

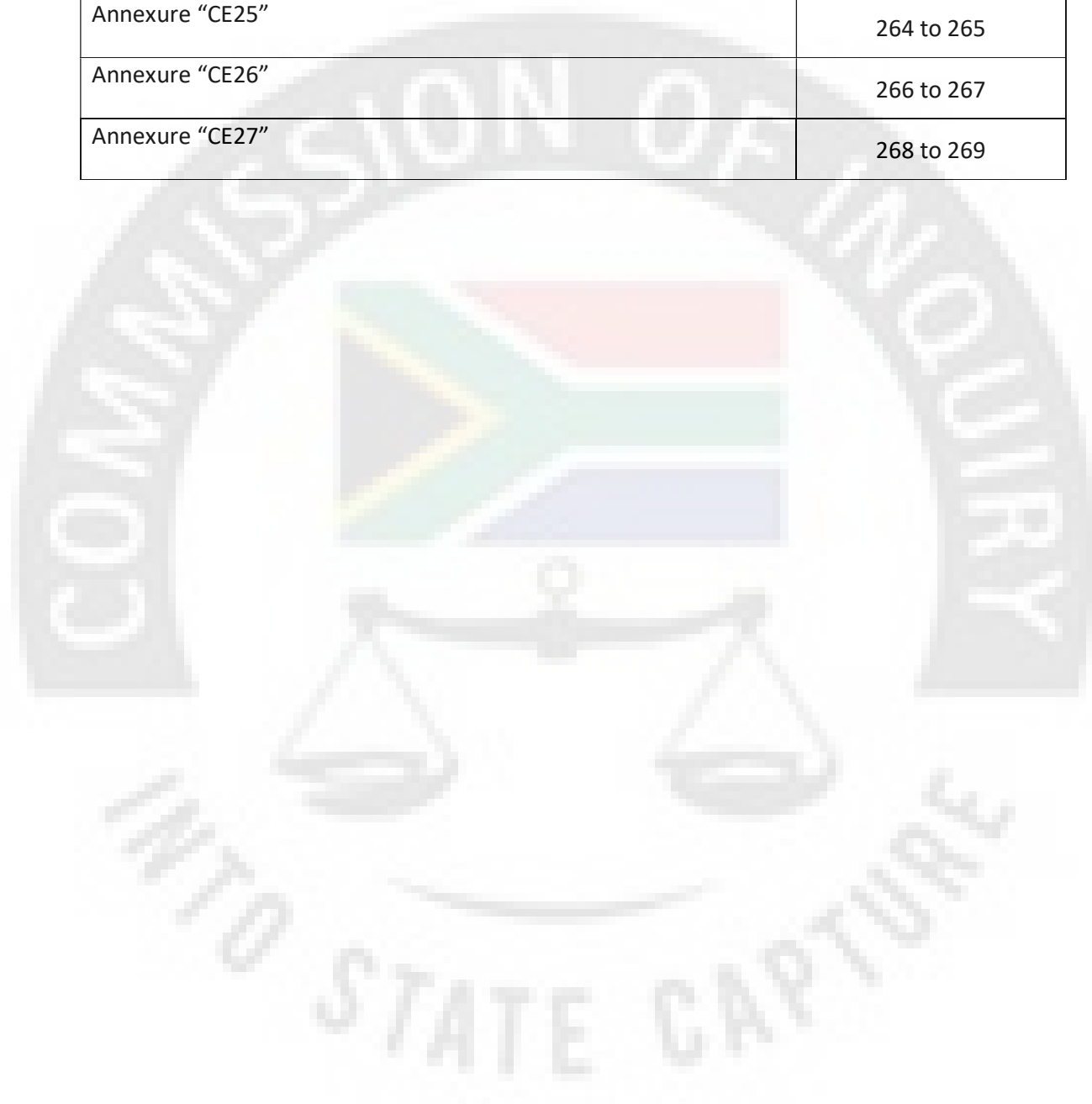
Statement of Clinton Martin Ephron



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STATEMENT OF CLINTON MARTIN EPHRON

for the purpose of the

JUDICIAL COMMISSION OF ENQUIRY TO ENQUIRE INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR, INCLUDING ORGANS OF STATE

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STATEMENT OF CLINTON MARTIN EPHRON
for the purpose of the
**JUDICIAL COMMISSION OF ENQUIRY TO ENQUIRE INTO ALLEGATIONS
OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR,
INCLUDING ORGANS OF STATE (“Commission”)**

1. I am a chartered accountant, having qualified as such in South Africa in 1993. During the period 2013 to 2017, I was the Chief Executive Officer (“**CEO**”) of Glencore’s coal business in South Africa and a director of both Optimum Coal Mine Proprietary Limited (“**OCM**”) and Optimum Coal Holdings Proprietary Limited (“**OCH**”).
2. Where I refer to “Glencore” in this statement, I am referring to the Glencore group of companies.
3. This statement is intended to provide information relating to the sale by OCH of shares held by it in its subsidiaries, including OCM.
4. This statement sets out my recollection and understanding of events at the time they occurred.

The period prior to the acquisition of Glencore’s interest in OCH

5. The matters set out in this section represent my current understanding of the history of OCH and OCM prior to Glencore acquiring its interest in them.
6. To the best of my knowledge, Optimum Collieries (the “**Mine**”) had been supplying coal to Eskom since the 1970s. Initially, coal was supplied only to Eskom on a cost-plus-margin basis but, from approximately 1983, the Mine operated as a “multi-product” mine, supplying coal locally to Eskom as well as to the export market.

7. On 4 January 1993, a Coal Supply Agreement (the “**CSA**”) was concluded between Eskom and Trans-Natal Coal Corporation Limited and Trans-Natal Collieries Limited (“**TNC**”), pursuant to which TNC undertook to supply the Hendrina Power Station (“**Hendrina**”) with an annual volume of 6,500,000 tons of coal (with certain specifications) at a fixed price per tonne for a period of 25 years until 31 December 2018. A copy of the CSA is annexed hereto marked “**CE1**”.
8. Again, to the best of my knowledge, at some stage prior to May 2008 BHP Billiton Energy Coal South Africa Limited (“**BHP**”) acquired ownership of the Mine. In June 2008, OCM acquired the Mine and a 9.5% interest in Richards Bay Coal Terminal from BHP. OCM was incorporated on 15 March 2006 as a BEE coal mining and exploration company.
9. As part of the sale by BHP to OCM, BHP (as the supplier of coal to Eskom under the CSA) ceded its right, title and interest under the CSA to OCM. Eskom consented to this substitution and certain amendments were made to the CSA, principally in relation to the quantity and quality specifications of the coal, reflecting the fact that there were disputes at that stage regarding the coal being supplied to Eskom.
10. I understand that other disputes subsequently arose between OCM and Eskom, primarily in relation to the price paid for coal by Eskom, resulting in amendments to the CSA in April 2011 following an arbitration commenced by OCM.
11. In March 2010, OCH, the holding company of OCM, listed on the Johannesburg Stock Exchange.

The acquisition of OCH by Glencore
12. In the period June 2011 to March 2012, Piruto BV (an entity within the

Glencore group) and Lexshell 849 Proprietary Limited ("**Lexshell**") (an entity then owned by Cyril Ramaphosa) acquired OCH through a series of transactions resulting in Piruto BV (Glencore) holding a 67.58% effective interest in OCH and Lexshell holding a 9.64% effective interest in OCH. The remaining shares in OCH were held by various minority partners (2.92%) and the Community Trust and the Employee Trust (19.86%). This transaction closed during March 2012 and OCH was delisted in July 2012.

13. For completeness, I note that Mr Ramaphosa divested his entire interest in OCH on 22 May 2014.
14. Prior to the acquisition of its interest in OCH, Glencore was not able to undertake a comprehensive due diligence exercise. In particular, Glencore only had publicly available information regarding the CSA and, accordingly, it only knew the duration, volume to be supplied and price per tonne provided by the CSA. Glencore did not, for example, know how any price-adjustment mechanisms in the CSA worked.

OCM's relationship with Eskom in 2012 to 2014

15. Following the acquisition by Glencore of its interest in OCH, differences continued to arise between OCM and Eskom, particularly in relation to sizing and quality of the coal supplied to Hendrina (although Eskom continued to accept and use the coal). In April 2013, OCM issued a notice requesting renegotiation of the sizing provisions in accordance with a provision in the CSA which specifically provided for such renegotiation. A copy of the notice is annexed hereto marked "**CE2**".
16. As regards the price of the coal supplied pursuant to the CSA, upon acquiring OCH, Glencore naturally took steps to better understand the viability of OCM and, in particular, the CSA. As a result of this post-acquisition review, by July 2013 OCM considered that the CSA was no

longer commercially viable.

17. By way of further explanation, at that time about half of OCM's coal was supplied to Eskom, and the price at which OCM was selling coal to Eskom pursuant to the CSA was significantly below the cost of producing each tonne of coal. Specifically, based on March 2013 invoice prices, OCM was losing approximately R150 per tonne of coal delivered to Eskom (the equivalent of R829 million per annum).
18. In OCM's considered view, these circumstances triggered the "*Hardship*" clause in the CSA, which entitled OCM to a revision of the purchase price for the coal. Eskom disputed OCM's declaration of "*Hardship*", and a disputed "*Hardship Notice*" from OCM to Eskom was subjected to arbitration (the "**Hardship Arbitration**") pursuant to an arbitration agreement concluded during December 2013. A copy of the Hardship Arbitration Agreement is annexed hereto marked "**CE3**".
19. While the arbitration proceedings were progressing, OCM and Eskom engaged in discussions regarding various other disputes concerning penalties, delivery shortfalls and other alleged breaches of the CSA.
20. In early 2014, Eskom approached OCM to see if it would agree to suspend the Hardship Arbitration to allow for a period of negotiation regarding the hardship claim and other disputes. OCM agreed, and on 23 May 2014, OCM/OCH and Eskom entered into a co-operation agreement (the "**Co-operation Agreement**") providing a process to further negotiate potential amendments and an extension to the CSA, as well as the possible settlement of disputes in relation to hardship and penalties. The Hardship Arbitration was suspended and certain interim arrangements were put in place to ameliorate the difficulties experienced by OCM. The parties also suspended the enforcement of their respective rights on account of alleged breaches of the CSA, and an effective

moratorium was agreed. A copy of the Co-operation Agreement is annexed hereto marked "CE4".

21. Whilst engaging with Eskom, OCM continued to review the rest of its business in order to determine how best to address its deteriorating financial situation.

Closure of the opencast section of the Mine

22. As at 2012, about half of OCM's coal was supplied to Eskom and the other half was exported. I understand that, prior to the acquisition of Glencore's interest in OCM, the export operations of OCM had generally subsidised the price at which coal was supplied locally to Eskom pursuant to the CSA. However, the export coal price began to decline in 2012, to a level at which it became impossible for OCM to operate profitably on the same basis.
23. By 2014 (i.e. around the time the Co-operation Agreement came into effect), OCM was losing cash of approximately R80 million to R100 million per month.
24. Following a review by OCM of its operations, OCM commenced a process to consider the closure of the opencast section of the Mine in January 2015, from which OCM was producing coal for export. The closure was effected in July 2015. This closure meant that the Mine could not produce enough coal both to supply Eskom and to export. From this point, Eskom was OCM's only customer, with all coal being supplied pursuant to the CSA.
25. Whilst the closure of the opencast section of the Mine enabled OCM to reduce its losses, it remained loss-making and OCM was accordingly required to raise additional funding, to which Glencore, as the majority shareholder of OCH, contributed. However, this funding did not prove to

be sufficient and OCM soon required yet further funding. In January and February 2015 alone, Glencore made approximately R480 million available to OCM by way of shareholder funding.

OCM's relationship with Eskom in the first half of 2015

26. Progress was made in the negotiations between OCM and Eskom in 2014 and early 2015. As part of this process, OCM provided substantial information to Eskom and its advisers, Nedbank and Basis Points Capital, in order to substantiate its costs and satisfy Eskom that it was indeed in a precarious financial position and suffering hardship. OCM also engaged with Eskom regarding the specifications of coal that it could reasonably deliver. I believed that we were successful in convincing the Eskom negotiating team regarding OCM's position both on its financial hardship and the coal specifications.
27. This process ultimately resulted in the production of a draft addendum to the CSA in early 2015 (the "**Fourth Addendum**"). The Fourth Addendum would have provided for an extension of the CSA until 2023 (the existing expiry being 31 December 2018), a revised price for coal, a mechanism whereby Eskom would be able to source coal elsewhere if it could do so at a lower price and a settlement of claims between OCM and Eskom. Glencore considered this proposal to be beneficial to all parties (a "win-win"), because it would have (i) ensured security of coal supply to Hendrina beyond 31 December 2018, (ii) enabled OCM to sell coal to Eskom at a more sustainable price, (iii) ensured the continued operation of the Mine and (iv) settled the claims between OCM and Eskom. The final draft of the Fourth Addendum is annexed hereto marked "**CE5**".
28. On 25 March 2015, OCM was advised that Eskom's Executive Procurement Committee had approved the Fourth Addendum subject to approval by the Eskom Board's Procurement Committee, which was

scheduled to meet on 15 April 2015. My understanding is that, on 15 April 2015, the Fourth Addendum was presented to the Eskom Board's Procurement Committee, which in turn referred the matter to the Eskom Main Board for consideration. Given that the Fourth Addendum had been presented to the Main Board of Eskom and would therefore have been acceptable to the Eskom Board's Procurement Committee, OCM was hopeful that the requisite approval would be forthcoming.

29. The Eskom Board had recently been reconstituted and, during late April 2015, OCM was informed by Mr Johann Bester of Eskom that the Fourth Addendum was to be reviewed by the then (newly appointed) Group Acting Chief Executive Officer, Mr Brian Molefe ("**Mr Molefe**"). OCM was further informed by Mr Molefe that he would contact OCM to discuss.
30. However, OCM did not hear from Mr Molefe. I therefore attempted to arrange to meet with him.
31. After a number of attempts at arranging a meeting with Mr Molefe, I was finally able to meet with him on 18 May 2015. At that meeting, Mr Molefe adopted an inflexible approach and indicated that Eskom would not amend the terms of the CSA and would instead continue to enforce its terms. He said that any amendments to the CSA would be considered closer to the end of the term of the CSA.
32. OCM considered this turn of events to be unfortunate given its belief that the Fourth Addendum represented a win-win for all parties, and wished to ensure that Mr Molefe had all the facts and information available to him (Mr Molefe having only taken office approximately three days prior to 23 April 2015, being the date when the Fourth Addendum was furnished to the Eskom Main Board). Accordingly, in a further attempt to resolve the impasse with Eskom, OCM addressed a letter to Mr Molefe on 22 May 2015 for the purpose of furnishing him with a synopsis of

OCM's financial position and details of the engagement between OCM and Eskom which had culminated in the draft Fourth Addendum. A copy of the letter is annexed hereto marked "**CE6**".

33. Eskom was advised in this letter of 22 May 2015 that the shareholders of OCM had indicated that if no progress was made with Eskom by the end of May 2015, *"the shareholders will have to reconsider their support for OCM and might withdraw all funding. If this occurs, the directors of OCM will, in accordance with their legal duties, have no choice but to place OCM in business rescue [("BR")] or liquidation..."*. As a responsible contractual counterparty, OCM felt it appropriate to ensure that Eskom was apprised of the difficult financial position that OCM was in, and the real risk of BR, so as to avoid uncertainty regarding the potential consequences of not concluding an agreement with OCM by 31 May 2015. By that stage, the funding provided by shareholders of OCM since October 2014 totalled approximately R1 billion.
34. Eskom failed to respond to this letter and I arranged to meet once again with Mr Molefe on 11 June 2015. I was accompanied on this occasion by the Glencore Group's CEO, Mr Ivan Glasenberg ("**Mr Glasenberg**") (who was visiting South Africa at the time). Mr Molefe was accompanied by a number of representatives of Eskom and he advised that, in his view, OCM must honour the CSA and that he would not renegotiate the terms of the CSA.
35. We made it plain to Mr Molefe that OCM had not overstated the consequences of a failure to renegotiate the CSA but, rather, that OCM had endeavoured to explore a number of options since 2012. We tried to impress upon Mr Molefe that the amendments proposed to the CSA were intended to achieve a win-win situation. We were of course very mindful that we were asking Eskom to expend more for coal for the immediate future but, in Glencore's view, this needed to be balanced against

Eskom's long-term interest in obtaining security of supply at a reasonable price.

36. Mr Molefe was unwavering in his stance and refused to agree to any changes. This was subsequently confirmed in writing when, on 22 June 2015, Eskom sent a letter (dated 10 June 2015) in which it stated that it no longer wished to participate in the settlement process envisaged by the Co-operation Agreement and, further, that it would enter into negotiations for a new CSA only in respect of the period after 31 December 2018 (that being the expiry date of the existing CSA). A copy of the letter is annexed hereto marked "**CE7**".
37. While Glencore and OCM understood that Mr Molefe was entitled to his position and how that position might benefit Eskom in the very short-term (i.e. Eskom would continue to receive coal at low prices), we felt that Mr Molefe's position did not necessarily appreciate the risk that Eskom faced after 2018 where they would have no security of coal supply from the Mine (which was located very close to Hendrina) and therefore would be left in a weak negotiating position.
38. On 30 June 2015, and in response to Eskom's letter, OCM addressed a further letter to Mr Molefe and Mr Vusi Mboweni (the acting Head of Primary Energy for Eskom), in which OCM made a final proposal in a last attempt to resolve the dispute with Eskom and reach a new long-term agreement with Eskom. This letter provided for a further reduced price, which was now below OCM's cost of production. No response was received to this letter. A copy of the letter is annexed hereto marked "**CE8**".
39. Ultimately, Eskom's termination of the settlement process led to the Hardship Arbitration being re-commenced on 23 June 2015 and a hearing was scheduled for the period 16-27 May 2016.

The First Oakbay Offer and Eskom's alleged R2 billion penalty

The First Oakbay Offer (1)

40. On 1 July 2015, Glencore received a letter from KPMG Services ("**KPMG**") advising that it had been requested by one of its clients, who wished to remain anonymous, to present an expression of interest to purchase either OCM or OCH for R2 billion (the "**First Oakbay Offer**"). KPMG further advised that its client would, in the event of an acquisition, continue to honour the existing CSA with Eskom. Mr Shaun Blankfield ("**Mr Blankfield**"), on behalf of Glencore, contacted Mr Werner Jacobs ("**Mr Jacobs**") of KPMG and told Mr Jacobs that OCM and OCH would not engage with an "anonymous" offeror. Mr Jacobs thereafter advised that the interested offeror was Oakbay Investments Proprietary Limited ("**Oakbay**"). A copy of the letter is annexed hereto marked "**CE9**".

The alleged R2 billion penalty

41. By mid-July 2015, OCM had been able to secure additional funding from Glencore to enable OCM to continue supplying coal to Eskom for the time being and intended to continue complying with its obligations to Eskom.
42. Shortly afterwards, on 16 July 2015, OCM received a letter from attorneys Cliffe Dekker Hofmeyr ("**CDH**"), representing Eskom, demanding payment of (alleged) penalties in an aggregate amount of approximately R2 billion in respect of alleged sizing and quality issues with the coal supplied to (and accepted by) Eskom between 1 March 2012 and 31 May 2015. This letter came as a complete shock to OCM and I felt that the decision by Eskom to impose the penalties was completely unreasonable because, while there was a purported contractual basis for these penalties, we had been discussing them with Eskom for a number of years and they knew that OCM did not believe

they were legitimate, and that OCM accordingly disputed them. Moreover, as set out above, Eskom was fully aware of the precarious financial position of OCM and the impact that these penalties would have on OCM, and the consequent risk that the imposition of these penalties would have on Eskom's security of supply. A copy of the letter is annexed hereto marked "**CE10**".

43. The manner in which the penalty provisions of the CSA worked meant that penalties could potentially be set off against the price at which coal was supplied to Eskom by OCM, with the effect that OCM could be required to supply coal at R1 per tonne. The alleged penalties were therefore a matter of serious concern to OCM and made BR proceedings very likely.

The First Oakbay Offer (2)

44. Shortly afterwards, on 25 July 2015, OCM and OCH signed a confidentiality and non-disclosure agreement with Oakbay pursuant to which OCM and OCH provided Oakbay with high level information concerning OCM. The reason for providing this information despite the fact that the R2 billion penalty was likely to lead to an imminent BR process was simply to maintain a potential option for keeping the Mine operational, albeit that OCH and OCM knew this would be an option for the BR practitioners (the "**BRPs**") to pursue in the event that BR proceedings were commenced (i.e. on the basis that the BRPs would assume control of OCH and OCM). A copy of the confidentiality and non-disclosure agreement is annexed hereto marked as "**CE11**".

The commencement of BR proceedings and subsequent discussions between the BRPs and Eskom

45. On 31 July 2015, the boards of directors of OCH and OCM resolved to commence voluntary BR proceedings in respect of each of OCM and

OCH. The decision to place the business under BR was driven by the fact that, in addition to OCM being required to sell all coal produced below cost, it now had to contend with an alleged R2 billion penalty and the prospect of supplying coal to Eskom for effectively R1 per tonne.

46. The BR proceedings commenced on 4 August 2015, from which point OCH and OCM were under the management control of the BRPs.
47. Relations with Eskom continued to deteriorate following the commencement of BR. By way of illustration, at the end of July 2015 Eskom withheld payment for no justifiable reason in an amount of approximately R58 million for coal which OCM had delivered that month. This was despite a letter addressed to the BRPs, dated 14 August 2015, in which Eskom confirmed that it would make payment. Payment was then refused again at the end of August 2015 for coal delivered that month (this time, the amount in issue was approximately R34 million). In fact, these payments were eventually made in June 2016, when Tegeta Exploration and Resources Proprietary Limited ("**Tegeta**") (a subsidiary of Oakbay and the purchaser of OCM referred to below) had become the owner of the Mine.
48. Following their appointment on 4 August 2015, the BRPs identified the CSA as the key issue causing OCH's and OCM's financial hardship. The BRPs' main objective was to avoid a liquidation process and, accordingly, they requested a meeting with Eskom with a view to reaching an agreement which would avoid liquidation. However, Eskom refused to meet with the BRPs.
49. On 20 August 2015, the BRPs suspended the supply of coal by OCM to Eskom, which I understood to be an attempt to mitigate OCM's losses. The BRPs also provided Eskom with an interim proposal for the supply of coal at this time. A copy of the BRPs letter to Eskom is annexed hereto

marked "**CE12**".

50. After the BRPs had ceased the supply of coal to Eskom, Eskom requested a meeting with the BRPs. The BRPs and I arranged to meet with Mr Molefe and the then Group Executive: Technology of Eskom, Mr Matshela Koko ("**Mr Koko**"), on 3 September 2015. However, when we arrived at Eskom's premises, Mr Molefe and Mr Koko insisted that the BRPs remain outside, and I accordingly met with them alone.
51. At this meeting, Mr Molefe insisted that I restore the supply of coal to Hendrina. I explained to Mr Molefe that it was the BRPs who had ceased the supply of coal and that any decision to recommence supply was theirs. In my position as a representative of Glencore (as opposed to on behalf of OCH and/or OCM, which were under the control of the BRPs), which would need to fund any recommencement of supply to Hendrina, I further explained to Mr Molefe that Glencore could only financially support OCM to recommence supply if Eskom undertook a commitment to negotiate with OCM in good faith. Mr Molefe agreed that Eskom would engage in good faith negotiations with OCM and I accordingly undertook to speak to Mr Glasenberg after our meeting regarding Glencore providing further funding to OCM to allow it to continue supplying Eskom.
52. I spoke to Mr Glasenberg on the same day, and Glencore agreed to provide further funding in light of Eskom's undertaking to engage in good faith negotiations. On this basis, the BRPs agreed to recommence the supply of coal to Eskom.
53. I contacted Mr Molefe shortly after speaking to Mr Glasenberg and advised him that Glencore would provide further funding for OCM, and that the BRPs had agreed that OCM would recommence the supply of coal to Eskom, during a negotiation period, at a price of R150 per tonne which was the CSA price, with payment to be made within 7 days of

receipt of coal, subject to Eskom committing to negotiating with OCM in good faith. The 7-day requirement was a necessity from the BRP's point of view because Eskom had withheld payment for the previous deliveries, causing further hardship. This was agreed and this interim arrangement was extended several times during the course of the BR. On this basis, OCM recommenced supplying coal to Eskom.

54. However, Eskom did not engage in any further negotiations, despite OCM providing significant information to Eskom to demonstrate its precarious financial position (see paragraph 61 below).

The Second Oakbay Offer

55. On 10 September 2015, OCM received a non-binding indicative offer from Oakbay (the "**Second Oakbay Offer**") for the acquisition of OCM as a going concern, for consideration of R1.00 and with a commitment to fund OCM's continuing operations, including working capital and fulfilment of its obligations for the remainder of the CSA. A copy of the Second Oakbay offer is annexed hereto marked "**CE13**".
56. The BRPs responded to the Second Oakbay Offer in writing on 17 September 2015, requesting clarification regarding certain matters (for example, financing and environmental liabilities) and noting that they were not yet formally considering a sale of OCM but that, if an offer were made which might represent the best option for rescuing OCM, it would be considered. At this time, I understand that the BRPs' preferred option remained reaching a sustainable agreement with Eskom. A copy of the BRPs' letter is annexed hereto marked "**CE14**".
57. On 21 September 2015, Oakbay responded to the BRPs' letter, noting, *inter alia*, that they were confident that Eskom's consent to Oakbay acceding to the CSA would be forthcoming and that KPMG had been retained as Oakbay's advisers for the potential sale. A copy of Oakbay's

letter is annexed hereto marked "**CE15**".

58. The following day, 22 September 2015, President Jacob Zuma announced that he would appoint Mr Mosebenzi Zwane ("**Minister Zwane**") as Minister of Mineral Resources from 23 September 2015.

The BRPs' First Long-Term Proposal to Eskom

59. At the same time that they were engaging with Oakbay, the BRPs were also seeking to engage with Eskom. On 17 September 2015, the BRPs submitted a proposal (the "**BRPs' First Long-Term Proposal**") to Mr Koko for the long-term supply of coal to Eskom. Similar to the proposal submitted to Eskom by OCM prior to the BR (i.e. the Fourth Addendum, see paragraph 27 above), the BRPs sought to agree an increase in the price paid by Eskom in return for security of supply after 2018. In submitting this proposal, the BRPs sought to commence the negotiations that Mr Molefe and Mr Koko had agreed to pursue in return for recommencement of the supply of coal. During this period, Eskom requested and the BRPs provided significant financial information to Eskom regarding the financial position of OCM. Much of this information had been previously provided to Nedbank and Basis Points Capital (see paragraph 26 above). A copy of the BRPs' First Long-Term Proposal is annexed hereto marked "**CE16**".
60. On 22 September 2015, the BRPs confirmed the terms of an Interim Agreement with Eskom, which included no sizing or quality specifications (despite Eskom having repeatedly raised complaints regarding sizing and quality), no penalty provision, and Eskom agreeing to engage with OCM in good faith.
61. About a week later, on 30 September 2015, CDH, on behalf of Eskom,

advised the BRPs that Eskom had considered the BRPs' First Long-Term Proposal and was not willing to entertain it. They further advised that any discussion and negotiation concerning a new price for coal would only be entertained closer to 2017 and that the penalties would have to be settled immediately in full. This was a clear breach of the 3 September 2015 agreement to engage in good faith negotiations and OCM advised Eskom of its disappointment in a letter dated 5 October 2015. CDH's and OCM's letters are annexed hereto marked "**CE17**" and "**CE18**", respectively.

The Phembani Offer

62. As a result of Eskom's unwillingness to engage further with OCM, the BRPs and Glencore considered further options, one of which was for Phembani Group Proprietary Limited ("**Phembani**"), a minority shareholder of OCH, to acquire OCM.
63. Following engagements with representatives of Phembani, Phembani made an offer to OCH to acquire its shares in OCM on 7 October 2015. The BRPs advised Oakbay on the same day that they had received an offer for the shares in OCM from a third party which the BRPs considered to be more favourable, on the whole, than the Second Oakbay Offer. The BRPs further advised that the third party had requested that OCM engage exclusively with it and that the BRPs would therefore not be able to progress discussions with Oakbay in relation to the Second Oakbay Offer nor permit Oakbay to proceed with its due diligence. A copy of Phembani's offer is annexed hereto marked "**CE19**".
64. On 9 October 2015, the BRPs and Phembani signed a non-disclosure agreement. A copy of the non-disclosure agreement is annexed hereto marked "**CE20**".
65. However, shortly after the conclusion of the non-disclosure agreement,

Phembani requested a meeting with me and explained at that meeting that Eskom had informed them that it would not consent to Phembani acceding to the CSA. This position was confirmed in writing much later in a letter to the BRPs received on 11 February 2016. It appears from that letter that the reason why Eskom refused to engage with Phembani was that Phembani indicated it would seek to renegotiate the CSA. A copy of the letter to the BRPs is annexed hereto marked "**CE21**".

The resumption of discussions with Oakbay

66. As a result of Eskom's rejection of Phembani as a purchaser of OCM, the BRPs informed Oakbay, in mid-October 2015, that they were in a position to engage further with Oakbay in negotiations for the acquisition of shares in OCM.
67. On 20 October 2015, the BRPs, representatives of Glencore (Mr Blankfield and me), representatives of Oakbay (including Mr Ajay Gupta ("**Mr A Gupta**"), Mr Ashu Chawla ("**Mr Chawla**"), Mr Varun Gupta, Ms Ronica Ragavan ("**Ms Ragavan**") and Mr Nazeem Howa ("**Mr Howa**")), together with Mr Nic Mathews and Mr Jacobs (of KPMG) met at the Guptas' home in Saxonwold, Johannesburg for the purpose of discussing the Second Oakbay Offer. It was noted that the proposed sale was of the shares in OCM only and the BRPs indicated that they needed an assurance from Oakbay that Oakbay would fund OCM for the duration of OCM's BR. It was agreed that Oakbay would continue with its due diligence. Messrs Blankfield and Van den Steen (one of the BRPs) met KPMG separately after this meeting to discuss the structure of a possible transaction.
68. On 23 October 2015, the BRPs confirmed to Oakbay that they were willing to proceed with the negotiation for the sale of the shares in OCM to Oakbay but that agreement needed to be reached regarding certain

transaction parameters. The BRPs advised that only OCM was for sale and that the purchase consideration of R1.00 did not include OCH's interest in the Richards Bay Coal Terminal, which was owned by Optimum Coal Terminal Proprietary Limited ("**OCT**"). The BRPs gave Oakbay until 30 November 2015 to conduct a due diligence on OCM and to execute definitive agreements for the transaction. The BRPs further advised Oakbay that it would need to assume all of OCM's liabilities.

69. Oakbay commenced with the due diligence (which included a site visit) of OCM, and KPMG attended to most of the due diligence work.
70. At that time, OCM and Glencore considered that it would be in their best interests to proceed with the proposed Oakbay transaction, because Eskom was not prepared to negotiate with OCM, Eskom would not consent to an assignment of the CSA to Phembani, and the proposed Oakbay transaction would enable OCM to continue operating and to supply Eskom. As regards the proposed consideration of R1.00, in view of the heavily loss-making CSA, the low export price of coal, the debts guaranteed by OCM and the security held over OCM's assets, Glencore considered this to be reasonable.
71. On 12 November 2015, Oakbay, OCH and OCM concluded a non-binding Term Sheet (the "**Oakbay Term Sheet**") for the proposed acquisition of OCM by Oakbay. The Oakbay Term Sheet recorded that the transaction was subject to due diligence and certain other conditions, including Eskom's support for the transaction and the release of OCH from all its obligations in respect of the CSA. A copy of the Oakbay Term Sheet is annexed hereto marked "**CE22**".

The meeting with Mr Raphela and the expansion of the proposed transaction

72. During November 2015, I was contacted by Mr Joel Raphela ("**Mr**

Raphela”), the Deputy Director General (“**DDG**”) of the Department of Mineral Resources (the “**DMR**”), who requested that I meet with him at Melrose Arch, Johannesburg. At that meeting, Mr Raphela indicated that the sale of all of OCM, OCT and Koornfontein Mines Propriety Limited (“**Koornfontein**”) (another subsidiary of OCH) should be considered, as opposed to just OCM (which was the deal currently on the table). While it was not unusual for the DMR to take an interest in transactions in the mining industry that were subject to their approval, I did find it surprising that Mr Raphela appeared to have detailed knowledge of the negotiations with Oakbay.

73. A meeting was called with Eskom on 24 November 2015 in order to update them regarding the discussions with Oakbay. The meeting was attended by Mr Blankfield on behalf of Glencore, the BRPs, Oakbay (represented by Mr Howa, Mr Chawla and Ms Ragavan) and Eskom (represented by Mr Koko, Suzanne Daniels, Edwin Mabalane and Ayanda Nteta), and was chaired by Mr Koko. Mr Blankfield advised the meeting that Oakbay was conducting a due diligence and that funding had been secured for OCM for the duration of Oakbay’s due diligence period, so as to ensure continuity of coal supply to Eskom during that period. Mr Koko responded by saying that Eskom expected OCM to honour the CSA until 2018 and that Eskom would not waive any penalties. A copy of the minutes of the meeting is annexed hereto marked “**CE23**”.
74. Mr Koko further stated that Eskom would not provide consent to any transaction with Oakbay unless the transaction extended beyond OCM to include all assets of the OCH Group, including OCH’s interest in the Richards Bay Coal Terminal and Koornfontein. Mr Koko required confirmation by the end of that weekend as to whether this would be acceptable. Mr Koko’s stated reason for insisting on a sale of OCH’s interest in the Richards Bay Coal Terminal and Koornfontein was that,

without such a sale, OCM would not be a viable business. Mr Koko's position had some merit, but I noted it was the same message that I had received from the DMR earlier that month. Since a transaction with Oakbay appeared to be the only option at that stage, Glencore and OCM/OCH agreed to engage further with Oakbay in respect of a transaction for all assets of OCH.

Initial contact from Minister Zwane's office

75. On 24 November 2015, Mr Glasenberg received a call from a representative of Minister Zwane's office, who said that Minister Zwane would be visiting Switzerland and would like to meet with Mr Glasenberg. It is not unusual for Ministers and Ambassadors to engage with Mr Glasenberg having regard to the nature of Glencore's international operations.
76. A meeting was scheduled between Minister Zwane and Mr Glasenberg in Switzerland on 1 December 2015. There was no indication to Mr Glasenberg of the purpose of the meeting.

The Third Oakbay Offer

77. On 25 November 2015 (i.e. prior to the meeting with Minister Zwane), Mr A Gupta, on behalf of Oakbay, briefly met with me to convey an offer to acquire the shares held by OCH in OCM and other subsidiaries of OCH, for the purchase consideration of R1 billion (the "**Third Oakbay Offer**").
78. For context, all of OCM's assets were pledged as security and the corresponding debt would need to be settled as part of any deal. As a result, the proposed consideration of R1 billion would have left a shortfall of approximately R1.5 billion that Glencore would have needed to fund.
79. Glencore considered the Third Oakbay Offer but was not prepared to fund the significant shortfall – as a result, the offer was declined.

80. At a meeting held on 26 November 2015, I informed Mr A Gupta that the offer had been declined. At that stage, OCM remained in BR and therefore, in the absence of a sale or some other solution, the BRPs would have had no option but to place OCM into liquidation.

The Section 54 Notices

81. At 14h00 on that day, a notice was issued by the DMR to the Koorfontein mine pursuant to section 54 of the Mine Health and Safety Act 29 of 1996 ("**Section 54 Notice**"). That Section 54 Notice ordered the withdrawal of employees from the underground mine and termination of the use of certain equipment. A copy of the Koorfontein Section 54 Notice is annexed hereto marked "**CE24**".

82. In the subsequent four days, three further Section 54 Notices were issued to other mines in which Glencore had an interest: the Wonderfontein Colliery, the Tweefontein Opencast Mine and the Goedgevonden Colliery. Copies of these Section 54 Notices are annexed hereto marked "**CE25**", "**CE26**", and "**CE27**", respectively.

83. The reasons provided for the suspensions, as set out in the Section 54 Notices, included the following representative examples:

83.1. *"An operator for Excavo mining mini truck not having license and checklist with him while operating."*

83.2. *"Safety belt was not used by the Excavo mining truck operator..."*

83.3. *"...operator's seat was not adjusted and there were engine oil leaks..."*

83.4. *"Four dump trucks found without first aid kit..."*

83.5. *"Wheel Loader 2 with cracked windscreen since 21 November*

2015.”

84. In light of these alleged issues, Glencore considered the Section 54 Notices to be unduly harsh and disproportionate, particularly in their demands for a complete cessation of all mining operations.
85. It is not common for multiple Section 54 Notices to be issued to a single operator so close in time, and they were accordingly of serious concern to Glencore.
86. In addition, inspectors from the DMR conducted inspections at certain of Glencore’s mines, including over the weekend (which was itself unusual).
87. Glencore was of the view that the Section 54 Notices had been issued and the inspections ordered for the purpose of pressurising Glencore in respect of Optimum. It was not clear to me at the time what the exact purpose of the pressure was, but I suspected that it was a warning to Glencore that there would be consequences for Glencore were it to allow OCM to go into liquidation and therefore that it must support the offer that we had at the time, which was the Third Oakbay Offer. What the Section 54 Notices also appeared to signal was that the DMR was prepared to jeopardise Glencore’s other mines in response to how we were handling the Optimum negotiations.
88. The Section 54 Notices were ultimately lifted between 30 November and 9 December 2015, at a significant cost to the business.

The decision to continue funding and terminate the business rescue proceedings

89. On 29 November 2015, after Glencore/OCH had declined the Third Oakbay Offer and had received the Section 54 Notices, the Glencore team held a telephone conference to consider its options regarding OCM, which at that stage consisted of letting the BRPs put the Mine into

liquidation (i.e. by withdrawing the funding being provided by Glencore) or committing to provide further funding to keep the Mine operational so that the BRPs could take it out of BR.

90. Glencore's decision was, in part, informed by its analysis of the Optimum business, which indicated that the additional cost of continuing to fund and operate OCM over its remaining mine life compared to the Third Oakbay Offer was approximately R1.1 billion, and which included a number of risky and uncertain assumptions which could have resulted in that amount increasing.¹
91. However, despite the high costs of continuing to fund OCM, Glencore decided that the collateral damage of putting OCM into liquidation (for example, the impact on the Mine's employees and Glencore's other businesses) would have been too great. We therefore decided to provide further funding commitments to allow the BRPs to terminate the BR proceedings, following which OCM would have continued operating the Mine in the ordinary course of business.

The meetings on 1 and 2 December 2015

92. On 1 December 2015, following the decision by Glencore to continue funding OCM, a meeting was held at Eskom's offices, attended by Mr Koko (representing Eskom), Mr Piers Marsden (representing the BRPs), Mr Blankfield and myself (representing Glencore), at which we conveyed that the Third Oakbay Offer had been rejected, that Glencore would continue to support OCM, and that both OCM and OCH would be discharged from BR. We asked Mr Koko whether he was happy with the decision. Mr Koko replied to the effect that of course he was happy, as

¹ It was this analysis that formed the basis of the decision a few days later to sell the Mine, which I detail at paragraph 100 below.

OCM would be honouring the CSA. He conveyed the message to Mr Anoj Singh (Eskom's Chief Financial Officer) as we left the meeting.

93. A meeting was also held that day between the BRPs, Mr Blankfield and the consortium of banks who held funding in OCM, at which the BRPs and Mr Blankfield informed the banks that Glencore had rejected the Third Oakbay Offer and was considering how to take OCM out of BR, although the possibility of a transaction with Oakbay remained if they improved their offer.
94. At or about the same time as the Eskom meeting, the meeting between Mr Zwane and Mr Glasenberg took place at the Dolder Hotel in Zurich. I understand that the meeting was also attended by Mr Salim Essa (**Mr Essa**). Mr Glasenberg had not met Mr Essa before and did not know who he was. When he asked who Mr Essa was, he was told that he was an advisor to Minister Zwane.
95. I understand that Mr Glasenberg asked Minister Zwane about the Section 54 Notices but that Minister Zwane did not engage with him on this issue, instead noting that he wished to use the meeting to discuss Optimum.
96. I also understand that Mr Glasenberg informed Minister Zwane that Glencore was willing to provide sufficient funding to have OCM and OCH discharged from BR and that OCM would continue supplying Eskom with coal, but that Glencore would also be open to a sale at an appropriate price, and as long as it was acceptable to the BRPs. Minister Zwane responded by saying that he was sure Glencore could reach a deal with the Gupta family.
97. When Mr Blankfield and I left the meeting with Eskom and were in the parking area at Eskom, Mr Glasenberg contacted me to inform me that Minister Zwane had informed him that Mr Tony Gupta (**Mr T Gupta**)

wished to meet with him on 2 December 2015 in Switzerland to discuss a potential transaction, and that he wanted me to join him at the meeting. I immediately travelled to Switzerland to attend the meeting on 2 December 2015.

98. There were essentially three parts of the meeting on 2 December 2015, which also took place at the Dolder Hotel:

98.1. The first part of the meeting commenced mid-morning and was attended by Minister Zwane, Mr Essa, Mr T Gupta, Mr Glasenberg and me. It was opened by Minister Zwane, who noted the importance of securing employment at the Mine, expressed concern that the Mine should not enter a liquidation process and stated that the best outcome would be for Glencore and Oakbay to reach a deal.

98.2. Mr Zwane then left the meeting, following which Mr T Gupta and Mr Glasenberg discussed the Third Oakbay Offer. After negotiation of the terms of a potential transaction, a purchase price of R2.15 billion was agreed (i.e. over double the amount of the Third Oakbay Offer).

98.3. The third part of the meeting was held over lunch. Shaun Teichner (Glencore's General Counsel) joined to discuss the principal terms of the transaction and the implementation process (regulatory approvals, documentation etc.). It was noted that the proposed transaction would need the approval of the BRPs, given that they were in control of OCH and OCM. Mr T Gupta also spoke about the rehabilitation trust funds. At that stage, the rehabilitation trust funds for OCM were invested in equity instruments. This was the Glencore Group's policy at the time on the basis that equity instruments provided the best long-

term return and, as a large multi-national, Glencore could withstand short-term volatility. Mr Gupta indicated that the purchasing entity could not assume the volatility risk and therefore he requested that OCM convert the rehabilitation trust funds into cash equivalents prior to signature of the sale agreement in order to mitigate the market risk of holding them in equity instruments. At the time, we thought that this seemed reasonable and did not raise any concerns because the funds would remain in the trust and be governed by the Trust Deed and relevant DMR regulations.

99. The principal terms of the acquisition of shares held by OCH in OCM and its other subsidiaries were orally agreed at the meeting in Switzerland on 2 December 2015.

Glencore's rationale for the transaction

100. Glencore was satisfied with the purchase price of R2.15 billion for the shares held by OCH, which required Glencore, *inter alia*, to contribute R400 million to release the banks' security. Glencore considered this to be an appropriate price based on its analysis of the OCH business undertaken at the end of November 2015 (which indicated that the future cost of continuing to fund OCM was higher than R400 million). Therefore, while it was clear that pressure was brought to bear on Glencore to sell the Mine, Glencore ultimately entered into a transaction that made commercial sense. Obviously, had Eskom engaged with OCM in 2015, the situation could have been avoided and a long-term solution for both Eskom and OCM could have been agreed.

Conclusion of the transaction

101. As was noted at the meeting on 2 December 2015, the BRPs also needed to approve the transaction, which they subsequently did.

Glencore and the BRPs instructed attorneys Werksmans, Johannesburg (who had acted as legal advisors to the BRPs) to commence drafting agreements for the acquisition by Oakbay or its subsidiary, Tegeta, of OCH's shares in its subsidiaries. The process involved intensive further negotiation, discussions and drafting in order to finalise suitable terms for the transaction. Ultimately, on 10 December 2015, a written Sale of Shares and Claims Agreement (the "**Sale Agreement**") was concluded between OCH, Tegeta, Glencore International AG and Oakbay.

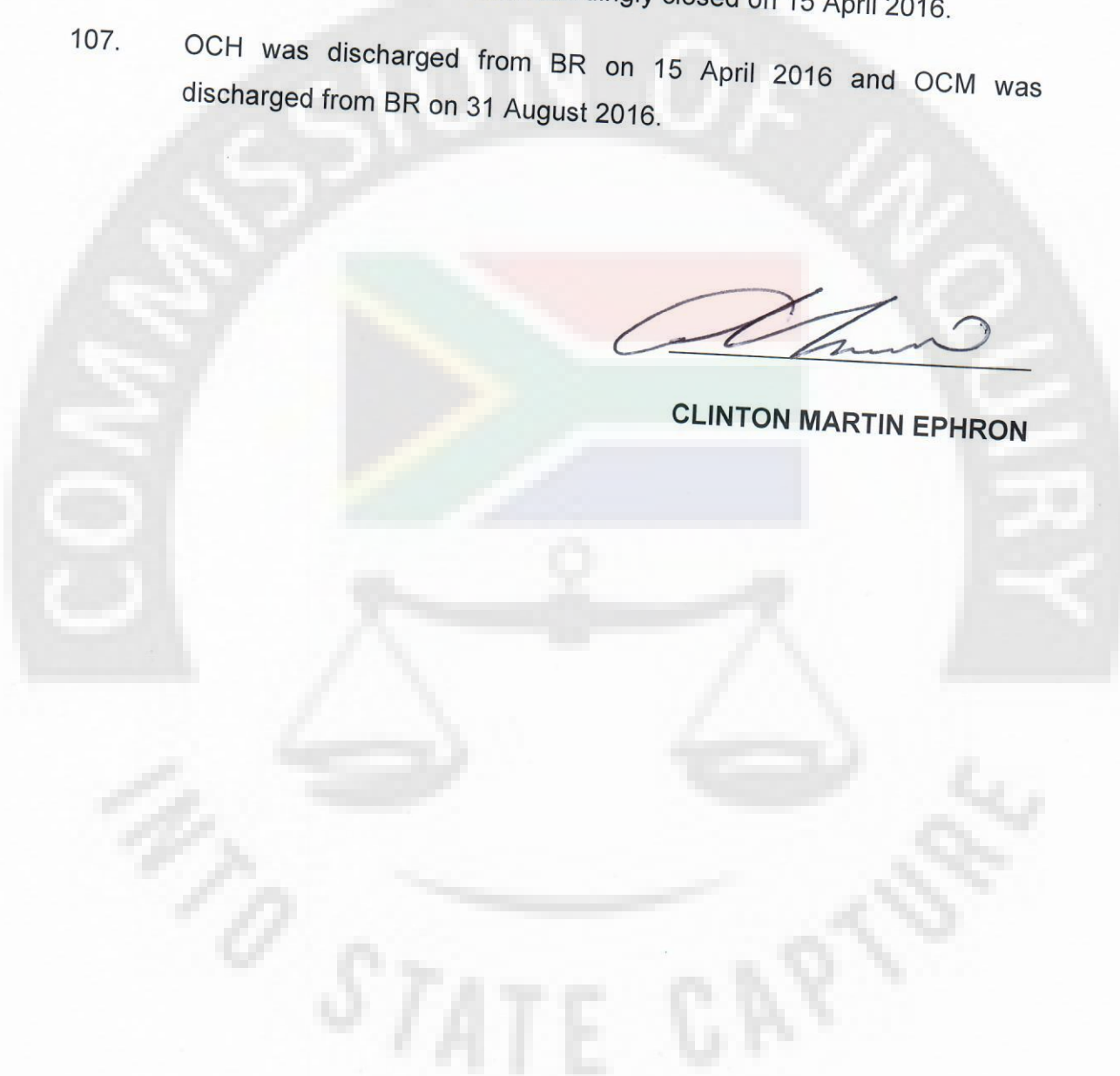
102. On 6 January 2016, the BRPs confirmed the sale of OCH's shares and requested regulatory consent to the transaction from the DMR.
103. The conditions precedent in the Sale Agreement were fulfilled on 8 April 2016 and the transaction was implemented.
104. On 31 March 2016, the BR plan of OCH was published and a notice to this effect was sent to all affected persons, notifying them of the meeting to vote on the BR plan. The BR plan was ultimately approved on 8 April 2016.
105. In the week beginning 4 April 2016, I received a telephone call from Mr Essa advising that Tegeta was short of an amount of R600 million for the purposes of payment of the purchase price. He requested that Glencore fund the shortfall of R600 million and said that Oakbay would get Eskom to pay the first R600 million from coal sales to Glencore. Glencore declined this request. At a meeting on 11 April 2016, Mr Marsden (one of the BRPs) was advised by Mr Howa that Tegeta was R600 million short and Mr Howa requested that Mr Marsden approach the consortium of banks requesting a bridging loan in an amount of R600 million in order to finance the shortfall on the purchase price. Mr Marsden arranged a meeting with the consortium of banks, whereafter Mr Marsden advised Mr Howa that the consortium of banks was not

prepared to finance the shortfall of the purchase price.

106. The closing meeting for the Sale Agreement was held at the offices of Werksmans Attorneys, Johannesburg on 15 April 2016, at which the shares in OCH's subsidiaries were formally delivered to representatives of Tegeta. The transaction accordingly closed on 15 April 2016.
107. OCH was discharged from BR on 15 April 2016 and OCM was discharged from BR on 31 August 2016.



CLINTON MARTIN EPHRON



21/TNC/29
11.12.92
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COAL SUPPLY AGREEMENT

1. PARTIES

1.1 ESKOM

1.2 TRANS-NATAL COAL CORPORATION LIMITED

1.3 TRANS-NATAL COLLIERIES LIMITED

2. INTERPRETATION

2.1 The headnotes to the clauses of this agreement are inserted for reference purposes only and shall in no way govern or affect the interpretation hereof.

2.2 Unless inconsistent with the context, the expressions set forth below shall bear the following meanings:

"accounting month" an accounting period determined by TNC in accordance with its accounting policy

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Page 2.

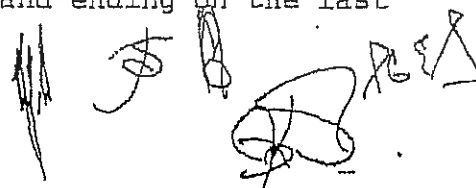
from time to time and arrived at by dividing 1 year into 12 accounting periods, as notified by TNC to Eskom annually in advance by notice in writing to be given not less than 30 days prior to the commencement of any year

"this agreement" this agreement read with the schedules hereto

"the base price" the price of coal determined in accordance with the provisions of Annexes 3A, 3B or 3C to Schedule 3 hereto, whichever is applicable

"business day" any day other than a Saturday, Sunday or official South African public holiday

"calendar month" a calendar month commencing on the first day of the month and ending on the last

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Page 3.

day of that month (e.g. 1
January to 31 January)

"coal" coal complying with the
applicable specifications

"the commencement
date" 1 January 1993

"the commissioning the date upon which the
date" partial beneficiation wash-
ing plant is certified by
TNC as being fully opera-
tional, which will not be
more than 2 years after the
commencement date

"contract price" the purchase price for coal
supplied in terms of this
agreement as specified in 7
and determined in terms of
Schedules 3 and 4 hereto

"the escalation the escalation factor deter-
factor" mined in accordance with
Schedule 4 hereto

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Page 4.

"Eskom"

a juristic person established under the Electricity Act, 1922 known as "The Electricity Supply Commission", which continued to exist as a juristic person known as "Eskom" under the Electricity Act, 1958 and which continued to exist as a juristic person known as "Eskom" under the Eskom Act, 1987

"Eskom Cost of Coal Index"

the cost of coal information to be supplied by Eskom to TNC in terms of 7.4

"Hendrina"

the coal-fired power station established by Eskom on the farm Boschmanskop 154 I.S. in the district of Hendrina, Transvaal.

"ISO"

International Standards Organisation

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Page 5.

"Komati"

the coal-fired power station established by Eskom on the farm Komati Power Station 56, IS in the district of Middelburg

"the maximum tonnages"

6 500 000 tons, being the maximum tonnages of coal which TNC may be required to supply to Eskom in each year in terms of this agreement plus a further 3 000 000 tons of coal per annum which TNC may be required to supply to Eskom as contemplated in 6.4

"the minimum off-take period"

the period commencing on the commencement date and terminating on 31 December 1997

"minimum payment"

in respect of each year after the expiry of the minimum off-take period, the amount referred to in paragraph 2 of Schedule 7 hereto

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Page 6.

"the minimum tonnages" 3 000 000 tons, being the minimum tonnages of coal which Eskom is required to purchase from TNC in terms of this agreement during each year of the minimum off-take period

"monthly weighted average" the monthly weighted average in respect of each accounting month

"monthly base price" the applicable portion of the base price in respect of deliveries of coal for the accounting month in question determined in accordance with the provisions of Schedule 8 hereto

"Optimum" the Optimum division of TNC

"the partial beneficiation washing plant" the washing plant to be established in terms of 8

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Page 7.

"the parties" collectively, Eskom, Trans-Natal and TNC

"the pre-commissioning period" the period calculated from the commencement date to the commissioning date or the second anniversary of the commencement date, whichever occurs first

"the post-commissioning period" the period commencing on the day following the expiry of the pre-commissioning period and terminating on the termination of this agreement or any extended period of the agreement for any reason

"the previous agreement" the coal supply agreement entered into between the Electricity Supply Commission (now Eskom), Trans-Natal and Optimum Collieries (Proprietary) Limited dated 24 June 1983 as amplified by Eskom's letter dated 7 January 1983 to General Mining

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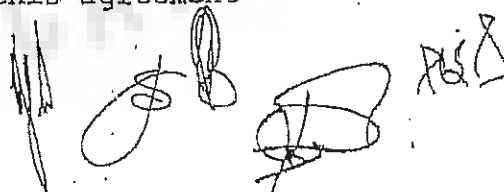
Page 8.

Union Corporation Limited
and the letter of General
Mining Union Corporation
Limited dated 31 January
1983 to Eskom

"the prime rate" the publicly announced prime
overdraft rate, nominal
annual compounded monthly in
arrear, charged by Volkskas
Bank from time to time on
unsecured overdrafts, as
certified by any manager of
that bank for the time being
whose certificate shall, in
the absence of manifest
error, be final and binding
on the parties

"SABS" the South African Bureau of
Standards

"the signature date" the date of last signature
of this agreement



Page 9.

"the specifica- the applicable specifica-
tions" tions for the coal set out
in Schedule 1 hereto

"ton" a metric ton

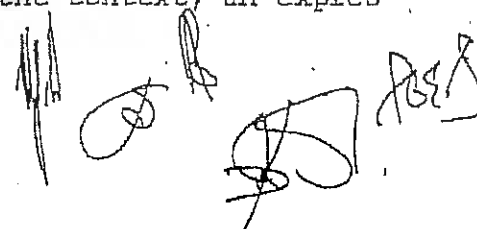
"TNC" Trans-Natal Collieries
Limited, registration no.
63/00537/06, a wholly-owned
subsidiary of Trans-Natal

"Trans-Natal" Trans-Natal Coal Corporation
Limited, registration no.
63/01000/06

"Trans-Natal group" Trans-Natal and any wholly-
owned subsidiary for the
time being of Trans-Natal

"year" a period of 12 consecutive
calendar months commencing 1
January and terminating on
31 December next following.

2.3 Unless inconsistent with the context, an expres-
sion which denotes:



Page 10.

- 2.3.1 any gender includes the other genders;
- 2.3.2 a natural person includes an artificial person and vice versa;
- 2.3.3 the singular includes the plural and vice versa.

2.4 The schedules to this agreement form an integral part hereof and words and expressions defined in this agreement shall bear, unless the context otherwise requires, the same meaning in such schedules.

3. INTRODUCTION

3.1 Trans-Natal, Eskom and Optimum Collieries (Proprietary) Limited entered into the previous agreement relating to the supply of coal to Hendrina.

3.2 The operations of Optimum Collieries (Proprietary) Limited were subsequently transferred to its holding company, TNC.

3.3 For various reasons the parties wish to vary the basis upon which TNC will supply coal to Hendrina

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Page 11.

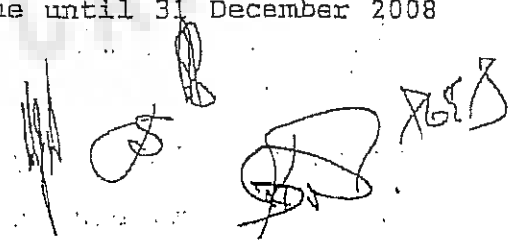
from that pertaining in terms of the previous agreement.

3.4 As Eskom is Optimum's primary customer, it is the intention of the parties that the coal requirements of Eskom will enjoy preference over other customers of Optimum and accordingly Eskom will be entitled to first call on any coal produced by Optimum including, if necessary, export quality coal, upon the terms and conditions contained in this agreement.

3.5 The parties wish to record the basis upon which the previous agreement will be cancelled and to provide for the continued supply of coal to Eskom upon the terms and conditions set out in this agreement.

4. DURATION

4.1 Notwithstanding the signature date, this agreement shall commence on the commencement date and, subject to the remaining provisions of this clause 4, shall continue until 31 December 2008 ("the initial period").

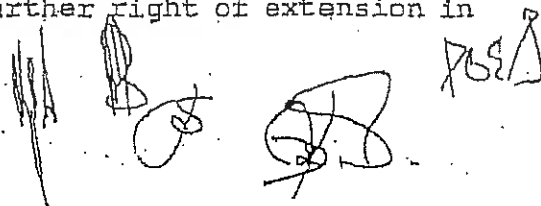


Page 12.

4.2 Eskom shall be entitled, by written notice to TNC and Trans-Natal to be received not less than 36 calendar months prior to the expiry of the initial period, to extend the duration of this agreement from 1 January 2009 for such further period, not exceeding 10 years, which Eskom may specify in such notice ("the first renewal period").

4.3 Provided that Eskom shall have exercised its right to extend the duration of this agreement in terms of 4.2 for a period of less than 10 years, Eskom shall be entitled, by written notice to TNC and Trans-Natal to be received not less than 36 calendar months prior to the expiry of the first renewal period, to extend the duration of this agreement from the day following the expiry of the first renewal period for such period which Eskom may specify in such notice; provided that such period shall not extend the duration of this agreement beyond 31 December 2018.

4.4 Should Eskom fail to exercise its right to extend the duration of this agreement in terms of 4.2, Eskom shall have no further right of extension in terms of 4.3.

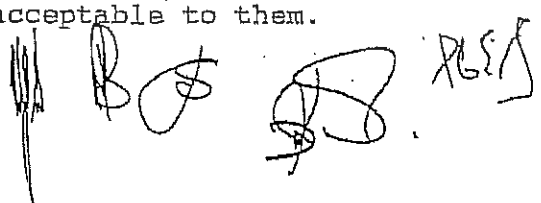


Page 13.

4.5 Any extension of the duration of this agreement in terms of 4.2 and 4.3 shall be upon the same terms and conditions contained in this agreement.

4.6 TNC or Trans-Natal shall issue a written reminder to Eskom of its right to extend this agreement in terms of 4.2 by not later than 30 November 2003 and annually thereafter until 30 November 2005; provided that should Eskom exercise its right to extend this agreement in terms of 4.2 and become entitled to exercise its right to extend this agreement in terms of 4.3, TNC or Trans-Natal shall issue a written reminder to Eskom of its right to extend this agreement in terms of 4.3 by not later than 30 November 2006 and annually thereafter until Eskom has either exercised its right in terms of 4.3 or such right has lapsed.

4.7 Provided Eskom has exercised its right to extend this agreement in terms of 4.2 or 4.3 until 31 December 2018, should any of TNC, Trans-Natal or Eskom wish to extend this agreement beyond 31 December 2018, the parties shall meet and endeavour to negotiate and conclude an extension of this agreement for a period and upon terms and conditions which are acceptable to them.



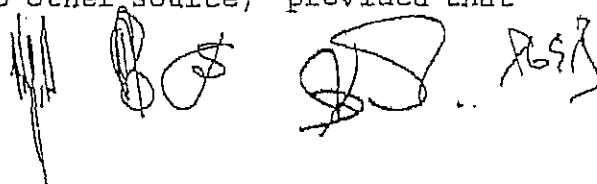
5. TERMINATION OF THE PREVIOUS AGREEMENT

5.1 The previous agreement shall be terminated with effect from midnight of the day prior to the commencement date.

5.2 Save in respect of a claim for the payment of the purchase price for coal delivered by TNC to Eskom during the period 30 November 1992 to 31 December 1992 (both inclusive), this agreement is in full and final settlement of all claims of whatsoever nature which any of the parties may have arising out of or incidental to the previous agreement or its implementation. Accordingly, save for the claim for the purchase price referred to above, none of the parties will have any claim of whatsoever nature against the other arising out of or incidental to the previous agreement or its implementation.

6. SUPPLY OF COAL

6.1 Eskom shall, with effect from the commencement date and thereafter for the duration of this agreement, purchase, subject to 6.3, its entire requirements of coal for Hendrina exclusively from TNC and from no other source; provided that

 RB58

Page 15.

Eskom shall purchase not less than the minimum tonnages in each year in accordance with the provisions of 14 read with Schedule 7 hereto.

6.2 TNC undertakes that with effect from the commencement date and for the duration of this agreement, it will supply all of Eskom's requirements of coal for Hendrina as set out in 6.1 up to the maximum tonnages in each year for a purchase price determined in terms of 7.

6.3 TNC shall have the right, but not the obligation, to supply the requirements of Eskom in any year for coal for Hendrina on the same terms and conditions as contained in this agreement to the extent that same may exceed the maximum tonnages. Eskom will comply with the procedures and requirements set out in 13 with regard to such excess tonnages. If TNC elects not to supply coal in excess of the maximum tonnages in any year, it will notify Eskom of its election within 30 days after receipt of the relevant order and Eskom will then be free to purchase its requirements of coal in excess of the maximum tonnages for that year from a source other than TNC on such terms as it is able to negotiate.

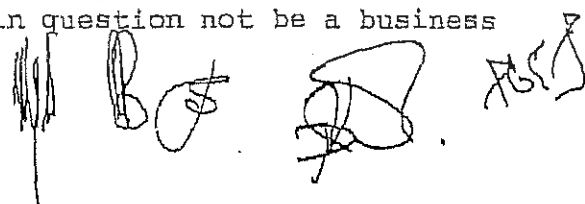
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- 6.4 Should Eskom so require, the parties will meet with a view to negotiating the supply by TNC of coal to Komati or another Eskom power station up to a maximum of 3 000 000 tons per year upon such terms and conditions as may be agreed between the parties.

7. CONTRACT PRICE AND PAYMENT

- 7.1 The contract price payable for coal to be supplied by TNC to Eskom under this agreement shall be determined in accordance with the provisions of Schedules 3 and 4 hereto.
- 7.2 TNC shall submit to Eskom within 10 days after the end of each accounting month an invoice reflecting the amount payable by Eskom to TNC in respect of coal supplied during the immediately preceding accounting month. Such invoice shall reflect the items set out in Schedule 3 hereto.
- 7.3 Eskom shall be obliged to pay the amount of each invoice by not later than the 15th day of the calendar month in which the invoice is furnished to Eskom; provided that should the 15th day of the calendar month in question not be a business

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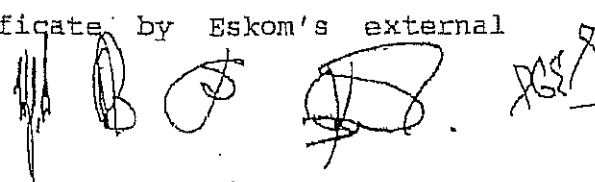
day then payment of such invoice shall be made on the business day next following such 15th day.

7.4 In order to enable the escalation factor to be determined, Eskom shall, during the currency of this agreement:

7.4.1 furnish TNC in writing by no later than the commencement date, a statement reflecting the average cost of coal purchased by Eskom from all sources for the accounting month ended 30 November 1991 (expressed in rands and cents per ton) which statement shall be certified as correct by Eskom's external auditors;

7.4.2 furnish TNC in writing within 7 days after the end of each accounting month, a statement reflecting the average cost of coal purchased by Eskom from all sources for the calendar month prior to the accounting month immediately preceding the date of the statement (expressed in rands and cents per ton);

7.4.3 furnish TNC every 6 calendar months with a written certificate by Eskom's external

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auditors certifying the correctness of the statements referred to in 7.4.2 during the previous 6 calendar months.

8. THE PARTIAL BENEFICIATION WASHING PLANT

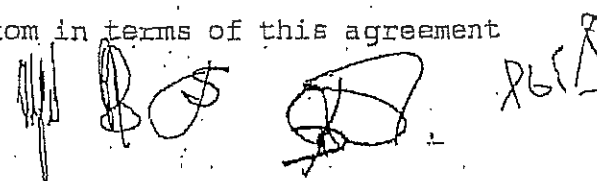
TNC shall as soon as possible after the signature date establish on Optimum's property and thereafter operate a partial beneficiation washing plant to be used for the washing of coal. The cost of establishing and operating the washing plant shall be borne and paid by TNC.

9. QUALITY

9.1 All coal supplied to Eskom in terms of this agreement shall conform to the specifications.

9.2 TNC shall be obliged to pay to Eskom the penalties relating to any coal delivered to Eskom which does not comply with the specifications in respect of calorific value, moisture content, volatiles or abrasiveness on the basis set out in Schedule 1 hereto.

9.3 If TNC for a period of 7 consecutive days delivers coal to Eskom in terms of this agreement

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of a quality which would entitle Eskom to reject such delivery of coal in terms of the provisions of Part 2 of Schedule 1 hereto, Eskom shall be entitled by notice in writing to TNC:

9.3.1 to require TNC either:

9.3.1.1 to blend sufficient coal intended to be washed for export purposes together with the coal to be delivered to Eskom in order to ensure that the coal to be delivered to Eskom conforms to the specifications; or

9.3.1.2 failing sufficient quantities of coal available for the purposes of 9.3.1.1, to blend sufficient coal already washed for export purposes together with the coal to be delivered to Eskom in order to ensure that the coal to be delivered to Eskom conforms to the specifications; and

9.3.2 if there is no, or insufficient quantities of, coal available for the purposes contemplated in 9.3.1, to purchase its requirements of coal from other sources, mutatis

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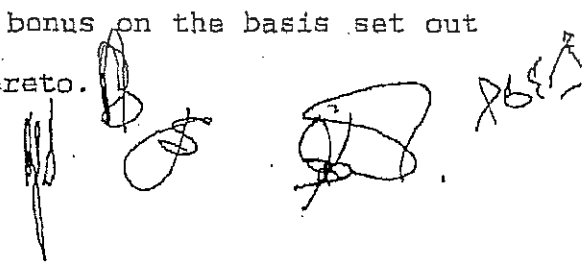
mutandis, upon the terms and conditions of
15.

9.4 The penalties and the right of rejection referred to in Schedule 1 hereto and the rights granted to Eskom in terms of 9.3, shall constitute the sole remedy of Eskom for the failure by TNC to meet the specifications with respect to calorific value, moisture content, volatiles or abrasiveness. Under no circumstances shall TNC be liable for general, special or consequential damages or loss which Eskom or its customers may suffer as a result of the failure of the coal to conform to the specifications or to meet the requirements, whether or not specified, of Eskom or its customers.

9.5 Eskom shall be obliged to pay to TNC:

9.5.1 the bonuses relating to any coal delivered to Eskom which exceeds the specifications in respect of calorific value, moisture content and abrasiveness on the basis set out in Schedule 1 hereto; and

9.5.2 the consistency bonus on the basis set out in Schedule 2 hereto.



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9.6 Unless TNC is notified in writing to the contrary within 15 days after each days' delivery of coal, such coal shall be deemed to conform in all respects to the specifications and Eskom shall have no claim whatsoever in regard thereto or arising therefrom. Such notification shall specify full details relating to the delivery of coal concerned including the date of delivery, the quantity of coal concerned and full details of the non-conformity of such coal to the specifications.

10. SAMPLING AND ANALYSIS

10.1 Coal supplied by TNC to Eskom in terms of this agreement shall be sampled from agreed sampling points in accordance with the sampling procedures set out in Schedule 5 hereto.

10.2 The results of the analysis of all samples taken during any accounting month shall be recorded by Eskom and Eskom shall notify TNC of such results within 7 days of them becoming available. Such results shall serve as the basis for determination of at least the following:

10.2.1 the weighted average size distribution;

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- 10.2.2 the weighted average calorific value;
- 10.2.3 the weighted average volatile content;
- 10.2.4 the weighted average total moisture content;
- 10.2.5 the weighted average ash content; and
- 10.2.6 the weighted average abrasiveness

of all coal supplied by TNC to Eskom in terms of this agreement during the accounting month in respect of which the samples were taken.

11. DETERMINATION OF THE GROSS MASS OF COAL DELIVERED

- 11.1 The gross mass of all coal delivered to Eskom by TNC in terms of this agreement shall be determined by mass-meters on Eskom's conveyors and/or on Eskom's assized weigh-bridges. The mass so determined shall be deemed to be the gross mass of coal delivered and shall be subject to a moisture-correction in terms of 12.
- 11.2 Eskom's mass-meters shall be:
 - 11.2.1 assized at least once in every year, and

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11.2.2 tested:

11.2.2.1 weekly by means of a "zero check";

11.2.2.2 monthly by means of a "dead-weight check"; and

11.2.2.3 6 monthly by means of a "bulk-load check" or other agreed test

and shall be adjusted, if necessary. Such tests shall be carried out by Eskom's employees and shall be witnessed by a representative of TNC. Any adjustments required to the mass-meters shall be agreed between the parties and such agreement shall be recorded in writing.

11.3 Eskom's mass-meters shall be serviced at regular intervals under an inclusive maintenance contract entered into between Eskom and the mass-meter suppliers. The maintenance procedures to be performed in terms of such maintenance contract shall be approved by TNC which approval shall not be unreasonably withheld.

11.4 Should any test referred to in 11.2 establish that Eskom's mass-meters are inaccurate by more

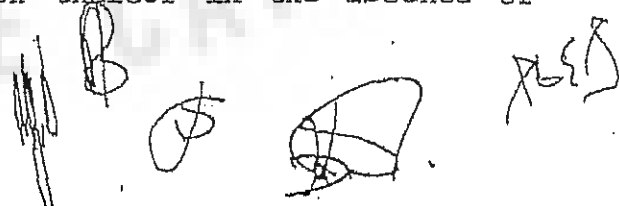
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than 2%, 50% of the error shall be deemed to have existed since the previous weekly test carried out in terms of 11.2 and the corrected gross mass shall be calculated on this basis between Eskom and TNC for the weekly period concerned.

11.5 Should any of Eskom's mass-meters break down, resort shall be had to TNC's mass-meters, if any, or to other evidence to agree on the gross mass of coal delivered. TNC shall, if so requested, furnish Eskom with evidence of the accuracy of its mass-meters to the reasonable satisfaction of Eskom.

11.6 Eskom shall furnish TNC with daily written returns reflecting the gross mass of all coal delivered to Hendrina as registered by Eskom's weighing appliances. Unless the gross mass, as reflected on any daily return is queried in writing within 7 days of the furnishing of such return, the gross mass reflected thereon shall be deemed to be the correct gross mass and the parties shall thereafter be precluded from seeking any correction thereof in the absence of manifest error.



12. MOISTURE ADJUSTMENT AND NET MASS

12.1 The gross mass of coal established monthly in terms of 11 shall be reduced by the average total moisture determined by the sampling and analysis procedures referred to in 10 as follows:

12.1.1 if the total moisture content is 6% or less, the mass shall not be adjusted;

12.1.2 if the total moisture content is more than 6% the following formula shall be applied:

$$NM = \frac{GM \times (100 - M)}{(100 - 6)}$$

Where:

NM = the net mass for the accounting month to be used for all price calculations;

GM = the gross mass established in terms of 11 for the applicable accounting month;

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M = the weighted average percentage total moisture for the applicable accounting month.

12.2 Eskom and TNC shall within 8 days of the end of each accounting month finalise the calculations to determine the net mass of coal delivered during the immediately preceding accounting month.

13. ESTABLISHMENT OF ESKOM'S REQUIREMENTS OF COAL

13.1 Eskom shall as early as possible in order to assist TNC with its planning of production, but in any event by not later than 1 July of each year give written notice to TNC of its coal requirements for the 5 years commencing 1 January of the following year, which notice shall specify Eskom's coal requirements:

13.1.1 on a monthly basis for the first 18 calendar months of each 5 year period; and

13.1.2 on a six monthly basis for the remainder of the second year of each 5 year period; and

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13.1.3 on an annual basis for the next years of each 5 year period in respect of which such notice is given. The first notice shall be given by Eskom on or before the signature date.

13.2 TNC shall each year, on the basis of Eskom's notified coal requirements, prepare a production and delivery program subject to the provisions of 6.1 and 6.2. This program may allow for movements in accordance with Eskom's stockpile operating requirements onto and off the Eskom stockpile established at Hendrina. Such production program shall be discussed and agreed with Eskom prior to the commencement of any year.

13.3 Should Eskom require a variation of its requirements as notified to TNC from time to time in terms of this agreement, Eskom shall give written notice of such variations to TNC and TNC will be allowed a reasonable period, from the date of Eskom's notice of variation within which to adjust its level of production.

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14. MINIMUM OFF-TAKE AND MINIMUM PAYMENTS

14.1 Eskom gives to TNC the undertakings contained in Schedule 7 hereto in respect of minimum off-take and minimum payments.

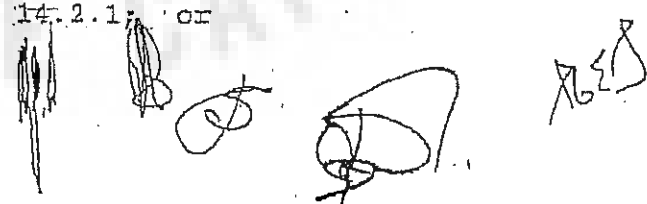
14.2 Should, at any time after the expiry of the minimum off-take period:

14.2.1 Eskom purchase less than 1 000 000 tons of coal per year for two consecutive years; or

14.2.2 Eskom's projected requirements of coal in terms of 13 be for less than 1 000 000 tons for the year immediately following the year in which Eskom purchased less than 1 000 000 tons of coal;

then TNC shall, on not less than 30 days' prior written notice to Eskom, be entitled, but not obliged, at any time after:

14.2.3 the end of the second consecutive year in the case of 14.2.1; or

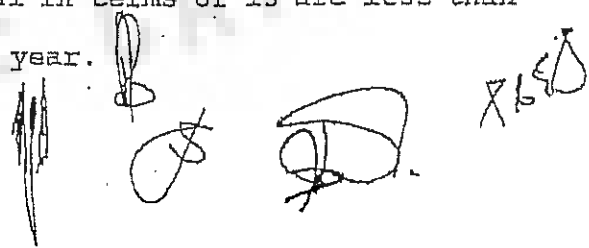


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14.2.4 the end of the year in which Eskom purchased less than 1 000 000 tons in the case of 14.2.2

to terminate this agreement.

14.3 Should at any time after the expiry of the minimum off-take period, Eskom's projected requirements of coal in terms of 13 be for less than 1 000 000 tons per year for two consecutive years then TNC shall, by written notice to Eskom, be entitled, but not obliged, at any time after receipt of the relevant projection in terms of 13, to terminate this agreement with effect from the commencement of the first year of any period of two consecutive years during which it is projected that Eskom will purchase less than 1 000 000 tons; provided that should TNC not exercise its rights of termination in respect of any particular two year period, TNC shall not be precluded from exercising its right of termination in respect of any other period of two consecutive years during which Eskom's projected requirements of coal in terms of 13 are less than 1 000 000 tons per year.

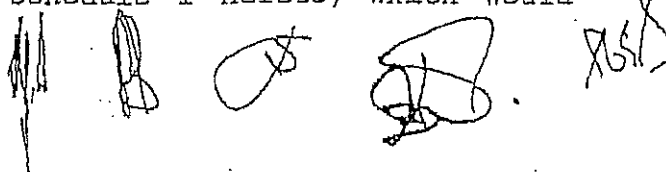


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14.4 Upon a termination of this agreement in terms of 14.2 or 14.3, Eskom shall pay to TNC, in addition to any other amounts which may become payable by Eskom in terms of this agreement, the minimum payment for the year during which the termination takes place unless Eskom shall have purchased coal from TNC during such year up to the termination date having a contract price in the aggregate in excess of the minimum payment for such year.

15. FAILURE TO SUPPLY

15.1 Should TNC fail to deliver Eskom's coal requirements for Hendrina up to the maximum tonnages as notified in terms of 13 for a period of 2 consecutive calendar months, Eskom shall be entitled to purchase from other sources the shortfall between its requirements and the total tonnage actually supplied by TNC to Eskom provided that TNC shall first be entitled to make up such shortfall from other sources whether within the Trans-Natal group or otherwise. Should the cost per ton for coal purchased by Eskom in order to make up any shortfall exceed the price of coal, including any applicable bonus or penalty referred to in Schedule 1 hereto, which would

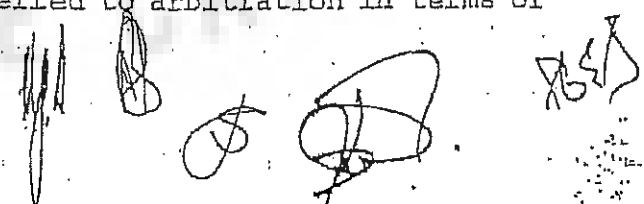
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Page 31.

have been payable by Eskom in terms of this agreement had TNC supplied such coal to Eskom, such excess cost per ton of such coal shall be recoverable from TNC by way of direct damages provided that:

15.1.1 when purchasing coal elsewhere, Eskom shall, as far as it is able, make its purchase at the lowest delivered cost and quality of coal which is both acceptable and available to Eskom at the time and shall take such steps as may reasonably be possible to minimise any claim for damages which it may have against TNC;

15.1.2 if TNC fails to supply Eskom's requirements for a continuous period of 6 calendar months in terms of this agreement, TNC and Eskom shall discuss and if possible agree on ways and means of alleviating any hardship caused to TNC by the implementation of this clause 15. Should agreement in this regard not be reached between the parties, the matter shall be referred to arbitration in terms of 30.



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- 15.2 Save as contemplated in 15.1, TNC shall not be liable for any loss or damage of whatever nature or description suffered by Eskom or its customers in respect of late delivery or non-delivery of coal.

16. DELIVERY

All coal supplied by TNC to Eskom in terms of this agreement shall be delivered to Eskom by loading such coal onto Eskom's over-land conveyors to Hendrina situated at Optimum and delivery shall take place when the coal passes over Eskom's mass meters over which the conveyors pass.

17. OWNERSHIP AND RISK

Risk and ownership in and to each delivery of coal to Eskom in terms of this agreement shall pass to Eskom on delivery in terms of 16.

18. ESSENTIAL SERVICES

Eskom shall supply TNC at Optimum with such quantities of potable and non-potable water at the appropriate tariff as TNC may reasonably require for its operations at Optimum and for the use of its employees,

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subject to TNC obtaining such permits to use the water as may be required by law and provided that Eskom shall not be obliged to supply water in excess of the aggregate of the quantity of water being supplied by it to TNC as at the commencement date plus such quantities of water as may be required for the purposes of the partial beneficiation washing plant from time to time.

19. OPTIMUM RESERVES

19.1 For the purposes of this agreement, "the reserves" shall be those reserves of coal at both Optimum and TNC's Koornfontein Mines as depicted in the plan and schedules annexed hereto as Schedule 6, it being recorded that the reserves depicted in Schedule 6 are those reserves estimated to be available as at 1 January 1992 based on TNC's best estimate given the current available information.

19.2 TNC warrants and undertakes in favour of Eskom that the reserves will be sufficient to enable TNC to comply with its obligations to supply coal to Eskom in terms of this agreement.

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19.3 TNC and Eskom will, on an annual basis, jointly undertake a review of the reserves and planned exploitation thereof and will make the results of such review available to Eskom.

19.4 TNC undertakes in favour of Eskom that, save in respect of a disposal or transfer as contemplated in 19.5, during the currency of this agreement it will not dispose of its rights to the reserves to any party without the prior written agreement of Eskom.

19.5 TNC shall at any time during the currency of this agreement be entitled, freely and without requiring the consent of Eskom, to dispose of or otherwise transfer its rights to the reserves to any company within the Trans-Natal group and likewise any transferee shall be entitled to dispose of or otherwise transfer its rights to the reserves to any other company within the Trans-Natal group provided that:

19.5.1 any transferee shall bind itself in writing as a party to this agreement in place of the transferor;

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19.5.2 if the transferee shall cease to be a company within the Trans-Natal group then, prior to such cessation, Trans-Natal shall procure that the transferee disposes of or transfers its rights to the reserves and cedes and delegates its rights and obligations under this agreement to another company within the Trans-Natal group; and

19.5.3 notwithstanding any such disposal or transfer TNC shall continue to be and shall remain liable in its own right for the due, proper and punctual performance of all the transferee's obligations under this agreement.

20. OPERATION OF OPTIMUM

20.1 The mine plan and method of mining followed by Optimum shall be at the discretion of TNC.

20.2 The production levels of Optimum shall be subject to adjustment from time to time to conform with such changes in mine planning as TNC deems necessary after consultation with Eskom so as to ensure that the coal requirements of Eskom as contemplated in this agreement are met.

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20.3 Subject to the provisions of 19.2 and 19.4, TNC shall be entitled to exploit the reserves as it in its sole discretion deems fit.

21. EXPLOSIVES INDEMNITY

21.1 TNC shall compensate Eskom, its servants, employees, agents or contractors on demand for any damages or loss, whether for personal injury or of any other nature whatsoever arising as a result of the presence of any explosive substance in any of the coal supplied in terms of this agreement. *dangerous word*

21.2 TNC hereby indemnifies Eskom and holds it harmless against any claim by any third party and any costs incidental thereto whether for personal injury or any other loss whatsoever suffered by such party or the dependants of such party arising as a result of the presence of any explosive substance in any of the coal supplied in terms of this agreement.

22. REHABILITATION

22.1 Eskom shall pay to TNC on the commencement date the sum of R5 079 050, escalated from 1 January

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1990 to date of payment by the escalation factor, towards the estimated rehabilitation costs of Optimum in respect of its operations up to the commencement date. Eskom shall have no further obligation to make any contribution towards the rehabilitation costs of Optimum for the period up to the commencement date.

22.2 It is recorded that provision is made in Annexes 3A, 3B and 3C to Schedule 3 to this agreement for a contribution towards the estimated rehabilitation costs of Optimum after the commencement date based on:

22.2.1 this agreement continuing until 31 December 2008; and

22.2.2 the rehabilitation obligations which Optimum has at law as at the commencement date.

22.3 If, at any time during the currency of this agreement, the rehabilitation obligations of Optimum at law are varied so as to result in an increase in the rehabilitation costs over those estimated as at the commencement date, then the parties shall meet to agree on an increase in the contribution to be made by Eskom towards such

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increased rehabilitation costs and should the parties fail to reach agreement thereon within 30 days of TNC requesting such meeting, the matter shall be submitted for arbitration in terms of 30.

23. WATER MANAGEMENT

Eskom shall contribute the sum of R17 689 500,00 (1 January 1992 money values) towards the costs of water management of Optimum. This amount, escalated in accordance with the escalation factor, shall be paid by Eskom to TNC on 31 December 2008 or on the termination of this agreement for any reason whatsoever, whichever occurs first.

24. MINE CLOSURE COSTS

Eskom shall contribute the sum of R12 162 900,00 (1 January 1992 money values) towards the mine closure costs of Optimum. This amount, escalated in accordance with the escalation factor, shall be paid by Eskom to TNC on 31 December 2008 or on the termination of this agreement for any reason whatsoever, whichever occurs first.

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25. CONFIDENTIALITY

All information and data made available or obtained from operations in terms of this agreement which are not a matter of public knowledge or available from any other source shall be and remain confidential between the parties during the currency of this agreement and shall not, without the prior written consent of the other parties, which consent shall not be unreasonably withheld, be disclosed to any third party, other than:

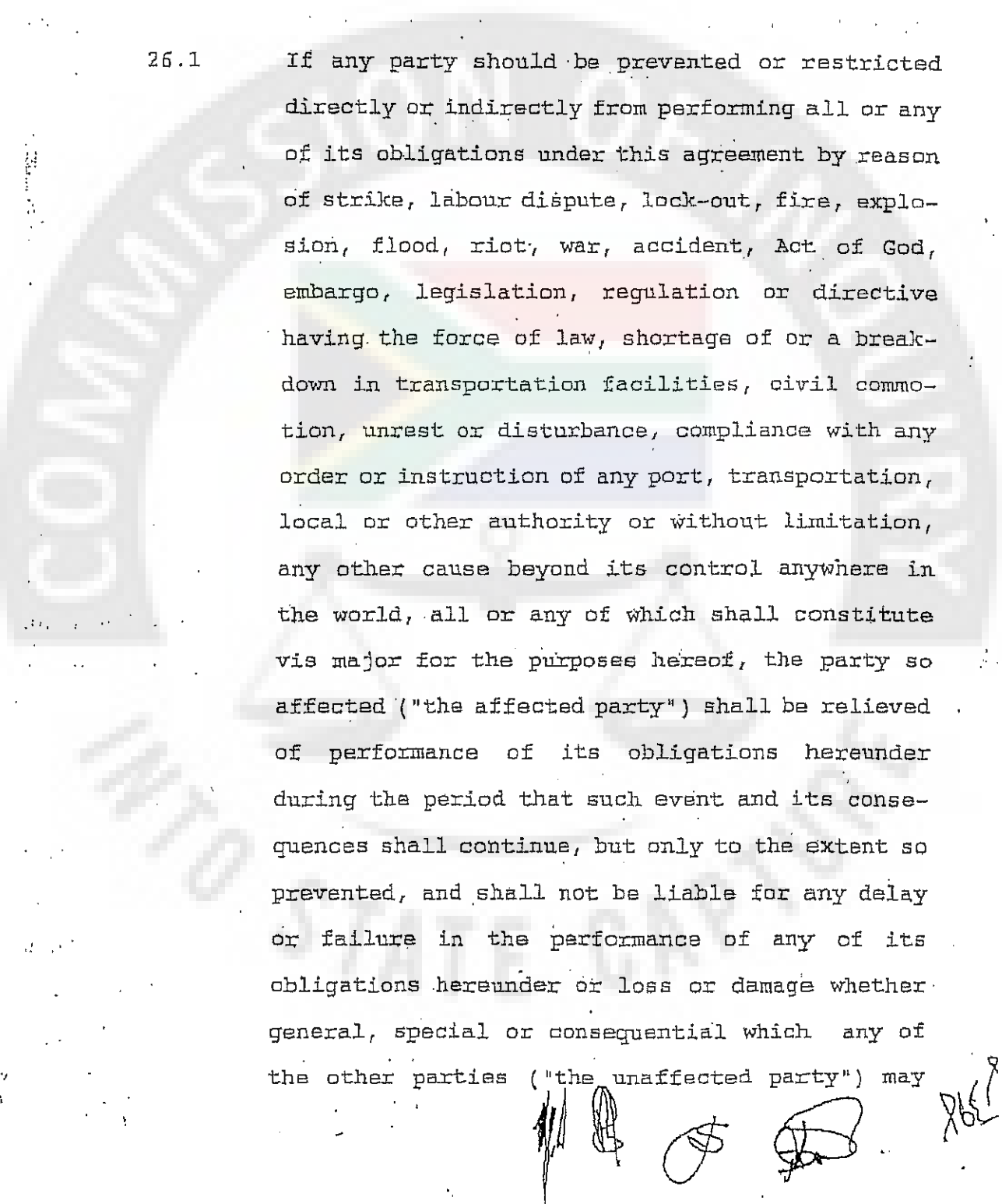
- 25.1 to an affiliate or Government agency of competent jurisdiction which shall have requested it; or
- 25.2 to a bona fide consultant approved by the parties (which approval shall not be unreasonably withheld); or
- 25.3 to investment analysts or employees; or
- 25.4 to The Johannesburg Stock Exchange or the Securities Regulation Panel; or
- 25.5 to shareholders of TNC or Trans-Natal; or
- 25.6 on a direction by a competent court; or

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25.7 as may be required by law.

26. VIS MAJOR

26.1 If any party should be prevented or restricted directly or indirectly from performing all or any of its obligations under this agreement by reason of strike, labour dispute, lock-out, fire, explosion, flood, riot, war, accident, Act of God, embargo, legislation, regulation or directive having the force of law, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbance, compliance with any order or instruction of any port, transportation, local or other authority or without limitation, any other cause beyond its control anywhere in the world, all or any of which shall constitute vis major for the purposes hereof, the party so affected ("the affected party") shall be relieved of performance of its obligations hereunder during the period that such event and its consequences shall continue, but only to the extent so prevented, and shall not be liable for any delay or failure in the performance of any of its obligations hereunder or loss or damage whether general, special or consequential which any of the other parties ("the unaffected party") may



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suffer due to or resulting from such delay or failure; provided always that written notice shall be given by the affected party to the unaffected party at the earliest possible opportunity whether by telex, telefax, telephone or cablegram or otherwise of the occurrence of the event constituting the vis major, together with details thereof and an estimate of the period of time for which it will endure.

26.2 At all times whilst the vis major event shall continue, the parties will meet at regular intervals to discuss and investigate and, if possible, to implement other practical ways and means of overcoming or avoiding the consequences of such vis major, so that the objectives, import and intent of this agreement may be pursued without unreasonable delay. In this regard, the parties will explore the possibility of:

26.2.1 concluding alternative arrangements for the supply or purchase of coal, as the case may be, or the possibility of purchasing coal or supplying it from other sources for such periods of time as may be reasonable in the circumstances regard being had to the nature

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and anticipated duration of the vis major;
or

26.2.2 Eskom consuming coal from TNC at other power
stations or operations of Eskom

as the case may be.

26.3 The affected party will use its best endeavours
to terminate the circumstances giving rise to the
vis major, and upon termination of the event
giving rise thereto, will forthwith give written
notice thereof whether by telex, telefax, tele-
phone or cablegram or otherwise, to the unaffec-
ted party.

26.4 In the event that vis major occurs as contem-
plated herein, the parties will on cessation of
the vis major, or prior thereto, negotiate the
period, if any, by which the duration of this
agreement should be extended to take account of
interruptions caused by such vis major. The
price payable for coal during such extension, if
any, shall be the price determined under this
agreement as being that applicable for the deli-
very period in which coal is actually delivered.

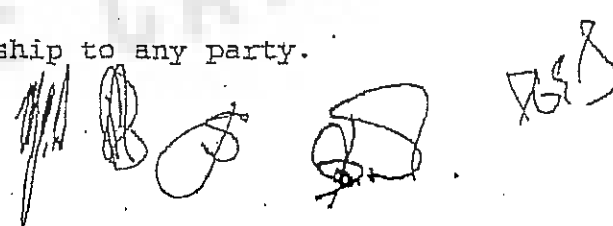
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26.5 This agreement will not, unless otherwise agreed, terminate by reason of intervention of vis major for whatever period, and in respect of any party; provided, however, that if such vis major should endure for longer than any continuous period of 180 days, and the affected party is then unable to demonstrate to the reasonable satisfaction of the unaffected party that the vis major event will terminate within a reasonable period after expiry of the aforesaid period of 180 days, then at any time whilst such vis major shall continue, but not after it ceases, the unaffected party shall be entitled on 90 days written notice given to the affected party to terminate this agreement, without prejudice to any rights of the unaffected party whether as to damages or otherwise, which may have arisen prior to the occurrence of the vis major.

27. HARDSHIP CLAUSE

27.1 In entering into this agreement the parties declare it to be their intention that this agreement shall operate between them with fairness and without undue hardship to any party.



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27.2 The provisions of this clause 27 shall apply where any new situation or circumstances arise ("relevant circumstances") which

27.2.1 are outside the control of the affected party;

27.2.2 could not reasonably have been anticipated by the affected party at the time of entering into this agreement; and

27.2.3 result in a major material disadvantage to the affected party and a corresponding major material advantage to the other party or in severe hardship to the affected party without any advantage to the other party.

"Relevant circumstances" may include, without limitation, the imposition of any tax, duty or other fee by any governmental or other authority with executive power but shall not include any circumstances resulting in TNC being unable to sell coal in the export market.

27.3 The affected party may serve a written notice ("relevant circumstances notice") on the other party that in its determination relevant circum-

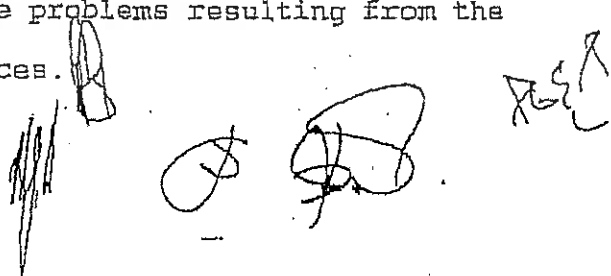
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Page 45.

stances have arisen, and the relevant circumstances notice shall state the date on which the relevant circumstances commenced ("relevant circumstances commencement date").

27.4 The other party may at any time within 7 (seven) days of receipt of the relevant circumstances notice refer it to arbitration in accordance with 30 for a determination as to whether the relevant circumstances notice has been validly given and/or whether the relevant circumstances commencement date is correctly stated. In default of such a referral the relevant circumstances notice shall be deemed to have been validly given and the relevant circumstances commencement date correctly stated.

27.5 After the date ("effective date") on which the relevant circumstances notice is agreed, determined or deemed to have been validly given and the relevant circumstances commencement date correctly stated, the parties shall in the utmost good faith use their best endeavours to agree mutually acceptable amendments to this agreement in order resolve the problems resulting from the relevant circumstances.



Page 46.

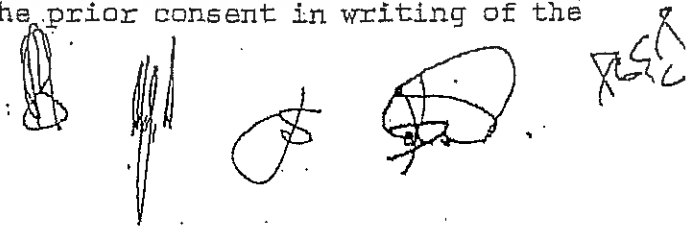
27.6 If such mutually acceptable amendments have not been agreed by the later of 90 (ninety) days after the effective date and 180 (one hundred and eighty) days after the relevant circumstances commencement date the affected party may at any time thereafter refer the matter to arbitration in terms of 30 for a determination as to the amendments to be made to this agreement.

28. BREACH

Should any party ("the defaulting party") breach any of the terms and conditions of this agreement, and fail to remedy such breach within a period of 90 days after receipt by the defaulting party of written notice from any of the other parties ("the aggrieved party") requiring it so to do, then the aggrieved party shall be entitled to such remedies as it may have at law.

29. CESSION AND ASSIGNMENT

29.1 Save as contemplated in 29.2, no party may cede or assign the whole or any part of its rights or obligations under this agreement to any other party without the prior consent in writing of the other parties.



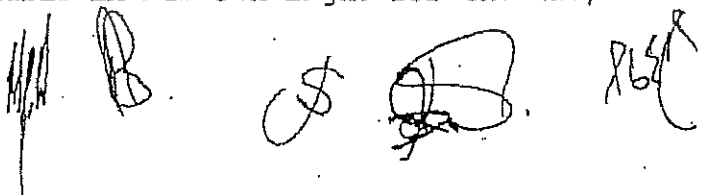
Page 47.

29.2 TNC shall at any time during the currency of this agreement be entitled, freely and without requiring the consent of Eskom, to cede its rights and/or assign its obligations under this agreement to any company within the Trans-Natal group and likewise any cessionary or assignee shall be entitled to cede its rights and/or assign its obligations under this agreement to any other company within the Trans-Natal group provided that:

29.2.1 any cessionary or assignee shall bind itself in writing as a party to this agreement in place of the transferor;

29.2.2 if the cessionary or assignee shall cease to be a company within the Trans-Natal group then, prior to such cessation, Trans-Natal shall procure that the cessionary or assignee cedes and/or assigns its rights and obligations under this agreement to another company within the Trans-Natal group; and

29.2.3 notwithstanding any such disposal or transfer TNC shall continue to be and shall remain liable in its own right for the due,



Page 48.

proper and punctual performance of all the assignee's obligations under this agreement.

30. ARBITRATION

30.1 Any dispute between the parties in regard to:

30.1.1 the interpretation of;

30.1.2 the effect of;

30.1.3 the parties' respective rights and obligations under;

30.1.4 a breach of;

30.1.5 any matter arising out of;

this agreement shall, save as otherwise provided in this agreement, be decided by arbitration in the manner set out in this clause.

30.2 The said arbitration shall be held subject to the provisions of this clause:

30.2.1 at Johannesburg;

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30.2.2 informally;

30.2.3 otherwise in accordance with the provisions of the Arbitration Act No. 42 of 1965, as amended;

it being the intention that if possible it shall be held and concluded within 21 (twenty-one) working days after it has been demanded.

30.3 The arbitrator shall be if the question in issue is:

30.3.1 primarily an accounting matter an independent chartered accountant agreed upon between the parties;

30.3.2 primarily a legal matter, a practising Senior or Queens Counsel with no less than 10 (ten) years standing agreed upon between the parties;

30.3.3 any other matter an independent person agreed upon between the parties.

30.4 If the parties cannot agree upon a particular arbitrator in terms of 30.3 above within 7

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Page 50.

(seven) working days after the arbitration has been demanded, any of the parties may request, within 7 (seven) days after the parties have so failed to agree, the President of the Transvaal Law Society to make the nomination in terms of 30.3.1, 30.3.2 or 30.3.3, as the case may be.

30.5 The parties irrevocably agree that the decision in these arbitration proceedings:

30.5.1 shall be binding on them,

30.5.2 shall be carried into effect,

30.5.3 may be made an order of any Court of competent jurisdiction.

30.6 The arbitrator shall be required to furnish reasons for any decision if so requested in writing by any party within 14 days after having handed down his decision.

31. CONSEQUENTIAL LOSS

Save as specifically contemplated in this agreement no party shall be liable to any of the other parties for any consequential loss or consequential or special

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Page 51.

damages by reason of its default in terms of this agreement.

32. DOMICILIUM

32.1 The parties hereto choose domicilia citandi et executandi for all purposes of and in connection with this agreement as follows:

Eskom: Megawatt Park
Maxwell Drive
Sunninghill
SANDTON
Marked for attention of
The Fuel and Water Manager

Trans-Natal: 80 Marshall Street
and JOHANNESBURG

TNC: 2001
Marked for attention of the
Managing Director

32.2 Any party hereto shall be entitled to change its domicilium from time to time, provided that any new domicilium selected by it shall be an address other than a box number in the Republic of South Africa, and any such change shall only be effective upon receipt of notice in writing by the other parties of such change.

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Page 52.

32.3 All notices, demands, communications or payments intended for any party shall be made or given at such party's domicilium for the time being.

32.4 A notice sent by one party to another party shall be deemed to be received:

32.4.1 on the same day, if delivered by hand;

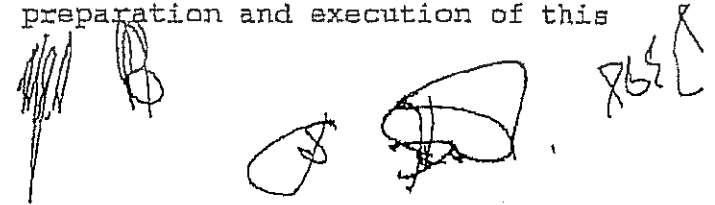
32.4.2 on the same day, if sent by telex or telefax;

32.4.3 on the fifth day after posting, if sent by prepaid registered mail.

32.5 Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen domicilium citandi et executandi.

33. COSTS

Each party shall bear its own costs of and incidental to the negotiation, preparation and execution of this agreement.



34. INTEREST ON ARREARS

All amounts payable in terms of this agreement shall, unless paid on due date, bear interest at a rate equal to the prime rate from due date to date of payment.


35. SECURITY

Trans-Natal hereby binds itself in favour of Eskom as surety for and co-principal debtor with TNC for the due, proper and punctual performance by TNC of all its obligations under this agreement, hereby waiving the benefits of excussion, division and no value received, the meaning of which it declares itself to be acquainted with.

36. GENERAL

36.1 No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.

36.2 No addition to, variation or consensual cancellation of this agreement shall be of any force or effect unless in writing and signed by or on behalf of all the parties.



Page 54.

36.3 No indulgence which any of the parties ("the grantor") may grant to any other or others of them ("the grantee(s)") shall constitute a waiver of any of the rights of the grantor, who shall not thereby be precluded from exercising any rights against the grantee(s) which might have arisen in the past or which might arise in the future.

36.4 The parties undertake at all times to do all such things, to perform all such acts and to take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and import of this agreement.

36.5 If any clause or term of this agreement should be invalid, unenforceable or illegal, then the remaining terms and provisions of this agreement shall be deemed to be severable therefrom and shall continue in full force and effect unless such invalidity, unenforceability or illegality goes to the root of this agreement.

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Page 55.

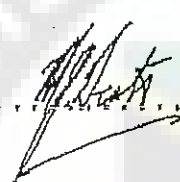
THUS DONE and SIGNED at JOHANNESBURG on this the
4th day of JANUARY 1993 in the presence
 of the undersigned witnesses:

AS WITNESSES:

For and on behalf of

ESKOM

by
 who warrants his authority
 hereto

1. 2. 


THUS DONE and SIGNED at JOHANNESBURG on this the
4th day of JANUARY 1993 in the presence
 of the undersigned witnesses:

AS WITNESSES:

For and on behalf of
 TRANS-NATAL COAL CORPORATION
 LIMITED

by
 who warrants his authority
 hereto

1. 2. 

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Page 56.

THUS DONE and SIGNED at JOHANNESBURG on this the
4th day of JANUARY 1993 in the presence
of the undersigned witnesses:

AS WITNESSES:

1.

[Signature]

2.

[Signature]

For and on behalf of
TRANS-NATAL COLLIERIES
LIMITED
by
who warrants his authority
hereto

[Signature]
[Signature]

[Signature]

[Signature]

Page 3.

- SCHEDULE 1 - PART 1 - QUALITIES OF COAL TO BE SUPPLIED TO ESKOM DURING THE PRE-COMMISSIONING PERIOD
- PART 2 - QUALITIES OF COAL TO BE SUPPLIED TO ESKOM DURING THE POST-COMMISSIONING PERIOD
- SCHEDULE 2 - CONSISTENCY BONUS
- SCHEDULE 3 - CONTRACT PRICE
- SCHEDULE 4 - THE ESCALATION FACTOR
- SCHEDULE 5 - SAMPLING AND ANALYSIS PROCEDURES
- SCHEDULE 6 - PLANS AND SCHEDULES OF RESERVES
- SCHEDULE 7 - MINIMUM OFF-TAKE AND MINIMUM PAYMENTS
- SCHEDULE 8 - METHOD OF CALCULATION OF MONTHLY BASE PRICE

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(17\TNC29.SH1)

SCHEDULE 1PART 1

1. QUALITIES OF COAL TO BE SUPPLIED TO ESKOM DURING THE
PRE-COMMISSIONING PERIOD

- 1.1 All coal supplied to Eskom in terms of this agreement during the pre-commissioning period shall conform to the following specifications:

	<u>Range</u>	<u>Typical</u>
Calorific Value (moisture free) (monthly weighted average)	25,5 MJ/kg - 26,5 MJ/kg	25,0 MJ/kg
Volatiles (air-dried) (24 hour period commencing 05h00 daily)	21% minimum	-
Abrasive Index (as per the Eskom/ Industry Standard) (monthly weighted average)	-	250

- 1.2 Coal shall be crushed to such a size as will allow not less than 94% of the coal on average to pass through a 50mm aperture square mesh screen.

2. COAL QUALITY PENALTIES, BONUSES AND REJECTION LIMITS

- 2.1. Average Calorific Value (Calculated on a monthly weighted average moisture free basis)

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Page 3.

2.2 Rejection Levels

In the event that coal is supplied to Eskom in terms of this agreement with quality specifications enumerated in this clause 2.2, Eskom shall be entitled to act in accordance with the terms and conditions set out below:

2.2.1

Partial Payment Rejection

Eskom shall have the right to refuse payment of 14% of the applicable portion of the monthly base price for any coal supplied to it during a 24 hour period (commencing at 05:00 daily), the quality of which (measured on a weighted 24 hour basis) falls within the range set out below:

Volatiles (air-dried)

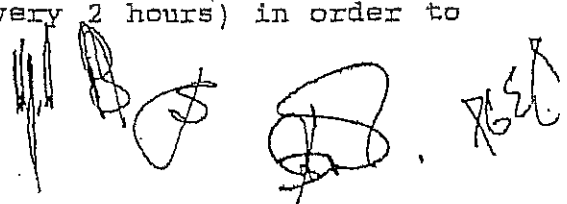
Below 21%

2.2.2

Coal Stockpile and Rejection

2.2.2.1

TNC shall be entitled and obliged to divert to a designated area on a stockpile any coal supplied to Eskom with a total moisture content in excess of 10% (measured every 2 hours) in order to



Page 4.

allow such coal to dry. Thereafter TNC shall be entitled to reclaim such coal from such designated area on the stockpile for redelivery to Eskom in terms of this agreement.

2.2.2.2

Should TNC fail to divert any coal to stockpile as contemplated in 2.2.2.1 above, Eskom shall be entitled to reject such coal.

2.2.2.3

The cost of stockpiling and reclaiming any coal referred to in 2.2.2.1 shall be borne and paid by TNC.

by TNC

7628

PART 23. QUALITIES OF COAL TO BE SUPPLIED TO ESKOM DURING THE POST-COMMISSIONING PERIOD

- 3.1 All coal supplied to Eskom in terms of this agreement during the post-commissioning period shall conform to the following specifications (calculated on a monthly weighted average basis):

	<u>Range</u>	<u>Typical</u>
Calorific Value (moisture free)	23,9 MJ/kg - 24,5 MJ/kg	24,2 MJ/kg
Total Moisture	8,0% - 9,0%	8,5%
Volatiles (moisture free)	21,6% - 25,5%	23,5%
Ash Content (moisture free)	23,7% - 27,7%	25,7%
Abrasive Index (as per the Eskom/ Industry standard)	250 - 350 mgFe	-
Ash initial deformation temperature		1400°C

- 3.2 Coal shall be crushed to such a size as will allow not less than 94% of the coal on average to pass through a 50mm aperture square mesh screen.

4. COAL QUALITY PENALTIES, BONUSES AND REJECTION LIMITS

- 4.1 Average Calorific Value (Calculated on a monthly weighted average moisture free basis)

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Page 6.

Penalties Payable by TNC in Respect of Calorific Value

24,2 MJ/kg - 23,9 MJ/kg	-	No penalty
23,9 MJ/kg - 21,6 MJ/kg	-	1% of the monthly base price per 0,1 MJ/kg below 23,9 MJ/kg
Below 21,6 MJ/kg	-	Eskom shall be entitled to reject the delivery of coal in question in accordance with the provisions of paragraph 4.4 below

Bonus Payable by Eskom in Respect of Calorific Value

24,2 MJ/kg - 24,5 MJ/kg	-	No bonus
Above 24,5 MJ/kg	-	1% of the monthly base price per 0,1 MJ/kg above 24,5 MJ/kg

4.2

Abrasiveness (calculated on a monthly weighted average basis and based on the currently applicable test methodology as compiled and approved by the Eskom/Industry Joint Working Group)

Penalties and Bonuses Payable

4.2.1





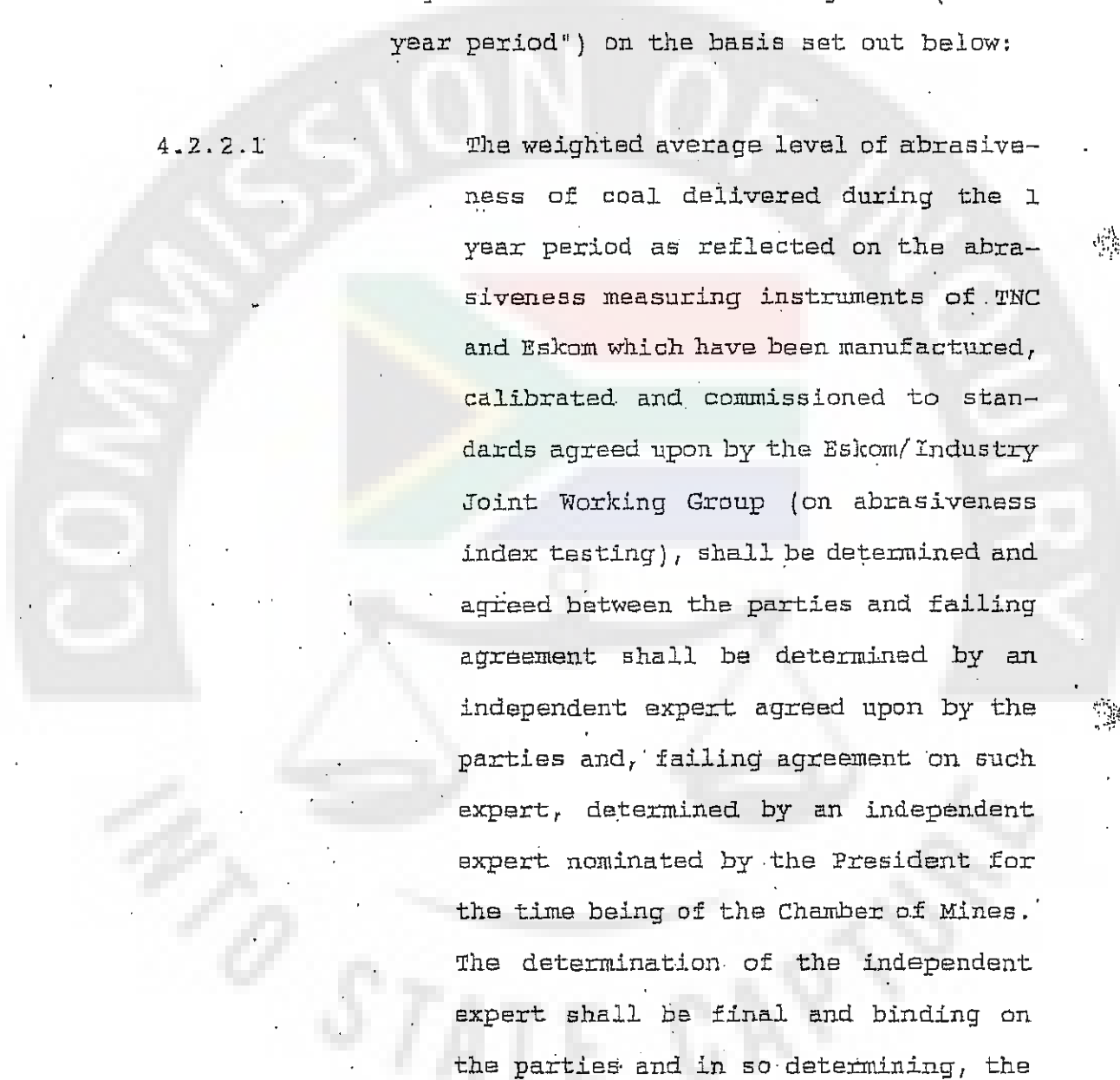
The following penalties and bonuses will be paid after the post-commissioning date:

Above 350 mgFe	A penalty of 1% of the monthly base price per 50 mgFe increment above 350 mgFe will be payable by Trans-Natal
Between 250 - 350 mgFe	No penalty or bonus will be payable
Below 250 mgFe	A bonus of 1% of the monthly base price per 50 mgFe increment below 250 mgFe will be payable by Eskom.

Page 7.

4.2.2 The abrasiveness parameters set out in paragraph 4.2.1 above shall be reviewed by the parties after the expiry of a period of 1 year from the commissioning date ("the 1 year period") on the basis set out below:

4.2.2.1 The weighted average level of abrasiveness of coal delivered during the 1 year period as reflected on the abrasiveness measuring instruments of TNC and Eskom which have been manufactured, calibrated and commissioned to standards agreed upon by the Eskom/Industry Joint Working Group (on abrasiveness index testing), shall be determined and agreed between the parties and failing agreement shall be determined by an independent expert agreed upon by the parties and, failing agreement on such expert, determined by an independent expert nominated by the President for the time being of the Chamber of Mines. The determination of the independent expert shall be final and binding on the parties and in so determining, the expert shall be acting as an expert and not as an arbitrator;



Page 8.

4.2.2.2

based on the weighted average level of abrasiveness determined in terms of 4.2.2.1 above, a "dead band" of 50 mgFe above the weighted average so determined ("the upper limit") and 50 mgFe below the weighted average so determined ("the lower limit"), shall be established;

4.2.2.3

the following penalties and bonuses shall be payable after the expiry of the 1 year period:

4.2.2.3.1

above the upper limit

a penalty of 1% of the monthly base price per 50 mgFe increment above the upper limit will be payable by Trans-Natal

4.2.2.3.2

Between the upper limit and the lower limit

no penalty or bonus will be payable

4.2.2.3.3

Below the lower limit

a bonus of 1% of the monthly base price per 50 mgFe increment below the lower limit will be payable by Eskom

4.3

Total Moisture (Calculated on a monthly weighted average basis)

Page 9.

Penalties Payable by TNC in Respect of Moisture

8,5% - 9,0%	-	No penalty
9,0% - 10,0%	-	1% of the monthly base price
Above 10%	-	TNC shall be entitled and obliged to divert to a designated area on a stockpile the coal in question falling which Eskom shall be entitled to reject the delivery of coal in question in accordance with paragraph 4.4 below.

Bonus Payable by Eskom in Respect of Moisture

8,5% - 9,0%	-	No bonus
Below 8,0%	-	1% of the monthly base price per each percentage point below 8,0% moisture.

4.4

Rejection Levels

In the event that coal is supplied to Eskom in terms of this agreement with quality specifications enumerated in this clause 4.4, Eskom shall be entitled to act in accordance with the terms and conditions set out below:

4.4.1

Payment Rejection

Eskom shall have the right to refuse payment of the applicable portion of the monthly base price for any coal supplied to it during a 24 hour period (commencing at 05:00 daily), the quality of which (measured on a

weighted 24 hour basis) falls within any or all of the ranges set out below:

Calorific Value (moisture free):	Below 21,6 MJ/kg
Ash Content (moisture free) :	Above 29,8%
Volatiles (moisture free) :	Below 21,6%

4.4.2

Coal Stockpile and Rejection

4.4.2.1

TNC shall be entitled and obliged to divert to a designated area on a stockpile any coal supplied to Eskom with a total moisture content in excess of 10% (measured every 2 hours) in order to allow such coal to dry. Thereafter TNC shall be entitled to reclaim such coal from such designated area on the stockpile for redelivery to Eskom in terms of this agreement.

4.4.2.2

Should TNC fail to divert any coal to stockpile as contemplated in 4.4.2.1 above, Eskom shall be entitled to reject such coal.

4.4.2.3

The cost of stockpiling and reclaiming any coal referred to in 4.4.2.1 shall be borne and paid by TNC.

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SCHEDULE 2CONSISTENCY BONUS

As an incentive to Trans-Natal to achieve the quality parameters referred to below on a consistent basis, Eskom will pay TNC a consistency bonus on the basis set out in this schedule. This consistency bonus scheme will be implemented from the commissioning date and shall initially be implemented for a trial period of 1 year whereafter the parties will negotiate whether to proceed with the scheme.

1. Quality Parameters

The following quality parameters will be considered in calculating the consistency bonus:

Calorific Value (moisture free)	on or above 24,2 MJ/Kg
Total Moisture	on or below 9%
Volatiles (moisture free)	on or above 23,6%

The quality parameters referred to above shall be determined on a 24 hourly basis commencing at 05:00 daily.

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Page 2.

2. Implementation

Eskom shall pay TNC a consistency bonus of R250 000 for each period of 25 consecutive 24 hour periods during which coal is supplied to Eskom in terms of this agreement which conforms to the quality specifications referred to in 1 above.

Such bonus shall be payable in the accounting month following the accounting month in which it is earned.

For the purposes hereof, each period of 25 consecutive 24 hour periods shall commence afresh immediately following any 24 hour period in which the coal supplied does not conform to the quality specifications referred to in 1 above.

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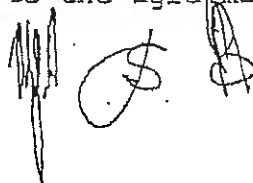
SCHEDULE 3CONTRACT PRICE

The monthly contract price payable by Eskom to TNC in terms of clause 7 of the agreement ("the agreement") to which this schedule is annexed as Schedule 3 shall be determined in accordance with the following formula:


$$P = A \times (B + C - D + E + F - G)$$

Where:

- P = the monthly contract price payable by Eskom;
- A = the escalation factor determined in accordance with Schedule 4 to the agreement;
- B = the monthly base price;
- C = the bonus (if any) payable in terms of Part 1 of Schedule 1 to the agreement;
- D = the penalty (if any) payable in terms of Part 1 of Schedule 1 to the agreement;
- E = the bonus (if any) payable in terms of Part 2 of Schedule 1 to the agreement;
- F = the consistency bonus (if any) payable in terms of Schedule 2 to the agreement;
- G = the penalty (if any) payable in terms of Part 2 of Schedule 1 to the agreement.







METHOD OF USE OF ANNEX 3A, 3B AND 3C

For the annual quantity purchased by Eskom in terms of the agreement as reflected in the column headed "Annual Quantity", the annual base price payable shall be the corresponding annual price reflected in the column headed "Annual Price".

Should the annual quantity purchased by Eskom in terms of the agreement not correspond exactly with a quantity reflected in the column headed "Annual Quantity", the annual base price payable shall be determined by interpolation (on a straight line basis to the nearest R1,00) between the two annual prices reflected in the column headed "Annual Price" which correspond to the two quantities in the column headed "Annual Quantity" which are respectively less than one hundred thousand tons less than and greater than the annual quantity actually purchased.

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BASE PRICE TABULATION
(In 1st January 1992 money values)

1. Prior to commissioning of partial beneficiation plant
with 3 Mtpa tonnage guarantee in force

ANNUAL QUANTITY	ANNUAL PRICE	ANNUAL QUANTITY	ANNUAL PRICE
t million	R million	t million	R million
0.0	90.512327	3.6	107.677091
0.1	90.512327	3.7	110.537885
0.2	90.512327	3.8	113.398679
0.3	90.512327	3.9	116.259473
0.4	90.512327	4.0	119.120267
0.5	90.512327	4.1	121.111855
0.6	90.512327	4.2	123.101843
0.7	90.512327	4.3	125.090231
0.8	90.512327	4.4	127.077019
0.9	90.512327	4.5	128.245020
1.0	90.512327	4.6	128.724825
1.1	90.512327	4.7	129.203031
1.2	90.512327	4.8	129.679636
1.3	90.512327	4.9	130.154642
1.4	90.512327	5.0	130.628047
1.5	90.512327	5.1	131.099852
1.6	90.512327	5.2	131.570058
1.7	90.512327	5.3	132.038663
1.8	90.512327	5.4	132.505669
1.9	90.512327	5.5	132.971074
2.0	90.512327	5.6	133.535131
2.1	90.512327	5.7	134.097588
2.2	90.512327	5.8	134.658445
2.3	90.512327	5.9	135.217702
2.4	90.512327	6.0	135.775359
2.5	90.512327	6.1	136.331417
2.6	90.512327	6.2	136.885874
2.7	90.512327	6.3	137.438731
2.8	90.512327	6.4	137.989988
2.9	90.512327	6.5	138.539645
3.0	90.512327	6.6	139.160502
3.1	93.373121	6.7	139.781359
3.2	96.233915	6.8	140.402216
3.3	99.094709	6.9	141.023074
3.4	101.955503	7.0	141.643931
3.5	104.816297		

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BASE PRICE TABULATION
(In 1st January 1992 money values)

2. After commissioning of partial beneficiation plant
with 3 Mtpa tonnage guarantee in force

ANNUAL QUANTITY	ANNUAL PRICE	ANNUAL QUANTITY	ANNUAL PRICE
t million	R million	t million	R million
0.0	88.647517	3.6	105.793724
0.1	88.647517	3.7	108.651425
0.2	88.647517	3.8	111.509127
0.3	88.647517	3.9	114.366828
0.4	88.647517	4.0	117.224529
0.5	88.647517	4.1	119.213025
0.6	88.647517	4.2	121.199920
0.7	88.647517	4.3	123.185215
0.8	88.647517	4.4	125.168910
0.9	88.647517	4.5	126.333819
1.0	88.647517	4.6	126.810532
1.1	88.647517	4.7	127.285644
1.2	88.647517	4.8	127.759157
1.3	88.647517	4.9	128.231070
1.4	88.647517	5.0	128.701382
1.5	88.647517	5.1	129.170095
1.6	88.647517	5.2	129.637208
1.7	88.647517	5.3	130.102721
1.8	88.647517	5.4	130.566633
1.9	88.647517	5.5	131.028946
2.0	88.647517	5.6	131.589910
2.1	88.647517	5.7	132.149275
2.2	88.647517	5.8	132.707039
2.3	88.647517	5.9	133.263204
2.4	88.647517	6.0	133.817768
2.5	88.647517	6.1	134.370732
2.6	88.647517	6.2	134.922097
2.7	88.647517	6.3	135.471861
2.8	88.647517	6.4	136.020026
2.9	88.647517	6.5	136.566590
3.0	88.647517	6.6	137.184355
3.1	91.505218	6.7	137.802119
3.2	94.362919	6.8	138.419883
3.3	97.220620	6.9	139.037648
3.4	100.078322	7.0	139.655412
3.5	102.936023		

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BASE PRICE TABULATION
(In 1st January 1992 money values)

3. After commissioning of partial beneficiation plant
with no tonnage guarantee in force

ANNUAL QUANTITY	ANNUAL PRICE
t million	R million
0.0	11.750103
0.1	13.540560
0.2	15.296570
0.3	17.052581
0.4	18.808591
0.5	20.564602
0.6	22.320612
0.7	24.076622
0.8	25.832633
0.9	28.635790
1.0	31.493492
1.1	34.351193
1.2	37.208894
1.3	40.066595
1.4	42.924297
1.5	45.781998
1.6	48.639699
1.7	51.497400
1.8	54.355102
1.9	57.212803
2.0	60.070504
2.1	62.928205
2.2	65.785907
2.3	68.643608
2.4	71.501309
2.5	74.359010
2.6	77.216712
2.7	80.074413
2.8	82.932114
2.9	85.789815
3.0	88.647517
3.1	91.505218
3.2	94.362919
3.3	97.220620
3.4	100.078322
3.5	102.936023

ANNUAL QUANTITY	ANNUAL PRICE
t million	R million
3.6	105.793724
3.7	108.651425
3.8	111.509127
3.9	114.366828
4.0	117.224529
4.1	120.082230
4.2	122.939932
4.3	125.299622
4.4	127.211191
4.5	128.419679
4.6	129.037443
4.7	129.655208
4.8	130.272972
4.9	130.890737
5.0	131.508501
5.1	132.126266
5.2	132.744030
5.3	133.361794
5.4	133.979559
5.5	134.597323
5.6	135.215088
5.7	135.832852
5.8	136.450616
5.9	137.068381
6.0	137.686145
6.1	138.303910
6.2	138.921674
6.3	139.539439
6.4	140.157203
6.5	140.774967
6.6	141.392732
6.7	142.010496
6.8	142.628261
6.9	143.246025
7.0	143.863790

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MT/gvh
(T7/TNC29.SH4)

SCHEDULE 4.THE ESCALATION FACTOR

The escalation factor as defined in the agreement ("the agreement") to which this schedule is annexed as Schedule 4 shall be determined in accordance with the following formula:

$$X = \left[\frac{PPI^1}{PPI^0} \times 0,6 + \frac{CCI^1}{CCI^0} \times 0,3 + 0,10 \right]$$

Where:

X = the escalation factor calculated to six decimal places;

PPI¹ = the Production Price Index for all commodities as published by the Central Statistical Service (or any replacement index) for the calendar month which is two calendar months prior to the accounting month of delivery of coal in terms of the agreement;

PPI⁰ = the Production Price Index for all commodities as published by the Central Statistical Service (or any replacement index) for the base month which is November 1991;

CCI¹ = the Eskom Cost of Coal Index for the calendar month which is two calendar months prior to the

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Page 2.

accounting month of delivery of coal in terms of
the agreement;

CCI⁰ = the Eskom Cost of Coal Index for the base month
which is November 1991.

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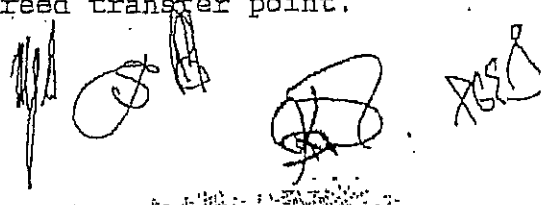
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MT/gvh
(17/TNC29.SHS)

SCHEDULE 5SAMPLING AND ANALYSIS PROCEDURES1. BASIS OF SAMPLING

- 1.1 Sampling shall be carried out by automatic means and the initial stage of sample mass reduction shall also be automated and included as an integral part of the sampling device.
- 1.2 The accuracy of the sampling programme selected shall be tested and adjusted in the initial stages to comply with the principle of duplicate sampling procedures.
- 1.3 Sampling and sample preparation shall be in accordance with the relevant SABS Code of Practice (SABS 0135 Part 1 1977 for sampling and SABS 0135 Part 2 1977 for sample preparation) or any modifications of such methods as shall be agreed between TNC and Eskom in consultation with the CSIR or SABS.
- 1.4 After this initial adjustment the duplicate samples shall be used for "Bias and Precision" tests on total moisture, calorific value (moisture free) and ash (moisture free).

2. AUTOMATIC SAMPLER

The sampler provided shall be of the "Falling stream-slotted vessel" type. One sampler shall be installed on each of the main conveyors conveying coal from Optimum to Hendrina at an agreed transfer point.



Page 2.

2.1 Sample Increments

Each sampler shall be optimised in accordance with the relevant ISO Standard to provide the appropriate mass and number of increments.

2.2 Sample Processing

The increments taken by each primary sampler shall pass down a common chute, through a secondary slotted belt sampler where a coarse sample (A), is split out for total Moisture and Size grading analysis. Sample (B) shall pass through a crusher where it is reduced to -15mm and sampled by means of a tertiary "Slotted Belt" conveyor. Sample (B) is then passed by means of a conveyor, into a "Mechanical Splitter" where it is split into four samples B1, B2, B3 and B4. The automatic sampler device described here is designed to comply with the procedures and accuracy demanded in the relevant ISO specification. Further division of samples to produce duplicates are also done according to relevant ISO specifications.

2.3 Accuracy of Sampling (Determination of Bias)

A test programme shall be carried out jointly by Eskom and TNC on an annual basis to establish if bias exists in terms of total moisture, ash (moisture free) and calorific value (moisture free). The programme will be undertaken in terms of ISO 1988 - 975 (E) - Annexure E.

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2.4 Size of Sample

After the sampling procedure has been adjusted to comply with the "duplicate sampling" standards the quantity of sample collected in one container over the 24 hour period may only be reduced in quantity to a stage where the two samples yield similar analytical results.

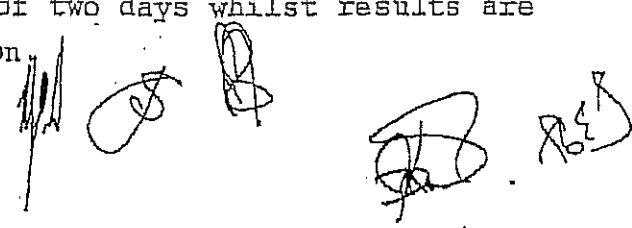
2.5 Minimum Size of Opening

The quantity of sample collected will be varied by adjusting the primary, secondary and slotted belt-samplers depending on analysis required. The minimum dimension of the opening of the sample collection bucket shall be 2,5 times the maximum diameter of the largest coal particle being sampled.

3. SAMPLING PERIOD AND NUMBER OF SAMPLES

The two separate samples A and B shall constitute duplicate samples of the coal being despatched to Eskom over the sampling period. The sampling period shall be one day. Sample A shall be split by means of a "Flopper gate" system into 3 samples; A1, A2 and A3. This system will be bias tested annually in accordance with the provisions of paragraph 2.3 above. Each sample shall be collected in a separate sealed container and shall be used as follows:

Sample A1 and A2 by Optimum and Hendrina respectively for size grading and Total Moisture determination. Sample A3 as a reference sample, which will be stored by Eskom for a period of two days whilst results are declared and agreed upon.



Page 4.

Sample B shall be split by means of a mechanical splitter into 4 samples, B1, B2, B3 and B4.

Each sample shall be collected by each of Optimum and Hendrina in separate sealed containers and shall be used as follows:

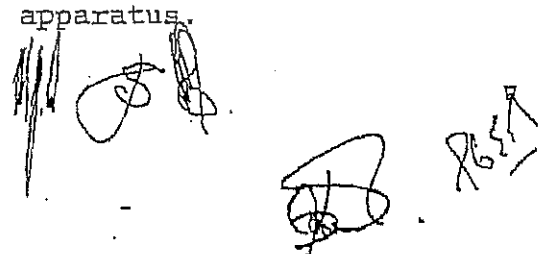
- Samples B1 and B2 by Optimum and Hendrina for chemical analysis and abrasiveness (subject to the provisions of paragraph 4.3 below with regard to sample preparation);
- Sample B3 by Optimum for 2 hourly "spot ash" determination and Sample B4 for a reference sample, which will be stored by Eskom for a period of 6 weeks.

4. SAMPLE PREPARATION

The samples shall be prepared for analysis in accordance with procedures laid down in this section which in turn are derived from the appropriate SABS Code of Practice (SABS 0135 Part 2 1977) and duplicate samples shall be delivered to Optimum.

4.1 Size Grading Sample (According to SABS 1079)

The grading analysis samples shall be collected daily and shall be reported and averaged over a period of one accounting month. One full increment from the sampler, weighing between 25 and 70 kg will be collected from each belt daily, reduced in mass, "air-dried" and the grading performed on a suitable apparatus.



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4.2 Total Moisture

The total moisture content of the coal sample for mass correction calculations on coal deliveries shall be determined by the procedure laid down in SABS 923 and shall be carried out on a representative portion of duplicate sample A, obtained by mixing and then coning and quartering.

4.3 Abrasiveness Index

The abrasiveness sample shall be prepared and the determination carried out in accordance with the currently applicable test methodology as agreed and approved by the Eskom/Industry Joint Working Group (on abrasiveness index testing). This method may be amended by mutual agreement once the investigations have been completed.

5. PROXIMATE ANALYSIS

5.1 The proximate analysis shall be determined in accordance with the SABS standard "SABS 925 - 928", "Proximate Analysis of Coal" any departure from this specification shall only be made in accordance with recommendations made by the SABS.

5.2 The moisture content determined in this analysis shall be employed for the calculation of the dry calorific value and the dry Volatile Matter. The analysis shall be carried out on the 212 micron analysis sample as described and shall be carried out at the same time as the calorific value determination. The method shall be as specified in "SABS 925" using a 1gm sample and not

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Page 6.

operating in an inert atmosphere or using nitrogen.

6. ANALYTICAL DISCREPANCIES : RESOLUTION

- 6.1 Should the difference between the analytical results obtained for a specific daily sample by Hendrina and Optimum, for any of the contractual qualities as defined in Part 2 of Schedule 1 to the agreement to which this schedule is annexed, exceed the following limits as laid down per reproducibility limits in the ISO Standard or as mutually agreed:

<u>Quality Parameter</u>	<u>Limit</u>
Total moisture	0,2% (mutual agreement).
Calorific value	0,3 MJ/kg (ISO)
Ash	0,3% absolute or 3% of mean result, whichever is greater (ISO)
Abrasive index	15% of the mean result (mutual agreement)
Volatile matter	0,5% absolute or 4% of mean result whichever is greater (ISO)

then Hendrina and Optimum shall:

- 6.1.1 each immediately repeat the analysis but only after machine calibration and checks against known standards have taken place;
- 6.1.2 in the event of discrepancy still existing each re-prepare a sub-sample from the original sample and re-analyse. If the analyses of the re-prepared samples are within limits as set out above, then this new result shall be accepted. If, however, a discrepancy still exists, then either:

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6.1.2.1 one of the analyses can be mutually agreed upon between the parties; or

6.1.2.2 either Hendrina or Optimum shall have the right to request that the reference sample referred to in paragraph 3 above be analysed by an independent laboratory as referee. The average of the result obtained by this laboratory and the result of that party with the smallest deviation from the referee's shall be accepted as the true result.

6.2 Hendrina and Optimum shall, at all reasonable times, have access to the sampling equipment, sample preparation and laboratory in order to establish whether acceptable standards of operation and accuracy are being maintained.

6.3 To facilitate the identification of error (i.e. preparation or analysis) each laboratory shall be familiar with the other laboratory's procedures, and check samples on a continuous or random basis shall be undertaken by mutual agreement.

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SCHEDULE 6

PLANS AND SCHEDULES OF RESERVES

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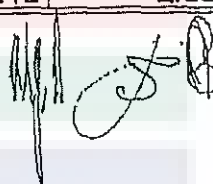

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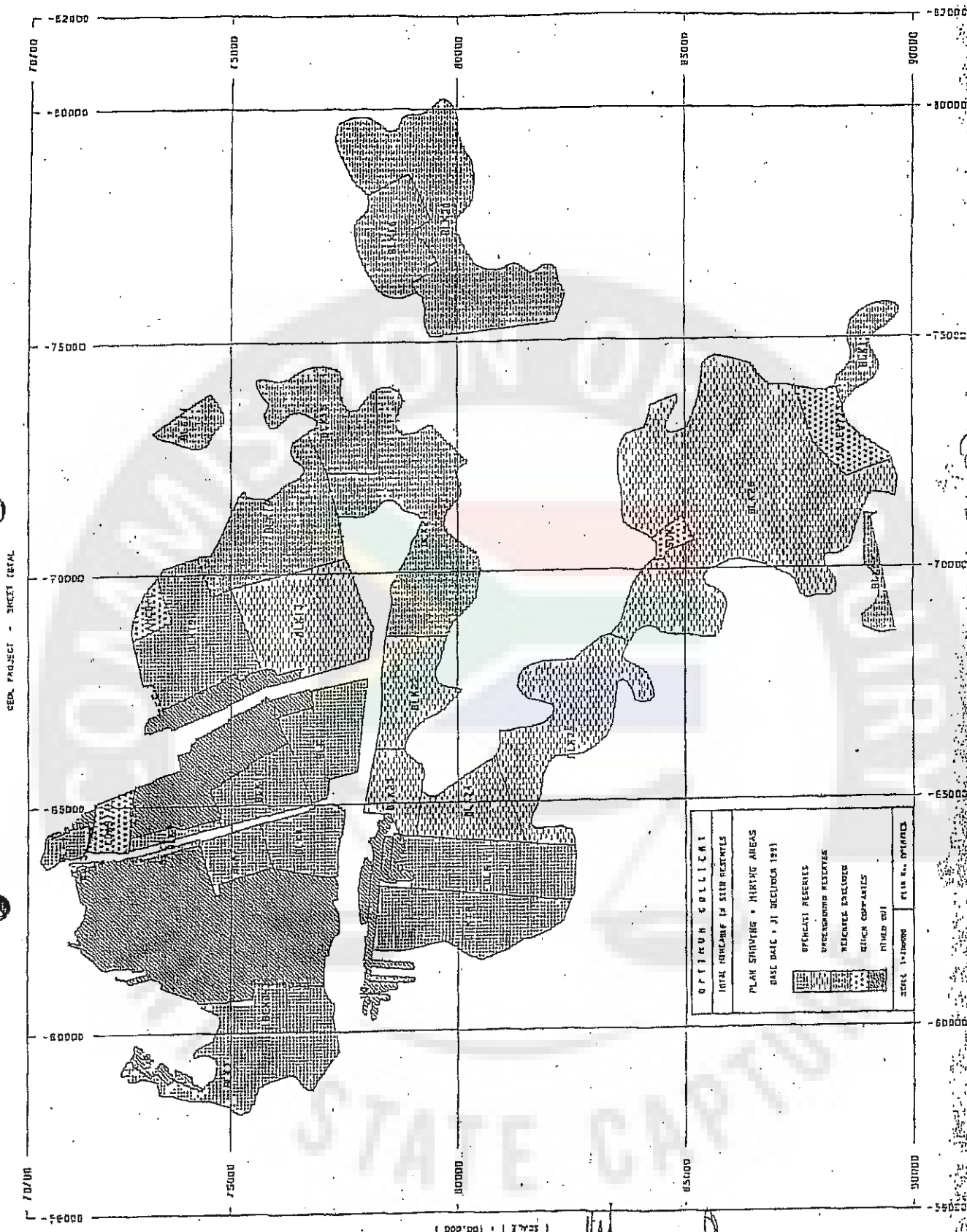
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SUMMARY
OPTIMUM AND KOORNFONTEIN
MINEABLE IN-SITU RESERVES

SCHEDULE 6

BLOCK/ AREA	SEAM	MINEABLE IN -SITU RESERVES		
		AREA (ha)	MEAN THICK (m)	TONS (mlls)
<u>OPTIMUM</u>				
Total	4L	2518.27	1.29	43.793
Mineable	2	9916.11	2.98	415.815
Reserves	2A	4567.44	1.32	82.532
TOTAL		17001.82	2.28	542.140
<u>KOORNFONTEIN</u>				
Total	2	4403.20	3.91	253.524
Mineable	4L	1717.70	2.86	79.536
Reserves	Opencast	579.40	2.87	27.838
TOTAL		6700.30	2.87	360.898
GRAND TOTAL		23702.12	2.58	903.04



OPTIMUM COLLIERIES

1. OPENCAST RESERVES

1.1 High Grade (+35% Yield at 10.2% Ash)

BLOCK/ AREA	SEAM	MINEABLE IN-SITU RESERVES		
		AREA (ha)	MEAN THICK (m)	TONS (mills)
BLK2	4L	75.92	1.63	1.594
	2	371.33	3.24	15.917
	2A	120.93	1.29	2.106
SUB TOTAL		568.18	2.61	19.617
BLK3	4L	150.85	1.46	2.894
	2	223.30	4.44	13.652
	2A	17.77	2.17	0.538
SUB TOTAL		391.92	3.19	17.084
BLK4	4L	0.00	0.00	0.000
	2	60.36	2.66	2.153
	2A	61.86	1.33	1.081
SUB TOTAL		122.22	1.99	3.234
BLK5	4L	0.00	0.00	0.000
	2	8.36	2.50	0.278
	2A	8.36	1.29	0.144
SUB TOTAL		16.72	1.90	0.422
BLK6	4L	25.32	1.10	0.381
	2	30.84	3.79	1.620
	2A	12.11	0.79	0.130
SUB TOTAL		68.27	2.26	2.131
BLK7	4L	109.04	1.31	1.954
	2	128.59	3.63	6.638
	2A	0.00	0.00	0.000
SUB TOTAL		237.63	2.57	8.592
BLK8	4L	201.47	1.36	3.650
	2	211.62	3.51	10.028
	2A	0.00	0.00	0.000
SUB TOTAL		413.09	2.46	13.678
BLK9	4L	0.00	0.00	0.000
	2	39.85	3.45	1.893
	2A	27.55	0.89	0.331
SUB TOTAL		67.40	2.40	2.224
BLK10	4L	54.40	1.32	0.963
	2	220.72	3.51	10.877
	2A	156.92	0.92	1.858
SUB TOTAL		432.04	2.29	13.698
BLK11	4L	261.12	1.23	4.307
	2	312.12	3.68	16.230
	2A	278.34	1.04	3.752
SUB TOTAL		851.58	2.07	24.289
BLK12	4L	117.03	1.29	2.038
	2	386.92	2.95	15.820
	2A	472.42	1.20	7.347
SUB TOTAL		976.37	1.90	25.205

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BLOCK/ AREA	SEAM	MINEABLE IN-SITU RESERVES		
		AREA (ha)	MEAN THICK (m)	TONS (mllls)
BLK18	4L	396.88	1.97	7.513
	2	394.41	4.77	25.767
	2A	250.02	0.81	2.754
SUB TOTAL		1041.31	2.52	36.034
TOTAL	4L	1392.03	1.35	25.294
HIGH	2	2386.42	3.68	120.873
GRADE	2A	1406.28	1.08	20.041
GRAND TOTAL		5186.73	2.35	166.208



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1.2 Low Grade (~35% Yield at 10.2% Ash)

BLOCK/ AREA	SEAM	MINEABLE IN-SITU RESERVES		
		AREA (ha)	MEAN THICK (m)	TONS (mills)
BLK2	4L	0.00	0.00	0.000
	2	0.00	0.00	0.000
	2A	247.34	1.95	6,902
SUB TOTAL		247.34	1.95	6,902
BLK3	4L	0.00	0.00	0.000
	2	0.00	0.00	0.000
	2A	197.89	3.30	9,286
SUB TOTAL		197.89	3.30	9,286
BLK7	4L	0.00	0.00	0.000
	2	0.00	0.00	0.000
	2A	117.13	1.50	2,577
SUB TOTAL		117.13	1.50	2,577
BLK8	4L	0.00	0.00	0.000
	2	0.00	0.00	0.000
	2A	158.60	1.94	4,292
SUB TOTAL		158.60	1.94	4,292
BLK12	4L	0.00	0.00	0.000
	2	89.26	2.93	3,743
	2A	0.00	0.00	0.000
SUB TOTAL		89.26	2.93	3,743
BLK18	4L	0.00	0.00	0.000
	2	100.28	6.10	8,778
	2A	164.07	3.42	8,090
SUB TOTAL		264.35	4.44	16,868
TOTAL	4L	0.00	0	0.000
LOW	2	189.54	4.61	12,521
GRADE	2A	885.03	2.46	31,147
GRAND TOTAL		1074.57	2.84	43,668

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2. UNDERGROUND RESERVES

2.1 High Grade (+35% Yield at 10.2% Ash)

BLOCK/ AREA	SEAM	MINEABLE IN-SITU RESERVES		
		AREA (ha)	MEAN THICK (m)	TONS (mills)
BLK13	2	168.49	2.13	5,043
BLK17	2	377.39	4.14	21,299
BLK22	2	290.81	2.97	12,145
BLK23	2	178.39	3.07	7,563
BLK24	2	192.59	2.97	8,031
BLK26	2	1775.63	3.18	78,260
TOTAL		2983.30	3.20	132,341

2.2 Low Grade (-35% Yield at 10.2% Ash)

BLOCK/ AREA	SEAM	MINEABLE IN-SITU RESERVES		
		AREA (ha)	MEAN THICK (m)	TONS (mills)
BLK13	2	392.22	2.40	13,636
BLK17	2	68.09	4.20	4,107
BLK24	2	91.88	3.24	4,233
BLK25	2	634.94	2.35	21,305
BLK26	2	274.75	3.35	13,088
TOTAL		1461.88	2.69	56,369
GRAND TOTAL		4445.18		188,710

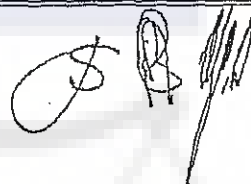
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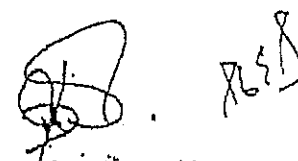
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3. RESERVES STERILISED BY UNDERGROUND MINING METHOD

BLOCK/ AREA	SEAM	MINEABLE IN-SITU RESERVES		
		AREA (ha)	MEAN THICK (m)	TONS (mills)
BLK13	4L	114.75	1.18	1.915
	2A	422.23	0.98	4.811
SUB TOTAL		536.98	1.01	6.726
BLK17	4L	443.41	1.26	7.736
	2A	304.97	0.94	3.947
SUB TOTAL		748.38	1.13	11.683
BLK22	4L	129.06	1.34	2.377
	2A	161.65	0.88	1.412
SUB TOTAL		290.71	0.97	3.789
BLK23	4L	158.99	1.15	2.491
	2A	82.55	0.84	0.990
SUB TOTAL		241.54	1.04	3.481
BLK24	4L	146.23	1.15	2.270
	2A	70.13	1.26	1.281
SUB TOTAL		216.36	1.19	3.551
BLK25	4L	75.93	1.08	1.107
	2A	56.94	0.84	0.650
SUB TOTAL		132.87	0.98	1.757
TOTAL RESERVES	4L	1068.37	1.22	17.896
STERILISED	2A	1098.47	0.92	13.091
GRAND TOTAL		2166.84	1.06	30.987





4. RESERVES EXCLUDED FROM PRESENT LIFE OF MINE PLAN

BLOCK/ AREA	SEAM	MINEABLE IN-SITU RESERVES		
		AREA (ha)	MEAN THICK (m)	TONS (mills)
BLK1	4L	0.00	0.00	0.000
	2	132.97	1.64	2.977
	2A	0	0	0
SUB TOTAL		132.97	1.64	2.977
BLK14	4L	0.00	0.00	0.000
	2	92.30	5.36	7.026
	2A	76.59	1.27	1.29
SUB TOTAL		168.89	3.51	8.316
BLK15	4L	0.00	0.00	0.000
	2	341.66	1.99	10.352
	2A	157.46	0.74	1.624
SUB TOTAL		499.12	1.60	11.976
BLK16	4L	0.00	0.00	0.000
	2	288.35	2.29	9.518
	2A	222.53	1.5	4.708
SUB TOTAL		510.88	1.95	14.226
BLK19	4L	0.00	0.00	0.000
	2	555.79	2.12	16.832
	2A	108.33	0.89	1.298
SUB TOTAL		664.12	1.92	18.130
BLK20	4L	0.00	0.00	0.000
	2	760.70	1.61	17.443
	2A	336.43	1.24	5.761
SUB TOTAL		1097.13	1.50	23.204
BLK21	4L	0.00	0.00	0.000
	2	584.38	2.67	23.913
	2A	212.8	0.88	2.642
SUB TOTAL		797.18	2.19	26.555
TAR ROAD	4L	57.87	1.06	0.603
	2	136.82	2.93	5.650
	2A	63.52	0.97	0.93
SUB TOTAL		258.21	2.03	7.183
TOTAL	4L	57.87	1.06	0.603
RESERVES	2	2892.97	2.22	93.711
EXCLUDED	2A	1177.68	1.11	18.253
GRAND TOTAL		4128.50	1.89	112.567

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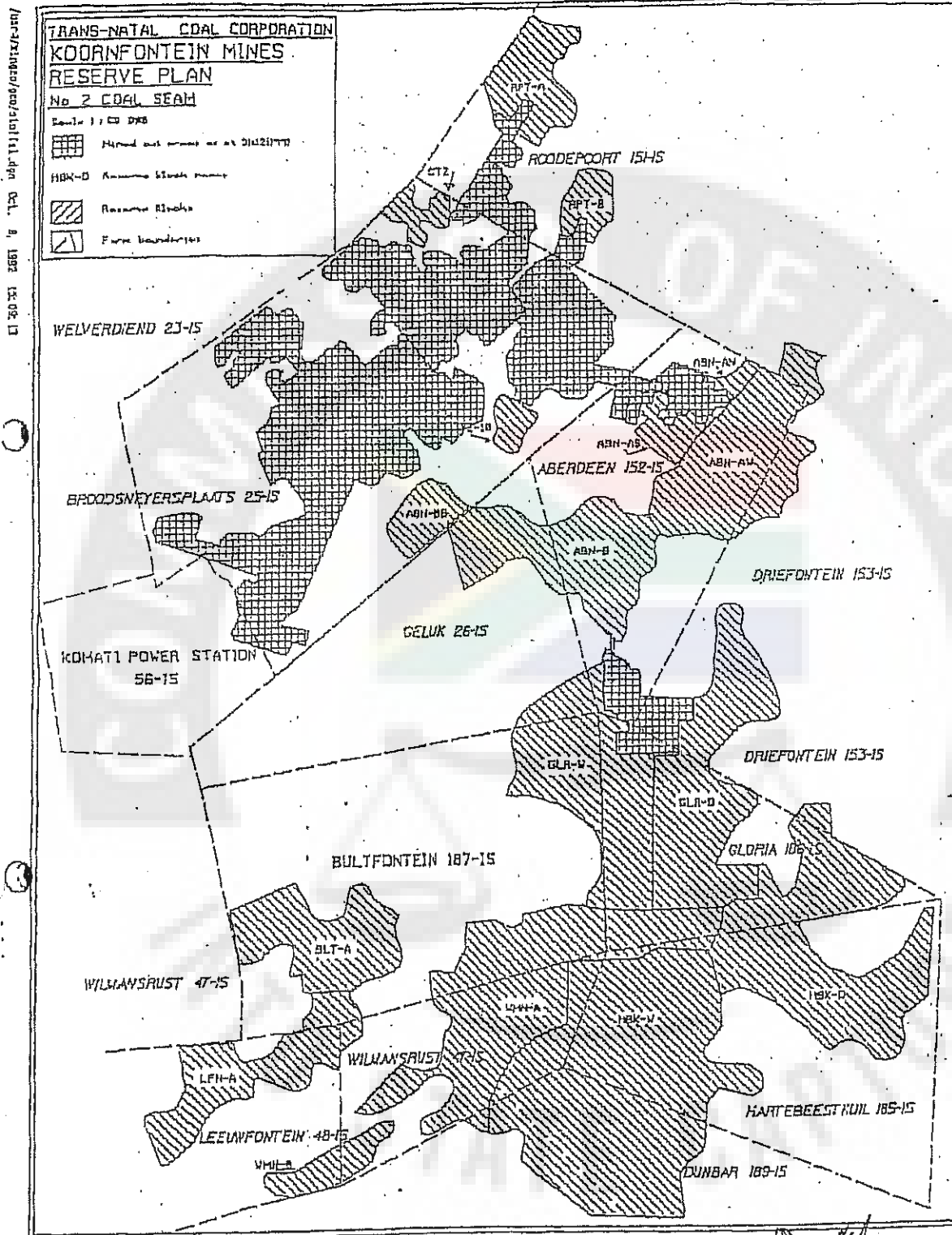
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TRANS-NATAL COLLIERIES
KOORNFONTEIN MINES
NO 2 COAL SEAM

RESERVES CALCULATED AS AT 01/01/92

BLOCK/ AREA	AVERAGE DEPTH (m)	MINEABLE IN-SITU RESERVES		
		AREA (ha)	MEAN THICK (m)	TONS (mills)
<u>HIGH GRADE RESERVES</u>				
ABN-AN	82	16.1	4.48	1.054
ABN-B	123	317.6	4.24	19.797
ABN-AS	104	52.0	4.47	3.409
ABN-AW	107	358.7	4.42	23.325
ABN-BB	86	70.3	3.43	3.577
VZ-10	118	34.6	4.44	2.259
SUB TOTAL	111	849.3	4.29	53.421
GLR-O	145	411.3	4.51	27.888
GLR-W	124	389.5	3.48	20.170
WMN-A	114	569.6	3.84	32.052
WNM-B	77	67.0	4.44	4.386
SUB TOTAL	124	1437.4	4.01	84.496
BLT-A	81	235.0	4.49	15.629
LFN-A	59	233.3	4.07	13.804
SUB TOTAL	70	468.3	4.29	29.433
TOTAL	111	2755.0	4.15	167.350
<u>LOW GRADE RESERVES</u>				
RPT-A	64	142.5	3.31	7.182
RPT-B	54	52.7	3.08	2.444
CTZ	102	39.6	2.98	1.766
SUB TOTAL	68	234.8	3.21	11.392
HBK-O	132	501.8	3.57	26.714
HBK-W	105	911.6	3.53	48.067
SUB TOTAL	115	1413.4	3.54	74.781
TOTAL	108	1648.2	3.5	86.173
GRAND TOTAL	110	4403.2	3.91	253.523



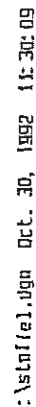
TRANS-NATAL COLLIERIES
KOORNFONTEIN MINES
NO 4-LOWER COAL SEAM

RESERVES CALCULATED AS AT 01/01/92

BLOCK/ AREA	AVERAGE DEPTH (m)	MINEABLE IN-SITU RESERVES		
		AREA (ha)	MEAN THICK (m)	TONS (mills)
ABERDEEN-ROODEPOORT-BLINKPAN				
RPT-A	48	256.1	2.95	12,421
RPT-B	37	81.2	3.16	4,177
ABN-A	85	419.2	2.87	19,250
ABN-B	99	278.3	3.24	14,700
BPN-DAVEL	72	122.1	3.39	6,744
BPN-DAV-10	92	46.4	2.79	2,112
BPN-HENDR	85	300.7	2.36	11,497
BPN-WITB	82	121.4	2.54	4,750
ABN-BETHAL	64	92.1	2.62	3,886
SUB TOTAL	75	1717.5	2.86	79,537
GLORIA-LEEUWFontein & KOORNFONTEIN BLOCK B OPENCAS				
GLR-A	131	262.0	2.69	11,839
GLR-B	122	54.7	2.37	2,131
LFN-A	47	262.8	3.16	13,868
SUB TOTAL	92	579.5	2.87	27,838
TOTAL	79	2297.0	2.87	107,375

\$ B 11/1

B.S.



21/TNC/29
11.12.92
MT/pvh
(17\TNC29,SH7)

SCHEDULE 7MINIMUM OFF-TAKE AND MINIMUM PAYMENTS1. Minimum off-take period

1.1 It is recorded and agreed that:

1.1.1 some of the fundamental considerations for TNC in entering into the agreement to which this schedule is annexed as Schedule 7 ("the agreement") are the facts that:

1.1.1.1 the Optimum operation is a multi-product operation;

1.1.1.2 the operations of Hendrina and Optimum are inter-dependent; and

1.1.1.3 sales to Hendrina in terms of this agreement will enable TNC to maintain the infrastructure in order to enable it to export coal;

1.1.2 the pricing structure specified in Schedule 3 to the agreement and the minimum and maximum tonnages have been arrived at so as to provide Eskom with the benefit of low prices for the coal to be supplied to Hendrina and to enable TNC to take advantage of the benefits of supplying coal for the export market; and

1.1.3 should Eskom fail to purchase the minimum tonnages in each year during the minimum off-take period as contemplated in 1.2, the

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Page 2.

viability of the supply of coal for the export market for TNC will be materially adversely prejudiced.

1.2.1

Accordingly, Eskom undertakes and shall be obliged during the minimum off-take period to purchase at least the minimum tonnage in each year during that period from TNC in terms of the agreement. Should Eskom however in any year during the minimum off-take period require less than the minimum tonnage ("the minimum off-take shortfall"), Eskom shall not be obliged to take delivery of such minimum off-take shortfall but shall nevertheless be obliged to and shall pay TNC by way of agreed liquidated damages an amount equal to the price per ton in terms of Schedule 3 to the agreement, escalated in accordance with the escalation factor, which it would have paid for the minimum off-take shortfall had it purchased such minimum off-take shortfall in accordance with its obligations in terms of this agreement.

1.2.2

TNC shall invoice Eskom in respect of the shortfall within 10 days after the end of each year and Eskom shall make payment of such invoiced amount by not later than the 15th day of the calendar month in which it is so invoiced.

1.2.3

Notwithstanding that Eskom may have made payment in respect of the minimum off-take shortfall in any year, the amount of the minimum off-take shortfall shall not be

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Page 3.

carried forward to or made up in any subsequent year and shall be forfeited by Eskom.

- 1.3 The parties may extend the duration of the minimum off-take period by agreement in writing.

2. After the expiry of the minimum off-take period

- 2.1 During the period of the agreement after the expiry of the minimum off-take period, should Eskom in any year fail to purchase any coal, Eskom shall pay to TNC the sum of R11 750 103 (1 January 1992 money values) escalated by the escalation factor by way of agreed liquidated damages.

- 2.2 TNC shall invoice Eskom in respect of the amount referred to in 2.1 within 10 days after the end of each year and Eskom shall make payment of such invoiced amount by not later than the 15th day of the calendar month in which it is so invoiced.
- [Handwritten signatures and initials are present below the text, including a large 'S' and 'R' in the center, and a signature 'XCS' in the bottom right corner.]*

21/TNC/29
11.12.92
MT/gvh
(T/TNC29,SH8)

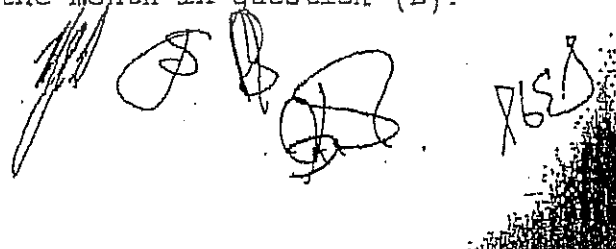
SCHEDULE 8

METHOD OF CALCULATION OF MONTHLY BASE PRICE

USING ANNEXURES 3A, 3B AND 3C

The monthly base price for each accounting month shall be determined as follows:

1. Determine tonnage of coal delivered in terms of clauses 11 and 12 of the agreement for the month in question (t).
2. Accumulate all monthly tonnages delivered for the year to date, including the tonnage in 1 above (T).
3. Annualise the accumulated tonnage by multiplying by 12 and dividing by the number of accounting months which have occurred in the year to date (A_t).
4. Using Annex 3A or 3B or 3C (whichever is applicable) calculate the annual price (A_p) corresponding to the annual tonnage calculated in 3 above.
5. Divide the annual price by the annual tonnage to determine (to six decimal places) a rate per ton (r).
6. Multiply the rate per ton by the accumulated tonnage for the year to date to obtain the price to date (p) to the nearest R1,00.
7. Subtract from the price to date all previous monthly base prices for the year. The remainder is the monthly base price for the month in question (B).

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Page 2.

ILLUSTRATIVE CALCULATION FOR MONTH "n"

(where January = 1, February = 2, etc.)

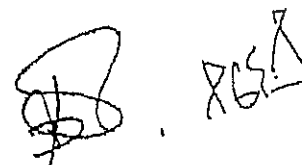
$$(2) \quad T = t_1 + t_2 + t_3 \dots + t_n$$

$$(3) \quad A_r = 12 \times T/n$$

$$(5) \quad r = A_p/A_r$$

$$(6) \quad p = T \times r.$$

$$(7) \quad B_n = p - B_1 - B_2 - B_3 \dots - B_{n-1}$$

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WITHOUT PREJUDICE

CE2



Eskom Holdings SOC Limited
Primary Energy Division

Fax: +27 11 800-6146

Attention: Pam Pillay
Senior Manager (Acting): Coal Operations

Your ref: 719558

23 April 2013

Dear Sirs

HENDRINA COAL SUPPLY AGREEMENT: SIZING SPECIFICATIONS

1. We refer to your letter dated 22 April 2013 regarding the sizing specifications in clause 3.4.3 of the First Addendum dated 8 April 2008 ("First Addendum") to the Hendrina Coal Supply Agreement ("CSA") between Eskom Holdings SOC Limited ("Eskom"), Optimum Coal Holdings (Pty) Ltd ("OCH") and Optimum Coal Mine Pty Ltd ("OCM") dated 4 January 1993 (as amended)
2. Following the discussions in September 2012, OCH has conducted detailed investigations in order to identify the reason for the changes in sizing and to identify possible remedial actions therefor. The results of these investigations have been shared with Eskom.
3. OCH has now reached the conclusion that the sizing specifications set out in clause 3.4.3 of the First Addendum are no longer realistically representative of the coal which OCM can reasonably be expected to achieve from the exploitation of the coal deposits constituting the Optimum Colliery, it being OCM's view that OCM is conducting its operations in a proper manner and in accordance with best industry standards.

2/.....

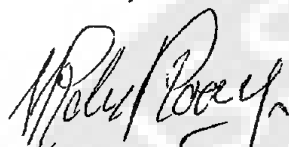
Optimum Coal Mine (Pty) Ltd Registration No: 2007/005308/07

A wholly owned subsidiary of Optimum Coal Holdings Limited
Business Address N11 Hendrina Road, Pullenshope Offramp, Pullenshope Private Bag X1201, Pullenshope, 1096, South Africa
Tel. +27 13 2965111
Registered Address 36 Fricker Road, Illovo, Johannesburg, Gauteng, 2196 P O Box 411333 Craighall 2024
Tel. +27 11 447 3858 Fax +27 11 447 5140
Directors: C M Ephron, R Cohen, S Blankfield

-2-

4. We therefore hereby formally notify Eskom that we wish to re-negotiate the specifications set out in clause 3.4.3 of the First Addendum as contemplated in clauses 3.4.4 and 3.4.5 of the First Addendum.
5. We look forward to hearing from you as to when Eskom can meet to commence such discussions and negotiations.

Yours faithfully



RIAAN DU PLOOY
Optimum Coal Mine (Pty) Limited



CE3

ARBITRATION AGREEMENT

between

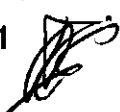

OPTIMUM COAL MINE PROPRIETARY LIMITED

OPTIMUM COAL MINE HOLDINGS PROPRIETARY LIMITED

and

ESKOM HOLDINGS SOC LIMITED

1



OPTIMUM COAL MINE PROPRIETARY LIMITED

First Claimant

OPTIMUM COAL MINE HOLDINGS
PROPRIETARY LIMITED

Second Claimant

and

ESKOM HOLDINGS SOC LIMITED

Defendant

ARBITRATION AGREEMENT

1 ARBITRATION

It is recorded that –

- 1.1 a dispute ("the hardship dispute") has arisen between the claimants and the defendant in respect of the claimants' claim that they have suffered hardship as contemplated in clause 27 of the Hendrina Coal Supply Agreement between the claimants and defendant, as amended from time to time;
- 1.2 the claimants and the defendant have agreed to refer the hardship dispute to arbitration ("the arbitration") on the terms as set out in clause

27.4 and 30 of the Hendrina Coal Supply Agreement read with this agreement.

2 APPOINTMENT OF AN ARBITRATOR

2.1 The parties hereby appoint Advocate Cedric Puckrin SC ("Puckrin") to be the arbitrator ("the arbitrator") to determine the hardship dispute.

2.2 In the event that, for any reason, the arbitrator is unable to act or continue as the arbitrator, the parties shall within 7 business days thereof agree on the appointment of a replacement arbitrator, failing which the provisions of clause 30.4 of the Hendrina Coal Supply Agreement shall regulate the appointment of the replacement arbitrator.

3 CONDUCT OF THE ARBITRATION

3.1 The arbitrator shall have the power to adjudicate the hardship dispute.

3.2 Save as may be agreed or as may be directed by the arbitrator in his discretion, the Uniform Rules ("the Rules") will apply to the conduct of the arbitration.

4 POWERS OF THE ARBITRATOR

In particular and without detracting from the generality of the foregoing, it is agreed that the arbitrator will have the power to –

- 4.1 make interim awards and rulings including interim awards on issues which may be determined in advance in terms of Rule 33(4) of the Rules;
- 4.2 call for and convene preliminary meetings for the purpose of dealing with any matters which may be considered necessary by either the arbitrator or the parties to facilitate the arbitration;
- 4.3 hear and consider interlocutory applications expeditiously and make rulings in respect thereof and/or give directions;
- 4.4 give all such directions and make such rulings relating to the conduct of the arbitration and associated matters as he in his discretion considers appropriate for their just and speedy determination.

5 THE AWARD

- 5.1 The arbitrator shall publish a written award with reasons as soon as practical and no later than two (2) months of the conclusion of the arbitration hearing.

5.2 The award may be published to the parties by telefax or e-mail.

5.3 The award of the arbitrator shall be final and binding on the parties, subject to the appeal process set out below.

6 APPEAL PROCESS

6.1 The parties will have a right of appeal and cross-appeal against the arbitrator's award in relation to the hardship dispute to an appeal panel.

6.2 Such appeal and/or cross-appeal shall be noted by delivering a notice of appeal and/or cross-appeal ("the notice of appeal") *mutatis mutandis* in accordance with rule 49(3) of the Rules, such notice of appeal to be delivered within 15 Court days of the publication of the arbitrator's award and notice of cross-appeal if any, within 5 Court days after delivery of the notice of appeal.

6.3 The appeal and/or cross-appeal will be to a panel of three arbitrators ("the appeal panel").

6.4 The appeal panel will be appointed as follows –

6.4.1 each party will nominate an appeal arbitrator ("the appeal arbitrators") of their choice;

6.4.2 failing agreement between the parties as to the third arbitrator within seven (7) days of delivery of the notice of appeal, the appeal arbitrators will then nominate a further appeal arbitrator of their choice.

6.5 It is the intention of the parties that the appeal panel should be agreed by consensus on the basis that the members of the appeal panel shall be drawn from the ranks of -

6.5.1 senior legal practitioners (i.e. of not less than 10 years' standing) i.e. attorneys or advocates on the practising roll in South Africa;

6.5.2 retired judges.

6.6 The appeal panel will determine the procedure for the appeal.

6.7 At the conclusion of the appeal, the appeal panel shall as soon as practicable publish the written appeal award.

6.8 Such appeal award shall be final and there shall be no further right of appeal.

DATED at Sandton this 12th day of December 2013



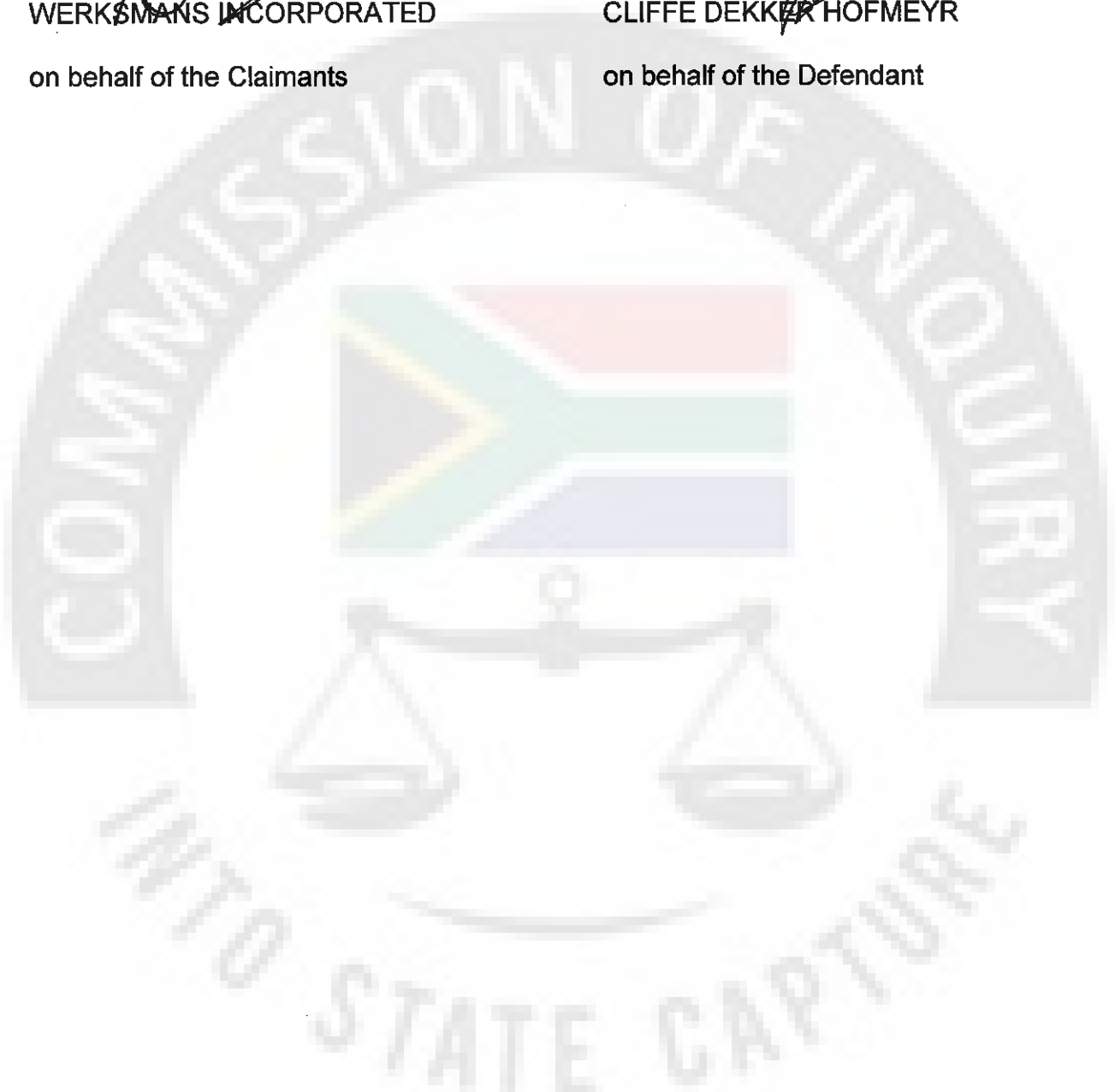
WERKSMANS INCORPORATED

on behalf of the Claimants



CLIFFE DEKKER HOFMEYR

on behalf of the Defendant



CONFIDENTIAL

AGREEMENT BETWEEN ESKOM HOLDINGS SOC LIMITED AND OPTIMUM COAL MINE PROPRIETARY LIMITED AND OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED REGARDING A PROCESS TO ENGAGE ON THE ISSUES BETWEEN THE PARTIES AND FOR THE REVIEW AND FUTURE EXTENSION OF THE COAL SUPPLY AGREEMENT FOR THE HENDRINA POWER STATION

- 1 Eskom Holdings SOC Limited ("**Eskom**") and Optimum Coal Mine Proprietary Limited ("**Optimum Mine**") and Optimum Coal Holdings Limited ("**Optimum Holdings**") (jointly referred to as the "**Parties**") are party to a coal supply agreement with addenda ("**the CSA**") which regulates the supply and delivery of coal to Eskom's Hendrina Power Station.
- 2 A number of impasses and/or issues ("**Issues**") have arisen between the Parties relating to the interpretation, implementation and execution of the CSA over an extended period. These Issues are:
 - 2.1 the interpretation, implementation and execution of the penalty provisions of the CSA;
 - 2.2 the interpretation, implementation and execution of the sampling process contemplated by the CSA;
 - 2.3 the quality of the coal supplied to Eskom and the price adjustment Eskom is entitled to impose in respect thereof;
 - 2.4 issues relating to the availability and utilisation of the supply infrastructure;
 - 2.5 the escalation mechanism in the CSA;
 - 2.6 the hardship arbitration initiated by Optimum Mine and Optimum Holdings against Eskom, in terms of which Optimum Mine and Optimum Holdings invoked the hardship provisions of the CSA; and
 - 2.7 the supply from Optimum Mine to Eskom after 31 December 2018.

The Parties reserve the right to supplement and refine the Issues through the Settlement Process (as defined below).

- 3 The Parties each believe that they have various accrued rights and claims arising out of the Issues (including in respect of Optimum Mine, an accrued right of cancellation in respect of the CSA). The Parties, however, recognise that that they have a mutual interest in ensuring that their commercial relationship is sustained for the duration of the CSA and potentially extended beyond the duration of the CSA. Accordingly, without waiving or compromising such rights and claims in any way and without acknowledging any liability or wrongdoing relating to any of the Issues, the Parties would like to engage in a negotiated process ("**Settlement Process**") in order to attempt to reach a composite

AGREEMENT BETWEEN ESKOM HOLDINGS SOC LIMITED AND OPTIMUM COAL MINE PROPRIETARY LIMITED AND BETWEEN THE PARTIES AND FOR THE REVIEW AND FUTURE EXTENSION OF THE COAL SUPPLY AGREEMENT FOR THE HENDRINA POWER STATION



- 4 agreement which attempts to address each of the Issues and results in the extension of the supply relationship between Eskom and Optimum Mine.
- 5 The Parties agree that the Settlement Process shall be conducted on the following terms and conditions:
 - 5.1 The discussions will be conducted on a without prejudice basis and each Party fully reserves all of its rights in respect of all accrued rights and claims as at the date of this agreement on the basis that if the Settlement Process terminates at any time, then each Party shall be fully entitled to exercise any of its accrued rights and bring any of its accrued claims.
 - 5.2 The Parties will instruct their attorneys to suspend the hardship arbitration on the following basis by no later than 23 May 2014:
 - 5.2.1 the suspension of the arbitration will be entirely without prejudice to the claim;
 - 5.2.2 notwithstanding the suspension of the arbitration, the Parties will arrange with the arbitrator and the Party's counsel to reserve the dates required for a hearing in March 2015 on the basis that if the Parties agree the Terms of Reference on or prior to the Validation Date (as defined below) then such dates can be released;
 - 5.2.3 if the Settlement Process is terminated on or before the Validation Date, then Optimum Mine may by notice in writing to Eskom immediately reinstate the hardship arbitration and the Parties will within two weeks meet to agree a revised timetable for the hardship arbitration with a March 2015 hearing date; and
 - 5.2.4 If the Settlement Process is terminated at any other time, then Optimum may by notice in writing to Eskom immediately reinstate the hardship arbitration on the basis that the Parties will as soon as possible thereafter meet in order to agree a new timetable and hearing date for the hardship arbitration.
 - 5.3 Eskom will, with retrospective effect to 1 May 2014 until the termination of the Settlement Process suspend the implementation of all penalties (including AI, CV, ash, sizing and short supply) in relation to the CSA, on the condition that Optimum Mine continues delivering coal in accordance with the specification to be agreed in the Terms of Reference.
 - 5.4 The Parties will establish negotiation teams who will be responsible for representing the Parties in the Settlement Process. The Eskom team will comprise Kiren Maharaj, Johann Bester, Andrea Williams, Gert Opperman and Ayanda Ntshanga. The Optimum team will comprise Clinton Ephron, Shaun Teichner, Riaan du Plooy and Dimitri Yiotopoulos. The Parties may supplement their teams from time to time.
 - 5.5 The Parties will, before 13 June 2014 ("Validation Date") meet for two days in order to agree Terms of Reference which shall contain, inter alia:
 - 5.5.1 a detailed description of each of the Issues to be negotiated (Technical, Commercial and Contractual), it being agreed that the Terms of Reference will include as an issue for negotiation the refund to Optimum Mine of penalties deducted by Eskom in respect of the period from 1 September 2013 to 30 April 2014 as well as Eskom's

AGREEMENT BETWEEN ESKOM HOLDINGS SOC LIMITED AND OPTIMUM COAL MINE PROPRIETARY LIMITED AND BETWEEN THE PARTIES AND FOR THE REVIEW AND FUTURE EXTENSION OF THE COAL SUPPLY AGREEMENT FOR THE HENDRINA POWER STATION



historic claims in relation to qualities which includes amongst others sizing.

- 5.5.2 The parameters for the negotiation in respect of each of the Issues (including, in respect of price for the remainder of the term of the CSA and any supply thereafter, the pricing philosophy that will be utilised to agree such prices); and
- 5.5.3 The time period within which the negotiated process should be completed in respect of each of the Issues.
- 5.6 If the Parties are unable by the Validation Date to agree and execute the Terms of Reference, each of the Parties shall be entitled to advise the other that it no longer wishes to participate in the Settlement Process in which case the Settlement Process shall terminate.
- 5.7 If the Parties reach agreement on the Terms of Reference by the Validation date, then:
- 5.7.1 Eskom will commence its internal process in order to obtain the necessary mandate to reach agreement with Optimum Mine and Optimum Holdings pursuant to the Terms of Reference; and
- 5.7.2 The Parties shall negotiate in good faith to reach agreement on all issues in accordance with the Terms of Reference, with the intention of executing a binding term sheet ("Term Sheet") or, if possible, a coal supply agreement reflecting such agreement by 31 December 2014.
- 5.8 The Parties agree that it is their current intention to conclude a new coal supply agreement which will govern the supply from Optimum Mine to Eskom from 1 January 2015.
- 5.9 If by 31 December 2014, a Term Sheet or new coal supply agreement has not been executed then (unless the Parties agree otherwise in writing) each of the Parties shall be entitled to advise the other that it no longer wishes to participate in the Settlement Process in which case the Settlement Process shall terminate.
- 5.10 If a Term Sheet is executed by 31 December 2014 but the new coal supply agreement is not ready for signature, then the Parties shall execute the coal supply agreement as soon as possible thereafter (but by no later than 31 March 2015).
- 5.11 The Parties acknowledge and agree that:
- 5.12 Any revised terms or conditions negotiated and agreed to, included but not limited to a new coal supply agreement shall be subject to any requisite Board approval of the Parties.
- 5.13 The implication for Eskom in terms of the Public Finance Management Act No. 1 of 1999 ("the PFMA") must be considered, specifically should it be required that Eskom must reach a compromise relating to any potential claim it has against Optimum Mine and Optimum Holdings.

AGREEMENT BETWEEN ESKOM HOLDINGS SOC LIMITED AND OPTIMUM COAL MINE PROPRIETARY LIMITED AND
BETWEEN THE PARTIES AND FOR THE REVIEW AND FUTURE EXTENSION OF THE COAL SUPPLY AGREEMENT FOR
THE HENDRINA POWER STATION



6. The following is a summary of the proposed process

NO	PROCESS	DEADLINE
1	Agreement between the attorneys regarding the suspension of the hardship arbitration	23 May 2014
2	Agree Terms of Reference	13 June 2014
3	Each Party to obtain relevant governance and regulatory approvals	31 Dec 2014
4	Agree Term Sheet or new coal supply agreement	31 Dec 2014
5	Agree new coal supply arrangement	31 Mar 2015
6	Frequency of meetings to be held bi-monthly or as agreed with respect to addressing specific Issues	

- 7 The existence, contents and terms of this agreement are confidential and, save as may be required by law, no Party shall disclose same to any third party, other than its affiliates and their respective directors, employees, officers and advisors.
- 8 This agreement constitutes the sole record of the agreement between the Parties in relation to the subject matter hereof. No Party shall be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. No addition to, variation, novation or agreed cancellation of any provision of this agreement shall be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties.
- 9 No indulgence or extension of time which any Party may grant to any other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.
- 10 All provisions of this agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision of this agreement which is or becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions of this agreement shall remain of full force and effect. The Parties declare that it is their intention that this agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 11 Each Party shall bear and pay the costs incurred by it in respect of the negotiation, drafting, preparation and execution of this agreement.
- 12 The signature by any Party of a counterpart of this agreement shall be as effective as if that Party had signed the same document as all of the other Parties.

AGREEMENT BETWEEN ESKOM HOLDINGS SOC LIMITED AND OPTIMUM COAL MINE PROPRIETARY LIMITED AND BETWEEN THE PARTIES AND FOR THE REVIEW AND FUTURE EXTENSION OF THE COAL SUPPLY AGREEMENT FOR THE HENDRINA POWER STATION



SIGNED at SUNNINGHILL on 23 MAY 2014.

As witnesses:

1 [Signature] PA. NTSHANGA For: **ESKOM HOLDINGS SOC LIMITED**

2 [Signature] V. NCUBE [Signature]
 Signatory: KIRAN MAHARAJ
 Capacity: DIVISIONAL EXECUTIVE
 Authority: PRIMARY ENERGY

SIGNED at MELROSE on 23 MAY 2014.

As witnesses:

1 [Signature] S. Bontkield For: **OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED**

2 [Signature] [Signature]
 Signatory: CLINTON EKHIZON
 Capacity: DIRECTOR
 Authority:

AGREEMENT BETWEEN ESKOM HOLDINGS SOC LIMITED AND OPTIMUM COAL MINE PROPRIETARY LIMITED AND
 BETWEEN THE PARTIES AND FOR THE REVIEW AND FUTURE EXTENSION OF THE COAL SUPPLY AGREEMENT FOR
 THE HENDRINA POWER STATION

FOURTH ADDENDUM TO THE HENDRINA COAL SUPPLY AGREEMENT

amongst

ESKOM HOLDINGS SOC LIMITED

and

OPTIMUM COAL MINING PROPRIETARY LIMITED

and

OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED

FOURTH ADDENDUM TO THE HENDRINA COAL SUPPLY AGREEMENT

amongst

ESKOM HOLDINGS SOC LIMITED

OPTIMUM COAL MINE PROPRIETARY LIMITED

and

OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED

1 DEFINITIONS AND INTERPRETATION

1.1 Clause 2 of the CSA, as amended or supplemented by the First Addendum and Second Addendum (including the definitions included in clause 1 of the First Addendum), will apply in the interpretation of the meaning of words and expressions and cognate expressions and, for the purposes of this Addendum, unless the context indicates a contrary intention, the following words and expressions will bear the meanings assigned to them below, and cognate expressions will bear corresponding meanings –

1.1.1 "**Addendum**" means this document, together with its annexures, each as may be amended from time to time;

1.1.2 "**CSA**" means the coal supply agreement in terms of which Optimum Colliery supplies coal to Eskom's Hendrina Power Station, as amended by the First Addendum, Second Addendum and Third Addendum;

1.1.3 "**First Addendum**" means the First Addendum to the CSA, entered into on 8 April 2008;

1.1.4 "**Optimum**" means, collectively, OCM and OCH;

1.1.5 "**Second Addendum**" means the Second Addendum to the CSA entered into on 12 April 2011;

- 1.1.6 **"Third Addendum"** means the Third Addendum to the CSA entered into on 11 February 2013; and
- 1.1.7 **"Signature Date"** means when this Addendum has been signed by all Parties (whether or not in counterpart), the latest of the dates on which this Addendum (or any counterpart) was signed by any Party.
- 1.2 Where any term is defined within a particular clause other than this clause 1, that term shall bear the meaning ascribed to it in that clause wherever it is used in this Addendum.

2 INTRODUCTION

2.1 It is recorded that -

- 2.1.1 on 23 May 2014 the Parties concluded an agreement ("**Co-operation Agreement**") in which the Parties agreed to engage in a negotiated process ("**Settlement Process**") in order to attempt to reach a composite agreement which addresses each of the Issues (as defined in the Co-operation Agreement) and results in the extension of the supply relationship between Eskom and OCM, it being agreed between the Parties that the discussions were to be conducted on a without prejudice basis and each Party would fully reserve all of its rights in respect of all accrued rights and claims as at the date of signature of the Co-Operation Agreement on the basis that (unless otherwise agreed) if the Settlement Process was terminated at any time, then each Party would be fully entitled to exercise any of its accrued rights and bring any of its accrued claims; and
- 2.1.2 the Parties have reached a settlement in relation to the Issues subject to the Settlement Process, which settlement comprises an amendment to the CSA (including an extension) and various reciprocal waivers and releases by the Parties; and
- 2.1.3 the Parties wish to record the terms of that settlement and the amendments to the CSA in writing.

2.2 Accordingly, the Parties agree as set out below.

3 AMENDMENTS TO THE CSA

3.1 The Parties hereby agree that the CSA is amended on the basis set out below with retrospective effect from 1 April 2015 ("**Effective Date**"). The provisions set out below supersede the relevant provisions of the CSA dealing with the subject matter of the clauses below. If there is any conflict between any provision of the CSA (including in its schedules) and the provisions set out in this Addendum, then the provisions in this Addendum shall prevail.

3.1.1 Duration

The CSA shall, subject to clause 3.1.6, continue until a total quantity of 39 375 000 tonnes of coal (other than coal which is rejected in accordance with clause 3.1.4.4) ("**Total Contract Quantity**") has been supplied by OCM to Eskom after 1 April 2015, it being recorded for the sake of clarity that based on the current estimated annual tonnage of 4 500 000 tonnes it is expected that the CSA will endure until approximately 31 December 2023.

3.1.2 Contract Price and Adjustment

3.1.2.1 Subject to clause 3.1.2.4, the price payable by Eskom to OCM for the coal supplied will be as follows -

3.1.2.1.1 during the period from 1 January 2015 to 31 December 2018 ("**First Period**"), the base price ("**First Base Price**") will be R18.85 per GJ (moisture free), excluding VAT;

3.1.2.1.2 during the period from 1 January 2019 to the date of termination of the CSA, the base price ("**Second Base Price**"), will be R24.31 per GJ (moisture free), excluding VAT;

3.1.2.1.3 the First Base Price and Second Base Price will be adjusted on each anniversary of 1 February 2015 ("**Base Date**") in

accordance with the annual price adjustment formula set out in Annexure C and using the following adjustment indices table:

Cost Component	Proportion	Index and Source Table	Base Date Index Value (B)	Base Date	Adjusted
Labour	41%	Chamber of Mines' annual salary increase agreement with NUM + a percentage to be agreed or determined in accordance with clause 3.1.2.2	100	31 January 2015	Annually
Diesel	5%	DME 0.05% Sulphur, Reef	1028.09	31 January 2015	Monthly
Electricity	23%	The average annual Eskom Megaflex tariff (or replacement tariff) applicable as at the Base Date calculated in accordance with the formula in annexure A	52.45	31 January 2015	Annually
Mechanical Engineering Materials	21%	SEIFSA – Table G Base date Dec 2012 =100	106.00	31 January 2015	Annually
Electrical Engineering Materials	10%	SEIFSA - Table G Base Date Dec 2012 =100	107.5	31 January 2015	Annually
Total	100%				

3.1.2.1.4

the First Base Price and Second Base Price, as the case may be, so adjusted in terms of clause 3.1.2.1.3 will, subject to clause 3.1.2.1.5, be the price payable for coal delivered during the calendar year commencing on the relevant anniversary of the Base Date;

- 3.1.2.1.5 the First Base Price and Second Base Price will also be adjusted on a monthly basis for changes in the diesel cost component in accordance with the monthly price adjustment formula set out in Annexure C and the relevant details set out in the table above; and
- 3.1.2.1.6 examples of the calculation of the annual and monthly price adjustments are set out in Annexure C.
- 3.1.2.2 The percentage to be added to the Chamber of Mines' annual salary increase agreement with NUM will be agreed between OCM and Eskom by 30 September 2015 failing which it will be 2%.
- 3.1.2.3 It is recorded that as the Chamber of Mines publishes an annual percentage increase as opposed to an index, a notional index value at 31 January 2015 of 100 will be assumed, and all future percentage Chamber of Mines increases will be applied to calculate an updated index value to be used at each Price Adjustment Date (as defined below).
- 3.1.2.4 In the event that OCM's opencast mining operations are restarted during the First Period and OCM, accordingly, resumes exporting coal, OCM shall pay to Eskom an amount of R[], excluding VAT, per ton of coal exported during the First Period. OCM shall, on a quarterly basis, deliver to Eskom a statement reflecting the tons exported and the amount payable by OCM to Eskom in terms of this clause 3.1.2.4. Eskom shall deduct the amount reflected in such statement from the first invoice after such quarter.
- 3.1.2.5 It is recorded for the avoidance of doubt that –
- the Base Price is a per GJ price and, accordingly, the amount payable by Eskom for each day's consignment will be determined based on the weighted average calorific value of such consignment;

3.1.2.5.1 the price that will be payable from the beginning of the Second Period will be the Second Base Price escalated by the Price Adjustment Factor on 1 January 2019; and

3.1.2.5.2 Schedules 3 and 4 of the CSA and clause 3.5 of the Second Addendum shall no longer be applicable with effect from the Effective Date.

3.1.3 **Review of Adjustment Indices Table**

3.1.3.1 The Parties shall consult with each other by no later than 3 months before each anniversary of the Base Date ("**Price Adjustment Date**") in good faith, with the objective of reaching agreement on the following –

3.1.3.1.1 whether or not any of the indices and source tables (as set out in the third column of the above adjustment indices table) measuring changes in the cost elements as set out in the first column of the above adjustment indices table are still applicable as an accurate measurement of actual cost movement in respect of that cost element for OCM and appropriate replacement indices and sources tables to be utilised, if necessary; and

3.1.3.1.2 whether or not the proportions set out in the second column of the above adjustment indices table accurately reflect the proportion which the corresponding cost element set out in the first column of the above adjustment indices table, constitutes the costs incurred by OCM in order to deliver the coal to Eskom.

3.1.3.2 If the Parties have not reached agreement in respect of the matters set out in clause 3.1.3.1, at least 1 (one) month prior to each Price Adjustment Date, the relevant dispute shall be referred for determination in terms of the provisions of clause 36.1 of the Shanduka CSA.

3.1.3.3 If any dispute as contemplated in clause 3.1.3.2 above, has not been resolved or determined before the relevant Price Adjustment Date, the indices and source tables in use before the dispute was declared shall be applied until the dispute has been resolved, whereafter, the agreement between the Parties or the determination of the independent expert shall be applied retrospectively and any necessary adjustment payments shall be included in OCM's next invoice/s issued after such resolution or determination.

3.1.4 **Quality**

3.1.4.1 The specifications, measurement, rejection rights and penalties for coal supplied to Eskom will be as set out in the following table -

Quality Parameter	Unit	Expected Quality Parameter	Quality Parameter Limit	Measurement basis	Measurement	Rejection and Penalties
Calorific Value	MJ/kg	23.45	<21.65	Moisture Free	Daily weighted average	Adjustment through price (ie through the fact that the price is calculated based on the GJ delivered) and ultimate rejection for < 21.65 – no other adjustment
Ash	%	27.5	>31.5	Moisture Free	Daily weighted average	Adjustment through price (ie through the fact that the price is calculated based on the GJ delivered) and ultimate rejection for > 31.5 – no other adjustment
Moisture	%	9%	>12%	As Received	Daily weighted average	There will be no adjustment or rejection but Eskom will have the right to request Optimum to stop supplies as per clause 3.1.4.8 below
Abrasive Index (Eskom Mining House Method)	mgFe/4 kg	600	> 600	Moisture Free	Monthly weighted average	Penalty for > 600 as per clause 3.1.4.4 below No rejection
Sulphur	%	1.5 %	> 1.6%	Moisture Free	Daily weighted average	Rejection No penalty
Volatiles	%	22.4%	< 20.5%	Moisture Free	Daily weighted average	Rejection No penalty
AFT (Initial deformation)	°C	1,300≥	None	N / A	None	None
Sizing < 6mm <2.38mm <0.81mm	% % % %	≤ 55% ≤ 35% ≤20%	None None >20%	N / A	Monthly weighted average	Penalty for >20% -0.81mm only as per clause 3.1.4.6 below No rejection

3.1.4.2 The Coal Quality Management Procedure ("**CQMP**") enclosed hereto as annexure **D** shall be utilised by the Parties from the Effective Date for the purpose of measuring and managing the Quality Parameters of coal supplied to Eskom in accordance with the CSA (as amended by this Addendum).

3.1.4.3 The Parties agree that in respect of AFT (initial deformation), the Expected Quality Parameter sets out the quality which OCM expects to deliver. However, if OCM does not meet the Expected Quality Parameter, there will be no rejection, penalty or adjustment and OCM shall not be liable for any claim and/or damage.

3.1.4.4 If a consignment of coal on a particular day is rejected due to the weighted daily average not meeting the CV, Ash, Sulphur or Volatiles Quality Parameter Limit, then -

3.1.4.4.1 Eskom shall not to pay for such consignment of coal and such consignment of coal will not reduce the Total Contract Quantity; and

3.1.4.4.2 such consignment of coal shall not be included in the calculation of the monthly weighted average for Abrasive Index and Sizing (ie the relevant weighted average shall be calculated in respect of the coal delivered over the balance of the days in the relevant month).

3.1.4.5 If the monthly weighted average Abrasive Index level is > 600 mgFe/4kg, OCM will be liable to pay a penalty to Eskom, calculated on the following basis -

> 600-700	R4.73 per tonne
> 700-800	R18.91 per tonne
> 800- 850	R23.64 per tonne
>850-900	R28.36 per tonne

>900

R42.55 per tonne

3.1.4.6

OCM shall, within one month of the Signature Date, advise Eskom in writing as to what changes it would require to be made to the CSA in respect of quantity, price and qualities for coal to be supplied consistently with an Abrasive Index Quality Parameter of less than 600 mgFe/4kg ("**Revised Terms**"). Eskom shall advise OCM in writing within one month of receipt of the Revised Terms whether it accepts the Revised Terms. If Eskom accepts the Revised Terms then the Parties shall sign a further addendum affecting the required changes to the CSA to give effect to the Revised Terms. If Eskom fails to respond within such one month period, it shall be deemed to have rejected the Revised Terms and the Abrasive Index penalties set out in clause 3.1.4.5 shall continue in full force and effect.

3.1.4.7

If the monthly weighted average size distribution of coal delivered by OCM contains more than 20% of coal with a size of less than 0.81mm, Eskom shall be entitled to reduce the price payable to OCM for the coal delivered in such month by an amount calculated as follows -

$$A = B \times (C - 20\%) \times D$$

where:

A = the amount by which the price for such coal shall be reduced, to be calculated;

B = the total number of tonnes of coal delivered by OCM during the relevant month;

C = the percentage of coal delivered during the 30 day period with a sizing of less than 0.81mm; and

D = 50% of the price payable by Eskom for the coal delivered during the relevant month.

An example of the calculation of the various adjustments and penalties is set out in Annexure B.

3.1.4.8 OCM shall notify Eskom if the coal being delivered is above the Quality Parameter Limit for moisture and shall stop delivering such coal and request Eskom if they want OCM to continue delivering such coal which does not meet the Quality Parameter Limit in respect of moisture. Eskom shall then within one hour advise OCM whether it wishes to accept delivery of such coal. If Eskom elects to receive such coal, then, notwithstanding the moisture parameters of such coal being above the Quality Parameter Limit, the price of such coal shall be paid by Eskom and such coal shall be deemed delivered and reduce the Total Contract Quantity.

3.1.4.9 It is agreed that in all circumstances the maximum amount by which the price of coal delivered shall be reduced (including through rejection and penalties) shall not exceed the price of such coal and in no circumstances will OCM be required to pay Eskom for coal delivered.

3.1.4.10 It is recorded and agreed for the avoidance of doubt that Schedules 1 and 2 of the CSA, clauses 3.3, 3.4, 3.5 and 3.6 of the First Addendum and clause 3.3 and 3.4.1 of the Second Addendum shall no longer be applicable with effect from the Effective Date.

3.1.5 **Quantity**

3.1.5.1 The total quantity to be supplied by OCM to Eskom for the balance of the term of the CSA from 1 April 2015 will, subject to clause 3.1.6, be 39 375 000 tonnes or 4 500 000 tonnes per calendar year, except in respect of the 2015 calendar year where the annual quantity will be 3 337 500 tonnes.

3.1.5.2 OCM shall deliver and Eskom will take off in each month, a quantity of coal between the Minimum Monthly Quantity and the Maximum Monthly Quantity agreed or determined in accordance with clause 3.1.6.

3.1.5.3 OCM shall deliver and Eskom will take off in each year, a quantity of coal between the Minimum Annual Quantity and the Maximum Annual Quantity in accordance with clause 3.1.6.

year	Annual Quantity (tonnes)	Minimum Annual Quantity (97.5% of Annual Quantity) (tonnes)	Maximum Annual Quantity (102.5% of Annual Quantity) (tonnes)	Monthly Quantity (tonnes)	Minimum Monthly Quantity (90% of Monthly Quantity) (tonnes)	Maximum Monthly Quantity (110% of Monthly Quantity) (tonnes)
1 April 2015 to 31 December 2015	3 375 000	3 290 625	3 459 375	375 000	337 500	412 500
1 January 2016 onwards	4 500 000	4 387 500	4 612 500	375 000	337 500	412 500

The table above will be adjusted pro rata to the extent that the Total Contract Quantity is reduced pursuant to clause 3.1.6.

3.1.5.4 It is recorded for the avoidance of doubt that the provisions of clauses 3.2 of the First Addendum and 3.1 and 3.2 of the Second Addendum shall no longer be applicable with effect from the Effective Date.

3.1.6 Planning, Supply and Off Take of Coal

3.1.6.1 The Parties shall use their reasonable endeavours to ensure that all delivery and off take of coal is spread evenly across each day and month.

3.1.6.2 The Parties shall, no later than four months before the end of each year agree the quantity of coal that shall be Supplied to Hendrina for each month and quarter of the subsequent year (each amount being the "**Agreed Monthly Quantity**" and the "**Agreed Quarterly Quantity**", respectively) such that:

3.1.6.2.1 the quantity agreed upon in respect of each month for the subsequent year will not be less than the Minimum Monthly Quantity or more than the Maximum Monthly Quantity; and

3.1.6.2.2 not less than the Minimum Annual Quantity and not more than the Maximum Annual Quantity for that year will be Supplied during that year without falling below the Minimum Monthly Quantity or exceeding the Maximum Monthly Quantity in any subsequent month of that year.

3.1.6.3 In the event that the Parties do not reach agreement in terms of clause 3.1.6.2, the quantities of coal to be supplied for each month of the subsequent year shall be the Monthly Quantity of 375 000 Tons.

3.1.6.4 Once the Agreed Monthly Quantities for the quarter have been determined in terms of clause 3.1.6.2, Eskom shall issue a written order for the Delivery of coal for each month in the quarter ("**the Drawdown Order**") in respect of the quantities so determined. OCM shall deliver and Eskom shall take off not less than 95% (ninety five percent) of the Agreed Quarterly Quantity.

3.1.6.5 Either Party ("**Requesting Party**") may request the other Party to deliver or take off, as the case may be, less than the Minimum Monthly Quantity or Minimum Annual Quantity or in excess of the Maximum Monthly Quantity or Maximum Annual Quantity for any Month or year ("**Proposed Quantity Change**"). The Requesting Party shall deliver to the other Party a written request for such Proposed Quantity Change and the other Party shall, within 5 business days, deliver to the Requesting Party written notification of its acceptance or rejection of the Proposed Quantity Change. Acceptance of the Proposed Quantity Change shall not be unreasonably withheld.

3.1.7 **Under Delivery**

3.1.7.1 In the event of OCM delivering less than 95% (ninety five percent) of the Agreed Quarterly Quantity in a quarter ("**Under Delivery**") the following provisions shall apply:

- 3.1.7.1.1 OCM shall, within 10 business days thereof submit a rectification plan to Eskom, which plan shall set out a schedule of how OCM shall make up the actual or expected shortfall in the shortest time reasonably possible, but in any event before the end of the period recorded in the rectification plan;
- 3.1.7.1.2 OCM shall consult with Eskom on the rectification plan and Eskom shall, within 10 business days after submission to it of the rectification plan, advise whether it accepts the plan, which acceptance will not be unreasonably withheld or delayed;
- 3.1.7.1.3 if Eskom accepts the rectification plan, OCM shall implement the rectification plan and make up the actual or expected shortfall in accordance with the rectification plan;
- 3.1.7.1.4 if Eskom fails to advise OCM whether it accepts or rejects such rectification plan within such 10 business day period, such rectification plan will be deemed to be accepted;
- 3.1.7.1.5 the Parties agree that the quantities of coal delivered during the period of implementation of the rectification plan may be in excess of the Agreed Monthly Quantities and shall not be subject to any limits specified in clause 3.1.5;
- 3.1.7.1.6 OCM may deliver coal from any of other source ("**Qualifying Alternative Coal**"), which coal complies with the Quality Parameters and which source's production facilities comply with all legislative requirements with which OCM is required to comply in terms of the CSA;
- 3.1.7.1.7 OCM shall source such Qualifying Alternative Coal and deliver it to Hendrina or to such other point approved by Eskom, provided that OCM shall be liable for any reasonable additional direct costs which Eskom may have to incur. OCM shall be entitled to the benefits of all reasonable and demonstrable direct cost savings which Eskom may enjoy, to take off such coal from such alternate point.

3.1.7.2 Where, as a result of the Under Delivery, Eskom takes coal from its own stockpiles to manage the shortfall, Eskom shall be entitled to recover from OCM its reasonably incurred and demonstrable costs for additional direct handling and stockpiling incurred by Eskom.

3.1.7.3 In the event of:

3.1.7.3.1 OCM failing to submit the rectification plan in terms of clause 3.1.7.1.1; or

3.1.7.3.1 OCM failing to implement the rectification plan in terms of clause 3.1.7.1.3; or

3.1.7.3.2 Eskom's rejection of the rectification plan; or

3.1.7.3.3 OCM's failure to make up the Under Delivery,

Eskom shall be entitled to purchase coal at market related prices, to make up the shortfall and to recover from OCM the difference between the actual price of such coal and the price for such coal as calculated in accordance with this Addendum and any additional reasonable and demonstrable costs incurred by Eskom to source such shortfalls from other sources. In doing so, Eskom shall use reasonable endeavours to purchase coal that meets the Quality Parameters and shall acting reasonably, take into consideration utilising sources suggested by OCM to make up such shortfall.

3.1.7.4 Any Under Delivery shall, unless otherwise agreed to in writing between the Parties, only constitute a material breach of a material term of the CSA if such Under Delivery:

3.1.7.4.1 occurred more than 2 (two) times in a year; and

3.1.7.4.2 in that year, OCM delivers less than 80% (eighty percent) of the Annual Quantity in respect of that year.

3.1.8 **Under Off Take**

- 3.1.8.1 In the event of Eskom taking off less than 95% (ninety five percent) of the Agreed Quarterly Quantity in a quarter ("**Under Off Take**"), Eskom shall, within 10 business days thereof submit a rectification plan to OCM, consult with OCM thereon and obtain OCM's reasonable acceptance of the rectification plan (which may not be unreasonably withheld or delayed), implement the rectification plan and make up the Under Off Take in accordance with the rectification plan by taking off additional coal in order to make up the Under Off Take within the shortest time reasonably possible, but in any event before the end of the period recorded in the rectification plan.
- 3.1.8.2 Should Eskom fail to submit a rectification plan to OCM's reasonable satisfaction, fail to implement such rectification plan, fail to make up the Under Off Take before the end of the period recorded in the rectification plan, pursuant to any of the aforesaid effort, Eskom shall make full payment of any Under Off Take not made up within 3 months after the quarter in respect of which the Under Off Take arose. The transfer of risk in respect of such coal shall pass from OCM to Eskom on the date of payment.
- 3.1.8.3 Provided that Eskom makes payment of any reasonable demonstrable additional direct handling and stockpiling costs incurred by OCM occasioned by any Under Off Take subsequently made up, Eskom shall be entitled to take off the coal paid for in terms of clause 3.1.8.2.
- 3.1.8.4 Any Under Off Take shall, unless otherwise agreed to in writing between the Parties, only constitute a material breach of a material term of the CSA if such Under Off Take:
- 3.1.8.4.1 occurred more than 2 (two) times in a year; and
- 3.1.8.4.2 in that year, Eskom takes off less than 80% (eighty percent) of the Annual Quantity in respect of that year.

3.1.9 **Quantity Adjustment Right**

- 3.1.9.1 Eskom shall be entitled, by no later than 31 December 2015, to implement and conclude a tender process to obtain bona fide written offers ("**Third Party Offers**") from third party coal suppliers (each a "**Third Party Supplier**" and collectively the "**Third Party Suppliers**") to supply a quantity of coal to Eskom at the Hendrina power station of not more than 2 000 000 tonnes per annum (ie 10 000 000 tonnes in aggregate) ("**Replacement Quantity**") during the period commencing on 1 January 2019 and ending on 31 December 2023 ("**Second Period**").
- 3.1.9.2 If Eskom wishes to accept one or more Third Party Offers (each an "**Accepted Third Party Offer**"), it must notify OCM accordingly in writing ("**Third Party Offer Notice**"), by no later than five Business Days after 31 December 2015, and provide the details of each Accepted Third Party Offer including the quantity, the price range (on a delivered basis to Hendrina power station), the quality, the penalty regime and any other relevant information.
- 3.1.9.3 OCM shall be entitled, by notice in writing to Eskom within fifteen Business Days of receipt of the Third Party Offer Notice, to require Eskom to enter into good faith negotiations with OCM until not later than 31 March 2016 (such period, the "**Negotiation Period**") for the supply by OCM to Eskom of the quantity that is the subject of the Accepted Third Party Offer ("**Accepted Quantity**") at the terms set out in in the Third Party Offer Notice or such other terms as may be acceptable to Eskom and OCM. Eskom shall be precluded from concluding a contract in respect of the Accepted Third Party Offer during such Negotiation Period. If during the Negotiation Period, OCM and Eskom reach agreement regarding the Accepted Quantity (or a portion thereof), then they shall conclude an addendum effecting the necessary changes to the CSA to give effect to such agreement.
- 3.1.9.4 If OCM elects not to require Eskom to enter into negotiations with OCM, or if OCM requires Eskom to enter into negotiations with OCM but OCM and Eskom are unable to reach agreement on the terms for

the supply of the Accepted Quantity (or a portion thereof) during the Negotiation Period, the Total Contract Quantity shall be reduced by the Accepted Quantity (or a portion thereof in respect of which no agreement was reached) from the date on which OCM advises Eskom that it does not require Eskom to enter into negotiations with OCM or the date of expiry of the Negotiation Period, as applicable.

4 **NEGOTIATION OF NEW CSA**

The Parties shall as soon as possible after the Signature Date negotiate in good faith to agree the terms of a new written coal supply agreement ("**New CSA**") which shall include a coal quality management procedure and shall reflect the amendments in this Addendum and shall supersede the CSA. Pending the conclusion of the New CSA, the terms of CSA (as amended by this Addendum) shall remain binding on the Parties.

5 **SETTLEMENT AND WAIVER**

5.1 Each of Optimum, on the one hand, and Eskom, on the other hand, hereby –

5.1.1 waives any claim for any loss, liability, expense, damage (including consequential damage), interest (whether simple or compound), claim, difference, counter-claim, legal fees, cause or right of action or proceedings, whether at law or pursuant to any statute or any other law, regulation or enactment or in equity, of whatsoever nature and howsoever arising, whether brought directly or indirectly, whether asserted or unasserted, whether alleged or not, whether known or unknown, and whether or not in their contemplation at the date of this Addendum brought or capable of being brought by it against the other and/or its affiliates and/or their respective officers, directors, employees and agents, arising out of or in connection with the CSA, as at the Signature Date, including, without limitation,

5.1.1.1 in respect of Eskom, all accrued penalty and price adjustment claims and claims for under-delivery as at the Signature Date; and

5.1.1.2 in respect of Optimum, its claims in terms of the hardship clause in clause 27 of the CSA but excluding amounts owing to OCM for coal

delivered during the period from [1 March 2015] to the Signature Date),

(collectively, "**Released Claims**"); and

5.1.2 unconditionally and irrevocably releases and discharges the other and/or its affiliates and/or their respective officers, directors, employees and agents from all Released Claims.

5.2 OCM and OCH shall, within 5 days of the Signature Date, send a formal notice of withdrawal in respect of the hardship arbitration to AFSA and Eskom. Each party shall bear its own costs of the arbitration proceedings.

6 **SAVINGS**

Save to the extent specifically or by necessary implication modified in or inconsistent with the provisions of this Fourth Addendum, all the terms and conditions of the CSA will continue in full force and effect.

7 **CONFIDENTIALITY**

Each of the Parties shall keep confidential and not without the prior written consent of the other Parties (which written consent will not be unreasonably withheld or delayed) disclose or divulge to any party the contents of this Addendum or any correspondence exchanged between the Parties in respect of and/or in anticipation of this Addendum or any agreement entered into pursuant to and/or in anticipation of this Agreement. It is specifically recorded that each of the Parties independently may be obliged to make public announcements in respect of this Addendum and its contents, in order to comply with applicable governmental or regulatory authorities, rules and/or regulations; and the Parties specifically hereby undertake to co-operate in good faith and as expeditiously as possible in all prevailing circumstances, in order that they may comply with their respective obligations in this regard.

8 **GENERAL**

The provisions of clauses 28 (Breach), 29 (Cession and Assignment), 30 (Arbitration), 32 (Domicilium), 33 (Costs) and 36 (General) of the CSA shall apply, mutatis mutandis, to this Addendum as if they were set out herein.

Signed at

on

[20192015](#)

for Eskom Holdings SOC Limited

DRAFT - NOT FOR SIGNATURE

who warrants that he is duly
authorised hereto

Name:

Position:

Signed at

on

[20192015](#)

for Optimum Coal Mine Proprietary Limited

DRAFT - NOT FOR SIGNATURE

who warrants that he is duly
authorised hereto

Name:

Position:

Signed at

on

2019~~2015~~

for Optimum Coal Holdings Proprietary
Limited

DRAFT - NOT FOR SIGNATURE

who warrants that he is duly
authorised hereto

Name:

Position:



Annexure A

Electricity Cost Element Example

Megaflex: Non-Local authority tariff

Transmission Zone : ≤ 300 kmVoltage ≥ 132 KV or Transmission Connected

					2014/2015		2015/2016	
					Active Energy Charge	Weighted Average	Active Energy Charge	Weighted Average
	Months	Hour periods	Hours					
Peak	June - Aug	3	7-10 and 18 -20	5	198.45	10.34	223.63	11.65
	Sept-May	9		5	64.74	10.12	72.96	11.4
Standard	June- Aug	3	6-7 10-18 20-22	11	60.11	6.89	67.74	7.76
	Sept - May	9		11	44.55	15.31	50.20	17.26
Off Peak	June - Aug	3	0-6 22-24	8	32.65	2.72	36.79	3.07
	Sept - May	9		8	28.27	7.07	31.86	7.97
					52.45		59.11	
Percentage increase					12.698%			

Annexure B

Example Penalty Calculation

<u>Steps to be taken in calculating monthly payment inclusive of penalties.</u>			
Step			Description of Step
1	Each month, determine the rand per gigajoule amount payable by Eskom for the current month by applying the escalation calculation recorded in 3.1.3 of the Fourth Addendum.		
2	Determine if the daily weighted average of a consignment and if the daily weighted average of such consignment is below the quality parameter limit for any one of Calorific Value, Ash, Sulphur or Volatiles.	Yes	No payment by Eskom for such consignment and such consignment shall not be included in the calculation of the monthly weighted average for Abrasive Index and Sizing
		No	Go to step 3
3	Determine the supplied consignment's moisture free tons calculated as per the formula in the step description		Moisture Free tons = As Received Tons * (1- Percentage Total Moisture for consignment)/1
4	Determine the rand per ton amount payable by Eskom for the consignment calculated as per the formula in the step description		Rand per GJ as per step 1 multiplied by the daily volume weighted average Calorific Value (Moisture Free Basis) as per step 2
5	Determine the total payable by Eskom for the consignment by multiplying the Rand per ton amount in step 4 with the Moisture free tons calculated in step 3		
6	Aggregate the total amounts payable by		

	Eskom for each Consignment supplied during a month to calculate a total amount payable by Eskom for the month prior to penalties.		
7	Aggregate the total daily moisture free tons for each consignment to calculate a monthly total		
Penalty application			
	Size Grading penalty		
8	Calculate monthly volume weighted average size fraction below 0.81 mm		Subject to the consignments excluded in step 2. I.e. No payment by Eskom for such consignment and such consignment shall not be included in the calculation of the monthly weighted average for Sizing
9	Determine if the calculation in 8 exceeds 20%	No	No size grading penalty payable by OCM for coal supplied during the month
		Yes	Use the answer obtained in step 8 as an input for variable C in step 10
10	Calculate size penalty as recorded in the step description		$A = B * (C - 20\%) * D$
			A= Monthly sizing penalty
			B = The monthly Moisture free tons calculated in step 3
			C= The actual percentage of -0.81mm material as calculated in step 8
			D= 50% of the price payable by Eskom for the coal delivered during the relevant month, as calculated in step 4
	AI Penalty		
11	Calculate the monthly volume weighted AI Index level rounded to the nearest whole number		Subject to the consignments excluded in step 2 I.e. No payment by Eskom for such consignment and such consignment shall not be included in the calculation of the monthly weighted average for Abrasive Index.
12	Determine if the answer in step 11 falls within any of the penalty ranges recorded in clause 3.1.4.4 of the fourth addendum	No	No AI Penalty payable by OCM for the coal supplied during the month.
		Yes	Use the rand per ton penalty applicable for the

			ranges recorded in clause 3.1.4.4 of the fourth addendum as input for variable J in step 13
13	Calculate the AI penalty as recorded in the step description		$G = J * B$
			Where G = Monthly AI Penalty payable by OCM
			J = the rand per ton AI penalty applicable as recorded in clause 3.1.4.4 of the fourth addendum
			B = The monthly Moisture free tons calculated in step 3
	Final amount payable by Eskom after subtraction of Sizing and AI penalties		
14	Calculate the final amount payable by Eskom for coal supplied as recorded in the step description.		if (A+G) is larger than H then P = 0 otherwise $P = H - A - G$
			Where P = the amount payable by Eskom for coal supplied after application of the Sizing and AI penalties, provided that P cannot be smaller than 0
			H = The aggregate amount payable by Eskom for the month as calculated in step 6, before applying Sizing and AI penalties
			A = Monthly sizing penalty
			G = Monthly AI penalty

DRAFT - NOT FOR SIGNATURE

Annexure C

Annual and Monthly Escalation Formulas and Example

Annual Escalation Calculation example													
Cost Element	Index and Source Table	Escalation Source Value at 31 January 2015	% Weighting at 31 January 2015	Escalation Source Value 31 January 2016	Escalation Factor - 2016	Escalation source value 31 January 2017	Escalation Factor - 2017	Escalation source value 31 January 2018	Escalation Factor - 2018	Escalation Source Value 31 January 2019	Escalation Factor - 2019		
Labour	Chamber of Mines Annual salary increase agreement with National Union of Mines for coal mines +2%	100	41%	107	44%	115	47%	123	50%	135	55%		
Diesel	DMEC 0.05% sulphur Reef	1028.09	5%	1300	6%	1500	7%	1800	9%	1850	9%		
Electricity	The average Annual Eskom Megaflex tariff (or replacement Tariff) applicable as at the Base Date calculated in accordance with the formula in annexure A	52.45	23%	59.22	26%	70	31%	100	44%	125	55%		
Mechanical Engineering materials	SFESA Table G	106	21%	113	22%	119	24%	123	24%	135	27%		
Electrical Engineering Materials	SFESA Table G	107.5	10%	112	10%	118	11%	123	11%	132	12%		
First Base Price				R 18.85	R 20.54	R 22.56	R 25.17	R 26.49	R 29.10	R 33.75	N/A		
Second Base Price				R 24.31	R 26.49	R 29.10	R 33.75	R 38.45					
Formula													
Period 01 January 2015 to 31 December 2018													
Price = First Base Price * ((ESV1P/ESV1B)*W1n+(ESV2P/ESV2B)*W2n+(ESV3P/ESV3B)*W3n+(ESV4P/ESV4B)*W4n+(ESV5P/ESV5B)*W5n													
Period 01 January 2019 to 31 December 2023													
Price = Second Base Price * ((ESV1P/ESV1B)*W1n+(ESV2P/ESV2B)*W2n+(ESV3P/ESV3B)*W3n+(ESV4P/ESV4B)*W4n+(ESV5P/ESV5B)*W5n													
ESV1n	Escalation source value for Labour in year n			ESV1B	Escalation source value for Labour 31 January 2015			W1n				Weighting of Labour as at 31 January 2015	
ESV2n	Escalation source value for Diesel in year n			ESV2B	Escalation source value for Diesel 31 January 2015			W2n				Weighting of Diesel as at 31 January 2015	
ESV3n	Escalation source value for Electricity in year n			ESV3B	Escalation source value for Electricity 31 January 2015			W3n				Weighting of Electricity as at 31 January 2015	
ESV4n	Escalation source value for Mechanical Engineering Materials in year n			ESV4B	Escalation source value for Mechanical Engineering Materials 31 January 2015			W4n				Weighting of Mechanical Engineering Materials as at 31 January 2015	
ESV5n	Escalation source value for Electrical Engineering Materials in year n			ESV5B	Escalation source value for Electrical Engineering Materials 31 January 2015			W5n				Weighting of Electrical Engineering Materials as at 31 January 2015	

Monthly Escalation Calculation example															
Cost Element	Index and Source Table	% Weighting at 31 January 2015	Escalation Source Value 31 January 2015	February Adjustment	March 2015 Adjustment	April 2015 Adjustment	May 2015 Adjustment	June 2015 Adjustment	July 2015 Adjustment	Aug 2015 Adjustment	Sept 2015 Adjustment	Oct 2015 Adjustment	Nov 2015 Adjustment	Dec 2015 Adjustment	Jan 2016 Adjustment
Labour	Chamber of Mines Annual salary increase agreement with National Union of Miners for coal	41%	100	100	100	100	100	100	100	100	100	100	100	100	100
Diesel	DME 0.05\$/litre/Reef	5%	1028.09	926.29	1000.09	1122.79	1130	1200	1300	1350	1390	1400	1400	1400	1400
Electricity	The average Annual Eskom Megaflex tariff (or replacement Tariff) applicable as at the Base Date calculated in accordance with the formula in measure A	23%	52.44												
Mechanical Engineering Materials	SEBISA Table G	21%	106	106	106	106	106	106	106	106	106	106	106	106	106
Electrical Engineering Materials	SEBISA Table G	10%	107.5	107.5	107.5	107.5	107.5	107.5	107.5	107.5	107.5	107.5	107.5	107.5	107.5
		100%													
Price R/G at start of Year n			R 18.85	R 18.76	R 18.82	R 18.94	R 18.94	R 19.01	R 19.10	R 19.15	R 19.05	R 18.96	R 19.10	R 19.15	R 19.19
Formula			Price = Price at start of Year n * ((ESV0n - ESV10n)/(ESV10n * W0n))												
			Projected data for illustrative purposes												
ESV0n	Escalation Source Value for Diesel in month n														
ESV10n	Escalation Source value for Diesel at start of escalation year n														

Annexure D**Coal Quality Management Procedure**



**OPTIMUM
COAL
MINE**

PRIVATE AND CONFIDENTIAL

Eskom Holdings SOC Limited
Megawatt Park
Maxwell Drive
Sunninghill

Attention:

Brian Molefe: Acting Chief Executive Officer
Vusi Mboweni, Acting Head: Primary Energy

with a copy to:, Johann Bester: General Manager - Fuel Sourcing

22 May 2015

Dear Sirs

HENDRINA COAL SUPPLY AGREEMENT

We refer to our letter to Eskom of 13 November 2014 (a copy of which is attached for your reference) regarding the severe financial situation at Optimum Coal Mine (Pty) Ltd ("**OCM**") and the need to amend the terms of the Hendrina coal supply agreement in order to ensure the continued survival of OCM as a going concern.

As you are aware, there have been various developments since the date of the 13 November letter. In order to mitigate the significant financial losses that OCM was suffering, OCM announced that it was considering closing its export operations. The associated section 189 and section 52 processes are ongoing in this regard.

Following the announcement of the potential closure of OCM's export operations, the Eskom negotiation team re-engaged with OCM regarding the amendment of the Hendrina supply agreement. There was significant progress made, which we believe was facilitated by the fact that Eskom for the first time accepted OCM's assertion that it was not making any money on its export business. In any event, after extensive negotiations, the terms of a deal were agreed between OCM and the Eskom negotiating team along the lines of the proposal set out in our 13 November letter, which involved the increase of the price for the coal from 1 April 2015 to 31 December 2018

Optimum Coal Mine (Pty) Ltd

(Registration No: 2007/005308/07)

A Glencore Operation

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Directors: R Cohen, C M Ephron, P Mahanyele, T Ncube



to cost (which costs were audited extensively by Eskom and its advisers) and an extension of the term of the Hendrina supply agreement for a 5 year period after 31 December 2018 at cost plus an agreed margin. OCM fully appreciates Eskom's difficult financial position and the consequences of increasing the price under the agreement but believes that such a deal is a fair compromise for both parties because it settles all outstanding legal issues between the parties (including the hardship claim which OCM brought against Eskom which would be resuscitated if no deal is concluded), provides OCM with the ability to continue operating as a going concern and allows Eskom to ensure security of supply beyond 2018 from a tied mine at its preferred "efficient cost plus a fair return" model, which will be the cheapest delivered supply available for the Hendrina power station.

Eskom's negotiating team advised OCM that the terms of the deal were subject to approval by the Executive-Procurement Committee and then the Eskom Board Procurement Sub-Committee. On 25 March 2015, OCM was advised that the Executive-Procurement Committee had approved the terms of the deal. Thereafter, OCM were advised that the deal was presented to the Procurement Sub-Committee of the Eskom Board on 15 April 2015, but the sub-committee was not willing to make a decision and had referred the matter to the full Eskom Board for consideration. We understand that on 23 April 2015 the full Eskom Board did not make a decision and requested further information. Following such board meeting, OCM continued to engage with Eskom in the expectation that the deal was still supported by Eskom and that the negotiations with Eskom would result in some deal, perhaps on amended terms, being concluded. On 18 May 2015, the CEO of OCM met with the Acting CEO of Eskom, who advised that Eskom would not be concluding any deal with OCM and would continue enforcing the existing coal supply agreement.

This outcome is obviously very damaging for OCM because it was on the back of such potential deal that OCM has been able to persuade its shareholders to continue advancing funds to the mine in order to enable it to continue operating. As previously indicated, OCM has exhausted all of its available banking facilities (in the amount of R2.5 billion) and requires approximately R100 million per month in order to continue operating. The shareholders of OCM have advanced approximately R1 billion to OCM since October 2014.

In the circumstances, the directors of OCM feel compelled to write to Eskom regarding the position in which they find themselves. As things stand, OCM does not have sufficient funds to continue operating without shareholder support. As indicated above, the shareholders of OCM committed to fund OCM on the basis that the negotiations with Eskom were ongoing and that a deal would be concluded with Eskom which would in some way improve the unsustainable financial position of OCM. The shareholders of OCM have, however, indicated that if no progress is made in the negotiations with Eskom by the end of May 2015, the shareholders will have to reconsider their support for OCM and may withdraw all such funding. If this occurs, the directors of OCM will, in accordance with their legal duties, have no choice but to place OCM into business rescue or liquidation, which would be very harmful for all stakeholders.

In business rescue, OCM would lose control over the business of OCM which would be placed under the control of a business rescue practitioner ("BRP") who would be tasked with trying to save OCM and prevent a liquidation of OCM. It is clear that the only possible method of rescuing OCM would be through an amendment to the Hendrina supply agreement, because the agreement is so

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onerous that it precludes any other alternate solution. Assuming that the BRP is able to continue operating OCM in the short term by finding a source of post-commencement finance, the BRP would no doubt feel compelled to renegotiate the agreement with Eskom, and if he was unable to reach agreement with Eskom, to exercise the powers granted to him in the Companies Act to suspend the Hendrina agreement and/or to approach the courts to cancel the Hendrina supply agreement. It is unclear how this process would pan out, but it is clear that it has the possibility of threatening supply to Eskom. If, for whatever reason, the BRP is unable to obtain amended terms for the Hendrina supply agreement or the court refuses to cancel the Hendrina supply agreement, that would mean that OCM cannot be rescued and that it would inevitably be placed into liquidation. The liquidation scenario would be extremely damaging for all parties including South Africa as a whole, because given the multiple claims against OCM, including significant secured debt, it would be impossible to ensure the continued supply of coal to Eskom or to restore that supply within a reasonable period of time.

The directors of OCM feel it is their duty to put the above position clearly to Eskom so that there is no uncertainty at Eskom regarding the potential consequences of not concluding a deal with OCM by 31 May 2015. OCM does not want Eskom to feel that it is negotiating under duress, but the negotiations with Eskom have been ongoing for 2 years and the directors have legal duties which they cannot ignore. It is with this in mind that we, as the directors of OCM, implore Eskom to reconsider its position and to provide confirmation that Eskom is willing to conclude a deal with OCM, if not entirely as per the agreement reached with the Eskom negotiating team then at least on a meaningful basis, which we as the directors can take to our shareholders by 31 May 2015 to ensure the continued operation of the business of OCM and the ability for Eskom to secure for Hendrina high quality coal for its remaining useful life.

Yours faithfully

Clinton Ephron

on behalf of
Optimum Coal Mine (Proprietary) Limited

Optimum Coal Mine (Pty) Ltd

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Mr Clinton Ephron
Optimum Coal Mine (Pty) Ltd
23 Melrose Boulevard 3rd Floor
MELROSE NORTH
2196

Dear Mr Ephron

ACKNOWLEDGEMENT OF RECEIPT: HENDRINA COAL SUPPLY AGREEMENT (CSA)

We acknowledge receipt of your letter dated 22 May 2015 and the issues you raise in it. However, considering Eskom's current financial position, which is public knowledge, we unfortunately cannot afford to reset the contract price, to that proposed by Optimum Coal Mine.

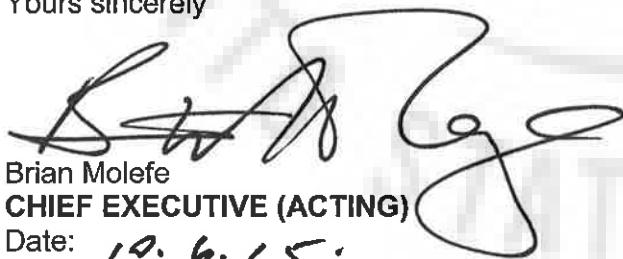
It remains a priority for Eskom, to ensure the security of the coal supply to Hendrina Power Station not only for the remainder of the current coal supply agreement but also for the remaining life of Hendrina Power Station. Therefore it remains critical to all stakeholders that Optimum Coal Mine continues to deliver coal as per the current contract.

Eskom, to the extent that the Co-Operation Agreement still regulates the settlement process hereby notifies Optimum Coal Mine in terms of clause 5.6 of the Agreement, that it no longer wishes to participate in the settlement process. Eskom accordingly hereby terminates the settlement process and confirms that the provisions of the CSA and addenda are forthwith applicable in respect of, *inter alia*, coal qualities and quantity requirements of the Hendrina Power Station.

However, the negotiation teams should continue to negotiate a new CSA for after 2018, in respect of the remaining life of Hendrina Power Station.

Eskom's rights remain strictly reserved.

Yours sincerely



Brian Molefe
CHIEF EXECUTIVE (ACTING)
Date: 10.6.15.



OPTIMUM COAL MINE

PRIVATE AND CONFIDENTIAL

Eskom Holdings SOC Limited
Megawatt Park
Maxwell Drive
Sunninghill

Attention:

Brian Molefe: Acting Chief Executive Officer
Vusi Mboweni, Acting Head: Primary Energy

with a copy to: Johann Bester: General Manager - Fuel Sourcing

30 June 2015

Dear Sirs

HENDRINA COAL SUPPLY AGREEMENT : REVISED OFFER

We refer to the meeting held at Eskom's offices on 11 June 2015 between your Mr Molefe and Mr Mboweni and our Mr Ivan Glasenberg and Mr Clinton Ephron. As discussed at the meeting, Optimum is willing to consider a compromise deal in relation to the renegotiation and extension of the Hendrina supply agreement. We have given consideration as to what sort of compromise would be feasible in the circumstances and, accordingly, we hereby submit this revised offer for Eskom's consideration. The proposed new agreement would supersede the existing Hendrina coal supply agreement and be in full and final settlement of all pending disputes and claims:

Commencement Date	1 July 2015
Duration	<ul style="list-style-type: none"> The agreement will endure until a total quantity of 46,750,000 tonnes of contract coal ("Total Contract Quantity") has been supplied by Optimum to Eskom.
Price	<ul style="list-style-type: none"> 1 July 2015 to 31 December 2018 ("First Period") Base price ("Base Price"), as at 1 July 2015 ("Base Date"), of R300 per Ton (Moisture free), excluding VAT, for a CV of 23 megajoules/kg (Moisture free); 1 January 2019 to 31 December 2023 ("Second Period") - Base price ("Second Base Price") as at the Base Date, of R570 per Ton (Moisture

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	free); excluding VAT, for a CV of 23 megajoules/kg (Moisture free).
Escalation	<ul style="list-style-type: none"> The Base Price for the First Period and the Second Period shall be escalated on each anniversary of the Base Date in accordance with a Price Adjustment Factor which is to be calculated in accordance with an escalation table to be agreed between Eskom and Optimum.
Quality Specifications and Adjustment	<ul style="list-style-type: none"> To be agreed between Eskom and Optimum
Quantity	<ul style="list-style-type: none"> The total quantity to be supplied by Optimum to Eskom for the balance of the term of the CSA from 1 July 2015 will, subject to below, be 46,750,000 tonnes or 5 500 000 tonnes per calendar year, except in respect of the 2015 calendar year where the quantity will be 2,750,000 tonnes for the period 1 July 2015 to 31 December 2015. Eskom shall be entitled, by no later than 31 December 2015, to implement and conclude a tender process to obtain bona fide written offers ("Third Party Offers") from third party coal suppliers (each a "Third Party Supplier" and collectively the "Third Party Suppliers") to supply a quantity of coal to Eskom at the Hendrina power station of not more than 5 500 000 tonnes per annum (ie 27 500 000 tonnes in aggregate) ("Replacement Quantity") during the period commencing on 1 January 2019 and ending on 31 December 2023 ("Second Period"). If Eskom wishes to accept one or more Third Party Offers (each an "Accepted Third Party Offer"), it must notify Optimum accordingly in writing ("Third Party Offer Notice"), by no later than five Business Days after 31 December 2015, and provide the details of each Accepted Third Party Offer including the quantity, the price range (on a delivered basis to Hendrina power station), the quality, the penalty regime and any other relevant information. Optimum shall be entitled, by notice in writing to Eskom within fifteen Business Days of receipt of the Third Party Offer Notice, to require Eskom to enter into good faith negotiations with Optimum until not later than 31 March 2016 (such period, the "Negotiation Period") for the supply by Optimum to Eskom of the quantity that is the subject of the Accepted Third Party Offer ("Accepted Quantity") at the terms set out in in the Third Party Offer Notice or such other terms as may be acceptable to Eskom and Optimum. Eskom shall be precluded from concluding a contract in respect of the Accepted Third Party Offer during such Negotiation Period. If during the Negotiation Period, Optimum and Eskom reach agreement regarding the Accepted Quantity (or a portion thereof), then they shall conclude an addendum effecting the necessary changes to the CSA to give effect to such agreement. If Optimum elects not to require Eskom to enter into negotiations with Optimum, or if Optimum requires Eskom to enter into negotiations with

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	Optimum but Optimum and Eskom are unable to reach agreement on the terms for the supply of the Accepted Quantity (or a portion thereof) during the Negotiation Period, the Total Contract Quantity shall be reduced by the Accepted Quantity (or a portion thereof in respect of which no agreement was reached) from the date on which Optimum advises Eskom that it does not require Eskom to enter into negotiations with Optimum or the date of expiry of the Negotiation Period, as applicable.
--	--

We remain of the view that this offer represents a reasonable compromise for all parties in that it provides some limited relief for Optimum to allow it to continue operating while at the same time ensures long-term supply for Eskom until 2023 at its preferred efficient cost plus a fair return model.

This offer is valid until 31 July 2015.

We look forward to hearing from you.

Yours faithfully

Clinton Ephron

on behalf of
Optimum Coal Mine (Proprietary) Limited

Optimum Coal Mine (Pty) Ltd

(Registration No: 2007/005308/07)

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KPMG Services Proprietary Limited
KPMG Crescent
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Telephone +27 (0)11 647 7111
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Docex 472 Johannesburg
Internet <http://www.kpmg.co.za/>

CME-180
CE9 180

Shaun Blankfield
Glencore plc
23 Melrose Boulevard
Melrose Arch
Johannesburg

Shaun.Blankfield@glencore.com

1 July 2015

Optimum Coal Holdings Limited

Dear Sir

KPMG has been approached by one of our clients to make contact with yourselves with regards to the Optimum coal mining business ('Optimum Mine') owned by Optimum Coal Holdings Limited ('Optimum Coal'). Due to the commercially sensitive nature of our clients operations, and of this approach, our client wishes to remain anonymous at this time.

Our client is nevertheless desirous of commencing negotiations for the purchase of the Optimum Mine directly from Optimum Coal, or alternatively acquiring Optimum Coal from Glencore Limited ('Glencore'), and has requested that we set out the broad commercial terms of an offer which, if acceptable, can be further negotiated directly between yourselves and our client.

On behalf of our client, we are therefore pleased to submit this non-binding expression of interest (the 'Expression of Interest') for the purchase of the Optimum Mine, alternatively the entire issued share capital of Optimum Coal. The Expression of Interest is subject to a number of pre-conditions, summarised below.

1. Background to our client

Our client is a well-established business with diverse operations, including mining services and mining operations, which include coal. Our client has a demonstrable track record of turning around marginal mining operations. It is a black empowered company both in terms of the mining charter and in terms of Eskom's procurement requirement, and is already a successful supplier of coal to Eskom. Our client is familiar with Optimum Coal's operations.

KPMG Services Proprietary Limited is a company incorporated under the South African Companies Act and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity.

KPMG Services Proprietary Limited is not a Registered Auditor in terms of the Auditing Profession Act, 26 of 2005 and does not provide audit services as defined in Section 1 of this Act

Registration number 1999/012876/07

Policy Board:
Chief Executive: TH Hoole

Executive Directors: N Dlomu, M Letsitsi, SL Louw, NKS Malaba, MM Mapaya, M Oddy, CAT Smit

Other Directors: ZH De Baer, LP Fourie, N Fubu, AH Jaffer (Chairman of the Board), FA Karreem, ME Magondo, AMS Mokgabudi, GM Pickering, JN Pierce, T Rossouw, M Saloojee, GCC Smith

The company's principal place of business is at KPMG Crescent, 85 Empire Road, Parktown, where a list of the directors' names is available for inspection.



Our client is desirous of increasing its coal assets and believes it has the capability to profitably manage the Optimum Mine through its existing expertise and through synergies between its existing coal business and that of Optimum Coal.

2. The indicative offer price

Our clients indicative price for the Optimum Mine (alternatively for the entire issued shares in Optimum Coal) is R2 billion. This price represents an Enterprise Value, and would be adjusted for any net debt assumed.

Whilst our client has not been able to complete a thorough valuation, they have reviewed publically available information on the operations of Optimum Coal and have assessed the value of the investment to date in plant and equipment, and are confident that the proposed price reflects fair value for the business. Our client is flexible with regards to the structure of the transaction which could either be a sale of the underlying assets of the Optimum Mine, or the purchase of the entire issued share capital in Optimum Coal.

3. Pre-conditions

Any formal offer would be subject to the pre-conditions that a financial, commercial, tax and legal due diligence is completed to the satisfaction of our client.

Any formal offer would be subject to the:

- Transfer of entitlements through Richards Bay Coal Terminal (including minimum allocation of 3 million tons per annum),
- Continuation of existing supply contracts with Eskom on current terms (including offtake of minimum 5 million tons of coal per annum),
- Requisite regulatory approvals, including, but not limited to, those required from the Department of Mineral Resources ('DMR'), in terms of s11 of the Mineral and Petroleum Resources Development Act, 2001, SRP, JSE and the Competition Commission,
- All requisite Glencore Board and Glencore Shareholder approvals, to the extent required, and
- Conclusion of requisite written and binding agreements to give effect to the sale.

4. Financing

Our client has held discussions with its bankers regarding their capacity to fund the acquisition of Optimum Coal. Based on their existing business operations and assets (i.e. without recourse to the assets of Optimum Coal), they have received written letters of support for the required funding, which together with cash resources, would allow them to fund the proposed purchase price of R2 billion, without recourse to the assets of Optimum Coal.



5. Approvals

The senior management of our client and the majority shareholder have approved our release of this Expression of Interest.

Whilst the proposed transaction would require regulatory approvals from various regulatory bodies, including the Competition Commission, and the DMR, we do not anticipate this transaction would meet with any objection, and are further of the view that this proposed transaction is the best opportunity available to Glencore to minimise job losses for its employees at Optimum Coal.

6. Due diligence

The Expression of Interest is subject to completion of satisfactory commercial, financial, tax and legal due diligence comprising, inter alia, access to management and key employees, site visits and access to a data room.

Whilst our client will be required to complete this due diligence, they are keen to move fast to close this transaction, and have already assembled a capable and dedicated internal team to conduct the due diligence.

It is our client's intention and ambition to work expeditiously to achieve an announcement in a short time frame and they look forward to discussing timetable details with you at the earliest opportunity. With your co-operation, they expect to complete the due diligence process within approximately four weeks.

8. Next Steps

KPMG would request the opportunity to discuss this letter with you, following which, should you wish to proceed, we will facilitate a meeting with our client.

9. Confidentiality

The content and existence of this Expression of Interest is strictly confidential and should not be disclosed to any person other than Glencore and its advisors.

In conclusion, we are pleased to have been given this opportunity to present this Expression of Interest. We would appreciate the opportunity to meet to discuss this further at your earliest convenience. Our client is enthusiastic about this proposal and confident that they will be able to deliver a mutually beneficial transaction.



Yours sincerely

A handwritten signature in black ink that reads 'Nick Matthews'.

Nick Matthews

Partner, Deal Advisory
Head Mergers & Acquisitions
Tel: +27(0)83 452 8351



Optimum Coal Mine (Pty) Limited
23 Melrose Boulevard 3rd Floor
Melrose North

Attention: Clinton Ephon

BY HAND & REGISTERED POST

Our Reference **R Moodley/J Feris**
Account Number **01949978**
Your Reference **C. Ephon**
Direct Line **(011) 562 1666/1825**
Direct Telefax **(011) 562 1466**
Direct e-mail **Rishaban.moodley@dlacdh.com**
Date **16 July 2015**

Dear Sir

**DEMAND FOR REPAYMENT IN RESPECT OF COAL WHICH FAILED TO COMPLY WITH THE
QUALITY SPECIFICATION OF THE CSA DURING THE PERIOD 1 MARCH 2012 TO 31 MAY 2015**

- 1 We confirm that we act on behalf of Eskom Holdings SOC Limited ("**Eskom**").
- 2 We have been instructed by Eskom as follows –
 - 2.1 Eskom, Trans-Natal Coal Corporation Limited (now BECSA) and the Trans-Natal Collieries Limited concluded a Coal Supply Agreement on 4 January 1993;
 - 2.2 Eskom subsequently agreed to the cession and assignment of the rights and obligations in terms of the CSA to Optimum Coal Holdings Proprietary Limited ("**OCH**") and Optimum Coal Mine Proprietary Limited ("**OCM**") by BECSA, and concluded the First Addendum with OCH and OCM on 8 April 2008 ("**First Addendum**") (OCH and OCM are collectively referred to as "**Optimum**" in this demand) and the Settlement of Arbitration and Second Addendum to the Hendrina Coal Supply Agreement with OCH dated 12 April 2011 ("**Second Addendum**").
 - 2.3 The First Addendum to the CSA provides that all coal supplied and delivered by Optimum to Eskom had to comply with, amongst others, the following quality specification –
 - 2.3.1 In terms of clause 3.4.2 all coal must have an ash content which shall not exceed 28.8% in order to ensure that the calorific value of the coal is not less than 23.0MJ/kg (calculated on a moisture free basis);
 - 2.3.2 In terms of clause 3.4.3 all coal must have a monthly average size distribution of:

CHAIRMAN AW Pretorius CHIEF EXECUTIVE OFFICER B Williams CHIEF OPERATING OFFICER MF Whitaker CHIEF FINANCIAL OFFICER ES Burger

DIRECTORS: JOHANNESBURG A Abro N Altini JA Aukema CD Baird CA Barclay R Beerman E Bester P Bhagattjee R Bonnet CJ Botes TE Brincker IH Burger CWJ Charter M Chenia CJ Daniel EF Dempster S de Vries ML du Preez L Erasmus BV Faber JJ Feris TS Fletcher L Franca TG Fuhrmann F Gatto MZ Gatto S Gill SB Gore J Govender AJ Hofmeyr Q Honey WH Jacobs WH Janse van Rensburg CM Jesseman JCA Jones TTM Kali J King Y Kleitman LJ Kruger J Latsky AM le Grange FE Leppan* AG Lewis BC Maasdorp Z Malinga G Masina HW Mennen B Meyer WJ Midgley R Moodley MG Mphahudi BP O'Connor SJ Oosthuizen N Parbhoo A Patel JS Pennington GH Pienaar V Pillay DB Pinnock AM Potgieter AW Pretorius AG Reid M Serfontein P Singh-Dhulam NTY Siwendu WHH Thyne HR van der Merwe JJ van Dyk WPS van Wyk NJ von Ey JG Webber MF Whitaker JG Whittle DA Wilken B Williams LD Wilson JM Witts-Hewinson MP Yeates

DIRECTORS: CAPE TOWN AC Alexander RD Barendse TJ Brewis MA Bromley MR Collins HC Dagut A de Lange LF Egypt GT Ford S Franks DF Fyfer SAP Gie JW Green AJ Hanrie AM Helberg PB Hesselting CI Hindley RC Horn S Immelman JH Jacobs R Jaga A Kariem IJ Lessing GC Lumb RE Marcus SI Meyer A Moolman NW Muller J Naser F I Newham G Orrie* L Rhodoo MB Rodgers BT Rubinstein BPA Strauss DM Thompson CW Williams TJ Winstanley

EXECUTIVE CONSULTANTS: HS Coetzee PJ Conradie CH Ewing HS Jackson MB Jackson

CONSULTANTS: A Abercrombie JMA Evenhuis* EJ Kingdon FF Kolbe

SENIOR ASSOCIATES: G Barkhuizen-Barbosa MA Bobat B Brown L Brunton K Caddy E Chang NS Comte J de Vos YM Dockrat L Engelbrecht T Erasmus TV Erasmus P Jani T Jordaan KJ Keanly JA Krige H Laing CJ Lewis HJ Louw NS Mbambisa N Mchunu N Mia T Moodley CP Muller DJ Naidoo CM O'Connor AP Pillay KS Plots B Pollastirini NA Preston JR Ripley-Evans LJ Salt IE Schneider BJ Scriba T Suliman FJ Terblanche T Tosen M Treurnicht M van Zweel MF Ward NI Zwane

CLIFFE DEKKER HOFMEYR SERVICES PROPRIETARY LIMITED DIRECTORS: ES Burger JA Cassette Z Omar* CH Pienaar R van Eeden MF Whitaker B Williams

*British *Canadian *Dutch *Cape Town Managing Partner

- 2.3.2.1 not more than 55% of coal supplied will be smaller than 6mm;
- 2.3.2.2 not more than 35% of coal supplied will be smaller than 2.38mm; and
- 2.3.2.3 not more than 15% of coal supplied will be smaller than 0.81mm.

("sizing specification")

- 2.4 A number of issues have arisen between Eskom and Optimum relating to the interpretation, implementation and execution of the CSA over an extended period of time. As a result thereof Eskom and Optimum entered into a Co-Operation Agreement on 23 May 2014. In terms of the Co-Operation Agreement Eskom undertook that it would, *inter alia*, with retrospective effect to 1 May 2014 and until the termination of the settlement process, suspend the implementation of all penalties and/or payment reductions (including AI, CV, Ash, sizing and short supply) in relation to the CSA, on the condition that Optimum continues delivering coal in accordance with the specification. The settlement process contemplated by the Co-Operation Agreement terminated on 22 June 2015, which entitles Eskom to re-commence with the implementation of all penalties and/or payment reductions in terms of the CSA.
- 2.5 Optimum has for a consecutive period from 1 March 2012 to 31 May 2015 (the "**Supply Period**"), failed to supply and deliver to Eskom coal which meets the quality parameter contemplated by clause 3.4 of the First Addendum. The coal supplied and delivered to Eskom, amongst others, failed to comply with the sizing specification, in that 20% to 45% of the coal supplied and delivered to Eskom by Optimum on a monthly basis, during the Supply Period, was smaller than 0.81mm. Despite this failure by Optimum, Eskom has, without prejudice to its right in terms of clause 3.6 of the First Addendum, paid Optimum for such coal, without applying any adjustment or reduction to the payment, for Optimum's failure to comply with the quality parameters, even though Eskom was entitled to adjust or reduce the payment accordingly.
- 2.6 Eskom has done a calculation of the reduction to the purchase price that Eskom was entitled to impose on the payment to Optimum for the coal supplied and delivered during the Supply Period, which failed to comply with the quality parameters in clause 3.4 of the First Addendum. The reduction Eskom is entitled to impose on the purchase price paid to Optimum for the Supply Period amounts to R2,176 530 611.99 (two billion one hundred seventy six million five hundred and thirty thousand six hundred and eleven rand and ninety nine cents). A spreadsheet with the calculation of the reduction amount in respect of the quality parameters is attached hereto for your ease of reference.
- 2.7 Eskom herewith demands payment in the amount of R2, 176 530 611.99 (two billion one hundred seventy six million five hundred and thirty thousand six hundred and eleven rand and ninety nine cents) from Optimum within 14 (fourteen) days from receipt of this letter, failing which Eskom shall invoke the dispute resolution process as contemplated by clause 6 of the First Addendum.
- 3 In the event that Optimum disputes the aforementioned claim, we submit that this letter shall constitute a referral of the dispute to arbitration as contemplated in clause 6.3 of the First Addendum.
- 4 Eskom records that clause 6.1 of the First Addendum has been complied with by virtue of the Co-Operation Agreement. The dispute is therefore not required to be referred to a Special Committee as contemplated in clause 6.1 of the First Addendum. We submit that this is the correct approach to follow as the termination of the Co-Operation Agreement, has illustrated that it will not be possible for this matter to be resolved at the executive level, as the settlement discussions has failed.

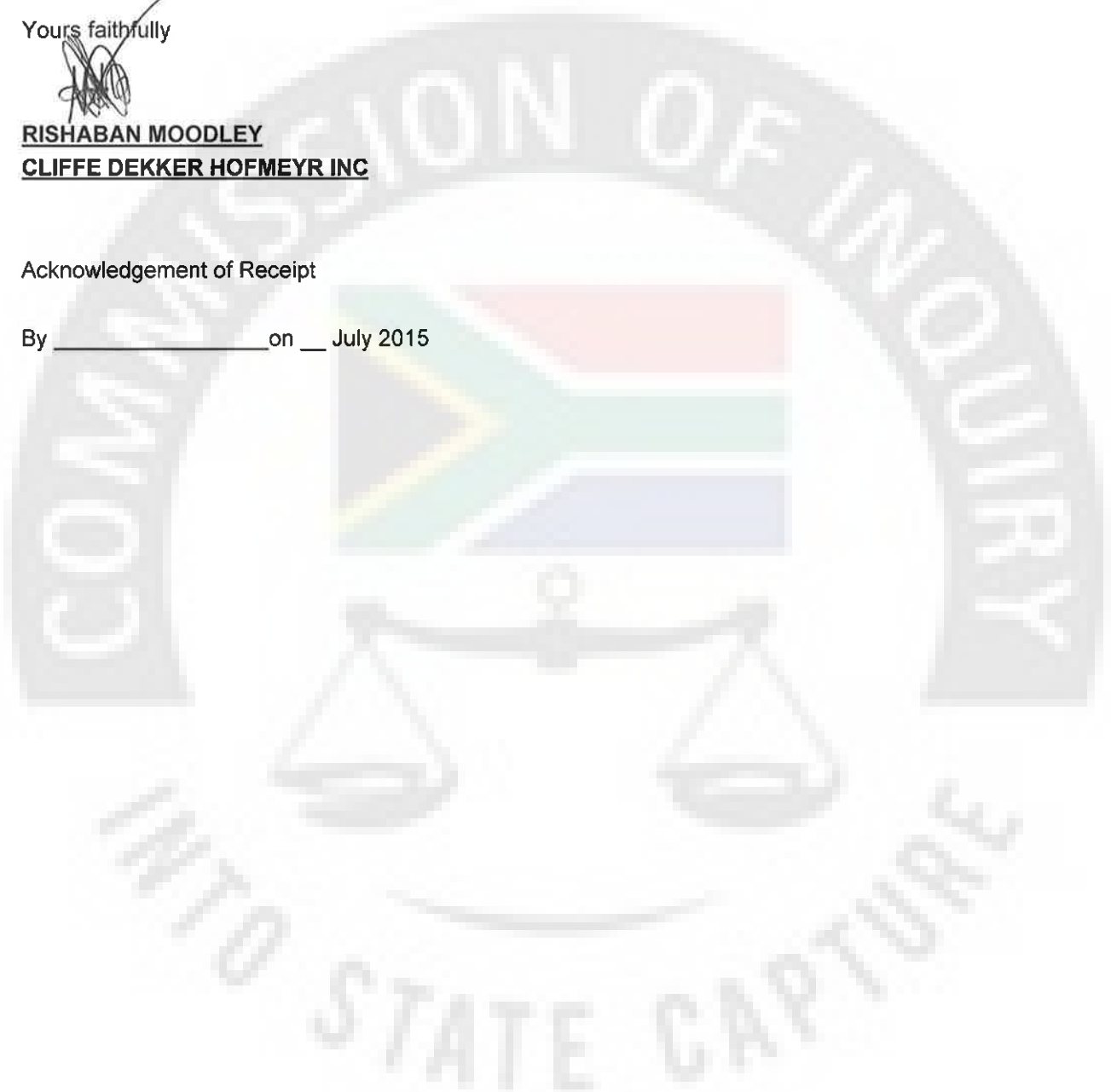
- 5 Further, in the event that Optimum disputes the claim amount Optimum must provide us with the names of its preferred arbitrator(s) within 5 (five) business days of the noting of the dispute. Should we fail to reach agreement on a particular arbitrator within 7 (seven) business days from the date of exchange of the names of the arbitrators, a request shall be made to the President of the Law Society of Northern Provinces to nominate an arbitrator.
- 6 We look forward to your response.

Yours faithfully


RISHABAN MOODLEY
CLIFFE DEKKER HOFMEYR INC

Acknowledgement of Receipt

By _____ on ____ July 2015



	Total Amount invoiced (Excl VAT)	Total Sizing Penalties (Excl VAT)	Total AI Penalties (Excl VAT)	Total CV Penalties (Excl VAT)	Total Ash Penalties (Excl VAT)	Total Penalties (Excl VAT)	Minimum Amount Payable (R1)	Total value of claim (incl Sizing) (Excl VAT)			Total value of claim (Excl Sizing) (Excl VAT)		
								Total penalty	Penalty already deducted	Net Claim amount	Total penalty	Penalty already deducted	Net Claim amount
Mar 12	60 092 065.00	-	-176 445.50	-2 536 764.15	-9 134 638.61	-11 847 848.27	509 632	11 847 848.27	-5 750 686.67	6 097 161.60	11 847 848.27	-5 750 686.67	6 097 161.60
Apr 12	49 897 234.44	-51 233 660.65	-188 999.03	-13 130 021.15	-5 780 230.28	-70 332 911.11	433 142	49 464 092.44	-3 695 423.94	45 768 668.50	19 099 250.46	-3 695 423.94	15 403 826.52
May 12	54 879 440.33	-60 601 021.22	-114 323.68	-16 776 364.44	-16 408 038.40	-93 899 747.74	469 850	54 409 590.33	-2 285 980.84	52 123 609.49	33 298 726.52	-2 285 980.84	31 012 745.68
Jun 12	52 995 408.96	-56 129 006.56	-75 770.42	-1 191 312.81	-19 953 406.18	-77 349 495.97	454 712	52 540 696.96	-1 870 190.00	50 670 506.96	21 220 489.41	-1 870 190.00	19 350 299.41
Jul 12	55 440 076.30	-62 545 284.28	-145 809.82	-3 544 078.90	-16 942 041.43	-83 177 214.43	473 926	54 966 150.30	-3 130 018.00	51 836 132.30	20 631 930.15	-3 130 018.00	17 501 912.15
Aug 12	67 415 965.02	-64 939 300.90	-212 264.92	-839 502.32	-20 527 665.62	-86 518 733.76	493 013	66 922 952.02	-4 408 321.00	62 514 631.02	21 579 432.86	-4 408 321.00	17 171 111.86
Sep 12	98 625 215.66	-60 398 734.66	-284 244.10	-	-4 580 072.78	-65 263 051.54	444 959	65 263 051.54	-4 925 696.00	60 337 355.54	4 864 316.88	-4 925 696.00	-61 379.12
Oct 12	65 554 781.30	-65 083 096.30	-227 590.83	-17 999 777.91	-3 213 695.70	-86 524 160.75	471 685	65 083 096.30	-5 221 553.00	59 861 543.30	21 441 064.45	-5 221 553.00	16 219 511.45
Nov 12	51 880 298.58	-51 508 636.58	-150 030.63	-26 370 915.29	-10 498 240.93	-88 527 823.43	371 662	51 508 636.58	-3 491 043.00	48 017 593.58	37 019 186.85	-3 491 043.00	33 528 143.85
Dec 12	59 078 595.66	-58 641 073.66	-167 551.78	-13 387 408.52	-32 067 321.09	-104 263 355.05	437 522	58 641 073.66	-2 927 443.00	55 713 630.66	45 622 281.39	-2 927 443.00	42 694 838.39
Jan 13	57 149 101.02	-56 738 724.02	-179 183.04	-16 341 852.61	-30 219 643.15	-103 479 402.82	410 377	56 738 724.02	-4 038 782.00	52 699 942.02	46 740 678.80	-4 038 782.00	42 701 896.80
Feb 13	68 269 355.76	-69 573 780.64	-169 438.21	-2 765 749.13	-17 902 165.00	-90 411 132.98	486 122	67 783 233.76	-4 328 580.00	63 454 653.76	20 837 352.34	-4 328 580.00	16 508 772.34
Mar 13	67 836 777.34	-65 592 896.46	-163 270.61	-4 912 502.59	-8 079 170.07	-78 747 839.73	453 334	67 383 443.34	-3 104 912.00	64 278 531.34	13 154 943.27	-3 104 912.00	10 050 031.27
Apr 13	58 399 980.24	-58 757 437.08	-211 294.98	-9 051 100.80	-28 905 712.86	-96 925 545.73	456 333	57 943 647.24	-3 753 116.00	54 190 531.24	38 168 108.65	-3 753 116.00	34 414 992.65
May 13	58 260 081.88	-57 855 469.88	-267 005.30	-40 061 421.83	-19 441 975.65	-117 625 872.65	404 612	57 855 469.88	-3 964 373.00	53 891 096.88	59 770 402.77	-3 964 373.00	55 806 029.77
Jun 13	69 906 236.40	-69 468 227.40	-349 584.08	-15 508 780.81	-61 600 891.31	-146 927 483.60	438 009	69 468 227.40	-6 156 673.00	63 311 554.40	77 459 256.20	-6 156 673.00	71 302 583.20
Jul 13	65 866 250.00	-65 412 000.00	-300 266.07	-39 791 910.46	-28 223 966.42	-133 728 142.95	454 250	65 412 000.00	-6 249 334.00	59 162 666.00	68 316 142.95	-6 249 334.00	62 066 808.95
Aug 13	60 161 143.77	-59 729 044.77	-290 240.19	-28 954 653.30	-29 311 374.06	-118 285 312.32	432 099	59 729 044.77	-5 791 329.00	53 937 715.77	58 556 267.55	-5 791 329.00	52 764 938.55
Sep 13	60 218 376.68	-59 825 203.68	-229 642.96	-12 514 945.61	-25 495 123.20	-98 064 915.45	393 173	59 825 203.68	-9 811 661.85	50 013 541.83	38 239 711.77	-9 811 661.85	28 428 049.92
Oct 13	71 876 009.15	-66 148 367.31	-227 218.32	-1 686 443.73	-5 546 376.53	-73 608 405.89	455 787	71 420 222.15	-5 915 646.65	65 504 575.50	7 460 038.58	-5 915 646.65	1 544 391.93
Nov 13	53 734 648.60	-53 310 036.60	-274 715.87	-	-2 886 151.27	-56 470 903.74	424 612	53 310 036.60	-6 089 922.90	47 220 113.70	3 160 867.14	-6 089 922.90	-2 929 055.76
Dec 13	56 143 863.60	-55 761 828.60	-324 439.84	-6 756 201.64	-208 867.76	-63 051 337.84	382 035	55 761 828.60	-7 866 080.36	47 895 748.24	7 289 509.24	-7 866 080.36	-576 571.12
Jan 14	54 328 514.32	-53 964 918.32	-348 798.72	-21 505 933.88	-19 475 094.76	-95 294 745.68	363 596	53 964 918.32	-9 619 534.95	44 345 383.37	41 329 827.36	-9 619 534.95	31 710 292.41
Feb 14	54 239 624.86	-53 876 550.86	-313 841.91	-4 723 358.30	-30 620 670.92	-89 534 421.99	363074	53 876 550.86	-10 345 502.61	43 531 048.25	35 657 871.13	-10 345 502.61	25 312 368.52
Mar 14	69 799 378.16	-69 369 265.99	-363 050.43	-9 106 645.38	-16 219 842.79	-95 058 804.60	430 754	69 368 624.16	-11 710 326.48	57 658 297.68	25 689 538.60	-11 710 326.48	13 979 212.12
Apr 14	73 530 604.98	-73 047 898.98	-313 235.85	-294 194.93	-9 356 194.34	-83 011 524.10	482 706	73 047 898.98	-14 213 161.47	58 834 737.51	9 963 625.12	-14 213 161.47	-4 249 536.35
May 14	67 346 005.58	-66 916 338.58	-353 672.61	-	-3 975 958.99	-71 245 970.18	429 667	66 916 338.58	-7 721 467.05	59 194 871.53	4 329 631.60	-7 721 467.05	-3 391 835.45
Jun 14	59 008 486.68	-58 613 754.68	-317 611.09	-3 961 164.52	-23 715 463.93	-86 607 994.22	394 732	58 613 754.68	0.00	58 613 754.68	27 994 239.54	0.00	27 994 239.54
Jul 14	64 051 306.76	-63 624 049.76	-347 976.30	-4 168 590.36	-15 654 724.70	-83 795 341.11	417 844	63 633 462.76	0.00	63 633 462.76	20 171 291.35	0.00	20 171 291.35
Aug 14	70 451 681.30	-70 003 800.30	-351 317.11	-16 134 091.34	-44 491 551.61	-130 980 760.36	447 881	70 003 800.30	0.00	70 003 800.30	60 976 960.06	0.00	60 976 960.06
Sep 14	66 380 830.16	-65 986 918.20	-410 645.03	-34 055 719.21	-52 557 389.13	-153 010 671.57	393 435	65 987 395.16	0.00	65 987 395.16	87 023 753.37	0.00	87 023 753.37
Oct 14	77 827 483.70	-77 325 273.70	-393 978.17	-13 138 891.90	-50 916 574.67	-141 774 718.45	502 210	77 325 273.70	0.00	77 325 273.70	64 449 444.75	0.00	64 449 444.75
Nov 14	68 718 376.47	-67 957 830.72	-371 552.71	-4 920 062.77	-27 712 794.99	-100 962 241.18	423 968	68 294 408.47	0.00	68 294 408.47	33 004 410.46	0.00	33 004 410.46
Dec 14	61 954 964.45	-61 576 462.54	-342 765.83	-10 506 229.03	-1 029 345.60	-73 454 802.99	377 353	61 577 611.45	0.00	61 577 611.45	11 878 340.45	0.00	11 878 340.45
Jan 15	58 948 784.15	-58 582 233.57	-377 391.20	-817 819.18	-1 311 736.81	-61 089 180.75	368 187	58 580 597.15	0.00	58 580 597.15	2 506 947.18	0.00	2 506 947.18
Feb 15	49 304 583.98	-48 998 028.30	-310 286.09	-7 273 839.95	-10 634 564.82	-67 216 719.16	307 294	48 997 289.98	0.00	48 997 289.98	18 218 690.86	0.00	18 218 690.86
Mar 15	51 635 467.79	-51 340 994.32	-288 431.19	-502 088.68	-6 530 523.98	-58 662 038.17	293 612	51 341 855.79	0.00	51 341 855.79	7 321 043.85	0.00	7 321 043.85
Apr 15	57 381 399.89	-57 024 685.34	-340 969.11	-3 993 083.42	-5 543 490.27	-66 902 228.14	355 582	57 025 817.89	0.00	57 025 817.89	9 877 542.80	0.00	9 877 542.80
May 15	63 458 263.69	-63 083 519.13	-245 874.82	-27 208 258.43	-48 575 548.73	-139 113 201.10	374 761	63 083 502.69	0.00	63 083 502.69	76 029 681.97	0.00	76 029 681.97
	2 432 046 662.61	# -2 330 545 354.55	-10 520 728.33	-436 431 679.28	-765 248 239.34	-3 542 746 001.49	16 477 502	2 334 917 370.76	-158 386 758.77	2 176 530 611.99	1 212 200 646.95	-158 386 758.77	1 053 813 888.18

NON-DISCLOSURE AGREEMENT

1 Parties

- 1.1 Optimum Coal Mine (Proprietary) Limited (registration number 2007/005308/07) ("**OCM**");
- 1.2 Optimum Coal Holdings (Proprietary) Limited (registration number 2006/007799/07) ("**OCH**");
- 1.3 Oakbay Investments (Proprietary) Limited (registration number 2006/017975/07) ("**Receiving Party**");

(each a "**Party**" and collectively, the "**Parties**").

2 Purpose and Transaction

- 2.1 OCM, OCH (collectively, the "**Disclosing Parties**") and the Receiving Party are discussing and evaluating a potential transaction (the "**Transaction**") relating to the acquisition of the whole or a part of the ordinary shares in, or the assets of, the Disclosing Parties and/or its subsidiaries.
- 2.2 The Disclosing Parties wish to disclose certain proprietary, secret and confidential information to the Receiving Party in connection with and for the purposes of the Transaction ("**Purpose**").
- 2.3 The Parties agree that any such disclosure of such Confidential Information shall be on the terms set out in this agreement.
- 2.4 In the event of any disclosure by the Receiving Party of its Confidential Information to the Disclosing Parties in connection with and for the purposes of the Transaction, the Receiving Party shall be deemed to be the "Disclosing Party" and the Disclosing Parties shall be deemed to be the "Receiving Party". The Parties agree that any such disclosure of such Confidential Information shall likewise be on the terms set out in this agreement.

3 Definitions

- 3.1 In this agreement, "**Confidential Information**" shall mean any technical, financial, commercial, scientific information, know-how, trade secrets, processes, notes, memoranda, methodology, designs, drawings, technical specifications and data information (whether oral, written, electronic or in any other form) relating to the Transaction, and/or the Disclosing Parties and/or their businesses or investments made available by or on behalf of the Disclosing Parties whether before or after this agreement is actually entered into, for the Purpose, together with any information derived from such information (including any analyses, compilations, studies and other material prepared by the Disclosing Parties in any form whatsoever that contain or otherwise reflect or are generated from such information), including, without limitation, the fact that the Transaction is in contemplation or any information concerning the terms, status or progress of the Transaction and the existence of this agreement. Confidential

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Information shall, however, not include any information to the extent that such information:

- 3.1.1 is already known to the Receiving Party or any of its Representatives at the date of disclosure by the Disclosing Parties under this agreement;
- 3.1.2 is, at the time of such disclosure by the Disclosing Parties, already published or generally available to the public;
- 3.1.3 which, after the time of such disclosure by the Disclosing Parties, is published or becomes generally available to the public, other than through the act or omission of the Receiving Party; or
- 3.1.4 is acquired independently from a third party that has the right to disseminate such information at the time it is disclosed to the Receiving Party without any obligation of confidentiality to the Disclosing Parties.

4 Confidentiality and Non-Use Undertakings

4.1 The Receiving Party acknowledges that:

- 4.1.1 the Confidential Information to be disclosed to the Receiving Party is a valuable, special and unique asset proprietary to the Disclosing Parties; and
- 4.1.2 any unauthorized disclosure of the Confidential Information will prejudice the Disclosing Parties' operations and business interests.

4.2 The Receiving Party undertakes, subject to 4.3:

- 4.2.1 to treat the Confidential Information as strictly confidential and to take all reasonable steps to protect the Confidential Information and keep it secure from unauthorised persons, adopting reasonable standards of care;
- 4.2.2 to only make such copies of any Confidential Information as are reasonably necessary for the Purpose and shall take reasonable steps to ensure that any such copies and the originals are protected against theft or unauthorised access;
- 4.2.3 not to, directly or indirectly, disclose to any third party any of the Confidential Information; provided that the Receiving Party shall be entitled to disclose the Confidential Information to its employees, directors and officers ("**Representatives**") who:
 - 4.2.3.1 have a need to know (and then only to the extent that each such Representative has a need to know);
 - 4.2.3.2 are aware that the Confidential Information should be kept confidential;

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~~4.2.3.3~~ are aware of the Receiving Party's obligations in relation to such Confidential Information in terms of this agreement; and

4.2.3.4 have been directed by the Receiving Party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential on terms no less stringent than those set out in this agreement,

provided further that:

4.2.3.5 the Receiving Party shall take reasonable steps to ensure that any Representative to whom the Confidential Information is disclosed complies with the terms of this agreement; and

4.2.3.6 any use or disclosure of the Confidential Information by any Representative in a manner which is contrary to the terms of this agreement shall constitute a breach of this agreement by the Receiving Party;

4.2.4 to use the Confidential Information solely for the Purpose and not to use or exploit the Confidential Information for its own benefit (including in any subsequent proceedings), or to allow any other person to do so, without the Disclosing Parties' written consent;

4.2.5 to the extent permitted by law and reasonably possible in the circumstances, to inform the Disclosing Parties immediately if the Receiving Party becomes aware of, or reasonably suspects there has been, a breach by it of the obligations in this agreement.

4.3 The Receiving Party may disclose the Confidential Information to the extent that such Confidential Information is required to be disclosed under any applicable law or regulation, excluding contractual obligations, or any order of court or governmental body (as advised by external legal counsel); provided that:

4.3.1 the Receiving Party shall only disclose the minimum of the Confidential Information that it is legally required to disclose (as advised by external legal counsel);

4.3.2 the Receiving Party shall give notice to the Disclosing Parties prior to such disclosure in order to enable the Disclosing Parties to take, at the Disclosing Parties' expense, such steps as they deem necessary to prevent such disclosure and the Receiving party will take such steps as the Disclosing Parties may reasonably require for that purpose and the Receiving Party shall keep the Disclosing Parties promptly and fully informed of all developments relating to any such potential disclosure; and

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4.2.3

if any such disclosure would include the identity of the Disclosing Parties (or any of their subsidiaries), then the disclosure of such identity shall require either (i) the consent of the Disclosing Parties or (ii) the written advice of external legal counsel of the Receiving Party to the effect that such disclosure is required.

5 Return of Confidential Information

5.1 The Confidential Information shall remain the property of the Disclosing Parties, and the Receiving Party shall, if so directed by any of the Disclosing Parties, return to the Disclosing Parties and/or destroy all Confidential Information furnished to it by the Disclosing Parties together with all copies, notes and memoranda relating thereto (including electronic copies) in its possession or control, and will not retain, and will procure that none of its Representatives retains, directly or indirectly, any copies, extracts or other reproductions, in whole or in part, of the Confidential Information.

5.2 The return and/or destruction and/or erasure of Confidential Information shall be confirmed by a director of the Receiving Party to the Disclosing Parties in writing

6 No representation or warranty

The Confidential Information does not purport to be all inclusive and the Disclosing Parties make no representations or warranties, express or implied, as to the quality, accuracy, reliability or completeness of the Confidential Information, and the Receiving Party expressly acknowledges the inherent risk of error in the use of the Confidential Information. None of the Disclosing Parties nor any of their officers, directors, employees, professional advisers, consultants, and/or agents shall have any duty of care, responsibility, or liability whatsoever (save in respect of any fraud or deceit by it) to the Receiving Party or any other person with respect to the use or reliance by the Receiving Party or any other person upon the Confidential Information.

7 Title

The Receiving Party acknowledges that the Confidential Information is proprietary to the Disclosing Parties and disclosure of the Confidential Information to the Receiving Party shall not thereby confer on the Receiving Party any rights or license of whatever nature in such Confidential Information.

8 Term

The provisions of this agreement shall apply until the expiry of a period of five years from the date of signature of this agreement, notwithstanding any decision not to proceed with the Transaction or any return or destruction or erasure of the Confidential Information.

9

The Parties' Relationship

- 9.1 Unless otherwise expressly agreed in writing between the Parties, nothing in this agreement or the subsequent dealings between the Parties shall create or be deemed to create:
- 9.1.1 any relationship of partnership, agency or employment between the Parties, or confer any authority on either of the Parties to contract on behalf of, or otherwise bind, the other Party;
- 9.1.2 an obligation on the Disclosing Parties to provide, or to continue to provide, any information to the Receiving Party, whether Confidential Information or otherwise.
- 9.2 Neither by virtue of this agreement nor the provision of the Confidential Information will either Party be under any obligation to proceed with the Transaction.

10 Breach

- 10.1 If the Receiving Party breaches any of the provisions of this agreement and, where such breach is capable of remedy, fails to remedy that breach within five days after receiving written notice from any of the Disclosing Parties requiring the Receiving Party to remedy the breach, then each of the Disclosing Parties will, without prejudice to its other rights in law, be entitled to:
- 10.1.1 apply to any court of competent jurisdiction by way of urgent proceedings to interdict or restrain the Receiving Party from perpetuating or continuing such breach or doing or permitting anything to be done which constitutes a breach of any undertaking in this agreement; and/or
- 10.1.2 claim from the Receiving Party all damages, which such Disclosing Party may have suffered, as a result of such breach.
- 10.2 No Party shall be entitled to cancel this agreement in respect of breach by the other Party of any of the provisions hereof; the Parties' remedies being limited to a claim for damages, with or without a claim for specific performance or interdictory relief.
- 10.3 The Receiving Party acknowledges and agrees that:
- 10.3.1 a breach of this agreement may cause irreparable loss, harm and damage to the Disclosing Parties, and that money damages would not be an adequate remedy for any such breach; and
- 10.3.2 the Disclosing Parties shall, without prejudice to any other remedy, be entitled to the remedies of interdictory relief, specific performance and other urgent relief, for any threatened or actual breach of any of the provisions of this agreement and that no proof

~~of special damage shall be necessary for the enforcement of this agreement.~~

11 Announcements

This agreement does not require any disclosure to be made by either Party and each Party undertakes not to make any public announcement (including a press release or a statement to the media) or discuss any matter with the media in relation to the Transaction; provided that if in the future any public is required in terms of applicable law or regulation (including the rules of any stock exchange) the Party making the announcement or discussing the matter with the media, shall first, to the extent permitted by law and reasonably possible in the circumstances, obtain the approval as to the wording and timing of such public announcement from the other Party.

12 Domicilium And Notices

12.1 The Parties choose domicilium citandi et executandi ("**domicilium**") for all purposes relating to this agreement, including the giving of any notice and the serving of any process, as follows:

Disclosing Parties	physical	1st Floor 23 Melrose Boulevard Melrose Arch Melrose North 2196
	Email	Alma.kennedy@glencore.co.za
	Attention:	Alma Kennedy
Receiving Party	Physical	144 Katherine Street Grayston Ridge Office Park Block A Lower Ground floor Sandton
	Email	ronica@oakbay.co.za
	Attention:	Ronlca Ragavan

12.2 Either Party shall be entitled from time to time, by giving written notice to the other, to vary its physical domicilium to any other physical address (not being a post office box or poste restante) within the Republic of South Africa and to vary its email address to any other email address.

12.3 Any notice given by either Party to the other ("addressee") which is delivered by hand between the hours of 09:00 and 17:00 on any business day to the addressee's physical domicile for the time being shall be deemed to have been received by the addressee at the time of delivery.

12.4 Any notice given by either Party to the other which is successfully transmitted by email to the addressee's email address for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the day of successful transmission thereof.

12.5 This 12 shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this 12.

12.6 Any notice in terms of or in connection with this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

13 Governing Law and Jurisdiction

13.1 This agreement shall be interpreted and implemented in accordance with the laws of the Republic of South Africa.

13.2 The Parties irrevocably submit themselves and consent to the exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that court) in respect of all claims or disputes howsoever arising out of or in connection with this agreement. The Parties irrevocably waive any objection they may now have or hereafter have that such action or proceeding has been brought in an inconvenient forum.

14 General

14.1 The obligations of the Receiving Party under this agreement are in addition to any other obligations which may arise under statute, common law or otherwise and this agreement does not derogate from any other confidentiality obligations which the Receiving Party may currently have or may in the future have to the Disclosing Parties.

14.2 This agreement constitutes the whole agreement between the Parties and no agreement varying, adding to, deleting from or cancelling this agreement shall be effective unless reduced to writing and signed by or on behalf of the Parties.

14.3 No addition to, variation, novation or agreed cancellation of, any provision of this agreement will be binding upon the Parties, unless reduced to writing and signed by or on behalf of both Parties.

14.4 No indulgence or extension of time, which either Party ("Grantor") may grant to the other, nor any election or failure by the Grantor to enforce, whether completely or partially, or delay the enforcement of, any of its existing or future rights, will constitute a waiver of, or, whether by

estoppel or otherwise, limit any of, the existing or future rights of the Grantor in terms hereof, save in the event and to the extent that the Grantor has signed a written document expressly waiving or limiting that right.

14.5 Neither Party shall be entitled to cede, delegate, assign or transfer any of its rights or obligations, under or in terms of this agreement to any third party without the prior written consent of the other Party.

14.6 Each term in this agreement is separate and divisible from every other term agreed to herein, so that if any one of the terms is or becomes unenforceable for any reason in any jurisdiction affected by this agreement, and to the extent of such prohibition or unenforceability, that term shall be severable from the balance of the agreement and will not affect the validity or enforceability of any other term contained in this agreement in any other jurisdiction affected by this agreement. Insofar as the terms are considered by the Parties to be reasonable in all the circumstances, they agree that if the terms taken together, are adjudged to go beyond what is reasonable in all the circumstances but would be adjudged reasonable if part or parts of the wording of the terms were deleted, the terms shall apply with such words deleted.

14.7 This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.


Signed at Sandton on 24 July 2015
for Optimum Coal Mine (Proprietary) Limited



who warrants that he is duly
authorised hereto

Name: C. Ephraim
Capacity: Director

Signed at Sandton on 24 July 2015
for Optimum Coal Holdings (Proprietary) Limited



who warrants that he is duly
authorised hereto

Name: C. Ephraim
Capacity: Director

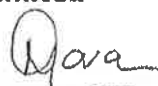
Signed at

Johannesburg

on

22 July

2015

for **Oakbay Investments (Proprietary)
Limited**who warrants that he is duly
authorised hereto

Name: RONICA RAGHAVAN

Capacity: AUTHORIZED



DELIVERED BY HAND, FACSIMILE AND EMAIL

Eskom Holdings SOC Limited

Megawatt Park
Maxwell Drive
Sunninghill

Attention: Chief Officer: Generation
Facsimile: 011 800 5555

Email: Matshela Koko - matshela.koko@eskom.co.za
Vusi Mboweni - mbowenv@eskom.co.za

CC: Ayanda Nteta - NtshanAK@eskom.co.za

Cc: **Cliffe Dekker Hofmeyer**

Attention: Rishaban Moodley
Email: rishaban.moodley@dlacdh.com

Johannesburg Office
155 5th Street
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com
enquiries@werksmans.com

YOUR REFERENCE:

OUR REFERENCE: Mr E Levenstein/Ms L Becker/lb/OPTI13168.19/#3407652v2

DIRECT PHONE: +27 11 535 8237/8196

DIRECT FAX: +27 11 535 8737/8796

EMAIL ADDRESS: elevenstein@werksmans.com/lbecker@werksmans.com

20 August 2015

OPTIMUM COAL MINE PROPRIETARY LIMITED (IN BUSINESS RESCUE) / ESKOM HOLDINGS SOC LIMITED RE: COAL SUPPLY AGREEMENT – SUSPENSION OF AGREEMENT AND OFFER TO SUPPLY

- 1 As you are aware, we act on behalf of Piers Marsden ("**Marsden**") and Peter Van den Steen ("**Van den Steen**"), the joint business rescue practitioners of Optimum Coal Mine Proprietary Limited ("**OCM**") (collectively referred to as "**our clients**").
- 2 We refer to the Coal Supply Agreement between Eskom Holdings SOC Limited ("**Eskom**") and OCM ("**CSA**"), as amended from time to time.
- 3 You are aware that the directors of OCM commenced business rescue proceedings on 4 August 2015 and appointed Marsden and Van den Steen as business rescue practitioners.
- 4 You would further be aware from the notices in respect of the business rescue proceedings, the hardship claim initiated by OCM in 2013 and your extensive engagement with OCM pursuant to the settlement process conducted in terms of the co-operation agreement between Eskom and OCM dated 23 May 2014 ("**Co-Operation Agreement**") (which settlement process Eskom terminated on 10 June 2015), that the principal reason for the commencement of OCM's business rescue proceedings is the financial distress that the terms of the CSA have placed,

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa

Directors D Hertz (Chairman) AL Armstrong BA Aronoff DA Arteiro T Bata AR Berman NMN Bhengu L Bick HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hoslosky BB Hotz HC Jacobs TL Janse van Rensburg N Jansen van Vuuren G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew R Kiloran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner JS Lubbe BS Mabasa PK Mabasa MPC Manaka H Masondo C Moraitis KO Motshwane L Naidoo J Nickig JJ Niemand BPF Olivier WE Oosthuizen S Padayachy M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raath A Ramdhan L Rood BR Roothman W Rosenberg NL Scott TA Sibidla LK Silberman JA Smit JS Smit CI Stevens PO Steyn J Stockwell W Strachan JG Theron JJ Truter KJ Trudgeon DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker D Wegierski M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies

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and continue to place, on OCM. The financial position of OCM was clearly communicated to Eskom on numerous occasions prior to the commencement of OCM's business rescue proceedings in both written correspondence and in formal meetings held between representatives of OCM and Eskom. This financial position has been exacerbated by Eskom's recent claim for historical and future penalties which, if upheld, will effectively result in OCM supplying coal to Eskom at R1 per ton.

- 5 As the business rescue practitioners for OCM, it is incumbent on Marsden and Van den Steen to minimise the immediate cash strain on OCM's finances in order to provide sufficient scope for them to develop a business rescue plan for OCM. In these circumstances, Marsden and Van den Steen can no longer allow OCM to continue performing the CSA on its current terms. This is even more the case given Eskom's failure to timeously make payment for coal delivered to Eskom in July, notwithstanding that Eskom confirmed in writing on 14 August 2015 that Eskom would make such payment. The non-payment of amounts due constitutes a breach of the CSA, and our clients reserve all of their rights in this regard.
- 6 Accordingly, the purpose of this letter is to advise you that in terms of section 136(2)(a) of the Companies Act 71 of 2008, as amended, Marsden and Van den Steen are entirely suspending all of the obligations of OCM in terms of the CSA with immediate effect, including but not limited to its obligation to supply coal to Eskom in terms of the CSA, for the duration of the business rescue proceedings. For the avoidance of doubt, this suspension does not affect Eskom's obligations to make payment for coal delivered prior to the suspension.
- 7 Notwithstanding the aforesaid, Marsden and Van den Steen are amenable to supplying coal to Eskom during the business rescue proceedings on terms which are sustainable for OCM. Accordingly, OCM hereby offers to supply coal to Eskom on the terms set out in the agreement enclosed with this letter ("**Interim Agreement**"), which Interim Agreement is based on the principles negotiated between OCM and Eskom's negotiating team pursuant to the Co-Operation Agreement. The price included in the Interim Agreement represents the average cash cost of production for OCM. The costs in the Interim Agreement are not materially different from the costs provided to Eskom as part of the Co-Operation Agreement process and have only been adjusted to take account of the different time period during which the coal is to be supplied. We record that pursuant to the Co-Operation Agreement, Nedbank and Basis Points Capital were appointed by Eskom to review OCM's costs in detail and they confirmed that OCM's costs were an accurate reflection of OCM's costs of mining.
- 8 As you will appreciate, if Eskom is not willing to purchase such coal, Marsden and Van den Steen will need to take various steps in order to further limit the expenses of the mine. Accordingly, the offer in the Interim Agreement is open for acceptance until 17h00 on Monday, 24 August 2015. If Eskom would like to accept such offer, please complete the missing domicilium details in the Interim Agreement, sign in the space provided and return a countersigned copy to us.
- 9 As indicated at the meeting held with Eskom on 17 August 2015, Marsden and Van den Steen remain willing to negotiate with Eskom and other stakeholders in OCM in order to develop a solution for OCM which will enable it to emerge from business rescue as a sustainable long-term supplier to Eskom.
- 10 Our clients' rights are strictly and fully reserved.

Yours faithfully


Werksmans Attorneys

INTERIM AGREEMENT ("Agreement")**between****ESKOM HOLDINGS SOC LIMITED ("Eskom")****and****OPTIMUM COAL MINE (PROPRIETARY) LIMITED ("OCM")****(each, a "Party" and, collectively, the "Parties")****1 Introduction**

1.1 It is recorded that:

1.1.1 the directors of OCM resolved on 31 July 2015 to commence business rescue proceedings in terms of section 129(1) of the Companies Act, 2008 ("**Business Rescue Proceedings**") as a result of OCM being financially distressed;

1.1.2 Piers Marsden ("**Marsden**") and Peter Van den Steen ("**Van den Steen**") have been appointed as business rescue practitioners in respect of OCM (collectively, the "**BRPs**"); and

1.1.3 the BRPs have in accordance with section 136(2)(a) of the Companies Act suspended for the duration of the Business Rescue Proceedings the Coal Supply Agreement between OCM and Eskom concluded in 1993, as amended from time to time.

1.2 OCM wishes to supply to Eskom, and Eskom wishes to purchase from OCM, coal for the duration of the Business Rescue Proceedings, on the terms and conditions set out below.

1.3 The Parties therefore agree as follows.

2 Suspensive Condition

2.1 This Agreement is subject to the fulfilment of the suspensive condition ("**Suspensive Condition**") that on or before 17h00 on 25 August 2015 OCM receives payment from Eskom of the amount of R51 107 913.6 (less the AI penalty amount) which Eskom undertook to pay to OCM in its letter dated 14 August 2015.

2.2 If the Suspensive Condition is not fulfilled or waived by 17h00 on 25 August 2015, this Agreement shall be of no force and effect.

3 Duration

This Agreement will commence on the day after the date on which the Suspensive Condition in 2 is fulfilled and will, unless otherwise terminated in accordance with its terms, endure until (i) the date on which the Business Rescue Proceedings have ended as contemplated in section 132 (2) of the Companies Act or (ii) a long-term agreement is concluded between OCM and Eskom which supersedes this Agreement; provided that OCM shall at any time during the Business Rescue Proceedings be entitled to terminate this Agreement on 30 days' written notice to Eskom.



4 Quantity

OCM shall supply to Eskom, and Eskom will purchase from OCM, 400 000 tons of coal per month (+/- 10% at OCM's option); provided that this will be pro-rated per day for part months during the term of this Agreement.

5 Price

Eskom shall pay to OCM R22.32 per GJ (moisture free) for coal delivered under this Agreement, it being agreed that the CV shall be determined on a monthly weighted average basis.

6 Payment

- 6.1 Eskom shall on each Wednesday during the term of this Agreement (if that date is not a business day, the next business day) pay to OCM for coal delivered in terms of this Agreement during the 7 day period ending on (and including) the Sunday immediately preceding the Wednesday; provided that (i) for the purposes of calculating the weekly payment, the CV of the coal will be deemed to be 23 MJ/kg (moisture free) and the moisture 9% and no penalties shall be deducted; (ii) an adjustment will be made to the first weekly payment of each month as per clause 6.4.
- 6.2 OCM shall not later than 2 days prior to the date of each payment deliver a valid tax invoice to Eskom in respect of the payment.
- 6.3 OCM shall deliver to Eskom, on or before the third business day of each month, a statement reflecting, in respect of all deliveries during the prior month under this Agreement:
- 6.3.1 the monthly weighted average CV of the coal delivered on a moisture free basis;
 - 6.3.2 the price payable for the coal delivered based on the monthly weighted average CV;
 - 6.3.3 the penalties payable in respect of the coal delivered in terms of clause 8;
 - 6.3.4 the net amount due to OCM for the coal delivered, being the amount in 6.3.2 less the amount in 6.3.3 ("**Net Amount**"); and
 - 6.3.5 a reconciliation between the Net Amount and the weekly payments made in terms of clause 6.1.
- 6.4 If the Net Amount exceeds the amount paid in respect of the coal delivered pursuant to clause 6.1, then Eskom shall pay the shortfall together with the next weekly payment. If the Net Amount is less than the amount paid in respect of coal delivered pursuant to clause 6.1, Eskom shall deduct such amount from the next weekly payment.
- 6.5 Any amount falling due for payment by Eskom to OCM in terms of or pursuant to this Agreement which is not paid on its due date shall, without prejudice to OCM's other remedies in terms of this Agreement, bear interest calculated from the due date for payment thereof until date of payment, at the prime rate.



7 Delivery, Risk and Ownership of coal

Ownership of, and risk in, the coal delivered in terms of this Agreement shall pass to Eskom upon delivery onto the conveyor.

8 Quality Specifications

- 8.1 The following table sets out the specifications of the coal to be delivered and the consequences (if any) for failure to meet such specifications:

Quality parameter	Unit	Expected Quality	Quality Rejection Limit	Measurement basis	Measurement	Adjustment
Calorific Value	MJ/kg	23	<21.65	Moisture Free	Monthly Weighted Average	Adjustment through price and Eskom can reject
Ash	%	28	>31.5	Moisture Free	Monthly Weighted Average	No adjustment but Eskom can reject
Moisture	%	9%	>12%	As Received	Monthly weighted Average	There will be no adjustment but Eskom will have the right to request Optimum to stop supplies as per clause 8.6 below
Abrasive Index (Eskom Mining House Method)	mgFe/4 kg	700	None	Moisture Free	Monthly weighted average	Penalty as per clause 8.4 below
Sulphur	%	1.5 %	None	None	None	None
Volatiles	%	22.4 %	None	None	None	None
AFT (Initial deformation.)	°C	1,300 ≥	None	N / A	None	None
Sizing < 6mm <2.8mm <0.81mm	% % %	≤ 55% ≤ 35% ≤20 %	None None ≤20%	N / A	Monthly weighted average	Penalty for -0.81mm only as per clause 0 below

- 8.2 The monthly weighted averages shall be calculated based on the coal delivered in terms of this Agreement during each calendar month of this Agreement (or part thereof).
- 8.3 The Parties agree that in respect of Quality Parameters where there is no Quality Rejection Limit, the Expected Quality Parameter sets out the quality which OCM expects to deliver. However, if OCM does not meet the Expected Quality parameters, there will be no right of rejection, penalty or adjustment and OCM shall not be liable for any claim and/or damage.
- 8.4 In the event that monthly weighted average Abrasive Index level of coal delivered by OCM in a month is > 700 mgFe/4kg, OCM will be liable to pay a penalty to Eskom in respect of each ton of coal delivered during that month, calculated on the following basis:



> 700-800	R 4.92 per ton
> 800- 850	R 6.15 per ton
> 850-900	R7.38 per ton
> 900	R11.07 per ton

- 8.5 In the event that the monthly weighted average size distribution of coal delivered by OCM in a month contains more than 20% of coal with a size of 0.81mm, OCM shall be liable to pay Eskom a penalty as follows:

$$A = B \times (C - 20\%) \times D$$

where:

A = the sizing penalty to be calculated;

B = the total number of tons of coal delivered by OCM during the relevant month;

C = the weighted average percentage of coal delivered during the month with a sizing of less than 0.81mm;

D = 50% of the price per ton paid by Eskom for the coal delivered during the month.

- 8.6 OCM shall notify Eskom in advance if the coal to be delivered will be above the quality rejection limit for moisture. Eskom shall then be entitled to elect whether to accept delivery of such coal which does not meet the quality rejection limit in respect moisture. If Eskom elects to receive such coal, then, notwithstanding the moisture parameters of such coal being in rejection, the price of such coal shall be determined in accordance with clause 5 and such quantity of coal shall constitute coal supplied to Eskom and reduce the contractual tonnage.

9 DOMICILIUM

- 9.1 The Parties choose domicilium citandi et executandi ("**Domicilium**") for all purposes relating to this Agreement, including the giving of any notice and the serving of any process, at the physical addresses and e-mail addresses set out below –

9.1.1 Eskom

physical - Megawatt Park
Maxwell Drive
Sunninghill
2157

e-mail: - _____

attention:- _____

9.1.2 OCM

physical - 1st Floor



23 Melrose Boulevard
Melrose Arch
2196

e-mail: pmarsden@matusonassociates.co.za

attention: Piers Marsden

- 9.2 Any Party will be entitled, from time to time, by giving written notice to the other, to vary its physical Domicilium to any other physical address (not being a post office box or poste restante) and to vary its e-mail Domicilium to any other e-mail address.
- 9.3 Any notice given by any Party to any other ("**Addressee**"), which is delivered by hand between the hours of 09:00 and 17:00 on any business day to the Addressee's physical Domicilium for the time being, will be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee at the time of delivery.
- 9.4 Any notice given by any Party to any other, which is successfully transmitted by e-mail to the Addressee's e-mail Domicilium for the time being, will be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee on the business day immediately succeeding the date of successful transmission thereof.
- 9.5 This clause 9 will not operate so as to invalidate the giving or receipt of any written notice, which is actually received by the Addressee other than by a method referred to in this clause 9.
- 9.6 Any notice in terms of, or in connection with, this Agreement will be valid and effective only if it is in writing and if it is received or deemed to have been received by the Addressee.

10 **FORCE MAJEURE**

- 10.1 A force majeure event shall occur in relation to a Party, when that Party is delayed or prevented directly or indirectly from performing all or any of that Party's obligations in terms of this Agreement for any cause beyond its reasonable control, including but not limited to fire, explosion, flood, riot, strike, lockout, industrial action, war, accident, act of nature, government action (whether legal or illegal), which could not have been prevented by a reasonable and prudent operator, all or any of which shall constitute a "**Force Majeure Event**" for the purposes hereof.
- 10.2 The Party affected by a Force Majeure Event ("**Affected Party**") shall be relieved of performance of its obligations in terms of this Agreement during the period that such event and its consequences continue (but only to the extent it is so delayed or prevented from performing partially or at all by the Force Majeure Event), and, provided that notice has been given in terms of clause 10.3, shall not be liable for any delay or failure in the performance of any of its obligations in terms of this Agreement or losses or damages whether general, special or consequential which the other Party ("**Unaffected Party**") may suffer due to or resulting from any such delay or failure.
- 10.3 The Affected Party shall give written notice to the Unaffected Party at the earliest possible opportunity in writing of the occurrence of the event constituting the Force Majeure Event, together with details thereof and a good faith estimate of the period of time for which it shall endure.



- 10.4 Should a Force Majeure Event as set out in clause 10.1 hereof affect the production capacity of the mine and/or OCM's ability to deliver coal for supply to Eskom in terms hereof or should such Force Majeure Event affect Eskom's ability to take off coal in terms of this Agreement, each of the Parties' respective obligations to deliver and to take off coal in terms hereof shall be reduced in proportion to the reduction in the capacity to deliver or capacity to take off as the case may be.
- 10.5 At all times whilst the consequences of a Force Majeure Event continues, the Parties shall meet at regular intervals to discuss and investigate, and if possible, to implement other practical ways and means to overcome the consequences of such a Force Majeure Event, with the objective of achieving the import and intent of this Agreement without unreasonable delay. In this regard the Parties shall explore the possibility of concluding alternative arrangements for the supply or purchase of coal as the case may be. These alternative arrangements may include quantity, quality and price adjustment amendments and supply from any source for such periods of time as may be reasonable under the circumstances with due regard to the nature and anticipated duration of the Force Majeure Event.
- 10.6 The Affected Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event on its ability to perform under this Agreement and to terminate the circumstances giving rise to a Force Majeure Event as soon as reasonably possible (provided that nothing in this clause 10 shall require the Affected Party to settle any strike, lock-out or other industrial or labour dispute, whether it is a party thereto or not) and upon termination of the event giving rise thereto, shall forthwith give written notice thereof to the Unaffected Party.

11 BREACH

Should a Party breach any provision of this Agreement and fail to remedy such breach within five days after receiving written notice requiring such remedy, then the other Party aggrieved thereby shall be entitled, without prejudice to its other rights in law including any right to claim damages, to claim immediate specific performance of all of the defaulting Party's obligations, and, if the breach is material, to cancel this Agreement, it being agreed that any failure by Eskom to timeously make any payment due in terms of this Agreement shall constitute a material breach.

12 GOVERNING LAW AND JURISDICTION

- 12.1 This Agreement will, in all respects (including its existence, validity, interpretation, implementation, cancellation, termination and enforcement), be governed by the laws of South Africa.
- 12.2 The Parties irrevocably submit themselves and consent to the exclusive jurisdiction of the High Court of South Africa (Gauteng Division, Pretoria) (or any successor to that court) in respect of this Agreement.

13 GENERAL

- 13.1 This Agreement constitutes the sole record of the agreement among the Parties in relation to the subject matter hereof. No Party will be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Agreement accordingly supersedes and replaces all prior commitments, representations



or undertakings, whether oral or written, among the Parties in respect of the subject matter hereof.

- 13.2 Notwithstanding any other provision in this Agreement, neither Party shall be liable in contract or in delict or otherwise for any indirect, consequential, punitive and/or special damages arising out of or in connection with this Agreement.
- 13.3 No addition to, variation, novation or agreed cancellation of, any provision of this Agreement will be binding on the Parties, unless reduced to writing and signed by or on behalf of all the Parties.
- 13.4 No indulgence or extension of time, which any Party ("**Grantor**") may grant to the other, nor any election or failure by the Grantor to enforce, whether completely or partially, or delay the enforcement of, any of its existing or future rights, will constitute a waiver of, or, whether by estoppel or otherwise, limit any of, the existing or future rights of the Grantor in terms hereof, save in the event and to the extent that the Grantor has signed a written document expressly waiving or limiting that right.
- 13.5 Neither Party shall have the right or the power to assign this Agreement, cede any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party.
- 13.6 The signature by any Party of a counterpart of this Agreement will be as effective as if that Party had signed the same document as the other Party.

Thus done and signed at _____ on the _____ day of _____
2015 in the presence of the undersigned witnesses.

For: **Eskom Holdings SOC Limited**

Who warrants that he is authorised thereto

Witnessed by:

1. _____

2. _____

Thus done and signed at _____ on the _____ day of _____
2015 in the presence of the undersigned witnesses.

For: **Optimum Coal Mine (Proprietary) Limited**

Who warrants that he is authorised thereto

Witnessed by:



OPTI13168.19/#3407653v2
20082015

1. _____
2. _____



**Private and Confidential****Piers Marsden**

Matuson & Associates
1st Floor, One on Ninth
Cnr Glenhove Road and Ninth Street Melrose Estate
Johannesburg,
2196
pmarsden@matusonassociates.co.za

Peter Van Den Steen

V-Squared Business Rescue Services (Pty) Ltd
916 Wexford Drive
Woodlands Village
Dainfern
peter@v2rescue.co.za

10 September 2015

Optimum Coal Mine – Non-binding Offer

Dear Sirs

We hereby submit a non-binding indicative offer ("Offer") for the acquisition of the assets and operations of Optimum Coal Mine ("OCM") on the basis set out in this letter ("Transaction").

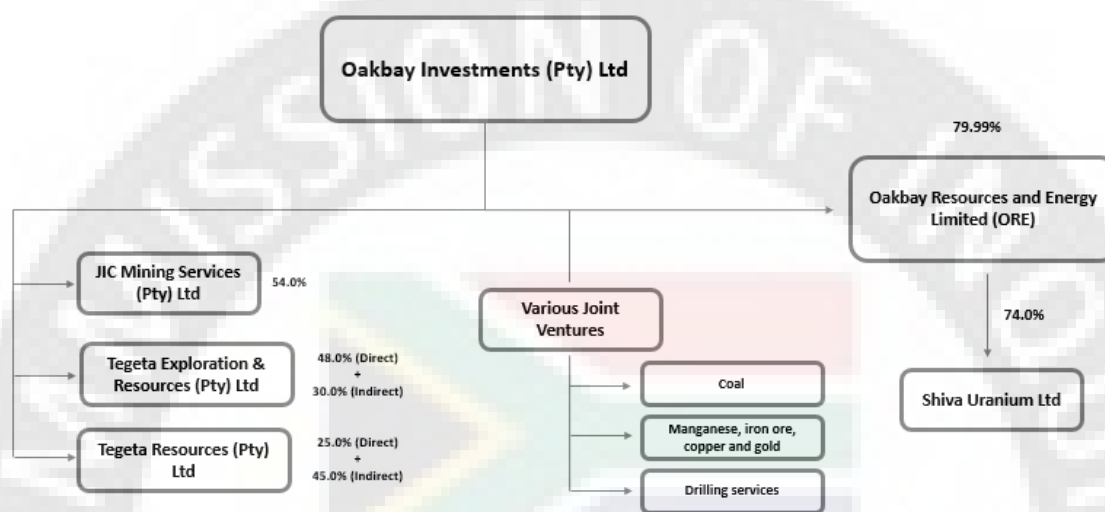
1. Identity and background of Oakbay

Oakbay Investments (Pty) Limited ("Oakbay") is the private investment vehicle of the Gupta Family, through which they hold a diverse range of interests. Oakbay holds investments in mining, technology and media & broadcast. Oakbay's attractive and diverse suite of mining investments comprise contract mining services, as well as coal, gold and uranium mining operations. In addition to its operating mining assets, Oakbay also holds various joint ventures in exploration mining and services companies.

2. Rationale for the proposed Transaction

Our significant investment in mining and mining services, places us in a very capable and favourable position to acquire and manage OCM efficiently and in line with Eskom's requirements. In addition to being a current coal producer supplying coal to Eskom's Majuba Power Station, we also believe that we can produce synergies between OCM and our subsidiary, JIC Mining Services, which could reduce OCM's operating cash costs significantly.

Below is a snapshot of our major mining assets:



Oakbay is a majority shareholder in Oakbay Resources and Energy Ltd ("ORE") which listed on the JSE on 28 November 2014. ORE has a market capitalisation of R24 billion, and is an investment holding company with a 74% interest in Shiva Uranium Limited, previously Uranium One Africa. Shiva Uranium ("Shiva") is Oakbay's flagship mining and exploration company, focusing primarily on uranium and gold deposits and the beneficiation thereof, with its main base of operations conducted on the Dominion and Rietkuil mines, near the North West town of Hartbeesfontein.

JIC Mining Services ("JIC") is one of the largest contract mining companies in South Africa boasting a workforce of more than 3500 employees and revenue in excess of R1 billion. Major customers of JIC includes Royal Bafokeng Platinum's Rasimone Platinum Mines, Impala Platinum, Amplats, Hernic Ferrochrome and Platinum Group Metals.

Tegeta Exploration and Resources (Pty) Ltd ("Tegeta") is focussed on exploration and mining of coal, holding 11 prospecting rights in the Witbank area. Tegeta currently supplies Eskom's Majuba Power Station and its major projects include Brakfontein (Portions 16, 17, 22, 24, 25 and 27) situated in Delmas and Syferfontein and Welgezend situated 10km from Standerton.

Tegeta Resources (Pty) Ltd ("Tegeta Resources") is an emerging exploration and mining company focussed on the acquisition, exploration, development mining and trading of various commodities, including but not limited to coal, chrome, manganese and iron ore. Tegeta Resources through its subsidiary Idwala Coal have 63 million tonnes of proven reserves of bituminous coal covered under its Vierfontein 61 IS and De Roodepoort projects

In addition to the above mining assets, we also have various joint ventures in coal, anthracite, iron ore, manganese, limestone, copper and gold projects, as well as drilling services company Blackedge Exploration (Pty) Ltd.

3. Oakbay's Offer (the "Offer")

To date, we have had access to publically available information on OCM, conducted limited discussions with Glencore executives, and gained access to further limited non-public information as at 30 June 2015 on OCM shared by Glencore, following our signature of a Confidentiality Agreement.

We are desirous of commencing negotiations for the purchase of OCM as soon as possible, and believe that our Offer will be acceptable to you and OCM's creditors.

As such, Oakbay offers the following in relation to the proposed acquisition of OCM:

- Oakbay commits to taking ownership of the environmental trust fund and liability as at 30 June 2015;
- Oakbay commits to acquiring as a going concern, the assets and operations of OCM, including property, plant and equipment, all working capital, but excluding long term borrowings, for a consideration of R1.00 ("one Rand"), and further commits to funding OCM's continuing operations, including working capital, to fulfil its obligations for the remainder of the current Eskom coal supply contract (to be ceded to Oakbay Investments), which terminates in 2018. Our determination of the above is based on our review of the balance sheet of OCM, at 30 June 2015, as set out in the Information Memorandum ; and
- Oakbay commits to transferring all remaining employees of OCM to Oakbay in accordance with Section 197 of the Labour Act, subject to a review of the existing terms of employment.

4. Conditions

The above Offer for OCM's assets is subject to the conditions that a financial, technical, tax and legal due diligence (collectively referred to as "Due Diligence") is completed to our satisfaction, during a six week period of exclusivity, that will be required.

In addition, Oakbay's Offer will be subject to:

- Termination of the existing contract mining arrangements at OCM, which will not be transferred to Oakbay;
- Requisite regulatory approvals, including, but not limited to, those required from the Department of Mineral Resources ('DMR'), in terms of s11 of the Mineral and Petroleum Resources Development Act, 2001 and the Competition Commission;
- All requisite Business Rescue approvals, and Glencore Board approval, to the extent required, and
- Conclusion of requisite written and binding agreements to give effect to the disposal.

5. Contact details of key personnel

The main point of contact for Oakbay during the sales process will be:

Ronica Ragavan
Oakbay Investments (Pty) Ltd

Grayston Ridge Office Park
Block A Lower Ground Floor
144 Katherine Street
Sandown, Sandton
Mobile: + 27 83 402 1388
Email: ronica@oakbay.co.za

KPMG have been retained as our advisors on this matter and the contacts below should be copied in all correspondence:

Nick Matthews Partner, KPMG South Africa Head of Mergers & Acquisitions Mobile: +27 83 452 8351 Email: nick.matthews@kpmg.co.za	Werner Jacobs Associate Director, KPMG South Africa Mergers & Acquisitions, Mining Transaction Leader Africa Mobile: +27 76 154 2089 Email: werner.jacobs@kpmg.co.za
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6. Financing

Based on our existing business operations and assets (i.e. without recourse to the assets of OCM), we intend funding the proposed transaction from internal resources. However, we have received written letters of support for the required funding from our financiers, which if required, would supplement funding the proposed transaction, without recourse to the assets of OCM.

7. Approvals

The senior management and shareholders of Oakbay have approved the release of this Offer.

Whilst the proposed transaction would require regulatory approvals from various regulatory bodies, we do not anticipate this transaction would meet with any objection.

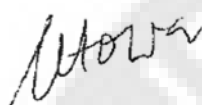
8. Confidentiality

The content and existence of this Offer is strictly confidential and should not be disclosed to any person other than the Business Rescue Practitioners and OCM's creditors.

In conclusion, we are pleased to have been given this opportunity to present this Offer. We would appreciate the opportunity to meet to discuss this further at your earliest convenience. Oakbay is enthusiastic about this proposal and confident that we will be able to deliver a mutually beneficial transaction.

Yours sincerely

On behalf of Oakbay Investments (Pty) Ltd



Nazeem Howa

Director



**CONFIDENTIAL**

Oakbay Investments (Pty) Ltd
 Grayston Ridge Office Park
 Block A Lower Ground Floor
 144 Katherine Street
 Sandown, Sandton
 Attention: Ronica Ragavan
 Email: ronica@oakbay.co.za

cc

Nick Matthews
 Partner, KPMG South Africa Head of Mergers & Acquisitions:
 Email: nick.matthews@kpmg.co.za

Werner Jacobs
 Associate Director, KPMG South Africa Mergers & Acquisitions, Mining Transaction Leader Africa
 Email: werner.jacobs@kpmg.co.za

17 September 2015

Dear Sirs

OPTIMUM COAL MINE (PTY) LTD – NON-BINDING OFFER

We refer to your unsolicited non-binding indicative offer ("**Offer**") for the acquisition of the assets and operations of Optimum Coal Mine ("**OCM**") on the basis set out in your letter ("**Transaction**").

At the outset, we wish to thank Oakbay Investments (Pty) Ltd ("**Oakbay**") for its continued interest in OCM. As we have previously advised, although we are not yet formally considering a corporate transaction for OCM, if an offer is forthcoming which represents the best option for rescuing OCM, we will obviously consider it.

Importantly, it is the duty of the business rescue practitioners to ensure that the best value is obtained for the stakeholders of OCM and in so doing, as business rescue practitioners, we may be required to engage in a formal expedited and competitive sales process. We will advise in due course as to our plans in this regard.

Optimum Coal Mine (Pty) Ltd
 (Registration No: 2007/005308/07)

A Glencore Operation

Business Address: N11 Hendrina Road, Pullenshope Offramp, Pullenshope

Mailing Address: Private Bag X1201, Pullenshope, 1096, South Africa

Tel.: +27 13 2965111

Registered Address: 1st Floor, Nedbank Building, 23 Melrose Boulevard, Melrose Arch, Melrose North,
 Johannesburg, 2196, South Africa

Mailing Address: Suite No. 19, Private Bag X1, Melrose Arch, Johannesburg, 2076

Tel: +27 11 772 0600 Fax: +27 11 772 0697

Directors: R Cohen, C M Ephron, P Mahanyele, T Ncube

In any event, before we can consider your Offer, there are a number of aspects which require further elaboration and clarification.

1. Interim period financing

As you are aware, the business of OCM is currently cash negative and requires funding of approximately R120 million per month in order to continue operating. We would require that the effective date of any Transaction would need to be no later than the date of signature of the binding agreements. Please confirm that you would be willing to provide the funding required to operate the business of OCM during the period from the date of signature of binding agreements until the various conditions precedent (e.g. section 11, Competition Tribunal approval etc.) are fulfilled. Please provide further details of your internal resources that will be utilised for funding as well as copies of letters of support from your financiers.

2. Post-commencement financing and pre-commencement creditors

As you will be aware, we have had to draw down on significant post-commencement financing in order to operate OCM during the business rescue proceedings. As at the date of this letter, we have drawn down approximately R115 million and we expect that by the end of October 2015, we will have drawn down approximately a further R80 million. This post-commencement financing is secured, has priority in terms of the Companies Act and needs to be settled. Moreover, there are certain creditors whose pre-commencement debts have not been settled but will need to be settled – this amounts to approximately R300 million. Please confirm that you are willing to provide funding in order to enable the settlement of such post commencement financing and pre-business rescue creditors in full.

3. Long-term borrowings

We note that your Offer specifically excludes the long-term borrowings of OCM. These long-term borrowings are secured over the assets of OCM. These funders (which are third party banks) will need to be incentivised in order to release such security over the assets of OCM and to vote in favour of a business rescue plan providing for implementation of the Offer, if it is proposed and accepted. Please provide us with your thinking as to what value these funders will be provided for their security if your Offer is accepted and why they would be incentivised to vote in favour of a plan that incorporates such an Offer.

4. Environmental liability

Your Offer refers to taking ownership of the Environmental trust fund and liability. Please confirm that you are willing to assume all environmental liabilities and obligations (both future and historical) relating to the operations of OCM.

5. Contractor

We note that it is a condition precedent to your Offer that the existing contract mining arrangements be terminated. Please confirm whether you are willing to bear the costs associated with the premature termination of such agreements or otherwise how you expect such costs to be funded. These costs will be advised as part of the diligence but will be substantial. Also, please confirm your position in relation to the employees of such contractors and whether you are willing to take over any of such employees.

Moreover, as you are aware, OCM currently operates both opencast and underground mining activities. Please confirm how you intend to perform such activities post the termination of such contracts, and, in particular, that you have the necessary expertise and equipment to conduct underground mining activities. In this regard, we note that the underground equipment and moveable infrastructure belongs to the underground mining contractor and therefore JIC Mining Services (Pty) Ltd would need to take over existing underground mining equipment (that belongs to the mining contractor) or replace such equipment. In each case, this would require a significant capital investment. It would also be helpful if you can give further detail in relation to the synergies that you foresee between JIC Mining Services (Pty) Ltd and OCM.

6. Eskom

We note your reference to a cession of the Eskom contract to Oakbay. Please confirm that you are willing to take assignment of all of OCM's rights and obligations under such Eskom agreements including all accrued liabilities due to Eskom as at the date of such assignment as well as all future obligations to deliver coal to Eskom until 31 December 2018 at the current price provided in the Eskom contract.

Moreover, as the assignment of the Eskom contract to Oakbay will require the consent of Eskom, please confirm the basis for your belief that Eskom will consent to such assignment. We note that if we can get comfortable with the various other issues raised in this letter, we will require that you obtain consent from Eskom to the assignment of the Eskom contract prior to commencing a comprehensive due diligence which assignment must include a full release in favour of OCM and affiliated entities for any liability of any nature whatsoever in connection with or relating to the Eskom contract. There is obviously no purpose in expending time and effort on this Offer, if Eskom is not willing to consent to such an assignment. Please confirm that you do not expect this to be a problem.

The terms of this letter are confidential and may not be disclosed by Oakbay to anyone, other than Oakbay's directors, officers, employees and advisors who have a need to know such information and who have agreed to keep the terms confidential.

We look forward to hearing from you as soon as possible.

Yours faithfully

Piers Marsden

Peter Van Den Steen

Joint Business Rescue Practitioners for Optimum Coal Holdings (Pty) Ltd (In Business Rescue) and Optimum Coal Mine (Pty) Ltd (In Business Rescue)

**Private and Confidential****Piers Marsden**

Matuson & Associates
1st Floor, One on Ninth
Cnr Glenhove Road and Ninth Street Melrose Estate
Johannesburg,
2196
pmarsden@matusonassociates.co.za

Peter Van Den Steen

V-Squared Business Rescue Services (Pty) Ltd
916 Wexford Drive
Woodlands Village
Dainfern
peter@v2rescue.co.za

21 September 2015

Optimum Coal Mine – Non-binding Offer

Dear Sirs

We wish to thank you for your letter of 17 September 2015 ("Response") in response to our submission of a non-binding indicative offer ("Offer") for the acquisition of the assets and operations of Optimum Coal Mine ("OCM") ("Transaction") on the basis set out in our letter dated 10 September 2015.

Your Response requested further elaboration and clarification on a number of aspects. Without in any way derogating from our Offer, we set out below some points of clarification for your consideration.

1. Interim period financing

OCM is currently cash negative and requires funding of approximately R120 million per month. You have requested that we provide funding required to operate the business of OCM, during the period from date of signature of binding agreements until the various conditions precedent (e.g. section 11, Competition Tribunal approval etc.) has been fulfilled.

Oakbay is desirous to complete the Transaction as soon as possible, and will commit to use its best endeavours to expedite the completion of the transaction, including the approval required in terms of section 11 of the Mineral and Petroleum Resources Development Act, 2001. Unfortunately, until such time as Oakbay is able to get control over the assets and operations of OCM, it is not possible to commit to cover the cost of interim financing.

However, should the requisite approvals not be received within 6 months of signature date, Oakbay will commit to fully funding all reasonable interim finance from that time, subject to a limit of R120 million per month.

In support of our commitment to honour the existing Eskom contract, and to cover interim finance, we attach a letter of support from our bankers, Bank of Baroda (Johannesburg branch). In addition, we can confirm we have liquid assets in the form of unencumbered short terms deposits to the value of approximately R750 million.

2. Post-commencement financing and pre-commencement creditors

With regard to the post commencement financing provided prior to Business Rescue, Oakbay confirms it will review this based on the final terms of any Transaction.

3. Long term borrowings

The settlement of the long term borrowings with third party banks will have to be negotiated. At this time we have no understanding of the quantum of third party bank debt, and the nature of the security the banks hold. Once a due diligence is performed and further details have been provided as to the amount of debt outstanding with the third party banks, and the security held by these respective banks, we shall be in a better position to comment. We would also need further clarification on any security, held by the third party banks, over the draglines of OCM.

4. Environmental liability

Subject to due diligence, we would assume responsibility of the future obligation of OCM as well as the historical obligation. However, we will also assume ownership of the current fund/s within the company necessary to cover the historical environmental liability.

5. Contractor

In our opinion the Company's Act provides for the suspension and/ or termination of current contractors, and any resultant penalties would be a pre-commencement creditor. No cost pertaining to termination of the contractor shall be borne by Oakbay.

Oakbay currently operates a number of opencast and underground mines through its subsidiary JIC Mining Services (Pty) Ltd (“JIC”). Whilst Oakbay believes that JIC replacing the current contractor at OCM will result in potential synergies, Oakbay may employ a new third party contractor if this will result in further benefits and synergies for OCM. As part of the due diligence, all underground mining equipment will need to be inspected prior to any agreement to purchase these assets from the current contractor.

6. Eskom

We confirm our willingness to take the assignment of all of OCM’s future rights and obligations under the Eskom contract. We confirm our willingness to take on future obligations with regard to the delivery of coal to Eskom until December 2018 at the current price provided in the Eskom contract.

It is noted that we will require the consent of Eskom to release OCM, and its affiliated entities, from its future obligations with Eskom. We are confident that this consent will be forthcoming. In this regard, we agree that this should be discussed immediately and propose that both parties concurrently approach Eskom to seek an in principle agreement, and would propose the approach is made as soon as a reasonable period of exclusivity (6 weeks) is granted to Oakbay.

7. Contact details of key personnel

The main point of contact for Oakbay during the sales process will be:

Ronica Ragavan
Oakbay Investments (Pty) Ltd

Grayston Ridge Office Park
Block A Lower Ground Floor
144 Katherine Street
Sandown, Sandton
Mobile: + 27 83 402 1388
Email: ronica@oakbay.co.za

KPMG have been retained as our advisors on this matter and the contacts below should be copied in all correspondence:

Nick Matthews Partner, KPMG South Africa Head of Mergers & Acquisitions Mobile: +27 83 452 8351 Email: nick.matthews@kpmg.co.za	Werner Jacobs Associate Director, KPMG South Africa Mergers & Acquisitions, Mining Transaction Leader Africa Mobile: +27 76 154 2089 Email: werner.jacobs@kpmg.co.za
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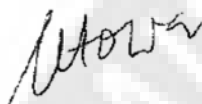
8. Confidentiality

The content and existence of this letter is strictly confidential and should not be disclosed to any person other than the Business Rescue Practitioners and OCM's creditors.

We trust you will find all in order and we look forward to hearing from you. We would appreciate the opportunity to meet to discuss this further at your earliest convenience. Oakbay remains enthusiastic about this proposal and confident that we will be able to deliver a mutually beneficial transaction.

Yours sincerely

On behalf of Oakbay Investments (Pty) Ltd



Nazeem Howa

Director



Devi Pillay

From: Piers Marsden <pmarsden@matusonassociates.co.za>
Sent: 17 September 2015 16:58
To: shaun.blankfield@glencore.com; Shaun Teichner; murray.houston@glencore.com; Lauren Becker; Eric Levenstein; David Hertz
Subject: FW: Optimum Coal Mine
Attachments: Eskom Proposal 17Sep.pdf

FYI

From: piers m <pmarsden@matusonassociates.co.za>
Date: Thursday 17 September 2015 at 4:56 PM
To: Matshela koko <matshela.koko@eskom.co.za>
Cc: MolefeB <MolefeB@eskom.co.za>, <rishaban.moodley@dlacdh.com>, Peter van den Steen <peter@v2rescue.co.za>, "Clinton.Ephron@glencore.com" <Clinton.Ephron@glencore.com>
Subject: Optimum Coal Mine

Hi Matshela

I hope this finds you well. As per our discussion last week Friday, attached please find a proposal for your consideration.

Please contact me if you have any queries.

Regards
Piers

Piers Marsden

c: +27(0)83 556 6751 t: +27(0)11 728 7166/7
f: +27(0)86 554 9998 w: www.matusonassociates.co.za

MATUSON
ASSOCIATES

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**OPTIMUM
COAL
MINE**

WITHOUT PREJUDICE

SUBJECT TO CONTRACT

CONFIDENTIAL

Eskom Holdings SOC Limited
Megawatt Park
Maxwell Drive
Sunninghill

Attention: Brian Molefe: Acting Chief Executive Officer

E-mail: MolefeB@eskom.co.za

Matshela Koko : Group Executive – Technology and Commercial

E-mail: matshela.koko@eskom.co.za

Cliffe Dekker Hofmeyer

Attention: Rishaban Moodley

E-mail: rishaban.moodley@dlacdh.com

17 September 2015

Dear Sirs

OPTIMUM COAL MINE (PTY) LTD (IN BUSINESS RESCUE) : SETTLEMENT PROPOSAL

We refer to our recent discussions regarding a resolution of the current disputes between Optimum Coal Mine (Pty) Ltd ("OCM") and Eskom SOC Limited ("Eskom") relating to the coal supply agreement between OCM and Eskom ("CSA"). As we have advised previously, Eskom is a key stakeholder in the business rescue proceedings of OCM and no rescue of OCM is possible unless there is a resolution of the outstanding disputes between OCM and Eskom including the hardship and penalty disputes. We do, however, appreciate Eskom's position that it has a binding agreement with OCM with certain accrued rights and that it cannot simply forego all of these rights in order to rescue OCM.

Optimum Coal Mine (Pty) Ltd

(Registration No: 2007/005308/07)

A Glencore Operation

Business Address: N11 Hendrina Road, Pullenshope Offramp, Pullenshope

Mailing Address: Private Bag X1201, Pullenshope, 1096, South Africa

Tel.: +27 13 2965111

Registered Address: 1st Floor, Nedbank Building, 23 Melrose Boulevard, Melrose Arch, Melrose North, Johannesburg, 2196, South Africa

Mailing Address: Suite No. 19, Private Bag X1, Melrose Arch, Johannesburg, 2076

Tel: +27 11 772 0600 Fax: +27 11 772 0697

Directors: R Cohen, C M Ephron, P Mahanyele, T Ncube

Accordingly, we have, together with the management of OCM, sought to develop a proposal which meets Eskom's key requirements while at the same time ensures that OCM is able to emerge from business rescue as a sustainable long-term supplier to Eskom.

This proposal consists of three components:

- an extension of the CSA which is designed to secure a long-term source of supply for Eskom and allow for a price averaging which will provide some short-term relief for OCM until 2019;
- a reasonable settlement of the alleged penalties which Eskom believes it has accrued against OCM; and
- the implementation of a new black economic empowerment transaction to make OCM a majority black owned company.

1. Extension of the CSA

We trust that Eskom and its advisers have now had sufficient time to consider the substantial financial information that was delivered to Eskom's attorneys on the 1st and 2nd of September 2015 and that it is clear to Eskom that OCM is suffering severe financial hardship as a result of the Eskom contract. We fully appreciate that even if Eskom accepts that OCM is suffering financial hardship, this is not necessarily a justification for Eskom to agree to any amendments to the CSA as Eskom believes that it has a binding contract that it is entitled to enforce.

We do, however, believe that Eskom cannot ignore the fact that the contract has a hardship clause which provides in its opening clause that it was the parties' intention that the agreement shall operate between them with fairness and without undue hardship to any party. While we accept that some level of subsidy from OCM's export operations was contemplated in the CSA, it could never have been contemplated that OCM would suffer such an extreme level of hardship or that the agreement would result in OCM suffering billions of Rands of losses over the term of the agreement.

Accordingly, Eskom would be acting in accordance with the principles set out in the CSA if it agrees to an accommodation in favour of OCM in order to ensure that OCM can emerge from business rescue and remain a long-term sustainable supplier to Eskom. Obviously, any such accommodation should insofar as possible also be in Eskom's standalone interests. Accordingly, after discussions with management and the shareholders of OCM, we wish to make the following indivisible proposal to Eskom which we believe meets these requirements:

- the duration of the CSA will be extended until 2023 to match the remaining useful life of the Hendrina power station;
- the tonnage to be delivered during such extension will be 27.5 million tons (i.e. 5.5 million tonnes per annum);
- the price for the coal delivered during the extension will be R630 per ton at a CV of 23 MJ/kg (moisture free) (subject to agreed inflationary adjustments with effect from 1 October 2015). We believe that this price is consistent with what Eskom could expect to achieve in a standalone new negotiation with OCM for this quantity of coal at this quality in 2019;
- the price for the coal for the period from 1 October 2015 to 31 December 2018 will remain unchanged, however, in order to provide some relief to OCM during the period until 2019, the price for the remainder of the CSA will be averaged out so that Eskom will pay a weighted average price of R443 per ton at a CV of 23 MJ/kg (moisture free) (subject to agreed inflationary adjustments with effect from 1 October 2015) for the

remainder of the CSA from 1 October 2015 to 31 December 2023. This average has been calculated on R156 per ton for the remaining 3.25 years (i.e. 17 875 000 tons) and then R630 for the next 5 years (i.e. 27 500 000 tons). The weighted average price of R443 per ton would still be less than OCM's average cash cost of production over the remainder of the extended CSA; and

- the specifications and price adjustment regime for the remaining coal to be delivered under the CSA will be amended to be consistent with the penalties and price adjustment regime agreed during the previous settlement discussions between OCM, the Eskom negotiating team and the Hendrina power station. These are set out in Annexure A for your ease of reference.

2. Penalties

Eskom has instituted claims against OCM for alleged non-compliance with the specifications set out in the CSA (and the addenda thereto), in amounts aggregating to approximately R2.2 billion. As you are aware, OCM disputes this amount and we believe that there is no reasonable basis to justify a penalty of this amount having regard to the history and background circumstances surrounding the imposition of penalties arising out of the CSA and that Eskom has no reasonable prospect of recovering this amount in an arbitration (this is separate from the issue as to whether OCM would, in fact, be able to settle such penalties if an award was made against it). In this regard, we note the following:

- the CSA includes a renegotiation clause in terms of which if at any time either party is of the view that the specifications in the CSA are no longer properly and/or realistically representative of the coal which OCM could reasonably expect to produce from its resource, it could request a renegotiation of the specification following which the parties would be required to enter into discussions and negotiations in good faith regarding the amended specification;
- in April 2013, OCM advised Eskom that the mine could no longer produce coal meeting the specifications and triggered the renegotiation clause;
- following the service of such notice, OCM and Eskom engaged in a process whereby OCM sought to demonstrate to Eskom that it was unable to meet the specification. This process endured until January 2014 during which time OCM provided significant information to Eskom regarding the difficulties it was having. Eskom has never disputed the technical reasoning put forward by OCM as to why it cannot meet the sizing specification. Eskom explicitly refrained from imposing any penalties regarding sizing during these negotiations in recognition of the fact that OCM had triggered the renegotiation clause;
- this renegotiation process was eventually subsumed into the broader settlement discussions which culminated in the signing of the Co-Operation Agreement in May 2014 which suspended all penalties. During the settlement discussions, there were extensive negotiations on the specifications with primary energy and the Hendrina power station and ultimately a specification was agreed in relation to sizing which matches that which OCM delivered during the period from 2012 to 2015. If this is a specification that the power station was capable of accepting, then clearly the delivery of coal meeting that sizing specification during most of 2012 to 2015 could not have caused any meaningful damage to the power station;
- if the Co-Operation Agreement had not been signed, and Eskom had not agreed to amend the specification, it is very likely that the dispute regarding the sizing specification would have, at that time, been referred to arbitration for dispute

resolution. If that had happened, Eskom would not have been able to impose the historical penalties for sizing;

- if the sizing penalty is excluded, then the sole basis for imposing a penalty would be in relation to ash and CV. As the Eskom negotiating team is aware, there is significant disagreement between Eskom and OCM regarding the imposition of the ash and CV penalties and the wording of the agreement does not support the penalties imposed by Eskom; and
- the factors set out above would present compelling defences in relation to any claim for penalties together with other defences such as the Conventional Penalties Act, waiver, estoppel etc.

In summary, we do not believe that any penalty is justifiable, but as part of an overall settlement, OCM would be willing, on a without prejudice basis, to pay a reasonable amount in full and final settlement of all penalties and/or damages alleged to be owing by OCM and/or its affiliated entities under or in connection with the CSA as at the date of signature of the amended CSA (including any alleged damages arising during the business rescue proceedings). We propose that once we have agreement on the balance of the proposal set out in this letter, we have a discussion regarding an appropriate settlement figure. As part of this discussion, we would also like to discuss the amounts withheld by Eskom for coal delivered during July and August 2015.

Obviously, OCM will not be in a position to settle any agreed settlement amount in cash, and therefore we would like to propose two options to Eskom as a method of settling such settlement amount.

- **Issue of equity**

The first option is that Eskom be issued an equity stake in OCM in order to settle the agreed settlement amount. The exact percentage will need to be discussed and agreed after agreement on the settlement amount. We believe that this would be a reasonable solution for Eskom in that it provides significant upside if export prices rally and it recognises that requiring OCM to settle the penalties in cash will impair OCM's ability to become a sustainable supplier to Eskom.

We understand that Eskom has expressed a reluctance to hold equity interests in mines, but Eskom would in due course be able to dispose of such stake or it could nominate a third party to acquire such shares, subject to OCM's agreement.

- **Reduction of price**

The second option is that Eskom be afforded a reduction in price on the coal purchased for the remainder of the term of the CSA in order to settle such penalties. This reduced price would obviously provide more certainty to Eskom but would not allow Eskom to participate in any upside in OCM.

3. Black Economic Empowerment transaction

The indirect major shareholders of OCM, Pembani Group Pty Ltd (which merged with Shanduka Resources Pty Ltd) ("Pembani") and Glencore Plc, have agreed a new BEE transaction in order to increase the black ownership of OCM to above 50% in line with Eskom's stated policy of sourcing coal from majority black-owned suppliers.

We note that as Pembani will be increasing its existing stake in OCM, they have requested to be directly involved in the negotiations of the proposal. They therefore have requested to participate in all future meetings in relation to this proposal.

Conclusion

We believe that this proposal represents a compelling offer for Eskom which allows Eskom to:

- secure a long-term sustainable supply of high quality coal for the remainder of the useful life of the Hendrina power station from a majority black supplier;
- ensure that Eskom continues to obtain the benefit of its existing low price CSA by using such price to reduce the price payable for the coal for the post 2018 period; and
- be compensated at a fair level for the penalties which it believes it has accrued.

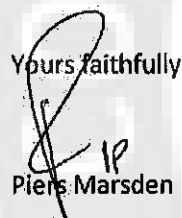
This proposal will obviously also ensure the long-term sustainability of the OCM business and prevent the negative consequences that would arise for all stakeholders from a liquidation of OCM.

As you will appreciate, we have significant time constraints during the business rescue proceedings and if we are to finalise this proposal before the deadline for the publication of the business rescue plan (i.e. 30 October 2015), we need to receive Eskom's feedback as soon as possible. Accordingly, we request that Eskom respond to this proposal by Friday, 25 September 2015. If Eskom is willing to accept this proposal, we and the management of OCM are prepared to dedicate all necessary resources to ensure that the proposal is implemented as soon as possible.

Please contact us if you have any queries.

We look forward to hearing from you.

Yours faithfully

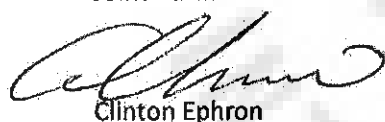


Piers Marsden



Peter Van den Steen

Joint Business Rescue Practitioners for Optimum Coal Mine (Pty) Ltd (In Business Rescue)



Clinton Ephron

Chief Executive Officer

Optimum Coal Mine (Pty) Ltd (In Business Rescue)

Annexure A – Specifications and Price adjustments

Quality Parameter	Unit	Expected Quality Parameter	Quality Parameter Limit	Measurement basis	Measurement	Rejection and Penalties
Calorific Value	MJ/kg	23	<21.65	Moisture Free	Monthly Weighted Average	Adjustment through price (i.e. through the fact that the price is calculated based on the GJ delivered) and ultimate rejection for < 21.65 – no other adjustment
Ash	%	27.5	>31.5	Moisture Free	Monthly Weighted Average	Adjustment through price (i.e. through the fact that the price is calculated based on the GJ delivered) and ultimate rejection for > 31.5 – no other adjustment
Moisture	%	9%	>12%	As Received	Monthly weighted Average	There will be no adjustment or rejection but Eskom will have the right to request Optimum to stop supplies as per below
Abrasive Index (Eskom Mining House Method)	mgFe/4kg	700	> 700	Moisture Free	Monthly weighted average	Penalty for > 700 as per below No rejection
Sulphur	%	1.5 %	> 1.6%	Moisture Free	None	Rejection No penalty
Volatiles	%	22.4%	< 20.5%	Moisture Free	None	Rejection No penalty
AFT (Initial deformation)	°C	1,300±	None	N / A	None	None
Sizing				N / A	Monthly weighted	Penalty for >20% - 0.81mm only as per

Quality Parameter	Unit	Expected Quality Parameter	Quality Parameter Limit	Measurement basis	Measurement	Rejection and Penalties
< 6mm	%	≤ 55%	None		average	below
<2.38mm	%	≤ 35%	None			
<0.81mm	%	≤20%	>20%			No rejection
	%					

1 The Parties agree that in respect of AFT (initial deformation), the Expected Quality Parameter sets out the quality which OCM expects to deliver. However, if OCM does not meet the Expected Quality Parameter, there will be no rejection, penalty or adjustment and OCM shall not be liable for any claim and/or damage.

2 If a consignment of coal on a particular day is rejected due to the weighted daily average not meeting the CV, Ash, Sulphur or Volatiles Quality Parameter Limit, then -

2.1 Eskom shall not pay for such consignment of coal and such consignment of coal will not reduce the Total Contract Quantity; and

2.2 such consignment of coal shall not be included in the calculation of the monthly weighted average for Abrasive Index and Sizing (i.e. the relevant weighted average shall be calculated in respect of the coal delivered over the balance of the days in the relevant month).

3 In the event that monthly weighted average Abrasive Index level of coal delivered by OCM in a month is > 700 mgFe/4kg, OCM will be liable to pay a penalty to Eskom in respect of each ton of coal delivered during that month, calculated on the following basis:

> 700-800 R 4.92 per ton

> 800-850 R 6.15 per ton

> 850-900 R7.38 per ton

> 900 R11.07 per ton

4 In the event that the monthly weighted average size distribution of coal delivered by OCM in a month contains more than 20% of coal with a size of 0.81mm, OCM shall be liable to pay Eskom a penalty as follows:

$$A = B \times (C - 20\%) \times D$$

where:

A = the sizing penalty to be calculated;

B = the total number of tons of coal delivered by OCM during the relevant month;

C = the weighted average percentage of coal delivered during the month with a sizing of less than 0.81mm;

D = 50% of the price per ton paid by Eskom for the coal delivered during the month.

- 5 OCM shall notify Eskom if the coal being delivered is above the Quality Parameter Limit for moisture and shall stop delivering such coal and request Eskom if they want OCM to continue delivering such coal which does not meet the Quality Parameter Limit in respect of moisture. Eskom shall then within one hour advise OCM whether it wishes to accept delivery of such coal. If Eskom elects to receive such coal, then, notwithstanding the moisture parameters of such coal being above the Quality Parameter Limit, the price of such coal shall be paid by Eskom and such coal shall be deemed delivered and reduce the total contract quantity.



Optimum Coal Mine (Pty) Ltd

Attention: Mr Clinton Ephron: Chief Executive Officer

**Matuson Associates and V-Squared Business
Rescue Services (Pty) Ltd**
Business Rescue Practitioners

Attention: Mr Piers Marsden

Email: optimumcoal@matusonassociates.co.za

Our Reference R Moodley
Account Number 01949978
Your Reference Clinton Ephron
Direct Line (011) 562 1666
Direct Telefax (011) 562 1466
Direct e-mail rishaban.moodley@cdhlegal.com
Date 30 September 2015

Dear Sir

OPTIMUM COAL MINE PROPRIETARY LIMITED (IN BUSINESS RESCUE): SETTLEMENT PROPOSAL

- 1 We refer to your letter dated 17 September 2015.
- 2 We have been instructed that Eskom SOC Limited ("**our client**") has considered your proposal and is not at this stage prepared to entertain it for, *inter alia*, the following reasons –
 - 2.1 any discussion and negotiation on the new contract price for coal to the Hendrina Power Station will only be considered closer to 2017 and not at this stage prior thereto;
 - 2.2 the penalty claim is not negotiable and it should be settled in full without any delay.
- 3 We record that it has come to our client's attention that assets are being stripped at the Optimum mine. Our client requires full details of all assets that has been removed or stripped, and, an undertaking by no later than close of business today, that the Business Rescue Practitioners, would immediately desist with such actions, failing which our client reserves the right to take the appropriate legal steps.
- 4 Our client's rights remain strictly reserved.

CHAIRMAN AW Pretorius **CHIEF EXECUTIVE OFFICER** B Williams **CHIEF FINANCIAL OFFICER** ES Burger

DIRECTORS: JOHANNESBURG A Abro N Altini JA Aukema CD Baird CA Barclay R Beerman E Bester P Bhagattjee R Bonnet CJ Botes TE Brincker IH Burger CWJ Charter M Chenia CJ Daniel EF Dempster S de Vries ML du Preez L Erasmus BV Faber JJ Feris TS Fletcher L França TG Fuhrmann F Gatto MZ Gatto S Gill SB Gore J Govender AJ Hofmeyr Q Honey WH Jacobs WH Janse van Rensburg CM Jesseman JCA Jones TTM Kali J King Y Kleitman LJ Kruger J Latsky AM le Grange FE Leppan* AG Lewis BC Maasdorp Z Malinga G Masina HW Mennen B Meyer WJ Midgley R Moodley MG Mphafudi GL Noeth BP O'Connor N Parbhoo A Patel JS Pennington GH Pienaar V Pillay DB Pinnock AM Potgieter AW Pretorius AG Reid M Serfontein P Singh-Dhulam NTY Siwendu WHH Thynne D Vallabh HR van der Merwe JJ van Dyk WPS van Wyk NJ von Ey JG Webber MF Whitaker JG Whittle DA Wilken B Williams LD Wilson JM Witts-Hewinson MP Yeates

DIRECTORS: CAPE TOWN AC Alexander RD Barendse TJ Brewis MA Bromley MR Collins HC Dagut A de Lange LF Egypt GT Ford S Franks DF Fyfer SAP Gie JW Green AJ Hannie AM Heiberg PB Hesseling CI Hindley RC Horn S Immelman JH Jacobs R Jaga A Kariem IJ Lessing GC Lumb RE Marcus SI Meyer A Moolman NW Muller J Neser FT Newham G Orrie[§] CH Pienaar L Rhoadie MB Rodgers BT Rubinstein BPA Strauss DM Thompson CW Williams TJ Winstanley

EXECUTIVE CONSULTANTS: HS Coetzee PJ Conradie MB Jackson

CONSULTANTS: A Abercrombie JMA Evenhuis* CH Ewing EJ Kingdon FF Kolbe

SENIOR ASSOCIATES: F Ameer-Mia G Barkhuizen-Barbosa MA Bobat B Brown L Brunton K Caddy E Chang NS Comte J de Vos YM Dockrat L Engelbrecht T Erasmus TV Erasmus P Jani* T Jordaan KJ Keanly JA Krige H Laing CJ Lewis HJ Louw NS Mbambisa N Mchunu N Mia T Moodley CP Muller DJ Naidoo AP Pillay KS Plots B Pollastrini NA Preston JR Ripley-Evans LJ Salt BJ Scriba T Suliman FJ Terblanche T Tosen M Treurnicht R Valayathum M van Zweek MF Ward NI Zwane

CLIFFE DEKKER HOFMEYR SERVICES PROPRIETARY LIMITED DIRECTORS: ES Burger JA Cassette Z Omar* R van Eeden B Williams

*British *Canadian *Dutch *Zimbabwean [§]Cape Town Managing Partner

Cliffe Dekker Hofmeyr Inc. Reg No 2008/018923/21

Yours faithfully

RISHABAN MOODLEY/JACKWELL FERIS
CLIFFE DEKKER HOFMEYR INC



DELIVERED BY EMAIL

Cliffe Dekker Hofmeyr

Attention: Rishaban Moodley
Email: rishaban.moodley@dlacdh.com

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YOUR REFERENCE:

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DIRECT PHONE: +27 11 535 8237/8196
DIRECT FAX: +27 11 535 9737/8796
EMAIL ADDRESS: elevenstein@werksmans.com/lbecker@werksmans.com

5 October 2015

Dear Sirs

**OPTIMUM COAL MINE PROPRIETARY LIMITED ("OCM") (IN BUSINESS RESCUE):
SETTLEMENT PROCESS**

- 1 We refer to your letter dated 30 September 2015.
- 2 We are disappointed that you have made no attempt to engage with the substance of our proposal or to make any counterproposal. Our clients are considering how to proceed and we will revert in due course.
- 3 Our clients categorically reject the allegation that any assets are being stripped at the Optimum mine. No assets have been removed from the Optimum mine except for certain arm's length disposals of minor assets that were surplus to requirements, which have been approved by the joint business rescue practitioners in accordance with section 134 of the Companies Act and the secured creditor who has taken possession of all of OCM's movable assets.
- 4 Our clients' right remains reserved.

Yours faithfully

Werksmans Attorneys

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa

Directors D Hertz (Chairman) AL Armstrong BA Aronoff DA Arteiro T Bata JD Behr AR Berman NMN Bhengu L Bick HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hosiosky BB Hotz HC Jacobs TL Janse van Rensburg N Jansen van Vuuren G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner JS Lubbe BS Mabasa PK Mabaso MPC Manaka H Masondo C Moraitis P Mosebo KO Motshwane L Naidoo J Nickig JJ Niemand BPF Olivier WE Oosthuizen S Padayachy M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raath A Ramdthin L Rood BR Roothman W Rosenberg NL Scott TA Sibidla LK Silberman JA Smit JS Smit B Sono CI Stevens PO Steyn J Stockwell W Strachan JG Theron JJ Truter KJ Trudgeon DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker D Wegierski M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies

CONFIDENTIAL**Non-Binding Term Sheet****7 October 2015****Acquisition of stake in Optimum Coal Mine**

- 1 Pembani Group (Pty) Ltd ("**Pembani**") will conclude an agreement with Optimum Coal Holdings (Pty) Ltd (in Business Rescue) ("**OCH**") in terms of which it will acquire 100% of OCH's shares and claims in Optimum Coal Mine (Pty) Ltd (in Business Rescue) ("**OCM**") for a consideration of R1 (the "**Transaction**").
- 2 The Transaction will include a very limited set of warranties relating only to title and otherwise the shares in OCH and OCM will be sold on an "as is" basis.
- 3 The existing management agreements between OCM and other Glencore group companies will remain in place, but will be subject to termination by either party on 30 days' written notice.
- 4 If OCM wishes to terminate the coal purchase agreement with Glencore International AG ("**GIAG**") it shall be entitled to do so subject to payment of a compensation payment. OCM will negotiate and agree with GIAG the amount of the compensation payment, and failing agreement the amount of the compensation amount will be referred to an independent expert for determination.
- 5 The Transaction will be subject to the following conditions precedent ("**CPs**"):
 - 5.1 Pembani completing a limited due diligence into the technical, financial, legal, commercial and environmental affairs of OCH and OCM and being satisfied with the results of such due diligence investigation;
 - 5.2 approval of a business rescue plan providing for the OCM disposal by 75% of the creditors' voting interests and 50% of the independent creditors' voting interests;
 - 5.3 conclusion of an agreement between OCM, OCH and Eskom Holdings SOC Limited ("**Eskom**") in terms of which:
 - 5.3.1 OCM and Eskom conclude an amendment to the 1993 coal supply agreement ("**CSA**"), on terms on which are satisfactory to Pembani; and
 - 5.3.2 Eskom irrevocably and unconditionally releases OCH and its affiliated entities from any and all historical and future liability and obligations arising from the CSA, including all liability for historical penalties claimed by Eskom;
 - 5.4 conclusion of agreements between OCH, OCM, OCT and FirstRand Bank Limited, Nedbank Limited and Investec Bank Limited (collectively, the "**Lenders**") in terms of which the Lenders approve the Transaction and an agreed portion of the debt of OCH is transferred from OCH to OCM, and OCH and its subsidiaries, including OCT, are released from liability in respect of such transferred portion;
 - 5.5 approval by RBCT of a new Coal Exporter in relation to Optimum Coal Terminal (Pty) Ltd; and

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- 5.6 approval of the Transaction by the Competition Authorities, the Minister of Mineral Resources and, to the extent necessary, the Exchange Control Department of the South African Reserve Bank (or an authorised dealer in foreign exchange).
- 6 The long-stop date for the:
- 6.1 CP in paragraph 5.1 will be 3 November 2015;
- 6.2 CPs in paragraphs 5.2, 5.3 and 5.4 will be 11 January 2016; and
- 6.3 balance of the CPs will be 30 June 2016.
- 7 Shanduka Resources (Pty) Ltd ("**Shanduka Resources**") and GIAG will sign an amendment to the Sale of Debt Agreement dated 28 July 2015 and the Payment Instruction Agreement dated 31 July 2015, in terms of which Shanduka Resources will purchase from GIAG an additional R60 million of debt held by GIAG in OCH on the basis that the purchase price for such debt will be settled out of the next dividend payable by Shanduka Coal (Pty) Ltd to Shanduka Resources.
- 8 Pembani will with effect from the date of fulfilment of the CP in paragraph 5.1 until closing or lapsing of the Transaction provide all post commencement finance ("**PCF**") required by OCM in order to continue operating and supplying Eskom under the CSA and the agreement reached with Eskom for interim supply until the end of October, which is approximately R120 million per month. If the Transaction becomes unconditional, the Pembani PCF will become shareholder debt in OCM.
- 9 Piruto, OCH and Pembani shall negotiate and execute the long-form agreements to give effect to the Transaction by no later than 16 October 2015 and will jointly announce the Transaction on signature of the long-form agreements. OCH will negotiate with Pembani exclusively until 16 October 2015.
- 10 Glencore and Pembani will within the next year negotiate regarding a possible acquisition by Pembani of a further interest in OCH and/or Koornfontein Mines (Proprietary) Limited.
- 11 This term sheet is non-binding and is subject to the conclusion of long form agreements and internal approvals of the parties, including without limitation, the Pembani Group and Shanduka Group boards.



NON-DISCLOSURE AND EXCLUSIVITY AGREEMENT**1 Parties**

- 1.1 Optimum Coal Mine Proprietary Limited (registration number 2007/005308/07) (in business rescue and represented by the Business Rescue Practitioners) ("**OCM**");
- 1.2 Optimum Coal Holdings Proprietary Limited (registration number 2006/007799/07) (in business rescue and represented by the Business Rescue Practitioners) ("**OCH**");
- 1.3 Pembani Group Proprietary Limited (registration number 1994/007085/07) ("**Receiving Party**");
- (each a "**Party**" and collectively, the "**Parties**").

2 Purpose and Transaction

- 2.1 OCM, OCH (collectively, the "**Disclosing Parties**") and the Receiving Party are discussing and evaluating a potential transaction relating to the acquisition of the whole or a part of the ordinary shares in, or the assets of, OCM (the "**Transaction**").
- 2.2 The Disclosing Parties wish to disclose certain proprietary, secret and confidential information to the Receiving Party in connection with and for the purposes of the Transaction ("**Purpose**").
- 2.3 The Parties agree that any such disclosure of such Confidential Information shall be on the terms set out in this agreement.

3 Definitions

- 3.1 In this agreement, "**Confidential Information**" shall mean any technical, financial, commercial, scientific information, know-how, trade secrets, processes, notes, memoranda, methodology, designs, drawings, technical specifications and data information (whether oral, written, electronic or in any other form) relating to the Transaction, and/or the Disclosing Parties and/or their businesses or investments made available by or on behalf of the Disclosing Parties whether before or after this agreement is actually entered into, for the Purpose, together with any information derived from such information (including any analyses, compilations, studies and other material prepared by the Receiving Party in any form whatsoever that contain or otherwise reflect or are generated from such information), including, without limitation, the fact that the Transaction is in contemplation or any information concerning the terms, status or progress of the Transaction and the existence of this agreement. Confidential Information shall, however, not include any information to the extent that such information:
- 3.1.1 is already known to the Receiving Party or any of its Representatives at the date of disclosure by the Disclosing Parties under this agreement;

- 3.1.2 is, at the time of such disclosure by the Disclosing Parties, already published or generally available to the public;
- 3.1.3 which, after the time of such disclosure by the Disclosing Parties, is published or becomes generally available to the public, other than through the act or omission of the Receiving Party; or
- 3.1.4 is acquired independently from a third party that has the right to disseminate such information at the time it is disclosed to the Receiving Party without any obligation of confidentiality to the Disclosing Parties.

4 Confidentiality and Non-Use Undertakings

4.1 The Receiving Party acknowledges that:

- 4.1.1 the Confidential Information to be disclosed to the Receiving Party is a valuable, special and unique asset proprietary to the Disclosing Parties; and
- 4.1.2 any unauthorized disclosure of the Confidential Information will prejudice the Disclosing Parties' operations and business interests.

4.2 The Receiving Party undertakes, subject to 4.3:

- 4.2.1 to treat the Confidential Information as strictly confidential and to take all reasonable steps to protect the Confidential Information and keep it secure from unauthorised persons, adopting reasonable standards of care;
- 4.2.2 to only make such copies of any Confidential Information as are reasonably necessary for the Purpose and shall take reasonable steps to ensure that any such copies and the originals are protected against theft or unauthorised access;
- 4.2.3 not to, directly or indirectly, disclose to any third party any of the Confidential Information; provided that the Receiving Party shall be entitled to disclose the Confidential Information to its employees, directors, officers, professional advisers, consultants, and/or agents ("**Representatives**") who:
 - 4.2.3.1 have a need to know (and then only to the extent that each such Representative has a need to know);
 - 4.2.3.2 are aware that the Confidential Information should be kept confidential;
 - 4.2.3.3 are aware of the Receiving Party's obligations in relation to such Confidential Information in terms of this agreement; and

- 4.2.3.4 have been directed by the Receiving Party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential on terms no less stringent than those set out in this agreement,

provided further that:

- 4.2.3.5 the Receiving Party shall take reasonable steps to ensure that any Representative to whom the Confidential Information is disclosed complies with the terms of this agreement; and

- 4.2.3.6 any use or disclosure of the Confidential Information by any Representative in a manner which is contrary to the terms of this agreement shall constitute a breach of this agreement by the Receiving Party;

- 4.2.4 to use the Confidential Information solely for the Purpose and not to use or exploit the Confidential Information for its own benefit (including in any subsequent proceedings), or to allow any other person to do so, without the Disclosing Parties' written consent;

- 4.2.5 to the extent permitted by law and reasonably possible in the circumstances, to inform the Disclosing Parties immediately if the Receiving Party becomes aware of, or reasonably suspects there has been, a breach by it of the obligations in this agreement.

- 4.3 The Receiving Party may disclose the Confidential Information to the extent that such Confidential Information is required to be disclosed under any applicable law or regulation, excluding contractual obligations, or any order of court or governmental body (as advised by external legal counsel); provided that:

- 4.3.1 the Receiving Party shall only disclose the minimum of the Confidential Information that it is legally required to disclose (as advised by external legal counsel);

- 4.3.2 the Receiving Party shall give notice to the Disclosing Parties prior to such disclosure in order to enable the Disclosing Parties to take, at the Disclosing Parties' expense, such steps as they deem necessary to prevent such disclosure and the Receiving party will take such steps as the Disclosing Parties may reasonably require for that purpose and the Receiving Party shall keep the Disclosing Parties promptly and fully informed of all developments relating to any such potential disclosure; and

- 4.3.3 if any such disclosure would include the identity of the Disclosing Parties (or any of their subsidiaries), then the disclosure of such identity shall require either (i) the consent of the Disclosing Parties or (ii) the written advice of external legal counsel of the Receiving Party to the effect that such disclosure is required.

5 Return of Confidential Information

- 5.1 The Confidential Information shall remain the property of the Disclosing Parties, and the Receiving Party shall, if so directed by any of the Disclosing Parties, return to the Disclosing Parties and/or destroy all Confidential Information furnished to it by the Disclosing Parties together with all copies, notes and memoranda relating thereto (including electronic copies) in its possession or control, and will not retain, and will procure that none of its Representatives retains, directly or indirectly, any copies, extracts or other reproductions, in whole or in part, of the Confidential Information, provided that in the event that the Receiving Party is unable to destroy any electronically held information and/or documentation by virtue of the same being retained in the Receiving Party's backup system, or if any material containing Confidential Information is required to be retained by applicable law, corporate governance requirements or for professional record keeping purposes, the Receiving Party agrees that such information and/or documentation will not be used subsequently by it and when possible, shall be destroyed in accordance with the Receiving Party's regular ongoing records management procedure.
- 5.2 The return and/or destruction and/or erasure of Confidential Information shall be confirmed by a director of the Receiving Party to the Disclosing Parties in writing

6 No representation or warranty

The Confidential Information does not purport to be all inclusive and the Disclosing Parties make no representations or warranties, express or implied, as to the quality, accuracy, reliability or completeness of the Confidential Information, and the Receiving Party expressly acknowledges the inherent risk of error in the use of the Confidential Information. None of the Disclosing Parties nor any of their officers, directors, employees, professional advisers, consultants, and/or agents shall have any duty of care, responsibility, or liability whatsoever (save in respect of any fraud or deceit by it) to the Receiving Party or any other person with respect to the use or reliance by the Receiving Party or any other person upon the Confidential Information.

7 Title

The Receiving Party acknowledges that the Confidential Information is proprietary to the Disclosing Parties and disclosure of the Confidential Information to the Receiving Party shall not thereby confer on the Receiving Party any rights or license of whatever nature in such Confidential Information.

8 Term

The provisions of this agreement shall apply until the expiry of a period of two years from the date of signature of this agreement, notwithstanding any decision not to proceed with the Transaction or any return or destruction or erasure of the Confidential Information.

9 The Parties' Relationship

- 9.1 Unless otherwise expressly agreed in writing between the Parties, nothing in this agreement or the subsequent dealings between the Parties shall create or be deemed to create:
- 9.1.1 any relationship of partnership, agency or employment between the Parties, or confer any authority on either of the Parties to contract on behalf of, or otherwise bind, the other Party;
- 9.1.2 an obligation on the Disclosing Parties to provide, or to continue to provide, any information to the Receiving Party, whether Confidential Information or otherwise.
- 9.2 Neither by virtue of this agreement nor the provision of the Confidential Information will either Party be under any obligation to proceed with the Transaction.

10 Breach

- 10.1 If the Receiving Party breaches any of the provisions of this agreement and, where such breach is capable of remedy, fails to remedy that breach within five days after receiving written notice from any of the Disclosing Parties requiring the Receiving Party to remedy the breach, then each of the Disclosing Parties will, without prejudice to its other rights in law, be entitled to:
- 10.1.1 apply to any court of competent jurisdiction by way of urgent proceedings to interdict or restrain the Receiving Party from perpetuating or continuing such breach or doing or permitting anything to be done which constitutes a breach of any undertaking in this agreement; and/or
- 10.1.2 claim from the Receiving Party all damages, which such Disclosing Party may have suffered, as a result of such breach.
- 10.2 No Party shall be entitled to cancel this agreement in respect of breach by the other Party of any of the provisions hereof; the Parties' remedies being limited to a claim for damages, with or without a claim for specific performance or interdictory relief.
- 10.3 The Receiving Party acknowledges and agrees that:
- 10.3.1 a breach of this agreement may cause irreparable loss, harm and damage to the Disclosing Parties, and that money damages would not be an adequate remedy for any such breach; and
- 10.3.2 the Disclosing Parties shall, without prejudice to any other remedy, be entitled to the remedies of interdictory relief, specific performance and other urgent relief, for any threatened or actual breach of any of the provisions of this agreement and that no proof

of special damage shall be necessary for the enforcement of this agreement.

11 **Announcements**

This agreement does not require any disclosure to be made by either Party and each Party undertakes not to make any public announcement (including a press release or a statement to the media) or discuss any matter with the media in relation to the Transaction; provided that if in the future any public announcement is required in terms of applicable law or regulation (including the rules of any stock exchange) the Party making the announcement or discussing the matter with the media, shall first, to the extent permitted by law and reasonably possible in the circumstances, obtain the approval as to the wording and timing of such public announcement from the other Party.

12 **Exclusivity**

In consideration of the Receiving Party committing resources and incurring costs relating to due diligence, negotiations and drafting of the agreements, until 11 January 2016, the Disclosing Parties shall, and shall procure that their respective directors, officers and employees and other duly authorized representatives (the "**Related Parties**") shall:

- 12.1 immediately terminate all initiatives, discussions and negotiations with, and ignore all inquiries, offers and proposals from, anyone except the Receiving Party, its directors, officers, employees and representatives, relating to any proposed sale, transfer or other disposal of, or business combination involving, OCM or any of the material assets of OCM; and
- 12.2 not, either directly or indirectly, and whether or not in conjunction with any third party, solicit, initiate, encourage, entertain or consider merits of any interest, inquiries, offers or proposals from, discuss or negotiate with, enter into any agreement, arrangement or understanding (whether or not legally binding) with, provide any information to, anyone except the Receiving Party and its directors, officers, employees and representatives, or do anything else that may lead to the same, relating to the Disclosing Parties with a view to effecting the sale, transfer, or other disposal of, or business combination involving, OCM or any of its assets.

13 **Domicilium And Notices**

- 13.1 The Parties choose domicilium citandi et executandi ("**domicilium**") for all purposes relating to this agreement, including the giving of any notice and the serving of any process, as follows:

Disclosing Parties	physical	1st Floor 23 Melrose Boulevard Melrose Arch Melrose North 2196
--------------------	----------	--

Email pmarsden@matusonassociates.co.za
/ peter@v2rescue.co.za /
Shaun.Blankfield@glencore.com

Attention: Piers Marsden / Peter van nen Steen
/ Shaun Blankfield

Receiving Party	Physical	Pembani Group Proprietary Limited 2 nd Floor, Building 3 Inanda Greens Business Park 54 Wierda Road West Wierda Valley Sandton 2146
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Email robw@pembani.co.za

Attention: Rob Wessels

13.2 Either Party shall be entitled from time to time, by giving written notice to the other, to vary its physical domicilium to any other physical address (not being a post office box or poste restante) within the Republic of South Africa and to vary its email address to any other email address.

13.3 Any notice given by either Party to the other ("**addressee**") which is delivered by hand between the hours of 09:00 and 17:00 on any business day to the addressee's physical domicilium for the time being shall be deemed to have been received by the addressee at the time of delivery.

13.4 Any notice given by either Party to the other which is successfully transmitted by email to the addressee's email address for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the day of successful transmission thereof.

13.5 This 13 shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this 13.

13.6 Any notice in terms of or in connection with this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

14 **Governing Law and Jurisdiction**

14.1 This agreement shall be interpreted and implemented in accordance with the laws of the Republic of South Africa.

- 14.2 The Parties irrevocably submit themselves and consent to the exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that court) in respect of all claims or disputes howsoever arising out of or in connection with this agreement. The Parties irrevocably waive any objection they may now have or hereafter have that such action or proceeding has been brought in an inconvenient forum.

15 General

- 15.1 The obligations of the Receiving Party under this agreement are in addition to any other obligations which may arise under statute, common law or otherwise and this agreement does not derogate from any other confidentiality obligations which the Receiving Party may currently have or may in the future have to the Disclosing Parties.
- 15.2 This agreement constitutes the whole agreement between the Parties and no agreement varying, adding to, deleting from or cancelling this agreement shall be effective unless reduced to writing and signed by or on behalf of the Parties.
- 15.3 No addition to, variation, novation or agreed cancellation of, any provision of this agreement will be binding upon the Parties, unless reduced to writing and signed by or on behalf of both Parties.
- 15.4 No indulgence or extension of time, which either Party ("Grantor") may grant to the other, nor any election or failure by the Grantor to enforce, whether completely or partially, or delay the enforcement of, any of its existing or future rights, will constitute a waiver of, or, whether by estoppel or otherwise, limit any of, the existing or future rights of the Grantor in terms hereof, save in the event and to the extent that the Grantor has signed a written document expressly waiving or limiting that right.
- 15.5 Neither Party shall be entitled to cede, delegate, assign or transfer any of its rights or obligations, under or in terms of this agreement to any third party without the prior written consent of the other Party.
- 15.6 Each term in this agreement is separate and divisible from every other term agreed to herein, so that if any one of the terms is or becomes unenforceable for any reason in any jurisdiction affected by this agreement, and to the extent of such prohibition or unenforceability, that term shall be severable from the balance of the agreement and will not affect the validity or enforceability of any other term contained in this agreement in any other jurisdiction affected by this agreement. Insofar as the terms are considered by the Parties to be reasonable in all the circumstances, they agree that if the terms taken together, are adjudged to go beyond what is reasonable in all the circumstances but would be adjudged reasonable if part or parts of the wording of the terms were deleted, the terms shall apply with such words deleted.
- 15.7 This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

Signed at Johannesburg

on 12th October 2015

for Optimum Coal Mine Proprietary Limited
(in business rescue and represented by
the Business Rescue Practitioners)

who warrants that he is duly
authorised hereto

Name: Piers Marsden
Capacity: Joint Business Rescue
Practitioner

Signed at Johannesburg

on 12th October 2015

for Optimum Coal Holdings Proprietary
Limited
(in business rescue and represented by
the Business Rescue Practitioners)

who warrants that he is duly
authorised hereto

Name: Peter van den Steen
Capacity: Joint Business Rescue
Practitioner

Signed at

on

2015

for Pembani Group Proprietary Limited

who warrants that he is duly

authorised hereto

Name:

Capacity:



NON-DISCLOSURE AND EXCLUSIVITY AGREEMENT

1 Parties

- 1.1 Optimum Coal Mine Proprietary Limited (registration number 2007/005308/07) (in business rescue and represented by the Business Rescue Practitioners) ("**OCM**");
- 1.2 Optimum Coal Holdings Proprietary Limited (registration number 2006/007799/07) (in business rescue and represented by the Business Rescue Practitioners) ("**OCH**");
- 1.3 Pembani Group Proprietary Limited (registration number 1994/007085/07) ("**Receiving Party**");

(each a "**Party**" and collectively, the "**Parties**").

2 Purpose and Transaction

- 2.1 OCM, OCH (collectively, the "**Disclosing Parties**") and the Receiving Party are discussing and evaluating a potential transaction relating to the acquisition of the whole or a part of the ordinary shares in, or the assets of, OCM (the "**Transaction**").
- 2.2 The Disclosing Parties wish to disclose certain proprietary, secret and confidential information to the Receiving Party in connection with and for the purposes of the Transaction ("**Purpose**").
- 2.3 The Parties agree that any such disclosure of such Confidential Information shall be on the terms set out in this agreement.

3 Definitions

- 3.1 In this agreement, "**Confidential Information**" shall mean any technical, financial, commercial, scientific information, know-how, trade secrets, processes, notes, memoranda, methodology, designs, drawings, technical specifications and data information (whether oral, written, electronic or in any other form) relating to the Transaction, and/or the Disclosing Parties and/or their businesses or investments made available by or on behalf of the Disclosing Parties whether before or after this agreement is actually entered into, for the Purpose, together with any information derived from such information (including any analyses, compilations, studies and other material prepared by the Receiving Party in any form whatsoever that contain or otherwise reflect or are generated from such information), including, without limitation, the fact that the Transaction is in contemplation or any information concerning the terms, status or progress of the Transaction and the existence of this agreement. Confidential Information shall, however, not include any information to the extent that such information:
- 3.1.1 is already known to the Receiving Party or any of its Representatives at the date of disclosure by the Disclosing Parties under this agreement;

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- 3.1.2 is, at the time of such disclosure by the Disclosing Parties, already published or generally available to the public;
- 3.1.3 which, after the time of such disclosure by the Disclosing Parties, is published or becomes generally available to the public, other than through the act or omission of the Receiving Party; or
- 3.1.4 is acquired independently from a third party that has the right to disseminate such information at the time it is disclosed to the Receiving Party without any obligation of confidentiality to the Disclosing Parties.

4 Confidentiality and Non-Use Undertakings

4.1 The Receiving Party acknowledges that:

- 4.1.1 the Confidential Information to be disclosed to the Receiving Party is a valuable, special and unique asset proprietary to the Disclosing Parties; and
- 4.1.2 any unauthorized disclosure of the Confidential Information will prejudice the Disclosing Parties' operations and business interests.

4.2 The Receiving Party undertakes, subject to 4.3:

- 4.2.1 to treat the Confidential Information as strictly confidential and to take all reasonable steps to protect the Confidential Information and keep it secure from unauthorised persons, adopting reasonable standards of care;
- 4.2.2 to only make such copies of any Confidential Information as are reasonably necessary for the Purpose and shall take reasonable steps to ensure that any such copies and the originals are protected against theft or unauthorised access;
- 4.2.3 not to, directly or indirectly, disclose to any third party any of the Confidential Information; provided that the Receiving Party shall be entitled to disclose the Confidential Information to its employees, directors, officers, professional advisers, consultants, and/or agents ("**Representatives**") who:
 - 4.2.3.1 have a need to know (and then only to the extent that each such Representative has a need to know);
 - 4.2.3.2 are aware that the Confidential Information should be kept confidential;
 - 4.2.3.3 are aware of the Receiving Party's obligations in relation to such Confidential Information in terms of this agreement; and

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- 4.2.3.4 have been directed by the Receiving Party to keep the Confidential Information confidential and have undertaken to keep the Confidential Information confidential on terms no less stringent than those set out in this agreement,

provided further that:

- 4.2.3.5 the Receiving Party shall take reasonable steps to ensure that any Representative to whom the Confidential Information is disclosed complies with the terms of this agreement; and

- 4.2.3.6 any use or disclosure of the Confidential Information by any Representative in a manner which is contrary to the terms of this agreement shall constitute a breach of this agreement by the Receiving Party;

- 4.2.4 to use the Confidential Information solely for the Purpose and not to use or exploit the Confidential Information for its own benefit (including in any subsequent proceedings), or to allow any other person to do so, without the Disclosing Parties' written consent;

- 4.2.5 to the extent permitted by law and reasonably possible in the circumstances, to inform the Disclosing Parties immediately if the Receiving Party becomes aware of, or reasonably suspects there has been, a breach by it of the obligations in this agreement.

- 4.3 The Receiving Party may disclose the Confidential Information to the extent that such Confidential Information is required to be disclosed under any applicable law or regulation, excluding contractual obligations, or any order of court or governmental body (as advised by external legal counsel); provided that:

- 4.3.1 the Receiving Party shall only disclose the minimum of the Confidential Information that it is legally required to disclose (as advised by external legal counsel);

- 4.3.2 the Receiving Party shall give notice to the Disclosing Parties prior to such disclosure in order to enable the Disclosing Parties to take, at the Disclosing Parties' expense, such steps as they deem necessary to prevent such disclosure and the Receiving party will take such steps as the Disclosing Parties may reasonably require for that purpose and the Receiving Party shall keep the Disclosing Parties promptly and fully informed of all developments relating to any such potential disclosure; and

- 4.3.3 If any such disclosure would include the identity of the Disclosing Parties (or any of their subsidiaries), then the disclosure of such identity shall require either (i) the consent of the Disclosing Parties or (ii) the written advice of external legal counsel of the Receiving Party to the effect that such disclosure is required.

5 Return of Confidential Information

5.1 The Confidential Information shall remain the property of the Disclosing Parties, and the Receiving Party shall, if so directed by any of the Disclosing Parties, return to the Disclosing Parties and/or destroy all Confidential Information furnished to it by the Disclosing Parties together with all copies, notes and memoranda relating thereto (including electronic copies) in its possession or control, and will not retain, and will procure that none of its Representatives retains, directly or indirectly, any copies, extracts or other reproductions, in whole or in part, of the Confidential Information, provided that in the event that the Receiving Party is unable to destroy any electronically held information and/or documentation by virtue of the same being retained in the Receiving Party's backup system, or if any material containing Confidential Information is required to be retained by applicable law, corporate governance requirements or for professional record keeping purposes, the Receiving Party agrees that such information and/or documentation will not be used subsequently by it and when possible, shall be destroyed in accordance with the Receiving Party's regular ongoing records management procedure.

5.2 The return and/or destruction and/or erasure of Confidential Information shall be confirmed by a director of the Receiving Party to the Disclosing Parties in writing

6 No representation or warranty

The Confidential Information does not purport to be all inclusive and the Disclosing Parties make no representations or warranties, express or implied, as to the quality, accuracy, reliability or completeness of the Confidential Information, and the Receiving Party expressly acknowledges the inherent risk of error in the use of the Confidential Information. None of the Disclosing Parties nor any of their officers, directors, employees, professional advisers, consultants, and/or agents shall have any duty of care, responsibility, or liability whatsoever (save in respect of any fraud or deceit by it) to the Receiving Party or any other person with respect to the use or reliance by the Receiving Party or any other person upon the Confidential Information.

7 Title

The Receiving Party acknowledges that the Confidential Information is proprietary to the Disclosing Parties and disclosure of the Confidential Information to the Receiving Party shall not thereby confer on the Receiving Party any rights or license of whatever nature in such Confidential Information.

8 Term

The provisions of this agreement shall apply until the expiry of a period of two years from the date of signature of this agreement, notwithstanding any decision not to proceed with the Transaction or any return or destruction or erasure of the Confidential Information.

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9 The Parties' Relationship

- 9.1 Unless otherwise expressly agreed in writing between the Parties, nothing in this agreement or the subsequent dealings between the Parties shall create or be deemed to create:
- 9.1.1 any relationship of partnership, agency or employment between the Parties, or confer any authority on either of the Parties to contract on behalf of, or otherwise bind, the other Party;
- 9.1.2 an obligation on the Disclosing Parties to provide, or to continue to provide, any Information to the Receiving Party, whether Confidential Information or otherwise.
- 9.2 Neither by virtue of this agreement nor the provision of the Confidential Information will either Party be under any obligation to proceed with the Transaction.

10 Breach

- 10.1 If the Receiving Party breaches any of the provisions of this agreement and, where such breach is capable of remedy, fails to remedy that breach within five days after receiving written notice from any of the Disclosing Parties requiring the Receiving Party to remedy the breach, then each of the Disclosing Parties will, without prejudice to its other rights in law, be entitled to:
- 10.1.1 apply to any court of competent jurisdiction by way of urgent proceedings to interdict or restrain the Receiving Party from perpetuating or continuing such breach or doing or permitting anything to be done which constitutes a breach of any undertaking in this agreement; and/or
- 10.1.2 claim from the Receiving Party all damages, which such Disclosing Party may have suffered, as a result of such breach.
- 10.2 No Party shall be entitled to cancel this agreement in respect of breach by the other Party of any of the provisions hereof; the Parties' remedies being limited to a claim for damages, with or without a claim for specific performance or interdictory relief.
- 10.3 The Receiving Party acknowledges and agrees that:
- 10.3.1 a breach of this agreement may cause irreparable loss, harm and damage to the Disclosing Parties, and that money damages would not be an adequate remedy for any such breach; and
- 10.3.2 the Disclosing Parties shall, without prejudice to any other remedy, be entitled to the remedies of interdictory relief, specific performance and other urgent relief, for any threatened or actual breach of any of the provisions of this agreement and that no proof

RW

of special damage shall be necessary for the enforcement of this agreement.

11 Announcements

This agreement does not require any disclosure to be made by either Party and each Party undertakes not to make any public announcement (including a press release or a statement to the media) or discuss any matter with the media in relation to the Transaction; provided that if in the future any public announcement is required in terms of applicable law or regulation (including the rules of any stock exchange) the Party making the announcement or discussing the matter with the media, shall first, to the extent permitted by law and reasonably possible in the circumstances, obtain the approval as to the wording and timing of such public announcement from the other Party.

12 Exclusivity

In consideration of the Receiving Party committing resources and incurring costs relating to due diligence, negotiations and drafting of the agreements, until 11 January 2016, the Disclosing Parties shall, and shall procure that their respective directors, officers and employees and other duly authorized representatives (the "**Related Parties**") shall:

12.1 immediately terminate all Initiatives, discussions and negotiations with, and ignore all inquiries, offers and proposals from, anyone except the Receiving Party, its directors, officers, employees and representatives, relating to any proposed sale, transfer or other disposal of, or business combination involving, OCM or any of the material assets of OCM; and

12.2 not, either directly or indirectly, and whether or not in conjunction with any third party, solicit, initiate, encourage, entertain or consider merits of any interest, inquiries, offers or proposals from, discuss or negotiate with, enter into any agreement, arrangement or understanding (whether or not legally binding) with, provide any information to, anyone except the Receiving Party and its directors, officers, employees and representatives, or do anything else that may lead to the same, relating to the Disclosing Parties with a view to effecting the sale, transfer, or other disposal of, or business combination involving, OCM or any of its assets.

13 Domicilium And Notices

13.1 The Parties choose domicilium citandi et executandi ("**domicilium**") for all purposes relating to this agreement, including the giving of any notice and the serving of any process, as follows:

Disclosing Parties	physical	1st Floor 23 Melrose Boulevard Melrose Arch Melrose North 2196
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RW

Email pmarsden@matusonassociates.co.za
 / peter@v2rescue.co.za /
Shaun.Blankfield@glencore.com

Attention: Piers Marsden / Peter van den Steen
 / Shaun Blankfield

Receiving Party	Physical	Pembani Group Proprietary Limited 2 nd Floor, Building 3 Inanda Greens Business Park 54 Wierda Road West Wierda Valley Sandton 2146
-----------------	----------	--

Email robw@pembani.co.za

Attention: Rob Wessels

13.2 Either Party shall be entitled from time to time, by giving written notice to the other, to vary its physical domicile to any other physical address (not being a post office box or poste restante) within the Republic of South Africa and to vary its email address to any other email address.

13.3 Any notice given by either Party to the other ("**addressee**") which is delivered by hand between the hours of 09:00 and 17:00 on any business day to the addressee's physical domicile for the time being shall be deemed to have been received by the addressee at the time of delivery.

13.4 Any notice given by either Party to the other which is successfully transmitted by email to the addressee's email address for the time being shall be deemed (unless the contrary is proved by the addressee) to have been received by the addressee on the day of successful transmission thereof.

13.5 This 13 shall not operate so as to invalidate the giving or receipt of any written notice which is actually received by the addressee other than by a method referred to in this 13.

13.6 Any notice in terms of or in connection with this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee.

14 **Governing Law and Jurisdiction**

14.1 This agreement shall be interpreted and implemented in accordance with the laws of the Republic of South Africa.

RW

- 14.2 The Parties irrevocably submit themselves and consent to the exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg) (or any successor to that court) in respect of all claims or disputes howsoever arising out of or in connection with this agreement. The Parties irrevocably waive any objection they may now have or hereafter have that such action or proceeding has been brought in an inconvenient forum.

15 General

- 15.1 The obligations of the Receiving Party under this agreement are in addition to any other obligations which may arise under statute, common law or otherwise and this agreement does not derogate from any other confidentiality obligations which the Receiving Party may currently have or may in the future have to the Disclosing Parties.
- 15.2 This agreement constitutes the whole agreement between the Parties and no agreement varying, adding to, deleting from or cancelling this agreement shall be effective unless reduced to writing and signed by or on behalf of the Parties.
- 15.3 No addition to, variation, novation or agreed cancellation of, any provision of this agreement will be binding upon the Parties, unless reduced to writing and signed by or on behalf of both Parties.
- 15.4 No indulgence or extension of time, which either Party ("Grantor") may grant to the other, nor any election or failure by the Grantor to enforce, whether completely or partially, or delay the enforcement of, any of its existing or future rights, will constitute a waiver of, or, whether by estoppel or otherwise, limit any of, the existing or future rights of the Grantor in terms hereof, save in the event and to the extent that the Grantor has signed a written document expressly waiving or limiting that right.
- 15.5 Neither Party shall be entitled to cede, delegate, assign or transfer any of its rights or obligations, under or in terms of this agreement to any third party without the prior written consent of the other Party.
- 15.6 Each term in this agreement is separate and divisible from every other term agreed to herein, so that if any one of the terms is or becomes unenforceable for any reason in any jurisdiction affected by this agreement, and to the extent of such prohibition or unenforceability, that term shall be severable from the balance of the agreement and will not affect the validity or enforceability of any other term contained in this agreement in any other jurisdiction affected by this agreement. Insofar as the terms are considered by the Parties to be reasonable in all the circumstances, they agree that if the terms taken together, are adjudged to go beyond what is reasonable in all the circumstances but would be adjudged reasonable if part or parts of the wording of the terms were deleted, the terms shall apply with such words deleted.
- 15.7 This agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

Signed at

on

2015

for Optimum Coal Mine Proprietary Limited
(in business rescue and represented by
the Business Rescue Practitioners)

who warrants that he is duly
authorised hereto

Name:
Capacity:

Signed at

on

2015

for Optimum Coal Holdings Proprietary
Limited
(in business rescue and represented by
the Business Rescue Practitioners)

who warrants that he is duly
authorised hereto

Name:
Capacity:

Signed at

SANDTON

on

9 OCTOBER

2015

for Pembani Group Proprietary Limited

RJ Wessels

who warrants that he is duly
authorised hereto

Name: *RJ WESSELS*

Capacity: *EXECUTIVE DIRECTOR*

11 February 2016

CE21

The Joint Business Rescue Practitioners
Optimum Coal Holdings (in Business Rescue)

Messrs Piers Marsden and Peter Van Den Steen

STRICTLY PRIVATE AND CONFIDENTIAL

Dear Sirs,

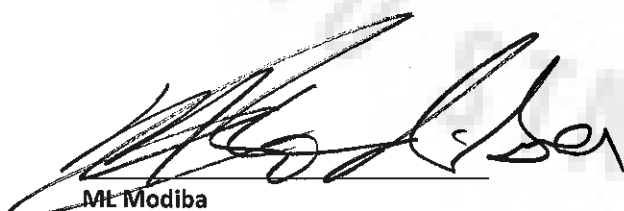
ACQUISITION OF OPTIMUM COAL HOLDINGS (PROPRIETARY) LIMITED ("OCH") BY TEGETA EXPLORATION AND RESOURCES ("TEGETA")

Pembani Development Trust will become an indirect shareholder in OCH through Lexshell 849 (Proprietary) Limited, as part of the post implementation steps of the merger between Pembani Group and Shanduka. We are aware that Tegeta is in the process of acquiring 100% of the assets of OCH (including its interests in Optimum Coal Mine (in Business Rescue) ("OCM"), Optimum Coal Terminal and Koornfontein Mines), subject to certain conditions precedent the details of which have been shared with us and were disclosed in press announcements in December 2015.

Pembani Group (Proprietary) Limited attempted to conclude a similar transaction with yourselves and Glencore to acquire a 100% shareholding in OCM conditional on obtaining Eskom and the Department of Mineral Resources' ("DMR") approval and arriving at a negotiated share of the existing liabilities at OCH. Eskom was not prepared to amend the OCM coal supply agreement ("CSA") or waive its rights to enforce the claim under the CSA, which led to the Pembani transaction failing.

We cannot preclude yourselves, Glencore and the OCH creditors from implementing the Tegeta transaction. We cannot vote on the Business Rescue Plan. However, without being critical of yourselves or Glencore, we wish to place on record that we are concerned about developments that led to the conclusion of the Tegeta Transaction and the failure of the Pembani transaction. We have sympathy for the fact that you and Glencore might under, current circumstances, not have much alternative but to proceed with Tegeta.

Kind regards,



ML Modiba
Pembani Development Trust

Cc: Clinton Ephron

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TERM SHEET FOR PROPOSED ACQUISITION OF OPTIMUM COAL MINE (PTY) LTD BY
OAKBAY INVESTMENTS (PTY) LTD

This term sheet describes the key terms and conditions on and subject to which Optimum Coal Holdings (Pty) Ltd (in business rescue) ("**OCH**") and Oakbay Investments (Pty) Ltd ("**Oakbay**") are willing to engage with each other regarding the potential disposal by OCH of its shares in and claims against Optimum Coal Mine (Pty) Ltd (in business rescue) ("**OCM**") to Oakbay (the "**Proposed Transaction**") and the proposed principal terms and conditions thereof.

While it is Oakbay's preference to acquire the assets of OCM (rather than the shares in and claims against OCM) and to assume certain agreed liabilities of OCM, Oakbay is (subject to the satisfactory outcome of the due diligence), prepared to consider the Proposed Transaction as set out in this term sheet.

This term sheet is not intended to be legally binding, save as to this paragraph and the provisions relating to *Costs and Expenses*, *Confidentiality*, *Exclusivity*, *Good Faith*, *Governing Law and Arbitration* and *General* below, which terms will be binding on the parties with the effect from the date of signature by the party signing last in time of this term sheet ("**Signature Date**"). OCH and Oakbay agree and acknowledge that this term sheet is not intended to, nor does it create, a legally binding obligation to proceed with the Proposed Transaction and that no such obligation will arise unless and until the Definitive Agreements (as defined below) are signed by the parties.

Seller

OCH (represented by its joint business rescue practitioners, Piers Marsden and Peter Van den Steen ("**BRPs**"))

Purchaser

Oakbay (or its nominee)

Target

The Target comprises the following:

- (i) 100% of the issued share capital of OCM, held by OCH; and
- (ii) 100% of the claims held by OCH against OCM.

OCM will be acquired as a going concern such that Oakbay (limited to the terms, conditions and amount of its funding obligation to OCM) will be indirectly liable for settling all agreed liabilities of OCM (including trade creditors and any agreed liabilities relating to the termination of the existing mining contractor) save for:

- (i) the debt and liabilities of OCM in favour of the consortium of banks ("**Bank Debt**"); and
- (ii) the alleged claim of Eskom Holdings SOC Limited ("**Eskom**"),

both of which will be dealt with as per below.

The existing mining contracting agreement will be terminated on or prior to the implementation of the Proposed Transaction on terms and conditions to be agreed between OCH, Oakbay and the contractor, including the potential purchase by OCM of the equipment and infrastructure owned by the mining contractor.

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Oakbay will need to commit sufficient funding to fund the operations of OCM post implementation of the Proposed Transaction in order to place the BRPs in a position in which they are able to determine that OCM is no longer financially distressed and terminate the business rescue proceedings of OCM.

Oakbay will be responsible for providing post-commencement finance to OCM with effect from the date 15 (fifteen) business days after the signature of the Definitive Agreements (as defined below).

The Target does not include any RBCT allocation which is held by Optimum Coal Terminal (Pty) Ltd ("**OCT**"), another subsidiary of OCH. If Oakbay wishes to acquire RBCT allocation from OCT, this will need to be separately agreed with OCH and OCT and an appropriate amount of the Bank Debt (as defined below) associated with that RBCT allocation will need to be assumed or settled.

Purchase Consideration

The purchase consideration for the Target will be R1.

Bank Debt

OCM is currently indebted to a banking consortium comprising Rand Merchant Bank, Investec and Nedbank (the "**Consortium**") for the Bank Debt.

The Bank Debt is secured over all of the assets of OCM including, without limitation:

- (i) the shares and claims in OCM held by OCH;
- (ii) the mining rights of OCM;
- (iii) the immovable property of OCM; and
- (iv) the movable property of OCM.

On acquisition of OCM, a portion of the Bank Debt will be taken over or settled by Oakbay, the exact amount of which will be determined during the course of the due diligence and will be negotiated in good faith between OCH, OCM, the Consortium and Oakbay.

Eskom Claim

Eskom has initiated a claim against OCM and OCH in the amount of approximately R2.2 billion ("**Eskom Claim**") in terms of the Coal Supply Agreement with Eskom ("**CSA**"). OCM and OCH dispute the claim. OCM and OCH will provide information to Oakbay during the due diligence regarding the Eskom Claim.

The parties shall use their best endeavors to negotiate a full release by Eskom in favour of OCM and OCH in respect of the Eskom Claim.

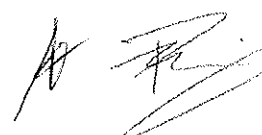
If the parties are unable to obtain a full release for OCM and OCH in respect of the Eskom Claim, OCH and Oakbay will negotiate between them an apportionment of liability for an agreed amount of the Eskom Claim on the basis that OCH will pay its agreed portion to Oakbay and OCH will be released and indemnified from any further liability to Eskom in relation to the Eskom Claim.

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Conditions Precedent

The Proposed Transaction will be subject to the following conditions precedent:

1. Oakbay obtaining:
 - i. the unconditional written consent of Eskom for the Proposed Transaction; and
 - ii. an unconditional and irrevocable release by Eskom in favour of OCH in respect of all future liability and obligations arising from the CSA (subject to completion of the Proposed Transaction);
2. Oakbay completing a legal, tax, financial and technical due diligence into the affairs of OCM and being satisfied with the results of such due diligence investigation;
3. finalisation and execution of the definitive comprehensive transaction agreements ("**Definitive Agreements**"), including the following agreements:
 - i. an interim financing and management agreement between Oakbay, OCH, OCM, the Consortium and the BRPs to govern, amongst other things and subject to applicable anti-trust rules / competition rules, the post commencement financing and the conduct of the business of OCM between the date of signature of the Definitive Agreements and the Proposed Transaction becoming unconditional; and
 - ii. a sale agreement between OCH and Oakbay to give effect to the Proposed Transaction and which reflects the terms and conditions set out in this term sheet (including the consents and approvals contemplated in point 6 below and a clause to stipulating those events that will, and those events that will not give rise to a material adverse change in relation to OCM and its business during the time from the date of signature of the Definitive Agreements to the date of fulfillment of the last of the conditions precedent) as further agreed during the due diligence;
4. OCH and/or OCM (as may be applicable to the Proposed Transaction) ceasing to be in business rescue, whether by way of the approval of the business rescue plan for OCH providing for the Proposed Transaction by 75% of the creditors' voting interests and 50% of the independent creditors' voting interests of OCH, or otherwise;
5. conclusion of agreements between, *inter alia*, OCH and OCM and the Consortium in terms of which the members of the Consortium approve the Proposed Transaction and



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give effect to the arrangement regarding the Bank Debt as contemplated above; and

6. obtaining of all applicable statutory and/or regulatory consents, including consents of the Minister of Mineral Resources in terms of section 11 of the Mineral and Petroleum Resources Development Act, 28 of 2002 ("MPRDA") and the relevant Competition Authority in terms of section 13A of the Competition Act, 89 of 1998 ("Competition Act").

Timetable

The parties intend to proceed as quickly as possible with the Proposed Transaction.

Oakbay will commence its due diligence immediately after the Signature Date and, provided that information and documentation is timeously provided to Oakbay, finalise its due diligence by no later than the date that is 30 days after the Signature Date.

As soon as reasonably practicable following the Signature Date, the parties will commence negotiations regarding the Bank Debt and the Eskom Claim and the other terms of the Definitive Agreements. The initial drafts of the Definitive Agreements will be prepared by OCH and furnished to Oakbay not less than 15 (fifteen) business days after the Signature Date, for their review and comment.

OCH and Oakbay will negotiate in good faith with a view to signing the Definitive Agreements within 7 (seven) days of the date of finalisation to the satisfaction of Oakbay of the due diligence.

The parties agree that, for purposes of calculating any time periods referred to in this term sheet, such time periods shall exclude the period between 16 December 2015 and 3 January 2016 (both dates inclusive).

Post Commencement Financing

Oakbay shall provide post commencement financing to OCM with effect from 15 (fifteen) business days after signature of the Definitive Agreements, provided that the only outstanding conditions precedent at such time are (i) the consent by the Minister in terms of section 11 of the MPRDA ("**Section 11 Approval**"); (ii) the approval of the relevant Competition Authority in terms of section 13A of the Competition Act ("**Competition Approval**"); and (iii) other conditions precedent that are conditional on Section 11 Approval and Competition Approval.

The parties acknowledge that there is a measure of risk to Oakbay in providing post commencement financing before the conditions precedent have been fulfilled. The parties will have consideration to what will be a reasonable time in which to obtain the approvals contemplated in those conditions precedent, and will provide in the relevant Definitive Agreement(s) for a limit to the amount and duration of the post commencement finance to be provided by Oakbay prior to the aforementioned conditions precedent both being fulfilled.

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Costs and Expenses

All costs and expenses incurred in connection with the Proposed Transaction will be borne by the party incurring them.

Confidentiality

This term sheet is confidential and is subject to the non-disclosure agreement dated 24 July 2015 between OCH, OCM and Oakbay, as amended.

Each party confirms that no announcement is required to be made or will be made in connection with the execution of this term sheet

The non-disclosure agreement and this confidentiality clause shall not restrict the parties' ability to engage with such parties as may be necessary to progress the matters expressly contemplated in this term sheet, including Eskom (in relation to the CSA and the Eskom Claim), the Department of Mineral Resources (in relation to section 11 of the MPRDA), the Competition Authorities (in relation to the application and approval of the Proposed Transaction in terms of section 13A of the Competition Act), the Consortium (in relation to the Bank Debt) and each parties' professional advisors required to assist in relation to the Proposed Transaction.

This provision shall survive the termination of this term sheet.

Exclusivity

OCH and OCM shall not until the date that is 30 days after the Signature Date, solicit, initiate, encourage, entertain or consider merits of any interest, inquiries, offers or proposals from, discuss or negotiate with, enter into any agreement, arrangement or understanding with, provide any information to anyone except Oakbay and its directors, officers, employees and representatives, with a view to effecting the sale, transfer, or other disposal of, or business combination involving, OCM or any of its assets.

Good Faith

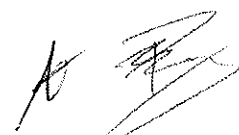
The parties undertake to engage with each other in good faith and without undue delay in evaluating the Proposed Transaction and seeking to progress, finalise and implement the arrangements contemplated in this term sheet.

**Governing
Arbitration****Law and**

This term sheet and any non-contractual rights and obligations arising in connection herewith shall be governed by South African law.

Any disputes arising from or in connection with this term sheet shall if so required by either party by giving written notice to that effect to the other be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator or arbitrators appointed by AFSA. There shall be no right of appeal as provided for in article 22 of the aforesaid rules.

Each party (i) expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency; and (ii) irrevocably authorises the other to apply, on behalf of all parties to such dispute, in writing, to the secretariat of AFSA in terms of article 23(1) of the aforesaid rules for any such arbitration to be conducted on an urgent basis.



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General

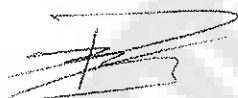
This term sheet supersedes all previous agreements, arrangements and communications relating to the Proposed Transaction.

No amendment or variation of this term sheet is valid or binding on a party unless made in writing and executed by duly authorized representatives of each party hereto.

The signature by any party of a counterpart of this term sheet shall be as effective as if that party had signed the same document as the other party.

Signed by:

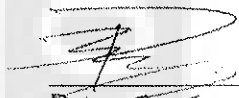
On behalf of Optimum Coal Holdings (Pty) Ltd (in business rescue)



Date: 2015-11-11
Name: P.F. VAN DEN STEEN
Position: BRP

Signed by:


On behalf of Optimum Coal Mine (Pty) Ltd (in business rescue)



Date: 2015-11-11
Name: P.F. VAN DEN STEEN
Position: BRP

Signed by:

On behalf of Oakbay Investments (Pty) Ltd



Date: 2015-11-12
Name: NAZEM ITHWA
Position: DIRECTOR

SUMMARY RECORD OF DISCUSSION

Meeting Name: Exploratory Discussions on Sustainable Hendrina Coal Supply

Date: 24 November 2015	Time: 15h00 -16h20	Venue: Huvo Nkulu Boardroom	Meeting No.: 01/2015
Attendees:			
Shaun Blankfield (Glencore) (SB)		Matshela Koko (Chairperson) (MK)	
Piers Marsden (Marsden Associates) (PM)		Suzanne Daniels (SD)	
Peter van den Steyn (PvdS)		Edwin Mabelane (EM)	
Nazeem Howa (Oakbay) (NH)		Ayanda Nteta (AN)	
Ashu Chawla (Oakbay) (AC)			
Ronica Ragavan (Oakbay) (RR)			

The Chairperson opened the meeting and welcomed all.

Emergency evacuation procedure was explained to all.

Chairman's opening remarks: Eskom is managing a tight system and Hendrina is key to the system. Therefore it is important to rescue the mine to ensure security of electricity supply.

PM indicated that the BRPs were looking at disposing the interest to Oakbay. The Due Diligence commenced 9 days ago and is currently underway. The purpose of the meeting was seek the support of Eskom to understand Eskom's concerns and what it needed to see out of the process.

Oakbay confirmed that the Due Diligence started 9 days ago and it is committed to a 30 day due diligence period with a definitive agreement to be in place by 15 December 2015.

Eskom questioned what would be the arrangement for the period 1-15 December.

PM advised that an extension of the current arrangement was anticipated and that a formal request for the extension of the current dispensation until such time as there is a definitive agreement in place, would be sought. SB confirmed that funding has been secured and will be extended until agreement was reached. He reiterated that there would be no interruption of coal supply and the amendments to the current funding arrangements were currently being effected by Glencore's legal team.

The Chairman emphasized the Eskom position: Eskom's priority is security of supply. There is a coal supply contract in place until 2018. Eskom expects Optimum Coal Mine to honour the contract at the contracted price until 2018. Eskom will not waive its penalty claim.

He noted that the Koorfontein supply contract expires in December 2015. It appeared that the Koorfontein disposal and that of the export allocation are separate to that of OCM. This gave rise to the question of how does OCH survive beyond the life of the Koorfontein contract. He further questioned the financial strength of the new buyer ; firstly would it be able to sustain a loss of ZAR 130M per month and secondly, how will the buyer survive without Koorfontein Contract and the export allocation? He postulated that if OCM were to be ring-fenced, Eskom was not convinced that it will survive on its own and hence he was compelled to engage in a discussion regarding OCH, and not OCM, in totality.

PM indicated that the BRP's view of the claim differed to that of Eskom. In addition, there was a ZAR 2.7bn of senior secured bank debt held by the Banking Consortium which will need to be evaluated by Oakbay. The BRP has had open discussions with Oakbay on this debt. PM confirmed that there was no engagement around the OCH solution and from a Glencore perspective, it may be open to this but at the moment Oakbay was dealing with the transaction from an OCM perspective.

NH confirmed that Oakbay would like to close the transaction as soon as possible. It had wanted clarity in respect of the key issues. While the Eskom position was very clearly stated, it had wished to seek clarity on the following key issues (i) was the price negotiable? NH confirmed that he understood the Eskom position to be that the contract price was to remain the same until contract expiry, subject to the current terms and conditions of the contract. (ii) Could the parties start discussions beyond 2018? It was confirmed that the Eskom position was understood by the parties to be that the discussions relating to what happens beyond 2018 are off the table. (iii) Would Eskom consider a waiver of the penalty claim? It was also clear that Eskom was not prepared to waive the penalty claim.

NH confirmed that Oakbay was dealing with it from an OCM perspective and that it did not have a mandate to talk regarding OCH.

It was concluded that the Eskom position was now clear to all parties and that Oakbay required a mandate to take the discussion further. NH requested to reconvene with the Business Rescue Practitioner and Glencore at 17h30 to discuss further. The Chairman reiterated that the parties would not have Eskom consent should it be limited to a transaction at OCM level. While it was supportive of a transaction with Oakbay, it would not be supportive were it to be limited to OCM level. The Chairman insisted that Eskom needs to know by the weekend that there is a prospect at OCH level to rescue the mine.

The meeting closed at 16h20.

Minutes submitted by: Ayanda Nteta

Approved by:



Matshela Koko
Chairman

Approved by:

On behalf of:
BRP's

Approved by:

On behalf of:
Oakbay



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Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

NOTICE OF ORDERS, SUSPENSIONS AND INSTRUCTIONS IN TERMS OF SECTION 54(1)(A) AND 54(1)(B) OF THE MINE HEALTH AND SAFETY ACT, 1996 (ACT 29 OF 1996), AS AMENDED.

Name of Regional Office : Mpumalanga
Name of Mines : Koorfontein Mines
Shaft : Blinkpan Shaft
Employer : Glencore
Section : 7 & Lamproom
Date : 26/11/2015

A. List the Dangerous Occurrence/Practice/Conditions observed


- 1) Tractor road from shaft to Section is dry and dusty,
- 2) 7 roads cutting sequence displayed at the place for a 11 roads section (incorrect cutting sequence) and the section is currently cutting out of sequence.
- 3) CM dust sampling have not been conducted for the entire November.
- 4) CM dust sampler was found on stop due to low battery.
- 5) There is no lamproom OP available in the lamproom.
- 6) There is no SANS/SABS certificates displayed in the lamproom and there is no notice board available.
- 7) The Blinkpan Lamproom is not managed well, No records available, 10% SCSR sampling by CSIR for 2015 have not been done and there is no burn down procedure for caplamps and burn down for caplamps not done.

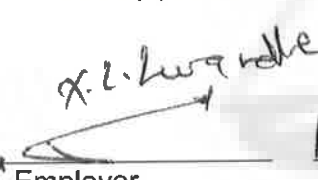
B. The orders and instructions (N.B directly linked to the above transgression(s))

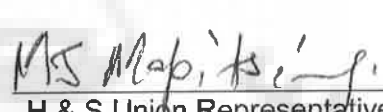
Transgression(s)	Orders / Instructions given
1	Based on the above and in an attempt to safeguard the lives of persons at the mine, The employer is hereby Instructed:
1-4	Withdraw all employees from underground.
5-7	Stop the use of the equipment in the Lamproom (SCSR, Caplamps and GDI's)

The employer is further instructed to ; jointly with member(s) of health and safety committee or unions ; fix the deviation(s) ; conduct comprehensive audit for similar deviation(s) ; investigate reasons for system failures and institute an action plan to prevent further recurrences of system failures. This instruction shall remain in force until such time that the employer has complied with the instructions and presentations made to the office of the principal inspector of mines by the said employer and the member(s) of health and safety committee or unions

In terms of section 54 (6) ; the instruction(s) take effect on 26/11/2015 at 14H00

 M.A. Simelane
 Inspector of Mines

 X.L. Luvu
 Employer

 M.S. Mapitsi
 H & S Union Representative

In terms of section 54(5), the instruction(s) is/are confirmed/Varied/ set aside.

Principal Inspector

Date



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NOTICE OF ORDERS, SUSPENSIONS AND INSTRUCTIONS IN TERMS OF SECTION 54(1)(A) AND 54(1)(B) OF THE MINE HEALTH AND SAFETY ACT, 1996 (ACT 29 OF 1996), AS AMENDED.

Name of Regional Office : **MPUMALANGA**
Name of Mines : **Wonderfontein Colliery**
Shaft : **Open Cast**
Employer : **Glencore**
Section : **Pit A and B**
Date : **2015-11-28**

A. List the Dangerous Occurrence/Practice/Conditions observed

- An operator for Excavo mining mini truck was not having license and checklist with him whilst operating.
- Safety belt was not used by the Excavo mining mini truck operator and the operator for CWZ032 LDV and not completed the checklist.
- ADT 146 operator's seat was not adjusted and there were engine oil leaks.
- ADT 141 and ADT 140, were leaking oil and the hooter were not working and there were not recorded as such on the checklist.
- HCL361MP, DC97PL GP and Tractor, operator were not having mine license and did not complete checklist.

B. The orders and instructions (N.B directly linked to the above transgression(s))

Transgression(s)	Orders / Instructions given
1	Based on the above and in an attempt to safeguard the lives of persons at the mine, the employer is hereby instructed to halt the use of all TMM at the mine. Except for the purpose of conducting audit and performing essential works (e.g. pumping water).



Principal Inspector

Date

In terms of section 54(5), the instruction(s) is/are confirmed/Varied/ set aside.

Inspector of Mines

Employer

H & S Union Representative

In terms of section 54 (6); the instruction(s) take effect on 28/11/2015 at 11h40

The employer is further instructed to ; jointly with member(s) of health and safety committee or unions ; fix the deviation(s) ; conduct comprehensive audit for similar deviation(s) ; investigate reasons for system failures and institute an action plan to prevent further recurrences of system failures.

This instruction shall remain in force until such time that the employer has complied with the instructions and presentations made to the office of the principal inspector of mines by the said employer and the member(s) of health and safety committee or unions.



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NOTICE OF ORDERS, SUSPENSIONS AND INSTRUCTIONS IN TERMS OF SECTION 54(1)(A) AND 54(1)(B) OF THE MINE HEALTH AND SAFETY ACT, 1996 (ACT 29 OF 1996), AS AMENDED.

Name of Regional Office : MPUMALANGA

Name of Mines : TWEEFONTEIN OPEN CAST

Shaft : OPEN CAST AND PLANT

Employer : GLENCORE COAL SA

Section : OPEN CAST & PLANT

Date : 28/11/2015

A. List the Dangerous Occurrence/Practice/Conditions observed

1. T04 AND T21 OPERATING WITH A CLASS HAZARDS
2. FEL 001 AND EXCAVATOR 302 EMERGENCY STEPS WERE DAMAGED
3. T03 FIRE EXTINGUISHER NOT WORKING. NO PRESSURE
4. PIT VIPER II (DRILL) FIRE EXTINGUISHER MISSING
5. EXCAVATOR 301 OPERATING WITH A CLASS HAZARD
6. EXCAVATOR 302 AND ADT 17 RUBBER SEALS WORN OUT AND ADT 17 WINDOW NOT CLOSING PROPERLY.
7. T24 EXHAUST DAMAGED, T02 AND T21 TYRES HAVE DEEP CUTS (INSIDE WALL). T05 FIRE EXTINGUISHER GAUGE NOT VISIBLE
8. EXCESSIVE DUST AT THE LOADING AREA WAS OBSERVED
9. OPERATOR LICENCES DO NOT HAVE ISSUE DATE AND EXPIRY DATE

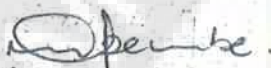
B. The orders and instructions (N.B directly linked to the above transgression(s))


Transgression(s)	Orders / Instructions given
1, 2, 3, 4, 5, 6 AND 8	BASED ON THE ABOVE AND IN AN ATTEMPT TO SAFEGUARD THE LIVES OF PERSONS AT THE MINE, THE EMPLOYER IS HEREBY INSTRUCTED TO HALT ALL THE TMMs AT THE MINE


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The employer is further instructed to; jointly with member(s) of health and safety committee or unions ; fix the deviation(s) ;conduct comprehensive audit for similar deviation(s) ; investigate reasons for system failures and institute an action plan to prevent further recurrences of system failures. This instruction shall remain in force until such time that the employer has complied with the instructions and presentations made to the office of the principal inspector of mines by the said employer and the member(s) of health and safety committee or unions

In terms of section 54 (6); the instruction(s) take effect on
28/11/2015 at 15:40


MESHACK MPEMBE
 Inspector of Mines


C. du Plessis
 Employer


Charles Kubheka
 H & S Union Representative

In terms of section 54(5), the instruction(s) is/are confirmed/Varied/ set aside.

 Principal Inspector

 Date



mineral resources

Department:
Mineral Resources
REPUBLIC OF SOUTH AFRICA

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NOTICE OF ORDERS, SUSPENSIONS AND INSTRUCTIONS IN TERMS OF SECTION 54(1)(A) AND 54(1)(B) OF THE MINE HEALTH AND SAFETY ACT, 1996 (ACT 29 OF 1996), AS AMENDED.

Name of Regional Office : **MPUMALANGA**
Name of Mines : **GOEDGEVONDEN COLLIERY**
Shaft : **OPENCAST**
Employer : **GLENCORE**
Section : **MINE-WIDE**
Date : **30/11/2015**

A. List the Dangerous Occurrence/Practice/Conditions observed

1. The mine has no collision avoidance to warn the operator of oncoming machine.
2. Air-conditioner, Headlights, Hand rails, dust etc. are classified as B-Class hazards instead Of A-Class hazards.
3. Haul Truck 110 and most trucks have only one stop block.
4. Inconsistence in completion of pre-use checklists for LDVs.
5. Lighting Plants without earthing rods.
6. Diesel Bouwser hand rail damaged.
7. Sun visor for Diesel bouwser missing for two months (C-Class hazard to be fixed in a week).
8. Four dump trucks found without first aid kit (B-Class hazard to be fixed in 24 hours).
9. Sub-contractor for the oil truck 'CFUC014' has no pre-use checklist.
10. Wheel Loader 2 with cracked windscreen since 21 November 2015.
11. Artisans/Supervisors not counter-signing pre-use checklists.
12. Drill viper (Assistant Operator) without a dust mask and drill machine side step damaged.
13. Dozer No. 2 cat-tracks worn out and air conditioner not working for 3 weeks.
14. Dozer 2 steel plate on the floor not bolted, and dust coming in.

B. The orders and instructions (N.B directly linked to the above transgression(s)) **269**

Transgression(s)	Orders / Instructions given
1 - 14	Based on the above and in an attempt to safeguard the lives of persons at the mine, the Employer is hereby instructed to halt the use of Trackless Mobile Machinery.
	Except for the purpose of fixing the deviations or conducting the audit.

The Employer is further instructed to; jointly with member(s) of Health and Safety Committee or Unions; fix the deviation(s); conduct comprehensive audit for similar deviation(s); investigate reasons for system failures and institute an action plan to prevent further recurrences of system failures. This instruction shall remain in force until such time that the employer has complied with the instructions and presentations made to the office of the Principal Inspector of Mines by the said Employer and the member(s) of Health and Safety Committee or Unions.

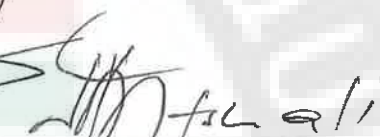
In terms of section 54 (6); the instruction(s) take effect on 30/11/2015 at 17H00

T. MOKOENA



Inspector of Mines


 Employer


 H & S Union Representative

In terms of section 54(5), the instruction(s) is/are confirmed/Varied/ set aside.

Principal Inspector

Date