

AGREEMENT

ENTERED INTO BETWEEN

**THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
IN ITS DEPARTMENT OF ENVIRONMENTAL AFFAIRS**

(Hereinafter referred to as "the Department")

Herein represented by **Ms Judy Beaumont**
in her capacity as: **Acting Director-General**
and duly authorised to enter into this Agreement

And

COAL OF AFRICA LIMITED

With Registration No.: **ACN 008 905 388**

(Hereinafter referred to as "CoAL")

Herein represented by **Mr David Brown**
in his capacity as: **Chief Executive Officer**
and duly authorised to enter into this Agreement

And

LIMPOPO COAL COMPANY PROPRIETARY LIMITED

With Registration No.: **2005/006072/07**

(Hereinafter referred to as "LCC")

Herein represented by **Mr David Brown**
in his capacity as: **Company Representative**
and duly authorised to enter into this Agreement

And

SOUTH AFRICAN NATIONAL PARKS

Established in terms of section 5 of the National Parks Act, 1976 (Act No. 57 of 1976)

(Hereinafter referred to as "SANParks")

Herein represented by **Mr Kuseni Dlamini**
in his capacity as: **Chairperson of SANParks Board**
and duly authorised to enter into this Agreement

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WHEREBY IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

1.1. For the purpose of this Agreement, unless the context indicates otherwise, the following definitions are set out for the terms indicated below -

- 1.1.1. **"this Agreement"** means this Agreement together with all schedules and appendices attached hereto or referred to herein;
- 1.1.2. **"Bank Account"** means a separate, designated bank account, approved by the Auditor General, contemplated in terms of section 188 of the Constitution of the Republic of South Africa, 1996;
- 1.1.3. **"CoAL"** means Coal of Africa Limited, a company incorporated in accordance with the laws of the Commonwealth of Australia under Registration No. ACN008905388, and registered as an external profit company according to the laws of the Republic of South Africa under registration number 2012/051325/10;
- 1.1.4. **"Department"** means the Department of Environmental Affairs of the Government of the Republic of South Africa;
- 1.1.5. **"Funds"** means the capital funds and operating costs associated with the implementation of this Agreement as contemplated in clause 3.2 read with Annexure "A", and **"Funding"** shall bear the same meaning;
- 1.1.6. **"LCC"** means Limpopo Coal Company (Pty) Ltd with registration number 2005/006072/07, a private company incorporated in terms of the companies law of the Republic of South Africa;
- 1.1.7. **"Mine"** means Vele Colliery;
- 1.1.8. **"the Parties"** means the Department, CoAL, LCC and SANParks, and a **"Party"** means either of them;
- 1.1.9. **"SANParks"** means the South African National Parks established in terms of section 5 of the National Parks Act, 1976 (Act No. 57 of 1976) and continuing to exist in terms of section 54(1) of the National Environmental Management: Protected Areas Act 57 of 2003 (as amended);

- 1.1.10. **“Signature Date”** means the date on which the last signing Party signs this Agreement; and
- 1.1.11. **“Steering Committee”** means a steering committee established in terms of clause 6.
- 1.2. Expressions defined in this Agreement shall bear the same meanings in the annexures to this Agreement, unless expressly stated otherwise in this Agreement.
- 1.3. In this Agreement:
- 1.3.1. the singular shall include the plural and vice versa; and
- 1.3.2. unless otherwise indicated, any meaning ascribed to a word, phrase or expression in this Agreement, shall bear the same meaning wherever it appears thereafter.
- 1.4. This Agreement shall bind the Parties and their respective successors-in-title.
- 1.5. In the event that any of the terms of this Agreement are found to be invalid, unlawful or unenforceable, such term will be severable from the remaining terms, which will continue to be valid and enforceable.
- 1.6. In the event of any conflict between the main body of this Agreement and any Annexures hereto, the provisions of the main body of this Agreement will prevail between the Parties.

2. TERM OF LONG-TERM COLLABORATION

This Agreement shall commence on the Signature Date and endure until terminated in terms of clause 7.

3. AREAS OF LONG-TERM COLLABORATION

- 3.1. For the purpose of:
- 3.1.1. strengthening cooperation between the Parties towards the conservation and sustainable development of the Mapungubwe Cultural Landscape (MCL) World Heritage Site (**“WHS”**);
- 3.1.2. maintaining the integrity of the WHS, and ensuring that the negative impacts of development are avoided, minimised or remedied in the pursuit of sustainable development; and

- 3.1.3 promoting the development of the MCL WHS so that it benefits the receiving environment, the local economy and resident communities, throughout the Life Of Mine (LOM), the Parties have agreed to co-operate towards the fulfilment of these long-term goals (the “**Long-term Goals**”).
- 3.2. The fulfilment of the Long-term Goals during the course of the LOM will, *inter alia*, require access to substantial capital resources. LCC agrees to provide the Funds required to fulfil the Long-term Goals save that the Parties agree that the exact timing of future allocations of the Funds will be dependent on the continued operations of the Vele Colliery.
- 3.3. The Parties will use their respective reasonable endeavours to achieve the Long-term Goals through the implementation of specific projects in five distinct phases over the estimated LOM in accordance with the Indicative Programme, attached hereto as **Annexure “A”**.
- 3.4. The Steering Committee (contemplated in clause 6) will agree on the detail of the projects in order to ensure that they are aligned to current and future SANParks priorities, both in terms of prioritising and budget allocation, and, to this end, the Steering Committee will develop business plans for each of the projects identified in **Annexure “A”**.
- 3.5. It is recorded that the Steering Committee shall at all times retain the right to vary any or all of the projects and activities if it is necessary for the fulfilment of the Long-term Goals. Such variation shall become effective if agreed to by all the Parties in writing.

4. **FUNDING**

- 4.1. Notwithstanding the indicative amounts and dates provided in **Annexure “A”**, budgets shall be prepared and agreed by the Steering Committee prior to each phase contemplated in **Annexure “A”**.
- 4.2. The Funds shall be payable to SANParks into the Bank Account in the amounts and on the dates to be agreed between the Parties.
- 4.3. CoAL and/or LCC reserve the right to structure the provision of Funding in the most tax efficient manner.
- 4.4. The Funds shall be used exclusively for the implementation of this Agreement and shall at all times be utilised in accordance with each budget approved by the Steering Committee.

- 4.5. Any deviation by SANParks of 10% (ten percent) or more from any agreed budget must be discussed and signed off by the Steering Committee. Failure to obtain permission from the Steering Committee as aforesaid shall constitute a material breach of this Agreement.
- 4.6. SANParks shall be obliged to furnish CoAL and the Department with monthly expenditure and revenue statements by no later than the 10th day of the month following the preceding relevant month. The aforesaid statements shall contain information indicating the use of the Funds and a written and signed certificate by the SANParks representative on the Steering Committee certifying that such Funds were used for the implementation of this Agreement.
- 4.7. SANParks shall maintain proper books and records of account so as to keep a record of expenditure.
- 4.8. It is specifically recorded and agreed that the CoAL/ LCC shall be entitled to appoint a firm of auditors to audit the expenditure and revenue statements referred to in clause 4.6 and in this regard SANParks undertakes to cooperate in all respects with the requests of such auditing firm.

5. OBLIGATIONS

- 5.1. Each Party shall at all times avoid a conflict of interest between this Agreement and its own interests and should either Party believe that such a conflict may exist, such Party shall immediately inform the others thereof in writing and the Parties shall use their reasonable endeavours to resolve such conflict in good faith and in the best interests of this Agreement.
- 5.2. Each Party agrees to co-operate fully and in good faith and to place at the disposal of the other Party the benefits of its experience and technical knowledge, and to use its best endeavours to achieve the objects of this Agreement.
- 5.3. Each Party shall carry out, diligently and punctually, all the work functions and tasks that such Party is allocated in terms of this Agreement or is obliged to carry out and perform in terms of this Agreement.
- 5.4. The Parties:
 - 5.4.1. shall, on a regular basis, keep each other informed of and consult on matters of common interest, which in their opinion are likely to lead to mutual collaboration;
 - 5.4.2. shall, at such intervals as deemed appropriate, convene meetings to review the progress of activities being carried out under this Agreement and to plan future activities;

- 5.4.3. may invite each other to send observers to meetings or conferences convened by them or under their auspices in which, in the opinion of either Party, the other may have an interest. Invitations shall be subject to the procedures applicable to such meetings or conferences; and
- 5.4.4. shall be responsible for their acts and omissions in connection with this Agreement and its implementation.

6. STEERING COMMITTEE

- 6.1. Each Party is entitled to appoint 3 (three) members (the "**Representatives**") to a Steering Committee responsible for implementation of this Agreement.
- 6.2. In pursuit of the objectives of this Agreement, the Steering Committee shall:
 - 6.2.1. agree on the thematic area and programmes for the period under review to be implemented;
 - 6.2.2. quarterly and/or at the request of either Party to:
 - 6.2.2.1. exchange views with regards to the progress of their collaboration and the performance of their respective obligations under this Agreement as well as other pertinent matters, and
 - 6.2.2.2. furnish each other with all necessary information as may be reasonably requested with regards to the progress and general status of the work of their collaboration;
 - 6.2.3. promptly inform each other of any factor which may interfere or is likely to interfere with the progress of their collaboration, the accomplishment of their collaboration, any related matter, and in particular the performance of either Party of its obligation in terms of this Agreement; and
 - 6.2.4. determine and, if need be, review the technical, financial, personnel and organisational requirements in respect of the planning, management and control of their collaboration in order to ensure effective and efficient execution and maintenance of their collaboration as well as matters connected thereto.
- 6.3. The Steering Committee shall meet at such intervals, times and places as may be determined by the Parties from time to time.
- 6.4. Save as provided for in this Agreement, the Steering Committee shall determine its own procedural rules.

6.5. The Steering Committee shall have plenary powers in respect of the following non-exhaustive list of matters:

6.5.1. amendment to the strategy contemplated in Annexure "B";

6.5.2. the preparation and agreement of budgets; and

6.5.3. statutory and regulatory matters.

7. BREACH AND TERMINATION

7.1. Should any Party ("**Defaulting Party**") breach any provision of this Agreement and fail to remedy such breach within 5 (five) Business Days after receiving written notice requiring it to do so from another Party (the "**Innocent Party**"), then the Innocent Party shall be entitled, without prejudice to its other rights in law including any right to claim damages, to claim immediate specific performance of the Defaulting Party's obligations, or in the case of a material breach of a provision going to the root of this Agreement, to cancel this Agreement by giving written notice to that effect to the Defaulting Party, in which circumstances, the cancellation shall be effective on the last Business Day in the calendar month in which the aforesaid written notice is given.

7.2. This Agreement may be modified or terminated at any time by mutual written agreement between the Parties.

7.3. This Agreement shall immediately terminate at the end of the Life of Mine.

7.4. The termination of this Agreement for whatever reason, shall not affect the provisions which specifically provide for their survival at the termination or which by their nature are intended to survive the termination of this Agreement independently.

7.5. After the termination of this Agreement in terms of this clause, the relationship between the Parties with respect to any uncompleted project, shall continue to be governed by the terms and conditions of this Agreement, until the completion of such project.

7.6. In the event of termination of this Agreement, the Department, after consultation with other Parties, may designate another entity to continue implementing the Long-term Goals.

8. DISPUTE RESOLUTION

8.1. A dispute which arises in regard to:

- 8.1.1. the interpretation of;
- 8.1.2. the carrying into effect of;
- 8.1.3. any of the Parties' rights and obligations arising from;
- 8.1.4. the termination or purported termination of or arising from the termination of; or
- 8.1.5. the rectification or proposed rectification of this Agreement, or out of or pursuant to this Agreement or on any matter which in terms of this Agreement requires agreement by the Parties, (other than where an interdict is sought or urgent relief may be obtained from a court of competent jurisdiction),

shall be resolved amicably by the Parties within ten (10) Business Days of dispute, failing which the dispute shall be submitted to and decided by arbitration.

8.2. That arbitration shall be held:

8.2.1. with only the Parties and their representatives present thereat; and

8.2.2. at Sandton, South Africa.

8.3. It is the intention that the arbitration shall, where possible, be held and concluded in 21 (twenty one) Business Days after it has been demanded. The Parties shall use their best endeavours to procure the expeditious completion of the arbitration.

8.4. Save as expressly provided in this Agreement to the contrary, the arbitration shall be subject to the arbitration legislation for the time being in force in South Africa.

8.5. There shall be 1 (one) arbitrator who shall be, if the question in issue is:

8.5.1. primarily an accounting matter, an independent chartered accountant with not less than 10 (ten) years' experience as a chartered accountant;

8.5.2. primarily a legal matter, a practising senior counsel or, alternatively, a practising attorney of not less than 15 (fifteen) years' experience as an attorney; or

8.5.3. any other matter, a suitably qualified person.

- 8.6. The appointment of the arbitrator shall be agreed upon by the Parties in writing or, failing agreement by the Parties within 10 (ten) Business Days after the arbitration has been demanded, at the request of any of the Parties shall be nominated by the Chairman for the time being of the Arbitration Foundation of South Africa (or its successor body in title) ("AFSA"). If that person fails or refuses to make the nomination, any Party may approach the High Court of South Africa to make such an appointment. To the extent necessary, the court is expressly empowered to do so.
- 8.7. The Parties shall keep the evidence in the arbitration proceedings and any order made by any arbitrator confidential unless otherwise contemplated herein.
- 8.8. The arbitrator shall be obliged to give his award in writing fully supported by reasons.
- 8.9. The provisions of this clause are severable from the rest of this Agreement and shall remain in effect even if this Agreement is terminated for any reason.
- 8.10. The arbitrator shall have the power to give default judgment if any Party fails to make submissions on due date and/or fails to appear at the arbitration, which judgment the arbitrator shall be entitled to rescind on good cause shown in terms of the legal principles applicable to rescission of judgments.
- 8.11. Nothing herein contained shall be deemed to prevent or prohibit a Party from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.

9. NOTICES AND ADDRESSES

- 9.1. The Parties choose as their *domicilia citandi et executandi* for all purposes under this Agreement, whether in respect of notices or other documents or communications of whatsoever nature (including the exercise of any option), the following addresses –

9.1.1. CoAL

Physical: South Block, Summercorn Office Block, Cnr Rockery Land and Sunset Avenue, Lonehill, Fourways 2191

Postal Address: P O Box x69517, Bryanston, 2021

Tel: 27 10 003 8000

Fax 27 11 388 1380

E-mail: david.brown@coalofafrica.com

9.1.2. **LCC**

Physical: South Block, Summercorn Office Block, Cnr Rockery Land and Sunset Avenue, Lonehill, Fourways 2191

Postal Address: P O Box x69517, Bryanston, 2021

Tel: +27 10 003 8000

Fax: +27 11 388 1380

E-mail: Florence.Duval@coalofafrica.com

9.1.3. **The Department**

Physical: Environment House, 473 Steve Biko Road, Arcadia

Postal Address: Private Bag X447, Pretoria, 0001

Tel: (012) 399 3091

Fax: (012) 359 3636

E-mail: fmketeni@environment.gov.za

9.1.4. **SANParks**

Physical: 643 Leyds Street, Mucklenuck, Pretoria, 0002

Postal Address: P.O. Box 787, Pretoria, 0001

Tel: (012) 426 5000

Fax: (012) 343 0155

E-mail:

9.2. Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax or e-mail.

9.3. Either Party may by notice to any other Party change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that Party to another physical address provided that the change shall become effective *vis-à-vis* that addressee on the 5th (fifth) business day from the receipt of the notice by the addressee.

9.4. Any notice to a Party –

9.4.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 5th (fifth) business day after posting (unless the contrary is proved);

- 9.4.2. delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery;
- 9.4.3. sent by telefax to its chosen telefax number, shall be deemed to have been received on the date of despatch (unless the contrary is proved); or
- 9.4.4. sent by e-mail to its chosen e-mail address, shall be deemed to have been received on the date of despatch (unless the contrary is proved).
- 9.5. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.
10. **WHOLE AGREEMENT**
- 10.1. This Agreement constitutes the whole agreement between the Parties relating to the subject matter hereof and supersedes any other discussions, agreements and/or understandings regarding the subject matter hereof.
- 10.2. No amendment or consensual cancellation of this Agreement or any provision or term hereof or of any agreement, bill of exchange or other document issued or executed pursuant to or in terms of this Agreement and no settlement of any disputes arising under this Agreement and no extension of time, waiver or relaxation or suspension of any of the provisions or terms of this Agreement or of any agreement, bill of exchange or other document issued pursuant to or in terms of this Agreement shall be binding unless recorded in a written document signed by the Parties (or in the case of an extension of time, waiver or relaxation or suspension, signed by the Party granting such extension, waiver or relaxation). Any such extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect whereof it was made or given.
- 10.3. No extension of time or waiver or relaxation of any of the provisions or terms of this Agreement shall operate as an estoppel against any Party in respect of its rights under this Agreement, nor shall it operate so as to preclude such Party thereafter from exercising its rights strictly in accordance with this Agreement.
- 10.4. To the extent permissible by law no Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not.

11. COUNTERPARTS

This Agreement may be executed in several counterparts, which together shall constitute one and the same instrument.

12. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa and all disputes, actions and other matters relating thereto shall be determined in accordance with such laws.

Signed by the Parties and witnessed on the following dates and at the following places respectively:

For: CoAL

Signature:



who warrants that he / she is duly authorised thereto

Name:

DAVID BROWN

Date:

8-10-2014

Place:

For: LCC

Signature:



who warrants that he / she is duly authorised thereto

Name:

DAVID BROWN

Date:


8-10-2014

Place:



AGREEMENT BETWEEN COAL OF AFRICA LIMITED, LIMPOPO COAL COMPANY PROPRIETARY LIMITED, THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA IN ITS DEPARTMENT OF ENVIRONMENTAL AFFAIRS, AND SOUTH AFRICAN NATIONAL PARKS

For: **SANParks**

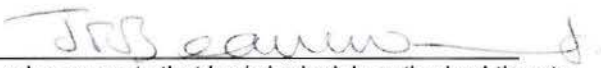
Signature: 
who warrants that he / she is duly authorised thereto

Name: KUSENI DLAMINI

Date: 08.10.2014

Place: CENTURION

For: **THE DEPARTMENT (DEA)**

Signature: 
who warrants that he / she is duly authorised thereto

Name: JUDY BEAUMONT

Date: 8 Oct 2014.

Place: PRETORIA, CERIBE