VOLUME



GJ OPPERMAN

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AFFIDAVIT

1. I, the undersigned

Gert Jacobus Opperman

do hereby state under oath in English that:

- a) I am an adult male, with identity number employed as Coal Supply Unit Manager, Eskom Primary Energy Department (PED). My office is situated at Eskom Megawatt Park, 1 Maxwell Drive, Sunninghill, Sandton.
- b) My contact details are:

Office:			
Cell:		o_beronetono€e se	Verine.
E-mail:			

- 2. This statement is true to the best of my knowledge and belief, I make it knowing that if it were tendered in evidence, I shall be liable for prosecution if I have wilfully stated in it anything, which I know to be false or do not belief to be true.
- 3. I have been employed at Eskom SOC Limited (hereinafter referred to as Eskom) since 1 February 1996 and I was initially appointed as a Plant Operator. I worked in various departments at Kendal Power Station until October 2009. I was then appointed in my current position as Coal Supply Unit Manager in the Eskom PED division.
- 4. My duties entail inter alia the following:
 - Determine and get approval for the short, medium and long term coal supply strategies;
 - Manage commercial and legal aspects of existing coal supply agreement (CSA);
 - Manage the implementation of new CSA's;
 - Manage CSA production, working and contractual cost budgeting process;



- Manage production and cost of the CSA's;
- Manage coal quality in terms of the CSA's;
- Monitor safety trends of the mines;
- Identify and manage coal supply and cost risk;
- Manage capital approvals for projects and control their implementation;
- Manage short, medium and long term mine planning of mines;
- Manage environmental and mine closure budgeting and capital approval process;
- Manage CSA accounts;
- Liaise with power station management, internal support personnel, other Eskom clients and industry committees;
- Project management and research and development;
- Management of monthly financial inputs/outputs; and
- Ensure logistic support both via road trucks as well as rail is performing to meet the delivery targets.
- 5. I currently report to Mr Petros Mazibuko who is the acting General Manager:
 Coal Operations.
- 6. I have been requested to provide information and to comment on my knowledge with regard to the management of the CSA at the Hendrina Power Station and to comment on certain payment transactions by Eskom. For ease of reference I will first deal with my involvement at the Hendrina Power Station whereafter I will deal with Arnot Power Station

Introduction

- 7. I am a Contract Manager within the Primary Energy Division (PED).
- I was responsible for,amongst others, the coal supply for the Hendrina Power Station from September 2012 until June 2018.
- I worked closely with George van der Merwe, who was the former Chief
 Operating Officer of Optimum Coal Mine (OCM) and I was responsible for the supply of coal to the Hendrina Power Station.



Background to Hendrina CSA

- 10. I deem it necessary to first provide a brief background to the CSA and to comment on my knowledge on what had transpired during the past number of years relating to the coal supply by OCM to the Hendrina Power Station.
- 11. The first Agreement commenced with the commissioning of the Hendrina Power Station in 1970, and was initially part of a Cost Plus Mine. The first contract was for a period of 30 years from commissioning in September 1978 (refer to Annexure GJO01). The annual production of coal was estimated at 5.6 million tons at the time.
- 12. On 4 January 1993 the then owners of Optimum, being Trans-Natal Coal Colliery Ltd, approached Eskom for approval to convert the mine into a multiproduct operation with both export and Eskom product. The mine then switched from a Tied-Mine to a Multi-product mine, this resulted inthe mine switching from a Cost-Plus mine to a Fixed-Price contract mine (refer to Annexure GJO02).
- 13. When the mine (Optimum) changed from a Cost-Plus mine to a Fixed-Price contract mine, a new CSA was entered into and this CSA had a new termination date, namely01 January 2019 (refer to Annexure GJ002Clause 4.2 of 1993 CSA reflect 10years from 1 January 2009).
- Optimum Mine was later sold to a privately owned company thereafter called Optimum Coal Mine (Pty) Ltd (OCM) in 2007/2008. During this period, and as part of the subsequent Addendums to the CSA, the annual quantities of the coal supply were reduced and Eskom applied price adjustments to compensate for the reduction in saleable tons of coal delivered. A monthly average sizing specification was also included in the coal quality parameters.
- 15. From November 2008 to March 2009, OCM sold and delivered coal to Eskom with an excessively high abrasive index. Coal with a high abrasive index was not in conformance with the CSA.
- Eskom imposed penalties based on the supply of non-conforming coal.
 OCMdisputed the penalties imposed by Eskom. The dispute was referred to



arbitration with considerations on the following:

- Whether the Abrasive Index (Al) was applied as a quality parameter;
- II. Whether there was ambiguity with regards to the CSA and the First Addendum; and
- III. Whether or not OCM was correct in its contention that the coal supplied conformed to the specifications.
- 17. A Settlement was reached before the Arbitrator could make a ruling, whereafter a Second Addendum and a Settlement agreement was reached dated 12 April 2011 (refer to Annexure GJO03for the settlement agreement).

Challenges after ownership transfer

- 18. OCM was acquired by Glencore in 2012 where after a third Addendum was signed on 11 February 2013 (refer to **Annexure GJ004**). The purpose of the 3rd Addendum was to delete paragraphs 4.1 and 4.2 of the Second Addendum (which mainly dealt with the co-operation for purposes of the CSA and to convert it into one document) and with no other changes to the CSA.
- After the purchase of OCM by Glencore, OCM started to supply coal (to the Hendrina Power Station) that did not meet the size specification as required.
- 20. Eskom issued a letter to OCM on 07 August 2012, advising them that the coal supplied was not meeting the specification and requested a remedial plan from the mine (refer to Annexure GJO05).
- 21. I was part of a group of people that was formed in 2013 that consisted of representatives of Eskom and OCM in an attempt to identify possible reasons for the issues raised and to agree on remedial actions.
- 22. A report from this working group was issued on 16 January 2013 (refer to Annexure GJ006), whereafter Eskom had issued a letter to OCM on 22 April 2013 (refer to Annexure GJ007) to place on record that OCM had to rectify the relevant aspects that were not met.
- 23. OCM replied on 23 April 2013 and requested to engage in discussions to renegotiate the specifications as set out in the First Addendum of the CSA (refer to Annexure GJO08). (I recall that there was a modification to the sampling



plant during 2012, which lead to a dispute in the coal scan results that resulted in the further penalties as discussed during this period).

Hardship claim by OCM and co-operation agreement

- 24. On 3 July 2013 OCM issued a hardship notice (of which I have no record of) to Eskom wherein they stated amongst others that the CSA includes an escalation factor, which was appropriate at the time when the CSA was concluded, but due to the circumstances that were not foreseeable at the time and beyond the reasonable control of OCM, has become inadequate to compensate for the cost of production a ton of coal for sale to Eskom.
- 25. A Senior Management Team of PED met with representatives of Glencore on 12 August 2013 (I do not recall being part of the meeting) to discuss and agree on the revision of the sizing requirements in the CSA. This meeting is recorded in a letter from OCM dated 21 August 2013 (refer to Annexure GJO09). Eskom further requestedinformation from OCM to negotiate the matter in good faith as per letter dated 18 October 2013 (I do not have a copy of this letter).
- 26. The matter was alsoreferred to a panel of arbitrators to adjudicate the hardship dispute as stated in the letter from DLA Cliffe Dekker Hofmeyer (CDH), who acted on behalf of Eskom dated 21 August 2013 (I do not have a copy of this letter). There were a number of discussions between Eskom and OCM/Glencore officials in an attempt to resolve the matter.
- 27. It was agreed to develop a contracting strategy that supports PED in resolving historic, current and possible future issues, which may result in dispute resolution on the OCM CSA. This further led to an Agreement that was entered into between Eskom and OCM regarding a process to engage on the issues between the parties and for the review and future extension of the CSA for the Hendrina Power Station in an attempt to settle the matter, which was signed by both parties on 23 May 2014 (refer to co-agreement attached as Annexure GJ0010).
- I was part of these discussions and prepared a Presentation document for discussion dated 28 May 2014 (refer to Annexure GJO11).



- 29. I was part of the negotiation team on behalf of Eskom (as part of Coal Operations). The Eskom team further comprised of Kiren Maharaj (as Head: PED), Johann Bester (as Head: Fuel Sourcing), Andrea Williams (Legal) and Ayanda Ntshanga (now Nteta) (Fuel Sourcing). The Optimum team comprised of Clinton Ephron, Shaun Teichner, Riaan du Plooy and Dimitri Yiotopoulos.
- 30. A number of issues were raised between the Parties relating to the interpretation, implementation and execution of the CSA over an extended period that formed the basis of the negotiation process as listed in paragraph 2 of the Agreement as follows(refer to Annexure GJO010):
 - The interpretation, implementation and execution of the penalty provisions of the CSA;
 - ii. The interpretation, implementation and execution of the sampling process contemplated by the CSA;
 - iii. The quality of the coal supplied to Eskom and the price adjustment Eskom is entitled to impose in respect thereof (This relates to the continued failure by OCM to supply and deliver coal to Eskom with the monthly average size distribution as contemplated by the Addendum of the CSA);
 - iv. Issues relating to the availability and utilisation of the supply infrastructure (This relates to the availability of the conveyor belt system and OCM underutilisation thereof);
 - v. The escalation mechanisms in the CSA (This aspect relates to the price adjustment Eskom is entitled to impose, specifically in respect of the failure to comply with the monthly average size distribution as contemplated by the Addendum of the CSA);
 - vi. 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
 - vii. The supply from Optimum Mine to Eskom after 31 December 2018".
- 31. The proposed timelines was recorded in the Agreement as summarised in the table hereunder:

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	

- 32. As part of the negotiation proceedings it was agreed not to deduct any penalties from the OCM invoices until further notice and to relax some of the quality parameters(the penalties were mainly based on short supply and the quality parameters). It was also agreed as part of the key focus areas of the Co-operation Agreement, that without acknowledging any liability or wrong doing relating to any of the issues or the hardship arbitration between the parties, that Eskom acknowledges that it is in the best interest to reach a resolution through a negotiated process in order to ensure that the relationship is sustained for the duration of the CSA, including an agreement on any future extension of the CSA and beyond December 2018.
- 33. During the negotiations and as part of the process Eskom issued a notice to Glencore on 23 March 2015 wherein Eskom advised Glencore of the stay of prescription for the penalties that were not deducted during the period that the Co-Operation Agreement was in effect and as a result of the on-going discussions (I do not have a copy of this notice). Eskom further provided a deadline of 26 March 2015 for OCM to respond, failing which it would have been deemed that OCM agreed to the stay of prescription.
- 34. OCM replied to Eskom on 26 March 2015 wherein they confirmed that they were willing to agree to the stay of prescription in respect of the accrued claim and was in light of the on-going negotiations in an attempt to settle the matter and was not concluded at the time (I do not have a copy of the response from OCM).



- 35. During my engagement with the Hawks on 28 August 2018,I was shown a copy of the following two letters:
 - Letter from Eskom to Mr Clinton Ephron of OCH titled "Optimum Coal Mine Proprietary Limited – Coal Supply Commitment To Eskom" dated 9 April 2015 (refer to Annexure GJO12); and
 - Letter from Eskom to Mr Clinton Ephron of OCH titled "Optimum Coal Mine Proprietary Limited – Coal Supply Commitment To Eskom" dated 12 May 2015 (refer to Annexure GJO13).
- I prepared these letters as they both refer to my name alongside the Enquiries Column.
- 37. The purpose of the letters were to place on record that OCM had failed to supply and deliver the required quantity of coal in terms of the CSA to the Hendrina Power Station for the period as mentioned.
- 38. Eskom had agreed not to impose at that stage any penalties for the short supply for 2015 on the basis of the Co-Operation Agreement that was concluded between the parties on 23 May 2014 and as referred to herein above. This information further confirmed that Eskom were actively involved in discussions as part of the negotiation proceedings and in an attempt to settle the matter.

Feedback to Board Tender Committee and termination of negotiations

- 39. I recall that a submission was prepared to provide feedback to the Board Tender Committee regarding the status of the negotiations with OCM, and as a result of the agreements that were reached to seek a mandate to conclude on the negotiations with OCM during early 2015 (refer to Annexure GJO14).
- 40. I did provide my views on some of the items that were subject to negotiations (refer to Annexure GJO15). I was not personally involved in the preparation of the Submission to conclude on the negotiations and it is my understanding that Mr Johann Bester of Fuel Sourcing attended to the matter.
- 41. I was later informed in June 2015 that Mr BrianMolefe, the then Acting Chief



Executive of Eskom, no longer wished to participate in the settlement process and cancelled the co-operation agreement on 10 June 2015 and also instructed that the provisions of the CSA and the necessary Addendums thereto came into effect.

- 42. I do not know why Mr Brian Molefe made this decision to stop the settlement process as I did not have any personal discussions with him regarding the matter prior to his decision.
- 43. The cancellation of the co-operation agreement OCM reinstated the "Hardship Arbitration proceedings" as per their letter dated 23 June 2015 (refer to Annexure GJ016).
- 44. There was a meeting between Mr Brian Molefe, Mr Vusi Mboweni, Mr Ivan Glasenberg and Mr Clinton Ephron on 11 June 2015. Following this meeting OCM made a Revised Offer which was sent to Eskom on 30 June 2015 (refer to Annexure GJO17).

Imposition of penalties and business rescue

- 45. After the reinstatement of the Hardship on 23 June 2015, Eskom had to impose the penalties for the short supply of coal and other aspects, such as the sizing and other relevant matters.
- 46. I recall that Mr ChirstoKruger of the PED Finance Department was involved in the calculation of a penalty amount. I do not know how Mr Chirsto Kruger calculated the penalty amount and/or how it was applied to the CSA and/or the relevant Addendums to the CSA.
- 47. I was later informed that the penalty amount calculated by Mr Christo Kruger came to about R2.1 billion. I was not in agreement with the amount since the estimates following my engagement, which was in January 2015, with Willem Needham, from Glencore, on the understanding and interpretation of the CSA and the relevant Addendums theretowas significantly lower, if I recall correctly the Glencore calculation reflected ±R16m and the Eskom calculation ±R720m (refer to Annexure GJO18).
- 48. As a result thereof and due to the further Hardship OCM was placed under



Business Rescue Proceedings on 4 August 2015.

- 49. On 3 September 2015 a meeting took place betweenMr Ephron of Glencore, the BRP of Optimum Coal Mine (Proprietary) Limited ("Optimum") and the CEO of Eskom. Hereafter letters were exchanged on 19th and 22nd of September 2015 and ultimately OCM agreed to commence with supply for 60 days as per the original CSA (I do not have copies of these letters).
- 50. On 17 September 2015, OCM sent a Settlement proposal to Eskom on all outstanding matters(I do not have a record of the proposal) and on 19 September 2015 CDH issued a notice to OCM that relaxed the sizing specification and suspend penalties on qualities (I do not have a record of the notice issued by CDH). This agreement was backdated to commence on 4 September 2015 and was valid for 60 days.

Process followed to determine coal quality

- 51. I'm not a specialist in this field but my level of understanding is that coal quality is determined before the coal is dispatch to Eskom. The process of determining coal quality is as follow:
 - a) For deliveries on a pre-certified basis, the stockpile is built at the mine under the direct supervision of 3rd party contracted by Eskom, also known as the Observer or Monitor.
 - b) Whilst building or constructing the stockpile, the coal is sampled by the mine.
 - c) When the stockpile is complete, and the required sample mass has been reached, then the stockpile is "closed".
 - d) The mine will inform the company responsible for transporting the sample that a sample is ready for collection. The transporting company is also a 3rd party contracted by Eskom.
 - e) The sample will be weighed and the handover documents signed before the sample is handed over to the transporter.
 - f) The transporter willtransport the sample to the Nominated Laboratory for analysis.
 - g) The Nominated Laboratory will simultaneously communicate the results to Eskom and the mine when the analysis of the sample is complete.
 - h) The mine will then decide if the coal will be dispatched to Eskom or not.



- 52. If the analysis of the Nominated Laboratory indicates that the quality of the coal sample does not meet the contractual requirements then a dispute may be raised.
- 53. If a formal dispute is raised then the transport company will collect the sample from the Nominated Laboratory and take it to a Dispute Laboratory.
- 54. The Dispute Laboratory will then analyse the sample and communicate the results of the analysis. The results of the Dispute Laboratory are final and binding.
- 55. The above coal quality testing process was not utilised for deliveries from OCM to the Hendrina Power Station. This is because OCM delivered coal to the Hendrina Power Station via a conveyor belt.
- 56. For the delivery of coal by OCM to the Hendrina Power Station, the coal quality testing process was as follows:
 - a) Coal would be delivered via a conveyor belt.
 - b) There was a belt sampler that scooped a sample of the coal that came through the conveyor.
 - c) The belt sampler scooped a sample roughly every minute.
 - d) The sample would be transported through another conveyor system into the Coal Scanner.
 - e) The Coal Scanner would analyse the quality of the coal using a radioactive source and algorithms.
 - f) Once the Coal Scanner had analysed the coal, the coal will discharge through another conveyor to the secondary sampler where a sample will be taken to perform the physical analysis on the coal.
 - g) This physical analysis consist of the Al and sizing parameters and the analysis is done by both the mine and the power station on-site laboratories.
 - h) After the secondary sample is taken the excess sample is sent back onto the feed system to the power station.
 - Results of the coal analysis are available to both Eskom and OCM simultaneously.

Coal with "fines"

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- 57. Sizing of coal is also a quality parameter. I'm not a specialist in this field but my understanding is that the size of coal affects how it is conveyed and handled, and the process of grinding the coal to a fine powder before it is blown into the furnace to sustain the fire.
- 58. A high percentage of fines, together with high moisture, will cause the coal to clot and stick to the transfer points and buffer bins. This may result in situations where the coal fails to flow which leads to the furnace running out of fuel.
- 59. In hindsight, it became clear that soon after the 2012 refurbishment of the sampling plant, the recorded sizing parameters of the coal supplied via conveyor did not meet the contract specifications.
- 60. There were several initiatives to understand the sizing challenges and these included assessments by both Eskom employees, a consultant etc.
- 61. Eventually on 01 October 2015, MrJan Voges from Optimum unilaterally decided to switch off the secondary crusher at the sampling plant of the Hendrina Power Station. When the secondary crusher was switched off, Eskom noticed that there was a significant reduction in the % fines reported in the daily coal results sheet (refer to prior report on fines attached as Annexure GJ006).
- 62. From 01 October 2015, the secondary crusher was never operational and it was clear that it had a significant effect on the increase in fines reported by the two laboratories.

Cession of OCM to Tegeta

63. An Internal memo dated 29 October 2015 was sent to the Group Executive of Generation (Mr Matshela Koko) requesting the approval for the continuation of supply from OCM until 30 November 2015 (refer to Annexure GJO19). The memo was requested by Mr Ayanda Nteta, signed in support by MsTsholanku, Mr. Vusi Mboweni and approved by Mr Matshela Koko. On 14 October 2015 Meridian Economics issued a report on the coal market and Glencore's strategy (refer to Annexure GJO20). At the time these memos were compiled and the reports were shared I do not recall being included in the



correspondence.

- 64. On 10 February 2016, the Eskom Board approved the cession of the OCH agreements from Glencore to Tegeta (refer to Annexure GJ021). This record was signed by Ms Daniels and the submission documents signed by Mr Vusi Mboweni, Ms. Tsholanku & Mr. Koko. The shares held in OCM were later sold to a company called Tegeta Exploration and Resources Proprietary Limited (Tegeta).
- 65. I was not personally involved in any of the negotiation proceedings between Eskom, OCM and Tegeta that led to the sale of the shares during early 2016 as I was responsible for coal operations.
- 66. On 4 March 2016, the 4th Addendum to the CSA was signed between Eskom, the BRP and Tegeta (N Howa) (refer to **Annexure GJO22**).
- 67. The4th Addendum was never shared with the contract management team and I only became aware of it on 08 June 2017 following an email request from Fuel Sourcing to provide a copy of the document and the subsequent sharing of the unsigned document on 24 July 2017 by Jithin Mohan (refer to Annexure GJO23).

Business rescue

- 68. On 27 July 2017, the Department of Minerals and Resources issued OCM with a Section 54 due to unsafe working practices observed and mining operations were stopped. On 29 July 2017, Eskom (finance, procurement and operations) and OCM met to discuss a Co-operation agreement.
- 69. Eskom issued a Force Majeure notice from 8 -12 August 2017 due to strikes at the Hendrina Power Station (refer to Annexure GJO24). On 11 August 2017,CDH sent a letter to Werksmans Attorneys acknowledging that OCM was still in BR and extending the interim arrangement to 29 August 2016. CDH received a letter from Werksmans Attorneys on 25 August 2016 extending the Interim Arrangement to 31 October 2016 (refer to Annexure GJO25).
- 70. OCM sent a letter on 31 August 2016 to All Affected Persons in which OCM



confirmed that they were released from Business Rescue on 31 August 2016 and requested to operate on the terms as agreed during the business rescue proceedings as the mine was still financially vulnerable (refer to **Annexure GJ026**).

- 71. OCM sent a letter on 5 September 2016 making a proposal on a revised escalation basket and base price (refer to **Annexure GJO27**). After receiving a second letter on the same matter on 23 September 2016, Eskom responded on the same date stating that it's going through its governing process (refer to **Annexure GJO28**).
- 72. On 11 October 2016, an internal memo was sent to the Group Executive Generation (Mr Koko) requesting support to increase the road deliveries to Hendrina Power Station in order to maintain the coal stock levels (refer to Annexure GJO29).

Suspension of penalties and business rescue again

- 73. On 4 November 2016, Eskom received a letter from OCM requesting the reinstatement of clause 5.3 of the co-operation agreement with Glencore which implied the suspension of the implementation of any penalties (refer to Annexure GJO30).
- 74. On 17 November 2016, an internal memo was send to the Chief Procurement Officer (Mr Edwin Mabelane) (refer to Annexure GJO31). This memo cited the reasons why OCM was seeking relief from certain contract conditions which were a change in the price escalation mechanism, payment twice per month, Eskom reserving the deduction of penalties and reducing the monthly volumes to 375kT. This memo was signed by Mr Petros Mazibuko, Mr Edwin Mabelane & Mr Willy Majola (OBO Mr Koko)
- 75. The Temporary Relief Agreement was signed on 20 December 2016 by Mr Edwin Mabelane and back dated from 1 September 2016 until 31 July 2017, agreeing to change the escalation basket, to reserve penalties and reduce monthly volumes to 375kT (refer to Annexure GJO32).
- 76. The extension of the Temporary Relief Agreement was signed on 18 August



- 2017 by Ms Ayanda Nteta and was valid from 1 August 2017 until 31 October 2017, agreeing to change the escalation basket, to reserve penalties and reduce monthly volumes to Hendrina's burn requirement.
- The Temporary Relief Agreement expired end October 2017 and with no other formal agreement the normal Coal Supply Agreement applied for November 2017.
- 78. On 20 January 2018, the 5th Addendum to the CSA was signed between Eskom (Mr WillyMajola) and Tegeta (refer to **Annexure GJO33**). The addendum was agreeing to:
 - The new escalation basket which included a new base price and rebasing the penalty amounts;
 - Changing the monthly volume to 400kT from November 2017 to 31
 December 2018
 - A minimum monthly volume of 370kT from 1 December 2017 and any shortfall will be made up by March 2019; and
 - Increasing the AI penalty limit to 650mgFe where after penalties will apply.
- On 19 February 2018, OCM again declares Business Rescue through a formal notice sent to Eskom (refer to Annexure GJO34).

Arnot Power Station

- 80. Mr Petros Mazibuko (currently Acting General Manager: Coal Operations) was the former Contract Manager responsible for the Arnot Power Station and during the relevant period between 2015 and 2016. My knowledge and/or involvement at Arnot Power Station was limited to the information as will be discussed hereunder.
- 81. Exxaro was previously responsible for the supply of coal to Arnot Power Station and was part of a Cost-Plus Mine. The Exxaro contract came to an end at December 2015 during which period an emergency was declared to supply Arnot with sufficient coal.



- 82. Eskom subsequently entered into a contract with Tegeta to supply coal to Arnot Power Station from OCM in January 2016 (refer to Annexure GJO35). (I was the Contract Manager for Hendrina Power Station and OCM could not supply sufficient coal to Hendrina Power Station at the time and during 2016 and was still under Business Rescue Proceedings).
- 83. The contract with Tegeta was extended for a further period of three months in February 2016, and then again for a period of five months in May 2016 (refer to Annexure GJO36).
- 84. The coal was transported from OCM to the Arnot Power Station by truck and as a result of a short term CSA entered into with Tegeta. I was not involved in the procurement of these contracts and I do not know how the CSA's were concluded.
- 85. My concern at the time and as Contract Manager responsible for Hendrina Power Station was that OCM could not supply sufficient coal to the Hendrina Power Station as required but it supplied coal to the Arnot Power Station through a contract with Tegeta during the period January 2016 to September 2016 (refer to Annexure GJO37).
- 86. During my interview with the Hawks,I was shown a PED Supplier Payment Control Form issued to Tegeta for a Pre-payment in the amount of R578,559,718.74 for Arnot and supported by:
 - Tegeta Invoice number 0000194 issued to Eskom dated 13 April 2016 for the supply of Coal in the amount of R659,558,079.37 (refer to Annexure GJ038);
 - ii. A calculation sheet for the aforementioned payment; and
 - iii. A copy of an Extract from the Approved Minutes of the Board Tender Committee (BTC)held on 11 April 2016 where the prepayment to secure the fixed coal was approved (I do not have a copy of the minutes).
- 87. The documentation was handed to me by Mr Sibanyoni of the PED Finance
 Department for signature in my capacity as Coal Supply Unit Manager. He
 reported to me that the pre-payment was based on the approval by the BTC as
 referred to herein above.



- 88. The project has initially been incorrectly allocated to the Majuba Contract (issued to Tegeta) and had to be re-allocated to the contract that was awarded to Tegeta for the supply of coal to Arnot.
- 89. I then wrote on the Tegeta invoice the note "This is a payment reversal from Majuba to Arnot P/S". I then created the Order with number 4502349513 (10) onto the SAP system for the Arnot Contract on 3 May 2016 and on the same day when the documentation was brought to me for my signature(refer to Annexure GJO39 for order number). I signed the PED Payment Control Form alongside my name as Coal Supply Unit Manager as "Authorised by" on 3 May 2016 and was based on the approval by the BTC.
- 90. It was my understanding that the payment in the amount of R659,558,079.37 was authorised and processed thereafter and as part of a pre-payment to secure coal for the period of the contract.
- 91. I was not aware that the payment has been processed during April 2016 and prior to when I reviewed and signed the payment on 3 May 2016 against the Arnot contract as referred to herein above. The purpose of my review of the request and signature was to authorise the payment to be processed and, if the payment was made in respect of the said request and prior to my review it would not have been in terms of our working procedures and is irregular.
- The coal supply from OCM to Arnot commenced with a once-off order of 100 000 tons to be delivered by 31 January 2016.
- A CSA was then signed on 16 February 2016 for a supply of 500 000 tons by 30 April 2016 (refer to Annexure GJO36).
- 94. On 15 March 2016, the parties signed the 1st Addendum to the CSA which changed the payment period from monthly to weekly.
- 95. On 13 April 2016, the parties signed the 2nd Addendum to the CSA which increased the original contract volumes by 1.25 million tons to a total of 1.75 million tons to be supplied by 30 September 2016 (refer to Annexure GJO37). No penalties were applied during this supply and the mine delivered the last tons on 19 August 2016.



96. Arnot is currently being supplied from six different suppliers but the Power Station remains under severe pressure with very low coal inventory levels).

I hereby confirm that:

- I know and understand the contents of this statement;
- I have no objection in taking the prescribed oath;
- I know that the oath is binding on my conscience; and
- I believe the statement gives a fair account of the events that happened.

SIGNATURE (Deponent)

I certify that the above statement was obtained by me and that the deponent has acknowledged that she knows and understand the contents of this statement. This statement was acknowledged and the deponent signature was placed thereon in my presence at

WITBANK

(place) on Z7 FEBRUARY ZO19 (date).

COMMISSIONER OF OATHS

17-70-0194

RECREAMMENTS BISATS

Annexure GJO01



OPTIMUM COLLIERIES (PROPRIETARY) LIMITED PASSED AT JOHANNESBURG ON 23 MAY 1983

COAL SUPPLY AGREEMENT

between

THE ELECTRICITY SUPPLY COMMISSION (Hereinafter referred to as "Escom")

and

TRANS-NATAL COAL CORPORATION LIMITED (Registration No 630100006) (Hereinafter referred to as "Trans-Natal")

and

OPTIMUM COLLIERIES (PROPRIETARY) LIMITED (Registration No 690807007) (Hereinafter referred to as "Optimum")

RESOLVED

- 1. THAT the Coal Supply Agreement, as submitted, between Escom and Trans-Natal and Optimum for the purpose of establishing and working a colliery on the Iron Farms and Hendrina coalfields for the supply of coal to Hendrina Power Station on the farm Boschmanskop 154 KS, in the district of Hendrina, Transvaal, as tendered for by Trans-Natal on 30 March 1965, be and is hereby approved.
- 2. THAT GRAHAM CHARLES THOMPSON in his capacity as a director of Optimum. or any one director of Optimum be and is hereby authorised to sign on behalf of the Company the abovementioned Agreement.

GESERTISEER 'N WARE AFSKRIF

CERTIFIED A TRUE CCPY

GENERAL MINING UNION CORPORATION PEPEPWILIMIED

J.P.R.KLIE.

COAL SUPPLY AGREEMENT

between

THE ELECTRICITY SUPPLY COMMISSION

and

TRANS-NATAL COAL CORPORATION LIMITED

and

OPTIMUM COLLIERIES (PROPRIETARY) LIMITED

ANNEXURES

- 1. LEASE AREA
- 2. LEASE AREA ESTIMATION OF RECOVERABLE RESERVES
- 3. SAMPLING PROCEDURE
- 4. INVOICE PROFIT FORMULA
- 5. SCHEDULE OF TENDERED CAPITAL AND WORKING COSTS
- 6. TONNAGE COST MODIFICATION TABLES
- 7. TENDER PROFIT FORMULA
- 8. COAL SPECIFICATIONS

THESE ANNEXURES CONSTITUTE PART OF THE AGREEMENT

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MADE AND ENTERED INTO by and between

ELECTRICITY SUPPLY COMMISSION

constituted in terms of the Electricity Act 1922, which Act was re-enacted by Act No. 40 of 1958, (hereinafter referred to as "Escom") and represented herein by Isak David van der Walt

in his capacity as Senior General Manager

being duly authorised hereto by resolution of the Commission passed on 11 February 1971

AND

TRANS-NATAL COAL CORPORATION LIMITED

a Company incorporated with limited liability in terms of the Companies Act, Act. No. 46 of 1926, (hereinafter referred to as "Trans-Natal") and represented herein by

STEPHANUS PHILLIPUS ELLIS

in his capacity as Director of the Company duly authorised hereto by virtue of a resolution of the Board of Directors of the Company passed at a meeting held in Johannesburg on the $23~\mathrm{May}~1983$

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OPTIMUM COLLIERIES (PROPRIETARY) LIMITED

a Company incorporated with limited liability in terms of the Companies Act, Act No. 46 of 1926, (hereinafter referred to as "the Company") and represented herein by

GRAHAM CHARLES THOMPSON

in his capacity as Director of the Company duly authorised hereto by virtue of a resolution of the Board of Directors of the Company passed at a meeting held in Johannesburg on the 23 May 1983

WITNESSETH:

THAT WHEREAS Escom called for tenders for the supply of coal to a coal-fired power station proposed to be built with a total installed capacity of 2 000 Megawatt.

AND WHEREAS Trans-Natal tendered on 30 March 1965, to establish and work a colliery with three shaft systems on the Iron Farms and Hendrina coalfields to supply coal to such a power station.

AND WHEREAS Escom accepted the Trans-Natal tender for the purpose of obtaining coal for such a coal-fired power station on the farm Boschmanskop 154 I.S., in the district of Hendrina, Transvaal, (hereinafter referred to as the "Hendrina Power Station").

AND WHEREAS Trans-Natal caused the Company to be incorporated for the purpose of establishing and working a colliery to supply coal to Hendrina Power Station on behalf of Trans-Natal.

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AND WHEREAS Escom approves that the Company, on behalf of Trans-Natal, establish and work a colliery to supply coal to Hendrina Power Station, without relinquishing any of the rights that it may have against Trans-Natal arising out of the tender and the negotiations.

AND WHEREAS the Company has agreed to establish and operate such colliery subject to the terms and conditions imposed on Trans-Natal following its tender being accepted by Escom.

AND WHEREAS Escom and Trans-Natal agreed in an exchange of letters dated 31 January 1969 and 21 February 1969 to modify the terms of the tender in certain respects in order to provide for opencast mining on portion of the Iron Farms coalfield.

AND WHEREAS the parties wish to reduce to writing the terms and conditions applicable to the supply of coal to Escom in terms of the aforesaid agreement as at 21 February 1969.

NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. ESTABLISHMENT OF AND PLANNED COMMISSIONING DATES
FOR HENDRINA POWER STATION

Escom undertakes to establish and commission Hendrina Power Station by stages, as set out in the following schedule, on the farm Boschmanskop 154 I.S., in the district of Hendrina, Transvaal.

Stage	1	31	May	1970		200	Megawatt
	2	30	September	1970		400	90
	3	28	February	1971		600	N.
	4	31	October	1971		800	90
	5	30	September	1972	1	000	**
	6	30	September	1973	1	200	385
	7	30	September	1974	1	400	24
	8	31	December	1975	1	600	91
	9	31	March	1977	1	800	•
	10	30	September	1978	2	000	99

The commencement dates of the first four stages are firm. The commissioning dates of the subsequent units which will determine the subsequent stages are provisional but will be as stated unless Escom notifies the Company of a change in the dates, which notification shall be timeously made.

- 2. GUARANTEE TO USE COAL AND NOTIFICATION OF REQUIREMENTS
 - a) Escom shall have the right to operate Hendrina Power Station at whatever it considers in its sole discretion from time to time to be in the circumstances the appropriate load factor and shall keep the Company informed of its intention by notification of the estimated coal requirements at 6 monthly intervals in advance.
 - b) It is estimated that each unit of 200 Megawatt will require an average of 48 000 tons of run of mine coal per month and that the coal requirements for the complete station will be 5,6 million tons per year.
 - c) Escom shall for the duration of this agreement be obliged -
 - to operate Hendrina Power Station as a coal-fired station;
 and

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ii) to purchase all coal requirements for the purpose of (i) above, from the Company.

3. COLLIERY HOUSING AND RAIL LINK

Escom shall meet the colliery housing requirements as they arise and as agreed to from time to time and shall provide a rail link from No. 3 Mine to Hendrina Power Station and such rolling stock as may be required to transport coal, in respect of which the tender capital will be reduced by R3 627 000 and R1 529 000 for the housing and the rail facilities respectively.

4. WARRANTY OF TITLE TO COAL RIGHTS

The Company warrants that it has or that it will obtain title to the mining rights relating to coal in the areas outlined in red and defined in Annexure 1 to this agreement and the diagram attached thereto, hereinafter referred to together as the "Lease Area", comprising the Iron Farms and the Hendrina coalfields. The costs thereof are to be borne by the Company.

5. ESTABLISHMENT OF THE COLLIERY

The Company undertakes:-

- a) to establish, operate and maintain on the Iron Farms a colliery which shall comprise underground and opencast workings, plant, equipment and off highway transport and may include adits or other means of exploiting the coalfield, capable of supplying the notified coal requirement according to the terms and conditions of this agreement.
- b) to take all steps as may be reasonably possible to ensure continuity of the opencast operations and, in particular, to secure and maintain the essential spare parts for the special equipment used in that operation, and to rehabilitate the opencast working area;

- c) to co-operate with Blinkpan Colliery Limited, in the event of an emergency which affects the supply of coal to Komati Power Station on a reciprocal basis.
- d) to hold the Lease Area at Escom's disposal, for Hendrina Power Station or Komati Power Station or both, or for a new power station which option shall be exercised by Escom at a reasonable time.
- 6. ESCOM RIGHTS TO COAL FROM THE IRON FARMS AND HENDRINA COALFIELDS

Escom shall have the first call upon the output and capability of the colliery on the Iron Farms coalfield and may call upon the Company to raise the level of production of the colliery above 5,6 million tons per year, as agreed between Escom and the Company.

- a) In the event of Escom calling for an increase in the coal supply, the Company shall take steps as may be necessary to meet the new level of production: and if the Company finds it necessary to incur additional capital expenditure on development and/or equipment which will not be covered by the increase in sales, the terms upon which such additional capital will be provided shall be for discussion and agreement between the parties, provided however that Escom shall have the option of itself providing the additional capital.
- b) In the event that the colliery on the Iron Farms coalfield is unable or if it is considered by the Company that the colliery will be unable in future years to supply the increased requirements of Escom, Escom shall have the right to call upon the Company in terms of Clause 6 (d) to open up a colliery on the Hendrina (Gloria/Aberdeen) coalfields to supply the increase, together with or without an additional supply as contemplated in Clause 6 (d) hereof and on the terms and conditions laid down in Clause 6 (d).

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- c) For the economical working of a new power station to be established by Escom together with Hendrina and Komati Power Stations, Escom shall have the right to transfer or to arrange for the transfer of coal produced at Blinkpan Colliery, and/or any new colliery established on the lease area to any of the said power stations on the condition that coal produced at any colliery established on the lease area will be paid for as if it had been supplied to Hendrina Power Station in terms of this agreement, provided that the cost of transport of coal beyond the points of delivery defined in the respective agreements shall be for Escom's account.
- d) If Escom considers it necessary or desires that a colliery should be opened upon the Hendrina coalfield for any purpose provided for in Clause 5 (d) hereof, it shall notify the Company of its proposals and the level of production required from such colliery. The Company shall furnish Escom with estimates of the capital cost and the working costs of the colliery or collieries best suited to Escom's proposals; and Escom shall have the right to call upon the Company to open up, develop, equip and operate such new colliery or collieries.

The terms and conditions of the Agreement for the supply of coal from such colliery or collieries shall be the terms and conditions of this Agreement <u>mutatis mutandis</u>, provided however that the capital expenditure incurred in opening up, developing and equipping the colliery or collieries shall be dealt with as capital expenditure for a new project and shall be considered as additional capital expenditure ranking for a return.

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7. RECORDS AND REVIEW OF COAL RESERVES

- a) The Company shall keep proper records of all coal mined and despatched from the Lease Area. Such records shall be open to inspection during ordinary business hours by any authorised representative of Escom.
- b) In the year 1971 and in every third year thereafter the Company shall review the extent of the coal reserves remaining in the Lease Area and shall re-estimate the remaining tonnages of raw coal that can be worked with safety, having regard to the requirements of the laws relating to mining and to prevailing circumstances and reconcile the balance of coal in the Lease Area and tonnages sold to Escom.
- c) The results of each review and reconciliation shall be reported in writing to Escom.

8. FAILURE TO MEET COAL REQUIREMENTS

- a) Should the Company fail from any cause whatsoever to meet the requirements of Escom in terms of this agreement, Escom shall be at liberty to purchase elsewhere so much of its requirements as it cannot obtain from the colliery/collieries established on the Lease Area, without prejudice to any claim which it may have to recover damages arising out of such failure.
- b) When purchasing coal elsewhere, Escom 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 Escom at the time and shall take such steps as may reasonably be possible to minimise any claim for damages it may have against the Company.

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9. DELIVERY AND PASSING OF RISK

- a) All coal supplied by the Company in terms of this Agreement shall be delivered to Escom at the Coal Preparation Plant by loading onto Escoms' overland conveyors to Hendrina Power Station.
- b) Coal supplied by the Company for any other stations shall be delivered by loading into railway trucks or other forms of transport, as arranged between Escom and the Company.
- c) All risks pertaining to such coal shall pass to Escom upon delivery.

10. OPERATION OF ESCOM COAL PLANT

The Company shall operate and maintain, at Escom's expense, the stockpile and associated equipment as well as the conveyors from the Coal Preparation Plant up to the discharge points into the staiths at Hendrina power station or into railway trucks or onto any ground stockpile.

11. INSTALLATION OF COAL BENEFICIATION PLANT

Escom shall have the right to call upon the Company to provide, operate and maintain a coal beneficiation plant and the Company undertakes that the layout of the colliery shall be such that a beneficiation plant can be added. If Escom calls for the installation of such plant the conditions applicable thereto shall be agreed to by the parties.

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12. DETERMINATION OF GROSS MASS OF COAL

- a) The gross mass of all coal delivered to Escom shall be determined by weightometers on Escom's conveyors and/or by weighbridge. The mass so registered shall be deemed to be the gross mass of coal delivered and shall be subject to a moisture correction in terms of Clause 13 hereof.
- b) Escom's weightometers shall be assized and thereafter tested weekly by means of a dead-weight and quarterly by a bulk load or other agreed test and adjusted, if necessary. These tests shall be carried out by Escom's staff and shall be witnessed by a representative from the Company. Any adjustments necessary shall be agreed upon and such agreement recorded in writing.
- c) Escom's weightometers shall be serviced at regular intervals under an inclusive maintenance contract entered into by Escom with the weightometer suppliers. The maintenance procedure to be performed in terms of such maintenance contract shall be approved by the Company, which approval shall not unreasonably be withheld.
- d) Should the parties agree that any test carried out in terms of Clause 12 (b) above establishes that Escom's weightometers are inaccurate, by more than 2%, half the error shall be deemed to have existed since the previous weekly test carried out in terms of Clause 12 (b) above and the corrected gross mass shall be calculated on this basis between Escom and the Company for the weekly period concerned.
- e) Escom shall further provide at Hendrina Power Station a weighbridge, which shall be assized regularly by the Government Assize Officer. Should the Company and Escom fail to agree on the correction of gross mass referred to in Clause 12 (d), the accuracy of the weightometers shall be checked by bulk load tests against the power station weighbridge.

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- f) In the event of a breakdown of Escom's weightometers, resort shall be had to the Company's weightometers, if any, or to other methods to agree on the gross mass of coal delivered. The Company shall produce satisfactory evidence of the accuracy of its weightometers or the other methods, if called upon by Escom.
- g) Escom shall render to the Company daily written returns reflecting the gross mass of all coal delivered to the power station as registered by Escom's weighing appliances. Unless the gross mass, as reflected on any daily return, is queried in writing within 7 days of the rendering 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.

13. MOISTURE ADJUSTMENT AND NETT MASS

The gross mass of coal established monthly in terms of Clause 12 (g) shall be reduced by the average total moisture determined by the agreed sampling and analysis procedures laid down in Annexure 3 as follows:-

- a) If the total moisture content is less than 6% the mass shall not be adjusted.
- b) If the total moisture content is more than 6% the following formula shall be applied:-

$$W = W1 \times (106 - M)$$
 (100)

- Where W = The nett mass for the month to be used for all price calculations.
 - W1= The gross mass established in terms of Clause 12 for the month.
 - M = The weighted average percentage total moisture for the month.

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Within 10 days of the end of each month the Company and Escom shall finalise the calculations to determine the nett mass of coal delivered during that month.

14. COAL SAMPLING PROCEDURES

- a) Coal supplied by the Company in terms of this agreement shall be sampled continuously from agreed sampling points. The size, grading, calorific value, percentage volatile content, percentage total moisture content, grindability and abrasiveness of such samples shall be determined in accordance with the procedures laid down in the attached schedule marked Annexure 3.
- b) The procedures for sampling and analysis shall be determined by agreement between the parties and Escom shall be responsible for the implementation and control of the sampling procedures.
- c) The analysis results as determined by Escom and obtained in respect of all samples taken during any one month shall be recorded by Escom and advised to the Company in writing within seven days. These results shall serve as the basis for the determination of the following but not limited to, the average size, average calorific value, average volatile content, average total moisture content, average grindability and average abrasiveness of all coal supplied in the month.
- d) The Company shall have the right at any time through its representatives to be present at the sampling operations and to observe the methods employed by the sampler or samplers in carrying out their duties.

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15. CALORIFIC VALUE PREMIUM/PENALTY RATES

a) It is recorded that the calorific value of the coal tendered was 25,49 MJ/kg air-dried (26,55 MJ/kg moisture free) which was calculated from an estimated mixture from three separate pits. Coal is now to be won initially from the opencast workings only and later from No. 1 and No. 2 underground pits. There is a probability that No. 3 pit will not be required for Hendrina Power Station, so that the average calorific value as tendered can no longer be accepted as the standard applicable to this agreement.

The standard calorific value (moisture free) applicable for each month shall be determined as in Annexure 8.

Differences between the standard calorific value so determined and the calorific value of the coal delivered in the month will give rise to premium or penalty adjustments to the price of

coal determined in terms of Clause 16 (a) in accordance with the following formula:

$$A = \frac{B - C}{C} \times 100$$

Where

- The percentage adjustment to the profit earned as determined in Clause 17 (h)
- B = The weighted average monthly calorific value of coal delivered (moisture free)
- C = The standard calorific value (moisture free) determined as described in Annexure 8

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provided that no premium shall be paid on coal with a calorific value of less than 26,50 MJ/kg (moisture free).

b) Volatile Content

Escom shall have the right to refuse payment of profit for any coal delivered during a period of more than 24 hours continuously having a percentage volatile content less than the tendered 21,0%.

16. PRICE OF COAL

a) The sum to be paid to the Company for coal supplied shall be the mean of the invoiced price per ton determined in terms of Clause 17 and the tender price per ton determined in terms of Clause 18 multiplied by the nett mass delivered as agreed in terms of Clause 13 as follows:-

$$P = IP + TP \times W$$

Where

- P = The sum to be paid to the Company.
- IP = The invoiced price per ton of coal
 determined in terms of Clause 17.
- TP = The tender price per ton of coal determined in terms of Clause 18.
 - W = The nett mass established in terms of Clause 13.
- b) If the price per ton calculated in terms hereof exceeds the controlled price for coal ruling at that time, Escom shall:-

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- i) limit payments to the Company to the controlled price;
- ii) hold the excess beyond the controlled price in escrow.
- iii) pay out from the escrow account the difference between the controlled price and the calculated price when the latter falls below the controlled price until the amount held in escrow is recovered by the Company from Escom.
- c) The method of calculating the invoice price/ton and the tender price per/ton shall be reviewed by the Company and Escom at 3 yearly intervals when the parties shall agree to continue or to adopt another formula. In the event of disagreement the matter shall be settled in terms of Clause 19.

17. INVOICED PRICE OF COAL

- a) The invoiced price per ton of coal shall be calculated monthly and shall be the sum of:
 - i) working costs per ton as provided for in Clause 17 (b);
 - ii) the amounts per ton set aside to provision accounts in terms of Clause 17 (c);
 - iii) Extraordinary expenditure per ton or the portion thereof to be charged to Escom in terms of Clause 17 (d);
 - iv) the charges per ton for the use and maintenance of Escom assets in terms of Clause 17 (e):
 - v) Head Office expense allowance in terms of Clause 17 (f).
 - vi) Buying fee in terms of Clause 17 (g);
 - vii) Profit per ton in terms of Clause 17 (h);

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- viii) amortisation per ton in terms of Clause 17 (i);
 - ix) adjusted for Calorific Value in terms of Clause 15 (a).
- b) "Working Costs" shall mean all expenditure in connection with the operation and maintenance of the colliery at the level of production required in terms of this agreement, and shall include <u>inter alia</u> the costs of:-
 - Opencast pit production including overburden removal, coaling, roadmaking and all opencast operations carried out in the ordinary course of producing and transporting coal, excluding capital costs, but including surface rehabilitation costs;
 - ii) Underground production including hewing or cutting, loading and conveyance to the surface, normal development work including tunnels, haulage-ways and travelling-ways;
 - iii) Maintenance and repair of opencast and underground
 machinery, plant and equipment, together with the costs of
 items of replacement and renewals of plant and equipment
 allowable by the Receiver of Revenue as a charge against
 working costs for taxation purposes. Cost of equipment to
 handle additional output shall not be included in working
 costs;
 - iv) Operation and maintenance of surface plant, including screening, picking, crushing and washing plant, together with the costs of items of replacement and renewals of plant as agreed with Escom.
 - v) Dumping of discards, middlings, waste, etc;
 - vi) Pumping from mine and storage dams including reticulation of water for washing and other purposes;

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- vii) Maintenance and upkeep of colliery buildings, offices, compounds, community and recreational facilities, and married and single quarters;
- viii) Operation and maintenance of railway sidings and locomotives (including hire of locomotives, if any), required in connection with the production and delivery of coal in terms of this agreement;
 - ix) The salaries of the Mine Manager and Mine officials in so far as they are incurred exclusively in coal production at the colliery;
 - x) Insurance as agreed between the parties e.g. of employees, insurance against public liability, fire and accident insurance of buildings, plant, explosives indemnity and equipment, but not insurance against loss of profits;
 - xi) The sinking of prospecting and other boreholes within the Lease Area for the purpose of mine planning as agreed by the parties;
 - xii) Contributions to any Pension Fund, Provident Fund,
 Unemployment Insurance Fund, Holiday Leave allowance and
 Industry allowances in respect of employees whose salaries
 and wages are included in working costs;
- xiii) A monthly apportionment to cover Group Training, Chamber of Mines, Statutory or any other levies, internal audit, safety operating expenses, East Rand security guards or other internal services all of which shall be agreed by Escom;
 - xv) Mine office expenses;

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xvi) In the event of State or Provincial taxation being imposed by which the Company is required to pay a direct tax on the production or sale of coal, then the amount of such tax in respect of coal supplied under this agreement shall be included in working costs, save in so far as the direct tax is accompanied by or followed by an equivalent reduction in the present rate of State and Provincial tax payable by public or private companies carrying on the business of coal mining, provided that such reduction is made in consequence of or is wholly or partially related to the imposition of the direct tax on the production or sale of coal;

xvii) The following shall be credited to working costs:-

- a) Proceeds received from sales of scrap or second-hand plant and material or work done at the colliery for third parties. No work shall be done for private individuals;
- Rebates received on electric power, explosives, labour recruiting and insurance excluding loss of profit;
- c) Rentals received from employees;
- d) Any credits arising from payments which have previously been included in working costs.

xviii) The following shall be excluded from working costs:-

- a) Any interest or redemption payable by the Company.
- b) Director's fees and remuneration;
- c) Donations.

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xix) The working costs per ton shall be the nett total of the costs enumerated herein plus such additional items as agreed to by both parties divided by the total tonnage established in terms of Clause 13.

c) Provision Accounts

The principle of providing for large items of expenditure which occur at planned intervals is accepted, subject to the following conditions:-

- i) The Company shall open four separate accounts in its books reflecting the amounts required to provide for:
 - i.a) the replacement of coal cutters, coal loaders, shuttle cars, breakers, roof bolting machines and drills;
 - i.b) the replacement and extension of trunk conveyor drives, framework and belting;
 - i.c) the sinking or raising of additional ventilation and travelling shafts;
 - i.d) the replacement of opencast equipment.
- ii) Before the beginning of each financial year of the Company, the Company and Escom shall jointly review and agree on the amount of the provisions made or to be made in the separate accounts and shall determine for each of the above accounts an allowance which shall be charged per ton of coal supplied during the ensuing year;
- iii) The Company shall prepare and submit for consideration, when reviewing provisions, the annual and five year cost and operating forecasts;

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- iv) The allowance shall be placed as they are earned to the credit of the respective provision accounts in the books of the Company and shall earn interest at current "call" rates or such other rates as may be mutually agreed: provided that interest will only become payable when the provision account balance exceeds the suspense account operating in terms of Clause 16 (b): provided also that the provision account balances may be held by Escom if so agreed by both parties;
- v) The actual costs of replacement of equipment and the establishment of additional shafts shall be debited, as such costs arise, to the respective provision accounts;
- vi) The allocation of any sums of money arising from the disposal of equipmennt, either during or on the termination of the agreement, will be subject to Escom's approval. In the event of Escom and the Company not being able to reach agreement on such allocation the matter shall be referred to their common auditors whose decision shall be final.

d) Extraordinary Expenditure

i) Expenditure of a capital nature which the Company or Escom considers should be incurred for the purpose of improving the overall efficiency of the colliery, saving labour, reducing working costs or in the interest of conserving or extending the life of the coal reserves within the Lease Area (such as improved methods of mining, loading or conveying coal) shall be regarded as extraordinary expenditure and shall be the subject of discussion between the Company and Escom. If it is agreed that such expenditure should be incurred, the Company and Escom shall agree, at the same time, on the basis, the manner and the rate per ton at which such capital shall be recovered and on the apportionment of any residual value.

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- ii) Failing agreement on the advisability or need to incur such extraordinary expenditure in terms hereof, the question concerned shall be referred to arbitration.
- e) Escom Facilities used by Company

Facilities provided by Escom in terms of Clause 3 and used by the colliery shall be invoiced monthly by Escom on the basis of 8% per annum on the capital cost of Escom houses occupied by employees of the Company, plus a pro rata share of the village establishment costs and a pro rata share of the village maintenance and running costs, based on the ratio of colliery employee houses to the total number of houses provided by Escom.

f) Head office Service Allowance

Escom shall pay an amount of one comma one (1,1) cents per ton in respect of the engineering, technical, secretarial, administrative, medical and all other services of the Company which may be classified as services rendered by the Head Office or any centralised organisation of the Company which will be escalated by the changes in the European Wages Index derived in terms of Clause 18 (c) (i). Only local travel may be charged to the colliery, that is, travel at the colliery or between the colliery and Head Office. Any overseas travel should be discussed and agreed with Escom.

g) Buying Fee

The commission payable to the Company's Buyers shall be fixed at 2,5 per cent of the purchase price of all stores. Records of all buying operations shall be kept.

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22/...

- h) Profit Rate
 - i) The profit per ton for invoice price purposes shall be calculated to give a gross return of 20% per annum on the cumulative certified capital for each stage as certified by Escom's auditors. Escalation of capital will be allowed at a rate of 50% of the annual changes in the Wholesale Price Index in January of each year according to the procedures laid down in Annexure 4 and subject to Clause 18 f iii).
 - ii) Either Escom or the Company may seek modification to the cumulative certified capital in the event that the availability of major equipment, either through failure, maloperation or any cause whatsoever, shall in any one year be less than 70% or entail the purchase of back-up equipment to ensure the continuity of coal supplies.
- i) Amortisation of Capital

Amortisation at the rate of 1,2649% per annum on the cumulative certified capital spent up to the commissioning of each stage shall be included in the invoiced price for a period until the capital has been amortised, irrespective of the tonnage taken by Escom. It is recorded that this rate is based upon a 30 year redemption period with instalments re-invested at 6%. Capital ranking for amortisation is not escalated.

18. TENDER PRICE OF COAL

- a) The tender price of coal shall be calculated monthly as a price per ton and shall be the sum of;-
 - i) Working costs per ton for each stage calculated as detailed in Clause 18 (b);

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- ii) The charges for the use and maintenance of Escom assets per ton allowed for in terms of Clause 18 (d);
- iii) Head Office allowance in terms of Clause 18 (e);
- iv) Profit per ton as calculated in terms of Clause 18 (f);
 - v) Amortisation per ton as calculated in terms of Clause 18 (g);
- b) The tender price working costs shall consist of the items of cost extracted from the tender as enumerated hereunder:
 - i) European wages per stage as in Annexure 5;
 - ii) non-European wages per stage as in Annexure 5;
 - iii) All other costs per stage as in Annexure 5.
- c) The escalation of the components of working costs for tender price purposes will be calculated in January each year as follows:
 - i) European wages will be escalated by an index derived from the European wages and salaries for coal mining members of the Chamber of Mines, with the 1964 rate of R2 789 per employee per year as the base of 100;
 - ii) Non-European wages will be escalated by an index derived from the same source as in (i) above with the 1964 rate of R154,4 per employee per year as the base of 100;
 - iii) Other costs will be escalated by changes in the Wholesale Price Index with the 1964 index of 86,4 as the base (April 1970 = 100);

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iv) The tender price working costs calculated above shall be divided by the tender tons at each stage to derive a cost per ton which shall be further modified monthly by the proportion that tendered working costs at full tonnage at each stage bear to tendered working costs at the actual tonnage as detailed in Annexure 6, according to the following formula:-

4-7

 $RF = \underbrace{R \times WCA}_{WCT}$

Where RF = Final tendered working cost per ton.

- R = Tendered working cost per ton calculated in (b) above.
- WCA = The working costs per ton tendered for the actual tonnage taken at each stage read from Annexure 6.
- WCT = The working costs per ton tendered at full tonnage at each stage as detailed in Annexure 6.
- d) i) The charge for the use of Escom facilities at each tendered stage shall be determined at the rate of 8% per annum on the capital shown in Annexure 5, irrespective of coal taken.
 - ii) The maintenance and village costs for Escom assets used for tender price calculation purposes shall be the same per tendered unit as that used to calculate the invoice price as detailed in Clause 17 (e).
 - iii) The cost per ton will be the sum of (i) and (ii) hereof, divided by the nett mass established in terms of Clause 13.

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- e) The Head Office Expense allowance shall be at the same rate as that used for calculating the invoice price and detailed in Clause 17 (f).
- f) The tendered profit rate of 20% per year gross on cumulative certified capital will be applied to the tendered capital (Annexure 5) escalated as below to derive the profit to be paid on the following basis:
 - i) As each stage is commissioned the capital tendered for that particular stage will be escalated by the change in the Wholesale Price Index between the 1964 index of 86,4 (April 1970 = 100) and the Wholesale Price Index for the year preceding that during which such stage is commissioned;
 - ii) In January every year after 1970 escalated capital for each stage commissioned during the preceding 12 months, escalated as above, will be added to the escalated capital determined in January the preceding year and the sum so obtained will then be escalated by 50% of the change in the Wholesale Price Index for the preceding calendar year.

The method of calculating the escalation of capital and the profit is detailed in Annexure 7;

iii) The Optimum capital ranking for return ceases to be escalated annually by half the percentage change in the W.P.I. 20 years after commissioning of the final set at Hendrina. Thereafter, no escalation is to be applied unless the W.P.I. increases by more than ten (10%) in any year; in which case the capital ranking for return is to be escalated by a percentage equal to half the difference between the percentage change in the P.P.I. and seven (7%), in the subsequent year.

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g) Amortisation shall be included irrespective of the tonnage taken, calculated at the annual rate of 1,2649% on the cumulative tendered capital as escalated for each stage, at the commissioning of such stage in terms of Clause 18 (f) (i). It follows that subsequent to the commissioning of each stage no further escalation of capital for amortisation purposes will occur. The cost per ton will be the above sum divided by tonnage established in terms of Clause 13.

19. DISPUTES ON COSTS

In the event of any dispute or difference arising between the parties as to the determination of working costs, profit, price, provisions or charges in terms of this agreement, the question shall be referred to and decided by the duly appointed auditors of the Company and of Escom.

20. SETTLEMENT OF COAL ACCOUNT

As soon as reasonably possible after Escom and the Company have in terms of Clause 12 agreed on the mass of coal delivered during the preceding month, the Company shall render to Escom an account within 7 days of month end and settlement of the account shall be made by Escom on or about 15 days after month end.

21. BOOKS OF ACCOUNT

- a) The Company shall keep proper records and books of account in respect of all capital expenditure and working costs separately incurred during the period of the agreement.
- b) Such records and books shall be kept at the colliery and shall be open to inspection during ordinary business hours by any authorised representative of Escom or by Escom's auditors.

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22. WATER SUPPLY

Escom shall supply the Company, at a price to be determined by Escom, with such reasonable quantities of potable and non-potable water as the Company may require for operations at the colliery and for the use of its employees, subject to the Company obtaining such permits to use the water as may be required by law.

23. EXPLOSIVES INDEMNITY

- a) The Company shall compensate Escom, its servants, employees, agents or contractors on demand for any damages or loss, whether for personal injury or of any other nature whatsoever arising from whatever cause as a result of the presence of any explosive substance in any of the coal supplied in terms of this agreement.
- b) The Company hereby indemnifies Escom 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 dependents of such party arising from whatever cause as the result of the presence of any explosive substance in any of the coal delivered in terms of this agreement.

24. LIABILITY FOR DAMAGES

Neither Escom nor the Company shall be held responsible or liable for the payment of damages because of any delays arising or failure to carry out any condition or term of this agreement, if such delay or failure is attributable to any cause beyond the control of either party and is not attributable to the wilful or wrongful act of that party, its servants, employees, contractors or agents.

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25. DEFINITIONS

In this agreement:-

- a) Calendar year shall mean the period of 12 calendar months from 1 January to the 31 December;
- b) Calorific value shall mean the "moisture free" calorific value determined in accordance with the British Standard Specification;
- c) Ton shall mean a metric ton of 1 000 kg.

26. DURATION OF AGREEMENT

- a) This agreement shall remain in force and effect for a period of not less than 30 years from the date of commissioning the final turbo generator set of the power station.
- b) The agreement may be further extended on the same terms and conditions for as long as a supply of coal is required by Escom or for as long as the coal reserves in the lease area are economically recoverable.

27. DISPUTES AND DIFFERENCES

Except where special provision is made herein for the resolution of any dispute or difference, all disputes or differences arising between the parties during the period of this agreement or thereafter connected with or arising out of this agreement shall be referred to arbitration in terms of the Arbitration Act, as amended, or any law passed in substitution thereof.

28. TRANSFER OF RIGHTS AND OBLIGATIONS

The Company shall not be entitled to cede, assign and transfer its rights and obligations under this agreement to any third party without the written consent of Escom.

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29. ADDRESSES OF PARTIES

a) All notices required to be given by one party to the other shall be deemed to have been given in terms of this agreement, if sent by registered post to or if deposited, against signature of receipt, at the following addresses.

Notices required to be given to Escom shall be addressed as follows:-

The Electricity Supply Commission
Megawatt Park
Maxwell Drive
Sunninghill Ext. 3
SANDTON
(P O Box 1091
JOHANNESBURG
2000)

Notices required to be given to the Company shall be addressed as follows:-

Trans Natal Coal Corporation Limited P O Box 61824 MARSHALLTOWN 2107

Either party shall be entitled to notify the other in writing of a change of address, in which case the new address shall apply for the purposes of this Clause.

30. COST OF AGREEMENT

The costs of and incidental to this agreement incurred by either party shall be borne by that party but any stamp duty on the agreement shall be borne by Escom.

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31. FURTHER AGREEMENTS

Irrespective of the date of execution of this agreement it is hereby recorded that this document records the position and agreements as agreed on or about 21 February 1969.

Subsequently further agreements have been reached between the parties, which agreements will in due course be recorded and incorporated in this agreement.

THUS	DONE	AND	SIGNED	bу	Escom	at	SANDTON	on	the 24 day
of	Je						19 85	Oli	the Lat day

AS WITHESSES:

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2. Landuchape.

Signal.

THUS DONE AND SIGNED by the Colliery Company at JOHANNESBURG on the 157 day of JUNE 1983

AS WITNESSES:

1. IPR flue

2. Saugheden

Schampan

THUS DONE AND SIGNED by Trans-Natal Coal Corporation Limited at JOHANNESBURE on the 157 day of JUNE 1983

AS WITNESSES:

1. SPR

2. Saufmeden

JSPOL:

Annexure GJ002







AGREEMENT BETWEEN

TRANS-NATAL COAL CORPORATION LTD AND TRANS-NATAL COLLIERIES LTD

AND

ESKOM

IN RESPECT OF THE FUNDING OF THE

PARTIAL BENEFICIATION WASHING PLANT AT OPTIMUM COLLIERY

JANUARY 1993



21/TNC/29 11.12.92 MT/gvh (T8\TNC29.AG2)

AGREEMENT

	1		PARTIES
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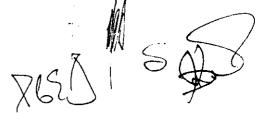
1.1	ESKOM
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- 1.2 TRANS-NATAL COLLIERIES LIMITED
- 1.3 TRANS-NATAL COAL CORPORATION LIMITED

2. <u>INTERPRETATION</u>

- 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:

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



Page 2.

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

"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 "Escom" under the Electricity Act, 1958 and which continued to exist as a juristic person known as "Eskom" under the Eskom Act, 1987

"the plant"

the partial beneficiation washing plant to be established by TNC in terms of the supply agreement

"the supply agreement"

the coal supply agreement between Eskom, Trans-Natal Coal Corporation Limited and TNC entered into or to be entered into contemporaneously with this agreement

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"TNC" Trans-Natal Collieries
Limited, registration no.

63/00537/06

"Trans-Natal" Trans-Natal Coal Corporation

Limited, registration no.

63/01000/06

"year"

a period of 12 consecutive

calendar months commencing

on 1 January and terminating

on 31 December next follow-

ing.

- 2.3 Unless inconsistent with the context, an expression which denotes:
- 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.

3. <u>INTRODUCTION</u>

- 3.1 The parties are about to enter into the supply agreement.
- In terms of the supply agreement, TNC undertakes to establish the plant.
- 3.3 It is estimated that the cost of establishing the plant will be approximately R47 000 000.
- It is further estimated that the establishment of the plant will not be required should Eskom's purchases of coal in each year in terms of the supply agreement be 3 900 000 tons or less.

4. UNDERTAKING BY ESKOM

In consideration for TNC establishing the plant,
Eskom undertakes in favour of TNC and Trans-Natal
that it will pay to TNC a fixed sum of
R13 719 000 in respect of each year, during the
5 year period commencing from 1 January 1993 and
terminating on 31 December 1997, in which Eskom
fails to purchase at least 3 900 000 tons of coal
in terms of the supply agreement.

Page 5.

- 4.2 The payment referred to in 4.1 shall be made by Eskom to TNC within 10 days after the end of the year in question.
- 4.3 The shortfall in any year shall not be carried forward to or made up in any subsequent year.
- 4.4 The undertaking contained in 4.1 is in addition to and shall not be restricted by any other undertaking by Eskom in terms of the supply agreement.

5. DOMICILIUM

5.1 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

Page 6.

TNC: 80 Marshall Street

and <u>JOHANNESBURG</u>

Trans-Natal: 2001

Marked for attention of the

Managing Director

- 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.
- All notices, demands, communications or payments intended for any party shall be made or given at such party's domicilium for the time being.
- A notice sent by one party to another party shall be deemed to be received:
- 5.4.1 on the same day, if delivered by hand;
- 5.4.2 on the same day, if sent by telex or telefax;

- 5.4.3 on the fifth day after posting, if sent by prepaid registered airmail.
- 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.

6. COSTS

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

7. GENERAL

- 7.1 No party shall be bound by any express or implied term, representation, warranty, promise or the like, not recorded herein.
- 7.2 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.

- 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.
- 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.

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

AŞ.	WΙ	ΨN	ES	S	ES.	:

For and on behalf of

ESKOM

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hereto

who warrants his authority

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THUS DONE and SIGNED at	OHANNESBURG on this the
of the undersigned witnesses:	
AS WITNESSES:	For and on behalf of TRANS-NATAL COLLIERIES LIMITED by who warrants his authority
P62 Rie	who warrants his authority hereto
2	NNESBURG 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
7. 7. 3. 3. 5. 5. 5. 5. 5. 5. 5. 5. 5. 5. 5. 5. 5.	who warrants his authority hereto
2. Mar Jiern	







COAL SUPPLY AGREEMENT

BETWEEN

TRANS-NATAL COAL CORPORATION LTD AND TRANS-NATAL COLLIERIES LTD

AND

ESKOM

FOR

THE SUPPLY OF COAL

BY

OPTIMUM COLLIERY

TO

HENDRINA POWER STATION

JANUARY 1993



21/TNC/29 MT/gvh (T7\TNC29CS.AGR)

COAL SUPPLY AGREEMENT

between

ESKOM

TRANS-NATAL COAL CORPORATION LIMITED

and

TRANS-NATAL COLLIERIES LIMITED

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21/TNC/29 11.12.92 MT/gvh (T7\TNC29CS.AGR)

COAL SUPPLY AGREEMENT

	- •	PARTIES	
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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.
- 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

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 date"

the date upon which the partial beneficiation washing plant is certified by TNC as being fully operational, 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 factor"

the escalation factor determined 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 "Escom" 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

take period"

"the minimum off- 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

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 beneplant"

the washing plant to be ficiation washing established in terms of 8

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.

tions"

"the specifica- the applicable specifications 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 whollyowned 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.

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

- 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. <u>INTRODUCTION</u>

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

- 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.
- 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

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").

- 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").
- 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.
- 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.

- 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.
- 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.
- 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

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 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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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.
- The shall submit to Eskom within 10 days after the end of each accounting month an invoice reflecting the amount payable by Eskom to The 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



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:

furnish TNC in writing by no later than the commencement date,

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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

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

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:

9.3.1.2

9.3.2

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

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

of, coal available for the purposes contemplated in 9.3.1, to purchase its requirements of coal from other sources, mutatis

mutandis, upon the terms and conditions of 15.

- 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.

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.
- 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;

- 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

- 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

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

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.

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

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

- 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

- 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:
- on a monthly basis for the first 18 calendar months of each 5 year period; and
- on a six monthly basis for the remainder of the second year of each 5 year period; and

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- 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.
- 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
- 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 \sqrt{a}



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.

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

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,

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





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.
- 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.
- 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

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.

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

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.

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
- on a direction by a competent court;

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 the other parties ("the unaffected party"

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.

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,

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.

26.4

- 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, telephone or cablegram or otherwise, to the unaffected party.
 - In the event that vis major occurs as contemplated 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 delivery period in which coal is actually delivered.

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

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.



- 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.

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

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.
- 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.

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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

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.

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

29.2.3

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

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 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;
- 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;
- 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

(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.
- 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

of

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

32. <u>DOMICILIUM</u>

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 o
	The Fuel and Water Manager
Trans-Natal:	80 Marshall Street

and <u>JOHANNESBURG</u>

TNC: 2001

Marked for attention of the Managing Director

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.

- All notices, demands, communications or payments intended for any party shall be made or given at such party's domicilium for the time being.
- 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;
- on the fifth day after posting, if sent by prepaid registered mail.
- 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. <u>INTEREST ON ARREARS</u>

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**

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

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.

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.

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.



THUS DONE and SIGNED at Joh	ANNESBURE on this the
. Lynday of JANUARY	1993 in the presence
of the undersigned witnesses:	
AS WITNESSES:	For and on behalf of
1. Mark	by who warrants his authority hereto
2	July 1
THUS DONE and SIGNED at JOH 4.1. day of JANUARY of the undersigned witnesses:	ANNESBURG on this the
AS WITNESSES:	For and on behalf of TRANS-NATAL COAL CORPORATION LIMITED by who warrants his authority
2. R68 Janua	hereto
7/0-	SW

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THUS	DONE	and	SIGNED	at	JOHANNESB	uncr	• • •	on	this	the
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AS WITNESSES

For and on behalf of

TRANS-NATAL LIMITED COLLIERIES

by
who warrants his authority
hereto



Page 3.

SCHEDULE 1 PART 1 - QUALITIES OF COAL TO BE SUPPLIED TO ESKOM DURING THE PRE-COM-MISSIONING PERIOD PART 2 - QUALITIES OF COAL TO BE SUPPLIED TO ESKOM DURING THE POST-COM-MISSIONING 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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SCHEDULE 1

PART 1

- 1. QUALITIES OF COAL TO BE SUPPLIED TO ESKOM DURING THE PRE-COMMISSIONING PERIOD
- All coal supplied to Eskom in terms of this agreement during the pre-commissioning period shall conform to the following specifications:

	Range	Typical
Calorific Value (moisture free) (monthly weighted average)	25,5 MJ/kg - 26,5 MJ/kg	26,0 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 <u>Average Calorific Value</u> (Calculated on a monthly weighted average moisture free basis)



Penalties Payable by TNC in Respect of Calorific Value

26,0 MJ/kg - 25,5 MJ/kg

No penalty

Below 25,5 MJ/kg

A penalty determined in accordance with the following

formula

P = 14% (A X B)

Where

penalty payable

Α the monthly base price

В

25,5 MJ/kg

minus

the monthly weighted average of calorific value

(moisture free)

25,5 MJ/kg

Bonus Payable by Eskom in Respect of Calorific <u>Value</u>

26,0 MJ/kg - 26,5 MJ/kg

No bonus

Above 26,5 MJ/kg

A bonus determined in accordance with the following formula:

 $P = 14\% (A \times B)$

Where

P bonus payable

the monthly base price

В

the monthly weighted average of calorific value (moisture free)

minus

26,5MJ/kg

26,5MJ/kg



2.2 <u>Rejection Levels</u>

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 stock-pile 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.

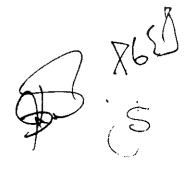
2.2.2.2

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.





PART 2

- 3. QUALITIES OF COAL TO BE SUPPLIED TO ESKOM DURING THE
 POST-COMMISSIONING PERIOD
- 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):

	Range	Typical
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% - 25,6%	23,6%
Ash Content (moisture free)	23,7% - 27,7%	25,7%
Abrasive Index (as per the Eskom/ Industry standard)	250 - 350 mgFe	JEP 2
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 <u>Average Calorific Value</u> (Calculated on a monthly weighted average moisture free basis)

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.

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;

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 <u>Total Moisture</u> (Calculated on a monthly weighted average basis)

\$67

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 failing 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% - 8,0% - 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

Page 10.

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 <u>Coal Stockpile and Rejection</u>

4.4.2.1

TNC shall be entitled and obliged to divert to a designated area on a stock-pile 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 stock-pile 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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21/TNC/29 11.12.92 MT/gvh (T7\TNC29.SH2)

SCHEDULE 2

CONSISTENCY 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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2. <u>Implementation</u>

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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CONTRACT 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:

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

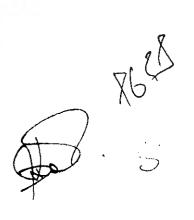
Where:

- 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;
- 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.



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

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

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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 4.9 130.154642 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 5.5 132.971074 2.0 90.512327 5.6 133.535131 2.1 90.512327 5.6 133.535131 2.1 90.512327 5.8 134.097588 2.2 90.512327 5.8 134.097588 2.2 90.512327 5.8 134.097588 2.2 90.512327 5.9 135.217702 2.4 90.512327 6.0 135.7753			4.0	119.120267
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 4.9 130.154642 1.3 90.512327 5.0 130.628047 1.4 90.512327 5.1 131.099852 1.6 90.512327 5.1 131.099852 1.6 90.512327 5.3 132.038663 1.8 90.512327 5.3 132.038663 1.8 90.512327 5.5 132.971074 2.0 90.512327 5.6 133.535131 2.1 90.512327 5.6 133.535131 2.1 90.512327 5.8 134.658445 2.3 90.512327 5.8 134.658445 2.3 90.512327 6.0 135.775359 2.5 90.512327 6.1 136.85874 2.7 90.512327 6.3 137.43873	"	The state of the s	; 4.1	121.111855
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 5.0 130.628047 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 5.5 132.971074 2.0 90.512327 5.6 133.535131 2.1 90.512327 5.6 133.535131 2.1 90.512327 5.8 134.658445 2.3 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 6.1 136.885874 2.7 90.512327 6.3 137.4387			4.2	123.101843
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 5.3 132.971074 2.0 90.512327 5.6 133.535131 2.1 90.512327 5.6 133.535131 2.1 90.512327 5.8 134.097588 2.2 90.512327 5.8 134.097588 2.2 90.512327 5.8 135.217702 2.4 90.512327 6.0 135.775359 2.5 90.512327 6.1 136.331417 2.6 90.512327 6.3 137.438731 2.8 90.512327 6.5 138.5396	•		4.3	125.090231
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 6.3 137.438731 2.8 90.512327 6.4 137.989988 2.9 90.512327 6.6 138.5396	"	90.512327	<u>.</u> 4.4	127.077019
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 5.8 134.097588 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 6.1 136.85874 2.7 90.512327 6.2 136.885874 2.9 90.512327 6.3 137.438731 2.8 90.512327 6.4 137.989988 2.9 90.512327 6.5 138.53964	<u>t</u> '	90.512327	4.5	128.245020 "
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 5.6 133.535131 2.1 90.512327 5.6 133.535131 2.1 90.512327 5.8 134.097588 2.2 90.512327 5.8 134.658445 2.3 90.512327 5.9 135.217702 2.4 90.512327 5.9 135.217702 2.4 90.512327 6.0 135.775359 2.5 90.512327 6.1 136.385874 2.7 90.512327 6.2 136.885874 2.9 90.512327 6.3 137.438731 2.8 90.512327 6.5 138.539645 3.0 90.512327 6.6 139.1605	1.0		4.6	128.724825
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 5.9 135.21770359 2.5 90.512327 6.0 135.775359 2.5 90.512327 6.1 136.381417 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 6.6 139.160502 3.1 93.373121 6.7 139.78	4.	90.512327	4.7	129.203031 "
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 6.5 138.539645 3.0 90.512327 6.6 139.160502 3.1 93.373121 6.7 139.781359 3.2 96.233915 6.8 140.4022	i 1.2	90.512327	4.8	129.679636
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 5.8 134.097588 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 6.8 140.4022		90.512327 *	* 4.9	130.154642 **
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 6.1 136.885874 2.7 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 6.7 139.761359 3.2 96.233915 6.8 140.402216 3.3 99.094709 6.9 141.0230	"	90.512327	5.0	130.628047
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 6.1 136.885874 2.7 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 7.0 141.643	1.5	90.512327	5.1	131.099852
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 6.1 136.885874 2.7 90.512327 6.3 137.438731 2.8 90.512327 6.3 137.989988 2.9 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	<u>"</u> 1.6	90.512327	5.2	
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	1.7	90.512327		77
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	1.8	90.512327		
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	· 1.9	90.512327		l'
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	± 2.0	90.512327		
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	» 2.1	90.512327	·	+-
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	2.2	90.512327		
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	2.3	90.512327	12	
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	2.4	90.512327		
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	2.5	, 1.	•	
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	" 2.6	90.512327		
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 6.7 139.761359 3.2 96.233915 6.8 140.402216 3.3 99.094709 6.9 141.023074 3.4 101.955503 7.0 141.643931	2.7	90.512327		
2.9 90.512327 6.5 138.539645 3.0 90.512327 6.6 139.160502 3.1 93.373121 6.7 139.761359 3.2 96.233915 6.8 140.402216 3.3 99.094709 6.9 141.023074 3.4 101.955503 7.0 141.643931				•
3.0 90.512327 6.6 139.160502 3.1 93.373121 6.7 139.761359 3.2 96.233915 6.8 140.402216 3.3 99.094709 6.9 141.023074 3.4 101.955503 7.0 141.643931	<u>*</u> 2.9		6.5	1
3.1 93.373121 6.7 139.761359 3.2 96.233915 6.8 140.402216 3.3 99.094709 6.9 141.023074 3.4 101.955503 7.0 141.643931	"			17
3.2 96.233915 6.8 140.402216 3.3 99.094709 6.9 141.023074 3.4 101.955503 7.0 141.643931				
3.3 99.094709 6.9 141.023074 3.4 101.955503 7.0 141.643931	•	,		,
3.4 101.955503 7.0 141.643931				•
	H		•	11
3.5 104.816297	3.5	104.816297		141.043931

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

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

ANNUAL	ANNUAL		
QUANTITY	PRICE	- ANNUAL	ANNUAL
	. FRICE	QUANTITY	PRICE
t million			•
transon	R million	<u>t million</u>	R million
. 0.0	00.0475		
0.1	88.647517	3.6	105.793724 "
	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	
1.6	88.647517	5.2	129.170095
1.7	88.647517	5.3	129.637208
1.8	88.647517	5.4	130.102721
1.9	88.647517	5.5	130.566633
2.0	88.647517"	5.6	131.028946
2.1	88.647517	5.7	131.589910 #
2.2	88.647517	* 5.8	132.149275
2.3	88.647517.	5.9	132.707039
2.4	88.647517	6.0	133.263204
2.5	88.647517	1	133.817768
2.6	88.647517	6.1	134.370732
2.7	88.647517	6.2	134.922097
2.8	88.647517	6.3	135.471861
2.9	88.647517	6.4	136.020026
3.0	88.647517	6.5	136.566590
3.1	91.505218	6.6	137.184355
3.2	94.362919	6.7	137.802119
3.3	97.220620	6.8	138.419883
3.4	100.078322	6.9	139.037648
3.5	102 936023	7.0	139.655412
			• A

\$ 765

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

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

ANNUAL	ANNUAL) I:	ANNUAL	
QUANTITY	PRICE		P:	ANNUAL
			QUANTITY	PRICE
t million	R million		t million	R million
				1 11111111011
0.0	11.750103		3.6	105.793724
0.1	13.540560		3.7	108.651425
0.2	15.296570		3.8	111.509127
0.3	17.052581		3.9	114.366828
0.4	18.808591		4.0	117.224529
0.5	20.564602		4.1	120.082230
0.6	22.320612		4.2	122.939932
0.7	24.076622		4.3	
0.8	25.832633		4.4	125.299622
0.9	28.635790		4.5	127.211191
1.0	31.493492		4.6	128.419679
1.1	34.351193		4.7	129.037443
1.2	37.208894		4.8	129.655208
1.3	40.066595	ļ.	4.9	130.272972
1.4	42.924297		5.0	130.890737
1.5	45.781998		5.1	131.508501
1.6	48.639699		5.2	132.126266
1.7	51.497400		5.3	132.744030
1.8	54.355102		5.4	133.361794
1.9	57.212803		5.5	133.979559
2.0	60.070504		5.6	134.597323
2.1	62.928205		5.7	135.215088
2.2	65.785907		5.8	135.832852
2.3	68.643608	1	5.9	136.450616
2.4	71.501309	4	6.0	137.068381
2.5	74.359010		6.1	137.686145
2.6	77.216712	1	i	138.303910
2.7	80.074413	į	6.2 6.3	138.921674
2.8	82.932114	į	6.4	139.539439
2.9	85.789815		6.5	140.157203
3.0	88.647517		1	140.774967
3.1	91.505218	4	6.6 6.7	141.392732
3.2	94.362919		6.8	142.010496
3.3	97.220620		6.9	142.628261
3.4	100.078322	} }	7.0	143.246025
3.5	102.936023	<u>'-</u>		143.863790
				\ \X

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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:

$$X = \begin{bmatrix} PPI^{1} & CCI^{1} \\ ---- & x & 0, 6 + ---- \\ PPI^{0} & CCI^{0} \end{bmatrix} \times 0, 3 + 0, 10$$

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;

 ${\tt CCI}^1$ = the Eskom Cost of Coal Index for the calendar month which is two calendar months prior to the



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

 CCI^0 = the Eskom Cost of Coal Index for the base month which is November 1991.



X6. X6.

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SAMPLING AND ANALYSIS PROCEDURES

1. 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.



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. ,/

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 "Floppergate" system into 3 samples; Al, 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.

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 Bl 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.

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

operating in an inert atmosphere or using nitrogen.

6. ANALYTICAL DISCREPANCIES : RESOLUTION

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:

Quality Parameter	<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, which-
	ever 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:

6.1.2

6.1.1 each immediately repeat the analysis but only after machine calibration and checks against known standards have taken place;

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:

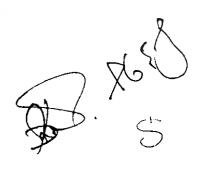
6.1.2.1 one of the analyses can be mutually agreed upon between the parties; or

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.



SCHEDULE 6

21/TNC/29 11.12.92 MT/gvh (T7\TNC29.SH6)

PLANS AND SCHEDULES OF RESERVES

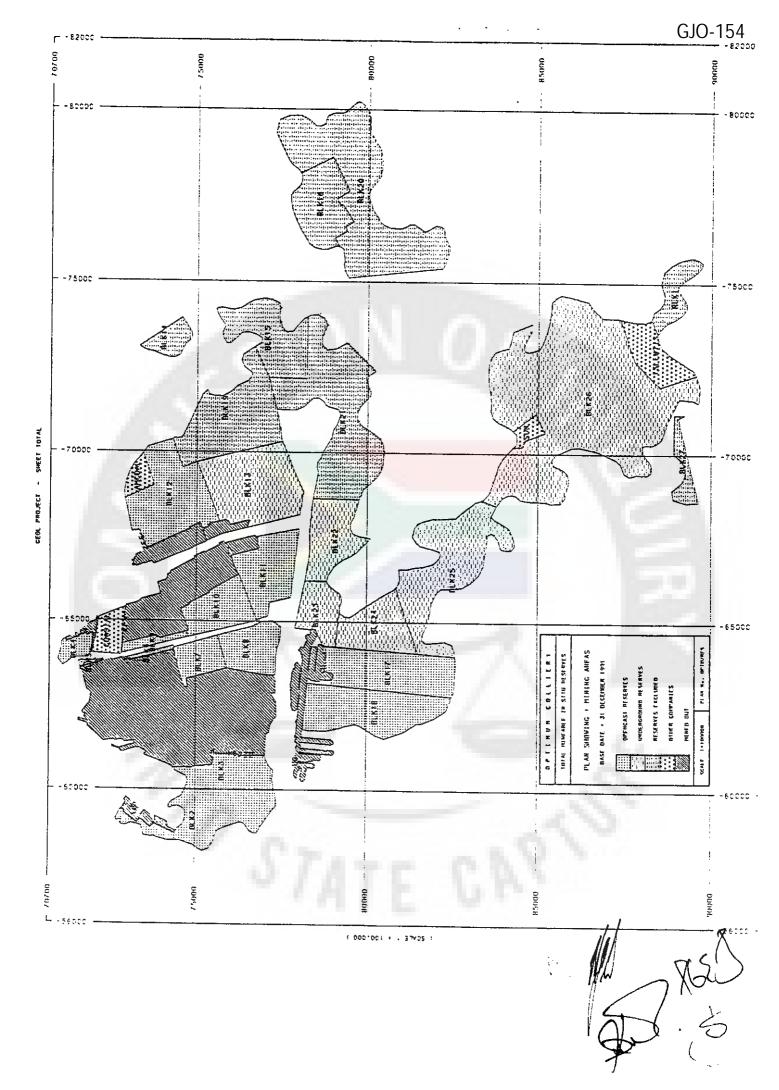


7. 76D

SUMMARY OPTIMUM AND KOORNFONTEIN MINEABLE IN-SITU RESERVES

		MINEABL	E IN-SITU P	ESERVES
BLOCK/	SEAM	AREA	MEAN	TONS
AREA		(ha)	THICK	(mills)
		· · · · · · · · · · · · · · · · · · ·	(m)	
	!			
OPTIMUM		!		
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
				į į
KOORNFONTEIN				
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

A.



OPTIMUM COLLIERIES

1. OPENCAST RESERVES

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

1.1 High Grade (+3	10.2		E IN-SITUR	ESERVES
BLOCK/	SEAM	AREA	MEAN	TONS
AREA		(ha)	THICK	(mills)
			(m)	()
BLK2	4L	75.92	1.63	1.594
	2	371.33	3.24	15.917
0110 -0-11	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
0110 7074	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
CUID TOTAL	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
CLID TOTAL	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
SUB TOTAL	2A	12.11	0.79	0.130
BLK7	41	68.27	2.26	2.131
DLN/	4L	109.04	1.31	1.954
	2	128.59	3.63	6.638
SUB TOTAL	2A	0.00	0.00	0.000
BLK8	41	237.63	2.57	8.592
DLIVO	4L	201.47	1.36	3.650
	2	211.62	3.51	10.028
SUB TOTAL	2A	0.00	0.00	0.000
BLK9	4L	413.09	2.46	13.678
DLIG	2	0.00	0.00	0.000
	2A	39.85	3.45	1.893
SUB TOTAL	2A	27.55 67.40	0.89	0.331
BLK10	4L	54.40	2.40	2.224
BEITTO	2	220.72	1.32	0.963
	2A	156.92	3.51 0.92	10.877
SUB TOTAL	20	432.04		1.858
BLK11	4L	261.12	2.29	13.698
	2	312.12	1.23 3.68	4.307
	2A	278.34	!	16.230
SUB TOTAL	20	851.58	1.04	3.752
BLK12	4L	117.03	2.07	24.289
	2	386.92	1.29	2.038
	2A	472.42	2.95	15.820
SUB TOTAL	1 7	976.37	1.20	7.347
		310.31	1.90/	25.205

	İ	I AND I A ST		
	MINEABLE IN-SITU RESERVES			
BLOCK/	SEAM	AREA	MEAN	TONS
AREA		(ha)	THICK	(mills)
			(m)	<u> </u>
BLK18	4L	396.88	1.37	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	2388.42	3.68	120.873
GRADE	2A	1406.28	1.08	20.041
GRAND TOTAL		5186.73	2.35	166.208



760

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

1.2 Low Grade (-35%			E IN-SITU R	ESERVES
BLOCK/	SEAM	AREA	MEAN	TONS
AREA		(ha)	THICK	. (mills)
		, ,	(m)	,
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



2. UNDERGROUND RESERVES

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

		MINEABLE IN-SITU RESERVES		
BLOCK/	SEAM	AREA	MEAN	TONS
AREA		(ha)	THICK	(mills)
			(m)	
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)

	70 11010 01 1012	70 7 10117		
		MINEABLE IN-SITU RESERVES		
BLOCK/	SEAM	AREA	MEAN	TONS
AREA		(ha)	THICK	(mills)
			(m)	
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

II COAND TOTAL		AAAFRO	400.740
GRAND TOTAL	1	4445.181	1887108
			100.710





3. RESERVES STERILISED BY UNDERGROUND MINING METHOD

		MINEABL	E IN-SITU F	RESERVES
BLOCK/	SEAM	AREA	, MEAN	TONS
AREA		(ha)	THICK	(mills)
			(m)	
BLK13	4L	114.75	1.18	1.915
	2A	422.23	0.96	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	0.68	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

		MINEABL	EIN-SITUR	ESERVES
BLOCK/	SEAM	AREA	MEAN	- TONS
AREA		(ha)	THICK	(mills)
I.			(m)	
BLK1	4L	0.00	0.00	0.000
<u>:</u> -	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
1	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	1177.66	1.11	18.253
GRAND TOTAL		4128.50	1.89	112.567

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TRANS-NATAL COLLIERIES KOORNFONTEIN MINES NO 2 COAL SEAM

RESERVES CALCULATED AS AT 01/01/92

		MINEAB	EIN-SITU P	RESERVES
BLOCK/	AVERAGE	AREA	MEAN	TONS
AREA	DEPTH	(ha)	THICK	(mills)
	(m)		(m)	
LUCII ODADE DECE	D) (E0			
HIGH GRADE RESE		404		
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
LOW CRADE DESCR	NEC.			
LOW GRADE RESER	64	140 5	0.04	7.400
RPT-B		142.5	3.31	7.182
	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	
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

		MINEABLE IN-SITU RESERVES			
BLOCK/	AVERAGE	AREA	MEAN	TONS	
AREA	DEPTH	(ha)	THICK	(mills)	
	(m)		(m)		
ABERDEEN-ROODEPOORT-BLINKPAN					
RPT-A	48	256.1	2.95	12.421	
				1	
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 OPENCAST					
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	





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21/TNC/29 11.12.92 MT/gvh (T7\TNC29.SH7)

SCHEDULE 7

MINIMUM OFF-TAKE AND MINIMUM PAYMENTS

1. 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;
- the operations of Hendrina and Optimum are inter-dependent; and
- 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



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 offtake 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

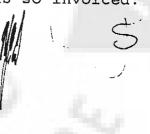


carried forward to or made up in any subsequent year and shall be forfeited by Eskom.

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

- 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.





21/TNC/29 11.12.92 MT/gvh (T7\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).
- 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 (Ap) 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).

ILLUSTRATIVE CALCULATION FOR MONTH "n"

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

- (2) $T = t_1 + t_2 + t_3 \dots + t_n$
- (3) $A_t = 12 \times T/n$
- (5) $r = A_p/A_t$
- (6) $p = T \times r$
- (7) $B_n = p B_1 B_2 B_3 \dots B_{n-1}$







Annexure GJO03



11.04.11 Eskom Settlement Final

SETTLEMENT OF ARBITRATION AND SECOND ADDENDUM TO THE HENDRINA COAL SUPPLY AGREEMENT

amongst

ESKOM HOLDINGS LIMITED

and

OPTIMUM COAL HOLDINGS LIMITED

and

OPTIMUM COAL MINE (PROPRIETARY) LIMITED





11.04.11 Eskom Settlement Final

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1 <u>DEFINITIONS AND INTERPRETATION</u>

Clause 2 of the CSA, as amended by the First Addendum, will prevail in the interpretation of the meaning of words and expressions and cognate expressions and, for the purposes of this Second Addendum, unless the context indicates a contrary intention, the following words and expressions will bear the meanings assigned to them below, and cognate expressions bear corresponding meanings -

- 1.1 "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;
- 1.2 "First Addendum" means the First Addendum to the CSA, entered into on or about 8 April 2008;
- 1.3 "Second Addendum" means this Second Addendum to the CSA.

2 **INTRODUCTION**

2.1 The rights and obligations of the Parties in terms of the CSA constitute the subject of an arbitration commenced by OCM.





- 2.2 The Parties have, by way of exchange of correspondence (being in the form of a letter offer addressed by Eskom to OCM on 7 April 2011; a response and counter offer by OCM to Eskom on 8 April 2011; and an acceptance by Eskom of OCM's counter offer on 8 April 2011) settled the arbitration and agreed to amend the CSA.
- 2.3 The Parties wish to record their agreement in writing.
- 2.4 It is recorded, for information purposes only, that Optimum Coal Holdings has, since the entering into of the First Addendum, been converted into a public company and its registration number has changed to 2006/007799/06.

3 AMENDMENTS TO THE CSA

The Parties hereby amend the CSA on the following basis:

- 3.1 Quantity of Coal
- 3.1.1 It is recorded, for the avoidance of doubt, that the quantity of coal which Optimum Colliery will sell and deliver to Eskom in terms of the CSA will be 5,500,000 tonnes per annum, deliverable on the basis as specified in the CSA.





- 3.1.2 Optimum Colliery will be entitled, on a rolling monthly basis, to create a buffer ("Buffer") by delivering up to 100,000 tonnes of coal to Eskom in excess of its delivery obligations, provided that
- 3.1.2.1 Optimum Colliery will only be entitled during any month to deliver coal constituting the Buffer after it will have delivered, during such month, the minimum quantity of coal which it is obliged to deliver in terms of the CSA; and
- 3.1.2.2 Optimum Colliery will specifically by the delivery of a written notice ("Buffer Notice") to Eskom designate as Buffer coal, any coal which it will deliver to Eskom and which will constitute the Buffer or part thereof;
- 3.1.3 Eskom will pay Optimum Colliery, at the end of any month during which Optimum Colliery will have delivered Buffer coal, 50% of the purchase price of such coal (as determined in terms of the CSA);
- in the event that any Buffer coal delivered by Optimum Colliery to Eskom will be subject to any quality penalty, Eskom will levy the entire quality penalty at the end of the month during which such Buffer coal will have been delivered (notwithstanding that Eskom will only be obliged at that time to pay 50% of the price of such Buffer coal);





- In the event that Optimum Colliery will during any month for whatever reason have delivered less coal than it is obliged to do in terms of the CSA, Eskom will take delivery of up to 50% of the Buffer ("Delivered Portion of the Buffer") as it exists at the end of that month, in order to make up such shortfall, or a portion of such shortfall. On the delivery of the Delivered Portion of the Buffer coal to Eskom in terms of this clause 3.1.5, Eskom will pay the balance of the purchase price owing to Optimum Colliery in respect of the Delivered Portion of the Buffer;
- In the event that Optimum Colliery will for whatever reason, and taking into account the Delivered Portion of the Buffer (delivered to Eskom in terms of clause 3.1.5), have delivered less coal than it is obliged to do in terms of the CSA and as measured and determined at the end of the period of two consecutive months ("Penalty Period") as described in Clause 3.2.8 of the First Addendum, the penalty for short delivery as specified in Clause 3.2.8 of the First Addendum will be applicable, provided that:
- 3.1.6.1 Variable **S** in the formula in Clause 3.2.8 of the First Addendum is hereby amended as follows;

$$S = (S1 - B)$$





S1 is the quantity expressed in tonnes, of coal which Optimum Colliery will, at the end of the Penalty Period, have short delivered to Eskom (after taking into account any Shortfall Coal delivered by Optimum Colliery during such period); and

B is the Delivered Portion of the Buffer (delivered to Eskom at the end of the Penalty Period in terms of clause 3.1.5 of this Second Addendum).

3.1.6.2 As at 31 March of every year, irrespective of whether Optimum Colliery will have short delivered coal or not, Buffer coal which will not have been delivered to Eskom in terms of clause 3.1.5 (and which will at that date constitute the Buffer) will be delivered to Eskom which will pay the balance of the purchase price for such Buffer coal.

3.2 Penalties in respect of Quantity

3.2.1 Penalties payable by Optimum Colliery for and/or in respect of the failure to deliver the minimum quantity of coal required in terms of the CSA and/or in respect of the failure to deliver coal of the specified minimum quality, unless specified otherwise in this Second Addendum, will be determined on the basis as set out in the CSA.





3.3 Abrasiveness Index

- 3.3.1 The Abrasiveness Index ("AI") of coal delivered by Optimum Colliery to Eskom in terms hereof will be targeted to be <423 mgFe on a 7 day weighted rolling average basis.
- In the event that the Al level is > 423 mgFe, Optimum Colliery will be liable to pay at penalty to Eskom, calculated on the following basis:

> 423 – 500	R 1.23 per tonne
> 500 – 600	R 4.92 per tonne
> 600 – 625	R 6.15 per tonne
> 625 – 650	R 7.38 per tonne
> 650	R 11.07 per tonne

3.3.3 The penalties specified in clause 3.3.2 are specified as at a base date of 1 April 2011 and will escalate at the same rate as the purchase price of coal sold and delivered in terms of the CSA.

3.4 Quality of Coal

3.4.1 It is specifically recorded that, save as recorded in clause 3.3, there will be no change in the penalty, premium and rejection regime which





will continue to be of force and effect on the same basis as set out in the CSA.

- 3.4.2 The Parties specifically agree and record that the spreadsheet in respect of the qualities of coal sold and delivered by Optimum Colliery to Eskom exchanged between the Parties on a daily basis will constitute ongoing compliance with the provisions of clause 9.6 of the CSA.
- 3.4.3 Eskom will be entitled to off set any and all amounts due in respect of any penalties in respect of the quality of coal sold and delivered by Optimum Colliery to Eskom (including, without limitation, in respect of AI) against the amount due to Optimum Colliery for and in respect of the purchase price of such coal; it being specifically recorded that Eskom will in writing advise Optimum Colliery monthly in arrears of the manner in which such penalties will have been calculated and Eskom will deliver to Optimum Colliery, together with the details of such calculation, the laboratory relevant results in respect of the coal in question in support of such calculation.

3.5 Price of Coal

3.5.1 The price payable to Optimum Colliery for coal sold and delivered to Eskom in terms of the CSA will be R 115.00 per tonne on the basis





that such price is set at a base of 1 April 2011, whereafter the escalation set out in the CSA will apply.

3.6 Betterment of Quality

- 3.6.1 The Parties agree that they will on at best efforts basis investigate initiatives that may involve alternative mining and/or beneficiation methods by Optimum Colliery with the intent to lower the Al of coal supplied to Eskom. Such investigations are to be conducted over a six-month period starting on 1 May 2011, and the cost of such initiatives will be for the account of Eskom, subject to:
- 3.6.1.1 Each initiative will be agreed on between the Parties and a budget therefore will be determined including deliverables, milestones and payment dates;
- 3.6.1.2 the costs set out in such budget will be subject to approval within the Eskom approval framework and governance structure; and
- the Parties will form a steering committee, with representation at executive level, which will meet at least once every calendar month; and to which steering committee the persons responsible for each initiative will report.





4 RE-STATEMENT OF THE CSA

- 4.1 The Parties will, as soon as reasonably possible in all prevailing circumstances, co-operate for the purposes of restating the CSA and converting it into one document. Eskom will prepare the first draft for consideration by the Parties.
- 4.2 It is specifically recorded that the restatement of the CSA and its conversion into one document will not affect the principal commercial terms applicable between the Parties as recorded in the CSA and this Second Addendum.

5 EFFECTIVE DATE

5.1 The terms of this Second Addendum will commence on 1 April 2011, notwithstanding the date of signature hereof.

6 ARBITRATION PROCEEDINGS

6.1 The arbitration proceedings between the Parties will be abandoned and fully and finally settled on the basis that the claim instituted by Optimum Colliery will be withdrawn on the date of signature by both Parties, on the basis that each of the Parties will bear its own costs of the arbitration proceedings, including its half of the arbitrator's fee.





- The Al penalty levied by Eskom during 2009 will stand, and no amount will be refunded to Optimum Colliery in respect thereof.
- A portion, in the amount of R11.45 million ("Al Accumulated Penalty"), of the Al penalties raised in the accounts of Eskom but not yet claimed by Eskom for the period from 1 April 2010 to 1 April 2011 will be payable (in full and final settlement of Eskom's claims and/or entitlements in respect of all Al penalties before or on 31 March 2011 in 12 equal instalments) by Optimum Colliery to Eskom. Optimum Colliery will be entitled, in its election, to pay the Al Accumulated Penalty, or any portion thereof, to Eskom either in cash, or by the delivery of coal having a commercial value, as determined in terms of the CSA read with this Second Addendum, equal to the Al Accumulated Penalty, or the relevant portion thereof. Optimum may at any time pay the full outstanding balance in cash or by means of a set off as contemplated in clause 6.7.
- Optimum Colliery shall, within 7 days of execution of the Second Addendum, and thereafter on the first day of every month, until the 1 March 2012, in writing notify Eskom whether the Accumulated Penalty instalment for the applicable month will be satisfied by payment in cash or additional coal delivery of coal to Eskom.





- Buffer coal may not be applied in respect of the penalty. Any shortfall in the delivery by Optimum Colliery of coal as and by way of payment of any instalment of the Al Accumulated Penalty, after Optimum Colliery will have advised Eskom in writing that such coal will be delivered to Eskom, shall attract a penalty calculated on the same basis as the penalty for short delivery by Optimum Colliery of the minimum quantity of coal due for delivery in terms of the CSA.
- Accumulated Penalty instalment in cash and fail to pay such instalment on the due date for such payment, the total amount of the outstanding Al Accumulated Penalty amount will become due and payable immediately and will be subject to interest at the rate set out in the CSA in respect of arrear amounts, until the date of payment of the full amount due to.

 Eskom. Eskom in its sole discretion may elect to deduct such outstanding Accumulated Penalty together with interest from the next payment due to Optimum Colliery.
- 6.7 Optimum Colliery will, however, be entitled, in the delivery of the written notice to Eskom as described in clause 6.3, to specify that the relevant instalment in respect of the Al Accumulated Penalty shall be off set against the amount due by Eskom to Optimum Colliery at the end of the





relevant month; whereupon Eskom shall be obliged to and shall so off set such instalment against such amount due.

7 SAVINGS CLAUSE

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

8 CONFIDENTIALITY

8.1

Each of the Parties shall keep confidential and not without the prior written consent of the other Party (which written consent will not be unreasonably withheld or delayed) disclose or divulge to any party the contents of this Second Addendum or any correspondence exchanged between the Parties in respect of and/or in anticipation of this Second 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 Second 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.

Signed on behalf of the Parties as set out below, each signatory hereto warranting that he or she has due authority to do so:

SIGNED at JOHANNESLUK on 12th day of April 2011.

For and on behalf of ESKOM HOLDINGS

LIMITED



SIGNED at JOHANNESBURGON 12th day of April 2011.



For and on behalf of OPTIMUM COAL HOLDINGS LIMITED

SIGNED at JOHANNESRINEG on 12th day of April 2011

For and on behalf of OPTIMUM COAL MINE (PROPRIETARY) LIMITED



Annexure GJ004



THIRD ADDENDUM TO THE HENDRINA COAL SUPPLY AGREEMENT

amongst

ESKOM HOLDINGS SOC LIMITED

and

OPTIMUM COAL HOLDINGS (PROPRIETARY) LIMITED

and

OPTIMUM COAL MINE (PROPRIETARY) LIMITED

Lan

1. DEFINITION AND INTERPRETATION

Clause 2 of the CSA will apply in the interpretation of the meaning of words and expressions and cognate expressions and, for the purposes of this Third Addendum, unless the context indicates a contrary intention, the following words and expressions will bear the meanings assigned to them below, and cognate expressions bear corresponding meanings

- 1.1 "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 and Second Addendum;
- 1.2 "First Addendum" means the First Addendum to the CSA, entered into on or about 8 April 2008;
- 1.3 "Second Addendum" means the Second Addendum to the CSA, entered into on or about 12 April 2011; and
- 1.4 "Third Addendum" means this Third Addendum to the CSA.

2. INTRODUCTION

- 2.1 On 12 April 2011 the Parties concluded the Second Addendum wherein it is set out in clause 4.1 that the Parties will co-operate for the purposes of restating the CSA and converting into one document.
- 2.2 Following numerous exchanges aimed at fulfilling the object setout above the Parties agreed in a meeting held on 15 January 2013 to dispense with provisions of clause 4.1 of the Second Addendum and to amend the Second Addendum accordingly.

3. AMENDMENTS TO THE SECOND ADDENDUM

3.1.1 The Parties hereby amend the Second Addendum by deleting the provisions of clause 4.1 and 4.2 of the Second Addendum.

1 pm

3.1.2 Notwithstanding the date of signature of this Third Addendum, the terms herein shall be effective from 15 January 2013.

4. SAVINGS CLAUSE

4.1 Save to the extent specifically or by necessary implication modified or inconsistent with the provisions of this Third Addendum, all the terms and conditions of the Second Addendum shall mutatis mutandis continue in full force and affect.

Signed on behalf of the Parties as set out below, each signatory hereto warranting that he or she has due authority to do so:

SIGNED AT SUNNINGHILL ON THIS 11TH DAY OF FEBRUARY 2013

KIREN MAHARAJ (Mrs)
For and on behalf of

ESKOM HOLDINGS SOC LIMITED

SIGNED AT SUNNINGHILL ON THIS 11TH DAY OF FEBRUARY 2013

For and on behalf of

OPTIMUM COAL HOLDINGS (PROPRIETARY) LIMITED

SIGNED AT SUNNINGHILL ON THIS 11TH DAY OF FEBRUARY 2013

For and on behalf of

OPTIMUM COAL MINE (PROPRIETARY) LIMITED

Annexure GJO05





CONFIDENTIAL

Mr Riaan du Plooy Chief Operations Officer Optimum Coal Mine (Pty) Ltd P O Box 411333 CRAIGHALL 2024

Date: 07 August 2012

Enquiries: Mrs P Pillay +27 (0) 11 800-3098

Our Ref: 718156

Dear Mr du Plooy

COAL QUALITY TRANSGRESSION ON SIZE DISTRIBUTION OF COAL

We refer to our email correspondence dated 18 July 2012, attached hereto, where we informed you that the excessive volumes of -0,81mm material supplied since May 2012 is a serious concern to Eskom.

We acknowledge your email response dated 20 July which details the reasons for this increased size distribution on the finer material. We advise that despite the change in the sources of coal and Optimum Coal Mine monitoring the situation, there has been no improvement and the transgression has not been rectified.

While Hendrina Power Station has not incurred a significantly higher number of coal hang ups as a result of the increase in finer size fractions, we are approaching the rainy season and mitigating factors must be considered to minimise Eskom's exposure while Optimum Coal Mine remedies the situation.

In terms of Clause 3.4.4 of the First Addendum to the Hendrina Coal Supply Agreement, Eskom hereby requests a meeting with Optimum Coal Mine to assess the extent of our risk as well as the plans that Optimum has implemented to reduce the -0,81mm material delivered to Hendrina Power Station.

Your response within three (3) working days of receipt of this letter is appreciated. Eskom reserves its rights.

Yours sincerely

H Møkwena

SENIOR MANAGER: COAL OPERATIONS

Primary Energy

Megawatt Park Maxwell Drive Sunninghill Sandton PO Box 1091 Johannesburg 2000 SA Tel +27 11 800 1111 Fax +27 86 663 9855 www.eskom.co.za

From: Willem Needham Sent: 20 July 2012 08:27 AM

To: Julian Nair (Julian@eskom.co.za); Karien Smith

Subject: FW: Hendrina Coal Supply

Julian / Karien

Please revert if you see no improvement during next week.

Willem

From: Du Plooy, Riaan (OCH OPT) [mailto:Riaan.DuPlooy@optimumcoal.com]

Sent: 20 July 2012 07:35 AM

To: Gain, Doug (OCS OPT); Willem Needham

Cc: Johann Bester; Humphrey Mokwena; Clinton.Ephron@glencore.com; Teke, Mike (OCS OPT)

Subject: RE: Hendrina Coal Supply

Willem, Humphrey & Eskom team,

We fully appreciate and share your concern regarding the increase in finer material in the Optimum supply to Hendrina.

We have been doing a lot of work to confirm what the source of this is and how best we can mitigate it.

The main cause of the increase in fines over the last two months has been the fact that we have been directing a significantly higher percentage of coal from the Kwagga North(KN) and Boschmanspoort(BMP) reserves into the Hendrina Power Station.

This is due to the fact that our one big dragline (Marion 4) at Pullenshope was on a scheduled shutdown from the 5th of June 2012 up until the 19th of July 2012.

The coal from the KN stream contains more fine material than the coal from Pulllenshope for 3 primary reasons:

- The coal from KN specifically passes through 18 transfer points more(35km from rill tower), gets handled with a front-end-loader and trucks through one more cycle before it enters our bypass conveyor system which feeds the Eksom plant stream.
- The KN coal is naturally more friable because we are establishing boxcuts in some of the KN
 pits close to the coal outcrop. (We are "free-digging" all the coal from KN through, no
 blasting, to ensure we minimize fines generation)
- BMP generates more fines because it is an underground operation with quite hard cutting conditions.

As stated above Marion 4 was commissioned on the 19th of June after the scheduled shutdown and the coal which reports into the by-pass/ Eskom plant system from the Pullenshope mining area should increase from today going forward.

We will monitor the situation closely and keep you informed if we do not see an improvement,

This issue has been discussed extensively at the technical meetings and Julian reported that there has been no increase in the number of silo blockages at the Power Station.

I thank you again for your appreciation of our technical challenges.

Kind regards



Riaan du Plooy Chief Operating Officer

Optimum Coal Holdings Limited Illovo Boulevard North Plaza 36 Fricker Road Illovo, Johannesburg 2196

Tel: +27 (0) 11 447 3858 Fax: +27 (0) 11 447 3894 Web: www.optimumcoal.com Optimum Coal Mine Pty Ltd Pullenshope Road Private Bag X1201

Private Bag X1201 Pullenshope, 1096 South Africa

Tel: +27 (0) 13 296 5181 Fax: +27 (0) 86 590 5535 Cell: +27 (0) 82 464 5310

From: Gain, Doug (OCS OPT)

Sent: Wednesday, July 18, 2012 12:22 PM **To:** Gain, Doug (OCS OPT); Willem Needham

Cc: Johann Bester; Humphrey Mokwena; Clinton. Ephron@glencore.com; Du Plooy, Riaan (OCH OPT);

Teke, Mike (OCS OPT)

Subject: RE: Hendrina Coal Supply

Willem.

Either Riaan, Clinton or myself will respond asap.

Please copy all of us on any correspondences.

Thanks

Doug

From: Gain, Doug (OCS OPT) Sent: 18 July 2012 12:16 PM

To: 'Willem Needham'

Cc: Johann Bester; Humphrey Mokwena **Subject:** RE: Hendrina Coal Supply

Willem,

Will get on this right away and will revert.

Regards Doug

From: Willem Needham [mailto:NeedhaWJ@eskom.co.za]

Sent: 18 July 2012 08:54 AM **To:** Gain, Doug (OCS OPT)

Cc: Johann Bester; Humphrey Mokwena

Subject: Hendrina Coal Supply

Hi Doug

I left a message on your mobile to contact me back.

Not really whether this is an issue for you or Clinton to handle but there is a big problem with excessive 0.81mm material in the supply from Optimum to Hendrina power station. I attaché hereto a slide that shows the 0.81mm daily fractions for May and June. As you can see the deviation from the contracted monthly average is huge, specifically since about 20 June the size fraction was more than double and on some days even triple that of the monthly average.

The problem has been raised during the monthly operational meetings but I am informed that there has not been any improvement so far.

Doug we can ill afford any downtime on our generation capacity at the moment and the fines issue is causing major alarms.

The issue needs urgent attention, can you please call me or if the issue needs to be handled by Clinton please indicate so.

Regards Willem

I'm part of the 49Million initiative.

http://www.49Million.co.za

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Annexure GJO06



Rohan R. Hiles

From: Mokone, Aubrey (OCH OPT) < Aubrey.Mokone@optimumcoal.com>

Sent: Wednesday, 16 January 2013 13:50

To: Gert Opperman; Karien Smith; Karien Smith; Maria Kgaphola; Tshwaro Petso; De Waal,

Fanie (OCH OPT); Snyders, Francois (OCH OPT); Visser, Ben (OCH OPT)

Subject: Fines Investigation updated report

Attachments: Fines Investigation Report update 16 January 2013.docx; Drop shatter Graph per

transfer points.xlsx

Good ladies & gents

Please find attached the update report on the fines Investigation. Please refer to page 3 as a continuation of the first report.

Regards



Aubrey Mokone

Metallurgist Optimum Colliery

Pullenshope Road Private Bag X1201 Pullenshope, 1096 South Africa

Tel: +27 (0) 13 296 5512 Fax: +27 (0) 86 649 7019 Cell: +27 (0) 71 678 1587 Web: www.optimumcoal.com

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<u>Fines Investigation Project - KWAGGA ExPIT Sampling Results – 29 November 2012</u>

Scope of project

Investigate possible points or sources of fines generation that contributes to >35% -0.81mm material to the Total Eskom Supply Product.

1. Background

Kwagga ExPIT from three sections/areas where sampled for Sizing & Drop Shatter tests. The areas are as follows:

- 1. Kwagga North BE09 Ramp 1 & 2
- 2. Kwagga North Marion 2 Ramp 5 to 8
- 3. Kwagga North Marion 3 Ramp 5 to 8

From the above areas, the extraction of coal was as follows:

- 1. Kwagga North BE09 Ramp 1 & 2 Seam 2A was extracted by means of blasting and then loaded to the tip
- 2. Kwagga North Marion 2 Ramp 5 to 8 Seam 2 was extracted by means of free digging and then loaded to the tip. (No blasting)
- 3. Kwagga North Marion 3 Ramp 5 to 8 Seam 2 was extracted by means of free digging and then loaded to the tip. (No blasting)

2. Sample Results

2.1 Kwagga North BE09 Ramp 2

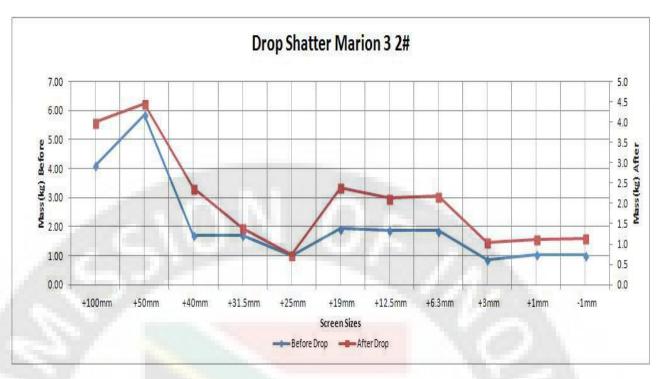


The blasted 2A seam had a percentage -0.81mm of 3.64% (m/m) which was similar to the drop shutter test results on the -0.81mm of 3.6% (m/m). The stability of the blasted 2A seam BE09 coal was 1.01 with a friability of 98.991%.

2.2 Kwagga North Marion 2 Ramp 5



The freely digged 2 seam had a percentage -0.81mm of 7.91% (m/m) which was very close to the drop shutter test results on the -0.81mm of 8.1% (m/m). The stability of the freely digged 2 seam Marion 2 coal was 1.0 with a friability of 98.999%.



2.3 Kwagga North Marion 3 Ramp 5

The freely digged 2 seam had a percentage -0.81mm of 4.47% (m/m) which was very close to the drop shutter test results on the -0.81mm of 5.01% (m/m). The stability of the freely digged 2 seam Marion 3 coal was 0.99 with a friability of 99.005%.

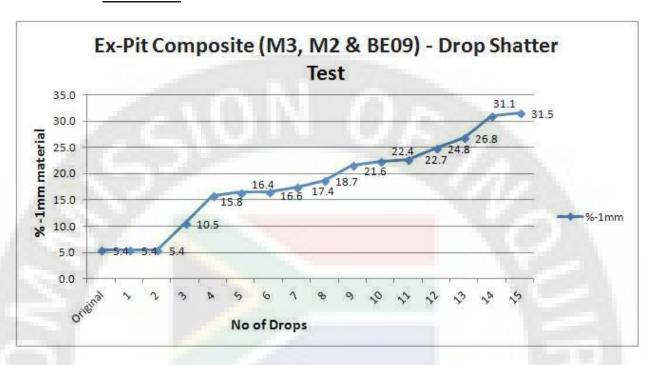
3. Kwagga ROM Handling - Simulation Drop test

A drop test used as tool to indicate the likely hood of coal to break when exposed to various methods of handling and Kwagga ROM alone making up to 60% or more of the total Optimum ROM, was focused on given the mining methods used to extract coal. Although the initial test results above did not indicate much in terms of how or why the fines gets generated, the test work does indicate that there is breakage that can be expected.

An estimation of about 15 transfer points from Kwagga North tip up to the blending yard was used for the simulation assuming each drop test represents a transfer point. The purposed of the simulation is to at least give an indication of how Kwagga coal breaks (friability deteriorates) along the way to the HMS blending yard stockpile.

All three Ex-Pit samples (Marion 3, Marion 2 and BE09) were combined on equal proposition and then dropped 15 times.

3.1 <u>Kwagga Ex-Pit Composite of Marion 3, 2 and BE09 – Drop shatter</u> Simulation



The above graph shows only the % -1mm material generated after each drop test and how accumulation thereof takes place. The composite sample did not change at all after 3 drop test but evidently increases linearly as the number of drop tests increases.

At the 15th drop test, the -1mm came at 31.5% which correlates well with the 35% or more -0.81mm material that are experienced on the daily Eskom Supply.

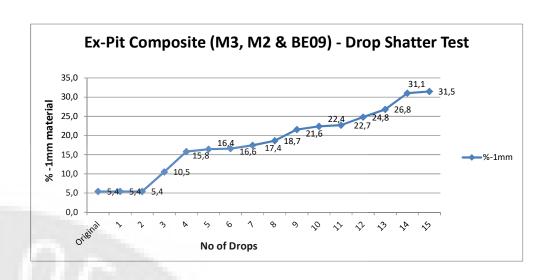
4. Further simulations

Further simulations will take place from individual kwagga Ex-Pits (Marion 3, 2 & BE09), Pullenshope Ex-Pit (Marion 4) and Boshmaspoort UG Ex-Pit. The purpose of doing all

the sections is to get an understanding of how fines get generated from the overall Optimum ROM.



	CompositeEx-Pit (M3, M2 & BE09)	
	No of Drops	%-1mm
	Original	5,4
2	1	5,4
4	2	5,4
6	3	10,5
8	4	15,8
10	5	16,4
12	6	16,6
14	7	17,4
16	8	18,7
18	9	21,6
20	10	22,4
22	11	22,7
24	12	24,8
26	13	26,8
28	14	31,1
30	15	31,5



Annexure GJ007





CONFIDENTIAL

Mr Riaan du Plooy Chief Operating Officer Optimum Coal Mine (Pty) Ltd P O Box 411333 CRAIGHALL 2024 Date: 22 April 2013

Enquiries: Gert Opperman +27 11 800-6146

Our Ref: 719558

Dear Sir

EXCESSIVE SUPPLY OF -0,81MM SIZE FRACTION PRODUCT TO HENDRINA POWER STATION

Since May 2012 Optimum Coal Mine (OCM) has been supplying coal that is not within the sizing specification of the First Addendum to the Coal Supply Agreement, specifically on the -0,81mm size fraction. The contractual limitation on this size fraction is 15%, while OCM has been supplying between 20-45% of the coal smaller than 0.81mm.

A letter was issued to OCM in August 2012, ref 718156 advising that the coal is not within specification and requesting rectification of the supply as per clause 3.4.4 of the First Amendment of the CSA.

An email response proposed that Eskom and OCH meet to discuss the matter. This meeting took place in September 2012 where it was agreed that a joint working group will investigate the source of the fine coal and look into remedial actions. This investigation has subsequently been completed and no remedial actions have been proposed following the close of the investigation. Eskom further notes with concern that no change in the sizing range in the supply of coal from OCM has been evident to date.

Eskom wishes to place on record that this is a transgression of the quality specification of the First Addendum to the coal Supply Agreement and calls upon OCM to rectify the transgression.

Eskom's rights are fully reserved.

Yours sincerely

Pam Pillay

SENIOR MANAGER (ACTING): COAL OPERATIONS

Primary Energy Division

Megawatt Park Maxwell Drive Sunninghill Sandton PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 8111 Fax +27 86 663 9855 www.eskom.co.za
Eskom Holdings SOC Limited Reg. No 2002/015527/06



Annexure GJ008





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/....

- 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

Annexure GJO09





Eskom Holdings SOC Limited Megawatt Park Maxwell Drive Sunninghill

Attention: Chief Officer - Generation

Mr Johan Bester - Acting Divisional Executive Primary Energy Division

21 August 2013

Dear Sirs

HENDRINA COAL SUPPLY AGREEMENT - SIZING SPECIFICATIONS

- We refer to the first addendum ("the First Addendum") to the written Hendrina Coal Supply Agreement ("the Agreement") concluded between Optimum Coal Mine (Proprietary) Limited ("OCM") and Eskom Holdings Limited ("Eskom").
- 2. On 23 April 2013, in a written letter sent to Eskom ("the Letter"), OCM formally notified Eskom that it wished to implement the provisions of clause 3.4.4 and 3.4.5 of the First Addendum in respect of the re-negotiation of the specifications set out in clause 3.4.3 of the First Addendum on the basis that the sizing specifications set out in clause 3.4.3 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.
- 3. In Eskom's 26 July 2013 written reply to the Letter, Eskom advised OCM that it disputed OCM's contentions but that it was willing to meet with OCM and negotiate the proposed amendment to clause 3.4.3.
- 4. On 12 August 2013, the parties met to discuss the above. Pursuant to what was discussed at the meeting, OCM hereby proposes that the limit of 15% for the sizing specification recorded in clause 3.4.3.3 of the First Addendum, be increased to 20%.
- 5. Please advise whether Eskom would be amenable to this proposal. If so, we will draft the necessary addendum for signature by the parties.



6. We look forward to your positive response to the above.

Yours faithfully

Clinton Ephron

Optimum Coal Mine (Proprietary) Limited



Annexure GJO10



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

- 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.
- 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 Eskorn after 31 December 2018.

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

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

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- 4 agreement which attempts to address each of the Issues and results in the extension of the supply relationship between Eskom and Optimum Mine.
- 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 Al, 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:
 - 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

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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.
- 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

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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.
- 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.
- 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.
- 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.
- 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

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SUNNINGHILL MAY SIGNED at 23 2014. As witnesses: For: **ESKOM HOLDINGS SOC LIMITED** A-NTSHANGA V. NCUBE Signatory: KIRBNI DIVICIONAL EXECUTIVE Capacity: PRIMARY Authority: EWERGY MELROSE SIGNED at 2014. 23 MAY on As witnesses: For: **OPTIMUM COAL HOLDINGS** PROPRIETARY LIMITED Signatory: CLINTON

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

SIGNED at

MEL ROSE

on 23 MM

2014.

As witnesses;

For:

OPTIMUM COAL MINE PROPRIETARY LIMITED

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Signatory: CUMM EI WILL

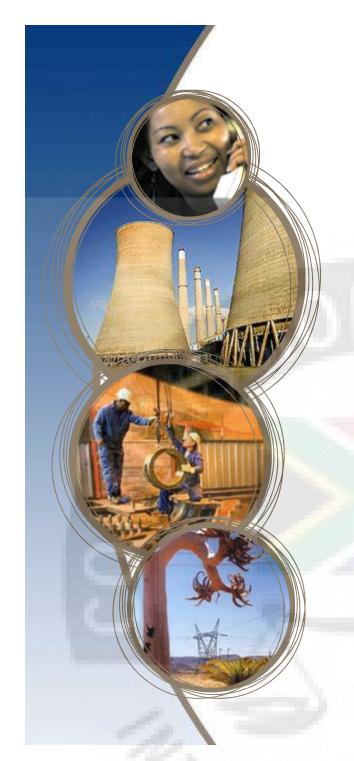
Capacity: DILEGIN

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

Annexure GJO11







Primary Energy Division

OCM Exploratory CSA Discussions

28 May 2014

Purpose & Background



PURPOSE

 To develop a contracting strategy that supports Primary Energy Division (PED) in resolving historic, current and possible future issues which may result in dispute resolution on the Optimum Coal Supply Agreement.

PROPOSED PROCESS

Day 2 Day 1 Termination of New CSA existing CSA discussions Day 2 Day 2 Items not in Day 1 Each team Parking lot agreement Focus session discussion Day 2 Way forward

The respective teams



Eskom team

Kiren Maharaj

Johann Bester

Ayanda Ntshanga

Gert Opperman

Andrea Williams

Glencore team

Clinton Ephron

Dimitri Yiotopoulos

Riaan Du Plooy

Shaun Teichner



Agenda – OCM Exploratory Discussion Session Day 1



- Eskom Coal Strategy & contracting principles
- Glencore Coal Strategy & contracting principles
- Qualities
 - New & Interim quality range
 - Measurement & Analysis
 - Escalation mechanism
- Volume
 - Minimum required volume
 - Under off take & Under supply
- Term / Duration of contract
- Indicative pricing
- Infrastructure
 - Conveyors responsibility, efficiency, constant feed rate
 - Sampling plant

Agenda - OCM Exploratory Discussion Session Day 2



- Parking lot items from Day 1 each team 2 hours focus session
- Items parties are not willing to concede on
 - Refer to Co-operation document points
- Termination of existing CSA
- Way forward items not in agreement
 - Terms of reference

Proposed Interim Quality requirement



ZKZ	GENERATIO	N COAL QUALITY S	PECIFICATIONS
HENDRIN A POWER STATION	DESIGN	Interim 100% Mill demand	OCM CONTRACT
TM	9	8	10
IM	4	3	
ASH	23.96	28.8	28.8
CV	24.83	22.64	23
VOL	23.96	22.4	21.6
S	0.83	0.8	
HI	53	53	
Al	253	<450	423
DFT	1340	>1300	1400
Top Size	25mm	35mm	>6mm<45%
		30mm <5%	<6mm>55%
		-3mm <20%	<2.35mm<35%
		-1mm <15%	<0.81mm<15%

All values are reported as Moisture Free (mf) or Dry Basis (DB) and is subject to Eskom Generation approval

Annexure GJO12



CONFIDENTIAL



Mr Clinton Ephron
Chief Executive Officer
Optimum Coal Holdings
Suite No 19
Private Bag X1
MELROSE ARCH
2076

Date: 09 April 2015

Enquiries: Mr Gert Opperman +27 11 800-6146

Our Ref: 723447

Dear Mr Ephron

OPTIMUM COAL MINE PROPRIETARY LIMITED - COAL SUPPLY COMMITMENT TO ESKOM

Eskom records that OCM has for this calendar year 2015 to date failed to supply and deliver to Hendrina Power Station the required quantity of coal in terms of the Coal Supply Agreement ("CSA") read with the various addendums.

During the exploratory discussions Optimum Coal Mine indicated that the annual supply target of 5,5 Million tons (458.3kT/month) will reduce to 4,5 Million tons (375kT/month) but at no time did Eskom agree to this reduction in volumes. Optimum Coal Mine ("OCM") delivered a total of 969,093 tons to Hendrina Power Station from January to March 2015, which is 405,907 tons below the contractual year to date volume of 1,374,999 tons.

Eskom will not impose at this stage any penalties for short supply for the 2015 on the basis of clause 5.3 of the agreement concluded between the parties on 23rd May 2014.

Eskom, reserves its rights to claim such penalties.

Yours sincerely

Vuyisile Ncube

SENIOR MANAGER (ACTING): COAL OPERATIONS

Primary Energy Division

Megawatt Park Maxwell Drive Sunninghill Sandton PO Box 1091 Johannesburg 2000 SA Tel +27 11 800 8111 Fax +27 11 800 5555 www.eskom.co.za

Eskom Holdings SOC Ltd Reg. No 2002/015527/30

Annexure GJ013



CONFIDENTIAL



Mr Clinton Ephron Chief Executive Officer Optimum Coal Holdings Suite No 19 Private Bag X1 MELROSE ARCH 2076 Date: 12 May 2015

Enquiries: Mr Gert Opperman +27 11 800-6146

Our Ref: 723478

Dear Mr Ephron

OPTIMUM COAL MINE PROPRIETARY LIMITED - COAL SUPPLY COMMITMENT TO ESKOM

Eskom records that OCM has for this calendar year 2015 to date failed to supply and deliver to Hendrina Power Station the required quantity of coal in terms of the Coal Supply Agreement ("CSA") read with the various addendums.

During the exploratory discussions Optimum Coal Mine indicated that the annual supply target of 5,5 Million tons (458.3kT/month) will reduce to 4,5 Million tons (375kT/month) but at no time did Eskom agree to this reduction in volumes. Optimum Coal Mine ("OCM") delivered a total of 356,3 kilotons to Hendrina Power Station for April 2015, which is 18,7 kilotons below the planned volume of 375kilotons per month and 102 kilotons below the contractual volume of 458,5 kilotons per month.

Eskom will not impose at this stage any penalties for short supply for 2015 on the basis of clause 5.3 of the agreement concluded between the parties on 23rd May 2014.

Eskom, reserves its rights to claim such penalties.

Yours sincerely

Vuvisile Ncube

SENIOR MANAGER (ACTING): COAL OPERATIONS

Annexure GJO14





	240-53463053
Unique Identifier	
Revision	Rev. 1
Revision Date	August 2015
Group Technology and	
Commercial	

TO:

The Chairman

Date:

3 June 2015

Committee

EXCO Procurement Sub-

Board of Directors Tender

25 March 2015

Committee

COMPILER:

Johann Bester

011 800 3729

BUSINESS UNIT &

Primary Energy

Tel: Rev:

NAME OF END-

Hendrina Power Station

DESCRIPTION

MANDATE TO CONCLUDE NEGOTIATIONS WITH OPTIMUM COAL

MINE FOR COAL SUPPLY TO HENDRINA POWER STATION

ENQUIRY NO.:

CORP3101

PR NO.:

USER

N/A

1. INTRODUCTION

Optimum Coal Mine ("Optimum") is currently losing money on every ton of coal it sells to Eskom as well as to the export market. Optimum have therefore already initiated a section 189 process to retrench 1300 miners and to close the export business by 31 March 2015. Optimum have agreed to continue to supply Eskom on condition that Eskom agrees to pay a higher price from 1 April 2015, which as a minimum will cover the current cost to produce coal for Eskom. Alternatively Optimum will declare bankruptcy, stop supply to Eskom and will close the mine in a matter of months.

In accordance with the mandate approved by the Board of Directors Tender Committee ("BTC") meeting on 12 August 2014, to negotiate but not conclude Coal Supply Agreement/s for up to 24 years to ensure the security of coal supply for Hendrina Power Station ("Hendrina"). This report reflects the progress to date thereof and requests noting of the feedback and a mandate to conclude negotiations with Optimum to ensure security of supply for Hendrina is requested.

The current coal supply contract with Optimum to supply 5.5 Million Tons ("Mt") per annum of coal from Optimum to Hendrina expires on 31 December 2018. The original life of Hendrina was until 2025 and has been extended to 2035.

Over the life of this Coal Supply Agreement ("CSA") there have been a number of issues relating to the interpretation and implementation of the CSA, in particular the penalty provisions for out of specification coal and failure to supply the full contract volumes. The most recent issue is the hardship arbitration initiated by Optimum against Eskom on the 28 February 2014 relating to the hardship notice issued on 3 July 2013 by Optimum.



	240-53463053
Unique Identifier	
Revision	Rev. 1
Revision Date	August 2015
Group Technology and	
Commercial	

Optimum claim, in the hardship notice, that since 2006 they have been supplying coal to Eskom at a price lower than their cost of production and have been losing money on every ton supplied to Eskom. Optimum have also indicated that they will close the entire mine if no agreement is reached on the hardship claim.

Based on the risks associated with the abovementioned Hardship Notice, PED sensitised the Eskom BTC about the said notice and was mandated by the BTC to enter into negotiations with Optimum to resolve prevalent issues in order to get assurance that Eskom could secure coal for Hendrina until and post 2018.

Noting the mandate previously granted as follows:

- Primary Energy Division ("PED") is mandated to negotiate with Optimum Coal Mine ("OCM") to ensure security of supply for the life of Hendrina Power Station ("Hendrina").
- Approval is granted for PED to issue an open market enquiry to secure coal supply to Hendrina for the period post 2018 taking into consideration the following:
 - Eskom's Emerging Miner Strategy.
 - o Eskom's Supplier Development and Localisation Requirements.
- The Divisional Executive, PED is authorised herewith, with the power to delegate further, to take all the necessary steps to give effect to the above, including the signing of any agreements, consents or other documentation necessary or related therewith.

PED now requires a mandate to conclude negotiations with Optimum, to ensure security of supply for Hendrina. Hence it is requested that the Board of Directors resolves that:

- Primary Energy Division ("PED") is mandated to conclude negotiations with Optimum Coal Mine ("Optimum") to ensure security of supply for Hendrina Power Station ("Hendrina") at R442/ton (February 2015 money values), for a CV of 23.5MJ/kg dry basis, from 1 April 2015 to 31 December 2018, and to include into this new coal supply agreement ("CSA"), the following valuable right, to be exercised by 31 December 2015;
 - PED is mandated to extend the CSA with Optimum for Hendrina from 1 January 2019 up to 31 December 2035 at a price up to R475/ton (February 2015 money values), excluding a margin of 20%, or from alternate sources, for a CV of 23.5MJ/kg dry basis.
- PED is mandated to negotiate and conclude the termination of the Optimum hardship claim in lieu of writing off the penalties that have been suspended against Optimum since 2012.



	240-53463053
Unique Identifier	
Revision	Rev. 1
Revision Date	August 2015
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- PED is mandated to negotiate with Optimum for the full Optimum reserve/resource and production for Eskom supply to Hendrina and for other Eskom power stations including but not limited to Tutuka and Arnot Power Stations, should it be possible to achieve an average cost per ton at or below R500/ton from 1 April 2015 to 31 December 2018 and at or below R527/ton from 1 January 2019 up to 31 December 2035 (February 2015 money values), excluding a margin of 15%, for the entire complex.
- PED is mandated to engage with alternate suppliers identified from the open market enquiry embarked upon as per BTC mandate to secure and develop alternative coal supply options for Hendrina for the period pre and post 2018 should the opportunity arise to reduce the delivered cost of coal to Hendrina and achieve transformation objectives.
- PED is mandated to negotiate but not to conclude with Optimum, for Eskom to take up a free carry shareholding of 10% to 15% equity and/or to engage with Optimum to facilitate the purchase of Optimum by Eskom or one of the state owned mining companies.
- The Divisional Executive, PED is authorised herewith to take all the necessary steps to give effect to the above including the signing of any agreements, consents or other documentation necessary or related therewith.

2. APPROVED MANDATE PARAMETERS AND NEGOTIATION RESULTS

The table below reflects the approved mandate parameters and the progress of negotiations are discussed below.

Approved Mandate Objectives	Results Achieved
Real Base: R296.30/ton (R14.28/GJ)	Price achieved: R442/ton (R20.66/GJ)
Aspiration Base: R190.90/ton	- NO
(R9.20/GJ)	Negotiated Savings : None
F 19	The price negotiations outcome is
Real and aspiration values based on a CV	discussed in section 3 of this report
of 20.75MJ/kg As Received (AR),	- N V
equivalent to a CV of 22.8MJ/kg on a Dry	_ n 10 N
basis	TE OBT
Conditions of contract: N/A	Negotiated Terms and Conditions: TBD
Other Mandate Objectives:	Other Negotiated Mandate Objectives:
1. PED to issue an open market enquiry to	1. RFI issued to the market and results
secure coal supply to Hendrina for the	discussed in section 2.5 of this report
period post 2018	



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Approved Negotiation Team:	Negotiation Team Participants:
1. Lead Negotiator - Johann Bester,	1. Lead Negotiator - Johann Bester,
General Manager, Fuel Sourcing	General Manager, Fuel Sourcing
2. Commercial - Ayanda Ntshanga,	2. Commercial - Ayanda Ntshanga,
Senior Manager, Fuel Sourcing	Senior Manager, Fuel Sourcing
3. Commercial - Sunjay Andhee, Chief	3. Commercial - Sunjay Andhee, Chief
Geologist, Fuel Sourcing	Geologist, Fuel Sourcing
4. Financial - Rehana Moola, Chief	4. Financial - Independent Corporate
Advisor, PED Finance	Financiers
5. Technical - Philip Mostert, Chief	5. Technical - Tshwaro Petso, Senior
Geologist, Technical Services	Geologist, Technical Services
6. Legal – Andrea Williams, Senior	6. Legal – Andrea Williams, Senior
Advisor, Legal	Advisor, Legal
7. Coal Operations - Gert Opperman,	7. Coal Operations - Gert Opperman,
Coal Supply Unit Manager, PED	Coal Supply Unit Manager, PED
	8. Hendrina Power Station - Ntombenhle
	Mkhize - Hendrina Power Station
AND THE RESERVE TO TH	Manager
	Karien Smith - Hendrina Maintenance
	Manager

PED's negotiating team for the Optimum mandate requires ratification within this approval.

2.1 Status of negotiations with Optimum after BTC mandate approval

Eskom's strategy throughout the engagements with Optimum has been to convince Optimum to trade off the current CSA for at least an additional five year CSA past the 31 December 2018 expiry date. For Eskom's benefit the team has tried to secure a cost reflective price, with the condition that Optimum grants Eskom the option to extend the current CSA until 2023.

Over the past 6-months, negotiations have not progressed as well or as quickly as desired, between Eskom and Optimum, since no agreement on the coal quality specification could be reached. Hendrina's requirement is a more stringent specification, specifically a lower ash percentage, a higher energy specification (CV of 23.45MJ/kg Dry basis) than is contracted for in the current CSA (CV of 23MJ/kg Dry basis), a lower Abrasive Index and a reduction in the proportion of fines. The parties however acknowledge that these more stringent coal quality specifications and contract extension will come at a higher cost. Optimum further claims it will cost significantly more to produce the higher specification required by Hendrina, since the volume and quality of mineable coal product as was contracted in 1993 is no longer available due to the changing geology of the area. To achieve the qualities, a reduction in annual supplied tonnages from 5.5Mt per annum to 4.5Mt per annum would be a more likely scenario, especially if the opencast portion of the mine is closed and only the underground



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mine is producing. The financial evaluation of the negotiated price with Optimum is discussed in section 3 of this report.

2.2 Coal Supply risk at Hendrina Power Station

Optimum put Eskom on terms to the effect that this matter needs to be resolved urgently failing which Optimum would reinstitute its hardship claim or declare Optimum a non-going concern.

Optimum is making provisions to shut down the export portion of the mine from 1 April 2015, resulting in job losses of around 1300 staff. The low export coal prices and associated profitability issues have been cited as the reasons for closing down the Open Cast section of the mine.

According to Venmyn Deloitte¹, "coal producers are facing low thermal coal export prices as they have fallen from highs of more than US\$118 per ton in 2011 to just over US\$60 per ton in January 2015. The low coal export prices have resulted in many junior miners experiencing liquidity challenges with several junior miners having taken on debt when commodity prices were higher and several more facing limited capital raising opportunities as a result of their low share prices. Major and mid-tier mining companies have also not emerged unscathed, with some assets struggling to remain profitable and some assets being demarcated as non-core and available for purchase. Venmyn Deloitte also states that this is a time of great unpredictability for the Southern African coal sector as a result of low export prices and limited or non-existent transport infrastructure that would allow exports. This could result in possible restructuring of the industry as a result of juniors battling to remain profitable and majors deciding to exit certain jurisdictions, sell assets that are non-core and potentially decide against coal capital expenditure programmes."

Optimum claim the open cast section of the mine is more expensive to run due to the very high stripping ratios (the amount of overburden that needs to be removed to access the coal seam, in the case of Optimum this is 7:1 and most mines operate profitably below 3:1). The underground sections will however be kept open to supply Eskom. This has a price implication for Eskom as PED is of the view that the Eskom product should be cross subsidised by the export product and hence should be supplied at marginal cost or at a subsidised price, which was the original basis for allowing the mine to convert from being a cost plus mine only supplying Eskom, to a dual product mine with more than 50% of its volume being sold to the export market. No revenue from the export portion of the mine will result in Eskom's sales having to cover the full operating costs of the mine.

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¹ Venmyn Deloitte, Southern African Coal – Black Hole or Black Gold, 19 February 2015



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Should supply from Optimum to Hendrina be reduced or stop completely, Eskom has the right to put forward a case to obtain an urgent court interdict compelling Optimum to supply coal, as contractually bound. Should Optimum reduce supply to levels well below contractual limits, Eskom has the right to implement as per the CSA, the export parity price penalties for short supply as dictated by the CSA.

Should the coal supply from Optimum be reduced or stop completely, Eskom will need to source the coal from alternate sources immediately. While there are alternate sources available, these have already been earmarked to fulfil the burn requirements at other Eskom power stations and it is unlikely that these will be available to Hendrina. Furthermore, the delivered cost of these alternate sources will in all likelihood higher than the price from Optimum, as the mine delivers coal via conveyor. Coal delivered by conveyor incurs a logistics cost in the order of R5 to R10 per ton compared to road or rail of between R150 and R180 per ton, depending on the distance and sidings used.

2.3 Logistics bottlenecks at Hendrina

PED's first preference would be to have coal delivered to Hendrina via conveyor as the current infrastructure at Hendrina is set up for this. Alternatively sourced coal will potentially be more expensive on a delivered basis due to the additional logistics portion. Additionally, the small Hendrina stockyard cannot manage an additional 4Mt per annum by road although there is currently already an amount of coal delivered by road. Should all the coal have to be trucked into Hendrina, the current logistics infrastructure will have to be modified to meet Hendrina's full burn requirements. Most importantly, Hendrina is one of two coal fired power stations in the Eskom fleet which cannot reclaim its full daily burn requirement. Hendrina's standard daily burn is 21 326 tons and with the current 7 units on load, the burn is approximately 17 000 tons per day. With 10 units on load this increases to approximately 24 000 tons per day. The current coal delivery profile is 12 600 tons per day via conveyors from Optimum and 8000 to 10 000 tons per day from imports via road. Should Optimum cease to supply to Hendrina, the following are the constraints that the power station will face:

- Coal Reclaim Infrastructure is insufficient to maintain Maximum Continuous Rating (MCR) burn requirements for an extended period.
 - Existing infrastructure can only reclaim 60% of MCR,
 - An additional feeder is on site on loan from Duvha until March 2015. With a feed capacity of ±750 t/hour.
 - No onsite blending facilities available leading to variable quality feed to the boilers
 - Stockyard space constraints when the only source of supply is reclaim to Power Station



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- ii. Coal import infrastructure is insufficient to accept and manage total daily burn through Import coal delivered via Trucks
 - Only one weighbridge system, historical maximum imports was 16 000 tons per day, once off.
- iii. Road haulage infrastructure is in a serious state of disrepair and limited throughput
 - D2274 (District Road) damaged with potholes poses a serious safety concern
 - Only one level crossing which is the point of passing the rail, only one truck can pass through at a time. This could lead to traffic congestion, limiting the number to trucks to the stockyard and hence delivered coal tonnages

One mitigation option would be to reduce load at Hendrina to the reclaim capability of 16 000 tons per day, which will place the current grid and risk of load shedding under more pressure. Hence contracting with too many suppliers could also lead to a logistical constraint from an infrastructure and number of coal delivery trucks perspective. While engaging with multiple suppliers the abovementioned constraints also need to be taken into account.

2.4 Hardship and penalties cost

Optimum have not met certain quality parameters in terms of the existing CSA and hence have outstanding penalties due to Eskom to the amount of R16M, as at the end of January 2015, and which still excludes the AI penalties from May 2014 to date. While considering the hardship claim and associated higher coal price that Optimum is requesting, Eskom has the option of negotiating the offsetting of the outstanding penalties against Optimum's hardship claim. The Optimum hardship claim can be as high as R1.2billion.

2.5 Open market enquiry results for supply post 2018

As per the BTC approved mandate, a RFI was issued to the market for coal supply to Hendrina post 2018. Twenty suppliers responded with 30 resources being offered by these suppliers. During the technical evaluation process 4 suppliers and 5 sources were not considered. 1 supplier wanted to supply petrified wood, 2 suppliers only summited EMPR documents, and 2 suppliers did not name their coal sources. The technical evaluation has indicated that 9 resources and associated suppliers have a high level of confidence with further 12 resources and associated suppliers having a medium level of confidence. A further 4 resources and associated suppliers had a low level of confidence. Two of the high confidence level and one low confidence level resources are located in Limpopo hence the logistics costs to deliver the coal to Hendrina may be high. The summary of the RFI responses is shown in the table below.



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Total supplier responses	20
Total resources offered	30
Resources not considered based on technical evaluation	5
Resources and associated suppliers with high level of confidence	9
Resources and associated suppliers with medium level of confidence	12
Resources and associated suppliers with low level of confidence	4

Figure 1 shows the indicative tonnages that High and Medium confidence sources. The strategy is to approach the evaluated suppliers from the RFI process through a closed RFP process. Through this closed RFP process, PED will negotiate with these suppliers to ensure security of coal supply to Hendrina for the duration of its life post 2018. Key assumptions are that suitable Black Owned Emerging Miners will be identified and developed timeously to utilise this restructuring opportunity to effectively supply Eskom.

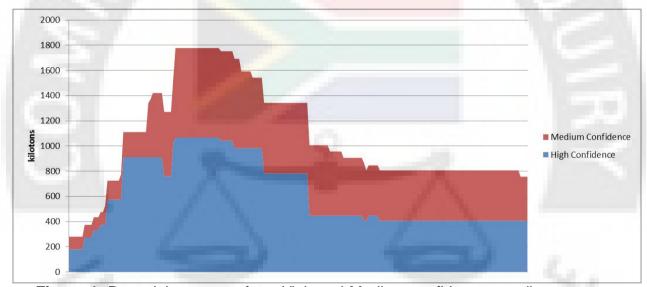


Figure 1: Potential tonnages from High and Medium confidence suppliers

3. FINANCIAL EVALUATION OF NEGOTIATED CONTRACT PRICE

Figure 2 shows the R/ton price and as received ("AR") CV of the various PED contracts. The previous Optimum proposal as indicated in the approved mandate submission and PED's real and aspirational base are also plotted against the contract prices along with Optimum's current offer. A summary of the real and aspiration base that PED was intending to negotiate with Optimum and as submitted in the previous approved mandate, as well as the price achieved, is shown in the table below.



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	R/ton	R/GJ	CV (MJ/kg, AR)	CV (MJ/kg, Dry Basis)
Price Achieved	442	20.66	21.39	23.5
Approved Real Base	296.30	14.28	20.75	22.8
Approved Aspirational Base	190.90	9.20	20.75	22.8

PED had intended to negotiate a real base of R296.30/ton with Optimum based on the fact that the Eskom product should be cross subsidised by the export product and hence should be supplied at marginal cost or at a subsidised price, which was the original basis for allowing the mine to convert from being a cost plus mine only supplying Eskom, to a dual product mine with more than 50% of its volume being sold to the export market. According to Optimum the price required to cover costs to break even to meet the current CSA qualities (except for AI and sizing) on the Eskom contract needs to increase significantly. Eskom's assessments of Optimum's proposed costs indicate that if agreed to will cost Eskom R5.5billion, at 5.5Mt per annum, for the remainder of the current CSA.

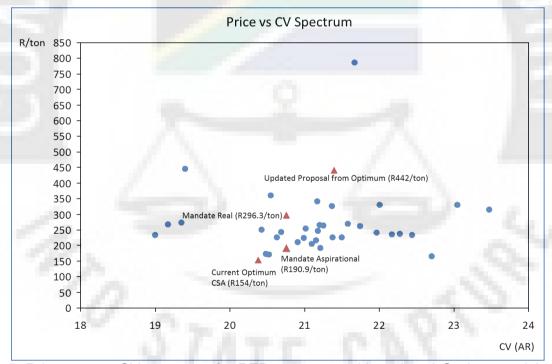


Figure 2: Price versus CV spectrum for PED contracts with updated Optimum pricing

The proposed pricing from Optimum is shown in the following table. Note that the R404/ton for the lower CV of 22.7MJ/kg Dry basis coal is what Optimum has suggested it can supply Eskom, which does not meet the current CSA CV specification of 23MJ/kg Dry basis coal,



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which contractually should be supplied to Eskom at R154.40/ton. The proportion of washed/export grade coal needs to be increased and therefore the pricing will increase with higher CV. As the ash requirements set by Hendrina are lowered, the price increases even further to accommodate the lower ash percentage.

Minimum CV Spec (Dry basis) (MJ/kg)	Minimum Ash Spec (Dry basis) (%)	Indicative Cost per ton - 2015 to 2018	Indicative Cost per ton - 2019 to 2023	Load losses (MW)
23.5	27.6	R442.00	R475.00 [#]	66
23.0	28.8	R421.00	R446.00	133
22.7	29.6	R404.00	R429.00	
23.0*	28.8	R154.40*		133

^{*}Current CSA Specification and price #Excludes a margin of 20%

An analysis conducted by Hendrina has indicated that at a CV of 23MJ/kg, the total load losses, taking into account the turbine de-rating, due to the lower quality specification will be 133MW. If the CV is increased to 23.45MJ/kg, units 1 to 7 at Hendrina can run without incurring load losses and comply with Fossil Fuel Fired Regulations ("FFFR"). However due to a difference in design, units 8, 9 and 10 will still incur a total load loss of 66MW (22MW per unit) in order to comply with FFFR. Hence for the higher CV of 23.45MJ/kg, only units 8, 9 and 10 require a de-rating.

PED engaged the services of Independent Corporate Finance advisors (Nedbank Capital and Basis Points) to conduct the financial due diligence on Optimum's costs mentioned above. The price offer for the coal that meets Hendrina's higher CV specification is R442/ton until 2018, which Optimum has indicated does not include a margin and this has been verified by the independent financial advisers. The price post 2018 is R475/ton which excludes a margin of 20%.

The conclusion from the Independent Corporate Finance advisors was that, based on mining and beneficiation costs for the coal quality specification and ash requirements at Hendrina, the price of R442/ton offered by Optimum for a CV of 23.5MJ/kg Dry basis is cost reflective and they are in agreement with how the costs have been allocated to produce the coal for Eskom. In comparison, PED's approved mandate was to negotiate a real base of R296.30/ton (August 2014 money values) for a CV of 22.8MJ/kg on a Dry basis.

PED will aim to negotiate the annual escalation of R442/ton offered by Optimum for a CV of 23.5MJ/kg Dry basis based on the proposed escalation basket shown in the table below. This is the basket that PED currently utilises for the medium term contracts. The escalation basket components will be reviewed on a three yearly basis if the need arises. The final agreed escalation basket and indices will depend on the outcome of interactions with Optimum.



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Labour	SEIFSA index of actual wage rates
Diesel	Diesel DME 0.05% Sulphur Reef
Electricity	Electricity Stats SA
Mining Machinery	Mining Machinery Stats SA
Overheads	CPI Headline (P0141)
Profit & Capital Recovery	CPI Headline (P0141)
Fixed	A fixed portion that doesn't escalate

3.1 Option for additional coal from Optimum for other Eskom power stations

Optimum is making provisions to shut down the open cast export portion of the mine. This would mean that the open cast resources will not be mined in the foreseeable future. Eskom has the option of engaging with Optimum to dedicate this portion of the mine in addition to the current underground resources. Taking up this option would mean that the production from the mine will stay at 10.8Mt per annum of saleable product (run of mine tons is close to 15Mt per annum) rather than reducing to 4.5Mt per annum if only the underground section stayed open. Optimum has beneficiation facilities on site which could be utilised to beneficiate the coal to meet the coal quality specifications at the various Eskom power stations including Tutuka. Potentially, the increased volume output from Optimum could improve inconsistency concerns at Tutuka. Based on initial discussions, Optimum have indicated that they would be able to supply Eskom 10.8Mt per annum at an indicative cost of R500/ton from 2015 to 2018 and R527/ton from 2019 to 2023, excluding a margin of 15%, for a minimum specification ash % of 25. If Eskom were to pursue the option of facilitating the purchase of the mine by Eskom or one of the state owned mining companies, Optimum have indicated they would consider a price of R3.5bn as the mine has a total resource of 630Mt in situ with 150Mt run of mine extractable reserves. PED is considering taking this coal to Tutuka Power Station ("Tutuka") to reduce load losses at Tutuka. Optimum has rail infrastructure and can load coal onto rail and Tutuka can offload containers. Eskom taking coal from Optimum will save 1300 jobs at the Optimum opencast mine.



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4. RECOMMENDATION

Noting that Optimum would be in breach of the CSA between the parties if they close the mine as threatened and are aware of this potential breach, the PED negotiation team recommends that Eskom concludes the negotiations with Optimum at R442/ton (February 2015 money values) for a CV of 23.5MJ/kg Dry basis until 31 December 2018. Eskom has the option of merely enforcing the current contract until 2018 but there are associated risks with this approach. If Optimum shuts down and coal has to be sourced from alternate parties, there is a high risk that Hendrina will have to be de-rated due to the logistics constraints discussed in section 2.3. Furthermore, the delivered cost of these alternate sources will in all likelihood be higher than the price from Optimum, as the mine delivers coal via conveyor. Eskom's assessments of Optimum's proposed costs indicate that if agreed to will cost Eskom R5.5billion, at 5.5Mt per annum, for the remainder of the current CSA. This will increase even further if coal is trucked in from alternate sources. Hence PED recommends negotiating with Optimum for the entire open cast and underground resources. This will enable Eskom to meet Hendrina's burn requirement as well as secure additional coal for alternate Eskom power stations like Tutuka.

In parallel to this, PED will approach the evaluated suppliers from the RFI process through a closed RFP process. Through this closed RFP process, PED will negotiate with these suppliers, along with Optimum, to ensure security of coal supply to Hendrina for the duration of its life post 2018.

Name: Johann Bester
Designation: General Manager: Fuel
Sourcing (Primary Energy Division)

Date:

Name: Edwin Mabelane

Designation: Group Executive (Acting): Group Technology and

Commercial

Date:

Name: Vusi Mboweni

Designation: **Divisional Executive** (Acting): Primary Energy Division

Date:

Annexure GJ015



Rohan R. Hiles

From: Gert Opperman < OppermGJ@eskom.co.za>

Monday, 06 October 2014 15:37 Sent:

To: Johann Bester

Cc: Ayanda Ntshanga; Sunjay Andhee; Andrea Williams

Subject: OCM penalty waiver

Attachments: Optimum short supply notifications

Hallo Johann,

In support/clarification of my previous email I ask...

Are we clear that we're in-line with the current way of not reducing payment based on inferior qualities supplied from OCM to Hendrina PS, as well as waiving our short supply claim whilst in the process of negotiating with Glencore on the longer term contract?

This is my first direct exposure to these type of negotiations and I need to get it off my chest. If feels to me that we are bending over backwards to accommodate a dying mine, whilst we are bleeding ourselves, just to find ourselves in great trouble later.

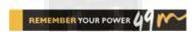
Kind Regards

Gert Opperman CSUM (Arnot/Hendrina & Glencore) 011 800 6146 086 537 4699

082 870 4989







Rohan R. Hiles

From: Gert Opperman < OppermGJ@eskom.co.za>

Sent: Monday, 29 September 2014 08:28

To: Johann Bester

Cc: Ayanda Ntshanga; Andrea Williams; Vuyisile Ncube

Subject: Optimum short supply notifications

Hallo Johann,

During the Monthly Technical meeting on Thursday Optimum indicated that they commit to supply not less than 420kT/month for the remaining three months of the year.

Since June 2014, when the negotiations commenced with OCM, no short supply notifications were send to OCM since talks were that these volumes will be cancelled.

Considering OCM's most recent proposal to now reduce the monthly volumes to 420kT/mnth for the remainder of 2014 I propose that we formalise our understanding and application of the waiver.

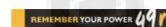
My proposal is that we insist that the shortfall volumes be supplied under the existing contract provisions. Thus, once a "new" agreement is signed the shortfall volumes will first be supplied where after the new contract volumes will take effect. This could be a provision in the interim agreement.

Kind Regards

Gert Opperman CSUM (Arnot/Hendrina & Glencore) 011 800 6146 086 537 4699 082 870 4989







Annexure GJ016





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

23 June 2015

Dear Sirs

HENDRINA COAL SUPPLY AGREEMENT: REINSTATEMENT OF HARDSHIP ARBITRATION

We refer to your letter dated 10 June 2015, which we received on 22 June 2015.

We will respond in due course to the substance of your letter, but in light of your termination of the Settlement Process (as defined in Co-Operation Agreement), we wish to advise that in accordance with the provisions of clause 5.2.4 of the Co-Operation Agreement, we hereby immediately reinstate the Hardship Arbitration initiated by Optimum Mine and Optimum Holdings against Eskom, by way of their statement of claim dated 28 February 2014.

Our legal representatives will shortly contact your legal representatives and the duly appointed arbitrator, in order, inter alia, to agree a new procedural timetable and hearing date for the arbitration. We note that in terms of Co-Operation Agreement you have an obligation to meet us as soon as possible to agree such new timetable and hearing date.

All our rights remain, in the interim, fully reserved.

Yours faithfully

Clinton Ephron

on behalf of

Optimum Coal Mine (Proprietary) Limited

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: 23 Melrose Boulevard, 1st Floor, 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

Annexure GJ017





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	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	 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

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: 23 Melrose Boulevard, 1st Floor, 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



	7.00					
	free); excluding VAT, for a CV of 23 megajoules/kg (Moisture free).					
Escalation	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	To be agreed between Eskom and Optimum					
Quantity	 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 					
0.00	 aggregate) ("Replacement Quantity") during the period commencing or 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 					

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: 23 Melrose Boulevard, 1st Floor, 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



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 Ephror

on behalf of

Optimum Coal Mine (Proprietary) Limited

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

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

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

Annexure GJO18



			GLENCORE CALC	CALCULATED AT THE TIME OF INVOICE				
MONTH	INVOICED AMOUNT	AMOUNT PAID	OCM PENALTY	PENALTY FOR ASH/CV/VOLS	PENALTY FOR SIZING			
Feb-12			202 318,35		-55 000 000,00			
Mar-12			1 620 204,91		-55 000 000,00			
Apr-12	55 604 858,73	51 474 152,57	1 616 650,17	4 130 706,15	-51 233 660,65			
May-12	60 538 085,22	57 776 114,71	1 893 560,95	2 761 970,51	-60 601 021,22			
Jun-12	56 115 331,72	54 091 646,07	322 930,58	2 023 685,65	-56 129 006,56			
Jul-12	62 724 542,82	59 105 352,66	158 077,92	3 619 190,16	-62 545 284,28			
Aug-12	65 433 641,09	60 369 254,75	790 316,57	5 064 386,34	-64 939 300,90			
Sep-12	60 843 693,66	55 917 997,66	-	4 925 696,00	-60 398 734,66			
Oct-12	65 554 781,30	60 333 228,30	-	5 221 553,00	-65 083 096,30			
Nov-12	51 880 298,50	48 389 255,50	-	3 491 043,00	-51 508 636,58			
Dec-12	59 078 595,66	56 151 152,66	174 553,07	2 927 443,00	-58 641 073,66			
Jan-13	57 149 101,02	53 110 319,02	1 360 090,30	4 038 782,00	-56 738 724,02			
Feb-13	62 760 512,88	58 431 932,88		4 328 580,00	-69 573 780,64			
Mar-13	66 046 230,46	62 941 318,46	-	3 104 912,00	-65 592 896,46			
Apr-13	57 586 190,40	53 833 074,40	174 716,21	3 753 116,00	-58 757 437,08			
May-13	58 260 081,88	54 295 708,88	179 534,46	3 964 373,00				
Jun-13	69 906 236,40	63 749 563,40	-	6 156 673,00	-69 468 227,40			
Jul-13	65 866 250,00	59 616 916,00		6 249 334,00	-65 412 000,00			
Aug-13	60 161 143,77	54 369 814,77	1 337 685,88	5 791 329,00	-59 729 044,77			
Sep-13	60 218 376,68	50 406 714,83	771 863,90	9 811 661,85	-59 825 203,68			
Oct-13	66 602 472,08	60 686 825,43	-	5 915 646,65				
Nov-13	53 734 648,60	47 644 725,70	-	6 089 922,90	-53 310 036,60			
Dec-13	56 142 119,65	48 276 039,29	-	7 866 080,36	-55 761 828,60			
Jan-14	54 328 514,32	44 708 979,37	-	9 619 534,95	-53 964 918,32			
Feb-14	54 239 624,86	43 894 122,25	191 161,76	10 345 502,61	-53 876 550,86			
Mar-14	69 799 378,16		-	11 710 326,48	-69 369 265,99			
Apr-14	73 530 604,98	59 317 443,51	294 186,80	14 213 161,47	-73 047 898,98			
May-14	67 346 005,58	59 624 538,53	-	7 721 467,05	-66 916 338,58			
Jun-14	59 008 486,68	59 008 486,68	-	-	-58 613 754,68			
Jul-14	64 051 306,76	64 051 306,76	-	-	-63 624 049,76			
Aug-14	70 451 681,30	70 451 681,30		-	-70 003 800,30			
Sep-14	66 380 353,20	66 380 353,20	2 549 607,52	-	-65 986 918,20			
Oct-14	77 827 483,70	77 827 483,70	196 233,40	-	-77 325 273,70			
Nov-14	68 382 066,65	68 382 066,65	-	-	-67 957 830,72			
Dec-14	61 954 964,45			-	-61 576 462,54			
Jan-15	58 948 784,15	58 948 784,15		-	-58 582 233,57			
Feb-15	49 304 583,98	49 304 583,98		-	-48 998 028,30			
TOTAL			13 833 692,75	154 846 077,14				

Estimated amount Estimated amount

on 23 April OCM wrote RE unability to meet the sizing spec

Total sizing penalty from 01 April`12 to 23 April`13 with Feb & March`12 assumed

Total penalty for sizing and chemical if OCM agrees to sizing penalty

BALANCE DUE TO ESKOM AFTER DEDUCTING R154m ALREADY DEDUCTED

BALANCE DUE TO OCM SHOULD THEY NOT AGREE TO SIZING PENALTY

141 012 384,39

-723 662 893,31

Annexure GJO19





. 1

MEMORANDUM

To:

Mr Matshela Koko

Reference: 724551

Group Executive: Generation

Version: 01

From:

Mr Vusi Mboweni

Senior General Manager: Primary Energy

Date:

29 October 2015

SUBJECT:

REQUEST FOR CONTINUATION OF SUPPLY FROM OPTIMUM

COAL MINE UNTIL 30 NOVEMBER 2015

PURPOSE:

1. The aim of this memorandum is:

2. To request the Group Executive Generation to approve the continuation of supply of coal from the Optimum Coal Mine (OCM) until 30 November 2015.

BACKGROUND:

- 3. On 4 September 2015, after engagements with the Eskom Holdings CE and other executives, supply to Hendrina was restored through an interim supply arrangement. The interim arrangement lapses on the 31st October 2015.
- 4. The Business Rescue Practitioner has requested (see attached letter from Werksmans) an extension of this interim agreement to the 30 November 2015 to allow for further engagement in order to produce a Business Rescue Plan.

DISCUSSION:

- 5. A letter has been drafted to accept the request for the extension on similar terms as the previous interim agreement (see letter attached). The letter will be sent by Cliffe Dekker Hofmeyer.
- 6. The terms and conditions for supply will remain the same as the interim agreement and are outlined below:

Primary Energy Division
Megawatt Park Maxwell Drive Sunninghill Sandton
PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 3036 Fax +27 11 86 667 5421 www.eskom.co.za
Eskom Holdings SOC Ltd Reg No 2002/015527/30

M H M

- a) coal price as per the Coal Supply Agreement (CSA);
- b) 458 333 thousand tons per month;
- c) at the qualities in terms of the 1993 Coal Supply Agreement and addenda thereto, save for the relaxation of the sizing specification as recorded herein for convenience:

No	Quality	Parameter
1.1.1	Calorific Value	As per the CSA
1.1.2	Ash	As per the CSA
1.1.3	Moisture	As per the CSA
1.1.4	Abrasive Index	As per the CSA
1.1.5	Volatiles	As per the CSA
1.1.6	Sizing	
	<6mm	not more than 55% of coal supplied will be smaller
		than 6mm;
	<2.38mm	not more than 35% of coal supplied will be smaller
		than 2.38mm; and
77.	<0.81mm	not more than 20% of coal supplied will be smaller
		than 0.81mm.

- d) Eskom will suspend the imposition of penalties in terms of coal supplied that does not meet the quality specification on the monthly payment to OCM. However, Eskom will continue to provide OCm with the required notices for non-compliance.
- e) Eskom shall make payment on a weekly basis for coal supplied in the preceding 7 days.

FINANCIAL IMPLICATIONS:

7. Not applicable

BUDGET IMPLICATIONS:

8. Not applicable

RECOMMENDATION:

9. It is recommended that the Group Executive Generation approves the continuation of supply from OCM until 30 November 2015.

Requested by:

Ayanda Nteta

Acting General Manager Fuel Sourcing

Date: 21 · 10 · 15

Supported by

Manager Legal

Supported by:

Senior General Manager Primary Energy Date: 2018 10 25

Approved by:

Group Executive Generation
Date: 1/4/1/5

Annexure GJO20





Economic assessment of matters relating to the coal supply arrangements from Optimum Coal Mine (Pty)Ltd and Optimum Coal Holdings (Pty)Ltd (both in business rescue) to the Eskom

Part One: Coal Market Review and Assessment of **Glencore Strategy**

14 October 2015

Dr Grové Steyn

grove.steyn@meridianeconomics.co.za

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1 Introduction

Eskom is currently negotiating with the business rescue practitioners of Optimum Coal (OCM) in order to secure the continued supply of coal to Eskom from the mine. This report is part of the deliverables of a study, commissioned by Cliffe Dekker Hofmeyr on behalf of Eskom, aimed at gaining an understanding of the economics of the supply arrangements that it might consider during the negotiation process with the OCM business rescue practitioners.

1.1 Background

OCM was established in 1968 after receiving a contract to supply the state-owned Hendrina power station with 6.5m tonnes annually. As a "tied" or "cost-plus" mine, Optimum received coal prices that were a fixed percentage above its operating costs, and Eskom contributed to the capital costs of the mine's development. After receiving permission to convert to a dual-product mine, a coal supply agreement (CSA) was signed in 1993, committing Optimum to delivering 5.5m tonnes a year to Hendrina until 2018 for a base price (escalated by an agreed mechanism) that was lower than the cost of production in order to enable Eskom to share in the benefit from exporting coal at (what was then) lucrative prices. After a renegotiation the base price was restated in 2011.

More recently, Optimum Coal Holdings, owner of the Optimum Coal Mine (OCM), was acquired by the Swiss-based commodity trader and mining group Glencore and a BEE partner in 2012, and delisted from the JSE stock exchange in a transaction that valued the company at R8.5bn.

OCM operates as a multi-product coal mining operation consisting of an opencast mine and underground mine intended to supply coal to both the export market and Eskom¹. The opencast mine of OCM (from which it mined coal for the export market) has been closed and placed into care and maintenance during February 2015. The underground mine is still being mined to, amongst others, comply with its obligations in terms of its mining right in terms of the MPRDA and supply coal to the Hendrina Power-station on an interim basis and on similar terms of the suspended Coal Supply Agreement ("CSA"). The period of the interim arrangement commenced on 4 September 2015 and lapses on the 30th October 2015.

OCM alleges that the reason it closed the opencast mining operation is, amongst others, due to market conditions. Furthermore, OCM was placed under business rescue more recently as it allegedly cannot sustain the supply of coal to Eskom on the terms of the current CSA.

1.2 Scope of Work

In order for Eskom to properly consider its position and the legitimacy of the position OCM alleges, it was deemed imperative to conduct a review of the current mining operations of OCM to, amongst others, provide Eskom with an independent technical and economic review of OCM operations (closed and operational). The objective was to enable Eskom to obtain a view on the viability of the current operating cost structure of the OCM mine in order to ascertain whether it is possible for OCM to comply with the terms and conditions of the CSA and identify the scenarios under which the mine is or can optimally conduct its operations, either open-cast, underground or a combination thereof.

The scope of the work for the economists appointed as part of the team, Meridian Economics, is as follows:

-

¹ Most of the information in this section was taken from the Scope of Work letter provided to Meridian Economics, dated 22 September 2015.

- 1. Review the past, present and future market conditions that influence the export of coal by Optimum and the Glencore Group;
- 2. Consider possible Glencore strategy decisions relating to coal supplies to Hendrina power station:
 - a. to the extent possible, determine whether Glencore has utilised the Optimum RBCT capacity to export coal from other mines; and if so, whether this is justifiable on the basis of cost-economics.
 - b. If the closure of the Optimum open cast export mine does not appear to be justified on the basis of cost-economics, consider whether it might be part of a Glencore strategy to force higher payments for its Eskom coal supplies.
- 3. Assess the economics of the Optimum operations (both open cast and underground mines) to assess the conditions under which it would be possible for a reasonably efficient miner to produce coal on a financially sustainable basis;

The remainder of this report addresses the first two points of the Scope of Work, while the third part is being delivered in the form of a spread sheet based economic model and associated report on the findings of the coal supply economics.

The project was delivered on short notice and exceedingly tight timeframes. The third part of the scope of work relied on a dependency on a mining costing model developed by SRK Consulting.

2 Coal market review

This section analyses the historic and future outlook for export coal as it pertains to South African producers. The characteristics and drivers of the domestic export industry are considered against the backdrop of shifting international market forces. Demand dynamics from key importing markets are evaluated, as well as supply factors from competitor countries. We also present differing analyst views on the prospects for export coal prices.

2.1 SA's place in the global coal market

In 2012, South African coal was exported to 34 countries. A total of 76Mt coal, valued at R52.2 billion, was exported, largely to consumers in the Far East (63.5%), EU (26.9%), Middle East (6.8%), Africa (2.4%) and America (0.4%) (XMP Consulting, 2013).

As can be seen in the below graph, the destination for South African coal has changed dramatically over the past decade or so, with a large shift away from Europe towards the Asian market, in particular China and India.

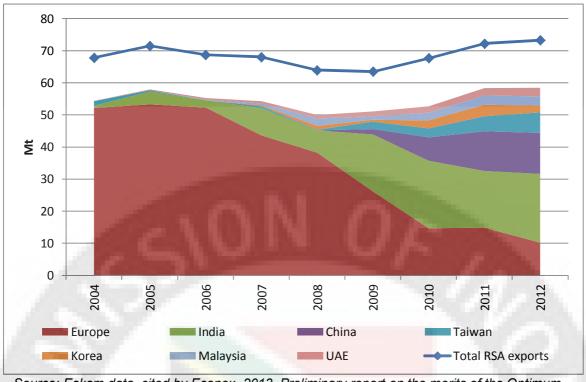


Figure 1: South African coal exports by destination, 2004-2012

Source: Eskom data, cited by Econex, 2013, Preliminary report on the merits of the Optimum

Coal Mine Hardship claim

This shift has been accompanied by a change in the grade of coal being exported from the Richards Bay Terminal, with an increase in exports of lower grade RB3 coal (5500 kcal NAR) to developing countries for thermal power generation. Indian coal-fired power stations have been designed for a lower-quality coal, similar to the type of coal used by some of Eskom's power stations. In addition, Chinese power stations have also been designed to use lower-quality coal as a result of the fact that their primary coal source has historically been Indonesia, which supplies a lower grade of coal (Coal report, 2015). This brings exports into competition with Eskom's requirements for some of its older power stations. The expansion of coal-powered generation in developing markets has been a key driver of the "sea-borne" thermal coal market in recent years, a theme which will be returned to below.

RB3 coal sells for a discount relative to RB1 coal (6000 kcal NAR). The typical price spread between the two grades of coal is shown below.

70 (\$/mt)

— RB 6,000 NAR
— RB 5,500 NAR

60

55

Jan-15 Feb-15 Mar-15 Apr-15 May-15 Jun-15 Jul-15

Figure 2: Spread between Richards Bay FOB 6,000 NAR and 5,500 NAR spot prices

Source: Platts, cited at http://www.africoalenergyreview.com, Accessed 30 September 2015

According to the International Energy Agency (IEA), SA accounted for only 3.3% of global coal production in 2013, with China producing 45% and India 7.8%. In terms of coal exports SA provided 5.5% of global exports, while Indonesia dominates world exports with 34% of export supply, followed by Australia at 27% (IEA, 2013, 2014 Key world energy statistics).

The following graph shows the top 10 thermal coal producers in the world, alongside the top thermal coal exporters.

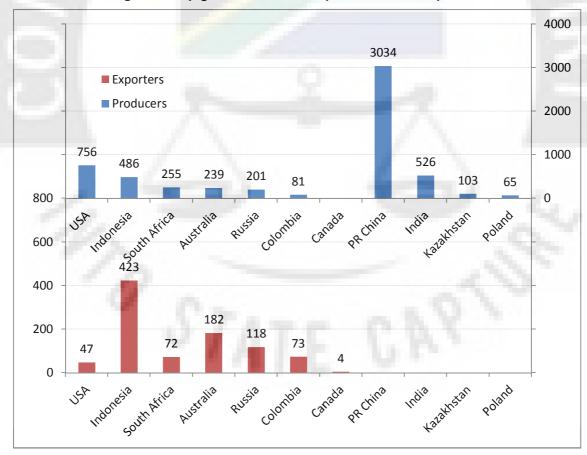


Figure 3: Top global thermal coal producers and exporters

Data sourced from www.worldcoal.org/resources/coal-statistics/, Accessed 1 October 2015

While SA plays a larger role in the *thermal* coal export market (8%), it is important to note that some of our major new export destinations are also much larger producers of thermal coal. As their domestic energy efficiency improves, particularly with regard to thermal coal generation, more costly imported supplies will be the first to fall away. The transport costs associated with export coal are particularly at risk to rising transport fuel costs. These trends will be discussed in more detail below.

2.2 Historic global coal price and demand

Global coal consumption rose steadily from around 2000, with consumption exceeding production in terms of million tonnes of coal equivalent (Mtoe) from 2001. Prices rose steadily as a result, and many new coal prospects were developed to meet the rapidly increasing demand. However, the financial downturn in 2008, followed by many new mines coming on stream at the same time, has resulted in a global over-supply that continues to today. This period has also seen a much greater gap in the price between coking and thermal coal, with thermal coal price volatility being less than coking coal. Since 2014 this gap appears to be returning to the levels seen prior to the rapid growth of the first decade of this century.

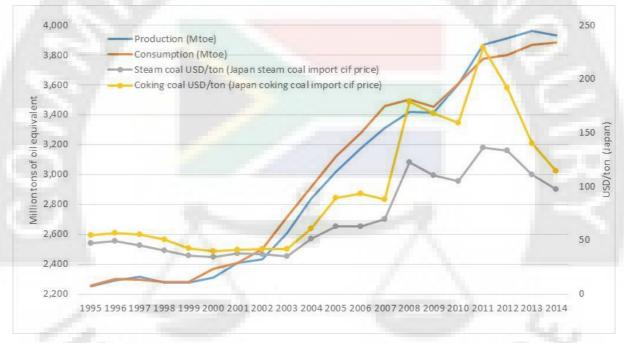


Figure 4: Global coal production and demand, vs coal price trends

Source: Data from BP Statistical Review of World Energy 2015, http://www.bp.com/en/global/corporate/about-bp/energy-economics/statistical-review-of-world-energy/statistical-review-downloads.html

Over the same period, the price has also been affected by the rand / dollar exchange rate. The following figure shows how the depreciation of the rand has helped to stabilise prices in rand terms over the past few years. This, together with low transport fuel costs, has most likely enabled producers to continue exporting amid very low dollar coal prices, but it is uncertain how long they can sustain these price levels.

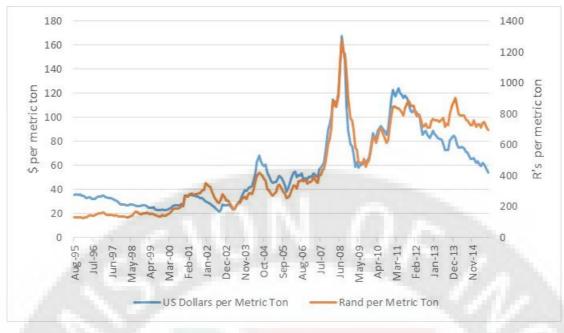


Figure 5: South African export coal price, in USD and ZAR per metric ton

Source: http://www.indexmundi.com, Accessed 30 September 2015

2.3 Underlying coal market dynamics, by region

Following the sustained high growth rates of the Chinese economy, and continued demand growth from India, many coal mines were developed with the anticipation of continued growth in global demand. New capacity was constantly added, and initially each additional tonne was consumed. However several factors have contributed to a tapering off of global demand, including the slowdown of the Chinese economy, and the shift away from coal in both the US and EU markets.

Following the brief price recovery up to 2011, coal prices have continued to fall as global oversupply persists. The current oversupply is the result of increased output growth coupled with weakening demand in China and other emerging markets. The supply response to the drop in demand has been delayed because of limitations to changing infrastructure supply services, the of the US dollar relative to the currencies of other major producers, and lower transport energy prices.

Amid persistent low prices, producers have been attempting to lower costs, but the resulting efficiencies have in turn put more coal on the market, increasing supply and driving prices lower.

Another possible way to stabilise coal prices is to reduce or cease production from unprofitable mines, and focus on those with lower production costs and mines closest to market. However, this isn't possible with 'take or pay' rail transport contracts. Given large financial commitments to pay for investments, many producers now operate at negative margins. The IEA observed in December 2014 that expansions would continue in the medium term, despite low prices, as many projects in different phases of development are ready to start or ramp up production.

The dynamics in the main coal markets are briefly discussed below.

2.3.1 China

While growth in the Chinese market is expected to continue in overall terms, a return of the rapid growth rates seen in the previous decade appears unlikely.

The local Chinese coal market itself is over-supplied, and the resultant price reduction by local producers to protect their market share has had a strong impact on the international market for coal, which was also oversupplied as producers globally had expanded operations to take advantage of high coal prices (IEA, 2014 Medium–Term Coal Market Report). The Chinese government's surprise decision to devalue the yuan in August 2015 is expected to support local producers.

Domestic pollution measures have also had significant implications. In response to severe air pollution, there have been cuts in coal generation in Chinese coastal regions, as well as restrictions on the quality of coal imports. New policies and regulations have been introduced² to restrict coal use in coastal China, to upgrade the nation's coal-fired power generation fleet, and to accelerate the increase of alternative energy technologies. The new "Action Plan for Upgrading and Rebuilding Coal-fired Power Generating Units to Conserve Energy and Reduce Pollution" introduces strict standards for existing and new coal-fired power plants, and requires the adoption of advanced coal technologies³. Another "Action Plan For Clean And Highly Efficient Utilisation Of Coal 2015-2020" aims to reduce coal consumption in absolute terms in the industrial sector.

A new report released by Natural Resources Defense Council's China Coal Cap Project⁵ explores how coal consumption could be reduced in a number of sectors. It outlines a scenario in which the total coal consumption of these coal-intensive industries can peak by 2020 - 10 years earlier than without coal cap policies - and set the country on a path to reduce its coal consumption by nearly half by 2050.

China's Energy Development Strategy Action Plan (2014-2020) sets binding caps - at absolute levels for the first time - on annual primary energy and coal consumption until 2020. It also specifies targets for reducing coal's share of primary energy consumption to 62% and for increasing non-fossil fuel energy's share to 15% by 2020 and to 20% by 2030.⁶

In September 2015, the EIA⁷ concluded that the rate of growth in Chinese demand for coal was slowing. The economic slow-down, industry restructuring, and new energy and environmental policies have all contributed to the slower growth of coal consumption in China. There is also a shift to more centralised and cleaner uses of coal. After nearly a decade of rapid growth, energy-based consumption of coal, which currently supplies two-thirds of China's overall energy use, grew by only 1% to 2% in 2012 and 2013 and was essentially flat in 2014. McQuarrie further reports that "UHV power lines from north west could displace 90mtpa of coal demand in the contestable domestic market by 2017".

7

The China Council for International Cooperation on Environment and Development, http://www.cciced.net/encciced/newscenter/latestnews/; http://www.cciced.net/encciced/policyresearch/impact/201504/P020150413373426638425.pdf

³ http://english.mep.gov.cn/News_service/infocus/201409/t20140928_289668.htm

⁴ http://en.xinfinance.com/html/Industries/Energy/2015/88898.shtml

⁵ http://www.nrdc.cn/coalcap/index.php/English/index

⁶ http://news.xinhuanet.com/english/china/2014-11/19/c 133801014.htm

⁷ http://www.eia.gov/todayinenergy/detail.cfm?id=22972

⁸ https://www.macquarieresearch.com/rp/d/r/publmageViewer.do?d= OTY5NTc1

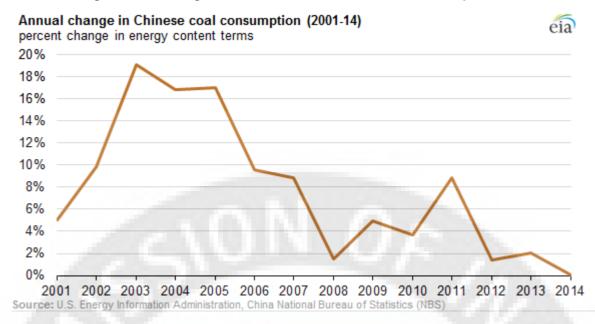


Figure 6: Declining annual increase in Chinese coal consumption

The EIA (2015) also observed that the structure of the Chinese economy appeared to be shifting as the country continues its rapid development. In 2013, the service sector share (47%) of GDP surpassed the industry sector (44%) for the first time in Chinese history. The service sector share increased to 48% in 2014, already exceeding the Chinese government's goal of 47% for 2015. Policies to accelerate the development of service industries are likely to sustain the transition away from industry, especially heavy manufacturing. As heavy manufacturing becomes less prominent, growth in coal consumption is expected to weaken.

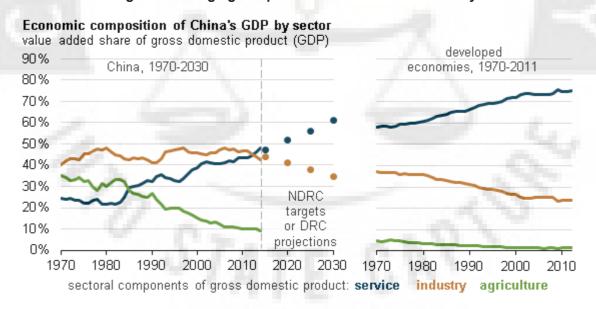


Figure 7: Changing composition of the Chinese economy

May 2015 saw the release of the Made in China 2025 plan, which signals China's intent to modernise manufacturing and further improve energy efficiency. Already, demand from coal-intensive industries such as steel, cement and fertiliser production is not only impacted by lower economic growth, but also, perhaps more significantly, by increasingly energy-efficient

processes. The plan could accelerate reductions in energy intensity and changes in energy consumption patterns, if successfully implemented.

Chinese coal use is likely to be concentrated in large, more efficient energy conversion facilities, mainly power and heat generation plants, as scattered, inefficient, and highly polluting small coal boilers are phased out. Coal burned directly at less efficient industrial facilities accounts for more than 20% of the coal consumption in China (compared with less than 5% in the United States currently), suggesting significant potential for reduction.

2.3.2 India

India is the largest importer of coal after China and, as referenced previously, an important destination for SA's thermal coal. While India aims to diversify its energy supply, the current indication is that it still plans to rely heavily on coal for electricity supply in the future. However, while demand is increasing, the risk to the export market is that the current Indian government intends to ramp up domestic coal production in coming years, to reduce its costs. The logistical obstacles to getting this domestic coal to market have not yet been overcome, so there will continue to be a demand for imported thermal coal over the short to medium term.

The possible volatility in import requirements is substantial, given considerable uncertainty over both domestic supply and demand. The uncertainty in the import market for coal is driven in part by the fact that India is largely self-sufficient in thermal coal, and its imports account for only about 20% of its demand. While this does present substantial risk, India is expected to be the main source of growth in the seaborne coal market, overtaking China in terms of demand for export coal.

The key variables affecting the export coal market will be the alignment between the growth in domestic demand for power generation, and the ability of the local market to increase production and deliver to market. BP currently projects that India will become increasingly dependent on imported coal in the period up to 2035, despite local supply sources and increases in non-fossil fuel electricity production.¹¹

cru/cruinsight/Thermal coal price outlook dependent on Indian import demand

⁹ http://www.latimes.com/world/asia/la-fg-india-climate-plan-20151002-story.html

¹⁰http://www.crugroup.com/about-

¹¹ http://www.bp.com/content/dam/bp/pdf/Energy-economics/Energy-Outlook/Country_insights_India_2035.pdf

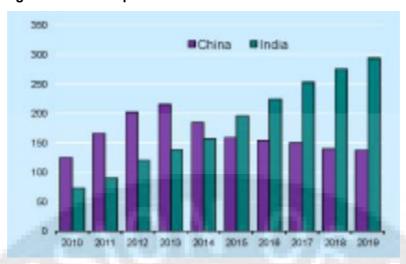


Figure 8: Indian import demand set to exceed Chinese demand

Source: CRN group, http://www.crugroup.com/about-cru/cruinsight/Thermal coal price outlook dependent on Indian import demand Accessed 3 October 2015

A June 2015 Australian report on the Indian coal market¹² notes that while Indonesia's lower grade and lower cost had helped to make it more attractive and easier to substitute into India's generator fleet (which has also resulted in higher South African RB3 exports), the move to build generators that employ supercritical technology, which are run more optimally on higher grade coals, could affect this trend in future.

Although subcritical technology is relatively low cost compared with other available technologies, it uses more coal and generates more CO₂ emissions. From 2017, all new coal-fired projects developed in India are required to use supercritical technology or better. The increased use of advanced coal-fired generation technologies will require high-quality coal that is not available in large quantities in India, and could signal a shift back to demand for higher RB1 grade coal in the future South African export market.

The following graph shows the potential importance of changes in the Indian demand or Indonesian supply markets for the SA coal export market, as SA is currently second only to Indonesia as a source of supply for India.

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http://www.industry.gov.au/Office-of-the-Chief-Economist/Publications/Documents/Coal-in-India.pdf



Figure 9: India's thermal coal imports 2013, by source

Source: Australian Government, Office of the Chief Economist, 2015, based on IEA data.

2.3.3 **Europe**

Demand in Europe saw a brief uptick thanks to low coal and carbon prices, against a backdrop of high gas prices and the partial shut-down of German nuclear plants. However coal demand has started to decline again due to slow economic growth, energy efficiency gains and growing use of alternatives to coal power generation. Climate change policies, together with more recent lower gas prices, make a declining trend in European coal demand the most likely outcome.

2.3.4 Asia Oceania

Coal demand from Japan, which increased after the shutdown of its nuclear plants in the wake of the 2011 Fukushima disaster, is expected to decline as the country restarts some of its nuclear capacity. After upgrading many of its nuclear reactors since 2011, the country's energy portfolio is expected to reduce fossil fuel power from 88% currently to between 55% and 58% by 2030.

Similar to India, investments in coal power plants in Indonesia, Vietnam and Malaysia are expected to result in increased coal consumption and demand in the region in future years.

2.3.5 Key supply dynamics

Indonesia is the world's largest exporter of both coal overall and thermal coal specifically, and consequently has a significant impact on the export market. Amid speculation that Indonesia may either limit low calorific coal exports, cap production or introduce a new export licence, exports are expected to increase at a slower rate.

While in the short to medium term this should benefit the South African RB3 export market, over the medium to longer term Indian demand for these exports should decrease as new domestic coal plants rely more on higher grade coal, and local Indian lower grade coal is prioritised over coal imports to reduce costs.

While the South African coal market has been aided somewhat by the depreciation of the rand against the US dollar, Australia has not had this benefit. Higher export production and transport costs have resulted in lower exports and the temporary closure of many mines in the face of global over-supply and sustained low prices.

2.4 Future market dynamics – diverging views

The current competing outlooks for coal can be characterised by their differing views on the time-frame of "peak coal", with one perspective claiming that the demand for coal will peak much earlier than generally expected due to a combination of climate change policies and improved energy efficiency. This view is now voiced by a combination of analysts such as Goldman Sachs and climate change advocates.

A more optimistic coal view is driven by the clean coal lobby, supported (indirectly) by the IEA forecasts, which sees thermal coal as a resource with a long future demand in the developing world.

There has however been a definite moderation in the coal outlook since the end of 2014, with a general abandonment of earlier forecasts for global demand to reach 9 billion tons per annum by 2019¹³, and of the June 2013 forecasts by Wood Mackenzie that Chinese thermal coal demand would double to approximately 7 billion tonnes a year by 2030.¹⁴

In September 2015, Goldman Sachs projected that coal demand will peak by 2020, about a decade earlier than the IEA estimated of 2014. The case for higher growth was premised on both the continued cost competitiveness of coal, and strong demand for new generating capacity across Asia. The former advantage has mostly disappeared (see below), and the latter demand has been eroded by a shift to both local supplies, pollution controls and improved energy efficiency in thermal generation.

In addition to the regional market trends discussed above, such as much earlier reductions in energy intensity and stricter policies related to pollution control, the cost competitiveness of coal has also been eroded. Where previous IEA predictions (2013) expected high liquefied natural gas (LNG) prices to make coal competitive, the price of LNG has also fallen dramatically including in Asia.¹⁵

The optimistic view is that the growth in demand for coal will rebound over the medium to longer term, albeit never again to the levels seen over the past decade. The current oversupply is the result of increased output growth coupled with weakening demand in China and other emerging markets, but is expected to decline as Asian demand (primarily from India and China) recovers. In this view, while the current over-supply will last until around 2020, the longer-term price trend is up. More coal mines will be needed to fuel new power stations in Asia.

The more pessimistic view is mostly due to dramatic changes in a key assumption which underpinned earlier projections of a doubling of coal consumption by 2030. This was the assumption that the power demand per unit of GDP in China would only halve by 2030. In reality, "it turned out this was actually achieved in 2014. In the first four months of 2015 the ratio, based on data from the National Bureau of Statistics of China, dropped further to just 0.1

Dec 2014 IEA view on coal growth:

http://www.iea.org/newsroomandevents/pressreleases/2014/december/global-coal-demand-to-reach-9-billion-tonnes-per-year-by-2019.html

¹⁴ For comparison, global demand for coal was 7.8 billion tons in 2013.

¹⁵ http://www.cnbc.com/2015/08/<u>31/asian-Ing-price-to-plunge-as-local-demand-wanes-supply-jumps.html</u>

per unit of GDP." While most analysts were predicting continued growth in Chinese imports, they fell by 11% over 2014 and have kept on falling. In the year to April 2015 Chinese coal imports fell an additional 38%¹⁶. These changes in the Chinese demand for seaborne thermal coal an uncertainty about the future demand from India underlay the more pessimistic view.

Rather than attempting our own forecasts in the very limited timeframe available for the finalisation of this report, we present a range of price forecasts for FOB Richards Bay RB1 prices that have been produced recently.

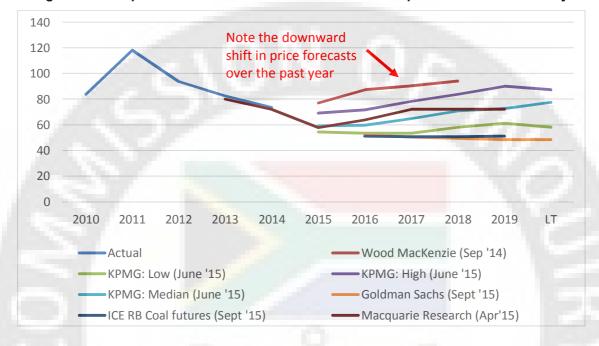


Figure 10: Comparison of actual and forecast thermal coal prices from Richards Bay

3 Glencore strategy

In January 2015, Glencore announced that it was considering the closure of certain of its opencast operations, large portions of the coal processing plants, and associated support services at the Optimum mine. This was confirmed in July. In this section we address the second part of the scope of work by considering the possible Glencore strategy decisions relating to coal supplies to the Hendrina power station and the closure of the open cast export operation.

Glencore stated that the operations were "financially not viable in the current market conditions.¹⁷" It also attributed the closure to "difficult market conditions and the continued deterioration in the export coal price". However, from other Glencore statements it is evident that the group carefully considered the optionality that closing the open cast mine would

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http://reneweconomy.com.au/2015/coal-hard-reality-how-did-industry-get-chinas-coal-demand-sowrong-98030

¹⁷ Glencore statement, 1 July 2015. http://www.glencore.com/assets/media/doc/news/2015/20150701-Optimum-Media-statement-01072015.pdf

provide. According to a Reuters report¹⁸ published in March 2015, Glencore CEO Ivan Glasenberg said:

"We looked at Optimum and decided it made sense to cut those export tonnes... and we can either utilise third-party tonnes for that (export infrastructure) allocation, or we can increase other capacity, or just keep those tonnes out of the market, and that we'll continue assessing."

The statement is a clear recognition that, under the circumstances, the company saw potential gains from the closure, including using other (more economical) Glencore output to achieve better export returns. In a report¹⁹ published later in 2015, this option was confirmed as their preferred route. However, other possible strategic goals should also be taken into consideration, particularly given Optimum's protracted bid to renegotiate its CSA with Eskom.

In this section, we test a number of hypothesis regarding its strategic motivation for suspending Optimum's export operations, namely:

- 1. To achieve positive or higher returns by using cheaper mines to utilise the Optimum export capacity.
- 2. To preserve Optimum's opencast coal reserves to achieve better future outcomes.
- 3. To pressure Eskom for higher prices for coal supplies in the absence of revenues from an export operation.

Our assessment is based on public statements, financial analysis of the mine's operations and the larger context informing Glencore's strategic decisions and actions in the South African coal market.

3.1 Glencore's rationale for acquiring Optimum Coal Holdings

We set out by investigating Glencore's rationale for acquiring Optimum Coal Holdings. Glencore, with its BEE partner Cyril Ramaphosa, started buying shares in Optimum Coal Holdings (OCH) in June 2011, announcing two months later its intention to acquire the entire shareholding in a bid that would value the company at R8.5bn. The takeover was completed in early 2012.

It would be Glencore's first significant purchase²⁰ following its successful initial public offering, which strengthened its balance sheet by \$10.4bn. The war chest and weakness in resource equities at the time allowed it to "look more aggressively at opportunities", CEO Ivan Glasenberg said²¹.

Glencore had expanded its South African coal mining interests at a steady rate since the mid-2000s. Using Shanduka Coal (Glencore owned a 70% interest) as its main vehicle, it bought Metorex's coal assets in 2006 and Umcebo Mining in 2010. With the Optimum acquisition,

¹⁸ Reuters, 3 March 2015. http://uk.reuters.com/article/2015/03/03/glencore-coal-cuts-idUKL5N0W53EV20150303

Reuters, 7 May 2015. http://www.reuters.com/article/2015/05/07/glencore-agmidUSL5N0XY4MT20150507

Reuters, 1 September 2011. http://www.reuters.com/article/2011/09/01/optimumcoal-brief-idUSL4E7K11LW20110901

²¹ Bloomberg, 25 August 2011. mhttp://www.bloomberg.com/news/articles/2011-08-25/glencore-international-says-first-half-profit-rises-57-to-2-45-billion

Glencore received access to the Optimum Collieries and Koornfontein mines in Mpumalanga, along with an export entitlement at the Richards Bay Coal Terminal (RBCT) equivalent to 8m tonnes at the time.

In a statement²² issued in September 2011, Glencore said: "Optimum's high quality, long life coal assets and significant presence at Richards Bay Coal Terminal would be an attractive addition to our existing South African coal business." As the largest marketer of seaborne coal globally, port access was crucial for Glencore, and it also fitted with its expectation of sustained demand for export coal due to concerns surrounding nuclear generation capacity and continued strong demand from China and India. The company added that the transaction "would further demonstrate [its] ability to identify attractive opportunities, capitalise on its strong local relationships and execute complex transactions".

A Glencore source told Reuters that while Optimum had "long-term off-take agreements in place, there remain significant opportunities for Glencore to add value" ²³. Synergies would be achieved both within the Optimum assets, but also by working closely with Glencore's existing assets and mining services businesses in South Africa.

However, some local competitors believed that the Optimum acquisition was motivated by an attempt to seize further market share and cement a dominant position (with resulting pricing power) in the South African coal market.

This may have been evidenced by Glencore's aggressive and elevated bid (its final offer price represented a premium of 40% above the trading price before the bid was declared) for a company, which according to one report, was in some distress. OCH, which aimed to raise up to R1bn in an effort to restructure its debt, saw its share price falling by 36% between mid-February and early August 2011 amid a 'lot of grumbling regarding the poor price at which Optimum was bound to sell coal to Eskom hiningmx reported that Optimum was also contractually bound to sell coal to BHP Billiton Energy Coal SA (Becsa) at \$87/t tonne for the remainder of that calendar year, even though internationally traded coal prices traded as high as \$120 a tonne at the time.

The Becsa deal was one of two marketing contracts (the other was with Swiss commodity trader Mercuria Energy) that left Optimum in a compromised position.

According to a Reuters report²⁶, executives at competitor firms were approached to buy Optimum, but declined because its mines were "saddled" with these long-term marketing agreements. "Where's the value if the marketing agreements are still in place?" one senior executive at an international trader reportedly asked.

The report stated that other sources at 'several firms' said that unless these agreements could be bought out or broken, they could not see any value in Optimum's assets. At the time, Glencore said it 'wouldn't touch' the marketing contracts²⁷. "The lifespan of the [Optimum] assets is materially in excess of the lives of the existing contracts and the acquisition price

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²² Glencore statement, 1 September 2011. http://www.glencore.com/assets/media/doc/news/2011/201109010800-Glencore-announces-expression-of-interest-for-Optium-Coal.pdf

²³ Reuters, 1 September 2011. http://www.reuters.com/article/2011/09/01/optimumcoal-briefidUSL4E7K11LW20110901

Miningmx, 6 September 2011. http://www.miningmx.com/page/opinion/columnists/1015380-Optimum-swoop-is-Glencore-at-brutal-best#.VhtT6eyqpBc

Miningmx, 6 September 2011. http://www.miningmx.com/page/opinion/columnists/1015380-Optimum-swoop-is-Glencore-at-brutal-best#.VhtT6eyqpBc

²⁶ Reuters, 1 September 2011. http://www.reuters.com/article/2011/09/01/optimumcoal-brief-idUSL4E7K11LW20110901

²⁷ Reuters, 1 September 2011. http://af.reuters.com/article/southAfricaNews/idAFL5E7K12C720110901

represents a great value acquisition for the long term," a Glencore source told Reuters. (Nonetheless, shortly thereafter, Glencore reportedly acquired Mercuria's marketing agreement for coal from the Koornfontein mine and future output from the Optimum mine²⁸ as part of a deal to buy its 15% stake in OCH. It bought Becsa's coal purchase rights in 2014.)

Competitors argued that the Optimum takeover afforded Glencore sight of the terms of both these contracts, securing pricing power over its rivals²⁹.

In addition, the Optimum acquisition would increase Glencore's coal-exporting rights at the terminal almost 20-fold,³⁰ according to the *Financial Times*. One industry player estimated that, following the Optimum takeover and including third-party marketing agreements, Glencore would 'handle' 50% of the RBCT exports³¹. The Optimum transaction cemented its position as price-setter in the domestic market, with one industry player noting that Glencore (through Shanduka Coal) 'basically sign quarterly contracts and the rest of us follow'.

Its dominant position at the RBCT following the Optimum deal would strengthen Glencore's already tight stranglehold over South African coal, Miningmx noted³². It quoted a note by investment bank JP Morgan, which stated that the Optimum bid moved the company "into an increasingly dominant position in an increasingly deregulated market i.e. in our view, classic Glencore fodder".

It is clear from Glencore's own statements that Optimum's export allocation was a primary reason for its acquisition of the company. The strategic benefits of securing the allocation, which afforded it increased pricing power and dominance in the domestic market, were evident. There is little to indicate that Optimum's physical mining assets were the main consideration behind the transaction.

3.2 Glencore's broader strategic imperatives

The next step in our analysis is to consider Glencore's broader strategic imperatives, especially in light of the economic downturn, the fall in commodity prices and its financing challenges.

Glencore has come under considerable pressure in recent months amid sustained falls in commodity prices. The company, the world's largest trader in commodities, merged with the mining group Xstrata, then the world's largest coal exporter, in 2013. At the time, the company said its unique business model would positioned it well, with a stable trading business providing a buffer against the cyclical nature of the commodity sector. This proved not to be the case when commodity prices entered a bear market in 2014, with both operations coming under pressure. In addition, the company has been grappling with a large debt burden following an aggressive expansion of its portfolios of mining assets.

In August 2015, it reported a 29%-decrease in adjusted earnings before interest, tax, depreciation and amortisation (EBITDA) for the first half of 2015, and a net debt position of \$29.6bn. This triggered a warning from Standard & Poor's that Glencore could lose its

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Reuters, 10 November 2011. http://www.reuters.com/article/2011/11/10/us-glencore-mercuria-optimum-thurs-idUSTRE7A967020111110

Miningmx, 6 September 2011. http://www.miningmx.com/page/opinion/columnists/1015380-Optimum-swoop-is-Glencore-at-brutal-best#.VhtT6eyqpBc

Financial Times, 1 September 2011. http://www.ft.com/intl/cms/s/0/d0e72618-d498-11e0-a42b-00144feab49a.html#axzz3nrY5eiQW

Miningmx, undated. http://www.miningmx.com/pls/cms/iac.page?p_t1=3085&p_t2=7934&p_t3=0&p_t4=0&p_dynamic=YP&p_content_id=1314144&p_site_id=83

³² Miningmx, undated. http://www.miningmx.com/pls/cms/iac.page?p_t1=3085&p_t2=7934&p_t3=0&p_t4=0&p_dynamic=YP&p_content_id=1314144&p_site_id=83

investment grade credit rating, which many analysts see as a critical business requirement for its trading operations.

In response, Glencore announced a number of measures to reduce its debt burden by \$10.2bn. This included the placing of \$2.5bn in new shares as well as the suspension of dividends, reduced capital expenditure, cuts to working capital, halting operations at two African copper mines, reducing readily marketable inventories and selling assets (primarily an agricultural business) of \$2bn.

However an Investec report that suggested the company's equity may be wiped out by prolonged commodity weakness sparked a 30%-drop in Glencore's share price on a single day (September 28, 2015). The company issued a statement to reassure investors that the business remains "operationally and financially robust" and that it has "positive cash flow, good liquidity and absolutely no solvency issues".

Its share price has since retraced some of the losses, but concerns remain about Glencore's prospects. Merrill Lynch estimates that at current spot commodity prices, Glencore has a \$9.3bn capital shortfall to safeguard its credit rating and would need to raise more than \$16bn to cut its net debt to two times EBITDA³³.

By end-September Glencore had lost some 80% of its market capitalisation since the company's initial public offering in 2011. The company's total debt-to-equity ratio reached 104%, double that of Rio Tinto and BHP Billiton³⁴. This leaves Glencore in a very constrained position, with an urgent requirement to cut costs, reduce debt and improve its balance sheet.

The suspension of unprofitable Optimum's export operations³⁵ will at best have only a limited positive impact on Glencore's financial position, and, given the urgency of its current situation, the company can be expected to actively attempt to secure any additional gains from the closure. This could include replacing Optimum's expensive export output with cheaper production from other mines, and/or as leverage in securing an improved CSA with Hendrina.

An additional consideration is the timing of the first announcement that Glencore may close the Optimum open-cast mine, which seemingly was part of an attempt to stabilise coal prices.

Glencore's primary response to falling coal prices has been to cut production, repeatedly criticising other miners for "oversupplying the market" In Australia, where it is the largest producer, the company shut down all of its coal operations for three weeks at the end of 2014, removing an estimated 5 million tonnes from the market in an effort to stem price declines. (Coal continued to fall during the shutdown.) This was followed by two announcements, in the space of four weeks, ostensibly aimed at sending a clear "supply side" signal to market. In January, the announcement that the possible closure of Optimum's opencast operations "would reduce its overall production by at least 5 million saleable tonnes per annum", was followed a by the declaration that Australian coal output would be lowered by 15%, with Glasenberg stating that the company was "not prepared to cannibalise our own revenue for [the] sake of volumes" "

³³ Financial Times, September 1 2015. Glencore sinks on equity issuance fears

³⁴ Bloomberg, 29 September 2015. http://www.bloomberg.com/news/articles/2015-09-29/glencore-shares-rise-in-london-trading-day-after-record-slump

³⁵ See the results on the viability of the Optimum operation presented in Part Two of this report.

³⁶ Reuters, 12 May 2015. http://uk.reuters.com/article/2015/05/12/uk-glencore-mining-outlook-idUKKBN0NX1AQ20150512

³⁷ The Sydney Morning Herald, 27 May 2015. http://www.smh.com.au/business/mining-and-resources/glencore-makes-good-on-slower-coal-output-20150527-ghaj8y.html

In March he declared that:

"The way we see the market behaving since we have cut tonnes in Australia and South Africa, the market has reacted very positively, if the market continues performing as it is - and coal prices have picked up recently - that should ensure there's no reason for anymore cutbacks³⁸."

This raises the possibility that at least the initial Optimum announcement may have been informed by a strategy to stabilise prices in the world market. Given that Optimum is one of its most expensive export operations, as discussed in Part Two of this report, it would have been the most economical output to forfeit.

3.3 Glencore strategy imperatives regarding Optimum's export coal operations considered.

In this section we return to the "hypotheses" on the Glencore strategic motivation regarding the closure of the Optimum export operations set out in the introduction to this section.

3.3.1 The relative economics of exporting from the Optimum open cast mine vs other Glencore mines

When asked about the impact of Optimum's opencast mine's closure in May this year, Reuters reported Glasenberg saying "if [Glencore] goes ahead with the Optimum closure it would expand capacity at another lower cost South African mine"³⁹.

This is a clear indication that the company considered the economic benefits, which according to our analysis will be considerable, of replacing Optimum's export coal with more cost-effective product.

Optimum is an expensive producer of export coal, with some of the highest cash costs in the Glencore portfolio.

³⁹ Reuters, 7 May 2015. http://www.reuters.com/article/2015/05/07/glencore-agm-idUSL5N0XY4MT20150507

Reuters, 3 March 2015 http://uk.reuters.com/article/2015/03/03/glencore-coal-cuts-idUKL5N0W53EV20150303

Mine name	Total cash cost, R/t	Glencore shareholding
Goedgevonden	395.06	74.0%
Impunzi Surface	488.12	79.8%
Wonderfontein	503.37	43.7%
Tweefontein Underground	545.75	79.8%
Tweefontein Surface	568.99	79.8%
Graspan	592.09	50.0%
Middelburg Townlands	590.26	50.0%
Savmore	622.77	15.0%
Koornfontein	731.98	67.0%
Optimum	798.88	67.0%
Springlake	924.27	50.0%

Source: Wood Mackenzie

Table 1: Export thermal cash cost curve, 2015

A number of Glencore mines have a much lower cost profile. In fact, Glencore has interests in three (Goedgevonden, Impunzi Surface and Wonderfontein) of the five export mines in South Africa with the lowest cash costs.

South Africa's cheapest export mine, Goedgevonden, in particular, offers large margins, with African Rainbow Minerals (part-owner with Glencore) recently reporting that the mine is achieving "impressive cost performance" with unit production costs per saleable tonne reducing by 9% in the first six months of 2015. Also, in its most recent financial results⁴⁰, Glencore noted continued productivity improvements at Tweefontein, where an expansion project was recently completed and opencast operations will be ramped up through 2015⁴¹.

According to our analysis, it would make considerable sense for Glencore to replace Optimum's export coal with other more cost-effective output in the group. ⁴² As an illustration, we calculated that Optimum exports of 5m tonnes at the mine's estimated total cash cost (R798.88/t), using Glencore's average realised export price for SA thermal coal for the first half of 2015 (\$57/t) and the exchange rate as at 30 June 2015 (R12.60/\$), would have result in an attributed loss of more than R270m for Glencore. By comparison, a theoretical allocation of Optimum's 5m

⁴⁰ Glencore's South African coal operations remain profitable despite falling coal prices and the depressed situation at Optimum. In the first six months of 2015, its domestic coal operation grew its adjusted EBITDA by 13% to \$230m, and reported a 150% jump in adjusted EBIT to \$40m – compared to a 23% fall in Australian thermal coal EBITDA and a large EBIT loss of \$39m for the Australian thermal operations.

⁴¹ Glencore highlighted Tweefontein's contribution in helping to bolster output of South African thermal coal for the export market, which rose by 8% to 11.0mt in the first half of 2015. (South African export coal was the only one of Glencore's coal asset categories to increase output.)

⁴² Note that the figures and analysis presented in the remainder of this section are not based on the SRK mining cost model and our associated technical economic analysis prepared as part of this project, but were compiled from independent sources – mostly Wood MacKenzie. In the event this independent analysis confirms the results obtained from our technical economic analysis based on the SRK mining cost model (see Part Two of this report).

tonnes equally distributed among its five lowest-cost coal exporters, would have yielded R773m for Glencore.

In an alternative analysis, Wood MacKenzie expects that Glencore will maintain its current export level by expanding output at Goedgevonden⁴³. This is supported by projections of expansion capital expenditure at Goedgevonden in the next few years. (See the following table.) The capital investment may pay off handsomely; at current prices, Glencore may potentially earn close to R1.2bn from increasing Goedgevonden export output by 5mt. Compared to a loss of R270m from Optimum, as per our illustration, this represents a substantial swing in income that will provide much-needed assistance in stabilising the company's finances.

Mine	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	Grand Total
Goedgevonden		-	50.00	2 100.00	2 050.00	-			_	_	4 200.00
Graspan	-								-	_	_
Impunzi Surface								_		_	_
Koornfontein	220.00	720.00	300.00			-		_		-	1 240.00
Lakeside				_	_		_				_
Middelburg Townlands		_	_	_	_	_	_				_
Middelkraal		_	_	_	_	_					
Mooiplaats		_	_	_	_	_	_				
Optimum		_		_	-		_				
Savmore				1 450.00	_	_	_				1 450.00
Springlake	_	-		_	_	_	_				
Tweefontein Surface	2 007.50	3 285.00	_			_	_	_			5 292.50
Tweefontein Underground	669.17	1 095.00				-		_			1 764.17
Wonderfontein	455.11	-			_	_	_	_	_		455.11

Source: Wood MacKenzie

Table 2: Expansion capital expenditure - by mine (R millions, real 2015)

Glencore has a total export allocation of 31.7% (including Optimum's specific allocation that may be internally reallocated in the Glencore group) at the Richards Bay Coal Terminal (RBCT). The current expectation is for RBCT to achieve export tonnage of 77mt this year, suggesting an allocation of 24.41m for Glencore mines. In the first half of 2015, the company produced export coal of 11.0m, suggesting that the company still has some scope to increase exports, particularly if incentivised by higher returns.

3.3.2 Preserving Optimum's opencast mine reserves

Glencore's has repeatedly stated that Optimum's opencast operations could be resumed when market conditions improve.

The company has also maintained that prices are bound to recover at some point as coal continues to play an "essential" role in energy demand, and given that many producers are now suffering losses, exiting the market and delaying investment. Glasenberg said in May that coal

⁴³ South Africa coal supply summary, September 2015. Wood MacKenzie

"looks good going forward", adding that Indonesian exports are tapering off with the country consuming more coal domestically⁴⁴.

Preserving Optimum's opencast operations would also be consistent with Glencore's stated strategy of not contributing to the oversupply in the coal market. The company has been vocal in its criticism of competitors, who it blames for oversupplying the market and contributing to the slump in commodity prices⁴⁵.

Given the losses that Optimum are currently suffering on its exports, preserving the coal reserves to sell at possible future improved prices could be a significant consideration for Glencore.

However, it remains uncertain that coal export prices will stage a substantial recovery in years to come. An alternative view could be that the opencast reserves are not preserved in the hope of an export price recovery, but perhaps made available to Eskom, which has to renegotiate a number of coal supply contracts – including possibly with Optimum itself for the Hendrina power station – in 2018.

Given expectations of prolonged weakness in coal export prices, there is a view that Eskom's prices may yet reach export parity on a quality-adjusted basis⁴⁶. It may end up making more sense for Optimum's open cast operations to supply Eskom than to be exported.

This thesis is supported by Glencore's unwillingness to sign a take-or-pay agreement with Transnet, which commits collieries to provide coal for transport. "The government has got to be a little concerned on these take-or-pay (contracts). If Eskom needs more tonnage and everyone is locked into the take-or-pays to Richards Bay, it's going to be hard to divert tonnage into the Eskom market," Glasenberg said in March⁴⁷. "We don't want to be in a situation like Australia where suddenly you sign these take-or-pays and you have a better outlet for the coal on the local market, but you can't supply the local market because you're paying a \$15/t penalty on your take-or-pay. 48"

3.3.3 An attempt to force Eskom to agree to higher coal prices

Since taking ownership of Optimum, Glencore has consistently tried to secure a revised CSA for Optimum. Negotiations with Eskom about the CSA, which expires on 31 December 2018, were terminated in July.

⁴⁴ Reuters, 7 May 2015 http://www.reuters.com/article/2015/05/07/glencore-agm-idUSL5N0XY40820150507

⁴⁵ Reuters, 7 May 2015 http://www.reuters.com/article/2015/05/07/glencore-agm-idUSL5N0XY4MT20150507

⁴⁶ Platts, 15 March 2015. www.platts.com/latest-news/coal/london/analysis-glencore-eskom-deal-introduces-new-dynamic-26039757

⁴⁷ Business Day, 4 March 2015. http://www.bdlive.co.za/business/mining/2015/03/04/transnet-contracts-worry-glencore

⁴⁸ Engineering News, 5 March 2016. http://m.engineeringnews.co.za/article/exxaro-confirms-take-or-pay-coal-railing-contact-with-transnet-2015-03-05

In terms of the CSA, a pricing structure was established "to provide Eskom with the benefit of low prices for the coal to be supplied to Hendrina and to enable TNC (the original owner) to take advantage of the benefits of supplying coal for the export market." With the suspension of Optimum's export operations (which are supposed to subsidise the Eskom output), Glencore presumably aimed to send a signal that the terms of the CSA were now obsolete. Glencore subsequently placed Optimum under supervision ("business rescue"), blaming "unsustainable financial hardship" caused by a failure to renegotiate the terms of the CSA. The company stated that if the Eskom supply agreement can be renegotiated, there is a reasonable prospect of rescuing Optimum. Without the export operations, the viability of the Optimum operations are diminished to an even greater extent, and it can be argued that, under the circumstances, the closure of the opencast activities had the added benefit to Glencore of invalidating the basis of the Eskom subsidy in the CSA and therefore of putting significant pressure on Eskom to pay a higher price for it coal from Optimum.

4 Conclusions

Given our estimates of the significant losses at Optimum's opencast export mining activities, Glencore's contention that the operations are "financially not viable in the current market conditions", appears to survive scrutiny. However, judging from Glencore's own statements, this situation has provided Glencore with a rationale for escaping from its obligations under the Optimum CSA (which required it to export coal – even at low margins) and thereby opened up a more lucrative opportunity to leverage the Optimum export capacity allocation. Increasing exports from its cheapest export mines to take up the slack in its export capacity left by the closure of the Optimum export operation, and thereby replacing the operating losses from the Optimum exports with positive margins from exporting from cheaper mines, appears to have been part of its strategy.

Furthermore, while we did not find any statements or other evidence to this effect, the closure of the export facilities undeniably strengthened Optimum's hand in its negotiations with Eskom for higher prices under the current Hendrina CSA – and this fact would have been known to Glencore beforehand.

Part Two of our report presents our findings on the prices required for Eskom coal under different Optimum mining options and macro-economic scenarios. In essence the severe downturn in the export market prices and the general pessimism about the degree to which future prices might recover has undone the cross-subsidisation on which the Optimum – Eskom CSA was premised. However, despite the higher price that will have to be paid for Optimum coal in future, these new circumstances might also present Eskom with an unexpected opportunity to ameliorate the effects of the impending "coal cliff" problems in the central

⁴⁹ This finding is also supported by our technical economic analysis presented in Part Two of this report.

Mpumalanga coal basin⁵⁰. Under the circumstances existing mines such as Optimum are now in a weak bargaining position and might well prefer to rather sell their export resources to Eskom at lower risk cost related prices and higher yields than what could be achieved by exporting. The same logic applies to the potential development of the few quality unexploited resources that remain in the Central Basin. Overall this effect, if appropriately exploited by Eskom, might well lead to a significant turnaround of its coal supply outlook for its older stations, both in terms of price and security of supply.



⁵⁰ See the Eskom "Coal Market Study, Final Report". January 2015.

Annexure GJO21





To whom it may concern

This serves to confirm that the Eskom Board Tender Committee, at its meeting held on 10 February 2016, approved the following:

- Eskom consents to the cession and assignment of the coal supply agreement between Optimum Coal Holdings (Pty) Ltd (OCH) and Eskom Holdings SOC Ltd (Eskom) from Glencore Operations South Africa (Pty) Ltd (Glencore) to Tegeta Exploration and Resources (Pty) Ltd (Tegeta):
 - 1.1 to the sale and purchase of shares of OCM;
 - 1.2 to release the guarantee given by OCH to Eskom; and
- 2. Tegeta to issue a parent company guarantee in favour of Eskom pertaining to the performance of the Coal Supply Agreement (CSA);
- 3. The cession and assignment of the coal supply agreement between Optimum Coal Holdings (Pty) Ltd and Eskom Holdings SOC Ltd to Tegeta Exploration and Resources (Pty) Ltd be granted, subject to evidence being provided that all conditions precedent in the sale agreement between OCH and Tegeta on or about 10 December 2015 have been met and Tegeta has provided sufficient proof that all financial requirements pertaining the CSA can be met;
- 4. That the Senior General Manager, Primary Energy Division (PED) be authorised, to take all the necessary steps to give effect to the above, including the signing and amendments of any agreements, consents or other documentation necessary or related thereto.

CERTIFIED AS A TRUE RECORD OF THE PROCEEDINGS OF THE MEETING.

Yours sincerely

Suzanne Daniels

Company Secretary

Date: 10/2/2016



FOURTH ADDENDUM TO THE HENDRINA COAL SUPPLY AGREEMENT

amongst

ESKOM HOLDINGS SOC LIMITED

and

OPTIMUM COAL MINE PROPRIETARY LIMITED

and

TEGETA EXPLORATION AND RESOURCES 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 between Eskom, OCH and OCM, in terms of which OCM supplies and delivers coal to Eskom's Hendrina Power Station, as amended by the First Addendum, Second Addendum and Third Addendum;
- 1.1.3 "Effective Date" means the date on which the Sale of Shares Agreement becomes unconditional in accordance with its terms;
- 1.1.4 "Eskom" means Eskom Holdings SOC Limited, a state-owned company with registration number 2002/015527/30 duly incorporated in terms of the laws of the Republic of South Africa;
- 1.1.5 "Eskom Guarantee" means the guarantee executed by OCH in favour of Eskom on 8 April 2008, in terms of which OCH guaranteed the performance by OCM of its obligations in terms of the CSA;
- 1.1.6 "First Addendum" means the First Addendum to the CSA, entered into on 8 April 2008;
- 1.1.7 "Oakbay" means Oakbay Investments Proprietary Limited, a private company with registration number 2006/017975/07 duly incorporated in terms of the laws of the Republic of South Africa
- 1.1.8 **"OCH"** means Optimum Coal Holdings Proprietary Limited, a private company with registration number 2006/007799/07 duly incorporated in terms of the laws of the Republic of South Africa;
- 1.1.9 "OCM" means Optimum Coal Mine Proprietary Limited, a private company with registration number 2007/005308/07 duly incorporated in terms of the laws of the Republic of South Africa;
- 1.1.10 "Parties" means the parties to this Addendum;

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- 1.1.11 "Penalties Claim" means the claim in the amount of R2,176,530,611.59 (plus interest calculated at 9% a tempore more) in respect of which Eskom initiated arbitration proceedings against, amongst others, OCH and for which it has instituted proceedings against OCH out of the High Court of South Africa, Gauteng Local Division, Johannesburg, under case number 28155/15;
- 1.1.12 **"Power Station"** means the Hendrina Power Station of Eskom;
- 1.1.13 "Sale of Shares Agreement" means the agreement entered into between, amongst others, OCH, Tegeta and Oakbay on or about 10 December 2015 (as amended by the first addendum thereto on 7 March 2016) in terms of which, inter alia, Tegeta acquires all of OCH's shares in and claims against OCM, Koornfontein Mines Proprietary Limited, Optimum Coal Terminal Proprietary Limited, Optimum Nekel Mining and Exploration Proprietary Limited, Optimum Overvaal Mining and Exploration Proprietary Limited and Optimum Mpefu Mining and Exploration Proprietary Limited;
- 1.1.14 "Second Addendum" means the Second Addendum to the CSA entered into on 12 April 2011;
- 1.1.15 "Signature Date" means the date 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;
- 1.1.16 "Tegeta" means Tegeta Exploration and Resources Proprietary Limited, a private company with registration number 2006/014492/07 duly incorporated in terms of the laws of the Republic of South Africa; and
- 1.1.17 **"Third Addendum"** means the Third Addendum to the CSA entered into on 11 February 2013.
- 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 OCH and OCM are jointly and severally liable to Eskom to ensure that the Power Station is supplied and delivered with coal which complies with the quality and quantity requirement set out in the CSA.

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2.1.2 On or about 31 July 2015, the board of directors of OCH and OCM passed a resolution for OCH and OCM to be placed under supervision and subject to business rescue in terms of Chapter 6 of the Companies Act, 2008. 2.1.3 As part of the business rescue proceedings Tegeta offered to purchase the shares and claims of OCH against OCM. 2.1.4 Tegeta, Oakbay and OCH concluded the Sale of Shares Agreement in terms of which Tegeta, inter alia, acquires all of OCH's shares in and claims against OCM, subject to the suspensive condition that Eskom -2.1.4.1 consents to the sale and purchase of the shares and claims of OCH by Tegeta; and 2.1.4.2 release OCH and its past and current Affiliates (other than OCM) from any and all liabilities under the CSA, including in terms of the Eskom Guarantee. 2.1.5 Eskom has agreed to consent to the cession OCH's rights to Tegeta and provide OCH with a release, subject to -2.1.5.1 Tegeta concluding an addendum to the CSA with Eskom in respect of, amongst others, all and any of OCH's obligations towards Eskom, all and any of Eskom's claims for loss or damages (whether contractual or in delict) against OCH or its Affiliates (now known or in the future), including the Penalties Claim; and 2.1.5.2 Eskom being issued with a guarantee by Tegeta on the same terms as the Eskom Guarantee, to Eskom's satisfaction. 2.1.6 The Parties, accordingly enter into this Addendum to -2.1.6.1 substitute OCH with Tegeta as the contracting party to the CSA in respect of all rights and obligations towards Eskom; 2.1.6.2 provide for Tegeta guaranteeing the performance of all OCM's obligations arising in

3 CESSION AND ASSIGNMENT AND GUARANTEE

3.1 From the Effective Date of the Sale of Shares Agreement –

terms of and in connection with the CSA.

- 3.1.1 Eskom hereby consents to the cession and assignment of all right and obligations of OCH in terms of the CSA to Tegeta in terms of clause 29 of the CSA.
- 3.1.2 OCH is substituted by Tegeta as the contracting party with OCM to the CSA to ensure compliance with all and any obligations towards Eskom in terms of the CSA, including all actions, claims, counterclaims, causes of action, debts, obligations, damages,

liabilities, rights and demands whatsoever, of whatever kind or nature, in contract or in delict, known or unknown, which Eskom now has or ever had against OCH that are and/or may be based upon, arise under, or be related to the CSA and/or the Eskom Guarantee (including (but not limited to), for the avoidance of any doubt, the Penalties Claim.

- 3.1.3 Tegeta irrevocably and unconditionally guarantees and undertakes that it shall -
- 3.1.3.1 use its best endeavours to procure that OCM shall duly and punctually perform each and every of its obligations arising in terms of and/or in connection with the CSA; and
- 3.1.3.2 pay such amounts as may from time to time be demanded by Eskom from OCM in terms of and/or in connection with the CSA as amended by this Addendum and/or otherwise by agreement between Eskom and OCM from time to time) but which OCM shall fail, for whatever reason, to pay to Eskom as and when such payment shall be due.
- 3.2 Tegeta shall deliver a written notice to Eskom within 5 (five) day from the Effective Date informing Eskom that the Sale of Shares Agreement has become unconditional.

4 AMENDMENTS TO THE CSA

- 4.1 The Parties shall as soon as possible after the Effective Date of the Sale of Shares Agreement, but not later than 90 days thereafter ensure that the coal quality management procedure ("CQMP") for the Power Station is signed, failing which the latest version of the CQMP as adopted by Eskom for the management of coal qualities shall regulate the coal qualities supplied and delivered to the Power Station.
- 4.2 Notwithstanding the provisions of clause 3.1.3 hereof Tegeta, and Eskom shall no later than 30 days after the Signature Date execute a guarantee, to Eskom's satisfaction in terms of which Tegeta guarantees the performance of all OCM's obligations arising in terms of and in connection with the CSA, substantially in accordance with Annexure 1 hereto.

5 SAVINGS

- 5.1 Save to the extent specifically or by necessary implication modified in or inconsistent with the provisions of this Addendum, all the terms and conditions of the CSA will continue in full force and effect.
- 5.2 In the event that the Sale of Shares Agreement fails to become effective for whatsoever reason, all the terms and conditions of the CSA against OCM and OCH shall continue in full force and effect.

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6 **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 cooperate 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.

7 SIGNATURE

Signed at

- 7.1 This Addendum is signed by the Parties on the dates and at the places indicated below.
- 7.2 This Addendum may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement as at the date of signature of the signatory last signing one of the counterparts.
- 7.3 The persons signing this Addendum in a representative capacity warrant their authority to do so.

on

for	Eskom Holdings SOC Limited
	who warrants that he is duly authorised hereto
	Name:

Position:

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2016

Signed at on 2016 for **Optimum Coal Mine Proprietary Limited** who warrants that he is duly authorised hereto Name: Position: Signed at on 2016 **Tegeta Exploration and Resources** for **Proprietary Limited** who warrants that he is duly authorised hereto Name: N. Howa Position: DIMCTER



Mpho M. Dlamini

From: Jithin Mohan

Sent: Monday, 24 July 2017 13:51 **To:** John Mamabolo; Gert Opperman

Cc: Vuyisile Ncube

Subject: FW:

Attachments: 4th Addendum to Hendrina CSA.PDF

Hi,

As discussed, attached is the unsigned version of the 4th addendum to the Hendrina CSA.

Regards, Jithin

From: Jithin Mohan

Sent: 12 June 2017 04:18 PM **To:** Ayanda Nteta; Vuyisile Ncube

Subject: FW:

Hi Ayanda and Vuyisile,

Maya had requested to know when the attached 4th addendum to the Hendrina CSA was signed (the attached version is only signed by one party).

The only records I could find was the signed co-operation agreement and temporary relief agreement (attached pdf's) and the first to third addendums to the Hendrina CSA. Also attached is the Eskom release letter that we have a copy of (word document). Kindly advise on way forward.

Regards, Jithin

From: Maya Naidoo

Sent: 08 June 2017 12:52 PM

To: Jithin Mohan **Subject:**





Mr George van der Merwe Chief Operations Officer Optimum Coal mine Suite no 19 Private Bag X1 Melrose Arch 2076

Dear Mr van der Merwe

COAL SUPPLY AND OFF TAKE AGREEMENT ENTERED INTO BY AND BETWEEN ESKOM HOLDINGS (SOC) LTD ("ESKOM"), AND OPTIMUM COAL HOLDINGS (PTY) LTD: FORCE MAJEURE NOTIFICATION – REF NUMBER 726134

Eskom hereby notifies Optimum in terms of clause 26 of the CSA, relating to force majeure. Eskom is experiencing a force majeure event due to the National Union of Mineworkers strike which commenced at Eskom Power Stations on the 08th of August 2016.

The duration and the impact of the strike on the Power Station operations are uncertain and currently not quantified. Once Eskom has information in this regard, the impact will be communicated formally to Optimum. Please note that Eskom is taking all reasonable steps to limit the effect of the strike.

Eskom's rights are fully reserved.

Yours sincerely

Petros Mazibuko

GENERAL MANAGER: COAL OPERATIONS (ACTING)

Date: 11 08 2016





DELIVERED BY EMAIL

Cliffe Dekker Hofmeyr

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

+27 11 535 8000 Tel +27 11 535 8600 www.werksmans.com enquiries@werksmans.com

YOUR REFERENCE:

Mr E Levenstein/Ms L Becker/lb/OPTI13168.19/#3907792v2 OUR REFERENCE:

DIRECT PHONE: +27 11 535 8237/8196 +27 11 535 8737/8796 DIRECT FAX:

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

25 August 2016

Dear Sirs

ESKOM HOLDINGS SOC LIMITED / OPTIMUM COAL MINE PROPRIETARY LIMITED (IN **BUSINESS RESCUE)**

- We refer to our letter dated 19 July 2016 and to your letter dated 11 August 2016. 1
- We are instructed to advise you that the interim arrangement referred to in such 2 correspondence is extended until 31 October 2016.
- 3 Our clients' rights remain 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

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 LM Becker JD Behr AR Berman NMN Bhengu Z Blieden HGB Boshoff GT Bossr
JB Oswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers R Driman 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 Harduth
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
K Louw JS Lubbe BS Mabasa MPC Manaka H Masondo SM Moerane C Moraitis PM Mosebo KO Motshwane L Naidoo J Nickig JJ Niemand
BPF Olivier WE Oosthuizen S Padayachy M Pansegrouw CP Pauw AV Pillay D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood
BR Roothman W Rosenberg NL Scott TA Sibidla LK Silberman JA Smit JS Smit BM Sono CI Stevens PO Steyn J Stockwell W Strachan JG Theron JJ Truter
KJ Trudgeon DN van den Berg AA van der Merwe HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker L Watson D Wegierski
G Wickins M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies





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Hand Delivered to the Trade Unions

31 August 2016

Attention: All Affected Persons

Optimum Coal Mine Proprietary Limited (In Business Rescue)

Attention: Companies and Intellectual Property Commission

businessrescue@cipc.co.za

OPTIMUM COAL MINE PROPRIETARY LIMITED (IN BUSINESS RESCUE)

- 1 We refer to the tenth status report circulated to affected person of Optimum Coal Mine Proprietary Limited ("OCM") on 4 August 2016.
- In terms of the aforesaid status report, we advised, among other things, that we were engaging with Tegeta Exploration & Resources Proprietary Limited ("**Tegeta**"), the new owners of OCM, to determine a means by which OCM can be released from its business rescue.
- In order to discharge OCM from business rescue, we need to be satisfied that OCM is no longer financially discressed within the meaning of section 128(1)(f) of the Companies Act 71 of 2008, as amended ("Act") as is required in terms of section 141(2)(b) of the Act.
- We confirm that OCM has procured the payment and/or settlement of the claims of the known and undisputed creditors of OCM which arose prior to 4 August 2015 ("Pre-Commencement Claims"), being the date on which the business rescue proceedings of OCM commenced. The rights of creditors to pursue claims disputed by OCM are reserved and can be resolved directly with OCM, going forward.



- Accordingly, for this and other reasons, we are satisfied that OCM is no longer financially distressed within the meaning of the Act and that OCM can be discharged from business rescue.
- This means that OCM will now continue to trade under the management and control of the board of directors of OCM and that all queries related to contracts, services, disputed claims, supplies and invoices should be directed to **Nitin Singh** on nitins@optimumcoal.com
- 7 We confirm that -
- 7.1 the discharge of OCM from business rescue does not affect the rights of employees and trade unions and that any queries or concerns in this regard can be directed to OCM through the existing structures; and
- 7.2 all other matters, for instance those related to the community, operational and/or legal issues that have been dealt with by the business rescue practitioners for the duration of OCM's business rescue need to be directed to OCM through the existing structures.
- 8 On 31 August 2016, we filed a notice of Termination of the Business Rescue Proceedings (Form CoR125.2) with the Companies and Intellectual Property Commission in accordance with section 141(2)(b)(ii) of the Act. A copy of the duly filed notice is enclosed herewith.
- Please note that the website that has been maintained by OCM for the duration of its business rescue proceedings and the business rescue email address will no longer be available following the release of this notice and that all queries pertaining to OCM should be addressed **Nitin Singh** on nitins@optimumcoal.com
- 10 We take this opportunity to thank you for your patience and co-operation during the process and wish you everything of the best in your future endeavours with OCM.

Yours faithfully

Piers Marsden and Peter van den Steen

Joint Business Rescue Practitioners of Optimum Coal Holdings Proprietary Limited





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- 7.2 all other matters, for instance those related to the community, operational and/or legal issues that have been dealt with by the business rescue practitioners for the duration of OCM's business rescue need to be directed to OCM through the existing structures.
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Yours faithfully

Piers Marsden and Peter van den Steen

Joint Business Rescue Practitioners of Optimum Coal Holdings Proprietary Limited





Mr Petros Mazibuko

General Manager: Coal Operations

Primary Energy

Maxwell Drive

Sandton

05 September 2016

Dear Mr Mazibuko

RE: Suggested Structure for an alternative to CCI

We would like to thank Eskom for the support given to Glencore during the business rescue process from August last year and continued under our ownership. We are happy to report that we have now come out of business rescue and hopefully the business will continue on a solid footing and continue to provide sustainable supply of coal to Eskom on a cost-efficient price.

Our primary concern revolves around the volatility in the CCI model which impacts very heavily on our ability to manage our business on a sustainable basis.

As proposed last time we met, we would like to propose the following modification to the pricing mechanism: (Please See Table 1 for further clarity)

Escalation Matrix:

1. The base price should be adjusted on an annual basis upwards or downwards as the case may be on 1 January 2017 and thereafter on 1 January of each subsequent year (the price adjustment date) by a price adjustment factor.

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

Business Address: N11 Hendrina Road, Pullenshope Offramp, Pullenshope Mailing Address: Private Bag X1201, Pullenshope, 1096, South Africa Tel.: +27 13 2965111

Registered Address: Block A, 144 Katherine Street, Sandton

Directors: N Howa, PU Govender, J Roux



- 3. This factor will be weighted in proportion by the following components:
 - Labour, Mining Supplies, Diesel, Electricity, Overheads, Profit and Capital.
 Naturally, we need a component of fixed costs as well.
 - b. Diesel will be adjust monthly, while the other components will be adjust annually.
- 4. The adjusted base price will be applicable to 31 December of each year for the remainder of the contract period.
- 5. Should there be any dispute around the calculations mentioned in point 3, then we will refer to independent contractor for resolution.

Table 1- Escalation Matrix

Cost Component	%	Proportion Index and Source Table	Base Date	Base	Frequency of
		Proportion findex and Source Table	Index Value (B)	Date	Adjustments
Labour	26%	SEIFSA Table C-4	127,4	Jun 16	Annually
Labour	3%	Mechanical Engineering index PQ151, Table 3	113,5	Jun 16	Annually
	6%	PPI Miring Machinery P0151 Table 4	12.4	Jun 16	Annually
Mining Supplies	3%	Imported Rubber P0151	86,9	Jun 16	Annually
	3%	Structural and fabricated metal products P0142.1	119,7	Jun 16	Annually
Diesel	8%	DME 0.05% Sulphur Reef	1128,87	Jun 16	Monthly
Electricity	4%	Electricity PPI P0142.1 Table 3	188,4	Jun 16	Annually
Overheads	7,50%	CPI headline P0141Table A All Items			Annually
	7,50%	PPI Coal & Gas P0142.1Table 4	109,8	Jun 16	Annually
Profit & Capital	11%	CPI headline P0141Table A All Items	122,1	Jun 16	Annually
	11%	PPI Coal& Gas P0142.1Table 4	109,8	Jun 16	Annually
Fixed	10%	Fixed	Not applicable		Not applicable
Total	100%				



Base Price:

For the escalation matrix to be applied correctly we need to determine a base price for the Matrix to be applied to . We suggest that we use the Average price up till date (In Table 2):

Table 2: Base Price Calculation

Jan-16	Feb- 16	Mar- 16	Apr-16	May- 16	Jun-16	Jul-16	Aug- 16	Sep- 16	Average
175,32	201,22	207,07	241,07	188,13	209,45	190,27	182,89	186,78	198,02

We trust this considerations will find your understanding and help Optimum remain sustainable and keep providing Hendrina the coal on a consistent basis .

Warm Regards

(electronically signed)

George van der Merwe

Chief Operating Officer

Optimum Coal





Mr George van der Werwe Chief Operations Officer Optimum Coal Mine (Pty) Ltd Private Bag X1201 PULLENSHOPE 1096

Dear Mr van der Merwe,

RE FEEDBACK FOR ON PROPOSED CO-OPERATION AGREEMENT – REF NUMBER 726193

Eskom herewith acknowledge receipt of your letter dated 23 September 2016 related to the subject matter.

Eskom confirms that in the meeting held on 07 September 2016, the Parties agreed that the escalation basket proposal will be formulated and submitted to the Eskom Board for a mandate to engage in this matter.

Currently, Eskom is going through its governance process to obtain the required mandate.

Eskom's rights are fully reserved.

Yours sincerely

Petros Mazibuko

GENERAL MANAGER: COAL OPERATIONS (ACTING)

Date: 23 09 2016

Primary Energy
Megawatt Park Maxwell Drive Sunninghill Sandton
PO Box 1091 Johannesburg 2000 SA
Tel +27 11 800 6290 Fax +27 11 800 5555 www.eskom.co.za





MEMORANDUM

To:

Mr Matshela Koko, Group Executive, Generation

Reference:

From:

Mr Edwin Mabelane, Chief Procurement Officer,

Version:

01

Group Commercial

Date:

11 October 2016

SUBJECT: OPTIMUM REDUCED SUPPLY TO HENDRINA POWER STATION AND THE RISK OF THE STOCKPILE REDUCING

PURPOSE

 This memorandum aims to provide background to the coal supply risk at Hendrina Power Station and proposes the delivery of coal via road to arrest the decline in stockdays.

BACKGROUND

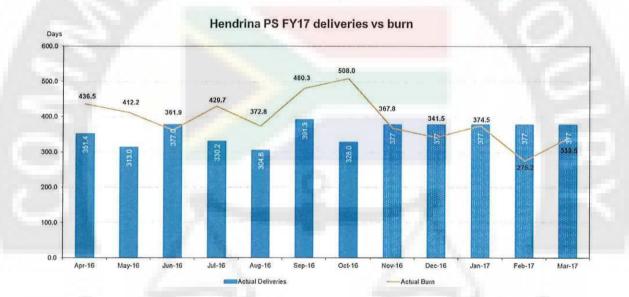
2. The Parties, Eskom Holdings SOC Limited ("Eskom") and Optimum Coal Mine Proprietary Limited ("OCM") and Optimum Coal Holdings Limited ("OCH") (jointly referred to as the "Optimum") are party to a Coal Supply Agreement with addenda ("CSA"), which regulates the supply and delivery of coal to Eskom's Hendrina Power Station ("Hendrina") up until 2018 at prescribed quantities, qualities and at an agreed price.

DISCUSSION

Contractually, Optimum is required to supply 458 333 tons per month and that this
volume may be reduced by 15%, which implies a minimum supply of 389 583 tons per
month.

OPTIMUM REDUCED SUPPLY TO HENDRINA POWER STATION AND THE RISK OF THE STOCKPILE REDUCING

- 4. The Optimum underground production is compromised by bad geological conditions. A number of production sections have encountered dyke intrusions within the current mining areas and the mine projects that the production sections will mine through the bad geological conditions by end of December 2016.
- 7. Currently Hendrina stockdays are at 25.2 and the risk of summer rains as well as the possible absenteeism during the December festive season will result in the Hendrina stockdays dropping below the minimum level of 20 days. To prevent a decline in the Hendrina stockdays, Primary Energy proposes to truck in coal at Hendrina. Liketh KK Pit 5 is a contract signed for the supply of coal to Hendrina. The graph below depicts the supply from Optimum in this financial year against the station burn.



It is evident that given the constrained supply, the additional import coal is required to prevent the station from running out of coal.

FINANCIAL IMPLICATIONS

8. The delivered cost of coal from Liketh KK Pit 5 is R494.99 per ton and the delivered cost of coal from Optimum to Hendrina is R182.89 per ton of coal.

BUDGET IMPLICATIONS

9. An additional cost of R312.10 per ton of coal will be incurred.

OPTIMUM REDUCED SUPPLY TO HENDRINA POWER STATION AND THE RISK OF THE STOCKPILE REDUCING

RECOMMENDATION

10. Primary Energy requests support to truck in coal under the Liketh Pit 5 contract originally signed for Hendrina to maintain and sustain the stockdays at the expected level of above 30 days.

Compiled by:.

Petros Mazibuko

GENERAL MANAGER:

COAL OPERATIONS (ACTING)

26 August 2016

Supported/Not Supported

Edwin Mabelane

CHIEF PROCUREMENT OFFICER:

GRØUP COMMERCIAL

Øate:

Recommended/Not recommended

Matshela Koko

GROUP EXECUTIVE: GENERATION

The Mill 2016 to effect for Mill 2016 to effect to the opportunity to either recover full supply from the mile or increase reclaims

Eskom Holdings SOC Ltd Reg No 2002/015527/30





Mr Petros Mazibuko General Manager: Coal Operations Primary Energy Maxwell Drive

Sandton

4 November 2016

Dear Mr Mazibuko

RE: Without prejudice and all rights reserve

As per our meeting held on the 1 November 2016 at Megawatt Park we hereby request that you reinstate clause 5.3 of the co-operation agreement that was signed between Eskom and Glencore on the 24 May 2014 as they had claimed against the "Hardship clause "in the current CSA.

As we are all well aware, that the current agreement is an onerous agreement. Due to this Glencore went into business rescue by August 2015. The factors surrounding the hardship clause in the agreement has not changed. Since the signing of the co-operation agreement inflation has increased two consecutive years by more than 6 % even though the mine inflation is well documented to be more in the region of 10-12% per year. This shows that the hardship has increased significantly since then.

Optimum was taken out of Business rescue on the 31 August 2016. This agreement will go a long way in serving our mutual interest by keeping the belts running and the supply constant. As per the co-operation agreement the qualities will not be compromised. We have already submitted the request for tender documents for the Hendrina supply post December 2018. We are willing to discuss around this tender for post December supply as indicated in the co-operation agreement signed between Eskom and Glencore.

We hope this letter finds your kind consideration.

Warm Regards

George van der Merwe Chief Operating Officer Optimum Coal (electronically signed)

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

Business Address: N11 Hendrina Road, Pullenshope Offramp, Pullenshope Mailing Address: Private Bag X1201, Pullenshope, 1096, South Africa

Tel.: +27 13 2965111

Registered Address: Block A, 144 Katherine Street, Sandton

Directors: N Howa, PU Govender, J Roux









MEMORANDUM

To:

Mr Edwin Mabelane, Chief Procurement Officer,

Reference:

Group Commercial

From:

Mr Petros Mazibuko, General Manager Coal

Version:

01

Date:

17 November 2016

Operations (Acting)

SUBJECT: OPTIMUM REQUEST FOR COOPERATION AGREEMENT

PURPOSE

1. This memorandum aims to provide a summary on the proposals that Optimum shared with Eskom to consider in order to keep Optimum from evoking the hardship provision in the contract.

BACKGROUND

- 2. The Parties, Eskom Holdings SOC Limited ("Eskom") and Optimum Coal Mine Proprietary Limited ("OCM") and Optimum Coal Holdings Limited ("OCH") (jointly referred to as the "Optimum") are party to a Coal Supply Agreement with addenda ("CSA"), which regulates the supply and delivery of coal to Eskom's Hendrina Power Station ("Hendrina") up until 2018 at prescribed quantities, qualities and at an agreed price.
 - From July 2016, Optimum and PED executives have been engaging in discussions on a
 possible relief of Optimum Colliery from certain clauses of the current CSA from 01 October
 2016 to 30 June 2017. This relief is in terms of the production difficulties that they foresee
 from October 2016 to June 2017.

OPTIMUM REQUEST FOR COOPERATION AGREEMENT

DISCUSSION

- 4. Optimum's points for substantiating the need for relief of certain clauses of the current CSA arise from:
- 4.1. Decreasing Mining Height resulting in lower production
- 4.2. Decreasing yield due to increased contamination
- 4.3. Increased prevalence of dykes resulting in lower production
- 4.4. Floor undulations resulting in machine breakdowns
- 4.5. Poor ventilation and limited pit room resulting in lower production and safety concerns
- 4.6. Procurement of the surface rights from an unwilling seller (Leon Cass). Eskom has had a similar previous experience with this same farmer.
- 4.7. The lack of investment in infrastructure over the historical business rescue period impacts on ROM generating projects which will further lower production.
- 5. Optimum's opinion is that these constraints will be rectified by 30 June 2017. Thereafter Optimum will be able to revert back to its contractual obligation.
- 6. The relief that Optimum is seeking is as follows:
- 6.1. Change the Inflation matrix away from CCI to a different escalation mechanism currently applied within the short/medium term contracts
- 6.2. Implement a twice a month payment structure
- 6.3. Eskom to reserve its rights on all penalties and not deduct the same
- 6.4. Reduced tons to 375k per month to Hendrina

FINANCIAL IMPLICATIONS

7. Currently the shortfall coal is delivered at approximately R500/ton versus the approximate R200/ton currently paid to Optimum.

BUDGET IMPLICATIONS

OPTIMUM REQUEST FOR COOPERATION AGREEMENT

8. This shortfall coal is not budgeted for and will have to be paid from the existing PED budget.

This totals approximately R225m from 01 October 2016 to 30 June 2017.

RECOMMENDATION

- 9. The suggested relief are as follow:
- 9.1. Change the Inflation matrix away from CCI to a different escalation mechanism currently applied within the short/medium term contracts

 Eskom has already drafted a mandate for approval on this matter and is in the process for consideration
- 9.2. Implement a twice a month payment structure

 Eskom can favorably consider this from 01 October 2016 to 30 June 2017 provided that the

 Parties agree on a settlement discount of 2.5%. The contract states a 30 day payment

 period
- 9.3. Eskom to reserve its rights on all penalties and not deduct the same

 Eskom agree to reserve its rights on the quality related penalties and accumulate the penalty amount over the period from 01 October 2016 to allow for the arbitration process currently underway to be completed. Eskom will immediately thereafter deduct penalties in terms thereof in equal instalments from the month of settlement and over the remaining period of the contract being up to 31 December 2018.
- 9.4. Reduced tons to 375k per month to Hendrina

 Eskom to waive the short supply penalty for the period from 01 October 2016 to 30 June

 2017 and the Shortfall volume is made up by 31 December 2018.
- 10. Should Eskom consider decide to implement the existing Agreement Eskom would have to charge Optimum Shortfall coal supply penalties in the region of R585m. It is Eskom's view that this would probably cripple the company and put it into liquidation. The next best alternative option for Eskom would exceed the cost of the Hendrina coal supply. It therefore makes business sense to keep Optimum afloat and supplying Eskom at the current terms and conditions of the contract, even if the supply is reduced.
- 11. Should any of these relief mechanisms be favourably considered, a formal approval process will need to be followed and your support of the recommendations under point 10 is requested.

OPTIMUM REQUEST FOR COOPERATION AGREEMENT

Compiled by: Petros Mazibuko **GENERAL MANAGER: COAL OPERATIONS (ACTING)** 17 November 2016 Supported/Net Supported Edwin Mabelane CHIEF PROCUREMENT OFFICER: **GROUP COMMERCIAL** Date: 2016 11 Approved / Not Approved Matshela Koko GROUP EXECUTIVE: GENERATION

Annexure GJO32





Mr George van der Merwe Chief Operations Officer Optimum Coal Holdings Suite No 19 Private Bag X1 MELROSE ARCH 2076

Dear Mr van der Merwe

TEMPORARY RELIEF AGEEMENT BETWEEN ESKOM HOLDINGS SOC LIMITED AND OPTIMUM COAL MINE PROPRIETARY LIMITED - REF NUMBER 726804

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 the parties to a coal supply agreement with addenda (the CSA") which regulates the supply of coal to Eskom's Hendrina Power Station.

A number of impasses have arisen between the Parties relating to the escalation provision in the CSA as well as the current position at Optimum.

Eskom has considered the constraints presented by Optimum Mine and agrees to the following temporary relief for the period, 1 September 2016 until 31 July 2017:

- 1. To change the Inflation matrix away from current CCI to a different escalation mechanism currently applied within the short/medium term contracts;
- 2. To reserve its rights on all penalties and not deduct the same;
- 3. To reduce the monthly supply volume to 375,000 tons.

Eskom's rights are fully reserved.

Yours sincerely

Edwin Vlabelane

HEF PROCUREMENT OFFICER

Date: 20(6 | 12 | 20

Annexure GJO33



FIFTH ADDENDUM TO THE HENDRINA COAL SUPPLY AGREEMENT

amongst

ESKOM HOLDINGS SOC LTD

and

OPTIMUM COAL MINE PROPRIETARY LIMITED

and

TEGETA EXPLORATION AND RESOURCES PROPRIETARY LIMITED

ep a

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 Fifth 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 "Fifth Addendum" means this Addendum;
- 1.1.2 "CSA" means the coal supply agreement between Eskom, Tegeta and OCM, in terms of which OCM supplies and delivers coal to Eskom's Hendrina Power Station, as amended by the First Addendum, Second Addendum, Third Addendum and Fourth Addendum;
- 1.1.3 "Eskom" means Eskom Holdings SOC Limited, a state-owned company with registration number 2002/015527/30 duly incorporated in terms of the laws of the Republic of South Africa;
- 1.1.4 "First Addendum" means the First Addendum to the CSA, entered into on 8 April 2008;
- 1.1.5 "Fourth Addendum" means the Fourth Addendum to the CSA;
- 1.1.6 "OCH" means Optimum Coal Holdings Proprietary Limited, a private company with registration number 2006/007799/07 duly incorporated in terms of the laws of the Republic of South Africa;
- 1.1.7 "OCM" means Optimum Coal Mine Proprietary Limited, a private company with registration number 2007/005308/07 duly incorporated in terms of the laws of the Republic of South Africa;
- 1.1.8 "Parties" means the parties to this Addendum:
- 1.1.9 "Second Addendum" means the Second Addendum to the CSA entered into on 12 April 2011;



DE CA

- 1.1.10 "Signature Date" means the date when this Fifth Addendum has been signed by all Parties (whether or not in counterpart), the latest of the dates on which this Fifth Addendum (or any counterpart) was signed by any Party:
- 1.1.11 "Tegeta" means Tegeta Exploration and Resources Proprietary Limited, a private company with registration number 2006/014492/07 duly incorporated in terms of the laws of the Republic of South Africa; and
- 1.1.12 "Third Addendum" means the Third Addendum to the CSA entered into on 11 February 2013.
- 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 Fifth Addendum.

2 INTRODUCTION

2.1 It is recorded that -

- 2.1.1 Tegeta and OCM are jointly and severally liable to Eskom to ensure that Hendrina is supplied and delivered with coal which complies with the quality and quantity requirements set out in the CSA.
- 2.1.2 On 21 December 2017 the Eskom Board Tender Committee resolved to approve amendments to the CSA for the remaining duration thereof based on justifications provided for such amendments.
- 2.1.3 Now therefore the Parties hereby agree to further amend the CSA on the terms and conditions as set out in this Fifth Addendum.

3 AMENDMENTS TO THE CSA

3.1 Contract Price of Coal

3.1.1 With effect from 1 January 2018 and until the expiry of the CSA on 31 December 2018, and including any Shortfall Extension Period (as defined in clause 3.3.5), the base price for coal as contemplated by Schedule 3 of the CSA read with clause 3.5 of the Second Addendum is rebased to R201.46/ton.



- 3.1.2 OCM shall in addition to the documents and information required in terms of clause 7 of the CSA read with clause 3.4 of the Second Addendum, submit the following information to Eskom with its monthly invoice for coal:
- 3.1.2.1 the monthly percentage of OCH's marketing commission:
- 3.1.2.2 OCH's monthly railage on a R/t basis; and
- 3.1.2.3 OCH's monthly throughput cost.
- 3.1.3 For the avoidance of doubt:
- 3.1.3.1 no further escalation shall apply to the base price of coal for the remaining duration of the CSA, including the Shortfall Extension Period (as defined in clause 3.3.5), save for diesel adjustment as provided at clause 3.2.2 below.
- 3.1.3.2 Clause 7 of the CSA regulating the contract price and payment for coal is only amended to reflect the new rebased price and escalation parameters provide under clause 3.2 below.
- 3.1.4 It is specifically recorded and agreed that with effect from 1 January 2018, no Party shall have a claim against any other Party in relation to the rebasing of the price of coal. Notwithstanding the above, the Parties shall retain any rights under the CSA to pursue any claim for failure to supply and deliver coal or in respect of accrued penalties or premiums in respect of coal for the period prior to 1 January 2018, including the period to the expiry of the CSA.

3.2 Escalation Parameters

3.2.1 Subject to clause 3.2.2, with effect from 1 September 2016, the escalation parameter for coal as contemplated by Schedule 4 of the CSA is hereby deleted and replaced with Table 1A hereunder:

Table 1A: Escalation Parameter

Cost Component	Index and source table	Weightings	Effective
Labour	SEIFSA Table C-4	26.00%	



Cost Component	Index and source table	Weightings	Effective	
			Not to be applied	
	Mechanical Engineering Index P0151, Table 3	3.00%	Not to be applied	
Mining Supplies	PPI Mining Machinery P0151 Table 4	6.00%	Not to be applied	
Mining Supplies	Imported Rubber P0151	3.00%	Not to be applied	
	Structural and fabricated metal products P0142.1	3.00%	Not to be applied	
Diesel	DME 0.05% Sulphur Reef	8.00%	Monthly Adjustment	
Electricity	Electricity PPI P0142.1 Table 3	4.00%	Not to be applied	
10	CPI headline P0141 Table A All Items	7.50%	Not to be applied	
Overheads	PPI Coal & Gas P0142.1 Table 4	7.50%	Not to be	







Cost Component	index and source table	Weightings	Effective
Profits & Capital	CPI headline P0141 Table A All Items	11.00%	Not to be applied
	PPI Coal& Gas P0142.1 Table 4	11.00%	Not to be applied
Fixed		10.00%	Not to be applied
Total		100.00%	

3.2.2 With effect from 1 January 2018 and until the expiry of the CSA (taking into account the Shortfall Extension Period set out in clause 3.3.5), the price of coal shall be adjusted monthly for diesel in terms of the escalation parameter set out under clause 3.2.1 above, with no additional annual escalation on the rebased contract price. Annexures "A" and "B" hereto sets-out the breakdown of the components of the rebased coal price and the Al penalty.

Table 1B: Rebased Penalty Values as at 31 December 2017

Rebased Values - December 2	017			
Quality	Re	Rebased		
Parameters	Va	lues		
Abrasiveness Index (AI)	R	19.2605		
Ash Content	R	201.46		
Calorific Value (CV)	R	201.46		
Sizing	R	201.46		

3.3 Quantity of Coal

3.3.1 With effect from 1 December 2017 in respect of the coal quantity requirements for Hendrina, clause 3.2 of the First Addendum is deleted and replaced with the



provisions of this clause. For the avoidance of doubt, clause 3.2 of the First Addendum continues to regulate any failure to supply the contractual tonnages for the period of the CSA up and until 30 November 2017.

- 3.3.2 For the period 1 December 2017 to 31 December 2018, the monthly contractual quantity of coal to be supplied and delivered by OCM to Eskom until the expiry of the CSA will be adjusted from 458 333 tons per month to 400 000 tons per month ("Monthly Contract Tonnage") or 5 200 000 tons of coal ("Total Contract Tonnage").
- 3.3.3 Until the expiry of the CSA, OCM shall supply and deliver to Eskom not less than 370 000 tons of coal per month ("Minimum Monthly Contract Tonnage"), failing which Eskom will apply the penalty contemplated by clause 3.3.8 and 3.3.9 should OCM for any particular month supply and deliver to Eskom coal which is less than the Minimum Monthly Contract Tonnage.
- 3.3.4 Should OCM fail to supply and deliver to the Power Station coal between the Minimum Monthly Contract Tonnage and the Monthly Contract Tonnage ("Shortfall Coal"), OCM shall provide Eskom with a rectification plan for such Shortfall Coal within 5 (five) calendar days from end of the month of the Shortfall Coal. The rectification plan shall specify how OCM will rectify the Shortfall Coal for the particular month during the later weeks or months, but in any event not later than 31 December 2018.
- 3.3.5 In the event that the Shortfall Coal not being rectified by OCM on or before 31 December 2018, as a result of matters that constitute vis major under clause 26 of the CSA, the CSA is extended for a period not exceeding 3 (three) months, effective from 1 January 2019 until 31 March 2019 ("Shortfall Extension Period").
- 3.3.6 For avoidance of doubt, the sole purpose of the Shortfall Extension Period is to ensure that any Shortfall Coal not supplied and delivered to Eskom during the period 1 January 2018 to 31 December 2018 be supplied and delivered to Eskom on or before 31 March 2019.
- 3.3.7 Should OCM fail to supply and deliver the Shortfall Coal during the Shortfall Extension Period, Eskom is entitled to claim direct damages from OCM for such Shortfall Coal.

place of

- 3.3.8 In the event OCM supplies and deliveries to Eskom less than the Minimum Monthly Contract Tonnage during a particular month, Eskom is entitled to levy a penalty. The penalty shall be calculated with reference to the difference between the Minimum Monthly Contract Tonnage (370 000 tons) less the actual coal supplied during the month ("Penalty Coal"). The difference constitutes the Penalty Coal.
- 3.3.9 The penalty for Penalty Coal shall be offset against all amounts due and payable from time-to-time by Eskom to OCM under the CSA. The penalty is calculated with the following formulae::

P=SxD

Where

P is the penalty payable by OCM to Eskom in the circumstances described in this clause 3.3.8;

S is the quantity, expressed in tonnes, of coal which OCM shall, at the end of each month have short delivered to Eskom; and

D is the difference between the export parity price ("EPP") (calculated in respect of gigajoule content) per tonne of coal and the price per tonne of coal (calculated in respect of gigajoule content) payable by Eskom ("Eskom gigajoule Price") to OCM in terms of the CSA. For the purposes hereof:

EPP shall be the price (calculated on the relevant gigajoule content per tonne) of coal determined by reference to the formula:

EPP = API 4 + CC

Where

API 4 is the relevant prevailing price per tonne of typical API 4 spec coal, adjusted in respect of all costs of carriage and loading thereof onto a vessel at Richards Bay Coal Terminal; and

CC is the average calorific content per tonne of typical API 4 spec coal; and

EN NO CO

"Eskom gigajoule Price" "EGP" shall be the price (calculated on the relevant content per tonne) payable by Eskom to Optimum Colliery in respect of coal supplied in terms of the Addendum, which shall be determined by dividing the price of each tonne of such coal by a factor of 23.5

The price payable by Eskom to OCM in respect of the coal required to be supplied and delivered to Eskom shall be based on the rebased price provided for in the CSA.

Annexure C to this addendum sets-out the calculation of the Shortfall Coal and the Penalty Amount in the event OCM supply less than the Minimum Monthly Contract Tonnage

3.3.10 Without limiting any other rights, including the right to levy a penalty for Penalty Coal, Eskom may approach a competent court on an urgent basis for mandatory interdictory relief, in the event that OCM for 2 (two) consecutive months fail to supply the Minimum Monthly Contact Tonnage to compel OCM to supply Eskom with the Monthly Contract Tonnage.

3.4 Abrasiveness Index Quality Parameter and Penalty Regime

- 3.4.1 With effect from 1 December 2017 and until the expiry of the CSA (taking into account the Shortfall Extension Period contemplated in clause 3.3.5), the Abrasiveness Index ("Al") coal quality parameter as contemplated by clause 3.3 of the Second Addendum for coal supplied and delivered to Eskom is adjusted from 423mgFe/4kg of coal to a value of 650mgFe/4kg of coal on a 7 (seven) day weight rolling average basis.
- 3.4.2 Should OCM on a 7 (seven) day weighted rolling average basis supply and deliver to Eskom coal with an AI in excess of >650mgFe/4kg of coal, Eskom shall levy a penalty of R19.2605. Annexure D hereto set-out the method of calculating the weighted rolling average and the calculation of the AI Penalty.
- 3.4.3 It is specifically recorded and agreed that save in relation to the AI, that all other quality specifications in relation to coal to be supplied and delivered to Eskom shall be in accordance with the provisions of the CSA. Annexure E hereto setsout the calculation of the other quality specifications contemplated by the CSA.



4 SAVINGS

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

5 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 Fifth Addendum or any correspondence exchanged between the Parties in respect of and/or in anticipation of this Fifth Addendum or any agreement entered into pursuant to and/or in anticipation of this Fifth Addendum. It is specifically recorded that each of the Parties independently may be obliged to make public announcements in respect of this Fifth 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.

6 SIGNATURE

- 6.1 This Fifth Addendum is signed by the Parties on the dates and at the places indicated below.
- 6.2 This Fifth Addendum may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement as at the date of signature of the signatory last signing one of the counterparts.
- 6.3 The persons signing this Fifth Addendum in a representative capacity warrant their authority to do so.





SUNNINGHILL 20 Dannord Signed at 2018 **Eskom Holdings SOC LTD** who warrants that he is duly authorised hereto Name: W.F. Majola Position: Acting Group Executive 20 January Signed at 2018 ОП Optimum Coal Mine Proprietary Limited who warrants that he is duly authorised hereto Name: George V/d W Lewe. Position: (20

By Der D

Signed at

on

20 JANUARY

2018

Tegeta Exploration and Resources

who warrants that he is duly authorised hereto

Proprietary Limited

Name: R. RAGAVAN

Position: PIRECTOR

ANNEXURE A: EXAMPLE OF THE REBASED COAL PRICE AND FUTURE ESCALATION CALCULATION

Sizing Sizing	Ash Content	Abrasiveness Index (AI)	Parameters	Quality	Rebased Values - December 2017	Total	Fixed	Profit & Capital	Overheads	Electricity	Diesel	Mining Supplies	Labour	Coast Component
give	7	ess inc	Vi		alues	100%	10%	11%	7.5%	Ď.	250	果果果	25%	3E
IA	Ś	lex (AI)			- Decemb	188.07	18.R1 Fixed							Bure Price G1 Sep 16 R 158.97
	R 201.46	R 19.2605	Values	Rebased	er 2017		Amed.	20.69 CPI headline POJATTable A All frams 20.69 PPI Coelă Gas POJAZJTable 4	14.11 CPI headline POIATTable A All Items 14.11 PPI Cosl & Gas POIAC.TTable 4	7.52 Electricity PPI P0142.1 Table 3	15.05 DME 0.05% Sulphur Reef	11.28 PPI Maring Machinery P0151 Table 4 5.64 Imported Risiber P0151 5.64 Structural and fabricated metal products P0142.1	48.50 SEPSA Table C-4 5.64 Mechanical Engineering Index PQ151	Proportion Index and Source Table
							Not epplicable	21.60 287.60	91.60	148.50	1048.87	99.40 70.80 99.00	137.80	Base Date Index Value (B)
											Aug 16			Date Date
							Not applicable		Annually		Monthly	Annually		Frequency of Adjustments
								103,30	101.80	150.80	1170.33	96.30 76.60 102.20	147.40 99.10	Aug 17
								104.77%	104.77%	101.25%	111.58%	58.89% 111.02% 103.23%	106.97%	Aug 17 Annual Adj. Sep 17 Ref. Dec 17 Diesel Adj.
						199.67	100 100 100 100 100	21.67	14.78	7.62	16.79	5.82	52.50	Sep 17
								× -	- =	ā	77	m 0 n	m Þ	P.
											1295,63			0c 17
											110.71%			
						201.46	S-A QID DID DID S-A	21.67	14.78	7,62	100	11.16 6.26 5.62	52.30	Final Price 31 Dec 2017



ANNEXURE B: EXAMPLE OF THE AI PENALTY AMOUNT AND FUTURE ESCALATION CALCULATION

Total	Fixed	Profit & Capital	Overheads	Electricity	Diesel	Mining Supplies	Labour	Cost Component
100%	10%	313%	7.5% 7.5%	4%	S.	KKK	26% 3%	× 20 m
17.98	1.80	1.98	135	0.72	144	0.54	4.67 0.54	Base Price 01 Sep 16 R 17.9800
	1.80 Fixed	CPI head	CPI head	Electricit	DIME 0.05	ppi Mirin Imported Structura	4.67 SEIFSA Table C-4 0.54 Mechanical Engir	7
		1.98 CPI headline PO141Table A All Items 1.98 PPI Coal& Gas PO142.1Table 4	1.35 CPI headline P01/41Table A All Rems 1.35 PPI Cool & Gas P01/42.1Table 4	0.72 Electricity PPI P0142.1 Table 3	1.44 DME 0.05% Sulphur Reef	1.08 PPI Miring Machinery P0151 Table 4 0.54 Imported Rubber P0151 0.54 Structural and fabricated metal products P0142.1	4.67 SEFSA Table C-4 0.54 Mechanical Engineering Index PQ151	Proportion Index and Source Table
	Not applicable	98.60	98.60	148.90	1 048.87	99.40 70.80 99.00	137.80 56.70	Base Date Index Value (8)
					Aug 16			Base
	Not applicable		Annually		Monthly	Annually		Frequency of Adjustments
		103.30	103.30	150.80	1170.33	98.30 78.60 102.20	147.40 99.10	Aug 17
		104.77%	104.77%	101.28%	111.58%	98.89% 111.02% 103.23%	106.97%	Aug 17 Annual Adj.
19.0887	1.80	2.20	171	0.73	1.60	0.56	5,00	Sep 17
		× -	- =	۵	*11	m 0 0	m >	P.
					1295.63			Dec 17
, .					110.71%			Adj. Sep 17 Ref. Dec 17 Diesei Adj. 51 Dec 2017
19.2605	1.80	2.07 2.20	1.50	0.73	1.78	1.07 0.50	5.00	Final Price \$1 Dec 2017

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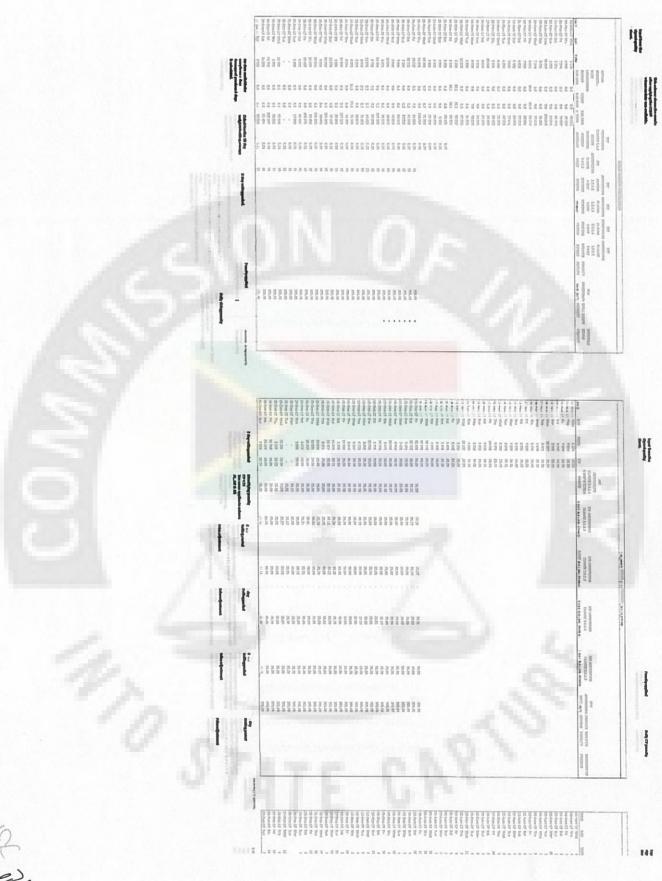
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ANNEXURE C: CALCULATION OF THE SHORTFALL COAL AND THE APPLICABLE PENALTY AMOUNT

		5th Addendum Clause 3.9 Penalty Coal	
Winimum Monthly Contractual Tonnage	tona	370 000	5th Addendum
OCM deliveries	tons	265 003	Clause: 3.3.8
	tons	104 997	Calculates the shortfell tons below
Buffer Stock	tons		the minimum monthly contractual.
Penalty Coal	8	104 997	contractual.
Calculation to determine the Monthly A	P1 4 price at sou	rce	
Monthly Ave API4 (Dec 17)	USD	94.81	
Exchange Rate (Ave Dec 17)	ZAR/USD	13.08	
Monthly Ave ZAR APM (Dec 17)	ZAR	1 238.33	5th Addendum
Marketing commission	0%		Clause: 3.3.9
Carriage Cost	ZAR	-158.63	API 4 adjusted by OCM's costs.
Loading cost on vessel at Richards Bay	ZAR	-17.07	
Adjusted Monthly AP1 4 Price at source	ZAR	1 062.03	
Monthly AP1 4 Price at acurce express			5th Addendum
Export parity price (EPP) (EPP=API4 / CC) R/GJ	42.31	Clause: 3.3.9
Adjusted Monthly AP1 4 Price at source	ZAR	1 062.03	Formatic
(CC) Ave calorific contant - API 4 spec coaf	CA	25.10	EPP = API 4/CC
			=F23/F26
Monthly Eakom Price expressed in R/G			
Eakom gigajouis price (EGP)	- 25 S S S S S S S S S S S S S S S S S S		5th Addendum
	R/G]	8.57	Clause: 3.3.9
Price (Rpt) psyable by Eskom to OCM - CSA Factor	ZAR	201.48	Formula:
	LV	23.50	EGP = Price perton / Factor (29.5)
Monthly Penalty Price expressed in R/C	21		APANIEN
Export party price (EPP) (EPP=AP4 / CC)	4	42.31	
Eskom glgajoule price (EGP)		-8.57	5th Addendum Clause: 3.3.9
Difference between EPP & EGP	D	33.74	Clause: 3.3.9
and the state of t		400000000000000000000000000000000000000	# F22 - F28
TOTAL MONTHLY PENALTY TO BE OF	FRET		
S (shortfall tons)	turn to the contract of the co	104 997	5th Addendum
D (difference between EPP & EGP)	tons	33.74	Clause: 3.3.9
O (consusance pseudesti Ch. 9 COh.)	R/GJ	33.74	Portreule:
P (penalty payable - excluding VAII)	ZAR	83 249 296 60	P = S = D = F39°F40
THE STATE OF THE S			

ANNEXURE D: EXAMPLE ON HOW TO CALCULATE THE WEIGHTED ROLLING AVERAGE FOR AI AND THE APPLICABLE PENALTY AMOUNT

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Annexure GJO34



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Companies and Intellectual Property Commission Republic of South Africa

	A STATE OF THE PROPERTY OF THE
Form Ook 129.1	Notice of Beginning of Business Rescue Proceedings
About this Form	Date: 19 FEBEUACY 2018
	Customer Codo: Davilo
ol: section 129 and 151 of	Concerning
and Regulation 123 M tha	(Name and Registration Number of Company)
Companios Regulators	Name: Optimum Coal Mine (Ply) Ltd
A company resolution to ".	Registration No: 2007/005308/07
Commisses business rescrib	The above named company advises that business rescue proceedings have commenced
White notice	In terms of Chapter 8 of the Companies Act, as a result of:
The leaf color and	
person with 6 husbass	X The Board of the company having adopted the allached resolution in forms section 129, on 16 February 2018
	15:0) VIII
(a) If the been ded, in the	A Court having made the attached order in terms of section 131, on
(b) The date of the count	THE REPORT OF THE PARTY OF THE
Dodan in suich a case	in terms of section 132 (1)(a), the company's business restaun proceedings commenced
the Noice is haved	on 19 FERCUREY 2018 , being the date on which:
(a) The corpsny must appoint	This notice was filed with the Commission.
a business nacua	LA.
precitioner with 6 businers " "days elter thing this notice;"	The court issued the attached order.
and.	(Only in the case of a company resolution)
5. (b) Any affected parson may : - epylysic acoust in terms of -	in support of this Notice, the company has attached a sworn statement of the relevant
Topiq na vol. 001 noulos	facts upon which the resolution was founded by a director representing the Board.
The less for thing this notice	KOMMISSIE VIR MAATSKAPPYE EN
	ONDERNEMINGSREDDING
Contacting the	
Commission -	2018 -02- 1 9 No: 04
Projectly Continuation of Earth Alica	BUSINESS RESCUE
[Doils] Address:	Name and The diplatorships only of the Children Property COMMISSION
Pielota 0001	Pushpaveni Ugeshiri Governor
PRepublical South Maics Tel: 086 100 2472	Authorised Signature:
Timetic party	Ø 1.
Tel	your on

This form is prescribed by the Minister of Trade and Industry in terms of section 223 of the Companies Act, 2004 (Act No. 71 of 2008).

RESOLUTION OF THE BOARD OF DIRECTORS OF OPTIMUM COAL MINE (PTY) LTD (REG NO: 2007/005308/07) ADOPTED AT ON THIS 16 DAY OF 6 brushy 2018

RESOLVED THAT:

- 1. The Board having concluded that there are reasonable grounds to believe that

 OPTIMUM COAL MINE (PTY) LTD (REG_NO: (2007/005308/07), the company is

 financially distressed and that there however appears to be a reasonable prospect that

 the company may be rescued, the company voluntarily begin business rescue

 proceedings and that it be placed under supervision in terms of the provisions of s

 129(1) read with s 129(2) of the new Companies Act, 2008 (Act 71 of 2008).
- 2. All steps be taken forthwith to file this resolution with the Companies and Intellectual Property Commission (CIPC), and further to comply with the provisions of s 129(3) of the new Companies Act, 2008 and after the appointment of a business rescue practitioner, with the provisions of s 129(4) of the said Act.
- 3. That Pushpaveni Ugeshni Govender be and in AMERICAL PROPERTIES to sign all KOMMISSIE VIR MAANEROUS documentation to give effect to this resolution remaining the sign and commentation to give effect to this resolution remaining the sign and commentation to give effect to this resolution remaining the sign and commentation to give effect to this resolution remaining the sign and commentation to give effect to this resolution.

BUSINESS RESCUE

COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION



- Appropriate steps be taken, in collaboration with CIPC, for Kurt Robert Knoop or a 4. person nominated by CIPC to be appointed as business rescue practitioner for the purposes aforesaid.
- The Board takes all reasonable steps to assist and co-operate with the business rescue 5, practitioner, in order to rescue the company.

BY ORDER OF THE DIRECTOR OF THE BOARD

Noticed Total

PUSHPAVENI UGESHNI GOVENDER

DIRECTOR

KOMMISSIE VIR MAATSKAPPYE EN INTELLEKTUELE EIENDOM ONDERNEMINGSREDDING

2018 -02- 19

No. 04

BUSINESS RESCUE

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

SWORN STATEMENT

I, the undersigned

PUSHPAVENI UGESHNI GOVENDER

Do hereby declare under oath as follows:

INTRODUCTION

- 1. I make this Affidavit as the sole director of OPTIMUM COAL MINE (PTY) LIMITED, REGISTRATION NUMBERS: 2007/005308/07 ("the entity"), in terms of the provisions of Section 129 of the Companies Act, 2008 (Act 71 of 2008) as amended from time to time (hereinafter referred to as the Act).
- 2. I am an adult female and the authorized individual pursuant to the resolution of directors of the entity and I am therefore the duly authorized representativo.
- The sole shareholder is Tegeta Exploration resolution is supported by the shareholder

KOMMISSIE VIR MAATSKAPPYE EN

2018 -02- 1 9

No: 04

BUSINESS RESCUE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

4. The facts contained in this Affidavit falls within my personal knowledge and I confirm the contents hereof to be true and correct.

- The entity has its registered address at GRAYSTONE RIDGE OFFICE PARK,
 Block A lower ground floor, 144 Katherine Street, Sandton, Gauteng, 2198.
- 6. The entities core business is the production of coal from its coalfield located in the Middleburg District, 200km east of Johannesburg. At prosent, the entity produces between 700 (seven hundred thousand) and 800 (eight hundred thousand) tons of coal per month.
- I am of the opinion that the entity has a reasonable prospect of success and therefore the entity ought to commence with business rescue proceedings forthwith.

RESOLUTION TO COMMENCE WITH BUSINESS RESCUE

2018 -02- 1 9 No: 04

9. This Affidavit deals with certain of the FORMANES THE RESCUE

of the board is founded and more specifically the reason why the entity via its board has made the election to commence business rescue proceedings.



FINANCIAL DISTRESS

- 10. The director of the entity reasonably believes that the entity is financially distressed (within the definition of the Act) due to the fact it is reasonably unlikely that it will be able to pay of all its debts as they fall due and payable within the immediately ensuing six (6) months. I will deal with this in more detail below.
- 11. The entity, within the prescripts of Chapter 6 of the Act, may come into financial distress due to the fact that the four (4) larger South African banks previously terminated any financial relationship, which left the Bank of Baroda as the last financial institution doing business with the entity. However, during or about the 12Th February 2018, the Bank of Baroda officially notified the office of the Registrar of Bank of its Intention to exit South Africa. The withdrawal of the aforementioned bank from South Africa shall cause an undue and unfair impediment upon the entity in terms of its ability to conduct business in the ordinary course inclusive management with its INTELLEKTUELE EIENDOM Suppliers, clientele, debtors and creditors.

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BUSINESS RESCUE
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approximate 3.1 billion rand.

2018 -02- 19

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13. The board believes that the mechanism provided for in business rescue proceedings will allow for a banking account to be secured with the Republic of South Africa, given that the proceedings implores the supervision and therefore control of the entity by an independent business rescue practitioner.

REASONABLE PROSPECT OF BUSINESS RESCUE

14. The entity, if given the opportunity under the supervision of a business rescue practitioner, will be able to negotiate a financial relationship with a registered bank within the Republic of South Africa and thereby prevent the entity from grinding to a standatill. In order to achieve this, it is crucial for the entity to be allowed to commence business rescue proceedings and in that period trade unhindered, in the ordinary course of its business, pursuant to the provisions of Chapter 6 of the Companies Act, 2008.

ROMMISSIE VIR MAATSKAPPYE EN
INTELLEKTUELE EIENDOM
ONDERNEMINGSREDDING

2018 -02- 1 9 No: 04

BUSINESS RESCUE
COMPANIES AND INTELLECTUAL
PROPERTY COMMISSION

Sworn to and signed before me at 91 of to this / 9 day of

February 2018 by the abovementioned Deponent, who acknowledge that he knows and understands the contents of this Affidavit and he has no objections to taking the prescribed oath which reads as follows: "I swear that the contents of this Affidavit is true, so help me God" and further that he acknowledges that she/he regards the said prescribed oath as binding on this conscience, which oath was duly administered by me as required by law.

COMMISSIONER OF OATHS

FULL NAME:

ABRIE DU PLESSIS

COMMISSIONER OF OATHS

SOFFICIO PRACTICING ATTORNEY R.S.A.

BI + FLOOR, 209 SMIT STREET

BRACHFONTEIN JHB 2011

CAPACITY:

TEL (011) 400-051/1

TEL (011) 400-051/1

AREA:

KOMMISSIE VIR MAATSKAPPYE EN INTELLEKTUELE EIENDOM ONDERNEMINGSREDDING

2018 -02- 1 9

No: 04

BUSINESS RESCUE

COMPANIES AND INTELLECTUAL PROPERTY COMMISSION

Annexure GJO35



CONFIDENTIAL



Mr Ravindra Nath Chief Executive Officer Tegeta Exploration and Resources (Pty) Ltd Grayston Ridge Office Park 144 Katherine Street **SANDTON** 2146

Dear Mr Nath

SHORT TERM CONTRACT ("STC") BETWEEN ESKOM HOLDINGS SOC LTD ("ESKOM") AND TEGETA EXPLORATION AND RESOURCES (PTY) LTD ("TEGETA") FOR THE SUPPLY OF APPROXIMATELY 100 000 TONS OF CONTRACT COAL FOR THE PERIOD COMMENCING 13 JANUARY 2016 OR SOONEST THEREAFTER 31 JANUARY 2016 - REFERENCE NUMBER 724585

Eskom confirms the purchase of 100 000 (one hundred thousand) Tons of Contract Coal from Tegeta Exploration and Resources (Pty) Ltd for the period commencing 13 January 2016, or soonest thereafter until 31 January 2016 or expiring when the total Contract Coal quantity has been delivered.

The essential agreed terms of the supply contract are:

1. Suspensive Conditions

No suspensive conditions are applicable.

2. Duration of Agreement

This Short Term Contract shall commence on 13 January 2016 or soonest thereafter and shall endure until 31 January 2016 or expiring when the total Contract Coal quantity has been delivered.

Primary Energy Megawatt Park Maxwell Drive Sunninghill Sandton PO Box 1091 Johannesburg 2000 SA Tel +27 11 800 8111 Fax +27 86 663 9855 www.eskom.co.za SHORT TERM CONTRACT ("STC") BETWEEN ESKOM HOLDINGS SOC LTD ("ESKOM") AND TEGETA EXPLORATION AND RESOURCES (PTY) LTD ("TEGETA") FOR THE SUPPLY OF APPROXIMATELY 100 000 TONS OF CONTRACT COAL FOR THE PERIOD COMMENCING 13 JANUARY 2016 OR SOONEST THEREAFTER UNTIL 31 JANUARY 2016 – REFERENCE NUMBER 724585

3. Coal Quantities

3.1 The Supplier shall Deliver and Eskom will Take Off, a quantity of Contract Coal between the Minimum Monthly Quantity and the Maximum Monthly Quantity as set in Table 1 hereunder.

Month	Monthly Quantity (Tons)	Minimum Monthly Quantity (10%)	Maximum Monthly Quantity
January 2016	100 000	90 000	100 000
Total	100 000		

Table 1: Coal Quantities

4. Source of Coal Supply

Contract Coal to be Delivered by the Supplier to Eskom in terms of this Agreement shall be a blended product sourced from Optimum Coal Mine.

5. Coal Quality

- 5.1 The Supplier shall ensure that each quality parameter of the Contract Coal Delivered to Eskom in terms of this Agreement shall comply with the Quality Specifications for Contract Coal set out in Table 2 hereunder.
- 5.2 The Supplier shall not supply coal that has not originated from the Pre-Certified Stockpiles.

SHORT TERM CONTRACT ("STC") BETWEEN ESKOM HOLDINGS SOC LTD ("ESKOM") AND TEGETA EXPLORATION AND RESOURCES (PTY) LTD ("TEGETA") FOR THE SUPPLY OF APPROXIMATELY 100 000 TONS OF CONTRACT COAL FOR THE PERIOD COMMENCING 13 JANUARY 2016 OR SOONEST THEREAFTER UNTIL 31 JANUARY 2016 - REFERENCE NUMBER 724585

Quality parameter	Unit	Quality Expected	Quality Rejection Limit	Measurement basis
Calorific Value	MJ/kg	24.01	<22.48	Air Dried
Total Moisture	%	8.0	>9.0	As Received
Inherent Moisture	%	4.1		Air Dried
Ash	%	20.18	>24.32	Air Dried
Abrasive Index (Eskom Mining House Method)	mgFe/4kg	<450	>450	Air Dried
Sulphur	%	1.19	>1.19	Air Dried
Volatiles	%	21.67	<19.53	Air Dried
AFT (Initial deformation)	°C	1490	<1490	N/A
Sizing: (cumulative) %		<i>"</i>		
ALC: NO.	+60mm	0	>0	
All Carlot	+50mm	5	>5	N/A
ALC: NO	-3.35mm	25	>25	
ACCOUNT I	-1mm	10	>10	

Table 2: Coal Qualities and Rejection Limits

6. Receiving Power Station

Contract Coal supplied in terms of this Short Term Contract will be Delivered to Arnot Power Station in the first instance. Eskom however reserves the right to request that the Contract Coal be delivered to any other Eskom nominated destination it so wishes.

7. Price

7.1 Delivery and Price

Eskom shall take Delivery and the Supplier shall Deliver the Contract Coal on a delivered at the Power Station basis. The price for Contract Coal costs shall be R20.41 (twenty rands and forty one cents) per GJ on an As Received Basis excluding VAT, Free Carrier (FCA) at the Delivery Point for Contract Coal Supplied to Arnot Power Station, in accordance with Table 2. The transport tariff per Ton payable by Eskom to the Supplier (and which shall be in addition to the Price payable for the Contract Coal so Delivered) shall be determined using the Eskom Coal Haulage Rates Model.

Page 3 of 7

SHORT TERM CONTRACT ("STC") BETWEEN ESKOM HOLDINGS SOC LTD ("ESKOM") AND TEGETA EXPLORATION AND RESOURCES (PTY) LTD ("TEGETA") FOR THE SUPPLY OF APPROXIMATELY 100 000 TONS OF CONTRACT COAL FOR THE PERIOD COMMENCING 13 JANUARY 2016 OR SOONEST THEREAFTER UNTIL 31 JANUARY 2016 – REFERENCE NUMBER 724585

7.2 Price Escalation

Not applicable. The price shall be fixed and firm for the duration of the Short Term Contract.

8. Pre-Certification of Coal

In order to ensure compliance with the provisions of Clause 5 the Supplier shall ensure that prior to Delivery to Eskom, coal contained in each separate stockpile is sampled and precertified to meet the Quality Specifications for Contract Coal and is identified as such in accordance with the processes and procedures set out in the STC Annexure A: Coal Quality Management Procedure applicable to this Short Term Contract.

9. Conditions of Contract

There will be no take-or-pay penalties applicable. The Short Term Contract shall mutatis mutandis be subject to the provisions of the existing Coal Supply and Off-Take Agreement Number 4600056841, unless otherwise provided for in this Short Term Contract. In the event of any discrepancy in interpretation between the terms and conditions of the existing Coal Supply and Off-Take Agreement Number 4600056841 referenced above and this Short Term Contract, the terms and conditions of this Short Term Contract will prevail.

10.General

- 10.1 This Short Term Contract constitutes the sole record of the agreement between 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 or expressly incorporated herein. This Short Term Contract accordingly supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof.
- 10.2 No addition to, variation, novation or agreed cancellation of, any provision of this Short Term Contract will be binding on the Parties, unless reduced to writing and signed non-electronically by or on behalf of all of the Parties.



SHORT TERM CONTRACT ("STC") BETWEEN ESKOM HOLDINGS SOC LTD ("ESKOM") AND TEGETA EXPLORATION AND RESOURCES (PTY) LTD ("TEGETA") FOR THE SUPPLY OF APPROXIMATELY 100 000 TONS OF CONTRACT COAL FOR THE PERIOD COMMENCING 13 JANUARY 2016 OR SOONEST THEREAFTER UNTIL 31 JANUARY 2016 - REFERENCE NUMBER 724585

10.3 The non-electronic signature by any Party of a counterpart of this Short Term Contract will be as effective as if that Party had signed the same document as the other Parties.

Yours sincerely

Vusi Mboweni

SENIOR GENERAL MANAGER: PRIMARY ENERGY

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Page 5 of 7

SHORT TERM CONTRACT ("STC") BETWEEN ESKOM HOLDINGS SOC LTD ("ESKOM") AND TEGETA EXPLORATION AND RESOURCES (PTY) LTD ("TEGETA") FOR THE SUPPLY OF APPROXIMATELY 100 000 TONS OF CONTRACT COAL FOR THE PERIOD COMMENCING 13 JANUARY 2016 OR SOONEST THEREAFTER UNTIL 31 JANUARY 2016 – REFERENCE NUMBER 724585

APROVAL OF SHORT TERM CONTRACT

This short term contract is hereby accepted by Eskom Holdings SOC Ltd and Tegeta Exploration and Resources (Pty) Ltd.

FOR: ESKOM HOLDING	IS SOC LIMITED		
	NAGER: PRIMARY ENERG are duly authorised to sign o		Manus Signature:
AS WITNESSES:	57		
1. AYANDA Specify full name	NTETA s:		Signature:
	nakaeani		Signature:
DATED AND SIGNED at	MEGAWATT PARK, SUN	NINGHILL on 14	January 2016.
FOR: TEGETA EXPLOR	ATION AND RESOURCES	S (PTY) LTD	
Ravindra Nath CHIEF EXECUTIVE OFF Who warrants that they a	FICER are duly authorised to sign o	on the Supplier's beh	Signature: alf
AS WITNESSES:			
1. Specify full name	s:		Signature:
2. <u>Specification</u>			Cimatura
Specify full name	S.		Signature:
DATED AND SIGNED at		on	January 2016.

Page 6 of 7

SHORT TERM CONTRACT ("STC") BETWEEN ESKOM HOLDINGS SOC LTD ("ESKOM") AND TEGETA EXPLORATION AND RESOURCES (PTY) LTD ("TEGETA") FOR THE SUPPLY OF APPROXIMATELY 100 000 TONS OF CONTRACT COAL FOR THE PERIOD COMMENCING 13 JANUARY 2016 OR SOONEST THEREAFTER UNTIL 31 JANUARY 2016 – REFERENCE NUMBER 724585

STC ANNEXURE A: COAL QUALITY MANAGEMENT PROCEDURE



Page 7 of 7

Annexure GJO36





COAL SUPPLY AGREEMENT

in respect of coal from

OPTIMUM COLLIERY

entered into by and between

ESKOM HOLDINGS SOC LTD

registration number 2002/015527/30, a company incorporated in terms of the laws of the Republic of South Africa with its registered office at Megawatt Park, Maxwell Drive, Sunninghill

("Eskom")

and

TEGETA EXPLORATION AND RESOURCES (PROPRIETARY) LIMITED

registration number 2006/014492/07

a company incorporated in terms of the laws of the Republic of South Africa with its registered office at Grayston Ridge Office Park Block A, Lower Ground Floor, 144 Katherine Street, Sandton 2146

("the Supplier")

Eskom Vendor Number: 11082687

Coal Supply Agreement between ESKOM HOLDINGS SOC LIMITED and TEGETA EXPLORATION AND RESOURCES PTY LTD executed at Sunninghill. Reference Number: 724767 Contract Number

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Contract Number

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17.		
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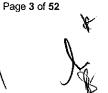


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SECTION 1: INTRODUCTION, DEFINITIONS AND INTERPRETATION

- 1. Introduction
- 1.1 The Supplier has procured coal and is party to an effective coal supply and off take agreement in respect of the Coal Resource with Optimum Coal ("Optimum Coal Coal Supply Agreement").
- 1.2 Consequent to the provisions of clauses 1.1 above, the Supplier shall be able to purchase coal, which coal the Supplier shall procure that, the coal from Optimum Coal's Reserve meets the contractual coal quality specification and transported for Supply to Eskom in terms of this Agreement.
- 1.3 Eskom requires Contract Coal in the quantities, for the duration and for the purposes mentioned in this Agreement.
- 1.4 The Parties wish to enter into a coal supply and off take agreement on the terms and conditions recorded below.
- 2. Definitions and Interpretation
- 2.1 In this Agreement, the following words and expressions shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is, cognate words and expressions) shall bear corresponding meanings:
- 2.1.1 "Agreement" means this coal supply agreement and shall include all Annexes hereto, as amended from time to time;
- 2.1.2 "Air Dried" means the physical condition of coal that has been dried at ambient temperature or at a temperature not exceeding 40 (forty) degrees Celsius to remove surface moisture until a constant mass is achieved;
- 2.1.3 "Annexe" means an annexe attached to the Agreement, as amended or replaced from time to time;

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2.1.4	"API#4 Price"	means the past month's average of API#4 index price of RB1 grade coal, Free on Board (FOB) Richards Bay and in US Dollars per ton as published by Argus/McCloskey;
2.1.5	"As Received"	means the physical condition of coal including both surface and residual moisture contents as received at the Delivery Point;
2.1.6	"Business Day"	means a day other than a Saturday, Sunday or gazetted public holiday in the Republic of South Africa;
2.1.7	"Calorific Value (CV)"	means the quantity of heat produced by the complete combustion of a given mass of coal, measured in MJ/kg;
2.1.8	"CV Adj <mark>ustment F</mark> actor (CVAF)"	means the factor used to adjust the Calorific Value of coal from an Air Dried to an As Received Basis and as set out more fully in clause 19;
2.1.9	"Coal H <mark>aulage Rates</mark> Model"	means the economic model used by Eskom to determine tariffs applicable to the road transportation of coal as amended from time to time;
2.1.10	"Coal Line Tariff"	means R110,00 per Ton, being the indicative average tariff charged by TFR for main line services from Mpumalanga to Richards Bay inclusive of the port charges levied by the Richards Bay Coal Terminal as at 01 April 2010 which shall be escalated annually by PPI on 01 April of each subsequent year;
2.1.11	"Coal Quality Management Procedure (CQMP)"	means the sampling analysis principles and procedures set out in Annexe A, as well as the procedures referred in clauses 16.4 and 18;

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2.1.12	"Coal Reserve"	means, at any time during the currency of this Agreement, so much of the Coal Resource from which a quantity of Contract Coal can be produced for Supply to Eskom in terms of this Agreement equal to at least the difference between 11 515 000 (eleven million five hundred and fifteen thousand MGJ (being approximately 500 000 (five hundred thousand) Tons (As Received) and the quantity of Contract Coal in the Coal Resource (expressed as an energy quantity) then actually Supplied to Eskom in terms of this Agreement;
2.1.13	"Coal Resource"	means all in-situ coal occurring naturally in, on and under the land to which the Mining Right relates;
2.1.14	"Commencement Date"	shall have the meaning ascribed to it in clause 7;
2.1.15	"Consignment"	means the approximate quantity Delivered in 1 (one) day;
2.1.16	"Contract Coal"	means the coal originating from Optimum Coal's Colliery reserve blended on Pre-Certified Stockpiles in respect of which the measurements of all coal quality parameters comply with the Quality Specifications and none of which is Reject Coal;
2.1.17	"Contract Period"	means the period described in clause 8;
2.1.18	"Deliver"	means the provision, and where applicable, the loading of Contract Coal by the Supplier at the respective Delivery Point, and "Delivery" shall have a corresponding meaning;

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2.1.19	"Delivery Points"	means:
		in respect of Road Coal, where the Supplier is responsible for road transportation, the weighbridge situated at the Power Station; and
	400	in respect of Road Coal, where Eskom is responsible for the road transportation, the weighbridge situated at the Mine;
2.1.20	"Drawdown Order"	means a written order issued by Eskom to the Supplier for the Delivery of Contract Coal as further described in clause 11.4;
2.1.21	"Equilibrium Moisture"	means the total moisture content which is reached by the coal that has naturally drained until a relatively constant moisture has been reached;
2.1.22	"FCA"	means free carrier as defined in Incoterms at the Delivery Point;
2.1.23	"GigaJoule (GJ)"	one thousand million Joules (being the derived unit of energy in the International System of Units) and being the metric terms used for measuring energy;
2.1.24	"Incoterms"	means the standard trade definitions used in sales contracts published by the International Chamber of Commerce as at 2000, as amended or replaced from time to time;
2.1.25	"Maximum Monthly Quantity"	means the maximum quantity of Contract Coal, in Tons, which Eskom is entitled to Take Off and which the Supplier is required to Deliver during each Month, being 110% (one hundred and ten percent) of the Monthly Quantity;

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2.1.26 "Maximum Weekly Quantity"

means the maximum quantity of Contract Coal, in Tons, which the Supplier is required to Deliver and which Eskom is required to Take Off during each Week, being 120% (one hundred and twenty percent) of the Weekly Quantity;

2.1.27 "MGJ"

means a million GigaJoules;

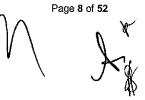
2.1.28 "Mine"

means the Optimum Coalmines established to exploit the Coal Resource;

2.1.29 "Mining Right"

means in respect of Contract Coal to be Delivered pursuant to the Optimum Coal - Coal Supply Agreement the mining right (Reference MP30/5/1/2/2/267MR) granted to Optimum Coal Mine (Pty) Ltd relating to coal in respect of various portions of the farm Bankvlei 160 IS, Boschmansfontein IS, Boschmanskop 154 IS, Boschmanslaagte Boschmanspoort IS, Bosmanspan 180 IS, Bothashoek 475 JS, Brakpan 163 IS, De Groote Rietpan JS, Driepan 156 IS, Groot Drakenstein IS, Kromdraai 486 JS, Optimus 480 JS, Pullenshope 155 IS, Schoonoord 164 IS, Speculatie 483 IS, Vlakfontein 179 IS, Zevenfontein 484 JS, Arendsfontein 464 JS, Driehoek 472 JS, Eikeboom 476 and 466 JS, Klipbank 467 JS, Noodhulp 474 JS, Rockdale 442 JS, Wanhoop 443 JS, Woestalleen 477 JS, Klipbank Blesbokfontein 487 JS, Blesboklaagte 488 JS, Bosmansspruit 459 JS, Kopermyn 435 JS, Kromdraai 486 JS, Kwaggafontein 460 JS, Mooifontein 448 JS, Rietkuil 491 JS, Rondevalley 482 JS, Schoonoord 164 IS, (as more fully indicated on the sketch plan attached thereto), Registration Division IS and JS, in the Magisterial District of Middleburg, in the province of Mpumalanga, measuring 37 719.4 hectares and registered in the Titles Office on 05 June 2008 under registration number 37/2008

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2.1.30	"Minimum Monthly Quantity"	means the minimum quantity of Contract Coal, in Tons, which Eskom is entitled to Take Off and which the Supplier is required to Deliver during each Month, being 90% (ninety percent) of the Monthly Quantity;
2.1.31	"Minimum Weekly Quantity"	means the minimum quantity of Contract Coal, in Tons, which the Supplier is required to Deliver and which Eskom is required to Take Off during each Week, being 80% (eighty percent) of the Weekly Quantity;
2.1.32	"MJ/Kg"	means MegaJoules (being 1,000,000 Joules) per kilogram;
2.1.33	"Month"	means a calendar month;
2.1.34	"Monthly Quantity"	means the quantity, in Tons, of Contract Coal which Parties target Supplying during each Month, as set out in the second column of Table 1;
2.1.35	"MPRDA"	means the Mineral and Petroleum Resources Development Act, No. 28 of 2002, as amended or replaced from time to time, including all regulations promulgated in terms thereof;
2.1.36	"Optimum Coal"	means Optimum Coal Mine (Pty) Ltd a company incorporated under the laws of the Republic of South Africa with registration number 2007/005308/07
2.1.37	"Nominated Laboratory"	
		means the independent laboratory appointed by Eskom for the purpose of analysing coal samples in terms of this Agreement;
2.1.38	"Party"	means Eskom or the Supplier, as the context in which the word appears requires and "Parties" means both Eskom and the Supplier;

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2.1.39	"Power Station"	means Arnot Power Station or any other Eskom owned or operated power station within the Republic of South Africa and which has been designated by Eskom as the destination of Contract Coal;
2.1.40	"Pre-Certified Stockpile"	means stockpile(s) of Contract Coal, approximately equivalent to a Day's delivery, unless otherwise agreed which have been sampled, analysed and certified, in accordance with this Agreement and Annexe A: The Coal Quality Management Procedure as meeting the Quality Specifications, or otherwise as accepted by Eskom;
2.1.41	"Price"	shall have the meaning ascribed to it in clause 14;
2.1.42	"Quality <mark>Rejection</mark> Limit"	means in respect of each coal quality parameter, the limit set out in the fifth column of Table 2;
2.1.43	"Quality Specification"	means in respect of each coal quality parameter set out in the first column of Table 2, the specification stipulated in the fourth column of Table 2, which coal Delivered by the Supplier to Eskom in terms of this Agreement must comply with;
2.1.44	"Reject Coal"	means coal in respect of which one or more quality parameters does not meet the Quality Specification;
2.1.45	"SAMREC Code"	edition of the South African Code for Reporting of Exploration Results, Mineral Resources and Mineral Reserves prepared by the South African Mineral Resources Committee Working Group under the joint auspices of the South African Institute of Mining and Metallurgy and the Geological Society of South Africa, as amended or replaced from time to time;
2.1.46	"Signature Date"	means the date on which this Agreement has been signed by both Parties hereto and if signed on different dates, the date of signature of the Party

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2.1.47	"Stockpile Retention Time"	means the period that a specific stockpile must be allowed to drain in order to reach Equilibrium Moisture as determined in clause 19.1.2;
2.1.48	"Supply"	means both when used as a noun and a verb, means the completed process of Delivery and Off Take which will take place more or less simultaneously, and "Supplied" shall have a corresponding meaning;
2.1.49	"Take Off"	when used as a verb, in respect of all Contract Coal Delivered, means the removal of such coal from the respective Delivery Points by Eskom in such quantities and at such rates as set out in this Agreement and the noun "Off Take", shall bear a corresponding meaning;
2.1.50	"Technical Liaison Meeting"	means the meeting to be held between the Parties as set out in clause 24;
2.1.51	"Tegeta"	means Tegeta Exploration And Resources (Proprietary) Limited a company duly incorporated in terms of the laws of the Republic of South Africa with registration number 2006/014492/07;
2.1.52	"Titles Office"	means the Mineral and Petroleum Titles Registration Office of South Africa;
2.1.53	"Ton"	means a metric ton of 1 000 (one thousand) kilograms;
2.1.54	"Tonnage Adjustment Factor"	means the factor used to adjust the tonnage of any Contract Coal that exceeds the maximum total moisture content, but which is accepted for Delivery in terms of clauses 19.3 and 19.4, for the moisture in excess of the Equilibrium Moisture;

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2.1.56	"Ultrafines"	means material below 100 (one hundred) microns resulting from the thicker underflow process recovered either as filter cake, arising from the filter press process or harvested from slimes dams;
2.1.57	"Under Delivery"	means Under Supply caused by the Supplier's failure to Deliver Contract Coal for any reason other than Force Majeure;
2.1.58	"Under Off Take"	means Under Supply caused by Eskom's failure to Take Off Contract Coal Delivered for any reason other than force majeure;
2.1.59	"Under Supply"	means:
ÿ	2.1.59.1	in respect of any Month, Supply of less than the Minimum Monthly Quantity applicable to that Month; or
1	2.1.59.2	in respect of any Week, Supply of less than the Minimum Weekly Quantity;
		as a result of either Under Delivery and/or Under Off Take for any reason other than force majeure;
2.1.60	"USD:ZAR Exchange Rate"	means at any point during each Month, the latest exchange rate for United States dollars and South African Rands ruling at financial close of the preceding Month as published by the South African Reserve Bank;
2.1.61	"VAT"	means value added tax levied from time to time in terms of the Value Added Tax Act, No. 89 of 1991 or any similar tax levied on the supply of goods imposed in terms of any law passed in substitution of the Value Added Tax Act, No. 89 of 1991 and for which tax a purchaser of such goods will be liable in terms of such substituting law;

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2.1.62	"Week"		means a period which consists of 7 (seven) calendar days; and
2.1.63	"Weekly Qu	uantity"	means the quantity, in Tons, of Contract Coal specified in the Drawdown Order for that Week, determined as set out in clause 11;
2.2	In this Agr	eement:	
	2.2.1	legislation mad	a statutory provision include any subordinate de from time to time under that provision and include as modified or re-enacted from time to time;
	2.2.2	reference to le	g anything to the contrary contained herein, all gislation shall include a reference to such legislation replaced from time to time;
	2.2.3	neuter gender	ng the masculine gender include the feminine and s and vice versa; the singular includes the plural and ad natural persons include artificial persons and vice
	2.2.4	corporation or	a "person" include a natural person, company, close any other juristic person or other corporate entity, a partnership, joint venture, syndicate, or any other persons;
	2.2.5		alues indicated by the words "betweenand" or hall include both values that demarcate the range;
	2.2.6	same meaning otherwise state appears. If the Agreement the Agreement or that clause or	wherever it appears in this Agreement, shall bear the ag and apply throughout this Agreement unless ted or inconsistent with the context in which it there is any conflict between any definitions in this en, for purposes of interpreting any clause of the paragraph of any Annexe, the definition appearing in reparagraph shall prevail over any other conflicting earing elsewhere in the Agreement;

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- 2.2.7 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day and shall refer to calendar days unless specifically stated otherwise;
- 2.2.8 any provision in this Agreement which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. pro non scripto) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement;
- 2.2.9 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;
- 2.2.10 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the eiusdem generis rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given; and
- 2.2.11 each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of the Agreement (i.e. the contra proferentem rule), shall not apply.

SECTION 2: WARRANTIES, UNDERTAKINGS, LEGAL COMPLIANCE AND REVIEW

General

3.1 The warranties contained in this Agreement shall be deemed to be representations and undertakings, material to the entering into of this Agreement, by the Supplier in favour of Eskom and by Eskom in favour of the Supplier where applicable;

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- 3.2 Each warranty shall be a separate warranty and in no way limited or restricted by reference to, or inference from, the terms of any other warranty;
- 3.3 Each warranty is given as at the Signature Date and shall endure for the duration of this Agreement;
- 3.4 Insofar as any of the warranties are promissory or relate to a future event, they shall be deemed to have been given as at the due date for fulfilment of the promise or the happening of the event, as the case may be;
- 3.5 Where any warranty is qualified by the expression "the Supplier and/or Eskom is not aware", "to the best of the Supplier's and/or Eskom's knowledge and belief" or any similar expression, that expression shall be deemed to include an additional statement that it has been made after due enquiry;
- 3.6 Nothing contained in this Agreement shall relieve a Party from its obligations to make those disclosures which it is in law obliged to make but which are not recorded in this Agreement.
- 4. Warranties Applicable to both Parties

Each Party hereby warrants unto and in favour of the other Party:

- 4.1 the Party and its representative(s), as applicable, have the requisite power, right and authority to enter into and perform the obligations to be assumed or performed by it in accordance with this Agreement and any other documents to be executed in accordance with this Agreement;
- 4.2 to the best of the Party's knowledge and belief, all facts and circumstances material to this transaction, or which would be material or would be reasonably likely to be material and which may affect the willingness of the Parties to enter into this Agreement or which may affect the Base Price and which are known to the Party, have been disclosed by the Party to the other Party; and
- 4.3 as at the Signature Date, no legal proceedings of any kind or business rescue proceedings, or administrative proceedings in terms of any law, and which shall prevent either Party from fulfilling its obligations in terms of this Agreement, have been instituted against such Party, and at all times during the currency of this Agreement neither Party has any obligations/duties to third parties which, if

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discharged, shall prevent the Party from fulfilling its obligations in terms of this Agreement.

5. Warranties by the Supplier

The Supplier hereby warrants unto and in favour of Eskom that:

- for purposes of Delivery of Contract Coal in terms of this Agreement, the Supplier has procured, and shall retain, a supply of coal from the Mine in terms of the Optimum Coal Coal Supply Agreement;
- the Supplier has a valid and enforceable coal supply agreement with Optimum Coal being the holder of the Mining Right and such other authorizations in respect of the Optimum Coal from which the Contract Coal will be sourced and Delivered to the Power Station;
- 5.3 consequent to the provisions of clauses 1.1 and 1.2 above, the Supplier shall be able to purchase coal, which coal the Supplier shall ensure is crushed, screened and blended to meet contractual specification and transported by road for Delivery to Eskom in terms of this Agreement;
- 5.4 the Supplier has, and shall retain, the un-encumbered right to sell coal purchased by it as described in clauses 1.1 and 1.2 to Eskom in accordance with the provisions of this Agreement;
- 5.5 upon Delivery of the Contact Coal, Eskom will become the owner of the Contract Coal free of any encumbrances, liens, rights of pre-emption or similar rights in favour of any third party;
- 5.6 as at the Signature Date the Supplier has complied, and has procured that Optimum Coal, has complied, and shall continue to comply with all material terms, conditions and obligations, contractual and statutory, which apply to all rights, titles, permits and other authorisations held by each of the, or applicable to any of the operations relating to this Agreement or resulting from the said parties' respective rights and obligations under this Agreement;
- 5.7 it has and shall not pledge, mortgage, cede or grant any other security rights over any coal purchased pursuant to the Optimum Coal - Coal Supply Agreement;

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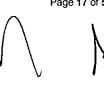
- 5.8 it has procured that Optimum Coal has and shall not pledge, mortgage, cede or grant any other security rights over Mining Right in terms of which coal is mined for purposes of the Optimum Coal - Coal Supply Agreement;
- 5.9 it is, and shall be, able to prove Optimum Coal's title to all Mining Rights held by Optimum Coal, who are the holders of the Mining Rights in terms of which coal is and shall be mined for purposes of the Optimm Coal - Coal Supply Agreement;
- 5.10 the Supplier is not aware of any facts or circumstances which may result in the withdrawal, suspension, cancellation, material alteration or non-renewal of any applications, rights, titles, permits and other authorisations held by itself and/or referred to in clause 5.6 specifically or by implication, as such matters relate to this Agreement;
- 5.11 the Coal Resource has sufficient Coal Reserves to satisfy its Delivery obligations in terms of this Agreement;
- 5.12 to the best of its knowledge and belief, the Supplier has disclosed to Eskom all legal, environmental matters and rehabilitation obligations relating to the Coal Resource and the Mining Rights in terms of which coal is mined for purposes of the Optimum Coal - Coal Supply Agreement; and
- 5.13 the Supplier shall notify Eskom of any changes made to the Optimum Coal - Coal Supply Agreement and all documentation supplied to Eskom in terms of this Agreement, where such changes have an impact on the warranties provided by the Supplier in terms of this Agreement.

6. Legal Compliance and Review

The Supplier warrants that in undertaking any activity to give effect to this 6.1 Agreement, Optimum Coal the Supplier itself are complying and will continue to comply with all their obligations under all current and future applicable laws including but not limited to the Mining Right, including the environmental management plan, the social labour plan and the mining work programme relating thereto, the National Water Act, No. 36 of 1998 ("NWA"); the National Environmental Management Act, No. 107 of 1998 ("NEMA"); the Environment Conservation Act, No. 73 of 1989; the National Environmental Air Quality Act, No. 39 of 2004; the Water Services Act, No. 100 of 1989; the Hazardous Substances Act, No. 15 of 1973; the National Heritage Resources Act, No. 25 of 1999; the World Heritage Convention Act, No. 49 of 1999; the MPRDA and the

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Mine Health and Safety Act, No. 29 of 1996, all statutory instruments, provincial ordinances and statutes, municipal government by-laws relating to the environment, government notices, circulars, codes of practice, guidelines, decisions, regulations, orders, demands, and criteria, injunctions or judgements of any court, administrative or regulatory authorities, central government, provincial government, municipal or any other body with responsibility for the protection of the environment (including but not limited to the health of the public, employees, flora and fauna).

- Eskom shall be entitled to conduct reviews in respect of the provisions of this clause 6 to ensure Optimum Coal, and the Supplier's compliance herewith and the Supplier agrees to co-operate with Eskom in this regard. To that end, Eskom and its designated representatives, including without limitation, its attorneys, auditors, environmental representatives engineers and geologists shall at all reasonable times, with reasonable prior notice to the Supplier, have access to the Mine and facilities utilised for the production and supply of coal under this Agreement and to all records, wherever located, pertaining to the supply of Coal in terms of this Agreement, which access will be at Eskom's expense and risk.
- 6.3 Eskom will provide feedback on risks identified from the reviews conducted in 6.2 above. The parties shall mutually agree how the risks will be addressed. Should the parties be unable to agree the risks that shall be addressed then the dispute will be resolved in terms of Section 9 of this Agreement.
- The Supplier shall address the agreed risks as indicated in 6.3 and shall report on progress of addressing such risks during the scheduled technical meetings.
- In the event that Eskom is approached by the State or any regulatory authority under NEMA and NWA with a view to remedying pollution relating to or resulting from the Parties' respective rights and obligations under this Agreement, the Supplier shall assist Eskom by making appropriate representations and taking appropriate steps to mitigate any statutory liability which Eskom may have under that legislation.
- 6.6 Eskom shall not at any time or for any reason be liable for any rehabilitation and/or closure costs incurred in connection with the Mine, nor the possible cost of remedying pollution under the NEMA and the NWA. To the extent that, after taking the steps referred to in clauses 6.1 and 6.5, Eskom incurs any such costs, for which Eskom is not responsible, then the Supplier shall compensate Eskom for

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all reasonable costs and expenses incurred by it, provided that Eskom shall take all reasonable steps to mitigate its loss and shall be obliged to prove such loss.

- 6.7 Where either Party's employees, agents and/ or its representatives enter the premises of the other Party, they shall comply with any of the applicable legislation set out in clause 6.1 above.
- The Supplier shall comply with the provisions detailed in Annexe B: Supplier Environmental Legal Requirements.
- In the event of material changes to the legislation referred to in clause 6.1 or the introduction of new legislation which results in an increase or reduction of the direct cost of producing and Delivering Contract Coal at the Delivery Point ("the Cost Differential"), the then applicable Price shall (subject to clause 6.11 below) be increased or reduced as the case may be, by a pro rata portion of the Cost Differential.
- 6.10 The pro rata portion shall be equal to the proportion which the value (expressed in Rand) of the sales to Eskom in terms of this Agreement bears to the aggregate of all sales from the Mines.
- 6.11 Eskom shall at any time, upon reasonable notice to the Supplier, be entitled to audit the Supplier's costs related to the producing and Delivering of such coal at the Delivery Point and financial information relating to the Supplier's income as a result of sales of coal. In the event that Eskom, as a result of its audit, disputes the Cost Differential, Eskom and the Supplier shall attempt to resolve the dispute amicably within 20 (twenty) days after a dispute being declared by either of them in this regard.

SECTION 3: COMMENCEMENT OF DELIVERIES, DURATION, RISK AND OWNERSHIP OF COAL

7. Commencement of Deliveries

The Supply of Contract Coal shall commence on 15 February 2016 ("the Commencement Date") in accordance with clause 11.

8. Duration

The term of this Agreement shall be for a period commencing on the Commencement Date and expiring on 15 April 2016 unless extended or earlier

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terminated in accordance with the terms of this Agreement until 11 515 000 (eleven million five hundred and fifteen thousand) MGJ the Total Energy Quantity has been Delivered; which is estimated to be a period not exceeding 3 (three) Months from the Commencement Date.

- 9. Risk and Ownership of Contract Coal
- 9.1 The risk in, and ownership of, the Contract Coal Delivered in terms of this Agreement shall pass to Eskom upon Delivery, notwithstanding the provisions of clause 15.
- 9.2 Eskom shall be entitled to use all Contract Coal Supplied to it in terms of this Agreement for consumption at any Power Station owned and/or operated by Eskom from time to time and Eskom shall be entitled to use the Contract Coal in accordance with its sole requirements including selling or disposing of such coal to any third party.
- 9.3 The Supplier shall Deliver Contract Coal to the designated Delivery Point in the quantities and at the rates set out in this Agreement for Off Take by Eskom.

SECTION 4: QUANTITIES, DELIVERY, OFF TAKE AND SUPPLY OF COAL

- 10. Coal Quantities
- The Supplier shall at all times throughout the duration of this Agreement ensure that the Coal Resource remains sufficient to enable the Supplier to comply with all its obligations in terms of this Agreement.
- The Supplier shall Deliver and Eskom will Take Off in each Week, a quantity of Contract Coal between the Minimum Weekly Quantity and the Maximum Weekly Quantity in accordance with clause 11 at an expected CV of 23.03 MJ/kg on an As Received basis.
- The Supplier shall Deliver and Eskom will Take Off in each Month, a quantity of Contract Coal between the Minimum Monthly Quantity and the Maximum Monthly Quantity in accordance with clause 11, at an expected CV of 23.03 MJ/kg on an As Received basis.
- The total quantity of Contract Coal to be supplied under this Agreement shall equal an energy quantity of 11 515 000 (eleven million, five hundred and fifteen thousand) MGJ ("the Total Energy Quantity"), being approximately 500 000

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(five hundred thousand) Tons (As Received) at an expected CV 23.03 MJ/kg on an As Received basis.

Table 1 Contract Coal Supply Schedule

Month	Monthly Quantity	Minimum Monthly Quantity (10%)	Maximum Monthly Quantity (10%)	Weekly Quantity	Minimum Weekly Quantity (20%)	Maximum Weekly Quantity (20%)
February 2016 (tons)	125 000	112 500	137 500	62 500	50 000	75 000
February 2016 Energy (MGJ)	2 878 750	2 590 875	3 166 625	1 439 375	1 151 500	1 727 250
March 2016 (Tons)	250 0 00	225 000	275 000	62 500	50 000	75 000
March 2016 Energy (MGJ)	5 757 500	5 181 750	6 333 250	1 439 375	1 151 500	1,727 250
April 2016 (Tons)	125 000	112 500	137 500	62 500	50 000	75 000
April 2016 Energy (MGJ)	2 878 750	2 590 875	3 166 625	1 439 375	1 151 500	1 727 250

Total Contract Quantity (Tons)	500 000
Energy (MGJ)	11 515 000

^{*} The tonnages indicated are on an As Received basis assuming a target CV of 24.01MJ/kg (Air Dried), 23.03MJ/kg (As Received), a Total Moisture of 8.0% (As Received) and Inherent Moisture of 4.1.

- Any quantities of Contract Coal not Delivered in a Month and for which the Supplier has paid a penalty in terms of clause 12.3, shall not be carried over to the next Month.
- 11. Planning and Supply of Contract Coal
- 11.1 The Parties shall use their reasonable endeavours to ensure that all Delivery and Off Take of Contract Coal is spread evenly across each day and Month and so as to comply with the limits stipulated in clauses 10.1 to 10.4.
- 11.2 Eskom shall, before the end of the first week of each Month specify, in the Technical Liaison Meeting, the quantity of Contract Coal that shall be Supplied for each Month of the subsequent Month such that:
 - 11.2.1 the quantity specified in respect of each Month will not be:
- 11.2.1.1 less than the Minimum Weekly Quantity; and

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11.2.1.2		not more than the Maximum Weekly Quantity; and
	11.2.2	the quantity to be Supplied each Month will not be:
11.2.2.1		less than the Minimum Monthly Quantity stipulated in Table 1; and
11.2.2.2		more than the Maximum Monthly Quantity stipulated in Table 1; and
	11.2.3	it takes into account the provisions of any Rectification Plans agreed to by the Parties.
11.3	excess of applicable obliged to maximum Supply in	ty may request at the Technical Liaison Meeting to Deliver or Take Off the Minimum Weekly Quantity and/or Minimum Monthly Quantity or in the Maximum Weekly Quantity and/or the Maximum Monthly Quantity to any Week or Month, provided that the other Party shall not be agree to such quantity below the minimum quantities or above the quantities as set out in Table 1, save in order to make up an Under terms of a Rectification Plan approved by the other Party. Should the tagree the Monthly Quantity shall apply.
11.4	determine Delivery o	Weekly Quantity for each month of the subsequent Month has been d in terms of clause 11.2, Eskom shall issue written order for the f Contract Coal for each Month ("the Drawdown Order") in respect of ties so determined. The Supplier shall Deliver and Eskom shall Take
	11.4.1	not less than the Minimum Weekly Quantity and not more than the Maximum Weekly Quantity during each Week of the subsequent Month; and
	11.4.2	not less than the Minimum Monthly Quantity and not more than the Maximum Monthly Quantity during the subsequent Month;
11.5		ance of doubt, the quantities set out in each Drawdown Order shall exclude any quantities planned for Supply under any agreed

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in the Drawdown Order.

Rectification Plan. Where applicable, such quantities shall be noted separately

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12. Under Delivery

- 12.1 In the event of an actual or expected Under Delivery:
 - 12.1.1 the Supplier shall, within 3 (three) days, submit a rectification plan to Eskom, which plan shall set out a schedule of how the Supplier shall make up the actual or expected shortfall in the shortest time reasonably possible, but in any event before the end of the Quarter;
 - 12.1.2 the Supplier shall consult with Eskom on the rectification plan and, Eskom undertakes, within 7 (seven) days after submission to it of the rectification plan, to advise whether the plan is acceptable, which acceptance will not be unreasonably withheld or delayed; and
 - 12.1.3 on Eskom's acceptance, the Supplier shall implement the rectification plan in the form and on the terms acceptable to Eskom and make up the actual or expected shortfall in accordance with the rectification plan.
- 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 the Supplier its reasonably incurred and demonstrable costs for additional direct handling and stockpiling.
- 12.3 In the event of:
 - 12.3.1 the Supplier failing to submit and implement the rectification plan in terms of clause 12.1; or
 - 12.3.2 Eskom's rejection of the rectification plan; or
 - 12.3.3 the Supplier's failure to make up the Under Delivery,

Eskom shall be entitled to purchase coal to make up for the shortfall, and to recover from the Supplier its proven costs for purchasing such coal. Where Eskom is unable to purchase coal to make up the shortfall within 1 month the conditions in clauses 12.3.1, 12.3.2 and 12.3.3 occurring, Eskom shall be entitle to recover from the Supplier a financial penalty calculated as:

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$$P = \left[\left(API\#4 \times ZAR - CLT \right) \times 0.77 \times \frac{21.4}{23} \right] - CP$$

where:

P:

is the effective penalty in Rand per ton;

API#4:

is the API#4 Price;

ZAR:

is the USD:ZAR Exchange Rate;

CLT:

is the Coal Line Tariff;

0.77:

represents a yield factor that accounts for the combined yield of

the primary and secondary washes, and for any lost earnings on

middlings product;

21.4:

is the expected Calorific Value of Contract Coal in MJ/kg on an

Air Dried basis;

23.0:

is a typical Calorific Value of run-of-mine export coal in MJ/kg on

an Air Dried basis;

CP:

is the Price of Contract Coal in Rand per ton assuming a Calorific

Value of 24.01 on an Air Dried Basis.

- 12.3.4 The quantity of any Under Delivery shall be measured:
- 12.3.5 in any Week, as the Minimum Weekly Quantity in respect of that Week less the quantity of Contract Coal actually Delivered in that Week;
- 12.3.6 in any Month, as the difference between the Minimum Monthly Quantity in respect of that Month and the quantity of Contract Coal actually Delivered in that Month; and
- 12.3.7 For avoidance of doubt, when calculating the quantity of an Under Delivery, the Supplier must first meet the Minimum Weekly and/or Monthly Quantity each Week and/or Month before any quantity of Contract Coal Delivered in terms of a Supplier rectification plan is credited against that rectification plan.
- 12.3.8 Any Under Delivery shall, unless otherwise agreed to in writing between the Parties, only constitute a material breach of a material term for purposes of clause 28 if such Under Delivery:
- 12.3.9 in any Month, is less than 50% (fifty percent) of the Monthly

Quantity in respect of that Month.

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13. Under Off Take

- In the event of an actual or expected Under Off Take, Eskom shall, within 3 (three) Business Days thereof submit a rectification plan to the Supplier, consult with the Supplier thereon and obtain the Supplier'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 Contract Coal in order to make up the Under Off Take within the shortest time reasonably possible, but in any event within 1 (one) Month after the date on which the Under Off Take arose.
- Should Eskom fail to submit a rectification plan to the Supplier's reasonable satisfaction, fail to implement such rectification plan, fail to make up the Under Off Take within a reasonable period pursuant to any of the aforesaid effort, Eskom shall make full payment of any Under Off Take not made up within 1 (one) Months after the date on which the Under Off Take arose without applying premiums or penalties to the Price.
- 13.3 Eskom shall remain entitled to Take Off the Contract Coal so paid for within the applicable quantity limitations, unless otherwise agreed. When Taken Off, appropriate adjustments to the Price paid shall be made for quality premiums and/or penalties in accordance with the qualities of the Contract Coal actually Taken Off.
- Eskom shall further be liable for the payment of any reasonable demonstrable additional direct handling and stockpiling costs incurred by the Supplier occasioned by any Under Off Take subsequently made up, provided that the Supplier shall notify Eskom in writing before incurring any additional costs and shall seek Eskom's involvement in minimising such additional costs.
- 13.5 The quantity of any Under Off Take shall be measured:
 - 13.5.1 in any Week, as the Minimum Weekly Quantity less the quantity of Contract Coal actually Taken Off in that Week;
 - in any Month, as the difference between the Minimum Monthly Quantity in respect of that Month and the quantity of Contract Coal actually Taken Off in that Month; and

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- 13.5.3 For avoidance of doubt, when calculating the quantity of an Under Off Take, Eskom must first meet the Minimum Weekly and/or Monthly Quantity each Week and/or Month before any quantity of Contract Coal Taken Off in terms of an Eskom Rectification Plan is credited against that Rectification Plan.
- Any Under Off Take shall, unless otherwise agreed to in writing between the Parties, and unless paid for in terms of clause 13.2, only constitute a material breach of a material term for purposes of clause 28 of this Agreement if such Under Off Take:
 - 13.6.1 in any Month, is less than 50% (fifty percent) of the Monthly Quantity.
- 13.7 Where the Supplier is responsible for the transportation of Contract Coal from the Mine to the Power Station, the Supplier shall be entitled to recover from Eskom any penalties it incurs for the cancellation and/or underutilisation of road transport resulting from any rectification plan accepted by the Supplier or any Under Off Take, determined in accordance with Annexe C2: The Rules of Road Transportation for Delivered Contracts.

SECTION 5: PRICE, ADJUSTMENTS, INVOICING AND PAYMENTS

- 14. Price
- 14.1 The price for Contract Coal ("the Price") shall be R20.41 (twenty rands and forty one cents) per GJ on an As Received Basis excluding VAT, Free Carrier (FCA) at the Delivery Point for Road Coal.
- The Base Price has been negotiated on an arm's length basis and the Supplier accepts all risks of cost elements and cost increases.
- 15. Invoicing and Payment
- The Supplier shall render a tax invoice to Eskom on or before the third Business Day of each Month together with a statement reflecting the Delivery dates; the mass of the coal on an As Received basis; the mass of the coal on an Air Dried basis; the As Received CV; the Price in respect of each Consignment and the total Contract Coal Supplied during the immediately preceding Month.

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- 15.2 Subject to clause 15.3, the amount payable in respect of each invoice shall, in the absence of manifest error and without set off, and provided that it has been timeously rendered, be payable within 30 (thirty) days of receipt of the invoice by Eskom, provided that disputed items or amounts on an invoice shall only be payable when the dispute has been resolved.
- In terms of clause 13.7 of this Agreement, Eskom shall be entitled, but not obliged to recover from the Supplier any penalties for the cancellation and/or underutilisation of road transport resulting from any Rectification Plan accepted by Eskom or any Under Delivery. In the event that Eskom elects to recover any such penalties, Eskom shall be entitled to set-of the said penalties against any invoice rendered by the Supplier.
- Without prejudice to any other of its remedies in law and/or this Agreement, the Supplier shall be entitled to recover interest on any amount payable by Eskom in terms of this Agreement which is overdue, at the prime overdraft lending rate charged from time to time by First National Bank of Southern Africa. The amount of such prime rate shall prima facie be proved by a certificate signed by any manager or accountant (whose appointment need not be proved) of any branch of such bank.

SECTION 6: QUALITY OF COAL

16. Contract Coal Quality

The Supplier shall ensure that each quality parameter of the Contract Coal Delivered to Eskom in terms of this Agreement shall comply with the Quality Specifications for Contract Coal set out in Table 3 hereunder.

Table 2: Coal Quality Specification and Rejection Levels

Quality parameter	Unit	Quality Expected	Quality Specifications	Quality Rejection Limit	Measurement basis
Calorific Value	MJ/kg	24.0	≥22.5	<22.5	Air Dried

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Quality parameter	Unit	Quality Expected	Quality Specifications	Quality Rejection Limit	Measurement basis
Total Moisture	%	8	≤9.0	>9.0	As Received
Inherent Moisture	%	4.1		The	As Received
Ash	%	20.2	≤24.3	>24.3	Air Dried
Abrasive Index (Eskom Mining House Method)	mgFe/4kg	<450	≤450	>450	Air Dried
Sulphur	%	1.19	≤1.19	>1.19	Air Dried
Volatiles	%	21.7	≥19.5	<19.5	Air Dried
AFT (Initial deformation)	°C	1380	≥1380	<1380	N/A
Sizing: (cumulative)	7	7		1	
+60mm	%	0.0	0	>0.0	
+50mm	%	5.0	≤5.0	>5.0	21 / 4
-6.35mm	%	50.0	≤50.0	>50.0	N/A
-3.35mm	%	30.0	≤30.0	>30.0	6
-1mm	%	15.0	≤15.0	>15.0	

All parameters are measured to 1 (one) decimal place, except AI and AFT, which shall be measured to the nearest integer. Sulphur to 2 decimal places

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- The Supplier shall ensure that no Ultrafines are blended into the coal to be Delivered to Eskom and that each Consignment of Contract Coal is substantially free from impurities and extraneous materials related to the proper mining and processing of coal.
- Where the Supplier wishes to Deliver coal of a higher quality than the Quality Specifications, the Supplier shall make a written request to Eskom and the acceptance of such request shall be at Eskom's sole discretion. For the purposes of determining the energy delivered for payment purposes, unless otherwise agreed, the CV of such coal shall be the maximum CV as set out in the Quality Specification.
- In the event that coal is Supplied which does not meet the Quality Specifications, Eskom shall treat such coal as Reject Coal, and such Reject Coal will be burned or disposed of, and
 - 16.4.1 If the relevant quality parameter is within 10% (ten percent) of the applicable reject level for that parameter, Eskom shall pay the Supplier an amount of R30.00 (thirty Rand) per Ton for such coal; or
 - 16.4.2 If the relevant quality parameter deviates from the applicable reject level by more than 10% (ten percent), Eskom shall not be liable to pay the Supplier for such coal.
- Where Eskom decides, at its sole discretion, to dispose of the Reject Coal, the Supplier shall be liable for any demonstrable and reasonable additional costs occasioned by the disposal of such coal, including the cost of transporting the coal to the Power Station.
- 16.6 Reject Coal supplied shall not constitute Supply or Delivery and shall not reduce the Monthly or Total Energy Quantity to be supplied in terms of this Agreement.
- 16.7 Coal Delivered from a Pre-Certified stockpile cannot be Reject Coal, provided that the Supplier has complied with the provisions of the Coal Quality Management Procedure.

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17. Pre-Certification of Coal

In order to ensure compliance with the provisions of clause 16:

- 17.1 prior to Delivery to Eskom, the Supplier shall ensure that coal contained in each separate stockpile is sampled and pre-certified to meet the Quality Specifications for Contract Coal and is identified as such in accordance with the processes and procedures set out in A: The Coal Quality Management Procedure;
- only coal that has been sampled, pre-certified and identified in accordance with the provisions of clause 17.1, may be placed on the Pre-Certified Stockpile.

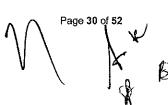
 The Supplier shall only Deliver Contract Coal to Eskom from Pre-Certified Stockpiles allocated for Delivery to Eskom in terms of this Agreement; and
- where the pre-certification process indicates that a product stockpile does not meet the Quality Specifications set out in Table 3, the Supplier shall blend/reprocess and re-sample such stockpile to meet the Quality Specification at the Supplier's own cost and risk.
- 17.4 Subject to Eskom's prior approval, manual resampling of stockpiles shall be allowed including re-processed/out of specification stockpiles.

18. Determination of Coal Quality

- The Parties shall implement the provisions of Annexe A: The Coal Quality

 Management Procedure, for the purpose of sampling, analysis, reporting and
 resolution of disputes relating to the qualities and quantities of coal Supplied in
 terms of this Agreement.
- The Supplier shall be responsible for the sampling of coal and associated costs.

 In this regard, the Supplier shall ensure that acceptable auto-mechanical sampling equipment is available for sampling of coal and shall be responsible for the maintenance thereof.
- 18.3 Eskom shall, at its cost and including the cost of transport, procure the analysis of such samples by the laboratory defined as the "Nominated Laboratory" in Annexe A.
- 18.4 The Supplier shall submit a daily report to Eskom in the format set out in Annexe A. Eskom reserves the right to amend Annexe A from time to time in Coal Supply Agreement between ESKOM HOLDINGS SOC LIMITED and TEGETA EXPLORATION AND RESOURCES PTY LTD executed at Sunninghill. Reference Number: 724767 Contract Number





order to align same with its operational arrangements and shall notify the Supplier in writing of any such amendments within 7 (seven) days of the amendments being effected.

- 18.5 Eskom shall procure that the Nominated Laboratory shall submit a daily report simultaneously to Eskom and the Supplier of the analysis results.
- 18.6 Eskom may provide on-site representatives for the verification of the sampling and pre-certification processes. The Supplier consents that Eskom's on-site representatives shall have full access to verify the sampling and the precertification process.
- 18.7 The Supplier undertakes to grant to Eskom and its representatives, on request, access to all available geological information relating to the Coal Reserve and the Coal Resource.
- 18.8 Eskom shall further be entitled to conduct pit visits on reasonable notice to the Supplier, to monitor the Supplier's application of effective grade and contamination controls.
- Disputes in respect the analytical results shall, notwithstanding the provisions of clause 27, be dealt with in terms of the dispute resolution procedure included in Annexe A: The Coal Quality Management Procedure.
- 19. Adjustment for Moisture Content
- Eskom and the Supplier shall jointly and in consultation with each other and no later than 30 (thirty) days after first Delivery of Contract Coal, conduct drainage tests to determine the Equilibrium Moisture content and the stockpile drainage period required for coal to attain such Equilibrium Moisture, which Stockpile Retention Time will then be reduced to writing and signed off by duly authorised representatives of both Parties to be used for evidentiary purposes. The Supplier shall bear the cost of sampling and Eskom shall bear the cost of the analysis;
 - 19.1.1 upon completion of the drainage tests to determine the Equilibrium Moisture and the Stockpile Retention Time in accordance with clause 19.1 above, the Supplier shall procure that all coal stockpiled for the purposes of this Agreement, with Total Moisture content that exceeds the Rejection Limit set out in the fifth column of Table 4, is

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drained for a period of at least the Stockpile Retention Time before Delivery and the Equilibrium Moisture value shall be used in the CV Adjustment Factor (CVAF) applicable to this Agreement; and

19.1.2 until such time as the results of the drainage tests become available and have been provided by Eskom to the Supplier, and until the Equilibrium Moisture and the Stockpile Retention Time have been determined, the Supplier shall procure that all coal stockpiled for the purposes of this Agreement, with Total Moisture content that exceeds the Rejection Limit set out in the fifth column of Table 4, is drained for a period of at least 24 (twenty four) hours prior to Delivery, and a deemed Equilibrium Moisture value of 9% (nine percent) shall be used in the CV Adjustment Factor (CVAF) applicable to this Agreement. Examples and the formulae used for this calculation are provided in Annexe D: Adjustments for Moisture Content.

For invoicing purposes, the mass of any Contract Coal accepted by Eskom and Delivered in terms of clause 19.3 shall be adjusted by multiplying the mass of such coal, as determined in accordance with clause 23, by the Tonnage Adjustment Factor. The Total Moisture content as stated in the Supplier's request in terms of clause 19.3 shall be used in the calculation of the Tonnage Adjustment Factor. Examples and the formulae used for this calculation are provided in Annexe D: Adjustments for Moisture Content.

In the event of high rainfall at the Mine, such that only the Total Moisture content of the coal exceeds the Rejection Limit set out in the fifth column of Table 3, the Supplier must make a formal request in writing for approval to Deliver such coal. The Supplier's request must state the quantity (in millimetres per 24 (twenty four) hour period) of rain that has fallen as well as the Total Moisture content of the coal at the time of the request being made. Eskom may, at its sole discretion, give the Supplier such approval and coal so accepted shall not be classified as Reject Coal and accordingly the provisions of clauses 16.4 to 16.6 of this Agreement shall not apply to such coal, but will be subject to the moisture adjustment in terms of clause 19.2. Eskom's acceptance or rejection of such request must be in writing and provided no later than the day following such request from the Supplier.

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19.4 For the purposes of converting the Calorific Value (CV) of coal from an Air Dried to an As Received Basis in order to determine the energy Delivered for invoicing purposes, the Calorific Value (CV) of coal measured on an Air Dried basis by the Nominated Laboratory shall be adjusted by multiplying the Air Dried Calorific Value (CV) by the CV Adjustment Factor (CVAF). Examples and the formulae used for this calculation are provided in Annexe D: Adjustments for Moisture Content.

SECTION 7: MODES OF TAKE OFF OF COAL

- 20. Modes of Take Off of Coal
- 20.1 Eskom shall use road transportation for Delivery of Contract Coal.
- 20.2 The Supplier shall Deliver the quantities stipulated by Eskom at the Delivery Points for Contract Coal, provided that the Parties shall liaise with each other:
 - 20.2.1 on a Weekly basis at the Technical Liaison Meetings to confirm the quantities Eskom requires to be Delivered; and
 - 20.2.2 in order to be responsive to Eskom's operational needs which may arise from time to time, Eskom may request a variation to the mode of transport previously agreed to by requesting a change to the Delivery Point. The additional reasonable and demonstrable direct costs which the Supplier may incur to comply with such variation request from Eskom will be borne by Eskom.

21. Road Coal Transportation Delivered Contract

- 21.1 Where the Supplier is responsible for the transportation of Contract Coal by Road ("Delivered Contract") to a designated Power Station, the Supplier shall ensure that sufficient road trucks are available to transport coal from the Mine to the Delivery Point.
- 21.2 The Supplier shall be responsible for ensuring that all road transportation under its control complies with the provisions of Annexe C2: Eskom's Rules of Road Transportation for Delivered Contracts.
- 21.3 The transport tariff per Ton payable by Eskom to the Supplier (and which shall be in addition of the Price payable for the Contract Coal so Delivered) shall be determined using the Coal Haulage Rates Model. The transport tariff payable in

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terms of the Coal Haulage Rates Model shall be reviewed each Month in accordance with Coal Haulage Rates Model.

21.4 Eskom reserves the right to require the Supplier to Deliver Contract Coal to any alternative Power Station, and the Supplier shall co-operate with Eskom in relation to such alternatives. Unless otherwise provided elsewhere in this Agreement, Eskom shall be liable for any reasonable and demonstrable additional costs incurred by the Supplier as a result of an Eskom request in terms of this clause 21.4 and shall be entitled to any reasonable and demonstrable additional savings resulting from such request.

22. Road Coal Transportation [FCA Contract]

- 22.1 Where Eskom is responsible for the transportation of Road Coal (i.e. an FCA Contract), Eskom will ensure that sufficient road trucks are available at the Delivery Point to Take Off Road Coal.
- The Supplier shall, at its own cost, provide, maintain and operate Pre-Certified Stockpiles with a total capacity of no less than 10 000 Tons, an access road, equipped with a weighbridge, terminating on the D2274 road, and truck loading equipment such that a maximum of 500 000 Tons of coal can be uniformly loaded into trucks and transported to the Power Station by road.
- 22.3 The Supplier shall ensure that Contract Coal sufficient for a minimum of 3 (three) days' Delivery is available at all times on Pre-Certified Stockpiles.
- The Supplier shall comply with Eskom's Rules of Road Transportation pertaining to coal loading operations, as amended or replaced from time to time, and which, in their present form, are contained in Annexe C1: Eskom's Rules of Road Transportation for FCA Contracts.
- 23. Mass Determination

23.1 general responsibilities

23.1.1 Each Party shall ensure that its mass measuring equipment is inspected assized and certified regularly by a company certified to assize mass measuring equipment in accordance with the Trade Metrology Act, No. 77 of 1973, as amended or replaced from time to time and prevailing South African Bureau of Standards

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specifications. Each Party shall procure that a certificate signed by the assizing company which is no more than 12 (twelve) Months old is available for inspection by the other Party at all times.

23.1.2 In the event that the Supplier's mass measuring equipment is not operational, the Supplier must inform Eskom within 24 (twenty four) hours of becoming aware of any such problems and Eskom's mass measurements shall be used for invoicing purposes until such time as the Supplier's mass measuring equipment has been repaired.

23.2 mass determination of Road Coal

- 23.2.1 The Supplier shall measure the mass of Road Coal Delivered by weighing same at the Mine. Each truck transporting the Road Coal shall be weighed full and empty at the relevant weighbridge located at the Delivery Point, and the mass thereof shall be recorded on a waybill issued in triplicate.
- The Supplier shall deliver the original waybill to Eskom with every truck load, retain 1 (one) copy, and forward 1 (one) copy to the transport contractor. The Supplier shall on a daily basis, forward to Eskom, a schedule depicting the waybills, the waybill number, vehicle registration number, dispatch and delivery time, total number of trucks loaded and the mass of each truck, and stockpile reference number (as further detailed in the CQMP), together with the said waybill.
- 23.2.3 Eskom shall weigh each truck received on a full and empty basis and the Parties shall reconcile their respective mass measurements on a weekly basis or no later than the date of the next Technical Liaison Meeting and the following shall apply:

23.2.3.1

where Eskom is responsible for the transportation of Coal from the Delivery Point, then in the event of a discrepancy of less than 2% (two percent) between the Supplier's mass determination and that of Eskom, the mass recorded on the waybill and/or the tonnage information supplied by the Supplier in terms of clause 23.2.2, as the case may be, will be accepted as final and binding, subject to clause 23.3;

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23.2.3.2

where the Supplier is responsible for the transportation of Coal to a Power Station, then, in the event of a discrepancy of less than 2% (two percent) between the Supplier's mass determination and that of Eskom, the mass recorded on the waybill and/or the tonnage information supplied by Eskom will be accepted as final and binding, subject to clause 23.3; and

23.2.3.3

in the event of a discrepancy of 2% (two percent) or more, and if the Parties agree that such discrepancy is due to a mass determination fault of either Party, the lesser of the two masses will temporarily be used for the purposes of this Agreement, until the source of the fault has been identified and corrective measures implemented, which shall, in any event, not be for a period of more than 30 (thirty) days, subject to clause 23.3.

23.3 disputes regarding mass measurement

- 23.3.1 Where there are persistent discrepancies or other disputes regarding mass or the mass measurement of Contract Coal, the Parties shall ensure that they use their best efforts to reach agreement within 20 (twenty) days after a dispute being declared by either Party in this regard.
- 23.3.2 The Parties shall retain records of all printouts in respect of mass measurement for a period of at least 3 (three) years after the date of Delivery, or any legislated period, whichever is the greater. In the event that there is an unresolved dispute between the Parties, such records shall be retained until such time as the dispute has been resolved.

SECTION 8: REPORTING REQUIREMENTS AND PROVISION OF INFORMATION

24. Technical Liaison Meetings

At least once per Month during the currency of this Agreement, a Technical Liaison Meeting shall be held and be attended by authorised representatives of Eskom and the Supplier to report on, *inter alia*:

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24.1	the Delivery and Take Off of Contract Coal (including Under Delivery/Under Off Take and planning of the Monthly Quantity and Weekly Quantity);								
24.2	any incident where Delivery or Off Take deviated from the Drawdown Order and/or from the quantities set out in clause 11;								
24.3	quality issues;								
24.4	any weight/mass determination issues;								
24.5	transport and mode of transport of Contract Coal;								
24.6	safety;								
24.7	environmental and water related matters;								
24.8	general information sharing; and								
24.9	any other material matter not referred to herein and/or referred to in Annexe E: The Technical Liaison Meeting Agenda.								
25.	Reports								
25. 25.1	Reports The Supplier shall within 3 (three) days of the end of each Month, provide Eskom on a Monthly basis with a summary of the qualities, quantities and dates of dispatch of each Consignment of coal Delivered in the previous Month.								
	The Supplier shall within 3 (three) days of the end of each Month, provide Eskom on a Monthly basis with a summary of the qualities, quantities and dates								
25.1	The Supplier shall within 3 (three) days of the end of each Month, provide Eskom on a Monthly basis with a summary of the qualities, quantities and dates of dispatch of each Consignment of coal Delivered in the previous Month. The Supplier shall supply Eskom with the following information within 30 (thirty)								
25.1	The Supplier shall within 3 (three) days of the end of each Month, provide Eskom on a Monthly basis with a summary of the qualities, quantities and dates of dispatch of each Consignment of coal Delivered in the previous Month. The Supplier shall supply Eskom with the following information within 30 (thirty) days after publication of the Suppliers annual report: 25.2.1 summary of the qualities, quantities and dates of dispatch of								
25.1	The Supplier shall within 3 (three) days of the end of each Month, provide Eskom on a Monthly basis with a summary of the qualities, quantities and dates of dispatch of each Consignment of coal Delivered in the previous Month. The Supplier shall supply Eskom with the following information within 30 (thirty) days after publication of the Suppliers annual report: 25.2.1 summary of the qualities, quantities and dates of dispatch of Contract Coal Delivered; 25.2.2 the reserve and resource statements, in accordance with the SAMREC Code, relating to the remaining coal to be mined at the								
25.1	The Supplier shall within 3 (three) days of the end of each Month, provide Eskom on a Monthly basis with a summary of the qualities, quantities and dates of dispatch of each Consignment of coal Delivered in the previous Month. The Supplier shall supply Eskom with the following information within 30 (thirty) days after publication of the Suppliers annual report: 25.2.1 summary of the qualities, quantities and dates of dispatch of Contract Coal Delivered; 25.2.2 the reserve and resource statements, in accordance with the SAMREC Code, relating to the remaining coal to be mined at the Mine;								

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- 25.2.6 its employment equity status; and
- 25.2.7 its latest audited financial statements.

26. Legislative Submissions associated with Compliance

The Supplier will provide Eskom, upon Eskom's request, with copies of all legislated submissions submitted to all competent authorities required pursuant to legislation aimed at protecting the environment and water resources, and regulating health and safety, prospecting and mining and black economic empowerment, including but not limited to, the Mining Right and the related the Mining Work Program, Environmental Management Programme, compliance submissions in respect of the said programmes and legislative black economic empowerment compliance.

SECTION 9: DISPUTE RESOLUTION AND BREACH

- 27. Dispute Resolution
- 27.1 This clause is a separate, divisible agreement from the rest of this Agreement and shall:
 - 27.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this clause. The Parties intend that any such issue shall at all times be and remain subject to arbitration in terms of this clause;
 - 27.1.2 remain in effect even if this Agreement terminates or is cancelled.
- If a dispute (hereinafter collectively referred to as a "Dispute") has arisen between the Parties out of, in relation to, or in connection, with this Agreement, or in regard to: the interpretation and meaning of; the effect of; the respective rights or obligations of the Parties under; the termination of; and/or any matter arising out of or following the termination of, this Agreement then and in such event the Dispute will be settled in accordance with the following procedures:

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27.3 step one

The Disputing Party must give a written notice ("the Dispute Notice") to the other Party ("the Receiving Party") recording the nature of the Dispute as perceived by the Disputing Party, the performance required by the Disputing Party from the Receiving Party in order to resolve the Dispute and/or the manner in which the Disputing Party believes the Dispute must be resolved, and the time period within which such performance is required. The time period, which may not be shorter than 3 (three) days and not longer than 7 (seven) days, is referred to herein as the "first period".

27.4 step two

In the event of the Receiving Party not performing in a manner demanded in the Dispute Notice or the Dispute not being resolved within the first period (or such further period as may be agreed to in writing by the Parties), then authorised senior executives of the Parties will meet within a period ("the Second Period") of no more than seven days after the end of the first period to attempt to settle such dispute in an amicable manner, the outcome of which meeting will be reduced to writing.

27.5 step three

27.5.1 If, irrespective of whether the senior executives (or their appointed nominee) have met or concluded any meeting, no written agreement is signed by the Parties resolving the Dispute within a period of 14 (fourteen) days calculated from the day upon which the Dispute was referred to the senior executives, or within such an extended period as may be agreed to in writing by the Parties, then:

27.5.1.1

either Party may refer the Dispute to be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") or its successor body by an arbitrator appointed by AFSA. "Refer" in this sub-clause means delivering or transmitting electronically a written notice to AFSA requesting the appointment of an arbitrator to determine the Dispute. Referral of the Dispute shall be completed on delivery to and acknowledgement of receipt by AFSA of the notice. The Party referring the Dispute shall thereafter deliver or electronically transmit a copy of the referral notice to the other Party;

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27.5.1.3

Contract Number

27.5.1.2	the arbitration will be held in Johannesburg in private at a venue								as
	determined	by the	AFSA	Rules	or	the	arbitrator	appointed	as
	envisaged ir	n clause	27.5.1.	1;					

- the arbitrator will have regard to the desire of the Parties to dispose of such Dispute expeditiously, economically and confidentially and shall be obliged to provide written reasons for his/her decision, together with reasons for such decision which shall be delivered in writing to the Parties within 21 (twenty one) days after the conclusion of the arbitration hearing;
- 27.5.1.4 the arbitrator will determine the liability for his/her charges and the costs of the arbitration will be paid accordingly by the Parties;
- 27.5.1.5 the Parties irrevocably agree that the decision in any such arbitration proceedings will be final and binding on them, will forthwith be put into effect and may be made an order of any court of competent jurisdiction.
 - 27.5.2 Nothing contained in this clause 27 will preclude any Party from applying for, or obtaining, interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator on the merits of the Dispute.
 - 27.5.3 The provisions of this clause 27 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Coal Supply Agreement.

28. Breach

28.1 breach of a warranty

If a Party breaches a warranty under clauses 3, 4 or 5 of this Agreement, and remains in breach of such warranty for 30 (thirty) Business Days after written notice to that Party requiring that Party to rectify that breach of warranty, the aggrieved Party shall be entitled, without derogating from any of its other specific rights or remedies provided for under this Agreement or which it is entitled to in law, at its option:

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- 28.1.1 to sue for immediate specific performance of any of the defaulting Party's obligations under this Agreement; or
- 28.1.2 to cancel this Agreement in which case written notice of the cancellation must be given to the defaulting Party, and the cancellation shall take effect on the giving of the notice.

28.2 breach of other material provisions

If a Party breaches any other material provision of this Agreement and remains in breach of such material provision for 30 (thirty) Business Days after written notice to that Party requiring that Party to rectify that breach, the aggrieved Party shall be entitled, without derogating from any of its other specific rights or remedies provided for under this Agreement, at its option:

- 28.2.1 to sue for immediate specific performance of any of the Defaulting Party's obligations under this Agreement; or
- to cancel this Agreement in which case written notice of the cancellation must be given to the defaulting Party, and the cancellation shall take effect on the giving of the notice, provided that a Party shall only be entitled to cancel this Agreement if such breach could reasonably affect the Supplier's ability to Deliver coal or Eskom's ability to Take Off coal in terms of this Agreement, as the case may be.

28.3 breach of general provisions

If a Party breaches any other general provision of this Agreement and remains in breach of such material provision for 30 (thirty) Business Days after written notice to that Party requiring that Party to rectify that breach, the aggrieved Party shall be entitled, without derogating from any of its other specific rights or remedies provided for under this Agreement to sue for immediate specific performance of any of the Defaulting Party's obligations under this Agreement.

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SECTION 10: FORCE MAJEURE MATTERS

29.	Force Maj	ieure
29.1	general	
	29.1.1	For the purposes of this Agreement, an exceptional event or circumstance:
29.1.1.1		which prevents or restricts either Party directly or indirectly from performing all or any of that Party's ("the Affected Party") obligations in terms of this Agreement;
29.1.1.2		beyond the reasonable control of the Affected Party;
29.1.1.3		not the direct or indirect result of a breach by the Affected Party of any of its obligations under this Agreement; and
29.1.1.4		could not have been (including by reasonable anticipation) avoided or overcome by the Affected Party, acting reasonably and prudently,
	subject to c	lause 29.1.2 shall constitute a "Force Majeure Event" for the purposes
	of this Agre	ement.
	29.1.2	A "Force Majeure Event" shall, subject to the conditions in clauses 29.1.1 to 29.1.1.4 being satisfied, include, without limitation:
29.1.2.1		war, hostilities (whether war to be declared or not), invasion, act of foreign enemies;
29.1.2.2		rebellion, terrorism, revolution, insurrection, military or usurped power or civil war;
29.1.2.3		riot, commotion, disorder, any blockade or embargo, strikes or lock outs that are on a national scale and directly affects the construction, energy and coal mining industry of South Africa, but shall not include any such action that is solely by the Supplier's personnel and other employees of the Supplier or its subcontractors;
29.1.2.4		natural catastrophes such as earthquake, hurricane, typhoon, volcanic activity floods (other than heavy rains), fire, 'Acts of God', or explosions."
Supply Agree	ment between	ESKOM HOLDINGS SOC LIMITED and TEGETA EXPLORATION AND RESOURCES

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- 29.1.3 An event which satisfies the requirements of clause 29.1, but is the direct or indirect result of any third party not fulfilling contractual, statutory or other obligations to the Affected Party (for reasons which would not in themselves constitute a "Force Majeure Event") shall not constitute a "Force Majeure Event" for purposes of this Agreement.
- 29.1.4 The Affected Party shall be relieved of performance of its obligations in terms of this Agreement during the period that a Force Majeure Event occurs 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 29.1.5, 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 ("the Unaffected Party") may suffer due to or resulting from any such delay or failure.
- 29.1.5 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.

29.2 proportionate reduction

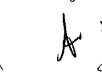
Should a Force Majeure Event affect the production capacity of the Mine and/or the Supplier's ability to Deliver coal for Supply to Eskom in terms hereof or should such Force Majeure Event affect Eskom's ability to Take Off coal in terms of this Agreement, each of the Parties' respective obligations 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.

29.3 consequences

At all times whilst 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 Coal Supply Agreement between ESKOM HOLDINGS SOC LIMITED and TEGETA EXPLORATION AND RESOURCES PTY LTD executed at Sunninghill. Reference Number: 724767 Contract Number

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the possibility of concluding alternative arrangements for the supply or purchase of coal as the case may be. These alternative arrangements may include but are not limited to quantity, quality and penalty 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.

29.4 termination of Force Majeure Event

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 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.

29.5 extension of this Agreement

- 29.5.1 In the event that a Force Majeure Event occurs as contemplated herein, the Parties shall, on cessation of the Force Majeure Event, or prior thereto, agree on the period, if any, by which the duration of this Agreement should be extended to take account of interruptions caused by such Force Majeure Event. The price payable for Contract Coal during such extension, shall be the Price determined under this Agreement as being that applicable for the period in which Contract Coal is actually Supplied, taking into account all adjustments as set out in this Agreement.
- 29.5.2 In the event of a Force Majeure Event affecting Eskom in terms of this Agreement which is expected to endure for a period of more than 30 (thirty) days, the Supplier may sell Contract Coal, to third Parties for as long as such Force Majeure Event continues. In this event the Agreement shall be extended in terms of clause 29.5.1 above.
- 29.5.3 In the event of that the Supplier is prevented by a Force Majeure Event from Delivering Contract Coal to Eskom in terms of this Agreement and for as long as such Force Majeure Event continues,

Eskom shall not be under any obligation pursuant to this Agreement Coal Supply Agreement between ESKOM HOLDINGS SOC LIMITED and TEGETA EXPLORATION AND RESOURCES PTY LTD executed at Sunninghill. Reference Number: 724767 Contract Number

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to purchase coal for use from the Supplier exclusively. Without derogating from that principle, Eskom shall be entitled to source all coal or any shortfall of coal from other sources.

29.6 termination of this Agreement due to Force Majeure Events

Unless otherwise unanimously agreed to in writing between the Parties, this Agreement shall be terminable by either Party if either Party is wholly prevented by a Force Majeure Event from fulfilling its obligations in terms of the agreement and where such prevention endures for a continuous period of at least 24 (twenty four) Months. Neither Party shall have any claim against the other for any loss suffered as a result of such termination.

SECTION 11: GENERAL PROVISIONS

30. Insolvency

Should either Party commit an act of insolvency, make an offer of compromise or composition, become the subject of a liquidation or business rescue proceedings then the other Party shall be entitled, but not obliged, without prejudice to any other rights which it may have, to terminate this Agreement.

31. Limitation of Liability

Notwithstanding any other provision in this Agreement, neither Party shall be liable in contract or in law or otherwise for any indirect, consequential, punitive and/or special damages or loss of profits or anticipated savings, whether foreseeable or not, and even if a Party has been advised of the possibility of such damages arising, incurred by the other Party arising out of or in connection with this Agreement.

32. Insurance

In order for it to fully comply with its obligations under this Agreement, for the duration of the Contract Period, the Supplier shall:

adequately insure, and keep insured, itself and, inter alia, the equipment acquired, and to be acquired, and the infrastructure established and to be established to enable the Supplier to comply with its obligations in terms of this Agreement against the risks which are in line with, and on terms which are in line with, common mining practice in South Africa;

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- 32.2 forthwith apply the proceeds of any insurance policy to replace or repair, as is reasonable in the circumstances, the Mine (including the equipment acquired, and to be acquired, and the infrastructure established and to be established to enable the Supplier to comply with its obligations in terms of this Agreement) in the event of an insurable incident which may cause it to be damaged, lost or destroyed; and
- 32.3 to provide written proof of such insurance at the written request of Eskom.

33. Cession and Delegation

- This Agreement shall be binding upon and shall be for the benefit of the Parties and, to the extent permitted by the provisions of this clause, their respective successors and assigns.
- Neither Party may delegate this Agreement including to its holding company, an affiliated company, another company wholly and or partially owned by the Parties, to an entity acquiring all or substantially all of the assets of that Party, or for purposes of securing indebtedness and no such assignment shall release the delegating Party from the obligation to perform in terms of this Agreement unless the other Party consents thereto in writing. A Party requesting such consent shall provide the other Party with all the necessary information to conduct a reasonable assessment of the request.

34. Entire Agreement

This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement and supersedes and novates in its entirety any previous understandings or agreements between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.

35. No Stipulation for the Benefit of a Third Person

Save as expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (i.e. a *stipulatio alteri*) which, if accepted by the person, would bind any Party in favour of that person.

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36. No Representations

A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

37. Variation, Cancellation and Waiver

No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of all the Parties.

38. Indulgences

The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

39. Applicable Law

This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.

40. Jurisdiction of South African Courts

The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, South Gauteng High Court, Johannesburg for any proceedings arising out of or in connection with this Agreement.

41. Service of Documents

41.1 The Parties choose the following addresses at which documents and notices in legal proceedings in connection with this Agreement shall be served (i.e. their domicilia citandi et executandi) and at which notices shall be received:

41.1.1 in the case of Eskom to: The Senior General Manager: Primary Energy

physical address

Eskom Holdings Limited

Megawatt Park Maxwell Drive Sunninghill

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postal address

PO Box 1091

Johannesburg

2000

fax no

+27 11 800 5555

41.1.2

in the case of the Supplier to:

The Chief Executive Officer

physical address:

Grayston Ridge Office Park

Block A, Lower Ground Floor144 Katherine

Street

Sandton, 2146

postal address

Postnet Suite 458 Private Bag X9 Benmore, 2010

The Parties choose the following address at which invoices and Drawdown Order may be received:

41.2.1 in the case of Eskom, invoices shall be submitted to: Finance

Manager – Primary Energy

physical address

Eskom Megawatt Park

Maxwell Drive Sunninghill

Fax no:

+27 11 800 5555

e-mail address:

snehal.nagar@eskom.co.za

41.2.2 in the case of the Supplier, Drawdown Orders shall be submitted to: The Chief Executive Officer

physical address: Grayston Ridge Office Park

Block A, Lower Ground Floor

144 Katherine Street

Sandton, 2146

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e-mail address:

nath@oakbay.co.za

- 41.3 Any legal or other notice shall be deemed to have been duly given:
 - on the fifth Business Days after posting (14 (fourteen) Business
 Days if the address is not in the Republic of South Africa), if posted
 by registered post (airmail, if available) to the Party's address in
 terms of this clause 41;
 - 41.3.2 on delivery, if delivered to the Party's physical address in terms of this clause 41 between 08h30 and 17h00 on a Business Day (or on the first Business Day after that if delivered outside such hours);
 - 41.3.3 on despatch, if sent to the Party's then fax number or e-mail address between 08h30 and 17h00 on a Business Day (or on the first Business Day after that if despatched outside such hours) in terms of this clause 41;
 - 41.3.4 unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.
- A Party may change that Party's address or fax number or e-mail address for this purpose by notice in writing to the other Party, such change to be effective only on and with effect from the seventh Business Day after the giving of such notice.
- A1.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate service of such written notice or communication to that Party notwithstanding that it was not sent to or delivered or served at that Party's chosen domicilium citandi et executandi.

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- 42. Costs
- 42.1 Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.
- 42.2 Any costs, including all legal costs on an attorney and own client basis and VAT, incurred by a Party arising out of or in connection with a breach by another Party shall be borne by the Party in breach.
- 43. Signature in Counterparts

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

44. Independent Advice

Each of the Parties hereby respectively agrees and acknowledges that:

- 44.1 it has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and
- each provision of this Agreement (and each provision of the Annexes) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.
- 45. Good Faith and Co-Operation
- The Parties shall, at all times, act in good faith towards each other and shall not bring any of the other Parties into disrepute.
- Each of the Parties undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

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SIGNED AT SUNNINGHILL ON THIS DAY OF FEBRUARY 2016
For and on behalf of
ESKOM HOLDINGS SOC LTD (who warrants that he is duly authorized hereto)
Name: W Brown I
Capacity: Senior General Manager: Primary Energy
AS WITNESSES:
1.
2.
SIGNED AT Sunginghal ON THIS DAY OF FEBRUARY 2016
SO THE
For and on behalf of
TEGETA EXPLORATION AND RESOURCES (PTY) LTD (who warrants that he is duly authorized hereto)
(And Walland State to to daily addition200 Horotoy
Name: RAVINDRA NATH.
Capacity: Chief Executive Officer
AS WITNESSES:
1. Drender
2. Chevere

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LIST OF ANNEXES

- i. Annexe A: The Coal Quality Management Procedure
- ii. Annexe B: Eskom Suppliers' Environmental Legal Requirements
- iii. Annexe C1: The Rules of Road Transportation FCA Contract
- iv. Annexe C2: The Rules of Road Transportation Delivered Contract
- v. Annexe D: Example Calculations for Adjustments for Moisture Content
- vi. Annexe E: Technical Liaison Meeting Agenda

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Annexure GJO37





SECOND ADDENDUM

to the

COAL SUPPLY AGREEMENT

entered into between

ESKOM HOLDINGS SOC LTD ("Eskom")
Reg no: 2002/015527/30

and

TEGETA EXPLORATION AND RESOURCES (PROPRIETARY) LIMITED ("Supplier")

Reg no: 2006/014492/07

(Collectively referred to as "the Parties")

D1 1/25 (\$49)

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1. PREAMBLE:

- 1.1. The Parties entered into a Coal Supply Agreement on 16 February 2016 to supply 500 000 tons of contract coal to Arnot Power Station or any other Eskom owned or operated power station within the Republic of South Africa and which has been designated by Eskom as the destination of Contract Coal.
- 1.2. The Parties entered into a First Addendum to the Coal Supply Agreement on 15 March 2016 to amend the invoicing and payment terms from a monthly invoicing and payment to a weekly invoicing and payment with effect from 17 February 2016.
- 1.3. The Parties have agreed to enter into a Second Addendum to the Coal Supply Agreement to supply an additional 1 250 000 tons of contract coal or 28 787 500 GJ to increase the total quantity of Contract Coal to be supplied under the Coal Supply Agreement to a total of 1 750 000 tons or 40 302 500 GJ.
- 1.4. The Parties, by agreement, hereby amend the Coal Supply Agreement which shall together with the First Addendum and this Second Addendum, constitute the entire Agreement between the Parties.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

2. DEFINITIONS AND INTERPRETATION

- 2.1. In this Agreement, unless the context requires otherwise:
 - 2.1.1. Addendum means this Second Addendum to the Coal Supply Agreement;
 - 2.1.2. Coal Supply Agreement means the Coal Supply Agreement in respect of coal supplied from Optimum Colliery, concluded between the Parties on 16 February 2016 as amended.
 - 2.1.3. **Signature Date** means the date of the last signature to this Addendum by the Party signing.
- 2.2. Words and phrases not defined in this Addendum have the same meaning as defined in the Coal Supply Agreement.
- 2.3. Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 2.4. The headings do not govern or affect the interpretation of this Addendum.
- 2.5. A reference to a Party includes that Party's successors-in-title and permitted assigns.
- 2.6. The rule of interpretation that, in the event of ambiguity, the contract must be interpreted against the party responsible for the drafting of the contract does not apply.

Page 2 of 6 MMK



3. AD CLAUSE 2 OF THE COAL SUPPLY AGREEMENT - DEFINITIONS AND INTERPRETATION

Clause 2.1.12 of the Coal Supply Agreement is hereby amended as follows:

2.1.12 "Coal Reserve" means, at any time during the currency of this Agreement, so much of the Coal Resource from which a quantity of Contract Coal can be produced for Supply to Eskom in terms of this Agreement equal to at least the difference between 40 302 500 (forty million three hundred and two thousand five hundred) GJ (being approximately 1 750 000 Tons (As Received) and the quantity of Contract Coal in the Coal Resource (expressed as an energy quantity) then actually Supplied to Eskom in terms of this Agreement;

4. AD CLAUSE 8 OF THE COAL SUPPLY AGREEMENT - DURATION

Clause 8 of the Coal Supply Agreement is hereby amended as follows:

8. The term of this Agreement shall be for a period commencing on the Commencement Date and expiring on 15 September 2016 unless extended or earlier terminated in accordance with the terms of this Agreement.

5. AD CLAUSE 10 OF THE COAL SUPPLY AGREEMENT - COAL QUANTITIES

Clause 10.4 and Table 1 of the Coal Supply Agreement are hereby amended as follows:

The total quantity of Contract Coal to be supplied under this Agreement shall equal an energy quantity of 40 302 500 GJ ("the Total Energy Quantity"), being approximately 1 750 000 Tons (As Received) at an expected CV 23.03 MJ/kg on an As Received basis.

Table 1 Contract Coal Supply Schedule

Month	Monthly Quantity	Minimum Monthly Quantity (10%)	Maximum Monthly Quantity (10%)	Weekly Quantity	Minimum Weekly Quantity (20%)	Maximum Weekly Quantity (20%)
February 2016 (tons)	125 000	112 500	137 500	62 500	50 000	75 000
February 2016 Energy (GJ)	2 878 750	2 590 875	3 166 625	1 439 375	1 151 500	1 727 250
March 2016 (Tons)	250 000	225 000	275 000	62 500	50 000	75 000
March 2016 Energy (GJ)	5 757 500	5 181 750	6 333 250	1 439 375	1 151 500	1 727 250
April 2016 (Tons)	250 000	225 000	275 000	62 500	50 000	75 000
April 2016 Energy (GJ)	5 757 500	5 181 750	6 333 250	1 439 375	1 151 500	1 727 250
May 2016 (Tons)	250 000	225 000	275 000	62 500	50 000	75 000
May 2016 Energy (GJ)	5 757 500	5 181 750	6 333 250	1 439 375	1 151 500	1 727 250
June 2016 (Tons)	250 000	225 000	275 000	62 500	50 000	75 000

Second Addendum to the Coal Supply Agreement between ESKOM HOLDINGS SOC LIMITED and TEGETA EXPLORATION AND RESOURCES PTY LTD executed at Sunninghill. Contract Number: 4600059576

age 3 of 6 M.L MMK



Month	Monthly Quantity	Minimum Monthly Quantity (10%)	Maximum Monthly Quantity (10%)	Weekly Quantity	Minimum Weekly Quantity (20%)	Maximum Weekly Quantity (20%)
June 2016 Energy (GJ)	5 757 500	5 181 750	6 333 250	1 439 375	1 151 500	1 727 250
July 2016 (Tons)	250 000	225 000	275 000	62 500	50 000	75 000
July 2016 Energy (GJ)	5 757 500	5 181 750	6 333 250	1 439 375	1 151 500	1 727 250
August 2016 (Tons)	250 000	225 000	275 000	62 500	50 000	75 000
August 2016 Energy (GJ)	5 757 500	5 181 750	6 333 250	1 439 375	1 151 500	1 727 250
September 2016 (tons)	125 000	112 500	137 500	62 500	50 000	75 000
September 2016 Energy (GJ)	2 878 750	2 590 875	3 166 625	1 439 375	1 151 500	1 727 250

Total Contract Quantity (Tons)	1 750 000
Energy (GJ)	40 302 500

The tonnages indicated are on an As Received basis assuming a target CV of 24.01MJ/kg (Air Dried), 23.03MJ/kg (As Received), a Total Moisture of 8.0% (As Received) and Inherent Moisture of 4.1.

6. AD CLAUSE 16 OF THE COAL SUPPLY AGREEMENT - COAL QUANTITIES

Clause 16.1 and Table 2 of the Coal Supply Agreement are hereby amended as follows:

The Supplier shall ensure that each quality parameter of the Contract Coal Delivered to Eskom in terms of this Agreement shall comply with the Quality Specifications for Contract Coal set out in Table 2 hereunder.

Table 2: Coal Quality Specification and Rejection Levels

Quality parameter	Unit	Quality Expected	Quality Specifications	Quality Rejection Limit	Measurement basis
Calorific Value	MJ/kg	24.0	≥ 23.0	<23.0	Air Dried
Total Moisture	%	8	≤ 9.0	>9.0	As Received
Inherent Moisture	%	4.1		0.3	As Received
Ash	%	20.2	≤ 22.8	>22.8	Air Dried
Abrasive Index (Eskom Mining House Method)	mgFe/4kg	<450	≤ 450	>450	Air Dried
Sulphur	%	1.19	≤ 1.19	>1.19	Air Dried
Volatiles	%	21.7	≥ 20.5	<20.5	Air Dried

Second Addendum to the Coal Supply Agreement between ESKOM HOLDINGS SOC LIMITED and TEGETA EXPLORATION AND RESOURCES PTY LTD executed at Sunninghill. Contract Number: 4600059576





Quality parameter	Unit	Quality Expected	Quality Specifications	Quality Rejection Limit	Measurement basis
AFT (Initial deformation)	°C	1380	≥ 1380	<1380	N/A
Sizing: (cumulative)					
+60mm +50mm	% %	0.0 5.0	0 ≤5.0	>0.0 >5.0	N/A
-6.35mm -3.35mm -1mm	% % %	50.0 30.0 15.0	≤50.0 ≤30.0 ≤15.0	>50.0 >30.0 >15.0	

All parameters are measured to 1 (one) decimal place, except Al and AFT, which shall be measured to the nearest integer. Sulphur to 2 decimal places

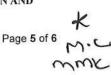
7. AD CLAUSE 22 OF THE COAL SUPPLY AGREEMENT - ROAD COAL TRANSPORTATION

Clause 22.2 of the Coal Supply Agreement is hereby amended as follows:

22.2 The Supplier shall, at its own cost, provide, maintain and operate Pre-Certified Stockpiles with a total capacity of no less than 10 000 Tons, an access road, equipped with a weighbridge, terminating on the D2274 road, and truck loading equipment such that a maximum of 1 750 000 Tons of coal can be uniformly loaded into trucks and transported to the Power Station by road.

8. GENERAL

- 8.1. Save to the extent expressly set out in this Second Addendum and except as it is otherwise mutually agreed between the Parties and reduced in writing, all the remaining terms and conditions contained in the Coal Supply Agreement, shall remain unaltered and in full force and effect.
- 8.2. This Second Addendum constitutes the sole record of the agreement between 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 Second Addendum accordingly supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, between the Parties in respect of the subject matter hereof.
- 8.3. No addition to, variation, novation or agreed cancellation of any provision of this Second Addendum shall be binding upon the Parties unless reduced to writing and signed by or on behalf of the Parties.





Signed at Sunningful on the 13 day of April 2016.
FOR: ESKOM HOLDINGS SOC LTD
Matshela Koko (Mr) GROUP EXECUTIVE: GENERATION Who warrants that he is duly authorised to sign on Eskom's behalf.
AS WITNESSES:
1. Maruno Letoto Specify full names Signature
2. Specify full names Signature
Signed at Sunningfill on the 4th day of April 2016.
FOR: TEGETA EXPLORATION AND RESOURCES (PTY) LTD
Ravindra Nath (Mr) CHIEF EXECUTIVE OFFICER Who warrants that he is duly authorised to sign on the supplier's behalf.
AS WITNESSES: 1. ADITI SINGH Specify full names Signature
2. M. M. Curvccl Specify full names Signature

Annexure GJO38





ESKOM HOLDINGS SOC



PRIMARY ENERGY DEPARTMENT SUPPLIER PAYMENT CONTROL FORM

VENDOR NO	11082687	POWER STATION ARNOT					
VENDOR NAME	TEGETA OPTIMUM	INTERNAL ORDER NUMBER	10000000311]			
VENDOR VAT NUMBER	4680233949	BANKING DETAILS]			
INVOICE DATE	2016/04/26	FNB ACC NO. 62117356990 CO	DE :254605				
PAYMENT DATE	2016/05/02						
INVOICE	AMOUNT (EXCL VAT)	VAT AMOUNT	TOTAL PAYMENT (INCL VAT)				
194 PREPAYMENT	578 559 718.74	80 998 360.62		4			
СРА		-	MANA.				
TOTAL INVOICE	578 559 718.74	80 998 360.62	659 558 079.37	Survey Co.			
CREDIT NOTE							
CREDIT NOTE 194 PREPAYMENT	-			1			
DEBIT NOTE		-					
TOTAL PAYMENT AMOUNT	578 559 718.74	80 998 360.62	659 558 079.37	^			
CONTRACT NUMBER	4600059576	AUTHORISED BY:	SIGNATURES DATE				
PURCHASE ORDER NUMBER	4502349513.(10)	COAL SUPPLY MANAGER NAME:Petros Mazibuko	19/2/2	PA			
SERVICE ENTRY NUMBER \	.0000	COAL SUPPLY UNIT MANAGER	03.05.11				
GOODS RECEIPT NUMBER	1082815288	NAME: Gert Opperman	Memor 03.05.16				
F1 RELEASE NUMBER	5005504229	FINANCIAL ADVISOR NAME:Oupa Rametsi	12 3 she				
SAP INVOICE NUMBER	5180059260.	MANAGEMENT ACCOUNTANT NAME:Philemon Sibanyoni	3/05/16				
CREDIT NOTE NUMBER		GEOLOGIST NAME:Tshwaro Petso					
DEBIT NOTE NUMBER		6					
- 1	0		40				
INVOICE CHECK	· C ·	INVOICE CHECK	73.7				
CONTRACT PRICE EXCL VAT	578 559 718.74	INVOICE & ESKOM CALCULATIONS A	TTACHED				
CPA PRICE EXCL VAT		SIGNED QUALITIES ATTACHED					
CREDIT NOTE		SAP PROCESSING					
DEBIT NOTE		REQUIRED SIGNATURES					
SUB TOTAL EXCL VAT		INVOICE RELEASED					
VAT	80 998 360.62						
TOTAL INCL VAT	659 558 079.37						
RELEASED BY		PREPARED BY	Philemon Sibanyoni				
RELEASE DATE		CELL & EXT NUMBER	x4392				

TEGETA EXPLORATION & RESOURCES (PTY) LTD

Block "A" Lower Ground Floor, Grayston Ridge, 144 Katherine St, Sandton Postnet Suite 458, Private Bag X9 Benmore 2010

> Tel: 011 430 7640 Fax: 086 566 4377 Regn. 2006/014492/07 VAT: 4680233949

TAX INVOICE

Account Number:

EOP001

Name: Address: ESKOM HOLDINGS SOC LTD.

PO BOX 1091

JOHANNESBURG

CONTRACT REF- 724767

Postal Code: Customer Ref:

=4502313607

Invoice Number:

Date: Vendor No: Order Number: Vat Number:

00000194 13/04/2016

0011082687 00000194 4740101508

Page:

Item Number	Description	Unit	Quantity	Price	Total Excl
EQC2	ESKOM QUALITY COAL(-50 MM SIZE)	GJ	29375000 00	19.70	578559718.75
*	1,250,000 MT@ CV OF 23.50				

RATE = 20.41 LESS 3.5% DISCOUNT

Total Excluding: Total Tax: Total Including:

578559718.75 80998360.63 659558079.38

Banking Details:

A/C Name: Tegeta Exploration & Resources Pty Ltd.

Bank: First National Bank

Commercial Cheque A/C: 62117356990 Branch Code: 254605, Sandton City Branch ESKOM HOLDINGS SOC LTD. PO BOX 1091 JOHANNESBURG CONTRACT REF- 724767

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TEGETA Armst Power Station 11062687 11062687 22 338 429.09 Prico Amount 707AL 707AL 72 338 429.09 716.59 718.56 718.59 718.75 80 988 360.62 659 559 079.37 718.75 718.	COAL TRANSPORT SOLVION TRANSPORT SOLVION THE TRANSPORT THE TRANS
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EXTRACT FROM THE MINUTES OF THE MEETING OF SHAREHOLDERS OF TEGETA EXPLORATION AND RESOURCES PTY LTD (REGISTRATION No. 2006/014492/07) (THE COMPANY) HELD AT SANDTON ON 13/04/2016

RESOLVED THAT the Company avails the pre-payment from Eskom for supply of Coal in next 5 months.

FURTHER RESOLVED THAT the Company pledges its shares to Eskom as a security for pre-payment.

Mr Ravindra Nath in his capacity as the director of the Company be & is hereby authorized to sign all the documents required to be signed on behalf of the Company to give effect to the above.

Certified to be true copy

For Shareholders:

Oakbay Investments Pty Ltd.

1 1966 5

Mabengela Investments Pty Ltd.

Barrete

Elgasolve Pty Ltd.

Fidelity Enterprises Ltd.

Sanjay Presin

Accurate Investments Ltd.

Sampy from

AGREEMENT REGARDING COAL SUPPLY AND LIMITED GUARANTEE AND CESSION AND PLEDGE IN SECURITY

- Eskom has obtained a mandate from its board tender committee to enable it to pre-purchase coal from Tegeta Exploration and Resources Proprietary Limited, registration number 2006/014492/07 ("Tegeta") for the supply and delivery of coal in accordance with Eskom's approvals framework on substantially the terms and conditions set out in the Existing Coal Supply Agreement.
- In order to enable Tegeta to undertake the required supply and delivery of coal to Arnot or any other power station as Eskom may direct, Eskom has agreed to advance funds to Tegeta in order for Tegeta to continue to supply and deliver coal to Eskom in terms of the Existing Coal Supply Agreement.
- The parties to this agreement ("Parties") wish to enter into a binding agreement ("Agreement"), to facilitate the financial commitments which each party will be required to make in order to procure the timely supply and delivery of the coal required by Eskom on the terms and conditions of Addendum 2 to the Coal Supply Agreement.

4 Terms of Agreement

- 4.1 Eskom will make an advance payment to Tegeta in lieu of future coal supply in terms of the Existing Coal Supply Agreement in the amount of R 659 558 079.00 (six hundred and fifty nine million five hundred and fifty eight thousand seventy nine rand and 38 cents) inclusive of VAT ("Advance Payment") payable on 13 April 2016.
- 4.2 Notwithstanding the provisions of Addendum 2 to the Coal Supply Agreement, the following shall apply -
- Tegeta will procure that for supply to Eskom from the Optimum mine in terms of the Existing Coal Supply Agreement, for the 5 month period commencing on 16th April 2016 to 30 September 2016, a 3.5% discount shall be applied to the agreed price of R 20.41 (twenty rand and forty one cents) per Gigajoule. Accordingly the price payable for supply from the OCM mine shall be R 19.69 (nineteen rand and sixty nine cents) per Gigajoule;
- In lieu of the Advance Payment, in respect of all invoices issued by Tegeta to Eskom relating to supply of coal from the Optimum Colliery, ("Total Invoices"), at the end of each month commencing 16 April 2016 Tegeta shall procure that it issues a credit note to Eskom equal to R 659 558 079.00 (six hundred and fifty nine million five hundred and fifty eight thousand seventy nine rand and 38 cents) until the full amount of the Advance Payment has been recovered in full.
- 4.2.3 In the event that the amount payable in respect of the Total Invoices is more than of R 659 558 079.00 (six hundred and fifty nine million five hundred and fifty eight thousand seventy nine rand and 38 cents), any amounts payable in respect of the Total Invoices in excess of R 659 558 079.00 (six hundred and fifty nine million five hundred and fifty eight thousand seventy nine rand and 38 cents) to Tegeta.
- 4.2.4 The Discharge Date shall be the date upon which the prepayment is recovered in full.
- As security for the due performance of its obligations, Tegeta pledges to Eskom with effect from date of signature of this Agreement, the Pledged Shares and cedes in securitatem debiti to Eskom all its present Rights and Interests, as continuing general covering collateral security for the due, proper and punctual performance in full of all the obligations in terms of this Agreement read together with Addendum 2 to the Coal Supply Agreement, which pledge and cession Eskom accepts.



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- 4.3.1 The pledge and cession contemplated by this Agreement are intended to operate as a pledge and a cession of each part of and all the Pledged Shares and the Rights and Interests, individually and collectively.
- 4.3.2 If, for any reason, any security interests intended to be created under this Agreement are or become illegal, invalid or unenforceable in respect of some of the Pledged Shares or the Rights and Interests, the pledge of those Pledged Shares and the cession of those Rights and Interests shall be severed from this Agreement, and this Agreement and all the security interests created over the remainder of the Pledged Shares and the Rights and Interests shall continue in full force and effect.
- 4.3.3 It is the intention of the Parties that the cession under this Agreement should operate as a security cession and not as an outright cession and, accordingly, that Tegeta shall (i) remain the beneficial owner of the Pledged Shares and the Rights and Interests (and consequently any distributions of any kind paid by the Issuer of the Pledged Shares and any other amounts of whatsoever nature payable on account of the Rights and Interests from time to time will accrue to, be paid to and be receivable and claimable by Tegeta until Eskom exercises its rights in terms of clause 4.5.
- 4.3.4 This Agreement and the security interests created pursuant to this Agreement:
- 4.3.4.1 come into full force and effect on the date of this Agreement without any further action, consent or authority required from any person save for the actions, consents or authority required in order to give effect to the Statutory Flagging;
- 4.3.4.2 unless otherwise agreed by Eskom shall not terminate before the Discharge Date; and
- 4.3.4.3 shall remain in full force and effect as continuing covering security, notwithstanding any intermediate discharge or settlement of, or temporary fluctuation in, the Secured Obligations.
- 4.3.4.4 Eskom shall obtain the necessary approvals in terms of the Public Finance Management Act (PFMA) or any other approvals, should that be required.
- 4.3.5 Tegeta represents and warrants to Eskom that
- 4.3.5.1 It is the beneficial owner of the shares to be pledged and that no encumbrance exists whatsoever exists at this time of pledge;
- 4.3.5.2 The pledged shares are duly authorized, validly existing and fully paid up:
- 4.3.5.3 Its entry into and the performance of its obligations under this Agreement, the transactions contemplated by and the security interests created under this Agreement, do not and will not conflict with:
- 4.3.5.3.1 any law or regulation applicable to it; or
- 4.3.5.3.2 its constitutional documents; or
- 4.3.5.3.3 any contractual obligation or document which is binding upon it or any of its assets (except for contractual restrictions existing on the date of this Agreement which are waived to the satisfaction of the Cessionary before or on the date of this Agreement).
- 4.3.5.4 Tegeta has the full right, power and authority to enter into this Agreement and to pledge the Pledged Shares and has taken all necessary corporate action to authorize the entry into and performance of, this Agreement and the transactions contemplated by this Agreement.







- 4.4 Eskom enters into the prepayment arrangement on the strength of and relying on the representations and warranties set out in clause 4.3.5, each of which is a separate representation and warranty, given without prejudice to any other representation or warranty and is deemed to be a material representation or warranty (as applicable) inducing Eskom to enter into the prepayment arrangements.
- Tegeta shall within 14 business days of signature of this Agreement provide Eskom with an alternate form of security, acceptable to Eskom.
- 4.5.1 In the event of the Alternative guarantee being provided to the satisfaction of Eskom, the pledge set out herein shall be discharged.
- The security constituted by this Agreement in favour of Eskom will remain in place until it is terminated in accordance with the discharge provisions in clause 4.2.4 and/or the provisions of clause 4.5.1 become of force and effect.
- 4.5.3 This Agreement:
- 4.5.3.1 creates the security interests it purports to create and is not liable to be avoided or otherwise set aside on Tegeta's liquidation or business rescue or otherwise; and
- 4.5.3.2 Constitutes Tegeta's legally valid and binding obligation, enforceable against it in accordance with these terms.
- Tegeta must deliver the documents set out in this Clause 5 to Eskom by no later than 1 (one) Business Day after the date of this Agreement (or in respect of Pledged Shares and the Rights and Interests acquired by Eskom or otherwise arising thereafter, as soon as reasonably possible after that property becomes Pledged Shares and the Rights and Interests).
- 5.1 Certified Shareholders' resolution indicating consent to pledge and cession;
- 5.2 Certified Directors Resolution authorising the signature of this Pledge;
- 5.3 Original Share Certificates
- This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties. The Parties will as soon as possible after the signature of this Agreement execute comprehensive agreements relating to the subject matter of this Agreement and which will contain further detailed provisions regarding the arrangements contemplated herein.
- In the event of any of the Parties ("Defaulting Party") committing a breach of any of the terms of this Agreement and failing to remedy such breach within a period of 10 (ten) days after receipt of a written notice from another Party ("Aggrieved Party") calling upon the Defaulting Party so to remedy, then the Aggrieved Party shall be entitled, at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of the terms of this Agreement or to cancel this Agreement forthwith and without further notice, and in either case to claim and recover damages from the Defaulting Party.
- No addition to or variation, deletion, or agreed cancellation of all or any paragraphs or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.







- This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- This Agreement shall be governed by the laws of the Republic of South Africa and each Party hereby consents and submits to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg.
- Each of the Parties hereby agrees, by countersigning this Agreement below, that it binds itself to the provisions of this Agreement, and the natural person signing in a representative capacity hereby warrants that he/she is fully authorised.

SIGNED at Sunning 411	on 13/4/16 2016 For and on behalf of ESKOM HOLDINGS SOC LIMITED
wines:	Signature MATSHELA KOKO
	GROUP EXECUTIVE: GENERATION
SIGNED at SunningHill.	on 13th April 2016 For and on behalf of TEGETA EXPLORATION AND RESOURCES (PROPRIETARY) LIMITED
Ora.	Signature RAVINDRA NATH Name of Signatory
	DIRECTOR. Designation of Signatory



ESKOM HOLDINGS SOC LTD Reg No 2002/015527/30 BOARD TENDER COMMITTEE

Unique Identifier	221-209	
Document Type	OCSDTE	
Revision	0	
Revision Date July 2015		
Office of the Company Secretary		

EXTRACT FROM THE APPROVED MINUTES OF THE SPECIAL BOARD TENDER COMMITTEE 1-2016/17 HELD BY TELECONFERENCE ON 11 APRIL 2016 AT 21h00

2.1 PRIMARY ENERGY

Addendum to the Short Term Coal Supply Agreement between various suppliers and Eskom Holdings SOC Limited ("Eskom") for the supply of coal to Arnot Power Station.

RESOLVED THAT:

- 2.1.1 Addenda to the Short Term Coal Supply Agreements between various suppliers and Eskom be concluded to extend the supply of coal from various sources to Arnot Power Station for up to a further five (5) months and/or such period as may be requested by the supplier but no later than 30 September 2016;
- 2.1.2 The Chief Financial Officer is hereby authorised to approve the basis for prepayment to secure the fixed coal price for the period of extension provided that there is a discount in the price, the supplier offers a guarantee in favour of Eskom and that the CFO can provide assurance to the committee that the transactions are economically viable for Eskom;
- 2.1.3 The Group Executive (Generation) is hereby authorised to take all the necessary steps to give effect to the above, including the signing of any consents, or any other documentation necessary or related thereto.

CERTIFIED AS A TRUE EXTRACT

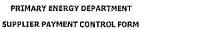
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COMPANY SECRETARY

Date: 15/4/2016



ESKOM HOLDINGS SOC





VENDOR NO	11082687	POWER STATION	ARNOT	
VENDOR NAME	TEGETA OPTIMUM	INTERNAL ORDER NUMBER 10000000031%		4 7.
VENDOR VAT NUMBER	4680233949	BANKING DETAILS		
VALUOVET DATE		FNB		
INVOICE DATE	2016/04/13	ACC NO. 62117356990 CODE :254605		
PAYMENT DATE	2016/04/13			
INVOICE	AMOUNT (EXCL VAT)	VAT AMOUNT	TOTAL PAYMENT	(INCL VAT)
194 PRE PAYMENT	578 559 718.7	80 998 360.63	3	659 558 079.38
СРА				,
TOTAL INVOICE	578 559 718.7	80 998 360.63		659 558 079,38
CREDIT NOTE		-		
DEBIT NOTE		-		-
TOTAL PAYMENT AMOUNT	578 559 718.7	5 60 998 360.63	3	659 558 079.38
CONTRACT NUMBER	4600059 676 6841	CORVINORISED BY:	SIGNATURES	DATE
PURCHASE ORDER NUMBER	4502313607 450 2767	FIRME: Maya Bhan	Mehon	12/04/201
SERVICE FIFTHY NUMBER	1082805112	NAME:		
F1 RELEASE NUMBER	5005477159			
SAP INVOICE NUMBER	518 002/600			
CREDIT NOTE NUMBER				
DEBIT NOTE NUMBER	_			
INVOICE CHECK	12	INVOICE CHECK		
CONTRACT PRICE EXCL VAT	578 559 718.75	INVOICE & ESKOM CALCULATIONS A	TTACHED	
CPA PRICE EXCL VAT	-	SIGNED QUALITIES ATTACHED		
CREDIT NOTE		SAP PROCESSING		
DEBIT NOTE		REQUIRED SIGNATURES		
SUB TOTAL EXCL VAT	578 559 718.75	INVOICE RELFASED		
VAT	80 998 360.63			
TOTAL INCL VAT	659 558 079.38			
RELEASED BY		PREPARED BY	Philemon Sibanyoni	
RELEASE DATE		CELL & EXT NUMBER	x4392	

TEGETA EXPLORATION & RESOURCES (PTY) LTD

Block "A" Lower Ground Floor, Grayston Ridge, 144 Katherine St, Sandton Postnet Suite 458, Private Bag X9 Benmore 2010

> Tel: 011 430 7640 Fax: 086 566 4377 Regn. 2006/014492/07 VAT: 4680233949

TAX INVOICE

Account Number:

Name: Address: **EOP001**

ESKOM HOLDINGS SOC LTD.

CONTRACT REF- 724767

Postal Code:

Customer Ref:

PO BOX 1091 JOHANNESBURG

2000

=4502313607

Invoice Number:

Date: Vendor No: Order Number: Vat Number:

00000194 13/04/2016 0011082687 00000194

4740101508

Page:

Item Number	Description	Unit	Quantity	Price	Total Excl
EQC2	ESKOM QUALITY COAL(-50 MM SIZE) 1,250,000 MT@ CV OF 23.50	GJ	29375000 00	19.70	578559718.75

= 29,375,000 GJ

RATE = 20.41 LESS 3.5% DISCOUNT

Total Excluding: Total Tax: Total including:

80998360.63 659558079.38

Banking Details:

A/C Name: Tegeta Exploration & Resources Pty Ltd. Bank: First National Bank

Commercial Cheque A/C: 62117356990 Branch Code: 254605, Sandton City Branch ESKOM HOLDINGS SOC LTD. PO BOX 1091 JOHANNESBURG CONTRACT REF- 724767

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EXTRACT FROM THE MINUTES OF THE MEETING OF SHAREHOLDERS OF TEGETA EXPLORATION AND RESOURCES PTY LTD (REGISTRATION No. 2006/014492/07) (THE COMPANY) HELD AT SANDTON ON 13/04/2016

RESOLVED THAT the Company avails the pre-payment from Eskom for supply of Coal in next 5 months.

FURTHER RESOLVED THAT the Company pledges its shares to Eskom as a security for pre-payment.

Mr Ravindra Nath in his capacity as the director of the Company be & is hereby authorized to sign all the documents required to be signed on behalf of the Company to give effect to the above.

Certified to be true copy

For Shareholders:

Oakbay Investments Pty Ltd.

1 1 4 1 2 50

Mabengela Investments Pty Ltd.

L'Saieirate

Elgasolve Pty Ltd.

Fidelity Enterprises Ltd.

Vanjas Presin

Accurate Investments Ltd.

Sanjay Provin

- 4.3.1 The pledge and cession contemplated by this Agreement are intended to operate as a pledge and a cession of each part of and all the Pledged Shares and the Rights and Interests, individually and collectively.
- If, for any reason, any security interests intended to be created under this Agreement are or become illegal, invalid or unenforceable in respect of some of the Pledged Shares or the Rights and Interests, the pledge of those Pledged Shares and the cession of those Rights and Interests shall be severed from this Agreement, and this Agreement and all the security interests created over the remainder of the Pledged Shares and the Rights and Interests shall continue in full force and effect.
- It is the intention of the Parties that the cession under this Agreement should operate as a security cession and not as an outright cession and, accordingly, that Tegeta shall (i) remain the beneficial owner of the Pledged Shares and the Rights and Interests (and consequently any distributions of any kind paid by the Issuer of the Pledged Shares and any other amounts of whatsoever nature payable on account of the Rights and Interests from time to time will accrue to, be paid to and be receivable and claimable by Tegeta until Eskom exercises its rights in terms of clause 4.5.
- 4.3.4 This Agreement and the security interests created pursuant to this Agreement:
- 4.3.4.1 come into full force and effect on the date of this Agreement without any further action, consent or authority required from any person save for the actions, consents or authority required in order to give effect to the Statutory Flagging;
- 4.3.4.2 unless otherwise agreed by Eskom shall not terminate before the Discharge Date; and
- 4.3.4.3 shall remain in full force and effect as continuing covering security, notwithstanding any intermediate discharge or settlement of, or temporary fluctuation in, the Secured Obligations.
- 4.3.4.4 Eskom shall obtain the necessary approvals in terms of the Public Finance Management Act (PFMA) or any other approvals, should that be required.
- 4.3.5 Tegeta represents and warrants to Eskom that
- 4.3.5.1 It is the beneficial owner of the shares to be pledged and that no encumbrance exists whatsoever exists at this time of pledge;
- 4.3.5.2 The pledged shares are duly authorized, validly existing and fully paid up;
- 4.3.5.3 Its entry into and the performance of its obligations under this Agreement, the transactions contemplated by and the security interests created under this Agreement, do not and will not conflict with:
- 4.3.5.3.1 any law or regulation applicable to it; or
- 4.3.5.3.2 its constitutional documents; or
- 4.3.5.3.3 any contractual obligation or document which is binding upon it or any of its assets (except for contractual restrictions existing on the date of this Agreement which are waived to the satisfaction of the Cessionary before or on the date of this Agreement).
- 4.3.5.4 Tegeta has the full right, power and authority to enter into this Agreement and to piedge the Pledged Shares and has taken all necessary corporate action to authorize the entry into and performance of, this Agreement and the transactions contemplated by this Agreement.

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- This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same Agreement as at the date of signature of the Party last signing one of the counterparts.
- This Agreement shall be governed by the laws of the Republic of South Africa and each Party hereby consents and submits to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local Division, Johannesburg.
- Each of the Parties hereby agrees, by countersigning this Agreement below, that it binds itself to the provisions of this Agreement, and the natural person signing in a representative capacity hereby warrants that he/she is fully authorised.

SIGNED at Sunning WII on	13人以りし 2016 For and on behalf of ESKOM HOLDINGS SOC LIMITED
wines:	Signature MATSHELA KOKO GROUP EXECUTIVE: GENERATION
	-H-
SIGNED at SunningHill. on	For and on behalf of TEGETA EXPLORATION AND RESOURCES (PROPRIETARY) LIMITED
Yoran	Signature RAVINDRA NATH

Name of Signatory

DIRECTOR

Designation of Signatory

€skom

SUBMISSION DOCUMENT

Unique Identifier 221-222			
Document Type	OCSDTE		
Revision	0		
Review Date July 2015			
Office of the Company Secretary			

Tegeta's short term contracts are for 600 000 tonnes of coal from Optimum's export stockpile. Supply for these contracts is due to be completed by the 15 April 2016. The coal from Optimum's export stock is a higher grade coal that is suitable for Arnot and Kriel Power Stations and is difficult to source from elsewhere.

These contracts were entered into in terms of the Medium Term Mandate granted by the Board Tender Committee ("BTC") on 11 September 2008. The BTC approved a mandate to negotiate and conclude CSAs on a medium term basis for the supply and delivery of coal to various Eskom Power Stations for the period October 2008 to March 2018 and this included the beneficiation of coal by suppliers or their contractors.

The benefits for extending these Short Term Contracts include:

The coal is being mined and can be delivered without delay;

Tegeta has the potential to supply approximately 250kt per month and Umsimbithi approximately 180kt per month. It would therefore be in the best interests of Eskom to negotiate and conclude extensions to these Short Term Contracts to alleviate the coal shortfall at Arnot due to the closure of Arnot colliery. Additionally to alleviate the shortfall coal requirements at Kriel Power Station due to the underperformance of Kriel Underground mine;

By procuring this coal for Arnot and Kriel Power Stations, it will assist towards building stock days as according to the April 2016 Supply Plan, as presented at the Primary Energy TCC of 8 April 2016 there is currently an estimated 2.14Mt tonnes shortfall at Arnot Power Station for FY2017 and 280 000 tonnes shortfall at Kriel Power Station for FY2017.

Both suppliers have indicated a willingness to extend current contracts, however, Tegeta has requested that Eskom consider some form of prepayment to enable it to meet the production requirements from the export component of the mine in lieu of the fact that it subsidises the direct feed to Hendrina Power and this will enable it to meet the coal supply demands for the two power stations in the short term.

3.2 Key assumptions

The submission and decision required set out herein, is based on the following key assumptions:

The qualities as agreed in the existing STC will be delivered; 3.2.1

3.2.2 The Terms and Conditions of the existing STC shall remain;

Eskom is securing its coal supply for two Power Stations in the short term, pending 3,2,3 the conclusion of the procurement process;

The principle of prepayment for security of supply has been established by previous 3.2.4 approvals.

3.3 Financial implications

3.3.1 To date the cost of coal in respect of the these Short Term Contracts is as follows:

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SUBMISSION DOCUMENT

Unique Identifier	221-222	
Document Type OCSDTI		
Revision	0	
Review Date July 2015		
Office of the Company Secretary		

RISK	MITIGATING FACTORS	LEVEL (HIGH/MEDIUM/LOW)
Quality:	The coal is suitable for Arnot and Kriel Power Stations as per the Combustion Report received from Research, Testing and Development Department.	
Other:	N/A	N/A

3.6 Verification by	independent party	(if	applicable)
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Not Applicable

4. OTHER APPROVALS REQUIRED

None

SIGNED

AYANDA NTETA

ACTING GENERAL MANAGER (FUEL SOURCING)

PRIMARY ENERGY

EDWIN MABELANE ACTING CHIEF PROCUREMENT OFFICER EROUP COMMERCIAL

MATSHELA KOKO

GROUP EXECUTIVE

GENERATION

Who hereby represents that the above information is correct.

Annexure GJO39



