



CONTRACT NUMBER KC/041/19

CONTRACT FOR PARTIAL LOADING AND HAULING OF COAL UNDER MENTORSHIP

between

KANGRA COAL PROPRIETARY LIMITED

Registration number 2001/003104/07

("Principal")

and

1) DDK LOGISTICS

Registration number 2019/512022/07

("Contractor")

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1. Introduction

- 1.1 The Principal conducts coal mining operations at the Colliery in the vicinity of Driefontein and Piet Retief area, Mpumalanga Province.
- 1.2 The Principal requires the rendering of the Services and the Contractor is desirous to render a portion of the Services under a mentor ship programme and have reached an in principle agreement in regard thereto, pursuant to which the Parties signed the Letter of Acceptance.
- 1.3 The Parties wish to record the terms and conditions of their agreement in writing by virtue of this Agreement.

2. Definitions and interpretation

- 2.1 In this Agreement, the following words 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) shall bear corresponding meanings:

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|-------|-----------------------|---|
| 2.1.1 | "Agreement" | means this agreement, including all Annexes thereto, as amended from time to time; |
| 2.1.2 | "Annexes" | means the annexes to this Agreement; and "Annexe" shall have a corresponding meaning; |
| 2.1.3 | "Business Day" | means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa; |
| 2.1.4 | "Coal" | means coal beneficiated by the Principal at the 'The Site' |
| 2.1.5 | "Colliery" | means the Principal's colliery situated on portions of the farms, Maquasa 19 HT, Rooikop 18 HT, Kransbank 15 HT, Nooitgezien 381 IT and Roodekraal 21 HT, Mpumalanga Province, which colliery includes <i>inter alia</i> Maquasa East, the Maquasa East Plant, Maquasa West and the Panbult Siding; |

Maquasa East Plant, Maquasa West and the Panbult Siding;

2.1.6 **"Commencement Date"**

means, notwithstanding the Signature Date, 30 October 2019;

2.1.7 **"Contractor"**

means DDK LOGISTICS, registration number 2019/512022/07 incorporated in accordance with the company laws of the Republic of South Africa, including any permitted Subcontractor;

2.1.8 **"Contractor's Equipment"**

means all apparatus, machinery, vehicles and other things owned by the Contractor and required by the Contractor, or any Subcontractor, in the performance of the Services and includes tools and temporary buildings;

2.1.9 **"Contractor's Compliance Pack"**

means the documents listed and included in Annexe "D" hereto, as supplemented or amended from time to time by either the Principal or the Contractor;

2.1.10 **"Contractor's Register"**

means the documents listed in Annexe "E" hereto, as supplemented or amended from time to time by either the Principal or the Contractor;

2.1.11 **"Contractor's Representative"**

means the person which the Contractor will from time to time appoint as its representative to carry out the functions allocated to the Contractor's Representative under this Agreement, which functions are set out in clause 20.1;

2.1.12 **"Contract Pricing"**

means the compensation payable by the Principal to the Contractor for the proper performance of the Services as described in clause 6 and Annexe "C";

- 2.1.13 **"Discard"** means waste rock and non-saleable carbonaceous and any foreign material and substances which remain after or are produced during any beneficiation process of coal by the Principal at the Colliery;
- 2.1.14 **"EMP"** means the Principal's approved environmental management programme in respect of the Mining Right;
- 2.1.15 **"Environment"** shall have the meaning ascribed to it in terms of section 1 of the National Environmental Management Act, No. 107 of 1998, as amended;
- 2.1.16 **"Environmental Approval"** means permits, authorisations, licences, consents or any other approvals issued to the Contractor or the Principal or as required by any competent authority pursuant to the Environmental Laws, the EMP and the Mining Right;
- 2.1.17 **"Environmental Laws"** means any and all Laws (whether civil, criminal or administrative), legislation, treaties, statutory instruments, directives, by-laws, judgments, regulations, notices, orders, government circulars, codes of practice and guidance notes or decisions of any competent regulatory body or common law relating to the Environment, which is capable of enforcement by legal process in the Republic of South Africa and as far as such laws are applicable to the Services;
- 2.1.18 **"Force Majeure"** shall have the meaning ascribed to it in clause 22;
- 2.1.19 **"Health and Safety Laws"** means all applicable South African health and safety legislation, statutes, ordinances, by-laws, regulations and mandatory codes of practice,




including the MHSA, the Occupational Health and Safety Act, No. 85 of 1993, the Road Ordinance (Mpumalanga), No. 22 of 1957, all as amended from time to time;

2.1.20 **"Health and Safety Matters"**

means any matter pertaining to health and safety in connection with the Services;

2.1.21 **"Infringement"**

means an infringement (or alleged infringement) of any patent, registered design, copyright, trademark, trade name, trade secret or other intellectual or industrial property right relating to the Services;

2.1.22 **"Laws"**

means any applicable South African law, including the common law, statute, subordinate legislation, treaty, guideline, directive, rule, by-law, regulation, ordinance, protocol, code, standard, requirement, order, judgement, injunction, award or decree of any competent authority having the force of law, including but not limited to the Labour Relations Act, No. 66 of 1995, the Basic Conditions of Employment Act, No. 75 of 1997, the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993, the MHSA, the Occupational Health and Safety Act, No. 85 of 1993, the Road Ordinance (Mpumalanga), No. 22 of 1957, the Road Traffic Act, No. 74 of 1997, the National Environment Management Act, No. 107 of 1998 and any other related or applicable environmental legislation or regulations, the MPRDA, the National Water Act, No. 36 of 1998 and any regulations in force thereunder and the Principal's HSEC Management Standards (including the 17 Standards and 12 Cardinal Rules) and Procedures;

- 2.1.23 **"Letter of Acceptance"** means the Principal's letter dated 18 October 2019 with the enclosed final negotiated rates annexed thereto which was accepted by the Contractor on 24 October 2019, pursuant to the ensuing negotiations, a copy of which letter and rates are Annexe "A" hereto;
- 2.1.24 **"Maquasa East"** means the Maquasa East section of the Colliery;
- 2.1.25 **"Maquasa East Plant"** means the Principal's beneficiation plant situated at and forming part of Maquasa East;
- 2.1.26 **"Maquasa West"** means the Maquasa West section of the Colliery;
- 2.1.27 **"Materials"** means the supplies, spare parts, oil, chemicals and other materials used by the Contractor or a Subcontractor in the performance of the Services;
- 2.1.28 **"MHSA"** means the Mine Health and Safety Act, No. 29 of 1996 and any regulations in force thereunder as amended from time to time;
- 2.1.29 **"Mining Right"** means the Principal's mining right or rights which it holds or will hold from time to time in terms of the MPRDA in respect of the Colliery;
- 2.1.30 **"MPRDA"** means the Mineral and Petroleum Resources Development Act, No. 28 of 2002 and any regulations in force thereunder as amended from time to time;
- 2.1.31 **"Panbult Siding"** means the Principal's railway siding Number 652377 at Panbult Station, near the town of Piet Retief, Mpumalanga Province;
- 2.1.32 **"Parties"** means the parties to this Agreement, being the Principal and the Contractor; and "Party" shall have the corresponding meaning;

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- 2.1.33 **"Physical Conditions"** shall have the meaning ascribed to it in clause 21.1;
- 2.1.34 **"Principal"** means Kangra Coal Proprietary Limited, registration number 2001/003104/07, a company incorporated in accordance with the company laws of the Republic of South Africa;
- 2.1.35 **"Principal's Representative"** means the person which the Principal will from time to time appoint as its representative to carry out the functions allocated to the Principal's Representative under this Agreement, which functions are set out in clause 20.2;
- 2.1.36 **"Rand" or "R"** means South African Rand, the lawful currency of the Republic of South Africa;
- 2.1.37 **"Rental Equipment"** means the equipment listed in Annexe "C" which the Contractor might have to keep available for hire by the Principal from time to time;
- 2.1.38 **"Services"** means all activities, obligations, duties and responsibilities of the Contractor under this Agreement as provided for in Annexe "B", and any incidental work including the remedying of defects, that can be reasonably incidental to and/or inferred as necessary or appropriate to perform such activities, obligations, duties and responsibilities;
- 2.1.39 **"Social and Labour Plan"** means the social and labour plan approved as part of the Mining Right;
- 2.1.40 **"Signature Date"** means, when this Agreement has been signed by each Party (whether or not in counterpart), the latest of the dates on which this Agreement (or any counterpart) was signed by any Party;

- 2.1.41 **"SIMRAC"** means the Safety in Mines Research Advisory Committee;
- 2.1.42 **"Site"** means Maquasa East, Maquasa West and Panbult Siding and any road(s) connecting such areas, individually or collectively, as the context may require;
- 2.1.43 **"Subcontractor"** means any permitted person or entity which the Contractor appoints as its subcontractor, for the execution of part of the Services on its behalf, and the legal successors in title to each such person or entity;
- 2.1.44 **"Surviving Provisions"** means clause 2 (Definitions and interpretation), clause 29 (Dispute resolution and arbitration), clause 30 (Miscellaneous matters) and any other provisions of this Agreement which are expressed to continue in force after its termination or which by necessary implication must continue after its termination;
- 2.1.45 **"Tender"** means the Contractor's proposal referred to in the Letter of Acceptance;
- 2.1.46 **"VAT"** means value-added tax levied in terms of the VAT Act;
- 2.1.47 **"VAT Act"** means the Value-added Tax Act, 89 of 1991, as amended from time to time; and
- 2.1.48 **"Coal"** means all Coal mined from and/or beneficated by the Principal from or at the Colliery.
- 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 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;
- 2.2.3 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;
- 2.2.4 references to a "subsidiary" or a "holding company" shall be references to a subsidiary or holding company as defined in the Companies Act;
- 2.2.5 if a definition imposes substantive rights and obligations on a Party, such rights and obligations shall be given effect to and shall be enforceable, notwithstanding that they are contained in a definition;
- 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;
- 2.2.7 if there is any conflict between any definitions in this Agreement then, for purposes of interpreting any clause of this Agreement or paragraph of any Annexe, the definition appearing in that clause or paragraph shall prevail over any other conflicting definition appearing elsewhere in this Agreement;
- 2.2.8 where any number of days is prescribed, those days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a Business Day, in which event the last day shall be the next succeeding Business Day;
- 2.2.9 where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day;
- 2.2.10 any provision in this Agreement which is or may become illegal, invalid or unenforceable in any jurisdiction affected by this Agreement shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability and shall be treated as having not been written (ie *pro non scripto*) and severed from the balance of this Agreement, without invalidating the

remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction;

2.2.11 the use of any expression covering a process available under South African law (such as but not limited to a winding-up) shall, if any of the Parties is subject to the law of any other jurisdiction, be interpreted in relation to that Party as including any equivalent or analogous proceeding under the law of such other jurisdiction;

2.2.12 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT;

2.2.13 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 (ie the *eiusdem 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.

2.3 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement which are expressly provided to operate after any such expiration or termination, or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the relevant provisions themselves do not provide for this.

2.4 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 this Agreement (ie the *contra proferentem* rule), shall not apply.

3. Appointment, commencement and duration

3.1 The Principal hereby appoints the Contractor to execute the Services on the terms set out in this Agreement, which appointment the Contractor hereby accepts.

3.2 This Agreement shall commence on the Commencement Date and unless terminated earlier in accordance with the provisions hereof, shall endure until 31

October 2022. The 'Contractor' shall have the right to automatic extension for a further 2 year period after the termination date of 31 October 2022, should all conditions were strictly met between the parties and the services still be required by The Principal. The contract will be managed by way of monthly performance reviews and performance measurement will be agreed to by both parties by no later than 30 days from commencement date.

4. Contractor's obligations

4.1 The Contractor shall perform the Services in a proper, diligent and workmanlike manner according to the performance measurements and in accordance with the terms and conditions of this Agreement and any instructions given by the Principal's Representative from time to time and to the reasonable satisfaction of the Principal's Representative.

4.2 The Contractor shall, in rendering the Services, take proper and appropriate measures:

4.2.1 to ensure that the Principal's coal mining and processing operations and activities at the Colliery are not interfered with, interrupted or otherwise adversely affected;

4.2.2 to prevent damage to the Principal's assets, infrastructure and processes; and

4.2.3 to protect and preserve the health, safety and security of its own employees, contractors, agents and representatives and those of the Principal.

4.3 The Contractor shall, whenever required by the Principal's Representative, submit to the Principal's Representative details of any arrangements and methods which the Contractor proposes to adopt for the performance of the Services. No significant alteration to these arrangements and methods shall be made without the alteration or alterations, as the case may be, being approved by the Principal's Representative, which approval shall not unreasonably be withheld.

4.4 Hauling of Coal and Discard

4.4.1 The Contractor shall where applicable load Coal, at its own risk, from any of the Coal stockpiles within the Site or from the load out bins at the Maquasa

East Plant and haul the loaded Coal to and tip the loaded Coal in areas designated from time to time for that purpose at the Panbult Siding and to any other delivery point designated by the Principal's Representative from time to time as provided for in this Agreement, in such quantities and at such frequency as it is obliged to do in terms of this Agreement, or otherwise as directed by the Principal's Representative from time to time and in accordance with Annexe "C".

4.4.2 The Contractor shall maintain an adequate stockpile of Coal at the Panbult Siding to enable continuous loading of export and inland trains.

4.4.3 The Contractor shall, at its own risk, load Discard from any of the Discard stockpiles within the Site or from the Discard bins at the Maquasa East Plant and haul the loaded Discard to areas designated from time to time for that purpose by the Principal's Representative as provided for in this Agreement, in such quantities and at such frequency as it is obliged to do in terms of this Agreement, or otherwise as directed by the Principal's Representative from time to time and in accordance with Annexe "C".

4.4.4 The Contractor will attend to road maintenance as more fully set out in paragraph 6 of Annexe "B" and at the rates as set out in Annexe "C".

4.4.5 Notwithstanding anything to the contrary contained in this Agreement, the Parties agree and record that the tonnage and hours reflected in Annexe "C" are indicative only and the Principal does not guarantee that such tonnage will be required to be hauled or that the Rental Equipment will be required for the indicated hours and the Contractor hereby waives any right it may have to rely on such tonnage and/or hours.

4.4.6 The Parties agree that the actual tonnage to be hauled by the Contractor as part of the Services and the actual hours during which Rental Equipment may be required, will from time to time be as agreed between the Parties in their regular meetings.


4.5 **Local Enterprise Development and Sub Contracting**

4.5.1 The Contractor shall, subject to clause 4.5.3, not be entitled to subcontract any part or any parts of the Services without the prior written consent of the Principal.

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- 4.5.2 If the Contractor appoints pre-approved Subcontractors, the Contractor shall remain responsible for compliance with this Agreement and to ensure that the Subcontractor fully and properly complies with the obligations of the Contractor in terms of this Agreement, to the extent that a portion of the Services has been subcontracted, and all acts or defaults of the Subcontractor or Subcontractors, its agents or employees, as the case may be, as if they were the acts or defaults of the Contractor.
- 4.5.3 The Contractor shall obtain the prior written approval of the Principal's Representative in respect of any proposed Subcontractor agreement prior to entering into such an agreement. The Contractor shall ensure that the approval by the Principal's Representative of the Subcontractor agreement is a condition precedent to any Subcontractor agreement which may be concluded by the Contractor.
- 4.5.4 The Contractor shall give the Principal's Representative not less than 15 Business Days' notice of its request to conclude any Subcontractor agreement.
- 4.5.5 Each Subcontractor agreement shall include provisions which would entitle the Principal to require the Subcontractor agreement to be freely ceded and assigned to and/or by the Principal or its nominee.
- 4.5.6 The Principal's consent to the appointment of a Subcontractor shall not create any privity of contract between the Principal and the Subcontractor.
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- 4.6 The contractor will operate under mentorship from The Principal under its Local Enterprise Development programme. The mentorship programme will be conducted by Principal appointed contractors, details of which are set out in ANNEXE E. Detailed target setting processes will be conducted by all parties and concluded within 30 days of the commencement date.
- 4.7 Safety Procedures
- 4.7.1 The Contractor shall:
- 4.7.1.1 comply with all Laws, including, but not limited to the Health and Safety Laws and the Principal's Site specific safety regulations

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- 4.7.1.2 be responsible for the safety of all persons which it allows to be on the Site; and
- 4.7.1.3 use reasonable efforts to keep the Site clear of unnecessary obstruction so as to avoid danger to such persons.
- 4.7.2 The Contractor shall comply with all reasonable requirements of the Principal in order for the Principal itself to comply with the Laws and the Health and Safety Laws pursuant to the Contractor rendering the Services.
- 4.7.3 The Contractor shall, as required by the Health and Safety Laws and the Principal, ensure that all statutory appointments are made and that all appointees fully understand their responsibilities, are trained and competent to execute their duties and are provided with all measures required to execute their duties.

4.8 Meetings and Reports

The Contractor shall be obliged to attend regular meetings as and when required by the Principal and shall render all reports reasonably required by the Principal.

5. Investigations and information

- 5.1 The Contractor warrants in accordance with the information as per the Principal's invitation to tender that:
- 5.1.1 prior to the submission of the proposal, the Principal provided the Contractor with:
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- 5.1.1.1 an opportunity to physically inspect the Site; and
- 5.1.1.2 every assistance to investigate all relevant data in the Principal's possession that may affect the provision of the Services;
- 5.1.2 it has inspected the Site and the relevant roads and reasonably informed itself regarding prevailing conditions at the Site and the surrounding locality that may impact on the provision of the Services;
- 5.1.3 it is satisfied as to the accuracy, sufficiency or completeness of any information made available by the Principal relevant to the performance of the Services;
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- 5.1.4 it accepts responsibility for its use of the information including any interpretation, inferences or conclusions it has drawn from the information;
- 5.1.5 it has made allowance for all the known matters as at the tender stage, contained in or capable of inference from the several documents forming this Agreement; and
- 5.1.6 it has based its tendered rates and prices on the said information.
- 5.2 The Contractor acknowledges that the Principal:
- 5.2.1 has used reasonable endeavours to ensure that the information supplied is accurate, sufficient and complete;
- 5.2.2 does not warrant the accuracy, sufficiency or completeness of the information;
- 5.2.3 does not accept any liability for and has not made any representation about, the accuracy, sufficiency and completeness of the information and the use of it by the Contractor.

6. Contract Pricing, Invoicing, Payment and VAT

- 6.1 As compensation for rendering the Services, the Principal shall compensate the Contractor in respect of the elements and at the rates, all as set out in Annexe "C".
- 6.2 The Contractor shall, subject to clause 5, be deemed to have reasonably satisfied itself as to the correctness and sufficiency of the Contract Pricing structure, as reflected in Annexe "C".
- 6.3 The Contract Pricing structure encapsulates the prices for the corresponding items submitted as part of the negotiations. The three main categories of items are load and haul, road maintenance and the hire of Rental Equipment. Local enterprise development (LED) is included as part of the Contract Pricing reflected in Annexe "C".
- 6.4 Unless otherwise stated in this Agreement, the Contract Pricing provides pricing for all things necessary for the proper performance of the Services and the remedying of any defects in the execution of the Services.

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- 6.5 Invoices for monthly payments must reflect 100% (one hundred percent) of the value to be invoiced during that month.
- 6.6 The Contractor shall on a monthly basis issue a valid tax invoice and submit such invoice and all supporting documents reasonably required by the Principal's Representative, to the Principal's Representative by no later than the 25th day of the month in which the Services were rendered and in the format as determined by the Principal.
- 6.7 Unless otherwise agreed and provided that the tax invoice and all supporting documents are in order, the Principal shall effect payment of the valid tax invoice by no later than the last day of the month following on the month during which the tax invoice was rendered.
- 6.8 Payment shall be made into the South African bank account of the Contractor as reflected on each monthly tax invoice.
- 6.9 The Contract Pricing is cited as exclusive of VAT.
- 6.10 The contractor record that it is in the process to obtain a VAT number and will submit the details within 20 business days from signature date.
- 6.11 The Principal records that it is a registered VAT vendor under number 4790204392.
- 6.12 Notwithstanding anything to the contrary in this Agreement, upon termination of the Agreement, the final payment for the Services rendered by the Contractor in the last month of the Agreement will only be due and payable once the Contractor has removed all the Contractor's Equipment, all the Rental Equipment and infrastructure associated with the Services from the Site.

7. Elements of pricing and pricing revision

- 7.1 The Parties record and agree that a price in respect of any item contained in Annexe "C" is made up of three elements ("Price"):
- 7.1.1 a fixed component which constitutes 10% of the price ("Fixed Component");
- 7.1.2 a variable component which constitutes 57% of the price ("Variable Component"); and

- 7.1.3 a diesel component which constitutes 33% of the price ("Diesel Component").
- 7.2 The Fixed Component will not be adjusted for the duration of the Agreement.
- 7.3 The Variable Component of the Contract Price will be adjusted on 1 November 2020 and annually thereafter on 1 November subject to negotiations originating from proposed adjustments by The Contractor submitted at least 40 Business Days prior to 1 November of each year.
- 7.4 The Producers Price Index for Domestic Output (PPI) will be used as the foundation in negotiations regarding proposed adjustments. Should the PPI be discontinued or cease to be published for any reason, the PPI will be replaced with a similar index or formula determined by agreement between the Parties within 3 (three) months after written request by either Party after such discontinuation or cessation. Should the Parties be unable to agree within such a period on a replacement index or formula, the Parties will, within 14 (fourteen) days thereafter, mutually appoint an expert to determine such replacement index or formula. If the Parties fail within that period to appoint an expert, the President of the Law Society of the Northern Provinces, or his/her nominee, shall, at the request of either Party, within 14 (fourteen) days thereafter, appoint an expert for the determination of such index or formula out of a list of four nominees, two of whom are nominated by each Party. If a Party fails to so nominate any nominees within 7 (seven) days after being requested so to do by the other Party, it shall forfeit its right to so nominate, and the appointment shall then be made from the nominees nominated by the other Party. The determination by the expert, who shall act as an expert and not as an arbitrator, of such an index or formula in terms hereof, as replacement for the above PPI, shall be final and binding upon the Parties.
- 7.5 The Diesel Component of the Contract Price will be adjusted on a monthly basis in accordance with the adjustments made to the 8C diesel region pricing structure which is published during the first week of every month. The diesel base rate will be recorded per litre as per the rate published on 2 October 2019 ("Base Rate")
- 7.5.1 The formula for the adjustment of the Diesel Component will be as follows:



$$A = [B/C - 1] \times D$$

A = % Adjustment on Base Rate

B = New Fuel Price

C = R 14. 78 per L (being the Base Rate)

D = 33 % (being the Diesel Component).

7.6 adjustment for changes in legislation

6 7.6.1 The Contract Pricing shall further be adjusted to take into account the actual increase or decrease in costs resulting from a change in the Laws or in the judicial or official governmental interpretation of such Laws made after the Commencement Date, to the extent that it affects the Contractor in the performance of the Services.

7.6.2 If the Contractor incurs additional cost as a result of these changes in the Laws or in such interpretations of the Laws, made after the Commencement Date, the Contractor shall give notice to the Principal's Representative of request for the variation in the Contract Pricing substantiated by proof of the change in the Laws and the extent of the effect thereof on the costs of the Contractor to render the Services. Such request shall be in a form prescribed by clause 30.6.

6 7.6.3 Any dispute between the Parties pursuant to the provisions of this clause 7.5 will be settled as provided for in clause 29.

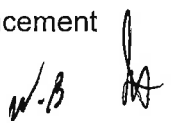
8. Contractor's claims

8.1 If the Contractor considers itself to be entitled to any additional payment, under any clause of this Agreement or otherwise in connection with this Agreement, the Contractor shall give notice to the Principal's Representative, describing the event or circumstance giving rise to the claim. The notice shall be given not later than 15 Business Days after the Contractor has become aware, or should have become aware, of the event or circumstance.

- 8.2 If the Contractor fails to give notice of a claim within such period of 15 Business Days, the Contractor shall not be entitled to any additional payment and the Principal shall be discharged from all liability in connection with the claim.
- 8.3 The Contractor shall keep such records as may be necessary to substantiate any claim, either in the Site or at any other location acceptable to the Principal's Representative. Without admitting the Principal's liability, the Principal's Representative may, after receiving any notice under this clause 8, monitor the record keeping and/or instruct the Contractor to keep further records. The Contractor shall permit the Principal's Representative to inspect all these records, and shall submit copies to the Principal's Representative on request.
- 8.4 Within 30 Business Days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Principal's Representative, the Contractor shall send to the Principal's Representative a fully detailed and substantiated claim which includes full supporting particulars of the basis of the claim and of the additional payment claimed.
- 8.5 After the Principal's Representative has received a fully substantiated claim from the Contractor, the Principal's Representative shall make a determination within 15 Business Days in respect of the Contractor's entitlement or otherwise, to claim additional payment. Such determination shall be subject to the approval of the Principal and shall become effective once such approval is furnished. Any dispute between the Parties pursuant to the provisions of this clause 8 will be settled as provided for in clause 29. The obligations of the Contractor shall not be altered by reason of the submission of any claim during the performance of the Services.

9. Contractor's Equipment and Rental Equipment

- 9.1 The Contractor shall at its own cost and expense supply, maintain and operate all the Contractor's Equipment so as to ensure an availability rate suitable for the proper and timeous rendering of the Services. When brought into the Site, the Contractor's Equipment shall be deemed to be exclusively intended for the performance of the Services. All Contractors' equipment will be declared to the Principal's Representative and inspected by the Principal prior to commencement of services as per Annexe "E".



- 9.2 The Contractor shall, at its own cost and expenses conclude and fully, properly and timeously comply with all the necessary agreements to ensure that the Rental Equipment will remain available on the Site for rendering the Services.

10. Progress and Statutory Reports and Contractor's Register

- 10.1 The Contractor shall submit monthly progress reports to the Principal's Representative. Such report shall include:
- 10.1.1 detailed description of Services performed during the month;
 - 10.1.2 a list of all the Contractor's Equipment, Rental Equipment, the Contractor's personnel, the Subcontractors and their personnel on the Site;
 - 10.1.3 safety statistics, including details of all incidents involving hazardous materials and activities relating to the Environment and public relations; and
 - 10.1.4 any other matter specified by the Principal's Representative.
- 10.2 The Contractor shall, as and when required by the Principal, submit to the Principal such reports and information as are required by the Principal to comply with its statutory reporting obligations in respect of any of the Laws.
- 10.3 The Contractor shall, at its offices on the Site, maintain and monthly update, the Contractor's Register and shall make same available for inspection by the Principal's Representative as and when required. The Contractor's Register shall at all times include at least the documents listed in Annexe "E" as well as all documents reasonably required by the Principal.

11. Access to Site

- 11.1 The Principal shall give the Contractor access to the Site in order that the latter may be able to carry out the Services and comply with its obligations under this Agreement.
- 11.2 The Contractor acknowledges that:
- 11.2.1 it may not have exclusive possession of the Site;

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- 11.2.2 it may only have access to areas within the Site that the Principal's Representative has granted it access to based on the consideration that the Contractor requires access to such areas in order to perform the Services;
- 11.2.3 the Principal may engage other contractors to undertake other activities on the Site while the Contractor is performing the Services; and
- 11.2.4 the Contractor shall not be entitled to any payment of costs or damages incurred as a result of the circumstances specified in clauses 11.2.1 to 11.2.3 other than as provided for by applicable Law.

12. Rights of way and facilities

The Principal shall bear all costs and charges for special and/or temporary rights of way which the Contractor may require, including those necessary for gaining access to the Site. The Contractor shall obtain, at its risk and cost, any additional facilities outside the Site which it may require for the performance of the Services.

13. Security on Site

The Principal shall be responsible for security in respect of the Site only, unless expressly provided otherwise in this Agreement.

14. Contractor's operations on Site

- 14.1 During the performance of the Services, the Contractor shall keep those areas of the Site which it or its Subcontractors are entitled to occupy or traverse in order to render the Services, free from all unnecessary obstruction, and shall store or dispose of, in a safe place and in accordance with any relevant Laws, any of the Contractor's Equipment, Rental Equipment or any surplus Materials. The Contractor shall clear away and remove from the Site any wreckage and rubbish brought onto the Site by it or its Subcontractors.
- 14.2 The Contractor shall be responsible for the maintenance of the area surrounding and incorporating the loading and tipping area.

15. Environmental protection

- 15.1 The Contractor shall take all reasonable steps to protect the Environment (both on and off the Site) in accordance with and to comply with any relevant environmental

management programme applicable to the Site or any Environmental Approval to the extent applicable to the rendering of the Services and to limit damage and nuisance to people and property resulting from pollution, noise and any other effects of its operations in rendering the Services.

15.2 Without derogating from the provisions of clause 15:

- 15.2.1 the Contractor shall ensure that emissions, surface discharges and effluent from the Contractor's activities shall not exceed the values permitted by relevant Laws;
- 15.2.2 the load of each truck shall be covered with tarpaulins approved by the Principal or the Principal's Representative, as the case may be. The Contractor will provide safe and appropriate facilities for the purpose of covering the loads of the trucks prior to any trucks commencing with hauling operations and leaving the Site. The Parties agree that the aforesaid shall apply to all hauling which takes place or will take place on any public road and that there will be no need to so cover any truck load which does not leave the Site; and
- 15.2.3 the Contractor shall comply with the Principal's dust suppression standards, as conveyed to the Contractor from time to time.

16. Hazardous substances

In the event that the Materials used by the Contractor in the performance of the Services are hazardous substances as defined in the Hazardous Substances Act, No. 15 of 1973:

- 16.1 the Contractor warrants that the Materials are safe and without risk to health and safety when used, handled, processed, stored or transported; and
- 16.2 the Contractor shall provide the Principal's Representative with detailed documented information about:
- 16.2.1 the use of such substances;
- 16.2.2 the potential risk to health and safety associated with such substances;
- 16.2.3 any restrictions or control on the use of such substances;
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- 16.2.4 the safety precautions to ensure that such substances are without risk to health and safety; and
- 16.2.5 the procedure to be followed in the event of an accident involving exposure to such substances.

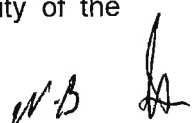
17. Staffing and labour

17.1 engagement of staff and labour

- 17.1.1 The Contractor shall make all arrangements for the appointment of all staff and labour required by it to render the Services and for their payment, housing, nutrition and transport.
- 17.1.2 The contractor will comply to the relevant recruitment policy of the Principal which will include recruitment preference to the local communities surrounding the Site.
- 17.1.3 The appointment of staff and labour must be in accordance with the rates and conditions negotiated. The rates and conditions negotiated may be deviated from where the Contractor obtains the prior consent of the Principal or the Principal's Representative, as the case may be, for the deviation from the negotiated rates and conditions or the Principal or Principal's Representative, as the case may be, suggests more suitable rates and conditions acceptable to the Contractor.
- 17.1.4 All persons employed by the Contractor shall be appropriately qualified, skilled and experienced in their respective fields of application.

17.2 rates of wages and conditions of labour

- 17.2.1 The Contractor shall
- 17.2.1.1 pay rates of salaries and wages which is in line with labour Laws and industry practice, and
- 17.2.1.2 observe conditions of employment which are not lower than those established by the relevant trade union of which the majority of the Contractor's personnel are members.



17.2.2 The Contractor shall put in a place a code of conduct which shall include a disciplinary procedure. Such a code of conduct will comply with industry standards and applicable Laws.

17.2.3 The Principal shall have the right to be kept abreast by the Contractor of the developments of any labour dispute that may arise between the Contractor and the Contractor's employees.

17.3 **prohibited conduct**

17.3.1 The Contractor shall at all times take all necessary precautions to prevent any unlawful, riotous or disorderly conduct ("Disorderly Conduct") by or amongst its employees or those of its Subcontractors, and to preserve peace and protection of persons and property on or near the Site.

17.3.2 The Principal's Representative shall be entitled to request that the Contractor remove any person employed on the Site by it or its Subcontractors including the Contractor's Representative if such a person:

17.3.2.1 performs or instigates Disorderly Conduct amongst fellow employees, the employees of the Contractor's Subcontractors or amongst the Principal's employees or the employees of the Principal's other contractors;

17.3.2.2 persists in any misconduct or lack of care;


17.3.2.3 carries out duties incompletely or negligently;

17.3.2.4 fails to conform with any provisions of this Agreement; or

17.3.2.5 persists in any conduct which is prejudicial to Health and Safety Matters or protection of the Environment.

17.4 **persons in the service of the Principal**

For the duration of this Agreement, the Contractor shall not recruit, or attempt to recruit or employ staff and labour from amongst the Principal's personnel.

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17.5 labour laws

- 17.5.1 The Contractor shall comply with all relevant labour laws applicable to the Contractor's personnel, including Laws relating to their employment, health, safety, welfare, immigration and emigration, and shall allow them all their legal rights.
- 17.5.2 The Contractor shall ensure that its employees obey all current applicable Laws, including those concerning safety at work.

17.6 working hours

- 17.6.1 The Contractor shall ensure that the working hours of all employees comply with the requirements of the Basic Conditions of Employment Act, No 75 of 1997 and other applicable Laws. The Contractor shall employ a shift cycle in accordance with a shift pattern which reduces the risk of operator fatigue to a minimum. Detailed working hours will be agreed to between the Contractor and the Principal's Representative from time to time.
- 17.6.2 No work shall be carried out on the Site on Sundays or gazetted national public holiday in the Republic of South Africa, or outside the normal working hours contemplated in clause 17.6.1, unless:
- 17.6.2.1 otherwise stated in this Agreement;
- 17.6.2.2 the Principal's Representative consents thereto, or
- 17.6.2.3 the work is unavoidable, necessary for the protection of life or property or for the effective and safe rendering of the Services, in which case the Contractor shall immediately advise the Principal's Representative thereof.

17.7 health and safety

- 17.7.1 The Contractor shall at all times take all reasonable precautions to maintain the health and safety of its personnel and ensure that suitable medical and first aid facilities are available at the Site.
- 17.7.2 The Contractor shall appoint a safety officer at the Site who shall comply with the Principal's health and safety policies and to be responsible for

maintaining safety and protection against accidents. The safety officer shall be qualified for this responsibility and shall have the authority to issue instructions and take protective measures to prevent accidents.

- 17.7.3 The Contractor shall send, to the Principal's Representative, details of any accidents as soon as practicable after its occurrence. The Contractor shall maintain records and reports concerning health, safety and welfare of persons as the Principal's Representative may reasonably require. The Contractor shall attend all inquiries relating to safety incidents upon the Site in the event of the Contractor or its employees or its subcontractors or their employees being involved in the incident.

17.8 Contractor's supervision

Throughout the performance of the Services, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary supervision to plan, arrange, direct, manage, inspect and execute the Services.

18. Materials

18.1 supply of Materials

The Contractor shall supply all Materials necessary for the performance of the Services in accordance with this Agreement, and shall arrange transportation to the Site for such Materials. If any delays or stoppages are encountered due to non-availability of Materials, the Contractor shall bear all cost incurred due to the delay.

18.2 storage of Materials

The Contractor shall be responsible for the storage and safe keeping of all Materials brought onto the Site by it for purposes of rendering the Services.

18.3 ownership of Materials

- 18.3.1 Any Materials brought on site by the Contractor for the execution of the Services shall remain the property of the Contractor.

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- 18.3.2 Notwithstanding the provision of this clause 18.3, the Contractor bears the risk of loss or damage to any Materials due to any cause other than the Principal's wilful misconduct or negligence until this Agreement is terminated.

18.4 standard of Materials

The Contractor shall ensure that all Materials used in the rendering of the Services shall be of good quality and which complies with any applicable quality specifications.

19. Suspension

Upon receipt of an instruction to suspend the performance of the Services, the Contractor shall suspend the relevant part of the Services and comply with any lawful instruction issued by the Principal's Representative.

19.1 resumption of Services

In the event that permission or instruction to proceed is given by the Principal's Representative, the Contractor shall immediately recommence the Services or the relevant part of the Services.

19.2 effect of suspension

A suspension contemplated under this clause 19 shall not constitute a breach of this Agreement.

20. Appointment of representatives

20.1 Contractor's Representative

- 20.1.1 The Contractor shall appoint the Contractor's Representative, shall give him all authority necessary to act on the Contractor's behalf in terms of this Agreement and shall give the Principal written notice of such appointment.

- 20.1.2 The Contractor's Representative shall be responsible to oversee and direct the Contractor's performance in terms of this Agreement. If the Contractor's Representative is to be temporarily absent from the Site during the performance of the Services, the Contractor shall appoint a suitable replacement person and shall give the Principal written notice of such appointment.

- 20.1.3 The Contractor's Representative shall, on behalf of the Contractor, receive instructions from the Principal's Representative in accordance with the provisions of clause 20.2 and the other provisions of this Agreement.
- 20.1.4 The Principal may, upon providing written reasons, object to any proposed Contractor's Representative and request the replacement of such Contractor's Representative.
- 20.1.5 The Contractor's Representative must be fluent in the English language and must have proper knowledge and experience of all elements and aspects of the Services.

20.2 **Principal's Representative**


- 20.2.1 The Principal shall appoint the Principal's Representative who shall carry out the duties assigned to him in terms of this Agreement and shall give the Contractor written notice of such appointment.
- 20.2.2 The Principal's Representative shall have no inherent authority. All of the Principal's Representative's rights are attributable to the Principal. If the Principal's Representative is to be temporarily absent from the Site during the performance of the Services, the Principal may appoint a suitable replacement person and shall give the Contractor written notice of such appointment.
- 20.2.3 Except as otherwise stated in this Agreement:
- ~~20.2.3.1~~ ~~whenever carrying out duties or exercising authority (as expressly~~
~~stated in this Agreement), the Principal's Representative shall be~~
~~deemed to act for and on behalf of the Principal;~~
- 20.2.3.2 the Principal's Representative has no authority to relieve either Party of any obligations or responsibilities under this Agreement; and
- 20.2.3.3 any approval, check, consent, examination, inspection, instruction, notice, proposal, request or similar act by the Principal's Representative (including absence of disapproval) shall not relieve the Contractor from any responsibility it has under this Agreement.

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- 20.2.4 The Principal's Representative may from time to time assign duties and delegate authority to assistants, and may also revoke such assignment or delegation.
- 20.2.5 Each assistant, to whom duties have been assigned or authority has been delegated, shall only be authorized to issue instructions to the Contractor to the extent defined by the delegation.
- 20.2.6 Any failure by an assistant to disapprove any part of the shall not constitute approval, and shall therefore not prejudice the right of the Principal's Representative to reject such part of the Services.
- 20.2.7 The Services shall be performed in accordance with this Agreement and any instructions given by the Principal's Representative, provided the Principal's Representative is authorized to issue such instruction under this Agreement. Whenever practicable, the Principal's Representative's instructions shall be given in writing. If the Principal's Representative:
- 20.2.7.1 gives an oral instruction;
- 20.2.7.2 receives a written confirmation of the instruction from the Contractor, within 5 Business Days after giving the instruction; and
- 20.2.7.3 does not reply by issuing a written rejection and/or instruction within 5 Business Days after receiving the confirmation,
- then the confirmation shall constitute the written instruction from the Principal's Representative.

21. Unforeseeable Physical Conditions

- 21.1 If the Contractor encounters natural physical conditions, excluding climatic conditions, and manmade or other physical obstructions and pollutants, which the Contractor encounters at the Site when performing the Services ("Physical Conditions") which it considers to have been reasonably unforeseeable by an experienced contractor at the date of submitting the proposal, the Contractor shall give notice to the Principal's Representative within 5 Business Days of encountering the Physical Conditions ("Physical Conditions Notice").

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- 21.2 The Physical Conditions Notice shall describe the Physical Conditions, so that they can be inspected by the Principal's Representative, and shall set out the reasons why the Contractor considers them to be unforeseeable and which remedies the Contractor proposes. The Contractor shall continue performing the Services, using such proper and reasonable measures as are appropriate in light of the Physical Conditions, and shall comply with any instructions which the Principal's Representative may give.
- 21.3 The Parties shall endeavour to reach agreement on the Physical Conditions and the appropriate measures to address it. If such agreement is not reached within 10 Business days of the Physical Conditions Notice, the issue shall be resolved as provided for in clause 29.

22. Force Majeure

22.1 general

22.1.1 For the purposes of this Agreement, an event or circumstance:

22.1.1.1 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;

22.1.1.2 beyond the reasonable control of the Affected Party;

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

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

shall constitute a "Force Majeure Event" for the purposes of this Agreement.

22.1.2 A Force Majeure Event shall, subject to the conditions in clauses 22.1.1.1 to 22.1.1.4 being satisfied, include, without limitation:

22.1.2.1 war, hostilities (whether war to be declared or not), invasion, act of foreign enemies;

22.1.2.2 rebellion, terrorism, revolution, insurrection, military or usurped power or civil war;

- 22.1.2.3 riot, commotion, disorder, any blockade or embargo;
- 22.1.2.4 any protected strike, lockout, go slow or other such industrial action generally affecting the mining industry or power generation industry or a significant sector of it; and
- 22.1.2.5 natural catastrophes such as earthquake, hurricane, typhoon, volcanic activity or floods."
- 22.1.3 An event which satisfies the requirements of clause 22.1.1, 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 as contemplated in clause 22.1.2 above) shall not constitute a "Force Majeure Event" for purposes of this Agreement.
- 22.1.4 The Affected Party shall be relieved of performance of its obligations in terms of this Agreement during the period that such event and its consequences continue (but only to the extent it is so delayed or prevented from performing partially or at all by the Force Majeure Event), and, provided that notice has been given in terms of clause 22.1.1, 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.
- 22.1.5 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.

22.2 proportionate reduction

Should a Force Majeure Event affect a Party's ability to comply with its obligations or enforce its rights, each of the Parties' respective obligations in terms hereof shall be reduced in proportion to the reduction in the capacity of that Party to comply with the terms and conditions of this Agreement.

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22.3 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 and with due regard to the nature and anticipated duration of the Force Majeure Event.

22.4 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 and upon termination of the event giving rise thereto, shall forthwith give written notice thereof to the Unaffected Party.

22.5 extension of this Agreement



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, attempt to 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 and failing such agreement within 10 Business Days after either Party initiated discussions in writing, this Agreement shall not be extended.

22.6 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 6 months. Neither Party shall have any claim against the other for any loss suffered as a result of such termination.

23. Termination

23.1 Either Party may terminate this Agreement:

- 23.1.1 subject to clause 24.1.1, forthwith upon learning of the other Party's breach of any warranty given by it in terms of this Agreement; or
- 23.1.2 notwithstanding anything to the contrary contained herein, in the event of a breach of this Agreement by a Party which breach cannot be remedied by a claim for damages as regulated in this Agreement or by specific performance; or
- 23.1.3 subject to clause 24.2, in the event of the other Party:
- 23.1.3.1 taking steps to place itself, or is placed in, liquidation, whether voluntarily or compulsorily, or if a liquidator, trustee, curator or judicial manager is appointed for the judicial management or winding up of the Party, in either case whether provisionally or finally or analogous proceedings are begun and not stayed or discharged before the third Business Day prior to the date set for the hearing of such proceedings; or
- 23.1.3.2 taking steps to deregister itself or is deregistered; or
- 23.1.3.3 committing an act which would be an act of insolvency, as defined in the Insolvency Act, No 24 of 1936, as at the Signature Date, if committed by a natural person; or
- 23.1.3.4 failing to satisfy a judgment against it within 10 Business Days of becoming aware of the judgment, unless the Party provides evidence on an ongoing basis to the reasonable satisfaction of the other Party that steps have been taken within the 10 Business Days to appeal, review or rescind the judgment and to procure suspension of execution and that such steps are being expeditiously pursued, in which case the period of 10 Business Days shall run from the date on which the judgment becomes final or the attempt to procure the suspension of execution fails; or
- 23.1.3.5 having any of its assets, properties or any part of its business attached or any holder of a security interest takes possession of any assets, properties or any part of the business of that Party and steps have not been taken by that Party to set such attachment aside or to recover such possession within the earlier of 10 Business Days from it acquiring

knowledge of such attachment or possession or such time as that Party ought reasonably to have acquired such knowledge of such attachment or taking of possession occurring; or

23.1.3.6 entering into or proposing to enter into a scheme of compromise with its creditors or a scheme of arrangement with the Shareholders, in terms of section 114 of the Companies Act, No. 71 of 2008, or similar applicable provision including, if any of the its directors or the shareholders adopt any resolution for the Party to enter into a compromise, composition or arrangement with its creditors, to place the Party under provisional or final liquidation or provisional or final judicial management or any of the foregoing otherwise becomes effective in any other way, or the Party commences negotiations with any one or more of its creditors with a view to the general readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition of its creditors; or

23.1.3.7 any authority condemns, nationalises, seizes, displaces, acquires control of or otherwise expropriates, all or any of the Site, or any portion thereof; the Materials and/or the Contractor's Equipment and/or the Rental Equipment; the Party's management of or authority in respect of the conduct of its business or the shares of the Party; or

23.1.3.8 otherwise repudiates this Agreement,

("Deemed Termination Event"), provided that any of the events listed in this clause 23.1, or as otherwise regulated in this Agreement to be a Deemed Termination Event, shall constitute a single such event; or

23.1.4 by furnishing the other Party with 60 calendar days' notice of such termination.

23.2 On the date of termination ("the Termination Date"), whether due to termination arising out of a Deemed Termination Event or otherwise, the Contractor shall discontinue execution of the Services.

23.2.1 The Principal shall remain liable to settle the Contractor's fees in relation to all Services completed prior to the Termination Date.

W.B. [Signature]

- 23.2.2 The Principal may, in addition to a right of retention (if applicable):
- 23.2.2.1 set off any agreed amounts payable by the Contractor to the Principal against amounts which are payable by the Principal to the Contractor; and
 - 23.2.2.2 withhold further payments to the Contractor until the costs of performing the Services and remedying any defects, and all other agreed costs incurred by the Principal, have been established and set off against any amounts which are payable by the Principal to the Contractor.
- 23.3 Upon termination of this Agreement, a Party shall not be entitled to claim from the other Party, any loss or damages (whether the loss or damages are direct, indirect, consequential, contractual, delictual or otherwise) suffered by that Party as a result of any such termination.

24. Breach

24.1 breach of a warranty

If a Party breaches a warranty under this Agreement, and fails to comply with a written notice from the non-breaching Party to the defaulting Party requiring that Party to:

- 24.1.1 commence within 48 hours to take all reasonable steps to remedy the breach and, having commenced, to diligently pursue such steps; and/or
- 24.1.2 to fully, properly and effectively remedy that breach or warranty within 15 Business Days after receipt of the notice, 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:
 - 24.1.2.1 to sue for immediate specific performance of any of the defaulting Party's obligations under this Agreement; or
 - 24.1.2.2 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 on the giving of the notice.

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24.2 breach of other contractual provisions

If either Party breaches any provision of this Agreement (and which provision is not regulated in clause 24.1 in its widest sense), and fails to comply with a written notice from the non-breaching Party to the defaulting Party requiring that Party to:

- 24.2.1 commence within 48 hours to take all reasonable steps to remedy the breach and, having commenced, to diligently pursue such steps; and/or
- 24.2.2 to fully, properly and effectively remedy that breach or warranty within 30 Business Days after receipt of the notice, 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:
 - 24.2.2.1 to suspend the performance of its obligations hereunder until such time as the defaulter has remedied its breach, without prejudice to the aggrieved Party's right to claim damages;
 - 24.2.2.2 to sue for immediate specific performance of any of the defaulting Party's obligations under this Agreement; or
 - 24.2.2.3 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.

24.3 general

In relation to any of the events referred to in clause 24.1 or 24.2, the aggrieved Party shall be entitled to claim such damages as the aggrieved Party may be entitled to in law, excluding any loss of profit, indirect or consequential damages, save as otherwise expressly provided for in this Agreement.

25. Risk and responsibilities

25.1 indemnities

The Contractor shall indemnify and hold harmless the Principal against and from all claims, damages, losses and expenses caused by the Contractor's negligence in respect of:

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25.1.1 bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the Contractor's performance of the Services and remedying of any defects, unless and to the extent attributed to any gross negligence, wilful misconduct or breach of this Agreement by the Principal;

25.1.2 damage to or loss of any property, real or personal to the extent that such damage or loss arises out of or in the course of or by reason of the Contractor's performance of the Services and the remedying of any defect; and

25.1.3 any breach of the provisions of clause 4.6.

25.2 **Principal's risks**

The Principal's risks are as follows:

25.2.1 war, hostilities (whether declared or not), invasion, act of foreign enemies within the Republic of South Africa;

25.2.2 rebellion, terrorism, revolution, insurrection, military or usurped power or civil war, within the Republic of South Africa;

25.2.3 riot, commotion, local area unrest or disorder within the Republic of South Africa by persons other than the Contractor's employees and its Subcontractor or Subcontractors, as the case may be;

25.2.4 munitions of war, explosive materials, ionizing radiation or contamination by radio activity, within the Republic of South Africa, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio activity; and/or

25.2.5 any operation of the forces of nature which is unforeseeable or against which an experienced Contractor could not reasonably have expected to have taken adequate preventative precautions.

25.3 **consequences of the Principal's risks**

If the Contractor incurs additional cost in executing the Services as a direct result of the occurrence of any of the Principal's risks, the Contractor shall give notice to

the Principal's Representative and shall be entitled to payment of such cost. Where the value of such cost is disputed, the Parties shall submit the dispute for resolution and/or arbitration as contemplated in clause 29.

25.4 limitation of liability

25.4.1 Neither Party shall be liable to the other Party for loss of use, loss of profit, loss of any contract or any indirect or consequential loss or damage which may be suffered by the other Party in connection with this Agreement or the termination thereof.

25.4.2 This clause 25.4 shall not limit liability in any case of fraud, deliberate default, reckless misconduct, gross negligence or corruption by the Contractor.

26. Insurance

26.1 Principal's insurance

26.1.1 The Principal has arranged for a principal controlled insurance policy. A copy of such policy is available to the Contractor upon request.

26.1.2 The Contractor warrants that it will familiarize itself with the terms and conditions of such policy. The existence of such policy shall in no way limit the indemnities given by the Contractor to the Principal in terms of this Agreement.

26.2 Contractor's insurance

26.2.1 The Contractor shall obtain insurance which complies with the provisions of this Agreement. Such insurance shall be effected with insurers and on terms approved by the Principal, which approval shall not unreasonably be withheld.

26.2.2 Notwithstanding anything to the contrary in this Agreement, the Contractor agrees to effect and maintain in force for the duration of this Agreement:

26.2.2.1 public liability insurance with an indemnity limit of at least R20,000,000.00 (twenty million Rand) per incident; and

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- 26.2.2.2 balance of third party vehicle insurance including passenger liability, fire and explosion with an indemnity limit of at least R1,000,000.00 (one million Rand) per incident.
- 26.2.3 Payments received from insurers shall be used for the rectification of the loss or damage. The Contractor shall submit to the Principal:
- 26.2.3.1 evidence that the insurance described in this clause has been effected; and
- 26.2.3.2 copies of the policies for the insurance described in this clause.
- 26.2.4 When each premium is paid, the Contractor shall upon request, submit evidence of payment to the Principal.
- 26.2.5 The Contractor shall comply with the conditions stipulated in each of the insurance policies. The Contractor shall keep the insurers informed of any relevant changes to the performance of the Services and ensure that insurance is maintained in accordance with this clause 26.
- 26.2.6 The Contractor shall not make any alteration to the terms of any insurance policy without the prior approval of the Principal, which approval shall not unreasonably be withheld.
- 26.2.7 If the Contractor fails to effect and keep in force any of the insurances it is required to effect and maintain under this Agreement, or fails to provide satisfactory evidence and copies of policies in accordance with this clause 26, the Principal may (at its option and without prejudice to any other right or remedy) effect insurance for the relevant coverage, pay the premiums due and set-off such payment against amounts payable to the Contractor.
- 26.2.8 Nothing in this clause limits the obligations, liabilities or responsibilities of the Contractor under this Agreement or otherwise. Any amount not insured or not recovered from the insurers shall be borne by the Contractor in accordance with its obligations, liabilities or responsibilities.

27. Indemnity

- 27.1 Each Party (the "Indemnifying Party") agrees to indemnify and hereby indemnifies and holds harmless the other Party, its affiliates, directors, employees, contractors

and agents (the "Indemnified Party") from and against any and all loss, claims, liability (including, without limitation, such liability, loss, damage, injury or death arising from any negligence, gross negligence, act or omission of or by the Indemnifying Party), whatsoever, howsoever, whenever arising, that the Indemnified Party may incur or suffer, directly or indirectly, as a result of any loss or destruction of, or damage to, the property of any persons and/or any personal injury or death of any person whatsoever, howsoever or whenever arising in the course of or as a result of or in connection with the rendering of the Services and/or the performance or non-performance of the Indemnifying Party's obligations in terms of this Agreement, and all costs and expenses incurred by the Indemnified Party shall be reimbursed by the Indemnifying Party promptly on demand, including reasonable costs incurred in connection with the investigation of, preparation for or defence of any pending or threatened litigation or claim within the terms of this indemnity or any matter incidental thereto.

27.2 If any Party becomes aware of any claim relevant for the purposes of the aforesaid indemnity, that Party shall properly notify the other Party thereof and shall, subject to being indemnified and secured to that Party's reasonable satisfaction by the other Party against all losses, damages, liabilities, claims, costs, charges and expenses that may be suffered or incurred thereby, take or procure to be taken such action as that Party may reasonably request to avoid, dispute, resist, appeal, compromise or defend such a claim, and that Party shall provide the other Party and its legal advisers with such information and documentation relating to such claim as it may reasonably require.

27.3 The aforesaid indemnity shall be subject to any rights that an Indemnified Party may have in terms of this Agreement, the common law or otherwise.

27.4 The above indemnity by the Contractor shall include liability for any additional levy imposed on the Principal in terms of an additional or increased SIMRAC levy envisaged in clause 29.

28. SIMRAC

28.1 In the event that, during the rendering of the Services, any person is injured or killed in circumstances where such injury or death results in an additional or increased SIMRAC levy being imposed on the Principal in terms of the MPRDA and/or the MHSA and/or the Regulations promulgated in terms thereof, or any Law

in substitution thereof, or in any other fine or penalty in terms of any other legislative provision, then, unless such injury or death was caused by the Principal, its employees or representatives, the Contractor shall be liable to the Principal for an amount equal to the total amount of such levies or fines that are levied on or payable by the Principal. Such amount will be payable by the Contractor to the Principal on demand, as a lump sum once off payment and shall not be capable of set off or deduction.

- 28.2 The Principal agrees to make available to the Contractor all research and reports that it receives from SIMRAC and to the extent that the Contractor requires any specific research to be done, the Principal agrees to request SIMRAC to undertake such research at the cost of the Contractor and to make the finding of such research available to the Principal and the Contractor.

29. Dispute Resolution and arbitration

29.1 **separate, divisible agreement**

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

- 29.1.1 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 this 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;

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

29.2 **disputes subject to referral to CEO's and arbitration**

Save as may be expressly provided for elsewhere in this Agreement for the resolution of particular disputes, any other dispute arising out of or in connection with this Agreement or the subject matter of this Agreement, including without limitation, any dispute concerning:

- 29.2.1 the existence of this Agreement apart from this clause;
- 29.2.2 the interpretation and effect of this Agreement;

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- 29.2.3 the Parties' respective rights or obligations under this Agreement;
- 29.2.4 the rectification of this Agreement;
- 29.2.5 the breach, termination or cancellation of this Agreement or any matter arising out of the breach, termination or cancellation;
- 29.2.6 damages arising in delict, compensation for unjust enrichment or any other claim, whether or not the rest of this Agreement apart from this clause is valid and enforceable,


shall be referred to the Chief Executive Officers of the Parties ("CEO's") as set out in clause 29.3.

29.3 **referral to CEO's**

Any dispute as contemplated in clause 29.2 shall be referred in writing to the respective CEO's of the Parties with the objective of settling such dispute within 14 days. If the Parties are unable to resolve any dispute by referral to the CEO's within 14 days of any Party in writing requesting that the dispute be so resolved, then the dispute shall be submitted to and decided by arbitration as set out in this clause.

29.4 **appointment of arbitrator**

- 29.4.1 The Parties shall agree on the arbitrator who shall be an attorney or advocate on the panel of arbitrators of the Arbitration Foundation of Southern Africa ("AFSA"). If agreement is not reached within 10 Business Days after any Party calls in writing for such agreement, the arbitrator shall be an attorney or advocate nominated by the Registrar of AFSA for the time being.
- 29.4.2 The request to nominate an arbitrator shall be in writing outlining the claim and any counterclaim of which the Party concerned is aware and, if desired, suggesting suitable nominees for appointment as arbitrator, and a copy shall be furnished to the other Parties who may, within 7 days, submit written comments on the request to the addressee of the request with a copy to the first Party.

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29.5 venue and period for completion of arbitration

The arbitration shall be held in Johannesburg, Gauteng and the Parties shall endeavour to ensure that it is completed within 90 days after notice requiring the claim to be referred to arbitration is given.

29.6 Arbitration Act - rules

The arbitration shall be governed by the Arbitration Act, 1965, or any replacement Act and shall take place in accordance with the Commercial Arbitration Rules of AFSA.

29.7 arbitrator may apply equity

The arbitrator need not strictly observe the principles of law and may decide the matters submitted to him according to what he considers equitable in the circumstances.

29.8 Application to court for urgent interim relief

Nothing contained in this clause 29 shall prohibit a Party from approaching any court of competent jurisdiction for urgent interim relief pending determination of the dispute by arbitration.

30. Miscellaneous matters**30.1 Address for service of legal documents**

~~30.1.1~~ The Parties choose the following addresses at which documents in legal proceedings in connection with this Agreement may be served (ie their *domicilia citandi et executandi*):

30.1.1.1 in the case of the Principal to:

physical address :

5 De Wet Street
Piet Retief
2380

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30.1.1.2 in the case of the Contactor to:

physical address:

- DDK LOGISTICS

Donkerhoek Farm
Piet Retief
2380

30.1.2 A Party may change that Party's address for this purpose by notice in writing to the other Party, such change to be effective only on and with effect from the 7th Business Day after the giving of such notice.

30.1.3 Notwithstanding anything to the contrary herein contained, a document actually received by a Party shall be an adequate service of that document to that Party notwithstanding that it was not sent to or delivered at that Party's chosen *domicilium citandi et executandi*.

30.2 postal address

30.2.1 Any written notice in connection with this Agreement may, subject to clause 30.1, be addressed:

30.2.1.1 in the case of the Principal to:

postal address : PO Box 745
Piet Retief
2380

fax no : 0178265284

E-Mail Address : bruce.ince@kangracoal.co.za

and should be marked for the attention of the Principal's Representative.

30.2.1.2 in the case of the Contactor to:

by hand

Contractor's Site Manager's Office

E- Mail Address : vilakaziwb1@gmail.com

and should be marked for the attention of the Contractor's Representative.

30.2.2 The notice shall be deemed to have been duly given:

30.2.2.1 5 Business Days after posting (14 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 postal address;

30.2.2.2 on delivery, if delivered to the Party's physical address between 08h30 and 16h00 on a Business Day (or on the first Business Day after that if delivered after 16h00);

30.2.2.3 on despatch, if sent to the Party's then fax number or e-mail address between 08h30 and 16h00 on a Business Day (or on the first Business Day after that if despatched after 16h00);


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.

30.2.3 A Party may change that Party's postal 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 7th Business Day after the giving of such notice.

30.2.4 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 that Party notwithstanding that it was not sent to or delivered at that Party's chosen addresses, fax number or e-mail address.

30.3 **entire contract**

This Agreement contains all the provisions agreed on by the Parties with regard to the subject matter of this 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.

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30.4 no stipulation for the benefit of a third person

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

30.5 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.

30.6 variation, cancellation and waiver

30.6.1 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 the Parties.

30.6.2 In the event of the Contractor requesting a variation to the scope of the Services, the Contractor shall reduce such a request to writing containing the following details:

30.6.2.1 a description of the proposed Services to be performed and a program for its execution;

30.6.2.2 the Contractor's proposal for any necessary modifications to the existing program; and

30.6.2.3 the Contractor's proposed valuation of the variation.

30.6.3 The Principal's Representative shall, after receiving such a proposal, respond with approval, disapproval or comments. The submission of a proposed variation does not have the effect of suspending existing Services. The Contractor shall continue providing the Services in its then current form until both Parties have agreed in writing on any proposed variation.

30.6.4 In the event of the Principal requiring a variation to the scope of the Services, the Principal shall reduce such a requirement to writing containing the following details:

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- 30.6.4.1 a description of the proposed Services to be performed and a program for its execution;
- 30.6.4.2 the Principal's proposal for any necessary modifications to the existing program; and
- 30.6.4.3 a request to the Contractor for a quotation for such variation.
- 30.6.5 Upon receipt of a quotation from the Contractor, the Parties shall attempt to reach agreement on the terms of such variation and once agreement has been reached, the Parties shall reduce their agreement to writing.
- 30.6.6 The initiation by either Party of a proposed variation will not have the effect of suspending existing Services. The Contractor shall continue providing the Services in its then current form until both Parties have agreed in writing on any proposed variation.

30.7 **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.

30.8 **cession and assignment**

- 30.8.1 The Contractor may not cede its rights or assign its obligations in terms of this Agreement without the Principal's prior written consent, which consent the Principal may withhold without stating any reasons.
- 30.8.2 The Principal may freely cede its rights or assign its obligations in terms of this Agreement to any party and shall be obliged to advise the Contractor thereof in writing.

30.9 **applicable law**

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

30.10 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.

30.11 costs

30.11.1 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.

30.11.2 Any costs, including all 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 the other Party shall be borne by the Party in breach.

30.12 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.

30.13 independent advice

Each of the Parties hereby respectively agrees and acknowledges that:

30.13.1 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

30.13.2 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.

30.14 good faith

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

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30.15 **co-operation**

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.

Signed at *Kangra* on 2019


Witness**for Kangra Coal Proprietary Limited***30th October 2019*

duly authorised and warranting such
authority

Signed at

on

2019

Witness**for DDK Logistics***30th October 2019*

duly authorised and warranting such
authority

N.B.

Annexe A

LETTER OF ACCEPTANCE

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Annexe B**LOADING AND HAULING SERVICES**

The Contractor will provide a portion of the following Services, the compensation for which is included in the Contract Pricing as reflected in Annexe "C":

1. Hauling of Coal

1.1 The Services to be provided by the Contractor include the following:

1.1.1 The Contractor shall haul at its own risk, from any of the Coal stockpiles within the Site or from the load out bins at the Maquasa East Plant and haul the loaded Coal to and tip the loaded Coal in areas designated from time to time for that purpose at the Principal's Panbult Siding and to any other delivery point designated by the Principal's Representative from time to time as provided for in this Agreement, in such quantities and at such frequency as it is obliged to do in terms of this Agreement, as directed by the Principal's Representative from time to time and in accordance with Annexe "C";

1.1.1 The Contractor shall haul Coal to and tip same at the Panbult Siding and maintain an adequate stockpile at the Panbult Siding to enable continuous loading of export and inland trains;

1.1.2 The Contractor shall, at its own risk, within the Site or from the Discard bins at the Maquasa East Plant and haul the loaded Discard to areas designated from time to time for that purpose by the Principal's Representative as provided for in this Agreement, in such quantities and at such frequency as it is obliged to do in terms of this Agreement, as directed by the Principal's Representative from time to time and in accordance with Annexe "C";

1.1.3 The Contractor shall haul Coal to other designated clients of the Principal;

1.1.4 The Contractor shall not have to attend to the maintenance of roads or contribute to the cost thereof as set out in 6 below for a period of 12 months from signature date. From month 13 the Contractor will contribute to the

cost of the road maintenance. Both parties will enter to an agreement in this regards at least 60 days prior to month 13 of the duration of the contract. In this regard The Principal it is recorded that the distance to the Panbult Siding is approximately 29 kilometres on public roads of which approximately 24 kilometres are on gravel roads; and

- 1.1.5 The Contractor could, as and when required by the Principal, make equipment available for hire to the Principal as set out and at the rates in Annexe "C". This will be subject to prior approval and according to the Contractor's allocation during the duration of the contract.
- 1.2 Distances to all delivery destinations are indicated in Annexe "C".
- 1.3 The Contractor will provide and maintain the availability of a fleet of side and other tipper trucks to load and transport the tonnages required by the Principal and communicated to the Contractor from time to time.
- 1.4 Should the Contractor be unable to meet the loading and hauling targets due to its equipment not meeting planned availability and performance targets, the Contractor shall make available replacement and/or additional equipment and operational and maintenance labour at its own expense to make up the shortfall to meet the agreed targets.
- 1.5 If the Principal requires the Contractor to haul any coal from the Principal's underground or opencast operations, such coal will be loaded from the relevant stockpiles created by the Principal.
-
- 1.6 Notwithstanding anything to the contrary contained in this Agreement, the Parties agree and record that the tonnage and hours reflected in Annexe "C" are indicative only and the Principal does not guarantee that such tonnage will be required to be hauled or that the to be hired equipment will be required for the indicated hours and the Contractor hereby waives any right it may have to rely on such tonnage and/or hours.
- 1.7 The Parties agree that the actual tonnage to be hauled by the Contractor as part of the Services and the actual hours during which rental equipment may be required, will from time to time be as agreed between the Parties in their regular planning meetings.

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2. Workshops (Not applicable during year 1)

Workshop equipment and facilities will not be supplied by the Principal and the Contractor will, for its own account, be responsible to establish its own workshop and lay down area and provide its own such facilities required to render the Services ("**Contractor's facilities**"). If the Contractor requires that the Contractor's facilities be located on the Site, it shall locate same in an area or areas designated by the Principal.

3. General responsibilities of the Contractor:

- 3.1 Housekeeping around the loading and tipping area will be the responsibility of the Contractor, where applicable
- 3.2 Where applicable, the Contractor must manage the stockpiles effectively to optimize the available stockpile area to prevent downtime.
- 3.3 The Contractor must take all measures required to prevent slumping and formation of high walls and to conduct maintenance on stockpiles in order to safeguard people and mobile machines.
- 3.4 The Contractor must provide enough qualified operators to operate the haulers and loaders to conform to the legal operating hours.
- 3.5 The Contractor must provide daily traffic management reports which report shall include all reasonable requirements of the Principal's Representative and at least the following:
 - 3.5.1 Number of tipper trucks, loaders and other equipment allocated to this Agreement;
 - 3.5.2 Speed Control of haulers;
 - 3.5.3 Fuel Consumption of all vehicles and equipment; and
 - 3.5.4 All the Contractor's consumption of oil and other lubricants.
- 3.6 The Contractor must provide a 24 hours (twenty four) response time in case of any breakdown.
- 3.7 The Contractor must ensure that the following will be clean and clearly visible at all times;

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- 3.7.1 head and tail lights of all vehicles and equipment; and
- 3.7.2 rear Chevron of all the transport vehicles.
- 3.8 The Contractor must complete pre-shift checklists (at the start of each shift) on each transport vehicle and submit same to the Principal's surface co-ordinator at Maquasa East.
- 3.9 Any load out bin operation (but not the maintenance thereof) will be the responsibility of the Contractor.
- 3.10 Discard hauling and handling will be inclusive of compaction on the discard dumps.
- 3.11 The Contractor will provide the following:
 - 3.11.1 an adequate number of haulers and loaders to conduct the portion of the Services;
 - 3.11.2 a detailed list of equipment/machines to the Principal's Representative and will not be entitled to remove any equipment from the Site without the prior written consent of the Principal's Representative, which consent will not unreasonable be withheld;
 - 3.11.3 adequate qualified drivers/operators to conform to the legal operating hours whilst fulfilling the Service; and
 - 3.11.4 the Contractor will be responsible to arrange accommodation for its employees at the Contractors cost.

4. Mass determination

- 4.1 The mass of Coal or Discard transported shall be accepted as the mass in terms of the weighbridge certificates issued by the Principal at its relevant weighbridges. The Contractor shall ensure that every truck shall be weighed empty once per day, and thereafter that every full load shall be weighed on the Principal's weighbridges.
- 4.2 The Contractor shall ensure that the loaded mass of its vehicles is kept within legal requirements/limits, as per applicable legislation so as not to prejudice the rendering of the Services in any way.

- 4.3 The Contractor shall ensure that the Principal's weighbridges are cleaned (of Coal and Discard) on a daily basis.

5. **Spillages**

- 5.1 It shall be the Contractor's responsibility to ensure that spillages of Coal, Discard and any fuel, lubricant and oil used by the Contractor in rendering the Services are kept to a minimum.
- 5.2 Any spillages referred to in 5.1 above by the Contractor, directly or indirectly, is to be cleaned up and any contaminated soil reclaimed and brought back by the Contractor to a point as designated by Principal at no extra charge.
- 5.3 All goods/Coal and Discard salvaged by the Contractor during cleaning/clearing shall remain the property of the Principal.

6. **Maintenance of gravel roads**

- 6.1 Contribution to the maintenance of gravel roads by the Contractor shall be exempted for a period of 12 months only from signature date.

7. **Management and legal appointments**

The Principal's strategic partners will provide the following people on behalf of the Contractor during the first 12 months of the contract only. The contractor will contribute to the below appointments according to allocation from Month 13 of the contract.

- 7.1 Site Manager; and

- 7.2 Safety Officer.

8. **Training**

8.1 **induction training**

All employees of the Contractor will be required to attend induction as prescribed by the Contractors Pack. The cost of such induction shall be for the account of the Contractor.

8.2 **competency training**

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All employees of the Contractor will be subject to assessments of competency by the Principal's training centre and licenses will be issued in accordance with legal requirements and mine standards by the training centre in conjunction with the Principal's engineering manager. Licenses will be required to be renewed after 180 days.

8.3 **training records**

Training records will be kept by the Contractor for all employees of the Contractor detailing the relevance of such training to the rendering of the Services.

9. **Water**

The Contractor will, for its own account, be entitled to source water, required for purposes of and incidental to its rendering of the Services to the Principal, from any available source on the Site, provided however that the Principal's own water requirements shall be satisfied first.

10. **Site clearance at termination of the Agreement**

Upon the termination of the Agreement, the Contractor will be allowed one month to ensure that all the Contractor's Equipment and infrastructure associated with the Services are removed from the Site.

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Annexe E**CONTRACTOR'S REGISTER AND PROPOSAL**

A) The Contractor's Register shall contain at least the following:

1. The Contractor's Letter of Good Standing in terms of COIDA;
2. Copies of the first pages of the identity documents of all the Contractor's employees (involved in rendering the Services) and all the employees of any Subcontractor (involved in rendering the Services) with contact details of their next of kin;
3. Copies of all medicals of the employees referred to in 2 above;
4. Copies of all induction records of the employees referred to in 2 above;
5. A list of all of the employees referred to in 2 above;
6. Details of all risk assessments;
7. Contact numbers of all emergency service providers; and
8. Letters of appointment of the Contractor's Management team which renders the Services as well as the Contractor's organogram in respect of such persons.

The Contractor shall be obliged to update the Contractor's Register at least once a month.

It will be competent for the Principal and/or the Contractor to require that documents be added to the Contractor's Register from time to time.

B) MENTORSHIP UNDER LOCAL ENTERPRISE DEVELOPMENT PROGRAM:

1. The Principal have awarded this contract to the Contractor under condition that the Contractor undergoes an intensive development program under the mentorship of contractors that will develop the Contractor in a structured manner.
2. **The program referred to in clause B 1):**
 - The Principal will appoint strategic partners that are experienced in the industry to assist The Principal with the development program.

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- The Principal's strategic partners will focus on 3 areas of development, namely Business Skills, Compliance and financial assistance during the duration of the contract.
- The Contractor will be developed to own a minimum of 23.5% of the total coal haulage requirements at the Principal's site. This will be achieved with yearly targets for each year until 2022. The revision dates for target setting will be on 1 August 2020 and thereafter on 1 August of each year. The applicable agreed targets will be formulated in writing and signed by both parties before 1 November of each year.
- Year 1 targets are set on actual equipment and the agreed target is a minimum of 5 and a maximum of 10 side tippers by end of year 1. The Contractor will also be allocated 1 x front end loader for year 1.
- The Contractor will receive full on site facility management free of charge from The Principal's strategic partners for a period of 12 months from signature date. The arrangement will be reviewed on 1 November 2020.
- The Contractor will receive assistance from The Principal's strategic partners relating to a truck ownership scheme. Any such assistance will be conducted in writing between the parties. The Principal will facilitate the negotiations.
- The Principal will monitor the development program on a regular basis to ensure progress towards the intended outcome.
- The Principal's strategic partners will contribute towards a fund which will be established for the 2 local businesses selected by the Principal to participate contractually with the mentorship contracts. The strategic partners will contribute 1.5% of their loading and hauling turnover towards this fund. The Principal will contribute R.0.50 (fifty cents) per ton towards this fund.
- DDK Logistics will be the beneficiary of 45% of the fund.

W/B



14 October 2019

DDK VENTURE

318 Old Stand
Driefontein
2383

Attention: Mr.B Vilakazi

Re: LETTER OF ACCEPTANCE: Coal Haulage Under Mentorship.

With reference to the tender submitted by DDK, it is our pleasure to inform you that your company has been awarded a portion of the tender for coal haulage at Kangra Coal on a contractual basis.

The details of the award, rates, etc. will be concluded during contract negotiations between the parties prior to commencement on 29 October 2019

Please sign below as acceptance of the above.

Yours faithfully,

A handwritten signature in black ink, appearing to be "B Hammond", written over a horizontal line.

Mr. B Hammond
General Manager
Kangra Coal (Pty) Ltd

A handwritten signature in black ink, appearing to be "B Vilakazi", written over a horizontal line.

Mr. B Vilakazi
Representative
DDK Venture