# <u>U11.1</u>

# WITNESS STATEMENT & ANNEXURE

# FOR

# PIERS MICHAEL MARSDEN

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#### STATEMENT OF PIERS MICHAEL MARSDEN

- I am an adult male charted accountant, with identity number 7703055168084, currently practicing from Suite 32 Building 2, 114 Oxford Road, Houghton Estate, Johannesburg.
- I have been asked to provide a statement to the Judicial Commission of Enquiry to enquire into allegations of State Capture, Corruption and Fraud in the Public Sector, Including Organs of State ("Commission").
- 3 I intend to provide information relating to the business rescue ("BR") proceedings of Optimum Coal Mine Proprietary Limited ("OCM") and its holding company, then, Optimum Coal Holdings Proprietary Limited ("OCH") over the period August 2015 to August 2016 and my recollection and understanding of the events that gave rise to the sale of OCH's shares in OCM to Tegeta Exploration and Resources Proprietary Limited ("Tegeta") and to the ultimate discharge of OCH and OCM from BR.

#### **Commencement of Business Rescue Proceedings – August 2015**

The BR provisions of the Companies Act 71 of 2008 ("Companies Act") provide a company with an opportunity to restructure its affairs in such a way that either maximizes the likelihood of the company continuing in existence on a solvent basis, or results in a better return for the creditors of the company than

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would ordinarily result from the liquidation of the company. The Companies Act provides a short window of 3 months within which to discharge a company from BR which time period can only be extended with the support of a majority of creditors. The support of the major creditors is not a given and is not always received. This is the lens thorough which the BR process of OCH and OCM must be viewed.

- 4 On 31 July 2015, the board of directors of OCH and OCM resolved to commence voluntary BR proceedings (attached marked **PMM1**).
- 5 The BR proceedings in respect of OCM and OCH commenced on 4 August 2015 (attached marked PMM2). On such date Mr Petrus Francois van den Steen ("Mr Van den Steen") and I were appointed as the joint business rescue practitioners ("BRP") of OCM and OCH (attached marked PMM3).
- 6 Mr van den Steen has signed a confirmatory affidavit (attached marked **PMM4**) in which he has confirmed the content of my statement insofar as it relates to him. When reference is made in this affidavit to "we" or us, it must be taken to include a reference to myself and van de Steen.
- 7 Mr van den Steen and I took management control of OCM and OCH in substitution for its board and pre-existing management from the moment OCM and OCH had commenced BR (ie from 4 August 2015).

- At this time, OCM was operating at a loss of approximately R150 million a month. This was because it had no funding from its shareholders or the consortium of banks<sup>1</sup>; was selling coal at 30% to 40% of its cost of production; was facing a potential penalties claim (of approximately R2 billion) from Eskom Holdings SOC Limited ("Eskom") and was faced with the prospect of supplying coal to Eskom for effectively R1 per tonne (as penalties could be offset against the purchase price of coal in terms of the CSA) if Eskom continued to levy penalties against OCM. Mr Clinton Ephron ("Mr Ephron") (a former director of OCM and OCH) confirmed this in his OCM BR statement (attached marked PMM5).
- 9 Given OCM's dire financial position we had a very limited time in which to attempt to rescue OCH and OCM. Without a viable solution, we would have needed to place OCM in liquidation.
- 10 OCH was a holding company. It had no operational cash requirements. We thus focussed our attention on OCM. OCH did however owe the Consortium of Banks an amount of R2.15 billion. This debt was secured by all of the assets of OCH and OCM. The board of directors of OCH faced a dilemma in that OCH had signed a guarantee (dated 8 April 2008) for the obligations of OCM in favour of Eskom (attached marked **PMM6**). Thus any default by OCM of its obligations to Eskom would have triggered a call on OCH – requiring OCH to

<sup>&</sup>lt;sup>1</sup> The consortium of banks is comprised of FirstRand Bank Limited (acting through its Rand Merchant Bank division), Investec Bank Limited (acting through its Corporate and Institutional Banking division) and Nedbank Limited (acting through its Corporate and Investment Banking division) ("Consortium of Banks").

satisfy OCM's obligations. As such OCH was also placed in BR (attached marked PMM2).

- 11 We conducted our investigation into the affairs of OCM and came to learn of the coal supply agreement concluded between Trans-Natal Coal Corporation Limited and Trans-Natal Collieries Limited and Eskom on 4 January 1993 (as amended from time to time) ("CSA").
- 12 Through a series of transactions, I understand that OCM acquired the Optimum collieries ("Mine") during June 2008 and became the supplier of coal to Eskom in terms of the CSA, and that Glencore became its indirect majority shareholder, during 2012 (Glencore being the majority shareholder of OCH OCM's holding company).
- 13 Upon investigating the affairs of OCM, it became apparent that the CSA was a loss making contract in that OCM was selling coal to Eskom for an amount of approximately R150/tonne, at a cost to OCM of approximately R430 to R450/tonne. This resulted in hardship for OCM and it was this hardship that OCM attempted to resolve with Eskom and Glencore before OCM and OCH were placed in BR.
- 14 Eskom was OCM's largest customer and OCM was supplying coal to Eskom at a loss. Eskom was also a significant creditor of OCM as a result of Eskom's alleged penalties claim (in the amount of R2 billion). Further, the CSA required Eskom's consent for any sale of the Mine. Eskom was therefore a key

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stakeholder in the rescue of OCM and the CSA was at the centre of OCM's financial distress.

#### **Engagements with Eskom**

- In the period from early to late August 2015, van den Steen and I attempted to set up a meeting with Eskom. After several attempts, a meeting was held on 17 August 2015. The meeting was attended by us and representatives of Eskom. The purpose of the meeting was to discuss BR and attempt to open discussions with Eskom about negotiating the CSA so that OCM could continue to supply coal to Eskom, and avoid liquidation.
- With Eskom unwilling to commence negotiations and OCM suffering significant loss on a monthly basis, we had no option but to stop the supply of coal. We did this on 20 August 2015 (letter to Eskom dated 20 August 2015 attached marked PMM7) utilizing the powers available to us as BRPs in terms of section 136(2)(a) of the Companies Act 71 of 2008. We also hoped that by suspending the supply of coal to Eskom, Eskom would accept the severity of OCM's financial position and engage with us. At the same time, we also presented Eskom with an interim proposal for the supply of coal. This was enclosed with our letter to Eskom dated 20 August 2015 (attached marked PMM7).
- 17 Once we had stopped the supply of coal to Eskom, Eskom called for a meeting with us. The meeting was held on 3 September 2015. Mr Ephron attended the meeting on behalf of OCM. Upon arrival at Eskom, we were not asked to join

the meeting and the meeting was held in our absence among Mr Brian Molefe ("Mr Molefe"), Mr Matshela Koko ("Mr Koko") and Mr Ephron. After the meeting, we were advised by Mr Ephron that Mr Molefe had requested OCM to recommence the supply of coal to Eskom and had undertaken to negotiate the CSA in good faith.

- 18 On the strength of the undertaking given by Eskom to negotiate in good faith, Glencore agreed to provide funding to OCM during the negotiation period and we agreed to recommence the supply of coal to Eskom. This we did in early September 2015.
- 19 During the negotiation period, OCM supplied coal to Eskom at approximately R150.00/tonne (the price in the CSA) and Eskom was required to make payment within 7 days of supply. It was also agreed that Eskom would waive the imposition of penalties. This was recorded in a letter, later addressed to Eskom on 22 September 2015 (attached marked PMM8). This interim arrangement was extended several times until OCM was discharged from BR in August 2016.
- 20 We began re-engaging with Eskom during the end of August/September 2015. As part of the engagement, Eskom requested us to provide it with financial information about OCM. This was provided to Eskom's attorneys, Cliffe Dekker Hofmeyer (attached marked **PMM9**). I was advised by the directors of OCM and OCH that most of this information had already been provided to Eskom previously. Eskom would therefore have been well aware of OCM's financial

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position prior to the commencement of OCM's BR proceedings. The information provided confirmed OCM's precarious financial position.

- 21 During this time, we received an unsolicited indicative non-binding offer from Oakbay Investments Proprietary Limited ("Oakbay") (Tegeta's holding company), on 10 September 2015. The terms of this offer (attached marked PMM10) provided for the acquisition of OCM, as a going concern, for a purchase price of R1.00. Oakbay committed to funding OCM going forward and to honouring the CSA.
- 22 We advised Oakbay that we were not considering the sale of OCM (attached marked PMM11). We were at this time focused on engaging with Eskom in an effort to renegotiate the CSA. Oakbay responded on 21 September 2015 (attached marked PMM12). It indicated, among other things, that it was confident that it would be able to secure Eskom's consent to the transaction.
- At approximately the same time, we had made a proposal to Eskom for the long term supply of coal. This was set out in a letter dated 17 September 2015 (attached marked PMM13). Eskom rejected the long term proposal and made no counter-proposal (attached marked PMM14). Instead it reiterated its previous position (which it held prior to undertaking to negotiate with OCM in good faith) that the terms of the CSA would not be renegotiated at such stage and that the penalty claim needed to be settled in full. We expressed our disappointment with Eskom's lack of engagement (attached marked PMM15).

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24 The "good faith" negotiations therefore came to an end shortly after they had begun on or around 5 October 2015 (attached marked **PMM15**). This resulted in us sending a letter to Eskom on 27 October 2015 advising Eskom that we need to explore alternatives. (attached marked **PMM16**).

- 25 It became clear to us that a negotiated settlement of the CSA with the corporate structure then in place (with Glencore as shareholder) was not likely to be concluded. Eskom were reluctant to engage with us. Accordingly, we needed to reconsider our approach and determine if the Mine could be sold.
- We met with Eskom again on 28 October 2015. This time to advise of the options that were then available to us to avoid a liquidation of OCM. We recorded these options in a letter dated 29 October 2015 (attached marked PMM17). We advised Eskom about the sale options that were available to us at the time. We presented three options to Eskom (i) the sale of OCM to a third party; (ii) the sale of OCM to Eskom; or (iii) the sale of OCM to a third party through a competitive sales process, on condition that new terms be agreed with Eskom. We indicated to Eskom that we had received an expression of interest from Oakbay and that Oakbay had given us permission to disclose its details to Eskom. We reminded Eskom that it (Eskom) was a key element in all of the proposed options and sought Eskom's view and position in this regard.
- 27 We discussed OCM's position with Glencore as OCM would need further funding to support its operations during BR. Glencore confirmed that it would provide funding to OCM, on a month to month basis, but indicated that funding

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was, however, dependent on the progress that we were making in selling the Mine. We therefore had conditional funding, limited time to sell the Mine and no time to engage in any formal sales process.

#### Attempts to Sell OCM

- 28 During the course of OCH and OCM's BR proceedings, Mr van den Steen and I received expressions of interest from various parties. In all instances, we indicated to such parties that Eskom was a key stakeholder in any sale of OCM, and that its consent would be required.
- 28.1 Endulwini Mining Corporation Proprietary Limited ("Endulwini") expressed interest in OCM from as early as August 2015. The chain of correspondence between our attorneys of record, Werksmans Attorneys ("Werksmans") and Zwiegers Attorneys over the period 12 August 2015 to 10 March 2016 is attached marked PMM18. The offer/s made by Endulwini were not suitable.
- 28.2 The African Exploration Mining and Finance Corporation ("AEMFC") (ie the State Owned Mining Company) expressed an interest in OCM. Two meetings were held with AEMFC's representatives. At the second meeting on 22 September 2015, AEMFC advised, among other things, that Eskom had requested it to record its intentions in respect of OCM in writing. Following this meeting, we heard nothing further from AEMFC.

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A company called Joe Singh Group of Companies indicated that it was interested in OCM and signed a non-disclosure agreement on 1 October 2015. Mr van den Steen and I met with representatives of Just Coal (this being the same entity who we understood concluded the non-disclosure agreement) on 1 October 2018 and following such meeting, advised that the asset was "too big for them, too connected and forbidden fruit".

28.4 On 7 October 2015, Phembani Group Proprietary Limited ("Phembani") offered to acquire all of OCH's shares in OCM. The terms of the offer were recorded in a term sheet (attached marked PMM19). On the basis that Phembani had sought to engage with us exclusive of others, we advised Oakbay immediately that we were not in a position to progress their offer (of 10 September 2015) at such time or to permit them to continue with their due diligence (attached marked PMM20). We progressed our engagements with Phembani. We were advised by Mr Ephron that Phembani had advised him that Eskom indicated at a meeting with them that it would not support Phembani's transaction. Phembani confirmed this in writing later in a letter dated 11 February 2016 (attached marked PMM21).

29 Accordingly, towards the end of October 2015, the only entity that remained interested in OCM was Oakbay/Tegeta.

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#### The Tegeta Transaction

- 30 After hearing from Phembani, we advised Oakbay (in October 2015) that we were able to continue engaging with it (attached marked **PMM22**). Discussions and engagements with Oakbay accordingly recommenced towards the end of October 2015.
- 31 We met with KPMG and representatives of the Gupta family on 20 October 2015 to discuss the Oakbay offer (as set out in paragraph 22 above). Representatives of Glencore were also present at the meeting. At such meeting we advised that any transaction would be for the sale of the shares in OCM only. We also indicated that we needed an assurance from Oakbay that it would fund OCM for the duration of its BR. The mechanics for the commencement of Tegeta's due diligence was discussed with van den Steen, Mr Shaun Blankfield (from Glencore) and representatives of KPMG at a meeting thereafter.
- 32 We confirmed our position in a letter dated 23 October 2015 to Oakbay (attached marked **PMM22**). In such letter we set out the parameters of the transaction and specifically indicated that we were willing to proceed with a sale of the shares in OCM only and that Oakbay's proposed offer (for a consideration of R1.00) would not include the shares held by OCM in Optimum Coal Terminal Proprietary Limited ("**OCT**") (the owner of the Richards Bay Coal Terminal). We gave Oakbay until 30 November 2015 to conclude a due-diligence on OCM and sign transaction agreements.

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- 33 A non-binding term sheet (based on its offer of R1.00) was signed on 12 November 2015 for the acquisition of the shares in OCM (attached marked PMM23). One of the terms of the term sheet was Eskom's consent to the transaction.
- 34 Despite Eskom's unwillingness to engage with OCM, we continued to update Eskom.
- 34.1 In early November, we reminded Eskom (3 November 2015) about the key role that it played in the rescue of OCM (attached marked **PMM24**).
- 34.2 We further advised Eskom (3 November 2015) that we had secured conditional funding from Glencore for the month of November 2015 and thus had limited funds and time to conclude a transaction to rescue OCM (attached marked **PMM24**).
- 34.3 Eskom did not comment on the sale options that we indicated were available to us (5 November 2015). It merely confirmed that it was willing to meet with representatives of Oakbay to consider the veracity of its 10 September 2015 offer (attached marked PMM25). We acknowledged this (attached marked PMM26).
- 35 Tegeta requested us to arrange a meeting with Eskom. Mr van den Steen and I facilitated it. This meeting was held on 24 November 2015. During the meeting, Mr Koko reiterated Eskom's position – that the terms of the CSA would

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not be amended; that Eskom expected OCM to honour its obligations in terms of the CSA and that Eskom would not waive any penalties. Mr Koko further indicated that Eskom would only consent to a transaction with Oakbay if the transaction was one concluded at the OCH level. Draft minutes from the meeting were prepared and signed by Mr Koko (attached marked **PMM27**).

- 36 Shortly after the meeting with Eskom (on or about 26 November 2015) Tegeta made a new offer. This offer included the sale of all the assets of OCH (ie not just the shares in OCM but in all of its other subsidiaries, including OCT) for a purchase price of R1 billion. No written offer was made. This offer was communicated to me by Mr Ephron.
- 37 This new offer from Tegeta meant a shortfall of R1.1. billion that was owing to the Consortium of Banks and the Consortium of Banks would need to approve of such a transaction and write off this shortfall. As such I was of the view that the Consortium of Banks needed to be satisfied with this offer. I arranged a meeting with representatives from the Consortium of Banks on 26 November 2015 to discuss the new offer. At such meeting the Consortium of Banks unanimously rejected the offer. I immediately communicated this to Tegeta at a meeting that I had with them, thereafter, on the same date – ie 26 November 2015.

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#### **Glencore's Change of Position**

- 38 On or about 30 November 2015 (a Monday), I received a call from Mr Ephron requesting that I attend an urgent meeting.
- 39 At such meeting, I was informed that Glencore had received a number of notices from the Department of Mineral Resources ("DMR") stopping operations at several of its mines over that weekend. We were also advised that Glencore had considered its position in relation to OCH (in light of the latest offer from Oakbay of R1 billion) and had taken a decision, as shareholder, to continue to fund OCH and OCM (at all costs). This would have enabled us to discharge OCH and OCM from BR as OCH and OCM would no longer then have been financially distressed. Glencore explained that based on the recent offer from Tegeta/Oakbay, it was preferable for Glencore to continue to fund OCM than it was to sell it for a purchase price of R1 billion.
- 40 In order to communicate this decision, Glencore requested that I set up meetings, firstly with Eskom, and immediately thereafter with the Consortium of Banks (who would have had to restructure their debt prior to the discharge of OCM and OCH from BR as the debt had become due during BR).
- 41 Two meetings were held on 1 December 2015. The meeting with Eskom was held first and attended by Mr Van den Steen and I, Mr Koko and two representatives from Glencore. At this meeting, Glencore advised that the recent Oakbay/Tegeta offer (with the purchase price of R1 billion) had not been

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accepted and that Glencore would continue to support OCM going forward and that OCH and OCM would therefore be discharged from BR. Glencore further confirmed that it would not seek an amendment to the CSA; that it would pursue arbitration proceedings for the resolution of the penalty dispute and that it would not insist on an extension of its supply agreement with Eskom at the Koornfontein mine (which could have been extended in January 2016). OCM had effectively then conceded on everything Eskom had wanted.

42 Glencore's position was communicated to the Consortium of Banks at a meeting immediately thereafter. This meeting was not attended by Mr Ephron as he had been called to a meeting at Glencore's head office.

#### **Tegeta's Amended Offer**

- 43 At this time, Mr Ephron had been called to an urgent meeting with Mr Glasenberg in Switzerland. He left for Switzerland on 1 December 2015. We had not been asked to attend such meeting.
- 44 Shortly thereafter, sometime in early December 2015, Mr Ephron advised me that following the meetings held in Switzerland, the principal terms of the transaction had been agreed between Glencore and Oakbya/Tegeta, which included the sale of all of OCH's assets to Tegeta for a purchase price of R2.15 billion. The terms of this agreement were not recorded in a further offer.

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- 45 We discussed the new offer with Glencore's representatives and with Mr Ephron on his return to Johannesburg and were satisfied that this offer was significantly more than the initial offer of R1 billion and that if Glencore was willing to contribute the balance of R400 million, to settle the Consortium of Banks' debt, that this constituted the best offer at the time for both OCH and OCM.
- 46 Glencore and Oakbay/Tegeta had further negotiations and engagements when the sale agreements were being prepared. Eventually, a sale of shares agreement ("Sale Agreement") was concluded between OCH, Tegeta, Glencore International AG, and Oakbay on 10 December 2015, which provided for the purchase by Tegeta of OCH's shares in all of its subsidiaries (including OCM and OCT) for a purchase price by Tegeta of R2.15 billion. Glencore agreed to pay the difference of R400 million (attached marked PMM28).

#### Implementation of the Sale Agreement

- 47 The Sale Agreement was subject to the fulfillment of a number of conditions, which needed to be fulfilled by 31 March 2016. These conditions are recorded in clause 3 of the Sale Agreement (attached marked **PMM28**), and included, among other things, the consent to the transaction from the DMR, Eskom and the Consortium of Banks as well as the adoption of the OCH BR plan.
- In order to obtain the consent of the Consortium of Banks, the lenders requiredTegeta to demonstrate that it had sufficient funds for the transaction.

In this regard, Tegeta presented van den Steen and I with a letter from the Bank of Baroda in late December which purported to demonstrate that Tegeta had sufficient funding for the transaction. This letter indicated that the Bank of Baroda would make payment of the full purchase price on behalf of its client, Tegeta, if all the conditions to the Sale Agreement were met. Tegeta would not provide us with a copy of this letter. We and the banks were thus not completely satisfied with the veracity of the letter, although it provided some level of comfort that Tegeta had the funds to meet its obligations. The banks did not, at this stage, consent to the transaction. The banks advised that they required a copy of the letter and requested that it be sent via the secure banking system - SWIFT.

48.2 Oakbay did provide us with a similar letter dated 4 March 2016 from the Bank of Baroda (annexed marked **PMM29**). This letter gave us a certain amount of comfort about Tegeta's ability to fund the transaction.

48.3 The condition that the banks consent to the transaction was ultimately waived as the Consortium of Banks were settled in full.

49 During the period December 2015 to April 2016, the parties to the Sale Agreement worked towards fulfilling the conditions to the agreement. Accordingly in this period there was no material threat that OCH and/or OCM would be placed in liquidation by the BRPs or that coal would not be supplied to Eskom in terms of the CSA.

- 50 All conditions to the Sale Agreement were fulfilled (or waived) by 8 April 2016. This rendered the Sale Agreement unconditional. All that remained, in principle, then, was for Tegeta (and Glencore) to pay their respective purchase considerations. The purchase price was required to be paid by Tegeta to Werksmans, as escrow agent ("Escrow Agent"), on the third business day after the date on which the Sale Agreement became unconditional - which was 13 April 2016.
- 51 On 11 April 2016, I received a telephone call from Nazeem Howa ("Mr Howa"), the Chief Executive Officer of Tegeta who had represented Tegeta in all negotiations (ie two days before payment was due), requesting a meeting on that day at the offices of Tegeta in Sandton. The meeting was held on 11 April 2016 at approximately 10h00.
- 52 At such meeting, I was advised by Mr Howa that Tegeta was R600 million short in respect of the purchase price and he requested me to approach the Consortium of Banks to request a bridging loan or deferral of this amount. The banks were pre-existing lenders, and the sole creditor, of OCH.
- 53 At 13h30 on 11 April 2016, I arranged a meeting with the Consortium of Banks at the offices of Rand Merchant Bank in Sandton. The meeting was attended by representatives of the banks and Glencore. At the meeting I was instructed

to advise Mr Howa that the banks were not prepared to finance the shortfall of the purchase price.

- 54 I telephonically communicated the banks' decision to Mr Howa on 11 April 2016
   sometime after the conclusion of the meeting at approximately 15h00.
- 55 On 14 April 2016 the Escrow Agent notified the parties to the Sale Agreement that the purchase price had been paid in full into the Escrow Agent's account (attached marked PMM30).

#### Discharge of OCH from BR

- 56 The purchase price from the Sale Agreement was used to settle the debt owing to the Consortium of Banks. OCH had no other external creditors and was therefore no longer financially distressed.
- 57 We notified the affected persons of OCH and the Companies and Intellectual Property Commission ("CIPC") that the OCH BR plan had been adopted and implemented and that OCH could therefore be discharged from BR.
- 58 OCH was discharged from BR on 15 April 2016 (attached marked PMM31).

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#### Funding of OCM by Tegeta and the Sale of Coal to Tegeta

- 59 While OCH had been discharged from BR, OCM now had a new shareholder but remained in BR.
- 60 In the period January 2016 to August 2016, we worked with Tegeta (the new shareholder of OCM) to restore OCM's financial stability so that it could be discharged from BR. For this, OCM needed funding to keep it operational whilst it was in BR.
- 61 The Sale Agreement provided that Tegeta would conclude a postcommencement finance ("PCF") agreement and provide PCF to OCM with effect from 1 January 2016.
- 62 On 10 December 2015, a PCF Agreement was concluded between Tegeta and OCM (attached marked PMM32). This agreement was effective from 1 January 2016 and would remain of force and effect until the date on which the Consortium of Banks were paid in terms of the Sale Agreement (which date was during April 2016).
- 63 On 14 January 2016 and 10 February 2016 respectively, draw down requests were made by OCM to Tegeta (attached marked PMM33). Tegeta made payment shortly after each drawdown request.

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- 64 During this time (during or about January 2016), we were advised by Gert Opperman (Eskom's Coal Unit Supply Manager for the Hendrina Power Station) that Eskom did not require the minimum contracted amount of coal in terms of the CSA (attached marked **PMM34**). This resulted in excess coal being available for sale. I enquired from OCM's mine manager why the supply of coal to the Hendrina Power Station was being reduced and was advised that the Hendrina Power Station apparently had excess stockpiles of coal.
- 65 As a result of Eskom's reduced need for coal, OCM had more coal than the minimum required for Eskom's purposes.
- 66 When there was surplus coal during this time, the surplus would either be exported by OCM (through Glencore) or purchased by Tegeta. In the latter case, Tegeta's PCF funding obligation to OCM would be reduced.
- 67 To the best of my knowledge, the surplus coal purchased by Tegeta from OCM was sold to Eskom. This was the same coal that was supplied to the Hendrina Power Station under the CSA.
- 68 Tegeta entered into various coal supply agreements with OCM. These agreements were signed in January 2016 and February 2016, before the closing of the sale transaction. In other words, Tegeta was not yet the owner of the Mine at the time when these agreements were signed. The agreements are attached marked PMM35 and PMM36.

22

- In terms of these agreements, OCM sold (and delivered) coal to Tegeta in January 2016 and in the period from February 2016 to April 2016. Tegeta was required to make payment within one business day of the date of invoicing and the agreements recorded that the coal was to be delivered to the Arnot Power Station ("Arnot"). This is why we believed that the coal was being sold by Tegeta to Eskom.
- The original PCF agreement that Tegeta signed expired in April 2016 (once the banks' debt had been paid). At this time, Mr Howa requested us to reconsider the terms for additional supply of coal from OCM to Tegeta. I advised Mr Howa (on 25 April 2016) (attached marked PMM37) that OCM would consider reviewing the terms for additional supply of coal to Tegeta, but required a further PCF agreement to be concluded.
- 71 A first draft of the further PCF Agreement ("Further PCF Agreement") was provided to Tegeta on 25 April 2016 (under the cover of the email dated 25 April 2016) (attached marked PMM38). This agreement was never executed.
- 72 A draft, unsigned document, dated 21 April 2016, with subject "Sale of Steam Coal — Contract No.118" ("Further Coal Supply Agreement") was provided to Tegeta under the cover of the email dated 25 April 2016 (after the sale transaction had closed) (attached marked PMM39). This document was never signed by Tegeta or OCM.

Statement - Piers Marsden - Execution/#5395867v3 02032019 <sub>23</sub> 23

- 73 Although the Further PCF Agreement and the Further Coal Supply Agreement were not signed, the terms referred to therein were implemented by both Tegeta and OCM.
- 74 Insofar as the Further Coal Supply Agreement is concerned, the terms provided for the supply of coal from OCM to Tegeta over the period May 2016 to October 2016. Tegeta was required to make payment (from 9 April 2016) for this coal within 30 days of the date of invoice (as opposed to payment within 1 day of invoicing). As with the other coal supply agreements, the contract provided for the delivery of the coal to Arnot.
- 75 These supply agreements allowed OCM to trade in the ordinary course without the need to request additional PCF from Tegeta. OCM was therefore primarily funded until August 2016 (when it was discharged from business rescue) from the coal purchases by Tegeta (and Eskom).
- 76 We recorded all payments made by Tegeta to OCM (for both PCF and coal purchases) in various spreadsheets and exchanged these with Tegeta. The last of the spreadsheets prepared reflected the position as at the end of July 2016 (attached marked PMM40). Tegeta made intermittent payments for coal delivered.

24

#### **Rehabilitation Funds**

- 77 The Regulations under the Mineral and Petroleum Resources Development Act 28 of 2002 ("MPRDA") and the provisions of the National Environmental Management Act 107 of 1998 ("NEMA") together with its regulations require security in relation to environmental rehabilitation obligations.
- 78 During the BR proceedings of OCM, security had been provided for this purpose with funds held in the Optimum Mine Rehabilitation Trust Fund ("Trust") established under a Deed of Trust for the establishment of Optimum Mine Rehabilitation Trust Fund (attached marked PMM41). When we took appointment as BRPs, an amount of approximately R1.456 billion was invested in an account with The Standard Bank of South Africa Limited ("Standard Bank").
- 79 At this time (during or about April 2016), it was public knowledge that certain banks had closed the accounts (or would be closing the accounts) of entities connected to the Gupta family. We understood that Oakbay/Tegeta appreciated, at this time, that Standard Bank would similarly no longer hold any Oakbay/Tegeta accounts.
- 80 During April 2016 Tegeta (the new shareholder of OCM) sought to transfer the funds held in trust with Standard Bank to another bank (attached marked **PMM42**). Tegeta did not advise to which bank it intended to transfer the funds.

<sub>25</sub> 25

This only became clear following the exchange of correspondence between ourselves and Tegeta and the trustees of the Trust.

- 81 Standard Bank advised Ms Ragavan the next day (on 22 April 2016) that it was not able to process the instruction without a request from authorised signatories (attached marked PMM43). The authorised signatories of this account were, at such time, still the representatives of the former shareholder, Glencore.
- 82 On 24 April 2016, we addressed a letter to Tegeta (attached marked PMM44) advising, among other things, that OCM is the ultimate beneficiary of the Trust and that sufficient funds needed to be maintained in trust for the purpose of discharging OCM's environmental rehabilitation obligations.
- 83 The new trustees of the trust (Althaf Emmamally, Pushpaveni Ugeshni Govender and Trevor William Scott) were issued with Letters of Authority from the Master of the High Court, authorising them to act as trustees of the Trust, on 26 April 2016 (attached marked **PMM45**).
- In a further letter dated 5 May 2016 to the trustees of the Trust, we sought details about the bank to which Tegeta wished to transfer the funds, and reiterated that the fiduciary duties of the trustees required them to act in the best interests of OCM at all times (attached marked **PMM46**).
- At a meeting that I attended that day (on 5 May 2016) with Standard Bank, the bank indicated that it would not keep the Trust's account open in circumstances

where all other accounts associated with the Gupta family/Tegeta would be closed. The bank advised however that it was in the process of conducting its "Know Your Client" processes on the new shareholder of OCM (Tegeta) and on the new trustees of the Trust and that this process would take approximately 2 weeks to complete. The bank account would accordingly remain open with Standard Bank until this process had finished at the very least during or about the end of May 2016.

- 86 The trustees responded to our letter dated 5 May 2016 on the same date (attached marked PMM47) and provided detail about the bank to whom they intended to transfer the trust funds. It was now apparent that it was the Bank of Baroda.
- We interrogated the Bank of Baroda's credibility and advised the trustees, among other things, that the trustees' duties were to the Trust and not to the group of companies of which Tegeta is a part and that the interests of those companies cannot override those of the Trust nor influence the trustees' decision in relation to the Trust's bank account. We reminded the trustees of their duties to safeguard the funds of the Trust on behalf of OCM and the DMR. Various questions were posed to the trustees in relation to the rationale for the proposed transfer of the funds to the Bank of Baroda and undertakings were sought from the trustees to ensure that the funds are always held in an account or invested into instruments which comply with section 37A of the Income Tax Act 58 of 1962 and that the Trust's funds would be maintained at a level sufficient to discharge OCM's statutory obligations under the MPRDA and

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<sub>27</sub> 27

NEMA and the regulations in a manner no less secure than was then the position. Our letter (9 May 2016) is enclosed marked **PMM48**.

- In letters dated 27 May 2016, Standard Bank advised Tegeta and the trustees of the Trust that following the conduct of its "KYC" process, the bank did not wish to establish a business relationship with Tegeta and that the effect of this would be that the trust account held with the bank would be closed on 27 July 2016. Standard Bank's letters are enclosed marked PMM49.
- 89 Following this, the trustees of the Trust passed a resolution on 13 June 2016 resolving to transfer the funds held with Standard Bank to the Bank of Baroda. We were provided with a copy of the said resolution (attached marked PMM50).
- 90 We remained concerned about preserving the rehabilitation funds and accordingly requested the trustees to provide us with undertakings in this regard. The undertakings provided were recorded in a letter dated 15 June 2016, attached marked **PMM51**.
- 91 Out of an abundance of caution, we also advised the South African Reserve Bank ("SARB") (in a letter dated 27 June 2016, attached marked PMM52) of the trustee's intention to transfer the rehabilitation funds to the Bank of Baroda and asked whether SARB had any reservations with the funds being so transferred. SARB contacted Werksmans telephonically and requested us to provide them with further information. This was provided to SARB on 7 July 2016 (attached marked PMM53).

<sub>28</sub> 28

- In a final attempt to ensure that the funds were preserved, we met with the Bank of Baroda on 13 June 2016. Ms Ragavan from Tegeta was present in the meeting. At this meeting, the bank confirmed that it had a copy of the trust deed and that it understood that the funds needed to be kept and preserved for the purpose of achieving the objectives recorded in the trust deed. The bank further advised that it was seeking legal advice to ensure that the funds were retained in trust in accordance with the law, that they would be earmarked as trust funds and that they would be ring-fenced and not used or draw down on other than for the purpose of OCM's environmental rehabilitation obligations in terms of the trust deed. We recorded the content of our meeting with the bank in minutes (attached marked PMM54) and in an email dated 5 September 2016 (attached marked PMM55).
- 93 As the beneficiary of the Trust, we could not prevent the trustees from acting as they deemed fit. Acting responsibly, however, we felt it was prudent to remind the trustees of the fiduciary capacity in which they acted in an attempt to encourage them to take steps to ensure that the funds remained preserved for their intended purpose.

#### **Carte Blanche**

94 On 12 June 2016 and 19 June 2016 ("Episodes"), Carte Blanche aired a feature on the OCH/Tegeta transaction, which precipitated the release of various press articles thereafter ("Articles"). A full length interview with Mr

<sub>29</sub> 29

Howa ("Interview") was also made available on the Carte Blanche website on 20 June 2016.

- 95 I viewed the Episodes and Interview in the week of 20 June 2016 and viewed the Articles.
- 96 Pursuant to the Episode, Interview and Articles, I learned, for the first time, that -
- 96.1 Eskom had made a pre-payment to Tegeta, for the purchase of coal from Tegeta, in an amount of R586 million (excluding VAT) ("Pre-Payment"); and
- 96.2 the coal for which the Pre-Payment was made by Eskom appeared to have been, or was to be, procured from OCM for Tegeta, and delivered by OCM to Arnot.
- 97 I came to learn from the Episodes, Interview and Articles that the Pre-Payment was approved by a committee of Eskom representatives at a meeting held at 21h00 on 11 April 2016. This meeting was held on the same day on which the request for the bridging finance was made to, and rejected by, the Consortium of Banks.
- 98 Pursuant to the Interview, Mr Howa remarked that the Pre-Payment had been made on the basis that OCM was in BR and required money for its liquidity and for the start-up of equipment.

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- 99 The Pre-Payment was not made to OCM. OCM did not receive any pre-payment or the Pre-Payment. From April 2016, OCM provided a 30-day payment term to Tegeta for the delivery of coal, on behalf of Tegeta, to Arnot. No pre-payment was required.
- 100 These events surrounding the Pre-Payment came as surprise to us and on the basis of this, Mr van den Steen and I each submitted a report to the Directorate for Priority Crime Investigations, in terms of section 34(1)(a) of the Prevention and Combatting of Corrupt Activities Act 12 of 2004 in which we reported the Pre-Payment and events surrounding it. Our reports are attached marked PMM56.

Discharge of OCM from BR

- 101 In the period January 2016 to August 2016 we engaged with representatives of Tegeta.
- 102 Tegeta demonstrated to us that, among other things, it had sufficient funds to sustain OCM for a period of at least 6 months, that the claims of trade creditors who had had pre-commencement claims against OCM would be/had been settled or paid in full and that it would be engaging in an expedited arbitration process with Eskom to resolve the R2 billion penalties claim.
- 103 We were therefore satisfied that if (among other things) the aforesaid occurred, that OCM would no longer be financially distressed. On this basis, there was

no need to prepare a BR plan for creditors to vote on because, among other things, all trade creditors had been settled or paid in full.

104 OCM was discharged from BR on 31 August 2016.

105 We notified the CIPC and the affected persons of OCM that OCM was no longer financially distressed and that it could, accordingly, be discharged from BR (attached marked **PMM57**).

DATED at	PARKTOWN	on this 12h day of MARC	CH 2019
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		PIERS MICHAEL M	ARSDEN

PMM 1

#### RESOLUTIONS PASSED BY THE BOARD OF DIRECTORS OF OPTIMUM COAL MINE PROPRIETARY LIMITED (2007/005308/07) ("COMPANY"), PASSED DURING A DULY CONSTITUTED MEETING OF THE BOARD HELD ON 31 JULY 2015

We, the persons whose names appear below, and who have signed this document (or any counterparts of it), are all (or a majority) of the directors of the Company, and we hereby -

- acknowledge that all directors of the Company received notice of the meeting and the agenda for the meeting and that a quorum is present for the meeting in person and/or via electronic communication;
- 2. confirm that adequate written notice of the meeting and the agenda items were given to all directors and that all time periods for the convening of the board meeting as required in terms of the Company's Memorandum of Incorporation and otherwise are hereby waived and/or condoned, to the extent necessary, given the urgency of the agenda items; and
- after careful consideration, adopt the resolutions below in accordance with the provisions of the Company's Memorandum of Incorporation and the Companies Act 71
   of 2008, as amended ("Companies Act").

#### WHEREAS

- 1 All or a majority of the members of the board of directors of the Company, sufficient to constitute a quorum and validly consider and resolve on such matters, reasonably believe that the Company is financially distressed within the meaning of section 128(1)(f)(i) of the Companies Act read with section 129(1)(a) of the Companies Act in that it appears reasonably -
- 1.1 unlikely that the Company will be able to pay all of its debts as they become due and payable within the Immediately ensuing six months; and/or
- 1.2 ilkely that the Company will become inscivent within the immediately ensuing six months.
- 2 Such members of the board of directors of the Company believe that there is a reasonable prospect of rescuing the Company in terms of Section 129(1)(b) of the Companies Act.

OPT(13168,19/#3362820v2

#### **RESOLVED THAT** ~

- 1 the Company voluntarily begin business rescue proceedings and be placed under supervision in terms of section 1.29(1) of the Companies Act;
- 2 the Company forthwith lodge the requisite documents for the commencement of business rescue proceedings with the Companies and Intellectual Property Commission of South Africa and any documents ancillary thereto and/or necessary for the commencement and/or continuation of business rescue proceedings;
- 3 Piers Marsden and Petrus Francis Van den Steen, turnaround specialists, be appointed as the joint business rescue practitioners in terms of section 129(3)(b) of the Act; and
- each of Clinton Martin Ephron and Richard Cohen, in his capacity as director of the Company be and is hereby authorised on behalf of the Company to do all things necessary, or to procure the doing of all things necessary, and to sign any and all documents, or procure the signing of any and all documents, as is necessary –
- 4.1 for the Company to begin business rescue proceedings and to give effect to the resolutions listed above; and
- 4.2 In respect of the business rescue proceedings of the Company;
- 5 any director of the Company who was present at the meeting of the board when the resolutions listed above were debated and passed may sign these resolutions in counterparts and, despite the fact that the names of all directors of the Company appear below, these resolutions need only be signed by members of the board of directors of the Company who are sufficient in number to constitute a quorum and validly consider and resolve on all matters discussed and agreed during the meeting.

Name: Richard Cohen

Capacity; Director Date: 3 1 JUL 2015

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Name: Thendeka Tosana Ncube Capacity: Director Date: 33 AU6 2015 44,040

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PMM-U11.1-034

Name: Clinton Martin Ephron Capacity: Director Date: 3.1 JUL 2015

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Name: Phuthi Mahanyele Capacity: Director Date: 3 1 JUL 2015

#### RESOLUTIONS PASSED BY THE BOARD OF DIRECTORS OF OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED (2006/D07799/07) ("COMPANY"), PASSED DURING A DULY CONSTITUTED MEETING OF THE BOARD HELD ON 31 JULY 2015

PMM-U11.1-035

We, the persons whose names appear below, and who have signed this document (or any counterparts of it), are all (or a majority) of the directors of the Company, and we hereby --

- acknowledge that all directors of the Company received notice of the meeting and the agenda for the meeting and that a quorum is present for the meeting in person and/or via electronic communication;
- 2. confirm that adequate written notice of the meeting and the agenda items were given to all directors and that all time periods for the convening of the board meeting as required in terms of the Company's Memorandum of Incorporation and otherwise are hereby waived and/or condoned, to the extent necessary, given the urgency of the agenda items; and
- 3. after careful consideration, adopt the resolutions below in accordance with the provisions of the Company's Memorandum of Incorporation and the Companies Act 71 of 2008, as amended ("Companies Act").

#### WHEREAS

- 1 All or a majority of the members of the board of directors of the Company, sufficient to constitute a quorum and validiy consider and resolve on such matters, reasonably believe that the Company is financially distressed within the meaning of section 128(1)(f)(l) of the Companies Act read with section 129(1)(a) of the Companies Act in that it appears reasonably –
- 1.1 unlikely that the Company will be able to pay all of its debts as they become due and payable within the immediately ensuing six months; and/or
- 1.2 likely that the Company will become insolvent within the immediately ensuring six months.
- 2 Such members of the board of directors of the Company believe that there is a reasonable prospect of rescuing the Company in terms of Section 129(1)(b) of the Companies Act.

#### OPTI13168.19/#3362623v3

#### **RESOLVED THAT -**

1. the Company voluntarily begin business rescue proceedings and be placed under supervision in terms of section 129(1) of the Companies Act;

PMM-U11.1-036

- 2 the Company forthwith lodge the requisite documents for the commencement of business rescue proceedings with the Companies and Intellectual Property Commission of South Africa and any documents ancillary thereto and/or necessary for the commencement and/or continuation of business rescue proceedings;
- 3 Piers Marsden and Petrus Francis Van den Steen, turnaround specialists, be appointed as the joint business rescue practitioners in terms of section 129(3)(b) of the Act; and
  - each of **Clinton Martin Ephron and Richard Cohen**, in his capacity as director of the Company be and is hereby authorised on behalf of the Company to do all things necessary, or to procure the doing of all things necessary, and to sign any and all documents, or procure the signing of any and all documents, as is necessary –
- 4.1

for the Company to begin business rescue proceedings and to give effect to the resolutions listed above; and

- 4.2 In respect of the business rescue proceedings of the Company;
- 5 any director of the Company who was present at the meeting of the board when the resolutions listed above were debated and passed may sign these resolutions in counterparts and, despite the fact that the names of all directors of the Company appear below, these resolutions need only be signed by members of the board of directors of the Company who are sufficient in number to constitute a quorum and validly consider and resolve on all matters discussed and agreed during the meeting.

Name: Richard Cohen Capacity: Director Date: 3 1 JUL 2015

OPT113168,19/#9352623v3

Name: Thandeka Tosana Ncube Capacity: Director Date: 3 AUG 2015

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Name: Clinton Martin Ephron Capacity: Director Date: 3 1 JUL 2015

Mahanyele Name: Phuthi Mahanyele Capacity: Director Date: 3 1 JUL 2015

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		(PT4) CFD The above named company advises that business rescue proceedings have	£	
1		commenced in terms of Chapter 6 of the Companies Act, as a result of:		
		The Board of the company having adopted the attached resolution in terms of section 129, on <u>31 JUM 2015</u>	,	
		A Court having made the attached order in terms of section 131, on		
		In terms of section 132 (1)(a), the company's business rescue proceedings.		
		commenced on <u>A DUCUIT 2015</u> , being the date on which:		
		This notice was filed with the commission.		
		The court issued the attached order.		
ł	A CONTRACTOR OF CO	(Only in the case of a compony resolution) In support of this Notice, the company has attached a sworn statement of the		
		relevant facts upon which the resolution was founded by a director representing the Board,		
	Compressions to a		÷	
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		Name and Title of person signing on behalf of the Company:		
		Clinton Ephrun Drauber		
		Authorised Signature:		
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	This form is prescribed	by the Minister of Trade and Industry in terms of sestion 223 of the Companies Act, 2006 (Act No. 71 of 2008)		
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	Companies and intellectual Property Commission	
	Republic of South Africa	
	Notice of Beginning of Business Rescue Proceedings	
	Date: 03/08/2015 Customer Code: WERLE MP	
	Name and Replication Number of Constants Name on Replication Number of Constants Name: OPTIMISM YORL HOWINGS Replictation No. 2006,007799 07	
	The above named company advises that business rescue proceedings have commenced in terms of Chapter 6 of the Companies Act, as a result of:	
	The Board of the company having adopted the attached resolution in terms of section 129, on <u>SI JULY ZOIS</u>	
	A Court having made the attached order in terms of section 131, on	
	In terms of section 132 (1)(a), the company's business rescue proceedings	
	commenced on <u>L POCUST</u> 2012	
	This notice was filed with the commission.	
	The court issued the attached order.	
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L. L.	(Only in the case of a company resolution) We will a support of this Notice, the company has attached a sworn statement of the In support of this Notice, the company has attached by a director representing the relevant facts upon which the resolution was founded by a director representing the	
	Board,	
		;
	Name and Title of person signing on behalf of the Company:	
	Charles Exchan Dirachi	
	Authorised Signature:	
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	BUSINESS RESCUE	

PMM 3

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		By the company, in terms of section 129 (3)(b).	
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Optimum Coal Mine Proprietary Limited

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Atlention: Board of Directors

31 July 2015

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Dear Sirs

APPOINTMENT OF A BUSINESS RESCUE PRACTITIONER FOR OPTIMUM COAL MINE PROPRIETARY LIMITED (2007/005308/07)

- 1. Lam an adult male employed as such by V-Squared Business Rescue Services in my capacity as Director.
- In a resolution dated 31 July 2015, the board of directors of Optimum Coal Mine Proprietary Limited (2007/005308/07) ("Company") passed a resolution in terms of which they resolved to
  - commence voluntarily business rescue proceedings in respect of the Company and place the Company under supervision in terms of Section 129(1) of the Companies Act 71 of 2008, as amended ("Act"); and
  - b, nominated me as a joint business rescue practitioner for the Company.
- I hereby accept the nomination for my appointment as a business rescue practitioner of the Company. I further confirm that I have the capacity to take the appointment.
- I submit that I am qualified to be appointed as a business rescue practitioner as provided for in Sections 138(1)(a) of the Act for the following reasons –
  - a. I am not subject to an order of probation in terms of Section 138(1)(c) of the Act;
  - b, I would not be disqualified from acting as a director of the Company in terms of Section 138(1)(d) of the Act;
  - c. I do not have any relationship with the Company that would lead a reasonable and informed third party to conclude that my integrity, impartiality or objectivity is compromised by any such relationship as envisaged by section 138(1)(e) of the Act; and
  - d. I am not related to any person who has a relationship envisaged in section 138(1)(f) of the Act.
- Please do not hesitate to communicate with me should you require any further information or require me to provide you with any further documentation to support my appointment.

Yours faithfully Peter Van den Steen

PO Box 4014 Dontorn 2055 / 916 Wextord Drive Woodlonds Village Dainfarn Cuil + 27 (0)83 459 2411 | 6-Mitall Peter@v2rescuo.co.za V-Squared Business Rescue Services (PoyFilted | Reg Ne 2010/0117/31/07 | Vat No 4770 258 630 Directors PF van den Steen

Ι, ţ 1 1 . Reproduced by Sublinet Online in terms of Government Printer's Copyright Authority No. 10505 dated 02 February 1998 No. 34289 286 STAATSKOERANT, 26 AFRIL 2011 Companies and Intellectual Property Commission Africa South Republic of Notice of Appointment of Business Rescue Practitioner Customer Code: WERECHP Date: 03 08/2015 Concerning: Name and Replication Company Registration No.: 2007 /00530 07 Name: OPTIMUM COAL MINE (1914) (11) The above named company commenced business rescue proceedings on 4 AUGURA 2015 The following person has been appointed as the business rescue practitioner: PIERS MARSDEN. By the company, in terms of section 129 (3)(b). By the court, in terms of section 131 (5). KOMMISSIE VRUUMA GUUPPYE EN INTELLEKTIG DE ADMOOM ONDERNLAMAGISCH DUMG 2015 -08- 0 4 No: 03 BUSINESS REACUE COMPANIES AND REACHECTUAL PROPERTY CHARMISSION Name and Title of person signing on behalf of the Company: Director 6phices Chinton Authorised Signature: This form is presignibled by the folmitter of Trade and Industry in letter of section 223 of the Companies Act, 2008 (Act No. 71 of 2008)



31 July 2015

**Optimum Coal Mine Proprietary Limited** 

Attention: Board of Directors

Dear Sirs;

1.

APPOINTMENT OF A BUSINESS RESCUE PRACTITIONER FOR OPTIMUM COAL MINE PROPRIETARY LIMITED (2007/005308/07)

- 1. I am an adult male employed as such by Matuson & Associates in my capacity as Director.
- In a resolution dated 31 July 2015, the board of directors of Optimum Coal Mine Proprietary L(mited (2007/005308/07) ("Company") passed a resolution in terms of which they resolved to -
  - commence voluntarily business rescue proceedings in respect of the Company and place the Company under supervision in terms of Section 129(1) of the Companies Act 71 of 2008, as amended ("Act"); and
  - b. nominated me as a joint business rescue practitioner for the Company.
- 3. I hereby accept the nomination for my appointment as the business rescue practitioner of the Company.
- I submit that I am gualified to be appointed as a business rescue practitioner as provided for in Sections 138(1)(a) of the Act for the following reasons –
  - 4.1 I am a member of good standing of a legal, accounting or business management profession accredited or to be accredited by the Commission as I am a member of, inter alla, the South African Institute of Chartered Accountants;
  - 4.2: I am not subject to an order of probation in terms of Section 138(1)(c) of the Act;
  - 4.3 I would not be disqualified from acting as a director of the Company in terms of Section 138(1)(d) of the Act,
  - 4:4 I do not have any relationship with the Company that would lead a reasonable and informed third party to conclude that my integrity, impartiality or objectivity is compromised by any such relationship as envisaged by section 138(1)(e); and
  - 4.5 Lam not related to any person who has a relationship envisaged in section 138(1)(f) of the Act.
- 5. I further confirm that I have the capacity to take the appointment.

- Matuson & Associates (Ptyl Etd.), Reg Nr. 2009/008967/07, VAT Nr. 4780253763 Directors: Les Matoson | | Pons Maisdon | Gory Rapton | Jobn Lighttooi | s 22 pn F1 / 94 7. 097, F1 - 2730985 bit 1998, av servingstrates Systemator 71 | How Over on Half, Stin Cast resolution A. Statistical Matage Instates Januar Jang, Ottic | PODass Servic), Dorsports (CDD)

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1 1 1 ţ ŧ ļ Reproduced by Subinet Office in terms of Government Printer's Copyright Authority No. 10505 duted 02 Pebruary 1998 No: 84239 285 STAATSKOERANT, 26 APRIL 2011 Companies and Intellectual Property Commission Africa South ٥٢ Republic Notice of Appointment of Business Rescue Practitioner 108/2015 Customer Code: NIELKMP Date: Concerning: Huma and Rephualion Rundles of Community 007799 107 Registration Ho .: 2006 Name: DUTIMUM TOAL HOUDINGS (PTY) I-TD The above hamed company commenced business rescue proceedings on ( ))))) 4 AUGUST ZOLS The following person has been appointed as the business rescue practitioner: PETEUS FRANCIS VAN DEN STIGEN By the company, in terms of section 129 (3)(b). By the court, in terms of section 131.(5), KOMMISSII, VIR HAATSKAPPYE ER INTELLEKTUELE EIENDOM ONDERMEMINGSREDDING 2015 -08- 04 No: 03 BUSINESS RESCUE COMPANIES AND INTELLECTUAL PROPERTY COMMISSION Name and Title of person signing on behalf of the Company: Clinton Ephein Dirah Authorised Signature: This form is prossibled by the Minister of Trade and industry in terms of section 223 of the Companies Act, 2008 (Art No. 7) of 2008)

KOMMISSIE VIE LINATSKAPPYE EN INTELLER TUPLE EIENDOM CHUERAN MINUSREDDING

2015 -08- 04

BUSINESS RECOUN

COMPANIES AND INTELLECTUAL PROPERT / DC. MINISBION

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**AUSINESS ABSCUE SERVICES** 

No: 03

**Optimum Coal Holdings Proprietary Limited** 

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Attention: Board of Directors

31 July 2015

Dear Sir.

APPOINTMENT OF A BUSINESS RESCUE PRACTITIONER FOR OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED (2006/007799/07)

- 1. I am an adult male employed as such by V-Squared Business Rescue Services in my capacity as Director.
- 2. In a resolution dated 31 July 2015, the board of directors of Optimum Coal Holdings Proprietary Limited (2006/007799/07) ("Company") passed a resolution in terms of which they resolved to
  - commence voluntarily business rescue proceedings in respect of the Company and place а. the Company under supervision in terms of Section 129(1) of the Companies Act 71 of 2008, as amended ("Act"); and
  - b. nominated me as a joint business rescue practitioner for the Company.
- 3. I hereby accept the nomination for my appointment as a business rescue practitioner of the Company. I further confirm that I have the capacity to take the appointment.
- 4. I submit that I am qualified to be appointed as a business rescue practitioner as provided for in Sections 138(1)(a) of the Act for the following reasons
  - a. I am not subject to an order of probation in terms of Section 138(1)(c) of the Act;
  - I would not be disqualified from acting as a director of the Company in terms of Section b. 138(1)(d) of the Act;
  - c. I do not have any relationship with the Company that would lead a reasonable and informed third party to conclude that my Integrity, impartiality or objectivity is compromised by any such relationship as envisaged by section 138(1)(e) of the Act; and
  - I am not related to any person who has a relationship envisaged in section 138(1)(f) of the d, Act.
- 5. Please do not hesitate to communicate with me should you require any further information or require me to provide you with any further documentation to support my appointment.

Yours faithfully Peter Van-den Steen

PO Box 4014 Dainfarn 2055 | 916 Wexford Drive Waadlands Village Dainfarn Dell + 27 (DB3 459 2411 | E-Mail Peteri@v2rescue.co.za V-Squared Business Reacue Services (Pty) Ltd | Reg Na 2010/011731/07 | Vat No 4770 258 830 Directors IF van den Steen

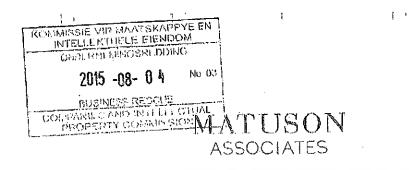


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	STAATSKOERANT, 28 APRIL 2011 No. 84239 286
	Companies and Intellectual Property Commission Republic of South Africa
	Formation Date: 03/08/2015 Eustomer Code: 10020000
	Mame and Replacement of Consoling Mamo: OUTIMENT (OAL MOLDINGS Registration No.: 2006 0077 09 0 (PLA) FTO The above named company commenced business rescue proceedings on H. DU 2007 7015
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	By the company, in terms of section 129 (3)(b).
	By the court, in terms of section 131 (5).
	KOMMISSIE VIR MAATSKAPPYE EN INTELLEKTOFLE EIENDOM       OPDERNEMINGSREDDEND       2015 -08- 0.4
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	Name and Title of person signing on behalf of the Company:
	Clinter Ephren Ditector
	Authorised Signature:

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31 July 2015

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**Optimum Coal Holdings Proprietary Limited** 

Attention: Board of Directors

Dear Sirs,

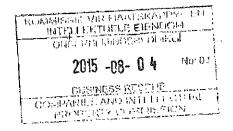
APPOINTMENT OF A BUSINESS RESCUE PRACTITIONER FOR OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED (2006/007799/07)

- 1. I am an adult male employed as such by Matuson & Associates in my capacity as Director.
- in a resolution dated 31 July 2015, the board of directors of Optimum Coal Holdings: Proprietary Limited (2006/007799/07) ("Company") passed a resolution in terms of which they resolved to
  - a. commence voluntarily business rescue proceedings in respect of the Company and place the Company under supervision in terms of Section 129(1) of the Companies Act 71 of 2008, as amended ("Act"); and
  - b. nominated me as a Joint business rescue practitioner for the Company.
- 3. I hereby accept the nomination for my appointment as the business rescue practitioner of the Company.
- I submit that I am qualified to be appointed as a business rescue practitioner as provided for in Sections 138(1)(a) of the Act for the following reasons –
  - 4.1 Fam a member of good standing of a legal, accounting or business management profession accredited or to be accredited by the Commission as I am a member of, among other things, the South African Institute of Chartered Accountants).
  - 4.2 I am not subject to an order of probation in terms of Section.138(1)(c) of the Act;
  - 4.3 I would not be disgualified from acting as a director of the Company in terms of Section 138(1)(d) of the Act;
  - 4.4 I do not have any relationship with the Company that would lead a reasonable and informed third party to conclude that my integrity, impartiality or objectivity is compromised by any such relationship as envisaged by section 138(1)(e); and
  - 4.5 1 am not related to any person who has a relationship envisaged in section 138(1)(f) of the Act.
- 5. I further confirm that I have the capacity to take the appointment:

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6. Please do not hesitate to communicate with me should you require any further information or require me to provide you with any further documentation to support my appointment.

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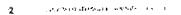
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Yours faithfully

Plers Marsden

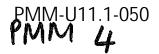


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#### CONFIRMATORY AFFIDAVIT OF PETRUS FRANCOIS VAN DEN STEEN

I, the undersigned,

(2)

#### PETRUS FRANCOIS VAN DEN STEEN

do hereby make oath and state that:

- 1 I am and adult male engineer, with identity number 6811075024087, practicing as a business rescue practitioner with Metis Strategic Advisors.
- 2 The facts contained in this affidavit fall within my personal knowledge and are true and correct.
- 3 I have read the statement of **PIERS MICHAEL MARSDEN** to the Judicial Commission of Enquiry to enquire into allegations of State Capture, Corruption and Fraud in the Public Sector, Including Organs of State and I confirm the truth and correctness of the allegations insofar as same relate to me.

#### PETRUS FRANCOIS VAN DEN STEEN

before me affidavit was signed and sworn to L certify that this on this the day of 2019, at by the deponent who acknowledged that he knew and understood the contents of this affidavit, had no objection to taking this oath, considered this oath to be binding on his conscience and uttered the following words: 'I swear that the contents of this affidavit are both true and correct, so help me God.'

Confirmatory Affidavit - Peter Van den Steen - Execution/#5399100v1 02032019

## COMMISSIONER OF OATHS

Name:

Address:

Capacity:

(internet) (internet)

(<u>)</u>; ; LB/LB /OPT113168.19

#### SWORN STATEMENT

PMM-U11.1-052

I, the undersigned,

#### **Clinton Martin Ephron**

(Identity Number: 690502 5002 08 4)

do hereby state as follows -

- I am a director of Optimum Coal Mine Proprietary Limited (Registration Number 2007/005308/07) ("Company"), a company with its registered address at 1st Floor, Nedbank Building, 23 Melrose Boulevard, Melrose Arch, Johannesburg, 2196 and its principal place of business at the coal-fired power station on the farm Boschmanskop 154, I.S. in the district of Hendrina.
- 2. I am duly authorised to depose to this sworn statement on behalf of the Company.
- 3. The facts contained herein are within my own personal knowledge and are true and correct.
- 4. This Sworn Statement is made by me on behalf of the Company to support the commencement of business rescue proceedings ("Business Rescue") in terms of Section 129 of the Companies Act, 2008 ("Act").
- 5. With this Sworn Statement I intend to provide the relevant information that is required in order to demonstrate that the Company should be placed in Business Rescue.
- The information contained in this Sworn Statement and the opinions expressed in the Sworn Statement relate to the financial difficulties of the Company and how the Company can –
  - a. be rescued and continue as a going concern as an alternative to liquidation; or
  - b. pay a higher dividend to its creditors than that which would become payable to creditors if the Company were to be liquidated.

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- 7. The mine owned by the Company commenced business in the 1970's and initially focussed on the mining and sale of coal to Eskom SOC Limited ("Eskom"). The mine began exporting coal around 1983.
- 8. The sales to Eskom are effected pursuant to a coal supply agreement, amended from time to time ("Coal Supply Agreement") concluded in 1993. It is an onerous contract and currently requires the Company to sell coal at 40% of its cost of production.
- 9. For the financial year ending 31 December 2014, the Company incurred a net loss of R3,090,147,352 as a result of its revenue being insufficient to fund profitable operations. The accumulated losses for the life of the Company as at the end of 2014 were R1,497,916,433. The Company has fully drawn down on its bank funding of R2.5 billion rand which was made available to the Company through its holding company, Optimum Coal Holdings Proprietary Limited. The Company has also access approximately R900 million of shareholder funding.
- 10. In 2014 the Company initiated a review of its operations as a result of the ongoing financial hardship arising from its onerous Eskom contract, difficult market conditions and the continued deterioration in the export coal price. Following such review, the Company decided to consider closing the export operations and initiated a section 189 process in terms of the Labour Relations Act 66 of 1995 with labour unions relating to the possible retrenchment of employees.
- 11. During the section 189 retrenchment process it became apparent that the export operations were not financially viable in the current market conditions and that there were no measures available to avoid the retrenchments. The Company therefore proceeded to close its export operations in July 2015.
- 12. The Company had intended to continue operating its Eskom business relying on funding from its indirect shareholders, but following receipt of a potential substantial claim from Eskom for historical penalties and the indication that future penalties would be applied which would result in the Company supplying coal to Eskom at R1, its shareholders have advised that they are not willing to provide further funding.
- 13. The Company is therefore financially distressed, within the meaning of Section 128 of Chapter 6 of the Companies Act, in that, *inter alla* –

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a. It is estimated the Company requires an amount of R900 million to fund its working capital requirements over the next 6 months. The Company is not able to raise such capital from third parties on the strength of its balance sheet and its shareholders are not willing to provide all such capital;

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- b. the Company is not able to repay all such amounts as are due and payable to creditors, including employees; and
- c. without further financial support, the Company will not be able to pay its debts as and when they fall due for payment.
- 14. In addition, the Company is engaged (or may become engaged) in the following legal and/or arbitration proceedings which proceedings have resulted (and will continue to result) in the incurrence of ongoing legal expenses, and which expenses may be curtailed if the business rescue practitioner elects not to continue with such proceedings –
  - a. arbitration proceedings instituted against Eskom arising out the Coal Supply Agreement entered into between the parties and, more particularly, the "Hardship Clause" embodied therein; and
  - b. anticipated further arbitration proceedings which may be launched by Eskom against the Company arising out of, among other things, Eskom's alleged entitlement to impose certain penalties and/or payment reductions relating to quality parameters set out in the Coal Supply Agreement entered into between the parties thereto (as amended). Although no formal arbitration proceedings have commenced in this regard, the dispute has been referred to arbitration by Eskom.
- 15. Notwithstanding the above factors, the directors of the Company believe that there is a reasonable prospect of rescuing the business of the Company, if action is taken immediately and if the Company commences Business Rescue. If the Company is placed under supervision, initiatives can be taken by a business rescue practitioner, when duly appointed, to take the following steps
  - a. an immediate temporary moratorium on all payments to creditors;

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b. a renegotiation of the Coal Supply Agreement or an application to court to cancel the Coal Supply Agreement;

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- c. a restructure of the debt of the Company with its creditors; and/or
- d. engage in discussions with various parties regarding post commencement financing and related terms.
- 16. Accordingly, the Company through its board of directors, maintains that the company is financially distressed but that there remains a reasonable prospect of rescuing the company and accordingly that the Company needs to be placed in Business Rescue.

#### **Clinton Martin Ephron**

I certify that this statement was signed and sworn to before me at

SANDTON on this the <u>3vd</u> day of <u>August</u> 2015 by the deponent after he declared that he knew and understood the contents of this statement, that he had no objection to taking the prescribed oath and has taken the prescribed oath which he considered binding on his conscience, having complied with regulations contained in government notice R1258 of 21 July 1972, as amended.

COMMISSIONER' OF OATHS Name: LIA KLEYNHANS Address: Capacity:

#### LIA KLEYNHANS Ex Officio Commissioner Practising Attorney, South Africa East Building, 85 Central Street Houghton, Johannesburg

## PMM 6

## **Optimum Coal Holdings Guarantee**

#### 1. PARTIES

- 1.1 Eskom Holdings Limited ("Eskom")
- 1.2 Optimum Coal Holdings (Proprietary) Limited, registration number 2006/007799/07 ("Optimum Coal Holdings")

#### 2. INTRODUCTION

- 2.1 Optimum Coal Mine (Proprietary) Limited ("Optimum") is the wholly owned subsidiary of Optimum Coal Holdings, which (in turn) is the registered and beneficial owner of the entire issued share capital of Optimum.
- 2.2 Optimum has entered into an agreement ("Sale of Business Agreement") with BHP Billiton Energy Coal South Africa (Proprietary) Limited ("BECSA"), in terms whereof Optimum has purchased from BECSA the business of the Optimum Colliery as a going concern.
- 2.3 The Sale of Business Agreement is subject to the condition precedent that Eskom shall, by not later than 8 April 2008, consent unconditionally and in writing to the cession and delegation by BECSA to Optimum of its rights and obligations in terms of and/or in connection with a Coal Supply Agreement ("CSA") entered into on 4 January 1993 between Eskom and BECSA (which was known, at the time of contracting, as Trans-Natal Collieries Limited).
  - Eskom is prepared to consent, by not later than 8 April 2008, to the cession and delegation by BECSA to Optimum of its rights and obligations in terms of and/or in connection with the CSA, provided that:

2.4.1

2.4

Optimum binds itself irrevocably and unconditionally in terms of an Addendum to the CSA ("Addendum") which shall be of full force and effect with effect from the date on which the Sale of Business Agreement shall be completed in accordance with its terms, in terms whereof the CSA shall be amended on a basis acceptable to Eskom; and

2.4.2

Optimum Coal Holdings shall guarantee, irrevocably and unconditionally, the performance by Optimum of all of its obligations arising in terms of the Addendum (including, without limitation, the obligations of Optimum in terms of the CSA as amended by the Addendum and/or otherwise by agreement between Eskom and Optimum from time to time).

2.5

Eskom and Optimum have agreed on the terms and conditions of the Addendum.

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- 2.6 Optimum Coal Holdings is prepared to the guarantee the performance by Optimum of all of its obligations arising in terms of the Addendum (including, without limitation, the obligations of Optimum in terms of the CSA as amended by the Addendum and/or otherwise by agreement between Eskom and Optimum from time to time).
- 2.7 Eskom and Optimum Coal Holdings ("Parties") wish to record their agreement in writing.

### 3. CONDITIONS PRECEDENT

- 3.1 This entire Agreement (save in respect of this clause 3, and clauses 7 to 13 (both inclusive), which shall be of immediate force and effect) shall be subject to the conditions precedent that:
- 3.1.1 Eskom shall have consented in writing, by not later than 8 April 2008, to the cession and delegation by BECSA to Optimum of its rights and obligations in terms of and/or in connection with the CSA; and
- 3.1.2 by not later than 30 September 2008, or such later date as the Parties may agree in writing, the Sale of Business Agreement shall have been completed in accordance with its terms.
  - The Parties shall use their respective reasonable commercial endeavours to procure the fulfilment of the conditions precedent specified in clause 3.1 as soon as reasonably possible after the date of signature hereof. In the event that the conditions precedent shall not have been fulfilled by not later than the dates specified in clause 3.1, this entire agreement (save in respect of clauses 7 to 13 (both inclusive), which shall be and remain of full force and effect) shall be of no force and effect, and neither Party shall have any claim against the other of them for anything done hereunder and/or arising hereout.

#### 4. GUARANTEE

- Optimum Coal Holdings hereby irrevocably and unconditionally guarantees and undertakes that it shall:
  - use its best endeavours to procure that Optimum shall duly and punctually perform each and every of its obligations arising in terms of and/or in connection with the Addendum (including, without limitation, each and every of its obligations arising in terms of the CSA as amended by the Addendum and/or otherwise by agreement between Eskom and Optimum from time to time); and

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pay such amounts as may from time to time be demanded by Eskom from Optimum in terms of and/or in connection with the Addendum (including, without limitation, the CSA as amended by the Addendum and/or otherwise by agreement between Eskom and Optimum from time to time) but which Optimum shall fail, for whatever reason, to pay to Eskom as and when such payment shall be due.

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- 4.2 This Guarantee is a continuing guarantee and the obligations of Optimum Coal Holdings in terms hereof shall be and remain in operation and existence for the duration of the CSA (as amended by the Addendum and/or otherwise by agreement between Eskom and Optimum from time to time), and shall expire 180 days after the termination of the CSA (as amended by the Addendum and/or otherwise by agreement between Eskom and Optimum from time to time).
- 4.3 During the existence of this Guarantee, the obligations of Optimum Coal Holdings shall be and remain in existence and of full force and effect notwithstanding any fluctuation in or temporary extinction of any of the obligations of Optimum Coal Holdings in terms hereof and/or the fluctuation in or temporary extinction of the obligations of Optimum in terms of and/or in connection with the CSA (as amended by the Addendum and/or otherwise by agreement between Eskom and Optimum from time to time).
  - This Guarantee shall be in addition to and not in substitution for any other rights which Eskom may have under or by virtue of the CSA (as amended by the Addendum and/or otherwise by agreement between Eskom and Optimum from time to time) and/or arising otherwise at law, and may be enforced without having recourse to any such rights and without taking any steps or proceedings against Optimum.

#### 5. ISSUE OF DEMAND

4.4

5.1

Eskom shall be entitled (but not obliged) to issue demand on Optimum Coal Holdings in terms of this Guarantee in the event that:

- Optimum shall commit a breach of any of the provisions of the CSA (as amended by the Addendum and/or otherwise by agreement between Eskom and Optimum from time to time) and shall be and remain in such breach notwithstanding the delivery by Eskom to Optimum of a written notice in terms of the CSA and/or the Addendum calling on it to remedy such breach and the effluxion of the period specified in such notice;
- 5.2 Optimum shall be placed under judicial management, in liquidation, or under winding up, whether voluntarily, compulsorily, finally or provisionally; or
- 5.3 Optimum shall commit an act which would have been an act of insolvency in terms of Section 8 of the Insolvency Act, 1936 (Act 24 of 1936) (as amended from time to time), in the event that Optimum were a natural person.

#### 6. PERFORMANCE

6.1 Optimum Coal Holdings hereby irrevocably and unconditionally undertakes to take all reasonable steps which shall be available to it in order to procure the due and punctual performance by Optimum of all of its obligations (including, without limitation, all of the obligations of Optimum to deliver

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coal to Eskom) arising in terms of and/or in connection with the CSA (as amended by the Addendum and/or otherwise by agreement between Eskom and Optimum from time to time), immediately on the issue of demand by Eskom on Optimum Coal Holdings in terms of clause 5.

6.2 Optimum Coal Holdings hereby irrevocably and unconditionally undertakes to make payment under this Guarantee to Eskom by not later than 10 (ten) Business Days after the delivery by Eskom of a demand in terms of clause 5 in respect of such payment. Optimum Coal Holdings shall make payment to Eskom of the full amount due to Eskom in terms hereof (and as demanded by Eskom from time to time) in cash without a set-off and/or deduction, by the transfer of the full amount due in immediately available funds to such bank account as Eskom may reasonably specify in writing from time to time.

#### 7. MUTUAL SUPPORT

- 7.1 The Parties undertake at all times to do all such things, perform all such actions and 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 or desirable for or incidental to the putting into effect or maintenance of the terms, conditions, import and intent of this Guarantee
- 7.2 The Parties undertake to act towards each other in all respects relating to this Guarantee in good faith.

## 8. DISPUTE RESOLUTION

- 8.1 Any dispute between the Parties in regard to:
- 8.1.1 the interpretation of;
- 8,1.2 the effect of;

8.2

- 8.1.3 the Parties' respective rights and obligations under;
- 8.1.4 a breach of; and/or
- 8.1.5 any matter arising out of;

this Guarantee shall be referred to a special committee ("Special Committee") consisting of the managing director of Optimum Coal Holdings and the Chief Officer: Generation, Eskom or his duly authorised representative, which shall meet as soon as possible after referral of the dispute to it, and shall use its *bona fide* best efforts to resolve the dispute.

In the event that the Special Committee shall have failed, for whatever reason, to resolve the dispute by not later than 30 Business Days after the

	dispute shall first have arisen, the dispute shall be submitted to and decided by arbitration.
8.3	The said arbitration shall be held subject to the provisions of this clause:
8.3.1	at Johannesburg;
8,3.2	informally;
8.3.3	otherwise in accordance with the provisions of the Arbitration Act No. 42 of 1965, as amended;
	it being the intention that if possible it shall be held and concluded within 90 Business Days after it has been demanded.
8.4	The arbitrator shall be if the question in issue is:
8.4.1	primar <mark>ily an accounting matter an independent cha</mark> rtered accountant with no less than 10 years standing agreed upon between the Parties;
8.4.2	primarily a legal matter, a practising Senior Counsel with no less than 10 years standing agreed upon between the Parties;
8.4.3	any other matter an independent person agreed upon between the Parties.
8.5	If the Parties cannot agree upon a particular arbitrator in terms of 8.4 above within 7 Business Days after the arbitration has been demanded, the nomination in terms 8.4.1, 8.4.2, and 8.4.3 as the case may be, shall be made by the President of the Law Society of the Northern Provinces within 7 days after the Parties have so failed to agree.
8.6	The Parties irrevocably agree that the decision in these arbitration proceedings:
8.6.1	shall be binding on them,
8,6.2	shall be carried into effect,
8.6.3	may be made an order of any Court of competent jurisdiction.

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#### 9. BREACH

Should Optimum Coal Holdings commit a breach of any of the provisions hereof, then Eskom shall, if it wishes to enforce its rights hereunder, be obliged to give the Optimum Coal Holdings 14 days written notice to remedy the breach. If the Optimum Coal Holdings fails to comply with such notice, Eskom shall be entitled to claim immediate payment and/or performance by Optimum Coal Holdings of all of the obligations of Optimum Coal Holdings, whether or not the due date for payment and/or performance shall have arrived, in either event without prejudice to Eskom's rights to claim damages. The foregoing is without prejudice to such other rights as Eskom may have under the CSA as amended by the Addendum or, at law.

#### 10. DOMICILIUM

10.1

10.2

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

Optimum Coal Holdings:	First Floor, Marlborough Gate Hyde Park Lane Hyde Park Sandton
Eskom:	Megawatt Park Maxwell Drive Sunninghill Sandton
time, provided that any new domic	ed to change its domicilium from time to cilium selected by it shall be an address Republic of South Africa, and any such n receipt of notice in writing by the other

- 10.3 All notices, demands, communications or payments intended for either Party shall be made or given at such Party's domicilium for the time being.
- 10.4 A notice sent by one Party to the other Party shall be deemed to be received:
- 10.4.1 on the same day, if delivered by hand;
- 10.4.2 on the same day of transmission if sent by telefax and if sent by telefax with receipt received confirming completion of transmission;
- 10.4.3 on the fifteenth day after posting, if sent by prepaid registered mail.

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

#### 11. <u>COSTS</u>

Each of the Parties shall pay its own costs of and incidental to the negotiation, preparation and/or execution of this Agreement.

#### 12. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the different Parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same instrument.

#### 13. GENERAL

- 13.1 This document constitutes the sole record of the Agreement between the Parties in regard to the subject matter thereof.
- 13.2 Neither Party shall be bound by any express nor implied term, representation, warranty, promise or the like, not recorded herein.
- 13.3 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.
  - 13.4 No indulgence which Eskom may grant to Optimum Coal Holdings shall constitute a waiver of any of the rights of Eskom, who shall not thereby be precluded from exercising any rights against Optimum Coal Holdings which might have arisen in the past or which might arise in the future.
  - 13.5 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 Guarantee.

THUS DONE and SIGNED at Summy hill on this the Sth day of APRIL 2008. For and on behalf of OPTIMUM COAL HOLDINGS (PROPRIETARY) LIMITED Per: TI Borman who warrants his authority hereto ्रि ( MIDRAND the on this THUS DONE and SIGNED at 8.44 day of APRIL 2008. For and on behalf of **ESKOM HOLDINGS LIMITED** Per: BA Dames who warrants his authority hereto

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7		WERKSMANS ATTORNEYS			
	DELIVERED BY HAND, FACSIMILE AND EMAIL				
	Eskom Holdings SOC Limited	Johannesburg Office 155 5th Street Sandton 2196 South Africa			
	Megawatt Park	Private Bag 10015 Sandton 2146			
	Maxwell Drive	Docex 111 Sandton Tel +27 11 535 8000			
	Sunninghill	Fax +27 11 535 8600			
	Attention: Chief Officer: Generation Facsimile: 011 800 5555	www.werksmans.com enquirles@werksmans.com			
	Email: Matshela Koko - matshela.koko@eskom.co.za TRECE	IVED A COPY			
	Vusi Mboweni - mbowenv@eskom.co.za	HEETUNHA			
		KINHOTED			
	CC: Ayanda Nteta - NtshanAK@eskom.co.za	9010812015			
.i	Cc: Cliffe Dekker Hofmeyer				
	Conta	182008110.			
	Attention: Rishaban Moodley	has the stand			
	Email: rishaban.moodley@diacdh.com				
	EMAIL ADDRESS: elevenstein@werksmans.com/ibecker@we 20 August 2015 OPTIMUM COAL MINE PROPRIETARY LIMITED (J HOLDINGS SOC LIMITED RE: COAL SUPPLY AGREEM	in B <b>us</b> iness Rescue) / Eskom			
	AND OFFER TO SUPPLY				
<u>م</u> بار چ	1 As you are aware, we act on behalf of Piers Marsden ("Van den Steen"), the joint business rescue practiti Limited ("OCM") (collectively referred to as "our clien	ioners of Optimum Coal Mine Proprietary			
	2 We refer to the Coal Supply Agreement between Eskom Holdings SOC Limited ("Eskom") and OCM ("CSA"), as amended from time to time.				
•	3 You are aware that the directors of OCM commenced business rescue proceedings on 4 August 2015 and appointed Marsden and Van den Steen as business rescue practitioners.				
	You would further be aware from the notices in respect of the business rescue proceedings, the hardship claim initiated by OCM in 2013 and your extensive engagement with OCM pursuant to the settlement process conducted in terms of the co-operation agreement between Eskom and OCM dated 23 May 2014 ("Co-Operation Agreement") (which settlement process Eskom terminated on 10 June 2015), that the principal reason for the commencement of OCM's business rescue proceedings is the financial distress that the terms of the CSA have placed				
	Warksmans Inc. Reg. No. 1990/007219/21 Registered Office 153 5th Street Sand Directors D Hentz (Chairman) AL Armstrong GA Aronoff DA Arteiro T Bata AR Bermen W Brown PF Burger PG Geland JG Clotte PPJ Contest C Cole-Morpan JN de Villers LJ R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hostosky BB Hotz HC Jacob J Kellinever SLG Kayens A Kenny BM Kew A Külaran N Kirby HA Kotze S Krigs PJ Km BS Matasa PK Matasao MPC Manaka H Masondo C Moraita KO Molshwana L Naidoo M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pytkowald RJ Resth A Randhin L R JA Smit JS Smit CI Stevens PO Steva J Stockwell W Strachan JG Theron JJ Truter KI Trud A Vatalidis RN Wakefield DC Walker D Weglerski M Wieham DC Willings DG Williams E Wol	ston 2.196 South Africa NMN Ghengu Lülck KGB Basholf GT Boser TJ Boswell MC Bri du Prezz RJ Feenstra S Fodor SJ Gardiner C Gaver JA God TJ Snase van Rensburg N Janen van Vuren Gjohannee SJ usche Pie Rozx MM Lassing ELevenstein JS Lochner IS Lu J Nickig JJ Miemand BPF Diviar WE Ocstivitzen S Padaya Lood BR Roothman W Reignberg NJ Scott TA Sibidia LU Silber			

Deeplerski m Wicham DC Williams DS WIRRING & VOUS AND AND A STELLENBOSCH . TYGER VALLEY

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

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

Yours faithfull Verksmans Attorneys

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#### INTERIM AGREEMENT ("Agreement")

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between

#### ESKOM HOLDINGS SOC LIMITED ("Eskom")

and

#### OPTIMUM COAL MINE (PROPRIETARY) LIMITED ("OCM")

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

1 Introduction

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- 1.1 It is recorded that:
- 1.1.1 the directors of OCM resolved on 31 July 2015 to commence business rescue proceedings in terms of section 129(1) of the Companies Act, 2008 ("Business Rescue Proceedings") as a result of OCM being financially distressed;
- 1.1.2 Piers Marsden ("Marsden") and Peter Van den Steen ("Van den Steen") have been appointed as business rescue practitioners in respect of OCM (collectively, the "BRPs"); and
- 1.1.3 the BRPs have in accordance with section 136(2)(a) of the Companies Act suspended for the duration of the Business Rescue Proceedings the Coal Supply Agreement between OCM and Eskom concluded in 1993, as amended from to time.
- 1.2 OCM wishes to supply to Eskom, and Eskom wishes to purchase from OCM, coal for the duration of the Business Rescue Proceedings, on the terms and conditions set out below.
- 1.3 The Parties therefore agree as follows,

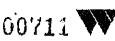
#### 2 Suspensive Condition

- 2.1 This Agreement is subject to the fulfilment of the suspensive condition ("Suspensive Condition") that on or before 17h00 on 25 August 2015 OCM receives payment from Eskom of the amount of R51 107 913.6 (less the AI penalty amount) which Eskom undertook to pay to OCM in its letter dated 14 August 2015.
- 2.2 If the Suspensive Condition is not fulfilled or waived by 17h00 on 25 August 2015, this Agreement shall be of no force and effect.

#### 3 Duration

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

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#### 4 Quantity

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

5 Price

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

#### 6 Payment

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

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#### 7 Delivery, Risk and Ownership of coal

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

#### 8 Quality Specifications

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

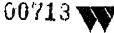
Quality peromet	Uni.	Expe cted Quali	Quality Rejection Limit	Measure ment basis	Measuremen	Adjustment
Calortfic Value	MJ/ kg	23	<21.65	Moisture Free	Monthly Weighted Average	Adjustment through price and Eskom can reject
Ash	%	28	>31.5	Molsture Free	Monthly Weighted Average	No adjustment but Eskom can reject
Moisture	%	9%	>12%	As Received	Monthly weighted Average	There will be no adjustment but Eskom will have the right to request Optimum to stop supplies as per clause 8.6 below
Abrasive Index (Eskom Mining House Method)	mgF e/4 kg	700	None	Moisture Free	Monthly weighted average	Penalty as per clause 8.4 below
Sulphur	96	1.5 %	None	None	None	None
Volatiles	%	22.4 %	None	None	Nóne	None
AFT (Initial deformati on.)	•C	1,300 ≥	None	N/A	None	None
Sizing < 6mm <2.8mm <0.81m m	% % %	≴ 55% ≤ 35% ≤20 %	None None ≤20%	N/A	Monthly weighted average	Penalty for -0.81mm only as per clause 0 below

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

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PMM-U11.1-069



> 700-800 R 4,92 per ton

> 800- 850 R 6.15 per ton

> 850-900 R7.38 per ton

> 900 R11.07 per ton

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

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

where:

- A = the sizing penalty to be calculated;
- B = the total number of tons of coal delivered by OCM during the relevant month;
- C = the weighted average percentage of coal delivered during the month with a sizing of less than 0.81mm;
- D = 50% of the price per ton paid by Eskom for the coal delivered during the month.
- OCM shall notify Eskom in advance if the coal to be delivered will be above the quality rejection limit for moisture. Eskom shall then be entitled to elect whether to accept delivery of such coal which does not meet the quality rejection limit in respect moisture. If Eskom elects to receive such coal, then, notwithstanding the moisture parameters of such coal being in rejection, the price of such coal shall be determined in accordance with clause 5 and such quantity of coal shall constitute coal supplied to Eskom and reduce the contractual tonnage.

#### DOMICILIUM 9

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

9.1.1

physical -	Megawatt Park Maxwell Drive Sunninghill 2157
e-mail: -	
attention:-	ALC .

Eskom

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9.1.2

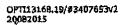
physical -

OCM

ist Floor



60714 v



23 Melrose Boulevard Melrose Arch 2196

Piers Marsden

e-mail:

attention:

9.2 Any Party will be entitled, from time to time, by giving written notice to the other, to vary its physical Domicilium to any other physical address (not being a post office box or poste restante) and to vary its e-mail Domicilium to any other e-mail address.

9.3 Any notice given by any Party to any other ("Addressee"), which is delivered by hand between the hours of 09:00 and 17:00 on any business day to the Addressee's physical Domicilium for the time being, will be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee at the time of delivery.

pmarsden@matusonassociates.co.za

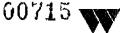
- 9.4 Any notice given by any Party to any other, which is successfully transmitted by e-mail to the Addressee's e-mail Domicilium for the time being, will be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee on the business day immediately succeeding the date of successful transmission thereof.
- 9.5 This clause 9 will not operate so as to invalidate the giving or receipt of any written notice, which is actually received by the Addressee other than by a method referred to in this clause 9.
- 9.6 Any notice in terms of, or in connection with, this Agreement will be valid and effective only if it is in writing and if it is received or deemed to have been received by the Addressee.

#### 10 FORCE MAJEURE

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





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

#### 11 BREACH

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

#### 12 GOVERNING LAW AND JURISDICTION .

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

#### GENERAL 13

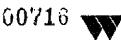
This Agreement constitutes the sole record of the agreement among the Parties in 13.1 relation to the subject matter hereof. No Party will be bound by any express, tacit or Implied term, representation, warranty, promise or the like not recorded herein. This Agreement accordingly supersedes and replaces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

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

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

Thus done and signed at	on the	day of
2015 In the presence of t	ne undersigned witnesses.	
For: Eskom Holdings SOC Limited		
Who warrants that he is authorised thereto		
Witnessed by:		
1		
2		
Thus done and signed at	on the	dav o

Who warrants that he is authorised thereto

Witnessed by:



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# 00793 PMM



Cliffe Dekker Hofmeyer Attention: Rishaben Moodley E-mail: <u>Ashaben.moodley(Richletal.seni</u>

22 September 2015

Dear Sirs

WITHOUT PREJUDICE: ESKOM HOLDINGS SOC LIMITED / OPTIMUM COAL MINE PROPRIETARY LIMITED -

We refer to your letter dated 19 September 2015 and the subsequent discussion between Mr Clinton Ephron of Optimum Coel Mine (Pty) Ltd ("OCM") and Mr Matshela Koko of Eskom Holdings SOC limited ("Eskons") on 21 September 2015 in respect of 1993 Coal Supply Agreement, as amended ("CSA").

At the outset, we wish to place on record that Mr Clinton Ephron is engaging with Eskom in his capacity as CEO and director of OCM and not on behalf of Glencore South Africa Pty Ltd, or any other entity, which has no connection or relationship with OCM or Eskom.

We confirm that your letter reflects the terms of the agreement reached batween OCM and Eskom in relation to continued supply during the 60 day period commencing on 4 September 2015 save for the following:

- as confirmed in the discussion between Mr Ephron and Mr Koko, there shall be no sizing quality specification or penalty applicable during such 60 day period; and
- the agreement to recommence supply was conditional on Eskom and OCM engaging during such 60 dey period in good faith negotistions to resolve the impasse that has arisen in respect of the CSA.

We note that we do not accept that the power station has any difficulties with coal which does not comply with the quality specification contemplated by clause 3.4.5 of the First Addendum and we reserve all our rights arising from the notice served by OCM on Eskom in terms of clause 3.4.4 of the First Addendum on 23 April 2013.

All of our other rights remain reserved.

Optimum Coal Mine (Pty) Ltd (Registration No: 2007/005308/07) A Glencore Operation Business Address: N11 Hendrins Road, Pollenshope Offramp, Fullenshope Mailing Address: Private Bag X1201, Pullenshope, 1096, South Africa Tel.: +27 18 2965111 Registared Address: 1ª Floor, Nedbank Building, 23 Melrose Boulevard, Melrose Arch, Melrose North, Johannesburg, 2196, South Africa Mailing Address: Suite No. 19, Private Bag X1, Melrose Arch, Johannesburg, 2076 Tel: +27 11 772 0600 Fax: +27 11 772 0697

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

State of the second sec 60794 Page 2 Please confirm by return correspondence your agreement to the aforegoing. Yours faithfully Peter Van den Steen Piers Marsden () ..... Joint Business Rescue Practitioners for Optimum Coal Mine (Pty) Ltd (In Business Rescue)  $(\hat{\mathbb{S}})$ **Clinton Ephron** 1 Chief Executive Officer Optimum Coal Mine (Pty) Ltd (In Business Rescue) Ner on V (A) 3)

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1 Protea Place Sendow 2196 Private Bag X40 Benn Bouth Africa Do: 42 Johannesburg

T +27 (0)11 562 1000 F +27 (6)11 662 1111 **Golacch.com** ww.clifischickolmeyr.com 8 ji to Da

Also at Cape Town

Werksmans Attorneys	Our Reference	R Moodley
	Account Number	01949978
Attention: Mr E Levenstein By Email: elevenstein@workmans.com	Your Reference	Piers Marsden
	Direct Line	(011) 562 1866
CC: Metuson Associates	Direct Telefax	(011) 562 1466
Attention: Piers Marsden Email: <u>optimumcoal@tmatusonassociates.co.za</u>	Çirect e-mèt	rishaban.moodley@dlacdh.com
Contents and Designation of the second s	Data	31 August 2015

#### Dear Sir

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(<sup>1</sup>). (<sup>1</sup>)

## ESKOM HOLDINGS SOC LIMITED// OPTIMUM COAL PROPRIETARY LIMITED (IN BUSINESS RESCUE) & OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED (IN BUSINESS RESCUE)

- We refer to the writer's telephone discussions with your Mr. David Hertz on 25 and 314 August 2015, our letter to you dated 24 August 2015 ("the letter") and your letter dated 28 August 2015.
- As discussed with your Mr Hertz and recorded in the letter, in order for any meaningful 2 consideration and discussion of what the bast available options are for Optimum to be a sustainable business going forward, it is imperative that Eskom is provided with a full disclosure of Optimum's entire business operations (both export and domestic) for the period 2012 to date.
  - The full disclosure is required, specifically having regard to the fundamental basis of the now suspended coal supply agreement! with Optimum. The full disclosure must include all the

<sup>1</sup> The financial modelling of the now suspended CSA provided Eskom with the benefit of tow prices for coel was premised on schedule 7 to the CSA which records that "some of the fundamental considerations for TNC in entering into the agreement to which this schedule is annexed as Schedule

7 are the facts that -

- the Optimum operation is a multi-product operation;
- o the operations of Hendrina and Optimum are inter-dependent; and
- o sales to Hendrine in terms of this egreement will enable TNC to maintain the infrastructure in order to enable # to export coal;"

CHANNIAN AW PRIORIUS CHIEF EXECUTIVE OFFICER & WINNING CHIEF OPERATING CHICGER MEVANIAM CHIEF FINANCIAL OFFICER IS BUGH

DREDTORS: JOHAMMESBURG A Abro MANIH JA Adams CO Geld CA Berchy R Beamer E Becker P Engative R Bound CJ Boles TE Brinder Hi Buyer CMJ Chades M Charle CJ Daniel EF Denpoler S de Wise ML du Prest L Enstrus BV Feber JJ Verla TS Fleicher L Fleich TG Churmen F Geldo M2 Callos S Gill Boyer CMJ Charles AJ Hotmar CJ Daniel EF Denpoler S de Wise ML du Prest L Enstrus BV Feber JJ Verla TS Fleicher L Fleicher J Latity Able Grange FE Lapper AJ Hotmar CJ Daniel EF Denpoler S de Wise ML du Prest L Enstrum JCA Long Y Makiman J J Kruger JLatity Able Grange FE Lapper AJ Hotmar CJ Honey WH Jacob WH Janes ven Reinsburg CM Jeseshen JCA Joneshen JCA Korg Y Makiman JJ Kruger JLatity Able Grange FE Lapper BC Headory Z Maling & Makime HW Mennen B Magner WJ Magley R Moodey MC Mohekal BP O'Connor N Parthas A Paint JB Pennington GK Ferner V Flag DB Princek ALP Polyber AW Preinius A3 Reid M Berfontein P Strut-Chuban NTY Swendu. WHI Tryne D Vallech HR ven der Merwe JJ von Dyk WPS ven Wyk HJ von Ey JG Webber MF Whileter JG White DA Wilson B Wilsons LD Wilson JM Wite Healmon MP Yeales

DIRECTORS: CAPE TONIN AC Alexander RO Berenties TJ Bravis NA Brominy MR Collins NC Deput A de Large LF Egypt GT Part S Prinks CF Fyfer SAP Die JW Gmen Al Hamin AM Weiberg PS Heeveling CI Hindiey RC Hon, S Ingreinnen JH Jacobs R Jaga A Kadem IJ Lassing OC Lurdo RG Marcus St Mayer A Moolman MV Huller J Neeer FT Newhern G Orthe<sup>®</sup> CH Plenew L Ritcode MB Rodgers BT Rubinstein BPA Birauss OH Thompson CW Weitame TJ Winstenkey

EXECUTIVE CONSULTANTS: HS Covere PJ Conrade HS Jackson MD Jackson

GONGULTANTE: A Aberrophie Jill Eventuit" CH Ewing EJ Kripdon FF Kolbe

un L. Brucken K. Caddy & Chang. NS Conste J de Vor Yik Dockval, L. Broutbrach. T. Ernemus S Mitembles N Michurii. N Mis T. Moodby: CP Muker DJ Naidoo AP Pilley NS Picts & Polisisinf Inde T. Toom N. Treumicht. M von Zweel MF Word M Zwane SERNOR ASSOCIATES: F Ameri-Min & Baltoulzen-Barbosa MA Bobat & Brown L Buckin K Cado TV Ensmus P Jani" 7 Jardesn KJ Kasniy JA Krign H Laing CJ Lawis KJ Losav NS Mitembles N Michael NA Presion At Ripley-Evans LJ Sell & Schneider BJ Sprins T Sulman FJ Terblanche T Toorn N Treun

CLIFFE DEKKER HOMMEVR SERVICES PROPRETARY LIMITED DIRECTORS: ES BUYEr JA Canoola Z O'NN" R VI

Register "Openation - Dutch "Zimbabween "Cape Town Meneging Parine:

Cilife Deleter Holmeyr Inc. Reg No 2006/018823/21

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#### ESKOM HOLDINGS SOC LIMITED// OPTIMUM COAL PROPRIETARY LIMITED (IN BUSINESS RESCUE) & OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED (IN BUSINESS RESCUE)optimum brp 2 25 AUGUST 2015 underlying financial Information of both Optimum Coal Mine and Optimum Coal Holdings (to whom significant profits have historically been channelied flowing from the export business conducted by Optimum Coal Mine). Eskom accordingly requires a full disclosure in respect of both the export product and the 4 Eskom product for the financial periods 2011 to 2015, which should include, but not be limited to, the following -The financial statements/management account of OCM and OCH; 4.1 The financial statements/management accounts of Optimum Coal Teminal (Pty) Ltd; 4.2 The financial statements/management accounts of Optimum Coal Services; 4.3 The Operational management accounts of OCM and OCH; 4.4 OCM and OCH annual financial statements; 4.5

- 4.6 Profitability Analysis/Breakeven Analysis in respect of OCM and OCH;
- 4.7 OCM and OCH balance sheets;

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- 4.8 Full assessment report prepared by the BRPs since commencement of the business rescue process;
- 4.9 Post Commencement Finance agreement/(s) or drafts thereof, concluded or to be concluded with the banking consortium (presumably Optrix Security Company (Pty) Ltd);
- 4.10 Dividends declared and paid by OCM/OCH since acquisition by Glencore;
- 4.11 Mining Work Programme/Mining Plan;
- 4.12 A copy of the Contract Mining Agreement; and
- 4.13 Life of Mine Pian as updated annually from 2011 to date for OCM;
- 4.14 The status of the current mining operation at Koomfontein;
- 5 The aforesaid is not an exhaustive list of documents and is subject to the comments of Eskom's appointed financial advisors.
- 6 Upon receipt of the aforementioned information, we can arrange a meeting between our respective clients.
- 7 Our client's rights remain reserved.

Yours faithfully

#### RISHABAN MOODLEY CLIFFE DEKKER HOFMEYR INC

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#### DELIVERED BY HAND

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#### **Cliffe Dekker Hofmeyer**

1 Protea Place Fredman & Protea Place Sandton

Attention: Rishaban Moodley

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

YOUR REFERENCE:	R Moodley
OUR REFERENCE:	Mr D Hertz/Mr E Levenstein/Ms L Becker/lb/OPTT13168.19/#3426670v1
DIRECT PHONE:	+27 11 535 8237/8196
DIRECT FAX:	+27 11 535 8737/8796
EMAIL ADDRESS:	dhertz@werksmans.com/elevensteln@werksmans.com

1 September 2015

#### WITHOUT PREJUDICE

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

- We refer to your letter dated 31 August 2015 ("your letter"), 1
- We enclose with this letter a CD containing the bulk of the information requested in paragraph 2 2 of your letter.
- The information is provided to you and your client, on a without prejudice basis, and in an 3 attempt to achieve a resolution of the current impasse between our respective clients, which culminated in the commencement of Optimum Coal Mine Proprietary Limited's ("OCM") and Optimum Coal Holdings Proprietary Limited's ("OCH") business rescue proceedings.
- The documentation on the CD includes -4
- Annual Financial Statements ("AFS") and Management Accounts ("MA") for OCM and AFS 4,1 for OCH. There are no MA for OCH (paragraph 4.1)
- AFS for Optimum Coal Terminal Proprietary Limited ("OCT"). There are no MA for OCT 4.2 (paragraph 4.2);
- AFS for Optimum Coal Services Proprietary Limited ("OCS"). There are no MA for OCS 4,3 paragraph 4.3);
- MA that have been provided for OCM, as referred to above. There are no MA for OCH 4.4 (paragraph 4.4). AFS have been provided for OCM and OCH, as set out above;

Werksmans Inc. Reg. No. 1999/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa Directors D Hertz (Chairman) AL Armstrong BA Aronoff DA Arteiro T Bats AR Berman (MNN Bhengu L Bick HGB Boshoff GI Bossr TJ Boswell MC Brönn W Brown PF Burger PS Claind JG Cloete PP) Coatser C Colc-Morgan JN de Villers L Du Hreez RJ Feenstra S Fodor S) Gardiner D Gewer JA Gobetz W Brown PF Burger PS Claind JG Cloete PP) Coatser C Colc-Morgan JN de Villers L Du Hreez RJ Feenstra S Fodor S) Gardiner D Gewer JA Gobetz W Brown PF Burger PS Claind JG Cloete PP) Coatser C Colc-Morgan JN de Villers L Du Hreez RJ Feenstra S Fodor S) Gardiner D Gewer JA Gobetz W Brown PF Burger PS Claind JG Cloete PP) Coatser C Colc-Morgan JN de Villers L Du Hreez RJ Feenstra S Fodor S) Gardiner D Gewer JA Gobetz W Brown PF Burger PS Claind JG Cloete PP) Coatser C Colc-Morgan JN de Villers L Du Hreez RJ Feenstra S Fodor S) Gardiner D Gewer JA Gobetz W Brown PF Burger SLG Kayana A Kenny BM Kew R Killoran N Kirby HA Kotze S Krige PJ Krusche P Ie Roux MM Lessing E Levenstein JS Lothner JS Lubbe BS Mabasa PK Mabaso MPC Manaka H Hesondo C Moraitis KO Motshwane L Naidoo J Nickig JJ Nemand BPF Olivier WE Oosthutzen S Pedayachy BS Mabasa PK Mabaso MPC Manaka H Hesondo C Moraitis KO Motshwane L Naidoo J Nickig JJ Nemand BPF Olivier WE Oosthutzen S Pedayachy A Santi JS Smit JS Strate CI Stevens PO Steva J Stockwell W Strechan JG Theron JJ Truter KJ Trudgeon DN Van den Berg HA van Hukerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker D Wegletski M Weahahn DC Williams DG Williams E Wood BW Workman-Davkes

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- 4.5 the balance sheets for OCM and OCH, which are contained in the AFS for the respective companies, have been provided above (paragraph 4.7); and
- 4.6 both of the documents requested in paragraphs 4.11 and 4.12 of your letter are enclosed herewith.
- 5 We are at this stage not in a position to provide you with a copy of the post-commencement finance agreement ("PCF Agreement") however, our client will endeavour to answer any question that you or your client may have regarding the PCF Agreement at the meeting to be held as matter of urgency for the purpose foreshadowed in paragraph 3 above.
- 6 No dividends have been declared in either OCM or OCH since the acquisition of the Optimum group by Glencore and Insofar as Koornfontein is concerned, it is currently operating and producing coal which is supplied to your client's Komati power station.
- 7 Our client is working on the requests referred to in paragraphs 4.6, 4.8 and 4.13 of your letter and we will provide you with an update in this regard shortly.
- 8 We draw your attention to the fact that the documentation and information provided to you and your client contains commercially sensitive and confidential information which is not publicly available and which, if disseminated, may cause serious harm or damage to the business of OCM and/or OCM or other entities within, or related to, the Optimum group of companies.
- 9 Accordingly such information and documentation -
- 9.1 is only to be provided to legal representatives and the senior officials of your client;
- 9.2 may not be copied or otherwise duplicated; and
- 9.3 must be returned to our client on request.
- 10 We refer to the non-disclosure agreement signed by our respective clients on 24 July 2014 ("NDA"). The NDA (in addition to the terms contained in this letter) applies to the information and documentation provided under cover hereof.
- 11 We do not intend addressing the remaining assertions contained in your letter which should not be misconstrued as a walver of our client's rights in this regard, which rights are in all respects fully reserved.
- 12 Our clients' rights are strictly and fully reserved.

Yours **RECEIVED A COPY** Clinda is Attorneys Name Werksr Sumame CLIFFE DEKKER HOFMEYR INC. ٩ 15 ll mai 1121 OIL 869 Sionskure

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1 Proise Pisce Sendown 2198 Private Beg X40 Semmone 2010 Bouth Africs Dx 42 Johanheeburg

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Attention: Mr. D Heriz	Account Northur	01949978
Email: dhertz@werksmans.com	Your Retworks	Mr D Hertz
	Direct Line	(011) 562 1666
	Direct Yoldin,	(011) 562 1695
	L'Arrect o-mali	rishaban.moodley@cdhlegal.com
All Allow Manual	Célo	1 September 2015

#### Dear Sir

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

1 We acknowledge receipt of your letter dated 1 September 2015 and the CD with certain of the information requested undercover of our letter dated 31 August 2015.

We noted that the documents/information made available to us and our client on the CD has been made subject to the non-disclosure agreement ("NDA") concluded between the parties on 24 July 2015. The NDA was concluded specifically to attempt to negotiate a revised or new cost supply agreement. The conclusion of the Co-Operation Agreement which lead to the NDA was terminated by Eskom in June 2015. We do not believe that the documenta/information your client has made available can be made subject to the NDA and we are of the view that the NDA is redundant.

3 The NDA also contains terms which excludes the use of the information your client has provided in any future private and confidential arbitration proceedings, specifically the hardship arbitration should such arbitration for whatsoever reason proceed in the future. Having regard to the present position the parties find themselves in, adhering to the terms of the NDA is nonsensical.

4 We therefore propose that the release of the information/documents should accordingly not be made subject to the NDA. We will request our client to treat the information as private and confidential proprietary information of Optimum, only to be circulated to senior Eakon personnel involved in this matter, the Eskom internal/external legal team and any such consultant employed by Eskom which may be required to assess the Information.

CHARMAN AW Pretodue CINEF EXECUTIVE OFFICER & Williams CLEEF FINANCIAL OFFICER. ES Burger

DRECTORE: JOHANDEEDING A Abro H Alfrid JA Aldanse CD Baird CA Bendey R Seeman E Besier P Shagatise R Bonnet CJ Bolez TE Brindler H Burger CWJ Charter M Charte CJ Darriel EF Dengaler S de Vine M. du Prasa L Shanna GV Peber JJ Fesis TS Peicher L Frange TG Putchann F Galbo MZ Galbo B Gill SC Gon J Governier Al Holmey' O Honey WH Jucobe WH Jappe van Rendberg GM Jeseman JCA Jones TTM Kait J King Y Veletaen LJ Kouger J Latity AM is Grange PE Leguer AG Levie RC Massedorg Z Mallings G Means HW Mennes B Meyer WJ Wolfer R Mondey MO Mahalad GL. Honey WH Jucob P et al Straining PE Leguer AG Levie RC Massedorg Z Mallings G Means HW Mennes B Meyer WJ Wolfer R Mondey MO Mahalad GL. Honey WH Veletae A Pael JS Preinty Policy (19) Fibrands VAI Fridaler Ad Veleta B Alf Stell N Bonthein Mig Regner Distant NTY Shvindo WHH Throne D Vallabh (R ven der Menne JJ van Dyk WPS van Wyk NJ von By JS Webber NET Withinger G Withite GA Weben B Wellam LD Witten Hewknon MP Yeakes

CINNECTORE: CAPIL TOWN AC Alexander RD Barender TJ Stanle MA Brontey MR Collins HC Dapit A de Lange LF Syrpl GT Fad S Frenks DF Pyler BAP Gie JW Greek Al Hannie Ald Helberg PB Hasseling Di Hickley RC Hon S Innelman Al Jecolo R Jage A Kadem IJ Leadeg GC Limb RB Matolis Si Meyer A Mootnen NW Midler J Never Fritembers G Chile' CH Plener L Rhoode MB Rodgers 6T Rubinshin BPA Streuse DM Thompson CW Waters TJ Winsterley

EXECUTIVE CONBLICTANTS: HS Contacts P3 Contacts HS Jackson MB Ackson

CONSULTANTE: A Aberorable JAA Evenhula" CH Ewing EJ Kingdon FF Kalter

SEMOR AGROCHATER: F Ameer-Mile G Bandudzen-Banbosa MA Bobat B Brown L Brunion K Caddy E Chang NS Copile J de Vos YM Godsail L Engelbacht Y Essantes Ty Essantes P Jani' Y Jodean NJ Koady JA Krige H Lairo CJ Lawis HJ Louw NS Milerbites N McNural H Mile T Mooday CP Muller DJ Heldoo AP Pillay KS Plats B Pollaskini NA Presion JR Rukey-Evene LJ Balt BJ Bolbe T Sullman FJ Ventilerche T Yosen M Tesuriori, R Visioyabum M vec Zwest MF Ward H Zwane

CLIFFE DEKKER HOFMEYR SERVICES FROPRIETARY LINFED DIRECTORS: EX Burger, JA Contaile 2 Omat" R von Eeden MF Ynhiskar B Valien

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Letter to Werksmans - Optimum 1 September 2015

5 Please confirm by return correspondence whether our proposal is acceptable in order to progress this matter with our client. In the interim, we provide you with our undertaking that we have not accessed the information provided to us in any manner whatsoever.

Yours failhfully

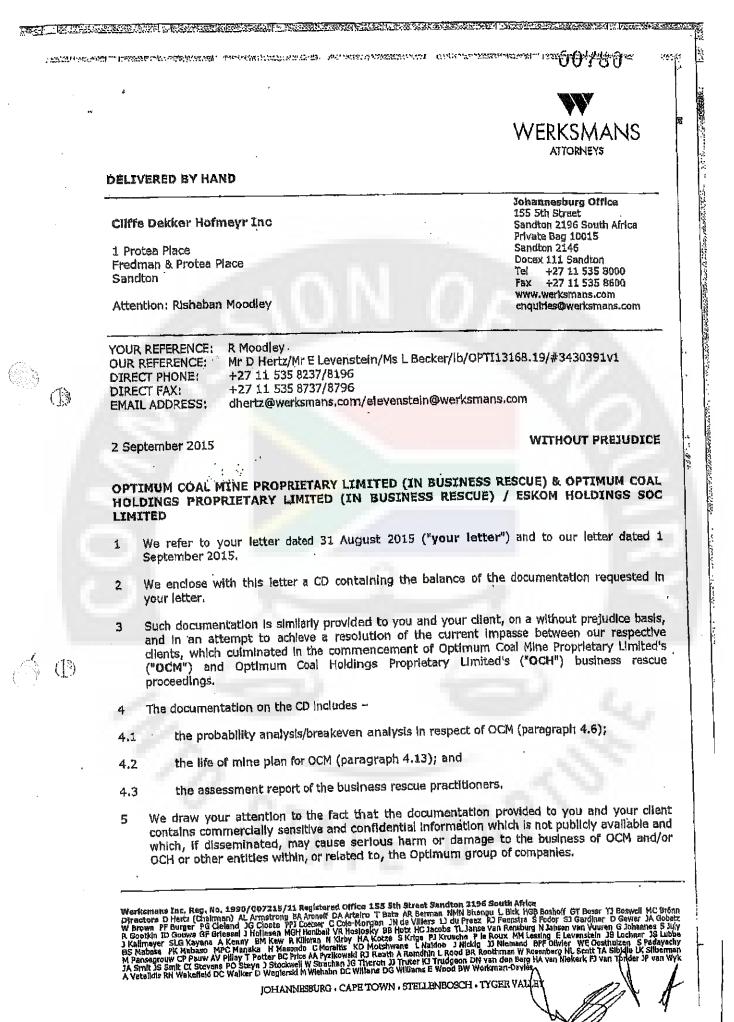
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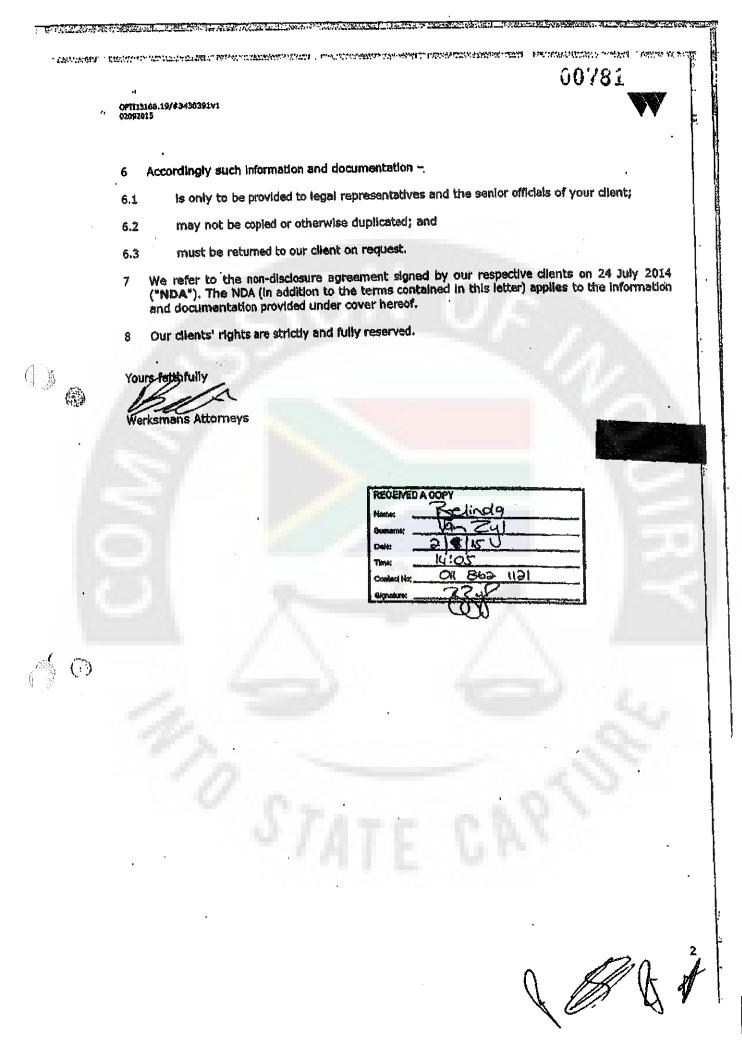
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(Transmitted Electronically)

RISHABAN MOODLEY CLIFFE DEKKER HOFMEYR INC

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#### Private and Confidential

#### **Piers Marsden**

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

#### Peter Van Den Steen

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

#### 10 September 2015

### Optimum Coal Mine - Non-binding Offer

#### Dear Sirs

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

### 1. Identity and background of Oakbay

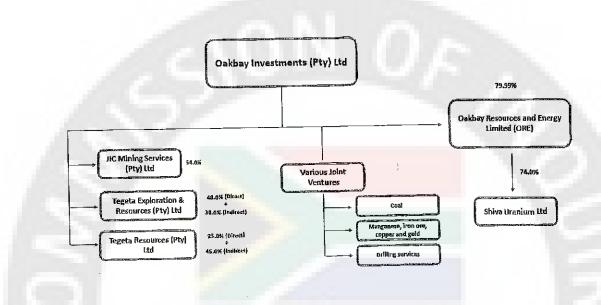
Oakbay Investments (Pty) Limited ("Oakbay") is the private investment vehicle of the Gupta Family, through which they hold a diverse range of interests. Oakbay holds investments in mining, technology and media & broadcast. Oakbay's attractive and diverse suite of mining investments comprise contract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

89 Gazelle Avenue, Corporate Park South, Old Pretoria Main Road, Midrand Johannesburg, South Africa Postal Address : Private Bag X 180, Halfway House, 1685, Johannesburg, South Africa Tel.: +27 11 542 1000 Fax: +27 11 542 1100 www.oakbay.co.za

#### 2. Rationale for the proposed Transaction

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

Below is a snapshot of our major mining assets:



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

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

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

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

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

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

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

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

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

Oakbay commits to taking ownership of the environmental trust fund and liability as at 30 June 2015;

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

#### 4. Conditions

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

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

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

## 5. Contact details of key personnel

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

Ronica Ragavan Oakbay Investments (Pty) Ltd

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

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

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

#### 6. Financing

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

#### 7. Approvals

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

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

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#### 8. Confidentiality

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

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

Yours sincerely

On behalf of Oakbay Investments (Pty) Ltd

Wown

Nazeem Howa

Director



#### CONFIDENTIAL

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

### CC

#### Nick Matthews

Partner, KPMG South Africa Head of Mergers & Acquisitions: Email: <u>nick.matthews@kpmg.co.za</u>

#### Werner Jacobs

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

17 September 2015

**Dear Sirs** 

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

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

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

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

Optimum Coal Mine (Pty) Ltd (Registration No: 2007/005308/07) A Glencore Operation Business Address: N11 Hendrina Road, Pullenshope Offramp, Pullenshope Mailing Address: Private Bag X1201, Pullenshope, 1096, South Africa Tel.: +27 13 2965111 Registered Address: 1<sup>st</sup> Floor, Nedbank Building, 23 Melrose Boulevard, Melrose Arch, Melrose North, Johannesburg, 2196, South Africa Mailing Address: Suite No. 19, Private Bag X1, Melrose Arch, Johannesburg, 2076 Tel: +27 11 772 0600 Fax: +27 11 772 0697

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

## Page | 2 213

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

#### 1. Interim period financing

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

## 2. Post-commencement financing and pre-commencement creditors

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

#### 3. Long-term borrowings

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

#### 4. Environmental liability

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

#### 5. Contractor

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

# Page | 3 214

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

6. Eskom

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

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

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

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

ours faithfully Piers Marsden

Pete Van Den Steen

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

PMM 12 INVESTMENTS (PTY) LTD.

#### Private and Confidential

#### **Piers Marsden**

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

#### Peter Van Den Steen

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

### 21 September 2015

## Optimum Coal Mine - Non-binding Offer

#### Dear Sirs

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

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

89 Gazelle Avenue, Corporate Park South, Old Pretorla Main Road, Midrand Johannesburg, South Africa Postal Address : Private Bag X 180, Haifway House, 1685, Johannesburg, South Africa Tel.: +27 11 542 1000 Fax: +27 11 542 1100 www.oakbay.co.za

# 216

#### 1. Interim period financing

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

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

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

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

## 2. Post-commencement financing and pre-commencement creditors

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

#### 3. Long term borrowings

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

#### 4. Environmental liability

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

#### 5. Contractor

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

# 217

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

#### 6. Eskom

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

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

#### 7. Contact details of key personnel

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

Ronica Ragavan Oakbay Investments (Pty) Ltd

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

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

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

#### 8. Confidentiality

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

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

Yours sincerely

On behalf of Oakbay Investments (Pty) Ltd

Atoria

Nazeem Howa

Director

## PMM-U11.1-096 PMM 13

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WITHOUT PREJUDICE

#### SUBJECT TO CONTRACT

CONFIDENTIAL

(N))

Eskom Holdings SOC Limited Megawatt Park Maxwell Drive Sunninghill

Attention: Brian Molefe: Acting Chief Executive Officer E-mail: <u>MolefeB@eskom.co.za</u>

Matshela Koko : Group Executive – Technology and Commercial E-mail matshela.koko@eskem.co.za

Cliffe Dekker Hofmeyer Attention: Rishaban Moodley E-mail: <u>rishaban.moodlev@dlacdh.com</u>

17 September 2015

**Dear Sirs** 

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

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

Optimum Coal Mire (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: 1<sup>n</sup> Floor, Nedbank Building, 23 Melrose Boulevard, Melrose Arch, Melrose North, Johannesburg, 2196, South Africa Mailing Address: Suite No. 19, Private Bag X1, Melrose Arch, Johannesburg, 2076 Tel: +27 11 772 0600 Fax: +27 11 772 0697

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

## 60788<sup>Page 12</sup>

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

This proposal consists of three components:

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

#### 1. Extension of the CSA

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

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

Accordingly, Eskom would be acting in accordance with the principles set out in the CSA if it agrees to an accommodation in favour of OCM in order to ensure that OCM can emerge from business rescue and remain a long-term sustainable supplier to Eskom. Obviously, any such accommodation should insofar as possible also be in Eskom's standalone interests. Accordingly, after discussions with management and the shareholders of OCM, we wish to make the following indivisible proposal to Eskom which we believe meets these requirements:

- the duration of the CSA will be extended until 2023 to match the remaining useful life of the Hendrina power station;
- the tonnage to be delivered during such extension will be 27.5 million tons (i.e. 5.5 million tonnes per annum);
- the price for the coal delivered during the extension will be R630 per ton at a CV of 23 Mj/kg (moisture free) (subject to agreed inflationary adjustments with effect from 1 October 2015). We believe that this price is consistent with what Eskom could expect to achieve in a standalone new negotiation with OCM for this quantity of coal at this quality in 2019;
- the price for the coal for the period from 1 October 2015 to 31 December 2018 will remain unchanged, however, in order to provide some relief to OCM during the period until 2019, the price for the remainder of the CSA will be averaged out so that Eskom will pay a weighted average price of R443 per ton at a CV of 23 Mi/kg (moisture free) (subject to agreed inflationary adjustments with effect from 1 October 2015) for the

## 60787 Page 13

remainder of the CSA from 1 October 2015 to 31 December 2023. This average has been calculated on R156 per ton for the remaining 3.25 years (i.e. 17 875 000 tons) and then R630 for the next 5 years (i.e. 27 500 000 tons). The weighted average price of R443 per ton would still be less than OCM's average cash cost of production over the remainder of the extended CSA; and

 the specifications and price adjustment regime for the remaining coal to be delivered under the CSA will be amended to be consistent with the penalties and price adjustment regime agreed during the previous settlement discussions between OCM, the Eskom negotiating team and the Hendrina power station. These are set out in Annexure A for your ease of reference.

#### 2. Penalties

Eskom has instituted claims against OCM for alleged non-compliance with the specifications set out in the CSA (and the addenda thereto), in amounts aggregating to approximately R2.2 billion. As you are aware, OCM disputes this amount and we believe that there is no reasonable basis to justify a penalty of this amount having regard to the history and background circumstances surrounding the imposition of penalties arising out of the CSA and that Eskom has no reasonable prospect of recovering this amount in an arbitration (this is separate from the issue as to whether OCM would, in fact, be able to settle such penalties if an award was made against it). In this regard, we note the following:

the CSA includes a renegotiation clause in terms of which if at any time either party is of the view that the specifications in the CSA are no longer properly and/or realistically representative of the coal which OCM could reasonably expect to produce from its resource, it could request a renegotiation of the specification following which the parties would be required to enter into discussions and negotiations in good faith regarding the amended specification;

in April 2013, OCM advised Eskom that the mine could no longer produce coal meeting the specifications and triggered the renegotiation clause;

- following the service of such notice, OCM and Eskom engaged in a process whereby OCM sought to demonstrate to Eskom that it was unable to meet the specification. This process endured until January 2014 during which time OCM provided significant information to Eskom regarding the difficulties it was having. Eskom has never disputed the technical reasoning put forward by OCM as to why it cannot meet the sizing specification. Eskom explicitly refrained from imposing any penalties regarding sizing during these negotiations in recognition of the fact that OCM had triggered the renegotiation clause;
- this renegotiation process was eventually subsumed into the broader settlement discussions which culminated in the signing of the Co-Operation Agreement in May 2014 which suspended all penalties. During the settlement discussions, there were extensive negotiations on the specifications with primary energy and the Hendrina power station and ultimately a specification was agreed in relation to sizing which matches that which OCM delivered during the period from 2012 to 2015. If this is a specification that the power station was capable of accepting, then clearly the delivery of coal meeting that sizing specification during most of 2012 to 2015 could not have caused any meaningful damage to the power station;
- if the Co-Operation Agreement had not been signed, and Eskom had not agreed to amend the specification, it is very likely that the dispute regarding the sizing specification would have, at that time, been referred to arbitration for dispute

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resolution. If that had happened, Eskom would not have been able to impose the historical penalties for sizing;

- If the sizing penalty is excluded, then the sole basis for imposing a penalty would be in relation to ash and CV. As the Eskom negotiating team is aware, there is significant disagreement between Eskom and OCM regarding the imposition of the ash and CV penalties and the wording of the agreement does not support the penalties imposed by Eskom; and
- the factors set out above would present compelling defences in relation to any claim for penalties together with other defences such as the Conventional Penalties Act, waiver, estoppel etc.

In summary, we do not believe that any penalty is justifiable, but as part of an overall settlement, OCM would be willing, on a without prejudice basis, to pay a reasonable amount in full and final settlement of all penalties and/or damages alleged to be owing by OCM and/or its affiliated entities under or in connection with the CSA as at the date of signature of the amended CSA (including any alleged damages arising during the business rescue proceedings). We propose that once we have agreement on the balance of the proposal set out in this letter, we have a discussion regarding an appropriate settlement figure. As part of this discussion, we would also like to discuss the amounts withheld by Eskom for coal delivered during July and August 2015.

Obviously, OCM will not be in a position to settle any agreed settlement amount in cash, and therefore we would like to propose two options to Eskom as a method of settling such settlement amount.

issue of equity

The first option is that Eskom be issued an equity stake in OCM in order to settle the agreed settlement amount. The exact percentage will need to be discussed and agreed after agreement on the settlement amount. We believe that this would be a reasonable solution for Eskom in that it provides significant upside if export prices rally and it recognises that requiring OCM to settle the penalties in cash will impair OCM's ability to become a sustainable supplier to Eskom.

We understand that Eskom has expressed a reluctance to hold equity interests in mines, but Eskom would in due course be able to dispose of such stake or it could nominate a third party to acquire such shares, subject to OCM's agreement.

#### Reduction of price

The second option is that Eskom be afforded a reduction in price on the coal purchased for the remainder of the term of the CSA in order to settle such penalties. This reduced price would obviously provide more certainty to Eskom but would not allow Eskom to participate in any upside in OCM.

#### 3. Black Economic Empowerment transaction

The Indirect major shareholders of OCM, Pembani Group Pty Ltd (which merged with Shanduka Resources Pty Ltd) ("Pembani") and Glencore Plc, have agreed a new BEE transaction in order to increase the black ownership of OCM to above 50% in line with Eskom's stated policy of sourcing coal from majority black-owned suppliers.

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We note that as Pembeni will be increasing its existing stake in OCM, they have requested to be directly involved in the negotiations of the proposal. They therefore have requested to participate in all future meetings in relation to this proposal.

#### Conclusion

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We believe that this proposal represents a compelling offer for Eskom which allows Eskom to:

- secure a long-term sustainable supply of high quality coal for the remainder of the useful life of the Hendrina power station from a majority black supplier;
- ensure that Eskom continues to obtain the benefit of its existing low price CSA by using such price to reduce the price payable for the coal for the post 2018 period; and
- be compensated at a fair level for the penalties which it believes it has accrued.

This proposal will obviously also ensure the long-term sustainability of the OCM business and prevent the negative consequences that would arise for all stakeholders from a liquidation of OCM.

As you will appreciate, we have significant time constraints during the business rescue proceedings and if we are to finalise this proposal before the deadline for the publication of the business rescue plan (i.e. 30 October 2015), we need to receive Eskom's feedback as soon as possible. Accordingly, we request that Eskom respond to this proposal by Friday, 25 September 2015. If Eskom is willing to accept this proposal, we and the management of OCM are prepared to dedicate all necessary resources to ensure that the proposal is implemented as soon as possible.

Please contact us if you have any queries.

We look forward to hearing from you.

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er Van den Steen

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

**Clinton Ephron** 

Chief Executive Officer Optimum Coal Mine (Pty) Ltd (In Business Rescue)

PMM

# 00795

1 Protes Place Sandown 2196 Private Bap X40 Benmore 2019 South Africa Dx 42 Joliannesburg

T +27 (0)11 562 1000 F +27 (0)11 562 1111 B jingcoriegel.com W www.ciiliedetkerheimeyt.com

Also al Cape Town

THE REAL PROPERTY AND ADDRESS OF

Optimum Coal Mine (Pty) Lid	Qur Releventé	R Moodley
a the set of the Official Statement Only & Frances then Office	Account Number	01949978
Attention: Mr Clinton Ephron: Chief Executive Officer	Your Raterance	Clinton Ephron
	Cirect Live	(011) 582 1668
Matuson Associates and V-Squared Business Rescue Services (Pty) Ltd	Cirect Telefac	(011) 562 1466
Business Rescue Practitioners	(Cleant a shall	rishaban.moodley@cdhlegal.com
		30 Sentember 2015

<u>Attention</u>: Mr Piers Marsden Email: optimumcoal@matusonassociates.co.za

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#### Dear Sir

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**A** 

OPTIMUM COAL MINE PROPRIETARY LIMITED (IN BUSINESS RESCUE): SETTLEMENT PROPOSAL

1 We refer to your latter dated 17 September 2015.

2 We have been instructed that Eskom SOC Limited ("our client") has considered your proposal and is not at this stage prepared to entertain it for, inter alia, the following reasons -

2.1 any discussion and negotiation on the new contract price for coal to the Hendrina Power Station will only be considered closer to 2017 and not at this stage prior thereto;

2.2 the penalty claim is not negotiable and it should be settled in full without any delay.

3 We record that it has come to our client's attention that assets are being stripped at the Optimum mine. Our client requires full details of all assets that has been removed or stripped, and, an undertaking by no later than close of business today, that the Business Rescue Practitioners, would immediately desist with such actions, failing which our client reserves the right to take the appropriate legal steps.

4 Our client's rights remain strictly reserved.

CHAIRMAN AW PRIVILIS CHIEF BRECUTIVE OFFICER & WINNIE CHIEF FINANCIAL OFFICER ES BUIGHT

DRECTORS: JOHANNESEURG A Abro H Alled JA Atkama CD Saird DA Barday R, Beaman E Bester P Bragatijes R. Bonnal CJ Boles TE Brincher N Burger CWJ Charter M Chanle CJ Daniel BF Dergeter S de Vries ML du Preaz L Eramus TV Fater JJ Feits TS Reicher L Franze TG Fultmenn F Galloo MZ Gattor S Gil SB Gore J Grivender AJ Notmary C, Honey Wri Jacobs VIII Janes van Rensburg CM Jessenten JOA Jones TM Yod J King Y Nekkens. LJ Kinger J Latisty Akt le Grange FE Laport AG Leele SC Massdorp Z, Jalinge G Maskins HW Mannes B Aleger WJ Michey R Nocklay MG Japater B, North IP officience A Rein Der Paris (CR) Ference V SI Filler J GB Pinnock, AM Poptierr VAV Freidricks AG Reid M Beservielle F Biogh-Zhuan MTV Stwanda Writh Tryns D Vallabh Int van der Mewe JJ ven Dyk WPG ven Wyk NJ von Sy JG Webber MF Writelater JG Witten B Wellaces LD Wilson JH Wits-Newsinger MF Yeates

BREICTORE: CAPE TOWN AC Alexander RD Banandae TJ Brawle MA Bronley MR Colline HC Degul A de Lenge LF Egypt & Fond S Franks DF Fyler SAP Gie JW Graan AJ Hannie AM Halberg FB Hesseling CJ Hindley RC Ham S Intoleinen JH Jacobs R Jage A Karlace JJ Leasing GC Lumb RE stances SI Meyer A Mooinen HW Maler J Hesse FT Newharn B Oniel CH Plenser L Rhoode MB Rodgers BT Rubleslah RPA Shituse DM Thompson CW Williams TJ Winstanley

EXECUTIVE CONSULTANTS: HS Contant FJ Convente MB Jackson

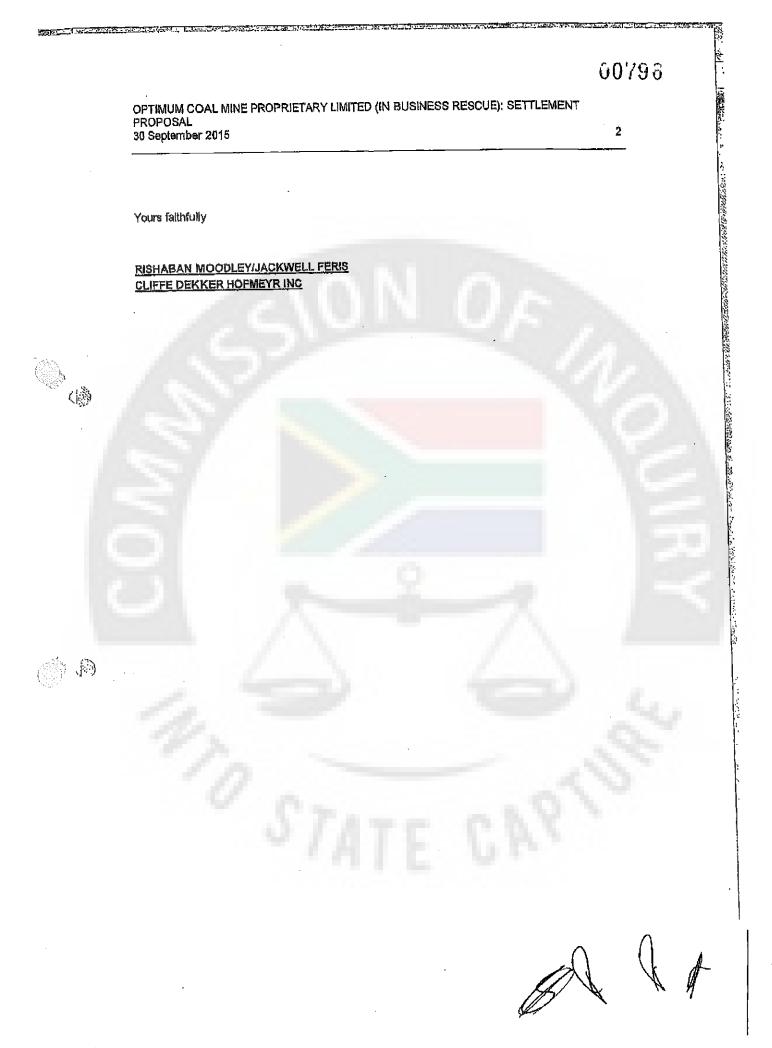
CONSULTANTS: A Abergraphie JKA Eventuar" CH Ewing EJ Kingdon FF Kalbe

SEMIOR ASSOCIATES: F Anser-Mile G Berkhrizen-Barbose MA Bobet & Brown L Granton K Ceddy & Chang NS Consis J da Vos YM Dochrei L Engelspecht T Wzerkus TV Ersenus P Jani' T Jordeen KJ Keenty JA Krige H Leing CJ Leine HJ Louny NS Maenthise N Mohunu N 48s T Moodhy CP Mader DJ Heido AP Pilley KS Picks B Polesgint NA Presion JR Ripley-Evens LJ Selt BJ Sedice T Sulimon FJ Terlenche T Toen N Treumidit R Volayathum N van Zusei Né Werd N Zuens

OLIFTE DEKKER NOFMEYR SERVICES PROPRIETARY LIMITED DIRECTORS: 65 EMISAR A COMMIN R. VAN EADER & WIKARD

fection "Conscion "Dutch "Zichstration Cape Town Managing Parises

Cliffe Dekker Holmeyr Inc. Rog No 2008/018823/21





#### **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 Tei +27 11 535 8000 Fax +27 11 535 8600 www.werksmans.com enquiries@werksmans.com

YOUR REFERENCE: Mr E Levenstein/Ms L Becker/lb/OPTI13168.19/#3482477v1 **OUR REFERENCE:** DIRECT PHONE: +27 11 535 8237/8196 +27 11 535 9737/8796 DIRECT FAX: elevenstein@werksmans.com/lbecker@werksmans.com EMAIL ADDRESS:

5 October 2015

Dear Sirs

#### OPTIMUM COAL MINE PROPRIETARY LIMITED ("OCM") (IN BUSINESS RESCUE): SETTLEMENT PROCESS

- We refer to your letter dated 30 September 2015. 1
- We are disappointed that you have made no attempt to engage with the substance of our 2 proposal or to make any counterproposal. Our clients are considering how to proceed and we will revert in due course.
- Our clients categorically reject the allegation that any assets are being stripped at the 3 Optimum mine. No assets have been removed from the Optimum mine except for certain arm's length disposals of minor assets that were surplus to requirements, which have been approved by the joint business rescue practitioners in accordance with section 134 of the Companies Act and the secured creditor who has taken possession of all of OCM's movable assets.
- Our clients' right remains reserved. 4

Yours faithfully

Werksmans Attorneys THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa Directors D Hertz (Chairman) AL Armstrong BA Aronoff DA Arteiro T Bata JD Behr AR Berman NMN Bhengu L Bick HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villiers LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hoslosky BB Hotz HC Jacobs TL Janse van Rensburg N Jansen van Vuuren G Johannes S July J Kalimeyer SLG Kayana A Kenny BM Kew R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Loube JS Lubbe BS Mabasa PK Mabaso MPC Manaka H Masondo C Moraitis P Mosebo KO Motshwane L Naidoo J Nicklig JJ Niemand BPF Olivier WE Oosthulzen S Padayachy M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood BR Roothman W Rosenberg NL Scott TA Sibidia LK Silberman JA Smit JS Smit B Sono CI Stevens PO Steyn J Stockwell W Strachan JG Theron JJ Truter KJ Trudgeon DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker D Wegierski M Wiehahn DC Willians DG Williams E Wood BW Workman-Davies

IOHANNESBURG . CAPE TOWN . STELLENBOSCH . TYGER VALLEY

10.00

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WERKSMANS ATTORNEYS

#### DELIVERED BY EMAIL

#### **Cliffe Dekker Hofmeyr**

Attention: Rishaban Moodley Email: rishaban.moodley@diacdh.com Johannesburg Office 155 5th Street Sandton 2196 South Africa Private Bag 10015 Sandton 2146. Docex 111 Sandton Tel +27 11 535 8000 +27 11 535 8600 Fax www.werksmans.com enquirles@werksmans.com

YOUR REFERENCE:

Mr E Levenstein/Ms L Becker/lb/OPTI13168.19/#3517100v1 OUR REFERENCE: +27 11 535 8237/8196 DIRECT PHONE: +27 11 535 9737/8796 DIRECT FAX: elevenstein@werksmans.com/lbecker@werksmans.com EMAIL ADDRESS:

27 October 2015

Dear Sirs

#### ESKOM HOLDINGS LIMITED ("YOUR CLIENT") / BUSINESS RESCUE PRACTITIONERS OF OPTIMUM COAL MINE PROPRIETARY LIMITED ("OUR CLIENTS")

- We refer to our previous correspondence in this matter. 1.
- As you are aware, it was agreed between our respective clients that Optimum Coal Mine 2 Proprietary Limited ("OCM") would re-commence supplying coal to Eskom for a period of 60 days commencing on 4 September 2015 on condition that our clients would engage in good faith negotiations to resolve the impasse that has arisen in respect of the Coal Supply Agreement.

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- Despite the attempts made by our clients to engage with representatives of your client and the 3 proposal made by our clients in their letter dated 17 September 2015, your client has, to our clients' disappointment, failed to engage or negotiate with our clients in any meaningful respect.
- Nevertheless, our clients are continuing to explore alternatives as part of the business rescue 4 process for OCM and will be procuring an extension for the publication of the business rescue plan. Notwithstanding the difficulties imposed by your client's unwillingness to engage in good faith with our clients, our clients have secured sufficient funding to 30 November 2015 to allow them to extend the existing supply arrangement until such date. If your client is not willing to continue on such basis, please advise by no later than 31 October 2015.
- Our clients' right remains reserved. 5

Yours faithfully

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa Diractors D Hertz (Chairman) AL Armstrong BA Aronoff DA Arteiro T Bata JD Beitr AR Berman NMN Bhengu L Bick HGB Boshoff GT Bossr TJ Boswell MC Bronn W Brown PF Burger PG Cieland JG Ciesta PD Cotteser C Cole-Morgan JN de Villers LJ du Prezz RJ Feeristra S Fodor SJ Gardiner D Gewar MC Bronn W Brown PF Burger PG Cieland JG Ciesta PD Cotteser C Cole-Morgan JN de Villers LJ du Prezz RJ Feeristra S Fodor SJ Gardiner D Gewar MC Bronn W Brown PF Burger PG Cieland JG Ciesta PD Cotteser C Cole-Morgan JN de Villers LJ du Prezz RJ Feeristra S Fodor SJ Gardiner D Gewar G Johannes S July J Kalimeyer SLG Kayana A Kenny BM Kew R Kiloran N Kitby HA Kotza S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lobher J S Lubbe DS Mabasa PK Mabaso MPC Manaka H Masonde C Moralits P Mosebo KO Motshwane L Naidoo J Nicklø JJ Niemand BPF Olivier WE Oosthuizen JS Lubbe DS Mabasa PK Mabaso MPC Manaka H Masonde C Moralits P Mosebo KO Motshwane L Naidoo J Nicklø JJ Niemand BPF Olivier WE Oosthuizen JS Lubbe DS Mabasa PK Mabaso CI Stevens PO Steva J Stockweil W Strachan JG Theron JJ Truter KJ Trudgeon DA van den Berg HA van Niekerk LK Silberman JA Smit JS Smit B Sono CI Stevens PO Steva J Stockweil W Strachan JG Theron JJ Truter KJ Trudgeon DA van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker D Weglerski M Wiehann DC Williams E Wood BW Morkman-Davies

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#### CONFIDENTIAL

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Eskom Holdings SOC Limited Megawatt Park Maxwell Drive Sunninghili

Attention: Matshela Koko : Group Executive - Generation

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

29 October 2015

Dear Matshela

#### OPTIMUM COAL MINE (PTY) LTD (IN BUSINESS RESCUE) : OPTIONS

We refer to the meeting held at your offices on 28 October 2015 at which we discussed the various options currently available to the business rescue practitioners ("BRPs") in order rescue the business of Optimum Coal Mine (Pty) Ltd ("OCM") in light of Eskom's unfortunate blanket rejection of the proposal made by the BRPs on 17 September 2015. As requested, we set out those options below in writing for Eskom's benefit.

Option 1 - sale of OCM to a third party

The first option is that OCM or the assets of OCM are sold to a third party on the basis that this third party would continue performing the existing Coal Supply Agreement ("CSA") with Eskom. As the assets of OCM are secured in favour of a consortium of banks, this option would require the third party to agree to assume a meaningful portion of the third party debt in order to secure a release of the secured assets. The assumption of such debt would need to be negotiated with the banking consortium that holds the security.

There is a very limited universe of buyers who have the ability and willingness to commit the approximately R4.2 billion worth of funding that is required to acquire the business of OCM on this basis. This option would require that the alleged historical penalty claims are reasonably addressed

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: 1\* Floor, Nedbank Building, 23 Melrose Boulevard, Melrose Arch, Melrose North, Johannesburg, 2196, South Africa Mailing Address; Suite No. 19, Private Bag X1, Melrose Arch, Johannesburg, 2076 Tel: +27 11 772 0600 Fax: +27 11 772 0697

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

## 00357

#### Page 2

so that they do not form part of the liabilities or contingent liabilities of OCM. The BRPs have received an expression of interest from a party (Oakbay investments (Pty) Ltd) which is interested in purchasing the assets of OCM on this basis and the BRPs are progressing discussions with Oakbay. We confirm that Oakbay has (since our meeting on 28 October) given us permission to disclose their identity to Eskom. The BRPs have limited time in which to explore this option because they require approximately R120 million worth of funding on a monthly basis to continue operating OCM and supplying Eskom on the current basis.

#### Option 2 - sale of OCM to Eskom

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The second option is that OCM or the assets of OCM are sold to Eskom along the lines set out in Option 1 above. The same requirements regarding the assumption of the debt and resolution of the alleged penalty claims would be applicable in this scenario. We are also fairly certain that the banking consortium would be comfortable in dealing with Eskom in developing a financial structure that works for all parties concerned.

We understand Eskom may be interested in acquiring export allocation. The export allocation utilised by OCM is owned by a separate legal entity (which also forms part of the banks' security package) but this could be negotilated on a separate basis as an add-on – again paired with the assumption of a portion of the debt.

As noted in our discussions, OCM has the capacity to supply good quality coal not only to Hendrina, but also to other power stations if the currently curtailed mining sections are started up again. From a strategic point of view, this would potentially contribute positively towards coal supply security for Eskom in the long run.

## Option 3 - Sale to third party on condition that new terms with Eskom are agreed

The third option is that OCM or the assets of OCM are sold to a third party via a competitive disposal process but such sale would be conditional on Eskom agreeing to more sustainable terms and, if necessary, to address its alleged penalty claims. This deal would obviously expand the number of potential purchasers for the assets of OCM but in order for the BRPs to able to run a competitive sale process, they would need Eskom to agree to more sustainable terms applying during such process because the BRPs will be unable to source funding during such process. If Eskom is willing to cooperate and provide some upfront indication that it would support a transaction of this nature, the option becomes more viable.

We have not included the option set out in our 17 September 2015 letter in light of Eskom's clear indication that it is not willing to agree any amendments to the CSA under the current ownership structure. We remain of the view that this is the most viable and compelling option for rescuing OCM for both Eskom and OCM, so we encourage Eskom to reconsider its position.

Eskom obviously has a major role to play in each of these options and it would be very helpful if Eskom were willing to indicate what its views are in relation to each option. In particular, if Eskom is interested in purchasing OCM, it should advise as soon as possible, because it could impact the process which the BRPs are currently undertaking with Oakbay.

We reiterate that if none of these options prove to be viable in the short term, then the BRPs expect that they will have no option but to put OCM into liquidation.

As we have indicated previously, we have been very disappointed in Eskom's unwillingness to engage meaningfully during this business rescue process notwithstanding its role as a key stakeholder and our best intentions to rescue OCM for the benefit of all stakeholders. We hope that our recent meeting will portend a more collaborative and co-operative relationship between both parties. As per our

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# 60353 Page | 3 discussions on 28 October you undertook to respond to us by the close of business on Monday, 2 November 2015. We look forward to hearing from you as soon as possible. Yours faithfully Peter Van Den Steen Plers Marsden Joint Business Rescue Practitioners for Optimum Coal Mine (Pty) Ltd (In Business Rescue) Ś (劇. 1)

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Your ref

W Zwiegers/Ze171

Our ref

12 August 2015

Writer's Direct Fax Line: 086 619 6422

Date

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PETER VAN DEN STEEN EMAIL; peter@v2rescue.co.za

Dear Sir

## OUR CLIENT; ENDULWINI MINING CORPORATION

We were informed by Optimum Colliery to communicate our client's offer to you and attach hereto a copy of the letter containing the offer addressed to Optimum Colliery as well as their response.

Should you require to discuss the details of our client's offer, please let us have a date, time and place for this meeting.

In the interim kindly also let us know when the first meeting of affected persons is scheduled for.

Yours faithfully

ZWIEGERS ATTORNEYS

Willem BJ Zwiegers - BProc Cell: 082, 561 5552

Telephone 0879452100 Fax 0113252207 Email corrie@zwiegers.co.za Dunkeld West Centre, 2<sup>r5</sup> floor, Office 288 Car Bompas & Jan Smuts Avenue, Dunkeld PO Box 41917, Craighall 2024

## 60321

05 August 2015

Mr. Shaun Blankfield Glencore 1<sup>st</sup> Floor Melique Boulevard Melrose Arch 2196

By email: sheun blankfield@plancom.com

Dear Shaun,

#### **Optimum** Colliery

ENDULW

Thank you for the summary information provided. To be frank, the information was, disappointingly limited, especially given the time it took to put it together. Given the limited nature of the information we have had to seek information from past records and whatever information is publicly available in order to make an indicative offer and consequently the indicative offer we make here below is still subject to a full due diligence and confirmation of information. As a result we will not be in a position to pay the proposed non-refundable USD10-million, proposed to be payable at the comencement of the due diligence.

Chur information suggests that we make an offer, and we hereby do make the offer, for ZARE.5-billion subject to a full due diligence for 100% of Optimum Crai Holdings and all its assets, including but not limited to;

- 1. The approximately 6.5-million tone of RBCT shareholding;
- 2. All mining and any mineral rights held by the company;
- 3. The Rehabilitation funds and
- 4. Other assets owned by the company.

Encluived Mining Corporation (Pty) Ltds Reg 2012/10/145/07 Tel: #27 11 459 2000 Foca 427 11 455 0044 #.0, Box 1815, Bedfordwine 2008

Rirectors: SP Dube (Chairman) BK Longwe, BT Majoka, DNA Mograi (NAs) (Chief Executive Officer); C. Nyuswa (Ma)

## 60322

Endulwin) Mining Corporation (Pty) Ltd

To confirm the offer we need the following information and/ or planifications, among other information that may be required;

- 1. What reserves and exact assets are owned by Optimum Coal Holdings and included in the proposed sale and purchase?
  - a, Any part sale will make it extremely difficult for two companies to be operational on the same reserve property with extremely interconnected operations from an underground and opencest point of view,
    - i. For instance; how will the water seepage issue be addressed by two companies mining the same reserve base and that are interconnected.
  - b. This information is required also because some potential relative low strip ratio opencast-able reserves might be classified as underground reserves due to the seam thickness. The thicker the seam, the lower the strip ratio depending on the burden thickness and taking into consideration the lowered underground mining cost associated with thicker seam mining.
  - c. The above mentioned point will have a severe impact on the overall utilisation of reserves due to differences in extraction factors associated with opencast and underground mining.

2. We need to establish how Glencore intends to address the full rehabilitation liability of which the largest portion is associated with historical opencast mining.

3. We need the exact assets that will be included in the proposed sale and purchase.

- a. The information provided makes no mention of the RBCT through put capacity (approx. 6.5 mtpa); for example;
- b. In fact surprisingly there is no mention in the information provided of the significant export volumes of Optimum.
- 4. How will this proposed sale impact on the other shareholders; apparently. Glencore only holds 68% of Optimum?
- 5. There seems to be a substantial Eskom liability that is not accounted for in the information supplied. Apparently there is tonnage undersupplied and apparently there are quality penalties also outstanding. What is the extent of the Eskom liabilities, if any?

Given the lack of slarity of the above from the information provided, a proper and detailed due diligence looking at the total operation will be required to calculate a firm offer and following from there provide any proof of funds. Having said that our information at the moment is that the price of ZAR1.5-billion is fair value, but as indicated subject to confirmation.

Hoping this letter meets with your favourable consideration.

Yours sincerely Dube hairman

Page 2 of 2



#### DELIVERED BY EMAIL

#### **Zwiegers Attorneys**

Attention: Mr W Zwiegers Email: corrie@zwlegers.co.za 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 Fax www.werksmans.com enguirles@werksmans.com

YOUR REFERENCE:	W Zwiegers/Ze171 Mr E Levenstein/Ms L Becker/Ib/OPTI13168.19/#3387747v1
DIRECT PHONE:	+27 11 535 8237/8196
DIRECT FAX:	+27 11 535 8737/8796
EMAIL ADDRESS:	elevenstein@werksmans.com/lbecker@werksmans.com

13 August 2015

#### Dear Sirs

## OPTIMUM COAL MINE PROPRIETARY LIMITED (IN BUSINESS RESCUE) AND OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED (IN BUSINESS RESCUE)

- We act on behalf of Piers Marsden and Peter van den Steen, the joint business rescue 1 practitioners of Optimum Coal Mine Proprietary Limited ("OCM") and Optimum Coal Holdings Proprietary Limited ("OCH").
- Our client has provided us with a copy of your letter dated 12 August 2015 and thanks you for 2 your letter.
- Our client has, however, confirmed that at this stage it is not entertaining offers for the 3 purchase of OCM and/or OCH, or any of its assets but that in the event that it does explore such an alternative, it will invite your clients to join in the formal sales process.

Yours faithfully

Werksmans Attorneys THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

Warksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Streat Sandton 2196 South Africa Directors D Heriz (Chairman) AL Armstrong BA Aronoff DA Arteiro T Bata AR Berman NMN Bhengu L Bick HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Clotte PP) Coetser C Cole-Morgan JN de Villers ID du Presz RJ Fsenstra S Fodor SJ Gardiner D Gewer JA Gobetz W Brown PF Burger PG Cleland JG Clotte PP) Coetser C Cole-Morgan JN de Villers ID du Presz RJ Fsenstra S Fodor SJ Gardiner D Gewer JA Gobetz W Brown PF Burger PG Cleland JG Clotte PP) Coetser C Cole-Morgan JN de Villers ID du Presz RJ Fsenstra S Fodor SJ Gardiner D Gewer JA Gobetz V Brown PF Burger SG Griessel J Holleson MGH Honiball VR Hoslosky BB Hotz HC Jacobs TL Janse van Rensburg N Janser van Vuuren G Johannes S July J Kallmeyer SLG Kayana A Kenny BM Kew R Killoran. N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner JS Luby BS Mabasa PK Mabaso MPC Manaka H Nasondo C Moralits KO Motshwane L Naldoo J Nicklg JJ Niemand BPF Olivier WE Oosthulzen S Padayachy BP Pansegrouw CP Pauw AV Pilley T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood BR Roothman W Rosenberg NL Scott TA Sibibia LK Silberman JA Smit JS Smit CI Stevans PO Stevn J Stockwell W Strachen JG Theron JJ Trutor KJ Trudgeno DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakoffeld DC Walker D Wegierski M Wiehahn DC Williams DG Williams E Wood SW Workman-Dayes

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Your ref	Qur ref	Date
Mr E Levenstein /Ms L Becker OPTI13168.19/#3387747v1	W Zwiegers/ZE171	15 December 2015

Writer's Direct Fax Line: 086 619 6422

WERKSMANS ATTORNEYS FAX: 011 535 8737/8796

Dear Sipho

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OPTIMUM COAL MINE (PTY) LTD (IN BUSINESS RESCUE) AND OPTIMUM COAL HOLDINGS (PTY) LTD (IN BUSINESS RESCUE OUR CLIENT: EZIMBORODWENI MINING (PTY) LTD

Your letter of the 13th August 2015 refers (copy attached for ease of reference).

Your client is now entertaining offers and our client wishes to participate in the formal sales process as per your client's undertaking in paragraph 3 of your abovementioned letter.

Please let us know whether it will be possible to start commencing negotiations this week.

Yours faithfully

W B ( ZWIEGERS ZWIEGERS ATTORNEYS

Kindly note that these offices will close at 13h00 on 15 December 2015 and re-open on 13 January 2016

Willem BJ Zwiegers - BProc Cell : 082 561 5552 Telephone 0879452100 Fax 0113252207 Email corrid@zwiegers.co.za DunkeldWest Centre, 2<sup>nd</sup> floor, Office 288 Chr Bombas & Jan Smuts Avenue, Dunkeld PO Bax 41917, Craighal 2024



#### DELIVERED BY EMAIL

#### Zwiegers Attorneys

Attention: Mr W Zwiegers Email: corrie@zwlegers.co.za **Johannesburg Office** 155 5th Street Sandton 2196 South Africa Private Bag 10015 Sandton 2146 Docex 111 Sandton +27 11 535 8000 Tel Fax +27 11 535 8600 www.werksmans.com enquirles@werksmans.com

YOUR REFERENCE:	W Zwiegers/Ze171
OUR REFERENCE:	Mr E Levenstein/Ms L Becker/lb/OPTI13168.19/#3611693v1
DIRECT PHONE:	+27 11 535 8237/8196
DIRECT FAX:	+27 11 535 8737/8796
EMAIL ADDRESS:	elevenstein@werksmans.com/lbecker@werksmans.com

28 December 2015

Dear Sirs

## OPTIMUM COAL MINE PROPRIETARY LIMITED (IN BUSINESS RESCUE) AND OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED (IN BUSINESS RESCUE)

- We refer to your letter dated 15 December 2015 ("your letter"), received by our offices on 23 1 December 2015.
- You would be aware from the press reports that our clients, the business rescue practitioners, 2 concluded an agreement with Tegeta Exploration & Resources Proprietary Limited for the sale of Optimum Coal Holdings Proprietary Limited's assets. This includes Optimum Coal Mine Proprietary Limited ("OCM"). Our clients did not conduct a formal sales process.
- Our clients are of the view that the agreement presents the most compelling value for all 3 stakeholders of OCH and will if implemented in accordance with its terms discharge OCM from its business rescue proceedings.
- The agreement however remains subject to the fulfilment of certain suspensive conditions. In 4 the event that the conditions are not fulfilled or walved as the case may be, our clients will be in contact with you and your client.
- Our clients' rights remain reserved. 5

Yours faithfully

Werksmans Attorneys THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa Directors D Hertz (Chairman) AL Armstrong BA Aronoff DA Arteiro T Bata JD Behr AR Bernen NMN Bhengu L Bick HGB Boshoff GT Bossr TJ Boswell MC Bronn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villers LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer G Johannes S July J Kalimeyer SLG Kayana A Kenny BM Kew R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Lothner JS Lubbe BS Mabasa PK Mabaso MPC Manaka H Masondo C Moraltis P Mosebo KO Motshwane L Naidoo J Nickig JJ Nemand BPF Olivier WE Oosthuizen JS Padayachy M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood BR Roothman W Rosenberg NL Scott TA Sibidia LK Silberman JA Smit JS Smit B Sons CI Stavans PO Steyn J Stockwell W Strachan JG Theron JJ Truter KJ Trodgeon DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker D Weglerski M Wiehaha DC Williams DG Williams E Wood BW Workman-Davies

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Mr E Levenstein /Mis L Becker OPTI13168.19/#3611693v1 W Zwlegers/ZE171

Date

17 February 2016

Writer's Direct Fax Line: 088 619 6422

WERKSMANS ATTORNEYS FAX: 011 535 8737/8796 FAXED

Dear Sir

OPTIMUM COAL MINE (PTY) LTD (IN BUSINESS RESCUE) AND OPTIMUM COAL HOLDINGS (PTY) LTD (IN BUSINESS RESCUE OUR CLIENT: ENDULWINI MINING CORPORATION (PTY) LTD

Previous communications and in particular your letter of the 13th August 2015 refers.

On 13 August 2015 your client undertook to invite our client to join the formal sales process. Despite this undertaking, we were informed that your client concluded an agreement with Tegeta Exploration & Resources (Pty) Ltd for the sale of Optimum Coal Holding (Pty) Ltd assets, which included Optimum Coal Mine (Pty) Ltd.

You mentioned that your client has not conducted a formal sales process, but they were of the view that the Tegeta transaction presents the most compelling value for all stakeholders. This despite the fact that they did not engage with our client, nor did they in any way interrogate the substance of our client's offer.

We attach hereto our client's offer once again. This is a cash offer. You will note that the purchase consideration has been raised by 40 million US Dollars. The offer has been increased so that a billion Rand can be allocated to minority shareholders which will include workers and community.

Our client holds the view that their offer (even before its increase) represents a far better proposition to affected persons and in particular workers who have not taken voluntary retrenchment packages.

Certain of the minorities, inter alia the Mankoe Trust have indicated that they prefer our client's offer to that of Tegeta.

Rumour has it that the representations made to the Competition Commission when its approval was sought, was not entirely accurate in that it did not fully disclose our client's offer. We believe this renders any decision taken by the Competition Commission reviewable.

Reports in the press create the impression that Glencore is in fact the driving force and mastermind behind the disposal process and your client, the business rescue practitioners are not independent.

Willem BJ Zwiegers - BProc Cell : 082 561 5552

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Telephone 0879452100 Fax 0113252207 Email Corrie@zwiegers.co.za Dunkeld West Centre, 2<sup>nd</sup> floor, Office 288 Car Bompas & Jan Smuts Avenue, Dunkeid PO Box 41917, Craighall 2024

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In the above circumstances therefore, please confirm that:

- 1. Your client will put our client's offer to the affected parties and then amend its business rescue plan to contain our client's offer.
- Any consent and/or approval by the Competition Commission will be waived as being irregular; alternatively will not be acted on pending a review thereof.

Sight should not be lost of the fact that there is more than money in Issue and regard should be had for what is in the interest of the workers, the general public and the affected communities. Negotiating within these perimeters should tip the scales in favour of our client's offer.

Yours faithfully

W B JZWIEGERS ZWIEGERS ATTORNEYS

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#### 00323

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17January 2016

The Business Rescue Practitioners -Glencore

By email:

Dear Sirs,

Optimum Coal Holdings (Pty) Ltd and Optimum Coal Mine (Pty) Ltd

We hereby make a revised offer for 100% of Optimum Coal Holdings (Pty)Ltd and Optimum Coal Mine (Pty) Ltd, Koornfontein Mine, Optimum Coal Terminal and all their assets for a purchase consideration of USD240-million.

The purchase consideration shall be used to settle the creditors, i.e. the banks, pay the minority shareholders and for the initial working capital to normalise the operation of the two companies.

Endulwini Mining is committed to preserve all the current jobs in the two companies.

The assets comprised in the sale shall include but not be limited to;

- 1. The approximately 8.5-million tons of RBCT shareholding;
- 2. All mining and any mineral rights held by the two companies;
- 3. The Rehabilitaion fund; and
- 4. Other assets owned by the company.

Our funders have confirmed that they are ready to present their credentials when required to do so.

We make this revised offer at the request of interested stakeholders who have taken note of the press reports around the current business rescue progress and are

> Endulwini Mining Corporation (Pty) Ltd: Reg 2012/104145/07 Tel: 427 11 450 2000 Fbx: 427 11 455 D044 P.O. Box 1815, Bedfordview 2008

Directors: SP Dube (Chairman) BK Langwe, BT Majala, DM Magaal (Ms) (Chief Executive Officer), C Nyuswa (Ms)

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Endulwini Mining Corporation (Pty) Ltd

concerned that information regarding the reported transaction is either not forthcoming and/or not transparent.

We hope to hear your response to this revised offer from you rather than read of your response in the press.

Yours sincerely;

17-02-'16 09:01 FROM-

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Sipho Dube Chairman

Fage 2 of 2

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#### DELIVERED BY EMAIL

#### **Zwiegers Attorneys**

Attention: Mr W Zwiegers Email: corrle@zwiegers.co.za **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 Fax www.werksmans.com enquiries@werksmans.com

YOUR REFERENCE: W Zwlegers/ZE171 Mr E Levenstein/Ms L Becker/Ib/OPTI13168.19/#3670309v1 OUR REFERENCE: +27 11 535 8237/8196 DIRECT PHONE: +27 11 535 8737/8796 DIRECT FAX: elevenstein@werksmans.com/lbecker@werksmans.com EMAIL ADDRESS:

23 February 2016

Dear Sirs

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#### OPTIMUM COAL MINE PROPRIETARY LIMITED (IN BUSINESS RESCUE) AND OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED (IN BUSINESS RESCUE) / ENDULWINI MINING CORPORATION PROPRIETARY LIMITED

- We refer to your letter dated 17 February 2016 ("your letter") and to the offer enclosed 1 therewith dated 17 January 2016 ("Offer").
- As you are aware from our previous correspondence, we act on behalf of Piers Marsden and 2 Peter van den Steen, the joint business rescue practitioners of Optimum Coal Mine Proprietary Limited ("OCM") and Optimum Coal Holdings Proprietary Limited ("OCH")
- We do not intend to deal with each of the points and allegations raised in your letter and 3 reserve our clients' rights to do so fully and to the extent necessary.
- As you are aware from our letter dated 28 December 2015, our clients did not conduct a 4 formal sales process. Our client was under no obligation to do so. Various parties approached our clients and expressed an interest in acquiring the shares and/or assets of OCM and/or OCH. One of the expressions of interest was from your client.
- Having considered all offers and options presented to it, our clients determined that the offer 5 presented by Tegeta Exploration & Resources Proprietary Limited ("Tegeta") presented the most compelling offer for all stakeholders of OCH and OCM.
- Before our clients can put your client's Offer to affected persons they require the following 6 detail from you -
- full details of the purchaser as well as the direct and indirect shareholders of the 6.1 purchaser and all of their respective experience in operating a mine;

JOHANNESBURG . CAPE TOWN . STELLENBOSCH . TYGER VALLEY

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 1.55 Sth Streat Sandton 2196 South Africa Directors D Hartz (Chairman) AL Armstrong BA Aronoff DA Arteiro T Bata JD Behr AR Berman NMN Bhengu L Bick HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cieland JG Cloete PPJ Coeter C Cole-Morgan JN de Villiers LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer G JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hosiosky BB Hotz HC Jacobs TL Janse van Rensburg N Jansen van Vurren JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hosiosky BB Hotz HC Jacobs TL Janse van Rensburg N Jansen van Vurren JS Lubbe ES Mabase PK Mabaso MPC Manaka H Masondo C Moratitis P Mosebo KO Motshwane L Naldoo J Nickig JJ Niemand BF Olivier WE Oosthulzen JS Lubbe ES Mabase PK Mabaso MPC Manaka H Masondo C Moratitis P Mosebo KO Motshwane L Naldoo J Nickig JJ Niemand BF Olivier WE Oosthulzen JS Lubbe ES Mabase PK Mabaso MPC Manaka H Masondo C Moratitis P Mosebo KO Motshwane L Naldoo J Nickig JJ Niemand BF Olivier WE Oosthulzen JS Lubbe ES Mabase JK Mabaso MPC Manaka H Masondo C Maratitis P Mosebo KO Motshwane L Naldoo J Nickig JJ Niemand BF Olivier WE Oosthulzen JS Lubbe ES Mabase JK Mabaso MPC Manaka H Masondo C Maratitis P Mosebo KO Motshwane L Naldoo J Nickig JJ Niemand BF Olivier WE Oosthulzen JS Lubbe ES Mabase JK Mabaso MPC Manaka H Masondo C Maratitis P Mosebo KO Motshwane L Naldoo J Nickig JJ Niemand BF Olivier WE Oosthulzen JS Lubbe ES Mabase JK Mabaso MPC Manaka H Masondo C Watkana JG Theron JJ Truter XI Trudgeon DA van den Barg HA van Niekerk LK Silbermen JA Smit JS Smit B Sono CI Stevens PO Stevn J Stockweit W Strachan JG Theron JJ Truter XI Trudgeon DA van den Barg HA van Niekerk LK Silbermen JA Smit JS Smit B Sono CI Stevens PO Stevn J Stockweit W Welahah DC Williams E Wood BW Workman-Davies FJ van Tonder JP van Wyk A Vatalldis RN Wakefield DC Walker D Weglerski M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies

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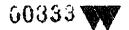


6.2 full details of the nature of the transaction (share sale or asset sale);

- 6.3 a bank guarantee for the purchase price of USD240 000 000 ("**Purchase Price**") in a form acceptable to our clients in their sole discretion;
- 6.4 how your client intends to ensure that the minority shareholders receive a consideration of R1 billion from the Purchase Price in light of the -
- 6.4.1 pre-commencement claim of the consortlum of banks in the amount of approximately R2.6 billion;
- 6.4.2 pre-commencement claim from shareholder lenders in the amount of approximately R1 billion;
- 6.4.3 pre-commencement claims of the trade creditors of OCM in the amount of approximately R289 million;
- 6.4.4 post-commencement claim of the consortium of banks in the amount of approximately R251 million; and
- 6.4.5 post-commencement claim of Tegeta in the amount of approximately R46 million;
- 6.5 details about whether your client intends to supply coal to Eskom on the terms of the current Coal Supply Agreement;
- 6.6 details of how your client intends to operate the mine after the closing of any transaction including confirmation of the availability of funding to support the operations of OCM on an ongoing basis from the date on which transaction agreements are signed; and
- 6.7 confirmation that your client's Offer has no other conditions.
- 7 We draw your attention to the fact that any sale of OCH's shares and claims and/or assets will require the consent of either the creditors and/or both the shareholders and creditors of OCH depending on the structure of the transaction.
- 8 Our clients are required to publish the business rescue plans of OCH and OCM soon and will accordingly require the aforesaid information by no later than 17h00 on 28 February 2016.
- 9 Once our clients have considered the veracity of the aforesaid information they will be in a position to advise you whether or not they believe that the Offer can be put before the body of affected persons for consideration.
- 10 Insofar as the Competition Commission ("Commission") is concerned, our clients -
- 10.1 deny that information provided, or representations made, to the Commission were inaccurate or irregular;
- 10.2 deny that they were required to disclose your client's Offer to the Commission;
- 10.3 do not believe that this is a matter to be determined by the Commission or that any decision made by the Commission or Competition Tribunal ("Tribunal") can be reviewed on this basis. The Commission and Tribunal evaluate the transaction notified to the Commission and have no power to evaluate other potential transactions, or to evaluate the notified transaction by reference to other potential transactions; and

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- 10.4 are not at liberty to provide your client with an undertaking that they will waive any consent or approval that is granted by the Commission or Tribunal in respect of the Tegeta offer. This is not something that is within their powers as business rescue practitioners nor is it something which our clients are required to provide. The approval by the Commission or Tribunal does not oblige our clients to proceed with the Tegeta offer, which will only be implemented if it is approved as part of a business rescue plan for OCH.
- 11 Our clients have a duty to act in the best interests of all stakeholders and maintain that they have done so for the duration of the business rescue proceedings of OCM and OCH. Your client's assertion that our clients are not independent is denied.
- 12 We awalt to hear from you.

Yours faithfully

Werksmans Attorneys THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

#### 24-02-'16 10:36 FROM-

00334 T-140 P0001 F-507

# zulegers

Your ref

Our ref

W Zwiegens/ZE171

Date 24 February 2016

Writer's Direct Fax Line: 086 619 6422

WERKSMANS ATTORNEYS FAX: 011 535 8737/8795

Mr E Levenstein /Ms L Becker OPTI13168.19/#3670309v1

Dear Sir

OPTIMUM COAL MINE (PTY) LTD (IN BUSINESS RESCUE) AND OPTIMUM COAL HOLDINGS (PTY) LTD (IN BUSINESS RESCUE OUR CLIENT: ENDULWINI MINING CORPORATION (PTY) LTD

We are in receipt of your letter of the 23rd February 2016.

To enable us to obtain a proper instruction and assist our client in properly responding to the contents of your abovementioned letter, we would be grateful if you could let us have copy of the Tegeta Exploration & Resources Proprietary Limited (Tegeta's) offer. This will enable our client to finalize their offer in such a way that it can, from a conditions point of view, compete on an equal footing.

Could you also provide us with the verbiage that your clients would require in respect of the bank guarantee mentioned in paragraph 6.3 of your letter.

Upon receipt of the above, our client undertakes to properly respond to your letter of the 23<sup>rd</sup> February 2016 yithin 48 hours.

Yours faithfully

W B J ZWEGERS ZWIEGERS ATTORNEYS

Willem BJ Zwiegers - BProc Cell : 082 561 5552 Telephone 0879452100 Fax 0113252207 Email corrie@zwiegers.co.za Dunkeld West Centre, 2<sup>nd</sup> floor, Office 288 Cnr Bompas & Jan Smuts Avenue, Dunkeld PO Box 41917, Caighall 2024



#### DELIVERED BY EMAIL

#### **Zwiegers Attorneys**

Attention: Mr W Zwlegers Email: corrie@zwiegers.co.za Johannesburg Office 155 5th Street Sandton 2196 South Africa Private Bag 10015 Sandton 2146 Docex 111 Sandton Tel +27 11 535 8000 Fax +27 11 535 8600 www.werksmans.com enquirles@werksmans.com

YOUR REFERENCE: W Zwiegers/ZE171 OUR REFERENCE: Mr E Levenstein/Ms L Becker/lb/OPTI13168.19/#3673625v2 +27 11 535 8237/8196 DIRECT PHONE: +27 11 535 8737/8796 DIRECT FAX: elevenstein@werksmans.com/lbecker@werksmans.com EMAIL ADDRESS:

25 February 2016

Dear Sirs

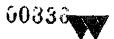
### OPTIMUM COAL MINE PROPRIETARY LIMITED (IN BUSINESS RESCUE) AND OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED (IN BUSINESS RESCUE) / ENDULWINI MINING CORPORATION PROPRIETARY LIMITED

- We refer to your letter dated 24 February 2016. 1
- Our clients are not in a position to disclose the terms of the Tegeta offer to any third party as 2 such terms are naturally subject to confidentiality provisions.
- However, the conditions to the Tegeta offer, which have been made public are -3
- the approval by the boards of directors of each of Tegeta and Oakbay Investments 3.1 Proprietary Limited;
- the signature of the transaction agreements; 3.2
- the approval of the transaction by the lenders of OCH; 3.3
- the approval of the Competition Tribunal; 3.4
- approval of the Minister in the Department of Mineral Resources; 3.5
- the consent of Eskom to the transaction and the release of DCH from the guarantee given 3.6 to Eskom by OCH for the debts of OCM and the release of its past and current affiliates (other than the companies that Tegeta is acquiring) from all claims of whatsoever nature and howsoever arising; and
- the adoption of a business rescue plan for OCH. 3.7

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa Directors D Hertz (Chairman) AL Armstrong BA Aronoff DA Arteiro T Bata JD Behr AR Berman NMN Bhengu L Bick HGB Boshoff GT Bossr TJ Boswell MC Bronn W Brown PF Burger PG Cleiand JG Cloete PPJ Coetser C Cole-Morgan JN de Villers LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer JA Gobetz R Gootkin ID Gouves GF Griessel J Holiesen MGH Honiball VR Hosiosky B9 Hotz HC Jacobs T, Janst van Renaburg N Jansen van Vuuren JS Lubbe BS Mabasa PK Mabaso MPC Manaka H Masondo C Morattis P Mosebo KO Motsiwane L Naldoo J Nickig JJ Niemand BPF Olivier WE Oosthuizen S, Padayachy M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood BR Roothmane W Rosenberg NJ Scott TA Sibidia S, Padayachy M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood BR Roothmane W Rosenberg NJ Scott TA Sibidia S, Padayachy M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood BR Roothmane W Rosenberg NJ Scott W A Sibierman JA Smit JS Snit B Sono CI Stevens PO Steven J Stockwell W Strachan JG Theron JJ Truter KO Trudgoog DN van den Berg HA van Niekerk LK Silberman JA Smit JS Snit B Sono CI Stevens PO Steven J Stockwell W Strachan JG Theron JD Truter KO Trudgoog DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker D Waglerski M Wiehahn DC Willians DG Williams E Wood BW Workman-Davies

JOHANNESBURG . CAPE TOWN . STELLENBOSCH . TYGER VALLEY

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4 We will furnish you with wording for the bank guarantee shortly.

5 We await to hear from you.

Yours faithfully

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Werksmans Attorneys THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

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#### 26-02-'16 10:25 FROM-

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Your ref

Qur ref

Date

Mr E Levenstein Ms L Becker OPTI13168.19/#3673625v2

W Zwiegers/ZE171

25 February 2016

Writer's Direct Fax Line: 086 619 6422

WERKSMANS ATTORNEYS FAX: 011 535 8737/8796

Dear Sir

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OPTIMUM COAL MINE (PTY) LTD (IN BUSINESS RESCUE) AND OPTIMUM COAL HOLDINGS (PTY) LTD (IN BUSINESS RESCUE OUR CLIENT: ENDULWINI MINING CORPORATION (PTY) LTD

Your letter of the 25th February 2016 has reference.

Clause 3.7 of your latter only mentions the adoption of a business rescue plan for OCH. Is the adoption of the plan for OCM not required?

As stated in our letter of the 24<sup>th</sup> February 2016, we shall respond once we have the wording of the bank guarantee that your clients require.

Yours faithfully

W B J ZWEGERS ZWIEGERS ATTORNEYS

Willem BJ Zwiegers - BProc Coll : 082 561 5552

Telephone 0879452100 Fax 0113252207 Email corriseBzwiegers.co.za Dunkeld West Centre, 2<sup>rd</sup> floor, Office 288 Cnr Bompas & Jan Smits Avenue, Dunkeld PO Box 41917, Craighall 2024

#### 10-03-118 10:24 FROM-

00338

T-164 P0001 F-544



Your ref

Our ref

Mr E Levenstein /Ms L Becker W Zwiegers/ZE171 OPTI13168,19/#3673625v2 Date

8 March 2016

Writer's Direct Fax Line: 086 619 6422

WERKSMANS ATTORNEYS FAX: 011 535 8737/8796

Dear Sir

OPTIMUM COAL MINE (PTY) LTD (IN BUSINESS RESCUE) AND OPTIMUM COAL HOLDINGS (PTY) LTD (IN BUSINESS RESCUE OUR CLIENT: ENDULWINI MINING CORPORATION (PTY) LTD

Your client makes mention in a circular addressed to Endulwini representing a minority shareholder (who we now represent) that the DMR is in the process of finalizing approval of the transaction.

In the circumstances we would be grateful if you could forward to us a copy of the application. If your client is not prepared to let us have a copy of the application then a simple acknowledgement of receipt by the DMR of the application would suffice.

In the interim our client's bankers are finalizing the documentation relating to our client's payment issues.

Yours faithfully

W B J ZWIEGERS ZWIEGERS APTORNEYS

Willem BJ Zwiegers - AProc Cell : 082 561 5552 Telephone 0879452100 Fax 0113252207 Email corrie@zwiegers.co.za Dunkeld West Contre, 2<sup>m</sup> floor, Office 288 Cnr Bompas & Jan Smuts Ayenue, Dunkeld PD Box 41917, Craignall 2024





#### DELIVERED BY EMAIL

#### Zwiegers Attorneys

Attention: Mr W Zwiegers Email: corrie@zwiegers.co.za **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 Fax www.werksmans.com enquiries@werksmans.com

YOUR REFERENCE:	W Zwlegers/ZE171
OUR REFERENCE:	Mr E Levenstein/Ms L Becker/Ib/OPTI13168.19/#3700211v1
DIRECT PHONE:	+27 11 535 8237/8196
DIRECT FAX:	+27 11 535 8737/8796
EMAIL ADDRESS:	elevensteln@werksmans.com/lbecker@werksmans.com

10 March 2016

Dear Sirs

#### OPTIMUM COAL MINE PROPRIETARY LIMITED (IN BUSINESS RESCUE) AND OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED (IN BUSINESS RESCUE) / ENDULWINI MINING CORPORATION PROPRIETARY LIMITED

- We refer to your letter dated 8 March 2016, received by our offices at 10h25 on 10 March 1 2016, via facsimile.
- Neither the application to the Department of Mineral Resources ("DMR"), nor any 2 acknowledgment of receipt by the DMR, is available to affected persons of Optimum Coal Holdings Proprietary Limited (In business rescue) ("OCH").
- In any event, we do not understand the basis for the request and what purpose would be 3 served through the provision of an acknowledgement of receipt. Our clients, the business rescue practitioners, have confirmed that the application has been submitted and is being evaluated.
- We note that you are now also acting for a minority shareholder of OCH. Kindly advise for 4 whom you are acting and on what basis.
- Our clients' rights remain reserved. 5

Yours faithfully

Werksmans Attorneys THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

Werksmans Inc. Reg. No. 1990/007215/21 Registered Office 155 5th Street Sandton 2196 South Africa Directors D Hertz (Chairman) AL Armstrong BA Aronoff DA Arteiro T Bata JD Bekr AR Berman NMN Bhengu L Bick HGB Boshoff GT Bosse TJ Boswelf MC Brónn W Brown PF Burger PG Cleiand JG Cioete PPJ Coetser C Cole-Morgan JN de Villiers LJ du Preez RJ Feenstra S Fodor SJ Gardiner D Gewer G Johannes S July J Kalimeyer SLG Kavana A Kenny BM Kew R Killoran N Kirby HA Kotze S Krige PJ Krusche P le Roux MM Lessing E Levenstein JS Locher JS Lubbe BS Mabasa PK Mabaso MPC Manaka H Masondo C Moraltis P Mossob KO Motshwane L Naldoo J Nickig JJ Niemend BPF Olivier WE Costhulzen JS Padayactiy M Pansegrouw CP Pauw AV Pillay T Potter BC Price AA Pyzikowski RJ Rasch A Ramdhin L Rood BR Rodthman W Rosenberg NL Scott TA Sibidia LK Silberman JA Smit JS Smit B Sono CI Stevens PO Stevin J Stockwell W Strachan JG Theron JJ Truter KJ Troffeco DN van den Berg HA van Niekerk FJ van Tonder JP van Wyk A Vetalidis RN Wakefield DC Walker D Weglerski M Wiehahn DC Willians DG Williams E Wood BW Workman-Davies

JOHANNESBURG . CAPE TOWN . STELLENBOSCH . TYGER VALLAY

#### CONFIDENTIAL

#### Non-Binding Term Sheet

#### 7 October 2015

#### Acquisition of stake in Optimum Coal Mine

- 1 Pembani Group (Pty) Ltd ("Pembani") will conclude an agreement with Optimum Coal Holdings (Pty) Ltd (in Business Rescue) ("OCH") in terms of which it will acquire 100% of OCH's shares and claims in Optimum Coal Mine (Pty) Ltd (in Business Rescue) ("OCM") for a consideration of R1 (the "Transaction"),
- 2 The Transaction will include a very limited set of warranties relating only to title and otherwise the shares in OCH and OCM will be sold on an "as is" basis.
- 3 The existing management agreements between OCM and other Glencore group companies will remain in place, but will be subject to termination by either party on 30 days' written notice.
- 4 If OCM wishes to terminate the coal purchase agreement with Glencore International AG ("GIAG") It shall be entitled to do so subject to payment of a compensation payment. OCM will negotiate and agree with GIAG the amount of the compensation payment, and failing agreement the amount of the compensation amount will be referred to an independent expert for determination.
- 5 The Transaction will be subject to the following conditions precedent ("CPs"):
- 5.1 Pembani completing a limited due diligence into the technical, financial, legal, commercial and environmental affairs of OCH and OCM and being satisfied with the results of such due diligence investigation;
- 5.2 approval of a business rescue plan providing for the OCM disposal by 75% of the creditors' voting interests and 50% of the independent creditors' voting interests;
- 5.3 conclusion of an agreement between OCM, OCH and Eskom Holdings SOC Limited ("Eskom") in terms of which:
- 5.3.1 OCM and Eskom conclude an amendment to the 1993 coal supply agreement ("CSA"), on terms on which are satisfactory to Pembani; and
- 5.3.2 Eskom irrevocably and unconditionally releases OCH and its affiliated entities from any and all historical and future liability and obligations arising from the CSA, including all liability for historical penalties claimed by Eskom;
- 5.4 conclusion of agreements between OCH, OCM, OCT and FirstRand Bank Limited, Nedbank Limited and Investec Bank Limited (collectively, the "Lenders") in terms of which the Lenders approve the Transaction and an agreed portion of the debt of OCH is transferred from OCH to OCM, and OCH and its subsidiarles, including OCT, are released from ilability in respect of such transferred portion;
- 5.5 approval by RBCT of a new Coal Exporter in relation to Optimum Coal Terminal (Pty) Ltd; and

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- 5.6 approval of the Transaction by the Competition Authorities, the Minister of Mineral Resources and, to the extent necessary, the Exchange Control Department of the South African Reserve Bank (or an authorised dealer in foreign exchange).
- 6 The long-stop date for the:

- 6.1 CP In paragraph 5.1 will be 3 November 2015;
- 6.2 CPs in paragraphs 5.2, 5.3 and 5.4 will be 11 January 2016; and
- 6.3 balance of the CPs will be 30 June 2016.
- 7 Shanduka Resources (Pty) Ltd ("Shanduka Resources") and GIAG will sign an amendment to the Sale of Debt Agreement dated 28 July 2015 and the Payment Instruction Agreement dated 31 July 2015, In terms of which Shanduka Resources will purchase from GIAG an additional R60 million of debt held by GIAG in OCH on the basis that the purchase price for such debt will be settled out of the next dividend payable by Shanduka Coal (Pty) Ltd to Shanduka Resources.
- 8 Pembani will with effect from the date of fulfilment of the CP in paragraph 5.1 until closing or lapsing of the Transaction provide all post commencement finance ("PCF") required by OCM in order to continue operating and supplying Eskom under the CSA and the agreement reached with Eskom for interim supply until the end of October, which is approximately R120 million per month. If the Transaction becomes unconditional, the Pembani PCF will become shareholder debt in OCM.
- 9 Piruto, OCH and Pembani shall negotiate and execute the long-form agreements to give effect to the Transaction by no later than 16 October 2015 and will jointly announce the Transaction on signature of the long-form agreements, OCH will negotiate with Pembani exclusively until 16 October 2015.
- 10 Glencore and Pembani will within the next year negotiate regarding a possible acquisition by Pembani of a further interest in OCH and/or Koornfontein Mines (Proprietary) Limited.
- 11 This term sheet is non-binding and is subject to the conclusion of long form agreements and internal approvals of the parties, including without limitation, the Pembani Group and Shanduka Group boards.

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#### CONFIDENTIAL

Oakbay Investments (Pty) Ltd Grayston Ridge Office Park Block A Lower Ground Floor 144 Katherine Street Sandown, Sandton

Attention: Ronica Ragavan

Email: ronica@oakbay.co.za

CC

#### **Nick Matthews**

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

#### Werner Jacobs

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

7 October 2015

Dear Sirs

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

We refer to your letter dated 21 September 2015 and our subsequent meeting held on 29 September 2015 regarding your non-binding indicative offer ("Offer") for the acquisition of the assets and operations of Optimum Coal Mine ("OCM").

Following the meeting, we have received another unsolicited offer for OCM from a third party. We believe that the terms of the third party offer are, on the whole, more favourable than your Offer. It is a condition of the third party offer that we engage exclusively with the third party for a period.

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: 1\* Floor, Nedbank Building, 23 Melrose Boulevard, Meirose 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

## 00798 Page | 2

We are therefore unable to progress discussions regarding your Offer at this stage or to allow you to proceed with your the due diligence.

If we are unable to reach agreement with the third party, we will contact you to progress your Offer.

We thank you for your continued interest.

Yours faithfully

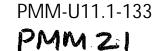
Piers Marsden

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Peter Van Den Steen

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

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» Pembani Development Prest

Tel +27 11 061- 2000 85 Grayston Drive, Sandton 2146 Postnet Suite 145, Private Bag X9924, Sandton 2146



11 February 2016

The Joint Business Rescue Practitioners Optimum Coal Holdings (in Business Rescue)

Messrs Piers Marsden and Peter Van Den Steen

#### STRICTLY PRIVATE AND CONFIDENTIAL

Dear Sirs,

#### ACQUISITION OF OPTIMUM COAL HOLDINGS (PROPRIETARY) LIMITED ("OCH") BY TEGETA EXPLORATION AND RESOURCES ("TEGETA")

Pembani Development Trust will become an indirect shareholder in OCH through Lexshell 849 (Proprietary) Limited, as part of the post implementation steps of the merger between Pembani Group and Shanduka. We are aware that Tegeta is in the process of acquiring 100% of the assets of OCH (including its interests in Optimum Coal Mine (in Business Rescue) ("OCM"), Optimum Coal Terminal and Koornfontein Mines), subject to certain conditions precedent the details of which have been shared with us and were disclosed in press announcements in December 2015.

Pembani Group (Proprietary) Limited attempted to conclude a similar transaction with yourselves and Glencore to acquire a 100% shareholding in OCM conditional on obtaining Eskom and the Department of Mineral Resources' ("DMR") approval and arriving at a negotiated share of the existing liabilities at OCH. Eskom was not prepared to amend the OCM coal supply agreement ("CSA") or waive its rights to enforce the claim under the CSA, which led to the Pembani transaction failing.

We cannot preclude yourselves, Glencore and the OCH creditors from implementing the Tegeta transaction. We cannot vote on the Business Rescue Plan. However, without being critical of yourselves or Glencore, we wish to place on record that we are concerned about developments that led to the conclusion of the Tegeta Transaction and the failure of the Pembani transaction. We have sympathy for the fact that you and Glencore might under, current circumstances, not have much alternative but to proceed with Tegeta.

Kind regards,

Mt Modiba

Pembani Development Trust

**Cc: Clinton Ephron** 

Trustees: Ol Shongwe, JAL Pitman, KKD Masoga, ML Modiba, A Jeawon February 2016

## PMM 22

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#### CONFIDENTIAL

Oakbay Investments (Pty) Ltd Grayston Ridge Office Park Block A Lower Ground Floor 144 Katherine Street Sandown, Sandton

Attention: Ronica Ragavan

Email: ronica@oakbay.co.za

CC.

#### Nick Matthews

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

#### Werner Jacobs

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

#### 23 October 2015

**Dear Sirs** 

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

We refer to our meeting held on 20 October 2015 regarding Oakbay's non-binding offer for the acquisition of the assets and operations of Optimum Coal Mine (Pty) Ltd ("OCM") (the "Transaction").

We confirm that we are interested in progressing discussions with Oakbay regarding the Transaction but before we allow Oakbay to commence its due diligence, we believe that we need to reach agreement regarding certain key parameters for the Transaction. In this regard, we set out below the key terms and conditions upon which we would be able to proceed:

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: 1<sup>st</sup> Floor, Nedbank Building, 23 Melrose Boulevard, Melrose Arch, Melrose North, Johannesburg, 2196, South Africa Mailing Address: Suite No. 19, Private Bag X1, Melrose Arch, Johannesburg, 2076 Tel: +27 11 772 0600 Fax: +27 11 772 0697

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

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- Oakbay will be afforded until 30 November 2015 to complete its due diligence of OCM and agree and sign definitive agreements with OCM and Optimum Coal Holdings (Pty) Ltd ("OCH") for the Transaction;
- we will continue to draw on third-party post-commencement finance until the signature of the transaction agreements (i.e. no later than 30 November 2015), but thereafter (ie no later than 1 December 2015), Oakbay will be required to provide post-commencement finance until the closing of the Transaction;
- Oakbay will, however, need to procure the in-principle consent of Eskom for the Transaction by no later than 15 November 2015 because if Eskom is not willing to consent to the Transaction, there is no point proceeding with further discussions;
- If the Transaction proceeds, Oakbay will need to acquire the business of OCM or the shares in OCM on a going concern basis, which means assuming all present, future and historical liabilities of OCM (including in relation to Eskom) and all existing contracts (including the mining contractor agreement). As part of its assumption of OCM's liabilities, Oakbay will also need to procure a release of OCH and its affiliated entities for any liabilities of OCM to Eskom. We, as the BRPs, simply cannot justify selling the assets of OCM for no consideration and leaving OCM with all historical liabilities. Moreover, if we were to sell the assets without the liabilities of OCM, this would render the implementation of the Transaction non-viable. We, as the BRPs, would need to run a transparent sales process to ensure that it is maximising value for the creditors of OCM and would need to obtain funding during that process which is not available. The Transaction would need to form part of an approved business rescue plan at OCM which provides for the compromise of the remaining creditors. This plan would need to be proposed to creditors and approved by 75% of the creditors, but in any event it remains subject to challenge if there is absolutely no value left for other creditors.
- if Oakbay is insistent on cancelling the mining contractor agreement, OCM is willing to work with Oakbay in order to reduce the amount payable for such cancellation, but the amount of such damages must be assumed by Oakbay as part of the business of OCM;
- Oakbay will need to assume a portion of the debt which is secured over the assets of OCM. The exact amount of the debt to be assumed will need to be agreed amongst OCM, Oakbay and the banks during the due diligence; and
- the R1 purchase consideration does not include any RBCT allocation, which we note is not owned by OCM but rather Optimum Coal Terminal (Pty) Ltd ("OCT"). If Oakbay wishes to purchase RBCT allocation as part of the Transaction, the terms and consideration for such purchase will need to be separately agreed with OCT.

We have commenced collating the necessary information for the due diligence. We will provide the information to you once you confirm in writing your agreement to the above terms and conditions.

We look forward to hearing from you.

Yours faithfully

Piers Marsden

Peter Van Den Steen

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

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#### PRIVATE AND CONFIDENTIAL

#### TERM SHEET FOR PROPOSED ACQUISITION OF OPTIMUM COAL MINE (PTY) LTD BY OAKBAY INVESTMENTS (PTY) LTD

This term sheet describes the key terms and conditions on and subject to which Optimum Coal Holdings (Pty) Ltd (in business rescue) ("OCH") and Oakbay Investments (Pty) Ltd ("Oakbay") are willing to engage with each other regarding the potential disposal by OCH of its shares in and claims against Optimum Coal Mine (Pty) Ltd (in business rescue) ("OCM") to Oakbay (the "Proposed Transaction") and the proposed principal terms and conditions thereof,

While it is Oakbay's preference to acquire the assets of OCM (rather than the shares in and claims against OCM) and to assume certain agreed liabilities of OCM, Oakbay is (subject to the satisfactory outcome of the due diligence), prepared to consider the Proposed Transaction as set out in this term sheet.

This term sheet is not intended to be legally binding, save as to this paragraph and the provisions relating to *Costs and Expenses*", "Confidentiality", "Exclusivity", "Good Faith", "Governing Law and Arbitration" and "General" below, which terms will be binding on the parties with the effect from the date of signature by the party signing last in time of this term sheet ("Signature Date"). OCH and Oakbay agree and acknowledge that this term sheet is not intended to, nor does it create, a legally binding obligation to proceed with the Proposed Transaction and that no such obligation will arise unless and until the Definitive Agreements (as defined below) are signed by the parties.

Seller

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Purchaser

Target

OCH (represented by its joint business rescue practitioners, Piers Marsden and Peter Van den Steen ("BRPs"))

Oakbay (or its nominee)

The Target comprises the following:

- (i) 100% of the issued share capital of OCM, held by OCH; and
- (ii) 100% of the claims held by OCH against OCM.

OCM will be acquired as a going concern such that Oakbay (limited to the terms, conditions and amount of its funding obligation to OCM) will be indirectly liable for settling all agreed liabilities of OCM (including trade creditors and any agreed liabilities relating to the termination of the existing mining contractor) save for:

- (i) the debt and liabilities of OCM in favour of the consortium of banks ("Bank Debt"); and
- (ii) the alleged claim of Eskom Holdings SOC Limited ("Eskom"),

both of which will be dealt with as per below.

The existing mining contracting agreement will be terminated on or prior to the implementation of the Proposed Transaction on terms and conditions to be agreed between OCH, Oakbay and the contractor, including the potential purchase by OCM of the equipment and infrastructure owned by the mining contractor.

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#### PRIVATE AND CONFIDENTIAL

Oakbay will need to commit sufficient funding to fund the operations of OCM post implementation of the Proposed Transaction in order to place the BRPs in a position in which they are able to determine that OCM is no longer financially distressed and terminate the business rescue proceedings of OCM.

Oakbay will be responsible for providing post-commencement finance to OCM with effect from the date 15 (fifteen) business days after the signature of the Definitive Agreements (as defined below).

The Target does not include any RBCT allocation which is held by Optimum Coal Terminal (Pty) Ltd ("OCT"), another subsidiary of OCH, If Oakbay wishes to acquire RBCT allocation from OCT, this will need to be separately agreed with OCH and OCT and an appropriate amount of the Bank Debt (as defined below) associated with that RBCT allocation will need to be assumed or settled.

The purchase consideration for the Target will be R1.

OCM is currently indebted to a banking consortium comprising Rand Merchant Bank, Investee and Nedbank (the "Consortium") for the Bank Debt.

The Bank Debt is secured over all of the assets of OCM including, without limitation:

- (i) the shares and claims in OCM held by OCH;
- (ii) the mining rights of OCM;
- (iii) the immovable property of OCM; and
- (iv) the movable property of OCM.

On acquisition of OCM, a portion of the Bank Debt will be taken over or settled by Oakbay, the exact amount of which will be determined during the course of the due difigence and will be negotiated in good faith between OCH, OCM, the Consortium and Oakbay.

Eskom has initiated a claim against OCM and OCH in the amount of approximately R2.2 billion ("Eskom Claim") in terms of the Coal Supply Agreement with Eskom ("CSA"). OCM and OCH dispute the claim. OCM and OCH will provide information to Oakbay during the due diligence regarding the Eskom Claim.

The parties shall use their best endeavors to negotiate a full release by Eskom in favour of OCM and OCH in respect of the Eskom Claim.

If the parties are unable to obtain a full release for OCM and OCH in respect of the Eskom Claim, OCH and Oakbay will negotiate between them an apportionment of liability for an agreed amount of the Eskom Claim on the basis that OCH will pay its agreed portion to Oakbay and OCH will be released and indemnified from any further liability to Eskom in relation to the Eskom Claim.

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**Purchase Consideration** 

Bank Debt

Eskom Claim

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#### PRIVATE AND CONFIDENTIAL

#### Conditions Precedent

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The Proposed Transaction will be subject to the following conditions precedent:

- 1. Oakbay obtaining:
  - i. the unconditional written consent of Eskom for the Proposed Transaction; and
- an unconditional and irrevocable release by Eskom in favour of OCH in respect of all future liability and obligations arising from the CSA (subject to completion of the Proposed Transaction);
- Oakbay completing a legal, tax, financial and technical due diligence into the affairs of OCM and being satisfied with the results of such due diligence investigation;
- finalisation and execution of the definitive comprehensive transaction agreements ("Definitive Agreements"), including the following agreements:
  - an interim financing and management agreement between Oakbay, OCH, OCM, the Consortium and the BRPs to govern, amongst other things and subject to applicable anti-trust rules / competition rules, the post commencement financing and the conduct of the business of OCM between the date of signature of the Definitive Agreements and the Proposed Transaction becoming unconditional; and
  - ii. a sale agreement between OCH and Oakbay to give effect to the Proposed Transaction and which reflects the terms and conditions set out in this term sheet (including the consents and approvals contemplated in point 6 below and a clause to stipulating those events that will, and those events that will not give rise to a material adverse change in relation to OCM and its business during the time from the date of signature of the Definitive Agreements to the date of fulfillment of the last of the conditions precedent) as further agreed during the due diligence;
- 4. OCH and/or OCM (as may be applicable to the Proposed Transaction) ceasing to be in business rescue, whether by way of the approval of the business rescue plan for OCH providing for the Proposed Transaction by 75% of the creditors' voting interests and 50% of the independent creditors' voting interests of OCH, or otherwise;
- 5. conclusion of agreements between, *inter alia*, OCH and OCM and the Consortium in terms of which the members of the Consortium approve the Proposed Transaction and

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#### PRIVATE AND CONFIDENTIAL

give effect to the arrangement regarding the Bank Debt as contemplated above; and

 obtaining of all applicable statutory and/or regulatory consents, including consents of the Minister of Mineral Resources in terms of section 11 of the Mineral and Petroleum Resources Development Act, 28 of 2002 ("MPRDA") and the relevant Competition Authority in terms of section 13A of the Competition Act, 89 of 1998 ("Competition Act").

The parties intend to proceed as quickly as possible with the Proposed Transaction.

Oakbay will commence its due diligence immediately after the Signature Date and, provided that information and documentation is timeously provided to Oakbay, finalise its due diligence by no later than the date that is 30 days after the Signature Date.

As soon as reasonably practicable following the Signature Date, the parties will commence negotiations regarding the Bank Debt and the Eskom Claim and the other terms of the Definitive Agreements. The initial drafts of the Definitive Agreements will be prepared by OCH and furnished to Oakbay not less than 15 (fifteen) business days after the Signature Date, for their review and comment.

OCH and Oakbay will negotiate in good faith with a view to signing the Definitive Agreements within 7 (seven) days of the date of finalisation to the satisfaction of Oakbay of the due diligence.

The parties agree that, for purposes of calculating any time periods referred to in this term sheet, such time periods shall exclude the period between 16 December 2015 and 3 January 2016 (both dates inclusive).

Oakbay shall provide post commencement financing to OCM with effect from 15 (fifteen) business days after signature of the Definitive Agreements, provided that the only outstanding conditions precedent at such time are (i) the consent by the Minister in terms of section 11 of the MPRDA ("Section 11 Approval"); (ii) the approval of the relevant Competition Authority in terms of section 13A of the Competition Act ("Competition Approval"); and (iii) other conditions precedent that are conditional on Section 11 Approval and Competition Approval.

The parties acknowledge that there is a measure of risk to Oakbay in providing post commencement financing before the conditions precedent have been fulfilled. The parties will have consideration to what will be a reasonable time in which to obtain the approvals contemplated in those conditions precedent, and will provide in the relevant Definitive Agreement(s) for a limit to the amount and duration of the post commencement finance to be provided by Oakbay prior to the aforementioned conditions precedent both being fulfilled.

Timetable

Post Commencement Financing

#### PRIVATE AND CONFIDENTIAL

amended,

Costs and Expenses

Confidentiality

Transaction will be borne by the party incurring them. This term sheet is confidential and is subject to the non-disclosure agreement dated 24 July 2015 between OCH, OCM and Oakbay, as

All costs and expenses incurred in connection with the Proposed

Each party confirms that no announcement is required to be made or will be made in connection with the execution of this term sheet

The non-disclosure agreement and this confidentiality clause shall not restrict the parties' ability to engage with such parties as may be necessary to progress the matters expressly contemplated in this term sheet, including Eskom (in relation to the CSA and the Eskom Clain), the Department of Mineral Resources (in relation to section 11 of the MPRDA), the Competition Authorities (in relation to the application and approval of the Proposed Transaction in terms of section 13A of the Competition Act), the Consortium (in relation to the Bank Debt) and each parties' professional advisors required to assist in relation to the Proposed Transaction.

This provision shall survive the termination of this term sheet.

OCH and OCM shall not until the date that is 30 days after the Signature Date, solicit, initiate, encourage, entertain or consider merits of any interest, inquiries, offers or proposals from, discuss or negotiate with, enter into any agreement, arrangement or understanding with, provide any information to anyone except Oakbay and its directors, officers, employees and representatives, with a view to effecting the sale, transfer, or other disposal of, or business combination involving, OCM or any of its assets.

The parties undertake to engage with each other in good faith and without undue delay in evaluating the Proposed Transaction and seeking to progress, finalise and implement the arrangements contemplated in this term sheet.

and This term sheet and any non-contractual rights and obligations arising in connection herewith shall be governed by South African law.

Any disputes arising from or in connection with this term sheet shall if so required by either party by giving written notice to that effect to the other be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") by an arbitrator or arbitrators appointed by AFSA. There shall be no right of appeal as provided for in article 22 of the aforesaid rules.

Each party (i) expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency; and (ii) irrevocably authorises the other to apply, on behalf of all parties to such dispute, in writing, to the secretariat of AFSA in terms of article 23(1) of the aforesaid rules for any such arbitration to be conducted on an urgent basis.

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Exclusivity

Good Faith

Governing Arbitration Law

Page 5 of 6

#### PRIVATE AND CONFIDENTIAL

General

This term sheet supersedes all previous agreements, arrangements and communications relating to the Proposed Transaction.

No amendment or variation of this term sheet is valid or binding on a party unless made in writing and executed by duly authorized representatives of each party hereto.

The signature by any party of a counterpart of this term sheet shall be as effective as if that party had signed the same document as the other party.

Signed by:

On behalf of Optimum Coal Holdings (Pty) Ltd (in business rescue)

Date: 2015-11-11 Name: R.F. VAN DEN STEEN Position: BRP

Signed by:

On behalf of Optimum Coal Mine (Pty) Ltd (in business rescue)

Date: 2015-11-11 Name: P. L. VAN Position: BRP. DEN DIEEN.

. :

Signed by: On behalf of Oakbay Investments (Pty) Ltd

Date: 2015-11-12 Name: NAZCOM HOWA Position: DIRECTOR

S Charles

# 00359



#### CONFIDENTIAL

Eskom Holdings SOC Limited Megawatt Park Maxwell Drive Sunninghill

Attention: Matshela Koko: Group Executive - Generation

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

3 November 2015

Dear Matshela

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OPTIMUM COAL MINE (PTY) LTD (IN BUSINESS RESCUE) ; OPTIONS

- 1. We refer to your letter to the BRPs dated 30 October.
- As you are aware we have received consent from the majority of the creditors to extend the publication of a business rescue plan for Optimum Coal Mine (Pty) Ltd ("OCM") from 30 October, 2015 to 29 February, 2016.
- 3. Eskom is the key role player in ensuring OCM's sustainability into the future. Without Eskom's intimate involvement in developing a solution to save OCM we are unable to publish a business rescue plan that will satisfy the criteria for a successful business rescue. To date we have not been able to engage in a constructive manner with Eskom to, jointly and with mutual intent, explore and create a realistic and viable roadmap forward both for OCM as well as Eskom. We therefore request again, that Eskom engage with the BRPs to address these issues constructively.
- 4. The extension of the publication date to the 29th of February, 2016 is based on the premise that proper progress during the month of November is made. This would need to be sufficiently developed to qualify for inclusion in a realistic and viable business rescue plan. Such a process will take us into the early parts of next year.

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: 1\* Floor, Nedbank Building, 23 Melrose Boulevard, Malrose 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

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#### Page 2

5. Please note that we have managed to secure conditional funding to keep OCM going for the month of November only. We therefore have a 3 month long funding gap which, if BRPs are unable to bridge, will result in the inevitable liquidation of OCM on or before the end of November 2015.

- 6. As matters stand currently we have not (as BRPs) been able to develop a plan that will ensure viable coal supply to Eskom on the basis of the Coal Supply Agreement as signed in 1993 the only way that we can do so is if Eskom and the BRPs collaborate to achieve this common goal. If we fail to achieve this there will not be a business rescue plan for OCM and we will have no choice but to liquidate OCM. Eskom cannot be left out of this process and must be part of it. Each of the options listed in our letter dated 29 October, 2015 requires the intimate involvement of Eskom
- 7. The Eskom claim that you referred to in your letter, as represented in the summons issued and filed on the 5th of May 2015 and in the referral to arbitration, is in dispute and will have to be resolved (post business rescue proceedings) or alternatively negotiated. Please note that should the outcome of this business rescue process result in the liquidation of OCM, Eskom will most likely receive a zero dividend in the Rand for any of its claims.
- 8. I refer to our letter, dated 29 October, 2015 and kindly request that Eskom responds to the letter as soon as possible.

Yours faithfully

Piers Marsden

Peter Van Den Steen

Joint Business Rescue Practitioners for Optimum Coal Mine (Pty) Ltd (in Business Rescue)

Eskom

Messrs. Marsden and Van Den Steen Joint Business Rescue Practitioners Optimum Coal Mine (Pty) Ltd (in Business Rescue)

Date: 5 November 2016

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BY EMAIL

**Dear Sirs** 

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#### OPTIMUM COAL MINE (PTY) LTD (IN BUSINESS RESCUE): OPTIONS

- 1. Receipt of your correspondence dated 3 November 2015 is hereby acknowledged,
- 2. Eakom agrees that a viable business rescue plan needs to be tabled by the practitioners and it has assumed that such plan would have been formulated with sufficient degree of certainty as to the options available to OCM.
- 3. It is with grave concern that Eskom notes the continuous threat of liquidation at the same time as you are seeking constructive engagement between the parties. As a Glencore operation, OCM should enjoy far more than conditional funding for limited time periods. There appears to be no concerted commitment on the part of OCM and its operators to meaningfully engage on the issues without resorting to valled threats of discontinuation of supply and recently, figuidation. I would request that you desist from these types of tactics with immediate effect.
- 4. You would appreciate that Optimum supplies one of Eskom's key contributors to the national power system. Hendrina Power Station is a stalwart in the Eskom fleet. Glencore was fully aware of the dynamics and history relating to the nature of the coal supply agreement and its structure as its representatives undertook before the Competition Tribunal that it would honour the contract. Eskom raised its concerns at the time and those concerns concerning the behaviour of Glencore may well be in the process of being realised as we witness the tactics being deployed in the current engagement with Eskom.
- 5. Accordingly, Eskom is appalled at the blatant disregard OCM displays for the impact that threats of liquidation has on the precarious balance of energy security and commercial viability. Glencore surely cannot be perceived to be acting in the national interest when it threatens to out off the fuel supply of a key strategic asset.
- I do not need to spell out the fiduciary duties of directors to you as business practitioners and I am sure your clients have been appropriately advised as to the implications of their actions.



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Eskon Holdings BOC Ltd Reg No 2002/015527/30

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- 7. As matters stand currently, Eskom may be compelled to seek intervention from such institutions such as the Tribunal, the Department of Mineral Resources and service providers to ensure meaningful engagement with OCM. It may also be an appropriate time for Eskom to review the engagement with Glenoore from a portfolio perspective.
- 8. Your earlier correspondence indicated possible options, one of which was the sale of Optimum to third parties. We note that you have an offer on the table. Eskom is happy to engage in a roundtable discussion with the interested party and yourselves to establish the veracity of the offer. You have repeatedly emphasized the limited time available to explore such options and Eskom would be willing to enter into such discussion provided that it aims to find a solution.
- 9. Eskom's rights remain reserved at all times.
- 10, I look forward to receipt of your proposed engagement plan per return correspondence.

Yours sincerely

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Matshela Koko GROUP EXECUTIVE: GENERATION

# PMM 26

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#### CONFIDENTIAL

Eskom Holdings SOC Limited Megawatt Park Maxwell Drive Sunninghill

Attention: Matshela Koko: Group Executive -- Generation

E:mall matshela.koko@eskom.co.za

13 November 2015

Dear Matshela

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#### OPTIMUM COAL MINE (PTY) LTD (IN BUSINESS RESCUE): OPTIONS

- 1. We refer to your letter dated 5 November 2015.
- 2. As our primary objective is in moving this process forward, we see no merit engaging in a back and forth with Eskom regarding the circumstances giving rise to the business rescue of Optimum and each party's respective conduct during the process. We do, however, wish to place on record that, as the business rescue practitioners of OCM, we are well aware of the importance of the Hendrina Power Station to the country as a whole and our duties as business rescue practitioners. It is for this reason that we have endeavoured, since the inception of business rescue, to engage with Eskom meaningfully in order to reach a solution that balances the Interests of OCM, its stakeholders (importantly its employees and the many dependents of such employees) and Eskom.
- 3. We are encouraged that Eskom is willing to engage in a roundtable discussion with the interested party, Oakbay investments. We can confirm that Oakbay Investments have now commenced due diligence on OCM. We anticipate that we and Oakbay will be looking to engage with Eskom very shortly. We will be in contact with you in this regard. We are hopeful, that with the support of Eskom, we will be able to conclude a transaction with Oakbay Investments, which can form the basis of a viable business rescue plan.

Optimum Coal Mine (Pty) Ltd (Registration No: 2007/005308/07) A Glencore Operation Business Address: N11 Hendrins Road, Pullenshope Offramp, Pullenshope Mailing Address: Private Bag X1201, Pullenshope, 1096, South Africa Tel.; +27 13 2965111 Registered Address: 1\* Floor, Nedbank Building, 23 Melrose Boulevard, Melrose Arch, Melrose North, Johannesburg, 2196, Bouth 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

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 Further to our telephone conversation earlier this week we look forward to meeting with you on Monday, 16 November 2015 to progress our discussions and await your confirmation of the time and venue for the meeting.

Yours faithfully

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Piers Marsden Peter Van Den Steen Joint Business Rescue Practitioners for Optimum Coal Mine (Pty) Ltd (in Business Rescue)

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# SUMMARY RECORD OF DISCUSSION

Meeting Name: Exploratory Discussions on Sustainable Hendrina Coal Supply

Date: 24 November 2015	<b>Time:</b> 15h00 -16h20	Venue: Huvo Nkulu Boardroor	m 01/2015	
Attendees:				
Shaun Blankfield (Gler	ncore) (SB)		Matshela Koko (Chairperson) (MK)	
Piers Marsden (Marsde	en Associates) (PN	1) Suzanne Danie	Suzanne Daniels (SD)	
Peter van den Steyn (		Edwin Mabelan	Edwin Mabelane (EM)	
Nazeem Howa (Oakba	ay) (NH)	Ayanda Nteta (	Ayanda Nteta (AN)	
Ashu Chawla (Oakbay) (AC)		1. Star		
Ronica Ragavan (Oak	bay) (RR)	4429- 1945		

The Chairperson opened the meeting and welcomed all.

Emergency evacuation procedure was explained to all.

Chairman's opening remarks: Eskom is managing a tight system and Hendrina is key to the system. Therefore it is important to rescue the mine to ensure security of electricity supply.

PM indicated that the BRPs were looking at disposing the interest to Oakbay. The Due Dillgence commenced 9 days ago and is currently underway. The purpose of the meeting was seek the support of Eskom to understand Eskom's concerns and what it needed to see out of the process.

Oakbay confirmed that the Due Diligence started 9 days ago and it is committed to a 30 day due diligence period with a definitive agreement to be in place by 15 December 2015.

Eskom questioned what would be the arrangement for the period 1-15 December.

PM advised that an extension of the current arrangement was anticipated and that a formal request for the extension of the current dispensation until such time as there is a definitive agreement in place, would be sought. SB confirmed that funding has been secured and will be extended until agreement was reached. He reiterated that there would be no interruption of coal supply and the amendments to the current funding arrangements were currently being effected by Glencore's legal team.

### Page 2 of 3260

The Chairman emphasized the Eskom position: Eskom's priority is security of supply. There is a coal supply contract in place until 2018. Eskom expects Optimum Coal Mine to honour the contract at the contracted price until 2018. Eskom will not waive its penalty claim.

He noted that the Koornfontein supply contract expires in December 2015. It appeared that the Koornfontein disposal and that of the export allocation are separate to that of OCM. This gave rise to the question of how does OCH survive beyond the life of the Koornfontein contract. He further questioned the financial strength of the new buyer ; firstly would it be able to sustain a loss of ZAR 130M per month and secondly, how will the buyer survive without Koornfontein Contract and the export allocation? He postulated that if OCM were to be ring-fenced, Eskom was not convinced that it will survive on its own and hence he was compelled to engage in a discussion regarding OCH, and not OCM, in totality.

PM indicated that the BRP's view of the claim differed to that of Eskom. In addition, there was a ZAR 2.7bn of senior secured bank debt held by the Banking Consortium which will need to be evaluated by Oakbay. The BRP has had open discussions with Oakbay on this debt. PM confirmed that there was no engagement around the OCH solution and from a Glencore perspective, it may be open to this but at the moment Oakbay was dealing with the transaction from an OCM perspective.

NH confirmed that Oakbay would like to close the transaction as soon as possible. It had wanted clarity in respect of the key issues. While the Eskom position was very clearly stated, it had wished to seek clarity on the following key issues (i) was the price negotiable? NH confirmed that he understood the Eskom position to be that the contract price was to remain the same until contract expiry, subject to the current terms and conditions of the contract. (ii) Could the parties start discussions beyond 2018? It was confirmed that the Eskom position was understood by the parties to be that the discussions relating to what happens beyond 2018 are off the table. (iii) Would Eskom consider a waiver of the penalty claim? It was also clear that Eskom was not prepared to waive the penalty claim.

NH confirmed that Oakbay was dealing with it from and OCM perspective and that it did not have a mandate to talk regarding OCH.

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#### SALE OF SHARES AND CLAIMS AGREEMENT

between

OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED (IN BUSINESS RESCUE) REPRESENTED BY PIERS MICHAEL MARSDEN AND PETRUS FRANCOIS VAN DEN STEEN (IN THEIR CAPACITY AS JOINT BUSINESS RESCUE PRACTITIONERS)

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## **TEGETA EXPLORATION & RESOURCES PROPRIETARY LIMITED**

and

#### **GLENCORE INTERNATIONAL AG**

and

# OAKBAY INVESTMENTS PROPRIETARY LIMITED

155 - 5th Street Sandton 2196 Johannesburg South Africa Private Bag 10015 Sandton 2146 Docex 111 Sandtoл Tel +27 11 535 8000 Fax +27 11 535 8600

enquiries@werksmans.com www.werksmans.com

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SALE OF SHARES AND CLAIMS AGREEMENT

between

OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED (IN BUSINESS RESCUE) REPRESENTED BY PIERS MICHAEL MARSDEN AND PETRUS FRANCOIS VAN DEN STEEN (IN THEIR CAPACITY AS JOINT BUSINESS RESCUE PRACTITIONERS)

and

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TEGETA EXPLORATION & RESOURCES PROPRIETARY LIMITED

and .

GLENCORE INTERNATIONAL AG

and

OAKBAY INVESTMENTS PROPRIETARY LIMITED

#### **1** INTERPRETATION

In this Agreement, clause headings are used for convenience only and shall not be used in its interpretation, and unless the context clearly indicates a contrary intention, -

- 1.1 a word or an expression that denotes -
- 1.1.1 any gender, includes the other genders;
- 1.1.2 the singular, includes the plural and vice versa; and
- 1.1.3 a natural person, includes an artificial or juristic person and vice versa;

	Sale of Shares Age 10122015	reement - OCH Oakbay - Execution Version/#3599350v2
		ne following words and expressions shall bear the meanings assigned to them elow and cognate expressions shall bear corresponding meanings -
	1,2,1	"Adjustment Amount" - shall bear the meaning assigned to this term in clause 7.3.1;
	1.2.2	"Applicable Law" - In relation to a Party, includes all and any -
	1.2.2.1	statutes, subordinate legislation and common law;
	1.2.2.2	regulations;
()) 	1,2,2,3	ordinances and by-laws; and
	1.2.2.4	directives, codes of practice, circulars, guidance notices, judgments and decisions of any competent authority, or any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation; and
	1.2.2,5	other similar provisions, from time to time, compliance with which is mandatory for that Party;
(j)	1.2,3	"Affiliate" - In relation to an entity or person, an entity or person that directly or indirectly Controls, is Controlled by or is under common Control with that entity or person;
	1.2.4	"Agent" - RMB, In Its capacity as Agent under the Original Facility Agreement;
	1.2.5	"Agreement" - this document, together with its annexures (if any), each as amended, novated or reinstated from time to time;
	1.2,6	"Auditors" - Deloitte;
	1.2.7	"BRPs" - the persons appointed jointly to oversee the Seller and OCM during the Business Rescue Proceedings in respect of each such company,

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as contemplated in section 128 of the Companies Act, being Marsden and van den Steen, or any business rescue practitioner that succeeds or replaces either or both of them in respect of the current Business Rescue Proceedings in respect of each such company;

- 1.2.8 "Business Day" any day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.2.9 "Business Rescue Plan" the business rescue plan of the Seller as contemplated in section 150 of the Companies Act to be developed and proposed by the BRPs as part of the Business Rescue Proceedings for the Seller;

"Business Rescue Proceedings" - business rescue proceedings commenced pursuant to Chapter 6 of the Companies Act;

"Calculation Date" - the date upon which the calculation of the Adjustment Amount has been agreed upon in writing or deemed to be agreed between the Purchaser and the Seller or finally determined as contemplated in clause 7.3.10;

1,2.12 "Claim" - shall bear the meaning assigned to this term in clause 12.1.1;

1.2.13 "Closing Date" - the first Business Day after the Release Date;

1.2.14 "Companies Act" - the Companies Act No 71 of 2008;

1.2.15 "Competition Act" - the Competition Act No 89 of 1998;

**"Competition Authorities"** - the Competition Commission of South Africa and/or the Competition Tribunal of South Africa and/or the Competition Appeal Court of South Africa, being regulatory and/or judicial authorities established in terms of the Competition Act;

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1.2.17	"Control" of a company or other entity shall me	ean -
1,2.17,1	the direct or indirect beneficial ownership or in respect of a listed entity 35%, of th other equity interest) in the company or e	e issued equity shares (or
1.2.17.2	the right, through shareholding or other alone or jointly with other persons, to con board of directors (or other controlling entity concerned and, without prejudice foregoing, the composition of such board shall be deemed to be so controlled if the the right may by the exercise of some p appoint or remove the majority of the dir other controlling body); or	trol the composition of the body) of the company or to the generality of the (or other controlling body) he person or entity holding ower, directly or indirectly,
1.2.17.3	the right, directly or indirectly, alone or to control the management of the compa	jointly with other persons, ny or entity concerned;
1.2.18	"Current Assets" - the aggregate of -	
1,2,18,1	inventories (to be valued at lower of cos	t or net realisable value);
1.2,18:2	consumables and rotables;	
1.2,18.3	trade debtors (other than the Eskom Re	ceivables);
1.2,18,4	Inter-company receivables;	~ ~
1,2,18.5	vendor deposits;	24.
1,2,18,6	VAT receivables;	
1,2,18,7	prepayments;	N.
1.2.18,8	sundry receivables; and	

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	Sale of Shares Agree 10122015	ment « OCH Oakbay - Execution Version/#3599350v2
	1,2,18,9	cash;
		of the Target Companies as set out in the Effective Date Balance Sheet less an amount of R85 000 000;
	1,2.19	"Current Llabilities" - the aggregate of -
	1.2.19.1	trade creditors;
	1.2,19.2	accruals and provisions)
- <sup></sup>	1.2.19.3	employee related payables and accruals;
	1,2,19,4	Inter-company payables;
	1.2.19.5	royalty payables;
2	1.2.19.6	VAT payables; and
	1.2.19,7	Income tax liabilities,
		of the Target Companies as set out in the Effective Date Balance Sheet, it being recorded for the avoidance of doubt that this excludes -
) ( )	1,2.19.8	any current portion of the onerous contract provision;
	1,2,19,9	any current portion of any long term debt; and
	1.2,19,10	any liability relating to the Penalties Claim;
	1,2.20	"CSA" - the 1993 coal supply agreement between Eskom, the Seller and OCM, in terms of which OCM supplies coal to Eskom's Hendrina Power Station, as amended by the First Addendum on 8 April 2008, the Second Addendum on 12 April 2011 and the Third Addendum on 11 February 2013;

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1.2.21 "Disclosed Guarantees" - collectively, the guarantees, suretyships, indemnities and undertakings (including letters of comfort and the like), furnished by the Seller and other members of the Glencore Group in respect of the obligations of the Target Companies which are disclosed in the Disclosure Schedule;

- 1.2.22 "Disclosure Schedule" the disclosure schedule annexed to this Agreement marked Annexure C and its attachments, which qualifies the representations and warranties made by the Seller in this Agreement;
- 1.2.23 "Effective Date" 1 January 2016;

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- 1.2.24 "Effective Date Balance Sheet" the aggregate balance sheet of the Target Companies as at the Effective Date, which is to be prepared in accordance with the provisions of clause 7.3.3;
  - "Effective Date Net Working Capital" the Net Working Capital on the Effective Date;
  - "Escrow Agreement" the escrow agreement to be concluded between the Seller, the Purchaser, Glencore and the Escrow Agent contemporaneously with this Agreement;
  - "Escrow Agent" Werksmans Incorporated (registration number 1990/007215/21), trading as "Werksmans Attorneys", a personal limited liability company duly incorporated and registered in accordance with the laws of South Africa;
  - 1.2.28 "Eskom" Eskom Holdings SOC Limited (registration number 2002/015527/30), a state-owned company duly incorporated and registered in accordance with the laws of South Africa;
  - 1.2.29 "Eskom Guarantee" the guarantee executed by the Seller in favour of Eskom on 8 April 2008, in terms of which the Seller guaranteed the performance by OCM of its obligations in terms of the CSA;



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1,2.30 **"Eskom Receivables"** - the amounts owing by Eskom to OCM for supplies in terms of the CSA during July 2015 and August 2015;

- 1.2.31 "Event" any action, circumstance, omission or transaction;
- 1.2.32 "Existing PCF Facility Agreement" the written loan facility agreement between, *inter alia*, the Lenders, OCM and the Security Agent concluded on or about 21 August 2015, as amended, in terms of which the Lenders made post-commencement finance available to OCM in terms of section 135 of the Companies Act;
- 1.2.33 **"Fulfilment Date"** the date on which the last of the Suspensive Conditions is fulfilled or waived, as the case may be;
  - "Glencore" Glencore International AG, a company incorporated in Switzerland under registration number CHE-106.909.694;
  - "Glencore Portion" the Original Facility Outstanding Balance less the Purchaser Portion;
    - "Glencore Group" Glencore Pic and its Affiliates, from time to time;
      - "Glencore Group Insurance Policies" all insurance policies (whether under policies maintained with third party insurers or any member of the Glencore Group), other than Target Company Insurance Policies, under which, immediately prior to the Closing Date, Target Companies are entitled to any benefit; and "Seller Group Insurance Policy" means any one of them, as the context requires;
  - 1.2.38 "IFRS" International Financial Reporting Standards;
  - 1.2.39 "Income Tax Act" the Income Tax Act No 58 of 1962;

1,2.40 **"Interest Rate"** - the Interest levied from time to time in terms of the Original Facility Agreement;

61.300 Sale of Shares Agreement - OCH Oakbay - Execution Version/#3599350v2 10122015 "Interim Period" - the period from the Effective Date to the Closing 1.2.41Date (both dates inclusive); "Investec" - Investec Bank Limited, acting through its Corporate and 1.2.42 Institutional Banking division (registration number 1969/004763/06), a public company duly incorporated and registered in accordance with the laws of South Africa; Proprietary Limited Mines" - Koornfontein Mines "Koornfontein 1.2.43 (registration number 2006/013073/07), a private company duly incorporated and registered in accordance with the laws of South Africa; "Lenders" - collectively, Investec, Nedbank and RMB; 1.2.44 "Marsden" - Piers Michael Marsden (Identity number 770305 5168 084); 1.2.45 "Material Assets" - the Mining Rights and all assets in the fixed asset 1,2,46 register of the Target Companies having a book value in excess of R5 000 000;

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"Material Adverse Change" - any material adverse change in the business, operations, assets, liabilities, position (financial, trading or otherwise) or profits of the Target Group, taken as a whole;

"Mining Rights" - the mining rights of the Target Companies issued in terms of the MRPDA which are listed in the Disclosure Schedule;

"MPRDA"- the Mineral and Petroleum Resources Development Act No 28 of 2002;

"Nedbank" - Nedbank Limited, acting through its Corporate and Investment Banking division (registration number 1951/00009/06), a public company duly incorporated and registered in accordance with the laws of South Africe;

1.2.51 "Net Working Capital" - Current Assets minus Current Liabilities;

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1.2.52 "New PCF Facility Agreement" - the agreement to be concluded between the Purchaser and OCM contemporaneously with this Agreement, in terms of which Purchaser shall make post-commencement finance available to OCM in terms of section 135 of the Companies Act with effect from the Effective Date;

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- 1.2.53 "Oakbay" Oakbay Investments Proprietary Limited (registration number 2006/017975/07), a private company duly incorporated and registered in accordance with the laws of South Africa;
- 1,2,54 "Oakbay Group" Oakbay and its Affiliates, from time to time;
  - 1.2.55 "OCM" Optimum Coal Mine Proprietary Limited (registration number 2007/005308/07) (in business rescue), a private company duly incorporated and registered in accordance with the laws of South Africa;
    - "OCT" Optimum Coal Terminal Proprietary Limited (registration number 2007/005379/07), a private company duly incorporated and registered in accordance with the laws of South Africa;
      - "Original Facility Agreement" the amended and restated loan facility agreement concluded on or about 26 February 2014 and amended on or about 17 April 2014 between, *inter alia*, the Lenders (as lenders), the Seller (as borrower), the Guarantors (as defined therein) and the Security Agent;

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"Original Facility Outstanding Balance" - the Outstanding Balance (as defined in the Original Facility Agreement) as at the Closing Date which is to be advised by the Agent as contemplated in clause 7.2.1;

1.2.59 "Original Facility Settlement Date" - the fourth Business Day after the , Fulfilment Date;

1.2,60 "Parties" - collectively, the Seller, the Purchaser, Glencore and Oakbay; and "Party" shall mean any of them, as the context may require;

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	1.2.61	"Payment Date" - the third Business Day after the Fulfilment Date;
	1.2.62	"Penalties Claim" - the claim for penalties instituted by Eskom against OCM as set out in the letter of demand dated 16 July 2015 and the summons issued by Eskom out of the Gauteng Local Division High Court under case number 28155/15;
Ĩ	1.2.63	"Prime Rate" the variable interest rate calculated and charged from time to time by Standard Bank of South Africa Limited to its most favoured corporate customers in respect of unsecured overdraft facilities, as certified by any manager or director of such bank, whose appointment need not be proved and whose certificate shall be final and binding on the Parties;
	1,2,64	"Pro Forma Balance Sheet" - the pro forma aggregate balance sheet for the Target Companies as at the Pro Forma Balance Sheet Date;
	1.2.65	"Pro Forma Balance Sheet Date" - 30 November 2015;
	1.2.66	<b>"Proposed Transaction"</b> - the sale and purchase of the Sale Equity In terms of this Agreement;
	1,2.67	<b>"Prospecting Rights"</b> - the prospecting rights of the Target Companies issued in terms of the MPRDA which are listed in the Disclosure Schedule;
	1.2.68	"Purchaser" - Tegeta Exploration & Resources Proprietary Limited (registration number 2006/014492/07), a private company duly incorporated and registered in accordance with the laws of South Africa;
	1,2,59	"Purchaser Portion" - R2 150 000 000 increased at the Interest Rate from the Effective Date to the Original Facility Settlement Date (both dates inclusive);
	1.2.70	"Purchase Price" - shall bear the meaning assigned to this term in clause 7.1;

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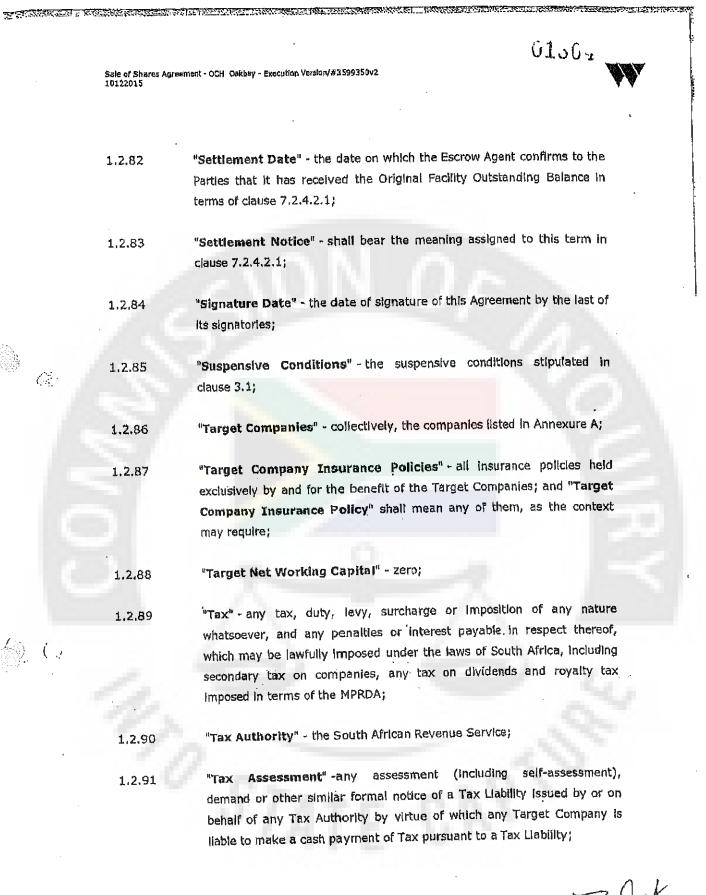
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	1,2.71	"Release Date" - the date on which the Security Agent provides the confirmation contemplated in clause 7.2.4.3;
	1,2,72	"Relief" - any allowance, credit, deduction, exemption, loss, refund or relief in respect of any Tax or which is relevant in computing taxable income for the purposes of any Tax;
	1.2.73	<b>*RMB</b> <sup>•</sup> - Firstrand Bank Limited, acting through its Rand Merchant Bank division (registration number 1929/001225/06), a public company duly incorporated and registered in accordance with the laws of South Africa;
¢¢	1.2,74	"Sale Claims" - all claims that the Seller may have against the Target Companies, whether on loan account or otherwise, as at the Closing Date;
	1,2.75	"Sale Equity" - collectively, the Sale Shares and the Sale Claims;
k	1.2.76	"Sale Shares" - all shares held by the Seller in the Target Companies, comprising the percentage of the issued share capital set out In Annexure A;
14	1,2,77	"Securities Transfer Tax" - securities transfer tax levied in terms of the Securities Transfer Tax Act No 25 of 2007;
Ċ	1.2.78	"Security Agent" - Optrix Security Company Proprietary Limited (registration number 2007/021141/07), a private company duly incorporated and registered in accordance with the laws of South Africa;
	1.2.79	"Security Cession" - the Security Cession, as defined in the Original Facility Agreement;
	1,2,80	"Security Documents" - the Security Documents, as defined in the Original Facility Agreement;
	1.2.81	"Selier" - Optimum Coal Holdings Proprietary Limited (registration number 2006/007799/07) (In business rescue), a private company duly incorporated and registered in accordance with the laws of South Africa;
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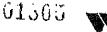
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"Tax Claim" - shall bear the meaning assigned to this term in

clause 12,1,1,2;

1.2.93 "Tax Demand" - the issue of any letter, notice or other document (including, for the avoidance of any doubt, a Tax Assessment) by or on behalf of any Tax Authority, or the taking of any other action by or on behalf of any Tax Authority, from which letter, notice, document or action it appears that a Tax Liability shall be imposed on any Target Company which may give rise to a Tax Claim by the Purchaser against the Seller;

1.2.94 "Tax Indemnity Period" - the period from 1 January 2012 to 31 December 2015 (both dates inclusive);

1,2,95 "Tax Identified Items" - the following Tax issues -

Act; and

the amount of approximately R537 000 000 of redeemable capital expenditure of OCM during OCM's 2008 tax year which was disallowed by the South African Revenue Service by virtue of the application section 37 read with section 36 of the Income Tax

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the incorrect ordering of the assessed loss and unredeemed capital balances of OCM for the 18 month period ending December 2012 in the amount of approximately R188 000 000 whereby the unredeemed capital balance were claimed before utilizing available assessed loss balances, resulting in the assessed loss balance being overstated for the 2011 and 2012 tax years with the compensating balance of unredeemed capital being understated;

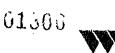
1.2.96

"Tax Liability" of any Target Company shall mean a liability of that Target Company to make an actual cash payment of or in respect of Tax;

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"Termination Agreement" - the agreement to be signed between OCM, OCT, Koornfontein Mines and Glencore terminating the agreements listed in Annexure D, with effect from the Closing Date and releasing OCM, OCT and Koornfontein from any liability in respect of such agreements;

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1.2.98 "Termination Event" - shall bear the meaning assigned to this term in clause 4.2;

- 1.2.99 "Transaction Agreements collectively, -
- 1.2.99.1 this Agreement;
- 1,2,99,2 the Escrow Agreement;
- 1.2.99.3 the New PCF Facility Agreement; and

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- the Termination Agreement;
- 1.2.100 "Van den Steen" Petrus Francois Van den Steen (identity number 681107 5024 087); and
- 1.2.101 "Warranties" shall bear the meaning assigned to this term in clause 9.1.1;
  - the terms **"Holding Company"** and **"Subsidiary**" shall bear the meanings assigned to them in the Companies Act;
  - any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the Signature Date and as amended or substituted from time to time;
- 1.5 If any provision in a definition is a substantive provision conferring a right or imposing an obligation on a Party, then, notwithstanding that it is only in a definition, effect shall be given to that provision as if it were a substantive provision in the body of this Agreement;
- 1.6 where any term is defined within a particular clause other than this clause 1, that term shall bear the meaning assigned to it in that clause wherever it is used in this Agreement;
- 1.7 where any number of days is to be calculated from a particular day, that number shall be calculated exclusively of the first and inclusively of the last

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day. If the last day of such number so calculated falls on a day which is not a Business Day, the last day shall be deemed to be the immediately preceding day which is a Business Day;

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any reference to days (other than a reference to Business Days), months or years shall be a reference to calendar days, months or years, as the case may be;

1.9 the cancellation or termination of this Agreement shall not affect those provisions of this Agreement that expressly provide that they shall operate: after any such cancellation or termination or which must necessarily continue to have effect after such cancellation or termination, notwithstanding that the clauses themselves do not expressly provide for such continuity;

1.10 where any day for the performance of any obligation or the payment of any amount in terms of this Agreement fails on a day other than a Business Day, that obligation shall be performed or that amount shall be paid on the immediately preceding Business Day;

1.11 the use of the words "including", "includes" or "Include", followed by a specific example/s, shall not be construed as limiting the meaning of the general wording preceding it, and the *elusdem generis* rule shall not be applied in the interpretation of that general wording or those specific example/s; and

1.12 the terms of this Agreement having been negotiated, the contra proferentem rule shall not be applied in the interpretation of this Agreement.

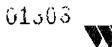
#### 2 INTRODUCTION

- 2,1 It is recorded that -
- 2.1.1 the Seller is the beneficial and registered owner of the Sale Shares and the holder of the Sale Claims;
- 2.1.2 on or about 31 July 2015, the board of directors of each of the Seller and OCM passed resolutions for the Seller and OCM to be placed under

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supervision and subject to business rescue in terms of Chapter 6 of the Companies Act;

2.1.3 on or about 4 August 2015, the Seller and OCM appointed Marsden and Van den Steen as business rescue practitioners for the Seller and OCM;

2.1.4 the Seiler wishes to sell to the Purchaser, which wishes to purchase from the Seller, the Sale Shares and the Sale Claims on the terms and subject to the conditions of this Agreement; and

2.1.5 It is the Intention of the BRPs and the Purchaser that pursuant to arrangements to be agreed between the Purchaser and the BRPs during the Interim Period, following the fulfilment of the Suspensive Conditions and the successful implementation of the Proposed Transaction, OCM will be in a position to trade itself out of its current financial distress, so that -

2.1.5.1 OCM shall no longer be financially distressed as contemplated in section 128 of the Companies Act; and

2.1.5.2 the BRPs shall file a notice of termination of Business Rescue Proceedings in accordance with sections 132 and 141(2)(b) of the Companies Act.

Accordingly, the Parties are entering into this Agreement to set out the terms upon which the Seller shall sell, and the Purchaser shall purchase, the Sale Equity.

#### **3 SUSPENSIVE CONDITIONS**

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- 3.1 The whole of this Agreement (other than clauses 1, 2 this 3 to 5, 9, 13 and 19 to 28 (both inclusive), by which the Parties shall be bound with effect from the Signature Date) is subject to the fulfilment of the suspensive conditions ("Suspensive Conditions") that, -
- 3.1.1 on or before the Signature Date, the board of directors of each of the Purchaser and Oakbay passes a board resolution approving the entry into of the Transaction Agreements to which it is a party and authorising a

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director of that Party to negotlate, settle and sign such Transaction Agreement;

- 3.1.2 on or before the Signature Date, each of the Transaction Agreements is signed;
- 3.1.3 on or before 31 March 2016, the Proposed Transaction is approved by -
- 3.1.3.1 the Lenders and the Security Agent;

the Competition Authorities without conditions or subject to conditions that the Seller and Purchaser confirm to each other in writing (within seven days after receipt of such conditional approval) are reasonably acceptable to them, it being agreed that any condition imposed by the Competition Authorities which relates to restrictions on retrenchment of employees of the Target Companies shall be deemed to be reasonably acceptable to the Seller and the Purchaser; and

- 3.1.3.3 the Minister of Mineral Resources in terms of section 11 of the MPRDA without conditions or subject to conditions that the Parties confirm to each other in writing (within seven days after receipt of such conditional approval) are reasonably acceptable to them;
  - on or before 31 March 2016, the Purchaser shall have obtained (in a form and substance reasonably acceptable to the Seller and the Purchaser) the irrevocable and unconditional -
  - consent of Eskom to the sale and purchase of the Sale Equity;
  - 3.1.4.2 release by Eskom of the Eskom Guarantee; and

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release by Eskom of the Seiler and its past and current Affiliates (other than the Target Companies), with effect from the Closing Date, from all actions, claims, counterclaims, causes of action, debts, obligations, damages, liabilities, rights and demands

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whatsoever, of whatever kind or nature, in contract or in delict, known or unknown, which Eskom now has or ever had against the Seller and its past and current Affiliates that are and/or may be based upon, arise under, or be related to the CSA, prior to and including the Closing Date,

provided that such releases may be subject to the implementation of the sale and purchase of the Sale Equity in terms of this Agreement;

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on or before the date that is two Business Days after the date on which the approvals contemplated in clause 3.1.3 and clause 3.1.4 have been obtained, the BRPs publish a Business Rescue Plan which contemplates the Proposed Transaction and, within 10 Business Days after the date of publication of such Business Rescue Plan, the Business Rescue Plan is validly approved and adopted and becomes unconditional and binding in accordance with section 152 of the Companies Act; and

3.1.6

on or before 31 March 2016, the other Transaction Agreements shall have become unconditional in accordance with their terms (save for any conditions relating to this Agreement becoming unconditional).

Each of the Parties shall use its reasonable endeavours to procure the fulfilment of the Suspensive Conditions as soon as practically possible after the Signature Date.

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The Suspensive Conditions are stipulated for the benefit of all Parties. The Parties may, by written agreement signed by all of them, waive all or any of the Suspensive Conditions (to the extent lawfully capable of waiver), in whole or in part, or extend the date for fulfilment of all or any of them on one or more occasions.

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- 3.4 If any of the Suspensive Conditions is not fulfilled for any reason whatsoever by the date specified for such fulfilment (or such later date as may be agreed by the Parties) and is not waived in terms of clause 3.3, -
- 3.4.1 this Agreement (other than clauses 1 and 2 this clause 3, and clauses 19 to 28 (both inclusive), by which the Parties shall remain bound) shall not come into force and effect; and
- 3.4.2 no Party shall have any claim against any other as a result of the failure of any of the Suspensive Conditions, except for any claims as may arise from a breach of this clause 3 or from any other provision of this Agreement by which the Parties remain bound or in circumstances in which a Party has deliberately frustrated the fulfilment of any Suspensive Condition.

#### 4 TERMINATION

- The Seller shall be entitled to terminate this Agreement, without any liability of any nature whatsoever, by notice in writing to the Purchaser and Oakbay, if during the Interim Period the Purchaser fails to advance funding requested in accordance with its obligation to do so in terms of the New PCF Facility Agreement and fails to remedy such breach within five Business Days of notice from the Seller to remedy that breach.
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> The Seiler shall be obliged to promptly notify the Purchaser in writing should any of the Target Companies be liquidated or wound-up, discontinue all of its business activities or (in case of all Target Companies other than OCM) become subject to Business Rescue Proceedings at any time prior to the Settlement Date (any such event, a "Termination Event").

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In addition to the remedies in clause 21 and without prejudice to any other remedies that it may have under this Agreement, if at any time prior to the Settlement Date, the Purchaser becomes aware of a Termination Event (whether independently or having received notice thereof from the Seiler in accordance with clause 4.2), the Purchaser shall be entitled, but not obliged, to terminate this Agreement by written notice to the Seiler to such effect (such

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notice to be given to the Sellers within three Business Days of the Purchaser becoming aware of such Termination Event).

4.4 In the event that the Purchaser becomes aware of a Termination Event as contemplated in clause 4.3 and fails within three Business Days of becoming aware of such Termination Event to terminate this Agreement by notice in writing to the Seller, the Purchaser shall be deemed to have irrevocably walved its right to terminate or cancel this Agreement, but this shall not in any way affect any of the Purchaser's other rights in terms of this Agreement.

#### 5 REGULATORY FILINGS

#### 5.1 Merger Filing

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- It is recorded that the Proposed Transaction shall, on implementation, constitute a large merger for purposes of the Competition Act.
  - The Purchaser shall be responsible for preparing and lodging, on behalf of the Partles, as soon as reasonably possible after the Signature Date, the requisite merger filing for the Proposed Transaction in accordance with the provisions of the Competition Act (and the regulations promulgated thereunder) ("Merger Filing").
    - The Seller shall make available to the Purchaser all necessary Information, records and documents reasonably required by the Purchaser in connection with such Merger Filing.
    - The Purchaser shall afford the Seller and its advisors a reasonable opportunity to review and make comments on the Merger Filing prior to the finalisation and submission of that Merger Filing to the Competition Authorities.
- 5.1.5 The Purchaser shall only submit the Merger Filing after it has received the approval of the Selier, which approval shall not be unreasonably withheld and shall be provided within three Business Days of the Merger Filing being provided to the Selier for its approval (unless the Selier has reason to reasonably withhold its approval).

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5.1.6 The filing and administrative fees payable to the Competition Authorities shall be borne in equal parts by the Seiler and the Purchaser,

5.1.7 The Purchaser and, to the extent necessary, the Seller, shall -

5.1.7.1 sign all documents and instruments and expeditiously provide all necessary information for submission the Merger Filing on being required to do so;

use its reasonable commercial endeavours and shall take all such steps and render all such assistance as may be reasonably necessary to procure that the Merger Filing, and all requisite documents referred to in clause 5.1.7.1 are properly prepared; and

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save for agreeing to conditions that are not reasonably acceptable to It, do everything reasonably required by the Competition Authorities In order to enable the Merger Filing to be dealt with, to the extent that it is within its power to do so.

#### Section 11 Application

5.2.1

5.2

The Purchaser shall be responsible for preparing and lodging, on behalf of the Parties, as soon as reasonably possible after the Signature Date, the application, in accordance with the requirements of section 11 of the MPRDA, for the consent of the Minister of Mineral Resources for the Proposed Transaction (such application, the "Section 11 Application").

5.2.2

The Seller shall make available to the Purchaser all necessary information, records and documents reasonably required by the Purchaser in connection with such Section 11 Application.

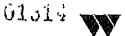
5.2.3

The Purchaser shall afford the Seller and its advisors a reasonable opportunity to review and make comments on the Section 11 Application prior to the finalisation and submission of the Section 11 Application.

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5.2.4 The Purchaser shall only submit the Section 11 Application after it has received the approval of the Selier.

- 5.2.5 The filing and administrative fees payable in relation to the Section 11 Application shall be borne and paid by the Purchaser.
- 5.2.6 The Purchaser and, to the extent necessary, the Seller, shall -

5,2.6,1 sign all documents and instruments and expeditiously provide all necessary information for submission of the Section 11 Application on being required to do so;

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use its reasonable commercial endeavours and shall take all such steps and render all such assistance as may be reasonably necessary to procure that the Section 11 Application, and all requisite documents referred to in clause 5.2.6.1 are properly prepared; and

5.2.6.3 save for agreeing to conditions that are not reasonably acceptable to it, do everything reasonably required by the Department of Mineral Resources in order to enable the Section 11 Application to be dealt with, to the extent that it is within its power to do so.

#### 6 SALE AND PURCHASE

6.1

The Seller hereby sells to the Purchaser, which hereby purchases from the Seller, the Sale Equity.

- 6.2 All risk in and benefit attaching to the Sale Equity shall pass to the Purchaser on the Closing Date retrospectively from the Effective Date. Notwithstanding the foregoing, ownership of the Sale Equity shall only pass to the Purchaser on the Closing Date after implementation of the provisions of clause 8.
- 6.3

The sale and purchase of the Sale Equity shall be one, indivisible transaction.

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#### 7 PURCHASE PRICE AND PAYMENT

#### 7.1 Purchase Price

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7.1.1 The aggregate purchase price payable by the Purchaser for the Sale Equity shall be -

- 7.1.1.1 the Purchaser Portion; minus
- 7.1.1.2 the Adjustment Amount (if applicable),

#### ("Purchase Price").

7.1,2 The Purchase Price shall be apportioned as follows -

first, as to the Sale Claims relating to Koornfontein Mines in the amount of R340 000 000;

7.1.2.2 second, as to the Sale Shares relating to Koornfontein Mines in the amount of R1;

third, as to the Sale Claims relating to OCT in the amount of R140 000 000;

7.1.2.4 fourth, as to the Sale Shares relating to OCT in the amount of R1;

7.1.2.5 fifth, as to the Sale Shares relating to the other Target Companies, In the amount of R1 for the Sale Shares of each Target Company;

7.1.2.6 sixth, as to the Sale Claims relating to the other Target Companies (other than OCM), in the amount of R1 per the Sale Claims of each Target Company (other than OCM); and

7.1.2.7 seventh, as to the balance to the Sale Claims relating to OCM.

7.1.3 The Purchaser shall be liable for the Securities Transfer Tax payable in respect of the sale and purchase of the Sale Shares.

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, <b>`</b>	7.2 No	otification and Settlement of Purchase Price	
	7.2.1	The Seller shall on the first Business Day after the to the Partles -	e Fulfilment Date provide
	7,2.1,1	a certificate from the Agent setting out the Facility Outstanding Balance; and	e amount of the Original
) ()	7.2.1.2	the details of the bank account of the B payment is required to be paid in terms of Account").	
	7.2.2	The Purchaser shall pay the Purchaser Portion in the Payment Date in cash, by way of electronic in set-off, withholding or deduction of any nature w	funds transfer, free of any
	7.2.3	Glencore shall pay the Glencore Portion into the Payment Date in cash, by way of electronic for set-off, withholding or deduction of any nature for such payment being set out in an agreemen Glencore and the Seller.	unds transfer, free of any whatsoever, with the basis
	7,2,4	Pursuant to the Escrow Agreement, -	
<u> </u>	7,2,4.1	the Agent shall retain the amount in the time as -	Escrow Account until such
	7.2,4,1.1	the Purchaser has paid the full P Escrow Account; and	Purchaser Portion into the
	7,2.4,1,2	Glencore has paid the full Glencor Account;	re Portion into the Escrow

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	7,2,4,2	after the Purchaser has paid the full Pur Escrow Account and Glencore has paid the the Escrow Account, the Escrow Agent shall	fuli Glencore Portion Into
	7,2,4.2.1	notify all Parties that it has received the be paid by the Purchaser and <b>Notice</b> "); and	
	7.2,4.2.2	pay the proceeds in the Escrow Account in clause 25 of the Original Facility Account"); and	
	, 7.2.4.3	after the Escrow Agent has transferred Settlement Account, the Seller shall reque confirm in writing to the Parties and the Ce clause 5 of the Security Cession) that the defined in the Security Cession) have bee there are no contingent Secured Obligation the Security Cession is terminated.	st that the Security Agent edents (as contemplated in e Secured Obligations (as en fully and finally settled,
	7.3 Ad	justment Amount	
	7.3.1	The adjustment amount ( <b>"Adjustment Am</b> positive or a negative number) shall be th Effective Date Net Working Capital and the Tam	e difference between the
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In order to determine the Adjustment Amount, the Seller shall cause to be prepared by the Auditors the Effective Date Balance Sheet and a document setting out the calculation of the Adjustment Amount (collectively, the "Adjustment Documents").

7.3.3

7.3.2

The Seller shall ensure that the Effective Date Balance Sheet shall be drawn on a basis that is consistent with the basis of the Pro Forma Balance Sheet utilising the audited balance sheets of the Target Companies as at 31 December 2015.

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7.3.4 The Seller shall, and it shall procure that the Target Companies shall,
 provide access to the Auditors to the books of account or records of any
 Target Company reasonably required for purposes of preparing the
 Effective Date Balance Sheet,

7.3.5 The Seller shall, as soon as possible, but in any event within 30 BusinessDays of the Effective Date, cause a copy of the draft AdjustmentDocuments to be delivered to the Purchaser.

The Purchaser shall be entitled to review the draft Adjustment Documents or, If the Purchaser so elects, to appoint a practising chartered accountant to do so on its behalf. The Seller shall, and it shall procure that the Target Companies shall, provide access to the Seller and its advisors and representatives to the books of account or records of any Target Company reasonably required for purposes of reviewing the draft Adjustment Documents.

The Purchaser shall advise the Seller in writing, within 10 Business Days after a copy of the draft Adjustment Documents have been delivered to it as contemplated in clause 7.3.5, whether it agrees with or disagrees with the draft Adjustment Documents (or any part thereof), provided that, if the Purchaser fails to notify the Seller whether it agrees with or disagrees with the draft Adjustment Documents within such 10 Business Day period -

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the Purchaser shall be deemed to be in agreement with the correctness of the draft Adjustment Documents; and

the draft Adjustment Documents shall, save for any manifest error in calculation, be final and binding on the Parties for all purposes under this Agraement.

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7.3.8 Should the Purchaser have advised the Selier as contemplated in clause 7.3.6, that it does not agree with the Adjustment Documents (or any part thereof), then -

7.3.8.1 the Parties shall forthwith consult with each other in order to resolve the disagreement;

7.3.8.2

failing such resolution within 10 Business Days after the date on which the Purchaser advised the Seller that it did not agree with the Adjustment Documents, the disagreement shall be submitted for determination to, and be decided on by, the chairman of an independent chartered accounting firm (or any partner or director of such firm nominated by the said chairman) ("Expert") agreed upon by Parties or, falling agreement within five Business Days following the expiry of the 10-Business Day period referred to above, appointed by the President for the time being of the South African Institute of Chartered Accountants or its successors-in-title, such appointment to be made on the application of either the Purchaser or the Seller. The expert shall -

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give a determination as soon as possible;

hear the matter informally and as soon as possible;

act as an expert and not as an arbitrator;

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not be bound by any rules of procedure or evidence and may decide on the procedure to be following in making his determination;

be obliged to call upon the Purchaser and the Seller to furnish him with their respective written submissions in respect of the correctness of the Adjustment Documents, which written submissions must be delivered to the expert within such period as he may determine, provided that the Expert shall be entitled to make his determination after such period whether or not such submissions were submitted to him; and

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be entitled to determine and make a ruling as to which of the Selier or the Purchaser (or In which proportion each Party) shall be liable for and pay the aggregate of the charges levied by the Expert for making his determination, or costs incurred by him for such determination, and all legal and other professional fees and disbursements incurred by the Parties in connection with any determination hereunder,

and his determination shall, save for manifest error, be final and binding on the Parties.

The Seller and the Purchaser shall each provide (and, to the extent that they are reasonably able, shall procure that their respective accountants, and the Seller shall procure that the Target Companies, provide) the Expert promptly with all information which he requires and the Expert shall be entitled (to the extent he considers it appropriate) to base his determination on such information and on the accounting and other records of the Target Companies.

Each of the Adjustment Documents shall only be deemed to be finalised when -

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the Purchaser confirms in writing that it is satisfied with the Adjustment Documents;

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the period of 10 Business Days referred to in clause 7.3.7 expires without the Purchaser having given notice in terms of clause 7.3.7 in respect of the draft Adjustment Documents; or

if the Purchaser gives notice in terms of clause 7.3.7 that it disagrees with the draft Adjustment Documents, when the disagreement raised by the Seller is finally resolved between the Parties or is determined by the Expert, as the case may be, as provided for in this Agreement.

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If the Adjustment Amount is a negative number, the Selier shall, within five Business Days after the Calculation Date (or if the Calculation Date is before the Closing Date, within five Business Days of the Closing Date), pay the Purchaser an amount equal to the Adjustment Amount (it being regarded for this purpose as a positive number) increased at the Prime Rate, calculated daily and compounded monthly in arrear from the Closing Date to the date of payment (both dates inclusive). The payment shall be made by way of electronic transfer of immediately available funds (free of any bank or other charges) into such bank account as may be specified in writing by the Purchaser.

#### 7.4 Restructuring

The Parties acknowledge that the Purchaser may during the Interim Period request an amendment to the Purchase Price and the payment mechanism set out in clauses 7.1 and 7.2. If the Parties agree on a revised Purchase Price and/or alternative mechanism for payment of the Purchase Price, then they shall execute a written addendum giving effect to such revised Purchase Price and/or mechanism. Pending signature of a written addendum by all the Parties, the provisions of clauses 7.1 and 7.2 remain of full force and effect.

#### Settlement of the Eskom Receivable

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If at any time after the Closing Date, the Eskom Receivable is settled (whether by way of payment or set-off), the Purchaser shall pay to the Seller, by way of electronic transfer of immediately available funds (free of any bank or other charges) into such bank account as may be specified in writing by the Seller, an amount equal to 50% of the amount of such settlement.

7.5.2

The Purchaser shall, and shall procure that OCM shall, use its best efforts to procure the settlement of the Eskom Receivable as soon as possible after the Closing Date.

7.5.3 The Purchaser shall keep the Seller regularly and reasonably informed regarding the progress made by OCM in its discussions with Eskom regarding the settlement of the Eskom Receivable.

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#### 8 CLOSING

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8.1 On the Closing Date and assuming that the Settlement Notice has been received by the Parties, representatives of the Seller and the Purchaser shall meet at the offices of the Seller at 23 Melrose Boulevard, Melrose Arch, Johannesburg. At such meeting, and against provision by the Purchaser of evidence of its compliance with its payment obligations in terms of clause 7.2.2, the Seller shall deliver to the Purchaser -

- 8.1.1 the share certificates in respect of the Sale Shares;
- 8.1.2 dated and duly completed share transfer forms by the Seller in respect of the Sale Shares;
  - the written resignations of each of the existing directors of the Target Companies with effect from the Closing Date, confirming that he or she waives all claims, whether in contract or in delict, actual or contingent, that he may have against the Target Companies; and
  - 8.1.4 resolutions of the board of directors of each Target Company -

8.1.4.1 approving the sale by the Seller of the Sale Shares and the Sale Claims to the Purchaser in terms of this Agreement;

8.1.4.2 authorising the company secretary or any director of each Target Company -

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to Issue a new share certificate to the Purchaser in respect of the Sale Shares;

to enter the Purchaser's name into the securities register of the

relevant Target Company as the holder of the Sale Shares; and

8.1.4.3 appointing such persons nominated in writing by the Purchaser to the Seller on or before the Closing Date as directors of each Target Company with effect from the Closing Date;

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8.1.4.4 noting the resignation of the directors of each Target Company as directors of that Target Company with effect from the Closing Date; and

8.1.4.5 written confirmation that the relevant Target Companies have been released from their contractual obligations in terms of -

8.1,4.5.1 the Local Services Agreement for Outsourcing Services concluded with Accenture (South Africa) Proprietary Limited on or about 28 November 2014; and

8.1.4.5.2 the Local Services Agreement for Outsourcing Services: Procure to Pay Services concluded with Accenture (South Africa) Proprietary Limited on or about 20 May 2014,

with effect from the Closing Date.

The Sale Claims shall be ceded to the Purchaser on the Closing Date without the need for the delivery of any further documents.

The Seller and the Purchaser shall be entitled, by agreement in writing, to waive the requirement for holding a meeting in terms of clause 8.1 on or before the Closing Date and, in those circumstances, to regulate the process through which the documents contemplated in clauses 8.1.1, 8.1.2, 8.1.3 and 8.1.4 shall be exchanged, as they deem fit.

#### 9 WARRANTIES

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### 9.1 Seller's Warranties

9.1.1 The Seller gives the Purchaser the warranties in Annexure B ("Warranties") on the basis that -

9.1.1.1 each Warranty shall be construed as a separate and independent Warranty and shall not therefore be limited by any reference to, or inference from, the terms of any other Warranty;

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9.1.1.2 the liability of the Seller in connection with the Warranties shall be subject to the limitations contained in clause 12;

9.1.1.3 each of the Warranties is subject to, and qualified by, the disclosures made by the Seller In the Disclosure Schedule in Annexure C;

9.1.1.4 each Warranty shall, to the extent that it is expressed in an inappropriate tense, be construed and read in the appropriate tense; and

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the Warranties shall, subject to the provisions of clause 12, survive the implementation of the sale and purchase of the Sale Equity from the Seller.

Save for the Warranties, the Seller and Glencore give no warranties or representations of any nature whatsoever, whether express, tacit or implied by law, in relation to the Sale Shares or the Sale Claims or any Target Company and/or its assets, operations or business and, accordingly, save for the Warranties, the Sale Shares and the Sale Claims are sold "as is where is", and the Purchaser acknowledges and agrees that (save for the Warranties given hereunder) it relies entirely on its own judgement in purchasing the Sale Shares and Sale Claims and has not relied on any representation by the Seller or Glencore other than the Warranties.

9.1,3

Without derogating from the generality of the foregoing provisions of this clause 9, the Purchaser agrees and undertakes to the Seller and Glencore (for itself and as agent for each member of the Glencore Group) that, except in the case of fraud, it has no right against and shall not make any claim against any present or former employee, director, agent, advisor or officer of the Seller or any member of the Glencore Group on whom it may have relied before agreeing to any term of or before entering into this Agreement.

01325 Sale of Shares Agreement - OCH Gakbay - Execution Version/#3599350v2 10122015 Notwithstanding anything to the contrary in this Agreement, the 9.1.4 Purchaser shall only be entitled to rescind or cancel this Agreement as a consequence of a breach by the Seller of any of the Warranties if the Purchaser would not have entered into this Agreement without 9,1,4,1 such Warranty and such breach results in a Material Adverse Change; and the breach has not been remedled after notice requiring such 9.1.4.2 remedy has been given to the Seller in accordance with clause 21, **Purchaser's Warranties** 9.2 The Purchaser represents and warrants in favour of the Seiler that, on the 9.2.1 Signature Date and the Closing Date, the Purchaser is a company with limited liability duly incorporated in, 9,2.1.1 and validly existing under, the laws of South Africa; the Purchaser Is regarded as a South African tax resident; 9.2.1:2 the Purchaser has -9.2.1.3 the legal capacity and power to enter into and perform; and 9.2.1.3.1taken all necessary actions (whether corporate, internal or 台湾 (二) 9.2,1,3.2 otherwise) to authorise its entry into and the performance of its obligations under, this Agreement;

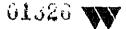
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the obligations expressed to be assumed by the Purchaser and the rights afforded to it under the Agreement are legal, valid, binding and enforceable by, and against, it; and

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9.2.1.5 the Purchaser has complied with all Applicable Laws in relation to the negotiation, preparation and implementation of this Agreement and the Proposed Transaction.

#### 10 TAX INDEMNITY

#### 10.1 Indemnity

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- 10.1.1 Subject to the remaining provisions of this clause 10, the Seller shall Indemnify the Purchaser in relation to and undertakes to pay, on the due date for payment in terms of clause 10.3, the Purchaser (or such other person as the Purchaser may direct) an amount equal to the amount of any Tax Liability of any Target Company arising
  - in respect of, or from, any Event that occurred or was deemed for the purposes of any Tax to have occurred during the Tax Indemnity Period;

In respect of, or by reference to, any income, profits or gains accrued or received, or deemed to have accrued or been received, during the Tax Indemnity Period;

in respect of, or from, the Tax Identified Items; or

any reasonable costs and expenses properly payable by the Purchaser or any Target Company In connection with any such Tax Liability to the extent that recovery is made under this clause 10 in respect of such Tax Liability,

provided that any amount shall be reduced by any Relief that is received by a Target Company after the Effective Date in relation to tax periods falling in the Tax Indemnity Period.

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#### 10.2 Exclusions

10.2.1 The obligation in clause 10.1.1 shall not apply to any Tax Liability of a Target Company to the extent that -

10,2,1.1 such Tax or Tax Liability arises as a result of normal trading activities after the Closing Date;

10.2.1.2 specific provision or reserve in respect of such Tax or Tax Liability was included in the Pro Forma Balance Sheet or the Effective Date Balance Sheet (for the avoidance of any doubt, contingent liabilities and deferred tax liabilities shall not be treated as provisions or reserves);

> such Tax Liability would not have arisen but for any transaction, act or omission (including any negligence or gross negligence) carried out or effected by the Target Company at any time after Closing Date;

10.2.1.4

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such Tax Liability arises by reason of a voluntary disclaimer or disclosure by the Target Companies, without the consent of the Seller, after the Closing Date of the whole or part of any Relief to which any of them is entitled or by reason of the revocation by the Target Companies after the Closing Date of any claim for Relief properly made (whether provisionally or otherwise) by it prior to the Closing Date in respect of the Tax Indemnity Period; or

10.2.1.5

such Tax Liability arises as a result of any changes after the Closing Date in the bases, methods or policies of accounting of the Purchaser or the Target Companies.

#### 10.3 Due Date Of Payment

If the Seller becomes liable to make any payment in terms of clause 10.1, the due date for the making of that payment shall be the date that is the later of -

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five Business Days after demand is made therefor by the Purchaser; and

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10.3.2 three Business Days before the last date on which the Target Company would have had to have paid to the appropriate Tax Authority the Tax that has given rise to the Seller's liability under this clause 10 in order to avoid incurring a liability to interest or a charge or penalty in respect of that Tax Liability.

#### 10.4 Tax Claims Procedure

10.4.1 If the Purchaser becomes aware of a Tax Demand relevant for the purposes of this clause 10, the Purchaser shall as soon as possible give written notice of that Tax Demand to the Seller and Glencore or, as the case may be, shall procure that a Target Company as soon as possible gives written notice of that Tax Demand to the Seller and Glencore.

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The Purchaser shall further procure that the relevant Target Company takes such action and gives such information and assistance in connection with the affairs of the Target Companies as the Seller and/or Glencore may reasonably request to avoid, resist, appeal or compromise the Tax Demand.

#### 10.4.3

The actions that the Selier and/or Giencore may reasonably request in terms of clause 10.4.1 shall include the Target Company applying to postpone (so far as is legally possible) the payment of any Tax and/or allowing the Seller or Glencore to take on or take over, at its own expense, the conduct of all or any proceedings of any nature whatsoever arising in connection with the Tax Demand in question, in which case the Seller and/or Glencore shall control such proceedings entirely.

10.4.4

If the Seller and/or Glencore take on or take over the conduct of such proceedings, the Purchaser shall provide (and shall procure that the Target Companies provide) such information and assistance as the Seller or Glencore may reasonably require in connection with the preparation for, and conduct of, those proceedings.

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The Seller and Glencore shall keep the Purchaser fully and promptly informed concerning their conduct of the proceedings in connection with

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the Tax Demand and shall consult with the Purchaser (and shall take any reasonable requests that the Purchaser has into account pursuant to such consultation) as to the conduct of such proceedings.

10.5 Tax Computations and Returns

10.5.1 The Purchaser hereby agrees that the Seller or its duly authorised agents -

10.5.1.1 shall prepare all computations and returns relating to Tax;

10.5.1.2 shall, to the extent possible, submit such computations and returns to the relevant Tax Authority and deal with all correspondence, negotiations and the agreements with respect thereto; and

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may require any claims, elections or notices that they may deem appropriate to be made by any Target Company,

in each case for all periods of the Target Companies ended before the Closing Date to the extent that such computations, returns, claims, elections or notices shall not have been prepared before the Closing Date, and shall submit such computations, returns, claims, elections or notices in draft to the Purchaser prior to submission to the Tax Authority. The Purchaser shall have 21 days within which to review such computations, returns, claims, elections or notices, and the Seller shall not unreasonably refuse to incorporate any comments of the Purchaser in finalising such computations, returns, claims, elections or notices.

10.5,2

The Purchaser shall after the Closing Date and to the extent necessary procure that the Target Company shall cause these computations, returns, claims, elections or notices to be authorised, signed and submitted to the relevant Tax Authority without further amendment and without delay (and in any event within any applicable time limit).

10.5.3

The Purchaser shall procure that the Target Companies shall afford such access to its books, financial statements and records as is necessary and reasonable for the Seller, and shall procure that the Target Companies

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give the Seller and its agents all such assistance as may reasonably be required to enable the Seller or its duly authorised agent to prepare such computations, returns, Tax Claims, elections or notices and conduct matters relating thereto.

10.5.4 The Parties shall cooperate in responding to each other's enquiries as to the Tax affairs of any Target Company in respect of periods before the Closing Date, including provision of information and copies of records that may be reasonably requested.

### 10.6 Exclusive Remedy

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The indemnity set out in clause 10.1 shall be the Purchaser and the Target Company's sole remedy for any matter relating to or in respect of Tax.

### 11 OTHER INDEMNITIES

11.1,1

- 11.1 The Seller shall indemnify OCM against all actual losses, liabilities, damages, costs and expenses of any nature whatsoever which the Purchaser may suffer or incur as a result of or in connection with
  - the claim filed against OCM by the National Union Of Mineworkers on behalf of Members vs Optimum Colliery (Pty) Ltd in Business Rescue : Case No. JS 861/15; and

11.1.2 the claim filed by Solly Lusenga and 303 Others vs Optimum Colliery (Pty) Ltd in Business Rescue : Case No JS 860/15;

(collectively, "Employee Claims").

11,2 It is recorded that a

11.2.1the Department of Water Affairs has submitted a claim to DCM in the<br/>amount of R32 915 841.79 for the payment of an outstanding involce<br/>dated 31 October 2014 for water usage ("Water Claim");

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- 11.2.2 OCM has conducted a reconciliation of the involce and the water usage readings and have found numerous errors amounting to R21 573 385.71 over the period August 2010 to October 2014;
- 11.2.3 OCM has made numerous payments to the department which have not reflected on the invoice as well as an overcharge during October 2003;
- 11.2.4 OCM is of the view that it only liable for R9 198 342.36 ("Water Claim Provision") in respect of the Water Claim; and
- 11.2.5 OCM and the department are in discussions regarding the Water Claim,
- 11.3 If after the Effective Date, OCM is required to pay an amount in respect of the Water Claim in excess of the amount of the Water Claim Provision, then the Seller shall pay to OCM 50% of the amount paid by OCM in excess of the Water Claim Provision.
  - The Purchaser shall procure that neither it nor OCM admits any liability in respect of the Employee Claims or the Water Claim.
    - The Seller shall, at its own expense and with the assistance of its own legal advisers, be entitled to contest the Employee Claims and the Water Claim In the name of OCM until finally determined by the highest court to which appeal may be made (or which may review any decision or judgment made or given in relation thereto) or to settle any such claim and shall be entitled to control the day-to-day proceedings in regard thereto.
  - 11.6 The Purchaser shall, and shall procure that OCM shall, render to the Seller such assistance as the Seller may reasonably require of the Purchaser or OCM In order to contest the Employee Claims and the Water Claim,
  - 11.7 The indemnity set out above shall be the Purchaser and the Target Company's sole remedy for any claim arising from or relating to the Employee Claim, the Water Claim or the facts and circumstances giving rise thereto.

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### 12 LIMITATION OF LIABILITY

#### 12,1 Time limitations

12.1.1 The Seller shall not be liable for any claim in respect of or in terms of -

- 12,1,1.1 a breach of Warranty; .
- 12.1.1.2 the indemnity in clause 10 ("Tax Claim");

12.1.1.3 the indemnities and undertakings in clause 11; or

12,1,1.4 a breach of clause 13,

(each a "Claim"), unless the Purchaser has given the Seller written notice of that Claim, specifying the factual basis of that Claim in reasonable detail to the extent then known to the Purchaser, prior to, -

12.1.1.5 In the case of a Claim other than a Tax Claim, the date that is two years after the Closing Date; and

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in the case of a Tax Claim, the date that is three years after the Closing Date,

and thereafter, within a reasonable time, pursues that Claim to completion. If the Claim relates to a contingent claim or liability, the Purchaser shall be required to provide notice of that potential Claim within the foregoing time periods and, as soon as practical after that contingent claim or liability becomes an actual claim or liability which is a liquidated amount, the Purchaser shall provide written notice thereof to the Seller confirming the liquidated amount of the Claim.

#### 12.2 Mitigation

For the avoidance of any doubt, nothing in this clause 11 shall in any way diminish the Purchaser's common law obligation to mitigate its loss.

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#### 12.3 Nature of claims

12.3.1 Notwithstanding anything to the contrary contained anywhere else in this Agreement, the Purchaser shall not have any Claim against the Seller -

12.3.1.1 for any consequential or special damage or loss, including loss of profit, loss of goodwill, injury to business reputation and/or loss of business opportunities;

12.3.1.2 to the extent that the circumstances or facts giving rise to the Claim (other than a Tax Claim and the Indemnities and undertakings in clause 11) are known to the Purchaser as at the Signature Date, whether as a result of its investigation of the Target Companies or otherwise;

> to the extent that allowance, provision or reserve was made in the accounts of any of the Target Companies in respect of the matters to which such Claim (other than a Tax Claim and the indemnities and undertakings in clause 11) relates or such matter was taken into account in computing the amount of any such allowance, provision or reserve;

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to the extent that the Claim is based on a liability that is contingent only, unless and until such contingent liability becomes an actual liability that is in a liquidated amount and is due, owing and payable, having been claimed in writing by the third person in question within the applicable periods referred to in clause 12.1; and

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to extent that the Claim arises or is increased as a result of, or is otherwise attributable wholly or partly to, -

any law not in force at the Signature Date which takes effect retrospectively or occurs as a result of the alteration of, or change in, any law which takes effect retrospectively, including any change in the basis or method of calculation of, or any increase in, the rates of Taxation in force as at the Signature Date;

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12.3.1.5.2 any change introduced, or having effect, after the Effective Date to the bases upon which the accounts of the Target Companies or the Purchaser are prepared and/or in the policies or practices adopted in the preparation of such accounts;

12.3.1.5.3 any act or omission by the Seller or any Target Company at any time after the Signature Date at the request of, or with the approval of, the Purchaser;

12.3.1.5.4 any voluntary act or omission on the part of the Purchaser or its directors, officers, employees or agents at any time after the Signature Date;

12.3.1.5.5 any voluntary act or omission on the part of any Target Company or its directors, officers, employees or agents at any time after the Closing Date;

> a failure by the Purchaser to comply with any of its obligations under this Agreement; and/or

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the implementation of the Transaction Agreements.

The Purchaser shall not be entitled to claim more than once in respect of any one breach, damage, deficiency or shortfall, or other set of circumstances, arising from the same cause of action or facts, which give rise to one or more Claims.

12.4 Amount

12.4.1 Notwithstanding anything to the contrary contained anywhere else in this Agreement or Applicable Law, -

12.4.1.1 the maximum amount which the Purchaser and Oakbay shall be entitled to recover or claim from the Seller in respect of all Claims and/or in terms of any other provision/s of this Agreement shall be R500 000 000; and

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the Purchaser shall not have a Claim against the Seller, unless -12.4.1.2 the individual Claim exceeds R250 000, it being agreed that, in 12,4.1.2.1 respect of any single cause of action, if the quantum thereof is not at least R250 000, no Claim may be made. For purposes hereof, no Claims less than R250 000 shall be aggregated with any other Claims for purposes of reaching the threshold referred to in clause 12.4.1.2.2; and the Claim exceeds the amount referred to In clause 12.4.1.2.1 12.4.1.2.2 and, if relevant, alone or taken together with any other Claim in the Claim/s exceed/s In of that amount, excess aggregate R10 000 000, and then (subject to the provisions of clause 12.4.1.2.1) the Seller shall have a claim only for the amount above R10 000 000, provided that no Cialm in respect of any single cause of action that is not at least R250 000 shall be payable in terms of clause 12.4,1.2,1. 12.5 Recovery Any Claim shall be reduced by the aggregate of -12.6 any amount recovered from a third party (including an insurer) in respect 12.6.1 of the damage, liability or loss giving rise to such Claim; and the realised benefits of any income tax allowances or deductions (at 12,6.2 prevailing Tax rates at the time) received by the Purchaser or any Target Company in respect of the damage, liability or loss giving rise to such Claim.

#### 12.7 Third Party Claims

12.7.1 If, in respect of any Claim, the Purchaser has the right to recover from a third party (including an insurer) a sum that relates to that Claim, the Purchaser shall notify the Seller in writing forthwith of it becoming aware of that right to enable the Seller to take steps to obtain recovery from

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that third party, and the Purchaser shall take all such steps (including ceding or procuring the cession of such claim/s) as the Seller may reasonably require (at the cost of the Seller) in order to enable the Seller to enforce such rights. The Purchaser shall pay over to the Seller any amount that it recovers in respect of a Claim.

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() () If the Purchaser becomes aware of a third party claim or potential third party claim which might give rise to Claim (Including a claim in respect of the payment of Tax) (**"Third Party Claim"**), then the Purchaser shall notify the Seller in writing of such Third Party Claim as soon as is reasonably possible after the Purchaser becomes aware of that Third Party Claim.

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The Purchaser shall not, and shall procure that each Target Company shall not, admit any liability in respect of that Third Party Claim.

The Seller shall, at its own expense and with the assistance of its own legal advisors, be entitled to contest any such Third Party Claim in the name of the Purchaser or the relevant Target Company until finally determined by the highest court to which appeal may be made (or which may review any decision or judgment made or given in relation thereto) or to settle any such Third Party Claim, and shall be entitled to control the day-to-day proceedings in regard thereto, provided that -

12.7.4.1

12.7.4.2

the Seller shall Indemnify and hold the Purchaser or the relevant Target Company harmless against all costs that may be incurred or become payable as a consequence of those steps (including any reasonable legal costs);

the Purchaser shall (at the expense of the Seller and, If the Purchaser so requires, with the Involvement of the Purchaser's own legal advisors), and it shall procure that each Target Company shall, render to the Seller such assistance as the Seller may reasonably require of the Purchaser in order to contest that Third Party Claim;

12.7.4.3

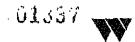
the Seller shall regularly and, in any event, on demand by the Purchaser, Inform the Purchaser fully of the status of the contested

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Third Party Claim and furnish the Purchaser with all documents and Information relating to the contested Third Party Claim which may reasonably be requested by the Purchaser; and

12.7.4.4 the Seller shall consult with the Purchaser prior to taking any major steps in relation to, or settling, that contested Third Party Claim and, in particular, before making or agreeing to any announcement or other publicity in relation to that Third Party Claim.

### 12.8 Reduction of Purchase Price

Any payment made by the Seller to the Purchaser in respect of a Claim shall constitute an amount repayable by the Seller and, accordingly, be a reduction in the amount of the Purchase Price paid in respect of the Sale Equity that was previously received by the Seller.

#### 13 INTERIM PERIOD

### 13.1 Positive Undertakings

The Seller undertakes to the Purchaser that, during the Interim Period, it shall, subject to the limitations imposed by the Business Rescue Proceedings of OCM, procure that each Target Company shall continue to carry on its business and pay its Tax on the same basis and in the same manner as it did immediately prior to the Signature Date.

### 13.2 Negative undertakings

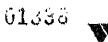
The Seller undertakes to the Purchaser that, during the Interim Period, subject to the limitations imposed by the Business Rescue Proceedings of OCM, procure that each Target Company shall not, without the prior written consent of the Purchaser, -

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change the nature or scope of its business, or cease or suspend, or threaten or propose to cease or suspend, to carry on all or a substantial part of its business;

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13.2.2 issue any ordinary shares, non-redeemable preference shares, deferred shares or other similar equity instruments (including instruments which are or become convertible into ordinary shares, non-redeemable preference shares, deferred shares or other equity instruments);

- 13.2.3 amend its memorandum of incorporation;
- 13.2.4 declare or pay any distribution or dividend;

13.2.5 pay any amount to any member of the Glencore Group other than (1) payments made in the ordinary course of business; and (1) payments in respect of management fees not exceeding R9 000 000 per month in aggregate for all Target Companies;

> enter into any transaction other than on arms'-length terms and for full and proper consideration;

dispose of, or enter into any agreement to dispose of (whether by one transaction or a series of transactions), any of its Material Assets, other than in the ordinary course of business;

take or agree to take any loans, borrowings or other forms of funding or financial facilities or assistance, or enter into or agree to enter into any foreign exchange transactions, guarantees or other similar agreements (other than pursuant to the New PCF Facility Agreement);

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13.2.7

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acquire or enter into any agreement to acquire (whether by one transaction or a series of transactions) all or any part of the business, undertaking or assets of any other persons or make any similar investment or acquire any subsidiary, other than in the ordinary course of business; and

13.2.10 form or enter into or agree to enter into or form, or acquire an interest in, any joint venture, partnership or agreement or other venture for the sharing of profits or assets.

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#### 13.3 Observers

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The Purchaser shall from the day after the Signature Date be entitled to appoint representatives ("Observers") to observe and monitor the affairs of each Target Company and ensure compliance with the obligations contained in this Agreement. The Purchaser shall appoint one or more employees of Oakbay as the Observers. An Observer shall be a person who is not involved in the strategic or operational decision making process of the Purchaser's coal business. Oakbay shall procure that from the day after the Signature Date, the Observers shall not share any information that he/she obtains in relation to the Target Companies with the Purchaser (other than to the extent necessary to enable the Purchaser to enforce its rights in terms of this Agreement and the New PCF Facility Agreement, in the event of non-compliance in terms of those agreements).

The Observers shall -

not be allowed to instruct or give any directions in relation to the conduct or management of the Target Company's business;

13.3.2.2 be entitled to have such reasonable access to -

13.3.2.2.1 Information and documents relating to the Target Companies;

13.3.2.2.2 the premises and areas on which the Target Companies' businesses are conducted;

13.3.2.2.3 the officers and amployees of the Target Companies,

as is reasonably required by the Observers for the purposes contemplated in clause 13.3.1.

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Nothing in this clause 13.3 shall compel or be construed as compelling the Seller or the BRPs to do anything, or refrain from doing anything, which it/they may be advised by its/their counsel constitutes any act or omission in contravention of any competition

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or anti-trust legislation in any relevant jurisdiction and, to the extent that same may be so construed as being in contravention of such legislation and/or any judicial decision thereon, that provision in this clause 13.3 shall be deemed to be *pro non scripto*.

### 13,4 Existing PCF Facility Agreement

Giencore shall procure that by not later than the Settlement Date -

13.4.1 OCM shall assign to the Seller all of its rights and obligations under the Existing PCF Facility Agreement with effect from the Settlement Date In consideration for a claim on loan account held by the Seller against OCM in an amount equal to the Outstanding Balance (as defined in the Existing PCF Facility Agreement) on the Settlement Date;

13.4.2 OCM shall be released from all of its obligations in respect of the Existing PCF Facility Agreement with effect from the Settlement Date; and

13.4.3 the security provided by the Target Companies in respect of the Existing PCF Facility Agreement shall be terminated with effect from the Settlement Date.

### 14 TRANSITION

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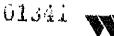
It is recorded that the Seller and the Target Companies form part of the integrated Glencore Group coal business in South Africa and shall after the Closing Date need to be extracted from such business and become stand-alone businesses ("Extraction").

14.2 The Glencore Group shall during the Interim Period continue to provide services to the Target Companies on the same basis and in the same manner as it did immediately prior to the Signature Date and shall be remunerated on the same terms on a monthly basis for such services (subject to the limit sat out in clause 13.2.5).

14.3

The Seller and the Purchaser shall as soon as possible after the Signature Date establish a working group in order to plan the Extraction and to negotiate the

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terms of a Transitional Services Agreement that shall govern the provision of services from the Giencore Group after the Closing Date, it being agreed that the Giencore Group shall be under no obligation to provide any services if agreement is not reached regarding the terms of the Transitional Services Agreement.

#### 15 INSURANCE

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With effect from the first Business Day after the Closing Date, the Target Companies shall cease to be insured by any Glencore Group Insurance Policies. With respect to any Glencore Group Insurance Policies written on an "occurrence basis", no Glencore Group Insurance Policies shall be available for occurrences which take place on or after the first Business Day after the Closing Date. With respect to Glencore Group Insurance Policies in respect of coverage written on a "claims made basis", no Glencore Group Insurance Policies in respect of coverage written on a "claims made basis", no Glencore Group Insurance Policies shall be available for claims made on or after the first Business Day after the Closing Date. The Seller and/or any member of the Glencore Group, as the case may be, shall be entitled to make arrangements with its Insurers to reflect this clause 14.

# 15.1 Existing claims under Glencore Group Insurance Policies

15.1.1

With respect to any claim made before the Closing Date by or on behalf of a Target Company under any Glencore Group Insurance Policy, to the extent that -

15.1.1.1

the relevant Target Company or the Purchaser has not been indemnified prior to the Closing Date in respect of the losses in respect of which the claim was made; or

15.1.1.2

the losses in respect of which the claim was made have not been reflected in the financial statements of the Target Companies,

the Seller shall use reasonable endeavours after the Closing Data to recover all relevant and applicable monies due from insurers and shall pay any monies received (after taking into account any deductible under the Glencore Group Insurance Policies and less any Tax payable on the proceeds and any reasonable out of pocket expenses suffered or incurred

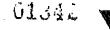
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by the Seller or any member of the Glencore Group in connection with the claim) to the Purchaser or, at the Purchaser's written direction, the relevant Target Company as soon as practicable after receipt.

15.1.2 The Purchaser shall provide (and shall procure that each Target Company also provides) all assistance, information and co-operation reasonably requested by the Seller or the Seller's representatives (including the Seller's Insurers, appointed claims handlers or any lawyers instructed in relation to such claim) in connection with the claim including prudent handling to make good any relevant or applicable loss, injury or damage or consequence of the claim.

## 15.2 New claims under "occurrence-based" policies

With respect to any event, act or omission relating to the Target Companies that occurred or existed prior to the Closing Date that is covered by an "occurrence-based" Glencore Group Insurance Policy, the Seller shall, at the direction of the Purchaser or the relevant Target Company, make a claim under such insurance policy, provided that -

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15.2.1

the Seller shall not be obliged to make any such claim if and to the extent that such claim is covered by an insurance policy held by the Purchaser or a member of the Purchaser's Group;

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the claim is notified to the Seller within five Business Days of the Purchaser becoming aware of the claim and, in any event, within one year after the Closing Date;

the Purchaser shall or shall procure that each Target Company shall be liable for any deductible under the Glencore Group Insurance Policies payable in respect of the claim; and

15.2.1.4

the Purchaser shall, or shall procure that a Target Company shall, reimburse the Seller or relevant other member of the Glencore Group for any retrospective premium increases under the insurance policy under which the claim is made, as such amounts are

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determined in accordance with that insurance policy as a result of any such claim made pursuant to this clause 15.2.1.

15.2.2 In the event that the Purchaser or a Target Company notifies a Claim pursuant to clause 15.2.1, the Seller shall, at the Purchaser's cost, make all necessary notifications and claims under the relevant Glencore Group Insurance Policy and the relevant Target Company shall be entitled to be paid any proceeds actually received under the Glencore Group Insurance Policy (less any deductible or excess actually paid by the Seller or any member of the Glencore Group and less any Tax suffered on the proceeds and any reasonable out of pocket expenses suffered or Incurred by the Seller or any member of the Glencore Group) provided that -

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the Seller shall not be required, pursuant to any requests made by the Purchaser or any Target Company, to undertake or threaten litigation or incur any expenditure or liability without being put in funds by the Purchaser or the relevant Target Company prior to incurring any such expenditure or liability;

15.2.2.2

15.2.2.3

neither the Purchaser nor any Target Company shall be entitled to any proceeds received by the Glencore Group under any Glencore Group Insurance Policy, except to the extent that such proceeds relate to a claim made pursuant to clause 15.2.1 In respect of any losses for which the relevant Target Company has not already been reimbursed, Indemnified or otherwise compensated for whether under this Agreement or otherwise;

the Purchaser shall provide (and shall procure that each Target Company also provides) all assistance, information and co-operation reasonably requested by the Seller or the Seller's representatives (including the Seller's insurers, appointed claims handlers or any lawyers instructed in relation to such claim) including prudent handling to make good any relevant or applicable loss, injury or damage or consequence of the claim.; and

15.2.2.4

the Purchaser shall or shall procure that each Target Company shall pay or bear any deductible or excess element of any such claim.

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### 16 RELEASE FROM GUARANTEES AND SURETYSHIPS

- 16.1 The Purchaser shall, to the extent that it has not already done so, procure the release of the Seller and the Glencore Group, within a period of 45 days from the Closing Date, from the Disclosed Guarantees. The Purchaser shall, if necessary to procure such release, furnish its own guarantees, suretyships, indemnities and undertakings.
- 15.2 Without prejudice to any of the rights of the Seller at law or in terms of any other provision of this Agreement, the Purchaser shall Indemnify the Seller and the members of the Glencore Group against all actual losses, liabilities, damages, costs and expenses of any nature whatsoever which the Seller or member of the Glencore Group may suffer or incur as a result of or in connection with a breach of the Purchaser of clause 16.1 ("Indemnified Guarantee Loss").
- 16.3 The Purchaser shall be obliged to pay the Seller or member of the Glencore Group the amount of any Indemnified Guarantee Loss suffered or Incurred by the Seller as soon as the Seller or member of the Glencore Group is obliged to pay the amount thereof (In the case of any Indemnified Guarantee Loss which Involves a payment by the Seller or member of the Glencore Group) or as soon as the Seller or member of the Glencore Group suffers the Indemnified Guarantee Loss (in the case of an Indemnified Guarantee Loss which does not Involve a payment by the Seller or member of the Glencore Group),

#### 17 NAME AND LOGO

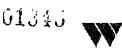
The Purchaser shall have the right to continue to use the name "Optimum Coal" and the logo currently used by each Target Company.

#### 18 GUARANTEES

- 18.1 Glencore Guarantee
- 18.1.1 Glencore hereby unconditionally and irrevocably guarantees, as a primary and independent obligation, the due and punctual performance by the Seller of its obligations under the Transaction Agreements, it being

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recorded for the avoidance of doubt that the liability of the Guarantor is subject to the limitations as set out in clause 12, including the limit on liability set out in clause 12.4.1.1.

18.1.2 Glencore unconditionally and irrevocably acknowledges that -

18.1.2,1

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the liability of Giencore under this Agreement shall not be released or diminished by any variation of any terms of this Agreement, any indulgence granted by the Purchaser to the Seller, any neglect or delay in seeking performance of any obligation under this Agreement or of any obligation hereby imposed or any granting of time for such performance in any case;

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this Agreement shall be a continuing guarantee and, accordingly, shall remain in force and shall not be discharged, limited, impaired, reduced or terminated in any way by any circumstances or condition whatsoever until all the obligations of the Seller under this Agreement have been fully performed, satisfied or have lapsed;

18.1,2.3 the obligations of Glencore hereunder shall not, in respect of any monles expressed to be payable under this Agreement, be subject to any counterclaim, set-off, deduction, withholding, diminution, abatement, recoupment, suspension, deferment or reduction for any reason whatsoever;

18.1.2.4 the obligations of Glencore set forth herein in respect of any monies expressed to be payable under this Agreement are primary obligations and constitute the full recourse obligations of Glencore enforceable against it to the full extent of all its assets and properties; and

18,1,2,5

Glencore renounces all benefits from the legal exceptions non numerates pecuniae, non causa debiti, errore calculi, revisions of accounts, no value received and all other legal benefits and exceptions, with the force, meaning and effect of which it declares itself to be fully acquainted.

Sale of Shares Agree 10122015	ment + OCH  Dakbay + Execution Version/#3599350v2	01340 🔻	V
18.1.3 <sup>.</sup>	The provisions of this clause 18.1 are severable Agreement and shall remain in effect even if this Agreement reason.	from the rest of this greement is terminated	
18,1,4	Glencore warrants that -	,	
18,1.4.1	it is a company with limited liability duly inco existing under, the laws of Switzerland;	rporated in, and validly	
18,1,4,2	it has -		
18.1.4.2.1	the legal capacity and power to enter in	to and perform; and	
18,1,4,2,2	taken all necessary actions (whether otherwise) to authorise its entry into ar obligations under,	corporate, internal or Id the performance of its	
	this Agreement; and		
18.1.4.3	the obligations expressed to be assumed by afforded to it under the Agreement are enforceable by, and against, it.	r Glencore and the rights legal, valid, binding and	
18.2 0	akbay Guarantee	<u>\</u>	
18.2.1	Oakbay hereby unconditionally and irrevocably and independent obligation -	undertakes, as a primary	
18.2.1.1	to pay the entire Purchase Price as conter Agreement, If the Purchaser fails to make therefor within five Business Days of firs Seller; and	payment on the due date	
18.2.1.2	to perform all of the other obligations, co under the Transaction Agreements if the such obligations, commitments and under	Purchaser falls to perform	l

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18.2.2 Oakbay unconditionally and irrevocably acknowledges that -

18.2.2.1 the liability of Oakbay under this Agreement shall not be released or diminished by any variation of any terms of this Agreement or any other Transaction Agreement, any induigence granted by the Seller or Giencore to the Purchaser or Oakbay, any neglect or delay in seeking performance of any obligation under any Transaction Agreement or of any obligation hereby imposed or any granting of time for such performance in any case;

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18.2.2.2 this Agreement shall be a continuing guarantee and, accordingly, shall remain in force and shall not be discharged, limited, impaired, reduced or terminated in any way by any circumstances or condition whatsoever until all the obligations of the Purchaser under this Agreement have been fully performed or satisfied;

> the obligations of Oakbay hereunder shall not, in respect of any monles expressed to be payable under this Agreement, be subject to any counterclaim, set-off, deduction, withholding, diminution, abatement, recoupment, suspension, deferment or reduction for any reason whatsoever;

18.2.2.4

18.2.2.5

18.2.2.3

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the obligations of Oakbay set forth herein in respect of any monies expressed to be payable under this Agreement are primary obligations and constitute the full recourse obligations of Oakbay enforceable against it to the full extent of all its assets and properties; and

Oakbay renounces all benefits from the legal exceptions non numeratae pecuniae, non causa debiti, errore calculi, revisions of accounts, no value received and all other legal benefits and exceptions, with the force, meaning and effect of which it declares itself to be fully acquainted.

18.2.3 The provisions of this clause 18.2 are severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.

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18.2.4	Oakbay warrants that -
18.2.4.1	it is a company with limited liability duly incorporated in, and validly existing under, the laws of South Africa;
18.2.4.2	it has -
18,2,4.2.1	the legal capacity and power to enter into and perform; and
18.2.4.2.2	taken all necessary actions (whether corporate, internal or otherwise) to authorise its entry into and the performance of its obligations under,

this Agreement; and

18.2.4.3

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the obligations expressed to be assumed by Oakbay and the rights afforded to it under the Agreement are legal, valid, binding and enforceable by, and against, it.

#### **19 CONFIDENTIALITY**

Notwithstanding the cancellation or termination of this Agreement, no Party ("Receiving Party") shall, at any time after the conclusion of this Agreement, disclose to any person or use in any manner whatsoever any other Party's Confidential Information or the existence and contents of the Transaction Agreements, provided that -

- 19.1 the Receiving Party may disclose the existence and contents of the Transaction Agreements to the extent required to implement the Proposed Transaction, including in the Business Rescue Plan;
- 19.2 the Receiving Party may disclose the other Partles' Confidential Information and the existence and contents of the Transaction Agreements -
- 19.2.1 to the extent required by Applicable Law (other than in terms of a contractual obligation of the Receiving Party);

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19.2.2 to, and permit the use thereof by, its employees, representatives and professional advisors to the extent strictly necessary for the purpose of implementing or enforcing the Transaction Agreements or obtaining professional advice or conducting its business, it being specifically agreed that any disclosure or use by any such employee, representative or professional advisor of such confidential or other information for any other purpose shall constitute a breach of this clause 19 by the Receiving Party; and

19.3 the provisions of this clause 19 shall cease to apply to any Confidential Information of a Party that -

19,3.1 Is or becomes generally available to the public other than as a result of a breach by the Receiving Party of its obligations in terms of this clause 19;

19,3,2 Is also received by the Receiving Party from a third party who did not acquire such Confidential Information subject to any duty of confidentiality in favour of any other Party; or

19.3.3 was known to the Receiving Party prior to receiving it from any other Party.

"Confidential Information" of any Party shall mean any Information disclosed by that Party to the Receiving Party prior to the conclusion of this Agreement, in terms of this Agreement or otherwise in connection with this Agreement.

## 20 PUBLICITY AND ANNOUNCEMENTS

- 20.1 No Party shall, subject to the provisions of clause 20.2, issue any press release or any other public document or make any public statement, in each case relating to or connected with or arising out of the Transaction Agreements, without consulting with the other Partles.
- 20.2 In the case of a release, announcement or document which is required to be given, made or published by law or under the rules and regulations of any stock exchange, the Party liable to give, make or publish the same shall give

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to the other Partles as much advance warning thereof as is reasonable in the circumstances, together with drafts or a copy thereof as soon as it is at liberty so to do.

#### 21 BREACH

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If any Party ("Defaulting Party") commits a breach of any provision of this Agreement and falls to remedy that breach within seven days (in case of a breach of clause 7) and 14 days (in the case of all other breaches) after receiving written notice from any other Party ("Aggrieved Party") requiring the Defaulting Party to do so, then the Aggrieved Party shall, without prejudice to its other rights in law but subject to clause 9.1.4, be entitled to cancel this Agreement or to claim immediate specific performance of all of the Defaulting Party's obligations then due for performance, without prejudice to the Aggrieved Party's rights to claim damages. Notwithstanding anything to the contrary contained in this Agreement in respect of a breach which is not material and no Party shall be entitled to cancel this Agreement in Segreement after the completion of the sale and purchase of the Sale Equity.

### 22 DOMICILIUM AND NOTICES

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

22.1.1

22.1

the Seller

physical First Floor 23 Melrose Boulevard Melrose Arch . 2196

e-mail pmarsden@matusonassociates.co.za peter@v2rescue.co.za Shaun.Blankfield@glencore.com

attention Piers Marsden/Peter Van den Steen/Shaun Blankfield

	Sale of Shares Ag 10122015	greement - OCH Qakbay - ≋xecu	tion Version/#3599350v2	01351 -
	22.1.2	Glencore	physical	Baarermattstrasse 3
				Baar
				6340 Switzerland
			e-mail	Shaun.Telchner@glencore.com
		120	attention	Shaun Telchner
	22,1,3	the Purchaser	physical	Lower Ground Floor, Block A Grayston Ridge Office Park 144 Katherine Street
<i>(</i> );				Sandton 2196
			e-mail	nazeemh@oakbay.co.za
. 65			attention	Nazeem Howa
	22,1,4	Oakbay	physical	Lower Ground Floor, Block A Grayston Ridge Office Park
				144 Katherine Street Sandton
		1		2196
<sub>м</sub> ( )г			e-mail	nazeemh@oakbay.co.za

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- 22.2 Any Party shall be entitled, from time to time, by giving written notice to the others, to vary its physical Domicilium to any other physical address (not being a post office box or *poste restante*) and to vary its e-mail Domicilium to any other e-mail address.
- 22.3 Any notice given or process served by any Party to any other ("Addressee"), which is delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the Addressee's physical Domicilium for the time being, shall

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be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee at the time of delivery.

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- 22.4 Any notice given or process served by any Party to any other, which is transmitted by e-mail to the Addressee's e-mail Domicilium for the time being, shall be deemed (unless the contrary is proved by the Addressee) to have been received by the Addressee on the Business Day immediately succeeding the date of successful transmission thereof.
- 22.5 This clause 22 shall not operate so as to invalidate the giving, serving or receipt of any written notice or process which is actually received by the Addressee other than by a method referred to in this clause 22.
- 22.6 Any notice or process in terms of, or in connection with, this Agreement shall be valid and effective only if in writing and if received or deemed to have been received by the Addressee.

#### 23 DISPUTES

23.1

- Unless this Agreement provides otherwise, any dispute arising from or in connection with this Agreement shall if so required by any Party by giving written notice to that effect to the others be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") before a panel of three arbitrators (at least one of which shall be a retired judge), with one arbitrator nominated by each Party to the dispute. If there are only two Parties to the dispute or if the Parties are able to organise themselves into two groups for the purposes of any dispute, then a third arbitrator shall be chosen by agreement between the two Party-nominated arbitrators or, falling such agreement between each Party to the dispute or the two Party-nominated arbitrators within seven days after the date of their appointment, as the case may be, appointed by AFSA on the request of any Party. There shall be no right of appeal as provided for in article 22 of such rules.
- 23.2 Each Party to this Agreement -
- 23.2.1

expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency; and

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23.2.2	irrevocably authorises any other Party to apply, on behaif of all Partles, in writing, to the secretariat of AFSA in terms of article 23 of the aforesaid rules for any such arbitration to be conducted on an urgent basis.
23.3	If the arbitrators' charges and any other costs have to be paid before the arbitrators have made their award in respect of those charges and costs, the Parties to the dispute shall bear and pay those charges and costs equally, pending any determination as to liability therefor by the arbitrators,
23.4	Any order or sward that may be made by the arbitrators -
23.4,1	shall be final and binding on the Partles in the absence of cierical or manifest error;
23,4,2	shall be carried into effect by the Parties; and
23.4.3	may be made an order of any competent court by any of the Parties.
23,5	Nothing in this clause 23 shall prohibit any Party from bringing urgent or Interdictory relief in a court.
23.6	For the purposes of clause 23.5 and having any award made by the arbitrators being made an order of court, each of the Parties hereby submits itself to the

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This clause 23 is severable from the rest of this Agreement and shall remain in 23.7 full force and effect notwithstanding any cancellation or termination of this Agreement.

non-exclusive jurisdiction of the High Court of South Africa, Gauteng Local

#### GOVERNING LAW 24

Division, Johannesburg.

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This Agreement shall, in all respects (including its existence, validity, interpretation, implementation, termination and enforcement), be governed by the law of South Africa.

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## SEVERABILITY

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Each provision of this Agreement is, notwithstanding the grammatical relationship between that provision and the other provisions of this Agreement, severable from the other provisions of this Agreement. Any provision of this Agreement that is or becomes invalid, unenforceable or unlawful in any jurisdiction shall. In such jurisdiction only, be treated as *pro non scripto* to the extent that it is so invalid, unenforceable or unlawful, without invalidating or affecting the remaining provisions of this Agreement, which shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would have been executed without that invalid, unenforceable or unlawful provision if they were aware of that invalidity, unenforceability or unlawfulness at the time of the execution of this Agreement.

## 26 CESSION, DELEGATION AND ASSIGNMENT

- 26.1 The Seller shall be entitled after the Closing Date without consent to cede, delegate or otherwise assign or transfer all (but not a part) of its rights, obligations under or in terms of this Agreement to any member of the Glencore Group.
- 26.2 The Purchaser shall be entitled after the Closing Date without consent to cede, delegate or otherwise assign or transfer all (but not a part) of its rights, obligations or interest in, under or in terms of this Agreement to any member of the Oakbay Group.
- 26.3 Save as contemplated in clauses 26.1 and 26.2, no Party shall be entitled to cede, delegate or otherwise assign or transfer all or any of its rights, obligations or interest in, under or in terms of this Agreement to any third party without the prior written consent of the other Partles.

### 27 GENERAL

27.1 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. This Agreement accordingly supersedes and replaces all prior commitments, representations or undertakings, whether oral or written, between the Parties in respect of the subject matter hereof. Each party

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acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this Agreement.

- 27.2 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 all Parties.
- 27.3 For the purposes of this Agreement, -
- 27.3.1 no data message, as defined in the Electronic Communications and Transactions Act No 25 of 2002 ("ECTA"), other than an e-mail, shall constitute writing; and

no electronic signature or advanced electronic signature, as defined in ECTA, shall constitute a signature, except for the purposes of varying any date referred to in this Agreement or giving any approval or consent in terms of this Agreement.

- No indulgence or extension of time which any Party ("grantor") may grant to any other, nor any election or failure by the grantor to enforce, whether completely or partially, or delay the enforcement of, any of its existing or future rights, 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 that right.
- 27.5 Without prejudice to any other provision of this Agreement, any successor-in-title, including any curator, executor, heir, liquidator or trustee, of any Party shall be bound by this Agreement.

27.6

27.3.2

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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 the other Parties.

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#### 28 COSTS

Each Party shall bear and pay its own costs in relation to the negotiation, drafting, finalisation and implementation of this Agreement.

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## \*\*\*\*SIGNATURE PAGES TO FOLLOW\*\*\*\*

01.57 JN/XN 10122015/OPT113168,19 Sale of Shares Agreement - OCH Oekbay - Execution Version/#3599350v2 December 2015 J thomastong 10 on Signed at Optimum Coal Holdings Proprietary for Limited (in business rescue) represented by Piers Marsden in his capacity as joint business practitioner who warrants that he is duly authorised hereto Name: Piers Match Position: BLP  $\langle g \rangle$ 2015 10 Orcemba on Signed at Jahannes 6 Optimum Coal Holdings Proprietary for Limited (in business rescue) represented by Peter van den Steen in his capacity as joint business practitioner who warrants that he is duly authorised hereto 1.F. VAN DEN STOCK Name: ( BRP Position:

01553 Sale of Shares Agreement - OCH Oakbay - Execution Version/#3599350v2 10122815 2015 оп Signed at **Glencore International AG** for who warrants that he is duly authorised hereto Name: Position: <u>,</u> ()) 10 DECEMBER 2015 signed at MELLOSE on **Oakbay Investments** Proprietary Limited for who warrants that he is duly authorised hereto Name: NAZEDA Hours DIRECTOR Position: DECEMBER MERANG 2015 10 **on** Signed at Tegeta Exploration & Resources for **Proprietary Limited** who warrants that he is duly authorised hereto Name: NAZGER HOWA Position: DINGCTOR E 2 A

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## ANNEXURE A - LIST OF TARGET COMPANIES

	Name	Registration	Percentage
		Number	Held
1	Optimum Coal Mine Proprietary Limited	2007/005308/07	100%
2	Koornfontein Mines Proprietary Limited	2006/013073/07	100%
3	Optimum Coal Terminal Proprietary Limited	2007/005379/07	100%
4	Optimum Nekel Mining and Exploration Proprietary Limited	2007/007728/07	51%
5	Optimum Viakfontein Mining and Exploration Proprietary Limited	2005/024619/07	100%
6	Optimum Overvaal Mining and Exploration Proprietary Limited	2002/031293/07	100%
7	Optimum Mpefu Mining and Exploration Proprietary Limited	2007/017921/07	100%

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#### ANNEXURE B - WARRANTIES

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#### 1 INTERPRETATION

In this Annexure B, -

- 1.1 words and expressions defined in the Sale of Shares and Claims Agreement ("Agreement") to which this is Annexure B shall bear the same meanings in this Annexure B as those assigned to them in the Agreement;
- 1.2 the following expressions shall bear the meanings assigned to them below and cognate expressions shall bear corresponding meanings -
- 1.2.1 "Cash and Cash Equivalents" cash and cash equivalents comprise cash held at bank, cash in hand and short-term bank deposits with an original maturity of three months or less;
  - "Encumbrance" any pledge, assignment, charge, mortgage, cession, lien, option over, power of sale, hypothecation, right of retention over, right of pre-emption, right of first refusal, allenation, restraint on alienation or other third party right or security interest of any kind or an agreement, arrangement or obligation to create any of the foregoing;

"Material Contracts"- collectively, -

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a contract which is of a long-term nature (le unlikely to have been fully performed, in accordance with its terms, more than 12 months after the date on which it was entered into or undertaken);

1.2.3.2 a contract which obliges any Target Company to pay an aggregate amount, or to render any other performance having an aggregate value, in excess of R20 000 000 per annum;

1,2.3.3 a contract which gives any person the right to participate in or to receive a commission or royalty on the income of any Target Company;

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1.2.3.4 ,	a consortium, joint venture, partnership or similar a	igreement; and
1,2,3,5	a contract which is essential for the continuing business of any Target Company;	operation of the
1.2.4	"Most Recent Accounts" - the financial statements Companies as at and for the 12-month pe 31 December 2014;	s for the Target riod ended on
1.3	unless the context clearly indicates a contrary intention, the below shall be given on the Signature Date and shall -	Warranties set out
1.3.1	In respect of the Warrantles in clauses 2, 3 an mutatis mutandis, to have been repeated on the Closing	
1,3.2	in respect of the other Warranties be deemed <i>mutatis</i> been repeated on the Effective Date;	mutandis, to have
1.4	for the purposes of any reference to the knowledge or stat the Seller in any Warranty, this shall mean the knowledge having made enquiry of the following individuals: Clinto Cohen, Shaun Blankfield, Shaun Teichner, Thys de Bruin, Ha Pillay and Justin Benjamin.	of the Seller after n Ephron, Richard
2 <b>O</b> R	RGANISATION AND AUTHORITY	
2.1	The Seller is a company with limited liability duly incorpor existing under, the laws of South Africa.	ated in, and valldiy
2.2	The Seller, represented by the BRPs, has -	
2,2,1	the legal capacity and power to enter into and perform	1; and
2,2,2	taken all necessary actions (whether corporate, inter authorise its entry into and the performance of its obli	
	the Transaction Agreements.	

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- 2.3 The obligations expressed to be assumed by the Seller and the rights afforded to it under the Transaction Agreements are legal, valid, binding and enforceable by, and against, it.

### **3 CORPORATE AFFAIRS**

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3.1 Each Target Company is a company with limited liability duly incorporated in, and validly existing under, the laws of South Africa.

Save for the Business Rescue Proceedings, no Target Company has taken any steps and, as far as the Seller is aware, no steps have been taken or are pending or threatened by any other person in respect of any Target Company, for its business rescue, deregistration, liquidation (whether provisional or final) or winding-up.

No Target Company has any existing or future obligation (whether contingent upon the exercise of any right, option, right of first refusal or otherwise), and no resolution has been passed requiring that Target Company, to vary (whether by way of an increase, reduction, consolidation, subdivision or otherwise) its authorised or issued shares, to vary any of the rights attaching to any of its shares or to create or issue any debentures or other securities,

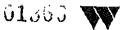
No Target Company is obliged to alter its memorandum of incorporation.

No person is entitled to participate in, or to a commission on the dividends or profits of, any Target Company, except as a shareholder.

3.6 The securities register and other statutory books and registers of each Target Company have been properly kept and contain complete, true and accurate records of its shareholders and all other material information which they are required to contain under Applicable Laws.

3.7 No person has any right to obtain an order for the rectification of the securities register of any Target Company.

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3.8 Each Target Company has the legal capacity and power to own its assets and carry on its business as it is presently being conducted.

### 4 SALE SHARES

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- 4.1 The Seller is the sole beneficial and registered owner of the Sale Shares.
- 4.2 The Seller is the sole beneficial owner of the Sale Claims.

4.3 The Sale Shares comprise 100% of the issued share capital of each of the Target Companies, save for in the case of Optimum Nekel Mining and Exploration Proprietary Limited in which the Sale Shares comprise 51% of the issued share capital.

- 4.4 All of the issued shares of each Target Company are of one class and rank parl passu with each other.
- 4.5 The Seller shall be entitled and able to give free and un-Encumbered registered and beneficial title to the Sale. Shares to the Purchaser on the Closing Date (subject to release of the Security Cession as contemplated in clause 7.2.4.3),

Save as provided in the Agreement, no person other than the Purchaser has any right, actual or contingent, (including, *inter alia*, any option or right of first refusal) to acquire any of the Sale Shares and Sale Claims.

## 5 ACCOUNTS AND FINANCE

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- 5.1 The Most Recent Accounts -
- 5.1.1 were prepared in accordance with IFRS and the Companies Act;
- 5.1.2 in respect of all Target Companies (other than OCM) have been audited;

5.1.3 fairly present the state of affairs, cash flows, operations and results of each entity to which they relate as at the date thereof and for the periods to which they relate; and

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- 5.1.4 were, unless inconsistent with clause 5.1.3, and except as disclosed in the notes to the Most Recent Accounts, prepared on the same bases and applying the same criteria as applied in the preparation of the annual financial statements of each entity to which they relate in respect of previous years.
- 5.2 The books and records of each Target Company are In its possession or under its control and have been properly maintained in accordance with all Applicable Laws and sound business practice.
- 5.3 No member of the Glencore Group has any claim against the Target Companies as at the Effective Date other than claims for services or goods rendered in the ordinary course of business.

#### ASSETS

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- Each Target Company has maintained a register of its assets in accordance with IFRS.
- Save for the Encumbrances contemplated in the Security Documents, each Target Company is the sole beneficial owner of all Material Assets referred to In its asset register and
  - such Material Assets are not subject to or liable to become subject to any Encumbrance or any credit agreement, suspensive sale agreement or lease agreement; and
- 6.2.2

It is not in any manner whatsoever prohibited or restricted from allenating or Encumbering any such Material Assets and, without limiting the generality of the foregoing, no person has any right (including any option or right of first refusal) to acquire or claim delivery, ownership or transfer, or the use, occupation, possession or enjoyment, of any such asset other than the purchase of merchandise in the ordinary course of business.

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### 7 COMPLIANCE WITH LAWS

Each Target Company has conducted and is conducting its business materially in accordance with all Applicable Laws.

### 8 LICENSES AND CONSENTS

- 8.1 Each Target Company has obtained all material approvals, consents, exemptions, licences, permits, registrations and other authorities required for the lawful conduct of its business in the places and in the manner in which such business is presently carried on (collectively, "Consents").
- 8.2 As far as the Seller is aware, none of the Target Companies is in breach of any of the terms or conditions of any such Consents.

#### LITIGATION

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- No Target Company is engaged in any material litigation or arbitration, expropriation, administrative, judicial, quasi-judicial or criminal proceedings, whether as plaintiff, defendant or otherwise, and, to the best of the Seller's knowledge and belief, no such litigation or arbitration, expropriation, administrative, judicial, quasi-judicial or criminal proceedings by or against any of the Target Companies are threatened or expected.
  - To the best of the Seller's knowledge and belief, there are not pending, or in existence, any disputes with, or investigations or enquiries by or on behalf of, any governmental body in respect of the affairs of any Target Company, and to the best of the Seller's knowledge and belief, there is no fact, matter or circumstance likely to give rise to any such disputes, investigations or enquiries.

### 10 MATERIAL CONTRACTS

10.1 The Target Companies are not bound by any Material Contracts whatsoever other than the Material Contracts which are listed in the Disclosure Schedule.

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10.2 To the best of the Seller's knowledge and belief, all of the Material Contracts (other than the CSA) are -

- 10.2.1 valid and of full force and effect according to their terms; and
- 10.2.2 not liable to be cancelled, rescinded, repudiated or otherwise avoided or prematurely terminated by any party thereto,

other than arising from the Business Rescue Proceedings of OCM.

10.3 As far as the Selier Is aware, none of the Target Companies, nor any other party to any contract with the Target Companies, is in breach of any of its obligations or is otherwise in default in terms of any Material Contract (other than the CSA).

### 11 EMPLOYEES

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- 11.1 No Target Company has any Hability to any pension or provident fund, medical scheme or other benefit fund and has made adequate financial provision for the post-retirement medical aid liability for any employees or former employees of the Target Companies entitled to such post-retirement medical aid benefits.
  - No present or past employee is or was a member of any pension, provident or other benefit fund other than the fund/s expressly referred to in the Disclosure Schedule, none of which has, on an actuarially sound assessment, a deficit in the funds required to meet any future liability in respect of any such employee.
- 11.3 There is no share incentive scheme for the benefit of any Target Company's employees, nor has any Target Company undertaken to establish any such scheme,
- 11.4 Adequate financial provision in accordance with IFRS has been made by the Target Companies for its leave liability.

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### 12 REHABILITATION TRUSTS

The Investments held by Optimum Mine Rehabilitation Trust and Koornfontein Rehabilitation Trust shall on 31 January 2016 comprise Cash and Cash Equivalents with an aggregate value of no less than R1 750 000 000.

### **13 INTELLECTUAL PROPERTY**

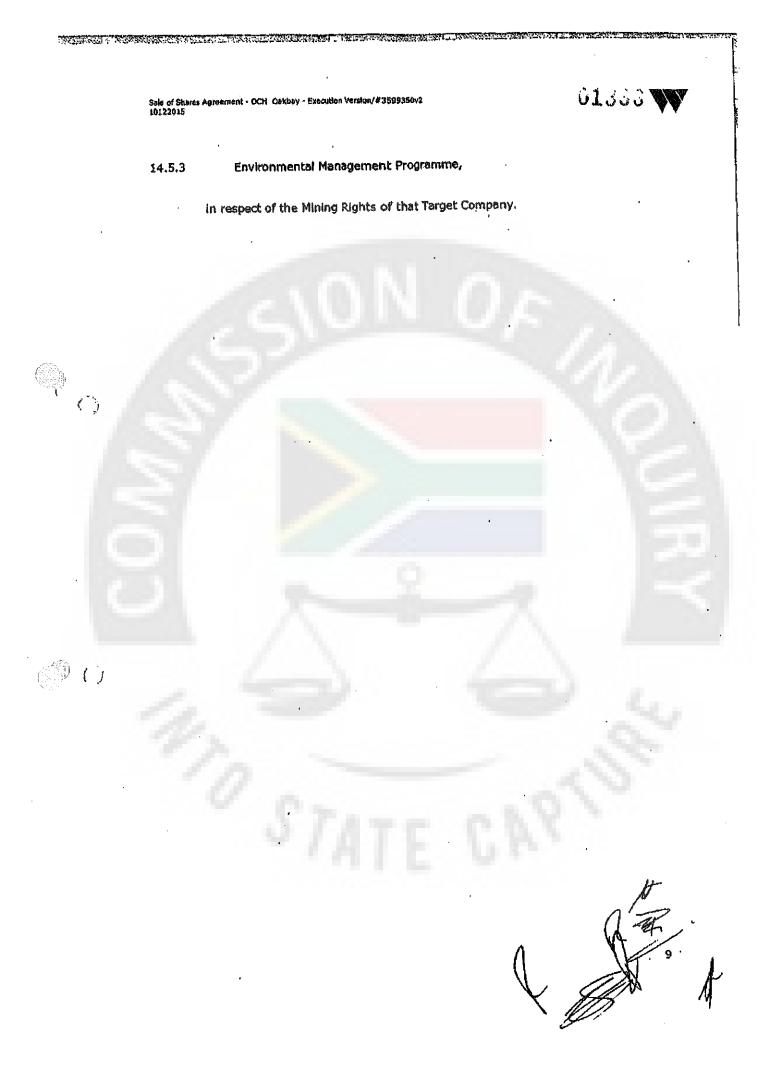
Each of the Target Companies owns or has the necessary rights to the material intellectual property used by it in its business and, to the best of the knowledge and belief of the Selier, there are no pending challenges brought against its intellectual property rights.

#### 14 MINING

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- 14.1 The Mining Rights, and any amendments thereto, have been validly granted.
- 14.2 The Prospecting Rights, and any amendments thereto, have been validly granted.
  - The disputes set out in paragraph 2.5 of the OCM section of the Disclosure Schedule will not have any impact on the mining operations of OCM contemplated in the mine plan applicable at the Effective Date for a period of two years after the Effective Date.
- 14.4 The Target Companies have at all times complied in all material respects with the terms and conditions stipulated in the Mining Rights.
- 14.5 The Seller is not aware of any notice from the Department of Mineral Resources being received by any Target Company stating that such Target Company is not in compliance with the terms and conditions stipulated in the -
- 14,5,1 Mining Work Programme;
- 14.5.2 Social and Labour Plan;



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### ANNEXURE C - DISCLOSURE SCHEDULE

#### 1 INTRODUCTION

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In this Disclosure Schedule, -

- 1.1 words and expressions defined in the Sale of Shares and Claims Agreement ("Agreement") to which this is Annexure C shall bear the same meanings in this Annexure C as those assigned to them in the Agreement; and
- 1.2 If any inconsistency is revealed between the Agreement and this Disclosure Schedule, this Disclosure Schedule shall prevail and shall be deemed to be the relevant disclosure.

#### 2 EFFECT OF DISCLOSURES

This Disclosure Schedule makes disclosures for the purposes of limiting the scope and effect of the Warranties given by the Seller in the Agreement; provided that the Purchaser shall not be deemed to have knowledge of the contents (as opposed to the existence) of the Material Contracts, Mining Rights and Prospecting Rights by virtue of their inclusion in the Disclosure Schedule.

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The Seller shall not be, or be deemed to be, in breach of any Warranty to the extent that a fact, information, matter or thing is disclosed or deemed to be disclosed in this Disclosure Schedule and the Purchaser acknowledges and agrees that it shall not have a claim in respect of any such fact, information, matter or thing and the Seller shall have no liability of any nature whatsoever or howsoever arising to the Purchaser in respect thereof or arising from, or out of, that fact, information, matter or thing.

2.3

All disclosures are made generally in relation to the Warranties and are not to be related to any particular Warranty, References in this Disclosure Schedule to clauses, particular paragraphs or provisions of the Agreement or any Annexure to the Agreement, or to any other documents, are inserted for convenience only and the disclosures made in this Disclosure Schedule, whether made generally or by reference to a particular clause, paragraph or provision, are disclosures made for the purposes of all the Warranties given by

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the Seller in the Agreement, which are qualified accordingly. Accordingly, each disclosure contained in this Disclosure Schedule must be taken as referring to each and every clause, paragraph or provision of the Agreement and any Annexures to the Agreement to which it can relate. The Purchaser shall not be entitled to claim that any fact, information, matter or thing has not been disclosed to it by reason of the relevant disclosure not being specifically related in this Disclosure Schedule to any particular clause, paragraph or provision of the Agreement or any Annexures to the Agreement.

NAME AND A DESCRIPTION OF A

The Information contained in this Disclosure Schedule is disclosed in confidence and solely for the purposes of the Agreement and no Information contained herein shall be deemed to be an admission by any Party to any third party of any matter whatsoever. The Seller does not assume responsibility to any person that is not a Party to the Agreement for the accuracy of any information contained herein.

The disclosure of any matter or document shall not imply that any representation or warranty has been given in respect of such matter or would be implicated by such disclosure, nor shall it be taken to contain any representation or implication by the Seller as to the materiality of the disclosure and the context of any particular Warranty.

## GENERAL DISCLOSURES

The Seller shall be deemed for all purposes to have disclosed to the Purchaser in this Disclosure Schedule -

- 3.1 all information that is publicly available; and
- 3.2 all facts, matters or things that would be identified by a search in relation to the Seller of DCM at the Companies and Intellectual Property Commission in South Africa and any Deeds Office on the Signature Date.

## 4 SPECIFIC DISCLOSURE

The disclosures in the attached schedule are made against the Warranties.

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ANNEXURE C:DISCIOSURE SCHEDULE With Oral DATINE OPENING COAL DATINE Sector 2010 COAL DATIN The Optimum Extension project (OEP), which is past of the Optimum Cultory is enviousness in the one an open test in dubing operation. 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Eakom · supplamentary float cisim 12.5 Hildpriceby, ina parties in the CEAAnava Alapyteo in glutting the application in the PPP excelution zmourt applicable Is the price payticle for contrast cost, Atticuigh this mailer has been settled, it is more a disk going leaved 1.2.4 Eskon - PPI calculations Below business record processings bugen, the parties to the Boschmanspool Altring Agreement (OCM and Conkrd), writely agreed to annote the mising organisms in cases for, internals, the recording exchange net procedul studie APIA cost pace rules adjustmant machinest phospilar (accorded in the Adlanatepus mixing sumement and agreements and the arrow source. The data second is the interaction in the adjustment and agreements and the arrow source. cator ROE Claim 1.2.5 in terms of the mixing vigracion concluded between ACM and Stipteria, in the event that the event of AP44 phiced) coal over 3 aposities instreame to AP40/hon or above, Klipbank shell be entitled to claim an logresse in the mixing rela-contacted with relevance to the efficience between the ourient read/delar exotance rate and the contraction rela of (R2.60.2). Kiplank Malop Att E Citim 1.28 CCM, CCT and Teoremi have been no politiking a long form transport agreement (L.TAT) for the transport of coal fiel OCM to RBCT. Cathele provident translin to be agreed and the agreement repeated unvectorized. 127 Transpot Fielgts Hell - Long term agreemant The United at the second secon TACTES LITIAANON STUTISTICS STUTISTICS STUDIES TO A TACT contrate ( in june 3016. CELL and Extom consider a coal supply warson and in 1963. 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Department of White Arters outlineding wels; usage invoice glapula 133 Cool Supply Alinement constituted on 4 Jonu's used to stupply 6.6 indian lone of oost per annual until 31 December 14 AMTERIAL CONTRACTS 8109 Addenium concluded on 8 April 2008 Addandum 1 to Ealorn CSA 14.2 Belforment of orbitstilan and second addension concluded on \$2 April 2031 Addendum 2 to Epkom DSA 1.4.3 Third addatedum enteludad on 11 February 2013 Addendum \$ 10 Eskom CSA 1.4.4 xport Quality eral pitchare agricement concluded with, buor alls, BEAGA on 12 September 2007 FPD SA Cost Plathase Agreenent (CPA) 1.4.0 First Audancium concludan on 11 October 2013 13.7 1st Addendura to CPA Analgoriumsh agreemant concludes bubbaan, Norr and OCAR, BEOSA and Glerincore Informational AD (GIAG) on 10 Analgoriumsh 2014 Interime of which BEOSA analgoned of cells rights and obdgateous in terms of the OPA to GIAG CPA Automan Agreeman 1.1.4 Bround Addenden concluded on 20 October 2014 and Addendary to CPA 14.1

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		(OCU, spriled for removal which was associated on SchObbOlls valid and SchObbolls, Prior to the expiry of the pincipal data, OCM bolged a section 102 explanation to recorporate the grospecting right and the mining schin, 2021 MR.
	Player Foruna	OUSI exceived an order in terms of Bechon 95(1) of the MRPDA nothering OCM to take introduce rectifying eleps with respect to the existration of a Friting Potum. Oplitment duty responded to the set discutte on 72 kay 2015. ODA received within enders terms of Section 95(19)(a servicing the Operating With Interdistic Ericle until Aca- complignces are addressed. ODAI responded to the set directly a on 5 August 2016. Indoor of adoptional was outy upplied.
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2	MABELINA HINERALS REACHINCES (PTY) LTO - Prospecting right	Date Kidged 2010/04/14
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	right application - 12092PR Balein Mailing Repolycas -	Date 1003red 2014101/20
_	Prospecting sight exploration (11702PR) Témeto Coul Mines (Phys Ll4-	Del # kod g# 0 20 14/03/26
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	GARICENTO (PTY) LTD - Prospecting right opplication - (11784 PR)	10010 1001 20160-1/12
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1	Lintinombo Resources (Pry Ltd	In 2011, Unitionible Resources were glanted an propositing light over areas which set subject to plinum's infitting dant, 2017 MR, OCM appealed her graviting of the right and the Director parents of the DMR decided in severe of OCM Unitionable statilities and the statilities are real analy water in order to exclude the severe statilities, however the Regional Clifford area and analy and an average of an order to exclude the severage the section.
5,2	Vhakoni hilingral Rescurces (Proprietary) Limbed	in 20071, Vinakoni Ulaorof Recordes viere pravleši a prospectiva riphi dver areaz which we subject to Optimum's natulaa nghi, 207 KW. OCM appended the granifica of the dyn and the Dezdeegawaral of his DNR dwabed in dvoor of OCM. Viological right is equivate to be not analy varied to order to exclude the overlopping properties, how wal the Reappend OMs tas an at exercised the walking as a with.
£.1	Kwara	In 2006, the Dhat enteneously granted a preserveling right to tweate which properties dult over speed with Optimum's mixing right, 207 Mit, subparatedly, Kyane applied for and was sheridely a miding fight over the earthe state. OCM appended the quality of the mixing right and the mixing or earlor of the finance of the state state. OCM appended the quality of the mixing right and the mixing or earlor of the mixing right accordingly a state of the state of the provided the granting right accordingly and the mixing right accordingly a state of the state of the state of the MPTRO.
	Social ang Labour Pian (S.F.)	A State of the second
3	(Sodal und Lebour Plan (SLP)	The BLP extends from 2012-2017. There are https:// in respect of Human Resource Davelopristal, Engloyment Example, Procursional and Load Controlo Daveloprined (LED). The stagets varias the activate activate in respect 2014 are indexed in the exclosed documents as well as becavior at septimized. On the LED component, Optimer committed to bails a 24 how Dominating Henrich in Kranzenskuble, Hawkins. The and Landy desamony into place 17 November 2016. OCM is currently processing the order number for the action which is budgeted at R 16 00 000. As an explorited and availaboration SLP highet may be sequeded.

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, <del>6</del>	Quismallers listed by OCH is fevere of Hodbink United for mining services portonned by Klipbank at OCH,	Consisting (n. favour of Naskanski), jongesti (d. a. toon facility bakween Nichens, Mining (Phy) Lie und Hodbeck. Giveragilen of (F1230 600 b00.000 Anvierd in amouste due under the facility, which is Ref12 764 420.60 (3 November 2016) Nichbank Liming is an Independent vonifactor and not part of the Oplimum Group of Companies.
1.9960	ENVIRONMENTAL PERMITE	
4	Panding Waler Use Litense (WCL) Resplication for Xivego Benicol and Rotals	The Wahr Use Locatia (WUL) for Knoops like was spowed on it May 2011, Their Wers somplicably andra Idantified in the YoUL which have bean idealised and communicated to the Department of Weiser Artice (WWS). The EWS indexed bed to WUL made to be recibed. Cold has a shralled the settification applications a 1 Jun 2015 an the DWS provided commania on 9 Sept 2015. Old is in the process of addatasting the DWS comments.
1.3	Pangling Wales Las Llosnoo (WUL) far Kwagga North	1 The Horning in Filling tots trues and electing to on neuroly parse. The WLA, is more through the part was submitted to the DWIs on 25, Jun 2015. A leaves has not been leaved yet. The asgrogentical with the DWIs is on galany. DCM teaponded to comments provided by the DWS in-Stream Webs: Us Binocleate an 25 Jun 2014. It is starting provider was applicated to confluct additional impact above, UCA reactived (b drait appeciated report on 1 Dec 2014.
La	Pandho EXPR approval (or Boschmansow Underground Walny Scollon	This eaction was not included in the approved EMPIT, an EMPR amenditured needs to be submitted. Any any boun appointed to consolicate and enough the EMPR. The EMPR subordiscion is planate for January 2010.
6,4	Ponting EAPR approval for Boshmanapoort Malny Project	The ELEP R was autorited to the DMR on 29 July 2013, OUM is a suit had shi of the DWR regultionants. The approv Is in puopes, OOU has been advised that the opperation is at the DMR Head Office for stansies.
0.3	Panding Orave Rhiosellen at Killeget North	As pervea in the mining footpoint are to be removed and the applicable SLAHRA parmite are to be applied for. The permit experiences have been submitted and the approvaling the provess.
5.B	Schooncord IWULA	Submylied SU Beplamber 2013, The Hoenze was procented to Use DVVS Engineering Bub-obectorale on 15 Gapaino 2016
5,7	Betreencold Ely	The Schwansons EW was submitted on 1 August 2014. A manine was hald on 32 November 2016 with the separational to underes the concern release outring the police participation, OOM onlives the application will be processed and recommended for approval.
ő.B	Schoonspid EMP Amendment	The Schnownoord EMP was submitted on a August 2013, the DAIR has provided feedback and the ROD is in the process of being truthed.
£.9	Schoonsord Supplementary Documents	Supplementary Documents
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7.1	Oplinium Employees True;	The amployees of Oplinum sis members of the Oplinum Employees Taul which is a stateholder of Oplinum Heidings (Fly) Ltd.
7,2	Post rolligment madical banefit ("Pfility")	A PRIAA exists on the DOA's belonce sheet for R2 780 635.06 (December 2014) for the benefit of analyseasts con litely post retirement modes of diguilons.
7.3	Permanani amployees : Penkion and Provisions Fund	All parmentant a mologene are all an members of Group or industry Provident and Panalon Punda

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2	YoleVTNO itentework and collon agreements	On 20 January 2014, KFN OCH and Darchomen (a Total Publishing) enlared into a Francylork Agreement and an Oplan Agreement whon entropy a steputa relating to se ownrend conveyor steptist by Deretentein over KFN's type marrel rights even without in e casent of KFN (or it produceded), electivity to the francylork agreement reserve. KFN has without in e casent of KFN (or it produceded), electivity to the francylork agreement in the Francylork Agreement, which fight is called a francylor of the conveyor in constitution for the relation in the Francylor Agreement, which fight is called a francylor of the control and called to the relevant properties in the served that KFN elects to mas the TANC (escrive).
3	Long Yarus Transnul Roll Aground M	Ch 21 May 2016 KFN and FFA and FFA and 50 an agriculture for Una transport of scalid Richards Bay Cost Terminal, in Iarne of White, inter star, KFN is object to under available a celtain quanity of cost to be transported by TFR, islang which it will be lined to forum/forum arguing theraps.
15.05	MATERIAL ADREEMENTS	
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12	Long Term Treasnel Rell Agrezma <i>th</i>	On 7 They 2016 KPH and TFR ordered has an option and to the Uranspool of Coal to Richards Bey Coal Termhal, In James of which, Inter 892, KPH is obtaind to make avoidable or cardin quarking of coal to be innersoried by TFR, failing which it will be hade for inviting expectly charges.
2,9	Estom Coul Supply Agreement (CSA)	Supply of courts Estom - Tolatementy Granity of 17,184 1403 (484 000 ton)
2.4	Notification 1 of the Estorn CBA	Amendment of the Commencement Data to 1 October 2012 and to the possibles of contract cost to be applied
2.6	Modification 2 of the Eakon CBA	listenation of the tendeston date to 50 November 2014 and emendment to the coal supply exhected
2.6	Monitscellon 9 at the Eskow DEA	Supply of an axistional 20100 lasts to be supplied by 20 November 2014
27	Medification 4 of the Eakom CSA	Supply of an additional 600 000 lons of soat by 31 March 2016 at A18.30 per GJ
2,8	Modification 6 of the Estion GSA	Education with date by which the additional cost in Medication 4 will be supplied to 30 April 2018
2.8	Nodification 6 of the Exitor CBA	Supply of an additioner 1 420 000 tons of nost by SI Jonuary 2018 at R17.70 per GJ
2.10	Acernius LEA	Accessions provide toursing, processment and ad too contracting envices to Keomioniati
2,11	GIAG Marketing Agreement	The appolarment of GLAO as Mechanications to be and analogies workloade mentalist for the anyori, historizing and as of all experises wells work other than again to be appoind in terms of the Extent OBA. Generoes will acro between 1.35 and 2.5% commission on any soal purchases agreements.
2.12	First Addendom to the GIAG Matering Agreement	The editenduits deals with the price of cost preckased and the commission applicable during 2010
2,15	Rustis - Wining Undergraund Verillation Agroement & Denveryor Briesping Bertless Agreement	instelled on a bier wile, primery and secondary verillelion stopplags is the underground mining areas & Conveyor sweeping services
2.14	Fraser Alexander (Ply) Lid Services Agreement	Dirasro and Product Handling services
2.15	Minews Dicarding and Services (Phy) Lo Services Agreement	Orico Cleaning, Hydrige Misidianania and yeashing al Protective Clothing scribes
2,14	Omega Sacatly (Phy) Lid Service & Agreement	Quard Security Berthes
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2.2	Propositing Rughi - Witmanarusi (1340 PM) Bestian 192 applisation (o consolidato 159 NR and 1340 PR Afriting Rught Application- Witmanerusi (1047 MR)	The Phinopal Prospecting Right was executed an 19/02/2007 and was Yokid until 19/02/2004. The femalal was appendent an 07/02/2010 and was yokid until 00/02/2012. Reconstruction and was yokid until 00/02/2012. Reconstruction and the second and was produced and the second and the MPRDA is extend to mining right area of 18/02/2010 and was yokid to 00 and 0
2.3	Prospeciling Right-704 PR Prospeciling Right- 1700 PR and 11706 PR AUning Right application. TNQ (10077MR)	Koomizanieh wer the holder of Tot PR which were see all of the 2009/2016 and wer veligt until 2605/2010, Rene wat see auded and 1910/2012 and were veligt unit 2009/2016 and wer veligt until 2605/2010, Rene (Koomizanie also hold Tot DPR (Pfinches) Reviewere Number) which was a secular on 01/20/2019, which until 3100/2019, Prior to apply Koomizanieh oppiled for tweevel (1172/2018, Prior Casewan Relationson Number) associated on 01/20/2015 ket with 310/2012016. A power and an effective were taken to combine the free prospecting rights and apply for a mission of the 2015 ket with 310/2019. New Number and the stripped of 2207/2013 Policies and seculated and 2207/2013 Policies of the second and a 2207/2013 Policies of the second and be were before the second and apply for a mission of the accession of the 2015 ket attempting and the stripped of the second and the second and the second and the second and policies of the second and a 2207/2013 Policies of the second and be and the second and attempting and the second and before the second and the s

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2.4.2	BLACK ROYALTY MINERALE (PTY) LT(). Piospecking Noti epillosilon (12532PR)	Objection Ladgas 21 Data ladgas 21 Nov 2014
843	HARVERT DAYTECK OOAL (PTY) LTO - Prospealing Right Application (12870999)	Objesting Lodged Date lodged 2015/02/11
L.1.4	HARVEST DAKTICA COAL (PTY) LTD - Proceeding Right Application - (12876PR)	Öğisiliri Ledged, Daje ledged 1//02/2016
2,4,6	HARVEST DAKTIKA ODAL (PTY) LTD - Prospecting Right Application ( 120102R)	Objection Logitad, Date ladored 2015/02/12
2.4,6	FARMICO GROUP (PTY) LTD - Prospecting right apparation - (133989R)	Ütijarilan Ladijad. Dela kidijad 2016/02/24
2,4,7	BLACK ROYALTY MINERALS (PTY) LTD - Prospecting right application - (12600PR).	Otjecilon Looged Date logged 2016/02/1#
2.4.8	ZCKUBIZE (PTY) LTD - Prospecing right opplication . (12827973)	Objecika Ledijad. Dalje ledijad 201 6/0 404
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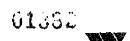
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## ANNEXURE D - TERMINATED AGREEMENTS

- 4.1 The Coal Purchase Agreement between Glencore, OCM, the Seller and OCT dated on or about 12 September 2007, as amended from time to time.
- 4.2 The RBCT Entitlement Management Agreement between Glencore, OCM, the Seller and OCT dated on or about 12 September 2007, as amended from time to time.
  - The Framework Agreement between Koomfontein Mines and Glencore dated on or about 4 June 2015, as amended from time to time.



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## ANNEXURE E - PRO FORMA BALANCE SHEET

[SEE ATTACHED]

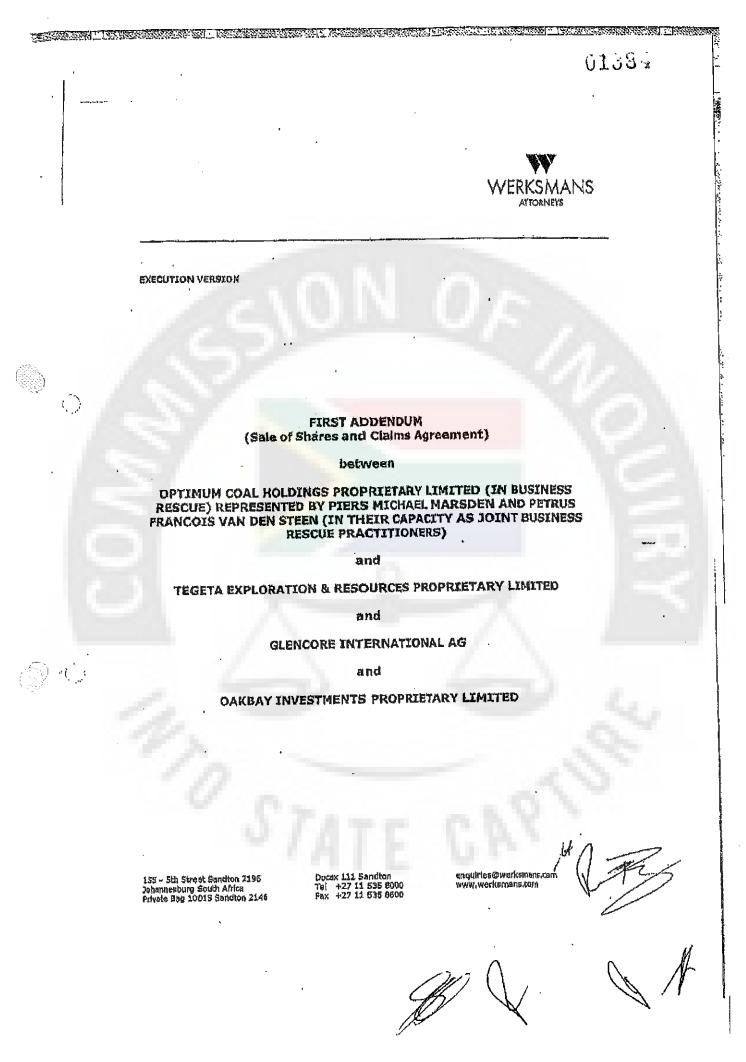
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otherwise defined in this Addendum will beer the same meanings in this Addendum as those assigned to them in the Sale of Shares Agreemant, provided that any conflict in the definition of a word or an expression between this Addendum and the Sale of Shares Agreement will be resolved by giving that word or expression, as the case may be, the meaning assigned to it in this Addendum.

#### 2 INTRODUCTION AND RECORDAL

2.1 The Parties record that -

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- 2.1.1 they entered into the Sale of Shares Agreement on or about 10 December 2015;
- 2.1.2 they wish to extend the time period which the Purchaser has to review the draft Adjustment Documents by 5 Business Days, such that the time,

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#### First Addendum (Sale of Sharos and Claims Aureament) - Execution Version/#366481391 17022016



period is extended from 10 Business Days to 15 Business Days after a copy of the draft Adjustment Documents is delivered to the Purchaser; and

2.1.3 they further wish to amend the date on which the Selier has werranted that the investments held by the Optimum Mine Rehabilitation Trust and Koomfontein Rehabilitation Trust shall comprise Cash and Cash Equivalents with an aggregate value of no less than R1,750,000,000 from 31 January 2016 to 15 February 2016.

Accordingly, the Partles agree as follows.

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#### 3 SPECIFIC AMENDMENTS TO SALE OF SHARES AGREEMENT

With effect from the Signature Date:

clauses 7,3,7 and 7.3,10,2 of the Sale of Shares Agreement are both amended by the deletion of the references to "10 Business Days", and the replacement thereof with "15 Business Days"; and

clause 12 of Annexure B of the Sale of Shares Agreement is amonded by the deletion of the date "31 January 2016"; and the replacement thereof with the date "15 Fabruary 2016",

#### ACKNOWLEDGMENT OF DELIVERY OF DRAFT ADJUSTMENT DOCUMENTS

The Purchaser hereby acknowledges and agrees that the draft Adjustment Documents were delivered to the Purchaser as contamplated in clause 7.3.5 of the Sale of Shares Agreement on 29 February 2016. Accordingly the 15 Business Day period referred to in clauses 7.3.7 and 7.3.10.2 respectively of the Sale of Shares Agreement will expire on 22 March 2016. The effect of this change is that the Purchaser shall be obliged to advise the Seller whether it agrees with or disagrees with the draft Adjustment Documents (or any part thereof) on or before 22 March 2016.

First Addandum (Sale of Shares and Clakou Apreament) - Exacution Version/#3664813vf 17022036

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5.1 This Addendum amends the Sale of Shares Agreement in accordance with the terms contained in this Addendum. Accordingly, this Addendum will be deemed to have been incorporated into, and must be read in conjunction with, the Sale of Shares Agreement, and the provisions of the Sale of Shares Agreement which are not amended by this Addendum will remain unaitered and of full force and effect. In all cases where the provisions of this Addendum conflict with the provisions of the Sale of Shares Agreement, then the provisions of this Addendum will prevail.

- No addition to, variation, novation or agreed cancellation of, any provision of this Addendum will be binding on the Parties unless reduced to writing and signed by or on behalf of all Parties.
- Without prejudice to any other provision of this Addandum, any successor-in-title, including any curator, executor or trustee, of any Perty will be bound by this Addandum.
- The signature by any Party of a counterpart of this Addendum will be as effective as if that Party had signed the same document as all of the other Parties.

#### COSTS

Each Party shall bear and pay its own costs in relation to the negotiation, drafting, finalisation, signing and implementation of this Addendum,

\*\*\*\*SIGNATURE PAGES TO FOLLOW\*\*\*\*

THE REPORT OF A DESCRIPTION OF A DESCRIP सारफ वन्द्र A STATE OF A STATE OF A STATE man and a second 61360 first Addandum (dale of Shares and Glains Agnoment) - Execution Version/#9664813vi 17022016 March signed at Sundim 9 2016 on Optimum Coal Holdings Proprietary Limited (in business rescue) represented by Piers Michael Mareden in his capacity as joint business practitioner for who Warrants that he is duly authorized hereto Name: Piers Marsden Pasition: Business Rescue Practitioner  $\langle \cdot \rangle$ 10 MARCH 'signed at Forkiway S 2015 0H Optimum Coal Holdings Proprietary Limited (in business rescue) for represented by Petrus Francols van den Steen in his capacity as joint business practitioner who wortants that he is duly authorised hareto Name: Petrus Francois van den Steen Position: Business Rescue Practitioner 11 March 2016 0ñ: Signed at Baar Giencore International AG for FRICA who warrants that he is duly authorised harato Name: M'Haering K.Klassen Position: Director/Authorised Signatory 5

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01351 first Addendum (Sala of Shares and Claims Apiedment) - Execution Vanion/#3664019vi 17022016 SAND-TON MARCU 2016 on p Signed at for Oakbay Investments Proprietary Limited TU -e who wapfants that he is duly authorised hereto Name: **A** Position: Director/Authorised Signatory 60 SANDTON 2016 on 10 MARCH Signed at for Tegeta Exploration & Resources Proprietary Limited 1000 Who werrants that he is duly sutherised hereto Name Position: Director/Authorised Signatory ( ) Ø.

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**EXECUTION VERSION** 



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#### SECOND ADDENDUM (Sale of Shares and Claims Agreement)

between

#### OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED (IN BUSINESS RESCUE) REPRESENTED BY PIERS MICHAEL MARSDEN AND PETRUS FRANCOIS VAN DEN STEEN (IN THEIR CAPACITY AS JOINT BUSINESS RESCUE PRACTITIONERS)

and

# TEGETA EXPLORATION & RESOURCES PROPRIETARY LIMITED

and

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**GLENCORE INTERNATIONAL AG** 

and

# OAKBAY INVESTMENTS PROPRIETARY LIMITED

155 - Sth Stract Sandton 2196 Johannesburg South Africa Private Bag 10015 Sandton 2146 Docex 111 Sandton Tel +27 11 535 8000 Fax +27 11 535 8600



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RV/M 05042016/0P7113168.19 Second Addendum (Sale of Shares and Claims Agreement) - Execution Version/#3735752v1

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W/M 06042016/OPT[13365.19 Second Addandum (Sale of Shares and Claims Agreement) - Execution Version/#3735752v1

SECOND ADDENDUM (Sale of Shares and Claims Agreement)

between

OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED (IN BUSINESS RESCUE) REPRESENTED BY PIERS MICHAEL MARSDEN AND PETRUS FRANCOIS VAN DEN STEEN (IN THEIR CAPACITY AS JOINT BUSINESS RESCUE PRACTITIONERS)

and

TEGETA EXPLORATION & RESOURCES PROPRIETARY LIMITED

and

**GLENCORE INTERNATIONAL AG** 

and

OAKBAY INVESTMENTS PROPRIETARY LIMITED

#### **1** INTERPRETATION AND DEFINITIONS

In this Addendum, clause headings are used for convenience only and will not be used in its interpretation, and, unless the context clearly indicates a contrary intention, -

- 1.1 a word or an expression that denotes -
- 1.1.1 any gender, includes the other genders;
- 1.1.2 the singular, includes the plural and vice versa; and
- 1.1.3 a natural person, includes an artificial or juristic person and vice versa;

Second Addendum (Sale of Shares and Claims Agreement) - Execution Version/#3735752v1 06042016

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1.2 the following words and expressions will, unless otherwise stated or clearly inconsistent with the context in which they appear, bear the following meanings, and other words and expressions derived from the same origins as those words and expressions (that is, cognate words and expressions) will bear corresponding meanings, ~

1.2.1 "Addendum" - this second addendum to the Sale of Shares Agreement, together with its annexures (if any), each as amended or replaced from time to time;

"First Addendum" - the first addendum to the Sale of Shares Agreement entered into among the Parties on or about 11 March 2016;

"Parties" - collectively, Glencore, Oakbay, the Purchaser and the Seller; and "Party" will mean any of them, as the context may require;

"Sale of Shares Agreement" - the sale of shares and daims agreement entered into among the Parties on or about 10 December 2015, as amended by the First Addendum; and

"Signature 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 a Party;

words and expressions defined in the Sale of Shares Agreement and not otherwise defined in this Addendum will bear the same meanings in this Addendum as those assigned to them in the Sale of Shares Agreement, provided that any conflict in the definition of a word or an expression between this Addendum and the Sale of Shares Agreement will be resolved by giving that word or expression, as the case may be, the meaning assigned to it in this Addendum.

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Second Addendum (Sale of Shares and Claims Agreement) - Execution Version/#3735752v1 06042016

#### 2 INTRODUCTION AND RECORDAL

- 2.1 The Partles record that -
- 2.1,1 they entered into the Sale of Shares Agreement on or about 10 December 2015;
- 2.1.2 they entered into the First Addendum on or about 11 March 2016;

2.1.3 the Purchaser advised the Seller that it disagreed with the draft Adjustment Documents within the time periods contemplated in clause 7.3.7 of the Sale of Shares Agreement (as amended by the First Addendum); and

2.1,4 the Partles now wish to extend the time period within which they are required to reach resolution of the disagreements raised by the Purchaser (as envisaged above) before the disagreements are referred to an Expert in terms of clause 7.3.8.2 of the Sale of Shares Agreement from 10 Business Days after the date on which the Purchaser advised the Seller in writing of its disagreements to 15 April 2016.

Accordingly, the Parties agree as follows.

# SPECIFIC AMENDMENT TO SALE OF SHARES AGREEMENT

With effect from the Signature Date, clause 7.3.8.2 of the Sale of Shares Agreement Is amended by the deletion of the phrase "within 10 Business Days after the date on which the Purchaser advised the Seller that it did not agree with the Adjustment Documents" In the first to third lines, and the replacement thereof with the phrase "by 15 April 2016".

#### 4 GENERAL

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This Addendum amends the Sale of Shares Agreement in accordance with the terms contained in this Addendum. Accordingly, this Addendum will be deemed to have been incorporated into, and must be read in conjunction with, the Sale of Shares Agreement, and the provisions of the Sale of Shares Agreement which are not amended by this Addendum will remain unaltered and of full

Second Addandum (Sale of Shares and Claims Agreement) - Execution Version/#3735752V1 06042016

> force and effect. In all cases where the provisions of this Addendum conflict with the provisions of the Sale of Shares Agreement, then the provisions of this Addendum will prevail.

4.2 No addition to, variation, novation or agreed cancellation of, any provision of this Addendum will be binding on the Parties unless reduced to writing and signed by or on behalf of all Partles.

4.3 Without prejudice to any other provision of this Addendum, any successor-in-title, including any curator, executor or trustee, of any Party will be bound by this Addendum.

The signature by any Party of a counterpart of this Addendum will be as effective as if that Party had signed the same document as all of the other Parties.

#### COSTS

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Each Party shall bear and pay its own costs in relation to the negotiation, drafting, finalisation, signing and implementation of this Addendum.

\*\*\*\*SIGNATURE PAGES TO FOLLOW\*\*\*\*

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				who warrants that he is a authorised hereto	iuly
(*)				Name: Petrus Francols v	an den Steen
<b>.</b>				Position: Business Rescu	e Practitioner
				A /7 /2016	
	Signed at	Rosebank	on for	4/7/2016 Optimum Coal Holdings	2016 Proprietary
				Limited (in business reso represented by Pater va his capacity as joint bus practitioner	cue) n den Steen in
1				2	
1				who warrants that he is authorised hereto	duly
(``)				Name: Piers Michael Ma	rsden
1 				Position: Business Resc	ve Practitioner
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			foi	Glencore International	tit
•				who warrants that he is authorised hereto	s duly
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			who warrants that he is duly authorised hereto	
			authorised hereto Name: NAZEDN HEWA	
1			Position: Director/Authorised Signatory	
	Signed at	SAN OTO N	on 7. APRIL 2016	83. ·
			for Tegeta Exploration & Resources Proprietary Limited	
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#### EXECUTION VERSION

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#### THIRD ADDENDUM (Sale of Shares and Claims Agreement)

between

#### OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED (IN BUSINESS RESCUE) REPRESENTED BY PIERS MICHAEL MARSDEN AND PETRUS FRANCOIS VAN DEN STEEN (IN THEIR CAPACITY AS JOINT BUSINESS RESCUE PRACTITIONERS)

and

# **TEGETA EXPLORATION & RESOURCES PROPRIETARY LIMITED**

and

#### GLENCORE INTERNATIONAL AG

and

### OAKBAY INVESTMENTS PROPRIETARY LIMITED

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

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THIRD ADDENDUM (Sale of Shares and Claims Agreement)

between

OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED (IN BUSINESS RESCUE) REPRESENTED BY PIERS MICHAEL MARSDEN AND PETRUS FRANCOIS VAN DEN STEEN (IN THEIR CAPACITY AS JOINT BUSINESS RESCUE PRACTITIONERS)

and

TEGETA EXPLORATION & RESOURCES PROPRIETARY LIMITED

and

GLENCORE INTERNATIONAL AG

and

OAKBAY INVESTMENTS PROPRIETARY LIMITED

### **1** INTERPRETATION AND DEFINITIONS

 $\langle \cdot \rangle$ 

In this Addendum, clause headings are used for convenience only and will not be used in its interpretation, and, unless the context clearly indicates a contrary intention, -

- 1.1 a word or an expression that denotes -
- 1,1.1 any gender, includes the other genders;
- 1,1,2 the singular, includes the plural and vice versa; and
- 1.1.3 a natural person, includes an artificial or juristic person and vice versa;

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Third Addendum (Sele of Shares and Claims Agreement) - Execution Version/#3740091v7 13042016

1.2 the following words and expressions will, unless otherwise stated or clearly inconsistent with the context in which they appear, bear the following meanings, and other words and expressions derived from the same origins as those words and expressions (that is, cognate words and expressions) will bear corresponding meanings, -

- 1.2.1 "Addendum" this third addendum to the Sale of Shares Agreement, together with its annexures (if any), each as amended or replaced from time to time;
- 1.2.2 "First Addendum" the first addendum to the Sale of Shares Agreement entered into among the Parties on or about 11 March 2016;
  - "Parties" collectively, Glencore, Oakbay, the Purchaser and the Seller; and "Party" will mean any of them, as the context may require;
  - "Sale of Shares Agreement" the sale of shares and claims agreement entered into among the Parties on or about 10 December 2015, as amended by the First Addendum and the Second Addendum;
    - "Second Addendum" the second addendum to the Sale of Shares Agreement entered into among the Parties on or about 7 April 2016; and

"Signature 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 a Party;

words and expressions defined in the Sale of Shares Agreement and not otherwise defined in this Addendum will bear the same meanings in this Addendum as those assigned to them in the Sale of Shares Agreement, provided that any conflict in the definition of a word or an expression between this Addendum and the Sale of Shares Agreement will be resolved by giving that word or expression, as the case may be, the meaning assigned to it in this Addendum.

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Third Addendum (Sale of Shares and Claims Agreement) - Execution Version/#3740091v7 13042016

#### 2 INTRODUCTION AND RECORDAL

2.1 The Parties record that -

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- 2.1.1 they entered into the Sale of Shares Agreement on or about 10 December 2015;
- 2.1.2 they entered into the First Addendum on or about 11 March 2016;
- 2.1.3 they entered into the Second Addendum on or about 7 April 2016;

2.1.4 the Purchaser and the Seller have been consulting with each other in order to resolve their disagreement regarding the Adjustment Amount since the Purchaser notified the Seller that it disagreed with the draft Adjustment Documents;

2.1.5 the Purchaser and the Seller have now fully and finally agreed and resolved on the amount of the Adjustment Amount and have agreed to amend the mechanism and timing of the payment of the Adjustment Amount;

in addition, the Purchaser wishes to retain the services of Accenture for a period after the Closing Date and does not require the Seller to deliver notices of termination of the Accenture agreements as contemplated in clause 8.1.4.5 of the Sale of Shares Agreement and has undertaken to process the changes to the board of directors of each of the Target Companies using its own service provider; and

the Parties now wish to record these agreements in writing and amend the Sale of Shares Agreement accordingly.

2.2 Accordingly, the Parties agree as follows.

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Third Addendum (Sale of Shares and Claims Agreement) - Execution Version/#3740091v7 13042016

#### 3 AGREEMENT WITH RESPECT TO DETERMINATION AND PAYMENT OF ADJUSTMENT AMOUNT

The Parties record and agree that -

- 3,1 the Purchaser and the Seller have fully and finally resolved their disagreement regarding the Adjustment Documents and agreed that the Adjustment Amount as contemplated in clause 7.3 of the Sale of Shares Agreement is a negative amount of R135 000 000 (which is due by the Seller to the Purchaser in terms of clause 7.3.11); and
  - the Seller shall, instead of paying the Adjustment Amount to the Purchaser within five Business Days after the Closing Date as contemplated in clause 7.3.11 of the Sale of Shares and Agreement, pay the Adjustment Amount into the Escrow Account on behalf of the Purchaser by not later than the Business Day after the Payment Date in part settlement of the Purchaser's obligation to pay the Purchaser Portion, provided that, if the Sale of Shares Agreement is not implemented and the amounts paid to the Escrow Agent are returned by the Escrow Agent for any reason, the Adjustment Amount shall be repaid by the Escrow Agent to the Selier and not the Purchaser.

### SPECIFIC AMENDMENTS TO SALE OF SHARES AGREEMENT

With effect from the Signature Date, -

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clause 1.2.58 is deleted in its entirety and is replaced with the following new clause 1.2.58 -

- "1.2.58 "Original Facility Outstanding Balance" the Outstanding Balance (as defined in the Original Facility Agreement) as at the Business Day after the Payment Date;";
- 4.2 clause 8.1.4.3 is deleted in its entirety without a consequential renumbering of the remaining sub-clauses of clause 8.1.4; and
- 4.3 clause 8.1.4.5 is deleted in its entirety. Notwithstanding the deletion of clause 8.1.4.5, the Seller shall use its reasonable endeavours to assist the

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Third Addendum (Sale of Shares and Claims Agreement) - Execution Version/#3740091v7 13042016

Purchaser and OCM in terminating the agreements with Accenture that were contemplated in clause 8.1.4.5 with effect from 30 April 2016.

#### 5 GENERAL

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- This Addendum amends the Sale of Shares Agreement in accordance with the terms contained in this Addendum. Accordingly, this Addendum will be deemed to have been incorporated into, and must be read in conjunction with, the Sale of Shares Agreement, and the provisions of the Sale of Shares Agreement which are not amended by this Addendum will remain unaitered and of full force and effect. In all cases where the provisions of this Addendum conflict with the provisions of the Sale of Shares Agreement, then the provisions of this Addendum will prevall.
- No addition to, variation, novation or agreed cancellation of, any provision of this Addendum will be binding on the Parties unless reduced to writing and signed by or on behalf of all Parties.
  - Without prejudice to any other provision of this Addendum, any successor-in-title, including any curator, executor or trustee, of any Party will be bound by this Addendum.
- The signature by any Party of a counterpart of this Addendum will be as effective as if that Party had signed the same document as all of the other Parties.

#### COSTS

Each Party shall bear and pay its own costs in relation to the negotiation, drafting, finalisation, signing and implementation of this Addendum.

\*\*\*\*SIGNATURE PAGES TO FOLLOW\*\*\*\*

АH

Third Addendum (Sale of Shares and Claims Apreament) - Exec 13042016	on	2016 Optimum Coal Holdings Proprietary Limited (in business rescue) represented by Peter van den Steen in his capacity as joint business practitioner
Signed at		Optimum Coal Holdings Proprietary Limited (in business rescue) represented by Peter van den Steen in his capacity as joint business practitioner
Signed at		Optimum Coal Holdings Proprietary Limited (in business rescue) represented by Peter van den Steen in his capacity as joint business practitioner
SIOI	for	Limited (in business rescue) represented by Peter van den Steen in his capacity as joint business practitioner who warrants that he is duly authorised hereto
S		who warrants that he is duly authorised hereto
	•••	authorised hereto
		Name: Plers Michael Marsden
		Position: Business Rescue Practitioner
Signed at Baar, CH	ón	13 April 2016
	for	Glèncore International AG who warrants that he is duly
		authorised hereto Name: M.Haering A.Hubmann
- ( <sup>*</sup> )		Position: Director/Authorised Signatory
1		
Signed at	σħ	2016
Signed at	for	Oakbay Investments Proprietary Limited
		who warrants that he is duly authorised hereto
		Name:
		Position: Director/Authorised Signatory

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#### 30 MARCH 2016

# CONFIRMATION REGARDING SUSPENSIVE CONDITIONS TO SALE OF SHARES AND CLAIMS AGREEMENT

#### 1 Introduction

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- Optimum Coal Holdings Proprietary Limited (in business rescue) ("OCH"), Tegeta Exploration & Resources Proprietary Limited ("Tegeta"), Glencore International AG and Oakbay Investments Proprietary Limited ("Oakbay") entered into a written sale of shares and claims agreement on or about 10 December 2015 (as amended by the First Addendum dated 7 March 2016) ("Main Agreement").
- 1.2 This is a Confirmation Agreement and the terms used in this Confirmation Agreement will have the same meanings as those assigned to them in the Main Agreement, unless this Confirmation Agreement assigns a different meaning to those terms.
  - The Main Agreement governs the acquisition by Tegeta of all of OCH's shares in and claims against Optimum Coal Mine Proprietary Limited (in business rescue), Koornfontein Mines Proprietary Limited, Optimum Coal Terminal Proprietary Limited, Optimum Nekel Mining and Exploration Proprietary Limited, Optimum Viakfontein Mining and Exploration Proprietary Limited, Optimum Overvaal Mining and Exploration Proprietary Limited, and Optimum Mpefu Mining and Exploration Proprietary Limited (**"Transaction**").

#### 2 Suspensive Conditions

- 2.1 The operative provisions of the Main Agreement relating to the Implementation of the Transaction are subject to the following Suspensive Conditions:
- 2.1.1 the board of directors of each of Tegeta and Oakbay passes a board resolution approving the entry into of the Transaction Agreements to which it is a party and authorising a director of that Party to negotiate, settle and sign such Transaction Agreement by 10 December 2015 (being the Signature Date of the Main Agreement);

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CP Confirmation Letter (Execution Version)/#3723297v3 30032016

2.1.2 each of the Transaction Agreements is signed by 10 December 2015 (being the Signature Date of the Main Agreement);

2.1.3 by 31 March 2016, the Proposed Transaction has been approved by ~

2,1.3.1 the Lenders and the Security Agent;

2.1.3.2 the Competition Authorities without conditions or subject to conditions that OCH and Tegeta confirm to each other in writing (within seven days after receipt of such conditional approval) are reasonably acceptable to them, it being agreed that any condition imposed by the Competition Authorities which relates to restrictions on retrenchment of employees of the Target Companies shall be deemed to be reasonably acceptable to OCH and Tegeta; and

2.1.3.3

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the Minister of Mineral Resources in terms of section 11 of the MPRDA without conditions or subject to conditions that the Parties confirm to each other in writing (within seven days after receipt of such conditional approval) are reasonably acceptable to them;

by 31 March 2016, Tegeta has obtained (in a form and substance reasonably acceptable to OCH and Tegeta) the irrevocable and unconditional -

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consent of Eskorn to the sale and purchase of the Sale Equity;

2.1.4.2

release by Eskom of the Eskom Guarantee; and

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2.1.4.3 release by Eskom of OCH and its past and current Affiliates (other than the Target Companies), with effect from the Closing Date, from 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 and its past and current Affiliates that are and/or may be based upon, arise under, or be related to the CSA, prior to and including the Closing Date,

provided that such releases may be subject to the implementation of the sale and purchase of the Sale Equity in terms of the Main Agreement;

the BRPs publish a Business Rescue Plan which contemplates the Transaction on or before the date that is two Business Days after the date on which the approvals contemplated in clause 2.1.3 and clause 2.1.4 have been obtained and, within 10 Business Days after the date of publication of such Business Rescue Plan, the Business Rescue Plan is validly approved and adopted and becomes unconditional and binding in accordance with section 152 of the Companies Act; and

> the other Transaction Agreements become unconditional in accordance with their terms (save for any conditions relating to the Main Agreement becoming unconditional) by 31 March 2016.

Each of the Partles hereby confirms that -

It is satisfied that each of the Suspensive Conditions in clauses 2.1.1, 2.1.2, 2.1.3 (save for clause 2.1.3.1), 2.1.4 and 2.1.6 has been fulfilled;

2.2.2 it is hereby waiving the fulfilment of the Suspensive Condition in clause 2.1.3.1, as it is entitled to do in terms of clause 3.3 of the Main Agreement; and

2.2.3 the only Suspensive Condition that remains to be fulfilled is the one described in clause 2.1.5.

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#### 3 General

- 3.1 Save for the amendments contemplated in this Confirmation Agreement, which will be deemed to have been incorporated into the Main Agreement, the provisions of the Main Agreement will remain unaltered and of full force and effect.
- 3.2 This Confirmation Agreement, read together with the Main Agreement, constitutes the sole record of the agreement among the Parties in relation to the subject matter hereof. No Party will be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein or therein.
- 3.3 No addition to, variation, novation or agreed cancellation of, any provision of this Confirmation Agreement will be binding on the Parties unless reduced to writing and signed by or on behalf of all Parties.
- 3.4 Without prejudice to any other provision of this Confirmation Agreement, any successor-in-title, including any business rescue practitioner, liquidator or trustee, of any Party will be bound by this Confirmation Agreement.
  - The signature by any Party of a counterpart of this Confirmation Agreement will be as effective as if that Party had signed the same document as the other Parties.

Signed at

3.5

Rosebank

on

2016

for Optimum Coal Holdings Proprietary Limited (In business rescue) represented by Piers Marsden In his capacity as joint business practitioner

30 March

who warrants that he is duly authorised hereto

Name: Piers Michael Marsden

Position: Business Rescue Practitioner

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	Signed at	on	2016
	- 01	for	Optimum Coal Holdings Proprietary Limited (In business rescue) represented by Peter van den Steen in his capacity as joint business practitioner
			who warrants that he is duly authorised hereto
q:			Name: Peter van den Steen
., .			Position: Business Rescue Practitioner
	Signed at	оп	2016
		for	Glencore International AG
			who warrants that he is duly authorised hereto
			Name:
(† <sub>.</sub> .)			Position: Director/Authorised Signatory
			2016
	Signed at	0	
	10 -	τ¢	r Oakbay Investments Proprietary Limited
·			who warrants that he is duly authorised hereto
			Name:
			Position: Director/Authorised Signatory
			. () _



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र्वेक ऑफ रहोटा Bank of Baroda

JHB/OPE.MIS/2015-16

04.03.2016

FirstRand Bank Limited Co Julian Grieve Investment Banking Resource Finance julian grieve@rmb.co.za

To FirstRand Bank Limited, acting through its Rand Merchant Bank division, acting in its role as Facility Agent for the lenders under the Amended and Restated Loan Facility Agreement entered into on or about 26 February 2014 and amended on 17 April 2014 between, amongst others, Optimum Coal Holdings Proprietary Limited ("OCH"), FirstRand Bank Limited (acting through its Rand Merchant Bank division), Nedbank Limited (acting through its Nedbank Capital division) and Investec Bank Limited (acting through its Corporate and Institutional Banking division)

This is for information that our valued customer Tegeta Exploration and Resource (Pty) Ltd ("Tegeta") have entered into an agreement with Optimum Coal Holdings (Pty) Ltd (OCH) for purchase of all OCH's shares and claims in its various subsidiaries including but not limited to Optimum Coal Mine (Pty) Ltd. In this connection, Tegeta has to pay R2,150,000,000.00 (Two Billion One Hundred and Fifty Million Rand) to the lenders of OCH to complete this transaction.

We the Bank of Baroda on request of Tegeta, with reference to the aforesaid, hereby agreed to make payment to the extent of pay R2,150,000,000.00 (Two Billion One Hundred and Fifty Million Rand) to the lenders of OCH to close the above transaction provided the following terms and conditions are fulfilled before 30<sup>th</sup> March 2016:

- All approvals and consents under the Mining and Petroleum Resource Act Number 28 of 2002 ("MPRDA") required for the share transfer, including but not limited to Section 11 approval, has been obtained by the parties;
- All agreements and transactions contemplated in this agreement (to the extent necessary) have been approved by the Competition authorities in terms of the Completion Act, Number 89 of 1998;
- The Company Secretary of Optimum Coal Mine (Pty) Ltd (in Business Rescue), Registration Number 2007/005308/07 (OCM), have delivered a confirmation notice to the bank confirming that pursuant to the share transfer, the shares in OCM have been transferred to Tegeta and Tegeta is registered as such in the registration of members of OCM;

Page 1 of 2 Johannesburg Branch, Sandton City Twin Towers, East Wing, 2<sup>nd</sup> Floor, Sandton, Johannesburg, Republic of South Africa Phone +27 11 7840715/23, Fax +27 11 7840759, Email: joburg@bankofbaroda.com, www.bankofbaroda.com



4.

र्वेक ऑफ़ बड़ोदा Bank of Baroda

The legal advisors of the bank have issued a confirmation letter that the conditions precedent set out in the agreement have been fulfilled.

This letter has been issued on specific request of Tegeta Exploration and Resource (Pty) Ltd.

The signatories hereto confirm that they are authorised and mandated to sign this letter.

Signed at SANDTON on this the 04<sup>TH</sup> day of MARCH 2016.

For-Bank of Baroda Bank of Barod pe (Shaikh Rauf) (Sanjiv Kumar) Senior Manager **Chief Executive** South Africa Territory Johannesb Johannesburg B

Page 2 of 2 Johannesburg Branch, Sandton City Twin Towers, East Wing, 2<sup>nd</sup> Floor, Sandton, Johannesburg, Republic of South Africa Phone +27 11 7840715/23, Fax +27 11 7840759, Email: joburg@bankolbaroda.com, www.bankolbaroda.com



#### **DELIVERED BY E-MAIL**

Optimum Coal Holdings (Pty) Ltd (in business rescue) e-mail: pmarsden@matusonassociates.co.za; peter@v2rescue.co.za; and shaun.blankfield@glencore.com

Tegeta Exploration & Resources (Pty) Ltd e-mall: nazeemh@oakbay.co.za

Glencore International AG e-mall: shaun.teichner@glencore.com

Optrix Security Company Proprietary Limited e-mail: jan.reyneke@tmf-group.com

YOUR REFERENCE: Optimum Coal OUR REFERENCE: DIRECT PHONE: DIRECT FAX: EMAIL ADDRESS:

Mr J Nickig/jn/OPTI13168,19/#3745043v1 +27 11 535 8293 +27 11 535 8693 jnickig@werksmans.com

14 April 2016

Dear Sirs

### NOTIFICATION UNDER AMENDED AND RESTATED ESCROW AGREEMENT

- We refer to the amended and restated escrow agreement concluded among Optimum Coal 1 HoldIngs Proprietary Limited (in business rescue), Tegeta Exploration & Resources Proprietary Limited, Glencore International AG, Optrix Security Company Proprietary Limited and ourselves dated 13 April 2016 ("Agreement").
- Words and expressions defined in the Agreement will bear the same meanings in this letter, 2 unless this letter specifically assigns different meanings to those words or expressions.
- This letter constitutes a Settlement Notice from the Escrow Agent pursuant to clause 11.2.1 of 3 the Agreement.
- We, in our capacity as the Escrow Agent, hereby notify the Parties that we have received the 4 full Purchaser Portion and the full Glencore Portion required to be paid by the Purchaser and Glencore in terms of the Acquisition Agreement into the Escrow Account and are proceeding to transfer these amounts into the Settlement Account.

TN J

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 Bileden HGB Boshoff GT Bossr TJ Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villers 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 Hoslosky 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 PK Mabaso MPC Manaka H Masondo SM Moerane C Moraltis PM Mosebo KO Motshwane L Naidoo J Nicklig JJ Nilemand BPF Olivier WE Oosthulzen 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 Slbidla 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 Weglerski G Wickins M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies

JOHANNESBURG , CAPE TOWN , STELLENBOSCH , TYGER VALLEY

#### **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 Fax www.werksmans.com engulries@werksmans.com

Yours faithfully .. WERKSMANS INC.

OPTI13168.19/#3745043v1 14042016



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PMM-U11.1-278



# PMM31

#### OPTIMUM COAL HOLDINGS

Delivered by Email and/or Facsimile

Displayed -

1

- Registered Office and Principal Place Business of the Company and anywhere where Employees are Employed
- Published on the Website Maintained by the Company and Accessible to Affected Persons

Delivered by Email and/or Registered Post to the Shareholders

# 19 April 2016 Attention: All Affected Persons Optimum Coal Holdings Proprietary Limited (In Business Rescue) Attention: Companies and Intellectual Property Commission businessrescue@cipc.co.za

#### OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED

- 1 We refer to the meeting held at Werksmans Attorneys on 8 April 2016 at which meeting the affected persons of Optimum Coal Holdings Proprietary Limited ("OCH") were requested to consider and vote on the business rescue plan published to affected persons of OCH on 31 March 2016 ("Plan").
- 2 We confirm that following the conduct of the vote in terms of section 152(1)(e) of the Companies Act 71 of 2008 ("Act") --
- 2.1 the Plan has been adopted with the requisite support of creditors;
- 2.2 the suspensive conditions to the OCH/Tegeta transaction have now been fulfilled; and
- 2.3 the business rescue proceedings of OCH have been concluded.
- We confirm that on **15 April 2016**, we filed a notice of Substantial Implementation of the Plan (Form CoR125.3) with the Companies and Intellectual Property Commission in accordance with sections 152(8) and 132(2)(c)(ii) of the Act and paragraph 5.3.1 of the Plan. A copy of the duly filed notice is enclosed herewith.

Optimum Coal Holdings (Pty) Ltd

(Registration No: 2006/007799/07)

A member of the Glencore group of companies

Registered Address: 1ª Floor, Nedbank Building, 23 Melrose Boulevard, Melrose Arch, Melrose North,

Johannesburg, 2196, South Africa

Mailing Address: Suite No. 19, Private Bag X1, Melrose Arch, Johannesburg, 2076, South Africa Tel: +27 11 772 0600 Fax: +27 11 772 0697

Directors: CM Ephron, R Cohen, P Mahanyele, T Ncube

Page |2

- 4 If you have any requests or queries, you are welcome to refer them optimumcoal@matusonassociates.co.za.
- 5 All notices that have been circulated to affected persons have been posted to OCH's website and are accessible from <u>www.optimumcoalbusinessrescue.co.za/wordpress</u>
- 6 We take this opportunity to thank you for your patience and co-operation during the process.

Yours faithfully

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Piers Marsden and Peter van den Steen Joint Business Rescue Practition<mark>ers of O</mark>ptimum Coal Holdings Proprietary Limited

111347224

# Companies and Intellectual Property Commission Republic of South Africa

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Form CoR 125.3	Notice of Substantial Implementation of Business Rescue Plan				
	Date: 15 April 2016				
About this Form	Customer Code:				
<ul> <li>This form is issued in</li> </ul>	Concerning:				
terms of section 152(8) of the Companies Act.	(Name and Registration Number of Company)				
2008, and Regulation 125 (5) of the Companies	Name: Optimum Coal Holdings (Pty) Ltd				
Regulations, 2011.	Registration No:2006/007799/07				
• This notice must be filed.					
	The above named company commenced business rescue proceedings by resolution on				
	04 August 2015				
	In terms of section 152, a business rescue plan was adopted on				
and the second sec	8 April 2016				
	The terms of that plan have now been substantially carried out, as contemplated in section 152(8). Accordingly, the business rescue proceedings end upon the filling of this Notice, in the manner contemplated in section 132 (2)(c) (ii).				
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	AUTOLIAN AND AND LONG TO AND				
	2016 04 4 6				
	2016 -04- 1 5 Nor. 0.1				
	COMPANIES AND INC.				
	COMPANIES AND INTELECTUAL PROPERTY COMMISSION				
Contacting the					
Commission					
The Companies and Intellectual Property Commission of South					
Africa	Name and Title of person signing on behalf of the Practitioner:				
Postal Address	Name and Thie or person signing or some or any and				
PO Box 429 Pretoria	Piers Marsden and Peter van den Steen - Joint Business Rescue Practition				
0001					
Republic of South Africa Tel: 086 100 2472	Authorised Signature:				
www.cipc.co.za					
WWW.cipe.co.co					

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

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**EXECUTION VERSION** 

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### POST-COMMENCEMENT FINANCE AGREEMENT

among

# TEGETA EXPLORATION & RESOURCES PROPRIETARY LIMITED

and

### OPTIMUM COAL MINE PROPRIETARY LIMITED

(in business rescue)

represented by

# PIERS MICHAEL MARSDEN AND PETRUS FRANCOIS VAN DEN STEEN (in their capacity as business rescue practitioners)

155 - 5th Street Sandton 2196 Johannesburg South Africa Private Bag 10015 Sandton 2146 Docex 111 Sandton Tel +27 (0)11 535 8000 Fax +27 (0)11 535 8600 enquiries@werksmans.com www.werksmans.com

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ANNEXURE B - FORM OF PCF NOTICE

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N/W 10122015/OPT113156,19 PCP Agreement - Optimum Coll Mine - Execution Version/#3599370v1

POST-COMMENCEMENT FINANCE AGREEMENT

among

TEGETA EXPLORATION & RESOURCES PROPRIETARY LIMITED

and

OPTIMUM COAL MINE PROPRIETARY LIMITED (in business rescue)

represented by

1,1.3

PIERS MICHAEL MARSDEN AND PETRUS FRANCOIS VAN DEN STEEN (in their capacity as business rescue practitioners)

TEALS IN THE INTERNAL PROPERTY IN THE PARTY IN

### **1** INTERPRETATION AND DEFINITIONS

In this Agreement, clause headings are used for convenience only and will not be used in its interpretation, and, unless the context clearly indicates a contrary intention, -

1.1 a word or an expression that denotes -

1.1.1 any gender, includes the other gender;

1.1.2 the singular, includes the plural and vice verse; and

a natural person, includes an artificial or juristic person and vice versa;

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1.2 the following words and expressions will, unless otherwise stated or clearly inconsistent with the context in which they appear, bear the following meanings, and other words and expressions derived from the same origins as those words and expressions (that is, cognate words and expressions) will bear corresponding meanings, -

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- 1.2.1 "Acquisition Agreement" the written sale of shares and claims agreement between the Lender, Glencore and the Borrower to be concluded contemporaneously with this Agreement in terms of which, *Inter alia*, the Lender will purchase the shares and claims in various subsidiaries held by the Borrower;
- 1,2.2 "Advance" the advance of Post-Commencement Finance by the Lender to the Borrower pursuant to clause 5; and "Advanced" will have a cognate meaning;
  - "Advance Date" In respect of an Advance, the date on which any cash Is Advanced by the Lender to the Borrower pursuant to clause 5;

"Agreement" - this document together with its annexures (if any), each as amended, novated or reinstated from time to time;

"Applicable Laws" - In relation to a person, will include all and any -

statutes and subordinate legislation and common law;

### regulations;

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ordinances and by-laws;

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circulars, codes of practice, directives, guidance notices, judgments and decisions of any competent authority or any governmental, intergovernmental or supranational agency, body, department or regulatory, self-regulatory or other authority or organisation, which, for the avoidance of any doubt, will include Basel II, Basel III and any amendment or replacement thereof; and



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1.2.5.5 other similar provisions,

from time to time, compliance with which is mandatory for that person;

1.2.6 "Availability Period" - the period commencing on 1 January 2016 and terminating on the earlier of -

1.2.6.1 the date on which the Acquisition Agreement lapses;

1.2.6.2 the date on which the Acquisition Agreement is terminated; and

1.2.6.3

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the Settlement Date;

"Borrower" - Optimum Coal Mine, Proprietary Limited (registration number 2007/005308/07) (in business rescue), a private company duly incorporated and registered in accordance with the laws of South Africa, which was placed in voluntary business rescue on 4 August 2015;

"BRPs" - the persons appointed jointly to oversee the Borrower during the Business Rescue Proceedings, as contemplated in section 128 of the Companies Act, being Marsden and van den Steen, or any business rescue practitioner that succeeds or replaces them in respect of the current Business Rescue Proceedings;

1.2,9

"Budget Forecast" - the financial forecast prepared in respect of the Borrower for the Availability Period, which sets out the anticipated income and expenditure of the Borrower for the Availability Period, a copy of which is attached as Annexure A to this Agreement;

1.2.10 "Business Day" - any day other than a Saturday, a Sunday or an official public holiday in South Africa;

1.2.11. "Business Rescue Proceedings" - the business rescue proceedings, as contemplated in Chapter 6 of the Companies Act, that commenced on 4 August 2015 in respect of the Borrower and in respect of which the BRPs were appointed;

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	PCF Agreemank - 0 10122015	ptimum Cost Mine - Exacution Version/#3599370v1
I	1.2.12	"Capital Outstanding" - at any point in time, that portion of any amount
		Advanced by the Lender to the Borrower that has not yet been repaid by
		the Borrower to the Lender at that point in time;
	1,2,13	"Companies Act" - the Companies Act No 71 of 2008, and the
		regulations promulgated in respect thereof, including those provisions of
		the Companies Act No 61 of 1973 that have not been repealed;
	1.2.14	"Encumber" - in relation to an asset, -
	1.2,14.1	to encumber that asset in any way, including by way of a cession
( ) ( )		in securitatem debiti, a mortgage bond, a general notarial bond, a
<b>6</b> i		special notarial bond or a piedge;
	1.2.14.2	to grant any other analogous or similar security interest of any
		nature whatsoever over that asset;
	1.2.14.3	any arrangement under which money or claims to, or for the benefit
		of, a bank or other account may be applied, sat-off or made subject
		to a combination of accounts, so as to effect discharge of any sum
		owed or payable to any person in respect of that asset; or
		any other type of preferential agreement or arrangement (including
	1.2.14.4	any title transfer and/or retention arrangement), the effect of which
5		is the creation of security over that asset,
	1	and "Encumbrance" will have a cognate meaning;
	1.2.15	"Event Of Default" - any circumstance or event specified in clause 11;
	1.2,16	"Giencore" - Glencore International AG, a company incorporated in

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PCF Agreement - Optimum Coal Mine - Execution Version/#3599370v1 10122015

); ;

1.2.19

1,2.17 **"Insolvency Event**" - any of the following circumstances or events occurring after the Signature Date -

- 1.2.17.1 an order or declaration is made, steps are taken, or a meeting of the directors or shareholders of the Borrower is convened to consider the passing of a resolution, or a resolution is proposed or passed, for the bankruptcy, liquidation (whether provisional or final), winding-up or deregistration of the Borrower's estate; or
- 1,2.17.2 any administrator or liquidator (other than the BRPs) is appointed in respect of the Borrower or any material part of its assets or the Borrower requests any such appointment;
- 1.2.18 **"Investec"** Investec Bank Limited, acting through its Corporate and Institutional Banking division (registration number 1969/004763/06), a public company duly incorporated and registered in accordance with the laws of South Africa;
  - "Lander" Tegeta Exploration & Resources Proprietary Limited (registration number 2006/014492/07), a private company duly incorporated and registered in accordance with the laws of South Africa;
  - 1.2.20 "Marsden" Plers Michael Marsden (Identity number 770305 5168 084);

1.2.21 "Nedbank" - Nedbank Limited, acting through its Corporate and Investment Banking division (registration number 1951/00009/06), a public company duly incorporated and registered in accordance with the laws of South Africa;

1.2.22 "OCH" - Optimum Coal Holdings Proprietary Limited (registration number 2005/007799/07) (in business rescue), a private company duly incorporated and registered in accordance with the laws of South Africa;

1.2.23 **"Outstanding Balance**" - In relation to any Post-Commencement Finance Advanced by the Lender at any point in time, the sum of the Capital Outstanding, plus any interest that may have accrued thereon, at that point in time;

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- 1.2.24 "Parties" the Lender, the Borrower and the BRPs; and "Party" will mean any of them, as the context may require;
- 1.2.25 **"PCF Account**" will bear the meaning assigned to this term in clause 5.2;
- 1.2.26 "PCF Notice" will bear the meaning assigned to this term in clause 5.1;

1.2.27 **"Post-Commencement Finance"** - the finance granted by the Lender to the Borrower in terms of this Agreement;

"Prime Rate" - the basic rate of interest (percent, per annum, compounded monthly-in-arrear and calculated on a 365-day year, irrespective of whether or not it is a leap year) from time to time quoted by First National Bank (a division of FirstRand Bank Limited) as being its prime rate, as certified by any director or manager of that bank, whose appointment, authority and/or designation it will not be necessary to prove;

1.2.29 "Rand" or "R" - the lawful currency of South Africa, being the Rand;

"RMB" - Firstrand Bank Limited, acting through its Rand Merchant Bank division (registration number 1929/001225/06), a public company duly incorporated and registered in accordance with the laws of South Africa;

"Settlement Date" - will bear the meaning assigned to this term in the Acquisition Agreement;

1.2.32 "Signature Date" - when this Agreement has been signed by all Parties (whether or not in counterparts), the latest of the dates on which this Agreement (or any counterpart) is signed by any such Party;

1.2.33 "Suspensive Condition" - the Suspensive Condition stipulated in clause 3.1;

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1.2.34 **"Termination Event"** - will bear the meaning assigned to this term in the Acquisition Agreement;

- 1.2.35
   "Total Commitment" the maximum amount of Post-Commencement

   Finance available for draw down by the Borrower from the Lender during

   the Availability Period, being R325 000 000; and
- 1.2.36 "Van den Steen" Petrus Francois Van den Steen (identity number 681107 5024 087);
  - 1.3 any reference to any statute, regulation or other legislation will be construed as a reference to that statute, regulation or other legislation as at the Signature Date and as amended or substituted from time to time;
    - If any provision in a definition is a substantive provision conferring a right or imposing an obligation on any Party, then, notwithstanding that it is only in a definition, the Parties will give effect to that provision as if it were a substantive provision in the body of this Agreement;
      - where any term is defined within a particular clause other than this clause 1, that term will bear the meaning assigned to it in that clause wherever it is used in this Agreement;
      - where any number of days is to be calculated from a particular day, that number will be calculated as excluding that particular day and commencing on the next day. If the last day of the number to be so calculated fails on a day that is not a Business Day, the last day will be deemed to be the next succeeding Business Day;
    - 1.7 any reference to days (other than a reference to Business Days), months or years will be construed as a reference to calendar days, months or years, as the case may be;
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the cancellation or termination of this Agreement will not affect those provisions of this Agreement that expressly provide that they will operate after any such cancellation or termination, or which must necessarily continue to

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have effect after such cancellation or termination, notwithstanding that the clauses themselves do not expressly provide for such continuity;

1.9 where any day for the performance of any obligation or the payment of any amount in terms of this Agreement falls on a day other than a Business Day, that obligation will be performed or that amount will be paid on the immediately preceding Business Day;

- 1.10 the use of the words "including", "includes" or "include", followed by a specific example/s, will not be construed as limiting the meaning of the general wording preceding the example/s, and the rule that words of the same kind will be interpreted the same way (that is, the *elusdem generis* rule) will not be applied in the interpretation of that general wording or those specific examples; and
- 1.11 the terms of this Agreement having been negotiated and drafted for the benefit of all Partles, the rule of construction that a contract will be interpreted against the Party responsible for the drafting and/or preparation thereof (that is, the *contra proferentem* rule) will not apply.

### 2 INTRODUCTION

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- The board of directors of the Borrower passed resolutions on 31 July 2015 for the Borrower to be placed under supervision and subject to business rescue in terms of Chapter 6 of the Companies Act.
- 2.2 The BRPs have been duly appointed as such in accordance with the requirements of the Companies Act.
- 2.3 The Lender wishes to acquire 100% of the shares of the Borrower held by OCH in terms of, and subject to the conditions contained in, the Acquisition Agreement.
- 2.4 The Borrower requires funding in order to, *Inter alia*, satisfy its operating and capital expenses as contemplated in the Budget Forecast during the Availability Period.



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2.5 The Borrower requires Post-Commencement Finance for the purposes of funding the requirements of the Borrower.

- 2.6 The Lender has agreed to provide such Post-Commencement Finance to the Borrower on the terms and subject to the conditions sat out in the Agreement.
- 2.7 The Partles are accordingly entering into this Agreement to set out the terms on which the Lender provides Post-Commencement Finance to the Borrower.

### 3 SUSPENSIVE CONDITION

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- The whole of this Agreement (other than clauses 1, 2, this clause 3 and clauses 15 to 21 (both inclusive), by which the Parties will become bound with effect from the Signature Date) is subject to the fulfilment of the Suspensive Condition ("Suspensive Condition") that, on or before the Signature Date, the Acquisition Agreement is signed by the parties thereto.
- If the Suspensive Condition is not fulfilled for any reason whatsoever by the date specified for such fulfilment (or such later date as may be agreed in writing by the Parties),
  - this Agreement (other than clause 1, this clause 3, and clauses 15 to 21 (both inclusive), by which the Parties will remain bound) will not come into force and effect;
- 3.2.2 the Parties will be restored as near as may be possible to the positions in which they would have been had this Agreement not been entered into; and
  - 3.2.3 no Party will have any claim against any other as a result of the failure of the Suspensive Condition, except for any claims as may arise from a breach of any other provision of this Agreement by which the Parties remain bound.

### 4 PURPOSE

4.1 All amounts that are Advanced by the Lender to the Borrower in terms of this Agreement may only be used for (i) the payment of the costs of the Business

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Rescue Proceedings (including the costs of the BRPs and any legal costs related thereto); (II) general corporate, operating, capital and working capital purposes of the Borrower as contemplated in the Budget Forecast; and (iii) any other purpose approved in writing by the Lender.

In utilising the Post-Commencement Finance, the BRPs shall at all times act in 4.2 good faith in accordance with the spirit and purport of this Agreement and in accordance with the duties imposed on them by, and the requirements of, the Companies Act.

#### CASH ADVANCES TO BORROWER 5

The BRPs will be entitled, by delivering a written notice ("PCF Notice") to the 5.1 Lender on any Business Day during the Availability Period, to require the Advance from the Lender of Post-Commencement Finance In order to fund the cash requirements of the Borrower as contemplated in the Budget Forecast, provided that -

each PCF Notice will be irrevocable; and

the Borrower will not be entitled to deliver more than one PCF Notice in any consecutive seven-day period, unless agreed in writing by the Lender.

The Lender shall, on the date specified in the relevant PCF Notice, Advance to the Borrower the amount specified in such PCF Notice by way of an electronic funds transfer into the following bank account ("PCF Account"), free of any deduction, set-off or withholding of any nature whatsoever (including any costs incurred in making the payment), -

Name of Account Holder	Optimum Coal Mine Proprietary Limited		
Bank	Standard Bank		
Account Number	000 36 4029		
Branch	Johannesburg		
Branch Code	00 0205		



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5.3 The Borrower acknowledges that the payment by the Lender of any portion of the Total Commitment in accordance with the provisions of this clause 5 will constitute a valid and proper discharge by the Lender of its obligation to advance such portion of the Total Commitment in terms of this Agreement.

### 6 GENERAL PROVISIONS APPLICABLE TO DRAW-DOWN

### 6.1 Form of PCF Notice

Each PCF Notice delivered by the Borrower to the Lender in terms of clause 5 will be substantially in the form attached to this Agreement as Annexure B, duly signed by the BRPs on behalf of the Borrower, and must contain at least the following details -

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the aggregate principal amount to be drawn-down pursuant to the delivery of that PCF Notice, which will be an amount of not less than R5 000 000 or any multiple thereof (or, if the amount available to be drawn under this Agreement is less than R5 000 000, such lesser amount);

the period for which the funding is required, the details for the payments that will be made with such funding and where such payments are contemplated in the Budget Forecast; and

the Advance Date on which the principal amount is to be Advanced by the Lender to the Borrower, which will be a date not less than three and not more than five Business Days after the date on which the PCF Notice is received by the Lender.

#### 6.2 Draw-Down Conditions

The Borrower will not be entitled to notify a draw-down, and the Lender will not be obliged to Advance, any amount -

6,2.1 If an Event of Default has occurred and is continuing;

6.2.2 after the end of the Availability Period;

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6.2.3 If the Advance of the amount notified pursuant to that PCF Notice would result in the Total Commitment being exceeded; or

6.2.4 on any day other than a Business Day that is not less than three and not more than five Business Days after the date of the PCF Notice, provided that the day must fail within the period commencing on the Signature Date and terminating on the last date of the Availability Period.

### 6,3 Advances

(b)

Subject to the foregoing provisions of this clause 6, on the Advance Date specified in a PCF Notice received by the Lender, the Lender shall Advance to the Borrower the amount so notified by way of an electronic funds transfer into the bank account nominated by the Borrower in that PCF Notice.

### 7 INTEREST

8.1

Interest will be calculated and accrue daily on the Outstanding Balance at the Prime Rate plus 2.5% from the first Advance Date to the date on which the Outstanding Balance is fully and finally settled (inclusive of the first Advance Date, but exclusive of the date on which the Outstanding Balance is fully and finally settled).

### 8 REPAYMENT OF OUTSTANDING BALANCE

- The Outstanding Balance will not be repayable for so long as the Acquisition Agreement has not lapsed or been terminated.
- 8.2 If the Acquisition Agreement becomes unconditional, then repayment method of the Outstanding Balance shall be agreed between the Lender and the Borrower.
- 8.3 If the Acquisition Agreement is cancelled (other than as a result of a breach by the Lender or its nominee) or lapses in accordance with its terms, then the Outstanding Balance shall become immediately due and payable; provided that during the Business Rescue Proceeding the Lender shall remain subject to the moratorium on legal proceedings contemplated in section 133 of the Companies Act for the duration of such Business Rescue Proceedings.

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8.4 If the Business Rescue Proceedings are terminated in accordance with section 141(2)(a) of the Companies Act such that the Borrower is placed in liquidation, then the Outstanding Balance will be repayable pursuant to such liquidation subject to the provisions of section 135 of the Companies Act.

### 9 GENERAL PROVISIONS APPLICABLE TO PAYMENTS

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Unless this Agreement specifically provides otherwise, the Borrower shall pay all amounts payable by it to the Lender in terms of this Agreement without any deduction, set-off or withholding of any nature whatsoever, in freely available cash into such bank account as may have been nominated by the Lender to the Borrower in writing before the date of the payment in question.

9.2 All payments made in terms of this clause 9 will be made in Rand.

### 10 WARRANTIES

### 10.1 Introduction

The Borrower gives the Lender the representations and warranties (each, ' a "Borrower's Warranty" and collectively the "Borrower's Warranties") in clause 10.2, on the basis that -

10,1,1

each Borrower's Warranty, unless specified otherwise, is made and given as at the Signature Date and thereafter will be deemed to be repeated on each day until such time as at the obligations of the Borrower under this Agreement have been fully and finally discharged, and, when given and deemed repeated, is and will be accurate and complete in all material respects;

10.1.2 each Borrower's Warranty will be an independent and separate warranty and will in no way be limited to or restricted by reference to or by inference from the terms of any other warranty or by any other provision in this Agreement;

10,1.3

insofar as any Borrower's Warranty is promissory or relates to a future event, such Borrower's Warranty will be deemed conclusively to have

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		been given as at the due date for fulfilment of the promise or for the happening of the event, as the case may be; and
	10.1.4	each Borrower's Warranty, to the extent that it is expressed in an inappropriate tense, will be construed and read in the appropriate tense.
	10.2 8	orrower's Warranties
	7	he Borrower represents and warrants to and in favour of the Lender that -
(x. · ·)	10.2.1	the Borrower is a private company with limited liability, duly incorporated and validly existing under the laws of South Africa;
	10.2.2	the Borrower has -
	10.2.2.1	the legal capacity and power to enter into and perform; and
	10.2.2.2	taken all necessary actions (whether corporate or otherwise) to authorise its entry into and performance of,
		this Agreement;
Ċ,	10.2.3	the obligations expressed to be assumed by the Borrower under this Agreement are legal, valid and are binding on, and enforceable against, the Borrower;
·	10.2.4	the entry into and performance by the Borrower of this Agreement do not and will not conflict with -
	10.2.4.1	any Applicable Laws In respect of the Borrower;
	10.2.4.2	its constitutional documents; or
	10,2,4,3	any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under

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10.2.5 It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement.

### 11 DEFAULT

- 11.1 If -
- 11.1.1 the Acquisition Agreement is terminated pursuant to the occurrence of a Termination Event;

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#### an Insolvency Event occurs; or

### there is any change in Applicable Laws that renders or may have the effect of rendering any provision of this Agreement illegal, invalid or unenforceable and that/those provision/s is/are not substituted with alternative legal, valid, binding and enforceable provisions or documents to the satisfaction of the Lender,

then the Borrower will be deemed to be in default, and the circumstance or event in question will be regarded as an "Event of Default".

### 12 REMEDIES

12,1

Subject to the provisions of clauses 12.3 and 12.5, if an Event of Default occurs, then, notwithstanding anything to the contrary contained anywhere else in this Agreement, the Lender will, without prejudice to its other rights in terms of this Agreement or at Applicable Law, have the right to –

12.1.1 cancel this Agreement and to claim repayment of the Outstanding Balance at that time (as evidenced by the certificate contemplated in clause 12.2), which will become immediately due and payable;

- 12.1.2 require immediate specific performance by the Borrower of its obligations under this Agreement, whether or not then due for performance; and/or
- 12.1.3 make such payments on behalf of the Borrower and do all such other things as the Lender may consider necessary for the protection of its

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rights or interests, on the basis that the Borrower shall forthwith reimburse the Lender for any amounts paid and/or expenses incurred by the Lender as a result thereof.

- A certificate signed by any director of the Lender (whose appointment need 12.2 not be proved) as to the existence of and the amount of the Outstanding Balance, that such amount is due and payable, which will include the amount of interest accrued thereon, shall, in the absence of cierical or manifest error, be prima facie proof of the contents and correctness thereof for the purposes of provisional sentence, summary judgement or any other proceedings (including any action) instituted by the Lender and shall be valid as a liquid document for such purpose.
- The Lender acknowledges and agrees that the moratorium on legal 12.3 proceedings contemplated in section 133 of the Companies Act remains in place during the Business Rescue Proceedings regardless of whether an Event of Default has occurred.
  - No remedy conferred by this Agreement is intended, unless specifically stated otherwise, to be exclusive of any other remedy that is otherwise available at Applicable Law. Each remedy will be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at Applicable Law. The election of any one or more remedy/les by the Lender will not constitute a walver by the Lender of the right to pursue any other remedy available to it.
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12.4

Notwithstanding anything to the contrary contained anywhere else in this Agreement, no Party will be entitled, under any circumstances whatsoever, to cancel or terminate this Agreement, unless otherwise agreed in writing among ail Parties.

#### INDEPENDENT ADVICE 13

Each Party acknowledges that, in entering into this Agreement, it has been free to secure independent accounting, legal, tax and/or other advice as to the nature and effect of all of the provisions of this Agreement, and that it has either taken such Independent accounting, legal, tax and/or other advice or dispensed with the necessity of doing so. In addition, each Party acknowledges that all of the

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provisions of this Agreement and the restrictions contained in it are fair and reasonable in all of the circumstances and are part of the overall intention of the Parties in connection with this Agreement.

### 14 RENUNCIATION OF BENEFITS

The Borrower hereby renounces the benefits of the defences and exceptions of no value received, *non numeratae pecuniae*, *non causa debiti*, *errore calculi* and revision of accounts, with the full force, meaning and effect of which the Borrower declares itself to be acquainted.

### 15 DOMICILIUM

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

Lender -	
physical -	Lower Ground Floor, Block A
	Greystone Ridge Office Port
	144 Katherine Street
	Sandton
	2196
e-mail -	nazeemh@oakbay.co.za
attention -	Nazeen Howa
Borrower and BRPs -	

15.1.2

15.1.1

physical

1st Floor 23 Melrose Boulevard Meirose Arch 2196

e-mail

attention -

pmarsden@matusonassociates.co.za peter@v2rescue.co.za Shaun.Biankfield@glencore.com

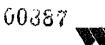
Plers Marsden / Peter Van den Steen / Shaun Blankfield

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15.2 Any Party will be entitled, from time to time, by giving written notice to the others, to vary its physical Domicilium to any other physical address (not being a post office box or *poste restante*) and to vary its e-mail Domicilium to another e-mail address.

- 15.3 Any notice given by any Party to another ("Addressee"), which is delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the physical Domicilium of the Addressee, will be deemed (unless the contrary is proved by the Addressee) to have been raceived at the time of delivery.
- 15.4 Any notice given by any Party to another, which is successfully transmitted by e-mail to the e-mail Domicilium of the Addressee, will be deemed (unless the contrary is proved by the Addressee) to have been received on the day immediately succeeding the date of successful transmission thereof.
  - 15.5 The provisions of this clause 15 will not operate so as to invalidate the giving or receipt of any written notice which is actually received by the Addressee other than by a method referred to in this clause 15.
  - 15.6 Any notice in terms of, or in connection with, this Agreement will be valid and effective only if it is in writing and if it is received or deemed to have been received by the Addressee.

### 16 DISPUTES

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Any dispute will be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") before a panel of three arbitrators (at least one of which will be a retired judge), with one arbitrator nominated by each Party to the dispute. If there are only two Parties to the dispute or if the Parties are able to organise themselves into two groups for the purposes of any dispute, then a third arbitrator will be chosen by agreement between the two Party-nominated arbitrators or, failing such agreement between each Party to the dispute or the two Party-nominated arbitrators within seven days after the date of their appointment, as the case may be, appointed by AFSA on the request of any Party.

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- 16.2 Each Party to this Agreement -
- 16.2.1 expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency in accordance with the Expedited Rules; and

- 16.2.2 irrevocably authorises any other Party to apply, on behalf of all Partles, in writing, to the secretariat of AFSA in terms of article 23 of the aforesaid rules for any such arbitration to be conducted on an urgent basis.
- 16.3 The majority decision of the arbitrators will be the decision of all of the arbitrators, and a unanimous decision is not required in terms of this clause 16.
- 16.4 Any award or order that may be made by the arbitrators -
- 16.4.1 will be final and binding on the Parties In the absence of clerical or manifest error;
- 16.4.2 must be carried into effect by the Parties; and
  - 16.4.3 may be made an order of any competent court by any of the Parties.
  - 16.5 The arbitration will be held at a venue in Johannesburg and in accordance with formalities and/or procedures determined by the arbitrators, and may be held in an informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings and/or discovery, or the strict rules of evidence.
  - 16.6 For the purposes having any award or order made by the arbitrators being made an order of court, each of the Parties hereby submits itself to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg).
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The hearing of the arbitration will be held *in camera*. Save to the extent strictly necessary for the purposes of the arbitration or for any court proceedings related thereto, no Party shall disclose or permit to be disclosed to

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> any person any information concerning the arbitration or the award (including the existence of the arbitration and all process, communications, documents or evidence submitted or made available in connection therewith).

- 16.8 If the arbitrators' charges and any other costs have to be paid before the arbitrators have made their award in respect of those charges and costs, the Parties shall bear and pay those charges and costs equally, pending any determination as to liability therefor by the arbitrators, provided that the Parties will be obliged to reimburse each other the amount of any such charges and costs in accordance with (and as soon as reasonably possible after) any determination as to their liability therefor is made by the arbitrators.
- 16.9 This clause 16 is severable from the rest of this Agreement and will remain in full force and effect notwithstanding any cancellation, expiration or termination of this Agreement.

### 17 GOVERNING LAW

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This Agreement will, in all respects (including its existence, validity, interpretation, implementation, cancellation, termination and enforcement), be governed by the laws of South Africa.

### 18 CESSION, DELEGATION AND ASSIGNMENT

No Party will be entitled, without the prior written consent of the other Parties, to cede, delegate, assign, Encumber or otherwise transfer all or any of its rights and/or obligations under this Agreement, either absolutely or as collateral security, to any third party.

### 19 SEVERABILITY

Each provision of this Agreement is, notwithstanding the grammatical relationship between that provision and the other provisions of this Agreement, severable from the other provisions of this Agreement. Any provision of this Agreement that is or becomes invalid, unenforceable or unlawful in any jurisdiction will, in such jurisdiction only, be treated as *pro non scripto* to the extent that it is so invalid, unenforceable or unlawful, without invalidating or affecting the remaining provisions of this Agreement, which will remain of full force and effect. The Parties declare that

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It is their intention that this Agreement would have been executed without that Invalid, unenforceable or unlawful provision if they were aware of that invalidity, unenforceability or unlawfulness at the time of the execution of this Agreement.

### 20 GENERAL

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- 20.1 This Agreement constitutes the sole record of the agreement among the Parties in relation to the subject matter hereof. No Party will be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Agreement accordingly supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, among the Parties in respect of the subject matter hereof.
- 20.2 No addition to, variation, novation or agreed cancellation of, any provision of this Agreement (including this provision) will be binding on the Parties unless reduced to writing and signed by or on behalf of all Parties.
- 20.3 For the purposes of this Agreement, -
- 20.3.1 no data message, as defined in the Electronic Communications and Transactions Act No 25 of 2002 ("ECTA"), other than an e-mail, will constitute writing; and
- 20.3.2

no electronic signature or advanced electronic signature, as defined in ECTA, will constitute a signature, except for the purposes of varying any date referred to in this Agreement or giving any approval or consent in terms of this Agreement.

20.4 No indulgence or extension of time, which any Party ("Grantor") may grant to any other, nor any election or failure by the Grantor to enforce, whether completely or partially, or delay the enforcement of, any of its existing or future rights, will constitute a waiver of, or, whether by estoppei or otherwise, limit (or be deemed to limit) any of, the existing or future rights of the Grantor in terms hereof, save in the event and to the extent that the Grantor has signed a written document expressly waiving or limiting that right.

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- 20.5 Without prejudice to any other provision of this Agreement, any successor-in-title, including any business rescue practitioner, liquidator or trustee, of any Party will be bound by this Agreement.

20.6 The signature by any Party of a counterpart of this Agreement will be as effective as if that Party had signed the same document as the other Parties.

### 21 COSTS

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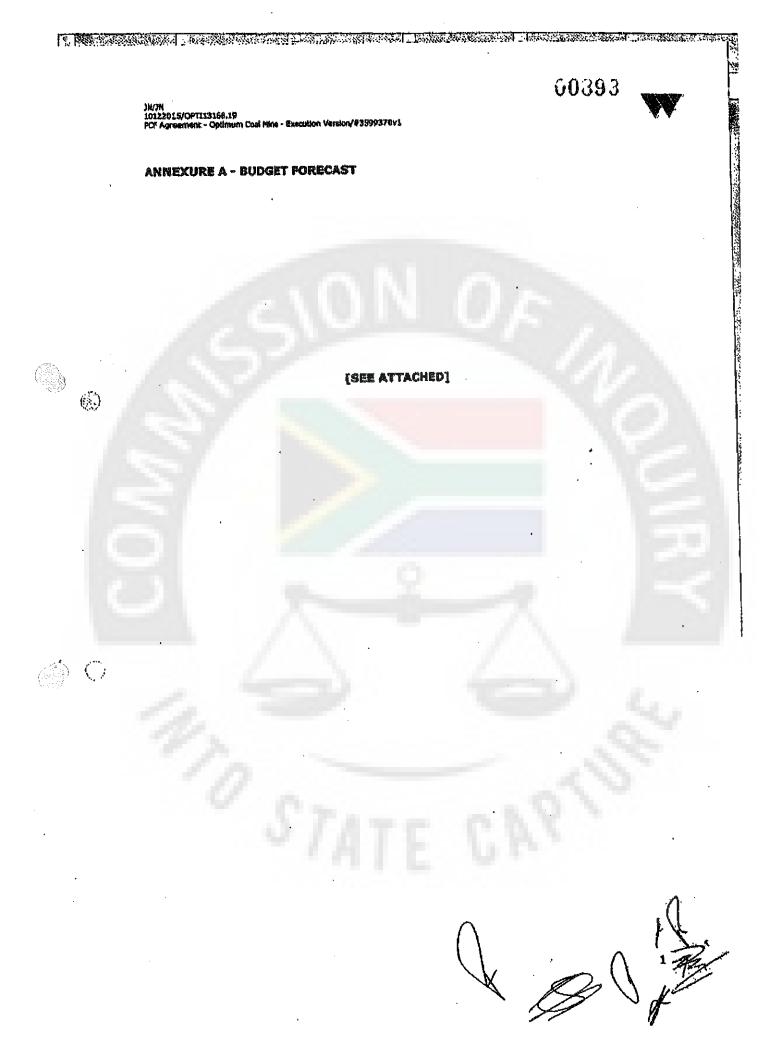
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Each Party shall bear and pay its own costs in relation to the negotiation, drafting, finalisation and signing of this Agreement.

\*\*\*\*SIGNATURE PAGES TO FOLLOW\*\*\*\*

1.0 ф., 00392 IN/IN 10112015/OPT13168,19 PCF Agreement - Optimum Casi Pline - Execution Version/#3599370v1. MELLOSS BECOMADE 10 2015 Signed at on のいた。ためなるななないないであるというなななないないないないであると **Exploration & Resources** for Tegeta **Proprietary Limited** 1360 who warrants that he is duly authorised hereto Name: NA245 My How Position: Director/Authorised Signatory ો  $(\uparrow)$ Malere Deamha 2015 Signed at on **Optimum Coal Mine Proprietary Limited** for (in business rescue) who Marrants that he is duly authorised hereto Name: Piers Michael Marsden Position: Business Rescue Practitioner ([\_j 10 DECEMBER. MELROSE 2015 on Signed at for Optimum Coal Mine Proprietary Limited (in business rescue) who warrants that be is duly authorised thread Name: Petrus Francols van den Steen Position: Business Rescue Practitioner

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#### Annosure A: Budast lorsons Outlinum Doal Mine Bummery

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asumplons.		jan	Feb	War	, Total
Old production	 1000	589	695	627	1 601
UG	food	395	407	422	1 224
-00	1000	164	268	205	657
Saleable production .	1000	623	523	623	1 569
Eakom	1000	459	46B	469	1 374
Export	1000	65	65	65	185
Forecast anabilow					
		. Jan 2016	Feb 2016	Mar 2016	Total
Revenue	8000	108 657	108 437	108 687	. 326 060
Eakom	RYDD	71 074	71 074	71 074	213 221
Export	RIODA	37 813	37 81a	37 613	112 899
Distribution costs	<i>E.0</i> 00	(14 917)	(14 917)	(14 817)	(44 762
Operating Cost	R'000	(182 485)	(188-639)	(187 245)	(686.831
Vining cost	000%	(123 728)	(127 856)	(127 622)	(379 208
Washing cost	R 100	(38 110)	(37 081)	(96 181)	(113 372
Ovathead ocat	R'000	(20 758)	(21 761)	(21 442)	
Capital expanditure	Roto	(7 485)	(23 316)	(18 872)	(48 95)
Forecast cash flow	R'000	(66 293)	(116 234)	(112,345)	[324 870
10% cash reduction	R'000	6 629	11 623	11 235	32.46
Not forecast cash flow	RIDOC	(86 654)	(104 611)	(101 113)	(282 38

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### Annakire A: Builder foreard. Örstanlin Obal Mine Detellad

Forecast cauhliow		Jan 2016	Feb 2016	Mar 2016	Tota
	·				
Rovenue	R 060	108 687	108 887	108 687	328 060
- Eskorn	R'000	71 074	71 074	71 074 37 813	112 830
- Expant	R000	37 613	87 813	31 110	112 000
Distribution costs	R'000	(14 917)	(14 917).	(14 817)	(44.752)
Rallage	ROOD	(9 243)	(8 243)	(9 243)	(27 729)
Port Cosis	R'000	(1 303)	(1 903)	(1 803)	(3 910)
Royallies	R000	(471)	(471)	(471)	(1 414)
inland Disiribution	R'000	(3 900)	(3 908)-	(3 900)	(11 700)
Minutes and	R'000	(125 729)	(127.868),	(127 622).	(679,208)
Mining cost	R'000	(6 351)	(6 411)	(5 887)	(18 649)
Biosting Expenses	R'000	(201)	(201)	(201)	(602)
Equipment Renies	ROOO	(10 925)	(10 825)	(10 825)	(31 874)
Labour	R'000	(0 476)	(10 851)	(9 6 90)	(26 613)
Repairs & Maintenence	RIGOO	(3 841)	(3 520)	(3 918)	(11 079)
Rahabillation/Water Plant	R'000	(7 207)	(7 176)	(7 861)	(21 783)
Underground Support	RIDOD	(56 052)	(70 815)	(72 621)	(212 386)
Production Contractor		(7 24B)	(7 314)	(6 737)	(21 300)
Transport & Dissai	R'000		(6 353)	(6 591)	(19 107)
Other Mining Costs	R'000	(6 363)	(4 791)	(4 207)	(13 882)
Electricity & Water	ROCO	(4 665)	64 5 4 13	(,,	
Washing cost	R'000	(38 110)	(37 081)	(38 181)	(113 372)
Conveyora	NOCO	(1 310)	(1 510)	(1 310)	(3 929)
Electricity & Weier	R'DOD	(6 094)	(8 094)	(6 004)	(18 281)
Equipment Rentals	R'000	(2 923)	(8 474)	(2 884)	(9 281)
Labour	R'000	(8 353)	(6 353)	(8 853)	(25 060)
Magnetite	R'000	(913)	(532)	(939)	(2 364)
Repairs & Maintenance	R'000	(9 779)	(9 576)	(0 792)	(29 148)
Discard Handling	8'000	(1 404)	(853)	(1 443)	(\$ 700)
Transport & Olesel	R'000	(2 070)	(1 654)	(2 096)	(5 827)
Washing Contractor	R'001	(2 121)	(2 121)	(2 121)	(6 (363)
Other Washing Costs	R'000	(3 144)	(8 107)	(3 146)	(9 398)
a	R 7000	(20 768)	(21 751)	(21 442)	(63 851)
Overhead cost Computer Consumables, Software & Licensos	R'000	(295)	(145)	(387)	(827)
	R'000	(154)	(170)	(183)	(566)
Elactricity & Water	R'000	(751)	(751)	(751)	(2 254)
Envkormant, Health & Sefety	R'000	(4 701)	(4 701)	(4 701)	(14 103)
Insurance	R'000	(790)	(783)	(763)	(2 355)
Laboratory Expenses	R'000	(308)	(308)	(308)	(617)
SLP Commitmente Levies & Subscriptions	RIODO	(192)	(171)	(171)	(533)
Entertaihment & Refrectimente	1000	(11)	(51)	(11)	(33)
	R'000	(126)	(118)	(118)	(383)
Other Admin Costs	R'000	(4 774)	(6 937)	(5 864)	(16 QB8)
Other Services	R'000	(124)	(124)	(124)	(371)
Personnel Training	R'000	(157)	(157)	(157)	(470)
Professionet Fees	R.000	(19)	(19)	(19)	(58)
Repairs & Maintanance	R'000	(8 801)	(5 801)	(5 601)	(20 402)
Labour	R'000	(1 499)	(1 459)	(1 457)	(4 335)
Security Stationery & Prinking	R'000	(35)	(35)	(36)	(106)
Telephone & Fax	R'000	(84)	(84)	(84)	(252)
Capital expanditure	R'000	(† 465)	(23 315)	(18 872)	(49 86Z)
	R'000	(98 283)	(116 234)	(112 348)	(324.875)
Forecast cush flow		lan saal		والمحفاة سيجيبون وترجيني	<u> </u>
10% cash radiction	R'000	9 829	11 828	11 235	32 467
Net forecest crish flow	R 000	(86,884	. (104 611)	(181 113)	(298.367

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JN/JN 10122015/OPT£13168,19 PCF Agreement - Optimum Coal Mine - Execution Vorsion/#3598370v1

### **ANNEXURE B - FORM OF PCF NOTICE**

TO: Tegeta Exploration & Resources Proprietary Limited

DATE: [insert date]

1

([])

#### **POST-COMMENCEMENT FINANCE AGREEMENT**

We refer to the post-commencement finance agreement dated 10 December 2015 ("PCF Agreement") between Tegeta Exploration & Resources Proprietary Limited (in its capacity as the lender) ("Tegeta"), Piers Marsden and Pieter van den Steen (in their capacity as our duly appointed business rescue practitioners) and us (in our capacity as the borrower), and hereby give you notice that we wish to draw-down an amount of R[+] on [+] under your obligation to provide post-commencement finance to us in terms thereof, which amount must be paid in accordance with the provisions of the PCF Agreement into the following account -

Name of Account Holder	Optimum Coal Mine Proprietary
	Limited
Bank	Standard Bank
Account Number	.000 36 4029
Branch	Johannesburg
Branch Code	00 0205

2 The funding is required for the following purposes and in the following amounts for those purposes:

[insert details of funding required]

- 3 We hereby warrant and confirm to you that, as at the date of this notice, -
- 3.1

the amount of the draw-down notified by us in this notice will not result in the Total Commitment being exceeded; and

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	PCF Agnesment - Optimum Cosi Mine - Execution 10122015		θC	)397 <b>W</b>
•	3.2 no Event of Default occurred and/or is con		defined in the PCF Agreer	nent) has
	Signed at	on		2015
		for O	ptimum Coal Mine Proprietary 1 business rescue)	y Limited
	1253		25.	
		w	ho warrants that he is duly uthorised hereto	
()		N	ame: Piers Marsden	
		P	<mark>osition: Business Re</mark> scue Pra	ctitioner
	Signed at Me	on		2015
		for C	ptimum Coal Mine Proprieta in business rescue)	ry Limited
			who warrants that he is duly outhorised hereto	********
		1	Vame: Petrus Francois van d	en Steen
Q		2.1	Position: Business Rescue Pri	actitioner
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### PCF NOTICE

TO

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Tegeta Exploration & Resources Proprietary Limited

DATE: 13 January 2016

#### POST-COMMENCEMENT FINANCE AGREEMENT

We refer to the post-commencement finance agreement dated 10 December 2015 ("PCF Agreement") between Tegeta Exploration & Resources Proprietary Limited (in its capacity as the lender) ("Tegeta"), Piers Marsden and Pieter van den Steen (in their capacity as our duly appointed business rescue practitioners) and us (in our capacity as the borrower), and hereby give you notice that we wish to draw-down an amount of R26,000,000 (Twenty six million rand) on 15 January 2016 under your obligation to provide post-commencement finance to us in terms thereof, which amount must be paid in accordance with the provisions of the PCF Agreement into the following account -

Name of Account Holder	Oplimum Coal Mine Proprietary Limited
Baak	Standard Bauk
Account Number	000 36 4029
Branch	Johannesburg.
Branch Code	00 0205

Optimum Coal Mine (Pty) Lid (Registration No: 2007/005308/07) A Glencore Operation Business Address: N11 Hendrine Road, Pullenshope Offramp, Pullenshope Matling Address: Private Bag X1201, Fullenshope, 1956, South Africa Tel.: +27 13 2965111 Registered Address: 1ª Floor, Nedbank Bullding, 29 Melrose Boulevard, Melrose Arch, Melrose North, Johannesburg, 2196, South Africa Malling Address: Suite No. 19, Private Bag X1, Melrose Arch, Johannesburg, 2076 Tel: +27 11 772 0600 Fax: +27 11 772 0697

Directors: CM Ephron, R Cohen, P Mahanyelo, T Noube

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## 00339

L. L. M. Salarana P.O.

2 The funding is required for the following purposes and in the following amounts for those purposes:

Refer to Annexure A

- 3 We hereby warrant and confirm to you that, as at the date of this notice, -
- 3.1 the amount of the draw-down notified by us in this notice will not result in the Total Commitment being exceeded; and

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THE CASE OF STREET

no Event of Default (as this term is defined in the PCF Agreement) has occurred and/or is continuing.

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Signed at

Kosebank

on 14 January For Optimum Coal Min

2016

Optimum Coal Mine Proprietary Limited for (in business rescue)

K-

who warrants that he is duly authorised hereto

Name: Piers Marsden

Position: Business Rescue Practitioner

Signed at

FOURWAY S

14 SANUARY

. 2016

for Optimum Coal Mine Proprietary Limited (In business rescue)

who warrants that he is duly authorised hereto

Name: Patrus Francols van den Steen

Position: Business Rescue Practitioner

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## PMM-U11.1-314 PMM 33

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#### PCF NOTICE

TO:

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(\$) <sup>1</sup>;

Tegeta Exploration & Resources Proprietary Limited

DATE: 13 January 2016

POST-COMMENCEMENT FINANCE AGREEMENT

We refer to the post-commencement finance agreement dated 10 December 2015 ("PCF Agreement") between Tegeta Exploration & Resources Proprietary Limited (in its capacity as the lender) ("Tegeta"), Piers Marsden and Pieter van den Steen (in their capacity as our duly appointed business rescue practitioners) and us (in our capacity as the borrower), and hereby give you notice that we wish to draw-down an amount of R26,000,000 (Twenty six million rand) on 15 January 2016 under your obligation to provide post-commencement finance to us in terms thereof, which amount must be paid in accordance with the provisions of the PCF Agreement into the following account -

Name of Account Holder	Optimum Coal Mine Proprietary Limited
Bank	Standard Bank
Account Number	000 36 4029
Branch	Johannesburg
Branch Code	00 0205

Optimum Coal Mine (Pty) Ltd (Registration No: 2007/003308/07) A Glencore Operation Business Address: N11 Hendriae Road, Pullenshope Offramp, Pullenshope Mailing Address: Private Bag X1201, Pullenshope, 1096, South Africa Tel.; +27 13 2965111 Registered Address: 1<sup>st</sup> Floor, Nedbank Building, 23 Melrose Boulevard, Melrose Arch, Melrose North, Johannesburg, 2196, South Africa Mailing Address; Suits No. 19, Private Bag X1, Melrose Arch, Johannesburg, 2076 Tel: +27 11 772 0600 Fax: +27 11 772 0697

Directors: Chi Ephran, R Cohen, P Mahanyelo, T Neubo

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2 The funding is required for the following purposes and in the following amounts for those purposes:

Refer to Annexure A

- 3 We hereby warrant and confirm to you that, as at the date of this notice, -
- 3.1 the amount of the draw-down notified by us in this notice will not result in the Total Commitment being exceeded; and

3,2

The street with the street and

no Event of Default (as this term is defined in the PCF Agreement) has occurred and/or is continuing.

Signed at

Kosebank

on 14 January

2016

For Optimum Coal Mine Proprietary Limited (In business rescue)

who warrants that he is duly authorised hereto

Name: Plers Marsden

Position: Business Rescue Practitioner

Signed at

OURWAY S

14 JANUARY

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. 2016

for Optimum Coal Mine Proprietary Limited (In business rescue)

who warfants that he is duly

who warfants that he is duly authorised horebo

Name: Patrus Francois van den Steen

Position: Business Rescue Practitioner

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PCF NOTICE

TO:

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**Tegeta Exploration & Resources Proprietary Limited** 

DATE: 10 February 2016

### POST-COMMENCEMENT FINANCE AGREEMENT

We refer to the post-commencement finance agreement dated 10 December 2015 ("PCF Agreement") between Tegeta Exploration & Resources Proprietary Limited (in its capacity as the lender) ("Tegeta"), Plers Marsden and Pleter van den Steen (in their capacity as our duly appointed business rescue practitioners) and us (in our capacity as the borrower), and hereby give you notice that we wish to draw-down an amount of R23,000,000 (Twenty Three million rand) on 15 February 2016 under your obligation to provide post-commencement finance to us in terms thereof, which amount must be paid in accordance with the provisions of the PCF Agreement into the following account -

Name of Account Holder	Optimum Coal Mine Proprietary Limited
Bank	Standard Bank
AccountNumber	000 36 4029
Brangin	Johannesburg
Remoti Collected and	00 0205

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.: 427 13 2965111 Registered Address: 1ª Floor, Nedbank Building, 23 Melrose Boulevard, Melrose Arch, Melrose North, Johannesburg, 2196, South Africa Mailing Address: Suite No. 19, Private Bag X1, Melrose Arch, Johannesburg, 2076 Tel: 427 11 772 0600 Fax: 427 11 772 0697

Directors: CM Ephron, R Cohen, P Mahanyele, T Ncube

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## THE SALL DROP TO A CALL COMPANY AND A CALL A 00901 Page 12 「「「「「「」」 The funding is required for the following purposes and in the following amounts for 2 those purposes: Refer to Annexure A We hereby warrant and confirm to you that, as at the date of this notice, -З いちにないない、このないないないないないないないないないできょうちょうちょうちょうちょう the amount of the draw-down notified by us in this notice will not result in the 3.1 Total Commitment being exceeded; and no Event of Default (as this term is defined in the PCF Agreement) has occurred 3.2 and/or is continuing. on 10 February 2016 Signed at **Optimum Coal Mine Proprietary Limited** for (in business rescue) who warrants that he is duly authorised hereto Name: Plers Marsden

Position: Business Rescue Practitioner

Signed at

 $_{\rm S}$  ()

on 10 February 2016

Optimum Coal Mine Proprietary Limited for (in business rescue)

who warrants that he is duly authorised hereto

Name: Petrus Francois van den Steen

Position: Business Rescue Practitioner

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PMM34

From: Gert Opperman [mailto:OppermGJ@eskom.co.za] Sent: 28 January 2016 08:23 AM To: de Bruin, Thys (OCH OPT) (<u>Thys.deBruin@optimumcoal.com</u>) Cc: <u>george@shiva-u.com</u>; Karien Smith; Shenaaz Naidoo; Vuyisile Ncube Subject: OCM deliveries for February

Hallo Thys,

` ( ))

I herewith request that the February supply over conveyor to Hendrina PS be reduced to 400kT.

Eskom however reserves its right to offtake the balance of 58.3kT for this month, under the current contract price and before end December 2016.

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May we please have your planned daily distribution of these volumes ASAP?

Kind Regards

Gert Opperman

Coal Supply Unit Manager

Majuba & Hendrina Power Stations

Glencore Group & Tegeta Exploration

011 800 6146

086 537 4699

082 870 4989

REMEMBER YOUR POWER 44 M

I'm part of the 49Million initiative... http://www.49Million.co.za

NB: This Email and its contents are subject to the Eskom Holdings SOC Limited EMAIL LEGAL NOTICE which can be viewed at <u>http://www.eskom.co.za/Pages/Email\_Legal\_Spam\_Disclaimer.aspx</u>

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PMM 35



11 January 2016

Tegeta Exploration and Resources (Ptv) Ltd Lower Ground Floor, Grayston Ridge Block A, 144 Katherine Street, Sandown, Sandton. South Africa

Attention: Mr Nazeem Howa

#### SALE OF STEAM COAL - CONTRACT NO. OPT0116 Re:

Optimum Coal Mine (Pty) Ltd, South Africa (hereinafter known as "Seller") is pleased to confirm the sale of steam coal to Tegeta Exploration and Resources (Pty) Ltd (hereinafter known as "Buyer"), according to the following terms and conditions:

Material:

Steam Coal

Quantity:

(SS)

100'000 mt to the nearest truck load Evenly spread at a rate of 5'000mtpd-10'000mtpd

**Delivery**: January 2016

Seller's Colliery:

Refers to Optimum Colliery.

Price:

R18.68/GJ on a Gross as received basis plus R60.00/mt DAP Delivery point (excl Vat)

Optimum Coal Mine (Pty) Ltd. (Registration No: 2007/005308/07) A Glencore Operation Business Address: N11 Hendrina Road, Pullenshope Offramp, Pullenshope Malling Address: Private Bag X1201, Pullenshope, 1096, South Africa Tel.: +27 13 2965111 Registered Address: 23 Melrose Boulevard, 14 Floor, Melrose Arch, Melrose North, Johannesburg, 2196, South Africa

Mailing Address: Suite No. 19, Private Bag X1, Melrose Arch, Johannesburg, 2076 Ju I Tel: +27 11 772 0600 Fax: +27 11 772 0697

Directors: R Cohen, C M Ephron, P Mahanyele, Th

## 00303 Page 2

Payment: The Seller will submit an invoice to the Buyer on the day that the Quantity delivered is greater than 25'000mt. Invoicing will thereafter be done in increments of 25'000mt until the entire Quantity is delivered.

Payment of each invoice shall be made by the Buyer within, one business day, after receipt by the Buyer of such invoice, via telegraphic transfer into the Seller's nominated bank account, without any counterclaim, deduction, set-off or withholding of any nature whatsoever.

Quality:

(0,0)

Specifications all on an ISO "air dried" basis, unless otherwise stated:

Quality parameter	Unit	Expected Quality	Quality Rejection Limit	Measurement basis
Calorific Value	MJ/kg	24.0	<23.50	Air Dried
Total Moisture	%	8.0	>9.0	As Received
Ash	%	25.3	>25.30	Air Dried
Volatiles	%	21.1	<21.0	Air Dried
Sulphur	%	1.1%	>1.24	Air Dried

Sampling/ Analysis:

The Seller shall set aside clearly labeled stockpiles of approximately 5'000mt each at the Seller's Colliery.

Sampling and analysis to be performed by Bureau Veritas Inspectorate Laboratories (Pty) Ltd ("BV") for each stockpile at the Seller's Colliery. Costs of the same to be for the Seller's account.

Results of each clearly marked pre-certified stockpile will be sent to the Buyer for approval.

The Buyer will also send the Eskom certified laboratory ("Eskom lab") GCV (as received) result to the Seller for approval.

Material can only be uplifted from the pre-certified stockpile once:

- The results of both the Eskom lab and BV lab have been sent to all Parties; and
- The GCV (as received) result of the Eskom lab is not more than 0.20 Mj/kg (as received) lower than the GCV (as received) of the BV lab.

Provided both these conditions are fulfilled, the Material can be uplifted from the pre-certified stockpile and Payment will be based on the Eskom lab GCV (as received).

Weight Determination:

Tonnage to be determined by the assized weighbridge at Seller's Colliery. Results will be final and binding for the purpose of settlement.

60304 Page 3

Delivery Point:

Eskom's Arnot Power Station, Middleburg

Risk

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And Ownership: Risk in the Coal Product supplied in terms of this Agreement will pass to the Buyer when such coal is delivered to the Delivery Point. Ownership of Coal Product will pass to the Buyer once it has been paid for in accordance with this Agreement.

Force Majeure: If because of Force Majeure Seller/Buyer is unable to carry out any of his obligations under this contract, and if such party promptly gives to the other party written/telex notice expressly claiming Force Majeure, then the following shall apply:

The term "Force Majeure" as used in this agreement shall mean any causes reasonably beyond control and without fault or negligence of the party affected thereby which wholly or in substantial part prevent the loading, unloading, delivery of the product sold hereunder.

The Force Majeure situations are including but not limited to acts of the public enemy, acts of war, riot or civil commotion, labor disputes, labor or material shortages, accidents, fires, explosions, floods, acts of God, breakdown or damage of plant, equipment, partial or complete embargoes, interruptions to contingencies or transportation, acts of governmental authority, acts, rules, regulations of any government, and if a condition of Force Majeure occurs and notice is given, the obligations of the party giving such notice shall be suspended. Should the Force Majeure event not be remedied within 90 days of its occurrence, then either party may by way of written notice, cancel this contract.

Arbitration:

Any controversy or claim arising out of or relating to this contract or any alleged breach thereof shall be settled by arbitration in Johannesburg as follows:

The Parties to the dispute may mutually agree to the appointment of any person to act as Arbitrator but failing such Agreement, the Arbitrator shall be an Advocate of no less than 10 (ten) years standing (alternatively, in respect of any technical or operational dispute, by any independent person with a minimum of 10 years' experience in the appropriate field), appointed by the Chairman for the time being of the Johannesburg Bar Council.

The said arbitration shall be held:

- In a summary manner, i.e. on the basis that it shall not be necessary observe or carry out either:
  - the usual formalities or procedure (e.g. there shall not be any pleadings or discovery); and/or

Page 4

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- the strict rules of evidence;
- Immediately and with a view to its being completed, if possible, within 21 (twenty one) business days after it is demanded;
- On the basis that the Arbitrator shall decide the matters submitted to him according to what he considers just and equitable in the circumstance, and therefore, the strict rules of law shall not be observed or be taken into account by him in arriving at his decision;
- Otherwise (but subject to 1.1 and 1.2) under the provisions of the Arbitration Act No. 42 of 1965 of the Republic of South Africa (as amended from time to time).

Any Party to the arbitration shall be entitled to be legally represented at the Arbitration proceedings. In the event of any Party deciding to be so legally represented, he shall be required to notify the other Party of such intention not less than 7 (seven) days prior to the date set aside for the hearing of the arbitration, to enable such other Party itself to be legally represented.

Breach:

Should either party breach any of the terms and conditions of this agreement and fail to remedy such breach within a period of 14 days after receipt by the defaulting party of written notice from the other party ("the aggrieved party") requiring it to do so, then the aggrieved party shall be entitled without prejudice to such other rights as it may have, to claim immediate payment and/or performance by the defaulting party of all the defaulting party's obligations, all without prejudice to the aggrieved party" rights to claim damages; provided that the aggrieved party shall not however, be entitled to cancel this agreement for any breach by the defaulting party unless such breach is a material breach going to the root of this agreement and incapable of being remedied by a payment in money, or if it is capable of being remedied by a payment in money, the defaulting party shall have failed to pay the amount concerned within 14 days after determination of the amount so payable.

In the event of the Seller, being placed under liquidation, judicial management or in the event of the estate of the Seller, being sequestrated then the Buyer shall be entitled, without prejudice to such other rights as it may have, to cancel the contract forthwith.

Cession and Assignment:

Neither party may cede or assign the whole or any part of its rights or obligations under this agreement to any other party without prior consent in writing of the other party, provided however that such consent shall not be unreasonably withheld. This agreement shall be binding upon and shall inure to the benefit of the legal representatives and successors of the parties

Page 5

exercising any rights against the grantee(s) which might have arisen in the past or which might arise in the future. No addition to, variation or consensual cancellation of any provision in this Non-variation: contract, including this provision, shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties The signature by either party of a counterpart of this offer will be as Counter-signature: effective as if that party had signed the same document as the other party.

hereto. Any purported assignment of cession by either party without the

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

said written consent by the other party shall be void.

No waiver:

63



## PMM-U11.1-325

00307

Page 5 AS WITNESSES: ..... on this the ..... 13 6L day of SANDTON THUS DONE and SIGNED at For and on behalf of bra TEGETA EXPLORATION AND RESOURCES (PTY) 1. LTD HOWA By NAZEEM Who warrants his authority hereto Alvausto litona 2. THUS DONE and SIGNED at 5405700 on this the 13774 day of AS WITNESSES: For and on behalf of 1. Who warrants his authority hereto 2. OPT012

 $\langle \hat{\gamma} \rangle$ 



# PMM 36

00303



17.02.2016

## Tegeta Exploration and Resources (Ptv) Ltd

144 Katherine Str, Grayston Ridge Office Park, Block A,Lower Ground Floor, Sandown, Sandton, 2148

Attention: Wr Nazeem Howa

### Re: SALE OF STEAM COAL - CONTRACT NO. 117

Optimum Coal Mine (Pty) Ltd, South Africa (hereinafter known as "Seller") is pleased to confirm the sale of steam coal to Tegeta Exploration and Resources (Pty) Ltd. (hereinafter known as "Buyer"), according to the following terms and conditions:

Steam Coal Material: 400,000 MT to the nearest truck load Quantity: Evenly spread at a rate of 7,000 MT pd- 12,000 MT pd February 2016 to April 2016 Delivery: Refers to Optimum Colliery. Seller's Colliery: R18.68/GJ on a Gross as received basis plus transport rate as Price: negotiated with the relevant transporter and Optimum Coal Mine DAP Delivery point (excluding VAT) The Seller will submit an invoice to the Buyer on the day that the Payment: coal quantity delivered is greater than 50,000MT. Involcing will thereafter be done in increments of 50,000MT until the entire Quantity is delivered. 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: 1\* Floor, Nedbank Building, 23 Melross Boulevard, Melrose Arch, Melrose North, Johannesburg, 2196, South Africa Mailing Address: Suite No. 19, Private Bag XI, Melrose Arch, Johanneaburg, 2076 Tel: +27 11 772 0600 Fax: +27 11 772 0697

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

Page 2

Payment of each invoice shall be made by the Buyer within, one business day, after receipt by the Buyer of such invoice, via telegraphic transfer into the Seller's nominated bank account, without any counterclaim, deduction, set-off or withholding of any nature whatsoever.

Quality: Specifications all on an ISO "air dried" basis, unless otherwise stated:

Quality Parameter	Unit	Expected Quality	Quality Rejection Limit	Measurement basis
Calorific Value	MJ/kg	24.0	<23.50	Air Dried
Total Moisture	. %	8.0	>9.0	As Received
Ash	%	25.3	>25.3	Air Dried
Volatiles	%	21.1	<21.0	Air Dried
Sulphur	%	1.1%	. >1.24	Air Dried

#### Analysis:

The Seller shall set aside clearly labeled stockpiles of approximately 5,000 MT each at the Seller's Colliery.

Sampling and analysis to be performed by Bureau Veritas Inspectorate Laboratories (Pty) Ltd ("BV") for each stockpile at the Seller's Colliery. Costs of the same to be for the Seller's account.

Results of each clearly marked pre-certified stockpile will be sent to the Buyer for approval.

The Buyer will also send the Eskom certified laboratory ("Eskom lab") GCV (as received) result to the Seller for approval.

Material can only be uplifted from the pre-certified stockpile once:

- The results of both the Eskom lab and BV lab have been sent to all Parties; and
- The GCV (as received) result of the Eskom lab is not more than 0.20 Mj/kg (as received) lower than the GCV (as received) of the BV lab.

Provided both these conditions are fulfilled, the Material can be uplifted from the precertified stockpile and Payment will be based on the Eskom lab GCV (as received).

### Page 3

### Weight Determination:

Tonnage to be determined by the assigned weighbridge at Saller's Colliery. Results will be final and binding for the purpose of settlement.

### **Delivery Point:**

Eskom's Arnot Power Station Middleburg or otherwise specified,

### **Risk & Ownership:**

Risk in the Coal Product supplied in terms of this Agreement will pass to the Buyer when such coal is delivered to the Delivery Point. Ownership of Coal Product will pass to the Buyer once it has been paid for in accordance with this Agreement.

### Force Majeure:

If because of Force Majeure Seller/Buyer is unable to carry out any of his obligations under this contract, and if such party promptly gives to the other party written/telex notice expressly claiming Force Majeure, then the following shall apply:

The term "Force Majeure" as used in this agreement shall mean any causes reasonably beyond control and without fault or negligence of the party affected thereby which wholly or in substantial part prevent the loading, unloading, delivery of the product sold hereunder.

The Force Majeure situations are including but not limited to acts of the public enemy, acts of war, riot or civil commotion, labor disputes, labor or material shortages, accidents, fires, explosions, floods, acts of God, breakdown or damage of plant, equipment, partial or complete embargoes, interruptions to contingencies or transportation, acts of governmental authority, acts, rules, regulations of any government, and if a condition of Force Majeure occurs and notice is given, the obligations of the party giving such notice shall be suspended. Should the Force Majeure event not be remedied within 90 days of its occurrence, then either party may by way of written notice, cancel this contract.

### Arbitration:

Any controversy or claim arising out of or relating to this contract or any alleged breach thereof shall be settled by arbitration in Johannesburg as follows:

The Parties to the dispute may mutually agree to the appointment of any person to act as Arbitrator but failing such Agreement, the Arbitrator shall be an Advocate of no less than 10 (ten) years standing (alternatively, in respect of any technical or operational dispute, by any independent person with a minimum of 10 years' experience in the appropriate field), appointed by the Chairman for the time being of the Johannesburg Bar Council.

Page 4

### The said arbitration shall be held:

• In a summary manner, i.e. on the basis that it shall not be necessary observe or carry out either:

the usual formalities or procedure(e.g. there pleadings or discovery); and/or

the strict rules of evidence;

 Immediately and with a view to its being completed, if possible, within 21 (twenty one) business days after it is demanded;

• On the basis that the Arbitrator shall decide the matters submitted to him according to what he considers just and equitable in the circumstance, and therefore, the strict rules of law shall not be observed or be taken into account by him in arriving at his decision;

• Otherwise (but subject to 1.1 and 1.2) under the provisions of the Arbitration Act No.42 of 1965 of the Republic of South Africa (as amended from time to time).

Any Party to the arbitration shall be entitled to be legally represented at the Arbitration proceedings. In the event of any Party deciding to be so legally represented, he shall be required to notify the other Party of such intention not less than 7 (seven) days prior to the date set aside for the hearing of the arbitration, to enable such other Party itself to be legally represented.

#### **Breach:**

Should either party breach any of the terms and conditions of this agreement and fail to remedy such breach within a period of 14 days after receipt by the defaulting party of written notice from the other party ("the aggrieved party") requiring it to do so, then the aggrieved party shall be entitled without prejudice to such other rights as it may have, to claim immediate payment and/or performance by the defaulting party of all the defaulting party's obligations, all without prejudice to the aggrieved party" rights to claim damages; provided that the aggrieved party shall not however, be entitled to cancel this agreement for any breach by the defaulting party unless such breach is a material breach going to the root of this agreement and incapable of being remedied by a payment in money, the defaulting party shall have failed to pay the amount concerned within 14 days after determination of the amount so payable.

In the event of the Seller, being placed under liquidation, judicial management or in the event of the estate of the Seller, being sequestrated then the Buyer shall be entitled, without prejudice to such other rights as it may have, to cancel the contract forthwith.

### **Cession and Assignment:**

Neither party may cede or assign the whole or any part of its rights or obligations under this agreement to any other party without prior consent in writing of the other party, provided however that such consent shall not be unreasonably withheld. This agreement shall be binding upon and shall hereto. Any purported assignment of cession by either party without the said written consent by the other party shall be void.

Page 15

### No waiver:

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.

### Non-variation:

No addition to, variation or consensual cancellation of any provision in this contract, including this provision, shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties.

### Counter-signature:

The signature by either party of a counterpart of this offer will be as effective as if that party had signed the same document as the other party.

THUS DONE and SIGNED at \_\_\_\_\_ on this the \_\_\_\_ day of \_\_\_\_\_2016

in the presence of the undersigned witnesses:-

AS WITNESS:

1.

 $(\mathbb{N})$ 

2,

For and on behalf of TEGETA EXPLORATION AND RESOURCES PTY LTD.

101 on this the day of

THUS DONE and SIGNED at 100 105-000 100 100 2016 In the presence of the undersigned witnesses:-

AS WITNESS:

1. 2.

For and on behalf of OPTIMUM COAL MINE PTY LTD.

Ø

1M 37

PMM-U11.1-331

From: piers m <<u>pmarsden@matusonassociates.co.za</u>> Date: Tuesday 10 May 2016 at 3:14 PM To: Nazeem Howa <<u>nazeemh@oakbay.co.za</u>>, Ronica Ragavan <<u>ronica@oakbay.co.za</u>> Subject: FW: Tegeta Coal Recon

FYI.

(

From: plers m <<u>pmarsden@matusonassociates.co.za</u>> Date: Monday 25 April 2016 at 8:52 AM To: Nazeem Howa <<u>nazeemh@oakbay.co.za</u>>, Peter van den Steen <<u>peter@v2rescue.co.za</u>> Cc: Ronica Ragavan <<u>ronica@oakbay.co.za</u>>, "<u>mscruse@matusonassociates.co.za</u>" <<u>mscruse@matusonassociates.co.za</u>>, Jared Nickig <<u>inickig@werksmans.com</u>> Subject: Fwd: Tegeta Coal Recon

Hi Peter / Nazeem

Please find attached the latest reconciliation on the coal supply.

We have delivered in excess of the existing coal supply agreement and we need to invoice and close that transaction.

I have attached hereto the proposed supply for 250k tons per month. This is still subject to operational confirmation on the tonnage. We can review the payment terms on this only if we have a corresponding commitment in terms of PCF. I have thus attached a PCF agreement for your consideration.

The extended payment terms will have a very significant impact on Optimums cash flow in month 1, likely to be in excess of R220 million. For the avoidance of doubt we cannot sign extended payment terms on the coal unless we have the PCF agreed to. We are busy working on the annexure to this agreement and will forward a draft shortly.

Please can I have your comments on both the PCF agreement and coal supply agreement.

Regards Piers

From: "Michelle Scruse" <<u>mscruse@matusonassociates.co.za</u>> To: "Piers Marsden" <<u>pmarsden@matusonassociates.co.za</u>> Sent: Friday, April 22, 2016 12:23:23 PM Subject: Fwd; Tegeta Coal Recon

From: "Meyer, Jan (Shanduka - ZA)" <<u>Jan.Meyer@Shandukacoal.com</u>> To: "Michelle Scruse" <<u>mscruse@matusonassociates.co.za</u>> Cc: <u>NITINS@JIC.CO.ZA</u>, "De Bruin, Thys (Optimum - ZA)" <<u>Thys.DeBruin@glencore.co.za</u>>

Ø

### Sent: Friday, April 22, 2016 12:11:31 PM Subject: RE: Tegeta Coal Recon

Michelle,

Herewith the recon as requested.

An amount of R36m was received yesterday as payment for the previous invoice.

Regards Jan

From: Michelle Scruse [mailto:mscruse@matusonassociates.co.za] Sent: 21 April 2016 16:47 To: Meyer, Jan (Shanduka - ZA) Subject: Tegeta Coal Recon

Hi Jan

(88)**(** 

Can I please ask for the recon of the Tegeta Coal? le. Delivered, invoiced and paid. Also can I please ask for the last weeks invoice for 36m and could you check that the R33m paid today relates to this invoice?

Thanks

Michelle Scruse CA (SA)

c: +27(0)82 649 6137 t: +27(0)11 728 7166/7

f: +27(0)86 554 9998

w: www.matusonassociates.cp.za

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Please consider the environment before printing this email.

Q

<u>Optimum Coal Mine</u> Tegeta Sales

(j)

	Tons defivered	i usus crehveled							
Date	Arnot	Kriel	Cumulative tons	Tons Invoiced	invoiced	Invoice number	Amount	Amount Paid	Amount Payable
18-Feb	1,303		E0E'I		1,303				
19-Feb	7,753		9,095		360'5				
20-Feb	9,533	ć	18,628		18,628				
21-Feb	10,153		28,781		28,781				
Z2-Feb	8,221	1	37,002		37,002				
23-Feb	10,131	,	47,133		47,133				
24-Feb	8,587	751	56,472	50,965	5,507	90014161	29,180,677.89		
25-Feb	8,117	2,297	66,886	2	12,921			58'19()921'57	
26-Feb	5,734	336	73,616		22,651				
27-Feb	8,609	1,053	83,277		32,313				<u>.</u>
28-Feb	10,575	652	34,505		43,540				
29-Feb	9,588	1,707	105,800		54,835				
03-Mar	6,262	1,654	113,716		62,751				
02-Mar		1,684	122,054	20,000	21,089	90014254	28,857,869.28		
03-Mar		1,215	129,346		28,381				
04-Mar		1,490	136,544		35,579			97'509'/60'97	
05-Mar		3,030	146,772		45,807				
06-Mar	7,474	2,159	156,405		55,440				
07-Mar		2,871	164,258		63,293		50 305 780 ac		
08-Mar	5,848	1,796	171,902	20,000	122,02	TO74TANE	70007 100°C7		
09-Mar		2,654	179,042		28,077			CO DAE YEAR OF	
10-Mar	5,203	588	185,134		34,169			20-007' / 00'E7	
11-Mar	6,247	1,893	193,274		42,310				
12-Mar		4,553			57,718				
13-Mar		2,040			63,752		11 010 100 00		
14-Mar	5,943	2,066		50,000	27,760	3001362	79,834,24541		
15-Mar		1,631	237,803		36,838			17 CAL 100 AC	
16-Mar	7,345	1,400	246,548		45,583			*******	
17-Mar		1,511	258,467		27,502		18 FOC 04 F 00		
D 18-Mar		1,626	272,423	50,000	21,458	90014350	06'015'060'97		
19-Mar		32	285,743		34,778				
20-Mar	-	2,175	6E1,7E2		46,774				
21-Mar		2,820	311,014		60,050				
22-Mar	11.962	2,602	325,579	50,000	24,614	90014352	29,391,859.62		
23-Mar		2,152	334,738		33,774			28,212,092,82	

**00**9**1**5

			42,173,009.68
29,391,859.62	18,976,780.72	36,563,154.50	230,548,707.40
	18,976,780.72 36,563,154.50	42,173,009.68	272,721,717.08
	90014451	90014561	
34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218 34,218,218 34,218,218,218,218,218,218,218,218,218,218	44,253 54,481 54,481 64,848 1,597 1,597 1,597 1,597 1,593 17,468 17,468 17,468 25,893 34,101 48,183	61,207 75,378 86,5378 86,5338 16,297 16,297 35,916 35,916 35,916 35,916 35,916	
<u> </u>	33,270 65,765	74,367	474,367
335,128 335,188 335,188 335,188 335,188 335,188 340,931 347,442 354,033	462,633 377,787 388,715 399,083 401,598 401,598 401,598 410,589 410,468 425,893 434,101	461,207 475,378 486,639 499,808 510,283 510,283 510,283 510,283 510,283 510,283	
10		-	53,467
5,748 6,512 5,591	8,607 10,928 10,928 10,367 2,515 7,736 5,531 8,425 8,208	13,024 14,172 11,250 4,025 5,144 10,475	456,815
25-Mar 26-Mar 27-Mar 30-Mar 31-Mar 31-Mar 01-Apr 01-Apr 01-Apr 01-Apr	04-401 05-401 06-401 09-401 11-401 11-401 11-401 11-401 12-401 13-401 14-401	15-Apr 15-Apr 17-Apr 19-Apr 20-Apr 22-Apr 23-Apr 24-Apr 25-Apr 25-Apr	Total

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Draft 1 DRAFT - NOT FOR SIGNATURE

## POST-COMMENCEMENT FINANCE AGREEMENT

among

## **TEGETA EXPLORATION & RESOURCES PROPRIETARY LIMITED**

and

## OPTIMUM COAL MINE PROPRIETARY LIMITED

(in business rescue)

represented by

PIERS MICHAEL MARSDEN AND PETRUS FRANCOIS VAN DEN STEEN (in their capacity as business rescue practitioners)

155 - 5th Street Sandton 2196 Johannesburg South Africa Private Bag 10015 Sandton 2146

Docex 111 Sandton Tel +27 (0)11 535 8000 Fax +27 (0)11 535 8600

enquiries@werksmins.com www.werksmans.com

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ANNEXURE A - BUDGET FORECAST

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ANNEXURE B - FORM OF PCF NOTICE

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## DRAFT - NOT FOR SIGNATURE

3N/3N 21042016/OPT113168.19 Second PCF Agreement - Optimum Coal Mine - Draft 1/#3754062v1

# 60313 W

POST-COMMENCEMENT FINANCE AGREEMENT

among

TEGETA EXPLORATION & RESOURCES PROPRIETARY LIMITED

and

OPTIMUM COAL MINE PROPRIETARY LIMITED (in business rescue)

represented by

PIERS MICHAEL MARSDEN AND PETRUS FRANCOIS VAN DEN STEEN (in their capacity as business rescue practitioners)

## **1** INTERPRETATION AND DEFINITIONS

In this Agreement, clause headings are used for convenience only and will not be used in its interpretation, and, unless the context clearly indicates a contrary intention, -

1.1 a word or an expression that denotes -

1.1.1 any gender, includes the other gender;

1.1.2 the singular, includes the plural and vice versa; and

1.1.3 a natural person, includes an artificial or juristic person and vice versa;

## 60320 🖤

- 1.2 the following words and expressions will, unless otherwise stated or clearly inconsistent with the context in which they appear, bear the following meanings, and other words and expressions derived from the same origins as those words and expressions (that is, cognate words and expressions) will bear corresponding meanings, ~
- 1.2.1. <u>"Acquisition Agreement"</u> the written sale of shares and claims agreement between the Lender, Clencore and the Borrower to be concluded contemporaneously with this Agreement in terms of which, *inter alla*, the Lender will purchase the shares and claims in various subsidiaries held by the Borrower;
- 1.2.21.2.1 "Advance" the advance of Post-Commencement Finance by the Lender to the Borrower pursuant to clause 4; and "Advanced" will have a cognate meaning;
- 1.2.3<u>1.2.2</u> "Advance Date" in respect of an Advance, the date on which any cash is Advanced by the Lender to the Borrower pursuant to clause 4;
- 1.2.4
   **Agreement**<sup>n</sup> this document together with its annexures (if any), each as amended, novated or reinstated from time to time;

1.2.51.2.4 "Applicable Laws" - In relation to a person, will include all and any -

1.2.5.11.2.4.1 \_\_\_\_\_statutes and subordinate legislation and common law;

1.2.5.21.2.4.2 regulations;

- 1.2.5.31.2.4.3 ordinances and by-laws;
- <u>1.2.5.41.2.4.4</u> circulars, codes of practice, directives, guidance notices, judgments and decisions of any competent authority or any governmental, intergovernmental or supranational agency, body, department or regulatory, self-regulatory or other authority or organisation, which, for the avoidance of any doubt, will include Basel II, Basel III and any amendment or replacement thereof; and

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### 1,2,5,51.2.4.5 \_\_\_\_other similar provisions,

from time to time, compliance with which is mandatory for that person;

<u>1-2-61.2.5</u> "Availability Period" - the period commencing on <u>the Signature</u> <u>Date1-January 2016</u> and terminating on the <u>Termination Dateearlier of :</u>

1-2-6-1 the date on which the Acquisition Agreement lapses;

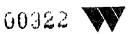
1.2.6.2 \_\_\_\_\_\_the date on which the Acquisition Agreement is terminated; and

1.2.6.3 the Settlement-Date;

(10)

- **1.2.71.2.6** "Borrower" Optimum Coal Mine Proprietary Limited (registration number 2007/005308/07) (in business rescue), a private company duly incorporated and registered in accordance with the laws of South Africa, which was placed in voluntary business rescue on 4 August 2015;
- **1.2.81.2.7** "**BRPs**" the persons appointed jointly to oversee the Borrower during the Business Rescue Proceedings, as contemplated in section 128 of the Companies Act, being Marsden and van den Steen, or any business rescue practitioner that succeeds or replaces them in respect of the current Business Rescue Proceedings;
- 1.2.91.2.8 "Budget Forecast" the financial forecast prepared in respect of the Borrower for the <u>first six months of the</u> Availability Period, which sets out the anticipated income and expenditure of the Borrower for the <u>first six</u> <u>months of the</u> Availability Period, a copy of which is attached as Annexure A to this Agreement;
- 1.2.101.2.9 "Business Day" any day other than a Saturday, a Sunday or an official public holiday in South Africa;
- 1.2.111.2.10 "Business Rescue Proceedings" the business rescue proceedings, as contemplated in Chapter 6 of the Companies Act, that commenced on 4 August 2015 in respect of the Borrower and in respect of which the BRPs were appointed;

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- <u>1.2.121.2.11</u> "**Capital Outstanding**" at any point in time, that portion of any amount Advanced by the Lender to the Borrower that has not yet been repaid by the Borrower to the Lender at that point in time;
- <u>1.2.131.2.12</u> "Companies Act" the Companies Act No 71 of 2008, and the regulations promulgated in respect thereof, including those provisions of the Companies Act No 61 of 1973 that have not been repealed;

1.2.141.2.13 "Encumber" - In relation to an asset, -

(-3)

1,2:14:11.2.13.1 to encumber that asset in any way, including by way of a cession In securitatem debiti, a mortgage bond, a general notarial bond, a special notarial bond or a pledge;

<u>1.2.14.21.2.13.2</u> to grant any other analogous or similar security interest of any nature whatsoever over that asset;

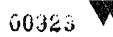
1.2.14.31.2.13.3 any arrangement under which money or claims to, or for the benefit of, a bank or other account may be applied, set-off or made subject to a combination of accounts, so as to effect discharge of any sum owed or payable to any person in respect of that asset; or

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and "Encumbrance" will have a cognate meaning;

1.2.151.2.14 "Event Of Default" - any circumstance or event specified in clause 10;

1,2.16 "Glencore" Glencore International AG, a company incorporated in Switzerland;



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## 1.2.171.2.15 "Insolvency Event" - any of the following circumstances or events occurring after the Signature Date -

<u>1.2.17.11.2.15.1</u> an order or declaration is made, steps are taken, or a meeting of the directors or shareholders of the Borrower is convened to consider the passing of a resolution, or a resolution is proposed or passed, for the bankruptcy, liquidation (whether provisional or final), winding-up or deregistration of the Borrower's estate; or

<u>4:2:17:21.2.15.2</u> any administrator or liquidator (other than the BRPs) is appointed in respect of the Borrower or any material part of its assets or the Borrower requests any such appointment;

- <u>1.2.191.2.16</u> "Lender" Tegeta Exploration & Resources Proprietary Limited (registration number 2006/014492/07), a private company duly incorporated and registered in accordance with the laws of South Africa;

1.2.201.2.17 \_\_ "Marsden" - Piers Michael Marsden (identity number 770305 5168 084);

- 1.2.22— "OEN"- Optimum Coal Heldings Proprietary Limited (registration-number 2006/007799/07) (In-business rescue), a private company duly Incorporated and registered in accordance with the laws of South-Africa;
- <u>1.2.231.2.18</u> **"Outstanding Balance"** in relation to any Post-Commencement Finance Advanced by the Lender at any point in time, the sum of the Capital Outstanding, plus any interest that may have accrued thereon, at that point in time;

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<u>1.2.241.2.19</u> "Parties" - the Lender, the Borrower and the BRPs; and "Party" will mean any of them, as the context may require;

1.2.25<u>1.2.20</u> "PCF Account" - will bear the meaning assigned to this term in clause 4.2;

1.2.261.2.21 "PCF Notice" - will bear the meaning assigned to this term in clause 4.1;

<u>1.2.271.2.22</u> "Post-Commencement Finance" - the finance granted by the Lender to the Borrower in terms of this Agreement;

1.2.281.2.23 "Prime Rate" - the basic rate of interest (percent, per annum, compounded monthly-in-arrear and calculated on a 365-day year, Irrespective of whether or not it is a leap year) from time to time quoted by First National Bank (a division of FirstRand Bank Limited) as being its prime rate, as certified by any director or manager of that bank, whose appointment, authority and/or designation it will not be necessary to prove;

1.2.291.2.24 "Rand" or "R" - the lawful currency of South Africa, being the Rand;

1.2.30 "RMB" Firstrand Bank-Limited, acting through its Rand Merchant Bank division (registration number 1929/001225/06), a public company-duly incorporated and registered in accordance with the laws of South Africa;

<u>1.2.32</u>1.2.25 "Signature Date" - when this Agreement has been signed by all Parties (whether or not in counterparts), the latest of the dates on which this Agreement (or any counterpart) is signed by any such Party;

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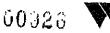
<u>1.2.341.2.26</u> "Termination <u>DateEvent</u>" - <u>the date on which the Business Rescue</u> <u>Proceedings in respect of the Borrower are terminated for any reason</u> <u>whatsoeverwill bear the meaning assigned to this term in the Acquisition</u> <u>Agreement</u>;

1.2.351.2.27 "Total Commitment" - the maximum amount of Post-Commencement Finance available for draw down by the Borrower from the Lender during the Availability Period, being R[•]325.000.000; and

1.2.361.2.28 "Van den Steen" - Petrus Francols Van den Steen (identity number 681107 5024 087);

- 1.3 any reference to any statute, regulation or other legislation will be construed as a reference to that statute, regulation or other legislation as at the Signature Date and as amended or substituted from time to time;
- 1.4 if any provision in a definition is a substantive provision conferring a right or imposing an obligation on any Party, then, notwithstanding that it is only in a definition, the Parties will give effect to that provision as if it were a substantive provision in the body of this Agreement;
- 1.5 where any term is defined within a particular clause other than this clause 1, that term will bear the meaning assigned to it in that clause wherever it is used in this Agreement;
- 1.6 where any number of days is to be calculated from a particular day, that number will be calculated as excluding that particular day and commencing on the next day. If the last day of the number to be so calculated falls on a day that is not a Business Day, the last day will be deemed to be the next succeeding Business Day;
- 1.7 any reference to days (other than a reference to Business Days), months or years will be construed as a reference to calendar days, months or years, as the case may be;
- 1.8 the cancellation or termination of this Agreement will not affect those provisions of this Agreement that expressly provide that they will operate after

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any such cancellation or termination, or which must necessarily continue to have effect after such cancellation or termination, notwithstanding that the clauses themselves do not expressly provide for such continuity;

- 1.9 where any day for the performance of any obligation or the payment of any amount in terms of this Agreement falls on a day other than a Business Day, that obligation will be performed or that amount will be paid on the immediately preceding Business Day;
- 1.10 the use of the words "including", "includes" or "include", followed by a specific example/s, will not be construed as limiting the meaning of the general wording preceding the example/s, and the rule that words of the same kind will be interpreted the same way (that is, the *eiusdem generis* rule) will not be applied in the interpretation of that general wording or those specific examples; and
- 1.11 the terms of this Agreement having been negotiated and drafted for the benefit of all Parties, the rule of construction that a contract will be interpreted against the Party responsible for the drafting and/or preparation thereof (that is, the contra proferentem rule) will not apply.

### 2 INTRODUCTION

- 2.1 The board of directors of the Borrower passed resolutions on 31 July 2015 for the Borrower to be placed under supervision and subject to business rescue in terms of Chapter 6 of the Companies Act.
- 2.2 The BRPs have been duly appointed as such in accordance with the requirements of the Companies Act.
- 2.3 The Lender wishes to acquired 100% of the shares of the Borrower on <u>15 April 2016</u>held by OCH in terms of, and subject to the conditions contained in, the Acquisition Agreement.
- 2.4 The Borrower requires funding in the form of Post-Commencement Finance in order to, *inter alia*, satisfy its operating and capital expenses as contemplated in the Budget Forecast during the Availability Period.

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- 2.62.5 The Lender has agreed to provide such Post-Commencement Finance to the Borrower on the terms and subject to the conditions set out in the Agreement.
- 2.72.6 The Parties are accordingly entering into this Agreement to set out the terms on which the Lender provides Post-Commencement Finance to the Borrower.

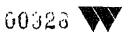
### 3 SUSPENSIVE CONDITION

- 3.1 The whole of this Agreement (other than clauses 1, 2, this clause 3 and clauses 15 to 21 (both inclusive), by which the Parties will become bound with effect from the Signature Date) is subject to the fulfilment of the Suspensive Gendition ("Suspensive Condition") that, on or before the Signature Date, the Acquisition Agreement is signed by the parties thereto.
- 3.2 If the Suspensive Condition is not fulfilled for any reason whatsoever by the date specified for such fulfilment (or such later date as may be agreed in writing by the Partles),
- 3.2.1- this Agreement (other than clause 1, this clause 3, and clauses 15 to 21 (both inclusive), by which the Parties will remain bound) will not come into force and effect;

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- 3.2.3 no Party will have any claim against any other as a result of the failure of the Suspensive-Condition, except for any claims as may arise from a breach of any other provision of this Agreement by which the Partles remain bound.



### 43 PURPOSE

- All amounts that are Advanced by the Lender to the Borrower in terms of this 4<del>.1</del>3.1 Agreement may only be used for (i) the payment of the costs of the Business Rescue Proceedings (including the costs of the BRPs and any legal costs related thereto); (ii) general corporate, operating, capital and working capital purposes of the Borrower as contemplated in the Budget Forecast; and (iii) any other purpose approved in writing by the Lender.
- In utilising the Post-Commencement Finance, the BRPs shall at all times act in <u>4.23,2</u> good faith in accordance with the spirit and purport of this Agreement and in accordance with the duties imposed on them by, and the requirements of, the Companies Act.

## 54 CASH ADVANCES TO BORROWER

The BRPs will be entitled, by delivering a written notice ("PCF Notice") to the 5.14,1 Lender on any Business Day during the Availability Period, to require the Advance from the Lender of Post-Commencement Finance In order to fund the cash requirements of the Borrower as contemplated in the Budget Forecast, provided that -

each PCF Notice will be irrevocable; and <del>5.1.1</del>4.1.1

- the Borrower will not be entitled to deliver more than one PCF Notice in 5.1.24.1.2 any consecutive seven-day period, unless agreed in writing by the Lender.
- The Lender shall, on the date specified in the relevant PCF Notice, Advance to <del>5,2</del>4.2 the Borrower the amount specified in such PCF Notice by way of an electronic funds transfer into the following bank account ("PCF Account"), free of any deduction, set-off or withholding of any nature whatsoever (including any costs incurred in making the payment), -

Name of Account Holder	Optimum Coal Mine Proprietary Limited
Bank	Standard Bank
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Account Number	000 36 4029	
Branch	Johannesburg	
Branch Code	00 0205	

5.34.3 The Borrower acknowledges that the payment by the Lender of any portion of the Total Commitment in accordance with the provisions of this clause 4 will constitute a valid and proper discharge by the Lender of its obligation to advance such portion of the Total Commitment in terms of this Agreement.

## 65 GENERAL PROVISIONS APPLICABLE TO DRAW-DOWN

### 6.15.1 Form of PCF Notice

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Each PCF Notice delivered by the Borrower to the Lender in terms of clause 4 will be substantially in the form attached to this Agreement as Annexure B, duly signed by the BRPs on behalf of the Borrower, and must contain at least the following details -

- 6.1.15.1.1 the aggregate principal amount to be drawn-down pursuant to the delivery of that PCF Notice, which will be an amount of not less than R[5 000 000] or any multiple thereof (or, if the amount available to be drawn under this Agreement is less than R[5 000 000], such lesser amount);
- 6.1.25.1.2 the period for which the funding is required, the details for the payments that will be made with such funding and where such payments are contemplated in the Budget Forecast; and

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#### **Draw-Down Conditions** 6.25.2

The Borrower will not be entitled to notify a draw-down, and the Lender will not be obliged to Advance, any amount -

\_if an Event of Default has occurred and is continuing; 6.2.15.2.1

- 6:2:25.2.2\_\_\_\_after the end of the Availability Period;
- \_if the Advance of the amount notified pursuant to that PCF Notice would <del>6.2.3</del>5.2.3 result in the Total Commitment being exceeded; or
- on any day other than a Business Day that is not less than three and not <del>6.2.4<u>5.2.4</u></del> more than five Business Days after the date of the PCF Notice, provided that the day must fall within the period commencing on the Signature Date and terminating on the last date of the Availability Period.

#### 6.35.3 Advances

Subject to the foregoing provisions of this clause 5, on the Advance Date specified in a PCF Notice received by the Lender, the Lender shall Advance to the Borrower the amount so notified by way of an electronic funds transfer into the bank account nominated by the Borrower in that PCF Notice.

### 76\_INTEREST

Interest will be calculated and accrue daily on the Outstanding Balance at the Prime Rate plus 2.5% from the first Advance Date to the date on which the Outstanding Balance is fully and finally settled (inclusive of the first Advance Date, but exclusive of the date on which the Outstanding Balance is fully and finally settled).

## 87\_REPAYMENT OF OUTSTANDING BALANCE

8-17.1 The Outstanding Balance will not be repayable prior to the Termination Datefor so long as the Acquisition Agreement has not lapsed or been terminated.

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- 8.27.2 If the Acquisition Agreement becomes unconditional After the Termination Date, then repayment method of the Outstanding Balance shall be agreed between the Lender and the Borrower.
- 8.3 If the Acquisition Agreement is cancelled (other than as a result of a breach by the Lender or its nominec) or lapses in accordance with its terms, then the Outstanding Balance shall become immediately due and payable; provided that during the Business Rescue Proceeding the Lender shall remain subject to the moratorium on legal proceedings contemplated in section 133 of the Gompanies Act for the duration of such Business Rescue Proceedings.
- 8.47.3 If the Business Rescue Proceedings are terminated in accordance with section 141(2)(a) of the Companies Act such that the Borrower is placed in liquidation, then the Outstanding Balance will be repayable pursuant to such liquidation subject to the provisions of section 1.35 of the Companies Act.

## 98 GENERAL PROVISIONS APPLICABLE TO PAYMENTS

9.18.1 Unless this Agreement specifically provides otherwise, the Borrower shall pay all amounts payable by it to the Lender in terms of this Agreement without any deduction, set-off or withholding of any nature whatsoever, in freely available cash into such bank account as may have been nominated by the Lender to the Borrower in writing before the date of the payment in question.

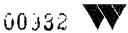
9.28.2 All payments made in terms of this clause 8 will be made in Rand.

### 109\_WARRANTIES

10,19,1 Introduction

The Borrower gives the Lender the representations and warranties (each, a "Borrower's Warranty" and collectively the "Borrower's Warranties") in clause 9.2, on the basis that --

<u>10.1.19.1.1</u> each Borrower's Warranty, unless specified otherwise, is made and given as at the Signature Date and thereafter will be deemed to be repeated on each day until such time as at the obligations of the Borrower under this Agreement have been fully and finally discharged, and, when given and



deemed repeated, is and will be accurate and complete in all material respects;

- <u>10.1.29.1.2</u> each Borrower's Warranty will be an independent and separate warranty and will in no way be limited to or restricted by reference to or by inference from the terms of any other warranty or by any other provision in this Agreement;
- <u>10.1.39.1.3</u> Insofar as any Borrower's Warranty is promissory or relates to a future event, such Borrower's Warranty will be deemed conclusively to have been given as at the due date for fulfilment of the promise or for the happening of the event, as the case may be; and
- 10.1.49.1.4 each Borrower's Warranty, to the extent that it is expressed in an inappropriate tense, will be construed and read in the appropriate tense.

10.29.2 Borrower's Warranties

The Borrower represents and warrants to and in favour of the Lender that -

10.2.19.2.1 the Borrower is a private company with limited liability, duly incorporated and validly existing under the laws of South Africa;

10.2.29.2.2 the Borrower has -

10.2.2.19.2.2.1 the legal capacity and power to enter into and perform; and

<u>10.2.2.29.2.2.2</u> taken all necessary actions (whether corporate or otherwise) to authorise its entry into and performance of,

this Agreement;

<u>10.2.39.2.3</u> the obligations expressed to be assumed by the Borrower under this Agreement are legal, valid and are binding on, and enforceable against, the Borrower;

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## <u>10-2-49.2.4</u> the entry into and performance by the Borrower of this Agreement do not and will not conflict with -

10.2.4.19.2.4.1 \_\_\_\_\_any Applicable Laws in respect of the Borrower;

10.2.4.29.2.4.2 Its constitutional documents; or

<u>40.2.4.39.2.4.3</u> any agreement or instrument binding upon it or any of its assets or constitute a default or termination event (however described) under any such agreement or instrument; and

<u>10.2.59.2.5</u> it has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Agreement.

### 1110DEFAULT

11.110.1 If -

11.1.210.1.1 an Insolvency Event occurs; or

<u>41.1.310.1.2</u> there is any change in Applicable Laws that renders or may have the effect of rendering any provision of this Agreement Illegal, invalid or unenforceable and that/those provision/s is/are not substituted with alternative legal, valid, binding and enforceable provisions or documents to the satisfaction of the Lender,

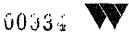
then the Borrower will be deemed to be in default, and the circumstance or event in question will be regarded as an "Event of Default".

### 1211 REMEDIES

12:11.1 Subject to the provisions of clauses 11.3 and 11.5, if an Event of Default occurs, then, notwithstanding anything to the contrary contained anywhere

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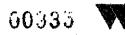
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else in this Agreement, the Lender will, without prejudice to its other rights in terms of this Agreement or at Applicable Law, have the right to -

- <u>12.1.11,1.1</u> cancel this Agreement and to claim repayment of the Outstanding Balance at that time (as evidenced by the certificate contemplated in clause 11.2), which will become Immediately due and payable;
- <u>12.1.211.1.2</u> require Immediate specific performance by the Borrower of its obligations under this Agreement, whether or not then due for performance; and/or
- <u>12.1.311.1.3</u> make such payments on behalf of the Borrower and do all such other things as the Lender may consider necessary for the protection of its rights or interests, on the basis that the Borrower shall forthwith reimburse the Lender for any amounts paid and/or expenses incurred by the Lender as a result thereof.
- 12.211.2 A certificate signed by any director of the Lender (whose appointment need not be proved) as to the existence of and the amount of the Outstanding Balance, that such amount is due and payable, which will include the amount of interest accrued thereon, shall, in the absence of clerical or manifest error, be *prima facie* proof of the contents and correctness thereof for the purposes of provisional sentence, summary judgement or any other proceedings (including any action) instituted by the Lender and shall be valid as a liquid document for such purpose.
- <u>12.311.3</u> The Lender acknowledges and agrees that the moratorium on legal proceedings contemplated in section 133 of the Companies Act remains in place during the Business Rescue Proceedings regardless of whether an Event of Default has occurred.
- 12.411.4 No remedy conferred by this Agreement is intended, unless specifically stated otherwise, to be exclusive of any other remedy that is otherwise available at Applicable Law. Each remedy will be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at Applicable Law. The election of any one or more remedy/les by the Lender will not constitute a waiver by the Lender of the right to pursue any other remedy available to it.

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<u>12.511.5</u> Notwithstanding anything to the contrary contained anywhere else in this Agreement, no Party will be entitled, under any circumstances whatsoever, to cancel or terminate this Agreement, unless otherwise agreed in writing among all Partles.

### 1312INDEPENDENT ADVICE

Each Party acknowledges that, in entering into this Agreement, it has been free to secure independent accounting, legal, tax and/or other advice as to the nature and effect of all of the provisions of this Agreement, and that it has either taken such independent accounting, legal, tax and/or other advice or dispensed with the necessity of doing so. In addition, each Party acknowledges that all of the provisions of this Agreement and the restrictions contained in it are fair and reasonable in all of the circumstances and are part of the overall intention of the Parties in connection with this Agreement.

### **4413RENUNCIATION OF BENEFITS**

The Borrower hereby renounces the benefits of the defences and exceptions of no value received, *non numeratae pecuniae*, *non causa debiti*, *errore calculi* and revision of accounts, with the full force, meaning and effect of which the Borrower declares itself to be acquainted.

### 4514DOMICILIUM

15:114.1 The Parties choose *domicilium citandi et executandi* (**\*Domicilium\***) for all purposes relating to this Agreement, including the giving of any notice and the serving of any process, as follows -

## 15.1.114.1.1 Lender -

physical

e-mail

attention -

Lower Ground Floor, Block A Greystone Ridge Office Port 144 Katherine Street Sandton 2196 nazeemh@oakbay.co.za Nazeen Howa

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### 45.1.214.1.2 Borrower and BRPs -

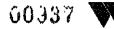
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physical -	1 <sup>st</sup> Floor
	23 Meirose Boulevard Meirose Arch
	2196
e-mail -	pmarsden@matusonassociates.co.za peter@v2rescue.co.za <del>Shaun.Blankfield@glencore.com</del>
attention -	Piers Marsden / Peter Van den Steen <del>/ Shaun</del> 

15.214.2 Any Party will be entitled, from time to time, by giving written notice to the others, to vary its physical Domicilium to any other physical address (not being a post office box or *poste restante*) and to vary its e-mail Domicilium to another e-mail address.

- 15:314.3 Any notice given by any Party to another ("Addressee"), which is delivered by hand between the hours of 09:00 and 17:00 on any Business Day to the physical Domicilium of the Addressee, will be deemed (unless the contrary is proved by the Addressee) to have been received at the time of delivery.
- <u>15.414.4</u> Any notice given by any Party to another, which is successfully transmitted by e-mail to the e-mail Domicilium of the Addressee, will be deemed (unless the contrary is proved by the Addressee) to have been received on the day immediately succeeding the date of successful transmission thereof.
- <u>15.514.5</u> The provisions of this clause 14 will not operate so as to invalidate the giving or receipt of any written notice which is actually received by the Addressee other than by a method referred to in this clause 14.
- 15:614.6 Any notice in terms of, or in connection with, this Agreement will be valid and effective only if it is in writing and if it is received or deemed to have been received by the Addressee.

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### 1615DISPUTES

16.115.1 Any dispute will be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") before a panel of three arbitrators (at least one of which will be a retired judge), with one arbitrator nominated by each Party to the dispute. If there are only two Parties to the dispute or if the Partles are able to organise themselves into two groups for the purposes of any dispute, then a third arbitrator will be chosen by agreement between the two Party-nominated arbitrators or, failing such agreement between each Party to the dispute or the two Party-nominated arbitrators within seven days after the date of their appointment, as the case may be, appointed by AFSA on the request of any Party.

16.215.2 Each Party to this Agreement -

- 16.2.115.2.1 expressly consents to any arbitration in terms of the aforesaid rules being conducted as a matter of urgency in accordance with the Expedited Rules; and
- <u>46.2.215.2.2</u> irrevocably authorises any other Party to apply, on behalf of all Parties, in writing, to the secretariat of AFSA in terms of article 23 of the aforesaid rules for any such arbitration to be conducted on an urgent basis.
- 16,315.3 The majority decision of the arbitrators will be the decision of all of the arbitrators, and a unanimous decision is not required in terms of this clause 15.

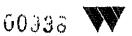
16.415.4 Any award or order that may be made by the arbitrators -

16.4.115.4.1 will be final and binding on the Parties in the absence of clerical or manifest error;

16.4.215.4.2 must be carried into effect by the Parties; and

16.4.315.4.3 may be made an order of any competent court by any of the Parties.

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- <u>16.515.5</u> The arbitration will be held at a venue in Johannesburg and in accordance with formalities and/or procedures determined by the arbitrators, and may be held in an informal and summary manner, on the basis that it will not be necessary to observe or carry out the usual formalities or procedures, pleadings and/or discovery, or the strict rules of evidence.
- <u>16.615.6</u> For the purposes having any award or order made by the arbitrators being made an order of court, each of the Parties hereby submits itself to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg).
- 16.715.7 The hearing of the arbitration will be held in camera. Save to the extent strictly necessary for the purposes of the arbitration or for any court proceedings related thereto, no Party shall disclose or permit to be disclosed to any person any information concerning the arbitration or the award (including the existence of the arbitration and all process, communications, documents or evidence submitted or made available in connection therewith).
- 16.815.8 If the arbitrators' charges and any other costs have to be paid before the arbitrators have made their award in respect of those charges and costs, the Parties shall bear and pay those charges and costs equally, pending any determination as to liability therefor by the arbitrators, provided that the Parties will be obliged to reimburse each other the amount of any such charges and costs in accordance with (and as soon as reasonably possible after) any determination as to their liability therefor is made by the arbitrators.
- **16.915.9** This clause 15 is severable from the rest of this Agreement and will remain in full force and effect notwithstanding any cancellation, expiration or termination of this Agreement.

### 1716GOVERNING LAW

This Agreement will, in all respects (including its existence, validity, interpretation, implementation, cancellation, termination and enforcement), be governed by the laws of South Africa.

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### **4817**CESSION, DELEGATION AND ASSIGNMENT

No Party will be entitled, without the prior written consent of the other Partles, to cede, delegate, assign, Encumber or otherwise transfer all or any of its rights and/or obligations under this Agreement, either absolutely or as collateral security, to any third party.

#### 1918SEVERABILITY

Each provision of this Agreement Is, notwithstanding the grammatical relationship between that provision and the other provisions of this Agreement, severable from the other provisions of this Agreement. Any provision of this Agreement that is or becomes invalid, unenforceable or unlawful in any jurisdiction will, in such jurisdiction only, be treated as *pro non scripto* to the extent that it is so invalid, unenforceable or unlawful, without invalidating or affecting the remaining provisions of this Agreement, which will remain of full force and effect. The Parties declare that it is their intention that this Agreement would have been executed without that invalid, unenforceable or unlawful provision if they were aware of that invalidity, unenforceability or unlawfulness at the time of the execution of this Agreement.

### 2019GENERAL

- 20.119.1 This Agreement constitutes the sole record of the agreement among the Parties in relation to the subject matter hereof. No Party will be bound by any express, tacit or implied term, representation, warranty, promise or the like not recorded herein. This Agreement accordingly supersedes and replaces all prior commitments, undertakings or representations, whether oral or written, among the Partles In respect of the subject matter hereof.
- 20.219.2 No addition to, variation, novation or agreed cancellation of, any provision of this Agreement (including this provision) will be binding on the Parties unless reduced to writing and signed by or on behalf of all Parties.

20.319.3 For the purposes of this Agreement, -

20.3.119.3.1 no data message, as defined in the Electronic Communications and Transactions Act No 25 of 2002 ("ECTA"), other than an e-mail, will constitute writing; and

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- <u>20.3.219.3.2</u> no electronic signature or advanced electronic signature, as defined in ECTA, will constitute a signature, except for the purposes of varying any date referred to in this Agreement or giving any approval or consent in terms of this Agreement.
- 20.419.4 No indulgence or extension of time, which any Party ("Grantor") may grant to any other, nor any election or failure by the Grantor to enforce, whether completely or partially, or delay the enforcement of, any of its existing or future rights, will constitute a walver of, or, whether by estoppel or otherwise, limit (or be deemed to limit) any of, the existing or future rights of the Grantor in terms hereof, save in the event and to the extent that the Grantor has signed a written document expressly waiving or limiting that right.
- 20.519.5 Without prejudice to any other provision of this Agreement, any successor-in-title, including any business rescue practitioner, liquidator or trustee, of any Party will be bound by this Agreement.
- 20-619.6 The signature by any Party of a counterpart of this Agreement will be as effective as if that Party had signed the same document as the other Parties.

### 2120COSTS

Each Party shall bear and pay its own costs in relation to the negotiation, drafting, finalisation and signing of this Agreement.

**\*\*\*\*SIGNATURE PAGES TO FOLLOW\*\*\*\*** 

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### PMM-U11.1-359



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JN/JN 21042016/OPTI13168.19 Second PCF Agreement - Optimum Coal Mine • Draft 1/#3754082v1

2017 on Signed at **Exploration & Resources** for Tedeta **Proprietary Limited** DRAFT - NOT FOR SIGNATURE who warrants that he is duly authorised hereto Name: Position: Director/Authorised Signatory 2017 <u>on</u> Signed at **Optimum Coal Mine Proprietary Limited** for (in business rescue) DRAFT - NOT FOR SIGNATURE who warrants that he is duly authorised hereto Name: Plers Michael Marsden Position: Business Rescue Practitioner 2017 on Signed at for Optimum Coal Mine Proprietary Limited (in business rescue) DRAFT - NOT FOR SIGNATURE who warrants that he is duly authorised hereto Name: Petrus Francois van den Steen

Position: Business Rescue Practitioner

JN/JN 21042016/OPT13168.19 Second PCF Agreement - Optimum Goal Mine - Draft 1/#3754082v1 60342



### **ANNEXURE A - BUDGET FORECAST**

(\*\*\*)



[SEE ATTACHED]

JN/JN 21042016/OPT113168.19 Second PCF Agraement - Optimum Coal Mine - Draft 1/#3754082v1

### ANNEXURE B - FORM OF PCF NOTICE

TO: Tegeta Exploration & Resources Proprietary Limited

DATE: [insert date]

### POST-COMMENCEMENT FINANCE AGREEMENT

finance agreement dated post-commencement refer to the 1 We ("PCF Agreement") between Tegeta [ ] April 201610 December 2015 Exploration & Resources Proprietary Limited (in its capacity as the lender) ("Tegeta"), Piers Marsden and Pieter van den Steen (in their capacity as our duly appointed business rescue practitioners) and us (in our capacity as the borrower), and hereby give you notice that we wish to draw-down an amount of R[.] on [.] under your obligation to provide post-commencement finance to us in terms thereof, which amount must be paid in accordance with the provisions of the PCF Agreement into the following account -

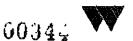
Name of Account Holder	Optimum Coal Mine Proprietary	
	Limited	
Bank	Standard Bank	
Account Number	000 36 4029	
Branch	Johannesburg	
Branch Code	00 0205	

2 The funding is required for the following purposes and in the following amounts for those purposes:

[insert details of funding required]

- 3 We hereby warrant and confirm to you that, as at the date of this notice, -
- 3.1 the amount of the draw-down notified by us in this notice will not result in the Total Commitment being exceeded; and

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3.2 no Event of Default (as this term is defined in the PCF Agreement) has occurred and/or is continuing.

Signed at

on

2017

for Optimum Coal Mine Proprietary Limited (in business rescue)

DRAFT - NOT FOR SIGNATURE

who warrants that he is duly authorised hereto

Name: Piers Marsden

Position: Business Rescue Practitioner

Signed at

on

2017

for Optimum Coal Mine Proprietary Limited (In business rescue)

### **DRAFT - NOT FOR SIGNATURE**

who warrants that he is duly authorised hereto

Name: Petrus Francois van den Steen

Position: Business Rescue Practitioner

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PMM-U11.1-363

PMM 39

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Optimum Coal Mine (Pty) Ltd.

(Registration No: 2007/005308/07) A Glencore Operation

Business Address: Nil 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 XI, Melrose Arch, Johannesburg, 2076 Tel: +27 11 772 0600 Fax: +27 11 772 0697 Directors; R Cohen, C M Ephron, P Mahanyele, T Noube

21.04.2016

#### Tegeta Exploration and Resources (Ptv) Ltd

144 Katherine Str, Grayston Ridge Office Park, Block A,Lower Ground Floor, Sandown, Sandton, 2146

Attention: Mr Nazeem Howa

### Re: SALE OF STEAM COAL - CONTRACT NO. 118

Optimum Coal Mine (Pty) Ltd, South Africa (hereinafter known as "Seller") is pleased to confirm the sale of steam coal to Tegeta Exploration and Resources (Pty) Ltd. (hereinafter known as "Buyer"), according to the following terms and conditions:

Material: Steam Coal 250,000 MT per month, subject to production being sufficient, to the Quantity: nearest truck load Evenly spread at a rate of 7,000 MT pd- 12,000 MT pd May 2016 to October 2016 **Delivery:** Refers to Optimum Colliery. Seller's Colliery: R18.68/GJ on a Gross as received basis plus transport rate as Price: negotiated with the relevant transporter and Optimum Coal Mine DAP Delivery point (excluding VAT) The Seller will submit an invoice to the Buyer within the first week Payment: of each month detailing the coal supplied in the preceding month. Payment of each invoice shall be made by the Buyer 30 calendar

days from statement, via telegraphic transfer into the Seller's nominated bank account, without any counterclaim, deduction, setoff or withholding of any nature whatsoever.

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Quality Parameter	Unit	Expected Quality	Quality Rejection Limit	Measurement basis
Calorific Value	MJ/kg	24.0	<23.50	Air Dried
Total Moisture	%	8.0	>9.0	As Received
Ash	%	25.3	>25.3	Air Dried
Volatiles	%	21.1	<21.0	Air Dried
Sulphur	%	1.1%	>1.24	Air Dried

Quality: Specifications all on an ISO "air dried" basis, unless otherwise stated:

### Analysis:

The Seller shall set aside clearly labeled stockpiles of approximately 5,000 MT each at the Seller's Colliery.

Sampling and analysis to be performed by Bureau Veritas Inspectorate Laboratories (Pty) Ltd ("BV") for each stockpile at the Seller's Colliery. Costs of the same to be for the Seller's account.

Results of each clearly marked pre-certified stockpile will be sent to the Buyer for approval.

The Buyer will also send the Eskom certified laboratory ("Eskom lab") GCV (as received) result to the Seller for approval.

Material can only be uplifted from the pre-certified stockpile once:

- The results of both the Eskom lab and BV lab have been sent to all Parties; and
- The GCV (as received) result of the Eskom lab is not more than 0.20 Mj/kg (as received) lower than the GCV (as received) of the BV lab.

Provided both these conditions are fulfilled, the Material can be uplifted from the precertified stockpile and Payment will be based on the Eskom lab GCV (as received).

### Weight Determination:

Tonnage to be determined by the assigned weighbridge at Seller's Colliery. Results will be final and binding for the purpose of settlement.

### **Delivery Point:**

Eskom's Arnot Power Station Middleburg or otherwise specified,

### Risk & Ownership:

Risk in the Coal Product supplied in terms of this Agreement will pass to the Buyer when such coal is delivered to the Delivery Point. Ownership of Coal Product will pass to the

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Buyer once it has been paid for in accordance with this Agreement.

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### Force Majeure:

If because of Force Majeure Seller/Buyer is unable to carry out any of his obligations under this contract, and if such party promptly gives to the other party written/telex notice expressly claiming Force Majeure, then the following shall apply:

The term "Force Majeure" as used in this agreement shall mean any causes reasonably beyond control and without fault or negligence of the party affected thereby which wholly or in substantial part prevent the loading, unloading, delivery of the product sold hereunder.

The Force Majeure situations are including but not limited to acts of the public enemy, acts of war, riot or civil commotion, labor disputes, labor or material shortages, accidents, fires, explosions, floods, acts of God, breakdown or damage of plant, equipment, partial or complete embargoes, interruptions to contingencies or transportation, acts of governmental authority, acts, rules, regulations of any government, and if a condition of Force Majeure occurs and notice is given, the obligations of the party giving such notice shall be suspended. Should the Force Majeure event not be remedied within 90 days of its occurrence, then either party may by way of written notice, cancel this contract.

### Arbitration:

Any controversy or claim arising out of or relating to this contract or any alleged breach thereof shall be settled by arbitration in Johannesburg as follows:

The Parties to the dispute may mutually agree to the appointment of any person to act as Arbitrator but failing such Agreement, the Arbitrator shall be an Advocate of no less than 10 (ten) years standing (alternatively, in respect of any technical or operational dispute, by any independent person with a minimum of 10 years' experience in the appropriate field), appointed by the Chairman for the time being of the Johannesburg Bar Council.

The said arbitration shall be held:

• In a summary manner, i.e. on the basis that it shall not be necessary observe or carry out either:

• the usual formalities or procedure(e.g. there pleadings or discovery); and/or

• the strict rules of evidence;

• Immediately and with a view to its being completed, if possible, within 21 (twenty one) business days after it is demanded;

• On the basis that the Arbitrator shall decide the matters submitted to him according to what he considers just and equitable in the circumstance, and therefore, the strict rules of law shall not be observed or be taken into account by him in arriving at his decision;

• Otherwise (but subject to 1.1 and 1.2) under the provisions of the Arbitration Act No.42 of 1965 of the Republic of South Africa (as amended from time to time).

3 | Page

### PMM-U11.1-366

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Any Party to the arbitration shall be entitled to be legally represented at the Arbitration proceedings. In the event of any Party deciding to be so legally represented, he shall be required to notify the other Party of such intention not less than 7 (seven) days prior to the date set aside for the hearing of the arbitration, to enable such other Party itself to be legally represented.

### Breach:

Should either party breach any of the terms and conditions of this agreement and fail to remedy such breach within a period of 14 days after receipt by the defaulting party of written notice from the other party ("the aggrieved party") requiring it to do so, then the aggrieved party shall be entitled without prejudice to such other rights as it may have, to claim immediate payment and/or performance by the defaulting party of all the defaulting party's obligations, all without prejudice to the aggrieved party" rights to claim damages; provided that the aggrieved party shall not however, be entitled to cancel this agreement for any breach by the defaulting party unless such breach is a material breach going to the root of this agreement and incapable of being remedied by a payment in money, or if it is capable of being remedied by a payment in money, the defaulting party shall have failed to pay the amount concerned within 14 days after determination of the amount so payable.

In the event of the Seller, being placed under liquidation, judicial management or in the event of the estate of the Seller, being sequestrated then the Buyer shall be entitled, without prejudice to such other rights as it may have, to cancel the contract forthwith.

### **Cession and Assignment:**

Neither party may cede or assign the whole or any part of its rights or obligations under this agreement to any other party without prior consent in writing of the other party, provided however that such consent shall not be unreasonably withheld. This agreement shall be binding upon and shall hereto. Any purported assignment of cession by either party without the said written consent by the other party shall be void.

#### No waiver:

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.

#### Non-variation:

No addition to, variation or consensual cancellation of any provision in this contract, including this provision, shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties.

#### Counter-signature:

4 | Page

The signature by either party of a counterpart of this offer will be as effective as if that party had signed the same document as the other party.

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THUS DONE and SIGNED at			
AS WITNESS:			
1.			
2.		For and on behal TEGETA EXPL RESOURCES P	ORATION AND
THUS DONE and SIGNED at	on this th	e <u>day of</u>	2016
in the presence of the undersigned witnesses:-			
AS WITNESS:			
1.			
		For and on beha	ulf of
2.	10	OPTIMUM CO	
27		PTY LTD.	
			100

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PMM 40

**Romy Wulfsohn** 

From: Sent: To: Subject: Attachments: Piers Marsden cpmarsden@matusonassociates.co.za>
14 November 2017 11:14
Piers Marsden
Fwd: Optimum Recon - July 2016
Bank Statement (Reconciliation).xlsx

From: "Michelle Brink" <mbrink@matusonassociates.co.za> To: ugeshnin@sahara.co.za Cc: "Ronica Ragavan" <ronica@oakbay.co.za>, "Piers Marsden" <pmarsden@matusonassociates.co.za> Sent: Wednesday, August 24, 2016 8:09:21 AM Subject: Optimum Recon - July 2016

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Please see attached the Tegeta coal recon for July 2016. Please let me know if you have any queries.

Thanks Michelle

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Summary Reconciliation as at the end of July 2016

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Reconciliation	Amount
June Involces owing by Tegeta	392,036,714
July Invoices owing by Tegeta	177,345,051
Standard Bank	-206,670,674
Tegeta June Payments	-134,694,174
Tegeta July Payment	-10,000,000
Intercompany Transfers	-61,976,500
Bank of Baroda (OCM)	-5,022,808
June Tegeta Loan - Deposits and Withdrawels	75,000,000
July Tegeta Loan - Deposits and Withdrawels	-80,022,808
Tegeta paid on behalf of Optimum	-38,691,852
Tegeta paid on behalf of Optimum	-29,154,055
	289,842,376
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Reconciliation	Date	Amount
June Invoices owing by Tegeta		392,036,714
	19/04/2016	42,173,010
	30/04/2016	66,021,930
	31/05/2016	135,813,991
	30/06/2016	148,027,784
July Invoices owing by Tegeta		177,345,051
Tegeta June Payments (Standard )	Bank)	-134,694,174
	09/05/2016	15,000,000
	20/05/2016	27,173,010
	23/05/2016	9,500,000
- / \	24/05/2015	2,021,164
	31/05/2016	12,000,000
the second se	02/06/2016	10,000,000
	03/06/2016	10,000,000
	07/06/2016	3,000,000
and the second se	08/06/2016	6,500,000
	09/06/2016	8,500,000
1 12	30/06/2016	30,000,000
11	30/06/2016	1,000,000
Tegeta July Payments (Standard I	Bank)	-10,000,000
	18/07/2016	5,000,000
~	19/07/2016	5,000,000
Intercompany Transfers (Standar	rd Bank)	-61,976,500
	21/04/2016	18,000,000
	15/06/2016	4,000,000
1	17/06/2016	-1,200,000
	01/07/2016	30,000,000
	21/04/2016	-10,000,000
	21/04/2016	15,000,000

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	12/05/2016	-1,323,500
	23/05/2016	7,500,000
June Bank of Baroda (OCM) - Tegeta	· · · •	75,000,000
	14/06/2016	8,000,000
	22/06/2016	7,000,000
	30/06/2016	-90,000,000
July Bank of Baroda (OCM) - Tegeta		-80,022,808
	12/07/2016	2,000,000
	15/07/2016	17,000,000
	21/07/2016	12,000,000
	21/07/2016	23,000,000
	22/07/2016	17,500,000
	27/07/2016	5,000,000
	28/07/2016	2,000,000
All Allows, & Barry	29/07/2016	20,000,000
	29/07/2016	-18,477,192
Tegeta paid on behalf of Optimum	15/06/2016	-38,691,852
Tegeta paid on behalf of Optimum	15/06/2016	-29,154,055
Total		289,842,376



## PMM 41

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### DEED OF TRUST FOR THE ESTABLISHMENT OF THE OPTIMUM MINE REHABILITATION TRUST FUND

Made and entered into by and between

Optimum Coal Investments (Proprietary) Limited (Registration Number 2006/007799/07) (Dereinafter referred to as the "Founder")

Michael Solomon Teka Eliphus Oki Monkoa Hemas Ignatiya Borman Wikidik Erich Cogho

[\*•

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(Identification Number 6408155713083) (Identification Number 5910106288082) (Identification Number 6703255179080) (Identification Number 5501285024081)

## DEFINITIONS AND INTERPRETATION

In this Agreement, the following expressions have the meaning respectively set

"The Acts and Regulations" means all the relevant laws of the Republic of South Africa and the regulations there under which do now or may hereafter regulate (mining operations, being *Inter alla*, the Minerals Act, 1991, the Atmospheric Pollution Prevention Act, 1965, the National Water Act 1998, the Mineral and Patroleum Resources Development Act, 2002, and which impose the statutory obligations as defined herein.

beneficiary Accounts" means the separate accounts in the accounting records of the Trust to be maintained and administered by the Trustees in respect of

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the beneficiaries or each of the beneficiaries as the case may be which are required by this document.

"the beneficiary" or "beneficiaries" mean/s. Optimum Coal Mine (Proprietary) Limited (Registration Number 2007/005308/07), as well as such other parties as may be constituted as beneficiaries hereafter by amendment of this Deed,

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"the Commissioner" means the Commissioner for the South African Revenue Service as referred to in the Income Tax Act No 58 of 1962 as emended ("the IT Act").

"the Founder" means Optimum Coal Investments (Proprietary) Limited; (Registration Number 2006/007799/07) being a company incorporated in terms of the laws of the Republic of South Africa with limited itability and which is the owner of 100% of the entire issued share capital of the beneficiary (being a controlling interest in the beneficiary) and the beneficiary is engaged in coal mining and prospecting operations in the Mpumalanga Province in South Africa.

"funds" mean the cash amounts paid to the Trust within the meaning of sec 11(hA) and s37A of the IT Act by a taxpayer as identified therein and does not include costs which are required in terms of any law to be incurred on an ongoing basis during the life of a mine or part of a mine, but does cover obligations discharged at the time of or after discontinuation of the operations in a mine or part of a mine, a

"the Optimum Mine Rehabilitation Trust", means the Trust created in terms of the Provisions of clause 3 hereof.

"the RM" means the Regional Manager: Minaral Development for the Mpumalanga Region of the Department of Minerals and Energy or such other official, irrespective of designation, who may beceafter be required to exercise those powers and discharge those functions.

"statutory abligations", mean the obligations imposed on the beneficiary/les in terms of any law which regulates mining operations, and which obligations

### នា/ជាចងរា/)អនុវទ្ធបាចនៅខ្មែរ ស្រចា/បិតវាហាយ សេខាវ សុខាវ ស សេខាវ សុខាវ សុខា

Include the rehabilitation upon pramature closure, decommissioning and fine) closure and post closure coverage of any latent and residual environmental limpacts on the area covered in terms of any permit, right, reservation or permission; to restore one or more areas to their natural or predeterminad state; or to a land use which conforms to the generally accepted principle of sustainable development as envisaged by section 37A of the IT Act.

"the Trustees" mean Michael Solomon Teke, Eliphus Oki Monkoe, Thomas Ignatius Borman jointly, who have agreed to be the first Trustees of the Optimum Mine Rehabilitation Trust.

In Interpreting this Deed, and subject to a contrary intention evidenced by the context,

### A reference to the singular includes the plural and vice versa;

A reference to the masculine includes reference to the feminine and neuter and vice versa;

A reference to a natural person includes a reference to any juristic persona and vice versa.

### RECORDAL.

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The Founder is engaged, through its shareholding (100%) in the beneficiary, in coal mining and prospecting activities.

. The beneficiary is subject to the statutory obligations. .

. . .

The Founder wishes to constitute a Rehabilitation Trust to receive, hold and apply the funds which the Trust may receive in order to discharge the statutory obligations of the beneficiary/ics.

. .

The Founder wishes to create the Trust for the benefit of the beheficiary/ies and for this purpose wishes to donate R100, 00 (one hundred rand) to the Trustees of the Trust.

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### 3 THE TRUST AND ITS OBJECTS

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There is hereby created subject to the approval of the Commissioner, a Trust called the OPTIMUM MINE REHABILITATION TRUST.

The sole object of the Trust is to apply its property solely for rehabilitation upon premature closure, decommissioning and final closure and post closure coverage of any latent and restdual environmental impacts on the area covered in terms of any permit, right, reservation or permission; to restore one or more areas to their natural or predetermined state; or to a land use which conforms to the generally accepted principle of sustainable development and apply the funds received by it in accordance with section 11(hA) and s37A of the IT Act, in order to discharge the statutory obligations of the beneficiary/les.

The Trust shall be a body corporate having parpetual succession and be capable of acquiring and disposing of and owning property and assets and contracting in its own name and suing and being sued in its own name. The rights and obligations of the Fund shall vest in it independently of its benaficiary/ies, Foundar or contributing company.

If the Trust contravenes any provision of section 37A (2) (financial instruments that may be held) by holding property other than property contemplated in that subsection, an amount of taxable income is deemed to accrue equal to the market value of that other property on the first date that the trust held that other property and the deemed amount shall be included in the income of the person that made the contribution to the Trust.

### DONATION

The Founder Hereby Irrevocably donates the sum of R100, 00 (one hundred rand) to the Trust, and its Trustees hereby accept such donation for the purpose and subject to the conditions of this Trust.

The donation made in terms of dause 4.1 hereof shall immediately vest in the Trustees but always subject to the terms of this Deed. orecitational a pacetobraunty forst due unal soc חסור מורח און מורח און מורח און מורח און מורח און מורח און און מורח און מור

Administration of the trust 5

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The Trustees shall not receive any remuneration from the Trust for their services, but shall be reimbursed for any personal expanditure reasonably incurred in the proper discharge of their duties as Trustees,

The first Trustees will be appointed by the Founder to administer the Trust.

15.3 The number of Trustees will be not less than two nor more than four.

> The first Trustees as well as those subsequently appointed shall hold office until they resign or are deemed to have vacated their offices in terms of clause 6.

> The Trustees shall control and administer the Trust, and shall perform and discharge the duties incumbent on them hereunder, and shall have the power to delegate from time to time any of their powers and functions to any one or more of their number as they may deem expedient in the discharge of their diuties,

### 6 RESIGNATION AND REMOVAL OF TRUSTEES

Should a trustee resign and the number of Trustees remaining is still two or more the remaining Trustees shall detide whether or not to fill the vacancy in which case they shall have the power to do so by assumption

56166 If only one trustee remains the or she must appoint a second trustee within three months of the vacancy/les-occurring.

If the number of Trustees falls to one and that one falls to appoint a co-trustee within three months, the Founder shall be entitled to do so; so also if for any reason no trustee remains in office, then the Founder shall be entitled to appoint two Trustees to constitute the nacessary quorum and the provisions of clause 6,1 will then apply.

A trustee may resign at any time on glying notice in writing to the remaining Trustees of his intention to do so and shall in any case be deemed to have

vacated his office if he is no longer employed by the Founder or any of its subsidiarles.

6.5	A trustee shall be automatically removed from office:
6.5.1	If his/her estate (q sequestrated)
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6.5.2	If he/she becomes of unsound mind:
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6.5.3	If he/she is convicted of any offence involving dishones

### CHAIRMAN AND VOTING .

The Trustees shall from time to time nominate one of their numbers to be Chairman of the Trust and ha shall continue to be Chairman until he resigns from that office or ceases to be a trustee,

Should the Chairman be absent at any meeting of the Trustees, the Trustees present shall appoint one of their number as Chairman to preside at that meeting.

Questions arising at meeting of Trustees shall be decided by a simple majority of votes each trustee personally present having one vote, and in the case of equality of votes the Chairman of such meeting shall have a casting vote,

. . . .

• • • §\* Notwithstanding the foregoind it shall be competent-for-the Trustees to decide any matter by way of a round robin procedure viz. In the form of a written resolution signed by each one of them which resolution shall be deemed to constitute a minute of a meeting of Trustees.

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### SECRETARY

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The Trustees shall appoint a Secretary (which may be a company); who shall not be ramunerated with monies from the Trust. The Secretary shall, whenever required to do so by any one trustee, convene a meeting of the Trustees and be responsible for the minutes to be kept of all meetings and decisions of the Trustees.

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### 9 MEETINGS AND QUORUM

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The Trustees shall meet from time to time and not less than twice a year to transact the business of the Trust and the necessary quorum for any such meeting shall be two Trustees personally present. Reasonable notice of every such meeting shall be given to each trustee and all meetings of the Trustees shall, unless otherwise decided by the Trustees, be held at the registered office of the beneficiary.

A resolution signed by all the Trustees shall have the same effect as if it had been passed at a duly constituted meeting.

### 10 TRUSTEES' LIABILITY

Subject to any liability imposed by law and not capable of being waived, the Trustees shall not be answerable or accountable for any loss arising out of their administration of the Trust, or in respect of any depreciation of any investment of the Trust, unless such loss or depreciation shall occur through their wilful inisconduct or gross negligence in which event only the Trustees concerned and not all the Trustees shall be jointly and severally liable.

The Trustees shall have no responsibility or liability for the efficacy of the measures taken in terms of clause 16 hereof or for the sufficiency of contributions and amounts paid by the beneficiaries of the Trust in terms of clause 14.

The Trustees do not by the assumption or the exercise of office herein incur any of the statutory obligations of the beneficiaries or become liable directly or indirectly for any breach of the statutory obligations or failure of compliance therewith.

The benefictaries indemnify the Trustees egainst claims made against the Trustees arising from loss or damage of whatsoaver nature in the course of their administration of the Trust (other than as a result of willful misconduct or gross negligence on the part of the Trustees).

## Security by the trustees

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ne.

The Trustees shall not be required to lodge security with the Mester of the High Court of any other officiation authority in terms of the Trust Property Control Act No. 57 of 1988 or any other law requiring that security be lodged with any official or authority for the due performance of their duties hereunder.

# 12 TRUSTEES' POWERS AND DUTIES

The Trustees shall have general control over the funds of the Trust and shall strive to attain the sole object for which the Trust is established.

The Trustees shall have plenary powers to enable them to achieve the sole' object of the Trust, and any matters necessarily incidental thereto.

The Trustees shall receive, hold, and apply funds contributed to the Trust in terms of this agreement by the beneficiaries, which amounts have been approved by the RM, together with the net income thereon. Except as may be otherwise provided herein, the Trustees shall not distribute any of its profits or otherwise to any person and shall use the funds solely for the objects for which the Trust has been established.

The Trustees will not permit any conflict of interest to erise between themselves and the Trust in any aspect of its business and affains, nor provide any Gnancial assistance or betwices or facilities other than such as required in terms of clause 12.3.

The management of the affairs and all the powers of the Trust shall vest in the Thustees and without derogating from the generality of the foregoing, the Trustees shall have full legal power:

to invest, realise and re-invest the contributions made to the Trust by the beneficiaries and the net income accrued thereon on such terms and at such rates of interest as the Trustees shall decide provided that, they shall be limited to making investments in institutions and investment validies as referred to in section 37A of the IT Act;

## PMM-U11.1-379

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to appropriate and utilize firstly the net income defined in 13.6 and secondly the contributions and/or amounts paid in terms of clause 14 for the measures taken for compliance with the statutory obligations of the beneficiary;

to institute any legal action including arbitration proceedings for the recovery of monies owing to the Trust, or to assert or protect the rights of the Trust and to prosecute, compromise, settle or withdraw any such action;

to execute against the corporeal, incorporeal, movable and immovable property of any of the Trust's judgment debtors;

to execute all documents for and on behalf of the Trust and In this regard to delegate their authority so to execute to two of the Trustees or to one of the Trustees and the Secretary of the Trust;

to employ professional advisers and representatives;

to effect such insurances as deemed necessary on behalf of the Trust or in its interests; and

generally to perform all acts connected with any of the Trust's affairs, or necessary to discharge its business and functions;

TRUST'S BOOKS OF ACCOUNT AND ACCOUNTING PROCEDURES

The Trustees shall cause proper books of account to be kept for the Trust and shall appoint independent auditors to report on the financial statements for each financial year of the Trust.

The financial statements of the Trust for each financial year (which shall be 'reckoned from 1 March to 28 February) shall be forwarded by the Trustees to. the Founder and beneficiary of the Trust and to the Commissioner and the RM within six calendar months after the end of each financial year of the Trust.

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The Trustees shall open a banking account in the name of the Trust, which shall be operated upon by the joint signatures of one of the Trustees and the secretary, or another duly appointed authorised joint signatory.

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All documents required to be signed or executed on behalf of the Trust shall be so signed or executed by the person or persons authorised thereto by resolution of the Trustees.

All costs, charges and expenses of administering the Trust shall be chargeable to and be borne by the Trust, Such costs, charges and expenses shall be paid out of income of the Trust.

The balance of the gross income remaining in any financial year of the Trust after deducting such costs, charges and expenses shall be the net income for the financial year, but if such costs, charges and expenses exceed the income, then the excess shall be the net loss for that financial year.

Such net income or net loss, as the case may be, shall be transferred (credited/debited) to the account of the beneficiaries on a monthly basis, should there be more than one beneficiary, the net income or net loss shall be allocated to the respective accounts on a proportionate basis.

The Trustees shall not be permitted to distribute, except as may otherwise be provided herein, any of the funds of the Trust to any person and shall utilize the funds solely for investment or the objects for which the Trust has been established.

No surplus funds will be refunded to the Founder or any other person (natural of juristic) but will be dealt with in accordance with clause 16,4 below if applicable and otherwise in accordance with 19,2 below;

TEMATES OF COST OF COMPLIANCE WITH THE STATUTORY OBLIGATIONS

Annually but at least ninety days before the end of its financial year, the beneficiary shall cause written estimates to be prepared, by suitably qualified persons, of the probable cost of measures to discharging the statutory

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obligations, other than costs which are required in terms of any law to be incurred on an ongoing basis during the life of a mine or part of a mine. The estimates may be made separately in respect of each duty, requirement or function of each group of duties, requirements, or functions as may be necessary or convenient. The estimates shall be certified as being fair by the beneficiary and shall thereafter be forwarded together with the calculations for approval to the RM, on an annual basis.

The beneficiary shall, before the end of the financial year concerned pay into the bank account of the Thust the approved contribution towards the estimated cost of implementing the measures so approved. The contributions shall be made in terms of section 11(hA) for contributions made prior to 2 November 2006 and if for any reason such contribution has not yet been considered and approved by the RM by the time such payment were made, then such payment shall be made in terms of section 37A of the IT Act in terms of contributions made after 2 November 2006.

Provided the RM shall give his prior approval in each case it shall be compatent for the beneficiaries and Trustees to revise estimates of the cost of measures to discharge the statutory obligations required in the event of changed circumstances and on adjusted payment, certified in terms of clause 14.1, may be made in accordance with clause 14.2 above.

## 15 Application for an annual contribution with the RM

## Contribution made prior to 2 November 2006

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It is envisaged that the RM will, upon approval of the contributions, issue a certificate confirming his satisfaction with the contributions and forward it to the beheficiary. The beneficiary shall forward, the certificate to the commissioner together with the income tax return for that particular year of assessment. The certificate will reflect the following:

That the contribution has been approved and complies with the provisions of clauses 14.2and14.3 :

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The year of assessment to which the contribution relates;

The specific amount which has been approved, which should be broken down separately for each mine!

That the taxpayer has complied with all the requirements of sections 11(hA).

15.2 Contribution made after 2 November 2006

The Commissioner will allow a deduction of the amount of the contribution made in terms of section 37A.

### COMPLIANCE WITH THE STATUTORY OBLIGATIONS

The Trustees undertake to ensure that the funds are utilised to discharge the statutory obligations in accordance with the requirements faid down by the RM. The funds will be placed at the disposal of such beneficiary to carry out the statutory obligations as and when so required. This undertaking shall be a supulation in favour of the RM and be enforceable by him.

In fulfilling the before mentioned undertaking, the amount made so available by the Trustees will be limited to the amount which stands to the credit of the beneficiaries concerned in the books of the Trust.

Any withdrawals of amounts from the Fund shall be endorsed by the RM.

Should there be a balance standing to the credit of any beneficiary/les after all the measures required to be taken in order to comply with its statutory obligations have been executed to the satisfaction of the RM, the said balance shall be credited to the remaining beneficiary/les accounts pro rate to the balance of each of such remaining beneficiary/les' accounts as at the end of the month in which all the said measures ware so executed, unless the beneficiary/les' responsible for generating the credit balance has/have elected that the balance be paid to a body referred to in clause 9.

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### 17 CESSATION OF MINING ACTIVITIES AND SMORTFALL

Should a beneficiary decide to terminate its mining operations (other than a temporary cessation of such operations) and/or should the beneficiary/fes go into liquidation prior to it having complied with all of the statutory obligations, which it may have, it shall, not earlier than three months and not later than one month prior to taking any steps for the winding up of such mining operations or going into liquidation, as the case may be, have final estimates prepared of the probable cost of compliance with such outstanding statutory obligations which shall be certified and approved as provided in clause 14.1.

On or after the date of termination of the mining activities, should the total amount of the final estimates as so approved exceed the total amounts standing to the credit of a beneficiary's account, the Founder or the beneficiary shall forthwith pay to the Trust the shortfall, and conversely in the event of the account remaining in credit such surplus shall be used to defrey the cost of compliance by that beneficiary with any statutory obligations imposed in respect of other mining operations conducted by that beneficiaries' accounts as the Trustees may determine and failing that shall be transferred in terms of clause 19:2 below.

### withdrawal from the fund by the beneficiary

Subject to previous written permission obtained from the RM and compliance with such conditions or terms as the RM may require concerning the discharge of any beneficiary/les' statutory abligations or any other matter including disposal of funds abiding to the credit of any particular beneficiary in the Trust accounts any one or more beneficiary/les may cease to be beneficiary/les of the Fund.

TERMINATION OF THE TRUST

The Trust may only be terminated after all the beneficiary's/les' statutory obligations including any post closure obligation have been met or provided for to the satisfaction and approval of the RM.

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Should any amount and/or other assets remain after the statutory obligations have been met or provided for to the satisfaction of the RM, that amount and other assets may be transferred only to another company or a trust which fulfils the requirements of section 37A of the TT Act and as approved by the Commissioner ; and further if no such company or trust has been established, to an account or trust prescribed by the Minister of Minerals and Energy and as approved by the Commissioner is satisfied that such company or trust satisfies the objects of section 37A(1)(a).

SERVED IN A CONTRACT ON A CONTRACT

### 20 AMENDMENT OF THIS DEED ...

Barren Street

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The provisions of this Deed may from time to time be amended by written agreement between the Founder and the Trustees with the concurrence of the behaddery/les and after the prior approval of the Commissioner thereto.

### ADAPTATION TO LEGISLATIVE CHANGES

Provided the sole object of the Trust can still be lawfully attained, no change to any delevant legislation regulating or relating to this Trust, its object or its provisions whall have the effect of preventing the Trust from continuing to operate, but incorporated as if it had incorporated interpreted as if it had incorporated interpreted as if it had incorporated interpreted as in the mutation mutation.

CONSEQUENCES FOR NON-COMPLIANCE WITH THE TRUST DEED AND THE PROVISIONS OF SECTION 37A

The Commissioner will apply the provisions of section 37A of the IT Act in the case

「日本の日本市の方 તેલે દ્વારા છે. દા /Qiopei/Chie/Oriziqe છુલ્ટર/Obriunte દૃભ્ય વલ્કવ પ્રિથમિંદ્ર દ 2, For and on Dehalf of Optimum Coal Investments (Pty) Ltd K .. \_\_\_\_\_day of PAPE HYDE THUS done and signed in on the Noventer 2007 by the Trustee. 49 AS WITNESSES: Mike Solomon Teke ۰. . : . THUS done and signed in HYDF- PHEY day of on the Novenper by the Trustee. 1 TINESSES: Ellphos Okl Monkee . . . THUS done and signed in PARX on the day of NOVEMBLE 207 by the Thistee, ÷ UNESSES; · ۰. Thomas Ignatius Borman 15 M 

13 **新潮流** 7th. HYDE PARIS THUS done and signed in an the day of BEL . 2007 . by the Trustee. AS WITNESSES: Viktor Brich Cogho IM 16

# PMM42



From: Ronica Ragavan <<u>ronica@oakbay.co.za</u>> Sent: Thursday 21 April 2016 18:27 To: Ramiah, Geraldine G Cc: Naidoo, Venorthy V; Ugeshni Naidu Subject: Movement of Deposits

### Dear Geraldine

WE have presently a R1.456 billion in account 494262 we would like to move this funds to another bank, Please advise if I may send through the instruction on this account.

Regards

Ronica Ragavan Group Finance +27 83 402 1388 | <u>ronica@oakbay.co.za</u>

> Physical Address: 144 Kalherine Street Grayston Ridge Block A | Sandtor | 2031

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PMM43

From: "Ramlah, Geraldine G" <<u>GeraidIne.Ramlah@standardbank.co.za</u>> Date: 22 April 2016 at 10:12:59 SAST To: Ronica Ragavan <<u>ronica@oakbav.co.za</u>> Cc: "Naidoo, Venorthy V" <<u>Venorthy.Naidoo@standardbank.co.za</u>>, Ugeshni Naidu <<u>Ugeshnin@sahara.co.za</u>>, "<u>pmarsden@matusonassoclates.co.za</u>" <<u>pmarsden@matusonassoclates.co.za</u>>, "<u>peter@v2rescue.co.za</u>" Subject: RE: Movement of Deposits

#### Dear Ronica

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Т,

We are not able to process any instructions on this account without a request from the authorised signatories given strictly in accordance with the terms of the Trust Deed.

The account holder is the Optimum Mine Rehabilitation Trust and the authorised signatories are those appointed by resolution of the Trustees. Such resolution states that any change in the office or powers of any of the persons authorised by such resolution or in the event of any such person being replaced will be certified by the Trustees in writing.

Please note that I have also cc'ed the Busin<mark>ess Rescue Practitioners on this email</mark> as I understand that the Trust Is still under the control of the BRP.

Regards Geraidine



### Geraldine Ramlah

FXMM: Corporate and Public Sector Tet +27 (0)11415 8245/ Mobile +27 (0)84 505 7869/ <u>Geraidine.ramlah@standardbank.co.za</u> / www.standardbank.com

Standard Bank Moving Forward<sup>er</sup> /

From: Ronica Ragavan [<u>mailto:ronica@oakbay.co.za</u>] Sent: 21 April 2016 06:27 PM To: Ramiah, Geraldine G Cc: Naldoo, Venorthy V; Ugeshni Naldu Subject: Movement of Deposits

Dear Geraldine

WE have presently a R1.456 billion in account 494262 we would like to move this funds to another bank,

Please advise if I may send through the Instruction on this account.

Regards

Ronica Ragavan

PMM-U11.1-389



WerksMaNS ATTORNEYS

Johannesburg Office 155 5th Street

Sandton 2196 Sputh Africa

### DELIVERED BY EMAIL

Tegeta Exploration and Resources Proprietary Limited

Attention: Nazeem Howa Email: nazeemh@tnamedia.co.za

YOUR REFERENCE: Tegeta Exploration and Resources Proprieta OUR REFERENCE: Mr E Levensteln/lb/OPT113168.19/#37568. +27 11 535 8237 DIRECT PHONE: +27 11 535 8737 DIRECT FAX: EMAIL ADDRESS: elevenstein@werksmans.com

24 April 2016

Dear Sirs

## OPTIMUM COAL MINE PROPRIETARY LIMITED (IN BUSINESS RESCUE)

- We refer to -1
- our letter dated 19 April 2016 ("our letter") (a copy of which is attached for ease of 1.1 reference); and
- the email sent by Geraldine Ramiah of The Standard Bank of South Africa Limited ("Standard Bank") on 22 April 2016 ("the email") to Ronica Ragavan of Oakbay 1.2 Investments Proprietary Limited ("Oakbay") (a copy of which is attached for ease of reference).
- As set out in our letter -2
- OCM, the company that operates the mine, is still in business rescue and our clients, the business rescue practitioners, have full management control of OCM, in substitution for its 2.1board and pre-existing management, for the duration of OCM's business rescue proceedings. Accordingly, all actions taken by the board of OCM require the prior written consent of the business rescue practitioners, failing which such actions will, in accordance with section 137(4) of the Companies Act 71 of 2008, as amended ("Companies Act"), be deemed to be vold; and
- all engagements, and decisions taken, in respect of the trustees of the environmental trust, investment decisions about the environmental trust and any matters related to the 2,2 environmental trust will require the participation, attendance and consent of the joint business rescue practitioners.

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 MNN Bhengu Z Bileden HGB Boshoff GT Bossr Di Boswell MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villers R Driman LJ du Prez RJ Feenstra S Fodor Sordiner D Gewer JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honibail VR Hoslosky BB Hotz HC Jacobs TJ Janse van Rensburg N Harduth G Johannes SJuly J Kallmeyer SLG Kayana A Kenny BM Kew R Killoran N Kiby HA Kotze S Krige. PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner G Johannes SJuly J Kallmeyer SLG Kayana A Kenny BM Kew R Killoran N Kiby HA Kotze S Krige. PJ Krusche P le Roux MM Lessing E Levenstein JS Lochner K Louw JS Lubbe BS Mabasa PK Mabaso MPC Manaka H Masondo SM Moerane C Moraitis PM Mosebo KO Motshwane L Nadoo J Nickig JJ Niemand BPF Olivier WE Oosthulzen S Padayachy M Pensegrouw CP Pauw AV Pillay D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdith L Rood BPF Olivier WE Oosthulzen S Padayachy M Pensegrouw CP Pauw AV Pillay D Pisanti T Potter BC Price AA Pyzikowski KJ Raath A Ramdith L Rood BPF Olivier WE Oosthulzen S Padayachy M Pensegrouw CP Pauw AV Pillay D Pisanti T Potter BC Price AA Pyzikowski KJ Raath A Ramdith L Rood BPF Olivier WE Oosthulzen S Padayachy M Pensegrouw CP Pauw AV Pillay D Pisanti T Potter BC Price AA Pyzikowski KJ Raath A Ramdith L Rood BPF Olivier WE Oosthulzen S Padayachy H Nenwe HA van Niekerk FJ van Tonder JP van Wyk A Vatalidis RN Wakefield DC Walker L Watson D Weglerski 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 Weglerski G Wilcidns M Wiehahn DC Willians DG Williams E Wood BW Workman-Davies

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- 3 It is clear from the content of the email that Tegeta Exploration and Resources Proprietary Limited and/or Oakbay and Ms Ragavan have paid scant regard to the content of our letter in that a request has been made to Standard Bank, directly, without the participation, attendance and consent of the joint business rescue practitioners to transact on the environmental trust fund account held with Standard Bank.
- 4 We are Instructed to advise you that our clients take serious issue with this conduct, particularly in light of the letter sent to Tegeta just a few days ago, and under no circumstances permit the transaction on the environmental trust account without the consent of the business rescue practitioners.
- 5 Notwithstanding what is set out above, Ms Ragavan has no authority to issue such instruction to Standard Bank. It is only the trustees of the trust who are empowered to transact on the funds held in such account, subject to the terms of the trust deed and their flduclary obligations to the trust.
  - Furthermore, OCM is under a legislative obligation to maintain sufficient funds in the trust's account to meet the rehabilitation obligations of the company under regulation 53 and 54 of the Mineral and Petroleum Resources Development Act 28 of 2002 ("MPRDA") and under section 24P of the National Environmental Management Act 107 of 1998 ("NEMA") as read with the regulations promulgated under NEMA on 20 November 2015 dealing with financial provisions for rehabilitation and to ensure that the funds are held or invested into accounts and/or instruments which meet the requirements of section 37A of the Income Tax Act 58 of 1962 ("Income Tax Act").
- 7 Accordingly, we are instructed to demand from Tegeta, as we hereby do, that Tegeta furnish our clients with the following irrevocable undertakings by 17h00 on Tuesday, 26 April 2016 –
- 7.1 the directors or Tegeta and/or OCM will not issue any instructions to any bank with respect to the withdrawal, movement or investment of any of the funds held in the trust's account;
- 7.2 Tegeta will procure that the new trustees, when appointed by Tegeta, will -
- 7.2.1 ensure that the funds of the trust are always held in an account or invested into Instruments which comply with section 37A of the Income Tax Act; and
- 7.2.2 maintain the trust's funds at a level sufficient to discharge OCM's statutory obligations under the MPRDA and NEMA and the regulations in force thereunder.
- 8 We are further instructed to advise you that in the event that Tegeta and/or any representative of Oakbay attempt on any basis to act in contravention of the powers and authority of the joint business rescue practitioners and/or any of the undertakings referred to above our clients will be obligated in accordance with the flduciary duties and legislative obligations that they owe to OCM and its affected persons, to institute proceedings to –
- 8.1 interdict Tegeta and/or any representative of Oakbay from conducting any business of OCM without the participation, attendance and consent of the joint business rescue practitioners;
- 8,2
- to claim such damages as OCM may have suffered from the relevant party; and

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- notify the affected persons of OCM and the regulatory authorities, of such applications, as our clients are required to do in terms of sections 144(3)(a), 145(1)(a), 146(a) and 8,3 regulation 125 of the Companies Act.
- As an aside, and as you are most likely aware, any contravention of the sections of the MPRDA and NEMA described above is a criminal offence under section 98 of the MPRDA and in terms of 9 regulation 18 of the NEMA regulations promulgated on 20 November 2015 and may result in a fine and/or imprisonment in addition to any civil remedies that may be available to the business rescue practitioners, OCM and/or its affected persons.
- Our clients' rights remain fully and strictly reserved. 10

THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

Yours faithfully

Werksmans Attorneys



PMM 45

G.P.-S 003-01-18



REPUBLIC OF SOUTH AFRICA

# MAGTIGINGSBRIEF LETTERS OF AUTHORITY

Ingevolge Arlikel 6(1) van die Wet op Beheer oor Trustgoed, 1988 (Wet 57 van 1988) In terms of Section 6(1) of the Trust Property Control Act, 1988 (Act 57 of 1988)

No: .....

Hiermee word gesertifiseer dat /

This is to certify that ALTHAF EMMAMALLY - 6907145142089 PUSHPAVENI UGESHNI GOVENDER - 7504240157085 TREVOR WILLIAM SCOTT - 7812315130089

gemagtig word om op te tree as trustee(s) van die / is/are hereby authorized to act as trustee(s) of the OPTIMUM MINE REHABILITATION TRUST

Signature

ASSISTENT MEESTER ASSISTANT MASTER

Г	MASTER OF THE NORTH GAUTENO HIGH COURT PRETORIA	
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DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

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# MM 46

#### DELIVERED BY EMAIL

### Trustees appointed to the Optimum Mine Rehabilitatio **Trust Fund**

Attention: Althaf Emmamally Attention: Pushpaveni Ugeshni Govender Attention: Trevor William Scott

c/o Nazeen Howa Email: nazeemh@tnamedla.co.za

c/o Ronica Ragavan Emall: ronIca@oakbay.co.za

YOUR REFERENCE:

OUR REFERENCE: DIRECT PHONE: DIRECT FAX: EMAIL ADDRESS:

Mr E Levenstein/lb/OPTI13168.19/#3766333v2 +27 11 535 8237 +27 11 535 8737 elevensteln@werksmans.com

5 May 2016

Dear Sirs

# OPTIMUM COAL MINE PROPRIETARY LIMITED (IN BUSINESS RESCUE)

- We act on behalf of Piers Marsden and Peter van den Steen, the joint business rescue practitioners of Optimum Coal Mine Proprietary Limited ("OCM"), and on behalf of OCM.
- We understand that Tegeta Exploration and Resources Proprietary Limited ("Tegeta") has appointed Althaf Emmamally, Pushpaveni Ugeshni Govender and Trevor William Scott as 2 trustees to the Optimum Mine Rehabilitation Trust Fund ("Trust").
- We are also told by Tegeta's attorney of record, Mr Gert van der Merwe of Van der Merwe & Assoclates Incorporated ("van der Merwe"), In a letter addressed to Werksmans dated 28 April 3 2016, that you Intend to transfer the funds held In the Trust's account from The Standard Bank of South Africa Limited ("Standard Bank") to a different bank account with another banking Institution.
- These funds secure (and will, in the fullness of time, be used) to discharge OCM's statutory rehabilitation obligations, Any decrease or loss in these funds will create a shortfall that OCM 4 will need to 'make up' or service from its other assets and resources (to the extent any such other assets and resources are available and sufficient for this purpose at the relevant time). If OCM is not able to make up this shortfall, then it would find itself in contravention of a number of different statutes. This could negatively affect its standing with regulatory bodies and impact upon its other operations (including, without limitation, the livelihoods of the employees of OCM).

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 TJ Bosweil MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Codser C Cole-Morgan JN de Villiers R Driman LJ du Preez RJ Feenstra S Fodor SJ dordiner D Gewer JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hoslosky BB Hotz HC Jacobs TL Janse van Rensburg N Harduth SJ Gardiner D Gewer JA Gobetz R Gootkin ID Gouws GF Griessel J Hollesen MGH Honiball VR Hoslosky BB Hotz HC Jacobs TL Janse van Rensburg N Harduth G Johannes J July J Kalimeyer 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 PK Mabaso MPC Manaka H Masondo SM Moerane C Moralits PM Mosebo KO Motshwane L Naldoo 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 Sibidia 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 Vataildis RN Wakefield DC Walker L Watson D Weglerski G Wickins M Wiehahn DC Willians DG Williams E Wood BW Workman-Davles

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- 5 Accordingly, our clients have a material interest in the funds which are held in the Trust's account and their continued preservation.
- 6 To this end, our clients have instructed us to remind you that your primary fiduciary duty as trustee is to safeguard the relevant funds on behalf of OCM and the Department of Mineral Resources ("DMR") (as the sole and exclusive beneficiary of the Trust). You should therefore act independently and cannot take instructions from Tegeta with respect to your duties or these funds. It is therefore surprising to us that van der Merwe should know of your intentions even before you were appointed.
- 7 To ensure that OCM's interest in the funds is protected, our clients would like you to kindly revert by close of business today with further detail, as set out below, pertaining to bank and the account into which you intend to transfer the Trust's funds, namely -
- 7.1 full details of the bank to which the trustees intend to transfer the Trust's funds, including details about whether such bank is a branch or division of a foreign bank or is separately registered as a local subsidiary of a foreign bank;
- 7.2 full details about whether the bank is registered as a 'bank' in South Africa by the South African Reserve Bank in accordance with the Banks Act 94 of 1990 (as amended);
- 7.3 full details about the capital adequacy of the bank;
- 7.4 full details about the credit rating of the bank and how this compares with the credit rating of Standard Bank;
- 7.5 full reasons why you believe such a transfer is necessary; and
- 7.6 whether the trustees have investigated the extent to which the funds will be ring-fenced at the new bank.
- 8 Please could you further advise whether ministerial consent is required and whether you will be approaching the Minister or the Department for consent.
- 9 Van der Merwe has Indicated in the 28 April 2016 letter that Standard Bank wishes to distance Itself from Tegeta, is unwilling to conduct business with Tegeta and Intends to close the bank accounts of OCM. Our clients intend to engage with Standard Bank to request that they maintain the Trust account for the duration of the business rescue proceedings of OCM.
- 10 Our clients' rights remain fully and strictly reserved.

Yours faithfully

Werksmans Attorneys THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

# PMM 4



The Werksmans Attorneys 155, 5th Street, Sandton-2196

Attn.Mr E Levensrein

Date: 05th May 2016

Dear Sirs,

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### OPTIMUM COAL MINE PROPRIETARY LIMITED (IN BUSINESS RESCUE) Kindiy refer to your letter dated 5th May 2016 in the captioned matter. In this connection we

have to advise seriatim as under;

1. 7.1 Name of the Bank: Bank of Baroda, Johannesburg Branch. It is a branch of Bank of Baroda, India, incorporated in India on 20th July 1908. It a Government of India Undertaking, Majority shares are held by Government of India;

ii.

- 7.2 The Bank is registered as "Bank" in South Africa 2.
- 7.3 The Capital Adequacy Ratio (%) Basel-III: 12,60 3. i. Basel-I: 13.33
  - 7.4 Credit Rating of Bank of Baroda;
    - Moody's- BCA- "ba2"
    - Moody's- CR Assessment- Baa-3
    - Fitch- IDR Rating: "BBB-"
    - Fitch VR Rating: "bb+"- Outlook "Stable"

In this connection we would like to mention that the oredit rating of Standard Bank of South Africa is also the same/similar to Bank of Baroda;

7.5 Standard Bank is closing all the accounts of the Oakbay Group ( the "Group"). Although they have not asked for closure of this account but as a business decision it would not be prudent to transfer the transaction accounts to other bank and leave the hucrative bulk deposit account with the non-cooperating bankers. Further, with a larger deposit at a bank it would be easy to negotiate finer banking charges. It has therefore been decided to transfer the account to Bank of Baroda.

7.6 The trustees shall ensure that the funds are managed as per the Trust Deed in place.

8. We will approach the DMR for approval before transfer;

9. We are willing to leave the Trust account with Standard bank provided they should be ready to treat the Group companies as a normal client and carry on with the bank accounts of other companies,

Yours faithfully

0 Authorised Trustee

Optimum Coal Mine (Pty) Ltd (Registration No.: 2007/005308/07 ---- 144 Katherine Street, Grayston-Ridge-Office Park, Block A Lower Ground-Floor, Johannesburg, South Am Tel.: +27 11 542 2200 Fax: 086 685 1814

Directors: N Howa | PU Govender | ) Roux

PMM 48

### DELIVERED BY EMAIL

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### Trustees appointed to the Optimum Mine Rehabilitat **Trust Fund**

Attention: Althaf Emmamally Attention: Pushpaveni Ugeshni Govender Attention: Trevor William Scott

c/o Ravindra Nath Email: nath@oakbay.co.za



YOUR REFERENCE: Mr E Levensteln/lb/OPTI13168.19/#3771843v2 OUR REFERENCE: +27 11 535 8237 DIRECT PHONE: +27 11 535 8737 DIRECT FAX: EMAIL ADDRESS: elevensteln@werksmans.com

9 May 2016

Dear Sirs

# OPTIMUM COAL MINE PROPRIETARY LIMITED (IN BUSINESS RESCUE)

- We refer to your letter dated 5 May 2016 ("your letter"). 1
- We do not intend to unnecessarily repeat what is stated in our previous correspondence or to deal with every allegation in your letter. Our clients' rights to do so at an appropriate time are 2 reserved.
- In paragraphs 1 to 4 of your letter, you have advised our clients of the details pertaining to the bank, being the Bank of Baroda, to which you wish to transfer the funds held on behalf of the 3 Optimum Mine Rehabilitation Trust Fund ("Trust"),
- Our clients are concerned that the increased risk associated with transferring the Trust's funds to the Bank of Baroda may jeopardise the funds held as security for Optimum Coal Mine 4 Proprietary Limited's ("OCM") rehabilitation obligations on the basis that the Bank of Baroda has a worse credit rating than The Standard Bank of South Africa Limited ("Standard Bank").
- In this regard, research shows -5
- Moody's BCA has rated the Bank of Baroda with a "ba2" rating and Standard Bank with a "baa2" rating. This rating indicates that the Bank of Baroda has speculative intrinsic, or 5.1standalone, financial strength and is subject to substantial credit risk absent any possibility of extraordinary support from an affiliate or Government compared to Standard Bank's rating which indicates that the bank has medium grade intrinsic, or standalone, financial strength and is thus subject to moderate credit risk, and as such may possess

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 Bileden HGB Boshoff GT Bossr Di Boswell 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 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 Kalimeyer 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 PK Mabaso MPC Manaka H Masondo SM Moerane C Moralits PM Mosebo KO Motshwane L Naldoo J Nickig JJ Niemand BPF Olivier WE Oosthulzen S Padayachy M Pansegrouw CP Pauw AV Pillay D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood BPF Olivier WE Oosthulzen S Padayachy M Pansegrouw CP Pauw AV Pillay D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood 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 Weglerski G Wickins M Wiehahn DC Willans DG Williams E Wood BW Workman-Davies

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certain speculative credit elements absent any possibility of extraordinary support from an affiliate of Government;

5.2

5.3

- Moody's CR Assessment has rated the Bank of Baroda as "baa3" and Standard Bank as "baa1". This rating indicates that the Bank of Baroda is medium grade and subject to moderate risk of defaulting on certain senior operating obligations and other contractual commitments and as such may possess certain speculative characteristics but with an "acceptable" ability to honour short term operating obligations; and
- Fitch Vlability Ratings has rated the Bank of Baroda with a "bb+" rating and Standard Bank with a "bbb-" rating. This indicates that the Bank of Baroda has moderate prospects of ongoing vlability and that a "moderate" degree of fundamental financial strength exists, which would have to be eroded before the bank would have to rely on extraordinary support to avoid a default, but that an "elevated" vulnerability exists to adverse change in business or economic conditions compared to Standard Bank whose rating indicates that the bank has good prospects of ongoing viability, that the bank's fundamentals are adequate, such that there is a "low" risk that it would have to rely on extraordinary support to avoid default but that adverse business or economic conditions are more likely to impair its capacity.
- 6 Based on the above, there appears to be a difference in the credit ratings of the two banks. In particular, the lower credit rating of the Bank of Baroda increases the risk associated with placing a deposit in the magnitude of R1.5 billion with such a bank. This risk is not, in our clients' view, sufficiently compensated by the lower fees payable or the potentially higher interest rate that applies to these funds while under the control of the Bank of Baroda.
- 7 Furthermore, In paragraph 5 of your letter you state that -
- 7.1 "it would not be prudent to transfer the transaction accounts to [an]other bank and leave the lucrative bulk deposit account with the non-co-operating bankers." We take It that you are referring to the other Group transaction banking accounts; and
- 7.2 "with a larger deposit at a bank it would be easy to negotiate finer banking charges". Yet again we assume that here you are referring to the charges on the other transaction accounts of the Group.
- 8 Your statements and purported justification are of concern to our clients as your duty, as trustees of the Trust, are to the Trust and not to the Group. These other "transaction accounts" are not those of the Trust and cannot influence the Trustees' decision in relation to the Trust.
- 9 The sole object of the Trust as recorded in clause 3.2 of the Trust Deed is to apply the Trust's property solely to discharge the statutory obligations of the beneficiary. It would be a breach of the Trustees' fiduciary duties to compromise this objective.
- 10 Our clients are concerned that by transferring the funds in the manner intended by you, this will indeed compromise the security of the Trust.
- 11 Accordingly, any decision taken in respect of the Trust should be taken by the Trustees objectively and independently and not having regard to other transaction accounts.
- 12 Without any support or justification, you have suggested that the Bank of Baroda will, upon the placement of the Trust's funds into a bank account with them, be beneficial to the Trust.

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- 13 Our clients are of the view that in the event that the Trust's account is moved from Standard Bank, it should be moved to an entirely independent bank and a bank that is independent of any bank at which the Group companies are to conduct their accounts. There should be no risk that the Trust's account is in any way associated with the Group accounts and its affairs.
- 14 As representatives of OCM, and beneficiary of the Trust, our clients have accordingly instructed us to record as we do, that they are not comfortable with the decision that the trustees intend to make to transfer the funds to the Bank of Baroda, particularly because you have provided no support for the benefit you intend to procure from a transfer of the funds.
- 15 To assist our clients in understanding your proposed conduct, our clients require the following irrevocable undertakings and/or confirmations, in a form and substance satisfactory to our clients -
- 15.1 an irrevocable undertaking, to be procured by the trustees from the Bank of Baroda, that the Trust's funds will be -
- 15,1,1 ring-fenced in a separate account; and
- 15.1.2 unencumbered and at all times retained solely for the benefit of the Trust on terms comparable to those upon which the Trust's fund are currently held on deposit with Standard Bank;
- 15.2 confirmation from the Bank of Baroda that it has read and understood the provisions of the Trust Deed (which Trust Deed should be annexed to the confirmation and referenced as annexed thereto in the confirmation) and undertakes to act in accordance therewith at all times when dealing with the Trust's funds;
- 15.3 separate irrevocable undertakings from each of the trustees, that each will ensure that -
- 15.3.1 the funds of the Trust are always held in "trust" and in an account or invested into instruments which comply with section 37A of the Income Tax Act; and
- 15.3.2 In the event that the account is transferred from Standard Bank to another bank, that the new bank will be entirely independent of any bank at which any of the Group companies conduct their accounts and business;
- 15.4 confirmation from the DMR that it (I) is aware that the Trust's funds are being transferred to another bank; and (II) consents to the transfer of the Trust's funds.

16 Our clients' rights remain fully and strictly reserved.

Yours faithfully

Werksmans Attorneys THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.





27 May 2016

Mr Nazeem Howa Chief Executive Tegeta Exploration and Resources (Pty) Ltd Lower Ground Floor, Block A Grayston Ridge Office Park 144 Katherine Street Sandton, 2196

Dear Sir

TERMINATION OF THE BANKING RELATIONSHIP BETWEEN STANDARD BANK AND OPTIMUM COAL MINE (PTY) LTD (REGISTRATION NUMBER: 2007/005308/07)

We refer to the request received from Glencore AG, an existing client of The Standard Bank of South Africa Limited ("SBSA"), to allow substitution of authorised signatories for the account/s currently held in the name of Optimum Coal Mine (Pty) Ltd ("OCM"), pursuant to the sale of the shares in that company to Tegeta Exptoration and Resources ("Tegeta").

As the sale took the form of a sale of shares, the request had the effect of substituting Tegeta for Glencore AG as the owner of OCM. Consequently SBSA was obliged, on account of its regulatory obligations, to perform the required KYC and due diligence processes for Tegeta before consenting to the retention of the OCM account/s, or not.

The outcome of the KYC and due diligence identified unacceptable risks for SBSA. As a result thereof, after due consideration, SBSA has decided not to establish a business relationship with Tegeta. The effect of this decision is that SBSA will terminate its existing banking relationship with Optimum Coal Mine (Pty) Ltd on reasonable notice. We will also no longer be extending any future facilities in favour of this entity.

SBSA hereby informs you that the account held in the name of Optimum Coal Mine (Ply) Ltd will be closed on 27 July 2016.

Kindly provide us with the bank account details where the available funds held in the account may be transferred to. Alternatively, a bank cheque(s) will be issued in your favour, which will be ready for collection on the first business day after the account closure date.

Yours sincerely

Kenny Fihla Franchise Head: Corporate and Investment Banking, SA

cc David Munro, Chief Executive, Corporate and Investment Banking cc Piers Marsden and Peter van den Steen, Joint Business Partner Rescue Practitioners, V-Squared Rescue Services (Piy) Ltd

Standard Bunk Centre 1ª Floor 5 Simmonds Sirael Johannesburg 2001 / PO Box 61690 Marshalltown 2107 South Africa Tel, Switchboard: +27 (0)11 536 9112 Fax +27 (0)11 536 4207 / Name.Surname@standardbank.co.za / standardbank.co.za

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Standard Bank Moving Forward™ /

credit of the OMRT account/s with Standard Bank to another institution subject to the prior written approval of the Department of Mineral Resources being obtained,

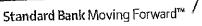
Yours since

142.5

Kenny Fihla Franchise Head: Corporate and investment Banking, SA

cc David Munro, Chief Executive, Corporate and Investment Banking

T. Tops





#### 27 May 2016

## The Trustees

Optimum Mine Rehabilitation Trust Lower Ground Floor, Block A Grayston Ridge Office Park 144 Katherine Street Sandton 2196

#### And lo

Mr Piers Marsden and Mr Peter van den Steen Joint Business Partner Rescue Practitioners V-Squared Business Rescue Services (Pty) Ltd 916 Wexford Drive Dainfern Golf and Residential Estate Dainfern 2055

#### Dear Sir

TERMINATION OF THE BANKING RELATIONSHIP BETWEEN STANDARD BANK AND OPTIMUM MINE REHABILITATION TRUST (IT 3693/07)

We refer to the notification to us of the change in Trustees for the Optimum Mine Rehabilitation Trust and the request to us that we substitute the authorised signatories for the account/s currently held in the name of Optimum Mine Rehabilitation Trust ("OMRT"), pursuant to the sale of shares agreement between Optimum Coal Holdings Proprietary Limited and Tegeta Exploration and Resources ("Tegeta")("the Purchase and Sale").

After due consideration, SBSA has decided not to establish a business relationship with Tegeta and consequently will be terminating its relationships with all companies acquired by Tegeta in terms of the Purchase and Sale.

The effect of this decision is that SBSA will need to terminate its existing banking relationship with Optimum Mine Rehabilitation Trust on reasonable notice.

In accordance with the terms of the Trust Deed governing the management and disposal of the funds held in the Optimum Rehabilitation Trust account and that is set aside as a rehabilitation fund for the Optimum Coal Mine, we hereby request the trustees of the Trust and the Business Rescue Practitioners for Optimum Coal Holdings and its former subsidiaries to make arrangements for the transfer of the funds standing to the

Standard Bank Centre 1" Floor 5 Simmonds Street Johannesburg 2001 / PO Box 61690 Marshalliown 2107 South Africa Tel. Switchboard: +27 (0)11 636 9112 Fax +27 (0)11 636 4207 / Name.Surname@slandardbank.co.za / standardbank.co.za

The Stundard Barik of Bouth Ardon Litalud (Reg.No. 195203979006) Authorized Iliratics services and registered second provider (NCROP15)

Directors: TE Gonbosto (Chalman) GK Yahabatas (Child Escontivo) Or. A Daohata' RMW Dientoff BJ Kupya' Ady RD Metrico: Dr. Nii. Odcor-Otlonoff AD Perker, ANA Peterido controli MJD Ruek PD Sullivantikyy; BG Tyhabalaia EM Woods

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### OPTIMUM MINE REHABILITATION TRUST

## EXTRACT FROM THE MINUTES OF THE MEETING OF THE TRUSTEES OF

OPTIMUM MINE REHABILITATION TRUST (REGISTRATION NUMBER: IT 3696/07)

#### ("THE TRUST")

HELD AT SANDTON ON THE 13TH JUNE 2016



4

The Trustees have received a notice from the present bankers of the Trust (Standard Bank of South Africa) for closure of the trust account maintained with them.

IT WAS RESOLVED THAT:

- 1. the Trust request Bank of Baroda, Johannesburg to open the account of the Trust with them.
- the Trust funds presently held with Standard Bank should be transferred to the account with Bank of Baroda, Johannesburg once the account is opened.
- 3. P U Govender In her capacity as the Trustee of the Trust be and is hereby authorised to sign all the documents required to give effect to the resolution.

CERTIFIED A TRUE COPY

Chairman of the Meeting

Optimum Mine Rehabilitation Trust (Trust No.: IT13693/07) 144 Katherine Street, Grayston Ridge Office Park, Block A Lower Ground Floor, Johannesburg, South Africa Tel.: +27 11 542 2200 Fax: 086 685 1814

Trustees: PU Govender | TW Scott | A Emmamally

PMMSI

#### DELIVERED BY EMAIL

Joint Business Rescue practitioners of Optimum Coal Mine Proprietary limited

Attention: Piers Marsden Emaii: <u>pmarsden@matusonassociates.co.za</u>

Attention: Peter van den Steen Email: <u>peter@v2rescue.co.za</u>

#### 15 June 2016

#### OPTIMUM MINE REHABILITATION TRUST FUND

- 1. We refer to your previous correspondence and to your letters dated 24 April 2016, 5 May 2016 and 9 May 2016 ("your letters").
- 2. As you are aware,
  - a, there is currently an amount of R1,461,000 000.00 which is held in an account, in the name of the Optimum Mine Rehabilitation Trust Fund ("Trust"), with The Standard Bank of South Africa Limited ("Standard Bank"); and
  - b. Standard Bank has confirmed that it will be closing the Trust's bank account and has requested that the Trust's funds be transferred to another banking institution, with the written approval of the Department of Mineral Resources ("DMR").
- 3. The trustees have engaged with other local banking institutions and no local South African bank is willing to establish relations with, inter alia, OCM. The trustees have identified the Bank of Baroda as the banking institution to whom the Trust's funds will be transferred.
- 4. The DMR furnished its consent to the transfer of the Trust's funds to the trustees on 5 May 2016. A copy of the DMR's lefter is enclosed marked A.
- 5. We appreciate the concerns that you have, as the representatives of the beneficiary of the Optimum Mine Rehabilitation Trust Fund have set out in your letters, and we trust that the undertakings provided in this letter will provide you with the comfort that you seek.
- As trustees of the Trust, we each irrevocably and unconditionally undertake in favour of OCM that the Trust's fund will at all times –
  - a. be held in "trust" and in an account or invasted into instruments which comply with section 37A of the income Tax Act 58 of 1962;
  - b. remain ring-fenced in a separate "trust" account;
  - c. will not be used or drawn down on, unless required for the purpose of OCM's environmental rehabilitation obligations in terms of the Trust Deed; and
  - d. be maintained at a level sufficient to discharge OCM's statutory obligations under the Mineral and Petroleum Resources Development Act 28 of 2002 and under section 24P of the National Environmental Management Act 107 of 1998 as read with the regulations promulgated under NEMA on 20 November 2015 dealing with financial provisions for rehabilitation
- 7. Should you have any questions or queries, feel free to contact Pushpaveni Govender.

Yours faithfully

Pushpaveni Govender

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Trovor William Scott

Contact Number 0828586089

Contact Number 6 08288888799

Contact Number 0833808040

Trustees of the Optimum Mine Rehabilitation Trust Fund



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URGENT



#### DELIVERED BY EMAIL

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#### South African Reserve Bank

Attention: Registrar of Banks Emall: rene.vanwyk@resbank.co.za 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 Fax www.werksmans.com enquiries@werksmans.com

YOUR REFERENCE: DIRECT PHONE: DIRECT FAX: EMAIL ADDRESS:

OUR REFERENCE: Mr E Levenstein/OPTI13168.19/#3821963v2 +27 11 535 8237 +27 11 535 8737 elevensteln@werksmans.com

27 June 2016

Dear Sirs

# OPTIMUM COAL MINE PROPRIETARY LIMITED (IN BUSINESS RESCUE)

- As you are aware, Optimum Coal Mine Proprietary Limited ("OCM"), the company that owns the Optimum coal mine, was placed in business rescue on 4 August 2015 and remains in 1 business rescue.
- We act on behalf of Piers Marsden and Peter van den Steen, the joint business rescue 2 practitioners of OCM and on behalf of OCM.
- OCM is the beneficiary of the Optimum Mine Rehabilitation Trust Fund ("Trust"), a Trust established for the purpose of holding funds to secure the environmental rehabilitation 3 obligations of OCM.
- There is currently an amount of approximately R1.5 billion which is held in an account, in the name of the Trust, with The Standard Bank of South Africa Limited ("Standard Bank"). 4
- Standard Bank has advised the trustees of the Trust that It does not intend to establish business relationships with Tegeta Resources and Exploration Proprietary Limited ("Tegeta") 5 (who nominated, and who subsequently have been appointed, the trustees of the Trust) and that it will be terminating its relationship with all companies in the Tegeta group.
- OCM is a subsidiary of Tegeta. 6
- The effect of this is that Standard Bank will be closing the Trust's bank account and has requested that the Trust's funds be transferred to another banking institution, with the written 7 approval of the Department of Mineral Resources ("DMR").

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 Bileden HGB Boshoff GT Bossr J Bosweil MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villers R Driman LJ du Preez RJ Feenstra S Fodor SJ Bosweil MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villers R Driman LJ du Preez RJ Feenstra S Fodor SJ Bosweil MC Brönn W Brown PF Burger PG Cleland JG Cloete PPJ Coetser C Cole-Morgan JN de Villers R Driman LJ du Preez RJ Feenstra S Fodor SJ dordner D Gewer JA Gobetz R Gootkin ID Gouws GF Griesse1 J Hollesen MGH Honibail VR Hoslosky BB Hotz HC Jacobs TL Janse van Rensburg N Harduth G Johannes J July J Kalimeyer 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 PK Mabaso MPC Manaka H Masondo SM Moerane C Moraitis PM Mosebo KO Motshwane L Naldoo JNickig JJ Niernand BPF Olivier WE Oosthulzen S Padayachy M Pansegrouw CP Pauw AV Pillay D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood BPF Olivier WE Oosthulzen S Padayachy M Pansegrouw CP Pauw AV Pillay D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood BPF Olivier WE Oosthulzen S Padayachy M Pansegrouw CP Pauw AV Pillay D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood BPF Olivier WE Oosthulzen S Padayachy M Pansegrouw CP Pauw AV Pillay D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood BPF Olivier WE Oosthulzen S Padayachy M Pansegrouw CP Pauw AV Pillay D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood BPF Olivier WE Oosthulzen S Padayachy M Pansegrouw CP Pauw AV Pillay D Pisanti T Potter BC Price AA Pyzikowski RJ Raath A Ramdhin L Rood KO 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 Weglerski

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- 8 The trustees of the Trust have advised the business rescue practitioners that they have identified the Bank of Baroda as the banking institution to whom the Trust's funds will be transferred. At present the trustees intend to transfer an amount of R1.5 billion.
- 9 In light of the fact that the DMR has Indicated that it is agreeable to the Trust's funds being transferred to the Bank of Baroda, provided they are a bank registered as such by the South African Reserved Bank ("SARB") and recent press reports which have indicated that SARB is investigating the Bank of Baroda, the business rescue practitioners have requested us to write to you to enquire whether SARB has any reservations or concerns with the trustees transferring the Trust's funds to the Bank of Baroda.
- 10 We understand that the DMR has approved of the transfer of the funds, subject to the condition referred to above, and that the transfer of the funds is imminent.
- 11 Your urgent attention and response to this would be appreciated.
- 12 We look forward to hearing from you.

Yours falthfully

Werksmans Attorneys THIS LETTER HAS BEEN ELECTRONICALLY TRANSMITTED WITH NO SIGNATURE.

PMM53

WERKSMANS ATTORNEYS

LB/JC 06072016/0PT13168-19 Memo to SARB - 7 July 2016/#38515B7v2

#### MEMO

TO:JOHANN DE JAGER - GENERAL COUNSEL OF THE SOUTH AFRICAN RESERVE BANKFROM:ERIC LEVENSTEINSUBJECT:OPTIMUM COAL MINE PROPRIETARY LIMITED (IN BUSINESS RESCUE)DATE:7 JULY 2016

1 We refer to our letter dated 27 June 2016 ("Letter").

2 We have been requested to provide further background information in relation to the Letter, which we set out hereunder.

- 3 Optimum Coal Mine Proprietary Limited ("OCM"), the company that owns the Optimum coal mine, was placed in business rescue on 4 August 2015 and remains in business rescue.
- 4 Piers Marsden ("Marsden") and Peter van den Steen ("Van den Steen") are the joint business rescue practitioners of OCM who have full management control of OCM in substitution for the board of directors and pre-existing management by virtue of s 140(1)(a) of the Companies Act 71 of 2008.
- 5 Werksmans acts on behalf of Marsden, Van den Steen and OCM.
- 6 The purpose of this memorandum is to place SARB in possession of further information about the sequence of events, at least as far as our clients are aware, that led to the trustees of the Optimum Mine Rehabilitation Trust Fund ("Trust") deciding to transfer the Trust's funds to an account held with the Bank of Baroda.
- 7 The Regulations under the Mineral and Petroleum Resources Development Act 28 of 2002 ("MPRDA") and the provisions of the National Environmental Management Act 107 of 1998 ("NEMA") together with its Regulations require security in relation to the rehabilitation obligations of OCM.
- 8 The security has been provided by funds being held in a Trust established under a Deed of Trust for the establishment of Optimum Mine Rehabilitation Trust Fund ("Trust Deed ").
- 9 The Trust Deed identifies OCM as the beneficiary of the Trust.
- 10 The Trust is a separate legal entity, administered by the trustees, in accordance with the provisions of the trust instrument, for the benefit of the beneficiaries, and in furtherance of the objectives of the trust.



Memo to SARB - 7 July 2016/#3851587v2 06072016



- 11 Insofar as the Trust in question is concerned, it is controlled by the trustees, who in this instance were nominated, and subsequently appointed by Tegeta Resources and Exploration Proprietary Limited ("Tegeta"), for the benefit of OCM, the beneficiary of the Trust."
- 12 Our clients, as business rescue practitioners of OCM, exercise no control over the Trust
- 13 The objects of the Trust are expressed in clause 3.2 of the Trust Deed as -

"The sole object of the Trust is to apply its property solely for rehabilitation upon premature closure, decommissioning and final closure and post closure coverage of any latent and residual environmental impacts on the area covered in terms of any permit, right, reservation or permission; to restore one or more areas to their natural or predetermined state; or to a land use which conforms to the generally accepted principle of sustainable development and apply the funds received by it in accordance with section 11(hA) and s 37A of the IT Act, in order to discharge the statutory obligations of the beneficiary/les."

- 14 The business rescue practitioners of OCM were advised by the trustees that the Standard Bank of South Africa Limited ("Standard Bank") had advised them (the trustees) that the funds held in an account, in the name of the Trust, with Standard Bank, needed to be transferred to another banking institution on the basis that Standard Bank did not intend to establish business relationships with Tegeta and would be terminating its relationship with all companies in the Tegeta group.
- 15 OCM is a subsidiary of Tegeta, pursuant to Tegeta having acquired, *Inter alia*, the shares and claims held by Optimum Coal Holdings Proprietary Limited in OCM, during December 2015.
- 16 The effect of Standard Bank's decision is that Standard Bank will be closing the Trust's bank account on 27 July 2016 and has requested that the Trust's funds be transferred to another banking institution, with the written approval of the Department of Mineral Resources ("DMR").
- 17 The trustees of the Trust accordingly advised the business rescue practitioners that they had identified the Bank of Baroda as the banking institution to whom the Trust's funds will be transferred.
- 18 In light of the aforesaid, the business rescue practitioners engaged with representatives of the Standard Bank to determine whether there was any basis upon which the bank would consider

Memo to SARB - 7 July 2016/#3851587v2 06072016



retaining an account in the name of the Trust for the Trust's funds. Standard Bank advised the business rescue practitioners that it was not in a position to do so.

19 Given the stance of Standard Bank (coupled with the attitude of other commercial banks, who had expressed their Intention in the press no longer to hold accounts for and on behalf of, *inter alia*, Tegeta) and notwithstanding the limited ability of a beneficiary to direct the trustees to act in any particular manner insofar as the Trust is concerned, the business rescue practitioners, as representatives of the beneficiary of the Trust, did, in correspondence to the trustees of the Trust, indicate their concern with the transfer of the funds and sought an irrevocable and unconditional undertaking from the trustees that they would ensure that at all times the Trust's funds –

19.1 be held in "trust" and in an account or invested into instruments which comply with section 37A of the Income Tax Act 58 of 1962;

- 19.2 remain ring-fenced in a separate "trust" account;
- 19.3 would not be used or drawn down on, unless required for the purpose of OCM's environmental rehabilitation obligations in terms of the Trust Deed; and
- 19.4 be maintained at a level sufficient to discharge OCM's statutory obligations under the MPRDA and NEMA (the latter as read with the regulations promulgated under NEMA on 20 November 2015 dealing with financial provisions for rehabilitation).
- 20 A copy of the Trustee's undertaking is enclosed herewith.
- 21 The DMR indicated that It was agreeable to the Trust's funds being transferred to the Bank of Baroda, provided the Bank of Baroda is a bank registered as such by SARB. A copy of the DMR's letter is enclosed herewith.
- 22 The business rescue practitioners researched the nature of the Bank of Baroda's license and credit rating, given the amount of the funds (approximately R1.5 billion) to be held on deposit at the Bank of Baroda, but the investment decision, was ultimately that of the trustees of the Trust and not that of the business rescue practitioners.
- 23 The practitioners met with representatives of the Bank of Baroda, ex abundanti cautela, to ensure that the Bank of Baroda was aware of the nature of the funds, that they needed to be ring-fenced and not utilised as security and to confirm that the bank had a copy of the Trust Deed.

Memo to SARB - 7 July 2016/#3851587v2 06072016



- 24 The purpose of our memorandum is to bring this matter to the attention of the SARB.
- 25 We trust that you find the above in order.



### MEETING WITH BANK OF BARODA

- Present -
- Nazeem Howa
- Pushpaveni Govender
- Ronica Ragavan
- Mr Gupta Bank of Baroda
- Representative from Bank of Baroda Bank of Baroda
- Piers Marsden
- Eric Levenstein
- Lauren Becker
- Given the current environment, the discussions were deemed to be confidential.

#### Piers Marsden –

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- The business rescue practitioners are grateful for the support that the Bank of Baroda has shown to OCM by agreeing to provide banking facilities to the Trust.
- The trustees are in the process of transferring R1.5 billion to the Bank of Baroda from The Standard Bank of South Africa.
- We, the business rescue practitioners trust that the Bank of Baroda will ensure that the trust funds are safely kept.
- The mine appears to be on the way to a sustainable operation.
- The business rescue practitioners want to be in a position to discharge the business rescue of OCM soon.
- The business rescue practitioners, in conjunction with the new shareholder representatives are trying to resolve the situation with the pre-commencement creditors.
- Thereafter it will be up to the management of OCM to manage the mine.
- Despite the statements made in the press, the business rescue practitioners believe that there remains a sustainable asset at Optimum.
- <u>Ronica Ragavan</u> P Govender is a representative in this meeting of the Optimum Coal Mine Rehabilitation Trust.

#### Piers Marsden -

- When the rehabilitation obligations of the mine need to be done, the funds will need to be available.
- As a bank you will understand that the funds have a designated purpose and the trustees have a responsibility to ensure that the funds are protected.
- <u>Ronica Ragavan</u> A trust account has been opened with the Bank of Baroda as well as a separate current account for the trustees.

#### Piers Marsden -

- The business rescue practitioners of OCM represent the beneficiary of the trust funds.
- We as beneficiary want to make sure that the funds are ring-fenced.
- The funds cannot be used as security and cannot be paid out.
- The aim is for OCM to be out of business rescue by 22 July 2016.
- The business rescue practitioners are trying to reconcile the claims of the precommencement creditors.

#### Ronica Ragavan –

- There are creditors from way before business rescue that weren't paid.
- Not sure how Glencore dealt with this.

- Piers Marsden -
- We will get to a point on the big accounts.
- For the balance of the creditors, they will be asked to sign a settlement agreement prior to payment.
- Ronica Ragavan –

- There are R259 million in pre-commencement claims.
- The aim is to pay creditors in terms of the business rescue claim forms that they have submitted.
- <u>Piers Marsden</u> Pre-commencement creditors cannot get paid unless they sign a full and final settlement agreement
- <u>Representative from Bank of Baroda</u> What will happen if someone comes along later and claims?
- Ronica Ragavan It will be OCM's responsibility to deal with such claims.
- Piers Marsden We have tried to put a final date on the submission of claims.
- Eric Levenstein When you talk about a trust account, is it held in terms of South African law? And do you have a copy of the trust deed?
- <u>Representative from Bank of Baroda</u> Yes, we have a copy of the trust deed.
- Representative from Bank of Baroda –
- Yes the funds are held in trust in accordance with South African law.
- The Bank of Baroda has taken legal advice from its attorneys, AW Jaffa, who is based in Pretoria.

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----- Forwarded Message -----From: "Plers Marsden" pmarsden@matusonassociates.co.za To: "ce sa" <<u>ce.sa@bankofbaroda.com</u>> Sent: Monday, September 5, 2016 7:50:27 AM Subject: Optimum out of BR

#### Dear Mr Gupta,

THE RECEIPTION OF THE PROPERTY OF T

Thank you for taking the time to meet with us on 13 June 2016 at the offices of the Bank of Baroda in Sandton,

We are most grateful that notwithstanding the current environment in which Tegeta Exploration and Resources Proprietary Limited finds itself with regard to banking in South Africa, that the Bank of Baroda has extended its support to Optimum as well as to the trustees of the Optimum Mine Rehabilitation Trust Fund ("Trust"), for the holding of the Trust's environmental rehabilitation funds.

We are pleased to advise you that OCM was discharged from business rescue on 31 August 2016 and that the management of Optimum Coal Mine Proprietary Limited ("OCM") is now in the hands of its board of directors,

Notwithstanding this, as you are aware from the Trust Deed (which you have a copy of) OCM, remains the beneficiary of the Trust's funds and accordingly the Trust's funds are required at all times to be safely kept in order to achieve the objectives set out in the Trust Deed.

We are comforted, following our meeting, with the knowledge that the Bank of Baroda has taken legal advice and will ensure that the Trust funds are held as trust funds in accordance with South African law, that they are earmarked as rehabilitation trust funds, that they will be ring-fenced and not used or drawn down on, unless required for the purpose of OCM's environmental rehabilitation obligations in terms of the Trust Deed, and that they will not oth erwise be used.

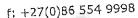
We thank you once again for your support.

Regards

Plers Marsden

c: +27(0)83 556 6751

t; +27(0)11 728 7166/7



w: www.matusonassociates.co.za

Should you not be the addressee and receive this e-mail by mistake, kindly notify the sender, and delete this e-mall, immediately and do not disclose or use same in any manner whatsoever. Views and opinions expressed in this e-mail are those of the sender unless clearly stated as those of the company. The company accepts no llability what soever for any loss or damages what soever and howsoever incurred, or suffered, resulting, or arising, from the use of this email or its attachments. The company does not warrant the integrity of this e-mail nor that it is free of errors,

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#### **Directorate for Priority Crime Investigations**

Anti-Corruption Desk A5 Promat Building 1 Cresswell Road Silverton Pretoria

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#### REPORT IN TERMS OF SECTION 34(1)(a) OF THE PREVENTION AND COMBATTING OF CORRUPT ACTIVITIES ACT 12 OF 2004

- We were appointed on 4 August 2015 by the Companies and Intellectual Property Commission ("CIPC") as the joint business rescue practitioners of Optimum Coal Holdings Proprietary Limited ("OCH") and its wholly-owned subsidiary, Optimum Coal Mine Proprietary Limited ("OCM").
- 2 OCH was discharged from business rescue on 15 April 2016, A copy of form CoR125.3 stamped by the CIPC is enclosed marked A. OCM is still in business rescue.
- We are accordingly addressing this to you in our capacities as the former, and current, joint business rescue practitioners ("BRPs") of OCH and OCM respectively. A copy of each of our certificates of appointment in respect of OCH and OCM is anciosed marked B1 and B2.
- The information contained in this letter is provided in terms of section 34(1)(a) of the Prevention and Combatting of Corrupt Activities Act 12 of 2004 ("PRECCA").
- 5 At the time of our appointment as BRPs, OCH was the majority shareholder of OCM and Glencore was the ultimate beneficial majority shareholder of OCH.
  - During or about 10 December 2015, OCH (then in business rescue), Tegeta Exploration & Resources Proprietary Limited ("Tegeta"), Giencore International AG and Oakbay Investments Proprietary Limited entered into a written sale of shares and claims agreement (as amended by the First Addendum dated 7 March 2016, the Second Addendum dated on or about 7 April 2016 and the Third Addendum dated on or about 13 April 2016) ("Sale Agreement"), in terms of which Tegeta agreed to purchase the shares and claims ("Target Shares and Claims") held by OCH in certain of its subsidiary companies, including OCM ("OCH/Tegeta Transaction"). The business rescue practitioners were a party to these agreements.
- 7 The details of the shareholders and the directors of Tegeta can be ascertained from the CIPC.
- 8 After the commencement of business rescue proceedings, OCM began supplying coal to, *inter allos*, Tegeta on agreed payment terms. We understand that Tegeta is a supplier of coal to Eskom Holdings SOC Limited ("Eskom").
- 9 In terms of the Sale Agreement, Tegeta was required, among other things, to make payment of the purchase price, in the amount of approximately R2.15 billion ("Purchase Price") for the Target Shares and Claims.
- 10 The Sale Agreement was subject to the fulfilment of certain suspensive conditions. These suspensive conditions were fulfilled and/or waived, as the case may be, by 8 April 2016, thereby rendering the Sale Agreement unconditional.

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11 The Purchase Price was required to be paid by Tegeta to Werksmans Attorneys, as escrow agent ("Escrow Agent"), on the third business day after the date on which the Sale Agreement became unconditional, which was 13 April 2016.

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- 12 Piers Marsden ("Marsden") received a telephone call from Nazeem Howa ("Howa"), on 11 April 2016 (le two days before payment was due under the Sale Agreement), requesting a meeting at the offices of Tegeta in Sandton on such date. The meeting was held on 11 April 2016 at approximately 10h00.
- 13 At such meeting, Marsden was advised by Howa that Tegeta was R600 million short in respect of the Purchase Price and requested Marsden to approach PirstRand Bank Limited (acting through its Rand Merchant Bank division), Investec Bank Limited (acting through its Corporate and Institutional Banking division) and Nedbank Limited (acting through its Corporate and Investment Banking division) ("Consortium of Banks"), to request a bridging loan in the amount of R600 million, to finance the shortfall on the Purchase Price. The Consortium of Banks were pre-existing lenders and the major creditor of OCH.
- 14 At 13h30 on 11 April 2016, Marsden arranged a meeting with the Consortium of Banks at the offices of Rand Merchant Bank in Sandton. The meeting was attended by representatives of the Consortium of Banks and Glencore, at which meeting the Consortium of Banks requested that Marsden advise Howa that the banks were not prepared to finance the shortfall of the Purchase Price,
- 15 Marsden telephonically communicated the decision of the Consortium of Banks to Howa on 11 April 2016 sometime after the conclusion of the meeting at approximately 15h00.
- 16 On 14 April 2016 the Escrow agent confirmed to us that payment of the Purchase Price was made in full to the Escrow Agent's account.
- 17 On 12 June 2016 and 19 June 2016 ("Episodes"), Carte Blanche aired a feature on the OCH/Tegeta Transaction, which precipitated the release of various press articles thereafter ("Articles"). A full length interview with Howa ("Interview") was also made available on the Carte Blanche website on 20 June 2016.
- 18 We viewed the Episodes and Interview in the week of 20 June 2016 and we viewed the Articles,
- 19 Pursuant to the Episode, Interview and Articles, we learned, for the first time, that -
- 19.1 Eskom had made a pre-payment to Tegeta, for the purchase of coal from Tegeta, In an amount of R586 million ("Pre-Payment"); and
- 19.2 the coal for which the Pre-Payment was made by Eskom appears to have been, or is to be, procured from OCM for Tegeta, and delivered by OCM to Eskom's Arnot Power Station.
- 20. We have come to learn from the Episodes, Interview and Articles that the Pre-Payment was approved by a committee of Eskom representatives at a meeting held at 21h00 on 11 April 2016. This meeting was held on the same day on which the request for the bridging finance was made to, and rejected by, the Consortium of Banks.
- 21 Pursuant to the Interview, Howa remarked that the Pre-Payment had been made on the basis that OCM was in business rescue and required money for its liquidity and for the start-up of equipment.

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00087 We confirm that the Pre-Payment was not made to OCM and that OCM provides a 22 30-day payment term to Tegeta for the delivery of coal, on behalf of Tegeta, to the Arnot Power Station. We are mindful of section 34(1)(a) of PRECCA and our obligation to report any suspicious activity. We do not intend to draw any conclusions from the aforesaid, but 23 wish to draw your attention to the circumstances of which we are aware, as a matter of caution. The content of this letter is private and confidential and is specifically addressed to the 24 organs of state responsible for law enforcement and ancillary issues to deal herewith and is not intended to, and should not, be published. We reserve our rights to provide supplementary documents and information as and 25 when they may be required as a result of any investigation and/or prosecution that may be conducted.  $(\cdot)$ Yours faithfully Plers Marsden and Peter van den Steen Joint Business Rescue Practitioners of Optimum Coal Mine Proprietary Limited

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	Conditional License About this Certificate • This Certificate is issued in iseras of section 138 of the Companies Act, 2008, and Regulation 127(2) of the Companies Regulations, 2011.	Conditional License for Business Rescue F Date: 14 April 2015 Concerning: Neme: PIERS MICHAEL MARSDEN	Practifioners
		Identity No: 7703005168054 The above named person has been conditionally licensed by to of section 138 of the Companies Act, 2008, to serve as a busi effective from the date of this License. The licensee has -	nees rescue pravilioner, minesa lumaround practice,
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	Contacting the Commission The Companies and Intellectual Property Contransation of Bouth Africa Poetal Addresse PO Box 423 Pretotis 0001 Republic of South Africa Tel: 086 100 2472 wowt.clpc.co.za		
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	Conditional License About this Certificate • This Certificate is issued in terms of section 138 of the Companies Act, 2008, and Regulation 127(2) of the Companies Regulations, 2011.	Conditional License for Business Rescue Practitioners Date: 04 MARCH 2015 Concerning: Name: PETRUS FRANCOIS VAN DEN STEEN Identity Nor 6811075024087
		The above named person has been conditionally licensed by the Commission in terms of section 138 of the Companies Act, 2008, to serve as a business rescue practitioner, effective from the date of this License. The licensee has - X satisfied the Commission that he or she has engaged in business tumaround practice, as defined in Regulation 127 (2), for a period of AT LEAST 10 years; and is for purpose of Regulation 127 classified as - X A Senior Business Rescue Practitioner
	Contacting the Commission The Comparies and intellectual Property Commission of South Africa Potenti Address Po Box 429 Pretota 0001 Republic of Sputh Africa Tel: 096 100 2472 Www.clpc.co.zz	Name and Title of person signing on behalf of the Commission:

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PMM-U11.1-427



00995

Annexure B

Unique reference Number

IR2016/07/19

ACKNOWLEDGEMENT OF RECEIPT IN TERMS OF SECTION 34(3)(a) OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT, 2004 (ACT NO. 12 OF 2004)

		(Full	Names and S	urname)			
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4 Ŀ ٩. . Reproduced by Sabinet Online in terms of Government Printer's Copyright Authority No. 19505 dated 02 February 1998 00053 ここのなどのなどのないないないないないないないないです。 GOVERNMENT GAZETTE, 7 DECEMBER 2012 9 No. 85949 · Was the matter reported to any other person or authority and if so to whom, when and what 6. Solution and the state of the second reference number was provided? 市の教育のであるのないののないです。 - Lever CE TTA-CH(52 What is the nature and extent of the gratification or benefit involved? Any information to the - 22-22-4 7. reporter's knowledge about the standard of living of the person(s) allegedly involved. +Acitico () 1..... Name and contact datalls of possible witnesses to the alleged offence(s): 8. Dorachen D > 5 m . day on Signed 20 6 of this Ol NEEDON at ()SECRETARY a jozi 212105-0 URE OF THE DESIGNATED MEMBER SIG DIRECTORATE FOR PRIORITY CRIME INVESTIGATION (DPCI) Unique reporting reference number To be inserted by the designated DFCI members to whom the report is made. A corresponding number must appear on the acknowledgement of receipt (Annexure B). RECEIVED A COPY JOZ ASANDA Name; 7021 Rumame: 2016-07-0 Dale; 14.03 Time; 423  $\alpha$ Contact No:

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#### **Directorate for Priority Crime Investigations**

Anti-Corruption Desk A5 Promat Building 1 Cresswell Road Silverton Pretoria

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Email: corruptionreports@saps.gov.za

#### REPORT IN TERMS OF SECTION 34(1)(a) OF THE PREVENTION AND COMBATTING OF CORRUPT ACTIVITIES ACT 12 OF 2004

- 1 We were appointed on 4 August 2015 by the Companies and Intellectual Property Commission ("CIPC") as the joint business rescue practitioners of Optimum Coal Holdings Proprietary Limited ("OCH") and its wholly-owned subsidiary, Optimum Coal Mine Proprietary Limited ("OCM").
- 2 OCH was discharged from business rescue on 15 April 2016, A copy of form CoR125.3 stamped by the CIPC is enclosed marked A. OCM is still in business rescue.
- 3 We are accordingly addressing this to you in our capacities as the former, and current, joint business rescue practitioners ("BRPs") of OCH and OCM respectively, A copy of each of our certificates of appointment in respect of OCH and OCM is enclosed marked B1 and B2.
- 4 The information contained in this letter is provided in terms of section 34(1)(a) of the Prevention and Combatting of Corrupt Activities Act 12 of 2004 ("PRECCA").
- 5 At the time of our appointment as BRPs, OCH was the majority shareholder of OCM and Giencore was the ultimate beneficial majority shareholder of OCH.
  - During or about 10 December 2015, OCH (then in business rescue), Tegeta Exploration & Resources Proprietary Limited ("Tegeta"), Giencore International AG and Oakbay Investments Proprietary Limited entered into a written sale of shares and claims agreement (as amended by the First Addendum dated 7 March 2016, the Second Addendum dated on or about 7 April 2016 and the Third Addendum dated on or about 13 April 2016) ("Sale Agreement"), in terms of which Tegeta agreed to purchase the shares and claims ("Target Shares and Claims") held by OCH in certain of its subsidiary companies, including OCM ("OCH/Tegeta Transaction"), The business rescue practitioners were a party to these agreements.
- 7 The details of the shareholders and the directors of Tegeta can be ascertained from the CIPC,
- 8 After the commencement of business rescue proceedings, OCM began supplying coal to, *inter allos*, Tegeta on agreed payment terms. We understand that Tegeta is a supplier of coal to Eskom Holdings SOC Limited ("Eskom").
- 9 In terms of the Sale Agreement, Tegeta was required, among other things, to make payment of the purchase price, in the amount of approximately R2.15 billion ("Purchase Price") for the Target Shares and Claims.
- 10 The Sale Agreement was subject to the fulfilment of certain suspensive conditions. These suspensive conditions were fulfilled and/or waived, as the case may be, by 8 April 2016, thereby rendering the Sale Agreement unconditional.

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11 The Purchase Price was required to be paid by Tegeta to Werksmans Attorneys, as escrow agent ("Escrow Agent"), on the third business day after the date on which the Sale Agreement became unconditional, which was 13 April 2016.

- 12 Piers Marsden ("Marsden") received a telephone call from Nazeem Howa ("Howa"), on 11 April 2016 (le two days before payment was due under the Sale Agreement), requesting a meeting at the offices of Tegeta in Sandton on such date. The meeting was held on 11 April 2016 at approximately 10h00.
- 13 At such meeting, Marsden was advised by Howa that Tegeta was R600 million short in respect of the Purchase Price and requested Marsden to approach FirstRand Bank Limited (acting through its Rand Marchant Bank division), Investee Bank Limited (acting through its Corporate and Institutional Banking division) and Nedbank Limited (acting through its Corporate and Investment Banking division) ("Consortium of Banks"), to request a bridging loan in the amount of R600 million, to finance the shortfall on the Purchase Price. The Consortium of Banks were pre-existing lenders and the major creditor of OCH.

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- 14 At 13h30 on 11 April 2016, Marsden arranged a meeting with the Consortium of Banks at the offices of Rand Merchant Bank in Sandton. The meeting was attended by representatives of the Consortium of Banks and Glencore, at which meeting the Consortium of Banks requested that Marsden advise Howa that the banks were not prepared to finance the shortfall of the Purchase Price.
- 15 Marsden telephonically communicated the decision of the Consortium of Banks to Howa on 11 April 2016 sometime after the conclusion of the meeting at approximately 15h00.
- 16 On 14 April 2016 the Escrow agent confirmed to us that payment of the Purchase Price was made in full to the Escrow Agent's account.
- 17 On 12 June 2016 and 19 June 2016 ("Episodes"), Carte Blanche alred a feature on the OCH/Tegeta Transaction, which precipitated the release of various press articles thereafter ("Articles"), A full length Interview with Howa ("Interview") was also made available on the Carte Blanche website on 20 June 2016.
- 18 We viewed the Episodes and Interview in the week of 20 June 2016 and we viewed the Articles.
- 19 Pursuant to the Episode, Interview and Articles, we learned, for the first time, that -
- 19.1 Eskom had made a pre-payment to Tegeta, for the purchase of coal from Tegeta, in an amount of R586 million ("Pre-Payment"); and
- 19.2 the coal for which the Pre-Payment was made by Eskom appears to have been, or is to be, procured from OCM for Tegeta, and delivered by OCM to Eskom's Arnot Power Station.
- 20 We have come to learn from the Episodes, Interview and Articles that the Pre-Payment was approved by a committee of Eskom representatives at a meeting held at 21h00 on 11 April 2016. This meeting was held on the same day on which the request for the bridging finance was made to, and rejected by, the Consortium of Banks.
- 21 Pursuant to the Interview, Howa remarked that the Pre-Payment had been made on the basis that OCM was in business rescue and required money for its liquidity and for the start-up of equipment.

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01002 We confirm that the Pre-Payment was not made to OCM and that OCM provides a 22 30-day payment term to Tegeta for the delivery of coal, on behalf of Tegeta, to the Arnot Power Station. We are mindful of section 34(1)(a) of PRECCA and our obligation to report any 23 suspicious activity. We do not intend to draw any conclusions from the aforesaid, but wish to draw your attention to the circumstances of which we are aware, as a matter of caution. The content of this letter is private and confidential and is specifically addressed to the 24 organs of state responsible for law enforcement and ancillary issues to deal herewith and is not intended to, and should not, be published. We reserve our rights to provide supplementary documents and information as and 25 when they may be required as a result of any investigation and/or prosecution that (ي) ري) may be conducted. Yours faithfully Plers Marsden and Pater van den Steen Joint Business Rescue Practitioners of Optimum Coal Mine Proprietary Umited 3 B

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Companies a	nd Intellectual Property Commission Republic of South Africa
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125 (5) of the Companies A Regulations, 2011.	larrie:
Т	he above named pompany commanced business rescue proceedings by resolution on
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	9-April 2016
	The terms of that plan have now been substantially carried out, as contemplated in aection 182(8), Accordingly, the business requue proceedings and upon the filling of this Notice, in the manner contemplated in section 182 (2)(c) (1).
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		The above named person has been conditionally licensed by to of section 138 of the Companies Act, 2008, to serve as a busi- effective from the date of this License. The licensee has - X satisfied the Commission that he or she has engaged in bu- as defined in Regulation 127 (2), for a period of AT Li- purpose of Regulation 127 classified as - X A Senior Business Rescue Practitioner	ness resoue practitioner, uniness turnatound practice,
	Contacting the Commission of South Africa Property Commission of South Africa Postal Address PO Box 429 Preioda 0001 Republic of South Africa Tel; 086 100 2472	Name and Title of person signing on behalf of the Commitsion ASTRID LUDIN - COMMISSIONER Authorised Signature:	
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		The above named person has been conditionally licensed by the of section 138 of the Companies Act, 2008, to serve as a busine effective from the date of this License. The licensee has - X satisfied the Commission that he or she has engaged in busines as defined in Regulation 127 (2), for a period of AT LE purpose of Regulation 127 classified as - X A Senior Business Resous Practitioner	ess rescue practitioner, .
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	www.olpo.cio.za	Page 1 of 2	

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	Piers Michael Marsden / Petrus Francois van den Steen	100
	The following documentation was received with the report:	
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	on day Signed at <u>Silverton Pretoria</u> this <u>Ath</u> of <u>July</u>	1 20 <u>6</u>
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Annexure B

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IR2016/07/19

ACKNOWLEDGEMENT OF RECEIPT IN TERMS OF SECTION 34(3)(a) OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT, 2004 (ACT NO. 12 OF 2004)

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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 <u>businessrescue@cipc.co.za</u>

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.
- 2 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 distressed 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.

### Optimum Coal Mine (Pty) Ltd

(Registration No.: 2007/005308/07 144 Katherine Street, Grayston Ridge Office Park, Block A Lower Ground Floor, Johannesburg, South Africa Tel.: +27 11 542 2200 Fax: 086 685 1814

Directors: N Howa | PU Govender | J Roux



- 5 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.
- 6 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 <u>nitins@optimumcoal.com</u>
- 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.
- 9 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 <u>nitins@optimumcoal.com</u>
- 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

Optimum Coal Mine (Pty) Ltd

(Registration No.: 2007/005308/07 144 Katherine Street, Grayston Ridge Office Park, Block A Lower Ground Floor, Johannesburg, South Africa Tel.: +27 11 542 2200 Fax: 086 685 1814

Directors: N Howa | PU Govender | J Roux



OPTIMUM COAL HOLDINGS

Delivered by Email and/or Facsimile

Displayed -

- Registered Office and Principal Place Business of the Company and anywhere where Employees are Employed
- Published on the Website Maintained by the Company and Accessible to Affected Persons

Delivered by Email and/or Registered Post to the Shareholders

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19 April 2016

Attention:	All Affected Persons
	Optimum Coal Holdings Proprietary Limited (in Business Rescue
	a statute de la la la Proposito Commission

Attention: Companies and Intellectual Property Commission businessrescue@cipc.co.za

### OPTIMUM COAL HOLDINGS PROPRIETARY LIMITED

- 1 We refer to the meeting held at Werksmans Attorneys on **8 April 2016** at which meeting the affected persons of Optimum Coal Holdings Proprietary Limited ("OCH") were requested to consider and vote on the business rescue plan published to affected persons of OCH on **31 March 2016** ("Plan").
- 2 We confirm that following the conduct of the vote in terms of section 152(1)(e) of the Companies Act 71 of 2008 ("Act") --
- 2.1 the Plan has been adopted with the requisite support of creditors;
- 2.2 the suspensive conditions to the OCH/Tegeta transaction have now been fulfilled; and
- 2.3 the business rescue proceedings of OCH have been concluded.
- We confirm that on **15 April 2016**, we filed a notice of Substantial Implementation of the Plan (Form CoR125.3) with the Companies and Intellectual Property Commission in accordance with sections 152(8) and 132(2)(c)(ii) of the Act and paragraph 5.3.1 of the Plan. A copy of the duly filed notice is enclosed herewith.

Optimum Coal Holdings (Pty) Ltd

(Registration No: 2006/007799/07)

A member of the Glencore group of companies

Registered Address: 1st Floor, Nedbank Building, 23 Melrose Boulevard, Melrose Arch, Melrose North,

Johannesburg, 2196, South Africa

Mailing Address: Suite No. 19, Private Bag X1, Melrose Arch, Johannesburg, 2076, South Africa Tel: +27 11 772 0600 Fax: +27 11 772 0697

Directors: CM Ephron, R Cohen, P Mahanyele, T Ncube

- 4 If you have any requests or queries, you are welcome to refer them <u>optimumcoal@matusonassociates.co.za</u>.
- 5 All notices that have been circulated to affected persons have been posted to OCH's website and are accessible from <a href="https://www.optimumcoalbusinessrescue.co.za/wordpress">www.optimumcoalbusinessrescue.co.za/wordpress</a>
- 6 We take this opportunity to thank you for your patience and co-operation during the process.

Yours faithfully

Piers Marsden and Peter van den Steen Joint Business Rescue Practitioners of Optimum Coal Holdings Proprietary Limited