

REPORT

for

MR T M G SEXWALE

CHAIRPERSON, TRILLIAN CAPITAL PARTNERS (PTY) LTD

on

**ALLEGATIONS WITH REGARD TO THE TRILLIAN GROUP OF
COMPANIES, AND RELATED MATTERS**

GEOFF BUDLENDER SC

29 June 2017

Instructed by S Sirkar

Herold Gie Attorneys

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INTRODUCTION

1. Towards the end of November 2016 I was appointed by Mr T M G Sexwale, the independent non-executive chairperson of Trillian Capital Partners (Pty) Ltd, to conduct an investigation into certain specified matters. Mr Sexwale acted on the authority of a resolution of the Board of Directors. The matters which I was required to investigate were the following:

1.1. The allegations in the *Sunday Times* of 23 October 2016 with regard to Trillian and related persons and entities, including, but not limited to, that:

1.1.1. the CEO of Trillian, Dr Eric Wood, had prior knowledge of the impending dismissal of Finance Minister Nene by President Zuma and his replacement with Minister Van Rooyen;

1.1.2. Trillian acted upon this information for commercial purposes with the aim of collaborating with Minister Van Rooyen so as to position Trillian to benefit from the appointment of the new Minister;

1.1.3. Dr Wood informed an employee of Trillian that Mr Mohamed Bobat would be appointed as a special adviser to Minister Van Rooyen, and would arrange that tenders from National Treasury and State owned enterprises (SOEs) would be channelled to a team at Trillian;

- 1.1.4. Trillian invoiced some SOEs for work which was not done and without contracts.
- 1.2. Issues raised in the report of the Public Protector, "*State of Capture*", in relation to the conduct of Trillian and related entities. These include, but are not limited to, the following issues:
 - 1.2.1. The cession by Eskom of major advisory contracts from Regiments Capital to Trillian.
 - 1.2.2. The role of Trillian and its principal shareholder, Mr Salim Essa, in the acquisition by Tegeta Exploration and Resources of the shares in Optimum Coal Holdings.
 - 1.2.3. The role or impact, if any, of members of the Gupta family and persons associated with it, on the activities of Trillian.
2. The terms of reference noted that it was possible that in the course of the investigation, I might identify "*related issues which bear on good corporate governance and good country governance. The investigator has the latitude to broaden the scope of this investigation in the light of information which emerges, and which bears on those questions. Trillian wishes to be a good corporate citizen of South Africa, and one of the purposes of this investigation is to ensure that it is such.*"

3. The terms of reference recorded further:

“The Board and Management of Trillian, including Dr Wood,¹ have undertaken to co-operate fully with the investigation. They will make themselves available to the investigating team, including meeting with the team and providing all relevant information and documents required by the investigating team.”

4. It was further recorded that I would submit a report to Mr Sexwale, making findings and recommendations, and that the report would be made public after it had been submitted to Mr Sexwale, without delay.
5. Attorney Doris Tshepe of Cheadle, Thompson & Haysom Inc (CTH) was appointed as attorney to the investigation.

The Trillian group of companies

6. I attach (Annexure A) an organogram setting out the ownership structure of the Trillian group, as provided to me by Trillian.
7. The central company in the Trillian structure is Trillian Capital Partners (Pty) Ltd (TCP). It holds 100% of the shares in various subsidiary operating companies:

¹ Dr Eric Wood is the CEO of Trillian Capital Partners.

- 7.1. Trillian Management Consulting (Pty) Ltd (TMC);
 - 7.2. Trillian Financial Advisory (Pty) Ltd (TFA);
 - 7.3. Trillian Asset Management (Pty) Ltd (TAM);
 - 7.4. Trillian Securities (Pty) Ltd; and
 - 7.5. Trillian Shared Services (Pty) Ltd.
8. In this report, when I refer to “*Trillian*”, I refer to Trillian Capital Partners (Pty) Ltd and its subsidiaries. Where I refer to a specific company in the Trillian group, I identify it.

The emergence of Trillian in its current form

9. Trillian in its present form has its origins in a dispute between three men who are the owners, managers, funders and directors of Regiments Capital (Pty) Ltd: Mr Litha Nyhonyha, Mr Magandheran Pillay, and Dr Eric Wood. This dispute has resulted in two High Court applications: in one, Dr Wood is suing Mr Nyhonyha and Mr Pillay; in the other, Mr Nyhonyha and Mr Pillay are suing Dr Wood. In each case, the applicants seek an order in terms of the Companies Act declaring their opponents as delinquent directors of Regiments Capital.

10. It is not necessary for present purposes to go into the detail of the litigation. It is sufficient to mention that Mr Pillay alleges that the source of the dispute was that he and Mr Nyhonyha refused to agree to a proposal by Dr Wood that a majority stake in Regiments Capital be sold to the Gupta family. Dr Wood denies this, and has a different explanation of the source of the dispute.
11. The parties entered into negotiations to resolve the dispute. It was proposed and agreed that there should be a parting of the ways, and that the parties should each receive some part of the assets and business of Regiments Capital. The negotiations contemplated that this would all be addressed in an agreement known as the Navigator Agreement. However, the parties could not reach agreement on the terms of the separation, and the Navigator Agreement was not concluded.
12. On 29 February 2016, by agreement, Dr Wood left the employ of Regiments Capital, and became the CEO of Trillian. However, he remained a director and (through a trust) a shareholder of Regiments Capital.
13. In the litigation, the parties accuse each other of acting unlawfully and contrary to the interests of Regiments Capital, of which they are all directors. They dispute who is entitled to the Regiments work, the fruits of that work, and the business opportunities. The litigation is pending. It would obviously not be appropriate for me to express any opinion with regard to the merits of the litigation.

PART 1: TRILLIAN'S RESPONSE TO THE INVESTIGATION

14. It is unfortunately necessary to commence with an account of the response of Trillian to this investigation. This is so because that response has had a fundamental impact on what I have been able to do, and what I have done.
15. As I have noted, the terms of reference recorded that the Board and management of Trillian, including Dr Wood, had undertaken to co-operate fully with the investigation, and to provide all relevant information and documents required by the investigating team.
16. Regrettably, Trillian management has not made good on that undertaking. Since January 2017, the Trillian management have consistently obstructed my attempt to conduct a proper investigation. They have refused, despite repeated requests, and despite undertakings which they have given, to provide me with the documents and other information which I required in order to be able to carry out this investigation.
17. The result is that I have been unable to carry out a full investigation into the matters set out in the terms of reference.
18. The process of collecting information commenced with a request which I made to Trillian on 16 November 2016 for specified information concerning the structure of Trillian, its financial statements, its contractual relationships with SOEs, its relationship with

Regiments Capital and with the consulting firm, McKinsey, and certain bank statements. This information was provided to me on 23 November 2016.

19. At my request, Ms Tshepe instructed expert financial analysts to undertake a review and analysis of certain of the information which I had been given. As a result of that review, through CTH I requested Trillian to provide further information. It related mainly to financial matters.
20. That request was made on 17 January 2017, more than five months ago. Since then, Trillian has refused to give me any information which I have requested. I set out below the sequence of events in this regard. Where I refer to “Trillian”, I refer to its management, under the leadership of Dr Wood and represented by their attorneys Stein Scop.
21. I now set out the sequence of events which followed on my request of 17 January 2017.

The request of 17 January 2017

22. Trillian Management refused to provide any of the information contained in the request of 17 January 2017. The reason they gave was that the information requested was outside the scope of my terms of reference.

23. CTH repeatedly requested (on my behalf) that Trillian state which parts of the request were alleged to be outside the terms of reference, and why it was contended that this is the case. Trillian never answered this question.
24. On 9 February 2017, Dr Wood wrote to me. He stated that the request “*appeared to have expanded the scope*” of the investigation. He did not identify any part of the request which he contended was outside the scope of the investigation.
25. On 10 February 2017, I replied to Dr Wood pointing this out. I said:

“[Trillian] has apparently decided that all of this information falls outside the scope of the investigation, or will yield nothing more than what it has already provided. I repeat that I consider this information relevant and necessary for me to be able to undertake my mandate. If that were not the case, I would not have asked for it. It is not for Trillian management, which is the subject of the investigation, to decide what evidence I may consider”.

26. I accordingly requested Dr Wood to reconsider his position. I received no response to my letter.

The request for electronic devices

27. After considering the information which I had received from Trillian and after reviewing the material that was in the public domain and interviewing a number of informants, I decided that it would be necessary for me to review relevant information on electronic devices used by Dr Wood.
28. Accordingly at my request, on 6 February 2017 Ms Tshepe wrote to Dr Wood recording that I required access to all of his electronic devices which could contain or which were used to send and receive e-mails, messages or draft documents which could be relevant in the investigation. These included computers, laptops, phones, and tablets. She informed him that an independent third party computer forensic service provider had been tasked to create forensic images of the above sources and to ring-fence and extract only specific information as agreed on, based on time period and content. An arrangement had been made for them to attend at the Trillian offices on 10 February 2017 to gain access to those devices.
29. Stein Scop immediately replied that Dr Wood refused to provide access to these devices. They stated:

“Eric advises me that nothing further would be gleaned from trawling his electronic devices and no further information which would result from such an

exercise that has not already been provided to you within the scope of your queries and investigation”.

30. In my letter of 10 February 2017 to Dr Wood, I pointed out that it was not appropriate for him (as one of the persons whose conduct I had to investigate) to decide what evidence I would find useful. This was a task which had been assigned to me. I requested that he reconsider his position.
31. The electronic devices were never provided to me. The result is that I was not able to carry out a proper investigation in relation to key aspects of the enquiry.

Other unsuccessful requests for information

32. Further requests for information were made to Trillian on 10 February 2017 and 23 March 2017. Trillian refused to provide any of the information requested on those dates.

A further broken undertaking to provide the information requested

33. During March 2017 I brought this to the attention of Mr Sexwale, and asked him to intervene. He had a meeting with the management of Trillian, and on 17 March 2017 he wrote to Dr Wood referring to that meeting. He stated that it was to be my call as to what information fell within the scope of the terms of reference. He said that from the side of Trillian, Dr Wood as head of management should be seen to have fully complied with my

requests. He recorded that Dr Wood had always assured him, and he had no reason to doubt this, that he and management had nothing to hide. *"It is therefore crucial that you co-operate with Adv Budlender"*. Mr Sexwale simultaneously wrote to me saying:

"Be assured that as promised, Trillian will fully co-operate with the investigation".

34. Meanwhile, Ms Tshepe and CTH had withdrawn as attorneys on the basis that it had been alleged that they had a conflict of interest, because Ms Tshepe had previously been a Director of Transnet. (She was not a Director at the times relevant to the inquiry which I was conducting.) A new attorney had to be appointed.

35. On 22 March 2017, Stein Scop wrote to me as follows:

"... Dr Eric Wood and the Management Team of Trillian wish to communicate to yourself that they stand ready, once you have received your refresher brief from the new attorneys, to provide you with any information which you and your new advising attorney may require and request. In addition, they confirm that they are eager to appear before you in order to provide you with the input that you may require".

36. On 23 March 2017, I wrote to Stein Scop stating that I hoped that a new attorney would be appointed shortly. I requested that in the meantime, I be provided with the documents requested by Ms Tshepe on 17 January 2017, 7 February 2017 and 10 February 2017. I

also asked for supporting documentation in respect of a withdrawal from the Trillian account with the Bank of Baroda on 14 April 2016, reflecting the person to whom the payment was made, the purpose of the payment, and who authorised it.

37. On 10 April 2017, Stein Scop wrote to me as follows:

“Trillian is putting together the documentation requested by CTH and should be in a position to forward it to yourself and the new attorneys this week”.

38. As I explain below, when this deadline approached, Trillian sought a new excuse for not providing the documents. This time, they attempted to close down the inquiry completely.

A false explanation of the delay in providing the documents requested

39. Meanwhile, there had been reports in the press about the delay in the enquiry. On 12 April 2017, Trillian issued a media release to the *Mail & Guardian* in response to those reports. They referred to the fact that in mid-March, Ms Tshepe had withdrawn as a result of an alleged conflict of interests. They then stated:

“Any delays occasioned by the process have not been at the instance of Trillian and were occasioned by the need to change attorneys as well as the previous

attorney reflecting information which request may have arisen from the conflict of interests”.

40. That statement was patently false, for two reasons:

40.1. By the time Ms Tshepe withdrew, in mid-March 2017, two months had already passed since the request of 17 January 2017. That request and other requests had met with no answer. The withdrawal of Ms Tshepe in mid-March 2017 could therefore hardly have been a reason for the “*delay*” on the part of Trillian in providing the information requested.

40.2. The suggestion that the requests may have been made because of Ms Tshepe’s alleged conflict of interests, is equally false. Ms Tshepe at all times made it clear, as I did, that the requests which she made were on my behalf and on my instructions.

41. On 12 April 2017, I wrote to Stein Scop attaching a copy of the media statement, and asking whether it had been sent with the knowledge and consent of Dr Wood. When I did not receive a response, on 19 April 2017, I again wrote to Stein Scop requesting a response. On 24 April 2017, they replied that Dr Wood had been out of the country since the beginning of April and had returned over the weekend. They said that the statement by Trillian was issued without his input or knowledge, and that it was prepared “*on advice by management*”.

42. That same day, I replied by asking Stein Scop to advise who, on behalf of management, provided the advice, and who, on behalf of management, authorised the issuing of the statement on behalf of Trillian. On 3 May 2017, I wrote again asking for a response, and on 11 May 2017, I wrote again asking for the courtesy of a reply.

43. On 12 May 2017, I received a reply from Stein Scop as follows:

“The response to the media was prepared collaboratively by the EXCO of the company”.

44. That same day, I wrote again to Stein Scop asking that they advise who the members of EXCO were who had been party to this.

45. I have never received any response to this enquiry.

46. The members of Trillian’s Exco behaved dishonestly in putting out the media statement which they did. When they were asked which of them had been party to it, they were apparently not prepared to identify themselves.

First attempt to close down the inquiry

47. On 3 May 2017, Trillian Management sent a memorandum to Mr Sexwale. In that memorandum, they pointed out that Ms Mosilo Mothepu had been identified as the

whistle-blower referred to in the *Sunday Times* article of 23 October 2016. That article had given rise to my appointment to conduct this inquiry. They pointed out that the article had referred to an affidavit allegedly submitted by her to the Public Protector, and that Ms Mothepu had now (in litigation with Trillian) denied having made such an affidavit. On this basis, they concluded that the reason for the investigation had fallen away.

48. This attempt to close down the inquiry was spurious and without any basis at all:

48.1. I had been appointed to investigate the allegations in the *Sunday Times* and in the Public Protector's report with regard to Trillian;

48.2. In her recent affidavit, Ms Mothepu had confirmed that she had submitted a statement to the Public Protector in which she made allegations of misconduct by Trillian;

48.3. Ms Mothepu's statement to the Public Protector appeared to have been the source of some of the statements in the *Sunday Times* report and the Public Protector's report;

48.4. Ms Mothepu denied having submitted an affidavit, i.e. a statement under oath. She said that she had submitted an unsworn statement;

- 48.5. Ms Mothepu had thus not denied having made allegations of misconduct by Trillian. She had also not withdrawn the allegations which she had made. To the contrary, she stood by them. All she had done was raise a dispute as to the form in which she had made them, namely whether they had been made under oath.
49. The suggestion by Trillian that the reason for the investigation had fallen away was not only spurious. No-one could have honestly believed that Ms Mothepu's statement that she had submitted an unsworn statement, and not an affidavit, to the Public Protector, in any way negated the reason why the inquiry had been appointed. It was appointed because of the serious allegations which were made in the *Sunday Times* and in the report of the Public Protector, and not because the allegations were made in a particular form (whether in an affidavit or an unsworn statement).
50. The management of Trillian are experienced professional people. They cannot honestly have believed that the dispute over whether Ms Mothepu's statement to the Public Protector was an affidavit or an unsworn statement had any bearing on the matter which I was required to investigate.
51. I conclude that this was a dishonest attempt by Trillian to have the investigation closed down, in order to avoid providing the information which I had requested, and which they had promised to provide.

Second attempt to close down the inquiry

52. There was some delay in the appointment of an instructing attorney to replace Ms Tshepe. Approaches were made to several firms of attorneys, each of which indicated that they had a conflict of interests for one reason or another. Ultimately, Mr Sexwale appointed attorney Shekesh Sirkar of Herold Gie, in Cape Town, as instructing attorney for the investigation.
53. On 14 June 2017, Mr Sirkar wrote to Stein Scop referring to their letter of 22 March 2017 to me, in which they had stated that Trillian Management “*stand ready, once you have received your refresher brief, from the new attorneys to provide you with any information which you and your new attorney may require and request*”. Mr Sirkar pointed out that I had now received the refresher brief from the new attorney, and repeated the requests which had previously been made. For good measure, he listed the outstanding requests for documentation.
54. Stein Scop replied by denying that Mr Sirkar had any mandate at all to act in the matter. They referred to the fact that there had not yet been agreement in respect of a deposit to be paid in advance to cover the fees and disbursements of Herold Gie. On this basis they asserted that Herold Gie had no mandate at all. They demanded that Herold Gie return to them all of the documents of Trillian, and said that they would send a representative to attend at Mr Sirkar’s office the following day to collect such documents. They said that Mr Sirkar had no mandate to have briefed me, and asked him to “*confirm that you have*

removed Adv Budlender SC from any purported brief with immediate effect". This would of course bring the entire inquiry to an end.

55. Mr Sirkar and I then spoke with Mr Sexwale. He confirmed that Mr Sirkar was mandated by him as Chairperson of the Board of Trillian, and that the mandate had not been terminated. Mr Sexwale confirmed further that I was on brief from Mr Sirkar, and I was required to complete my inquiry. By this stage, I had undertaken to provide a report by the end of June 2017. Mr Sirkar informed Stein Scop accordingly. No-one arrived at Mr Sirkar's office to collect the documents which had been demanded.
56. In my opinion, this was patently another cynical attempt to bring the inquiry to an end. As Stein Scop were aware, Trillian had still not paid Ms Tshepe's invoices in respect of the investigation. The reason for this was that through Stein Scop, Trillian had raised a dispute about those invoices. Trillian and Stein Scop must have known that in the light of that fact, a new attorney would be extremely unlikely to take on the appointment unless a suitable deposit was paid. If a new attorney would not accept the appointment, my own appointment and the investigation would come to an end.
57. I conclude that in the light of the obstructive and evasive position consistently taken by Trillian from January 2017, and having regard to the background to which I have referred above, this was a cynical attempt by Trillian to prevent the inquiry ever being concluded.

Conclusion

58. The result of the repeated obstruction and obfuscation by Trillian is that I have not been able to complete the inquiry which I was appointed to undertake. I have consulted a number of informants, and I have studied a large number of documents which I have obtained either from Trillian or from other sources. In the sections of this report which follow, I refer to some of the matters into which I have enquired, and the information which has been made available to me in this regard.
59. I have not been able to corroborate any of this information with Trillian, because they have refused to provide me with the information which I requested. Some time ago, they assured me that they wished to attend an interview with me. At that stage, I took the view that an interview would not be effective, because I had not yet received the documents which I had requested and which I had been promised. The result was that I would not be fully informed as to the questions which I wished to put to them, and I also would not be able to test the accuracy of their answers by reference to the relevant documents.
60. I was recently informed by Mr Sexwale that Dr Wood had told him that he (Dr Wood), and possibly others, wished to attend an interview with me relevant to the inquiry. I immediately (on 19 June 2017) wrote to Dr Wood referring to my discussion with Mr Sexwale, and requesting Dr Wood, if he wished to have such a meeting, urgently to make contact with Mr Sirkar in order to make the necessary arrangements. Dr Wood did not respond to this invitation.

61. Mr Sexwale had publicly announced that I would produce this report by the end of June. After close of business of 28 June 2017, as this report was about to be released, Stein Scop wrote to Mr Sirkar stating that Dr Wood wished to have a meeting with me. A meeting with Dr Wood at this stage would necessarily lead to a delay in the release of the report until after 29 June 2017. It may not be coincidental that the shareholders of Trillian had called a meeting for 29 June 2017, at which a resolution would be proposed for the removal of Mr Sexwale as chairperson. If this were followed by a decision by the directors to terminate my enquiry, the result would be that this report would never be released. I did not agree to the meeting.
62. The interviews which I have had, and the documents which I have studied, have raised very many more questions than I am able to answer. They need to be investigated by someone who has the legal power to compel witnesses to give evidence and to produce documents. I address this further in the concluding section of this report.
63. Against that background, I now address certain discrete matters which I have investigated on the basis of the information made available to me.

PART 2: ESKOM

The relationship between Trillian and Eskom

64. On 2 December 2016, the Minister of Public Enterprises (Ms Lynne Brown) provided a written reply in the National Assembly to a question from Ms N W A Mazzone (DA). Ms Mazzone asked the Minister:

- (1) What amount did Trillian Capital Partners receive in service fees for allegedly negotiating the settlement of a massive insurance claim involving the explosion of a boiler at the Duvha power plant?
- (2) Did Eskom appoint the specified company to source a new supplier to replace the exploded boiler at the Duvha power plant? If so, what: (a) were the fees payable to the specified company in this regard? and (b) what are the further relevant details?
- (3) (a) Which other contracts of engagement have been concluded between Eskom and the specified company? and (b) What are the costs involved in each case?

65. The Minister answered as follows:

(1) No amount was paid to Trillian Capital Partners for the Duvha power plant insurance claim. Eskom did not appoint Trillian Capital Partners to negotiate the settlement for the Duvha power plant insurance claim.

(2) No, Eskom did not appoint Trillian Capital Partners to source a new supplier to replace the exploded boiler at the Duvha power plant. There was no need to appoint any external party to assist with sourcing ...

(3) (a) None. (b) Not applicable (annexure “B”)

66. Eskom spokesperson Khulu Phasiwe was similarly reported as telling the media company, Fin24, on 18 May 2017 that while Trillian was listed as a supplier of Eskom in 2016, Eskom has no record of paying it any money as no services were used.

67. In my request of 16 November 2016, I asked Trillian for all invoices submitted by TH or TCP or TCP’s business units to the State or a State-owned entity. Trillian produced the following invoices addressed to Eskom, all of which are stamped “Paid”.

67.1. On 14 April 2016, TMC (a 100% subsidiary of TCH) submitted invoice ESK2016-MC01 to Mr Anoj Singh of Eskom (Annexure C). It is stamped “Paid” on the same day. It is for an amount (including VAT) of R30 666 000.00. The description of the service rendered is:

“Professional fees: Pro-rate share of Eskom Corporate Plan Deliverable”.

67.2. On 10 August 2016, TMC submitted invoice ESK2016-MC02 addressed to Prish Govender at Eskom (Annexure D). It is for an amount (including VAT) of R122 208 000.00. It is stamped “Paid” on 13 August 2016. The description of the services rendered is:

“Professional fees: Financial Advisory for the following Eskom initiatives:

- *Project Surge*
- *Private Sector Participation*
- *Online Vending Services*
- *Hitachi*
- *Duvha*
- *Short term funding facility*
- *Long term funding facility”.*

67.3. On 10 August 2016, TMC submitted invoice ESK2016-MC03 to Prish Govender at Eskom Holdings (Annexure E). It is for the amount (including VAT) of

R113 262 534.00. It is stamped "*Paid*" on 13 August 2016. The invoice is stated to be in respect of the following:

"Professional fees: Management Consulting for the following Eskom initiatives:

- *Programme Management Office (PMO)*
- *Procurement*
- *Primary Energy*
- *Claims*
- *Generation".*

68. The information which the Minister of Public Enterprises gave to Parliament was, depending on the view you take of it, either false or seriously misleading. An amount in excess of a quarter of a billion rand was paid to TMC. TMC is a subsidiary of TCP. Yet the Minister stated that nothing was paid by Eskom to TCP.²

² amaBhungane reported on 18 May 2017 that on 14 December 2016, Eskom paid a further R152.8 million to Trillian for management consulting. This date is after the date on which Trillian replied to my request for information of 16 November 2016, and I therefore do not have any information in that regard.

69. The statement by Eskom to Fin24 on 18 May 2017, namely that while Trillian was listed as a supplier of Eskom in 2016, the power utility has no record of paying any money, cannot be true, unless Eskom has no records of three payments totalling more than a quarter of a billion rand. If it is correct that “no services [of Trillian] were used”, it is for Eskom to explain why it paid the quarter of a billion rand. This question is not rhetorical: it is very pertinent in relation to the question of Trillian tenders to Eskom, Trillian contracts with Eskom, and the work performed by Trillian for Eskom.
70. On 16 November 2016, I had asked Trillian for all tenders or quotations submitted by TH or TCP or TCP’s business units to the State or a State-owned entity. Trillian disclosed only one tender to Eskom. That was in response to an Eskom Request for Proposals for the provision of financial advisory services for a period of three years. The status of the tender was recorded as “*awaiting client decision*”. It follows that Trillian did not submit any tenders for the work referred to in the three invoices which I have identified, giving rise to total payments (including VAT) of R266 136 534.00.
71. The amounts involved are, on any reckoning, very large. On 17 January 2017, I therefore asked Trillian to provide the following:
- 71.1. Project timesheets for all TCP and subsidiary personnel working on State or State-owned enterprise contracts for the financial year ending February 2016 and the current year to date accounts for the financial year ending February 2017. This includes contracts where Trillian are sub-contractors.

- 71.2. Copies of all the final deliverables for contracts with State-owned companies, including the correspondence where such deliverables are provided to the State-owned company for the financial year ending February 2016 and the current year to date accounts for the financial year ending February 2017. This includes contracts where Trillian is a sub-contractor.
72. Trillian refused to provide me with this information. It contended that this was not relevant to the inquiry which I was conducting. It is frankly difficult to understand how anyone could honestly make that assertion. The question which therefore arises is why Trillian refused to provide the information which I had requested. I address this further below.
73. I was, however, given information in this regard by the former CEO and Executive Director of Trillian Financial Advisory, one of the wholly-owned subsidiaries of TCP.³ She explained some of the items listed in the Trillian invoices as follows:
- 73.1. The Duvha claim: The power station had exploded, and Eskom had made a claim from its insurers. Marsh were representing the insurers. Through arrangements made by Mr Anoj Singh, Dr Wood and the CEO met Marsh to assist in resolving the insurance claim. The first time the CEO met Marsh was on 9 December 2015. At this time, she was still employed by Regiments. In these discussions she and Dr Wood were representing Eskom, talking to their insurers about the settlement of the claim. They were also advising Eskom on the Supply Chain appointment

and on people to do the repair. By 1 March 2016, when the CEO moved from Regiments to Trillian, their role in this matter had been concluded. All of the work had been done on behalf of Regiments, and all of the expenses were being recovered by Regiments.

73.2. The Eskom Corporate Plan: In December 2015 Eskom had to prepare a corporate plan in terms of the Public Finance Management Act. Anoj Singh of Eskom asked Regiments to assist in this regard. Regiments assisted the Eskom Treasury team to put together the plan which had to be submitted to the Board, the Treasury and the Department of Public Enterprises. The work was done by Regiments and completed by December 2015 or January 2016.

73.3. Online Vending Strategy: Regiments assisted Eskom with the formulation of the online vending strategy. She was the lead person on this task. The task was completed before she moved to Trillian. After she had moved to Trillian, she did work on the appointment of an entity to undertake the implementation.

73.4. R30 bn loan facility (Goldman Sachs): The team analysed a proposal by Goldman Sachs and made recommendations to Anoj Singh. Eskom had the capacity to do this: it is what their Treasury team did. They were skilled and experienced in the field.

³ In this report I refer to the former CEO of TMC and the former CEO of TFA by their titles rather than by their names. This is to protect their privacy to the extent possible.

74. In general, the former CEO stated that in each instance all or a substantial part of the work had been done before 1 March 2016, which for those purposes was the effective Trillian inception date. Before 1 March 2016 the work was done by the staff of Regiments, who were paid by Regiments. She commented further that generally Regiments were not needed for this work, as Eskom staff were able to carry it out.
75. It therefore seems that the Eskom spokesperson was substantially correct when he asserted that Trillian had not done any work for Eskom. Trillian had not tendered for any of this work, and it did not have any contract with Eskom for this work. It has refused to provide me with any information in respect of any work which it allegedly did. The question which Trillian and Eskom need to answer is why these payments were made.
76. The former CEO of TFA told me that the international consultancy firm McKinsey originally had a contract with Regiments as its SDP.⁴ When Trillian was to break away from Regiments, McKinsey had to “vet” Trillian in order to satisfy itself in terms of its due diligence risk review. Trillian put together a company profile, which it submitted to McKinsey. McKinsey declined to contract with Trillian, as I describe more fully below. Trillian were told that this was because the shareholder (Mr Essa) who was a “PEP” (Politically Exposed Person). The former CEO said that she discussed this with Dr Wood in April 2016. He said that she was not to worry, as he would discuss the matter with Mr Anoj Singh of Eskom. He said that Trillian had responded to an Eskom Request for Proposals, and Mr Singh would appoint Trillian through that process. The obvious question which arises is how he could be so confident that Eskom would appoint Trillian.

⁴ I address the McKinsey-Trillian relationship more fully in the next section of this report.

77. The following emerges from this overview of the information which I obtained:

77.1. It is not true that Eskom made no payments to Trillian. It paid Trillian more than a quarter of a billion rand.

77.2. Trillian had not tendered for this work.

77.3. Trillian had no contract with Eskom for this work.

77.4. Trillian refused to provide me with information on what work it did to justify these fees, on the basis that this was "*not relevant*" to my inquiry.

77.5. It appears that virtually all of the work on the projects in question was done by Regiments, and not by Trillian.

77.6. When Trillian was unable to continue the Eskom work because it failed McKinsey's risk review process because of the role of Mr Essa in Trillian, Dr Wood was not concerned, because he said that Mr Anoj Singh of Eskom would award a contract directly to Trillian.

78. Dr Wood contends in the litigation with Regiments that the intended Navigator Agreement, settling the dispute amongst the directors of Regiments, entitled Trillian to the payments which it claimed and received from Eskom. Regiments, Mr Nyhonyha and

Mr Pillay dispute this. It is so that the parties initially started implementing parts of the still incomplete and unsigned agreement. It is not appropriate for me to express a view as to the respective rights of the parties to that intended agreement. That is part of the subject matter of the litigation.

79. However, whatever the rights of Dr Wood or Trillian may have been against Regiments, that was and is a matter between those parties. It is difficult to see on what basis Eskom, a third party which was not party to those negotiations, could have lawfully made payment to Trillian for work for which it did not tender, for which it did not have a contract, and which it did not perform. At best, Trillian may have had a claim against Regiments. That would not mean that Eskom could lawfully pay Trillian.
80. It may be that this is the reason why Eskom subsequently denied that it had made any payments to Trillian. As I have pointed out, that denial was false.
81. I am not able to pursue this enquiry further because of Trillian's refusal to co-operate and my lack of powers of compulsion.
82. Finally, I note that it appears from reports in the press that the relationship between Trillian and Eskom has not ended. *Business Day* has reported that in March 2017 Trillian provided Eskom with a "*risk assessment*" of bids which had been submitted for the supply of a new boiler at Duvha. The Chinese firm Dongfang was reported to have secured the tender even though its bid was substantially higher than the bids of its competitors.

PART 3: MCKINSEY

83. Major state-owned enterprises such as Eskom and Transnet have a Supplier Development Programme (“SDP”). In terms of the SDP, they require certain service providers to engage local service providers to participate in the work. One of the purposes of an SDP is that the local service providers should gain experience and develop skills, and should benefit from part of the contract.
84. McKinsey, the international consulting firm, is one of the companies which has been required to do this. McKinsey was engaged to undertake work on behalf of both Eskom and Transnet. On my behalf, Ms Tshepe of CTH contacted McKinsey in Johannesburg and requested them to attend an interview. They responded by stating that they would prefer to deal with the matter by way of written answers to questions provided by me.
85. On 22 March 2017, I wrote to Mr Benedict Phiri, the person dealing with this at McKinsey, and asked *inter alia* the following questions in relation to Trillian:⁵
- 85.1. Did McKinsey work on any projects on which Trillian worked as an SDP or a subcontractor? If so, in each instance:
- 85.1.1. Who were the clients?

⁵ I also asked certain other questions in relation to Regiments Capital, which are not relevant here.

85.1.2. What role did Trillian play?

85.1.3. What was Trillian's relationship with McKinsey on the project?

85.1.4. To which entity did Trillian submit its invoices?

85.1.5. Was this the usual arrangement for SDPs or subcontractors? If not, why was the usual arrangement not followed, and who suggested this particular arrangement?

85.2. In relation to the due diligence which McKinsey undertook with regard to Trillian:

85.2.1. What information did McKinsey request from Trillian?

85.2.2. What information did Trillian provide?

85.2.3. What information did Trillian not provide?

85.2.4. When did McKinsey decide not to partner with Trillian?

85.2.5. What are the full reasons why McKinsey decided not to partner with Trillian?

86. I stated that I would be happy at that stage to receive written answers to those questions, and that my decision as to whether to persist with a request for an interview or interviews would depend on how comprehensive the written answers were.

87. On 6 April 2017, McKinsey replied as follows:

“McKinsey did not work on any projects on which Trillian worked as an SDP or a subcontractor to McKinsey. Furthermore, Trillian is in possession of correspondence from McKinsey to Trillian with respect to the due diligence referred to. We consent to such correspondence being shared with you by Trillian pursuant to your investigation.”

88. On 3 May 2017, I wrote to Mr Phiri as follows:

“I attach a copy of a letter dated 9 February 2016 from Mr Vikas Sagar of McKinsey to Prish Govender of Eskom. Its contents appear to be inconsistent with your letter of 6 April 2017. I shall be grateful for your comments in this regard”.

89. The letter to which I referred was from McKinsey and Company to Prish Govender of Eskom. It was dated 9 February 2016, and was signed by Vikas Sagar, a Director of McKinsey and Company Africa (Pty) Ltd. It read as follows:

“Dear Prish

Authorisation to pay Subcontractors Directly

We refer to the Professional Services Contract for the provision of consulting services for 6 entered into between Eskom SOC Ltd (Eskom) and McKinsey and Company Africa (Pty) Ltd (“McKinsey”), dated 29 September 2015 (the Agreement). As you know, McKinsey has subcontracted a portion of the services to be performed under the Agreement to [Trillian (Pty) Ltd] (Trillian).

Subject to:

(i) the terms of the Agreement relating to any payments to be made by Eskom to us; and (ii) us issuing a written confirmation of our satisfaction with the relevant services to be performed by Trillian to McKinsey and; (iii) the correctness of the amount to be invoiced, we hereby agree for, and authorize, Trillian to invoice, and be paid directly by, Eskom for any services performed by it in pursuance of our obligations under the Agreement”. (Annexure “F”).

90. On 9 May 2017, Mr Phiri replied that he would discuss the matter with his colleagues and revert to me. I sent him reminders on 17 May and 23 May 2017. In the latter letter, I pointed out that I intended shortly to commence writing my report. On 24 May, Mr Phiri stated that he would be in a position to respond to me by 2 June 2017. On 4 June 2017, having not received a reply, I again wrote to him. He replied on 6 June 2017 that McKinsey had unfortunately not completed its internal processes in this regard, and he was also not in a position to definitively articulate when they would have done so, as

there were a few aspects they were reviewing. He would, however, revert to me as soon as they were ready.

91. On 6 June 2017, I informed Mr Phiri that I was planning to complete and issue my report during the course of June 2017. I stated that I was sure that he would appreciate that if I did not have a response from McKinsey before then, I would have to report accordingly.
92. On 18 June 2017, I received an e-mail from Mr Phiri as follows:

“We refer to the previous correspondence with you. You have asked for further elucidation. We have noted from media reports and press statements that will be formal regulative and investigative enquiries into a number of matters which have featured prominently in the press including, we understand, some relevant to Trillian.

In the circumstances, we have been advised that it would not be appropriate to provide further information relating to the informal investigation you are conducting into the affairs of Trillian. We trust you will understand our position.”

93. On 19 June 2017, I acknowledged receipt of that e-mail. I asked the following:

“For the sake of clarity, would you please confirm that I am to understand your e-mail to mean that McKinsey is not willing to provide me with information

regarding its relationship with Trillian, and not just in relation to the particular letter which I sent to you for comment.”

94. On 26 June 2017 Mr Phiri responded as follows:

“For clarity, McKinsey’s position is that, in light of the informal nature of your inquiry in the context of the various legal and regulatory processes around Trillian, it is inappropriate to furnish any further comment with respect to this matter.”

95. In the light of this attitude, I have not raised with McKinsey the further matters referred to in this report.
96. The factual situation is that a letter on the McKinsey letterhead, signed by a Director of McKinsey, directly contradicts what McKinsey told me on 6 April 2017. It contradicts McKinsey’s claim that it did not work on any projects *“on which Trillian worked as an SPD or a Subcontractor to McKinsey”*. McKinsey has neither suggested that the letter apparently signed by its Director is not genuine, nor provided any explanation for this inconsistency, despite repeated invitations to do so. It has refused to provide any explanation.
97. I have to say that I find this inexplicable, particularly having regard to the fact that McKinsey presents itself as an international leader in management consulting, and given the widespread public interest in this matter. It is difficult to avoid the conclusion that the

ultimate McKinsey response was an attempt to avoid dealing with a situation which appears to be embarrassing to the company. In my opinion, a refusal to provide the truth ought to be even more embarrassing.

98. I have subsequently established from the former CEO of TMC that in fact McKinsey did not conclude a contract with Trillian. A draft contract was prepared. The draft was discussed by the parties, and it was amended, but it was not signed. The reason for this appears to have been that as a result of the due diligence enquiry which it undertook, McKinsey ultimately decided not to contract with Trillian. However, this leaves two questions unanswered.
99. The first question, obviously, is why the McKinsey Director, Mr Sagar, wrote the letter of 9 February 2016, stating that McKinsey had subcontracted a portion of the services to be performed by it under an agreement with Eskom to Trillian, and why it authorised Eskom to make payment directly to Trillian in respect of that work.
100. The second question arises from facts which give rise to even greater concern. One of the witnesses with whom I consulted was the CEO of Trillian Management Consulting for approximately three months. She resigned on 19 March 2016. She informed me that during the period of her employment at Trillian she had extensive engagement with McKinsey in relation to Eskom. She provided me with extensive documentation in that regard, which demonstrated beyond any doubt whatsoever that:
 - 100.1. during this period, McKinsey was undertaking work on behalf of Eskom; and

- 100.2. Trillian was working with McKinsey on this Eskom work as a supplier development partner.
101. The unexplained denial by McKinsey is all the more inexplicable in the light of these facts. Trillian itself provided me with the agenda of a meeting of the Steering Committee in respect of the “*Top Consultants’ Programme*” which McKinsey was conducting on behalf of Eskom. It reflects Dr Wood, the CEO of TMC, and the CEO of TFA, each of them identified as being from Trillian, as members of the Steering Committee for the Programme (see for example “**H**”, an extract from that document). This flies in the face of the denial by McKinsey that it worked on any projects on which Trillian worked as an SDP or a subcontractor to McKinsey.
102. The documents provided to me include a memorandum from Vikas Sagar and Alexander Weiss of McKinsey to Clive Angel and Eric Wood of Trillian, dated 15 December 2015 and headed “McKinsey-Trillian partnership principles for the Eskom turnaround”.
103. The letter from Mr Sagar is also confirmed by an e-mail from the CEO of TMC to mabelaet@gmail.com (Mr Edwin Mabelane, who I understand is the chief procurement officer of Eskom) referring to a meeting the previous night, and noting “*McKinsey issued a letter to Eskom stating that payment should be made directly to Trillian*”
104. I conclude that the denial of McKinsey is false. Why they made a false denial is for them to explain.

105. A further issue arises from a contemporaneous internal Trillian memorandum written by the then CEO of TMC. The memorandum addressed the *“Current status of the Trillian/McKinsey supplier development partnership: Eskom turnaround programme”*. It recorded that McKinsey had entered into a Supplier Development Partnership with Trillian Management Consulting as part of their commitments for the award of the Eskom turn-around programme. The CEO stated that she had concerns about the general behaviour of the team, and more specifically the senior leadership of McKinsey, in relation to the Supplier Development Relationship, as highlighted by the statement which she said had been made by a senior McKinsey representative at a meeting of the joint team:

“It doesn’t really matter [supplier development] as long as you get your percentage [revenue]”.

106. She said that this was said in response to her complaint that McKinsey was not engaging Trillian in the programme, with the result that Trillian was not receiving the exposure and experience which it required. She reported that a general theme, from the McKinsey leadership down, was that *“Trillian as the development partner is simply a necessary, but unwanted piece of baggage in the awarded contract”*. She recorded a further McKinsey response, by Mr Lorenz Jungling, as follows:

“TMC requested a separate discussion on the proposed ramp of TMC resources, to ensure that the organisation is optimally structured and developed.

McKinsey response (Lorenz Jungling): The program does not have a detailed and long term plan that will make this explicit. Besides, regardless of TMC resources allocated to projects, TMC will still get their 30%”.

107. After another meeting, the CEO of TMC recorded that McKinsey’s view (as expressed by Mr Jungling) was as follows:

“... the current McKinsey sentiment is that TMC is not motivated by delivery and growth towards independence, but rather in this partnership purely to receive revenue in return for not much work.”

108. This suggests that the “*Supplier Development Programme*” was, at least from the point of view of some senior McKinsey representatives, a sham. The Eskom contract price included 30% for Trillian, which from those representatives’ point of view served little purpose other than to provide a substantial financial benefit to Trillian and its shareholders – and presumably to induce Eskom to award the contract to McKinsey.
109. I have referred above to the due diligence conducted by McKinsey. Annexure “G” is a letter from McKinsey dated 10 March 2016 and addressed to Eric Wood at TMC. The letter is headed “*Trillian, Hubei Hongyuan, E Gateway Global Consultants FZC, and Eskom Duvha Boiler Purchase*”. It records that the McKinsey global risk review is “ongoing”, with a view to being concluded during the middle of the following week. McKinsey required detailed responses to a letter of 25 February 2016 by the close of

business on Friday, 11 March 2016. The information required by McKinsey included the following:

- 109.1. Detailed account of the form and legal status of Trillian's relationship with Hubei Hongyuan, which I understand is a Chinese company.
- 109.2. Detailed account of the form and legal status of Trillian's relationship with E Gateway Global Consultants FCZ.⁶
- 109.3. Confirmation that Trillian, its employees, or any of its subcontractors or affiliates have no other interests which may conflict with their respective roles as advisor to Eskom.
- 109.4. Confirmation that, pending Trillian's detailed response to the letter, and with immediate effect, no Trillian personnel, subcontractor personnel, or personnel of any affiliate undertaking would conduct or undertake any activities on any element of the Top Consultants Programme which may lend themselves to a conflict of interest whether real or perceived.
- 109.5. Confirmation that Trillian indemnifies, defends and holds McKinsey harmless from any and all claims brought against McKinsey in respect of and relating to Trillian's relationship with Hubei Hongyuan and any services performed by Trillian and/or any of its subcontractors or their affiliates for Eskom.

110. From this it appears that by March 2016, McKinsey had developed reservations about its relationship with Trillian. Trillian was apparently not able to satisfy McKinsey in that regard, and the relationship was terminated. Two matters arise from this:

110.1. The document appears to confirm that Trillian was working with McKinsey on an Eskom project, the Duvha boiler purchase;⁷ and

110.2. It raises questions with regard to the probity of Trillian, which apparently was not able to satisfy McKinsey's risk review. This too is a matter which requires further investigation.

McKinsey, Trillian and Transnet

111. One further document is of note in this regard. On 9 March 2016, Dr Wood (Trillian) and Mr Sagar (McKinsey) sent a joint memorandum to Mr Garry Pita of Transnet. It was headed "*Proposed Model for Support: April to September*". It states that McKinsey had terminated its relationship with Regiments Capital "*due to political exposure and under-delivery by Regiments*". This separation was to be effective as at 31 March 2016. The memorandum – and I underline, this is a joint memorandum from Trillian and McKinsey – proposes that McKinsey and Regiments/Trillian "*support Transnet on independent streams to deliver on the 2016/17 budget*". In other words, what was proposed by McKinsey and Trillian was a different form of "partnership" for providing services to Transnet, in which the work would be divided between them, and they would act

⁶ I refer below to eGateway.

independently of each other. This would be a means for McKinsey and Trillian to co-operate in obtaining work and payment from Transnet without Trillian having to satisfy McKinsey's risk review (due diligence).

112. The memorandum proposed a basis for settling the existing contract for R245 million, by Transnet paying R235 million. The authors noted that if there was such a settlement, there would be an additional R130 million in contract value outstanding on the Transnet General Capital Freight Business ("*GFB*") contract. They proposed that the contract value be split 50:50 between McKinsey and Regiments or Trillian.

Conclusion

113. This narrative raises questions about McKinsey:

- 113.1. McKinsey initially indicated a willingness to answer questions which were put in writing.

- 113.2. It did answer questions which were put in writing.

- 113.3. When it was put to McKinsey that a letter on its letterhead suggested that one of those answers was false, and it was invited to explain this, it took 2½ months to

⁷ It also belies the answer which the Minister of Public Enterprises gave in this regard in the National Assembly.

decide how to answer - and then answered that it was “inappropriate” for it to respond to an “informal” enquiry such as the one I was mandated to undertake.

113.4. Why that would be “inappropriate” has not been explained. In my opinion, the answer holds no water at all.

114. The facts revealed by the investigation raise questions as to the conduct of McKinsey. They require further investigation, by a person or institution which has the legal powers to compel McKinsey to provide the relevant information. I do not have those powers.

PART 4: TRANSNET

115. As I have previously noted, on 16 November 2016 I asked Trillian for copies of all invoices submitted by TH or TCP or TCP's business units to the state or a state-owned entity. Trillian produced the following invoices addressed to Transnet:

115.1. Invoice TCPSWATTII-01 dated 7 June 2016 for R36 014 296.91 (including VAT) for "*Professional fees: Work done to close the SWATII project*" (annexure I).

115.2. Invoice TCB-GFB01 dated 23 May 2016 for R7 980 000.00 (including VAT) in respect of "*Professional fees: Work done to date (31 March 2016) in respect of 'Transnet GFB Breakthrough'*" (annexure J).

115.3. Invoice TCP-GFB02 dated 23 May 2016 for R7 980 000.00 (including VAT) in respect of "*Professional fees: Work done to date (30 April 2016) in respect of 'Transnet GFB Breakthrough'*" (annexure K).

115.4. Invoice TCP-GFB03 dated 7 June 2016 for R7 980 000.00 (including VAT), for "*Professional fees: Work done to date (31 May 2016) in respect of 'Transnet GFB Breakthrough'*" (annexure L).

115.5. Invoice TCP-GCIA01 dated 20 May 2016 for R2 689 830.00 (including VAT) in respect of *“Professional fees: Work done to date (1 February – 1 April 2016) and out of pocket expenses and support services at 10% of the total bill”*(annexure M). The project appears to be *“TRXGCIA – DCT Affordability Model”*.

115.6. Invoice TE2016-CP01 dated 19 April 2016 for R11 400 000.00 (including VAT) in respect of *“Professional fees: Financial structuring advisory services”*(annexure N).

115.7. Invoice TFA2016-FA07 for R41 040 000.00 (including VAT) in respect of *“Professional services – Transnet property database and financial model to create a ring-fenced property fund”* (annexure O). Three elements of those services are listed.

116. I deal with certain of these invoices.

117. The Club Loan:

117.1. The former CEO of Trillian Financial Advisory informed me that Trillian had no role at all in putting together the Club Loan, which was a package incorporating a number of lenders. The Club Loan Agreement was signed on 24 November 2015.

117.2. The former CEO refers to a report by amaBhungane stating that Trillian Asset Management was paid R93 000 000 in respect of the Club Loan. She says that Trillian did not perform any of the Club Loan work, and that if it indeed invoiced R93 000 000, this was for work which was not done by it, and that there was no reason for Transnet to accept and pay on the invoice.

117.3. The invoices provided to me by Trillian do not include an invoice for R93 000 000 in respect of the Club Loan. I have, however, obtained a Trillian Asset Management account statement in respect of an account with Investec, described as "*Main Account*". It reflects a credit of R93 480 000.00 on 4 December 2015. The description of the transaction is "*RTL Transaction*", with an EFT number provided.

117.4. If this payment was indeed made by Transnet, as has been alleged, then it is doubly suspicious: first, because Trillian did not provide me with an invoice in that regard; and second, because according to the former CEO of TFA, Trillian did not work on the Club Loan.

117.5. These are matters into which I would have inquired if Trillian had co-operated with the inquiry. There may be an entirely innocent explanation, but as a result of Trillian's refusal to co-operate with the inquiry, I have not been able to establish whether this is the case.

118. Transnet Engineering:

118.1. The former CEO of TFA states that on 2 February 2016, Dr Wood instructed her to organise a meeting with Transnet Engineering to discuss their order book in respect of other African countries, and possibly provide them with a funding proposal to assist their African expansion strategy. The meeting occurred on 4 February 2016 at the offices of TE. She says that shortly after the meeting, Dr Wood called her and instructed her to draft a funding proposal and request the finance section to generate an invoice for R10 000 000 (excluding VAT). She said that she could not send the client an invoice with the proposal, as no work had yet been performed. She says that her team drafted the proposal to TE, and Dr Wood then requested the finance department of Trillian to generate the invoice to TE. She was instructed to send the proposal to Mr Clive Angel, Director of Integrated Capital, who would send the proposal to Mr Thamsanqa Jiyane of TE. She says that Mr Angel sent the proposal to Mr Jiyane on 17 February 2016, and a supporting invoice for "*Professional fee: Financial structuring advisory services in the fund raising to facilitate African and Global sales of rolling stock*". It was attached to an e-mail to Mr Jiyane, referring to the Trillian Financial Advisory invoice for work performed. The invoice reference was TE2016-FA01.

118.2. Trillian have not given me such an invoice. As noted above I have, however, been given invoice TE2016-CP01 of 19 April 2016 for R10 000 000.00 plus R1.4 million in VAT. The footnote to the description of the services is the same as that referred to by the former CEO of TFA. The invoice is stamped "*Paid*" on 1 July 2016. If the former CEO is correct, it appears that two invoices were sent for this work. If so, I do not know whether both of them were paid.

119. Invoice TFA2016-FA07: The former CEO says that Regiments had identified Transnet's property portfolio as an opportunity to enhance Transnet's EBITDA. Fuel Property, headed by Mr Mark Pamensky (an Eskom board member, and Oakbay board member at the time), was sourced to analyse Transnet's property portfolio and propose a structure in this regard. Fuel Property performed the Transnet property analysis. The proposal was given to Mr Garry Pita of Transnet by Dr Wood in mid-April 2016, and was delivered to Mr Siyabonga Gama (Group CEO of Transnet) together with a R36 million invoice on 15 April 2016. She comments that this is a further instance where a proposal was submitted together with an invoice.
120. I have not been able to analyse the relationship between Trillian and Transnet in the detail which would be necessary for a proper inquiry. What however appears from the information which I have obtained through this inquiry is that questions need to be asked and answered with regard to Transnet invoices that appear to be missing, or duplicated, or in respect of work which Trillian did not itself do.
121. All of these matters require inquiry by an entity which has the power to compel Trillian, Transnet and any other relevant parties to provide the documents and information which are relevant.

PART 5: THE PURCHASE OF THE CONTROLLING SHARES OF OPTIMUM COAL HOLDINGS BY TEGETA EXPLORATION AND RESOURCES

122. This is a matter on which the Public Protector reported extensively in her report “*State of Capture*”. Tegeta Exploration and Resources purchased controlling shares in Optimum Coal Holdings (“OCH”) under circumstances of considerable controversy. It was alleged that Eskom had in various ways improperly facilitated this deal, for the benefit of the shareholders of Tegeta.

123. The shareholders of Tegeta include the following:

123.1. 29.05% is owned by Oakbay Investments (Pty) Ltd, which is known to be majority-owned by members of the Gupta family;

123.2. 28.53% is owned by Mabengela Investments (Pty) Ltd, of which Mr Duduzane Zuma (the son of the President) holds 45%, and Mr Rajesh Cumar Gupta holds 25%;

123.3. 2% is owned by Mr Ashu Chawla, who is reported to be the CEO of the Gupta-owned company Sahara; and

- 123.4. 21.5% is owned by Elgasolve (Pty) Ltd, the sole director of which is Mr Salim Aziz Essa. As I have noted, Mr Essa owns all of the shares in Trillian Holdings (Pty) Ltd, which in turn holds 60% of the shares in Trillian Capital Partners (Pty) Ltd.
124. It appears that as the date for the payment of the purchase price by Tegeta drew near, Tegeta found itself short of the money needed to cover the purchase price. According to the Public Protector, between 11 December 2015 and 14 April 2016 a specified account at the Bank of Baroda (an Indian Bank) received 32 deposits amounting to R2,478,639,309 for the benefit of Tegeta. The Public Protector reported that the following amounts were paid by Trillian companies:
- 124.1. Trillian Advisory paid R95 639 309;
- 124.2. Trillian Asset Management paid R74 784 000;
- 124.3. Trillian Capital Partners paid R65 000 000.
125. On 14 April 2016, just over R2 billion was transferred from that account to attorneys Werksmans to settle the Tegeta portion payable to the loan consortium which was involved (paragraph 5.334).

126. In my first request for information, dated 16 November 2016, I asked for records of all payments made by TH or TCP or TCP's business units to Tegeta or anyone else in favour of Tegeta. Trillian replied that:

"Trillian Capital Partners and its subsidiaries did not pay any money to Tegeta Exploration and Resources".

127. I also asked for records of all payments made by TH or TCP or TCP's business units to the Bank of Baroda or an account held at the Bank of Baroda. Trillian responded by providing me with certain Bank of Baroda bank statements. They stated further:

"The Bank of Baroda account is not our primary account and is therefore not used for transactional purposes with external parties. The account was used for the following transactions:

- *Intercompany transfers between the Trillian Group companies from both our ABSA and FNB bank accounts.*
- *Deposits of monies received from Regiments Capital Swap transactions.*
- *Interest received from our fixed deposit account with Bank of Baroda.*
- *Bank charges and EFT charges".*

128. The bank statements showed that on 14 April 2016, an amount of R160 246 000 was withdrawn from Trillian's current account with the Bank of Baroda. This was the very day on which the payment was made by Werksmans to settle the Tegeta portion payable to the loan consortium. The withdrawal does not appear to "fit" within any of the categories of transactions for which Trillian asserted that the Bank of Baroda account was used. And the coincidence of the substantial amount of R160 246 000 being withdrawn on the very day when payment was made in respect of the Tegeta loan, raises the most obvious questions as to whether this is a coincidence at all.

129. Accordingly, on 23 March 2017 I wrote to Stein Scop and requested the following:

"Supporting documentation in respect of the transfer out of Bank of Baroda account xxxxxx⁸ on 14 April 2016, reflecting the person to whom the payment was made, the purpose of the payment, and who authorised it".

130. Trillian has refused to provide this information.

131. In my opinion, for the following reasons there are strong grounds for suspecting that this money was used to assist Tegeta to pay for the shares in OCH.

131.1. the Public Protector found in her report that Trillian paid to Tegeta part of the purchase price for OCH;⁹

⁸ I have redacted the account number.

131.2. a withdrawal and transfer of a very large amount was made on the very day when payment was made by attorneys Werksmans in respect of the purchase price;

131.3. that withdrawal from the Bank of Baroda account, unlike the others which I have seen, does not bear an annotation which is consistent with the stated purposes of the account;¹⁰

131.4. Trillian was requested to explain the purpose of the withdrawal, and has refused to do so,

132. If this is so, its significance would be two-fold:

132.1. first, it would demonstrate that Trillian answered my questions of November 2016 untruthfully;

132.2. second, it would tend to demonstrate that Trillian is what is referred to colloquially as a “*Gupta-linked company*”, when one has regard to the lack of any explanation for the payment, and the fact that members of the Gupta family and their close associates were the principal shareholders of Tegeta and therefore the principal beneficiaries of the payment. I address this question further below.

⁹ I note that she appears to have had access to the relevant bank accounts, as at paragraph 5.331 of her reports, she states that all deposits made in favour of Tegeta to raise the purchase price were initially paid into an account of which she gives the number.

¹⁰ The annotation in respect of this withdrawal is “*FDR03/643*”.

PART 6: THE DISMISSAL OF MINISTER NENE

133. On 8 December 2015, the President dismissed Mr Nhlanhla Nene as Minister of Finance. The announcement had a significant impact on financial markets.

134. On 26 October ²⁰¹⁵~~1995~~, Dr Wood had sent an e-mail to Mr Essa as follows:

“Hi Salim

As discussed, I have quickly jotted down a few points for the FM. These are not comprehensive. In time I’m sure I can develop a more comprehensive list.

Regards

Eric”.

135. The former CEO and Executive Director of TFA says that on that day (26 October 2015), Dr Wood called her into his office for an informal meeting. He informed her that the President was going to fire the Finance Minister. He subsequently sent her an e-mail outlining National Treasury’s new initiatives, which he had drafted.
136. Dr Wood denies that he ever told the former CEO that the President was going to dismiss Minister Nene, or that he had advance knowledge of this. He set out his version of the events in his answering affidavit in the application against him by Regiments Capital. He states that during May 2014, he had a discussion with Minister Nene and prepared a list

of financial ideas and initiatives which he thought might be of interest to the Minister. Sixteen months later, in September 2015, he mentioned this to Mr Essa, who expressed interest in the idea. The following month, on 26 October 1995, he sent Mr Essa the list of ideas which he had proposed to the Minister. After a telephonic discussion with Mr Essa, he updated the list, and sent the updated list to Mr Essa and also to the CEO of TFA.

137. Mr Nene has publicly denied having had such an engagement with Dr Wood.
138. The former CEO also states that on 9 December 2015, the morning after the President had made the announcement of the dismissal of Minister Nene and his replacement with Minister Van Rooyen, she went to Dr Wood's office. She said to him "So you were right", and he said "Of course I was". He informed her that Mr Mohammed Bobat would be the new Finance Minister's special advisor. Mr Bobat was a principal at Regiments Capital in the management consulting division, reporting directly to Dr Wood. She says that Dr Wood said that Mr Bobat would appoint a team of experts at Trillian with public finance experience and expertise, and would channel tenders from National Treasury and State-owned companies to this team. He would subsequently provide guidance on technical and pricing elements of any tenders channelled from that office.
139. She states that Dr Wood further informed her that Mr Bobat would remain as the Minister's advisor for two years and would return to TCP upon the expiry of his contract. He said that he had given Mr Bobat the option of returning to any Trillian subsidiary of his choosing, and that Mr Bobat had chosen Financial Advisory. It was therefore

important that relations between her and Mr Bobat be improved if they were going to work together.

140. She also states that she saw Mr Bobat in Dr Wood's office on several occasions during her tenure at Trillian (ie after 1 March 2016, by which time Mr Bobat was Advisor to Minister Van Rooyen as Minister of Co-Operative Government and Traditional Affairs). She refers to two such occasions:

140.1. She says that on 4 March 2016, she came into the office after attending a presentation outside the office, to find that he was sitting at her desk, as Dr Wood's secretary had allocated him the desk on the assumption that she was not coming into the office that day. She says that Mr Bobat sat, worked and chatted with the Financial Advisory team for the remainder of the day.

140.2. She says that she saw him again on 22 March 2016 walking towards Salim Essa's office at Melrose Arch. She was at a meeting at Integrated Capital at the time. The office of Integrated Capital is next door to Mr Essa's office.

141. There is thus a dispute as to whether Dr Wood had advance knowledge of the dismissal of Minister Nene. The e-mail of 26 October 2015, referring to a list for "*the FM*" is said to support the assertion that he had this advance knowledge, on the basis that the "*FM*" was the Finance Minister to be appointed in place of Mr Nene (Mr Van Rooyen). Dr Wood's version is diametrically opposed to this: he denies having the advance

knowledge. He says that the reference to the “*FM*” is a reference to the then Finance Minister, Mr Nene.

142. If one wants to determine the truth of the matter, it is necessary to look at corroborating or contradictory evidence, and to assess the probabilities.
143. The most obvious source of corroborating or contradictory evidence would be Dr Wood’s electronic devices, which would record e-mails and sms’s which he had sent and received, and his diary appointments. That is one of the reasons I asked for access to the electronic devices. Dr Wood and Trillian refused to provide them to me, in my opinion for no good reason. The reason provided was that Dr Wood contended that the devices would not assist me in my investigation. That is of course hardly a matter for him to determine, given that he was one of the subjects of the investigation.
144. It is now more than four months since that request was made and refused. It is safe to assume that if there was inculpatory evidence¹¹ on the electronic devices, it will by now have been removed. As a result of Dr Wood’s and Trillian’s unjustified refusal to give me access to his electronic devices, I have been prevented from carrying on the inquiry in this regard. If there is inculpatory evidence which contradicts Dr Wood’s version (and I cannot say whether there is or is not), it will by now most likely have been destroyed.
145. It is not possible to make a definitive finding of fact on this issue. Factors relevant to the probabilities include the following:

145.1. Mr Nene has contradicted the version given by Dr Wood. I recognise, however, that Ministers have very many meetings, and it is possible that he may not have total recall in this regard, although one would expect him to remember a meeting of this kind, particularly given that Dr Wood claims to have had a further discussion with him about the matter at another meeting.

145.2. The conduct of Trillian Management in this inquiry has left me with the impression that what it says cannot be trusted. It undertook to participate fully in the inquiry and to provide all information required, and then reneged on that. It then made a further undertaking to provide all information required, and again reneged. It issued a false statement to the media attempting to explain why it had not provided the information requested. It has on two occasions attempted to bring the enquiry to an end, on spurious grounds. This is not the conduct of an entity which can readily be trusted.

145.3. Underlying all of this is the question why Trillian Management, having agreed to co-operate with the inquiry, and having initially done so, then refused to continue to do so, and in fact attempted to shut down the inquiry. It seems to me that the most likely explanation is that it was concerned at some of the questions which I had raised, and concerned with what would emerge if it disclosed the truth.

145.4. The CEO struck me as a straightforward person, who was anxious to make full information available to the inquiry. She answered directly any questions which

¹¹ Evidence which tends to confirm the allegations of the former CEO.

were put to her, and immediately provided whatever documents I requested to the extent that she could.

146. As I have said, it is not possible to make a definitive finding without access to all the relevant material and without questioning witnesses. However, it seems to me likely that the version given by the former CEO is the truth. If that is indeed the case, it raises the very troubling question as to how information about how the President was going to exercise his Constitutional prerogative came to be in the hands of a private company – and particularly where the information was commercially very sensitive.
147. I was required by the Terms of Reference to investigate whether Trillian acted upon this information for commercial purposes with the aim of collaborating with Minister Van Rooyen so as to position it to benefit from the appointment of the new Minister. One cannot answer this question without access to the relevant materials, which are not available to me. I have also not interviewed Mr Bobat. Under the circumstances, I cannot make any finding. However, what I can say with regard to the role of Mr Bobat is that the material disclosed in the report of the Public Protector and in the litigation between Regiments Capital and Dr Wood gives rise to grounds for deep concern, which call for an answer. To the best of my knowledge he has not provided such an answer.
148. These are matters which can only be finally determined by a proper inquiry which has the power to compel witnesses to give evidence and to produce documents.

PART 7: A GUPTA CONNECTION?

149. Paragraph 1.2.3 of the Terms of Reference provides that I am to enquire into the *“role or impact, if any, of members of the Gupta family and persons associated with it, on the activities of Trillian”*.

150. In a media statement issued on 23 October 2016, Trillian Capital Partners said the following:

“The Gupta family has no shareholding or other interest whatsoever in Trillian Holdings. It has no link to Trillian Holdings or to any of the other constituent members of the Trillian Group of Companies”.

151. As appears from the Trillian organogram (annexure “A”), Trillian Holdings owns 60% of the shares in Trillian Capital Partners. Dr Wood (through Zara W (Pty) Ltd) appears to be the beneficial holder of 25% of the shares in Trillian Capital Partners. I have not received any information as to the identity of Aerion Nominees (Pty) Ltd, who hold 12% of the shares in TCP.

152. According to the Trillian organogram, all of the shares in Trillian Holdings (Pty) Ltd, the majority shareholder in TCP, are held by Mr Salim Aziz Essa.

153. As far as I am aware, Mr Essa is not a member of the Gupta family in the sense of having a blood relationship with them. However, there have been extensive and repeated reports in the media that he is a very close business associate of the members of the Gupta family. The report of the Public Protector is replete with examples of business connections and common investments between Mr Essa and the Gupta family. It has never been denied that he is a very close associate of the Gupta family.

154. Two matters referred to in this report may further connect Mr Essa with the Gupta family:

154.1. If the withdrawal of R160 million from the Trillian Bank of Baroda account was indeed destined to pay for the purchase of OCH by Tegeta, as appears to have been the case, then that payment was made very substantially for the benefit of members of the Gupta family. There is no apparent reason why Trillian would have made that payment, other than to benefit them.

154.2. It is also unclear why Trillian holds an account with an Indian bank, the Bank of Baroda. It has been widely reported, without any contradiction, that Oakbay, the Gupta company, similarly holds an account or accounts at that bank. Trillian opened this account long before the Gupta companies ran into difficulty with their South African banks. And Trillian denies that it has any link with the Guptas. There is no apparent reason why Trillian, a company owned by South Africans and conducted in South Africa, and which asserts that it has no link with the Guptas, would want or need an account with a bank in India. Standing by itself, one would not attach much significance to the opening of an account with a bank

with which the Guptas also do business. In the light of the other evidence, however, it is suggestive of a connection between Trillian and the Guptas.

155. Mr Sexwale informed me that on a number of occasions over a period of a few months, he unsuccessfully attempted to arrange a meeting with Mr Essa, the majority shareholder of the company of which he (Mr Sexwale) was the Chairman. He recorded this in a letter of 2 June 2017 to Mr Essa, stating:

"Sadly you have failed to respond to all our telephonic and sms's communications. This includes messages we have sent via the CEO of Trillian Dr Eric Wood... The reason I have been trying to have a sit down meeting with you, was to be able to get your assistance in providing replies to weekly media reports which continue to repeat corruption related allegations about you and your associates, but such a meeting has not come to be."

156. The assertion that Mr Essa is a very close business associate of the members of the Gupta family is widely reported (he is sometimes referred to in press reports as *"the fourth brother"*). Neither Mr Essa nor the Guptas have ever disputed this. The evidence appears overwhelming that Mr Essa is indeed a person very closely associated with the Gupta family, and in business with them.

157. Given that Mr Essa is the owner of the majority of the shares in TCP, which in turn holds all of the shares of the other members of the Trillian Group, and given the activities of Trillian to which I have referred, it seems reasonable to conclude that at least one of the

key “members of the Gupta family and persons associated with it” has a very substantial role in and impact on the activities of Trillian.

158. The connection between Mr Essa and the Guptas must be known to the leadership of Trillian, as it is known to anyone in South Africa who reads a newspaper. Under the circumstances, the assertion in TCP’s media release that the Gupta family “*has no link to Trillian Holdings or to any of the other constituent members of the Trillian group of companies*” was at best misleading, and in my opinion was in fact dishonest. The Gupta family does have such a link, through its close association with Mr Essa.¹²

¹² It takes very little reading between the lines to conclude that this is one of the reasons why Trillian failed the McKinsey risk review.

PART 8: SOME FURTHER MATTERS

159. During the course of the inquiry, many issues have emerged which call for further investigation. I have attempted to limit the inquiry by not following each and every one of them. There are, however, two further matters to which I think I ought to refer, if only briefly.

E Gateway

160. The former CEO of TMC states that on 18 January 2016, she was introduced by Mr Clive Angel of Integrated Capital to a company known as E Gateway, as the preferred Trillian partner for the Eskom Generation workstream. Mr Angel said to her *“our boss has found them, and we will work with them”*. She understood the reference to the *“boss”* as a reference to Mr Essa.
161. E Gateway is E Gateway Global Consultants FZC, a company registered in Dubai.
162. As may be recalled, when McKinsey required Trillian to provide certain information as part of its global risk review, one of the matters on which it required information, was *“Detailed account of the form and legal status of Trillian’s relationship with Egateway Global Consultants FCZ”*.

163. There are widespread allegations in the public media with regard to the activities of the Gupta family and those associated with them in Dubai. There are allegations of the purchase of property, externalisation of funds, and so on.
164. If Trillian had co-operated in the inquiry, I would have wished to investigate precisely why Mr Essa required that it contract with E Gateway in respect of certain of the Eskom work, the terms of the contract, and the payments made under the contract. A copy of the contract is annexure P. I have not been able to pursue this matter further.

The Trillian Bank of Baroda account

165. I have already raised the question why Trillian would want or need an account with the Bank of Baroda. Again, this is a matter which I would have investigated if Trillian had co-operated with the inquiry.
166. The former CEO of Trillian Management Consulting informed me that the decision to open an account with the Bank of Baroda was one of the factors which led to her resignation. She states that she was not informed why such an account was necessary, or who had made the decision. She was at the time both the CEO and an Executive Director of TMC.
167. On Friday 18 March 2016 she received, at the instance of Mr Marc Chipkin of Integrated Capital, a document purporting to be an extract from the minutes of a meeting of Trillian Management Consulting (Pty) Ltd on 17 March 2016. She was asked to sign the minute.

It contained a resolution that application be made to the Bank of Baroda, Johannesburg branch, for the opening and operation of a current account, and that she and Mr Burnand, in their capacities as Directors of TMC, authorised Mr Chipkin to sign all documents to give effect to that. She interpreted this as providing that Mr Chipkin would have sole signing rights on the account.

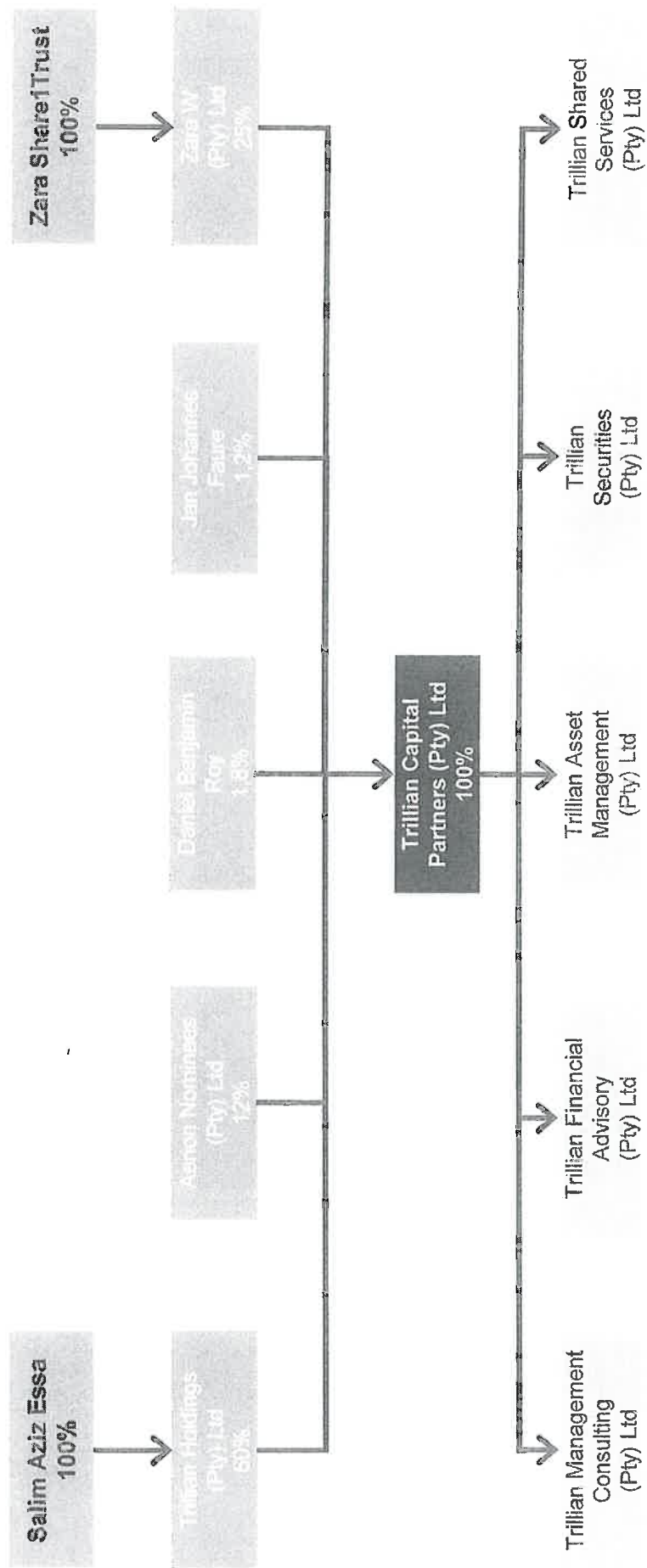
168. She states that she concluded that she was being “*used*”, and she resigned the following morning.

CONCLUSION

169. The management of Trillian have obstructed this investigation. The obvious question is why they have done so. The only conclusion I can reach is that the questions which I raised, and my requests for documents and information, led them to conclude that if they complied with the undertaking they had given, information would be revealed which would be embarrassing to them. I can think of no other reason.
170. I expect that Trillian will say that some of the factual information in this report is incorrect or incomplete. If that is so, it is because Trillian refused to co-operate with the enquiry.
171. I need to record that I am sure that many staff members of Trillian have sought only to do a professional and honest job. They have been let down by the management of Trillian.
172. This investigation is still incomplete. I could have spent more time attempting to obtain information from other parties, including Eskom and Transnet. But it has become clear that the enquiry will not reach a satisfactory conclusion. What I can say with complete confidence is that the investigation has revealed matters which should be of great public concern. These matters need to be fully investigated, the results need to be made public, and those responsible for any wrongdoing should be required to account. All of this has to happen without delay.

173. It is necessary for these matters be investigated by an entity which has the power to compel all concerned to give evidence and provide documentation. In my opinion, the most appropriate entity would be a commission of enquiry established under the Commissions Act, and undertaken by a person or persons of independence and integrity. The enquiry into the matters raised in this report should, in my opinion, be part of the enquiry proposed by the Public Protector in her report "*A State of Capture*". Those who profess their innocence of wrongdoing should be at the front of the queue asking for a judicial commission of inquiry to deal with these matters without delay.
174. The reason why this should be done urgently is that there is ample evidence in the public domain that malfeasance is continuing. Investigating and dealing with this is not only a matter of accountability for what has already happened – it is a matter of putting a stop to wrongs which are currently taking place.
175. This is not to say that there is not also a need for full exposure and accountability in respect of wrongs committed in the past. The use of public power to benefit and enrich favoured people and interests is a matter which requires exposure. This is so whether it has taken place during the apartheid era or in the democratic era. However, the need to put a stop to abuse which is taking place now cannot be held hostage to the need for investigations of our past. Those who propose this will fairly be suspected of attempting to prevent or delay the ending of the abuse of public power and public resources which is currently taking place.

Question 1,2 & 3 : Group organogram





**DEPARTMENT: PUBLIC ENTERPRISES
REPUBLIC OF SOUTH AFRICA
NATIONAL ASSEMBLY**

QUESTION FOR WRITTEN REPLY

QUESTION NO.: PQ 2701

DATE OF PUBLICATION: 02 December 2016

Ms N W A Mazzone (DA) to ask the Minister of Public Enterprises:

(1) What amount did Trillian Capital Partners receive in service fees for allegedly negotiating the settlement of a massive insurance claim involving the explosion of a boiler at the Duhva power plant; (2) did Eskom appoint the specified company to source a new supplier to replace the exploded boiler at the Duhva power plant; if not, why not; if so, what (a) were the fees payable to the specified company in this regard and (b) are the further relevant details; (3) (a) which other contracts of engagement have been concluded between Eskom and the specified company and (b) what are the costs involved in each case?

REPLY :

(1)

No amount was paid to Trillian Capital Partners for the Duvha power plant insurance claim. Eskom did not appoint Trillian Capital Partners to negotiate the settlement for the Duvha Power Plant insurance claim.

(2)

No, Eskom did not appoint Trillian Capital Partners to source a new supplier to replace the exploded boiler at the Duhva Power Plant. There was no need to appoint any external party to assist with sourcing.

(2)(a)

Not applicable

(2)(b)

No other additional relevant detail relating to the above is applicable.

(3)(a)

None

(3)(b)

Not applicable

Tax Invoice

Invoice: ESK2016-MC01

VAT #: 4950270852

Date: 14 April 2016

Mr Anoj Singh
Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sunninghill
Sandton

VAT Number: 4740101508

Professional fees: Pro-rate share of Eskom Corporate Plan deliverable **R 26,900,000.00**

VAT (14%) **R 3,766,000.00**

Total **R 30,666,000.00**

Banking Details:

Bank: ABSA
Account Holder: Trillian Management Consulting (Pty) Ltd
Account Number: 4088410495
Branch Code: 632005

14/04

Please quote invoice number on transfer and remittance

Invoice is payable upon receipt.



Tax Invoice

Invoice: ESK2016-MC02
VAT #: 4950270852
Date: 10 August 2016

Mr. Prish Govender
Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sunninghill
Sandton

VAT Number: 4740101508

Professional fees: Financial Advisory for the following Eskom Initiatives: **R 107,200,000.00**

- ▣ *Project Surge*
- ▣ *Private Sector Participation*
- ▣ *Online Vending Services*
- ▣ *Hitachi*
- ▣ *Duvha*
- ▣ *Short term funding facility*
- ▣ *Long term funding facility*

VAT (14%) **R 15,008,000.00**

Total **R 122,208,000.00**

Banking Details:

Bank: ABSA
Account Holder: Trillian Management Consulting (Pty) Ltd
Account Number: 4088410495
Branch Code: 632005

13/05

Please quote invoice number on transfer and remittance
Invoice is payable upon receipt.



Tax Invoice

Invoice: ESK2016-MC03
VAT #: 4950270852
Date: 10 August 2016

Mr. Prish Govender
Eskom Holdings SOC Ltd
Megawatt Park
Maxwell Drive
Sunninghill
Sandton

VAT Number: 4740101508

Professional fees: Management Consulting for the following Eskom Initiatives: **R 99,353,100.00**

- ▣ *Programme Management Office (PMO)*
- ▣ *Procurement*
- ▣ *Primary Energy*
- ▣ *Claims*
- ▣ *Generation*

VAT (14%) **R 13,909,434.00**

Total **R 113,262,534.00**

Banking Details:

Bank: ABSA
Account Holder: Trillian Management Consulting (Pty) Ltd
Account Number: 4088410495
Branch Code: 632005

Please quote invoice number on transfer and remittance
Invoice is payable upon receipt.

13/08



9 February 2016

Prish Govender
Eskom
Megawatt Park
Sunninghill

Email: Prish.Govender@eskom.co.za

Dear Prish,

Authorisation to pay Subcontractor Directly

We refer to the Professional Services Contract for the provision of consulting services for 6 months entered into between Eskom SOC Ltd (Eskom) and McKinsey and Company Africa Proprietary Limited ("McKinsey"), dated 29 September 2015 (the Agreement). As you know, McKinsey has subcontracted a portion of the services to be performed under the Agreement to [Trillian Proprietary Limited] (Trillian).

Subject to: (i) the terms of the Agreement relating to any payments to be made by Eskom to us; and (ii) us issuing a written confirmation of our satisfaction with the relevant services to be performed by Trillian to McKinsey and; (iii) the correctness of the amount to be invoiced, we hereby agree for, and authorize, Trillian to invoice, and be paid directly by, Eskom for any services performed by it in pursuance of our obligations under the Agreement.

We trust you find the above in order.

Yours sincerely



Vikas Sagar
Director

McKinsey and Company Africa Proprietary Limited

March 10, 2016

CONFIDENTIAL

Eric Wood
Trillian Management Consulting
eric@tcp.co.za

Dear Mr. Wood

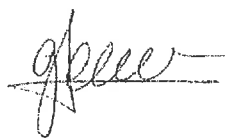
**TRILLIAN, HUBEI HONGYUAN, E GATEWAY GLOBAL CONSULTANTS FZC,
AND ESKOM DUVHA BOILER PURCHASE**

The above matter refers. Mr. Vikas Sagar has forwarded your e-mail dated March 08, 2016 to us. We have noted the contents thereof with thanks. We wish to inform you however that our global risk review remains ongoing with a view to being concluded during the middle of the coming week. To this effect, in addition to your undertaking to furnish us with a detailed group profile of the Trillian Group (which we have still not received), we would also appreciate your detailed responses to our letter dated February 25, 2016 before the close of business on Friday 11 March 2016. Your response should contain the following, as previously requested by us:

1. Detailed account of the form and legal status of Trillian's relationship with Hubei Hongyuan;
2. Detailed account of the form and legal status of Trillian's relationship with E Gateway Global Consultants FCZ;
3. Confirmation that Trillian, its employees, or any of its subcontractors or affiliates have no other interests which may conflict with their respective roles as advisor to Eskom;
4. Confirmation that, pending your detailed response to this letter and with immediate effect, no Trillian personnel, subcontractor personnel, or personnel of any affiliate undertaking will conduct or undertake any activities on any element of the Top Consultants Programme which may lend themselves to a conflict of interest whether real or perceived;
5. Confirmation that Trillian indemnifies, defends and holds McKinsey harmless from any and all claims brought against McKinsey in respect of and relating to Trillian's relationship with Hubei Hongyuan and any services performed by Trillian and/or any of its subcontractors or their affiliates for Eskom.

We look forward to your favourable reply.

Yours sincerely,



Georges Desvaux
Managing Partner, Africa



Jean-Christophe Mieszala
Chair, Client Service Risk Committee
Europe, Middle East & Africa

Introductions



Eskom
McKinsey¹
Trillian¹



Anoj Singh
Group CFO



Matshele Koko
Generation



Ayanda Noah
Cust. Services



Abram Masango
Group Capital



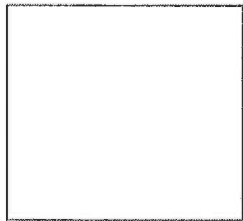
Edwin Nabelane
CFO



Maya Bhana
GM: Office of CFO



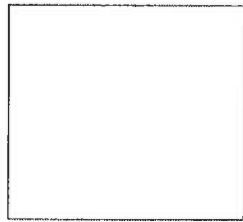
Prish Govender
Program Director:
Group Capital



Charles Kalima
Senior Manager:
Commercial



Dave Gorrie
Senior Manager:
Commercial



Mary Anne
Hendricks
Manager:
GCD Bus. Enable.



Alex Weiss
Director



Vikas Sagar
Director



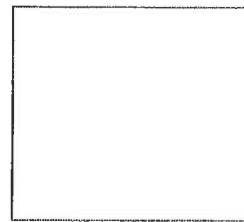
Lorenz Jüngling
Partner



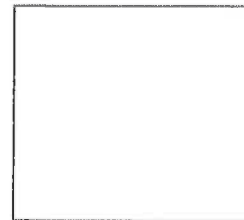
Jonathan Bown
Associate Partner



Eric Wood
Trillian Executive
Director



Bianca Smith
Trillian Mgmt.
Consulting CEO



Mosilo Mothepu
Trillian Principal

¹ No voting rights

Tax Invoice

Invoice: TCPSWATII-01
VAT #: 4900270770
Date: 07 June 2016

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

Professional fees: Work done to close the SWAT II project

R 31 591 488.52

VAT (14%)

R 4 422 308.39

Total

R 36 014 296.91

Banking Details:

Bank: ABSA
Account Holder: Trillian Capital Partners (Pty) Ltd
Account Number: 4088041167
Branch: North Towers
Branch Code: 632005

Invoice is payable upon receipt.

01/07/16

Invoice: TCP-GFB01
VAT #: 4900270770
Date: 23 May 2016

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

Transnet GFB Breakthrough

Professional fees: Work done to Date (31 Mar 2016)	R 7 000 000.00
VAT (14%)	R 980 000.00
Total	R 7 980 000.00

Banking Details:

Bank: ABSA
Account Holder: Trillian Capital Partners (Pty) Ltd
Account Number: 4088041167
Branch: North Towers
Branch Code: 632005

calc7

Invoice is payable upon receipt.

Invoice: TCP-GFB02
VAT #: 4900270770
Date: 23 May 2016

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

Transnet GFB Breakthrough

Professional fees: Work done to Date (30 Apr 2016)	R 7 000 000.00
VAT (14%)	R 980 000.00
Total	R 7 980 000.00

Banking Details:

Bank: ABSA
Account Holder: Trillian Capital Partners (Pty) Ltd
Account Number: 4088041167
Branch: North Towers
Branch Code: 632005

01/07/16

Invoice is payable upon receipt.

Tax Invoice

Transnet Soc Ltd
35th Floor, Carlton Centre
150 Commissioner Street
Johannesburg
VAT Number: 4720103177

Invoice: TCP-GFB03
VAT #: 4900270770
Date: 07 June 2016

Transnet GFB Breakthrough

Professional fees: Work done to Date (31 May 2016)

R 7 000 000.00

VAT (14%)

R 980 000.00

Total

R 7 980 000.00

Banking Details:

Bank: ABSA
Account Holder: Trillian Capital Partners (Pty) Ltd
Account Number: 4088041167
Branch: North Towers
Branch Code: 632005

Invoice is payable upon receipt.

01/07

Tax Invoice

Invoice: TCP-GCIA01
Vat #: 4900270770
Date: 20 May 2016

Garry Pita
Group Chief Financial Officer
Transnet SOC Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg

Vat #: 4720103177

*Professional fees: Work done to date (01 Feb – 01 Apr 2016)	R 2 145 000.00
Out of Pocket expenses and support services at 10% of total bill	R 214 500.00
Vat (14%)	R 330 330.00
Total	R 2 689 830.00

Banking Details:

Bank: ABSA
Account Holder: Trillian Capital Partners (Pty) Ltd
Account Number: 4088041167
Branch: North Towers
Branch Code: 632005

Please quote the invoice number on transfer and remittance.

Invoice is payable upon receipt.

* TRXGCIA –DCT Affordability Model

01/07/16

15.11
2**Tax Invoice****Invoice: TE2016-CP01****Vat #: 4900270770****Date: 19 April 2016**

Mr Thamsanqa Jiyane
Transnet SOC Limited
44th Floor
Carlton Centre
150 Commissioner Street
Johannesburg

Vat #: 4720103177

Professional fees: Financial Structuring advisory services* **R 10 000 000.00**

Vat (14%) **R 1 400 000.00**

Total **R 11 400 000.00**

Banking Details:

Bank: Absa
Account Name: Trillian Capital Partners (Pty) Ltd
Account number: 40 8804 1167
Branch code: 632005

01/07/16

Please quote the invoice number on transfer and remittance.

Invoice is payable upon receipt.

**Financial Structuring advisory services on the fund raising required to facilitate African and global sales of rolling stock.*



Tax Invoice**Invoice: TFA2016-FA07****VAT #: 4900270770****Date: 15 April 2016**

Transnet SOC Limited
150 Commissioner Street
Johannesburg
South Africa
2001

VAT Number: 4720103177**Professional services - Transnet Property Database and financial model to create a ring-fenced property fund**

- Project office initiatives (Property portfolio)	R12 500 000.00
- EBITDA impact on bringing the budget closer to the corporate plan	R20 000 000.00
- Application of Cost and Revenue Drivers to run the portfolio on commercial terms	R3 500 000.00

Subtotal	R36 000 000.00
VAT (14%)	R 5 040 000.00

Total	R41 040 000.00
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Banking Details:

Bank: ABSA
Account Name: Trillian Capital Partners (Pty) Ltd
Account Number: 4088041167
Branch Code: 632005

Please quote invoice number on transfer and remittance.

Invoice is payable upon receipt.

27/05

P

OUTSOURCING ENGINEERING CONSULTANCY SERVICES AGREEMENT

(AGREEMENT FOR DEPLOYMENT OF MANPOWER TO CARRYOUT REVIEW, STUDY, ANALYSIS AND RECOMMEND SOULTIONS OF TECHNICAL ASPECTS FOR DIFFERENT POWER PLANTS OWNED BY ESKOM)

This Agreement is entered between the parties on the 26th day of January, 2016

Between

M/s. TRILLIAN MANAGEMENT CONSULTING, having Registration No: 2015/111709/07 having its business address at 4th Floor, 23 Melrose Boulevard, Melrose Arch, 2196 represented by its Authorized Signatory **Ms. BIANCA SMITH** National, holding Identity No: 8007260017089 (hereinafter called as **"First Party/Principal"**) on the one part

AND

M/s. EGATEWAY GLOBAL CONSULTANTS FZC, having License No:00741, having its registered office at PO Box 7073, Um Al Quwain, UAE represented by its Authorized Signatory **Mr. Javed S Khan**, US National, holding Passport No: 530541926 (hereinafter called as **"Second Party/Consultant"**) on the other part.

(The First Party and Second Party shall be individually referred to as Party and collectively referred to as Parties and which expression shall unless it be repugnant to the context or meaning thereof be deemed to mean and include its' successors, legal representatives and permitted assignees)

PREAMBLE

WHEREAS the Principal herein is the leading company in South Africa and have operations in South Africa and around the world, and is being awarded a multilevel contract with McKinsey and Company Africa Proprietary Limited covering several aspects for the renovation, reassessment and improvement of the different facilities of ESKOM, which is the governmental body overseeing the Energy sector of the Government of South Africa.

AND WHEREAS the Consultant has specialized expertise, professional skills, and personnel and technical resources in the energy segment and has the knowledge to make assessment, improvements and advice on the different sectors of Energy facilities.

Consultant has capability to provide the technical & managerial qualified personnel experienced in their relevant job skills in the thermal power projects to Principal to carry out the above objective.

PRINCIPAL



CONSULTANT



AND WHEREAS the Principal has approached the Consultants to provide outsourcing consultancy services for Deployment of Manpower on different facilities of ESKOM as per the General Conditions of this Agreement and as per the specific conditions/requirements of each project, which are mentioned in the Annexure which form part of this agreement.

AND WHEREAS the Consultant have agreed to provide the Services on the terms and conditions set forth here in this agreement as well as the Annexure of this agreement.

Now this agreement witnesses and it is hereby agreed by and between the parties hereto as follows:

1. The preamble of this agreement is hereby considered as an integral part of this agreement and shall be read as part of this agreement.
2. Both the parties hereby agree that the general conditions contained in this agreement shall be the basis of the relationship between the parties and for each and every specific project that is entrusted by the Principal to the Consultant, an Annexure shall be entered between the parties and the same shall be added to this agreement. Such Annexure shall contain specific details of the project and any special conditions specifically agreed for such projects.
3. Between the parties, the following documents attached hereto shall be deemed to form an integral part of this Agreement:
 - (a) The General Conditions of this Agreement;
 - (b) The Details and understanding reached between the parties in the Annexure
 - (c) The Special Conditions, if any for each entrusted project

4. COMMENCEMENT AND MODIFICATION

4.1 Commencement of Agreement

- a. This Agreement shall come into force and effect on the date of execution of this Agreement (the "Effective Date") and each Annexure will specify the date on which Consultant's services will begin to be carried out as per the project requirement.
- b. Period of the contract shall be 36 months subject to review of the agreement thereafter every six months by the Parties. If required the Contract can be extended for further period of 12 months on mutually / renegotiated terms by the parties

4.2 Commencement of Services

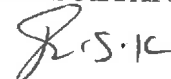
- a. The Consultants shall begin carrying out the Services as per the Annexure for each project and as per the Special Conditions, if any, specified in each Annexure.

4.3 Modification

PRINCIPAL



CONSULTANT



- a. Modification of the terms and conditions of this Agreement as well as the Annexure, including any modification of the scope of the Services or of the Agreement Price, may only be made in writing, which shall be signed by both the Parties.

5. OBLIGATIONS OF THE CONSULTANTS

5.1 General

- a. The Consultants shall perform the Services and carry out their obligations with all due diligence, efficiency, and economy, in accordance with generally accepted professional techniques and practices, and shall observe sound management practices, and safe methods and as per the Business Plan or Hypothesis defined by the Principal. The Consultants shall always act, in respect of any matter relating to this Agreement or to the Services, as faithful advisers to the Principal, and shall at all times support and safeguard the Principal's legitimate interests in any dealings with Sub consultants or third parties.
- b. The scope of services of deployed professional skills shall be as under :

To assist and help in the Turn-around strategy as provided by the Principal for improving EAF of ESKOM recovery Project.

Immediate deployment of the team including a Project Manager at South Africa who shall be in charge of the Technical Team and Human Resource department/ Management. Team to be deployed as per the agreed schedule

To study, review and analyze the Operations of main mechanical, electrical, instrumentations of the equipment & systems of Boiler Turbine Package along with their auxiliaries & Balance of Plant in all respects to run the power plant efficiently, checking & monitoring log books, change over schedules, housekeeping of entire thermal power plants, Preventive & Scheduled Maintenance work, analysis of coal, ash, seawater, RO water, boiler water, condensate water quality as per water & steam cycles and then suggest recommendations, modifications and repairs or replacements for improving EAF.

To supervise, monitor and suggest remedies and solutions during the implementation stage to carryout recommended changes for modifications and repairs or replacements improving the EAF.

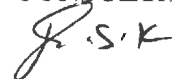
5.2 Confidentiality

- a. The Consultants, Sub consultants, and the Personnel shall not, either during the term or after the expiration of this Agreement, disclose any proprietary or confidential information relating to the Project, the Services, this Agreement, or the Principal's business or operations without the prior written consent of the Principal.

PRINCIPAL



CONSULTANT



5.3 Liability of the Consultants

- i. Consultant will not be liable for any loss of damage caused by or arising out of circumstances over which it had no control.
- ii. Consultant shall not be liable for indirect damages, such as loss of revenue, economic loss, and loss of production, profit or interest.
- iii. Principal shall keep indemnified the Consultant against all claims from any third party, arising from the provision of its Services.
- iv. In case the manpower is sent back due to misconduct or quality of work / inefficiency, maximum liability of eGateway shall be to bear the expenses for deporting him back and replacing with a person with better qualifications & skills.
- v. Consultant liability under the Mandate shall cease on completion of their services or termination of the Mandate.

5.4 Reporting Obligations

- a. The Consultants shall submit to the Principal the reports and documents in regular intervals as per the formats provided and as specified and required under each project under the conditions set forth in the Annexure.

5.5 Documents Prepared by Consultant to be the Property of the Principal

- a. Upon full payment of the service fees, as specified in Annexure, all plans, drawings, specifications, reports, and other documents and software prepared by the Consultants shall become and remain the property of the Principal, and the Consultants / deployed manpower shall, not later than upon termination or expiration of this Agreement, deliver (if not already delivered) all such documents and software to the Principal, together with a detailed inventory thereof. The Consultants / deployed manpower may retain a copy of such documents and software.

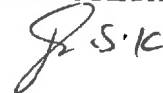
5.6 Equipment and Materials Furnished by the Principal

- a. Equipment and materials made available to the Deployed Manpower / Consultants by the Principal, or purchased by the Consultants with funds provided exclusively for this purpose by the Principal, shall be the property of the Principal and shall be marked accordingly. Upon termination or expiration of this Agreement, the Consultants shall assist in making available to the Principal an inventory of such equipment and materials and shall dispose of such equipment and materials in accordance with the Principal's instructions or afford salvage value of the same.

PRINCIPAL



CONSULTANT



5.7 Accounting

- a. The Consultants (i) shall keep accurate and systematic accounts and records for the Services hereunder, in accordance with internationally accepted accounting principles and in such form and detail as will clearly identify all relevant time charges, and cost, and the basis thereof.

6. CONSULTANTS' PERSONNEL AND SUBCONSULTANTS

6.1 Description of Personnel

- a. Upon awarding a project to the Consultant by the Principal and upon the parties executing the Annexure for the specific project, which form part of this agreement, the Consultant shall choose the specific personnel required for such project and the details of those personnel shall be forwarded to the Principal and those personnel are deemed to be approved by the Principal. The Consultant shall also inform the Principal, their Title, agreed job description and estimated period of their engagement in the specific project as per the Annexure.
- b. Consultant Party shall be engaging experts of its choice, but of the desired expertise, other than its own in house people for completing the assignment. Consultant and anyone it may engage to perform any part of the work hereunder are independent service providers and not employees or agents of Principal.

6.2 Visa Procedure and Residency during the Project Period

- a. Upon the finalization of the Consultant's Personal for a project, as specified in the Annexure for specific project and also during the extended period, as agreed between the parties, the Principal shall assist & help in making all the arrangements, as per the laws of South Africa, the work Permit Visa for the personals to travel to South Africa, live in South Africa during the Project phase and also to work as per the agreed project. The Consultant shall be responsible for arranging the initial entry visa for Consultant's personals and also for the Residency of the personals in South Africa during the project phase and Principal shall extend support/ assistance for this purpose.

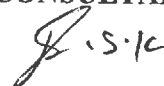
6.3 Removal and/or Replacement of Personnel

- a. Except as the Principal may otherwise agree, no changes shall be made in the Key Personnel. If, for any reason beyond the reasonable control of the Consultants, it becomes necessary to replace any of the Key Personnel, the Consultants shall provide as a replacement a person of equivalent or better qualifications;
- b. If the Principal, finds that any of the Personnel have committed serious misconduct or have been charged with having committed a criminal action, then the Consultants shall,

PRINCIPAL



CONSULTANT



at the Principal's written request specifying the grounds, provide as a replacement a person with qualifications and experience acceptable to the Principal.

7. OBLIGATIONS OF THE PRINCIPAL

7.1 Assistance, Coordination and Approvals

i. Assistance

The Principal shall use its best efforts to ensure that the Principal shall:

- (a) provide at no cost to the Consultants, Subconsultants and Personnel such documents prepared by the Principal or other consulting engineers appointed by the Principal and end customer ESKOM , as shall be necessary to enable the Consultants, Subconsultants or Personnel to perform the Services.
- (b) assist to obtain the existing data pertaining or relevant to the carrying out of the Services, with various Government and other organizations. Such items unless paid for by the Consultants without reimbursement by the Principal, shall be returned by the Consultants upon completion of the Services under this Contact;
- (c) issue to officials, agents and representatives of the concerned organizations, all such instructions as may be necessary or appropriate for prompt and effective implementation of the Services;
- (d) assist to obtain permits which may be required for right-of-way, entry upon the lands and properties for the purposes of this Agreement;
- (e) provide to the Consultants, Subconsultants, and Personnel any such other assistance and exemptions as may be specified in the Annexure.

ii. Co-ordination

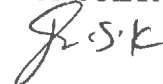
The Principal shall:

- (a) coordinate and get or expedite any necessary approval and clearances relating to the work from any Government or Semi-Government Agency, Department or Authority, and other concerned organization specified in each Annexure.
- (b) coordinate with any other consultants employed by him.

PRINCIPAL



CONSULTANT



iii. Approvals

- (a) The Principal shall accord approval to the personals of the Consultants when ever those are required for the Consultant for their effective implementation of their services.

7.2 Access to Land

- a. The Principal warrants that the Consultants shall have, free of charge, unimpeded access to all land of which access is required for the performance of the Services.
- b. Free space for Office with required furniture in Plant Premises with potable water & power.

7.3 Change in the Applicable Law & Increase in Cost

- a. If, after the date of this Agreement, there is any change in the Applicable Law which effect the Services rendered by the Consultants, including any additional taxation, then the remunerations and direct costs otherwise payable to the Consultants under this Agreement shall be increased accordingly, and corresponding adjustment shall be made to the amounts referred to in Annexure, as the case may be.

7.4 Services and Facilities

- a. The Principal shall assist & help in making available to the Consultants, Subconsultants and their Personnel, the Residency Visa, Multiple Entry Business Travel Visas. The cost of services will be borne by consultant who has already built in such service costs their contract price

7.5 Payments

- a. In consideration of the Services performed by the Consultants under this Agreement, the Principal shall make to the Consultants such payments and in such manner as is provided by Clause 9 of this Agreement.

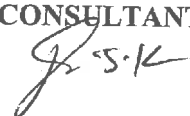
8 NON-SOLICITATION and NON POACHING OF RESPECTIVE PERSONNEL

- 8.1 Both Parties and their Principal Employers, including their subsidiaries, affiliate, group companies, Patent company, hereby agrees and undertakes that it shall not solicit or entice away any Personnel, SubConsultants, employees, clients, customers or any other contacts of the Consultant or the Principal for the duration of this Agreement or for the period of three (3) years following the termination of this Agreement.

PRINCIPAL



CONSULTANT



9 PAYMENTS TO THE CONSULTANTS

9.1 Remuneration

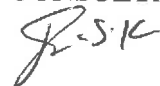
- a. The Consultants remuneration will consist of a fixed down-payment amount and a performance based bonus. The fixed down payment will be paid over the initial 6 months of the project and the performance based bonus thereafter. The performance bonus will be earned as a result of achieving a raise in EAF as per the agreed benchmarks.
- b. The fixed down-payment portion of the remuneration will be 77% (Seventy seven percent) of the agreed monthly budget allocated to the Principal. The monthly budget allocation to the Principal will be shared transparently and in advance, with the Consultant.
- c. The performance based bonus will be shared equally between the Principal and the Consultants after deducting each party's respective costs.
- d. The Consultants' total remuneration shall be specified in the Project Annexure, which form part of this agreement, and shall be including all staff costs incurred by the Consultants in carrying out the Services described in the Annexure and Back end support provided by the consultant from its Other offices. Other reimbursable direct costs expenditure, if any, shall be specified in the Annexure and/or the Consultant shall take preapproval from the Principal before incurring any such cost. Except as provided in Sub-Clause 9.1.b the Agreement Price may only be increased above the amounts stated in the Project Annexure if the Parties have agreed to additional payments in writing. This clause is modified as sub-clause (b).
- e. The remuneration shall be invoiced in ZAR (South African Rand) and paid in currency of ZAR through RTGS to the bank account of the eGateway Global.
- f. The above remuneration shall be inclusive of comprehensive Insurance policy, travel & travel related expenses and boarding & lodging etc. of deputed personnel.
- g. There shall not be any deduction in payments on account mandate rates or head counts which are already agreed.
- h. In case of additions or deletions in the scope, the completion time and prices will be revised through mutual agreement in writing.

9.2 Terms and Conditions of Payment

PRINCIPAL



CONSULTANT



- a. Payment will be made to the account of the Consultants and according to the payment schedule stated in the Annexure. Payments shall be made after the conditions listed in the Annexure for such payments have been met, and the Consultants have submitted an invoice to the Principal specifying the amount due.

9.3 Period of Payment

- a. Any amount due to the Consultants shall be paid by the Principal to the Consultants within Ten (10) days from the date issuance of the Invoice by the Consultant to the Principal and the Consultant shall issue invoice in every 30 days cycle. The bill shall be submitted by Consultant to Principal not later than Fifth Business Day of the month whose billing is to be made along with the monthly progress report. *James Shefz & Khun*
- b. ~~ANY AMOUNT DUE TO THE CONSULTANT SHALL BE PAID BY THE PRINCIPAL TO THE CONSULTANT WITHIN 5 DAYS OF THE PRINCIPAL RECEIVING PAYMENT.~~
- c. ~~THE PRINCIPAL WILL ADVISE THE CONSULTANT ONCE INVOICES HAVE BEEN ISSUED TO THE CLIENT AT WHICH POINT THE CONSULTANT MAY ISSUE THE INVOICE.~~

9.4 Additional Services

Additional Services means:

- a. Services as approved by the Principal outside the Scope of Services described in the Annexure;
- b. Services to be performed during the period extended for any Project, beyond the original schedule time for completion of the Services; and
- c. Any re-doing of any part of the Services as a result of Principal's instructions.
- d. If, in the opinion of the Principal, it is necessary to perform Additional Services during the currency of the Agreement for the purpose of the Project, such Additional Services shall be performed with the prior concurrence of both the Parties. The Consultants shall inform the Principal of the additional time (if any), and the additional remuneration and reimbursable direct costs expenditure for such Additional Services. If there is no disagreement by the Principal within two weeks of this intimation, such additional time, remuneration and reimbursable direct costs expenditure shall be deemed to become part of the Agreement.

10 EXTENSION, COMPLETION AND/OR TERMINATION

10.1 Expiration of Agreement

- a. Unless terminated earlier, this Agreement shall expire when, pursuant to the provisions hereof, the Services have been completed and the payments of remunerations including the direct costs if any, have been made. The Services shall be completed within an

PRINCIPAL



CONSULTANT



agreed period, or such extended time as may be allowed as per written agreement between the parties.

10.2 Extension of Time for Completion

If the scope or duration of the Services is required to be increased:

- a. the Consultants shall inform the Principal of the circumstances and probable effects;
- b. the increase shall be regarded as Additional Services; and
- c. the Principal shall extend the time for Completion of the Services accordingly.

10.3 Force Majeure

10.3.1 Definition

- a. For the purposes of this Agreement, "Force Majeure" means an event which is beyond the reasonable control of a Party and which makes a Party's performance of its obligations under the Agreement impossible or so impractical as to be considered impossible under the circumstances, and includes, but is not limited to, war, riots, civil disorder, earthquake, fire, explosion, storm, flood or other adverse weather conditions, strikes, lockouts or other industrial actions (except where such strikes, lockouts or other industrial actions are within the power of the Party invoking Force Majeure to prevent), confiscation or any other action by government agencies.
- b. Force Majeure shall not include (i) any event which is caused by the negligence or intentional action of a Party or such Party's Subconsultants or agents or employees, nor (ii) any event which a diligent Party could reasonably have been expected to both (A) take into account at the time of the conclusion of this Agreement and (B) avoid or overcome in the carrying out of its obligations hereunder.
- c. Force Majeure shall not include insufficiency of funds or failure to make any payment required hereunder.

10.3.2 No Breach of Agreement

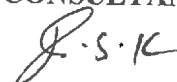
- a. The failure of a Party to fulfill any of its obligations under the Agreement shall not be considered to be a breach of, or default under this Agreement insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event; (a) has taken all reasonable precautions, due care and reasonable alternative measures in order to carry out the terms and conditions of this Agreement; and (b) has informed the other Party in writing not later than fifteen (15) days following the occurrence of such an event.

10.3.3 Extension of Time

PRINCIPAL



CONSULTANT



- a. Any period within which a Party shall, pursuant to this Agreement and its Annexure, complete any action or task, shall be extended for a period equal to the time during which such Party was unable to perform such action as a result of Force Majeure.

10.4 Termination

10.4.1 By the Principal

A. The Principal may terminate this Agreement, by not less than thirty (30) days written notice of termination to the Consultants, to be given after the occurrence of any of the events specified in paragraphs (a) through (e) of this Sub-Clause and One hundred and twenty (120) days' in the case of the event referred to in paragraph (f):

- (a) if the Consultants do not remedy a failure in the performance of their obligations under the Agreement, within thirty (30) days after being notified or within any further period as the Principal may have subsequently approved in writing;
- (b) if the Consultants become (or, if the Consultants consist of more than one entity, if any of their Members becomes) insolvent or bankrupt or enter into any agreements with their creditors for relief of debt or take advantage of any law for the benefit of debtors or go into liquidation or receivership whether compulsory or voluntary;
- (c) if the Consultants fail to comply with any final decision reached as a result of arbitration proceedings pursuant to this agreement hereof;
- (d) if the Consultants submit to the Principal a statement which has a material effect on the rights, obligations or interests of the Principal and which the Consultants know to be false statement;
- (e) if, as the result of Force Majeure, the Consultants are unable to perform a material portion of the Services for a period of not less than Ninety (90) days;
- (f) if the Principal, in its sole discretion, decides to terminate this Agreement.

10.4.2 By the Consultants

A. The Consultants may terminate this Agreement, by not less than thirty (30) days written notice to the Principal, such notice to be given after the occurrence of any of the events specified in paragraphs (a) through (d) of this Sub-Clause:

PRINCIPAL



CONSULTANT



- James Shafiq Khan*
- (a) if the Principal fails to pay any remuneration due to the Consultants pursuant to this Agreement within thirty (30) days after receiving Invoice/written notice from the Consultants that such payment is overdue;
 - (b) if the Principal is in material breach of its obligations pursuant to this Agreement and has not remedied the same within forty-five (45) days (or such longer period as the Consultants may have subsequently approved in writing) following the receipt by the Principal of the Consultants' notice specifying such breach;
 - (c) if, as a result of Force Majeure, the Consultants are unable to perform a material portion of the Services for a period of not less than Ninety (90) days;
 - (d) if the Principal fails to comply with any final decision reached as a result of arbitration proceedings pursuant to Clause 7 hereof.

10.4.3 Cessation of Services

- a. Upon receipt of notice of termination under Sub-Clause 10.4.1, or giving of notice of termination under Sub-Clause 10.4.2, the Consultants shall take all necessary steps to bring the Services to a close in a prompt and orderly manner and shall make every reasonable effort to keep expenditures for this purpose to a minimum. With respect to documents prepared by the Consultants, and support provided by the Principal, the Consultants shall proceed as provided, respectively, by Sub-Clauses 3.8 or 3.9.

10.4.4 Payment upon Termination

Upon termination of this Agreement pursuant to Sub-Clauses 10.4.1 or 10.4.2, the Principal shall make the following payments to the Consultants:

- a. In case of termination of agreement within first 12 months, Principal shall make payment to the Consultant the fee equivalent to at least Four months remuneration of the teams deployed therein as the consultant will also enter back to back arrangement with their Technical & Managerial qualified team.
- b. Payments as per clause 9.1(b) including remuneration and reimbursable direct costs expenditure pursuant to Clause 6 for Services satisfactorily performed prior to the effective date of termination. Effective date of termination for purposes of this Sub-Clause means the date when the prescribed notice period would expire;
- c. except in the case of termination pursuant to paragraphs (a) through (d) of Sub-Clause 9.1, reimbursement of any reasonable cost incidental to the prompt and orderly termination of the Agreement, including the cost of the return travel of the Personnel, according to Consultants Traveling Allowance.

10.4.5 Disputes about Events of Termination

PRINCIPAL

CONSULTANT

R.S.K

- a. If either Party disputes whether an event specified in paragraphs (a) through (e) of Sub-Clause 10.4.1 or in paragraph (a) through (d) of Sub-Clause 10.4.2 hereof has occurred, such Party may, within forty-five (45) days after receipt of notice of termination from the other Party, refer the matter to arbitration pursuant to Clause 7 hereof, and this Agreement shall not be terminated on account of such event except in accordance with the terms of any resulting arbitral award.

11 SETTLEMENT OF DISPUTES

11.1 Amicable Settlement

- a. The Parties shall use their best efforts to settle amicably all disputes arising out of or in connection with this Agreement or its interpretation.

11.2 Dispute Settlement

- a. Any dispute between the Parties as to matters arising pursuant to this Agreement which cannot be settled amicably within thirty (30) days after receipt by one Party of the other Party's request for such amicable settlement may be submitted by either Party for settlement in accordance with the provisions of the Arbitration Rules of SOUTH AFRICA
- b. Services under the Agreement and its Annexure, shall, if reasonably possible, continue during the arbitration proceedings and no payment due to or by the Principal shall be withheld on account of such proceedings.

12 MISCELLANEOUS

12.1 Law Governing the Agreement

- a. This Agreement, its meaning and interpretation, and the relation between the Parties shall be governed as per the laws of South Africa.

12.2 Language

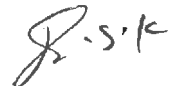
- a. This Agreement has been executed in the English language which shall be the binding and controlling language for all matters relating to the meaning or interpretation of this Agreement. All the reports and communications between the parties shall be in the English language.

12.3 Notices

PRINCIPAL



CONSULTANT



- a. Any notice, request, or consent made pursuant to this Agreement shall be in writing and shall be deemed to have been made when delivered in person to an Authorized Representative of the Party to whom the communication is addressed, or when sent by registered mail, telex, or facsimile to such Party at the address of the Authorized Representatives specified hereinabove. A Party may change its address for notice hereunder by giving the other Party notice of such change of address in writing.

12.4 Location

- a. The Services shall be performed at such locations as are specified in each of the Annexure, which shall form part of this agreement and which will specify the full details of each project and where the location of a particular task is not so specified, at such locations as mutually agreed by the Parties.

12.5 Authorized Representatives

- a. Any action required or permitted to be taken, and any document required or permitted to be executed, under this Agreement by the Principal or the Consultants shall be taken or executed by the Authorized Representatives specified hereinabove.

12.6 Taxes and Duties

- a. Unless specified in the Special conditions of the Annexure, the Principal shall pay such taxes, duties, fees and other impositions as may be levied under the Laws of South Africa for the Consultants, Sub-consultants, and their Personnel.

If any tax exemptions, reductions, allowances or privileges may be available for the services to be provided under this contract by South Africa, Principal shall use its best efforts to enable the service provider to benefit from any such tax savings to the maximum allowable extent.

12.7 Entire agreement

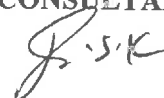
- a. This document along with its Annexure constitutes the entire agreement between the parties hereto with respect to the Consultancy and outsourcing services to be rendered by the Consultant to the Principal and supersedes all prior negotiations, representations or agreements related to this matter, either written or oral.
- b. Each provision of this Agreement shall be considered separate and if any provision(s) is (are) determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement that are valid, enforceable and legal.

12.8 No Assignment.

PRINCIPAL



CONSULTANT



- a. Neither Party may assign or delegate any right or obligation under this Agreement without the express written consent of the other Party (which consent may be withheld in such Party's sole discretion). This consent requirement shall not apply in the event either party shall change its corporate name or merge with another corporation. This Mandate shall benefit and be binding upon the successors and assigns of the parties hereto.

12.9 Interpretation.

- a. The headings in this Agreement are provided for convenience and do not affect its meaning. The words "include", "includes" and "including" are to be read as if they were followed by the phrase "without limitation". The Parties have participated jointly with their respective counsel in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement is to be construed as if drafted jointly by the Parties and there is to be no presumption or burden of proof favoring or disfavoring any Party because of the authorship of any provision of this Agreement.

12.10 Not for Benefit of Third Parties.

- a. Except as otherwise expressly provided herein, this Agreement and each and every provision thereof is for the exclusive benefit of the Parties and is not for the benefit of any third party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

PRINCIPAL:

TRILLIAN...

Name:

Management Consulting

Signature:

PRINCIPAL

CONSULTANT

J. S. K.

CONSULTANT:

EGATEWAY GLOBAL CONSULTANTS Pte

Name: JAVED SHAFQAT KHAN

Signature: Javed Shafqat Khan

WITNESSES

Witness 1:

Print Name

Signature

M. Goodson



Witness 2:

Print Name

Signature

Sadi Feroozui



FORMAT - PROJECT ANNEXURE

(Will be numbered and added to the Main Agreement and shall form Part of the Agreement)

Between

M/s. TRILLIAN MANAGEMENT CONSULTING having Registration No: 2015/111709/07
having its business address at 4th Floor, 23 Melrose Boulevard, Melrose Arch, 2196 represented

PRINCIPAL



CONSULTANT



by its Authorised Signatory Ms. Bianca Smith National, holding Identification No:8007260017089 (hereinafter called as “**First Party/Principal**”) on the one part

AND

M/s. EGATEWAY GLOBAL CONSULTANTS FZC, having License No:00741, having its registered office at PO Box 7073, Um Al Quwain, UAE represented by its Authorized Signatory Mr. Javed S Khan , US National, holding Passport No: 530541926 (hereinafter called as “**Second Party/Consultant**”) on the other part

1. This Annexure shall be read in conjunction with main consultancy agreement entered between the parties on 25th January 2016 and this Annexure shall be numbered and made part of the above mentioned main agreement executed between the parties.

2. Project & Service Provided by the Consultant

- a. "Project" means ESKOM Turn-around Program, Generation Work stream, UCLF Reduction
- b. The Services and Consultancy services provided by the Consultant and its Personals shall be as follows:
 - i. Support the delivery methodology with Expert recommendation and data analysis, as stipulated by the Project Manager of McKinsey and Company Africa Proprietary Limited
 - ii. Comply with all reporting requests and schedules as agreed on by the Project Leadership.

3. Consultant's Service Fees and Consultancy Remuneration

- a. The total consultant's fees in ZAR shall be paid into the bank account of the consultant in United Arab Emirates and the account details are:

4. Authorized Representatives

The Authorized Representatives are the following:

For the Principal:

Bianca Smith

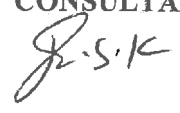
Telephone : +27833450095

E.Mail : bianca@tcp.co.za

For the Consultants:

 **PRINCIPAL**

_____ (Name of Project Manager)

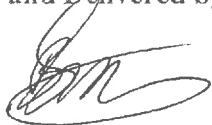
 **CONSULTANT**

- b. The Principal in coordination with the Consultant and other parties involved in the project shall have a coordination meeting within the last week of every month, for proper co-ordination between all the parties involved and to update the Principal as well as the Government departments regarding the progress of the project and to give a full update.

In agreement whereof the parties have hereby affixed their respective signatures and seal on this the 26 day of January 2016 

Signed, Sealed and Delivered by Bianca Smith

PRINCIPAL



Signed, Sealed and Delivered by JAVED SHAFQAT KHAN ,

CONSULTANT



PRINCIPAL

CONSULTANT