Memorandum of Understanding

between

Coal of Africa Limited ("CoAL") and its subsidiary Limpopo Coal Company Pty Ltd ("Limpopo Coal") (jointly referred to as “the CoAL companies”)

and


1. The parties to this Memorandum of Understanding share a commitment to work together and strengthen cooperation in the interest of sustainable development and the preservation and protection of the Mapungubwe Cultural Landscape.

2. As at date hereof, Limpopo Coal has been awarded the following licences for its Vele Colliery near Musina, Limpopo Province ("the authorisations"): 
   a. New Order Mining Right and approved Environmental Management Programme ("EMP") in terms of the MPRDA¹;
   b. an Integrated Water Use Licence and an amendment licence in terms of the NWA² ("the IWUL");
   c. Environmental Authorisation(s) under section 24G of NEMA³ ("the section 24G authorisation").

3. The parties hereby agree to commence negotiations with each other in good faith and with the aim of setting a benchmark for best practice in relation to managing and mitigating the impacts of mining and related activities at the Vele Colliery on the environment, specifically including the impact on water and heritage resources, in accordance with applicable management plans and the applicable regulatory framework.

4. Negotiations between the parties are structured in accordance with a two-stage process. The first stage involves the conclusion of this Memorandum of Understanding. In the second stage, upon signature of this Memorandum of Understanding, the parties will engage in further negotiations with a view to concluding a Memorandum of Agreement which will contain further detail. These negotiations will focus, inter alia, on the following:
   a. the identification and commissioning of limited additional research, monitoring and modelling of the potential impacts of mining and related activities on the environment, water resources and heritage resources;
   b. agreeing requisite amendments to the EMP and the IWUL as determined by the parties, as well as the relevant processes and timeframes for the submission of the necessary applications to the relevant governmental departments;

c. monitoring of compliance with the conditions of the section 24G authorisation, the EMP and the IWUL in alignment with the terms of reference for the Environmental Management Committee (“EMC”) established by the s.24G authorisation and IWUL;

d. the conditions for the Coalition’s participation in the EMC in accordance with the applicable terms of reference including the reasonable reimbursable costs of its nominated representative/s as may be agreed between the parties;

e. transparency and information-sharing by all parties in relation to compliance with applicable legislation and authorisations, including all internal and external compliance auditing reports in relation to actual and potential impacts of the mining and related activities at Vele Colliery on the environment, specifically including impact on the water and heritage resources;

f. provisions dealing with the content of and the manner in which public announcements pertaining to the Memorandum of Agreement, if any, will be made, and with the use and disclosure of information that any of the parties may receive from any other party pursuant to their interaction;

g. provision for termination of the Memorandum of Agreement should any of the parties to it fail to comply with its obligations the applicable legislation and authorisations;

h. an undertaking from the Coalition to withdraw the legal proceedings brought by the Coalition in the South Gauteng High Court for a final and temporary interdict against the DMR and Limpopo Coal (case number 10/30146)(“the interdict proceedings”) within 10 days of signature of the Memorandum of Agreement, on the basis that each party pays its own costs incurred in relation to those proceedings;

i. an undertaking from the Coalition to withdraw the administrative appeals against the NOMR, the EMP, the IWUL and the section 24G authorisation (“the administrative appeals”) within 10 days of signature of the Memorandum of Agreement; and

j. the removal of the petition from the Save Mapungubwe website.

5. During the negotiations referred to above, the Coalition undertakes to take no further steps to progress the interdict proceedings and the administrative appeals, save for formal steps required to prevent proceedings from lapsing, or the Coalition being barred from continuing with such proceedings. The parties agree that none of these proceedings will be prejudiced by the Coalition staying such proceedings in accordance with this Memorandum of Understanding, should it be forced to continue with these proceedings in due course.

6. Upon the signing of this Memorandum of Understanding, the CoAL companies undertake to share all information relevant to the potential or actual impacts of the Vele Colliery on the environment, specifically including but not limited to impacts on the water and heritage resources, relevant GIS data, as well as the mining works programme for the Vele Colliery. The parties to this Memorandum of Understanding shall not be obligated to disclose any document or information which is legally privileged.

7. The negotiations referred to above will commence as soon as possible after signature of this Memorandum of Understanding, and conclude in the form of a formal Memorandum of Agreement by no later than 31 January 2012 or such later date as the parties may agree and record in writing.
8. Limpopo Coal undertakes to obtain any outstanding authorisations required to conduct its operations in compliance with legal requirements.

9. The parties will endeavour to facilitate participation by the Coalition in:
   a. a public participation process on the terms of the off-set agreement to be concluded between the CoAL companies, DEA and South African National Parks (“SANParks”) in terms of the s.24G authorisation, including at the very least the submission of written comment by the Coalition on the proposed terms of the off-set agreement;
   b. the implementation of the off-set agreement; and
   c. negotiations regarding the buffer zone to be established for the Mapungubwe World Heritage Site.

10. Should a party to this Memorandum of Understanding, acting reasonably, form the belief that the other party is not undertaking negotiations in good faith and/or in accordance with the objectives stated above, it will be entitled, subject to a prior dispute resolution process in accordance with clause 11 below to be conducted by a mutually acceptable mediator, the costs of which are to be borne by the CoAL companies, to:
    a. withdraw from this Memorandum of Understanding on written notice to the other party and to regard its obligations under this Memorandum of Understanding as void; and
    b. in the case of the Coalition, continue with the pending legal proceedings.

11. If any dispute or difference arises between any of the parties in relation to any breach of this Memorandum of Understanding, the party claiming such dispute or difference, shall immediately advise the other party in writing thereof. Within 5 (five) days of receipt of such notice, the parties shall each ensure that their nominated representatives meet and negotiate in good faith in order to resolve such dispute or difference. If the dispute cannot be settled by the nominated representatives, the parties undertake to submit the dispute to conciliation or mediation or similar form of alternative dispute resolution. This Memorandum of Understanding is a public document to be made available to all authorities, shareholders of CoAL, stakeholders and funders of the Coalition, the media, and the public at large. Once signed, the Memorandum of Understanding will be placed on the CoAL and the Coalition websites to facilitate access by members of the public. Thereafter no party shall make any public announcements pertaining to the negotiations without advance notice to all other parties.

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CEO: Coal of Africa (Pty) Ltd

Yolan Friedmann  
CEO: Endangered Wildlife Trust

Nick Hiltermann  
Chairperson: Mapungubwe Action Group
Catherine Namono
Chairperson: Association of Southern African Professional Archaeologists

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Mark Anderson
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CEO: World Wide Fund for Nature South Africa