



CONSTITUTION OF THE COAL ROADMAP FOR SOUTH AFRICA

THE PARTICIPANTS, WITH THE FULL SUPPORT AND PARTICIPATION OF THE SOUTH AFRICAN GOVERNMENT

CONSIDERING that South Africa has a coal based energy economy, and notwithstanding the advances being made in renewable energies, energy efficiency measures and the proposed new nuclear build for electricity generation, acknowledging that the use of fossil fuels is forecast to increase;

CONSIDERING that the government and coal producers, beneficiaries, transporters and users need to address the future of the South African coal industry;

CONSIDERING that those involved in the production, transformation and use of coal need to consider issues around sustainability, including the challenge of climate change;

HAVE AGREED AS FOLLOWS:-

1 NAME

The name of this initiative is and shall be the **Coal Roadmap for South Africa** (the "**Initiative**").

2 LEGAL STATUS

2.1 The Initiative is and shall be a distinct and separate legal entity with the power to acquire, to hold and to alienate Property and with the capacity to acquire rights and obligations having perpetual succession.

2.2 The Initiative is and shall be a juristic person and can act and be acted against in its own name.

2.3 The property and funds of the Initiative vest in the Initiative as a juristic person and no Member of the Initiative shall be liable for the debts of the Initiative.

3 INTERPRETATION

In this Constitution, except in a context indicating that some other meaning is intended,



- 3.1 **Act** means the Competition Act 89 of 1998 and all amendments and powers enacted thereunder;
- 3.2 **Adherents** means a non-Contributing entity, nevertheless involved in the Initiative:-
- 3.2.1 as a member of the Steering Committee;
- 3.2.2 as well as any Stakeholder whose involvement in the Initiative is approved by the Board;
- 3.3 **Assigns** means any entity tasked with providing financial, secretariat and project management functions at the request of the Board on the further terms contained herein, such entities being as at the Effective Date, the Fossil Fuel Foundation and the South African National Energy Research Institute;
- 3.4 **Board** means the board appointed pursuant to 9 having the powers as set out more fully in 9.2;
- 3.5 **Board Member** means a Members' designated representative or alternate on the Board;
- 3.6 **Constitution** means this document and all appendices attached hereto;
- 3.7 **Contribution** means any amount paid to or benefit received by the Initiative and **Contributing** shall bear like meaning;
- 3.8 **Effective Date** means the date on which the Constitution becomes binding on the Participants being:-
- 3.8.1 on or after [hardcode date]; and
- 3.8.2 provided at least two of the Founding Members listed in Appendix B have signed the Constitution
- 3.9 **Initiative** means this Coal Roadmap initiative embarked on by the Participants with the full support and participation of the Government in order, subject to the provisions of the Act to detail and assess options and scenarios for the future development of the individual and collective components of the domestic coal industry and extract recommendations to maximise the opportunities of coal as a



valuable energy and chemical resource, while ensuring a better quality of life for current and future generations;

- 3.10 **Founding Member** means those Members identified in **Appendix B**
- 3.11 **Government** means the Government of the Republic of South Africa;
- 3.12 **Members** means both a Founding Member and a Subsequent Member
- 3.13 **Objectives** means, to the extent permitted by the provisions of the Act, to:-
- 3.13.1 provide independent and impartial expert analysis and comment on the various national and international drivers, including but not limited to climate change, that may impact on the supply and utilisation of coal over the coming twenty five years;
 - 3.13.2 provide independent and impartial expert analysis and comment on available and future technology options for the supply and utilisation of coal over the short-term (five years) and long-term (twenty five years);
 - 3.13.3 identify, consider and report on the various parameters/metrics for evaluating coal's position, relative to other competing resources and to identify relative strengths and weaknesses of these competing resources;
 - 3.13.4 focus on and identify technologies, coal and coal-derived products that meet current, new and emerging future market needs and demands;
 - 3.13.5 identify and report on global trends and information sources for coal supply and utilisation, as well as opportunities with renewable energy sources that have an impact on coal, such as wind, solar and biomass;
 - 3.13.6 develop an understanding of the primary factors required for the successful development of various future coal related opportunities;
 - 3.13.7 provide guidance on technology acquisition and implementation for South Africa in key areas, including, inter alia, external partnerships, policies and structures, and centres of global excellence; and



- 3.13.8 provide guidance on issues of governance, research and development, private sector and infrastructural investments and opportunities for social investment.
- 3.14 **Participants** means collectively both Members and Adherents;
- 3.15 **Property** means all forms of property excluding rights of ownership in and to immovable property;
- 3.16 **Protocol** means the Competition and Confidentiality Protocol attached hereto as **Appendix A** with which all Participants and Assigns shall conduct any and all activities related to this Initiative;
- 3.17 **Steering Committee** means the committee established in accordance with clause 9.2.2;
- 3.18 **Stakeholder** means any *bona fide* entity, community, body or relevant government organ, as well as any academic or specialist, involved, interested or affected by the production, use, transport, sale of coal or is involved in the development of the Coal industry in South Africa, such term to be construed widely and is capable in the reasonable opinion of the Board of adhering to and enforcing the Constitution and Protocol;
- 3.19 **Subsequent Member** means an entity approved by the Board as a Member in accordance with the further provisions of this Constitution who is not a Founding Member.

4 GENERAL

- 4.1 Further in this Constitution, except in a context indicating that some other meaning is intended
- 4.1.1 expressions in the singular also denote the plural, and *vice versa*;
- 4.1.2 words and phrases denoting natural persons refer also to juristic persons and *vice versa*;
- 4.1.3 pronouns of any gender include corresponding pronouns of the other genders and



- 4.1.4 the headings shall not be treated as forming part of the Constitution, as such headings are for convenience of reference only.

5 **SUBSIDIARY OBJECTS AND POWER OF THE INITIATIVE**

In pursuance of the main objects and powers of the Initiative and subsidiary thereto, the further objects and powers of the Initiative are and shall be –

- 5.1 to enter into such arrangements with appropriate authorities as the Initiative may deem conducive to its objects or any of them, and to obtain from such authorities any rights, privileges and concessions which the Initiative may deem advisable to obtain; and, whenever the Initiative deems it necessary, to apply to any authority to authorise the doing and performing of any object of the Initiative, or for any authority deemed necessary in connection therewith;
- 5.2 to receive Contributions on behalf of the Initiative,
- 5.3 to subscribe, administer and invest the funds received by the Initiative in –
- 5.3.1 any recognised banking, trust and other financial institution;
- 5.3.2 to do all such other things as are incidental or conducive to the attainment of the above Objectives, whether main or subsidiary.

6 **LIMITATIONS**

Any Contribution to the Initiative howsoever derived shall be applied solely towards the promotion of its Objectives, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise howsoever, to any Participant save for costs legitimately incurred by such Participant in achieving the Objectives of the Initiative, such costs to be approved by the Board in accordance with the further provisions of this Constitution.

7 **RIGHTS AND OBLIGATIONS OF PARTICIPANTS**

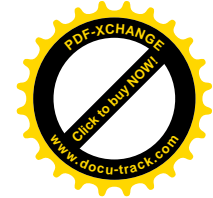
- 7.1 A Member shall -
- 7.1.1 make a Contribution of no less than R100 000-00 (one hundred thousand rand) to the Initiative;



- 7.1.2 ensure that any representatives which it nominates to represent it at any meeting in relation to the Initiative are sufficiently aware of the provisions of the Act;
- 7.1.3 be bound by the provisions of the Protocol;
- 7.1.4 be bound by the provisions of this Constitution;
- 7.1.5 be bound by the decisions of the Board; and
- 7.1.6 be entitled to appoint a representative to the Board.
- 7.2 An Adherent shall –
 - 7.2.1 ensure that any representatives that it nominates to represent it at any meeting in relation to the Initiative are sufficiently aware of the provisions of the Act;
 - 7.2.2 be bound by the provisions of the Protocol;
 - 7.2.3 be bound by the provisions of this Constitution; and
 - 7.2.4 be bound by the decisions of the Board.
- 7.3 Participation by the Participants in this Initiative does not and shall not give to any Participant of any class any right, title, interest, claim, demand in or to any of the monies, properties or assets of the Initiative.

8 **TERMINATION**

- 8.1 A Participant may resign from the Initiative on written notice to the chairperson of the Board, given at any time. It shall not be entitled to a refund of any Contribution made prior to the date of resignation. Further, notwithstanding such resignation, the Participant shall be obliged to make any Contribution it has undertaken to provide to the Initiative, notwithstanding if the date for delivery of such Contribution falls after the date of its resignation.
- 8.2 A Participant may be removed from the Initiative following a unanimous vote by all Board Members. If the Participant in question is entitled to appoint a Board



member, such Board Member shall recuse themselves from the meeting (and shall enjoy no vote) at the time the motion of removal is tabled.

8.3 Notwithstanding such resignation or removal, a Participant shall continue to be bound by the provisions of the Protocol for the period detailed in the Protocol.

9 THE BOARD

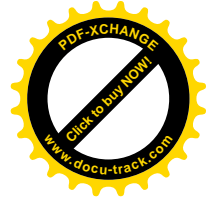
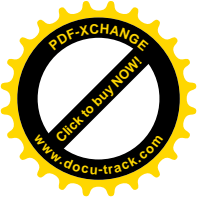
9.1 Members of the Board

9.1.1 The Board Members shall consist of one senior representative from each of the Members and one representative of the South African Government appointed for the duration of the operations of the Initiative.

9.2 Powers of the Board

The management and control of the affairs of the Initiative shall vest in the Board which shall have full power and authority to do any act, matter or thing which could or might be done by the Initiative. The Board shall have the powers and authority required to achieve the Objectives of the Initiative. Without in any way limiting such powers and authority the Board shall have the following further special powers –

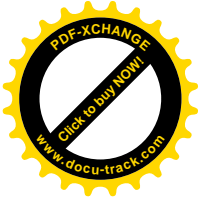
- 9.2.1 to ensure that Contributions received are applied for the purpose for which they were provided;
- 9.2.2 to approve the composition of the Steering Committee;
- 9.2.3 to approve an annual work programme and budget as submitted by the Steering Committee;
- 9.2.4 to approve the application of any Stakeholder as either a Subsequent Member or Adherent;
- 9.2.5 to receive feedback from the Steering Committee regarding progress and findings of the Initiative.
- 9.2.6 to choose from amongst the Board Members, a chairperson and vice-chairperson



- 9.2.7 to agree any resolutions or decision, that may be necessary or expedient in order to achieve the Objectives of the Initiative in terms of this Constitution;
- 9.2.8 to form or appoint sub-committees for special or general purposes and to delegate powers to such sub-committees and to delegate any task or activity to such sub-committee provided always that any sub-committee established shall act in accordance with the Protocol;
- 9.2.9 to appoint any Adherent to any sub-committee with such powers as may be conferred on it at the time of appointment or thereafter by the Board, to be subject in all respects to such rules or instructions as may from time to time be framed, given or approved by the Board;
- 9.2.10 to utilise the funds of the Initiative solely for investment or for the Objectives as set out in this Constitution; and
- 9.2.11 to do all such other things as may be necessary for the proper carrying out of the Objectives of the Initiative.

10 MEETINGS OF THE BOARD

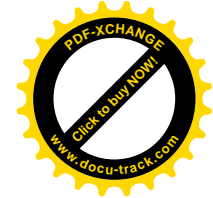
- 10.1 The chairperson, or in his absence the vice-chairperson, shall act as the chairperson of the Initiative and the Board.
- 10.2 Should both the chairperson and vice-chairperson not be present at any meeting of the Board the members thereof present shall elect a chairperson from their number at that meeting.
- 10.3 The Board shall meet from time to time as required on written request by any two members, but no less than every quarter. No less than 14 (fourteen) days' notice must be given by the secretary to the members of the Board of all meetings of the Board Members unless all agree to accept shorter notice. The notice referred to will include a detailed agenda for the proposed meeting.
- 10.4 No meeting of the Board or any sub-committee of the Board may take place without a detailed agenda and meetings will be conducted strictly in accordance with the agenda.



- 10.5 The quorum for a meeting of the Board shall be a majority of the Board Members, of which at least one Board Member shall be acting in their capacity as a representative of the Government;
- 10.6 Any decision by the Board shall be unanimous and indicated by vote by show of hands of the members present at the meeting.
- 10.7 Each Board Member entitled to be present and to vote, shall have one vote. The chairperson shall not have a casting vote additional to his deliberative vote. No voting by proxy shall be permitted.
- 10.8 The chairperson shall cause for minutes to be kept of the names of the members of the Board present at any meeting together with minutes of all resolutions and all proceedings taken at such meeting by a designated member of the Steering Committee. All such minutes shall be duly entered into books properly kept and provided for that purpose. Any such minutes or an extract therefrom, signed by the chairperson shall be *prima facie* evidence of the matters therein stated.
- 10.9 A designated member of the Steering Committee shall provide general secretarial assistance to the Board which assistance shall include but not be limited to arranging Board meetings, taking and distributing minutes and round-robin resolutions.
- 10.10 A resolution in writing that is signed by all the members of the Board and inserted in the minute book of the Board shall be as valid and effective as if passed at a meeting of the Board. Any such resolution may consist of several documents in the same form, each of which is signed by one or more of the members of the Board and shall be deemed (unless the contrary appears from the resolution) to have been passed on the date it was signed by the last member of the Board entitled to sign it ("**round-robin resolution**").
- 10.11 All costs associated arising or incurred as a result of the activities of the Board and its Members, shall be borne by the Member incurring such cost, and if incurred by the Board, shall be covered by the budget of the Initiative.

11 **STEERING COMMITTEE**

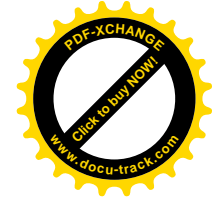
- 11.1 In furtherance of the Objectives and subject to the limitations set from time to time by the Board, the Steering Committee shall:



- 11.1.1 abide by the provisions of the Protocol and at all times act in strict accordance therewith;
 - 11.1.2 oversee the technical and non-technical aspects of the Initiative;
 - 11.1.3 produce an annual work programme and budget and submit such work programme and budget to the Board for approval;
 - 11.1.4 receive regular feedback from the Assigns;
 - 11.1.5 receive the progress and final reports and submit these to the Board for approval;
 - 11.1.6 establish any sub-committee it deems necessary that would advise it on any aspect of its functions provided that such sub-committee shall always act in accordance with and be bound by the provisions of the Protocol;
 - 11.1.7 approve contracts and issue payment subject to a Board approved budget and annual work programme;
 - 11.1.8 undertake any other activity necessary to ensure the proper technical management of the Initiative.
- 11.2 The provisions of 10 shall apply *mutatis mutandis* to the meetings of the Steering Committee; save that the Fossil Fuel Foundation shall provide a secretarial function to the Steering Committee and that decisions shall be taken by simple majority vote. Fossil Fuel Foundation and South African National Energy Research Institute shall recuse themselves from any deliberations or vote in which a conflict of interest may arise between themselves and the Initiative.

12 ASSIGNS

- 12.1 The Fossil Fuel Foundation shall provide secretarial services and project manager services to the Initiative and shall recover their reasonable directly incurred administrative costs from the budget for the Initiative on a cost recovery basis.
- 12.2 The South African National Energy Research Institute shall be the Financial Manager for the Initiative project and shall recover its administrative costs from the budget for the Initiative on a cost recovery basis.



12.3 The Fossil Fuel Foundation and the South African National Energy Research Institute shall be members of and report to the Steering Committee.

12.4 Assigned powers and responsibilities of the Fossil Fuel Foundation shall be to –

12.4.1 abide by the provisions of the Protocol;

12.4.2 develop a detailed work programme and budget for the Initiative for approval by the Steering Committee;

12.4.3 compile the technical terms of reference for prospective work for approval by the Steering Committee;

12.4.4 manage the research and capacity building contracts; and

12.4.5 act as secretary to the Steering Committee.

12.5 The South African National Energy Research Institute's powers and responsibilities shall be to-

12.5.1 abide by the provisions of the Protocol;

12.5.2 manage the finances of the Initiative;

12.5.3 call for proposals from prospective service providers;

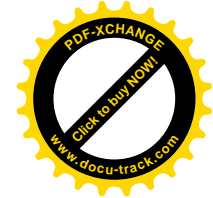
12.5.4 contract service providers; and

12.5.5 pay service providers on prior written authority from the Steering Committee;

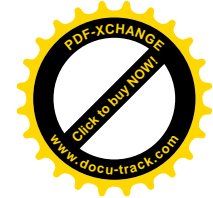
12.6 Should the Steering Committee reasonably believe that the Fossil Fuel Foundation and the South African National Energy Research Institute are unable to fulfil their functions, then with the approval of the Board, it may reassign those functions to any other Assign it may choose. It is recorded that the South African National Energy Research Institute may assign its rights and obligations to [insert name].

13 FUNDING AND ACCOUNTING

13.1 The Initiative shall be funded by:



- 13.1.1 Contributions from the Members including, for the avoidance of doubt, the Government as a Member; and
- 13.1.2 Contributions from any source approved by the Board.
- 13.2 Each Participant shall bear its own costs incurred in terms of this Initiative, including the costs of formulating or transmitting reports and of reimbursing its employees for travel and all other per diem expenses incurred.
- 13.3 The financial year of the Initiative shall correspond to the financial year of the South African National Energy Research Institute.
- 13.4 Within three months of the Effective Date, the Fossil Fuel Foundation shall prepare and submit to the Steering Committee for endorsement and Board for approval an overall draft programme of work and budget, together with a programme of work and budget for the following year of the Initiative project, not later than three months before the beginning of each financial year thereafter.
- 13.5 The South African National Energy Research Institute shall maintain complete and separate financial records which shall clearly account for all funds and property coming into the custody or possession of the South African National Energy Research Institute in connection with the Initiative.
- 13.6 By no later than three months after the close of each financial year the South African National Energy Research Institute shall submit to auditors selected by the Steering Committee for audit the annual accounts. Upon completion of the annual audit, the South African National Energy Research Institute shall present the accounts together with the auditors' report to the Steering Committee for onward transmission to the Board.
- 13.7 All books of account and records maintained by the South African National Energy Research Institute the Initiative shall be preserved for at least three years from the date of termination of the Initiative.
- 13.8 The South African National Energy Research Institute shall pay all taxes and similar impositions imposed by national or local governments and incurred by it in connection with the Initiative. The South African National Energy Research Institute shall, however, endeavour to obtain all possible exemptions from such taxes



13.9 Each Participant shall have the right, at its own cost, to audit the accounts of the Initiative.

13.10 The South African National Energy Research Institute shall deposit any moneys that are not required for immediate use into a bank account and interest earned shall accrue to the Initiative.

14 PROCUREMENT

14.1 The South African National Energy Research Institute shall have the power to enter into agreements for all necessary support, investigative research and analytical services and activities in the interest of the Initiative, provided that such agreements and contracts are authorised in an approved Budget or by the provisions of this Constitution or by the express authority of the Steering Committee.

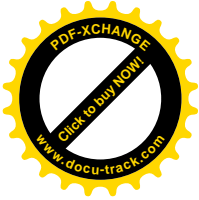
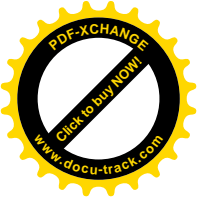
14.2 The Fossil Fuel Foundation shall propose to the Steering Committee a programme of work for the Initiative. The Steering Committee, after due consideration that may include amendments, shall recommend the work programme to the Board. The Board shall, after amendments as appropriate, approve the work programme.

14.3 The South African National Energy Research Institute, after receipt of the approved work programme, shall call for proposals from interested parties.

14.4 The South African National Energy Research Institute may also approach a specific service supplier where it is deemed to be necessarily expedient or where it is deemed that such a supplier is a sole competent provider of such service. In such a case, the South African National Energy Research Institute shall justify in writing such a proposal.

14.5 The Fossil Fuel Foundation and South African National Energy Research Institute shall evaluate the proposals received and make recommendations to the Steering Committee for approval.

14.6 On approval of the Steering Committee, the South African National Energy Research Institute shall enter into a contract with the service provider acting as Agent for and on behalf of the Initiative.



15 REGISTER OF PARTICIPANTS

15.1 No Participant shall enjoy any rights hereunder, nor shall be entitled to participate in any manner in the Objectives save and until they have been accepted by the Board as either an Adherent or a Member, at which time they shall be bound by the Constitution and the Protocol.

15.2 All Participants shall communicate their addresses from time to time to the relevant Assign providing a secretarial function who shall keep a register of the names of such Participants, which list shall clearly identify Participants who are Members and Participants who are Adherents and their addresses.

16 EXCLUSION OF LIABILITY AND INDEMNITY

16.1 Each Participant waives any claim it may enjoy in law and shall hold the Initiative and all fellow Participants harmless from and shall in no manner whatsoever seek to hold any of them liable for any injury (including death), loss or damage suffered by such Participant arising directly or indirectly from its participation in the Initiative, save and unless such harm, loss or damage arises as a result of any breach of the terms of this Constitution or breach of the Protocol by a fellow Participant.

17 AMENDMENTS TO THE CONSTITUTION

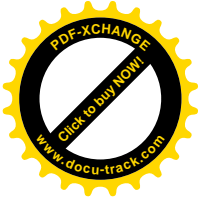
17.1 The constitution of the Initiative or any part thereof as contained herein shall not be rescinded, added to or amended, save by a resolution, unanimously adopted by a the Board.

18 NO PARTNERSHIP

18.1 This Initiative shall not operate so as to constitute any Participant as partners, or, save as expressly permitted in this Constitution as agents of its fellow Participant.

19 GENERAL

The original signed copy of this Constitution and all resolutions enacted from time to time which have the effect of varying the Constitution's provisions shall be lodged with the South African National Energy Research Institute who shall make same available for the inspection of members upon application.



20 **DISSOLUTION**

- 20.1 The Initiative may be dissolved by unanimous resolution of the Board.
- 20.2 Upon its dissolution the assets of the Initiative remaining after the satisfaction of all its liabilities shall be given or transferred to some other association or institution or associations or institutions having objects similar to the objects of the Initiative, to be determined by the Members of the Initiative, failing such determination, in pro-rate portion to the Contribution made by the Members.

21 **INTERPRETATION**

The interpretation of this constitution and of all decisions of the Initiative shall rest entirely with the Board, whose interpretation shall be final and binding on all Participants of the Initiative.