

**IN THE HIGH COURT OF SOUTH AFRICA  
(GAUTENG DIVISION, PRETORIA)**

**CASE NO:**

In the matter between:

**CORRUPTION WATCH (RF) NPC**

Applicant

and

**ESKOM HOLDINGS SOC LIMITED**

First Respondent

**MARK VIVIAN PAMENSKY**

Second Respondent

**ANOJ SINGH**

Third Respondent

**BRIAN MOLEFE**

Fourth Respondent

**VENETE JARLENE KLEIN**

Fifth Respondent

**ZETHEMBE WILFRED KHOZA**

Sixth Respondent

**MINISTER OF PUBLIC ENTERPRISES**

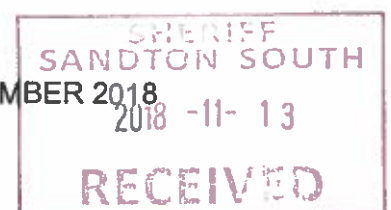
Seventh Respondent



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DATED at Johannesburg on this 12<sup>th</sup> day of NOVEMBER 2018



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**TO: THE REGISTRAR**  
High Court  
**PRETORIA**

**AND TO : ESKOM HOLDINGS SOC LIMITED**  
First Respondent  
Eskom Megawatt Park  
2 Maxwell Drive  
Sunninghill  
Sandton

**AND TO: MARK VIVIAN PAMENSKY**  
Second Respondent  
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Dais Street  
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**AND TO: ANOJ SINGH**  
Third Respondent  
21 Silversands Avenue  
Wendywood  
Sandton  
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AND TO: **BRIAN MOLEFE**  
Fourth Respondent  
32 Bond Place  
Midstream Estate  
Gauteng  
1692

AND TO: **VENETE JARLENE KLEIN**  
Fifth Respondent  
11 Numeral Street  
Mookloof Estates  
Pretoria  
0059 /  
537 Chpin Street  
Constantia Park  
Johannesburg  
0000

AND TO: **ZETHEMBE WILFRED KHOZA**  
Sixth Respondent  
95 Pardy Road  
Isipingo Hills  
Durban  
KwaZulu Natal  
4133

AND TO: **MINISTER OF PUBLIC ENTERPRISES**  
Seventh Respondent  
Infotech Building  
1090 Arcadia Street  
Hatfield  
Pretoria



## **national treasury**

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Ref: 43/1/2/5/1

Mr B. Molefe  
Group Chief Executive  
Eskom  
P O Box 1091  
JOHANNESBURG  
2000

Dear Mr Molefe

### **REPORT ON THE VERIFICATION OF COMPLIANCE WITH TREASURY NORMS AND STANDARDS - APPOINTMENT OF TEGETA EXPLORATION AND RESOURCES (PTY) LTD.**

This report contains the findings of National Treasury's review of compliance with norms and standards during the bidding process.

Kindly table the report before the Eskom Board and submit the required information on or before 30 April 2016.

Kind regards.

KENNETH BROWN  
CHIEF PROCUREMENT OFFICER

DATE: 12/4/2016

CC: Chairman of the Board

Public Protector

Director-General: Department of Public Enterprises

**national treasury**

Department:  
National Treasury  
REPUBLIC OF SOUTH AFRICA

**REPORT ON THE VERIFICATION OF COMPLIANCE WITH TREASURY NORMS AND STANDARDS - APPOINTMENT OF TEGETA EXPLORATION AND RESOURCES (PTY) LTD.**

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**REPORT ON THE VERIFICATION OF COMPLIANCE WITH TREASURY NORMS AND STANDARDS -  
APPOINTMENT OF TEGETA EXPLORATION AND RESOURCES (PTY) LTD.**

**1. INTRODUCTION**

- 1.1 This report contains the findings of National Treasury's review of the processes followed leading to the appointment of Tegeta Exploration and Resources (Pty) Ltd.
- 1.2 Tegeta Exploration and Resources (Pty) Ltd was appointed to supply coal from Brakfontein and Brakfontein Extension to Majuba Power Station.
- 1.3 National Treasury has reviewed the documents provided by your entity as well as other documents relevant to the tender, and would like to bring the issues identified during the review to your attention as indicated below.

**2. ADVERTISEMENT OF THE TENDER**

- 2.1 Eskom did not advertise the tender to supply coal.
- 2.2 Eskom allow suppliers of coal to submit their proposals for supplying coal for consideration.
- 2.3 Idwala Coal Crypts (Pty) Ltd approached Eskom offering to supply coal.

**3. BACKGROUND**

- 3.1 Idwala Coal Crypts (Pty) Ltd submitted a proposal to supply coal to be mined and processed from Brakfontein Colliery.
- 3.2 Eskom indicated that the initial proposal was submitted by Idwala Coal Crypts (Pty) Ltd in 2012. The subsequent offer was submitted by Tegeta Exploration and Resources (Pty) Ltd on 23<sup>rd</sup> September 2014.

**4. MEETINGS**

**Meeting dated 09<sup>th</sup> May 2014 between Goldridge and Eskom (See Annexure A)**

- 4.1 Goldridge proposed supplying coal out of two sources, namely Brakfontein and Vierfontein.
- 4.2 The meeting was informed that the environmental report of Brakfontein is finalized whereas the Vierfontein was to be finalized.
- 4.3 Goldridge indicated that they are the owners of the Brakfontein mine through Tegeta Exploration and Resources (Pty) Ltd. It was indicated that the mine has a stockpile of 150 000 tons.
- 4.4 Goldridge agreed to revert to Eskom with volumes and price proposals for Brakfontein based on different quality parameters.
- 4.4.1 Tegeta Exploration and Resources (Pty) Ltd issued 930 shares, 280 shares owned by Arrowhead Trading which is a black women owned company; 200



**REPORT ON THE VERIFICATION OF COMPLIANCE WITH TREASURY NORMS AND STANDARDS -  
APPOINTMENT OF TEGETA EXPLORATION AND RESOURCES (PTY) LTD.**

shares owned by an overseas entity; and 450 shares owned by South African companies.

**Meeting dated 10<sup>th</sup> July 2014 between Goldridge/Tegeta and Eskom (See Annexure B)**

- 4.5 Eskom revealed that the mining was taking place very close to a stream which was a sensitive environmental area. It further indicated that a wall that was constructed upstream to prevent water has collapsed leading to flooding of the mine works.
- 4.6 Eskom requested Tegeta Exploration and Resources (Pty) Ltd to provide an authorization from the relevant authorities allowing mining through a wetland and diversion of a stream.
- 4.7 Tegeta Exploration and Resources (Pty) Ltd acknowledged that mining is taking place very close to a stream. It further indicated that the entity was fined for contravening environmental regulations.
- 4.8 Eskom indicated that the diversion of a stream requires authorization in terms of National Water Act.
- 4.9 The meeting was informed that a sample of the Seam 4 Upper, Seam 4 Lower and a blend of two was collected on 13 June 2014 to perform chemical analysis.
- 4.10 The results indicated that only Seam 4 Lower was within Eskom's specifications. However, Seam 4 Lower could only be considered for further assessment if the Hard Grove Index can meet Eskom's threshold of a minimum of 50 and the analysis of S4L came back at 28.
- 4.11 Eskom further requested a recently mined sample.
- 4.12 Tegeta Exploration and Resources (Pty) Ltd indicated that mining was suspended in order to sell the existing stock pile before re-commencing any mining. The size of the stockpile was between 70 000 – 75 000 tons.

**Meeting dated 23<sup>rd</sup> September 2014 between Tegeta /Idwala and Eskom (See Annexure C)**

- 4.13 The meeting was informed that there are concerns around the Hard Grove Index ("HGI") on the initial sample that was tested.
- 4.14 Eskom expressed concerns that the second sample revealed higher Iron and Calcium, Low burn out time and low side CV.
- 4.15 Eskom indicated that the combustion test results shows that coal from Brakfontein was potentially suitable for use at Kendal, Kriel units 4-6, Lethabo and Matimba Power Stations.
- 4.16 Eskom further indicated that it will consider the seam 4 Lower of Brakfontein as the 4 Upper seam did not meet Eskom's requirements.

**REPORT ON THE VERIFICATION OF COMPLIANCE WITH TREASURY NORMS AND STANDARDS -  
APPOINTMENT OF TEGETA EXPLORATION AND RESOURCES (PTY) LTD.**

- 4.17 Tegeta Exploration and Resources (Pty) Ltd indicated the possibility of blending 4 seam with higher quality seam 2. Eskom stated that the blending will be problematic and also the fact that a new offer would have to be submitted.
- 4.18 Eskom raised a concern of contamination to seam 4 lower with seam 4 upper. Tegeta Exploration and Resources (Pty) Ltd was requested to present a plan on how it will prevent the contamination.
- 4.19 Tegeta Exploration and Resources (Pty) Ltd was requested to submit a revised proposal for supplying the 4 seam lower only.

**Meeting dated 23rd January 2015 between Tegeta /Idwala and Eskom (See Annexure D)**

- 4.20 Eskom provided feedback about test results that have been conducted on the seam 4 Lower, the seam 4 Upper and a blend of both the seam 4 Upper and seam 4 Lower.
- 4.21 The test results showed that seam 4 Lower was suitable for Eskom use at certain stations, the seam 4 Upper and the blended product were unsuitable for Eskom use because of the high Abrasive Index (AI) and marginal Hard Grove Index.
- 4.22 It was further indicated that the in-seam partings which is predominantly sandstone in seam 4 Upper is responsible for the high AI.
- 4.23 Tegeta Exploration and Resources (Pty) Ltd will selectively mine the seam, use a grader to remove the major in-seam partings, avoid over drilling and blasting to address the high AI.
- 4.24 Eskom indicated that the price offered by Tegeta Exploration and Resources (Pty) Ltd was too high. The prices offered were R17/GJ for the seam 4 Lower and R15/GJ for the blended product (seam 4 Upper and seam 4 Lower).
- 4.25 Eskom negotiated a price for both seam 4 Lower and blended product (seam 4 Upper and seam 4 Lower) even though the blended product was not suitable for Eskom.
- 4.26 It was agreed that Tegeta Exploration and Resources (Pty) Ltd will submit its revised pricing to Eskom. It will also present its technical plans to address the seam 4 upper qualities.

**Meeting dated 30<sup>th</sup> January 2015 between Tegeta /Idwala and Eskom (See Annexure E)**

- 4.27 Tegeta Exploration and Resources (Pty) Ltd offered a revised price of R13.50/GJ for a five year contract supplying 65,000 tons per month from the Brakfontein Resource.



- 4.28 Eskom accepted the price on condition it has the first right of refusal for additional coal resources at Brakfontein extension. Furthermore, the coal must meet the technical and combustion requirements of Majuba Power Station.
- 4.29 Tegeta Exploration and Resources (Pty) Ltd presented its proposed technical plan to mitigate the high abrasive (AI). A plan was that the entity will selectively mine the seam, use a grader to remove the major inseam partings and avoid over drilling and blasting.
- 4.30 Eskom was satisfied with the plan presented by Tegeta Exploration and Resources (Pty) Ltd.
- 4.31 The meeting agreed that a newly mined sample of the blended product will be collected for testing.
- 4.32 Tegeta Exploration and Resources (Pty) Ltd proposed to supply 65kT/month of the blended product (seam 4 Upper and seam 4 Lower). The proposed start date was the 1st of April 2015 subject to a successful combustion test.
- 4.33 Tegeta Exploration and Resources (Pty) Ltd was requested to provide a proposed ramp up plan.

## 5. WATER USE LICENSE

- 5.1 Tegeta Exploration and Resources (Pty) Ltd acknowledged that mining was taking place very close to a stream and that it was fined for contravening environmental laws.
- 5.2 The 2014/15 Annual Report of the Department of Water Affairs and Sanitation does not show any fines or penalties payments received by the Department.
- 5.3 There is no evidence that Tegeta Exploration and Resources (Pty) Ltd was fined and that the fine was paid.
- 5.4 Tegeta Exploration and Resources (Pty) Ltd submitted its proposal to supply coal before it was granted a Water Use License.
- 5.5 According to Section 151(1)(a) of the National Water Act, it is an offence to use water without the required water use license. Any person convicted of this offence is liable on first conviction for a fine or imprisonment for up to five years or both. Upon second conviction, the offender is liable for a fine or imprisonment for up to 10 years, or both.
- 5.6 Tegeta Exploration and Resources (Pty) Ltd's license was issued on 22 December 2014. (See Annexure F)
- 5.7 Water Use License that was issued required Tegeta Exploration and Resources (Pty) Ltd to comply with certain requirements. Some of the requirements were as follows:

- 5.7.1 An annual internal audit on compliance (to be submitted within one month of the finalization);
- 5.7.2 An external audit annual audit on compliance (to be submitted within one month of the finalization);
- 5.7.3 Flood lines determination for both rivers and surrounding the project area (to be submitted within six month of the issuance of license);
- 5.7.4 Final groundwater monitoring program (within six months of the issuance of license);
- 5.7.5 Geochemical studies, numerical groundwater flow and contaminant transport models for the proposed mine (within twelve months of the issuance of license);
- 5.7.6 Acceptance groundwater monitoring network (within six (6) months of the issuance of license); and
- 5.7.7 The Integrated Water and Waste Management Plan (IWWMP and updated Rehabilitation Strategy and Implementation Programme (RSIP) (within one year of the issuance of license).
- 5.8 There is no evidence that Tegeta Exploration and Resources (Pty) Ltd complied with additional Water Use License requirements.
- 5.9 There is no evidence that Eskom ensured that Tegeta Exploration and Resources (Pty) Ltd comply with all legislative requirements.

## 6. COAL SUPPLY AGREEMENT

- 6.1 A Coal Supply Agreement between Eskom and Tegeta Exploration and Resources (Pty) Ltd was signed on 10 March 2015 with the commence date of 1<sup>st</sup> April 2015. (See Annexure G)
- 6.2 The coal supply agreement (See Annexure H, page 30) indicates the following:

Quality parameter	Unit	Quality Expected	Quality Rejection Limit	Measurement basis.
Calorific Value	MJ/kg	21.10	<20.0	Air Dried
Total Moisture	%	<8.0	>10.0	As Received
Inherent Moisture	%	4.4	N/A	As Received
Ash	%	27.9	>30.0	Air Dried
Abrasive Index (Eskom Mining House Method)	MgFe/ 4kg	<450	>450	Air Dried
Sulphur	%	1.0	>1.3	Air Dried
Volatiles	%	21.3	<20	Air Dried
AFT (Initial deformation	°C	21.3	<20	Air Dried
Sizing				
+50min	%	<5.0	>5.0	N/A
-3mm	%	<35	>35	
-1mm	%	<10	>10	

- 6.3 The coal supply agreement indicates that coal will be supplied to Majuba Power Station which was not initially identified as suitable power station.
- 6.4 The supplier warrants in clause 6.1 of the Coal Supply agreement that it is complying and will continue to comply with all its obligations under all current and future applicable laws including but not limited to the mining right, including the environmental management plan, the social labour plan and the mining work programme relating thereto, the National Water Act, No. 36 of 1998 ("NWA"); the National Environmental Management Act, No. 107 of 1998 ("NEMA"); the Environment Conservation Act, No. 73 of 1989; the National Environmental Air Quality Act, No. 39 of 2004; the Water Services Act, No 100 of 1989; the Hazardous Substances Act, No. 15 of 1973; the National Heritage Resources Act, No. 25 of 1999; the World Heritage Convention Act, No. 49 of 1999; the MPRDA and the mine Health and Safety Act, No.29 of 1996, all statutory instruments, provincial ordinances and statutes, municipal government by-laws relating to the environment, government notices, circulars, codes of practice, guidelines, decisions, regulations, orders, demands, and criteria, injunctions or judgments of any court, administrative or regulatory authorities, central government, provincial government, municipal or any other body with responsibility for the protection of the environment(including but not limited to the health of the public, employees, *flora* and *fauna*).
- 6.5 In terms of clause 29.2 of the Coal Supply Agreement, the supplier shall supply Eskom with the following information on an annual basis, within 30 (thirty) days after publication of the Supplier's annual report:
- 6.5.1 Summary of the qualities;
- 6.5.2 quantities and dates of dispatch of Contract Coal Delivered during the previous Year;
- 6.5.3 The reserve and resource statements, in accordance with the SAMREC Code, relating to the remaining coal to be mined at the Mine;
- 6.5.4 Progress on long term issues dealt with in this Agreement;
- 6.5.5 Latest tax clearance certificates;
- 6.5.6 Its broad based black economic empowerment status;
- 6.5.7 Its employment equity status: and
- 6.5.8 Its latest audited financial statements.
- 6.6 There is no evidence that the supplier complied with clause 29.2 of the Coal Supply agreement which require the submission of prescribed information to Eskom within 30 days after the publication of the annual report.

- 6.7 There is no evidence that Eskom enforced clause 30 of the Coal Supply agreement with regards to the submission of the legislative submission associated with compliance by the supplier.

**7. SUSPENSION OF COAL SUPPLY**

- 7.1 Tegeta Exploration and Resources (Pty) Ltd was notified of the decision to suspend the supply of coal on a letter dated 31 August 2015 (See Annexure I)
- 7.2 Eskom raised concern that there is a significant increase in the number of out of specification coal stockpiles from July to August 2015 and inconsistency in the laboratory results.
- 7.3 The suspension of coal supply from Tegeta Exploration and Resources (Pty) Ltd was lifted on a letter dated 5th September 2015. (See Annexure J)
- 7.4 Eskom indicated that the suspension is lifted whilst it continues its investigation into the inconsistency in the coal quality management process.

**8. SABS TEST RESULTS**

- 8.1 Eskom requested SABS to test the coal from Tegeta Exploration and Resources (Pty) Ltd on a letter dated 31 August 2015. (See Annexure K)
- 8.2 SABS performed the test from the 06<sup>th</sup> September 2015 and issued the results on 18 September 2015. (See Annexure L)
- 8.3 The results from SABS highlighted non-compliance to the coal quality specifications, mainly in Volatile, Sulphur, Ash and Inherent moisture.
- 8.4 SABS results further revealed that seven samples that were tested contained Sulphur that was higher than the rejection limit of 1.3% and the worst sample contained more than 2% of Sulphur content.
- 8.5 There is no evidence that Eskom implemented any remedial action after receiving SABS test report.

**9. PRICES CHARGED.**

- 9.1 The final price agreed by Eskom and Tegeta Exploration and Resources (Pty) Ltd was R13.50 per gigajoule.
- 9.2 Tegeta Exploration and Resources (Pty) Ltd justified its higher price because it increased its BEE Shareholding.

**10. PAYMENTS MADE TO TEGETA**

- 10.1 The table below shows the details of payments made to Tegeta Exploration and Resources (Pty) Ltd from April 2015 to August 2015. (See Annexure M)

Month	Invoice date	Quantity	Units	Payment
Apr-15	05/05/2015	987430.08	GJ	R 15 342 886.07
May-15	03/06/2015	1 615 787.51	GJ	R 25 106 429.49
Jun-15	03/07/2015	1 626 278.06	GJ	R 25 362 131.60
Jul-15	05/08/2015	2 265 181.33	GJ	R 35 325 955.88
Aug-15	04/09/2016	2 141 769.91	GJ	R 33 206 000.69
<b>Total</b>		<b>8 636 446.89</b>		<b>R 134 343 403.73</b>

- 10.2 Eskom failed to submit a system generated list of payments made to Tegeta Exploration and Resources (Pty) Ltd.

**11. ANNUAL FINANCIAL STATEMENTS**

- 11.1 Tegeta Exploration and Resources (Pty) Ltd.'s Annual Financial Statements for the year ended 28 February 2014 indicates that the company was operating in 2013.
- 11.2 The annual financial statements were approved by the board of directors on 26 September 2014.
- 11.3 The annual financial statements do not indicate that Tegeta Exploration and Resources (Pty) Ltd was fined for operating the mine without a water use license.
- 11.4 The 2014/15 annual report for the department of Water and Sanitation does not reflect any income received from fines or penalties.
- 11.5 It is not clear whether Tegeta Exploration and Resources (Pty) Ltd paid the fine it alleged was imposed.

**12. CONCLUSION**

**Water Use License**

- 12.1 Tegeta Exploration and Resources (Pty) Ltd confirmed on the 10<sup>th</sup> July 2014 that the mine was fined for contravening the environmental laws.
- 12.2 There is no evidence that Eskom requested Tegeta Exploration and Resources (Pty) Ltd to submit evidence of settling the fine imposed by competent authorities.
- 12.3 The annual financial statements were approved by the board of directors on 26 September 2014 after the alleged fine was imposed by competent authorities.

- 12.4 The 2013/14 annual financial statements of Tegeta Exploration and Resources (Pty) Ltd do not indicate that the entity was fined for operating the mine without the Water Use License.
- 12.5 The Water Use License for Tegeta Exploration and Resources (Pty) Ltd was issued on 22<sup>nd</sup> December 2014.
- 12.6 The 2014/15 annual report for the department of Water and Sanitation does not reflect any income received from fines or penalties.
- 12.7 There is no evidence that Tegeta Exploration and Resources (Pty) Ltd paid the fine it alleged was imposed for contravening environmental laws.
- 12.8 There is no evidence that Tegeta Exploration and Resources (Pty) Ltd complied with the additional requirements imposed by the Water Use License.
- 12.9 There is no evidence that Eskom ensured that Tegeta Exploration and Resources (Pty) Ltd comply with the Water Use License requirements.

**Quality of coal**

- 12.10 The initial tests revealed that seam 4 Lower was suitable for Eskom use at certain stallions, but the seam 4 Upper and the blended product were unsuitable.
- 12.11 It is not clear why the Coal Supply Agreement included 4 Upper seam which did not comply with Eskom's requirements.
- 12.12 Tegeta Exploration and Resources (Pty) Ltd undertook to selectively mine the seam, use a grader to remove the major inseam partings and avoid over drilling and blasting to improve the quality of coal.
- 12.13 Tegeta Exploration and Resources (Pty) Ltd undertook to supply coal with a rejection limit of 1.3% of Sulphur content.
- 12.14 Eskom allowed Tegeta Exploration and Resources (Pty) Ltd to supply the stockpile coal which did not conform to its standards.
- 12.15 SABS test results (dated 18 September 2015) revealed that seven samples that were tested contained Sulphur that was higher than the rejection limit of 1.3% and the worst sample contained more than 2% of Sulphur content.
- 12.16 There is no evidence that Eskom implemented any remedial action after receiving the SABS test results dated 18 September 2015.

**Reports and Legislative submissions associated with compliance**

- 12.17 There is no evidence that Tegeta Exploration and Resources (Pty) Ltd complied with clause 29.2 of the Coal Supply agreement which require the submission of prescribed information to Eskom within 30 days after the publication of the annual report.

12.18 There is no evidence that Tegeta Exploration and Resources (Pty) Ltd complied with clause 6.1 of the Coal Supply agreement which is a declaration that the supplier is complying and will continue to comply with all its obligations under all current and future applicable laws.

12.19 There is no evidence that the Eskom complied with clause 30 of the Coal Supply agreement with regards to the submission of the legislative submission associated with compliance by the supplier.

### 13. RECOMMENDATIONS

13.1 The Accounting Authority must submit evidence of effective and appropriate steps taken to ensure that Tegeta Exploration and Resources (Pty) Ltd :

13.1.1 supplied and continue to supply coal that conform to Eskom's standards;

13.1.2 complied and continue to comply with all its obligations under applicable laws (clause 6.1 of the coal supply agreement);

13.1.3 submitted prescribed information to Eskom within 30 days after the publication of the annual report (clause 29.2 of the coal supply agreement);

13.1.4 Settled the fine for contravening environmental laws imposed by competent authorities;

13.1.5 Complied with additional Water Use License requirements; and

13.1.6 Selectively mined the seam, use a grader to remove the major in-seam partings and avoid over drilling and blasting to improve the quality of coal.

13.2 The Accounting Authority must submit evidence of effective and appropriate steps taken by Eskom after receiving the SABS coal test results dated 18 September 2015 which confirmed that Tegeta Exploration and Resources (Pty) Ltd's coal do not conform to contracted standards.

13.3 The Accounting Authority must submit evidence of effective and appropriate steps taken by Eskom after Tegeta Exploration and Resources (Pty) Ltd justified its high coal price because of the increased BEE shareholding.

13.4 The Accounting Authority must submit evidence of effective and appropriate steps taken by Eskom to ensure compliance with clause 30 of the Coal Supply agreement with regards to the submission of the legislative submission associated with compliance by the supplier.

13.5 The Accounting Authority must submit evidence of effective and appropriate steps taken by Eskom to ensure that Tegeta Exploration and Resources (Pty) Ltd was not paid for the tons of coal that did not comply with its standards.

**14. REMEDIAL ACTION**

- 14.1 The Accounting Authority must consider this report and submit the requested information/documents to National Treasury by not later than 30 April 2016.



# Annexure A

13





# MINUTES OF MEETING WITH

GOLDRIDGE

HELD ON 09 MAY 2014

AT ESKOM'S OFFICES, MEGAWATT PARK, SUNNINGHILL

DINKRAAL BOARDROOM

## Attendants:

### Eskom

Ayanda Ntshanga (AN)  
Shumani Muvhangu (SM)  
Mabatho Mothapo (MM)  
Sunjay Andhee (SA)  
Thabani Mashego (TM)

### Goldridge

Satish Mudaliar (SM)  
Ravindra Nath (RN)

- The supplier Goldridge had proposed supplying coal out of two sources, namely Brakfontein and Vierfontein.
- The environmental evaluations for both sites were undertaken and it was indicated that Brakfontein Report is finalised and Vierfontein report is still being finalised. .
- Technical Services (MM) also went for a site visit before conducting the technical evaluation.
- Goldridge explained to the Eskom team that mining at Brakfontein was temporarily halted for a month and a half as their stockpile was at 150 000tons ROM.
- Goldridge explained that they have a stockpile of coal amounting to 150 kt ROM.
- Since a number of suppliers were offering coal from Brakfontein, and Goldridge being the owners of the source, the Eskom team required clarity on whom they should be talking to over possible supply from that source.
- Goldridge explained that they are the owners of the mine through Tegeta (Pty) Ltd and would be the preferred supplier; they would require a month's notice to cancel any off-take agreements they have with other suppliers.

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*[Handwritten signature]* bse

- The Goldridge team explained the structure of their business, Tegeta which owns the source issued 930 shares which are owned as follow:
  - 280 shares owned by Arrowhead Trading which is a black women owned company.
  - 200 shares owned by an overseas entity
  - 450 shares owned by South African companies
- AN explained that Eskom prefers dealing with companies that are 50%+1 share black owned.
- The initial sample was collected and tested from Goldridge in 2012, but arrangements will be made with the Eskom technical team to collect a second sample to confirm the coal qualities.
- The supplier indicated to the Eskom team that the resources is approximately 21 million tons and reserves approximately 14 million saleable (raw ROM) tons.
- AN indicated that Eskom's current burn projections have resulted in a reduction in the coal requirement for the current financial year.

#### **Actions:**

- The Eskom team is busy finalising the report on the other source that was offered (Vierfontein), and they will communicate the outcomes with the supplier by the end of May.
- Goldridge will also revert to Eskom with volumes and price proposals for Brakfontein based on different quality parameters.

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21

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## Annexure B

17/10

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**MINUTES OF MEETING WITH  
GOLDRIDGE/TEGETA  
HELD ON 10 July 2014  
AT ESKOM'S OFFICES, MEGAWATT PARK, SUNNINGHILL  
NKATEKO BOARDROOM**

**Attendants:**

**Eskom**

Ayanda Ntshanga (AN)  
Shumani Muvhungu (SMV)  
Thabang Matsoaboli (ThM)  
Sunjay Andhee (SA)  
Thabani Mashego (TM)  
Rakgomo Setshedi (RS)

**Goldridge/Tegeta**

Satish Mudalier (SM)  
Ravindra Nath (RN)

- AN explained the evacuation procedure.
- AN provided feedback on the Vierfontein Colliery offer from Tegeta, this explanation was further re-iterated by SMV explaining that Eskom required that Tegeta provide Eskom with an authorisation from the relevant authorities, giving them permission to mine through a wetland and diversion of a stream.
- SMV explained that Eskom required that Tegeta provide Eskom with an authorisation from the relevant authorities, giving them permission to mine through a wetland and diversion of a stream.
- According to SMV when the Eskom team performed a site evaluation, it was observed that mining was taking place close to a stream, which is considered a sensitive environmental area. A wall that was constructed upstream to prevent water had collapsed leading to flooding of the mine workings (pit).
- RN acknowledged that current mining was taking place close to a stream; he stated that that Tegeta were fined for contravening environmental regulations, they have paid the fines and have since been mining in accordance with the law.

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- RN re-emphasised the point that Tegeta are not mining through a wetland or an environmentally sensitive area at Vierfontein Colliery.
- SMV explained that diversion of a stream requires authorisation in terms of the National Water Act, and Idwala has diverted the stream without such authorisations. Although the stream and/or wetland were mined through or diverted, there is no water use license on file to authorise the activity and rehabilitation, therefore this is still considered a risk by Eskom. In conclusion, AN indicated that an email will be forwarded to Idwala to communicate outcome of the environmental due diligence.
- A sample was collected on Friday the 13<sup>th</sup> of June 2014 from the standing stockpile as this was what was offered to Eskom.
- A sample of the S4U, S4L and a blend of the two was collected to perform a chemical analysis.
- According to the chemical analysis only the S4L was found to be within Eskom specifications. However, the S4L can only be considered for further assessment if the Hard Grove Index can meet Eskom's threshold of a minimum 50, the analysis of S4L came back as 28.
- SA asked if it would be possible to get a recently mined sample and what it would cost the supplier to get a miner on site to start mining.
- SM and RN stated that mining had been suspended and that they would like to sell the existing stockpile before re-commencing any mining.
- The size of the stockpile is between 70 000-75 000 tons.
- SM and RN asked if another sample could be tested, SA indicated that it would be ideal for Eskom to re-test a newly mined sample, but it was requested by Tegeta that Eskom would collect and re-test another sample from the stockpile.
- Given the results of the chemical analysis, some concerns were raised by the Eskom team as to the ability of Tegeta/Goldridge to meet the offered qualities.
- Eskom's reduced coal requirement was explained to Tegeta
- It was further explained that these discussions do not obligate Eskom to enter into a supply agreement with Tegeta

#### Actions:

- Mabatho Mothapo to make arrangements to collect another sample for testing.

# Annexure C

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# MINUTES OF MEETING WITH

## TEGETA

HELD ON 23 SEPTEMBER 2014

AT ESKOM'S OFFICES, MEGAWATT PARK, SUNNINGHILL

DINKRAAL BOARDROOM

### Attendants:

#### Eskom

Thabani Mashego (TM)  
Ayanda Ntshanga (AN)  
Philip Mostert (PM)

#### Tegeta/IDLWA

Satish Mudliar (SM)  
Ravindra Nath (RN)

- The meeting commenced with AN advising on the evacuation procedure
- AN recapped the Eskom process and explained where in the process we were with regards to the Tegeta offer.
- It was recalled that an initial sample was collected, this initial sample was tested and there were some concerns around the Hard Grove Index ("HGI").
- A second sample was collected for a combustion test, hence the need for this meeting, to provide feedback on the combustion test and chemical analysis results.
- PM Acting Technical Services Manager gave feedback on the combustion test results.
- Some concerns around the coals characteristics were raised, namely:
  - Higher Iron and Calcium compared to the previous sample that was tested, this is a concern as it could potentially cause slagging.
  - Low burn out time
  - The CV is on the low side
- The above mentioned concerns are problems that can be addressed.
- Due to the combustion test results, coal from Brakfontein is potentially suitable for use at Kendal, Kriel units 4-6, Lethabo and Matimba Power Stations.

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- It was also stressed that Eskom would only be able to consider the seam 4 Lower of Brakfontein as the 4 Upper seam did not meet Eskom's requirements as per the sample provided.
- RN mentioned the possibility of blending the 4 seam with the higher quality seam 2; PM stated the potential problems that could occur with blending and also the fact that a new offer would have to be submitted.
- SM queried if there are incentives for supplying improved qualities i.e. higher CV coal, AN responded stating that the supplier should provide a proposal on this.
- Some concerns were raised over the possible contamination of the seam 4 lower with the seam 4 upper; Tegeta would have to present plans on how they plan to prevent the contamination.
- SM asked if there is any way Eskom can accommodate them as they are only looking to supply "small" amounts of coal. Tegeta are looking to sell the stockpile that's currently on the ground that is made up of both the 4 seam upper and lower, totalling somewhere between 70-75kT.
- SM stated that it would be very difficult to only mine the seam 4 Lower.
- AN stated the seam 4 upper wasn't within Eskom's parameters.
- AN urged Tegeta to re-look at their operations and assess if it would still be viable for them to offer only the seam lower.
- SM enquired if a "new" or "fresh" sample of seam 4 upper can be prepared for testing down the line, AN responded stating that it would depend if there is a requirement for that coal at a later date.
- AN stated that the Power Stations that could potentially take coal from Brakfontein have all their needs met for this financial year, if Eskom and Tegeta are to conclude a Coal Supply Agreement ("CSA") it would commence at the earliest on the 1<sup>st</sup> of April 2015.
- Tegeta enquired as to the possibility of moving some coal in the interim period until the CSA is concluded, AN indicated that Eskom would be unable to take any coal until all agreements are in place.
- AN requested confirmation of the nearest siding. SM indicated that he would confirm as he thinks that it is Hawerklip which is approximately 3-5km from the mine.
- AN raised the issue with the "traders" that are offering the Brakfontein coal, Eskom requires clarity on who they must deal with going forward, Eskom cannot negotiate a CSA with all the parties involved, Tegeta as the owners will have to clarify this situation.
- AN advised that these discussions do not obligate Eskom to procure coal from the supplier.

#### Way Forward

- Eskom to share the Coal Quality Management Procedure ("CQMP") and CSA template.
- Tegeta to send official communication to Eskom regarding whom Eskom must enter into CSA discussions with

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- Tegeta will also submit a revised proposal only supplying the 4 seam lower, this offer must indicate:
  - Price
  - Volume
  - Duration

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# Annexure D

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MINUTES OF MEETING WITH  
TEGETA-IDWALA  
HELD ON 23 JANUARY 2015  
AT ESKOM'S OFFICES, MEGAWATT PARK, SUNNINGHILL  
KENAKO BOARDROOM

Attendants:

Eskom

Thabani Mashego (TM)  
Ayanda Ntshanga (AN)  
Mabatho Mothapo (MM)  
Sunjay Andhee (SA)

Tegeta/Idwala

Satish Mudliar (SM)  
Ravindra Nath (RN)

- 
- Evacuation procedure was explained by AN
  - MM provided feedback on the physical and proximate analysis of various samples received from Tegeta.
  - Numerous tests have been conducted on the following samples:
    - The seam 4 Lower
    - The seam 4 Upper
    - A blend of both the seam 4 Upper and seam 4 Lower
  - The tests showed that the seam 4 Lower was suitable for Eskom use at certain stations, the seam 4 Upper and the blended product were unsuitable for Eskom use because of the high Abrasive Index (AI) and marginal Hard Groove Index
  - The in seam partings which is predominantly sandstone in seam 4 Upper is responsible for the high AI..
  - To address the high AI, Tegeta will selectively mine the seam and use a grader to remove the major in seam partings. Furthermore overdrilling and blasting into the floor will be avoided. Detailed plans will be shared with Eskom.

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- AN reiterated Eskom's concern around the high price that was being offered by Tegeta. The prices offered were:
  - R17/GJ for the seam 4 Lower
  - R15/GJ for the blended product (seam 4 Upper and seam 4 Lower)

**Way forward:**

- Tegeta to revise their pricing and get back to Eskom.
- Tegeta to also present their technical plans to Eskom on how they plan to address the seam 4 upper qualities.

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# Annexure E

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**MINUTES OF MEETING WITH  
TEGETA-IDWALA  
HELD ON 30 JANUARY 2015  
AT ESKOM'S OFFICES, MEGAWATT PARK, SUNNINGHILL  
GREEN ROOM BOARDROOM**

**Attendants:**

**Eskom**

Thabani Mashego (TM)  
Ayanda Ntshanga (AN)  
Sunjay Andhee (SA)  
Johann Bester (JB)

**IDWALA**

Ravindra Nath (RN)  
Satish Mudliar (SM)  
A.K. Upadhy (AK)

- JB advised on the evacuation procedures

**Commercial Discussion**

- JB started the discussion by discussing Eskom's pricing principles.
- JB stated that parties are far apart in terms of the price.
- JB went on to show the average cost of coal delivered to Majuba Power Station
- RN stated that they have increased their BBBEE ownership and a higher price would be needed to finance the BBBEE partners.
- RN also further stated that recent changes in the environmental law as well as royalties justified the need for a higher price.
- JB stated that any price that the parties agree on would set a new benchmark on coal sold to Eskom, so it was important that an acceptable price be agreed between both parties.
- JB urged that Tegeta review their price, if they are unable to review their price Eskom would have to look at alternative suppliers.

- RN requested to call their board and obtain a mandate to adjust their price offer.
- RN came back with a price offer of R13.50/GJ for a five year contract. of approximately 65kt per month from the Brakfontein Resource.
- Eskom agreed to accept the price, provided that Eskom has the first right of refusal, for the additional coal resources at Brakfontein extension. Furthermore the coal must meet the technical and combustion requirements of Majuba Power Station.

#### Technical Discussion

- AK the Mine Manager presented their proposed technical plan to mitigate the high abrasive (AI) to MM and SA.
- Eskom's other big concern is the Hard Grove Index ("HGI") which is marginal; Eskom requires a minimum of HGI of 50.
- SA and MM were satisfied by the plans presented by Tegeta on how they plan to mitigate the high AI is sound.
- A newly mined sample of the blended product will have to be collected for testing.
- Tegeta are proposing a supply of 65kT/month of the blended product (seam 4 Upper and seam 4 Lower).
- The proposed start date would be the 1st of April 2015, subject to a successful combustion test.
- AK was requested to provide Eskom with their proposed ramp up plan.

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# Annexure F

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## **water & sanitation**

Department:  
Water and Sanitation  
REPUBLIC OF SOUTH AFRICA

Private Bag X313, Pretoria, 0001, Sedibeng Building, 185 Francis Baard, Pretoria, Tel: (012) 336-7500,  
Fax: (012) 326-4472/ (012) 326-2715

### **LICENCE IN TERMS OF CHAPTER 4 OF THE NATIONAL WATER ACT, 1998 (ACT NO. 36 OF 1998) (THE ACT)**

I, *Margaret-Ann Diedricks*, in my capacity as Director General in the Department of Water and Sanitation acting under authority of the powers delegated to me by the Minister of Water and Sanitation, hereby authorise the following water uses in respect of this licence.

SIGNED: .....

DATE: ..... 22/12/14 .....

**LICENCE NO. 04/B20E/ABCGIJ/2994  
FILE NUMBER: 16/27/B200/C585**

1. **Licensee:** **Tegeta Resources and Exploration (Pty) Ltd: Brakfontein Colliery**  
  
**Postal Address :** **Private Pag X9  
BENMORE  
2010**
2. **Water Uses**
  - 2.1 **Section 21(a) of the Act:** Taking water from a water resource, subject to the conditions as set out in Appendices I and II.
  - 2.2 **Section 21 (c) of the Act:** Impeding or diverting the flow of water in a watercourse subject to conditions as set out in Appendices I and III.
  - 2.3 **Section 21(g) of the Act:** Disposing of waste in a manner which may detrimentally impact on a water resource, subject to the conditions as set out in Appendices I and IV.
  - 2.4 **Section 21 (i) of the Act:** Altering the bed, banks course or characteristics of a watercourse, subject to conditions as set out in Appendices I and III.

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Licence No: 04/B20E/ABCGIJ/2994  
File No: 16/2/7/B200/C585

- 2.5 Section 21(j) of the Act: Removing, discharging or disposing of water found underground, if it is necessary for the efficient continuation of an activity or for the safety of people, subject to the conditions as set out in Appendices I and V

3. Property on which the use will be exercised

Table 1: Property Details

Description	Area (ha)	Title deed no.	Property owner
Brakfontein 264 IR Ptn 17	58.2337	T228/2012	Confident Concept Pty Ltd
Brakfontein 264 IR Ptn 22	63.3834	T152242/2006	Hannes Polgieter Trustfonds
Brakfontein 264 IR Ptn 25	168.4376	T9659/2011	Confident Concept Pty Ltd
Brakfontein 264 IR Ptn 27	30.9546	T9659/2011	Confident Concept Pty Ltd
Brakfontein 264 IR Ptn 28	86.4684	T21084/1979	Combrink Petrus Johannes
Brakfontein 264 IR Ptn 16	150.8995	T690/2008	Koos Uys & Seun Boerdery CC

5. Licence and Review Period

- 5.1 This licence is valid for a period of fifteen years (15) years from the date of issuance and as provided for under Section 49 of the Act, it may be reviewed every five (5) years

6. Definitions

"Any terms, words and expressions as defined in the National Water Act, 1998 (Act 36 of 1998) shall bear the same meaning when used in this licence."

"The Provincial Head" means the Head of Operations Provincial: Mpumalanga, Department of Water and Sanitation, Private Bag X11259, Mbombela, 1200.

"Report" refers to the report: Tegela Exploration and Resources (Pty) Ltd: Integrated Water And Waste Management Plan (IWWMP) FOR BRAKFONTAIN COLLIERY Portions 4, 16, 17, 22, 24, 25, 27, 28 And 29 Of The Farm Brakfontein 264 IR 16/2/7/B200/C585 Volume 1 July 2013 (Amended November 2014)

Licence No: 04/B20E/ABCG/J/2994  
File No: 16/27/B200/C585

7. Brief description of the application

This licence authorises Tegeta Resources and Exploration (Pty) Ltd for Brakfontein colliery. The water uses associated with opencast coal mining and underground mining on portion 16, 17, 22, 25, 27 and 28 of the farm Brakfontein 284 IR. The water uses are for Section 21(a), (c), (g), (i) and (j) as per section 40 of the National Water Act (Act 36 of 1998). The study area falls within Water Management Area 4 (WMA4) of the Upper Olifants River. Specifically the area occurs within quaternary catchment B20E. The far western extremity of Portion 16 is within quaternary catchment B20A, but this area should remain unaffected by surface disturbance.

The proposed area which will be directly affected by the opencast mining is around 138ha of portions 17, 22, 25 and 27 (Plan 2 and Plan 3). Approximately 70 ha of mining area have been lost due to the implementation of the 200m buffer zones. Infrastructure areas have and will disturb a further 135 ha in total.

Licence No: 04/B20E/ABCGIJ/2994  
File No: 16/27/B200/C585

# APPENDIX I

## General conditions for the licence

1. This licence is subject to all applicable provisions of the National Water Act, 1998 (Act 36 of 1998).
2. The responsibility for complying with the provisions of the licence is vested in the Licensee and not any other person or body.
3. The Licensee must immediately inform the Provincial Head of any change of name, address, premises and/or legal status.
4. If the property(ies) in respect of which this licence is issued is subdivided or consolidated, the Licensee must provide full details of all changes in respect of the properties to the Provincial Head within sixty (60) days of the said change taking place.
5. If a water user association is established in the area to manage the resource, membership of the Licensee to this association is compulsory.
6. The Licensee shall be responsible for any water use charges or levies imposed by a responsible authority.
7. While effect must be given to the Reserve as determined in terms of the Act, where a desktop determination of the Reserve has been used in issuance of a licence, when a comprehensive determination of the Reserve has finally been made; it shall be given effect to.
8. The licence shall not be construed as exempting the Licensee from compliance with the provisions any other applicable Act, Ordinance, Regulation or By-law.
9. The licence and amendment of this licence are also subject to all the applicable procedural requirements and other applicable provisions of the Act, as amended from time to time.
10. The Licensee shall conduct an annual internal audit on compliance with the conditions of licence. A report on the audit shall be submitted to the Provincial Head within one (1) month of finalisation of the audit.
11. The Licensee shall appoint an independent external auditor to conduct an annual audit on compliance with the conditions of this licence. The first audit must be conducted within three (3) months of the date this licence is issued and a report on the audit shall be submitted to the Provincial Head within one (1) month of finalisation of the report.
12. Flow metering, recording and integrating devices shall be maintained in a sound state of repair and calibrated by a competent person at intervals of not more than two (2) years. Calibration certificates shall be available for inspection by the Provincial Head or his representative upon request.
13. Any incident that causes or may cause water pollution shall be reported to the Provincial Head or his/her designated representative within 24 hours.

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Licence No: 04/B20E/ABCGIJ/2994  
File No: 16/2/7/B200/C585

14. If the water use described in this licence is not exercised within three (3) years of the date of the licence, the authorisation will be withdrawn. Upon commencement of the water use, the Licensee must inform the relevant authority in writing.

Licence No: 04/B20E/ABCGIJ/2994  
File No: 16/217/B200/C585

# APPENDIX II

## Section 21 (a) of the Act: Taking water from a water resource

1. This licence authorises the taking of a maximum quantity of groundwater in property as indicated in Table 2:

Table 2: Section 21 (a) water activities

Water use(s)	Purpose	Capacity/ Volume (m <sup>3</sup> tonnes and/or m <sup>3</sup> /annum)	Property Description	Co-ordinates
Section 21(a)				
Abstraction of groundwater from a borehole	The water is for drinking, water, toilets and change houses.	657m <sup>3</sup> /a	Portion 25 of farm Brakfontein 264 IR	26°13'32.05"S 28°50'59.24"E
		657m <sup>3</sup> /a	Portion 27 of farm Brakfontein 264 IR	26°13'50.70"S 28°50'51.00"E
Abstraction of ground water from mining operations	Water will be used in the processing plants.	54 700 m <sup>3</sup> /a	Portion 16 of farm Brakfontein 264 IR	26°13'38.21"S 28°49'55.88"E
		36 500 m <sup>3</sup> /a	Portion 17 and 27 of farm Brakfontein 264 IR	26°13'22.12"S 28°51'0.94"E
		54 700 m <sup>3</sup> /a	Portion 22 and 25 of farm Brakfontein 264 IR	26°14'4.92"S 28°50'18.49"E

2. The quantity of water authorised to be taken in terms of this licence may not be exceeded without prior authorisation by the Minister.
3. This licence does not imply any guarantee that the said quantities and qualities of water will be available at present or at any time in the future.
4. The volumes may be reduced when the licence is reviewed.
5. The Licensee shall continually investigate new and emerging technologies and put into practice water efficient devices or apply technique for the efficient use of water containing waste, in an endeavour to conserve water at all times.
6. The Licensee shall be responsible for any water use charges or levies, which may be imposed from time to time by the Department or Responsible Authority in terms of the Department's Raw Water Pricing Strategy.

Licence No: 04/B20E/ABCGJJ/2984  
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7. The Licensee shall establish and implement a continual process of raising awareness amongst itself, its workers and stakeholders with respect to Water Conservation and Water Demand Management Initiatives.
8. All water taken from the resource shall be measured as follows:
  - 8.1 The daily quantity of water taken must be metered or gauged and the total recorded at the last day of each month; and
  - 8.2 The licensee shall keep record of all water taken and a copy of the records shall be forwarded to the Provincial Head on or before 25 January and July of each year.
9. No water taken may be pumped, stored, diverted, or alienated for purposes other than intended in this licence, without written approval by the Minister or his/her delegated nominee.
10. The Licensee shall install and monitor appropriate water measuring devices to measure the amount of water abstracted, received and/or consumed, as applicable to the infrastructure.
11. Notices prohibiting unauthorised persons from entering the certain areas, as well as internationally acceptable signs indicating the risks involved in case of an unauthorised entry must be displayed along the boundary fence of these areas.
12. The Department accepts no liability for any damage, loss or inconvenience, of whatever nature, suffered as a result of:
  - 12.1 Shortage of water;
  - 12.2 Inundations or flood;
  - 12.3 Siltation of the resource; and
  - 12.4 Required reserve releases.
13. The Licensee shall ensure that all measuring devices are properly maintained and in good working order and must be easily accessible. This shall include a programme of checking, calibration, and/or renewal of measuring devices.
14. The Licensee shall establish a programme of formal Information Management System, which maintains a database on water supply, distribution and delivery infrastructure.

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Licence No: 04/B20E/ABCGIJ/2994  
File No: 16/2/7/B200/C585

## APPENDIX III

Section 21(c) of the Act: Impeding or diverting the flow of water in a watercourse;  
and

Section 21(i) of the Act: Altering the bed, banks, course or characteristics of a  
watercourse

Table 3: Details of water resource crossings

Section 21 c & i	Water Use Activity	Co-ordinates	Co-ordinates
Wetland areas, tributaries and boreholes have/will be affected by mining activities	Incline shaft and associated stockpiles will be established outside the 200m buffer but within 500m of a hillslope seep HGM 4 associated with tributary 1, channelled valley bottom wetland HGM3 and a pan.	Portion 16 of farm Brakfontein 264 IR	26°13'36.52"S 28°49'53.54"E
	Underground mining will take place outside the 200m buffer but within the 500m regulated area of the pan	Portion 16 farm Brakfontein 264 IR	26°13'22.94"S 28°49'43.54"E
	Underground mining will take place outside the 200m buffer but within the 500m upper reaches and the origin of tributary 1 (±500 long) and associated wetlands (HGM 3 and 4)	Portion 16 farm Brakfontein 264 IR	26°13'29.28"S 28°49'54.55"E  26°13'30.79"S 28°50'12.05"E
	Isolated Hillslope seep wetland (HGM3 B - Seriously modified - PES: E) area have been affected by existing mining activities on this	Brakfontein 264 IR Portion 17 and 27:	26°13'20.46"S 28°50'41.27"E
	Isolated Hillslope seep wetland (HGM2 B - Seriously modified - PES: E) area have been affected by existing	Brakfontein 264 IR Portion 17:	26°13'13.33"S 28°51'4.18"E

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Licence No: 04/B20E/ABCGIJ/2994  
File No: 16/27/B200/C585

Section 24 C&I	Water Use Activity	Co-ordinates	Co-ordinates
	mining activities on this property.		
	Mining within 500m of unchanneled valley bottom wetland (HGM1 B).	Brakfontein 264 IR Portion 17:	26°13'7.68"S 28°51'11.56"E
	Existing mining within 500m of unchanneled valley bottom wetland (HGM4 B).	Brakfontein 264 IR Portion 17:	26°13'7.75"S 28°51'14.51"E  26°13'7.75"S 28°51'14.51"E
	Existing mining and haul road within 100m of tributary 3 and associated channeled valley bottom wetland (HGM4 B).	Brakfontein 264 IR Portion 27:	26°13'37.20"S 28°50'48.37"E  26°13'42.24"S 28°51'7.20"E
	Existing mining outside the 200m buffer but within 500m of unchanneled valley bottom wetland (HGM4 B).	Brakfontein 264 IR Portion 27:	26°13'28.16"S 28°51'9.97"E  26°13'42.24"S 28°51'7.20"E
	Existing PCD within 100m of wetland area encroaching into wetland edge associated with tributary 1 (HGM4-B). PCD is planned on being relocated outside the 100m buffer.	Brakfontein 264 IR Portion 27:	26°13'42.24"S 28°51'7.20"E
	Mining within 500m of a spring (CBFS1).	Brakfontein 264 IR Portion 27:	26°13'47.86"S 28°51'17.93"E
	ROM Stockpiling within 500m of tributary 2 and associated wetlands.	Brakfontein 264 IR Portions 25:	26°13'48.36"S 28°50'39.59"E

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Licence No: 04/B20E/ABCGIJ/2094  
File No: 16/2/7/B200/C585

Section 21 r.c. & i	Water Use Activity	Co-ordinates	Co-ordinates
	Overburden stockpiles outside the 200m buffer but within 500m of tributary 2 and associated wetlands.	Brakfontein 264 IR Portions 22 and 25:	26°14'15.00"S 28°49'51.89"E
	Mining outside the 200m buffer but within 500m of Wilge River and associated wetlands.	Brakfontein 264 IR Portions 22 and 25:	Eastern extent: 26°14'13.74"S 28°50'59.32"E
	Discard dump within 500m of Wilge River and tributary 3 and associated wetlands.	Brakfontein 264 IR Portions 25:	26°14'11.54"S 28°51'17.88"E  26°13'57.58"S 28°51'2.84"E
	PCD within 500m of Wilge River, tributary 3 and associated wetlands.	Brakfontein 264 IR Portions 25:	26°13'55.99"S 28°51'9.04"E  26°13'54.73"S 28°51'3.89"E
	Septic tank within 500m of tributary 3 and associated wetlands.	Brakfontein 264 IR Portions 25:	26°13'46.38"S 28°50'52.76"E
	Wash plant within 500m of tributary 2 and tributary 3 and their associated wetlands.	Brakfontein 264 IR Portions 25:	26°13'55.96"S 28°50'44.56"E

# 1. Construction, Operation and Maintenance

1.1 The Licensee shall carry out and complete all the activities according to the following:

## 1.1.1 Report(s) submitted to the Department or the Responsible Authority

1.1.1.1 Surface water assessment for Brakfontein colliery prepared by Letsolo dated 2013

1.1.1.2 Surface water assessment for Brakfontein extension prepared by Letsolo dated 2013

1.1.1.3 Aquatic assessment for Brakfontein colliery prepared by SEF dated 2013

1.1.1.4 Aquatic assessment for Brakfontein extension prepared by SEF dated 2013




Licence No: 04/B20E/ABCGIJ/2994  
File No: 16/2/7/B200/C585

- 1.1.1.5 Wetland assessment Brakfontein colliery prepared by SEF dated 2013
- 1.1.1.6 Wetland assessment Brakfontein extension prepared by SEF dated 2013
- 1.1.1.7 Section 21 (c) & (f) supplementary form.

- 1.1.2 Conditions of this licence; and
- 1.1.3 Any other written direction issued by the Storm Water Head in relation to this licence.
- 1.2 The conditions of this licence shall be brought to the attention of all persons (employees, sub-consultants, contractors etc.) associated with the undertaking of this activity and the Licensee shall take such measures that are necessary to bind such persons to the conditions of this licence.
- 1.3 Construction activities must not take place within the 1:100 year flood-line or within a horizontal distance of 100 metres from any watercourse, estuary, borehole or well, whichever is the greatest, unless authorised by this licence.
- 1.4 Compensation measures for damage to and or mitigation measures must be recommended if avoidance or minimisation of the impacts of the proposed development is not possible or if mitigation measures fail to adequately protect the in-stream and riparian habitat.
- 1.5 No material with pollution generating potential will be used in any construction activities.
- 1.6 Necessary erosion prevention mechanisms shall be employed to ensure the sustainability of all structures.
- 1.7 The Licensee must ensure that structures such as the river, road crossings, weirs and the culverts are not damaged excessively by floods exceeding the magnitude of floods occurring on average once in every 100 years.
- 1.8 The structure of temporary crossings must be non-erosive, structurally stable and must not induce any flooding or safety hazard. Temporary crossings must be inspected regularly for accumulation of debris, blockage, erosion of abutments and overflow areas. Debris must be removed and damages must be repaired and reinforced immediately.
- 1.9 Construction activities shall start up-stream and proceed into a down-stream direction, so that the recovery processes can start immediately, without further disturbance from upstream construction works.
- 1.10 Construction activities must be scheduled to take place during dry seasons when flows are lowest.
- 1.11 The natural migration of aquatic biota and upstream movement of fish must not be disturbed.
- 1.12 The development may not impede natural drainage lines.
- 1.13 The construction camp shall not be located within the 1:100 year flood line or within 100 metres of any watercourse whatever the greatest.
- 1.14 Vehicles and other machinery must be serviced well above the 1:100 year flood line or within a horizontal distance of 100 metres from any watercourse or estuary. Oils and other potential pollutants must be disposed off at an appropriate licensed site, with the necessary agreement from the owner of such a site.
- 1.15 All reagent storage tanks and reaction units must be supplied with a bunded area built to the capacity of the facility and provided with sumps and pumps to return the spilled material back into the system.
- 1.16 The system shall be maintained in a state of good repair and standby pumps must be provided.




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- 1.17 Any hazardous substances must be handled according to the relevant legislation relating to transport, storage and use of the substance.
  - 1.18 Pollutions caused by spills from the conveyances of any pollution generating potential must be prevented through proper maintenance and effective protective measures especially near all stream crossings.
  - 1.19 Any access roads or temporary crossings must be:
    - 1.19.1 non-erosive, structurally stable and should not induce any flooding or safety hazard;
    - 1.19.2 Repaired immediately should damage occur to prevent further damage.
- 2. Storm water Management**
- 2.1 Storm water shall be diverted from the construction works and roads must be managed in such a manner as to disperse runoff and to prevent the concentration of storm water flow.
  - 2.1 Where necessary, works must be constructed to attenuate the velocity of the storm water discharge and to protect the banks of the watercourse.
  - 2.2 Storm water control works must be constructed, operated and maintained in a sustainable manner throughout the project.
  - 2.4 Increased runoff due to vegetation clearance and/or soil compaction must be managed, and steps must be taken to ensure that storm water does not lead to bank instability and excessive levels of silt entering the watercourse.
  - 2.5 Storm water leaving the Licensee's premises must in no way be contaminated by any substance, whether such substance is a solid, liquid, vapour or gas or a combination thereof which is produced, used, stored, dumped or spilled on the premises.
- 3. Water Quality and Quantity**
- 3.1 The in-stream water quality must be analysed on a weekly basis during the construction period for activities occurring closer than 100m to a watercourse, at the monitoring points on both upstream and downstream of the activities for the following variables: pH, Electrical conductivity (mS/M), suspended solids (mg/l), and total dissolved solids (mg/l). Monitoring shall continue on monthly basis after the cessation of the activities.
  - 3.2 Activities (such as maintenance) that lead to elevated levels of turbidity of any watercourse must be minimised.
  - 3.3 The Licensee shall ensure that the quantity of water to downstream water users does not decrease because of the existence of the river diversions, river crossings, and culverts and associated maintenance of road crossings.
- 4. General Specifications**
- 4.1 A suitably-qualified person, appointed by the Licensee, and approved, in writing, by the Storm Water Provincial Head, must be responsible for ensuring that the structures are maintained in line with the design specifications.

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- 4.2 The Licensee shall have a full time Civil Engineer Supervisor on the site during construction of river diversions, river crossings, culverts and pollution control dams. The contractor shall have an approved Site Agent on the site during construction.
- 4.3 Necessary erosion prevention mechanisms shall be employed to ensure the sustainability of all the structures.

## 5. Protective Measures

- 5.1 The river crossings structures may not restrict river flows by reducing the overall river width or obstructing river flow.
- 5.2 Operation and storage of equipment within the riparian zone must be limited as far as possible.
- 5.3 All activities within the riparian zone should be restricted as far as possible.
- 5.4 Any material removed from the in stream or riparian habitat, may not be stored within the riparian zone, and may not be stored in such a way that will cause damming of water or wash-away.
- 5.5 Alien vegetation must not be allowed to further colonise the area, and all new alien vegetation recruitment must be eradicated or controlled, using standard methods approved by the Department.
- 5.6 Soils that have become compacted through the activities of the development must be loosened to an appropriate depth to allow seed germination.
- 5.7 The proposed development must not impede the upstream movement of fish.
- 5.8 Increased runoff due to vegetation clearance and/or soil compaction must be managed and steps must be taken to ensure that storm water does not lead to bank instability and excessive levels of silt entering the stream.
- 5.9 Riparian vegetation, including dead trees, may not be removed from the area; in particular, snags (fallen trees and branches) in the river must be protected (i.e. not collected for firewood or any other purpose).
- 5.10 All reasonable steps should be made to minimise noise and mechanical vibrations in the vicinity of the river.

## 6. Rehabilitation

- 6.1 All disturbed areas must be re-vegetated with an indigenous seed mix in consultation with an indigenous plant expert, ensuring that during rehabilitation only indigenous shrubs, trees and grasses are used in restoring the biodiversity.
- 6.2 The vegetation of affected environment should also be managed to prevent erosion and siltation of the water course.
- 6.3 The Licensee shall take steps necessary to allow movement of aquatic species, including migratory species during the rehabilitation programme.
- 6.4 The Licensee shall embark on a systematic long-term rehabilitation programme to restore natural watercourses to environmentally acceptable and sustainable conditions after construction, which shall include, but not be limited to:
  - 6.4.1 The rehabilitation of disturbed and degraded riparian areas to restore and upgrade the riparian habitat integrity to sustain a bio-diverse riparian ecosystem; and

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- 6.4.2 Annually assess the habitat to monitor the sustainability of the diversions and compliance with these conditions. Action must be taken to rectify any negative impacts.
- 6.5 The Licensee shall ensure that the volume of flow is not reduced except for natural evaporative losses and the authorised attenuation volumes.
- 7. General Surface Water Design Requirements and Criteria**
- 7.1 The Licensee shall determine flood lines (1:50 and 1:100 year) prior to construction to ensure risks are adequately managed. Flood lines shall be clearly indicated on the layout plans.
- 7.2 The Licensee shall schedule construction activities at or close to river crossings, streams or wetlands to take place during low flow periods.
- 7.3 The Licensee shall clearly indicate all wetlands boundaries within the project area on layout plans.
- 7.4 Design and planning of all proposed construction activities adjacent to or in the vicinity of rivers, streams and wetlands shall consider the following measures:
- 7.4.1 Impact of alignment on springs and wetlands shall be investigated and monitored and ensure their continued functioning.
- 7.4.2 Where appropriate, large individual indigenous riparian trees shall be avoided during construction and shall be clearly marked on site.
- 7.4.3 All construction roads in or adjacent to the riparian zone shall be minimised and if required, shall be aligned and managed so as to minimise disturbance of the riparian zone and in-stream habitats.
- 7.5 The Licensee shall do Bio-monitoring to determine the impact, change, deterioration and improvement of the aquatic system associated with the activities that of impeding, altering or diverting the water resource.

## **8 SITE SPECIFIC CONDITIONS**

- 8.1 Flood lines are to be determined for both rivers surrounding the project area and be submitted to the Provincial Head within six (6) months of the issuance of this licence. X
- 8.2 Mining must exclude the 2 main wetlands on the western and eastern side of the mine.
- 8.3 All measures and technologies available must be utilized to ensure that decant points are at least 200m away from all rivers.
- 8.4 Drainage systems, trenches, channels and dams ensuring the separation of clean and dirty water must be constructed and operated in an environmentally friendly.
- 8.5 An inspectional and maintenance system to clean and access drainage systems, trenches, channels and dams must be established and implemented.
- 8.6 All diversion trenches and berms as well as soil stockpiles must be seeded with an appropriate seed mixture during the first rainy season after establishment.

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#### APPENDIX IV

Section 21 (g) of the Act: Disposing of waste in a manner which may detrimentally impact on a water resource

#### 1. CONSTRUCTION, OPERATION AND MAINTAINANCE

- 1.1 The Licensee shall carry out and complete all the activities, including the construction and operation of the facilities indicated in Table 4, according to the Report and according to the final plans submitted with the Integrated Water Use Licence Application as approved by the Provincial Head:

**Table 4: Geographical positions of all the waste water management facilities**



Water use(s)	Purpose	Capacity/ Volume (m <sup>3</sup> tonnes and/or m/annum)	Property Description	Co-ordinates
<b>Section 21(g)</b>				
21(g): Storage of dirty water in the PCDs	Mine Infrastructure PCD	7 000m <sup>3</sup>	Brakfontein 264 IR Portion 27:	26°13'29.78"S 28°50'36.89"E  26°13'32.70"S 28°50'38.44"E  26°13'29.71"S 28°50'40.63"E  26°13'28.78"S 28°50'39.62"E
	Additional Infrastructure PCD with 7 000m <sup>3</sup> capacity.	7 000m <sup>3</sup>		26°13'29.43"S 28°50'40.75"E  26°13'32.56"S 28°50'38.66"E  26°13'34.29"S 28°50'41.76"E



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Water use(s)	Purpose	Capacity/ volume (m <sup>3</sup> tonnes and/or m <sup>3</sup> /annum)	Property Description	Co-ordinates
				26°13'30.58"S 28°50'43.66"E
	PCD at wash plant and co-disposal. PCD with 17 658m <sup>3</sup> capacity. Capacity to increase by 8 147m <sup>3</sup> if mine water is pumped from sumps to PCD.	17 658m <sup>3</sup>	Brakfontein 264 IR Portion 25:	26°13'54.23"S 28°50'59.35"E  26°13'54.16"S 28°51'8.89"E  26°13'56.93"S 28°51'8.42"E  26°13'56.78"S 28°50'59.17"E
21(g): Coal Stockpiling and overburden stockpiling	Temporary overburden and ROM coal stockpiles at incline shaft.	1 200 000 tons/year.	Brakfontein 264 IR Portions 16:	26°13'38.21"S 28°49'55.88"E
	Temporary overburden and coal stockpiles at mining area.	600 000 tons/year.	Brakfontein 264 IR Portions 27:	26°13'27.94"S 28°50'44.26"E
	ROM stockpiles at mining area.	1 200 000 tons/year.	Brakfontein 264 IR Portions 17:	26°13'20.24"S 28°50'46.43"E
	Temporary overburden stockpiles at mining area.	450 000 m <sup>3</sup> .	Brakfontein 264 IR Portions 17:	26°13'4.26"S 28°51'6.37"E
	Temporary overburden stockpiles at mining area.	450 000 m <sup>3</sup> .	Brakfontein 264 IR Portion 22:	26°14'14.93"S 28°49'52.61"E
	Temporary overburden stockpiles at mining area.	500 000 m <sup>3</sup> .	Brakfontein 264 IR Portion 25:	26°13'42.28"S 28°50'37.75"E

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Water use(s)	Purpose	Capacity/ Volume (m <sup>3</sup> tonnes and/or m <sup>3</sup> /annum)	Property Description	Co-ordinates
	Temporary coal stockpiles at wash plant area.	300 000 m <sup>3</sup>	Brakfontein 264 IR Portion 25:	26°13'57.47"S 28°50'40.63"E
21(g) Co-disposal facility for discard and slurry disposal	Containment of waste emanating from the processing and washing plant.	264 000 tons/a	Brakfontein 264 IR Portion 25	26°13'57.67"S 28°50'58.31"E 26°14'3.59"S 28°50'55.28"E  26°14'9.84"S 28°50'59.06"E  26°14'5.93"S 28°51'7.13"E  26°13'57.29"S 28°51'8.32"E
21(g): Dust suppression		32 850m <sup>3</sup> /a	Brakfontein 264 IR All portions within the mineral rights boundary	All areas
21(g): Ablutions and septic tanks		22265m <sup>3</sup> /a	Brakfontein 264 IR Portions 27 and 25	26°13'34.32"S 28°50'58.56"E  26°13'48.07"S 28°50'53.12"E

1.2 The construction of the waste containment facilities listed in Table 4 must be carried out under the supervision of a professional Civil Engineer, registered under the Engineering Profession of South Africa Act, 1990 (Act 114 of 1990), as approved by the designer. 

1.3 Within thirty (30) days after the completion of the activities referred here in accordance with the relevant provisions of this licence, the Licensee shall in writing, under


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reference 27/2/2/B120/5/4, Inform the Provincial Head thereof. This shall be accompanied by a signature of approval from the designer referred to above that the construction was done according to the design plans referred to in the Report.

- 1.4 The Licensee must ensure that the disposal of the waste or water containing waste and the operation and maintenance of the system are done according to the provisions in the Report.
- 1.5 The Licensee shall as well submit a set of as-built drawings to the Provincial Head after the completion of the waste facilities listed in Table 4.
- 1.6 The waste facilities listed in Table 4 shall be operated and maintained to have a minimum freeboard of 0.8 metres above full supply level and all other water systems related thereto shall be operated in such a manner that it is at all times capable of handling the 1:50 year flood-event on top of its mean operating level.
- 1.7 The Licensee shall use acknowledged methods for sampling and the date, time and sampler must be indicated for each sample.
- 1.8 The Compacted Clay Layer compaction specification must be amended to a minimum of 95% Standard Proctor density.
- 1.9 The Geo-membrane shall comply with SANS 1526 and GRI GM13.
- 1.10 The Pollution Control Dam protection layer of sand on the floor and geo-textile on the wall area shall be removed out as to reinstate the composite effect of the Barrier system.
- 1.11 The ash layer beneath the Run of Mine pad shall be installed.

## 2. DISPOSAL OF WASTE OR WATER CONTAINING WASTE

- 2.1 The Licensee is authorised to dispose of waste or water containing waste into the waste management facilities on the properties described in Table 5:

Table 5: Volumes of waste or water to be disposed at the waste disposal facilities

Description of Activity/Facilities	Volume in Cubic meters per annum (m <sup>3</sup> /a)	Capacity in Cubic meters (m <sup>3</sup> )	Waste Description	Property Name
Disposal of contaminated run-off and contaminated dewatered water Pollution Control Dam	500 000 m <sup>3</sup> /a	47 000	Mine dirty water emanating from the dewatering of opencast pit and dirty water run-off.	Viakvarkfontein 213 IR portion 4

- 2.2. The Licensee is authorised to dispose of a maximum volume of two hundred and ninety one thousand three hundred and eight cubic meters per annum (291 308 m<sup>3</sup>/a)





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of waste water by means of dust suppression onto haul roads and mining area on portion 4 Vlakvarkfontein.

### 3. MONITORING

- 3.1 Surface draining via the two streams cross the proposed mining rights area, flowing from south to north towards Delmas, occurs within the study area, therefore reasonable and sound groundwater protection measures are required to ensure that no cumulative pollution affects these water resources.
- 3.2 There must be an undertaking by the mine to provide and compensate the surrounding groundwater users should their boreholes be affected in terms of quantity and quality in a long term.
- 3.3 The Licensee must submit the final groundwater monitoring program with the inclusion of the boreholes in Table 6 of the Licence within six (6) months of issuance of this licence. X
- 3.4 The groundwater model must be updated as more information on the current and additional monitoring boreholes becomes available.

Table 6: Groundwater monitoring boreholes

Monitoring point	Description	Co-ordinates
CBF1	Proposed Underground & Opencast	-26.2247 'S 28.8322 'E
CBF2	Proposed Underground & Opencast	-26.2277 'S 28.8348 'E
CBF3	Proposed Underground & Opencast	-26.2255 'S 28.8376 'E
CBF5	not applicable	-26.2150 'S 28.8620 'E
CBF6	not applicable	-26.2281 'S 28.8609 'E
CBF7	not applicable	-26.23536 'S 28.874 'E
BHA1	Current Opencast	-26.2170 'S 28.8539 'E
BHA3	Current Opencast	-26.2274 'S 28.8544 'E
BHB	Current Surface Infrastructure	-26.22348 'S 28.8443 'E
BHC	Proposed Underground & Opencast	-26.2219 'S 28.8420 'E

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Table 7: Groundwater monitoring plan frequency

Phase	Groundwater levels	Groundwater quality	Parameters
During mining	Monthly	Quarterly	Total Dissolved Solids / Electrical Conductivity; pH level; Alkalinity; Carbonates; Magnesium; Calcium; Sodium; Potassium; Sulphate; Chloride; Fluoride; Iron; Manganese; and Aluminum.
Post-Mining	Monthly	Quarterly	

3.5 The Licensee shall monitor on monthly basis the water resources at surface water monitoring points in Tables 8 & 9 and groundwater monitoring points in Tables 6 & 7 on a quarterly basis to determine the impact of the facility and other activities on the water quality by taking samples at the monitoring points.

Table 8: Surface water sampling points.

Monitoring point	Description	Co-ordinates
MP-A	Tributary of the Wilge River, up stream of Ptn 27	-26.2311 'S 28.8403 'E
MP-B	Tributary of the Wilge River, eastern boundary of Ptn 27	-26.2253 'S 28.8418 'E
MP-C	Tributary of the Wilge River, downstream of Ptn 27	-26.2298 'S 28.8553 'E
MP-D	Up stream of Ptn 29 (northern boundary)	-26.2037 'S 28.8417 'E
MP-E	Up stream of Ptn 29 (northern boundary)	-26.1939 'S 28.8439 'E
MP-F	Downstream of Ptn 29	-26.1978 'S 28.8654 'E
MP-G1	Wilge river, upstream of MP-C	-26.2320 'S 28.8558 'E
MP-G2	Upstream of confluence with Wilge River	-26.2347 'S 28.8849 'E
MP-G3	Downstream of Ptn 17 and 27 but up stream if Ptn 4	-26.2093 'S 28.8774 'E
MP-G4	Most downstream point of the entire study area	-26.1748 'S 28.8819 'E
In-pit sump	Location may vary within the general location of the pit	-26.2237 'S 28.8504 'E
PCD	South-western extent of existing mining area. Dirty water containment dam.	-26.2252 'S 28.8440 'E
PCD	Eastern area of portion 25	-26.2322 'S 28.8509 'E

Table 9: Groundwater monitoring plan frequency

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Phase	Groundwater levels	Groundwater quality	Parameters
During mining	Monthly	Monthly	Total Dissolved Solids / Electrical Conductivity; pH level; Alkalinity; Carbonates; Magnesium; Calcium; Sodium; Potassium; Sulphate; Chloride; Fluoride; Iron; Manganese; and Aluminum.
Post-Mining	Quarterly	Quarterly	

- 3.6 The date, time and monitoring point in respect of each sample taken shall be recorded together with the results of the analysis.
- 3.7 Monitoring points shall not be changed without prior notification to and written approval by the Provincial Head.
- 3.8 The waste management facilities must be designed in such manner that any leakages can be contained and reclaimed without any impact on the surrounding environment, an early warning detection system must be installed and monitored to detect any leakages or malfunction in the waste management facilities in time in order to take corrective action to protect water resources.
- 3.9 Post mine closure, there is a great chance of decant and acid mine drainage, the Licensee is required to commit to treat decanting water up to an environmentally acceptable standard before that decant reports to surface water bodies in the study area.
- 3.10 The groundwater model must be updated as more information in the current and the additional monitoring boreholes becomes available.
- 3.11 Geochemical studies must be carried out and the numerical groundwater flow and contaminant transport models for the proposed mine must be updated and submitted to the Provincial Head within (12) twelve months of the issuance this licence. X
- 3.12 An acceptable groundwater monitoring network must be established within six (6) months of the date of issuance of this licence. X

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#### 4. WATER RESOURCE PROTECTION

- 4.1 The impact of the activities of the mine on the groundwater shall not exceed the limits as indicated in Table 10.

Table 10: Ground Reserve Quality

Parameters	Quality Limit
Electrical Conductivity (mS/m)	37.51
pH	5.5-9.5
Sodium (mg/l)	10.46
Magnesium (mg/l)	5.61
Calcium (mg/l)	20.68
Chloride (mg/l)	8.80
Sulphate (mg/l)	14.85
Nitrate (mg/l)	0.48

#### 5. REPORTING

- 5.1 The Licensee shall update the water balance annually and calculate the loads of waste emanating from the activities. The Licensee shall determine the contribution of their activities to the mass balance for the water resource and must furthermore co-operate with other water users in the catchment to determine the mass balance for the water resource reserve compliance point.
- 5.2 The Licensee shall submit the results of analysis for the monitoring requirements to the Provincial Head on a quarterly basis under Reference number 16/27/B200/C585.

#### 6. STORMWATER MANAGEMENT

- 6.1 The stormwater management drawings must be submitted to the Department for approval prior to the commencement of the proposed water use activities and that no mining activity or infrastructure is positioned within the 1: 100 year floodline of the Kilpspruit and any other water resources within the vicinity of the mine without the requisite authorisation.
- 6.2 The Licensee must also ensure that the runoff water storage facilities can accommodate at least 1:50 year stormwater with a minimum 0.8 metre freeboard.
- 6.3 Stormwater leaving the Licensee's premises shall in no way be contaminated by any substance, whether such substance is a solid, liquid, vapour or gas or a combination thereof which is produced, used, stored, dumped or spilled on the premises.

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- 6.4 Increase runoff due to vegetation clearance and/or soil compaction must be managed, and steps must be taken to ensure that stormwater does not lead to bank instability and excessive levels of silt entering the stream.
- 6.5 Stormwater shall be diverted from the mine complex site and roads and shall be managed in such a manner as to disperse runoff and concentrating the stormwater low.
- 6.6 Where necessary works must be constructed to attenuate the velocity of any stormwater discharge and to protect the banks of the affected watercourses.
- 6.7 Stormwater control works must be constructed, operated and maintained in a sustainable manner throughout the impacted area.
- 6.8 Increased runoff due to vegetation clearance and/or soil compaction must be managed, and steps must be taken to ensure that stormwater does not lead to bank instability and excessive levels of silt entering the streams.
- 6.9 All stormwater that would naturally run across the pollution areas shall be diverted via channels and trapezoidal drains designed to contain the 1:50 year flood.
- 7. PLANT AREAS AND CONVEYANCES**
- 7.1 Pollution caused by spills from the conveyances must be prevented through proper maintenance and effective protective measures especially near all stream crossings.
- 7.2 All reagent storage tanks and reaction units must be supplied with a bunded area built to the capacity of the facility and provided with sumps and pumps to return the spilled material back into the system. The system shall be maintained in a state of good repair and standby pumps must be provided.
- 7.3 Any hazardous substances must be handled according to the relevant legislation relating to the transport, storage and use of the substance.
- 7.4 Any access roads or temporary crossings must be:
- 7.4.1 Non-erosive, structurally stable and shall not induce any flooding or safety hazard and
- 7.4.2 Be repaired immediately to prevent further damage.
- 8. ACCESS CONTROL**
- 8.1 Strict access procedures must be followed in order to gain access to the property.
- 8.2 Notices prohibiting unauthorised persons from entering the controlled access areas as well as internationally acceptable signs indicating the risks involved in case of an unauthorised entry must be displayed along the boundary fence of these areas.

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## 9. CONTINGENCIES

- 9.1 Accurate and up-to-date records shall be kept of all system malfunctions resulting in non-compliance with the requirements of this licence. The records shall be available for inspection by the Provincial Head upon request. Such malfunctions shall be tabulated under the following headings with a full explanation of all the contributory circumstances:

- 9.1.1 Operating errors
- 9.1.2 Mechanical failures (including design, installation or maintenance)
- 9.1.3 Environmental factors (e.g. flood)
- 9.1.4 Loss of supply services (e.g. power failure) and
- 9.1.5 Other causes.

- 9.2 The Licensee must, within 24 hours, notify the Provincial Head of the occurrence or potential occurrence of any incident which has the potential to cause, or has caused water pollution, pollution of the environment, health risks or which is a contravention of the licence conditions.

- 9.3 The Licensee must, within 14 days, or a shorter period of time, as specified by the Provincial Head, from the occurrence or detection of any incident referred above, submit an action plan, which must include a detailed time schedule, to the satisfaction of the Provincial Head of measures taken to:

- 9.3.1 Correct the impacts resulting from the incident
- 9.3.2 Prevent the incident from causing any further impacts and
- 9.3.3 Prevent a recurrence of a similar incident.

## 10. AUDITING

- 10.1 The Licensee shall conduct an annual internal audit on compliance with the conditions of this licence. A report on the audit shall be submitted to the Provincial Head within one month of finalisation of the report, and shall be made available to an external auditor should the need arise.

## 11. INTEGRATED WATER AND WASTE MANAGEMENT

- 11.1 The Licensee must update an *Integrated Water and Waste Management Plan (IWWMP)*, which must together with the updated *Rehabilitation Strategy and Implementation Programme (RSIP)*, be submitted to the Provincial Head for approval within one (1) years from the date of issuance of this licence. X
- 11.2 The IWWMP and RSIP shall thereafter be updated and submitted to the Provincial Head for approval, annually.
- 11.3 The Licensee must, at least 180 days prior to the intended closure of any facility, or any portion thereof, notify the Provincial Head of such intention and submit any final amendments to the IWWMP and RSIP as well as a final *Closure Plan*, for approval.
- 11.4 The Licensee shall make full financial provision for all investigations, designs, construction, operation and maintenance for a water treatment plant should it become a requirement as a long-term water management strategy.

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- 11.5 During the operational phase the Licensee must ensure local aquifers are not artificially recharged by the seepage emanating from the opencast mining workings, dirty water dams, leaking pipes or any hazardous waste storage facilities.
- 11.6 Emergency action plans in cases of groundwater polluted emanating from the opencast mine workings; dirty water dams; any hazardous waste storage facilities (e.g. oil and diesel spills), or leakage occurred along the pipeline must be adhered to to protect groundwater quality from degradation and a plan for remediation must be developed and ensure that the corrective measures implemented are adequate. This action plan should inter alia identify the sources of potential groundwater contamination, the potential impacts should be quantified and their contribution factored into the remedial strategy of groundwater.
- 11.7 The monitoring data must be analyzed by a hydro-geologist to establish quality trends for the boreholes. This can be used to re-evaluate the aquifer quantity and quality status on an ongoing basis and recommendation adjustment to abstraction rate or daily pump cycle if required.
- 11.8 Pollution control dams and the groundwater recharge into the mine workings should be managed properly to avoid decant of groundwater poor quality mine water into the surface resources and ensure surface streams do not act as secondary sources of contamination during operational, decommission and closure phases

### 13 GENERAL CONDITIONS

- 13.1 Water samples must be taken from all the monitoring boreholes by using approved sampling techniques and adhering to recognized sampling procedures. Samples should be analyzed for both organic as well as inorganic pollutants, as mining activity often lead to hydrocarbon spills in the form of diesel and oil. At least the following water quality parameters should be analyzed for:

13.1.2 Major Ions (Ca, K, Mg, Na, SO<sub>4</sub>, NO<sub>3</sub>, Cl, F)

13.1.3 Electrical Conductivity (EC)

13.1.4 Total Petroleum hydrocarbon (TPH)

13.1.5 Total Alkalinity

These should be recorded on a data sheet. It is proposed that the data should be entered into an appropriate computer database and reported to the Department of Water And Sanitation.

- 13.2 The final backfilled opencast topography should be engineered such that runoff is directed away from the opencast areas.
- 13.3 The final layer should be as clayey as possible and compacted if feasible, to reduce recharge to the opencasts.
- 13.4 Quarterly groundwater sampling must be done to establish a database of plume movement trends, to aid eventual mine closure.
- 13.5 The Licensee must ensure in advance that alternative water supply for external water users is provided to these users should groundwater resources be impacted

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- 13.6 A proper groundwater and surface water monitoring network should be established to monitor the quality and quantity of groundwater as per the report recommendation and ensuring that water used by other water users are safeguarded in accordance to Chapter 14 of the National Water Act, 1998.
- 13.7 The waste containment facilities must be designed in such a manner that any spillage can be contained and reclaimed without any impact on the surrounding environment, a plan must be in place to stop overflowing in a dam in case of rainy seasons.
- 13.8 The Licensee shall at all times together with the conditions of this licence adhere to the Regulations on use of water for mining and related activities aimed at the protection of water resources (GN 704, 4 June 1999).

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File No: 16/27/B20D/C585

# APPENDIX V

Section 21 (j) of the Act: Removing, discharging or disposing of water found underground if it is necessary for the efficient continuation of an activity or for the safety of people.

1. This licence authorises the removal of a maximum volume of water found underground in the property as indicated in Table 11:

Table 11: Section 21 (j) water use activities.

Water use(s)	Purpose	Capacity/ Volume (m <sup>3</sup> tonnes and/or m <sup>3</sup> /annum)	Property Description	Co-ordinates
21(j): Dewatering of mine pits for safe mining	150m <sup>3</sup> /day for dust suppression and mine requirements	54 750m <sup>3</sup> /a	Brakfontein 264 IR Portions 16:	26°13'38.21"S 28°49'55.88"E
	100m <sup>3</sup> /day for dust suppression and mine requirements	36 750m <sup>3</sup> /a	Brakfontein 264 IR Portions 17 and 27:	26°13'22.12"S 28°51'0.94"E
	150m <sup>3</sup> /day for dust suppression and mine requirements	54 750m <sup>3</sup> /a	Brakfontein 264 IR Portions 22 and 25:	26°14'4.92"S 28°50'18.49"E

2. The quantity of the water authorised to be removed in terms of this licence may not be exceeded without prior authorisation by the Minister.
3. The Licensee shall provide any water user whose water supply is impacted by the water use with potable water.
4. The quantity of water removed from underground must be metered and recorded on a daily basis.
5. The groundwater levels shall be monitored monthly.
6. Self registering flow meters must be installed in the delivery lines at easily accessible positions near the dewatering points.
7. Calibration certificates in respect of the pumps must be submitted to the Provincial Head after installation thereof and thereafter at intervals of two (2) years.
8. The date and time of monitoring in respect of each sample taken shall be recorded together with the results of the analysis.

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File No: 16/2/7/B200/C585

9. Analysis shall be carried out in accordance with methods prescribed by and obtainable from the South African Bureau of Standards, in terms of the Standards Act, 1982 (Act 30 of 1982).
10. The methods of analysis shall not be changed without prior notification to the Licensee and written approval by the Minister or his/her delegated nominee.
11. The Provincial Head must be informed of any incident that may lead to groundwater being disposed of contrary to the provisions of this licence, by submitting a report containing the following information:
  - 11.1 Nature of the incident (e.g. operating malfunctions, mechanical failures, environmental factors, loss of supply services, etc)
  - 11.2 Actions taken to rectify the situation and to prevent pollution or any other damage to the environment and
  - 11.3 Measures to be taken to prevent re-occurrence of any similar incident.
12. The Licensee shall follow acceptable construction, maintenance and operational practices to ensure the consistent, effective and safe performance of the groundwater removal system.
13. Reasonable measures must be taken to provide for mechanical, electrical or operational failures and malfunctions of the underground water removal system.

END OF LICENCE

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# Annexure G

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## COAL SUPPLY AGREEMENT

in respect of coal from

## BRAKFORTEIN COLLIERY AND BRAKFORTEIN COLLIERY EXTENSION

entered into by and between

## ESKOM HOLDINGS SOC Ltd

registration number 2002/015527/30, a company incorporated in terms of the laws of the Republic of South Africa with its registered office at Megawatt Park, Maxwell Drive, Sunninghill  
 ("Eskom")

and

## TEGETA EXPLORATION AND RESOURCES (PROPRIETARY) LIMITED

registration number 2008/014492/07, a company incorporated in terms of the laws of the Republic of South Africa with its registered office at Grayston Ridge Office Park Block A, Lower Ground Floor, 144 Katherine Street, Sandton 2146  
 ("the Supplier")

Eskom Vendor Number: 0011082687

Coal Supply Agreement between ESKOM HOLDINGS SOC LIMITED and TEGETA EXPLORATION AND RESOURCES (PROPRIETARY) LIMITED  
 PTY LTD executed at SUNNINGHILL on 10 March 2018  
 Ref:



Contract Number [46]

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Coal Supply Agreement between ESKOM HOLDINGS SOC LIMITED and TEGETA EXPLORATION AND RESOURCES  
PTY LTD executed in SUNNINGHILL on 10 March 2015  
Ref:

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## SECTION 1: INTRODUCTION, DEFINITIONS AND INTERPRETATION

## 1. Introduction

1.1 The Supplier is the holder of the Mining Right in respect of the Coal Resource and wishes, to sell to Eskom, Contract Coal produced from coal mined pursuant to the Mining Right in the quantities and qualities for the duration and for the purposes mentioned in this Agreement.

1.2 Eskom requires Contract Coal in the quantities, for the duration and for the purposes mentioned in this Agreement.

1.3 The Parties wish to enter into a coal supply and off take agreement on the terms and conditions recorded below.

## 2. Definitions and Interpretation

2.1 In this Agreement, the following words and expressions shall, unless otherwise stated or inconsistent with the context in which they appear, bear the following meanings and other words derived from the same origins as such words (that is cognate words and expressions) shall bear corresponding meanings:

2.1.1 "Agreement" means this coal supply agreement and shall include all Annexes hereto, as amended from time to time;

2.1.2 "Air Dried" means the physical condition of coal that has been dried at ambient temperature or at a temperature not exceeding 40 (forty) degrees Celsius to remove surface moisture until a constant mass is achieved;

2.1.3 "Annexa" means an annexa attached to the Agreement, as amended or replaced from time to time;

2.1.4 "Annual Quantity" means the quantity of Contract Coal, measured in GJ, which Parties target Supplying during each Year, as set out in the second column of Table 1;

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2.1.5	"API#4 Price"	means the past month's average of API#4 index price of RB1 grade coal, Free on Board (FOB) Richards Bay and in US Dollars per ton as published by Argus/McCloskey;
2.1.6	"As Received"	means the physical condition of coal including both surface and residual moisture contents as received at the Delivery Point;
2.1.7	"Base Date"	means in respect of each cost component set out in Table 2, the base date set out in the fifth column of Table 2;
2.1.8	"Base Date Index Value (B)"	means in respect of each cost component set out in the first column of Table 2, the value of the relevant index on the Base Date of such cost component set out in the fourth column of Table 2;
2.1.9	"Base Price"	shall have the meaning ascribed to it in clause 15;
2.1.10	"Business Day"	means a day other than a Saturday, Sunday or gazetted public holiday in the Republic of South Africa;
2.1.11	"Calorific Value (CV)"	means the quantity of heat produced by the complete combustion of a given mass of coal, measured in MJ/kg;
2.1.12	"CV Adjustment Factor (CVAF)"	means the factor used to adjust the Calorific Value of coal from an Air Dried to an As Received basis and as set out more fully in clause 23;
2.1.13	"Coal Haulage Rates Model"	means the economic model used by Eskom to determine tariffs applicable to the road transportation of coal as amended from time to time;

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- 2.1.14 "Coal Line Tariff" means per Ton, being the Indicative average tariff charged by TFR for main line services from Mpumalanga to Richards Bay inclusive of the port charges levied by the Richards Bay Coal Terminal as at which shall be escalated annually by PPI on 01 April of each subsequent year;
- 2.1.15 "Coal Quality Management Procedure (CQMP)" means the sampling analysis principles and procedures set out in Annexure A, as well as the procedures referred in clauses 20.4 and 22;
- 2.1.16 "Coal Reserve" means, at any time during the currency of this Agreement, so much of the Coal Resource from which a quantity of Contract Coal can be produced for Supply to Eskom in terms of this Agreement equal to at least the difference between 275 855 450 MGJ (being approximately 13 950 000 Tons (As Received) and the quantity of Contract Coal in the Coal Resource (expressed as an energy quantity) then actually Supplied to Eskom in terms of this Agreement;
- 2.1.17 "Coal Resource" means all in-situ coal occurring naturally in, on and under the land to which the Mining Right relates;
- 2.1.18 "Commencement Date" shall have the meaning ascribed to it in clause 7;
- 2.1.19 "Consignment" means:
- 2.1.19.1 In respect of Rail Coal, a train load;
- 2.1.19.2 In respect of Road Coal, the approximate quantity Delivered in 1 (one) day;

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- 2.1.20 "Container Trains" means trains typically consisting of 50 (fifty) wagon ISO-type 6 (six) meter open top containers on flat bed rail cars;
- 2.1.21 "Contract Coal" means the coal originating from Pre-Certified Stockpiles made up of a blend of the seam 4 upper and the seam 4 lower in respect of which the measurements of all coal quality parameters comply with the Quality Specifications and none of which is Reject Coal;
- 2.1.22 "Contract Period" means the period described in clause 7;
- 2.1.23 "Deliver" means the provision, and where applicable, the loading of Contract Coal by the Supplier at the respective Delivery Points, and "Delivery" shall have a corresponding meaning;
- 2.1.24 "Delivery Points" means:
- 2.1.24.1 in respect of Rail Coal, the weighbridge or the handover/departure point situated at the Rail Siding;
- 2.1.24.2 in respect of Road Coal, where the Supplier is responsible for road transportation, the weighbridge situated at the Power Station; and
- 2.1.24.3 in respect of Road Coal, where Eskom is responsible for the road transportation, the weighbridge situated at the Mine;
- 2.1.25 "Drawdown Order" means a written order issued by Eskom to the Supplier for the Delivery of Contract Coal as further described in clause 11.4;



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- 2.1.26 "Equilibrium Moisture" means the total moisture content which is reached by the coal that has naturally drained until a relatively constant moisture has been reached;
- 2.1.27 "Eskom Trains" means trains operated by TFR or any other rail operator as may be appointed during the operation of this Agreement, for the purposes of transporting coal for Eskom, and shall include Jumbo Trains, Small Trains and/or Container Trains;
- 2.1.28 "FCA" means free carrier as defined in Incoterms at the Delivery Point;
- 2.1.29 "GigaJoule (GJ)" one thousand million Joules (being the derived unit of energy in the International System of Units) and being the metric terms used for measuring energy;
- 2.1.30 "Incoterms" means the standard trade definitions used in sales contracts published by the International Chamber of Commerce as at 2000, as amended or replaced from time to time;
- 2.1.31 "Jumbo Trains" means trains capable of being operated on TFR's heavy haul rail system and typically consisting of 100 (one hundred) wagons having a rated payload of 83 (eighty three) Tons per wagon and an axle load of no more than 26 (twenty six) Tons per axle;
- 2.1.32 "Latest Index Value (L)" means, in relation to each cost component in Table 2, the latest available value for the relevant index for such cost component, as set out in the third column of Table 2 and at the time of calculating any price adjustment, which shall be:

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- 2.1.32.1 for Monthly price adjustments, the value of the relevant Index for each cost component published for the Month prior to the most recent annual Price Adjustment Date except for diesel, which shall be the value of the diesel index published for the current Month, and
- 2.1.32.2 for annual price adjustments, the value of the relevant index for each cost component published for the Month prior to the relevant Price Adjustment Date except for diesel which shall be the value of the diesel index published for the current Month;
- 2.1.33 "Maximum Annual Quantity" means the maximum quantity of Contract Coal, in GJ, which Eskom is entitled to Take Off and which the Supplier required to Deliver during each Year, being 110% (one hundred and ten percent) of the Annual Quantity;
- 2.1.34 "Maximum Monthly Quantity" means the maximum quantity of Contract Coal, in Tons, which Eskom is entitled to Take Off and which the Supplier is required to Deliver during each Month, being 120% (one hundred and twenty percent) of the Monthly Quantity;
- 2.1.35 "Maximum Quarterly Quantity" means the maximum quantity of Contract Coal, in Tons, which the Supplier is required to Deliver and which Eskom is required to Take Off during each Quarter, being 115% (one hundred and fifteen percent) of the Quarterly Quantity;
- 2.1.36 "MGJ" means a million GigaJoules;

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- 2.1.37 "Mine" means the Brakfontein Colliery and Brakfontein Colliery Extension coal mine(s) established to exploit the Coal Resource.
- 2.1.38 "Mining Right" means the mining right F/2009/07/30/001] granted to TEGETA EXPLORATION AND RESOURCES (PTY) LTD relating to coal in respect of various portions of the farm BRAKFORTEIN 264 IR PORTIONS 17 AND 27 (as more fully indicated on the sketch plan attached thereto), Registration Division IS, in the Magisterial District of DELMAS, in the province of MPUMALANGA, measuring 95.7872 hectares and registered in the Titles Office on 28 OCTOBER 2010 under registration number 200601449207;
- and
- TEGETA EXPLORATION AND RESOURCES (PTY) LTD relating to coal in respect of various portions of the farm BRAKFORTEIN 264 IR PORTIONS 2,3,4,5,16,22,24,25,28 and remaining extent of portion 29 (as more fully indicated on the sketch plan attached thereto), Registration Division IS, in the Magisterial District of DELMAS, in the province of MPUMALANGA, measuring 1.283 709 hectares and registered in the Titles Office on 6 MARCH 2014 under registration number 2010/10/19/001;
- 2.1.39 "Minimum Annual Quantity" means the minimum quantity of Contract Coal, in GJ, which Eskom is entitled to Take Off and which the Supplier is required to Deliver during each Year, being 90% (ninety percent) of the Annual Quantity;

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2.1.40	"Minimum Monthly Quantity"	means the minimum quantity of Contract Coal, in Tons, which Eskom is entitled to Take Off and which the Supplier is required to Deliver during each Month, being 80% (eighty percent) of the Monthly Quantity;
2.1.41	"Minimum Quarterly Quantity"	means the minimum quantity of Contract Coal, in Tons, which the Supplier is required to Deliver and which Eskom is required to Take Off during each Quarter, being 85% (eighty five percent) of the Quarterly Quantity;
2.1.42	"MJ/Kg"	means MegaJoules (being 1,000,000 (one million) Joules) per kilogram;
2.1.43	"Month"	means a calendar month;
2.1.44	"Monthly Quantity"	means the quantity, in Tons, of Contract Coal which Parties target Supplying during each Month, as set out in the fifth column of Table 1;
2.1.45	"MPRDA"	means the Mineral and Petroleum Resources Development Act, No. 28 of 2002, as amended or replaced from time to time, including all regulations promulgated in terms thereof;
2.1.46	"Nominated Laboratory"	means the independent laboratory appointed by Eskom for the purpose of analysing coal samples in terms of this Agreement;
2.1.47	"Party"	means Eskom or the Supplier, as the context in which the word appears requires and "Parties" means both Eskom and the Supplier;

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2.1.48	"Power Station"	means Majuba Power Station or any other Eskom owned or operated power station within the Republic of South Africa and which has been designated by Eskom as the destination of Contract Coal;
2.1.49	"PPI"	means the producer price index for domestic output in South Africa, Table 1A (which is, at the Signature Date contained in Statistical Release P0142.1) as published by Statistics South Africa. In the event that the above producer price index ceases to be published or is replaced during the currency of this Agreement, then PPI shall mean an alternative index measuring substantially the same elements as that measured by the above mentioned producer price index;
2.1.50	"Pre-Certified Stockpile"	means stockpile(s) of Contract Coal, approximately equivalent to a Day's delivery, unless otherwise agreed which have been sampled, analysed and certified, in accordance with this Agreement and Annexure A: The Coal Quality Management Procedure as meeting the Quality Specifications, or otherwise as accepted by Eskom;
2.1.51	"Price"	shall have the meaning ascribed to it in clause 16.2;
2.1.52	"Price Adjustment Date"	shall have the meaning ascribed to it in clause 16.1;
2.1.53	"Price Adjustment Factor (PAF)"	means 1 (one) plus (the sum of (L-B)/B for each applicable index in Table 2 multiplied by the corresponding proportion for that index as set out in the second column of Table 2), where 'L' is the Latest Index Value and 'B' is the Base Date Index Value;

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2.1.54	"Quality Rejection Limit"	means in respect of each coal quality parameter, the limit set out in the fifth column of Table 3;
2.1.55	"Quality Specification"	means in respect of each coal quality parameter set out in the first column of Table 3, the specification stipulated in the fourth column of Table 3, which coal Delivered by the Supplier to Eskom in terms of this Agreement must comply with;
2.1.56	"Quarter"	means a period which consists of 3 (three) consecutive Months, the first of such period to commence on 1 APRIL of each Year;
2.1.57	"Quarterly Quantity"	means the quantity, in Tons, of Contract Coal specified in the Drawdown Order for that Quarter, determined as set out in clause 11
2.1.58	"Rail Coal"	means Contract Coal which Eskom requires to be Taken Off by rail transport;
2.1.59	"Rail Siding"	means the railway siding identified by number 766188 (Hawerkilp Station);
2.1.60	"Reject Coal"	means coal in respect of which one or more quality parameters does not meet the Quality Specification;
2.1.61	"Road Coal"	means Contract Coal which Eskom requires to be Taken Off by road transport;

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## 2.1.62 "SAMREC Code"

means the 2007 edition of the South African Code for Reporting of Exploration Results, Mineral Resources and Mineral Reserves prepared by the South African Mineral Resources Committee Working Group under the joint auspices of the South African Institute of Mining and Metallurgy and the Geological Society of South Africa, as amended or replaced from time to time;

## 2.1.63 "Signature Date"

means the date on which this Agreement has been signed by both Parties hereto and if signed on different dates the date of signature of the Party signing last in time;

## 2.1.64 "Small Trains"

means trains which shall operate primarily on TFR's general freight business rail system and which shall typically consist of 75 (seventy five) wagons having a rated payload of no more than 58 (fifty eight) Tons and an axle load of no more than 20 (twenty) Tons per axle;

## 2.1.65 "Stockpile Retention Time"

means the period that a specific stockpile must be allowed to drain in order to reach Equilibrium Moisture as determined in clause 23.2.1;

## 2.1.66 "Supply"

means both when used as a noun and a verb, means the completed process of Delivery and Off Take which will take place more or less simultaneously, and "Supplied" shall have a corresponding meaning;

## 2.1.67 "Take Off"

when used as a verb, in respect of all Contract Coal Delivered, means the removal of such coal from the respective Delivery Points by Eskom in such quantities and at such rates as set out in this Agreement and the noun "Off Take", shall bear a corresponding meaning;





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- 2.1.68 "Technical Liaison Meeting" means the meeting to be held between the Parties as set out in clause 28;
- 2.1.69 "TFR" means Transnet Freight Rail, a division of Transnet Limited, registered in terms of the company laws of the Republic of South Africa under registration number 1990/000900/06 and having its registered office at 47th floor, Carlton Centre, 150 Commissioner Street, Johannesburg, 2001;
- 2.1.70 "Titles Office" means the Mineral and Petroleum Titles Registration Office of South Africa;
- 2.1.71 "Ton" means a metric ton of 1 000 (one thousand) kilograms;
- 2.1.72 "Tonnage Adjustment Factor" means the factor used to adjust the tonnage of any Contract Coal that exceeds the maximum total moisture content, but which is accepted for Delivery in terms of clauses 23.3 and 23.4, for the moisture in excess of the Equilibrium Moisture;
- 2.1.73 "Total Energy Quantity" shall have the meaning ascribed to it in clause 10.4;
- 2.1.74 "Ultrafines" means material below 100 (one hundred) microns resulting from the thicker underflow process recovered either as filter cake, arising from the filter press process or harvested from slimes dams;
- 2.1.75 "Under Delivery" means Under Supply caused by the Supplier's failure to Deliver Contract Coal for any reason other than Force Majeure;
- 2.1.76 "Under Off Take" means Under Supply caused by Eskom's failure to Take Off Contract Coal Delivered for any reason other than force majeure;

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## 2.1.77 "Under Supply"

means:

## 2.1.77.1

In respect of any Month, Supply of less than the Minimum Monthly Quantity applicable to that Month;

## 2.1.77.2

In respect of any Quarter, Supply of less than the Minimum Quarterly Quantity; or

## 2.1.77.3

In respect of any Year, Supply of less than the Minimum Yearly Quantity applicable to that Year,

as a result of either Under Delivery and/or Under Off Take for any reason other than *force majeure*;

## 2.1.78 "USD:ZAR Exchange Rate"

means at any point during each Month, the latest exchange rate for United States dollars and South African Rands ruling at financial close of the preceding Month as published by the South African Reserve Bank;

## 2.1.79 "VAT"

means value added tax levied from time to time in terms of the Value Added Tax Act, No. 89 of 1991 or any similar tax levied on the supply of goods imposed by or in terms of any law passed in substitution of the Value Added Tax Act, No. 89 of 1991 and for which tax a purchaser of such goods will be liable in terms of such substituting law; and

## 2.1.80 "Year"

means a 12 (twelve) Month period beginning on the Commencement Date and thereafter, each subsequent period of 12 (twelve) consecutive Months.

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- 2.2 In this Agreement:
- 2.2.1 references to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time;
- 2.2.2 notwithstanding anything to the contrary contained herein, all reference to legislation shall include a reference to such legislation as amended or replaced from time to time;
- 2.2.3 words importing the masculine gender include the feminine and neuter genders... and vice versa; the singular includes the plural and vice versa; and natural persons include artificial persons and vice versa;
- 2.2.4 references to a "person" include a natural person, company, close corporation or any other juristic person or other corporate entity, a charity, trust, partnership, joint venture, syndicate, or any other association of persons;
- 2.2.5 a range of values indicated by the words "between...and..." or "from...to..." shall include both values that demarcate the range;
- 2.2.6 any definition, wherever it appears in this Agreement, shall bear the same meaning and apply throughout this Agreement unless otherwise stated or inconsistent with the context in which it appears. If there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of the Agreement or paragraph of any Annexure the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in the Agreement;
- 2.2.7 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day and shall refer to calendar days unless specifically stated otherwise;
- 2.2.8 any provision in this Agreement which is or may become illegal, invalid or unenforceable shall be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (i.e. *pro non scripto*) and severed from the balance of this Agreement, without invalidating the remaining provisions of this Agreement;
- 2.2.9 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;

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2.2.10 the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *ejusdem generis* rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given; and

2.2.11 each of the provisions of this Agreement has been negotiated by the Parties and drafted for the benefit of the Parties, and accordingly the rule of construction that the contract shall be interpreted against or to the disadvantage of the Party responsible for the drafting or preparation of the Agreement (i.e. the *contra proferentem* rule), shall not apply.

## SECTION 2: WARRANTIES, UNDERTAKINGS, LEGAL COMPLIANCE AND REVIEW

### 3. General

3.1 The warranties contained in this Agreement shall be deemed to be representations and undertakings, material to the entering into of this Agreement, by the Supplier in favour of Eskom and by Eskom in favour of the Supplier where applicable;

3.2 Each warranty shall be a separate warranty and in no way limited or restricted by reference to, or inference from, the terms of any other warranty;

3.3 Each warranty is given as at the Commencement Date and shall extend for the duration of this Agreement; and

3.4 Insofar as any of the warranties are promissory or relate to a future event, they shall be deemed to have been given as at the due date for fulfilment of the promise or the happening of the event, as the case may be.

3.5 Where any warranty is qualified by the expression "The Supplier and/or Eskom is not aware", "to the best of the Supplier's and/or Eskom's knowledge and belief" or any similar expression, that expression shall be deemed to include an additional statement that it has been made after due enquiry.

3.6 Nothing contained in this Agreement shall relieve a Party from its obligations to make those disclosures which it is in law obliged to make but which are not recorded in this Agreement.

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#### 4. Warranties Applicable to both Parties

Each Party hereby warrants unto and in favour of the other Party:

- 4.1 the Party and its representative(s), as applicable, have the requisite power, right and authority to enter into and perform the obligations to be assumed or performed by it in accordance with this Agreement and any other documents to be executed in accordance with this Agreement;
- 4.2 to the best of the Party's knowledge and belief, all facts and circumstances material to this transaction, or which would be material or would be reasonably likely to be material and which may affect the willingness of the Parties to enter into this Agreement or which may affect the Base Price and which are known to the Party, have been disclosed by the Party to the other Party; and
- 4.3 as at the Commencement Date, no legal proceedings of any kind or administrative proceedings in terms of any law, and which shall prevent either Party from fulfilling its obligations in terms of this Agreement, have been instituted against such Party, and at all times during the currency of this Agreement neither Party has any obligations/duties to third parties which, if discharged, shall prevent the Party from fulfilling its obligations in terms of this Agreement.

#### 5. Warranties by the Supplier

The Supplier hereby warrants unto and in favour of Eskom that:

- 5.1 the Supplier is the holder of the Mining Right and has the un-encumbered right to dispose of the Contract Coal to Eskom in accordance with the provisions of this Agreement;
- 5.2 upon Delivery of the Contract Coal, Eskom will become the owner of the Contract Coal free of any encumbrances, liens, rights of pre-emption or similar rights in favour of any third party;
- 5.3 as at the Signature Date the Supplier has complied with all material terms, conditions and obligations, contractual and statutory, which apply to all rights, titles, permits and other authorisations held by it, or applicable to any of its operations;

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- 5.4 the Supplier has and shall not pledge, mortgage, cede or grant any other security rights over the Mining Right or any coal produced pursuant thereto;
- 5.5 the Supplier is able to prove title to all rights held by it, including the Mining Right;
- 5.6 the Supplier is not aware of any facts or circumstances which may result in the withdrawal, suspension, cancellation, material alteration or non renewal of any rights, titles, permits and other authorisations held by it, or applicable to any of its operations, as such matters relate to this agreement and/or the Coal Resource, as the case may be;
- 5.7 the Coal Resource has sufficient Coal Reserves to satisfy its Delivery obligations in terms of this Agreement;
- 5.8 to the best of its knowledge and belief, the Supplier has disclosed to Eskom all legal, environmental matters and rehabilitation obligations relating to the Coal Resource and the Mining Rights; and
- 5.9 The Supplier shall notify Eskom of any changes made to the documentation supplied to Eskom in terms of this Agreement, where such changes have an impact on the warranties provided by the Supplier in terms of this Agreement.
- 5.10 The supplier warrants that they shall comply with the Black Ownership targets as stipulated in Annexure G, at no cost to Eskom. This Annexure G is regarded as a material provision for purposes of this Agreement and any non-compliance to the Black Ownership targets as stipulated will result in a material breach and dealt with according to the provisions made in this Agreement.

#### 6. Legal Compliance and Review

- 6.1 The Supplier warrants that it is complying and will continue to comply with all its obligations under all current and future applicable laws including but not limited to the Mining Right, including the environmental management plan, the social labour plan and the mining work programme relating thereto, the National Water Act, No. 36 of 1998 ("NWA"); the National Environmental Management Act, No. 107 of 1998 ("NEMA"); the Environment Conservation Act, No. 73 of 1989; the National Environmental Air Quality Act, No. 38 of 2004; the Water Services Act, No. 100 of 1989; the Hazardous Substances Act, No. 15 of 1973; the National Heritage Resources Act, No. 25 of 1999; the World Heritage Convention Act, No. 49 of 1999; the MPRDA and the Mine Health and Safety

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Act, No. 29 of 1996, all statutory instruments, provincial ordinances and statutes, municipal government by-laws relating to the environment, government notices, circulars, codes of practice, guidelines, decisions, regulations, orders, demands, and criteria, injunctions or judgements of any court, administrative or regulatory authorities, central government provincial government, municipal or any other body with responsibility for the protection of the environment (including but not limited to the health of the public, employees, flora and fauna).

6.2 Eskom shall be entitled to conduct reviews in respect of the provisions of this clause 6 to ensure the Supplier's compliance herewith and the Supplier agrees to co-operate with Eskom in this regard. To that end, Eskom and its designated representatives, including without limitation, its attorneys, auditors, environmental representatives engineers and geologists shall at all reasonable times, with reasonable prior notice to the Supplier, have access to the Mine and facilities utilised for the production and supply of coal under this Agreement and to all records, wherever located, pertaining to the supply of Coal in terms of this Agreement, which access will be at Eskom's expense and risk.

6.3 Eskom will provide feedback on risks identified from the reviews conducted in 6.2 above. The parties shall mutually agree how the risks will be addressed. Should the parties be unable to agree the risks that shall be addressed then the dispute will be resolved in terms of Section 9 of this Agreement.

6.4 The Supplier shall address the agreed risks as indicated in 6.3 and shall report on progress of addressing such risks during the scheduled technical meetings.

6.5 In the event that Eskom is approached by the State or any regulatory authority under NEMA and NWA with a view to remedying pollution relating to or resulting from the Parties' respective rights and obligations under this Agreement, the Supplier shall assist Eskom by making appropriate representations and taking appropriate steps to mitigate any statutory liability which Eskom may have under that legislation.

6.6 Eskom shall not at any time or for any reason be liable for any rehabilitation and/or closure costs incurred in connection with the Mine, save where Eskom caused the pollution, nor the possible cost of remedying pollution under the NEMA and the NWA. To the extent that, after taking the steps referred to in clauses 6.1 and 6.5, Eskom incurs any such costs, for which Eskom is not responsible, then the Supplier shall compensate Eskom for all reasonable costs



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and expenses incurred by it, provided that Eskom shall take all reasonable steps to mitigate its loss and shall be obliged to prove such loss.

6.7 Where either Party's employees, agents and/ or its representatives enter the premises of the other Party, they shall comply with any of the applicable legislation set out in clause 6.1 above.

6.8 The Supplier shall comply with the provisions detailed in Annex B: Environmental Legal Requirements.

6.9 In the event of material changes to the legislation referred to in clause 6.1 or the introduction of new legislation which results in an increase or reduction of the direct cost of producing and Delivering Contract Coal at the Delivery Point ("the Cost Differential"), the then applicable Price shall (subject to clause 6.11 below) be increased or reduced as the case may be, by a pro rata portion of the Cost Differential.

6.10 The pro rata portion shall be equal to the proportion which the value (expressed in Rand) of the sales to Eskom in terms of this Agreement bears to the aggregate of all sales from the Mines.

6.11 Eskom shall at any time, upon reasonable notice to the Supplier, be entitled to audit the Supplier's costs related to the producing and delivering of such coal at the Delivery Point and financial information relating to the Supplier's income as a result of sales of coal. In the event that Eskom, as a result of its audit, disputes the Cost Differential, Eskom and the Supplier shall attempt to resolve the dispute amicably within 20 (twenty) days after a dispute being declared by either of them in this regard. Where Eskom and the Supplier are unable to resolve the dispute, either Eskom or the Supplier may then refer the dispute to an independent expert for determination in accordance with clause 32.

6.12 Where either Party's employees, agents and/ or its representatives enter the premises of the other Party they shall be required to comply, and each Party shall procure that they comply, with the relevant legislation set out in clause 6.1 above and other health and safety rules applicable to the premises of the other Party. Both Parties hereby agree, in terms of section 37(2) of the Occupational Health and Safety Act no. 85 of 1993 ("OHSA") (if applicable) that the other Party is relieved of any of its liabilities in terms of section 37(1) of the OHSA in respect of any act or omissions of either Party's employees, agents and/or its representatives to the extent permitted by the OHSA.

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### SECTION 3: COMMENCEMENT OF DELIVERIES, DURATION, RISK AND OWNERSHIP OF COAL, SUSPENSIVE CONDITIONS

#### 7. Commencement of Deliveries

Subject to clause 10 below, the Supply of Contract Coal shall commence on 1 April 2015 ("the Commencement Date") in accordance with clause 11 and subject to the coal meeting all of Eskom's technical and coal supply requirements.

#### 8. Duration

The term of this Agreement shall be for a period commencing on the Commencement Date and expiring, unless extended or earlier terminated in accordance with the terms of this Agreement until the Total Energy Quantity has been Delivered.

#### 9. Risk and Ownership of Contract Coal

9.1 The risk in, and ownership of, the Contract Coal Delivered in terms of this Agreement shall pass to Eskom upon Delivery, notwithstanding the provisions of clause 19.

9.2 Eskom shall be entitled to use all Contract Coal Supplied to it in terms of this Agreement for consumption at any power station owned and/or operated by Eskom from time to time and Eskom shall be entitled to use the Contract Coal in accordance with its sole requirements including selling or disposing of such coal to any third-party.

9.3 The Supplier shall Deliver Contract Coal to the designated Delivery Point in the quantities and at the rates set out in this Agreement for Off Take by Eskom.

#### 10. Conditions Precedent

10.1 The Parties agree that this Agreement will be subject to the fulfilment or waiver of the following Conditions Precedent:

10.2 in respect of the Supplier:

10.2.1 by no later than 16h00 on 31 March 2015, the Supplier had completed and reported a successful combustion test for coal supply to Majuba Power Station.

10.3 It is specifically recorded that if the Conditions Precedent are not fulfilled or waived on or prior to the applicable date referred to in clause 10.2.1 the remaining provisions of this Agreement



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shall never become effective. In such event, neither Party shall have any claim of any nature against the other.

#### SECTION 4: QUANTITIES, DELIVERY, OFF TAKE AND SUPPLY OF COAL

##### 10. Coal Quantities

10.1 The Supplier shall at all times throughout the duration of this Agreement ensure that the Coal Resource remains sufficient to enable the Supplier to comply with all its obligations in terms of this Agreement.

10.2 The Supplier shall Deliver and Eskom will Take Off in each Month, a quantity of Contract Coal between the Minimum Monthly Quantity and the Maximum Monthly Quantity in accordance with clause 11 at an expected CV of 20.15 MJ/kg on an As Received basis.

10.3 The Supplier shall Deliver and Eskom will Take Off in each Year, a quantity of Contract Coal between the Minimum Annual Quantity and the Maximum Annual Quantity in accordance with clause 11 at an expected CV of 20.15 MJ/kg on an As Received basis.

10.4 The total quantity of Contract Coal to be supplied under this Agreement shall equal an energy quantity of 275 855 450 MJ ("the Total Energy Quantity"), being approximately 13 950 000 Tons (As Received) at an expected CV of 20.15 MJ/kg on an As Received basis.

Table 1 Contract Coal Supply Schedule

Year	Annual Quantity	Minimum Annual Quantity	Maximum Annual Quantity	Monthly Quantity	Minimum Monthly Quantity	Maximum Monthly Quantity
April 2018 – Sep 2018 (Tons)	390 000	351 000	429 000	85 000	82 000	78 000
Energy (MJ)	7 858 500	7 072 650	8 644 350	1 309 750	1 047 800	1 571 700
Oct 2018 – Sep 2020 (Tons)	1 356 000	1 220 400	1 491 600	113 000	90 400	135 600
Energy (MJ)	27 323 400	24 591 060	30 055 740	2 276 950	1 821 560	2 732 340
Oct 2020 – Sep 2025 (Tons)	1 356 000	1 220 400	1 491 600	113 000	90 400	135 600
Energy (MJ)	27 323 400	24 591 060	30 055 740	2 276 950	1 821 560	2 732 340
Total Contract Quantity (Tons)	13 950 000					
Energy (MJ)	275 855 450					

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- 10.5 Any quantities of Contract Coal not be Delivered in a Year and for which the Supplier has paid a penalty in terms of clause 12.3, shall not be carried over to the next Year.

#### 11. Planning and Supply of Contract Coal

- 11.1 The Parties shall use their reasonable endeavours to ensure that all Delivery and Off Take of Contract Coal is spread evenly across each day and Month and so as to comply with the limits stipulated in clauses 10.1 to 10.4.

- 11.2 Eskom shall, before the end of the second week of the last Month of each Quarter specify, in the Technical Liaison Meeting, the quantity of Contract Coal that shall be Supplied for each Month of the subsequent Quarter such that:

- 11.2.1 the quantity specified in respect of each Month will not be:

- 11.2.1.1 less than the Minimum Monthly Quantity; and

- 11.2.1.2 not more than the Maximum Monthly Quantity; and

- 11.2.2 the quantity to be Supplied each Year will not be:

- 11.2.2.1 less than the Minimum Annual Quantity stipulated in Table 1; and

- 11.2.2.2 more than the Maximum Annual Quantity stipulated in Table 1; and

- 11.2.3 it takes into account the provisions of any Rectification Plans agreed to by the Parties.

- 11.3 Either Party may request at the Technical Liaison Meeting to Deliver or Take Off less than the Minimum Monthly Quantity and/or Minimum Annual Quantity or in excess of the Maximum Monthly Quantity and/or the Maximum Annual Quantity applicable to any Month or Year, provided that the other Party shall not be obliged to agree to such quantity below the minimum quantities or above the maximum quantities as set out in Table 1, save in order to make up an Under Supply in terms of a Rectification Plan approved by the other Party. Should the Parties not agree the Monthly Quantity and/or Annual Quantity shall apply.

- 11.4 Once the Monthly Quantity for each month of the subsequent Quarter has been determined in terms of clause 11.2, Eskom shall issue written order for the Delivery of Contract Coal for each Month in the subsequent Quarter ("the

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Drawdown Order") in respect of the quantities so determined. The Supplier shall Deliver and Eskom shall Take Off:

- 11.4.1 not less than the Minimum Monthly Quantity and not more than the Maximum Monthly Quantity during each Month of the subsequent Quarter; and
- 11.4.2 not less than the Minimum Quarterly Quantity and not more than the Maximum Quarterly during the subsequent Quarter;
- 11.5 For avoidance of doubt, the quantities set out in each Drawdown Order shall expressly exclude any quantities planned for Supply under any agreed Rectification Plan. Where applicable, such quantities shall be noted separately in the Drawdown Order.

## 12. Under Delivery

- 12.1 In the event of an actual or expected Under Delivery:
  - 12.1.1 the Supplier shall, within 7 (seven) days, submit a rectification plan to Eskom, which plan shall set out a schedule of how the Supplier shall make up the actual or expected shortfall in the shortest time reasonably possible, but in any event before the end of the Quarter;
  - 12.1.2 the Supplier shall consult with Eskom on the rectification plan and, Eskom undertakes, within 7 (seven) days after submission to it of the rectification plan, to advise whether the plan is acceptable, which acceptance will not be unreasonably withheld or delayed; and
  - 12.1.3 on Eskom's acceptance, the Supplier shall implement the rectification plan in the form and on the terms acceptable to Eskom and make up the actual or expected shortfall in accordance with the rectification plan.
- 12.2 Where, as a result of the Under Delivery, Eskom takes coal from its own stockpiles to manage the shortfall, Eskom shall be entitled to recover from the Supplier its reasonably incurred and demonstrable costs for additional direct handling and stockpiling.
- 12.3 In the event of:
  - 12.3.1 the Supplier failing to submit and implement the rectification plan in terms of clause 12.1; or

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- 12.3.2 Eskom's rejection of the rectification plan; or
- 12.3.3 the Supplier's failure to make up the Under Delivery,

Eskom shall be entitled to purchase coal to make up for the shortfall, and to recover from the Supplier its proven costs for purchasing such coal. Where Eskom is unable to purchase coal to make up the shortfall within 1 month the conditions in clauses 12.3.1, 12.3.2 and 12.3.3 occurring, Eskom shall be entitled to recover from the Supplier a financial penalty calculated as:

$$P = \left[ (API\#4 \times ZAR - CLT) \times 0.77 \times \frac{[x]}{23} \right] - CP$$

where:

- $P$ : is the effective penalty in Rand per ton;
- $API\#4$ : is the API#4 Price;
- $ZAR$ : is the USD:ZAR Exchange Rate;
- $CLT$ : is the Coal Line Tariff;
- 0.77: represents a yield factor that accounts for the combined yield of the primary and secondary washes, and for any lost earnings on middlings product;
- 21.10: is the expected Calorific Value of Contract Coal in MJ/kg on an Air Dried basis;
- 23.0: is a typical Calorific Value of run-of-mine export coal in MJ/kg on an Air Dried basis;
- $CP$ : is the Price of Contract Coal in Rand per ton assuming a Calorific Value of 21.10 on an Air Dried basis.

12.4 The quantity of any Under Delivery shall be measured:

- 12.4.1 in any Month, as the Minimum Monthly Quantity in respect of that Month less the quantity of Contract Coal actually Delivered in that Month;
- 12.4.2 in any Quarter, as the difference between the Minimum Quarterly Quantity in respect of that Quarter and the quantity of Contract Coal actually Delivered in that Quarter; and
- 12.4.3 in any Year, as the difference between the Minimum Annual Quantity applicable to that Year and the quantity of Contract Coal actually Delivered in that Year.



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12.4.4 For avoidance of doubt, when calculating the quantity of an Under Delivery, the Supplier must first meet the Minimum Quarterly Quantity each Quarter before any quantity of Contract Coal Delivered in terms of a Supplier Rectification Plan is credited against that Rectification Plan.

12.5 Any Under Delivery shall, unless otherwise agreed to in writing between the Parties, only constitute a material breach of a material term for purposes of clause 33 if such Under Delivery:

12.5.1 occurred more than 3 (three) times during any rolling 12 (twelve) Months; and

12.5.1.1 in any Month, is less than 50% (fifty percent) of the Monthly Quantity in respect of that Month; or

12.5.1.2 in any Quarter, is less than 60% (sixty percent) of the Minimum Quarterly Quantity in respect of that Quarter; or

12.5.1.3 in any Year, is in excess of 70% (seventy percent) of the Minimum Annual Quantity in respect of that Year.

12.6 Where Eskom is responsible for the transportation of Contract Coal from the Mine to the Power Station, Eskom shall be entitled, but not obliged to recover from the Supplier any penalties for the cancellation and/or underutilisation of rail and road transport resulting from any rectification plan accepted by Eskom or any Under Delivery, determined in accordance with Annexure C1: The Rules of Road Transportation for FCA Contracts and Annexure D: The Rules of Rail Transportation, as the case may be.

### 13. Under Off Take

13.1 In the event of an actual or expected Under Off Take, Eskom shall, within 3 (three) Business Days thereof submit a rectification plan to the Supplier, consult with the Supplier thereon and obtain the Supplier's reasonable acceptance of the rectification plan (which may not be unreasonably withheld or delayed), implement the rectification plan and make up the Under Off Take in accordance with the rectification plan by Taking Off additional Contract Coal in order to make up the Under Off Take within the shortest time reasonably possible, but in any event within 3 (three) Months after the date on which the Under Off Take arose.

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- 13.2 Should Eskom fail to submit a rectification plan to the Supplier's reasonable satisfaction, fail to implement such rectification plan, fail to make up the Under Off Take within a reasonable period pursuant to any of the aforesaid effort, Eskom shall make full payment of any Under Off Take not made up within 3 (three) Months after the date on which the Under Off Take arose without applying premiums or penalties to the Price.
- 13.3 Eskom shall remain entitled to Take Off the Contract Coal so paid for within the applicable quantity limitations, unless otherwise agreed. When Taken Off, appropriate adjustments to the Price paid shall be made for quality premiums and/or penalties in accordance with the qualities of the Contract Coal actually Taken Off.
- 13.4 Eskom shall further be liable for the payment of any reasonable demonstrable additional direct handling and stockpiling costs incurred by the Supplier occasioned by any Under Off Take subsequently made up, provided that the Supplier shall notify Eskom in writing before incurring any additional costs and shall seek Eskom's involvement in minimising such additional costs.
- 13.5 The quantity of any Under Off Take shall be measured:
- 13.5.1 In any Month, as the Minimum Monthly Quantity less the quantity of Contract Coal actually Taken Off in that Month;
- 13.5.2 in any Quarter, as the difference between the Minimum Quarterly Quantity in respect of that Quarter and the quantity of Contract Coal actually Taken Off in that Quarter; and
- 13.5.3 in any Year, as the difference between the Minimum Annual Quantity in respect of that Year and the quantity of Contract Coal actually taken Off in that Year.
- 13.5.4 For avoidance of doubt when calculating the quantity of an Under Off Take, Eskom must first meet the Minimum Quarterly Quantity each Quarter before any quantity of Contract Coal Taken Off in terms of an Eskom Rectification Plan is credited against that Rectification Plan.
- 13.6 Any Under Off Take shall, unless otherwise agreed to in writing between the Parties, and unless paid for in terms of clause 13.2 only constitute a material breach of a material term for purposes of clause 33 of this Agreement if such Under Off Take:

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- 13.6.1 has not been made up as set out in clause 13.1 above within 90 calendar days after the Under Off Take first occurred;
- 13.6.2 occurred more than 3 (three) times during any rolling 12 (twelve) Months; and
- 13.6.3 in any Month, is less than 50% (fifty percent) of the Monthly Quantity; or
- 13.6.4 in any Quarter, is less than 60% (sixty percent) of the Minimum Quarterly Quantity; or
- 13.6.5 in any Year, is less than 70% (seventy percent) of the Minimum Annual Quantity;

- 13.7. Where the Supplier is responsible for the transportation of Contract Coal from the Mine to the Power Station, the Supplier shall be entitled to recover from Eskom any penalties it incurs for the cancellation and/or underutilisation of road transport resulting from any rectification plan accepted by the Supplier or any Under Off Take, determined in accordance with Annex C2: The Rules of Road Transportation for Delivered Contracts.

#### 14. Eskom Technical Compliance

The Contract Coal to be supplied from both Brakfontein and Brakfontein Colliery Extension must at all times comply with Eskom's technical and coal supply requirements. For the avoidance of any doubt if these requirements do not render compliance for supply to Majuba Power Station, Eskom reserves the sole and exclusive right to call upon a material breach as more fully provided for in this Agreement and exercise its rights accordingly.

**SECTION 6: PRICE, ADJUSTMENTS, INVOICING AND PAYMENTS**

#### 15. Base Price

- 15.1 The price for Contract Coal on the Base Date ("the Base Price") shall be R 13.50 (thirteen rands and fifty cents) excluding VAT per GJ, Free Carrier (FCA) at the Delivery Point for Rail Coal and Road Coal
- 15.2 For the avoidance of doubt, the Base Price excludes any consideration due to the Supplier by Eskom for Road Transportation where the Supplier is responsible for road transportation. Such consideration shall be determined in accordance with clause 26.
- 15.3 The Base Price and Price adjustments have been negotiated on an arms length basis and the Supplier accepts all risks of cost elements, cost increases other than provided for in clauses 16 and 17.

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**16. Annual Adjustment**

- 16.1 The Base Price stipulated in clause 15, shall be adjusted upwards or downwards as the case may be on the 1<sup>st</sup> of April and annually thereafter on the 1<sup>st</sup> of April of each subsequent Year ("the Price Adjustment Date"), by the Price Adjustment Factor.
- 16.2 The Base Price as adjusted in terms of clause 16.1 on the 1<sup>st</sup> of April of each Year shall be the price ("the Price") of Contract Coal applicable until the 31<sup>st</sup> of March of that Year, subject to any Monthly price adjustments determined in accordance with clause 17.
- 16.3 If the published value of any index in the third column of Table 2 is changed after it has been used in calculating a Price Adjustment Factor, the calculation shall be repeated and a correction included in the Supplier's next invoice.
- 16.4 If the value of any index in the third column of Table 2 for the applicable Month is not yet published and available for the calculation of the Price Adjustment Factor in any Year, the most recent published index shall be used. The calculation of the Price Adjustment Factor shall then be repeated when the applicable index is published and made available, and a correction shall be included in the Supplier's next invoice.
- 16.5 In the event that any index in the third column of Table 2 is no longer published and the Parties are unable to agree on a replacement index, the matter shall be referred for expert determination in accordance with clause 32.1.
- 16.6 In the event that the matters referred to in clauses 16.3 to 16.5 are disputed by any Party, the matter shall, notwithstanding the provisions of clause 31, be referred to an independent expert for determination in accordance with clause 32.1 at least 6 (six) Months before the commencement of the next Year.
- 16.7 Should Parties have not resolved any dispute as set out in clause 16.6 above before the commencement of the next Year, the escalation sources in use before the dispute was declared shall be applied on a provisional basis until the dispute has been resolved, where after the determination of the independent expert as referred to in clause 16.6 shall be applied retrospectively and any necessary adjustment payments shall be made.

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Table 2: Contract Price Adjustment Indices

Cost Component	Proportion	Index and Source Table	Base Date Index (B)	Base Date	Frequency of Adjustments
Labour	26%	SEIFSA Labour Index		March 2015	Annually
Diesel	8%	OME D 05% Sulphur		March 2015	Monthly
Electricity	4%	Electricity PP		March 2015	Annually
Mining Supplies	15%	20% Mechanical engineering index 40% PPI Mining Machinery 20% Imported Rubber index 20% Structural and fabricated metal products index		March 2015	Annually
Overheads	15%	50% CPI headline items 50% PPI		March 2015	Annually
Profit & Capital Recovery	22%	50% CPI headline items 50% PPI Coal and Gas		March 2015	Annually
Fixed	10%	Fixed			Not Scalable
Total	100%				

18.8 For the avoidance of doubt, the Parties note that the calculation of the Price Adjustment Factor each Year automatically adjusts the proportions set out in the second column Table 2 in line with the changes in the values of the indices.

16.9 For the avoidance of doubt, the annual price adjustment each Year shall be based on the Base Price and disregarding the monthly Price adjustments.

#### 17. Monthly Adjustment for Diesel Price Changes

17.1 The Price determined in accordance with clause 18.1 shall be adjusted upwards or downwards on the first Business Day of each Month to reflect the change in

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the price of diesel only, during the previous Month, by multiplying the Base Price by the Price Adjustment Factor.

- 17.2 The provisions of clause 16.3 and 16.4 shall apply *mutatis mutandis* to this clause 17.

#### 18. Adjustments of Other Monetary Amounts

Unless specified otherwise, any other monetary amount used in this Agreement and which is expressed in South African Rand shall also be adjusted annually, by the Price Adjustment Factor, on the Price Adjustment Date.

#### 19. Invoicing and Payment

- 19.1 The Supplier shall render a tax invoice to Eskom on or before the third Business Day of each Month together with a statement reflecting the Delivery dates; the mass of the coal on an As Received basis; the mass of the coal on an Air Dried basis; the As Received CV; the Price in respect of each Consignment and the total Contract Coal Supplied during the immediately preceding Month.

- 19.2 Subject to clause 19.3, the amount payable in respect of each invoice shall, in the absence of manifest error and without set off, and provided that it has been timeously rendered, be payable within 30 (thirty) days of receipt of the invoice by Eskom, provided that disputed items or amounts on an invoice shall only be payable when the dispute has been resolved.

- 19.3 In terms of clause 13.7 of this Agreement, Eskom shall be entitled, but not obliged, to recover from the Supplier any penalties for the cancellation and/or underutilisation of rail and road transport resulting from any Rectification Plan accepted by Eskom or any Under Delivery. In the event that Eskom elects to recover any such penalties, Eskom shall be entitled to set-off the said penalties against any invoice rendered by the Supplier.

- 19.4 Without prejudice to any other of its remedies in law and/or this Agreement, the Supplier shall be entitled to recover interest on any amount payable by Eskom in terms of this Agreement which is overdue, at the prime overdraft ending rate charged from time to time by First National Bank of Southern Africa Limited. The amount of such prime rate shall prima facie be proved by a certificate signed by any manager or accountant (whose appointment need not be proved) of any branch of such bank.

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## SECTION 8: QUALITY OF COAL

## 20. Contract Coal Quality

- 20.1 The Supplier shall ensure that each quality parameter of the Contract Coal Delivered to Eskom in terms of this Agreement shall comply with the Quality Specifications for Contract Coal set out in Table 3 hereunder.

Table 3: Coal Quality Specifications and Rejection Limits

Quality parameter	Unit	Quality Expected	Quality Rejection Limit	Measurement basis
Calorific Value	MJ/kg	21.10	<20.0	Air Dried
Total Moisture	%	<6.0	>10.0	As Received
Inherent Moisture	%	4.4	N/A	As Received
Ash	%	27.9	>30.0	Air Dried
Abrasive Index (Eskom Mining House Method)	mgFe/4kg	<450	>450	Air Dried
Sulphur	%	1.0	>1.3	Air Dried
Volatiles	%	21.3	<20.0	Air Dried
AFT (Initial deformation)	°C	1300	<1220	N/A
Sizing				
+50mm	%	<5.0	>5.0	N/A
-3mm (cumulative)	%	<30.0	>35.0	
-1mm	%	<10.0	>15.0	

All parameters are measured to 1,000 decimal place, except AI and AFT, which shall be measured to the nearest integer.

\*Hardgrove Index should be within Eskom acceptable limit of <55 in order to achieve the desired milling and coal fineness during combustion.

\*Full combustion tests will be conducted on all proposed coal prior to delivery and acceptance by Eskom. The objective of the combustion test is to ascertain suitability of the coal for use by Eskom.

\*\*\*\*\*mathematical blending limits to be advised by Eskom

- 20.2 The Supplier shall ensure that no Ultralines are blended into the coal to be Delivered to Eskom and that each Consignment of Contract Coal is substantially free from impurities and extraneous materials related to the proper mining and processing of coal.

- 20.3 Where the Supplier wishes to Deliver coal of a higher quality than the Quality Specifications, the Supplier shall make a written request to Eskom and the acceptance of such request shall be at Eskom's sole discretion. For the

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purposes of determining the energy delivered for payment purposes, unless otherwise agreed, the CV of such coal shall be the maximum CV as set out in the Quality Specification.

- 20.4 In the event that coal is supplied which does not meet the Quality Specifications, Eskom shall treat such coal as Reject Coal, and such Reject Coal will be burned or disposed of, and
- 20.4.1 If the relevant quality parameter is within 10% (ten percent) of the applicable reject level for that parameter, Eskom shall pay the Supplier an amount of R30.00 (thirty Rand) per Ton for such coal; or
- 20.4.2 If the relevant quality parameter deviates from the applicable reject level by more than 10% (ten percent), Eskom shall not be liable to pay the Supplier for such coal.
- 20.5 Where Eskom decides, at its sole discretion, to dispose of the Reject Coal, the Supplier shall be liable for any demonstrable and reasonable additional costs occasioned by the disposal of such coal, including the cost of transporting the coal to the Power Station.
- 20.6 Reject Coal supplied shall not constitute Supply or Delivery and shall not reduce the Monthly, Yearly or Total Energy Quantity to be supplied in terms of this Agreement.
- 20.7 Coal Delivered from a Pre-Certified stockpile cannot be Reject Coal, provided that the Supplier has complied with the provisions of the Coal Quality Management Procedure.
- 20.8 The following clauses, to ensure assurance on the quality precertification process, shall be applicable:
- 20.8.1 Mix / Blending Process
- 20.8.1.1 The Supplier shall install/ have adequate mechanical mixing/blending capacity to ensure blending and consistency within the product consignment.
- 20.8.1.2 The Supplier shall be required to provide Eskom with a schematic flow diagram/procedure diagram outlining the mix/blending process that shall be adhered to for the duration of the Agreement. The flow diagram shall be agreed to between the Parties and shall form part of the final Agreement.

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Variability tests will be performed to determine the sampling implement frequency.

#### 21. Pre-Certification of Coal

In order to ensure compliance with the provisions of clause 20:

- 21.1 Prior to Delivery to Eskom, the Supplier shall ensure that coal contained in each separate stockpile is sampled and pre-certified to meet the Quality Specifications for Contract Coal and is identified as such in accordance with the processes and procedures set out in Annexure A: The Coal Quality Management Procedure;
- 21.2 Only coal that has been sampled, pre-certified and identified in accordance with the provisions of clause 21.1, may be placed on the Pre-Certified Stockpile. The Supplier shall only Deliver Contract Coal to Eskom from Pre-Certified Stockpiles allocated for Delivery to Eskom in terms of this Agreement; and
- 21.3 Where the pre-certification process indicates that a product stockpile does not meet the Quality Specifications set out in Table 3, the Supplier shall blend/reprocess and re-sample such stockpile to meet the Quality Specification at the Supplier's own cost and risk.
- 21.4 The Supplier shall be required to provide Eskom with a flow diagram/procedure indicating the auto-mechanical sampling process that shall be adhered to for the duration of the Agreement. The flow diagram shall be agreed to between the Parties and shall form part of the Final Agreement.
- 21.5 For assurance purposes the following is required:

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21.5.1 Eskom will observe whether the existing dome cameras provide enough coverage and may require a different camera system covering the auto-sampler, sample collection, preparation and sampling and placement in the lockable bin.

21.5.2 Eskom would like camera coverage of the sample from the point of the cross belt sampler to splitting in the laboratory. Eskom shall require the Supplier to provide a solution within the first month of signing of the short term contract.

21.5.3 No manual resampling of stockpiles shall be allowed - including re-processed/out of specification stockpiles.

21.6 The Supplier shall be required to provide Eskom with a flow diagram/procedure indicating the load out control process that shall be adhered to for the duration of the Agreement. The flow diagram shall be agreed to between the Parties and shall form part of the final Agreement.

21.7 The Supplier shall be required to implement the following:

21.7.1 A traffic management system. There shall be clear separation of in and outgoing traffic. Strict adherence to the prescribed consignments size, which shall be equal to the agreed consignment size. Mini "transit" stockpiles shall not be allowed.

21.7.2 A weighbridge identity system must be implemented. The approved system shall be required to include the stockpile identity on the weighbridge certificate. A vehicle tracking system. For Delivered Agreements the vehicle tracking system shall be required to be compatible to Eskom's DX250 vehicle tracking system. Eskom may, on an ad-hoc basis, request information from the vehicle tracking system. The Supplier shall make such information available to Eskom by the requested date.

21.7.3 The existing dome camera covering the stockpile load-out area. Eskom will observe whether the dome cameras provide enough coverage and may require a different camera system and Eskom shall have access to the information as and when required.

21.7.4 Supply Eskom with a daily stockpile status report showing a reconciliation of practical tonnages. (Tons closing stock - Tons opening stock - Tons Added - Tons Dispatched). The format of the status report shall be agreed to by the parties and included in the agreement. The Supplier will provide survey reports on request, for audit purposes.

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21.7.5 Adequate supervision shall be demonstrated. The Supplier shall be required to provide a signed supervisory structure to Eskom, such structure shall form part of the Agreement.

21.8 Eskom shall be entitled to:

21.8.1 At any time, with reasonable notice, audit the site in terms of adherence to the above requirements relating to pre-certification.

21.8.2 Request the Supplier to provide pre-qualification analysis of the individual sources that make up the blend for the Contract Coal.

21.8.3 At Eskom's cost, conduct verification sampling at the source (as loaded) and at the Power Station.

21.8.4 Eskom shall have the right to view and access the footage of the dome camera observing the automatic sampler, the auto sampler, sample collection, preparation and sampling placement in the lockable bin, as and when required.

21.9 The Supplier shall be entitled to:

21.9.1 Have access to the verification results. All verification sampling results will be supplied to the Supplier 24 hours after the analysis results have been issued to Eskom.

21.9.2 The supplier shall be notified of any pre-certification sampling and will witness the pre-certification sampling.

## 22. Determination of Coal Quality

22.1 The Parties shall implement the provisions of Annex B: The Coal Quality Management Procedure, for the purpose of sampling, analysis, reporting and resolution of disputes relating to the qualities and quantities of coal Supplied in terms of this Agreement.

22.2 The Supplier shall be responsible for the sampling of coal and associated costs. In this regard, the Supplier shall ensure that acceptable auto-mechanical sampling equipment is available for sampling of coal and shall be responsible for the maintenance thereof.

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- 22.3 Eskom shall, at its cost and including the cost of transport, procure the analysis of such samples by the laboratory defined as the "Nominated Laboratory" in Annexure A.
- 22.4 The Supplier shall submit a daily report to Eskom in the format set out in Annexure A. Eskom reserves the right to amend Annexure A from time to time in order to align same with its operational arrangements and shall notify the Supplier in writing of any such amendments within 7 (seven) days of the amendments being effected.
- 22.5 Eskom shall procure that the Nominated Laboratory shall submit a daily report simultaneously to Eskom and the Supplier of the analysis results.
- 22.6 Eskom may provide on-site representatives for the verification of the sampling and pre-certification processes. The Supplier consents that Eskom's on-site representatives shall have full access to verify the sampling and the pre-certification process.
- 22.7 The Supplier undertakes to grant to Eskom and its representatives, on request, access to all available geological information relating to the Coal Reserve and the Coal Resource.
- 22.8 Eskom shall further be entitled to conduct pit visits on reasonable notice to the Supplier, to monitor the Supplier's application of effective grade and contamination controls.
- 22.9 Disputes in respect the analytical results shall, notwithstanding the provisions of clause 30, be dealt with in terms of the dispute resolution procedure included in Annexure A: The Coal Quality Management Procedure.

### 23. Adjustment for Moisture Content

- 22.10 Eskom and the Supplier shall jointly and in consultation with each other and no later than 30 (thirty) days after first Delivery of Contract Coal, conduct drainage tests to determine the Equilibrium Moisture content and the stockpile drainage period required for coal to attain such Equilibrium Moisture, which Stockpile Retention Time will then be reduced to writing and signed off by duly authorised representatives of both Parties to be used for evidentiary purposes. The Supplier shall bear the cost of sampling and Eskom shall bear the cost of the analysis.



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23.1.1 upon completion of the drainage tests to determine the Equilibrium Moisture and the Stockpile Retention Time in accordance with clause 23.1 above, the Supplier shall procure that all coal stockpiled for the purposes of this Agreement, with Total Moisture content that exceeds the Rejection Limit set out in the fifth column of Table 3, is drained for a period of at least the Stockpile Retention Time before Delivery and the Equilibrium Moisture value shall be used in the CV Adjustment Factor (CVAF) applicable to this Agreement; and

23.1.2 until such time as the results of the drainage tests become available and have been provided by Eskom to the Supplier, and until the Equilibrium Moisture and the Stockpile Retention Time have been determined, the Supplier shall procure that all coal stockpiled for the purposes of this Agreement, with Total Moisture content that exceeds the Rejection Limit set out in the fifth column of Table 3, is drained for a period of at least 24 (twenty four) hours prior to Delivery, and a deemed Equilibrium Moisture value of 10% (ten percent) shall be used in the CV Adjustment Factor (CVAF) applicable to this Agreement. Examples and the formulae used for this calculation are provided in Annexure E: Example Calculations for Adjustments for Moisture Content.

23.2 For invoicing purposes, the mass of any Contract Coal accepted by Eskom and Delivered in terms of clause 23.3 shall be adjusted by multiplying the mass of such coal, as determined in accordance with clause 27, by the Tonnage Adjustment Factor. The Total Moisture content as stated in the Supplier's request in terms of clause 23.3 shall be used in the calculation of the Tonnage Adjustment Factor. Examples and the formulae used for this calculation are provided in Annexure E: Example Calculations for Adjustments for Moisture Content.

23.3 In the event of high rainfall at the Mine, such that only the Total Moisture content of the coal exceeds the Rejection Limit set out in the fifth column of Table 3, the Supplier must make a formal request in writing for approval to Deliver such coal. The Supplier's request must state the quantity (in millimetres per 24 (twenty four) hour period) of rain that has fallen as well as the Total Moisture content of the coal at the time of the request being made. Eskom may, at its sole discretion, give the Supplier such approval and coal so accepted shall not be classified as Reject Coal and accordingly the provisions of clauses 20.4 to 20.6 of this Agreement shall not apply to such coal, but will be subject to the moisture adjustment in terms of clause 23.2. Eskom's acceptance or rejection of such request must be in writing and provided no later than the day following such request from the Supplier.

23.4 For the purposes of converting the Calorific Value (CV) of coal from an Air Dried to an As Received Basis in order to determine the energy Delivered for invoicing purposes, the

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Calorific Value (CV) of coal measured on an Air Dried basis by the Nominated Laboratory shall be adjusted by multiplying the Air Dried Calorific Value (CV) by the CV Adjustment Factor (CVAF). Examples and the formulae used for this calculation are provided in Annex E: Example Calculations for Adjustments for Moisture Content.

## SECTION 7: MODES OF TAKE OFF OF COAL

### 24. Modes of Take Off of Coal

24.1 Eskom shall use {1 (one)/2 (two)} modes of Take Off of Contract Coal, namely {rail and/or road}

24.2 Eskom shall, not less than 30 (thirty) calendar days before each anniversary of the Commencement Date for the currency of this Agreement, notify the Supplier in writing of the provisional estimates of the relevant portions of the Annual Quantity which it requires to be Delivered for Take Off by rail and road respectively during each Month of the following Year.

24.3 The Supplier shall Deliver the quantities stipulated by Eskom in the notice contemplated in clause 24.2 at the Delivery Points for Road Coal and Rail Coal respectively, provided that the Parties shall liaise with each other:

24.3.1 on a Monthly basis at the Technical Liaison Meetings to confirm the quantities Eskom requires to be Delivered for Take Off by {rail and/or by road}; and

24.3.2 in order to be responsive to Eskom's operational needs which may arise from time to time, Eskom may request a variation to the mode of transport previously agreed to by requesting a change to the Delivery Point. The additional reasonable and demonstrable direct costs which the Supplier may incur to comply with such variation request from Eskom will be borne by Eskom.

### 25. Road Coal Transportation (FCA Contract)

25.1 Where Eskom is responsible for the transportation of Road Coal (i.e. an FCA Contract), Eskom will ensure that sufficient road trucks are available at the Delivery Point to Take Off Road Coal.

25.2 The Supplier shall, at its own cost, provide, maintain and operate Pre-Certified Stockpiles with a total capacity of no less than 3 ("three") days Consignment, an access road, equipped with a weighbridge, terminating on the R50 road, and truck loading equipment such that a maximum of 1 491 600 Tons of coal per

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annum can be uniformly loaded into trucks and transported to the Power Station by road.

- 25.3 The Supplier shall ensure that Contract Coal sufficient for a minimum of 3 (three) days' Delivery is available at all times on Pre-Certified Stockpiles.
- 25.4 The Supplier shall comply with Eskom's Rules of Road Transportation pertaining to coal loading operations, as amended or replaced from time to time, and which, in their present form, are contained in Annex C1: Eskom's Rules of Road Transportation for FCA Contracts.

#### 26. Road Coal Transportation (Delivered Contract)

- 26.1 Where the Supplier is responsible for the transportation of Contract Coal by Road (ie a Delivered Contract) to a designated Power Station, the Supplier shall ensure that sufficient road trucks are available to transport coal from the Mine to the Delivery Point.
- 26.2 The Supplier shall be responsible for ensuring that all road transportation under its control complies with the provisions of Annex C2: Eskom's Rules of Road Transportation for Delivered Contracts.
- 26.3 Where the Supplier is responsible for the transportation of Road Coal from the Mine to any Eskom Power Station, the transport tariff per Ton payable by Eskom to the Supplier (and which shall be in addition of the Price payable for the Contract Coal so Delivered) shall be determined using the Coal Haulage Rates Model. For the avoidance of doubt, the transport tariff payable in terms of the Coal Haulage Rates Model shall be reviewed each Month and the Price adjustment provisions as set out in clause 18 and 17 shall not apply to the said tariff.
- 26.4 Eskom reserves the right to require the Supplier to Deliver Contract Coal to any alternative Power Station, and the Supplier shall co-operate with Eskom in relation to such alternatives. Unless otherwise provided elsewhere in this Agreement, Eskom shall be liable for any reasonable and demonstrable additional costs incurred by the Supplier as a result of an Eskom request in terms of this clause 26.4 and shall be entitled to any reasonable and demonstrable additional savings resulting from such request.

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**27. Mass Determination****27.1 general responsibilities**

**27.1.1** Each Party shall ensure that its mass measuring equipment is inspected, assized and certified every 12 (twelve) Months or more regularly if necessary in the case of recurring discrepancies, by a company certified to assize mass measuring equipment in accordance with the Trade Metrology Act, No. 77 of 1973, as amended or replaced from time to time and prevailing South African Bureau of Standards specifications. Each Party shall procure that a certificate signed by the assizing company which is no more than 12 (twelve) Months old is available for inspection by the other Party at all times.

**27.1.2** In the event that the Supplier's mass measuring equipment is not operational, the Supplier must inform Eskom within 24 (twenty four) hours of becoming aware of any such problems and Eskom's mass measurements shall be used for invoicing purposes until such time as the Supplier's mass measuring equipment has been repaired. Where Eskom does not have mass measuring equipment installed for rail transportation, Parties shall estimate the mass based on the number of rail wagons and the nominal carrying capacity of each rail wagon.

**27.2 mass determination of Road Coal**

**27.2.1** The Supplier shall measure the mass of Road Coal Delivered by weighing same at the Mine. Each truck transporting the Road Coal shall be weighed full and empty at the relevant weighbridge located at the Delivery Point, and the mass thereof shall be recorded on a waybill issued in triplicate.

**27.2.2** The Supplier shall deliver the original waybill to Eskom with every truck load, retain 1 (one) copy, and forward 1 (one) copy to the transport contractor. The Supplier shall on a daily basis, forward to Eskom, a schedule depicting the waybills, the waybill number, vehicle registration number, dispatch and delivery time, total number of trucks loaded and the mass of each truck, and stockpile reference number (as further detailed in the CQMP), together with the said waybill.

**27.2.3** Eskom shall weigh each truck received on a full and empty basis and the Parties shall reconcile their respective mass measurements on a weekly basis or no later than the date of the next Technical Liaison Meeting and the following shall apply:

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27.2.3.1 where Eskom is responsible for the transportation of Coal from the Delivery Point, then, in the event of a discrepancy of less than 2% (two percent) between the Supplier's mass determination and that of Eskom, the mass recorded on the waybill and/or the tonnage information supplied by the Supplier in terms of clause 27.2.2, as the case may be, will be accepted as final and binding;

27.2.3.2 where the Supplier is responsible for the transportation of Coal to a Power Station, then, in the event of a discrepancy of less than 2% (two percent) between the Supplier's mass determination and that of Eskom, the mass recorded on the waybill and/or the tonnage information supplied by Eskom in terms of clause 27.2.2, as the case may be, will be accepted as final and binding, subject to clause 27.4; and

27.2.3.3 In the event of a discrepancy of 2% (two percent) or more, and if the Parties agree that such discrepancy is due to a mass determination fault of either Party, the lesser of the two masses will temporarily be used for the purposes of this Agreement, until the source of the fault has been identified and corrective measures implemented, which shall, in any event, not be for a period of more than 30 (thirty) days, subject to clause 27.4.

### 27.3 mass determination of Rail Coal

27.3.1 The Supplier shall measure the mass of Rail Coal Delivered at the load out flask situated at the Rail Siding.

27.3.2 The mass of each rail wagon load of Rail Coal shall be determined by the Supplier's load out flask, and the mass thereof shall be recorded on a waybill issued in triplicate, which recorded mass shall be applicable to this Agreement

27.3.3 The Supplier shall deliver the original waybill to Eskom with every train load, retain one copy, and forward one copy to TFR. The Supplier shall on a daily basis, forward to Eskom, a schedule depicting the waybills the train number, dispatch and delivery time, total number of rail wagons loaded and the mass of each rail wagon and where applicable, the stockpile reference number (as further detailed in the CQMP), together with the said waybill.

27.3.4 The Supplier shall on a daily basis, forward to Eskom a schedule depicting the waybills for that day.

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27.3.5 Eskom shall be entitled to weigh each rail wagon received on a full and empty basis and the Parties shall reconcile their respective mass measurements on a weekly basis or no later than the date of the next Technical Liaison Meeting and the following shall apply:

27.3.5.1 In the event of a discrepancy of less than 2% (two percent) between the Supplier's mass determination and that of Eskom, the mass recorded on the waybill and/or the tonnage information supplied by the Supplier in terms of clause 27.3.3, shall be accepted as final and binding.

27.3.5.2 In the event of a discrepancy of 2% (two percent) or more, and if the Parties agree that such discrepancy is due to a mass determination fault of either Party, the lesser of the two masses shall temporarily be used for the purposes of this Agreement, until the source of the fault has been identified and corrective measures implemented, which shall not be for a period of more than 30 (thirty) days, subject to clause 27.4.

27.4 disputes regarding mass measurement

27.4.1 Where there are persistent discrepancies or other disputes regarding mass or the mass measurement of Contract Coal, the Parties shall ensure that they use their best efforts to reach agreement within 20 (twenty) days after a dispute being declared by either Party in this regard.

27.4.2 Where the Parties are unable to reach agreement within the time period set out in clause 27.4.1 above either Party may then refer the dispute for an independent expert determination in terms of clause 32 of this Agreement.

27.4.3 The Parties shall retain records of all printouts in respect of mass measurement for a period of at least 3 (three) years after the date of Delivery, or any legislated period, whichever is the greater. In the event that there is an unresolved dispute between the Parties, such records shall be retained until such time as the dispute has been resolved.

## SECTION 8: REPORTING REQUIREMENTS AND PROVISION OF INFORMATION

### 28. Technical Liaison Meetings

At least once per Month during the currency of this Agreement, a Technical Liaison Meeting shall be held and be attended by authorised representatives of Eskom and the Supplier to report on, *inter alia*:

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- 28.1 the Delivery and Take Off of Contract Coal (including Under Delivery/Under Off Take and planning of the Monthly Quantity, Quarterly Quantity and Yearly Quantity);
- 28.2 any incident where Delivery or Off Take deviated from the Drawdown Order and/or from the quantities set out in clause 11;
- 28.3 quality issues;
- 28.4 any weight/mass determination issues;
- 28.5 transport and mode of transport of Contract Coal;
- 28.6 safety;
- 28.7 environmental and water related matters;
- 28.8 general information sharing; and
- 28.9 any other material matter not referred to herein and/or referred to in Annexes F: The Technical Liaison Meeting Agenda.

#### 29. Reports

- 29.1 The Supplier shall within 3 (three) days of the end of each Month, provide Eskom on a Monthly basis with a summary of the qualities, quantities and dates of dispatch of each Consignment of coal Delivered in the previous Month.
- 29.2 The Supplier shall supply Eskom with the following information on an annual basis, within 30 (thirty) days after publication of the Suppliers annual report:
  - 29.2.1 summary of the qualities, quantities and dates of dispatch of Contract Coal Delivered during the previous Year;
  - 29.2.2 the reserve and resource statements, in accordance with the SAMREC Code, relating to the remaining coal to be mined at the Mine;
  - 29.2.3 progress on long term issues dealt with in this Agreement;
  - 29.2.4 latest tax clearance certificates;
  - 29.2.5 its broad based black economic empowerment status;
  - 29.2.6 its employment equity status; and

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29.2.7 its latest audited financial statements

**30. Legislative Submissions associated with Compliance**

The Supplier will provide Eskom, upon Eskom's request, with copies of all legislated submissions submitted to all competent authorities required pursuant to legislation aimed at protecting the environment and water resources, and regulating health and safety, prospecting and mining and black economic empowerment, including but not limited to, the Mining Right and the related the Mining Work Program, Environmental Management Programme, compliance submissions in respect of the said programmes and legislative black economic empowerment compliance.

**SECTION 9: DISPUTE RESOLUTION AND BREACH****31. Dispute Resolution**

31.1 This clause is a separate, divisible agreement from the rest of this Agreement and shall:

31.1.1 not be or become void, voidable or unenforceable by reason only of any alleged misrepresentation, mistake, duress, undue influence, impossibility (initial or supervening), illegality, immorality, absence of consensus, lack of authority or other cause relating in substance to the rest of the Agreement and not to this clause. The Parties intend that any such issue shall at all times be and remain subject to arbitration in terms of this clause;

31.1.2 remain in effect even if this Agreement terminates or is cancelled.

31.2 If a dispute (hereinafter collectively referred to as a "Dispute") has arisen between the Parties out of, in relation to, or in connection, with this Agreement, or in regard to:

31.2.1 the interpretation and meaning of;

31.2.2 the effect of;

31.2.3 the respective rights or obligations of the Parties under;

31.2.4 the termination of; and/or

31.2.5 any matter arising out of or following the termination of,

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this Agreement then and in such event the Dispute will be settled in accordance with the following procedures:

### 31.3 step one

The Disputing Party must give a written notice ("the Dispute Notice") to the other Party ("the Receiving Party") recording the nature of the Dispute as perceived by the Disputing Party, the performance required by the Disputing Party from the Receiving Party in order to resolve the Dispute and/or the manner in which the Disputing Party believes the Dispute must be resolved, and the time period within which such performance is required. The time period, which may not be shorter than seven days and not longer than 14 days, is referred to herein as the "first period".

### 31.4 step two

In the event of the Receiving Party not performing in a manner demanded in the Dispute Notice or the Dispute not being resolved within the first period (or such further period as may be agreed to in writing by the Parties), then authorised representatives of the Parties will meet within a period ("the Second Period") of no more than seven days after the end of the first period to attempt to settle such dispute in an amicable manner, the outcome of which meeting will be reduced to writing.

### 31.5 step three

If, irrespective of whether the Parties have met or concluded any meeting, no written agreement recording the resolution of the Dispute is signed by the Parties within the Second Period, then the Dispute must, within a period of seven days calculated from the end of such Second Period, be referred in writing by the Disputing Party to each of the Chief Executive Officers of the Supplier and Eskom:

### 31.6 step four

31.6.1 If, irrespective of whether the senior executives (or their appointed nominee) have met or concluded any meeting, no written agreement is signed by the Parties resolving the Dispute within a period of 30 (thirty) days calculated from the day upon which the Dispute was referred to the senior executives, or within such an extended period as may be agreed to in writing by the Parties, then:

31.6.1.1 either Party may refer the Dispute to be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa ("AFSA") or its successor body by an arbitrator appointed by AFSA. "Refer" in this sub-

Coal Supply Agreement between ESKOM HOLDINGS SOC LIMITED and VEGETA EXPLORATION AND RESOURCES PTY LTD executed at SUNNINGHILL on 10 March 2018  
Ref:

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clause means delivering or transmitting electronically a written notice to AFSA requesting the appointment of an arbitrator to determine the Dispute. Referral of the Dispute shall be completed on delivery to and acknowledgement of receipt by AFSA of the notice. The Party referring the Dispute shall thereafter deliver or electronically transmit a copy of the referral notice to the other Party;

31.6.1.2

the arbitration will be held in Johannesburg in private at a venue as determined by the AFSA Rules or the arbitrator appointed as envisaged in clause 31.6.1.1;

31.6.1.3

the arbitrator will have regard to the desire of the Parties to dispose of such Dispute expeditiously, economically and confidentially and shall be obliged to provide written reasons for his/her decision, together with reasons for such decision which shall be delivered in writing to the Parties within 21 (twenty one) days after the conclusion of the arbitration hearing;

31.6.1.4

the arbitrator will determine the liability for his/her charges and the costs of the arbitration will be paid accordingly by the Parties;

31.6.1.5

subject to the provisions of clause 31.6.2, the Parties irrevocably agree that the decision in any such arbitration proceedings will be final and binding on them, will forthwith be put into effect and may be made an order of any court of competent jurisdiction.

31.6.2

"Either" Party has the right to appeal against the decision of the arbitrator appointed in terms of clause 31.6.1.1 provided that this is done within 30 (thirty) days of receipt by the Parties of the arbitrator's award. The appeal shall be heard by three arbitrators, in accordance with a procedure determined by them, who shall be appointed as follows:

31.6.2.1

the Party appealing will appoint 1 (one) arbitrator from the ranks of retired High Court Judges or Senior Advocates;

31.6.2.2

the other Party will nominate 1 (one) arbitrator from the ranks of retired High Court Judges or Senior Advocates; and

31.6.2.3

the 2 (two) arbitrators so nominated must nominate a third arbitrator from the ranks of retired High Court Judges or Senior Advocates.



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- 31.6.3 Nothing contained in this clause 31 will preclude any Party from applying for, or obtaining, interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator on the merits of the Dispute.
- 31.6.4 The provisions of this clause 31 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Coal Supply Agreement.
- 31.6.5 Notwithstanding the provisions of clauses 31.3, 31.4, 31.5 and 31.6, a Disputing Party shall be entitled to refer any Dispute to be finally resolved by an arbitrator as contemplated in clause 31.6 above, without having commenced, or completed, the procedures prescribed in clauses 31.3, 31.4, 31.5 and 31.6 when in the view of the Disputing Party the prescribed procedures may not have been completed before any claim of the Disputing Party may have become prescribed. In this case the other Party shall be precluded from raising in the arbitration and/or any other forum a special plea or defence to the effect that the Disputing Party is precluded from proceeding immediately to arbitration because of the provisions of clauses 31.3, 31.4, 31.5 and 31.6.
- 31.6.6 The provisions of this clause 31 shall not apply in regard to the matters to be determined by an independent expert in terms of clause 32.

## 32 Determination by an Independent Expert

### 32.1 applicability of indices to measure changes in cost factors

The resolution of any Dispute between the Parties arising from this Agreement and relating to the applicability of the indices stipulated in Table 2, actual movement of the actual cost movement in respect of that cost element in the South African coal mining industry and if necessary an appropriate replacement index, must be determined by an independent expert who must:

- 32.1.1 have at least a bachelors degree in statistics, economics or equivalent qualifications; and
- 32.1.2 have proper practical knowledge and at least 10 (ten) years' experience of statistics, indexing, finance and economics and application in South African Mining Industry.

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### 32.2 quality and quantity disputes

The resolution of any Dispute between the Parties arising from this Agreement and which is of a technical nature relating to coal qualities and quantities, must be determined by an Independent expert who must:

- 32.2.1 have a bachelors degree in metallurgy or equivalent qualifications; and
- 32.2.2 have proper practical knowledge and at least 10 (ten) years' experience of coal mining, coal processing quality and quantity determination and the use of coal in heat generation applications.

### 32.3 mining related disputes

The resolution of any Dispute between the Parties arising from this Agreement and which is of a technical nature relating to coal mining and the coal resources in terms of the Mining Right, including the information furnished by the Supplier in respect of the coal resources, all warranties furnished by the Supplier and a replacement code for reporting reserves if the SAMREC Code no longer exists, must be determined by an independent expert who must:

- 32.3.1 have a bachelors degree in Geology and/or Mining Engineering; and
- 32.3.2 have proper practical knowledge and at least 10 (ten) years' experience of coal geology, reserve determination and coal mining.

### 32.4 disputes relating to nature of dispute

Should the Parties be unable to reach agreement on the nature of a Dispute in terms of this clause 32 the Chairperson for the time being of the South African Institute of Mining and Metallurgy, or its successor body, may, at the request of either of the Parties, determine in his/her absolute discretion the nature of the Dispute for purposes of this paragraph 32.

### 32.5 appointment of expert

If the Parties are unable to agree upon an acceptable Independent expert pursuant to this clause 32 within 15 (fifteen) Business Days after a request by a Party for the appointment of such expert then, within 5 (five) Business Days after the lapse of such period, the Parties shall jointly request the head of the relevant professional body under which the Independent expert falls, or if such professional body does not exist, the President for the time being of AFSA or its successor body to appoint an

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independent person, who satisfies the requirements an expert, to act as an independent expert to make the relevant expert determination in terms of this clause 32.10, provided, however, that if one party fails or refuses to join the other in making such request, then the latter may apply for such appointment.

### 32.6 procedure

The independent expert shall determine the procedures to be followed, including the manner in which the expert shall receive written, and if so required by the expert, oral submissions on behalf of each Party. The independent expert shall likewise determine the place where the expert shall meet the Parties, provided that such place must be in Johannesburg or Pretoria. The independent expert may, if the expert deems this necessary, conduct an inspection of any plant, mine, facilities and/or other area that is the subject of the Dispute. The independent expert shall act as an expert and not as an arbitrator or mediator.

### 32.7 costs

The Parties shall share any costs of AFSA and the costs of the independent expert equally, unless otherwise directed by the expert.

### 32.8 reasons

The independent expert shall in each case be obliged to give written reasons and motivation for his/her determination.

### 32.9 binding effect

In the absence of grounds for review, the relevant expert's determination shall be binding on both Parties.

### 32.10 review

32.10.1 Subject to the provisions of clause 32.9, any Party may take the independent expert's determination on review.

32.10.2 In the event that any Party wishes to take the independent expert's determination on review in terms of clause 32.10.1 above, the said Party must notify the other Parties and the independent expert thereof in writing within 60 (sixty) days after receipt of the independent expert's determination and reasons failing which the right to review shall lapse.

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- 32.10.3 In the event of a review the independent expert's determination shall be suspended, pending finalisation of the review procedure.
- 32.10.4 Any review as envisaged must be conducted by a practising senior counsel with not less than ten years standing or a retired High Court Judge agreed between the Parties.
- 32.10.5 If the Parties cannot agree upon a particular person to conduct the review within 7 (seven) Business Days after notice has been given in terms of clause 32.10.1 then either Party may request, within seven Business Days after the Parties have so failed to agree, the Chairperson of the Johannesburg Bar Council (or any replacement body) to appoint a person to conduct the review.
- 32.10.6 The person conducting the review shall determine the procedures to be followed, provided that such proceedings must be held in Johannesburg or Pretoria. The powers of the person conducting the review shall be those of the High Court conducting a review as envisaged in Rule 63 of the High Court rules, as amended or replaced from time to time.

### 33. Breach

#### 33.1 breach of a warranty

If a Party breaches a warranty under clauses 3, 4 or 5 of this Agreement, and remains in breach of such warranty for 30 (thirty) Business Days after written notice to that Party requiring that Party to rectify that breach of warranty, the aggrieved Party shall be entitled, without derogating from any of its other specific rights or remedies provided for under this Agreement or which it is entitled to in law, at its option:

- 33.1.1 to sue for immediate specific performance of any of the defaulting Party's obligations under this Agreement; or
- 33.1.2 to cancel this Agreement in which case written notice of the cancellation must be given to the defaulting Party, and the cancellation shall take effect on the giving of the notice.

#### 33.2 breach of other material provisions

If a Party breaches any other material provision of this Agreement and remains in breach of such material provision for 30 (thirty) Business Days after written notice to that Party requiring that Party to rectify that breach, the aggrieved Party shall be



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entitled, without derogating from any of its other specific rights or remedies provided for under this Agreement, at its option:

- 33.2.1 to sue for immediate specific performance of any of the Defaulting Party's obligations under this Agreement; or
- 33.2.2 to cancel this Agreement in which case written notice of the cancellation must be given to the defaulting Party, and the cancellation shall take effect from the date of the notice.

### 33.3 breach of general provisions

If a Party breaches any other general provision of this Agreement and remains in breach of such material provision for 30 (thirty) Business Days after written notice to that Party requiring that Party to rectify that breach, the aggrieved Party shall be entitled, without derogating from any of its other specific rights or remedies provided for under this Agreement to sue for immediate specific performance of any of the Defaulting Party's obligations under this Agreement.

## SECTION 10: FORCE MAJEURE MATTERS

### 34. Force Majeure

#### 34.1 general

34.1.1 For the purposes of this Agreement, an exceptional event or circumstance

which prevents or restricts either Party directly or indirectly from performing all or any of that Party's ("the Affected Party") obligations in terms of this Agreement;

34.1.1.2 beyond the reasonable control of the Affected Party;

34.1.1.3 not the direct or indirect result of a breach by the Affected Party of any of its obligations under this Agreement; and

34.1.1.4 could not have been (including by reasonable anticipation) avoided or overcome by the Affected Party, acting reasonably and prudently,

subject to clause 34.1.2 shall constitute a "Force Majeure Event" for the purposes of this Agreement.

Coal Supply Agreement between ESKOM HOLDINGS SOC LIMITED and TEGETA EXPLORATION AND RESOURCES LTD  
PTY LTD executed at BUNNINHILL, on 19 March 2018  
Re:

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- 34.1.2 A "Force Majeure Event" shall, subject to the conditions in clauses 34.1.1 to 34.1.1.4 being satisfied, include, without limitation:
- 34.1.2.1 war, hostilities (whether war to be declared or not), invasion, act of foreign enemies;
- 34.1.2.2 rebellion, terrorism, revolution, insurrection, military or usurped power or civil war;
- 34.1.2.3 riot, commotion, disorder, any blockade or embargo, strikes or lock outs that are on a national scale and directly affects the construction, energy and coal mining industry of South Africa, but shall not include any such action that is solely by the Supplier's personnel and other employees of the Supplier or its subcontractors;
- 34.1.2.4 natural catastrophes such as earthquake, hurricane, typhoon, volcanic activity floods (other than heavy rains), fire, 'Acts of God', or explosions."
- 34.1.3 An event which satisfies the requirements of clause 34.1, but is the direct or indirect result of any third party fulfilling contractual, statutory or other obligations to the Affected Party (for reasons which would not in themselves constitute a 'Force Majeure Event') shall not constitute a "Force Majeure Event" for purposes of this Agreement.
- 34.1.4 The Affected Party shall be relieved of performance of its obligations in terms of this Agreement during the period that a Force Majeure Event occurs and its consequences continue (but only to the extent it is so delayed or prevented from performing partially or at all by the Force Majeure Event), and, provided that notice has been given in terms of clause 34.1.5 shall not be liable for any delay or failure in the performance of any of its obligations in terms of this Agreement or losses or damages whether general, special or consequential which the other Party ("the Unaffected Party") may suffer due to or resulting from any such delay or failure.
- 34.1.5 The Affected Party shall give written notice to the Unaffected Party at the earliest possible opportunity in writing of the occurrence of the event constituting the Force Majeure Event, together with details thereof and a good faith estimate of the period of time for which it shall endure.

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### 34.2 proportionate reduction

Should a Force Majeure Event affect the production capacity of the Mine and/or the Supplier's ability to Deliver coal for Supply to Eskom in terms hereof or should such Force Majeure Event affect Eskom's ability to Take Off coal in terms of this Agreement, each of the Parties' respective obligations to Deliver and to Take Off coal in terms hereof shall be reduced in proportion to the reduction in the capacity to Deliver or capacity to Take Off as the case may be.

### 34.3 consequences

At all times whilst a Force Majeure Event continues, the Parties shall meet at regular intervals to discuss and investigate, and if possible, to implement other practical ways and means to overcome the consequences of such a Force Majeure Event, with the objective of achieving the import and intent of this Agreement without unreasonable delay. In this regard the Parties shall explore the possibility of concluding alternative arrangements for the supply or purchase of coal as the case may be. These alternative arrangements may include but are not limited to quantity, quality and penalty amendments; and supply from any source for such periods of time as may be reasonable under the circumstances with due regard to the nature and anticipated duration of the Force Majeure Event.

### 34.4 termination of Force Majeure Event

The Affected Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure Event on its ability to perform under this Agreement and to terminate the circumstances giving rise to a Force Majeure Event as soon as reasonably possible (provided that nothing in this clause shall require the Affected Party to settle any strike, lock-out or other industrial or labour dispute, whether it is a party thereto or not) and upon termination of the event giving rise thereto, shall forthwith give written notice thereof to the Unaffected Party.

### 34.5 extension of this Agreement

34.5.1 In the event that a Force Majeure Event occurs as contemplated herein, the Parties shall, on cessation of the Force Majeure Event, or prior thereto, agree on the period, if any, by which the duration of this Agreement should be extended to take account of interruptions caused by such Force Majeure Event. The price payable for Contract Coal during such extension, shall be the Price determined under this Agreement as being that applicable for the period in which Contract

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Coal is actually Supplied, taking into account all adjustments as set out in this Agreement.

34.5.2 In the event of a Force Majeure Event affecting Eskom in terms of this Agreement which is expected to endure for a period of more than 30 (thirty) days, the Supplier may sell Contract Coal, to third Parties for as long as such Force Majeure Event continues. In this event the Agreement shall be extended in terms of clause 34.5.1 above.

34.5.3 In the event of that the Supplier is prevented by a Force Majeure Event from Delivering Contract Coal to Eskom in terms of this Agreement and for as long as such Force Majeure Event continues, Eskom shall not be under any obligation pursuant to this Agreement to purchase coal for use from the Supplier exclusively. Without derogating from that principle, Eskom shall be entitled to source all coal or any shortfall of coal from other sources.

#### 34.6 termination of this Agreement due to Force Majeure Events

Unless otherwise unanimously agreed to in writing between the Parties, this Agreement shall be terminable by either Party if either Party is wholly prevented by a Force Majeure Event from fulfilling its obligations in terms of the agreement and where such prevention endures for a continuous period of at least 24 (twenty four) Months. Neither Party shall have any claim against the other for any loss suffered as a result of such termination.

### SECTION 11: GENERAL PROVISIONS

#### 35. Insolvency

Should either Party commit an act of insolvency, make an offer of compromise or composition, become the subject of a liquidation or business rescue proceedings then the other Party shall be entitled but not obliged, without prejudice to any other rights which it may have, to terminate this Agreement.

#### 36. Limitation of Liability

Notwithstanding any other provision in this Agreement, neither Party shall be liable in contract or in law or otherwise for any indirect, consequential, punitive and/or special damages or loss of profits or anticipated savings, whether foreseeable or not, and even if a Party has been advised of the possibility of such damages arising, incurred by the other Party arising out of or in connection with this Agreement.

Coal Supply Agreement between ESKOM HOLDINGS SOC LIMITED and JEGETA EXPLORATION AND RESOURCES PTY LTD executed at SURROUNDING HILL on 10 March 2018

Ref:

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**37. Insurance**

In order for it to fully comply with its obligations under this Agreement, for the duration of the Contract Period, the Supplier shall:

- 37.1 adequately insure, and keep insured, itself and, *inter alia*, the Mine (including the equipment acquired, and to be acquired, and the infrastructure established and to be established to enable the Supplier to comply with its obligations in terms of this Agreement) against the risks which are in line with, and on terms which are in line with, common mining practice in South Africa;
- 37.2 forthwith apply the proceeds of any insurance policy to replace or repair, as is reasonable in the circumstances, the Mine (including the equipment acquired, and to be acquired, and the infrastructure established and to be established to enable the Supplier to comply with its obligations in terms of this Agreement) in the event of an insurable incident which may cause it to be damaged, lost or destroyed; and
- 37.3 to provide written proof of such insurance at the written request of Eskom.

**38. Cession and Delegation**

- 38.1 This Agreement shall be binding upon and shall be for the benefit of the Parties and, to the extent permitted by the provisions of this clause, their respective successors and assigns.

38.2 Neither Party may delegate this Agreement including to its holding company, an affiliated company, another company wholly and or partially owned by the Parties, to an entity acquiring all or substantially all of the assets of that Party, or for purposes of securing indebtedness and no such assignment shall release the delegating Party from the obligation to perform in terms of this Agreement unless the other Party consents thereto in writing. A Party requesting such consent shall provide the other Party with all the necessary information to conduct a reasonable assessment of the request.

**39. Confidentiality**

- 39.1 The Parties acknowledge that any information supplied in connection with this Agreement or in connection with each other's technical, industrial or business affairs which has or may in any way whatsoever be transferred or come into the possession or knowledge of any other of them (the Receiving Party) may

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consist of confidential or proprietary data, disclosure of which to or use by third parties might be damaging to the Party concerned.

39.2 The Receiving Party therefore agrees to hold such material and information in the strictest confidence, to prevent any copying thereof by whatever means and not to make use thereof than for the purposes of this Agreement and to release it only to such properly authorised directors, employees or third parties requiring such information for the purposes of this Agreement and agree not to release or disclose it to any other Party who has not signed an agreement expressly binding himself not to use or disclose it other than for the purposes of this Agreement.

39.3 The undertaking and obligations contained in this clause do not apply to information which is publicly available at the date of disclosure or thereafter becomes publicly available from sources other than the Parties.

39.4 The Receiving Party demonstrates that if was already in its possession prior to its receipt by or disclosure to such Receiving Party; is required by law or any regulatory authority to be disclosed after being disclosed to the Receiving Party is disclosed by any other person to the Receiving Party otherwise than in breach of any obligation of confidentiality.

39.5 The Parties shall take such precautions as may be necessary to maintain the secrecy and confidentiality of such material and information in respect of its directors, employees, agents, and/or director or employees or agents of any assignee, sub-contractor or distributor or any other person to whom any such confidential or proprietary data may have been or shall be disclosed.

39.6 Save as may be required by law or any regulatory authority no announcement or publicity of the existence of this Agreement or its content or transaction embodied in this Agreement shall be made or issued by or on behalf of any Party without the prior written agreement of the other Party.

#### 40. Alienation or Disposal of an Interest

Where any proposed transaction shall result in a change in control of the holder of the Mining Right, Eskom shall forthwith be notified in writing within 7 (seven) days of such decision and provided with a copy of the application to amend the Mining Right, in terms of the provisions of the MPRDA and written confirmation that the intended transaction shall not affect the Supplier's ability to carry out and comply with the obligations of this Agreement and the terms and conditions of the right as conferred.

Coal Supply Agreement between **ESKOM HOLDINGS SOC LIMITED** and **TEGETA EXPLORATION AND RESOURCES**  
 PTY LTD entered at SUNNINGHILL on 19 March 2018  
 Ref:

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#### 41. Entire Agreement

This Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Agreement and supersedes and novates in its entirety any previous understandings or agreements between the Parties in respect thereof, and the Parties waive the right to rely on any alleged provision not expressly contained in this Agreement.

#### 42. No Stipulation for the Benefit of a Third Person

Save as expressly provided for in this Agreement, no provision of this Agreement constitutes a stipulation for the benefit of a third person (i.e. a *stipulatio alteri*) which, if complied by the person, would bind any Party in favour of that person.

#### 43. No Representations

A Party may not rely on any representation which allegedly induced that Party to enter into this Agreement, unless the representation is recorded in this Agreement.

#### 44. Variation, Cancellation and Waiver

No contract varying, adding to, deleting from or cancelling this Agreement, and no waiver of any right under this Agreement, shall be effective unless reduced to writing and signed by or on behalf of all the Parties.

#### 45. Indulgences

The grant of any indulgence, extension of time or relaxation of any provision by a Party under this Agreement shall not constitute a waiver of any right by the grantor or prevent or adversely affect the exercise by the grantor of any existing or future right of the grantor.

#### 46. Applicable Law

This Agreement is to be governed, interpreted and implemented in accordance with the laws of the Republic of South Africa.

#### 47. Jurisdiction of South African Courts

The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, South Gauteng High Court, Johannesburg for any proceedings arising out of or in connection with this Agreement.

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## 48. Service of Documents

- 48.1 The Parties choose the following addresses at which documents and notices in legal proceedings in connection with this Agreement shall be served (i.e. their *domicilia citandi et executandi*) and at which notices shall be received:

## 48.1.1 in the case of Eskom to: The Divisional Executive – Primary Energy

physical address Eskom Holdings SOC Limited  
Megawatt Park  
Maxwell Drive  
Sunninghill

postal address PO Box 1091  
Johannesburg  
2000

fax no +27 11 800 5555

## 48.1.2 in the case of the Supplier to: The Chief Executive Officer

physical address: Grayston Ridge Office Park  
Block A, Lower Ground Floor 144 Katherine  
Street  
Sandton, 2148

postal address

POSTNET SUITE 458  
PRIVATE BAG X9  
BENMORE 2010  
086 3770457

fax no

- 48.2 The Parties choose the following address at which invoices and Drawdown Order may be received:

## 48.2.1 In the case of Eskom, invoices shall be submitted to: Finance Manager – Primary Energy

physical address Eskom Holdings SOC Limited  
Megawatt Park  
Maxwell Drive

Sunninghill

Fax no: 011 800 5555

e-mail address: anelal.nagar@eskom.co.za

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48.2.2 In the case of the Supplier, Drawdown Orders shall be submitted to:

The Chief Executive

physical address: Grayston Ridge Office Park  
Block A, Lower Ground Floor  
144 Katherine Street  
Sandton, 2146

Fax no: 086 3770457

e-mail address: nath@oakbay.co.za

48.3 Any legal or other notice shall be deemed to have been duly given:

48.3.1 on the fifth Business Days after posting (14 (fourteen) Business Days if the address is not in the Republic of South Africa), if posted by registered post (airmail, if available) to the Party's address in terms of this clause 48;

48.3.2 on delivery, if delivered to the Party's physical address in terms of this clause 48 between 08h30 and 17h00 on a Business Day (or on the first Business Day after that if delivered outside such hours);

48.3.3 on despatch, if sent to the Party's then fax number or e-mail address between 08h30 and 17h00 on a Business Day (or on the first Business Day after that if despatched outside such hours) in terms of this clause 48,

48.3.4 unless the addressor is aware, at the time the notice would otherwise be deemed to have been given, that the notice is unlikely to have been received by the addressee through no act or omission of the addressee.

48.4 A Party may change that Party's address or fax number or e-mail address for this purpose by notice in writing to the other Party, such change to be effective only on and with effect from the seventh Business Day after the giving of such notice.

48.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate service of

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such written notice or communication to that Party notwithstanding that it was not sent to or delivered or served at that Party's chosen *domicilium citandi et executandi*.

#### 49. Costs

49.1 Each Party shall bear that Party's own legal costs and disbursements of and incidental to the negotiation, preparation, settling, signing and implementation of this Agreement.

49.2 Any costs, including a legal costs on an attorney and own client basis and VAT, incurred by a Party arising out of or in connection with a breach by another Party shall be borne by the Party in breach.

#### 50. Signature in Counterparts

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

#### 51. Independent Advice

Each of the Parties hereby respectively agrees and acknowledges that:

51.1 It has been free to secure independent legal advice as to the nature and effect of each provision of this Agreement and that it has either taken such independent legal advice or has dispensed with the necessity of doing so; and

51.2 each provision of this Agreement (and each provision of the Annexes) is fair and reasonable in all the circumstances and is part of the overall intention of the Parties in connection with this Agreement.

#### 52. Good Faith and Co-Operation

52.1 The Parties shall, at all times, act in good faith towards each other and shall not bring any of the other Parties into disrepute.

52.2 Each of the Parties undertakes at all times to do all such things, perform all such acts and take all such steps, and to procure the doing of all such things, within its power and control, as may be open to it and necessary for and incidental to the putting into effect or maintenance of the terms, conditions and import of this Agreement.

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SIGNED AT SUNNINGHILL ON THIS 10 DAY OF March 2015

[Signature]  
 For and on behalf of  
 ESKOM HOLDINGS SOC LIMITED  
 (who warrants that he is duly authorized hereto)

Name: V M Bowen  
 Capacity: DE (P&D) Acting

AS WITNESSES:

1. [Signature]2. [Signature]

SIGNED AT SUNNINGHILL ON THIS 10<sup>TH</sup> DAY OF MARCH 2015

[Signature]  
 For and on behalf of Tegeta Exploration and Resources (Pty) Ltd  
 (who warrants that he is duly authorized hereto)

Name: RAVINDRA NATH

Capacity: DIRECTOR.

AS WITNESSES:

1. [Signature]2. [Signature]

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[Signature]  
cc



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LIST OF ANNEXES

- i. Annexa A: The Coal Quality Management Procedure
- ii. Annexa B: Environmental Legal Requirements
- iii. Annexa C1: The Rules of Road Transportation (FCA)
- iv. Annexa C2: The Rules of Road Transportation (Delivered Contract)
- v. Annexa D: The Rules of Rail Transportation
- vi. Annexa E: Example Calculations for Adjustments for Moisture Content
- vii. Annexa F: Technical Liaison Meeting Agenda
- viii. Annexa G: Black Ownership Plan

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# Annexure H

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Contract Number 148...

Page 34 of 65

## SECTION 8: QUALITY OF COAL

## 20. Contract Coal Quality

- 20.1 The Supplier shall ensure that each quality parameter of the Contract Coal Delivered to Eskom in terms of this Agreement shall comply with the Quality Specifications for Contract Coal set out in Table 3 hereunder.

Table 3: Coal Quality Specifications and Rejection Limits

Quality parameter	Unit	Quality Expected	Quality Rejection Limit	Measurement basis
Calorific Value	MJ/kg	21.10	<20.0	Air Dried
Total Moisture	%	<8.0	>10.0	As Received
Inherent Moisture	%	4.4	N/A	As Received
Ash	%	27.9	>30.0	Air Dried
Abrasive Index (Eskom Mining House Method)	mgFe/4kg	<450	>450	Air Dried
Sulphur	%	1.0	>1.3	Air Dried
Volatiles	%	21.3	<20.0	Air Dried
AFT (Initial deformation)	°C	*300	<1220	N/A
Sizing				
+50mm	%	<5.0	>5.0	N/A
-3mm (cumulative)	%	<30.0	>35.0	
-1mm	%	<10.0	>15.0	

All parameters are measured to 1 (one) decimal place, except AI and AFT, which shall be measured to the nearest integer.

\*Hard grove Index should be within Eskom acceptable limit of <55 in order to achieve the desired mixing and coal fineness during combustion.

\*\*Full combustion tests will be conducted on all proposed coal prior to delivery and acceptance by Eskom. The objective of the combustion test is to ascertain suitability of the coal for use by Eskom.

\*\*\*\*\*mathematical blending limits to be advised by Eskom

- 20.2 The Supplier shall ensure that no Ultrafines are blended into the coal to be Delivered to Eskom and that each Consignment of Contract Coal is substantially free from impurities and extraneous materials related to the proper mining and processing of coal.

- 20.3 Where the Supplier wishes to Deliver coal of a higher quality than the Quality Specifications, the Supplier shall make a written request to Eskom and the acceptance of such request shall be at Eskom's sole discretion. For the

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# Annexure I

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Tegeta Exploration and Resources (Pty) Ltd  
Attention: Mr Ravi Nath

By E-mail: nath@oakbay.co.za

Dear Sir

**SUSPENSION OF COAL SUPPLY: BRAKFORTEIN COLLIERY AND BRAKFORTEIN COLLIERY EXTENSION**

The above matter has reference.


Eskom notes the significant increase in the number of out-of-specification coal stockpiles from July to August 2015. During August 2015, 50% of the stockpiles have been out of specification resulting in rejection. Further, Eskom notes the inconsistency in the laboratory results as the outcome of coal samples provided by the mine.

This is of great concern to Eskom as it now calls into question the exact nature and quality of the coal that Brakfontein Colliery and Brakfontein Colliery Extension supplies to Eskom in terms of the coal supply agreement.

Therefore as a precautionary measure, Eskom hereby notify you of the suspension of offtake from the mines in order to investigate the root cause of the inconsistency in the coal quality management process.

The suspension will come into effect by 16h00 today.

Yours sincerely

  
Matshele Koko  
GROUP EXECUTIVE  
Date: 31/8/15

Group Technology and Commercial  
Megawatt Park Maxwell Drive Sunninghill Sandton  
PO Box 1091 Johannesburg 2000 SA  
Tel +27 11 800 4852 Fax +27 86 668 2072 www.eskom.co.za

Eskom Holdings SOC Ltd Reg No 2002/015527/30

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SGS Services South Africa Pty Ltd  
Attention: JP O'Connell

Dear Sir

**SUSPENSION OF THE NEC3 TERM SERVICES CONTRACT: COAL SAMPLING, SAMPLING OVERSIGHT AND ANALYSIS OF ESKOM COAL IMPORTS**

The above matter has reference.

Eskom notes with great concern, the inconsistency between the results of the contractual samples reported by yourselves and the South African Bureau of Standards (SABS) on coal stockpiles taken from the Brakfontein Colliery and Brakfontein Colliery Extension stockpiles in the period 1 August 2015 to 23 August 2015.

The results from SABS highlight major non-compliance to the coal quality specification as contracted with Eskom. This non-compliance is prevalent mainly in the Volatile, Ash and Total Moisture parameters.

In light of the above, Eskom is unclear on the quality of coal it is to off-take from the Colliery and the robustness of the coal sampling and reporting process.

Therefore, as a precautionary measure, Eskom hereby notifies you of the suspension of the coal sampling, sampling oversight and analysis of Eskom coal imports in order to investigate the root cause of the inconsistency in the results of the samples above-mentioned.

The suspension will be effective immediately.

Yours sincerely

Matshela Koko  
GROUP EXECUTIVE

Date: 31/8/15

Group Technology and Commercial  
Megawatt Park Maxwell Drive Sunninghill Sandton  
PO Box 1091 Johannesburg 2000 SA  
Tel +27 11 800 4852 Fax +27 86 668 2072 [www.eskom.co.za](http://www.eskom.co.za)

Eskom Holdings SOCLtd Reg No 2002/015527/30

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Sibonisiwe Coal Laboratory Services cc  
Attention: Mr Happing Masuku

By Fax: 013 246 1102

Dear Sir

**SUSPENSION OF THE NEC3 TERM SERVICES CONTRACT: COAL SAMPLING,  
SAMPLING OVERSIGHT AND ANALYSIS OF ESKOM COAL IMPORTS**

The above matter has reference.

Eskom notes with great concern, the inconsistency between the results of the contractual samples reported by yourselves and the South African Bureau of Standards (SABS) on coal stockpiles taken from the Brakfontein Colliery and Brakfontein Colliery-Extension stockpiles in the period 1 August 2015 to 23 August 2015.

The results from SABS highlight major non-compliance to the coal quality specification as contracted with Eskom. This non-compliance is prevalent mainly in the Volatile, Ash and Total Moisture parameters.

In light of the above, Eskom is unclear on the quality of coal it is to off-take from the Colliery and the robustness of the coal sampling and reporting process.

Therefore, as a precautionary measure, Eskom hereby notifies you of the suspension of the coal sampling, sampling oversight and analysis of Eskom coal imports in order to investigate the root cause of the inconsistency in the results of the samples above-mentioned.

The suspension will be effective immediately.

Yours sincerely,

Matshela Koko  
GROUP EXECUTIVE  
Date: 31/8/15

Group, Technology and Commercial  
Megawatt Park Maxwell Drive Sunninghill Sandton  
PO Box 1091 Johannesburg 2000 SA  
Tel +27 11 800 4852 Fax +27 86 668 2072 [www.eskom.co.za](http://www.eskom.co.za)

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# Annexure J

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Tegeta Exploration and Resources (Pty) Ltd  
Attention: Mr Ravi Nath

By E-mail: nath@oakbay.co.za

Dear Sir

**UPLIFTMENT OF THE SUSPENSION OF COAL SUPPLY: BRAKFORTEIN COLLIERY  
AND BRAKFORTEIN COLLIERY EXTENSION**

The above matter and our letter dated 31 August 2015 refer.

Eskom hereby lifts the suspension of coal supply from the Brakfontein Colliery and Brakfontein Colliery Extension effective immediately whilst it continues its investigation into the inconsistency in the coal quality management process.

Eskom's rights are fully reserved.

Yours sincerely

Matshela Koko  
GROUP EXECUTIVE  
Date: 5/9/15

Group Technology and Commercial  
Megawatt Park Maxwell Drive Sunninghill Sandton  
PO Box 1091 Johannesburg 2000 SA  
Tel +27 11 800 4852 Fax +27 86 668 2072 www.eskom.co.za

Eskom Holdings SOC Ltd Reg No 2002/015527/30

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# Annexure K

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Mr Frans Wolters  
SM: Mining and Minerals  
SABS Laboratory  
8 Rand Street  
MIDDLEBURG  
1050

Dear Mr Wolters

**TRANSPORT AND ANALYSIS SERVICES CONTRACT BETWEEN THE SABS  
AND ESKOM: TRANSPORT AND ANALYSIS OF ESKOM CONTRACTUAL  
SAMPLES FROM TEGETA BRAKFORTEIN COLLIERY – REF: 724828**

As per Eskom Contract with SABS to render Service on as and when required basis, SABS is hereby requested to provide Eskom with the Transport and Analysis of Eskom contractual samples from Tegeta Brakfontein Colliery.

SABS is required to make arrangements with Tegeta Brakfontein Colliery to complete safety file and induction.

SABS is hereby required to declare any conflicting interests by 01 September 2015.

Eskom would like to thank SABS for continued support.

Yours sincerely

Charlotte Ramavhona  
**SERVICES MANAGER: LABORATORY SERVICES CONTRACT**

Date: 31 August 2015

Charlotte Ramavhona  
Frans Wolters: frans.wolters@sabs.co.za  
Tumo Molatuli: Tumo.molatuli@sabs.co.za  
Siphelele Gobeni  
Gert Opperman

Primary Energy  
Megawatt Park Maxwell Drive Sunninghill Sandton  
PO Box 1091 Johannesburg 2000 SA  
Tel +27 11 800 5794 Fax +27 86 668 4464 www.eskom.co.za

Eskom Holdings SOC Ltd Reg No 2002/016527/30

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# Annexure L

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**CONDITIONS OF TEST - COAL ANALYSIS**

The acceptance of an item for test and the issue of a test report are subjected to the SABS's CONDITIONS OF TEST \*, from which the following have been extracted:


1. If published or reproduced by the client, a test report shall be reproduced in full, i.e. the reproduction shall contain the printed as well as the typed parts of the report; nothing excepted. In special circumstances an abridged form of the report or issue.
2. A test report relates only to an item submitted for the actual test. It furnishes or implies no guarantee whatsoever in respect of a similar item that has not been tested.
3. The performance of a test and the issue of a test report do not imply approval by the SABS of the quality and/or performance of the item that has been tested. This does not authorize the use of a certification mark.

NOTE - An unlawful statement implying that an item has been approved by the SABS constitutes a punishable offence in terms of the Standards Act.

4. While every endeavour will be made to ensure that a test is representative and accurately performed, and that a report is accurate in the quoted results and conclusions drawn from the test, the SABS or its officers shall in no way be liable for any error.

\* Obtainable upon request from the Chief Executive Officer, Private Bag X191, Pretoria, 0001.

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# Annexure M

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April 19

## TEGETA EXPLORATION &amp; RESOURCES (PTY) LTD

Block "A" Lower Ground Floor, Grayston  
Ridge, 144 Katherine St, Sandton  
Postnet Suite 458, Private Bag X9  
Benmore 2010

Tel: 011 430 7840  
Fax: 086 666 4377  
Regn. 2008/014492/07  
VAT: 4680233949

## TAX INVOICE

Account Number: ESK002  
Name: ESKOM HOLDINGS SOC LTD  
Address: P.O BOX 1091  
JOHANNESBURG  
CONTRACT NO: 4600056841  
Postal Code: 2000  
Customer Ref: PO: 4502139219-10 V

Invoice Number: 000161  
Date: 05/06/2015  
Vendor No: 0011082687  
Order Number: 000151  
Val Number: 4740101508

Page: 1

Item Number	Description	Unit	Quantity	Rate	Total Excl
EQC	ESKOM QUALITY COAL (1-50MM SIZE)	GT V	976829.75	13.83	13314189.49

Total Excluding: 13314189.49  
Total Tax: 1863988.53  
Total Including: 15178178.02 A

## Banking Details:

A/C Name: Tegeta Exploration & Resources Pty Ltd.  
Bank: First National Bank  
Commercial Cheque A/C: 62117356990  
Branch Code: 254605, Sandton City Branch

ESKOM HOLDINGS SOC LTD  
P.O BOX 1091  
JOHANNESBURG  
CONTRACT NO: 4600056841

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# TEGETA EXPLORATION & RESOURCES (PTY) LTD

Block "A" Lower Ground Floor, Grayston  
Ridge, 144 Katherine St, Sandton  
Postnet Suite 458, Private Bag X9  
Benmore 2010

Tel : 011 430 7640  
Fax : 086 566 4377  
Regn. 2006/014492/07  
VAT : 4680233949

## TAX CREDIT NOTE

Account Number: ESK002  
Name: ESKOM HOLDINGS SOC LTD  
Address: P.O BOX 1091  
JOHANNESBURG  
CONTRACT NO: 4600056841  
Postal Code: 2000  
Location: 00 DEFAULT LOCATION

C/Note Number: 000041  
Date: 05/05/2015  
Sales Rep: 0011082687  
Invoice Number: 000161 05/05/2015  
Page: 1  
Customer Ref: PO : 4502139219-10  
Val Number: 4740101508

Item Number	Description	Unit	Quantity	Price	Total Excl	Tax	Total Incl
EQC	ESKOM QUALITY COAL (K-)60MM SIZE	GJ	10600.33	13.83	144482.50	20227.55	164710.05



144482.50 20227.55 164710.05

ESKOM HOLDINGS SOC LTD  
P.O BOX 1091  
JOHANNESBURG  
CONTRACT NO: 4600056841

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Block "A" Lower Ground Floor, Grayston  
Ridge, 144 Katherine St, Sandton  
Postnet Suite 458, Private Bag X9  
Benmore 2010

Tel: 011 430 7640  
Fax: 086 586 4377  
Regn. 2006/014492/07  
VAT: 4880233949

Account Number: ESK002  
Name: ESKOM HOLDINGS SOC LTD  
Address: P.O BOX 1091  
JOHANNESBURG  
CONTRACT NO: 4800056841  
Postal Code: 2000  
Customer Ref: PO : 4502139219-20 A

Invoice Number: 000155  
Date: 03/06/2015  
Vendor No: 0011082687  
Order Number: 000155  
Vat Number: 4740101508  
Page: 1

Item Number	Description	Unit	Quantity	Price	Total Excl
EQC	ESKOM QUALITY COAL (1-50MM SIZE)	GJ	403286.82	13.63	5486423.80
EQC	ESKOM QUALITY COAL (1-50MM SIZE)	GJ	500000.00	13.63	8816000.00
EQC	ESKOM QUALITY COAL (1-50MM SIZE)	GJ	712498.89	13.83	9711358.87

Week on		
<p>1. <u>Monday</u> 1/1/80 - <u>Monday</u> 1/1/80 - <u>Monday</u> 1/1/80</p> <p>2. <u>Tuesday</u> 1/2/80 - <u>Tuesday</u> 1/2/80 - <u>Tuesday</u> 1/2/80</p> <p>3. <u>Wednesday</u> 1/3/80 - <u>Wednesday</u> 1/3/80 - <u>Wednesday</u> 1/3/80</p> <p>4. <u>Thursday</u> 1/4/80 - <u>Thursday</u> 1/4/80 - <u>Thursday</u> 1/4/80</p> <p>5. <u>Friday</u> 1/5/80 - <u>Friday</u> 1/5/80 - <u>Friday</u> 1/5/80</p> <p>6. <u>Saturday</u> 1/6/80 - <u>Saturday</u> 1/6/80 - <u>Saturday</u> 1/6/80</p> <p>7. <u>Sunday</u> 1/7/80 - <u>Sunday</u> 1/7/80 - <u>Sunday</u> 1/7/80</p>	<p>1. <u>Monday</u> 1/1/80 - <u>Monday</u> 1/1/80 - <u>Monday</u> 1/1/80</p> <p>2. <u>Tuesday</u> 1/2/80 - <u>Tuesday</u> 1/2/80 - <u>Tuesday</u> 1/2/80</p> <p>3. <u>Wednesday</u> 1/3/80 - <u>Wednesday</u> 1/3/80 - <u>Wednesday</u> 1/3/80</p> <p>4. <u>Thursday</u> 1/4/80 - <u>Thursday</u> 1/4/80 - <u>Thursday</u> 1/4/80</p> <p>5. <u>Friday</u> 1/5/80 - <u>Friday</u> 1/5/80 - <u>Friday</u> 1/5/80</p> <p>6. <u>Saturday</u> 1/6/80 - <u>Saturday</u> 1/6/80 - <u>Saturday</u> 1/6/80</p> <p>7. <u>Sunday</u> 1/7/80 - <u>Sunday</u> 1/7/80 - <u>Sunday</u> 1/7/80</p>	<p>1. <u>Monday</u> 1/1/80 - <u>Monday</u> 1/1/80 - <u>Monday</u> 1/1/80</p> <p>2. <u>Tuesday</u> 1/2/80 - <u>Tuesday</u> 1/2/80 - <u>Tuesday</u> 1/2/80</p> <p>3. <u>Wednesday</u> 1/3/80 - <u>Wednesday</u> 1/3/80 - <u>Wednesday</u> 1/3/80</p> <p>4. <u>Thursday</u> 1/4/80 - <u>Thursday</u> 1/4/80 - <u>Thursday</u> 1/4/80</p> <p>5. <u>Friday</u> 1/5/80 - <u>Friday</u> 1/5/80 - <u>Friday</u> 1/5/80</p> <p>6. <u>Saturday</u> 1/6/80 - <u>Saturday</u> 1/6/80 - <u>Saturday</u> 1/6/80</p> <p>7. <u>Sunday</u> 1/7/80 - <u>Sunday</u> 1/7/80 - <u>Sunday</u> 1/7/80</p>

Total Excluding:	22023183.76
Total Tax:	3083245.73
Total Including:	25106429.49

**Banking Details:**

A/C Name: Tegela Exploration & Resources Pty Ltd.  
Bank: First National Bank  
Commercial Cheque A/C : 62117356990  
Branch Code : 254605, Sandton City Branch

ESKOM HOLDINGS SOC LTD  
P.O BOX 1091  
JOHANNESBURG  
CONTRACT NO: 4800058841

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# TEGETA EXPLORATION & RESOURCES (PTY) LTD

Block "A" Lower Ground Floor, Grayston  
Ridge, 144 Katherine St, Sandton  
Postnet Suite 458, Private Bag X9  
Benmore 2010

Tel : 011 430 7640  
Fax : 086 566 4377  
Regn. 2006/014492/07  
VAT : 4680233949

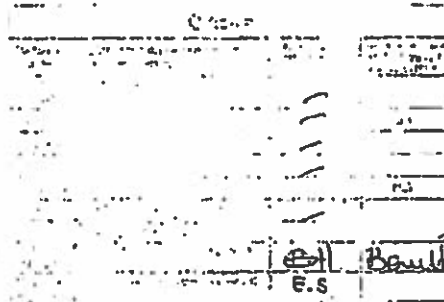
## TAX INVOICE

Account Number: ESK002  
Name: ESKOM HOLDINGS SOC LTD  
Address: P.O BOX 1091  
JOHANNESBURG  
CONTRACT NO: 4600056841  
Postal Code: 2000  
Customer Ref: PD: 4502139219-30 ✓

Invoice Number: 000167  
Date: 03/07/2015  
Vendor No: 0011082687  
Order Number: 000167  
Vat Number: 4740101508

Page: 1

Item Number	Description	Unit	Quantity	Price	Total Excl
EQC	ESKOM QUALITY COAL II (-)50MM SIZE	GJ	1285984.69 ✓	13.68 ✓	17592270.68
	MAJUBA POWER STATION			✓	
	= 1,285,984.69 GJ @ R 13.68/GJ				
EQC	ESKOM QUALITY COAL II (-)50MM SIZE	GJ	340293.37 ✓	13.68 ✓	4655293.30
	HAWERKLIP POWER STATION			✓	
	= 340,293.37 GJ @ R 13.68/GJ				



*Nath Lavindra*  
*- Nath @ balabay.co.za*

Total Excluding: 22247483.68  
Total Tax: 3114847.74  
Total Including: 25362131.60 ✓

### Banking Details:

A/C Name: Tegeta Exploration & Resources Pty Ltd.  
Bank: First National Bank  
Commercial Cheque A/C : 62117356990  
Branch Code : 254605, Sandton City Branch

ESKOM HOLDINGS SOC LTD  
P.O BOX 1091  
JOHANNESBURG  
CONTRACT NO: 4600056841

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TEGETA EXPLORATION & RESOURCES (PTY) LTD

Block "A" Lower Ground Floor, Grayston  
Ridge, 144 Katherine St, Sandton  
Postnet Suite 458, Private Bag X9  
Benmore 2010

**Tel: 011 430 7640**  
**Fax: 086 568 4377**  
**Regn. 2006/014492/07**  
**VAT: 4680233948**

# TAX INVOICE

Account Number: ESK002  
Name: ESKOM HOLDINGS SOC LTD  
Address: P.O BOX 1091  
JOHANNESBURG  
CONTRACT NO: 4600055841  
Postal Code: 2000  
Customer Ref: 4502189773-10 & 20 <sup>1</sup>

Invoice Number: 000158  
Date: 05/08/2015  
Vendor No: 0011082687  
Order Number: 000158  
Vat Number: 4740101509

Page: 1

Item Number	Description	Unit	Quantity	Price	Total Excl
EQC	ESKOM QUALITY COAL (1-50MM SIZE)	GJ	1895213.70	13.88	25926523.42
	MAJUBA POWER STATION				
	= 1,895,213.70 GJ @ R 13.68/GJ				
EQC	ESKOM QUALITY COAL (1-50MM SIZE)	GJ	389867.83	13.88	5391167.18
	HAWERKLIIP POWER STATION				
	= 389,867.83 GJ @ R 13.88/GJ				

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Total Excluding:	30987680.60
Total Tax:	4338275.28
Total Including:	35325955.88

**Banking Details:**

**A/C Name: Tegela Exploration & Resources Pty Ltd.  
Bank: First National Bank  
Commercial Cheque A/C : 62117356990  
Branch Code : 254605, Sandton City Branch**

ESKOM HOLDINGS SOC LTD  
P.O BOX 1091  
JOHANNESBURG  
CONTRACT NO: 4500056841

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## TEGETA EXPLORATION &amp; RESOURCES (PTY) LTD

Block "A" Lower Ground Floor, Grayston  
Ridge, 144 Katherine St, Sandton  
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Benmore 2010

Tel : 011 430 7640  
Fax : 086 566 4377  
Regn. 2006/014482/07  
VAT : 4680233949

## TAX INVOICE

Account Number: ESK002  
Name: ESKOM HOLDINGS SOC LTD  
Address: P.O BOX 1091  
JOHANNESBURG  
CONTRACT NO: 4600056841  
Postal Code: 2000  
Customer Ref: 4502189773-30 & 40

Invoice Number: 000162  
Date: 04/09/2015  
Vendor No: 0011082887  
Order Number: 000162  
Vat Number: 4740101508

Page: 1

Item Number	Description	Unit	Quantity	Price	Total Excl
EQC	ESKOM QUALITY COAL ((-)50MM SIZE)	GJ	1432465.71 <sup>A</sup>	13.60	19481533.68
	• MAJUBA POWER STATION				
	• = 1,432,465.71 GJ @ R 13.60/GJ				
EQC	ESKOM QUALITY COAL ((-)50MM SIZE)	GJ	707914.38 <sup>A</sup>	13.60	9627636.30
	• HAWERKLIIP POWER STATION				
	• 707,914.38 GJ @ R 13.60/GJ				
EQC	ESKOM QUALITY COAL ((-)50MM SIZE)	GJ	1389.84	13.60	18901.82
	• MATLA POWER STATION				
	• = 1,389.84 GJ @ R 13.60/GJ				

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Total Excluding: 29128070.78  
Total Tax: 4077929.91  
Total Including: 33206000.69

## Banking Details:

A/C Name: Tegeta Exploration & Resources Pty Ltd.  
Bank: First National Bank  
Commercial Cheque A/C : 62117356990  
Branch Code : 254605, Sandton City Branch

ESKOM HOLDINGS SOC LTD  
P.O BOX 1091  
JOHANNESBURG  
CONTRACT NO: 4600056841

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