

 Eskom	Agreement	Primary Energy
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COAL SUPPLY AGREEMENT

in respect of coal from

[Insert Name of Coal Resource / Mine]

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

[INSERT NAME OF THE SUPPLIER]

registration number [●]/[●]/[●] a company incorporated in terms of the laws of the Republic of South Africa with its registered office at [●]

("the Supplier")

Eskom Vendor Number: [●]

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1. Preamble

- 1.1 Eskom requires Contract Coal in the quantities, for the duration and for the purposes mentioned in this Agreement.
- 1.2 The Supplier is the Holder of the Contractual Mining Right in respect of the Coal Resource.
- 1.3 The Supplier wishes to sell, to Eskom, Contract Coal produced from coal mined pursuant to the Contractual Mining Right, for the duration and for the purposes mentioned in this Agreement.
- 1.4 The Parties wish to enter into a coal supply agreement on the terms and conditions recorded below.

It is hereby agreed as follows:

2. Definitions and Interpretation

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 **"Agreement"** means this coal supply agreement ("the **Coal Supply Agreement**") and shall include the Standard Terms and Conditions of Coal Supply and all Annexes hereto, as amended from time to time;
- 2.2 **"Annexe"** means an annexe attached to the Agreement, as amended or replaced from time to time;
- 2.3 **"Annual Quantity"** means the quantity of Contract Coal, measured in GigaJoules, which Parties target Supplying during each Year, as set out in the second column of Table 1;
- 2.4 **"Base Date"** means in respect of each cost component set out in Table 2, the date set out in the fifth column of Table 2;
- 2.5 **"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;

- 2.6 **"Base Price"** shall have the meaning ascribed to it in clause 8;
- 2.7 **"Coal Reserve"** means, at any time during the term 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 the Total Energy Quantity and the quantity (expressed as an energy quantity) of Contract Coal in the Coal Resource then actually Supplied to Eskom in terms of this Agreement;
- 2.8 **"Coal Resource"** means all in-situ coal occurring naturally in, on and under the land to which the Contractual Mining Right relates;
- 2.9 **"Commencement Date"** shall have the meaning ascribed to it in clause 5;
- 2.10 **"Contract Coal"** means the **[crushed and screened] / [partially washed] / [mixed/blended] / [washed], [number # seam]** coal certified at the Power Station or Eskom nominated site or originating from Pre-Certified Stockpiles and/or Verified coal samples, whichever is applicable, in respect of which the measurements of all coal quality parameters comply with the Quality Specifications and none of which is Reject Coal;
- 2.11 **"Contract Period"** means the period described in clause 6;
- 2.12 **"Contractual Mining Right"** means the Mining Right **[DMR reference]** granted to **[●]** relating to coal in respect of various portions of the farm **[●]** no. **[●]** (as more fully indicated on the sketch plan attached thereto), Registration Division IS, in the Magisterial District of **[●]**, in the province of **[●]**, measuring **[●]** hectares and registered in the Titles Office on **[●]** under registration number **[●]**;
- 2.13 **"Expected Quality"** means the quality of Contract Coal that the Supplier expects to Deliver as modelled and presented according to the SAMREC Code and as set out in the third column of Table 3;

- 2.14 **"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 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;
- 2.15 **"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 105% (one hundred and five percent) of the Annual Quantity;
- 2.16 **"Maximum Monthly Quantity"** means the maximum quantity of Contract Coal, in GJ, 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;
- 2.17 **"Maximum Quarterly Quantity"** means the maximum quantity of Contract Coal, in GJ, which the Supplier is required to Deliver and which Eskom is required to Take Off during each Quarter, being 110% (one hundred and ten percent) of the Quarterly Quantity;
- 2.18 **"Mine"** means the [name of the mine] coal mine/colliery established to exploit the Coal Resource;
- 2.19 **"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 95% (ninety five percent) of the Annual Quantity;
- 2.20 **"Minimum Monthly 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 Month, being 80% (eighty percent) of the Monthly Quantity;

- 2.21 **"Minimum Quarterly Quantity"** means the minimum quantity of Contract Coal, in GJ, which the Supplier is required to Deliver and which Eskom is required to Take Off during each Quarter, being 90% (ninety percent) of the Quarterly Quantity;
- 2.22 **"Monthly Quantity"** means the quantity, in GJ, of Contract Coal which Parties target Supplying during each Month, as set out in the fifth column of Table 1;
- 2.23 **"Power Station"** means [●] 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;
- 2.24 **"Price"** shall have the meaning ascribed to it in clause 9.1.3;
- 2.25 **"Price Adjustment Date"** shall have the meaning ascribed to it in clause 9.1.1;
- 2.26 **"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;
- 2.27 **"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, with which Contract Coal and/or Qualifying Alternative Coal Delivered by the Supplier to Eskom in terms of this Agreement must comply;
- 2.28 **"Road Coal Transport Rate"** means the rate in Rand per ton per kilometre determined by Eskom, applicable to the road transportation of coal, as amended from time to time;
- 2.29 **"Standard Terms and Conditions of Coal Supply"** means the document containing terms and conditions of coal supply which shall form, and be read and construed as, part of this Agreement;
- 2.30 **"Supplier"** means [●] (Proprietary) Limited registered under the laws of South Africa registration number [●]/[●]/[●]; and

2.31 **"Total Energy Quantity"** shall have the meaning ascribed to it in clause 7.2.

3. Contract Documents

3.1 The following documents shall form, and be read and construed as, part of this Agreement:

3.1.1 This Coal Supply Agreement;

3.1.2 The **Standard Terms and Conditions of Coal Supply (Rev 1.0)**; and

3.1.3 The following annexes to the Agreement:

3.1.3.1 **Annexe A:** The Coal Quality Certification Procedure (to be developed)

3.1.3.2 **Annexe B:** The Coal Quality Management Procedure

3.1.3.3 **Annexe C:** Supplier Development, Localisation and Industrialisation Targets

3.1.3.4 **Annexe D:** The Safety and Health Requirements

3.1.3.5 **Annexe E:** The Environmental Legal Requirements

3.1.3.6 **Annexe F:** The Rules of Rail Transportation

3.1.3.7 **Annexe G:** The Rules of Road Transportation

3.1.3.8 **Annexe H:** Example Calculations of Price Adjustment Factor

3.1.3.9 **Annexe I:** Adjustments for Moisture Content

3.1.3.10 **Annexe J:** Technical Liaison Meeting Agenda

3.2 The contract documents are to be taken as mutually explanatory of one another.

3.3 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.

4. **Warranties by the Supplier** *[Drafting note: These provisions may be altered to cater for value-adding/beneficiation]*

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

- 4.1 the Supplier is the Holder of the Contractual Mining Right, has and shall retain the unencumbered right to dispose of the Contract Coal so produced to Eskom in accordance with the provisions of this Agreement;
- 4.2 the Supplier has not and shall not pledge, mortgage, cede or grant any other security rights over the Contractual Mining Right, any coal produced pursuant thereto and/or this Agreement except for the purposes of raising finance required in order for the Supplier to comply with its obligations in terms of this Agreement and the Mine, in which event the Supplier shall request Eskom's consent in accordance with **clause 34.2** of the Standard Terms and Conditions of Coal Supply;
- 4.3 the Supplier is able to prove title to all rights held by it, including the Contractual Mining Right; and
- 4.4 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, life of mine plan, and the Contractual Mining Right.

5. **Commencement of Deliveries**

The Supply of Contract Coal shall commence on **[date]** or such date that the Parties may agree to in writing ("**the Commencement Date**") in accordance with **clause 9** of the Standard Terms and Conditions of Coal Supply.

6. **Duration** *[Drafting note: please add 1 month at the end to enable last payment]*

The term of this Agreement shall be for a period commencing on the Commencement Date and expiring when the Total Energy Quantity has been Delivered, which period ("**the Contract Period**") is estimated to be **[number of years] ([number of years in words])** years **[number of months] ([number of months in words])** months, unless extended or earlier terminated in accordance with the terms of this Agreement.

7. **Coal Quantities**

- 7.1 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 9** of the Standard Terms and Conditions of Coal Supply, at an expected CV of [●] ([●]) MJ/kg on an As Received basis.

7.2 The total quantity of Contract Coal to be Supplied under this Agreement shall be the **Total Energy Quantity** stipulated in Table 1 below.

7.3 The Supplier shall Deliver Contract Coal as set out in Table 1 hereunder.

Table 1: Contract Coal Supply Schedule *[Drafting note: Please include the ramp-up profile]*

Period		Annual Quantity	Minimum Annual Quantity	Maximum Annual Quantity	Monthly Quantity	Minimum Monthly Quantity	Maximum Monthly Quantity
Year 1	Month 1 – Month 12 (million GJ)						
	(Tons)						
Year 2	Month 1 – Month 12 (million GJ)						
	(Tons)						
Year 3	Month 1 – Month 12 (million GJ)						
	(Tons)						
Year 4	Month 1 – Month 12 (million GJ)						
	(Tons)						

Total Energy Quantity (million GJ)	
Estimated Total Tonnage (Tons)	

The tonnage quantities indicated are on an As Received basis assuming an expected CV of [●]MJ/kg (Air Dried), [●]MJ/kg (As Received), a Total Moisture content of [●]% (As Received) and Inherent Moisture of [●]%

8. Base Price

8.1 The price for Contract Coal on the Base Date ("**the Base Price**") shall be R[●] ([●]) per GJ excluding VAT, Free Carrier (FCA) at the Delivery Point for Contract Coal Supplied.

8.2 For the avoidance of doubt, the Base Price excludes any consideration due to the Supplier by Eskom for road transportation. Such consideration shall be determined in accordance with clause 12.

8.3 The Base Price and Price adjustments have been negotiated on an arm's length basis and the Supplier accepts all risks of cost elements, cost increases other than provided for in clause 9.

9. Price Adjustments

9.1 Annual Adjustments

9.1.1 The Base Price stipulated in clause 8.1, shall be adjusted upwards or downwards as the case may be on **[the first anniversary of the Base Date]** and annually thereafter on **[the anniversary of the Base Date]** of each subsequent Year ("**the Price Adjustment Date**"), by the Price Adjustment Factor, subject to clause 9.1.2.

9.1.2 If in respect of any Year, the increase in the Base Price as a result of applying the Price Adjustment Factor in accordance with clause 9.1.1 exceeds the price increase for Eskom coal as determined by the National Energy Regulator of South Africa ("NERSA"), the increase as determined by NERSA shall apply.

9.1.3 The Base Price as adjusted in terms of clause 9.1.1 on **[the anniversary of the Base Date]** of each Year shall be the price ("**the Price**") of Contract Coal applicable until **[the last Month]** of that Year, subject to any Monthly price adjustments determined in accordance with clause 9.2.

9.1.4 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 of Table 2 in line with the changes in the values of the indices. **Annexe H shows Example Calculations of the Price Adjustment Factor.**

9.2 Monthly Adjustment for Diesel Price Changes

The Price determined in accordance with clause 9.1.3 shall be adjusted upwards or downwards on the first Business Day of each Month to reflect the change in the price of diesel only, during the previous Month, by multiplying the Base Price by the Price Adjustment Factor.

Table 2: Base Price Adjustment Indices

Cost Component	Proportion	Index and Source Table	Base Date Index Value (B)	Base Date	Frequency of Adjustments
Labour	26%	SEIFSA labour index (Table C4)			Annually
Diesel	8%	DME 0.05% Sulphur Reef			Monthly
Electricity	4%	Stats SA Electricity PPI (P0142.1, Table 3)			Annually

Cost Component	Proportion	Index and Source Table	Base Date Index Value (B)	Base Date	Frequency of Adjustments
Mining Supplies	6%	Stats SA General and special purpose machinery (P0142.1, Table 1)			Annually
	4.5%	Stats SA Rubber and plastic products (P0142.1, Table 1)			Annually
	4.5%	Stats SA Structural and fabricated metal products (P0142.1 Table 1)			Annually
Overheads	7.5%	Stats SA CPI headline items (P0141 Table A all items)			Annually
	7.5%	Stats SA PPI final manufactured goods (P0142.1, Table 1)			Annually
Profit & Capital	11%	Stats SA CPI headline items (P0141 Table A all items)			Annually
	11%	Stats SA PPI Coal and Gas (P0142.1, Table 4)			Annually
Fixed	10%	Fixed			Not applicable
Total	100%				

9.3 Review of Table 2: Base Price Adjustment Indices *[Drafting note: This clause 9.3 is only applicable to Agreements with Contract Periods of 5 (five) years or more.]*

9.3.1 On a date not earlier than 2 (two) Years from the Commencement Date, and annually thereafter, the Parties shall consult with each other in good faith with the objective of reaching agreement on the following:

9.3.1.1 whether or not any of the indices and source tables (as set out in the third column of Table 2) measuring changes in the cost elements as set out in the first column of Table 2 are still applicable as an accurate measurement of actual cost movement in respect of that cost element in the South African coal mining industry; and

9.3.1.2 appropriate replacement indices and sources tables to be utilised, if necessary.

9.3.2 Should the Parties be unable to reach agreement in respect of any of the aforesaid matters, at least 6 (six) Months before the commencement of the next Year, such matters shall be resolved in terms of the provisions of **clause 28** of the Standard Terms and Conditions of Coal Supply.

9.3.3 Should the Parties not have resolved any dispute, as set out in clause 9.3.2 above, before the commencement of the next Year, the indices and source tables in use before the dispute was declared shall be applied until the dispute has been resolved, where after, the determination of the independent expert shall be applied retrospectively and any necessary adjustment payments shall be made.

10. Contract Coal Quality

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

Table 3: Contract Coal Quality Specifications

Quality Parameter	Unit	Expected Quality	Quality Specifications	Measurement basis
Calorific Value	MJ/kg			Air Dried
Total Moisture content	%			As Received
Inherent Moisture content	%		Not applicable	As Received
Ash content	%			Air Dried
Abrasiveness Index (AI) (Eskom Mining House Method)	mgFe/4kg			Air Dried
Sulphur content	%			Air Dried
Volatile Matter content	%			Air Dried
Ash Fusion Temperature (AFT) (Initial deformation)	°C			Not applicable
Particle Size Distribution				Not applicable
+60mm	%			
+50mm	%			
-3mm (cumulative)	%			
-1mm	%			

Parameters are measured to 1 (one) decimal place, except AI and AFT which shall be measured to the nearest integer and Sulphur content which shall be measured to 2 (two) decimal places.

Quality Parameter	Unit	Desired Minimum Limit	Measurement basis
Hardgrove Grindability Index (HGI)	Unit		As Received

HGI is an indicative quality parameter, which parameter shall be measured and recorded on a daily basis, but will not be used to reject coal.

11. Rail Transportation of Contract Coal

In respect of Contract Coal Delivered by rail, the Supplier shall, at its own cost and expense:

11.1 ensure that [●] ([●]) Tons (As Received) of the [●] ([●]) Tons (As Received) product stockpile capacity and corresponding reclaim system is dedicated to Eskom, which reclaim system must have a capacity of [●] ([●]) Tons (As Received) per hour; and

11.2 provide rail infrastructure which shall be included in the Coal Supply Equipment and Infrastructure and which shall include:

11.2.1 the Rail Siding; and

11.2.2 a rapid load out station or front-end loader which must be maintained to have a consistent loading rate of [●] ([●]) Tons (As Received) per hour; such that approximately the Maximum Annual Quantity of Contract Coal per Year can be uniformly loaded into trains. The rapid load out station must be capable of loading heavy haul (for Jumbo Trains) and general freight business trains (for Small Trains).

12. **Road Transportation of Contract Coal** [*Drafting note: Please do not delete, provisions for both DPU and FCA must be retained*]

12.1 The Parties hereby agree that, effective from the Commencement Date, the Contract Coal shall be transported by [the Supplier (on a DPU basis)] / [Eskom (on an FCA basis)]. Road transportation of Contract Coal by [the Supplier] / [Eskom] shall continue until such time that Eskom varies the mode of transport and/or Delivery Point as contemplated in clause 19.3.2 of the Standard Terms and Conditions of Coal Supply.

12.2 **Road Transportation of Contract Coal by the Supplier (Supply on a DPU Basis)**

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 Road Coal Transport Rate. For the avoidance of doubt, the transport tariff payable in terms of the Road Coal Transport Rate shall be reviewed each Month and the Price adjustment provisions as set out in clause 9 shall not apply to the said tariff.

12.3 **Road Transportation of Contract Coal by Eskom (Supply on an FCA Basis)**

The Supplier shall, at its own cost, provide, maintain and operate Pre-Certified Stockpiles with a total capacity of no less than [●] ([●]) Tons, an access road, equipped with a weighbridge, terminating on the [●] ([●]) road, and truck loading equipment such that the Maximum Annual Quantity can be uniformly loaded per annum into trucks and transported to the Power Station or any other Eskom nominated site by road.

13. **Service of Documents**

13.1 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:

13.1.1 **in the case of Eskom to:** The General Manager – Primary Energy

physical address

Eskom Holdings Limited
Megawatt Park

Maxwell Drive
Sunninghill

postal address PO Box 1091
Johannesburg
2000

e-mail address: [•]

13.1.2 **in the case of the Supplier to:** The Chief Executive Officer

physical address: [The Supplier]
[Physical address]

postal address P O Box [•],
[Postal address line 2],

e-mail address: [•]

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

13.2.1 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

postal address PO Box 1091
Johannesburg
2000

e-mail address: [•]

13.2.2 in the case of the Supplier, Drawdown Orders shall be submitted to:

The Mine Manager

physical address: [The Supplier]
[Physical address]

postal address P O Box [•],
[Postal address line 2]

e-mail address: [•]

Thus done and signed at Megawatt Park on the [●] day of [●] in the presence of the undersigned witnesses.

For and on behalf of
ESKOM HOLDINGS SOC LTD
(who warrants that he is duly authorised hereto)

Name: [Name] [Surname]

Capacity: [Title]

AS WITNESSES:

1. Full Names: _____ Signature: _____

2. Full Names: _____ Signature: _____

Thus done and signed at [●] on the [●] day of [●] in the presence of the undersigned witnesses.

For and on behalf of
[Insert Supplier Name] (PROPRIETARY) LIMITED
(who warrants that he is duly authorised hereto)

Name: [Name] [Surname]

Capacity: [Title]

AS WITNESSES:

1. Full Names: _____ Signature: _____

2. Full Names: _____ Signature: _____