

ANNEXURE "C"

AMENDING AGREEMENT

between

AFRICAN OXYGEN LIMITED

and

AIR PRODUCTS SOUTH AFRICA (PROPRIETARY) LIMITED

read hope phillips
ATTORNEYS

Handwritten initials and a checkmark

CONTENTS

1.	INTERPRETATION	1
2.	INTRODUCTION	2
3.	AMENDMENTS TO THE 2000 AGREEMENT	2
4.	GENERAL	2
5.	COUNTERPARTS	3
6.	COSTS	3

BE
D

1. INTERPRETATION

In this amending agreement -

- 1.1 clause headings are for convenience purposes only and shall not be used in its interpretation;
- 1.2 unless the context clearly indicates a contrary intention -
- 1.2.1 an expression which denotes any gender includes the other genders, a natural person includes an artificial person and *vice versa*, and the singular includes the plural and vice versa;
- 1.2.2 where any term is defined within a particular clause, other than this interpretation clause, that term shall bear the meaning ascribed to it in that clause wherever it is used in this amending agreement;
- 1.2.3 unless otherwise defined herein, terms defined in the written agreement concluded between the Parties shall bear the same meanings herein;
- 1.2.4 the following expressions shall bear the following meanings and related expressions shall bear corresponding meanings -
- 1.2.4.1 "Act" means the Competition Act 89 of 1998, as amended;
- 1.2.4.2 "Afrox" means African Oxygen Limited, a company incorporated in the RSA with registration number 1905/00089/06;
- 1.2.4.3 "Air Products" means Air Products South Africa (Proprietary) Limited, a company incorporated in the RSA with registration number 1969/03571/07;
- 1.2.4.4 "CLP" means the Corporate Leniency Policy issued by the Commission in terms of the Act to clarify the Commission's policy approach on matters falling within its jurisdiction in terms of the Act as published in the Government Gazette Notice 628 of 2008;
- 1.2.4.5 "CO2" means carbon dioxide;
- 1.2.4.6 "Commission" means the Competition Commission of South Africa, a statutory body established in terms of section 19 of the Act, with its principal place of business at Building C, Mulayo Building, DTI Campus, 77 Meintjies Street, Sunnyside, Pretoria;

- 1.2.4.7 "Commissioner" means the Commissioner of the Competition Commission, appointed in terms of section 22 of the Act;
- 1.2.4.8 "Complaint" means the complaint initiated by the Commissioner on 20 April 2011, in terms of section 49B(1) of the Act, against the Parties for an alleged contravention of section 4(1)(b)(ii) of the Act under case number 2011Apr5739;
- 1.2.4.9 "2000 Agreement" means the written agreement entitled "Heads of Agreement for the Supply of Carbon Dioxide off the Natref Refinery" between the Parties concluded on or about 20 November 2000, as amended on 25 April 2001; and
- 1.2.4.10 "Parties" means Afrox and Air Products.

2. INTRODUCTION

- 2.1 On 4 February 2011, Air Products was granted conditional immunity in terms of the CLP, for its involvement, *inter alia*, in concluding and implementing the 2000 Agreement. On 20 April 2011, the Commissioner initiated the Complaint in terms of section 49B(1) of the Act against the Parties, for an alleged contravention of section 4(1)(b)(ii) of the Act.
- 2.2 After investigating the Complaint, the Commission came to the view, *inter alia*, that, by concluding the 2000 Agreement, the Parties had allocated the liquid CO₂ market to Afrox and the gaseous CO₂ market to Air Products in contravention of section 4(1)(b)(ii) of the Act.
- 2.3 Without conceding that, in relation to the 2000 Agreement, it has contravened section 4(1)(b)(ii) of the Act, Afrox has agreed to amend the 2000 Agreement as set out hereunder.

3. AMENDMENTS TO THE 2000 AGREEMENT

The 2000 Agreement is amended as follows –

- 3.1 clause 3.3 of the of the 2000 Agreement is deleted in its entirety;
- 3.2 clause 3.6 of the of the 2000 Agreement is deleted in its entirety.

4. GENERAL

- 4.1 This amending agreement constitutes the entire record of the agreement

between the Parties regarding its subject matter.

4.2 Neither party shall be bound by any term, representation or promise or the like not recorded in this or another written document signed by both the Parties. No addition to, variation, novation, amendment or agreed cancellation of this amending agreement shall be of any force or effect unless in writing and signed by both the Parties.

4.3 Save as provided for in this amending agreement, the remaining provisions of the 2000 Agreement, shall continue to be binding on the Parties. In the event of any conflict between the provisions of the 2000 Agreement and this amending agreement, the provisions of this amending agreement shall prevail.

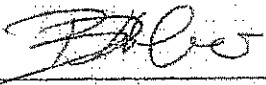
5. COUNTERPARTS

This amending agreement may be executed in any number of counterparts and by the different Parties on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same instrument. A counterpart of this amending agreement in fax form or a printout of a counterpart of this amending agreement which is scanned and emailed shall be conclusive evidence of the original signature and shall be as effective in law as the counterparts in original form showing the original signatures.

6. COSTS


Each party shall bear and pay its own costs of and incidental to the negotiation, drafting, preparation and execution of this amending agreement.

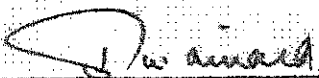
Signed at SELBY on 22 NOVEMBER 2014
BRETT KIMBER

 - MANAGING DIRECTOR

AFRICAN OXYGEN LIMITED

who warrants that s/he is duly authorised hereto

Signed at BRYANSTON on 17th February 2014/5 

 - FINANCIAL DIRECTOR

AIR PRODUCTS SOUTH AFRICA (PROPRIETARY) LIMITED

who warrants that s/he is duly authorised hereto