



Western Australia

## **Collie Coal (Griffin) Agreement Act 1979**

Compare between:

[11 Sep 2010, 01-c0-06] and [27 Jun 2023, 01-d0-01]



## Collie Coal (Griffin) Agreement Act 1979

**An Act to ratify an agreement between the State of Western Australia and The Griffin Coal Mining Company Limited with respect to the mining, development and rehabilitation of certain coal reserves and to matters related thereto.**

### 1. Short title

This Act may be cited as the *Collie Coal (Griffin) Agreement Act 1979*<sup>1</sup>.

### 2. ~~Interpretation~~ Terms used

In this Act —

~~the~~ 2023 variation agreement means the agreement a copy of which is set out in Schedule 2;

Agreement means the agreement a copy of which is set out in ~~the~~ Schedule 1 and includes that agreement —

(a) as ~~altered~~ varied from time to time in accordance with its provisions; ~~and~~

(b) as varied by the 2023 variation agreement.

[Section 2 inserted: No. 14 of 2023 s. 4]

### 3. Ratification of the Agreement

The Agreement is hereby ratified and its implementation authorised.

**4. Ratification of 2023 variation agreement**

(1) The 2023 variation agreement is ratified.

(2) The implementation of the 2023 variation agreement is authorised.

(3) Without limiting or otherwise affecting the *Government Agreements Act 1979*, the 2023 variation agreement operates and takes effect despite any enactment or other law.

*[Section 4 inserted: No. 14 of 2023 s. 5]*

## **Schedule 1 — Collie Coal (Griffin) Agreement**

[s. 2]

*[Heading ~~amended~~inserted: No. ~~1914~~ of ~~2010~~2023 s. 46.]*

THIS AGREEMENT made this fifth day of November, 1979, BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, K.C.M.G., O.B.E., M.L.A. Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called “the State”) of the one part and THE GRIFFIN COAL MINING COMPANY LIMITED a company incorporated under the provisions of the Statutes of Western Australia and having its registered office at 24 King’s Park Road, West Perth, in the said State (hereinafter called “the Company” in which term shall be included the Company and its successors and permitted assigns and appointees) of the other part.

### WHEREAS:

- (a) the Company is engaged in the mining of coal at Collie and desires to expand its activities and increase production and has applied for additional coal mining leases;
- (b) the State desires to ensure that the coal resource at Collie is developed in the most economic and practicable way and that the coal requirements of the State Energy Commission and Industry in Western Australia are adequately safeguarded consistent with the purposes of this Agreement;
- (c) by agreement dated 29th March, 1979 the State Energy Commission entered into an agreement with the Company to purchase coal for use in its power stations during a 25 year period from certain coal mining leases held by the Company.

NOW THIS AGREEMENT WITNESSETH —

### **Definitions** <sup>21</sup>

1. In this Agreement subject to the context —

“advise”, “apply”, “approve”, “approval”, “consent”, “certify”, “direct”,  
“notify”, “request”, or “require”, means advise, apply, approve,  
approval, consent, certify, direct, notify, request, or require in

writing as the case may be and any inflexion or derivation of any of these words has a corresponding meaning;

“associated company” means —

- (a) any company or corporation providing for the purpose of this Agreement capital of not less than \$2 000 000 or the equivalent thereof which is incorporated or formed within the United Kingdom the United States of America or Australia or such other country as the Minister may approve and which —
  - (i) is promoted by the Company for all or any of the purposes of this Agreement and in which the Company or some other company or corporation acceptable to the Minister has not less than a 25% interest or some lesser interest acceptable to the Minister; or
  - (ii) is related within the meaning of that term as used in section 6 of the *Companies Act 1961*, to any company or corporation in which the Company or some other company or corporation acceptable to the Minister holds not less than 25% of the issued ordinary share capital; and
  - (iii) is notified to the Minister by the Company as being such a company;
- (b) any company or corporation approved in writing by the Minister;

“Clause” means a clause of this Agreement;

“commencement date” means the date the Bill referred to in Clause 3 comes into operation as an Act;

“Commonwealth” means the Commonwealth of Australia and includes the Government for the time being thereof;

“Company’s Coal Mining Leases” means such of the coal mining leases referred to in Schedule “A” hereof together with such of the coal mining leases granted to the Company pursuant to Clause 21 as the

Company holds from time to time during the currency of this Agreement;

“Conservator of Forests” means the person for the time being holding or acting in the office of the Conservator of Forests under the provisions of the Forests Act;

“Country Areas Water Supply Act” means the *Country Areas Water Supply Act 1947*;

“Forests Act” means the *Forests Act 1918*;

“Land Act” means the *Land Act 1933*;

“local authority” means the council of a municipality that is a city, town or shire constituted under the *Local Government Act 1960*;

“Mining Act” means (unless a contrary intention is expressed) the *Mining Act 1904* and the amendments thereto and the regulations made thereunder as in force at the date of execution of this Agreement;

“mining areas” means the areas over which the Company at the date hereof holds coal mining leases under the Mining Act referred to in Schedule “A” hereof together with the areas in respect of which the Company has at the date hereof applied for coal mining leases under the Mining Act referred to in Schedules “B” and “C” hereof;

“mining plan” means any plan to be furnished to the Minister pursuant to Clause 14;

“Minister” means the Minister in the Government of the State for the time being responsible (under whatsoever title) for the administration of the Act to ratify this Agreement and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Company and includes the successors in office to the Minister;

“Minister for Mines” means the Minister in the Government of the State for the time being responsible for the administration of the Mining Act;

“month” means calendar month;

“notice” means notice in writing;

- “overall scheme” refers to the overall scheme in Clause 6;
- “person” or “persons” includes bodies corporate;
- “private road” means a road (not being a public road) which is either constructed by the Company in accordance with its proposals as approved by the Minister pursuant to Clause 7 or agreed by the parties to be a private road for the purpose of this Agreement;
- “public road” means a road as defined by the *Road Traffic Act 1974*;
- “Public Works Act” means the *Public Works Act 1902*;
- “Railways Commission” means the Western Australian Government Railways Commission established pursuant to the *Government Railways Act 1904*;
- “said State” means the State of Western Australia;
- “State Energy Commission” means the State Energy Commission of Western Australia established pursuant to the *State Energy Commission Act 1945*;
- “State Energy Commission contract” means the contract referred to in recital (c) to this Agreement;
- “State forest” means land dedicated under the Forests Act as a State forest;
- “this Agreement” “hereof” and “hereunder” refer to this Agreement whether in its original form or as from time to time added to varied or amended;
- “timber” includes trees when they have fallen or have been felled, and whether sawn, hewn, split or otherwise fashioned;
- “timber reserve” means land reserved pursuant to the Forests Act for forestry purposes;
- “year 1” means the 12 month period commencing on 1st July, 1980 and ending on 30th June, 1981 and “year” followed immediately by any other numeral has a corresponding meaning.



### **Interpretation** <sup>21</sup>

2. In this Agreement —
- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
  - (b) power given under any clause other than Clause 35 to extend any period or date shall be without prejudice to the power of the Minister under Clause 35;
  - (c) marginal notes do not affect the interpretation or construction <sup>21</sup>; and
  - (d) reference to an Act other than the Mining Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.

### **Initial obligations of the State** <sup>21</sup>

3. The State shall —
- (a) introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31st December, 1980; and
  - (b) to the extent reasonably necessary for the purposes of this Agreement allow the Company to enter upon Crown lands.

### **Ratification and operation** <sup>21</sup>

4. (1) The provisions of this Agreement other than this Clause and Clauses 1, 2 and 3 shall not come into operation until the Bill referred to in Clause 3 has been passed by the Parliament of Western Australia and comes into operation as an Act.

(2) If before 31st December, 1980 the said Bill is not passed then unless the parties hereto otherwise agree this Agreement shall then cease and determine and neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement.

(3) On the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

**Reserves of coal for State Energy Commission <sup>21</sup>**

5. The parties agree that during the currency of this Agreement fifty per centum of the aggregate of the extractable reserves of coal from time to time existing in the coal mining leases held by the Company and set out in Schedule "A" hereof (other than coal mining leases numbered 449, 450, 453, 454, 532 and 537) together with all coal mining leases issued to the Company pursuant to Clause 21 in respect of applications for coal mining leases referred to in Schedule "B" hereof shall be reserved to satisfy the needs of the State Energy Commission and such proportion of the said reserves (or so much thereof as the State Energy Commission may from time to time require) shall be made available to the State Energy Commission pursuant to mutually acceptable commercial arrangements to be entered into between the Company and the State Energy Commission.

**Initial obligations of the Company-overall scheme <sup>21</sup>**

6. The Company shall, having regard to the desire of the State to ensure that the coal resource at Collie is mined in the most economic and practicable way, forthwith prepare an overall scheme for the exploration and development of the Company's coal resource contained in the mining areas taking full account of the need to satisfy the coal requirements of both the State Energy Commission and Industry in the said State for the projected period of this Agreement and the need to take adequate steps to progressively rehabilitate all areas mined for coal within the Company's Coal Mining Leases whether mined by the Company or some other party before or after the date of this Agreement. The Company shall furnish the Minister with a copy of the overall scheme at the time of submitting proposals under subclause (1) of Clause 7.

**Company to submit proposals <sup>21</sup>**

7. (1) On or before the commencement of year 1 (or thereafter within such extended time as the Minister may allow as hereinafter provided) and subject to the provisions of this Agreement the Company shall having due regard to the State Energy Commission contract submit to the Minister to the fullest extent reasonably practicable its detailed proposals (which proposals shall include plans where appropriate and specifications where reasonably required by the Minister) for the exploration and development of the Company's

coal resource referred to in the overall scheme for the 15 year period from the commencement of year 1 to the end of year 15 and including the location, area, lay-out, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters; namely —

- (a) measures to be taken for the mining of coal by open-cut methods and deep mining methods consistent with the purposes of this Agreement;
- (b) details of the total tonnage of coal which the Company proposes to mine in each of years 1 to 15 inclusive;
- (c) the processing of coal where the Company proposes to proceed with production of processed coal on a commercial basis or to sell coal to another party who proposes to process the coal;
- (d) roads;
- (e) power supply;
- (f) the clearing of timber;
- (g) the collection and disposal of water (including water pumped or drawn from mines);
- (h) water courses and any alteration to their regime;
- (i) any other works, services or facilities desired by the Company, including any railway requirements;
- (j) use of local professional services, labour and materials;
- (k) any leases, licences or other tenures of land required from the State; and
- (l) measures to be taken in accordance with best modern practice for the protection and management of the environment including rehabilitation and/or restoration of the mined areas referred to in Clause 6 and the workings associated therewith, the prevention of the discharge of tailings, slimes, pollutants or overburden into the surrounding country, water courses, lakes or underground water supplies, the prevention of soil erosion and forest disease and, to the extent that the Company is responsible for implementing the matters referred to in paragraphs (a) to (k) of this subclause, consideration of the environmental effects relating thereto.

### **Order of proposals** <sup>21</sup>

(2) The proposals may with the approval of the Minister and shall if so required by the State be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (l) of subclause (1) of this Clause.

### **Use of existing infrastructure** <sup>21</sup>

(3) The proposals relating to any of the matters mentioned in subclause (1) of this Clause may with the approval of the Minister and that of any third parties concerned instead of providing for the construction of new facilities of the kind therein mentioned provide for the use by the Company upon reasonable terms and conditions of any existing facilities of such kind.

### **Consideration of proposals** <sup>21</sup>

8. (1) On receipt of the said proposals the Minister shall —

(a) approve of the said proposals either wholly or in part without qualification or reservation; or

(b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) of Clause 7 not covered by the said proposals; or

(c) require as a condition precedent to the giving of his approval to the said proposals that the Company makes such alteration thereto or complies with such conditions in respect thereof as he thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions.

### **Advice of Minister's decision** <sup>21</sup>

(2) The Minister shall within 2 months after receipt of the said proposals give notice to the Company of his decision in respect to the same.

### **Consultation with Minister** <sup>21</sup>

(3) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) of this Clause the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new proposals either generally or in respect to some particular matter.

**Minister's decision subject to arbitration <sup>21</sup>**

(4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) of this Clause and the Company considers that the decision is unreasonable the Company may within 2 months after receipt of the notice mentioned in subclause (2) of this Clause elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision.

**Arbitration award <sup>21</sup>**

(5) An award made on an arbitration pursuant to subclause (4) of this Clause shall have force and effect as follows —

(a) if by the award the dispute is decided against the Company then unless the Company within 3 months after delivery of the award gives notice to the Minister of its acceptance of the award this Agreement shall on the expiration of that period of 3 months cease and determine; or

(b) if by the award the dispute is decided in favour of the Company the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

**Effect of non-approval of proposals <sup>21</sup>**

(6) Notwithstanding that under subclause (1) of this cause any detailed proposals of the Company are approved by the Minister or determined by arbitration award, unless each and every such proposal and matter is so approved or determined by the commencement of year 2 or by such extended date if any as the Company shall be granted pursuant to the provisions of this Agreement then the Minister may give to the Company 12 months notice of intention to determine this Agreement and unless before the expiration of the said 12 months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of Clause 37.

**Implementation of proposals <sup>21</sup>**

(7) The Company shall Implement the approved proposals in accordance with the terms thereof.

**Company's obligations for further proposals <sup>21</sup>**

9. (1) The Company shall submit to the Minister detailed proposals for the exploration and development of the coal resource contained in the

Company's Coal Mining Leases and as to such of the matters mentioned in paragraphs (a) to (l) of subclause (1) of Clause 7 as the Minister may require —

(a) for the 15 year period from the commencement of year 16 to the end of year 30, on or before the end of year 15, and

(b) for the 12 year period from the commencement of year 31 to the end of year 42, on or before the end of year 30.

(2) At the times the Company submits proposals pursuant to subclause (1) of this Clause the Company shall furnish to the satisfaction of the Minister evidence that the Company has used reasonable endeavours to negotiate an agreement with the State Energy Commission for the supply of coal consistent with the entitlements of the State Energy Commission in terms of Clause 5 for the period covered by the relevant proposal.

(3) The provisions of Clause 7 and Clause 8 (other than subclauses (5) and (6)) shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this Clause. The Company shall implement the approved proposals in accordance with the terms thereof.

#### **Additional proposals <sup>21</sup>**

10. If the Company at any time during the continuance of this Agreement desires to significantly vary its activities carried on pursuant to this Agreement to a greater extent than those specified in any approved proposals it shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (l) of subclause (1) of Clause 7 as the Minister may require. The provisions of Clause 7 and Clause 8 (other than subclauses (5) and (6)) shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause. The Company shall implement the approved proposals in accordance with the terms thereof.

#### **Protection and management of the environment <sup>21</sup>**

11. (1) The Company shall in respect of the matters referred to in paragraph (l) of subclause (1) of Clause 7 and which are the subject of approved proposals under this Agreement, carry out a continuous programme of investigation and research including monitoring and the study of sample areas to ascertain the effectiveness of the measures it is taking pursuant to its approved proposals for rehabilitation and the protection and management of the environment.

### **Reports <sup>21</sup>**

(2) The Company shall during the currency of this Agreement at yearly intervals commencing from the date when the Company's proposals are approved submit an interim report to the Minister concerning investigations and research carried out pursuant to subclause (1) of this Clause and at 3 yearly intervals commencing from such date submit a detailed report to the Minister on the result of the investigations and research during the previous 3 years.

### **Additional proposals <sup>21</sup>**

(3) The Minister may within 2 months of the receipt of the detailed report pursuant to subclause (2) of this Clause notify the Company that he requires additional detailed proposals to be submitted in respect of all or any of the matters the subject of the detailed report.

(4) The Company shall within 2 months of the receipt of a notice given pursuant to subclause (3) of this Clause submit to the Minister additional detailed proposals as required and the provisions of Clause 7 and Clause 8 (other than subclauses (5) and (6)) where applicable shall *mutatis mutandis* apply in respect of such proposals.

(5) The Company shall implement the decision of the Minister or an award made on an arbitration as the case may be in accordance with the terms thereof.

### **Access <sup>21</sup>**

12. The Company shall permit the Minister or any officer or other person authorised in that behalf by him to enter upon any land for the purpose of making any survey, inspection or examination for the purpose of this Agreement.

### **Implementation of approved proposals relating to the environment <sup>21</sup>**

13. The Company may with the consent of the Conservator of Forests arrange for the Conservator of Forests to carry out on behalf of the Company any approved proposal relating to the environment at the cost in all respects of the Company.

### **Mining plan to be furnished to Minister <sup>21</sup>**

14. During the currency of this Agreement the Company shall from the commencement of year 1 and thereafter at 5 yearly intervals furnish to the

Minister in sufficient detail a plan of the Company's proposed mine development and coal production under this Agreement for the ensuing 5 years.

**Use of local professional services labour and materials <sup>21</sup>**

15. (1) The Company shall for the purposes of this Agreement as far as it is reasonable and economically practicable —

- (a) use the services of engineers, surveyors, architects and other professional consultants resident and available within the said State;
- (b) use labour available within the said State;
- (c) when calling for tenders and letting contracts for works materials plant equipment and supplies ensure that Western Australian suppliers manufacturers and contractors are given reasonable opportunity to tender or quote; and
- (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere.

(2) The Company shall from time to time during the currency of this Agreement when requested by the Minister submit a report concerning its implementation of the provisions of subclause (1) of this Clause.

**Roads <sup>21</sup>**

16. (1) The Company shall —

- (a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in its operations hereunder;
- (b) at its own cost make such provision as shall ensure that all persons and vehicles (other than those engaged upon the Company's operations and its invitees and licensees) are excluded from use of any such private roads; and
- (c) at any place where such private roads are constructed by the Company so as to cross any railways or public roads provide and maintain at its cost such reasonable protection as may be required by the Commissioner of Main Roads or the Railways Commission as the case may be.



**Spillage of coal** <sup>21</sup>

(2) The Company shall use its best endeavours to minimize spillages of coal on private or public roads and shall remove spillage and clean up roads whenever such spillage occurs.

**Public Roads** <sup>21</sup>

(3) The State shall maintain or cause to be maintained those public roads under the control of the Commissioner of Main Roads or a local authority which may be used by the Company to a standard similar to comparable public roads maintained by the Commissioner of Main Roads or a local authority as the case may be.

(4) In the event that the Company's operations hereunder require the use of a public road referred to in subclause (3) of this Clause which is inadequate for the purpose, or result in excessive damage or deterioration of any such public road (other than fair wear and tear) the company shall pay to the State the whole or an equitable part of the total cost of any upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads having regard to the use of such public road by others.

**Liability** <sup>21</sup>

(5) The parties hereto further covenant and agree with each other that —

(a) for the purposes of determining whether and the extent to which —

(i) the Company is liable to any person or body corporate (other than the State); or

(ii) an action is maintainable by any such person or body corporate in respect of the death or injury of any person or damage to any property arising out of the use of any of the roads referred to in subclause (1) of this Clause for the maintenance of which the Company is solely responsible hereunder and for no other purpose the Company shall be deemed to be a municipality and the said roads shall be deemed to be streets under the care control and management of the Company; and

(b) for the purposes of this Clause the terms “municipality” “street” and “care control and management” shall have the meanings which they respectively have in the *Local Government Act 1960*.

**Rail** <sup>21</sup>

**Loading facilities** <sup>21</sup>

17. (1) Pursuant to the need of the Company to transport coal by rail the Company shall in accordance with plans and specifications approved by the Railways Commission at its own cost provide or cause to be provided, maintain and operate coal loading facilities including weighing facilities sufficient to meet train operating requirements together with a staff adequate to ensure the proper operation of all such coal loading facilities.

**Loading and trimming of wagons and loading rates** <sup>21</sup>

(2) The Company shall ensure that —

(a) all wagons are loaded within the authorised axle load capacity and shall be subject to such minimum load per wagon and per train as may be set by the Railways Commission;

(b) the load in all wagons is properly trimmed to permit safe transport at all times; and

(c) loading and unloading rates as prescribed by the Railways Commission from time to time are adhered to.

**Extensions and additions to track** <sup>21</sup>

(3) If the Company requires any additional railway track (including all necessary loops, spurs and sidings) to service any new coal loading station required by the Company within the Company’s Coal Mining Leases then the Railways Commission shall, subject to first agreeing with the Company upon the route such railway track shall follow, the cost of construction thereof and the terms of payment, provide such railway track in accordance with plans and specifications determined by the Railways Commission at the cost of the Company. The provisions of Clause 42 shall not apply if the Company and the Railways Commission do not reach agreement as aforesaid. Any such additional railway track so provided shall be maintained by the Railways Commission at the expense of the Company to such standards as the Railways Commission shall specify.

**Mining** <sup>21</sup>

(4) The Company shall ensure that mining adjacent to the railway shall be carried out in such manner as not to endanger the railway. The Company shall obtain the prior approval of the Railways Commission before commencing any mining which might be likely to affect the stability of the railway.

**Railway crossing** <sup>21</sup>

(5) Notwithstanding the provisions of paragraph (c) of subclause (1) of Clause 16 the Company shall be permitted access over the Railway only at crossings approved by the Railways Commission.

**Diversion of railway** <sup>21</sup>

(6) The Company may during the currency of this Agreement request the Railways Commission to divert any portion of the Railway within the Company's Coal Mining Leases if in the opinion of the Minister such portion interferes with the logical and economical development of the Company's Coal Mining Leases. On receipt of such request the Railways Commission shall with reasonable expedition determine an alternative route for the Railway satisfactory to the Railways Commission and for this purpose may require the Company to provide land at the Company's expense. The Railways Commission shall subject to the availability of land divert the Railway at the Company's expense within 18 months of the determination of the alternative route as aforesaid.

**Additional rail requirements** <sup>21</sup>

(7) Where the Company requires the use of rail facilities for the transport of coal from the Company's Coal Mining Leases to a port for export overseas pursuant to any agreement entered into by the Company with the approval of the Minister pursuant to Clause 25, the Company shall give reasonable notice to the Railways Commission of its requirements for additional rolling stock, track, improvements siding or other facilities and subject to the Railways Commission approving such requirements and the Company entering into satisfactory arrangements for their provision and their financing by the Company, the Railways Commission will provide such requirements.

**Electricity** <sup>21</sup>

**Non-interference with Muja power station water supply and transmission lines** <sup>21</sup>

18. (1) The Company shall not carry out any operations pursuant to this Agreement so as to interfere with or endanger the Muja power station or the bores pumps pipelines and appurtenant works supplying water thereto or any transmission lines therefrom.

**Diversion of transmission lines** <sup>21</sup>

(2) The Company may from time to time request the State Energy Commission to divert any portion of its transmission lines, and on receipt of such request the State Energy Commission shall with reasonable expedition determine an alternative route for the transmission lines satisfactory to the State Energy Commission and for this purpose may require the Company to provide land at the Company's expense. The State Energy Commission shall subject to the availability of land divert at the expense of the Company the transmission lines within 12 months of the determination of the alternative route as aforesaid.

**Water** <sup>21</sup>

19. (1) Subject to any right of the Company to utilize or otherwise dispose of water occurring in or collecting on the Company's Coal Mining Leases (including water pumped or drawn from mines) in accordance with any proposal approved hereunder, the Company shall permit the State or any instrumentality of the State to use so much of such water remaining as is required by the State or such instrumentality of the State PROVIDED HOWEVER that nothing in this Clause shall be deemed to affect any agreement or arrangement between the Company and the State Energy Commission as to such water, or shall diminish any obligation upon the Company to comply with the provisions of any Act or law of the State.

(2) Where any proposed mining activity of the Company is likely to affect the availability to the State of water from any bore within the Company's Coal Mining Leases the Company will give to the State such reasonable notice thereof as will enable the State to make alternative arrangements for the provision of such water.

**Forests** <sup>21</sup>

20. (1) Where pursuant to any proposals approved hereunder, the Company is authorised to enter any State forest or timber reserve for the purposes of exploratory drilling, clearing of timber and undergrowth, or mining,

the Company shall give to the Conservator of Forests not less than 6 months prior notice of its intention to so enter and the Conservator may impose upon the Company, conditions as to such entry for the protection of the State Forest or timber reserve (consistent with the relevant approved proposal). Such conditions may include provision for —

- (a) the prohibition of the use by the Company of certain roads and tracks;
- (b) the use by the Company of routes as directed by the Conservator; and
- (c) the disposal of unused coal and overburden.

**Permit to take timber for mining purposes <sup>21</sup>**

(2) Notwithstanding the provisions of subclause (1) of this Clause, the Company shall from time to time as may be necessary apply for a permit under the Forests Act to fell, cut, split and remove timber for mining purposes and provided that the Company is not in default hereunder and subject to the provisions hereof the Conservator of Forests shall (unless the permit applied for conflicts with the relevant working plan of the Conservator of Forests prepared pursuant to Section 31 of the Forests Act) issue such permit (upon payment of the appropriate fee) modified where necessary to enable the Company to carry out its obligations under this Agreement.

**Coal mining leases to be granted to the Company <sup>21</sup>**

21. (1) (a) Within 60 days after all its proposals submitted pursuant to Clause 7 have been approved the Company shall notify the State of such of those applications for coal mining leases referred to in Schedule “B” and Schedule “C” hereof which the Company desires to be approved and the State shall cause to be granted to the Company the coal mining leases so applied for (notwithstanding that the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed at the Company’s expense) such coal mining leases to be granted under and, except as otherwise provided in this Agreement subject to the Mining Act.

(b) Upon the granting of the coal mining leases pursuant to paragraph (a) of this subclause the rights of the Company as the holder of any remaining applications for coal mining leases referred to in Schedule “B” and Schedule “C” hereof shall forthwith cease and determine (but without any refund of rent already paid).

**Term of coal mining leases granted under this Clause <sup>21</sup>**

(2) Subject to the performance by the Company of its obligations under this Agreement and except as otherwise provided in this Agreement under the Mining Act, the term of any coal mining lease granted to the Company pursuant to subclause (1) of this Clause shall be for a period of 21 years commencing from the date of the Company's notification to the State referred to in the said subclause (1) with the right during the currency of this Agreement to take a renewal of the said term for a further period of 21 years upon the same terms and conditions, subject to the sooner determination of the said term upon the cessation or determination of this Agreement, such right to be exercisable by the Company making written application for such renewal not later than 1 month before the expiration of the initial term of any such coal mining leases.

**Modification of term of existing coal mining leases <sup>21</sup>**

(3) Notwithstanding anything to the contrary contained in any coal mining lease referred to in Schedule "A" hereof upon the approval of the Company's proposals pursuant to Clause 7, the term of such coal mining leases shall, subject to the provisions of this Agreement remain current during the continuance of this Agreement.

**Effect of determination of Agreement on existing coal mining leases <sup>21</sup>**

(4) In the event that this Agreement is determined during the currency of the State Energy Commission contract —

(a) each of coal mining leases Nos. 449, 450, 453, 454, 532 and 537 will subject to its terms and conditions and the Mining Act continue in force for the balance of the period during which the State Energy Commission contract continues in force, or for the balance of its unexpired term or any renewed term, whichever is the longer;

(b) any other coal mining lease referred to in Schedule "A" hereof then in existence will subject to its terms and conditions and the Mining Act continue in force for the balance of its unexpired term;

(c) if coal mining leases Nos. 458, 459, 460, 463, 464, 465 and 466 expire by effluxion of time during the currency of the State Energy Commission contract the State shall cause to be granted to the Company a special lease of such part or parts of the surface of the land comprised in such coal mining leases as may be necessary to enable the Company to fulfil its obligations under the State Energy Commission contract. Such special lease shall be granted upon

such terms and conditions as shall be reasonable having regard to the requirements of the Company and shall be for a term expiring on the date that the State Energy Commission contract terminates or is determined.

**Other conditions <sup>21</sup>**

(5) The Company's Coal Mining Leases shall be subject to such conditions as the Minister for Mines may reasonably require from time to time for the purpose of reducing or making good injury to the surface of the land therein or injury to anything on or below the surface of that land.

**Labour conditions <sup>21</sup>**

(6) The State shall ensure that during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the labour conditions imposed by or under the Mining Act in regard to the Company's Coal Mining Leases.

**Other mining tenements <sup>21</sup>**

(7) (a) The State shall not during the currency of this Agreement register any claim or grant any lease or other mining tenement under the Mining Act or any similar title under any Act passed in substitution therefor or in lieu thereof or otherwise by which any person other than the Company or an associated company will obtain under the laws related to mining or otherwise any rights to mine or take the natural substances (other than petroleum in a liquid or gaseous state) within the Company's Coal Mining Leases unless the Minister reasonably determines that it is not likely to unduly prejudice or to interfere with the operations of the Company hereunder assuming the taking by the Company of all reasonable steps to avoid the interference.

(b) In the event of the registration of any claim or grant of any lease or other mining tenement or other similar title other than a prospecting area pursuant to paragraph (a) of this subclause, the land contained therein shall be deemed to be automatically excised from the Company's Coal Mining Leases (with abatement of future rent in respect of the land excised but without any abatement of rent already paid or any rent which has become due and has been paid in advance).

**Access over the Company's Coal Mining Leases <sup>21</sup>**

(8) The Company shall not prohibit the State and third parties with the consent of the State (with or without stock vehicles and rolling stock) from

having access to and passing over the Company's Coal Mining Leases (by separate route, road or Railway) so long as that access and passage does not materially prejudice or interfere with the operations of the Company under this Agreement.

**Mining on privately owned land <sup>21</sup>**

(9) The Company shall not commence any mining or related operations for the purposes of this Agreement on privately owned land within the Company's Coal Mining Leases above the depth of 31 metres from the surface of such land unless and until it has entered into a written agreement with the owner and occupier of such land for the purpose of providing for compensation (to be assessed or determined in accordance with the provisions of the Mining Act or any Act passed in substitution therefor or in lieu thereof) arising out of its operations or proposed operations on the land and has lodged a true copy of the agreement with the Department of Mines.

**Surrender of Company's Coal Mining Leases or parts thereof <sup>21</sup>**

(10) Notwithstanding the provisions of this Clause the Company may from time to time with the approval of the Minister for Mines and subject to survey if required by the Minister for Mines at the Company's expense surrender to the State all or any portion or portions (of reasonable size and shape) of the Company's Coal Mining Leases provided that such portion or portions have been rehabilitated in accordance with approved proposals hereunder (with abatement of future rent in respect to the area surrendered but without any abatement of rent already paid or any rent which has become due and has been paid in advance) and the provisions of Section 115 of the Mining Act are modified accordingly.

**Amendment of the Mining Act <sup>21</sup>**

(11) For the purposes of the Company's Coal Mining Leases the definition of "Private Land" in Section 136 of the Mining Act shall be deemed to be modified by deleting therefrom the passage "except coal mining".

(12) The Company shall prior to the date of notification to the State referred to in subclause (1) of this Clause have the right to enter upon and explore the areas covered by the Company's applications for coal mining leases referred to in Schedule "B" and Schedule "C" hereof on such terms and conditions as the Minister shall approve PROVIDED THAT in the case of privately owned land the consent of the owner and occupier shall first be obtained.



**Leases, licences, permits and easements <sup>21</sup>**

22. The State shall in accordance with the Company's approved proposals grant to the Company, or arrange to have the appropriate authority or other interested instrumentality of the State grant for such periods and on such terms and conditions (including renewal rights where appropriate) as shall be reasonable having regard to the requirements of the Company, leases, licences, permits and easements for any purposes related to the Company's operations under this Agreement.

**Modification of Land Act <sup>21</sup>**

23. For the purpose of this Agreement in respect of any land sold or leased to the Company by the State the Land Act shall be deemed to be modified by —

(a) the substitution for subsection (2) of section 45A of the following subsection —

“(2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be sold or leased;”;

(b) the deletion of the proviso to section 116;

(c) the deletion of section 135;

(d) the deletion of section 143; and

(e) the inclusion of a power to offer for sale or grant leases or licences for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods, the terms and conditions and the forms referred to in the Land Act.

The provisions of this Clause shall not operate so as to prejudice the rights of the State to determine any lease licence or other right or title in accordance with the other provisions of this Agreement.

**Liaison for townsite development <sup>21</sup>**

24. The Company shall from time to time liaise with the State and the local municipal authority with a view to ensuring that appropriate planning and adequate provision is being made for serviced land to be available for housing development commensurate with the Company's operations hereunder.

**Agreements with other parties** <sup>21</sup>

25. (1) The Company shall not, without the consent of the Minister enter into any agreement for the sale of coal for export from the State.

(2) Subject to the provisions of Clause 10 the Company shall not, in any of years 1 to 15 inclusive, enter into any agreement without the consent of the Minister for the supply of coal which exceeds the tonnage of coal which pursuant to the provisions of paragraph (b) of subclause (1) of Clause 7 and Clause 8 has been determined as the maximum tonnage which the Company may sell in the relevant year.

(3) Notwithstanding the provisions of subclauses (1) and (2) of this Clause, the Company shall advise the Minister of any agreement entered into by the Company for the supply of coal after the commencement date with any person or persons other than the State Energy Commission and shall submit to the Minister in respect of such agreement such details as the Minister may require.

**Royalties** <sup>21</sup>

26. (1) The Company shall pay to the State in respect of all coal mined or produced by the Company from the Company's Coal Mining Leases and sold by it royalties at the rates from time to time prescribed under or pursuant to the provisions of the Mining Act or any Act passed in substitution therefor or in lieu thereof.

**Return and payment of royalties** <sup>21</sup>

(2) The Company shall during the continuance of this Agreement within 14 days after the last day of each month (commencing with the last day of the month in which the commencement date occurs) furnish to the Minister for Mines a return showing such particulars as the Minister for Mines requires to enable the calculation of the royalty payable under this Clause and shall pay to the Minister for Mines, at the time of furnishing the return the royalty payable hereunder.

**Inspection** <sup>21</sup>

(3) The Company shall permit the Minister for Mines or his nominee to inspect at all reasonable times and to take copies of or extracts from all books of account and records of the Company as are relevant for the purpose of determining the amount of royalty payable under this Clause and if required by

the State take reasonable steps to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the reasonable satisfaction of the Minister for Mines as to all relevant weights and analyses and shall give due regard to any objection or representation made by the Minister for Mines or his nominee as to any particular weight or analysis of coal mined or produced by the Company from the Company's Coal Mining Leases and sold by it which may affect the amount of royalty payable hereunder.

**Zoning** <sup>21</sup>

27. The State shall after consultation with the relevant local authority ensure that the Company's Coal Mining Leases and any lands the subject of any Crown grant lease licence or easement granted to the Company under this Agreement and all freehold and leasehold land occupied by the Company in accordance with or the subject of proposals approved hereunder shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the operations of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State by any State agency or instrumentality or by any local authority or other authority of the State on the ground that such operations are contrary to any zoning by-law regulation or order.

**Rating** <sup>21</sup>

28. The State shall ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection with that residence and except as to any part upon which there stands any improvements that are used in connection with a commercial undertaking not directly related to the mining of coal), shall for rating purposes under the *Local Government Act 1960* be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate, PROVIDED THAT nothing in this Clause shall prevent the Company making the election provided for by section 533B of the *Local Government Act 1960*.

**No discriminatory rates** <sup>21</sup>

29. Except as provided by this Agreement the State shall not impose or permit or suffer any instrumentality of the said State or any local authority or other authority to impose discriminatory taxes, rates or charges of any nature

whatever on or in respect of the titles, property or other assets, products, materials or services used or produced by or through the operations of the Company hereunder and the State shall not take or permit any such instrumentality or any local authority or other authority to take any other discriminatory action that would deprive the Company of any rights granted or intended to be granted to it under this Agreement.

**Resumption for the purposes of this Agreement <sup>21</sup>**

30. The State may as and for a public work under the Public Works Act, resume any land required for the purposes of this Agreement and notwithstanding any other provisions of that Act may sell lease or otherwise dispose of the land to the Company. The Company shall pay to the State on demand the costs of and incidental to any land resumed at the request of and on behalf of the Company pursuant to this Clause.

**No resumption <sup>21</sup>**

31. The State agrees that subject to the performance by the Company of its obligations hereunder the State shall not resume or suffer or permit to be resumed by an instrumentality or by any local authority or other authority of the said State any portion of the land the subject of any lease mentioned in Clause 22 the resumption of which would materially impede the Company's works and activities thereon or any portion of the land the subject of the Company's Coal Mining Leases whereon any of the Company's works are situate in accordance with proposals approved hereunder the resumption of which would materially impede the Company's mining or other activities thereon nor shall the State create or grant or permit or suffer to be created or granted by an instrumentality or authority of the said State any road right of way or easement of any nature or kind whatsoever over or in respect of the land comprised in the said leases whereon any of the Company's works are situate in accordance with proposals approved hereunder without the consent of the Company first had and obtained which consent the Company agrees it shall not arbitrarily or unreasonably withhold.

**Assignment <sup>21</sup>**

32. (1) Subject to the provisions of this Clause the Company may at any time —

(a) assign mortgage charge sublet or dispose of to an associated company as of right or to any other company or person with the consent of the Minister the Company's Coal Mining Leases or any of them or the whole or any part of the rights of the Company hereunder (including its rights to or as the

holder of any lease licence easement grant or other title) and of the obligations of the Company hereunder PROVIDED THAT the consent of the Minister shall not be required in respect of any mortgage charge or assignment existing at the date hereof;

(b) appoint as of right an associated company or with the consent of the Minister any other company or person to exercise all or any of the powers functions and authorities that are or may be conferred on the Company hereunder;

subject however in the case of an assignment subletting or disposition to the assignee sublessee disponee or the appointee (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the obligations of the Company as lessee of the Company's Coal Mining Leases (if appropriate) and the provisions hereof on the part of the Company to be complied with observed or performed in regard to the matter or matters the subject of such assignment subletting disposition or appointment.

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this Clause the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained herein and in any lease licence easement grant or other title the subject of an assignment mortgage subletting or disposition or appointment under subclause (1) of this Clause PROVIDED THAT the Minister may agree to release the Company from such liability where he considers such release will not be contrary to the interests of the State.

(3) Notwithstanding the provisions of the Mining Act, the *Transfer of Land Act 1893* and the Land Act, insofar as the same or any of them may apply —

(a) no assignment mortgage charge sublease or disposition made or given pursuant to this Clause of or over the Company's Coal Mining Leases or any other lease sublease licence reserve or tenement granted hereunder or pursuant hereto by the Company or any assignee sublessee disponee or appointee who has executed and is for the time being bound by deed of covenant made pursuant to this Clause; and

(b) no transfer assignment mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge

shall require any approval or consent other than such consent as may be necessary under this Clause and no equitable mortgage or charge shall be rendered ineffectual by the absence of any approval or consent (otherwise than as required by this Clause) or because the same is not registered under the provisions of the Mining Act.

**Variation** <sup>21</sup>

33. (1) The parties hereto may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement or of any lease licence easement or right granted hereunder or pursuant hereto for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

(2) The Minister shall cause any agreement made pursuant to subclause (1) of this Clause in respect of any addition substitution cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.

(3) Either House may, within 12 sitting days of that House after the agreement has been laid before it pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

**Force majeure** <sup>21</sup>

34. This Agreement is deemed to be made subject to any delays in the performance of the obligations hereunder and to the temporary suspension of the continuing obligations (other than for payment of moneys due) hereunder that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including without limiting the generality of the foregoing delays or any such temporary suspension as aforesaid caused by or arising from Act of God *force majeure* earthquakes floods storms tempest washaways fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) acts or omissions of the Commonwealth shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability profitably to sell coal or factors due to overall world economic conditions or factors due to action taken by or on behalf of any government or governmental

authority or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party of the event or events and shall minimise the effect of such causes as soon as possible after the occurrence.

**Power to extend periods <sup>21</sup>**

35. Notwithstanding any provision of this Agreement the Minister may at the request of the Company from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

**Determination of Agreement <sup>21</sup>**

36. (1) In any of the following events namely if the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations to the State herein or in the Company's Coal Mining Leases or any of them or in any lease sublease licence or other title or document granted or assigned under this Agreement on its part to be performed or observed or if the Company abandons or repudiates its operations under this Agreement and such default is not remedied or such operations resumed within a period of 180 days after notice as provided in subclause (2) of this Clause is given by the State (or — if the alleged default (or the materiality thereof) abandonment or repudiation is contested by the Company and within 60 days after such notice is submitted by the Company to arbitration — within a reasonable time fixed by the arbitration award but not less than 90 days after the making of the arbitration award where the question is decided against the Company the arbitrator finding that there was a *bona fide* dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement.

(2) The notice to be given by the State in terms of subclause (1) of this Clause shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the party or parties responsible therefor and shall be given to the Company and all such assignees mortgagees chargees and disponees for the time being of the Company's Coal Mining Leases or any of them and of the Company's said rights to or in favour of whom or by whom an assignment

mortgage charge or disposition has been effected in terms of Clause 32 whose name and address for service or notice has previously been notified in writing to the State by the Company of any such assignee mortgagee chargee or disponent.

(3) The abandonment or repudiation by or liquidation of the Company referred to in subclause (1) of this Clause means the abandonment or repudiation by or the liquidation of all of them the Company and all assignees and appointees who have executed and are for the time being bound by a deed of covenant in favour of the State as provided in Clause 32.

(4) If the default referred to in subclause (1) of this Clause shall not have been remedied after such notice or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may, subject to the rights of the holder of any mortgage charge or assignment existing at the date of this Agreement itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand.

(5) Notwithstanding the provisions of this Clause, the determination by the State Energy Commission of the State Energy Commission contract, by reason of the established default of the Company under such contract, shall be deemed to be a breach of this Agreement entitling the State to determine this Agreement forthwith by notice to the Company. The State shall cause a copy of such notice to be served upon all such assignees, mortgagees, chargees and disponents for the time being of the Company's Coal Mining Leases or any of them and of the Company's said rights to or in favour of whom or by whom an assignment, mortgage, charge or disposition has been effected in terms of Clause 32 whose name and address for service of notice has previously been notified to the State by the Company or any such assignee, mortgagee, chargee or disponent.

#### **Effect of cessation and determination of Agreement <sup>21</sup>**

37. (1) Upon the cessation or determination of this Agreement —

(a) except as otherwise agreed by the Minister the rights of the Company and those of any assignee or mortgagee of the Company under this Agreement or under any coal mining lease granted to the Company pursuant to



subclause (1) of Clause 21 or any other lease, licence, easement or right granted hereunder or pursuant hereto and all the right title and interest of the Company and of any such assignee or mortgagee in and to any land wherever situated granted to the Company or to such assignee for any other of the purposes of this Agreement shall thereupon cease and determine, but without prejudice to the liability of either of the parties in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder; and

(b) the Company shall forthwith pay to the State all moneys that may then have been payable or accrued due hereunder; and

(c) except as provided in this Clause or otherwise provided in this Agreement neither of the parties shall have any claim against the other of them in respect to any matter or thing contained in or arising out of this Agreement.

(2) Subject to the provisions of subclause (3) of this Clause upon the cessation or determination of this Agreement all buildings erections and other improvements erected on any land other than land held by the Company pursuant to any of the coal mining leases referred to in Schedule "A" hereof then occupied by the Company or any associated company or assignee of the Company under any coal mining lease granted to the Company pursuant to Clause 21 or any other lease, licence, easement, right or grant made hereunder for the purpose hereof shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Company or any other party and freed and discharged from all mortgages and other encumbrances and the Company shall do and execute all such deeds documents and other acts matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.

(3) In the event of the Company immediately prior to the cessation or determination of this Agreement or subsequently thereto desiring to remove any of its fixed or movable plant and equipment from any part of the land occupied by it at the date of such cessation or determination other than land held by the Company pursuant to any of the coal mining leases referred to in Schedule "A" hereof the Company shall give to the State notice of such desire and thereby shall grant to the State the right or option exercisable within 3 months thereafter to purchase *in situ* the said fixed or movable plant and equipment or any part thereof at a fair valuation to be agreed between the parties or failing agreement determined by arbitration hereunder.

(4) The determination of this Agreement shall not affect the operation of subclause (4) of Clause 21.

**Environmental protection** <sup>21</sup>

38. Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to the operations of the Company hereunder that may be made by the State or any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act for the time being in force.

**Indemnity** <sup>21</sup>

39. The Company shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by the Company pursuant to this Agreement or relating to its operations hereunder or arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

**Licences and consents** <sup>21</sup>

40. The Company shall make all necessary applications from time to time to the proper authorities and the Commonwealth and the State for the grant to it of any licences or consents required under Commonwealth or State law to permit it to enter this Agreement and perform its obligations hereunder.

**Stamp duty exemption** <sup>21</sup>

41. (1) The State shall exempt from any stamp duty which but for the operation of this Clause would or might be chargeable on —

(a) this Agreement;

(b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee of the Company any lease licence easement or right granted or demised hereunder or pursuant hereto; and

(c) any assignment sublease or disposition (other than by way of mortgage or charge) and any appointment to or in favour of the Company or an associated company of any interest right obligation power function or authority made pursuant to the provisions of this Agreement.

PROVIDED THAT this Clause shall not apply to any instrument or other document executed or made more than 7 years from the date hereof.

(2) If prior to the date on which the Bill referred to in Clause 3 to ratify this Agreement is passed as an Act stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1) of this Clause the State when such Bill is passed as an Act shall on demand refund any stamp duty paid on any such instrument or other document to the person who paid the same.

#### **Arbitration** <sup>21</sup>

42. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement the construction of this Agreement or as to the rights duties or liabilities of either party hereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to the arbitration of two arbitrators one to be appointed by each party the arbitrators to appoint their umpire before proceeding in the reference and every such arbitration shall be conducted in accordance with the provisions of the *Arbitration Act 1895*.

(2) Except where proposals are pursuant to the provisions of this Agreement referred to arbitration, the provisions of this Clause shall not apply to any case where the State the Minister or any other Minister in the Government of the said State is by this Agreement given either expressly or impliedly a discretionary power.

(3) The arbitrators or umpire (as the case may be) of any submission to arbitration hereunder are hereby empowered upon the application of either of the parties to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties hereunder and an award may in the name of the Minister grant any further extension or variation for that purpose.

#### **Notices** <sup>21</sup>

43. Any notice consent or other writing authorised by or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Public Service of the State acting by the direction of the Minister and forwarded by prepaid post to the Company at its registered office for the time being in the

State and by the Company if signed on its behalf by a director manager or secretary of the Company or by any person or persons authorised by the Company in that behalf or by its solicitors (which solicitors have been notified to the State from time to time) and forwarded by prepaid post to the Minister and any such notice consent or writing shall be deemed to have been duly given or sent (unless the contrary be shown) on the day on which it would be delivered in the ordinary course of post.

**Consultation** <sup>21</sup>

44. The Company shall during the currency of this Agreement consult with and keep the State fully informed on a confidential basis concerning any action that the Company proposes to take with any third party (including the Commonwealth or any Commonwealth constituted agency authority instrumentality or other body) which might significantly affect the overall interest of the State under this Agreement.

**Sub-contracting** <sup>21</sup>

45. The State shall ensure that without affecting the liabilities of the parties under this Agreement either party shall have the right from time to time to entrust to third parties the carrying out of any portions of the operations which it is authorised or obliged to carry out hereunder.

**State Energy Commission contract** <sup>21</sup>

46. Nothing in this Agreement shall affect the rights and obligations of the Company or the State Energy Commission under the State Energy Commission contract.

**Inconsistency** <sup>21</sup>

47. Where any provision in any coal mining lease referred to in Schedule “A” hereof held by the Company during the currency of this Agreement is inconsistent with any provision of this Agreement this Agreement shall prevail.

**Applicable law** <sup>21</sup>

48. This Agreement shall be interpreted according to the law for the time being in force in the said State.

SCHEDULE "A"

Coal mining leases under the Mining Act held by the Company at the date of this Agreement 448, 514, 537, 449, 450, 451, 452, 515, 532, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466.

SCHEDULE "B"

Applications for coal mining leases under the Mining Act in the name of the Company at the date of this Agreement which if granted would be subject to the reservation of coal to satisfy the needs of the State Energy Commission as provided in Clause 5. 735, 722, 721, 720, 719, 724, 725, 713, 710, 714, 711, 718, 715, 712, 709, 708, 707, 705, 704, 706.

SCHEDULE "C"

Applications for coal mining leases under the Mining Act in the name of the Company at the date of this Agreement which if granted would not be subject to the reservation of coal to satisfy the needs of the State Energy Commission as provided in Clause 5. 634, 633, 642, 636, 756, 744, 635, 745, 746, 751, 752, 753, 747, 748, 749, 682, 681, 680, 651, 652, 754, 755, 661, 750, 648, 643, 645, 637, 638, 644, 640, 639.

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by the said THE HONOURABLE  
SIR CHARLES WALTER MICHAEL  
COURT, K.C.M.G., O.B.E., M.L.A. in the  
presence of:

}

CHARLES COURT

ANDREW MENSAROS

.....

Minister for  
Industrial Development.

THE COMMON SEAL of THE GRIFFIN  
COAL MINING COMPANY LIMITED was }  
hereunto affixed by authority of the Board of } (C.S.)  
Directors, and in the presence of: }

Director. STOWE.

Secretary. D. JESSUP.

**Schedule 2 — 2023 variation agreement**

[s. 2]

[Heading inserted: No. 14 of 2023 s. 7.]

**2023**

**THE HONOURABLE MARK McGOWAN**  
**PREMIER OF THE STATE OF WESTERN AUSTRALIA**

**AND**

**THE GRIFFIN COAL MINING COMPANY PTY LIMITED**  
**(RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION)**

**ACN 008 667 285**

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**COLLIE COAL (GRIFFIN) AGREEMENT 1979**  
**RATIFIED VARIATION AGREEMENT**

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[Solicitor's details]

**THIS AGREEMENT** is made this 4<sup>th</sup> day of May 2023

**BETWEEN**

**THE HONOURABLE MARK McGOWAN, BA, LLB, M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time ("the State") of the one part**

**AND**

**THE GRIFFIN COAL MINING COMPANY PTY LIMITED ACN 008 667 285 (receivers and managers appointed) (in liquidation) of Level 1, 7 Rheola Street, West Perth, Western Australia ("the Company") of the other part.**

**RECITALS**

- A.**      The State and the Company are the parties to the agreement dated 5 November 1979 ratified by and scheduled to the *Collie Coal (Griffin) Agreement Act 1979* and which is referred to in this Agreement as the "**Principal Agreement**".
- B.**      The parties wish to vary the provisions of the Principal Agreement on the terms and conditions set out in this Agreement.

**THE PARTIES AGREE AS FOLLOWS:**

**1. Ratification and operation**

- (1) This Agreement, other than this clause, does not come into operation except in accordance with subclause (2).
- (2) This Agreement, other than this clause, comes into operation on the day on which it is ratified by an Act of the Parliament of Western Australia ("**Operative Date**") unless, before that day, it terminates under subclauses (4) or (5).
- (3) The State must introduce in the Parliament of Western Australia on or before 22 June 2023 or a later date agreed between the parties to this Agreement, a Bill to ratify this Agreement however the State is not obliged to endeavour to secure its passage as an Act.



(4) If by 30 June 2023 this Agreement has not been ratified by an Act of the Parliament of Western Australia then, unless the parties to this Agreement otherwise agree, this Agreement terminates on that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

(5) The parties agree that if the Principal Agreement is otherwise determined in accordance with its provisions on a day prior to the Operative Date, then this Agreement shall also terminate on and from that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

(6) The State acknowledges and agrees that, notwithstanding any other provision of this Agreement or the Principal Agreement:

(a) Matthew Donnelly, Sean Holmes and Grant Sparks ("Receivers") execute this Agreement as joint and several receivers and managers of the assets of the Company for and on behalf of and as agents of the Company;

(b) the Receivers are not liable in their personal capacity in any way in connection with this Agreement or the Principal Agreement, except to the extent any liability is caused or contributed to by the recklessness, fraud, gross negligence or wilful misconduct of any Receiver;

(c) to the maximum extent permitted by law, the State releases and forever discharges the Receivers personally from any liability under this Agreement or the Principal Agreement, except to the extent any liability is caused or contributed to by the recklessness, fraud, gross negligence or wilful misconduct of any Receiver; and

(d) the limitations on the Receivers' liability under this Agreement will continue notwithstanding the Receivers ceasing to act as receivers and managers of the assets of the Company or this Agreement being terminated or amended.

## **2. Variations of the Principal Agreement**

The Principal Agreement is varied as follows:

- (1) in clause 1 by inserting in the appropriate alphabetical position the following new definition:

"variation date" means the date on which Clause 2 of the variation agreement made on or about 4 May 2023 between the Honourable Mark McGowan, Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time and the Company comes into operation;

- (2) by inserting after clause 10 the following new clause:

### **"Proposals after variation date**

#### **Extension of timeframes of approved proposals**

- 11A. (1) Subject to Clause 10 and this Clause generally, all timeframes (whether express or implied) for any activities obliged and authorised to be undertaken by the Company pursuant to this Agreement and approved proposals hereunder (including measures to be taken for the protection and management of the environment) on or prior to 30 June 2023 shall be deemed extended on and from the variation date to 30 June 2024.

#### **Additional proposals for financial year ending 30 June 2024**

- (2) The Company shall, not later than 3 months after the variation date (or such extended time as the Minister may allow), submit detailed proposals under and in accordance with Clause 10 for the financial year ending 30 June 2024 for the exploration and development of the coal resource contained in the Company's Coal Mining Leases and as to such of the matters mentioned in paragraphs (a) to (l) of subclause (1) of Clause 7 as the Minister may require and such proposals shall be deemed to meet the requirement of Clause 10 that the proposals evidence a significant variation of the Company's activities

under this Agreement to a greater extent than those specified in any approved proposals.

**Additional proposals for financial year ending 30 June 2025**

(3) If the term of the Agreement is extended by the Minister pursuant to subclause (3) of Clause 49 then the draft additional proposals accompanying the notice given pursuant to subclause (2) of Clause 49 shall be deemed, on the date of the Minister's decision under subclause (3) of that Clause, to be submitted by the Company under and in accordance with Clause 10 and without limitation to the Minister's consideration of such proposals under that Clause."

(3) in clause 21 by:

(a) inserting after subclause (2) the following new subclause:

**"Extended term of coal mining leases granted under this Clause**

(2a) The term of each coal mining lease, granted to the Company pursuant to subclause (1) of this Clause and subsisting immediately prior to the variation date, is deemed to continue until:

(a) 30 June 2024; or

(b) if the Minister extends the term of the Agreement under subclause (3) of Clause 49, 30 June 2025,

subject in each case to the sooner determination of such term upon the cessation or determination of this Agreement. "

(b) inserting in subclause (3) after the word "Agreement" and before the full stop the following:

", including as extended by and in accordance with Clause 49";  
and



EXECUTED for and on behalf of )  
THE GRIFFIN COAL MINING )  
COMPANY PTY LIMITED )  
(RECEIVERS AND MANAGERS )  
APPOINTED) (IN LIQUIDATION) )  
by its joint and several receiver and )  
manager in the presence of: )

[Signature] )

Signature of witness )

SEAN HOLMES )  
Full name of witness (block letters) )

[Signature] )

Signature of receiver and )  
manager )

MATTHEW J DONNELLY )  
Name of receiver and manager )  
(block letters) )

[Schedule 2 inserted: No. 14 of 2023 s. 7]

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## Notes

<sup>1</sup>—This is a compilation of the *Collie Coal (Griffin) Agreement Act 1979* and includes ~~the~~ amendments made by ~~the~~ other written laws ~~referred to in the following table. The table also contains.~~ [For provisions that have come into operation, and for information about any ~~reprint~~ reprints, see the compilation table.](#)

## Compilation table

Short title	Number and year	Assent	Commencement
<i>Collie Coal (Griffin) Agreement Act 1979</i>	82 of 1979	11 Dec 1979	11 Dec 1979
<b>Reprint of the <i>Collie Coal (Griffin) Agreement Act 1979</i> as at 8 Nov 2002</b>			
<i>Standardisation of Formatting Act 2010</i> s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<sup>2</sup>			
<a href="#">Collie Coal (Griffin) Agreement Amendment Act 2023</a>	<a href="#">14 of 2023</a>	<a href="#">26 Jun 2023</a>	<a href="#">s. 1 and 2: 26 Jun 2023 (see s. 2(a)); Act other than s. 1 and 2: 27 Jun 2023 (see s. 2(b))</a>

## Other notes

<sup>1</sup> Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.