
**BUSINESS
DEVELOPMENT
SERVICES
AGREEMENT**

**CNR ROLLING STOCK SOUTH
AFRICA PTY LTD.**
(Regn. No. _____)

with

**BEX STRUCTURED PRODUCTS
PTY LTD.**
(Regn. No. 2000/028999/07)

Or its **NOMINEE**

AGREEMENT DATE: MAR 08, 2015

This Agreement is entered into by and between the following parties:

BEX STRUCTURED PRODUCTS PTY LTD (hereinafter, referred to as "BEX") (which expression includes its associates, subsidiaries, affiliates, successors and permitted assigns), a company duly incorporated and existing under the Companies Act in South Africa, and having its registered offices at 1st Floor, 24 Crescent Drive, Melrose Arch 2076, Johannesburg, duly authorised and represented by Mr. Marc Bond.

and

CNR ROLLING STOCK SOUTH AFRICA PTY LIMITED (hereinafter referred to as the "Company") (which expression includes its successors and permitted assigns), a company duly incorporated and existing under the Companies Act in South Africa, and having its office address at _____, duly authorised and represented by the person signing this Agreement., duly authorised and represented by Mr. _____, signing this Agreement.

(Hereinafter, BEX and the Company may be individually referred to as a "Party", and collectively as "the Parties".)

WHEREAS:

- A. **BEX**, a professional service advisory business that specialises in business enterprise optimisation using financial modelling, derivatives and engineering techniques, with its long subsisting relationships in the territory of South Africa (hereinafter "The Territory") has acquired a familiarity with regulatory, social, cultural and political framework whereby it is capable to closely co-ordinate with the designated authorities to comprehend the applicable Government policies, identify the opportunities of participation in various Government and Private projects, lend consultancy on participating in various tenders and bidding processes and thus facilitating trade of goods and services concerning such projects.

The **COMPANY** is a global company specializing in the manufacture of Locomotives and Spare Parts for the same, with a focus on emerging markets. The **COMPANY** has approached **BEX** to provide advisory services in respect of the Project, for expanding their business in the Territory and help it in achieving their BEE (Black Economic Empowerment) objectives in the Territory on a long-term basis.

- B. The Parties have, after mutual discussions, acknowledged and agreed that they have suitable and complementary resources to jointly harness the opportunities in the Territory through a Business Development Services Agreement, whereby **BEX** will play active role in providing advisory services in respect of the Project, Business development and BEE structuring and management in the Territory.
- C. In view of the above-set background, the Parties have agreed to reduce in writing their mutual understanding and their respective fundamental interests, rights, duties, obligations and liabilities in relation to the agency, their respective roles in this regard, the terms and conditions on which the Parties would implement the agency relationship and certain other matters thereto.

1. Definitions and Interpretation

1.1. Definitions

Certain terms are defined within the recitals and within the body text of this Agreement. In addition, the following terms shall have the following meaning:

| | |
|------------------|---|
| "Affiliate" | means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such person. |
| "Agreement" | means this Agreement, including the recitals and schedules hereto, as the same may be varied or amended from time to time in writing by agreement of the Parties; |
| "Agreement Date" | shall mean and refer to MARCH 08, 2015 ; being the date of execution of this Agreement; |
| "Business Day" | means any day on which banking institutions in South Africa are open for business. |
| "Force Majeure" | means any of the following events or occurrences: (i) Acts of God, such as fires, floods, thunderstorms, earthquakes, unusually severe weather and natural catastrophes; (ii) civil disturbances, such as strikes, lock outs and riots; (iii) acts of aggression, such as explosions, wars, and terrorism which are not foreseen; or (iv) acts of government or actions of regulatory bodies which significantly inhibit or prohibit either Party from performing their obligations under this Agreement. |
| "Person" | includes any individual, company, corporation, firm, partnership, consortium, joint venture or association, whether a body corporate or an unincorporated association of persons. |
| "Product" | means the Company's related products and Services. |
| "Project" | shall mean the change in scope whereby Transnet Engineering (TE) requires the Company to change the location of the local manufacture programme from the TE Spartan Pretoria facility to their Durban facility. |
| "Territory" | means Republic of South Africa. |
| "Third Party" | means a person who is not a Party to this Agreement and does not include Affiliates of any of the Parties. |

"Nominee" means any juristic person or Company that may be nominated by BEX with the prior written consent of CNR from time to time to continue with and fulfil the obligations of this Agreement and/or to provide the necessary Invoices for executing the commercial aspects of this Agreement.

"BEE" means Black Economic Empowerment as set out in the BEE Charter of the Republic of South Africa.

1.2. Interpretation

1.2.1. References to this Agreement or to any other instrument shall be a reference to this Agreement or that other instrument as amended, varied, novated, or substituted from time to time.

1.2.2. The headings in this Agreement are for ease of reference only and shall not affect the interpretation or construction of this Agreement.

1.2.3. References to Recitals, Clauses and Schedules are references to recitals, clauses and sub clauses and schedules to this Agreement.

1.2.4. Words importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and the neuter gender and vice versa.

1.2.5. Each of the representations and warranties provided in this Agreement are independent of other representations and warranties and unless the contrary is expressly stated, no Clause in this Agreement limits the extent or application of another Clause.

1.2.6. "In writing" includes any communication made by letter or fax or e-mail.

1.2.7. The words "include", "including" and "in particular" shall be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as limiting the generality of any preceding words.

1.2.8. References to a person shall be construed so as to include:

1.2.8.1. individual, firm, partnership, trust, joint venture, company, corporation, body corporate, unincorporated body, association, organization, any government, or state or any agency of a government or state, or any local or municipal authority or other governmental body (whether or not in each case having separate legal personality);

1.2.8.2. that person's successors in title and assigns or transferees permitted in accordance with the terms of this Agreement; and

1.2.9. References to a person's representatives shall be to its officers, employees, legal or other professional advisers, sub-contractors, agents, attorneys and other duly authorized representatives.

1.2.10. References to statutory provisions shall be construed as references to those provisions as are respectively amended or re-enacted or as their application is modified by other provisions (whether before or after the date of this Agreement) from time to time and shall include any provisions of which they are re-enactments (whether with or without modification).

1.2.11. All warranties, representations, indemnities, covenants, guarantees, stipulations, undertakings, agreements and obligations given or entered into by more than one person are given or entered into severally unless otherwise specified.

1.2.12. In the event that the date on which any act or obligation specified in this Agreement to be performed falls on a day which is not a Business Day, then the date on which the act or obligation is to be effected or performed shall take place on the next Business Day.

1.2.13. This Agreement is the result of negotiations between, and has been reviewed by, the Parties and their respective counsel. Accordingly, this Agreement shall be deemed to be the product of the Parties, and there shall be no presumption that an ambiguity should be construed in favour of or against any Party solely as a result of such Party's actual or alleged role in the drafting of this Agreement.

2. Preamble

- 2.1. Whereas the TE requires the Company to change the location of the local manufacture programme from the TE Koedoespoort Gauteng facility to their Bay-Head Durban facility.
- 2.2. And whereas the Company has approached BEX to assess and formulate the entire strategy and planning to quantify and benchmark the costs associated with the re-location as per Clause 2.1.
- 2.3. And whereas BEX has agreed to undertake the work at their sole risk and at no cost to the Company if the agreed benchmark costs are not realized from Transnet Freight Rail (TFR).
- 2.4. After extensive research and negotiations with both the Company & TFR, BEX and the Company have agreed that the benchmark costs for the Project will be fixed at R280 million (Rands Two hundred and eighty million only) excluding VAT.
- 2.5. Since BEX has undertaken to negotiate and finalize the deal with TFR on risk basis, it is agreed between both parties that BEX be entitled to an agency commission equivalent to the difference between the price excluding VAT awarded to the Company by TFR and the price benchmark of R280 million excluding VAT as detailed in Clause 7.

3. Scope and Purpose of the Agreement and key principles

- 3.1. The Parties have entered into this Agreement to record their mutual understanding as regards their relationship and the manner in which such relationship shall be effectuated and implemented through this Agreement.
- 3.2. The scope of this Agreement is the regulation of the rights and relationships of the Parties, both among themselves and with respect to Third Parties, with the aim of

identifying, preparing and executing deals to supply the Company's locomotives and services in the Territory.

- 3.3. In order to achieve their joint commercial objective, the Parties shall operate this Agreement as per the terms and conditions set out herein.
- 3.4. Each Party agrees to co-operate with the other Party on the best effort basis.
- 3.5. Each Party hereby agrees and undertakes towards the other Party to perform and observe all of the provisions of this Agreement.
- 3.6. The Parties acknowledge that the broad parameters for the conduct of this Agreement (subject always to the terms and conditions of this Agreement) is to enable increase of the market share of Company's Services in the Territory and enhancement of the economic value of the Parties.

4. General Conditions of appointment

- 4.1. The Company hereby appoints BEX to provide advisory and consulting services in respect of the Project and to aid Business Development and to assist in achieving the Company's BEE objectives in in the Territory.
- 4.2. The Parties hereby agree and acknowledge that they are independent contractors. No partnership, joint venture or employment is created or implied by this Agreement.

5. Duties and Responsibilities of BEX

- 5.1. BEX shall provide advisory services in respect of the Project and will assist in preparing the Bid documentation in respect to the Project on risk basis.
- 5.2. BEX shall assist the Company to improve its market share in the Territory.
- 5.3. BEX shall not make any representation on behalf of the Company except in conformity with the written instructions issued by the Company.
- 5.4. BEX will have a period of one year from the Agreement Date to deliver the Project, failing which this agreement will automatically terminate and the Parties can then decide on its resurrection or not, by written agreement.
- 5.5. BEX will inform the Company timeously in writing if it wishes to appoint a nominee to carry on with the provisions of this Agreement in its place and the appointment of nominee shall be effected after the written consent of CNR.

6. Duties and Responsibilities of the Company

- 6.1. The Company shall on its own make necessary submissions of proposals and documents as per the requirements of the bidding documents, wherever applicable, in the most competitive manner.
- 6.2. The Company shall be responsible to study, understand and interpret the requirements of the bids or offers on its own or in conjunction with its Partners and BEX shall in no way be liable for any misconstruction of any clause mentioned therein.
- 6.3. The Company shall alone be responsible for complying with all conditions and for all after sale support services to TFR and BEX shall not be obligated for any consequent liabilities arising out of the same, whatsoever.

7. Remuneration, payment terms etc.

- 7.1. For the Project Scope deviation (referred herein above), BEX shall assist the Company to negotiate the best possible price with TFR based on a minimum price benchmark of R280 million (Rands Two Hundred and Eighty million only) excluding VAT.
- 7.2. The Company agrees that BEX will be entitled for an agency commission equivalent to the difference between the price excluding VAT awarded to the Company by TFR and the price benchmark of R280 million excluding VAT. For example if the price awarded is R650 million, then BEX will be entitled to an agency commission of R370 million. The Company price will be fixed at R280 Million irrespective of whether the total Project value is negotiated lower than the R650 million by TFR.
- 7.3. BEX shall be entitled to agency commission irrespective of the fact whether the supply is of main product or any spare part or ancillary item thereto.
- 7.4. The agency commission as stated above shall get due and payable in proportionate tranches as and when payment is received by the Company.
- 7.5. The company shall pay BEX within 10 business days after receiving the invoice and the BEX banking details as per clause 12 from BEX.

8. Term and Termination

- 8.1. This Agreement shall be effective from the Agreement Date and will remain valid till the time the Company remains eligible for award of the scope deviation by reason of the fact that the original Project has been awarded to the Company or is not called off before execution. However, once the Agreement for the scope deviation is signed by Company within the validity of this Agreement, this Agreement shall be automatically extended and shall remain in force until full payment due to BEX under this Agreement is made by the Company.
- 8.2. Notwithstanding the aforementioned, if either Party hereto commits a breach of this Agreement or defaults in the performance of any obligation hereof, and if such default or breach is evidenced and not rectified within 14 (fourteen) business days after the same has been called to the attention of the defaulting Party by a written notice from the other Party; then the non-defaulting Party, at its option, may thereupon terminate this Agreement by submitting a written notice to the other Party.
- 8.3. Any expiration or termination of this Agreement pursuant to Clause 7.2 shall be without prejudice to any other rights or remedies to which a Party may be entitled hereunder or at law and shall not affect any accrued rights or liabilities of either Party.

9. Liability provisions

- 9.1. Each Party undertakes to cause its employees, agents, and Affiliates, as long as they are associated with terms of this Agreement, to respect and comply with this Agreement.

In any case, each Party undertakes to collaborate in good faith with each other to avoid or minimize any disadvantage or harm affecting the other Party.

9.2. The provisions of Clause 9 shall continue to apply following the expiration or termination of this Agreement and for a period of Five (5) years thereafter.

10. Confidentiality

10.1. During the course of this Agreement, one Party (the "Discloser") may, on a case-by-case basis, disclose to the other Party (the "Recipient") certain Confidential Information all of which shall be regarded as confidential. "Confidential information" means any information as the Discloser may from time to time provide (or have supplied or disclosed on its behalf) to the Recipient, including all financial or other information relating to its business affairs or the business affairs of the Affiliates, whether orally or in a written, physical or visual form, regarding the products, activities, including (without limitation) data, software systems, information technology, products, applications together with analyses, compilations, forecasts, studies or other documents prepared by the Discloser (including, but not limited to, lawyers, accountants, consultants and financial advisers) and/or its Representatives which contain or otherwise reflect information about the Discloser and/or its Affiliates.

10.2. The Recipient shall at all times during the term of this Agreement and for a period of five (5) years following its termination, hold all Confidential Information which it acquires from Discloser under the terms of this Agreement, or otherwise, in strict confidence and shall not disclose such information to any third party or duplicate, transfer, or use directly or indirectly, the Confidential Information other than in Recipient's performance of its obligations under this Agreement.

The foregoing restrictions shall not apply to any information which: (i) is or becomes generally available to the public other than as a result of a breach of obligation by Recipient; or (ii) is lawfully acquired from a third party who owes no obligation of confidence in respect of the information; or (iii) Recipient is required to disclose by law (provided that Recipient shall assert the confidential nature of the information and give immediate written notice to Discloser and assist Discloser in obtaining a protective order against such disclosure).

10.3. Upon request of Discloser, or upon the expiration or any earlier termination of this Agreement, Recipient shall promptly return all copies of the Confidential Information in whatever form or media, to Discloser or, at the direction of Discloser, destroy the same. Recipient shall certify in writing to Discloser such return or destruction within ten (10) days of the date of Discloser's request.

10.4. Subject to all other terms of this agreement, this Agreement and its Annexes are also Confidential Information and either party shall not disclose, advertise or publish the terms or conditions of this Agreement or the Annexes without the prior written consent of the other party.

11. Miscellaneous

11.1. All notices required or permitted to be given under this Agreement shall be in writing, shall be given to the other Party and shall be deemed given to a Party when:

11.1.1. delivered to the appropriate address by hand or by overnight courier service (costs prepaid);

11.1.2. received by the addressee, if sent by certified mail, return receipt requested;

in each case to the following addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number or person as a Party may designate by notice to the other Party):

BEX:

BEKStructured Products Pty Ltd

For the attention of: Mr. Marc Brand

Address: 24 Crescent Drive, Melrose Arch 2076, Johannesburg

The Company:

CNR ROLLING STOCK PTY LTD.

For the attention of: Mr. _____

Address: _____

All correspondence, exchange of information, documents between the Parties, with Customers / third parties shall take place in English language.

11.2. No Party may assign any interest, benefit, right or obligation under this Agreement to any Person without having obtained the prior written consent of the other Party. It shall be a condition of any assignment that the assigning Party gives prior written notice to the other Party and to the Third Party including any Authority (if required by Law or any contract) of its intention and that such Person, provides prior written confirmation that it does not object to such intended assignment, and with respect to an assignment to non-Affiliates that the other Party provides prior written confirmation that it does not object to such intended assignment. Furthermore, it shall be a condition of any assignment that the new participant shall have to ratify this Agreement in writing and accept to be bound by and adhere to the provisions of this Agreement, and in any event of assignment to an Affiliate as specified above, the assigning Party shall continue to guarantee the performance of the new participant under this Agreement and in any event of assignment, it shall also continue to be bound by the exclusivity and confidentiality provisions set forth herein.

11.3. If any provision of this Agreement is or becomes illegal, unenforceable or invalid under the law of any jurisdiction applicable to the Parties, neither the legality, validity or enforceability of the remaining provisions of this Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall be in any way affected or impaired thereby; provided, however, that if such severability materially changes the economic benefits of this Agreement to a Party, the Parties shall negotiate an equitable adjustment in the provisions of this Agreement in good faith.

- 11.4. This Agreement (including any annexes thereof) sets forth the full and complete understanding of the Parties as of the date of execution of this Agreement and supersedes all other prior negotiations, agreements, and understandings of the Parties with respect thereto. No Party shall be bound by any other obligations, conditions or representations with respect to the subject matter of this Agreement.
- 11.5. No waiver of any of the provisions of this Agreement shall be deemed to be or constitute a waiver of any other provision whether similar or not. No single waiver shall constitute a continuing waiver.
- 11.6. Neither this Agreement nor any of the terms hereof may be amended, supplemented, waived or discharged unless the Parties so agree in writing.
- 11.7. Nothing in this Agreement, except to the extent explicitly provided, shall be construed to create an association, trust, partnership, joint venture, or other fiduciary relationship between the Parties or to impose a trust or partnership duty, obligation or liability between the Parties. No Party shall by virtue of this Agreement be deemed to be the representative of the other Party for any purpose whatsoever, and no Party shall have the power or authority as agent or in any other capacity to represent, act for, bind, or otherwise create or assume any obligation on behalf of any other Party for any purpose whatsoever, except specifically agreed in writing by the other Party.
- 11.8. This Agreement may be executed in one or more duplicate counterparts and when executed by all of the Parties shall constitute a single binding agreement.
- 11.9. Neither Party hereto shall be liable for any failure to perform its obligations under this Agreement due to a Force Majeure event. In the event of Force Majeure the Parties shall evaluate the obligations affected by the Force Majeure event, and shall mutually agree in writing on the measures to be taken or on the effect of such Force Majeure event on the Parties' obligations hereunder. The Parties may agree that performance of a Party's obligations shall be suspended during the period of existence of such Force Majeure event as well as the period reasonably required thereafter to resume the performance of the obligation. The Parties shall use their best reasonable efforts to minimize the consequences of this Force Majeure. In the event of Force Majeure the Parties, shall discuss and mutually agree on the continued co-operation between the parties, including the necessity of termination of this Agreement.
- 11.10. Nothing expressed or implied in this Agreement is intended or shall be construed to create or extend any rights or benefits to any third party, other than the Parties hereto excluding clause 12.
- 11.11. Except to the extent of indemnification obligations related to Third Party claims, neither Party hereunder shall be liable for special, incidental, exemplary, indirect, punitive or consequential damages arising out of a Party's performance or non-performance under this Agreement, whether based on or claimed under contract, tort (including such Party's own negligence) or any other theory at law or in equity.

12. BEX Banking details

The Banking details will be mentioned in each invoice provided by BEX to the Company.

Any changes to the above banking details of BEX will be advised by BEX to the Company in writing. In the event of the Company receiving what appears to be an instruction from BEX, amending the BEX banking details, the Company shall only be entitled to act upon such instruction if it was received in writing from, or confirmed in writing with, the signatory to this Agreement.

13. Binding Effect

With effect from the Agreement Date, this Agreement shall become unconditional and a legal, valid and binding obligation of each of the Parties.

14. Signature in counterparts

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement on the date and at the place mentioned below.

SIGNED AT _____ ON THIS THE 8TH DAY OF MARCH 2015

For and on behalf of BEXSTRUCTURED PRODUCTS PTY LTD:

Name: MR. MARC BRAND Designation: **Authorized Signatory**

Signature: _____

AS WITNESS:

1. _____

SIGNED AT _____ ON THIS THE _____ DAY OF MARCH 2015

For and on behalf of CNR ROLLING STOCK PTYLTD..

Name: _____ Designation: **Authorized Signatory**

Signature: _____

AS WITNESS:

1. _____

Annexure – A

Statement of Advisory Services to be provided by BEX to CNR ROLLING STOCK SOUTH AFRICA PTY LTD. (CNR) in respect of the Project as defined in Clause 1.1 of this Agreement

BEX, with its long subsisting relationships in the territory of South Africa has agreed to provide **CNR** with the following services as part of its Advisory and Consulting Services on the Project:

1. Conduct detailed research on the costs associated with the Project on risk basis
2. Negotiate with TFR and assist the Company to conclude the deal with TFR on the Project at the agreed minimum benchmark price of R280 million excluding VAT.
3. Assist CNR in preparing the Bid documentation and negotiating with TFR on pricing levels in relation to the Project.
4. Advise CNR on the regulatory, social, cultural and political framework in South Africa with respect to the Project.
5. Identify the various opportunities of participation in various Government and Private projects, leading to the shortlisting and focus on the current Project as contemplated in this Agreement.
6. Closely co-ordinate with the designated authorities to comprehend the applicable Government policies and advise CNR accordingly to ensure smooth execution of the Project.
7. Provide consultancy on participating in the Tenders and bidding processes related to the Project.
8. Assist CNR in increasing their footprint in Government and Private Projects in South Africa.

It is hereby noted and agreed between the parties that the above services are provided as a pre-Project service and will conclude on CNR signing the Contract for the Project with TRANSNET. BEX will provide necessary proof of delivery of the above services as required by CNR.