



SERVICE LEVEL AGREEMENT

Entered into between:

THE SOUTH AFRICAN HERITAGE RESOURCES AGENCY

111 Harrington Street, Cape Town, 8001

Herein represented by **MR DUMISANI SIBAYI** in the capacity
of Executive Officer Heritage Resources Management
and duly authorized thereto

(Herein referred to as the client "SAHRA")

and

B4 ARCHITECTS CC

(Registration Number: 2011/088028/ 23)

herein represented by **Mr. Bruce Brinkman** in his capacity as a member
thereof and duly authorized thereto

(Herein referred to as "the Service Provider")

PREAMBLE

WHEREAS: The South African Heritage Resource Agency and B4 Architects CC desire entering into a Service Level Agreement in terms of which B4 Architects CC undertakes to develop and produce a Conservation Management Plan associated with the project of SAHRA as defined herein.

AND WHERAS: The parties agree further that the amount specified in clause 6.1 constitute the service provider's fees for the development of Conservation Management Plan services to be rendered by services provider to SAHRA which includes but not limited to the scope described "Annexure A". The services provider accepts the appointment as an independent service provider for rendering the agreed services,

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 Headings to the clauses of this agreement are for the purposes of convenience and reference only, and shall be used to assist with the interpretation of the terms of this agreement.
- 1.2 Words importing:
 - 1.2.1 any one gender include the other gender;
 - 1.2.2 the singular includes the plural and vice versa; and
 - 1.2.3 natural persons include juristic entities and vice versa;
- 1.3 The following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

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- 1.3.1 **"Agreement"** shall mean this written document together with all written appendices, schedules and amendments attached to it from time to time.
- 1.3.2 **"Commencement date"** means the 4th February 2015 despite signature of this agreement by the parties.
- 1.3.3 **"Dispute"** shall mean any disagreement, controversy, or claim, including without limitation, situations or circumstances in which the Parties are required to mutually agree on changes to terms, conditions or changes, arising out of, or relating to the Agreement.
- 1.3.4 **"Parties"** shall mean both SAHRA and B4 Architects cc.
- 1.3.5 **"Project"** shall refer to developing and producing a Conservation Management Plan for "Blackie" – a steam locomotive built in England in 1859, the first Railway Locomotive to run in South Africa.
- 1.3.6 **"SAHRA"** shall refer to the South African Heritage Resources Agency as established in terms of section 11 of the National Heritage Resource Act 25 of 1999 ("the NHRA"), and a listed public entity listed in terms of the provisions of the Public Finance Management act 1 of 1999.
- 1.3.7 **"Services"** shall mean to develop Conservation Management Plan Services to be performed by B4 Architects cc in accordance with this Agreement as further described in clause 5.

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1.3.8 "Service Provider" shall mean B4 Architects CC (Registration number: 2011/ 088028/ 23), close corporation and having its principal place of business at Office: Unit 8, Bloomingdales Office Park, 34 Ninth Avenue, Walmer, Port Elizabeth, 6070.

1.3.9 "Writing" means legible writing and in English and excludes any form of electronic communication contemplated in the Electronic Communication and Transaction Act No. 25 of 2002 (as amended).

2. APPOINTMENT

2.1 The SAHRA hereby appoints the Service Provider to provide services to it and the Service Provider hereby accepts the appointment and agrees to render services to the SAHRA on the terms and conditions set out hereunder and as per the quotation submitted by the Service Provider and accepted by SAHRA, with all Special Bid Conditions and General Conditions of Contract, which form part of this Agreement and is attached hereto, and marked as "Annexure B".

2.2 The Service Provider undertakes to proceed with its instruction in accordance with and in strict adherence to the terms of this agreement, any written instructions that may be issued and applicable laws and regulations.

3. DURATION

3.1 Despite signature, the Agreement shall commence on 4 February 2015 and continue until 31 March 2015 whereafter it shall terminate unless it is extended in accordance with clause 3.2.



3.2 The parties may extend the Agreement beyond the period set out in clause 3.1 above upon mutual Agreement by the Parties and shall only be valid if it is in writing, executed at any time prior expiry of this Agreement and it is signed by both parties. In the event that Parties agree to extend this Agreement, unless specifically agreed otherwise the Agreement shall be extended for the period mutually agreed upon, on the same terms and conditions and at the same rates/charges.

4. TERMINATION

4.1 Failure on the part of the Service Provider to satisfactorily provide the Services as is envisaged in this Agreement shall amount to a material breach of this Agreement and shall entitle the SAHRA to terminate this agreement.

4.2 The Service Provider accepts that by reason of the working relationship envisaged in the agreement and in addition to any other ground that may be set out in this Agreement, shall also be entitled to terminate this agreement without notice should the Service Provider or any member of its staff conduct itself in any manner that may adversely affect the working relationship, including but not limited to:

4.2.1 Making any false statements or representations which relate to the structure/or composition of the Service Provider before or after the Commencement Date; or

4.2.2 Making any false statement or representations relating to obligation arising from this agreement; or

4.2.3 Poor performance; or

4.2.4 Failure to execute instructions timeously or at all; or

4.2.4 Being under investigation by any government agency for alleged criminal activities or misconduct; and/or

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4.2.5 Being under provisional liquidation.

4.3 Excluding the instances set out 4.1 and 4.2 and without prejudice to any other remedies which either of the Parties may otherwise have in terms of the Agreement or at law, either of the Parties shall be entitled to terminate the Agreement by written Notice to the other, in the even that:

4.3.1 either of the Parties commits a breach of the terms and conditions of the Agreement and fails to remedy such breach within seven (7) calendar days after receiving Notice from the other party to the Agreement.

4.4 The termination of the Agreement, for whatever reason, shall not affect the rights of either of the Parties:

4.4.1 That may have accrued before the termination of the Agreement; or

4.4.2 Which specifically or by their nature survives the termination of the Agreement.

5. THE SERVICES

5.1 The Service Provider warrants that it has the required knowledge and understanding of railway heritage and especially the historic and delicate nature of an asset such as "Blackie".

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5.2 The Service Provider shall:

5.2.1 Work closely with Passenger Rail Agency of South Africa (PRASA) and Transnet regarding any conservation work to be carried out on "Blackie" as well as siting and other considerations at the chosen display location.

5.2.2 Compile the Conservation Management Plan in three key phases each in consultation and in agreement with the owners of the locomotive regarding the following:

5.2.2.1 Assessment of condition and discussion of recommendations for any conservation work.

5.2.2.2 Discussion of recommendations concerning the current planned location identified where "Blackie" would be displayed as well as specifications for the enclosure to provide both suitable protection and appropriate visual considerations (lines of sight, accessibility, night-time illumination). Final agreed design concepts and outline specifications to be included in the CMP.

5.2.2.3 Provision of guidance on the future management and care of "Blackie".

5.3 In addition to the obligations set out in clause 5.2 above, the Service Provider shall undertake the following work and include the findings and recommendations in the Conservation Management Plan:

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- 5.3.1 attend at the Firgrove storage location of "Blackie" and make an assessment of the condition of the Blackie with respect to:
- (i) Any visible damage;
 - (ii) Any repairs needed to correct visible damage or for the structural stability of the locomotive (for example; obviously loose or missing components);
 - (iii) Condition of paintwork;
 - (iv) Corrosion of the locomotive, both external and where accessible, internal surfaces (for example: inside surfaces of main frames); and
 - (v) Condition of boiler insulation lagging (if present). If lagging is present, the service provider must give an opinion on the presence of asbestos. If present, recommend any legal requirements and allowable remedial measures such as whether removal is required or whether sealing any exposed cladding seams in situ to render safe would be acceptable.
- 5.3.2 Recommend any remedial conservation work required to be undertaken on "Blackie" to make the locomotive suitable for display.
- 5.3.3 Recommend safe transport procedures for "Blackie" from Firgrove to its proposed display location and its installation in the new enclosure.
- 5.3.4 Recommend the specifications for the display enclosure including type of glass, type of supports (to minimize visual interference), maintenance access and lighting. The type of track on which the locomotive is to be displayed should be specified (for example: rails set in a plinth or ballasted – note that the track gauge is 1435 mm not the current 1067 mm). Simple protective railings and or bollards to prevent vehicles or people getting too close to the enclosure are likely to be required and should be specified.

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5.3.5 Recommendations for the roof of the enclosure to ensure adequate drainage but also whether some element of shade is to be provided.

5.3.6 Recommend any security measures for the enclosure.

5.3.7 Recommendations for the future maintenance and conservation of the locomotive including cleaning cycles for both locomotive and enclosure.

6. GENERAL TERMS AND CONDITIONS REGARDING THE CONSERVATION MANAGEMENT PLAN

6.1 A Conservation Management Plan (CMP) shall be valid for a period of five (5) years after which it has to be reviewed by SAHRA.

6.2 Ownership of the Conservation Management Plan shall automatically be transferred to SAHRA upon finalization and acceptance of it by SAHRA.

6.3 The Conservation plan shall include a brief report on the design / specification discussions decisions for display.

6.4 SAHRA's requirements for acceptance of the Conservation Management Plan include the following:

6.4.1 Inclusion of a comprehensive statement of significance of the locomotive;

6.4.2 Provision of a physical description of "Blackie" including colour images; and

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- 6.4.3 Provision of GPS coordinates of the envisaged location of "Blackie" at Cape Town Station.
- 6.5 The Service Provider shall provide a brief report on the condition assessment of the Blackie.
- 6.6 The service provider shall also furnish user friendly manuals of the Conservation Management Plan for those who will be responsible for looking after the locomotive.
- 6.7 The Conservation Management Plan shall set out clear time-frames of tasks to be performed during the assessment and when the Conservation Management Plan is implemented by the responsible officials of the owners (Transnet) and monitoring process, clearly stating the duties, timeframes and the manner of performing those duties.
- 6.8 Due to the fact that the "Blackie" is to be located in a public space, the Conservation Management Plan shall state what measures would have to be undertaken to see that there will not be any negative impact on the locomotive with identification of any risk factors.
- 6.9 The Conservation Management Plan should contain guidelines on protection from the elements such as corrosion and others as the locomotive will be displayed outside.

7. PAYMENT

- 7.1 The total value of service provided by the service provider to SAHRA amounts R62 244.00 (sixty thousand, two hundred and forty four rand) (excluding vat) for the execution of the agreed service.
- 7.2 The amount referred to in clauses 7.1 shall be inclusive of all costs, expenses and overheads of every kind, incurred by the Service Provider in the performance of the required services.

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- 7.3 SAHRA shall not be liable for costs and expenses incurred relating to the Project
- 7.4 Payment shall be effected by means of a bank transfer into the account of the Service Provider.
- 7.5 Payment with reference to clause 7.1, part payments shall only be paid out on presentation of an invoice which shall be accompanied by completed work in line with the Service Provider's duties under clause 5 and specified in annexure "A" hereto.
- 7.6 The Service Provider undertakes to fully co-operate in any financial and audit procedure initiated by SAHRA. This obligation may include, where it is deemed necessary to allow SAHRA, at its written request, to satisfy itself with the financial documentation, books or accounts of the services provided by the Service Provider to SAHRA, and to keep such documentation, books and accounts in order to ensure that there is compliance and that payment is being appropriately utilised.

8. NOTICES AND DOMICILIA

- 8.1 The Parties choose as their *domicilium citandi et executandi* their respective addresses set out in 8.2 for all purposes arising out of or in connection with this agreement at which addresses all processes, notices and communications arising out of or in connection with this agreement, its breach or in connection with this agreement, its breach or termination may validly be served upon or delivered to the Parties.

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8.2 For purposes 8.1 the Parties' respective addresses shall be:

THE SAHRA: 111 Harrington Street
Cape Town
8001

THE SERVICE PROVIDER: 7800 Suite 8 Bloomingdale Office Park,
34 9TH Avenue, Walmer
Port Elizabeth
6070

8.3 Any notice given in terms of this agreement shall be in writing and shall:-

8.3.1 If delivered by hand be deemed to have been duly received by the addressee on the date of delivery;

8.3.2 If posted by pre-paid registered post be deemed to have been received by the addressee on the 12th (twelfth) day following the date of such posting; and

8.3.3 If successfully transmitted by facsimile or e-mail be deemed to have been received by the addressee 1 (one) day after dispatch.

8.4 Notwithstanding anything to the contrary contained in this agreement written notice of communication actually received by one Party from the other Party including by way of facsimile or e-mail transmission shall be adequate written notice of communication to such Party.

9. **DISPUTE RESOLUTION**

9.1 In the event of a dispute arising between the Parties relating to any matter pertaining to this Agreement or the interpretation thereof, the following process will be followed:

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- 9.1.1 The Party raising the dispute must serve the other Party with a notice within 7 days of the dispute arising, notifying the other party of the nature of the dispute, with sufficient particularity;
- 9.1.2 Within 14 days of receipt of the notice the CEO of SAHRA, or any acting CEO at that time, and the Service Provider or its delegate will meet to discuss the dispute, with a view of resolving the dispute/s in question, the idea being that the dispute should be resolved as speedily as reasonably possible;
- 9.1.3 Should the Parties be unable to resolve the dispute in question in terms of clause 8.1.2 above, the dispute shall be referred to arbitration, by either of the Parties;
- 9.1.4 Such arbitration proceedings shall be held in accordance with the rules and regulations of the Arbitration Foundation of South Africa (AFSA) and conducted by an arbitrator to be appointed by the AFSA; and
- 9.1.5 The decision of the arbitrator shall be final and binding on the Parties, who shall summarily carry out that decision and either of the Parties shall be entitled to have the decision made an order of any court with competent jurisdiction.
- 9.2 No clause in this Agreement which refers to arbitration shall mean or be deemed to mean or interpreted to mean that either of the Parties shall be precluded from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

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10. CONFIDENTIAL INFORMATION

10.1 The Service Provider shall not, during the currency of this agreement, or at any time thereafter, utilize or cause to be utilized, and/or directly or indirectly publish or cause to be published or otherwise disclose or cause to be disclosed to any third party, any of the Confidential Information of the SAHRA, government in any other sphere, or any government institution or organ of state.

10.2 For purposes of this clause "Confidential Information" shall mean -

10.2.1 any information disclosed, revealed or exchanged and which pertains to, but is not limited to, all intellectual property rights, all trade secrets, all agreements (whether in writing or not) which exists at the time of revealing the content thereof to the Service Provider , the content of all possible future agreements which may be entered into with any other party, all knowledge obtained by way of research and development, irrespective of whether the aforementioned information that is revealed is applicable to technical, operational or financial aspects of the SAHRA, government in any other sphere, or any government institution or organ of state;

10.2.2 any information of whatever nature, which has been or may be obtained by the Service Provider , whether in writing or in electronic form or pursuant to discussions between the parties, or which can be obtained by examination, testing, visual inspection or analysis, including, without limitation, scientific, business or financial data or information, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, studies, findings, computer software, inventions or ideas;

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- 10.2.3 analyses, concepts, compilations, studies and other material prepared by or in possession or control of the Service Provider which contain or otherwise reflect or are generated from any such information as is specified in this definition;
- 10.2.4 all information which a third party has in terms of any agreement made available to the SAHRA and which has become known to the Service Provider in the course of rendering the Services; and
- 10.2.5 Any dispute between the parties resulting from this Agreement;
- 10.3 The Service Provider shall -
- 10.3.1 Use the Confidential Information only for the purpose of rendering the Services;
- 10.3.2 Treat and safeguard the Confidential Information as private and confidential; and
- 10.3.3 Ensure proper and secure storage of all Confidential Information.
- 10.4 Any documents or records (including written instructions, notes or memoranda) relating to the Services which are to be provided to the Service Provider or which come into the Service Provider's possession during the currency of this Agreement, are deemed to be the property of the SAHRA and shall be surrendered to the SAHRA on demand, and in the event of the expiry or termination of this

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Agreement, the Service will not retain any copies thereof or extracts thereof without obtaining the prior written permission of the SAHRA .

11. DAMAGES AND LIABILITY

11.1 SAHRA will not be held accountable for any loss, damage or injury incurred by the Service Provider and or any of its agents, employees or any other person affiliated thereto in respect of this Agreement, throughout the duration of this Agreement.

11.2 Any damage caused by the Service Provider and or its agents, employees or any other person affiliated thereto in respect of this Agreement, to the property of the SAHRA, will be recouped from the Service Provider by way of an invoice.

12. WARRANTIES

Neither the Service Provider, nor anyone on their behalf shall be regarded as having given any warranties, or made any representations, guarantee or undertaking save for what may be specifically set out in this Agreement or as contained in the reports furnished in terms of this Agreement.

13. VALIDITY

If any provision of this Agreement is found or held to be invalid or unenforceable, the validity and enforceability of all the other provisions of this Agreement will not be affected thereby.

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14. GENERAL

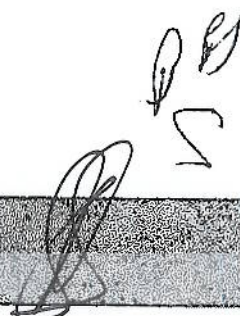
- 14.1 This Agreement does not constitute either of the Parties an agent or legal representative of the other for any purposes whatsoever and neither of the Parties shall be entitled to act on behalf of, or to represent the other unless duly authorised thereto in writing.
- 14.2 No alteration, variation or cancellation of this Agreement or any of the terms hereof will be of any force or effect, unless reduced to writing and signed by the Parties.
- 14.3 Each Party will bear its own costs in relation to the preparation of this Agreement.
- 14.4 The terms of the Agreement may be reconsidered or renegotiated at any stage if any of the Parties concerned desire this, provided that this is produced in writing after agreement has been reached.

15. ASSIGNMENT, CESSION AND DELEGATION

Neither of the Parties shall be entitled to assign, cede, delegate or transfer any rights, obligations, share or interest acquired in terms of this Agreement, in whole or in part, to any other party or person without the prior written consent of the other, which consent shall not unreasonably be withheld or delayed.

16. WAIVER AND RELAXATION

- 16.1 No waiver on the part of either party to this Agreement of any rights arising from a breach of any provision of this Agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision.

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16.2 No indulgence, leniency or extension of a right, which either of the Parties may have in terms of this Agreement, and which either party ("the grantor") may grant or show to the other party, shall in any way prejudice the grantor, or preclude the grantor from exercising any of the rights that it has derived from this Agreement, or be construed as a waiver by the grantor of that right.

17. SEVERABILITY

In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining terms, which will continue to be valid and enforceable.

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SIGNED AT Cape Town ON THIS 4 DAY OF February 2015.



MR DUMISANI SIBAYI
EXECUTIVE OFFICER: HRM OF
SAHRA)

AS WITNESSES:

1 _____
(Initials and surname)

2 _____
(Initials and surname)


SIGNED AT Port Elizabeth ON THIS 4th DAY OF FEBRUARY 2015.




MR BRUCE BRINKMAN
An authorised member of
B4 Architects CC

B4 Architects cc
ck2011/088028/23
VAT Reg. No. 4320259544

AS WITNESSES:

1 

(Initials and surname)
E. THERON.

2 

(Initials and surname)
B.K. ALBRECHT