Party giving the same, and it will be effective only in the specific instance and for the purpose given. No single or partial exercise of any such power or right will preclude any other or further exercises of that power or right in terms of this




Cession and Delegation Agreement.

- 8.4 Each Party must bear its own costs arising from the negotiation, and conclusion of and performance under this Cession and Delegation Agreement.
- 8.5 If a court declares a provision of this Cession and Delegation Agreement to be invalid, the validity of the other provisions remains unaffected. The Parties must immediately negotiate in good faith to replace the invalid provision with a valid provision that comes as close as legally possible to the intent of the invalid provision.
- 8.6 Any provision of this Cession and Delegation Agreement that contemplates performance or observance subsequent to termination or expiration of this Cession and Delegation Agreement or which must necessarily continue to have effect after such expiration or termination, will survive the termination or expiration of this Cession and Delegation Agreement, notwithstanding that the provision itself does not expressly provide for this.
- 8.7 Nothing in this Cession and Delegation Agreement constitutes any Party as the agent, principal, representative, joint venturer or partner of any other Party, and no Party may represent the contrary to any third party.
- 8.8 No Party may cede its rights or delegate its obligations under this Cession and Delegation Agreement without the prior written consent of the other Parties, provided that T-Systems may cede its rights or delegate its obligations to any company that it controls, that controls it, or that is under common control with it without the other Parties' prior consent.
- 8.9 This Cession and Delegation Agreement may be signed in two or more counterparts and the signed counterparts, collectively, will constitute a binding agreement between the Parties.
- 8.10 The provisions of this Cession and Delegation Agreement were settled by negotiation and each Party was free to secure independent legal advice. The rule of construction that clauses must be interpreted against the Party principally responsible for drafting will, therefore, not apply in the interpretation of this Cession and Delegation Agreement.
- 8.11 This Cession and Delegation Agreement will be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.
- 8.12 The use of any expression in this Cession and Delegation Agreement covering a process available under the laws of the South Africa such as, without limiting the interpre-

Handwritten initials and signatures. There are two sets of initials, one above the other, and a long, flowing signature below them.

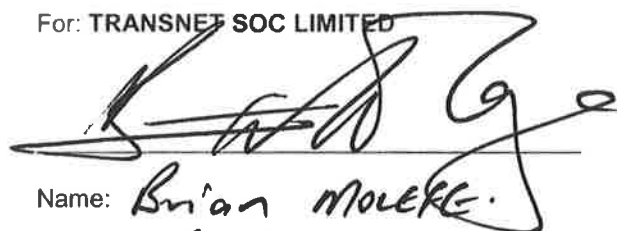
tation of this particular sub-clause, "winding-up" will, if any of the Parties is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such defined jurisdiction.

8.13 This Cession and Delegation Agreement supersedes all other agreements relating to the subject matter of this Cession and Delegation Agreement.

8.14 No Party may rely on any representation made prior to the conclusion of this Cession and Delegation Agreement, even if such representation induced another Party that wishes to rely on it, to conclude the Cession and Delegation Agreement, unless that representation is recorded in this Cession and Delegation Agreement.

SIGNED at Jhb on 01.12.14

For: TRANSNET SOC LIMITED



Name: Brian MOLEKE.

Capacity: GCE.

Who warrants that he/she is authorised to do so

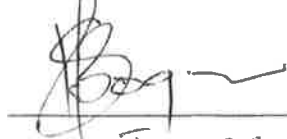
Name:

Capacity:

Who warrants that he/she is authorised to do so

SIGNED at MIDRAND on 28/11/2014

For: **T-SYSTEMS SOUTH AFRICA (PROPRIETARY) LIMITED**



Name: JONAS P. BOGOSHI

Capacity: VP SALES

Who warrants that he/she is authorised to do so



Name: George Raath

Capacity: BN1: Legal

Who warrants that he/she is authorised to do so

SIGNED at _____ on _____

For: **ZESTILOR (PROPRIETARY) LIMITED**

Name: _____

Capacity: _____

Who warrants that he/she is authorised to do so



Initials: _____