

Annexe E**RULES OF RAIL TRANSPORTATION: THE PLANNING AND TRAIN HANDOVER
PROCEDURES FOR THE TAKE OFF OF CONTRACT LIMESTONE BY RAIL**

[DRAFTING NOTE: The provisions of this Annexe need to be discussed with the technical experts at Eskom and must be tailored to suit the Supplier's actual rail set up. The default provisions are for an operation that services Export and Eskom Trains from the same rail loop/ load out station.]

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1. INTRODUCTION

- 1.1 In addition to the provisions of the Agreement, this **Annexe E** records the procedures that the Parties agrees will apply at the Supplier's rail loading facilities for the purposes of Delivery of Contract Limestone by rail to Eskom.
- 1.2 The provisions of this **Annexe E** record practical operational and train scheduling matters and create no contractual obligations between the Supplier and TFR.
- 1.3 The Parties record that it is TFR's intent to establish an operating system whereby trains are operated in accordance with a planned train schedule that includes, for each Eskom Train, a scheduled arrival time at, and departure time from the Handover Point. Until such time as this operating system is in place, the Parties shall plan and undertake Rail Off-take in accordance with clause 8 of this Annexe.

2. DEFINITIONS AND INTERPRETATION

In this Annexe:

- 2.1 save as defined in clause 2.2 below, the words and expressions used in the form as defined in the Agreement, shall have the meaning assigned thereto in the Agreement;
- 2.2 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:
- 2.2.1 **"Actual Rail Loading Time"** means the actual period which the Supplier takes to load an Eskom Train, calculated from the time that the empty train is available for loading at the Handover Point until the time when the Supplier returns the properly loaded train to the Handover Point and, if such Eskom Train is returned to the Handover Point not loaded so as to comply with the provisions of clause 4.1.1, until such time as the loading has been corrected;

- 2.2.2 **"Eskom Train Schedule"** means the weekly train schedule, prepared by TFR, and provided to the Supplier in terms of clause 6, for the forthcoming week, to enable Eskom to Take Off the Contract Limestone in the forthcoming Week;
- 2.2.3 **"Export Trains"** means trains consigned to the RBCT or any other designated export terminal in Southern Africa;
- 2.2.4 **"Handover Point"** means:
- 2.2.5 in respect of empty rail wagons, from TFR (on behalf of Eskom) to the Mine, will be Shunt Signal No. [●] just before the balloon split depicted on Appendix [●]; and
- 2.2.6 in respect of loaded rail wagons, from the Mine to TFR (on behalf of Eskom) for Eskom Trains, will be Shunt Signal No. [●] just before the balloon split depicted on Appendix [●];
- 2.2.7 **"Handover Time"** means:
- 2.2.8 in respect of empty Eskom Trains, from TFR (on behalf of Eskom) to the Mine, will be when TFR's locomotive driver has notified the RLT Operator via two way radio or other agreed means that the empty Eskom Train has arrived at the agreed Handover Point, provided that the Eskom Train shall not be deemed to have arrived at the Handover Point until the Supplier is required to accept the train in terms of clause 7. The RLT Operator will record such Handover Time on the "Train Release Document"; and
- 2.2.9 in respect of loaded Eskom Trains, from the Mine to TFR (on behalf of Eskom), will be when the RLT Operator has notified TFR's locomotive driver via two way radio or other agreed means, that the loaded Eskom Train has arrived at the Handover Point. The RLT Operator will record such Handover Time on the "Train Release Document";

- 2.2.10 **"Minimum Enforceable Rail Loading Time"** means the minimum period of [●] ([●]) hours in which TFR can require the Supplier to load each Eskom Train, calculated from the actual Handover Time until the time at which the Supplier must return the Properly Loaded Train to the Handover Point in terms of the Eskom Train Schedule;
- 2.2.11 **"Permitted Rail Loading Time"** means the period available to the Supplier to load each Eskom Train, calculated from the actual Handover Time until the time when the Supplier is scheduled to return the properly loaded Eskom Train to the Handover Point, in terms of the Eskom Train Schedule;
- 2.2.12 **"Penalty"** shall have the meaning ascribed to it in clause 5.5;
- 2.2.13 **"Properly Loaded Train"** means a train loaded in accordance with the provisions of clause 4.1.1;
- 2.2.14 **"RLT Operator"** means the person employed by the Supplier to operate the rapid load out station referred to in clause [●];
- 2.2.15 **"Small Trains"** means trains which will operate primarily on TFR's general freight business rail system and which shall typically consist of either 60 or 75 wagons having a rated payload of no more than 58 tons and an axle load of no more than 20 tons per axle;
- 2.2.16 **"the TFR Siding"** means the TFR siding commonly referred to as the "[●]" and which will be connected to the Mine by means of an electrified rail link. For avoidance of doubt the [●] Control Point East is located at the co-ordinates [●]S, [●]E and the [●] Control Point West is located at the co-ordinates [●]S, [●]E;

3. RAIL TRANSPORTATION OF CONTRACT LIMESTONE

Where Eskom elects to Take Off Contract Limestone by rail, Eskom will procure that locomotive and rail wagons are available at the Delivery Point to Take Off such Contract Limestone by rail in accordance with the provisions of this **Annexe E**.

4. THE LOADING OF ESKOM TRAINS

- 4.1 The Supplier shall be responsible for the loading of the Eskom Trains according to the following principles:

- 4.1.1 within TFR's loading tolerances for underloading, overloading and skew loading, as notified to the Supplier in writing by Eskom, and as amended from time to time, provided that the Supplier shall only be obliged to comply with the amendment upon receiving prior written notice thereof;
- 4.1.2 within the Permitted Rail Loading Time, which shall not be less than the Minimum Enforceable Rail Loading Time; and
- 4.1.3 subject to the planning procedures and train handover rules set out in clauses 6 and 7.
- 4.2 The Supplier, acting on Eskom's behalf, shall measure the Actual Rail Loading Time for each Eskom Train, reconcile its measurements with those measured by TFR and record such measurements in writing and within 24 hours of the completion of loading.
- 4.3 Where the Supplier fails to load an Eskom Train in terms of clause 4.1, the Supplier shall be required to add or remove limestone in order to meet the required loading tolerances, and the Supplier's Actual Rail Loading Time shall be adjusted to include the actual time taken to correct the loading.
- 4.4 Eskom reserves the right to hold back an Eskom Train found to be under-loaded, overloaded or skew loaded, as defined in accordance with TFR's loading tolerances for overloading and skew loading referred to in clause 4.1, either at the Mine or en-route and Eskom may require the Supplier to off-load or arrange to off-load sufficient quantity of the Contract Limestone to bring the mass of the Eskom Train within the TFR loading tolerances referred to in clause 4.1, and the Supplier's Actual Rail Loading Time shall be adjusted to include the actual time taken to correct the loading irrespective of whether the incorrectly loaded Eskom Train has been returned to the Handover Point.
- 4.5 Eskom shall be entitled to recover from the Supplier all penalties imposed by TFR on Eskom for Eskom Trains that have not been loaded in accordance with TFR's loading tolerances for underloading, overloading and skew loading referred to in clause 4.1.1. To the extent that such penalties are imposed by agreement between Eskom and TFR, Eskom undertakes to consult with the Supplier before entering into such agreement with TFR in respect of the mechanisms and amounts of penalties for underloading, overloading and skew loading with the objective of minimising the financial and operational impact of such penalties. Eskom shall further use reasonable endeavours to procure that such mechanisms and amounts are

substantially in line with industry norms. The Supplier shall not be entitled to approve or veto any agreement reached between Eskom and TFR.

5. RAIL NON-UTILISATION CHARGES

- 5.1 The Parties shall record all train cancellations and the reasons for such cancellations within 24 hours of any such cancellations.
- 5.2 Cancellations shall be measured in terms of the planned tonnages of Contract Limestone for the cancelled train as set out in the Eskom Train Schedule.
- 5.3 The Supplier shall be deemed responsible for the cancellation of an Eskom Train in the following situations:
- 5.3.1 if the Supplier requests that the Eskom Train be cancelled for whatever reason within its reasonable control, including, *inter alia*, insufficient Contract Limestone available for Off Take, and breakdowns of the Supplier's loading equipment;
 - 5.3.2 if TFR cancels the Eskom Train as a direct result of the Supplier's Actual Rail Loading Time exceeding its Minimum Enforceable Rail Loading Time, including any time taken to correct loading in terms of clauses 4.2 and 4.3;
 - 5.3.3 the Supplier is deemed to be responsible for a cancellation in accordance with clause 7; and
 - 5.3.4 if TFR or the Supplier cancels an Eskom Train as a result of the Supplier's loading facilities being occupied by any other train and such occupation is as a result of the Supplier's fault.
- 5.4 Eskom shall determine the total penalties it must pay to TFR for non-utilisation of rail capacity for each year ended **[insert date of anniversary of Eskom's TFR contract]** and the following shall apply:
- 5.4.1 where Eskom is not required to pay any penalties to TFR for the non-utilisation of TFR capacity, no Penalty shall be paid by the Supplier, regardless of the number of cancellations attributed to the Supplier for the year ended **[insert date of anniversary of Eskom's TFR contract]**; and
 - 5.4.2 where Eskom is required to pay any Penalty to TFR for the non-utilisation of TFR capacity and the Supplier has incurred Penalty Cancellations (as further described in clause 5.5.2 below) for the Year ended **[insert date of**

anniversary of Eskom's TFR contract] as determined in accordance with clause 5.5.2, the Supplier shall pay to Eskom an amount equal to the Penalty determined in accordance with clause 5.5.3.

- 5.5 The Penalty payable by the Supplier for the cancellation or non-utilization of Eskom Trains for each year ended **[insert date of anniversary of Eskom's TFR contract]** ("**the Penalty**") shall be determined as follows:
- 5.5.1 the number of 'buffer' cancellations each Month shall equal the number of trains scheduled in that Month to Take Off Contract Limestone multiplied by 30% of the difference between 100 and Eskom's and Eskom's minimum rail commitment ("**the Take of Pay Level**") with TFR (expressed as a percentage of total contracted TFR capacity);
- 5.5.2 the total of the Supplier's cancellations for each Month as determined in accordance with clause 5.3 shall be reduced by the buffer cancellations for that Month, and any non-negative number of cancellations remaining shall be totalled for the year ending **[insert date of anniversary of Eskom's TFR contract]** in order to determine the number of cancellations that will attract a penalty ("**Penalty Cancellations**") for that year;
- 5.5.3 the penalty payable to Eskom by the Supplier shall equal R[●] ([●]) per Ton ("**the Penalty Rate**") multiplied by the Penalty Cancellations multiplied by the average number of Tons scheduled to be loaded in each Eskom Train for the year ending **[insert date of anniversary of Eskom's TFR contract]**; and
- 5.5.4 the Penalty Rate shall be escalated by PPI on [●] each year. In the event that Eskom is required to make any further variation to the Penalty Rate or the provisions relating to the calculation thereof as is required by the RTA, Eskom shall consult with the Supplier and implement such variation within a reasonable period as agreed to with the Supplier.
- 5.6 The Parties record that Eskom's Take or Pay Level with TFR is 85% of the total contracted TFR capacity. Eskom may change this Take or Pay level from time to time in line with any changes to its RTA with TFR, but may not raise this Take or Pay Level above South African limestone rail transportation industry norms without the prior approval of the Supplier, which approval shall not unreasonably be withheld or delayed.

6. PLANNING OF OFFTAKE OF CONTRACT LIMESTONE BY RAIL

- 6.1 Eskom shall procure that TFR provides the Supplier with an Eskom Train Schedule to ensure that sufficient rail capacity is available to meet the required Rail Quantity for the Month.
- 6.2 Eskom shall procure that, in preparing the Eskom Train Schedule, TFR does so in consultation with the Supplier and to comply with the following guidelines:
- 6.2.1 the Permitted Rail Loading Time for each Eskom Train shall not be less than the Minimum Enforceable Rail Loading Time;
 - 6.2.2 provision shall be made for the planned maintenance of the Supplier's rail loading facilities, provided that the Supplier shall take all reasonable steps to schedule its planned maintenance such that the impact on the loading of Eskom Trains is minimised and the planned times of such maintenance shall be recorded in the Eskom Train Schedule;
 - 6.2.3 the Eskom Train Schedule shall take into account the Supplier's export train schedule and permitted loading time for Export Trains; and
 - 6.2.4 the Eskom Train Schedule shall at a minimum specify the number of Eskom Trains planned for each day of the week and shall include the scheduled arrival time at the Handover Point and the scheduled departure time from the Handover Point for each train.
- 6.3 Eskom shall procure that TFR presents the latest Eskom Train Schedule to the Supplier at least 3 (three) days before the start of each new week for approval by the Supplier, which approval shall not unreasonably be withheld or delayed.
- 6.4 The Supplier shall further meet each Month with Eskom and TFR to prepare a provisional train schedule for each week of the subsequent Month. Any changes between this provisional train schedule and the Eskom Train Schedule agreed in accordance with clause 6.3 and the reasons for the changes shall be recorded by Eskom or TFR in writing.
- 6.5 The above provisions shall not derogate from the Supplier's obligation to co-operate with Eskom to enable the forthcoming week's Eskom Train Schedule to be drawn up and to keep Eskom informed of any circumstances which will prevent the Supplier from meeting its obligations in terms of the Agreement.

7. HANDOVER OF ESKOM TRAINS

- 7.1 The Supplier shall return all Eskom Trains accepted for loading to the Handover Point within the Permitted Rail Loading Time.
- 7.2 Where an Eskom Train arrives at a time that will permit the train to be loaded in the Permitted Rail Loading Time and returned ahead of, or at its scheduled departure time as set out in the Eskom Train Schedule, the following shall apply:
- 7.2.1 where the Supplier's loading facilities are unoccupied and no Export Train is expected to arrive within the Permitted Rail Loading Time, the Supplier shall accept the train for loading;
- 7.2.2 where the Supplier's loading facilities are unoccupied, but an Export Train is expected to arrive within the Permitted Rail Loading Time and the prior loading of the Export Train shall not result in the Eskom Train being cancelled, the Supplier and TFR may jointly decide whether the Supplier shall accept the Eskom Train for loading or shunt the Eskom Train into the TFR Siding for loading after the Export Train;
- 7.2.3 where the Supplier's loading facilities are occupied, but sufficient time remains to load the occupying train and the Eskom Train before the scheduled departure time in the Eskom Train Schedule, given the Minimum Enforceable Loading Time, the Supplier shall accept the Eskom Train as soon as it has completed the loading of the train occupying its loading facilities; and
- 7.2.4 where the Supplier's loading facilities are unoccupied, but unavailable for any reason other than scheduled maintenance as recorded in the Eskom Train Schedule or as a result of an event of Force Majeure, as further described in the Agreement, the Supplier shall accept the Eskom Train for loading as soon as the loading facilities become available, but the Handover Time shall be the time at which TFR notifies the Supplier that the Eskom Train was available for loading regardless of whether the Eskom Train has actually reached the Handover Point or not.
- 7.3 Where an Eskom train arrives such that the time remaining until the scheduled departure time is less than the Minimum Enforceable Rail Loading Time, TFR and the Supplier shall jointly decide whether to cancel the Eskom Train or load the Eskom Train, and if accepted for loading, TFR and the Supplier shall agree a new departure time, taking into account the Minimum Enforceable Rail Loading Time.

- 7.4 Where an Eskom Train arrives and an Export Train is currently loaded or is planned to be loaded, and the prior loading of the Export Train would cause the Eskom Train to handed over after its scheduled departure time, given the Minimum Enforceable Rail Loading Time:
- 7.4.1 TFR shall decide whether to cancel the Eskom Train or request the Supplier to load the Eskom Train before or after the Export Train, and if required, TFR and the Supplier shall agree a new departure time, taking into account the Minimum Enforceable Rail Loading Time;
- 7.4.2 Eskom will ensure that TFR shall immediately communicate in writing, its decision as to which train shall be loaded to both Eskom (through its Primary Energy Rail Logistics Department) and the Supplier, clearly indicating TFR's understanding of the impact of such decision; and
- 7.4.3 both Eskom and the Supplier shall confirm to TFR that they have received such correspondence from the TFR.

8. PLANNING AND HANDOVER OF TRAINS PRIOR TO THE OPERATION OF A COMPREHENSIVE ESKOM TRAIN SCHEDULE

- 8.1 Parties shall meet and agree the Eskom Train Schedule in accordance with clause 6, except that the Eskom Train Schedule shall only contain the number of Eskom Trains planned for each day, but not the scheduled arrival and scheduled departure times.
- 8.2 On notification by TFR that the Eskom Train is ready for loading, the Supplier shall accept the Eskom Train for loading unless:
- 8.2.1 the Supplier's loading facilities are occupied by an Export Train or another Eskom Train;
- 8.2.2 the Supplier's loading facilities are undergoing planned maintenance, provided that TFR was notified of such planned maintenance when Parties agreed the Eskom Train Schedule, and, in this case, the Supplier's Handover Time shall be measured as the earlier of the actual Handover Time or the time at which the maintenance was planned to be completed as recorded in the Eskom Train Schedule; and
- 8.2.3 the Supplier and TFR agree to delay loading of the Eskom Train in order to permit the loading of an Export Train.

- 8.3 The Supplier will be deemed to have caused the cancellation of an Eskom Train if its Actual Rail Loading Time exceeds [•] ([•]) hours.