

Western Australia

**Collie Coal (Western Collieries) Agreement Act
1979**

As at 05 Apr 2002

Version 01-a0-08

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Collie Coal (Western Collieries) Agreement Act 1979

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Collie Coal (Western Collieries) Agreement Act 1979

An Act to ratify an agreement between the State of Western Australia and Western Collieries Ltd. 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 (Western Collieries) Agreement Act 1979*¹.

2. Interpretation

In this Act —

the Agreement means the agreement a copy of which is set out in Schedule 1, and includes that agreement as so altered from time to time in accordance with its provisions;

the Supplementary Agreement means the agreement a copy of which is set out in Schedule 2;

the Supplementary Agreement (1990) means the agreement a copy of which is set out in Schedule 3;

the Supplementary Agreement (1994) means the agreement a copy of which is set out in Schedule 4.

[Section 2 amended by No. 76 of 1985 s. 3; No. 9 of 1990 s. 4; No. 57 of 1994 s. 4.]

3. Ratification of the Agreement

The Agreement is hereby ratified and its implementation authorised.

4. Supplementary Agreement

- (1) The Supplementary Agreement is ratified.
- (2) The implementation of the Supplementary Agreement is authorised.
- (3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Supplementary Agreement shall operate and take effect notwithstanding any other Act or law.

[Section 4 inserted by No. 76 of 1985 s. 4.]

5. Supplementary Agreement (1990)

- (1) The Supplementary Agreement (1990) is ratified.
- (2) The implementation of the Supplementary Agreement (1990) is authorised.
- (3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Supplementary Agreement (1990) shall operate and take effect notwithstanding any other Act or law.

[Section 5 inserted by No. 9 of 1990 s. 5.]

6. Supplementary Agreement (1994)

- (1) The Supplementary Agreement (1994) is ratified.
- (2) The implementation of the Supplementary Agreement (1994) is authorised.
- (3) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Supplementary

Agreement (1994) shall operate and take effect notwithstanding any other Act or law.

[Section 6 inserted by No. 57 of 1994 s. 5.]

Schedule 1

Schedule 1

[S. 2.]

THIS AGREEMENT made this 17th day of January, 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 WESTERN COLLIERIES LTD. a company incorporated under the provisions of the Statutes of Western Australia and having its registered office at 517-519 Hay Street, 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 Western Australian Industry are adequately safeguarded.

NOW THIS AGREEMENT WITNESSETH —

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 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;

“Coal Mining Lease” means the coal mining lease granted pursuant to Clause 21 and any renewal thereof and according to the context shall describe the area of land demised as well as the instrument by which it is demised;

“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;

“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*;

“Mining Act” means the *Mining Act 1904*;

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“mining areas” means the areas delineated and coloured red (hereinafter called “the red areas”) on the plan marked “A” (initialled by or on behalf of the parties hereto for the purposes of identification) over which the Company as at the date hereof holds coal mining leases, together with such of the areas delineated and coloured yellow (hereinafter called “the yellow areas”) on the said plan in respect of which the Company has at the date hereof applied for coal mining leases;

“mining plan” refers to any coal mining development plan (including all plans and appendices) and amendments thereto to be furnished to the State Energy Commission from time to time pursuant to any agreement between the State Energy Commission and the Company for the supply of coal;

“Minister” means the Minister in the Government of the State for the time being responsible (under whatsoever title) for the administration of the ratifying Act and pending the passing of the Act means the Minister for the time being designated in a notice from the State to the Company and includes the successors in office of 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 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 ²

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 36 to extend any period or date shall be without prejudice to the power of the Minister under Clause 36;
- (c) marginal notes do not affect the interpretation or construction ²; and
- (d) reference to an 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 ²

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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, 1979; and
 - (b) to the extent reasonably necessary for the purposes of this Agreement allow the Company to enter upon Crown lands.

Ratification and operation ²

4. (1) The provisions of this Agreement other than this Clause and Clauses 1 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, 1979 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 ²

5. The parties agree that during the currency of this Agreement fifty per centum of the extractable reserves of coal from time to time existing within the Coal Mining Lease shall be expressly 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 include coal to be mined by open-cut methods and coal to be mined by deep mining methods and 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 ²

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 total coal resource contained in the mining areas taking full account of the need

to achieve a balance acceptable to both parties between open-cut mined and deep mined coal, 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 Coal Mining Lease whether mined by the Company or some other party and such of the red areas on the plan marked "A" mined by the Company that are not included in the Coal Mining Lease. The Company shall furnish the Minister with a copy of the overall scheme at the time of submitting proposals under sub clause (1) of Clause 7.

Company to submit proposals ²

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 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 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) the mining of coal, including measures to be taken to achieve a fair balance between the mining of coal by open-cut methods and deep mining methods;
- (b) evidence that the coal needs of the State Energy Commission have been met for the period covered by such proposals on a basis commercially acceptable to both the Company and the State Energy Commission;
- (c) details of the total tonnage of coal which the Company proposes to mine for sale to all purchasers including the State Energy Commission in each of years 1 to 15 inclusive;
- (d) 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;
- (e) roads;

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- (f) power supply;
- (g) the clearing of timber;
- (h) the collection and disposal of water (including water pumped or drawn from mines);
- (i) water courses and any alteration to their regime;
- (j) any other works, services or facilities desired by the Company, including any railway requirements;
- (k) use of local professional services, labour and materials;
- (l) any leases, licences or other tenures of land required from the State; and
- (m) 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 and the red 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 (l) of this subclause, consideration of the environmental effects relating thereto.

Order of proposals²

(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 (m) of subclause (1) of this Clause.

Use of existing infrastructure²

(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 proposals²

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 (having regard to the circumstances including the overall development of and the use by others as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions.

Advice of Minister's decision²

- (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 Minister²

- (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 arbitration²

- (4) If the decision of the Minister is as mentioned in the said paragraph (c) and the Company considers that the condition precedent is unreasonable the Company may within 2 months after receipt of the notice mentioned in sub-clause (2) of this Clause elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the condition precedent.

Arbitration award²

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

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- (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 ²

(6) Notwithstanding that under subclause (1) of this of Clause 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 ²

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

Company's obligations for further proposals ²

9. The Company shall submit to the Minister detailed proposals for the exploration and development of the coal resource contained in the Coal Mining Lease and as to such of the matters mentioned in paragraphs (a) to (m) 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.

The provisions of Clauses 7 and 8 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 proposals²

10. If the Company at any time during the continuance of this Agreement desires to significantly modify expand or otherwise vary its activities carried on pursuant to this Agreement beyond 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 (m) of subclause (1) of Clause 7 as the Minister may require. The provisions of Clauses 7 and 8 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 environment²

11. (1) The Company shall in respect of the matters referred to in paragraph (m) 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.

Reports²

(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 proposals²

(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.

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(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 Clauses 7 and 8 where applicable shall *mutatis mutandis* apply in respect of such proposals.

(5) The Company shall implement the approved proposals in accordance with the terms thereof.

Access ²

12. The Company shall permit the Minister or any officer or other person authorized 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 ²

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.

State Energy Commission mining plan ²

14. At such time or times as the Company shall submit to the State Energy Commission any mining plan, the Company shall forward to the Minister a copy thereof.

Use of local professional services labour and materials ²

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 ²

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 licencees) 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 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 ²

(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 ²

(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

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(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.

Liability²

(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 for the maintenance of which the Company is 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 term “municipality” “street” and “care control and management” shall have the meanings which they respectively have in the *Local Government Act 1960*.

Rail Loading Facilities²

17. (1) The Company shall in accordance with plans and specifications approved by the Railways Commission at its own cost provide, 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 rates²

(2) The Company shall ensure that:

(a) all wagons are loaded within the authorized axle load capacity and shall be subject to such minimum load per wagon and per train as may be defined 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 ²

(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 Coal Mining Lease 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 repayment, 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 43 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 ²

(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 ²

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

Diversion of railway ²

(6) The Company may during the currency of this Agreement request the Railways Commission to divert any portion of the railway within the Coal Mining Lease if in the opinion of the Minister such portion interferes with the logical and economical development of the Coal Mining Lease. 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.

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Additional rail requirements ²

(7) Where the Company requires the use of rail facilities for the transport of coal from the Coal Mining Lease 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 sidings 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 ²

Non-interference with Muja Power Station water supply and transmission lines ²

18. (1) The Company shall not carry out any operations pursuant to this Agreement so as to interfere with or endanger the water supply system and appurtenant works water supplying water to the Muja Power Station or any transmission lines from the Muja Power Station.

Diversion of transmission lines ²

(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 ²

19. (1) Subject to any right of the Company to utilize water occurring in or collecting on the Coal Mining Lease (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 in existence at the date hereof 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 Coal Mining Lease 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.

Forests²

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 purposes²

(2) Notwithstanding the provisions of subclause (1) of this Clause, the Company shall from time to time as may for 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 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 Lease²

21. (1) (a) On application made by the Company within 60 days after all its proposals submitted pursuant to Clause 7 have been approved for a Coal Mining Lease over so much of the land in the red areas and the yellow areas as the Company desires and in respect of which the Company then holds coal

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mining leases, the State shall upon the surrender by the Company of all such coal mining leases cause to be granted to the Company at the rental specified from time to time in the Mining Act a Coal Mining Lease of any part or parts of such land within the mining areas 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 Lease to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act but in the form of the Schedule hereto and subject to such of the conditions of the surrendered coal mining leases as the Minister for Mines determines and such other 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 in the Coal Mining Lease or injury to anything on or below the surface of that land.

(b) Upon the granting of the Coal Mining Lease the rights of the Company as the holder of any coal mining lease over so much of the red areas and the yellow areas respectively as are outside the Coal Mining Lease shall forthwith cease and determine (but without any refund of rent already paid) but nothing in this paragraph shall limit any obligation of the Company to rehabilitate as provided by the relevant approved proposal.

(2) Subject to the performance by the Company of its obligations under this Agreement and the Mining Act and notwithstanding any provisions of the Mining Act to the contrary, the term of the Coal Mining Lease shall be for a period of 21 years commencing from the date of receipt of application with the light 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 the Coal Mining Lease.

Labour conditions ²

(3) 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 Coal Mining Lease.

Other mining tenements ²

(4) (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 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 as defined in the *Petroleum Act 1967*) within the Coal Mining Lease 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 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 Coal Mining Lease (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 coal mining lease ²

(5) The Company shall not prohibit the State and third parties (with or without stock vehicles and rolling stock) from having access to and passing over the Coal Mining Lease (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 ²

(6) The Company shall not commence any mining or related operations for the purposes of this Agreement on privately owned land within the Coal Mining Lease 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) 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 part of coal mining lease ²

(7) 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 Coal Mining Lease (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) provided however that

Schedule 1

such portion or portions have been rehabilitated in accordance with approved proposals hereunder.

Amendment of the Mining Act ²

(8) For the purposes of the Coal Mining Lease, 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.”.

(9) The Company shall prior to the date of application for a Coal Mining Lease under subclause (1) of this Clause have the right to enter upon and explore such of the yellow areas as have not then been included in a coal mining lease on such terms and conditions as the Minister shall approve.

Leases, licences, permits and easements ²

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 ²

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 ²

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 ²

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 Clause 7(1)(c) and Clause 8 has been determined as the maximum tonnage which the Company may sell in the relevant year to any person or persons including the State Energy Commission.

(3) Subject to 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 ²

26. (1) The Company shall pay to the State in respect of all coal mined or produced by the Company from the Coal Mining Lease and sold by it royalties at the rates from time to time prescribed under or pursuant to the provisions of the Mining Act.

Return and payment of royalties ²

(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

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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.

Inspection²

(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 Coal Mining Lease and sold by it which may affect the amount of royalty payable hereunder.

Zoning²

27. The State shall after consultation with the relevant local authority ensure that the Coal Mining Lease 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 or other authority of the State on the ground that such operations are contrary to any zoning by-law regulation or order.

Rating²

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 rates²

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 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 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 agreement²

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 resumption²

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 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 Coal Mining Lease 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.

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Assignment ²

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 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;
 - (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 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 Coal Mining Lease 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.

Substituted securities²

33. Where the Company whether before or after the execution of this Agreement executes and has registered in the Department of Mines a mortgage over a coal mining lease in the mining areas, and the land the subject of that coal mining lease on the surrender of such lease becomes incorporated in the Coal Mining Lease then provided the consent of the mortgagee is first obtained, the Coal Mining Lease shall notwithstanding the provisions of the Mining Act be deemed to be the subject of such mortgage as if the Coal Mining Lease had been referred to in the mortgage. A memorandum of any such mortgages shall be endorsed on the Coal Mining Lease in the order in which they appeared registered against any such surrendered lease at the time of its surrender and shall be noted in the appropriate registers of the Department of Mines by the Principal Registrar who shall also endorse on the original and duplicate copies of such mortgages the fact of their having been registered as an encumbrance against the Coal Mining Lease.

Variation²

34. (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.

Schedule 1

(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 majeure²

35. 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 profitability 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 (other than the State or any authority of the State) 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 periods²

36. 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 agreement²

37. (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 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 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 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 in writing to the State by the Company or any such assignee mortgagee chargee or disponee.

(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 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.

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Effect of cessation and determination of agreement ²

38. (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 the Coal Mining Lease or any other lease, licence, easement or right granted hereunder or pursuant hereto or (notwithstanding the provisions of the Mining Act) under any coal mining leases granted pursuant to the Mining Act in respect of coal mining lease applications numbered 671, 672, 673, 674, 675, 684 and 731 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 then occupied by the Company or any associated company or assignee of the Company under the Coal Mining Lease or any other lease, licence, easement, right or grant made hereunder for the purpose hereof or under any coal mining leases granted pursuant to the Mining Act in respect of coal mining lease applications numbered 671, 672, 673, 674, 675, 684 and 731 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 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.

Environmental protection²

39. 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.

Indemnity²

40. 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 consents²

41. 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 exemption²

42. (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

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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.

Arbitration²

43. (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.

Notices²

44. 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.

Consultation²

45. 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-contracting²

46. 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 authorized or obliged to carry out hereunder.

Applicable law²

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

THE SCHEDULE
WESTERN AUSTRALIA

Schedule 1

Mining Act 1904
Collie Coal (Western Collieries) Agreement Act

COAL MINING LEASE

Lease No. Collie River Mineral Field

.

ELIZABETH THE SECOND by the Grace of God Queen of Australia and Her other Realms and Territories, Head of the Commonwealth.

TO ALL TO WHOM THESE PRESENTS shall come GREETING:

KNOW YE that whereas by The *Mining Act 1904*, power is given to the Governor of Our State of Western Australia, in the Commonwealth of Australia, to grant leases of land for the purposes of mining for coal thereon AND WHEREAS by an Agreement made between the State of Western Australia and WESTERN COLLIERIES LTD. a company incorporated under the provisions of the Statutes of Western Australia and having its registered office at 517-519 Hay Street, Perth, in the said State (hereinafter called "the Company" which expression includes its successors and permitted assigns) which Agreement (hereinafter referred to as "the Agreement") was ratified by the Collie Coal (Western Collieries) Agreement Act, the State agreed to grant to the Company on application made by the Company a coal mining lease under and, except as otherwise provided by the Agreement, subject to the *Mining Act 1904* AND WHEREAS the Company has now made application for a coal mining lease of the land hereinafter described for the purpose of mining thereon for coal: NOW WE in consideration of the rents and royalties reserved by the Agreement and in consideration of the other covenants and conditions in this lease and in the Agreement to be observed by the Company DO BY THESE PRESENTS GRANT AND DEMISE unto the Company but subject to the provisions of the Agreement all those pieces and parcels of land situated in the Collie River Mineral Field containing approximately hectares (subject to such corrections as may be necessary to accord with the survey when made) and particularly described and delineated on the plan in the Schedule hereto and all those mines, seams, or deposits of coal in, on and under the said land (hereinafter called the "said mine"), together with the rights, liberties, easements, advantages and appurtenances thereto belonging or appertaining to a lessee of a coal mining lease under The *Mining Act 1904* including all amendments thereof for the time being in force and all regulations made thereunder for the time being in force (which Act and regulations are hereinafter referred to as "the Mining Act") or to which the Company is entitled under the

Agreement, excepting and reserving out of this demise any portion of the said land which is now used for any public works or building whatsoever to hold the said land and the said mine and all and singular the premises hereby demised for the term of twenty one (21) years from the day of 197 with the right to renew the same for one further period of twenty one (21) years as provided in but subject to the terms covenants and conditions set out in the Agreement and to the Mining Act (as modified by the Agreement), YIELDING and paying therefor the rents and royalties as provided for in the Agreement AND WE do hereby declare that this lease is subject to the condition that the Company shall observe perform and carry out the provisions of the *Coal Mines Regulation Act 1946*, and all amendments thereof for the time being in force made thereunder and the provisions of the Mining Act (as modified by the Agreement) in so far as the same affect or have application to this lease or any renewal thereof.

SPECIAL CONDITIONS (to be inserted)

PROVIDED THAT this lease and any renewal thereof shall not be determined or forfeited otherwise than under and in accordance with the Agreement.

AND PROVIDED FURTHER that all petroleum and minerals other than coal on or below the surface of the demised land are reserved to Her Majesty or any person claiming under her and that any person lawfully authorised in that behalf may have access to the demised land for the purpose of searching for and obtaining petroleum or, subject to the terms of the Agreement, minerals other than coal in any part of the land under the provisions of the *Petroleum Act 1967* or the Mining Act.

IN WITNESS WHEREOF we have caused our Minister for Mines to affix his seal and set his hand hereto at Perth in our said State of Western Australia and the Common Seal of the Company was hereunto affixed by authority of the Board of Directors.

DATED THE DAY OF 197 .

THE SCHEDULE ABOVE REFERRED TO (plan of Lease)

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

Schedule 1

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
WESTERN COLLIERIES LTD,
was hereunto affixed by order
of and at a meeting of the
Directors of the said Company
this 17th day of January, 1979
in the presence of —

W. M. DUNSTAN
.....Director.

A. T. FOGARTY
.....Director.

G. SIMMONDS
.....Secretary.

[Schedule 1 amended by No. 76 of 1985 s. 5.]

Schedule 2

THIS AGREEMENT is made the 7th day of October 1985 BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, 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 WESTERN COLLIERIES LTD a company incorporated under the provisions of the Statutes of Western Australia and having its registered office at 29th Floor, 44 St. George's Terrace, 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 parties hereto are the parties to the agreement dated the 17th day of January, 1979 which was ratified by and is scheduled to the *Collie Coal (Western Collieries) Agreement Act 1979* (hereinafter called "the principal Agreement"); and
- (b) the parties desire to vary the provisions of the principal Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the principal Agreement.
2. The provisions of this Agreement shall not come into operation until a Bill to approve and ratify this Agreement is passed by the Legislature of the said State and comes into operation as an Act.
3. The principal Agreement is hereby varied as follows —
 - (1) Clause 1 —
 - (a) by deleting the definition of "Coal Mining Lease";
 - (b) by deleting the definition of "Mining Act" and inserting the following definition —

“ “Mining Act” means the *Mining Act 1978*; ”;

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- (c) by inserting in the definition of “mining areas” after “applied for coal mining leases” the following —
 - “ and following the grant of the Mining Lease includes the land leased thereby and any area or areas added thereto pursuant to the provisions of subclause (2a) of Clause 21 ”;
 - (d) by deleting the definition of “Minister for Mines” and inserting the following definition —
 - “ “Minister for Minerals and Energy” means the Minister in the Government of the State for the time being responsible for the administration of the Mining Act; ”;
 - (e) by inserting after the definition of “State forest” the following definition —
 - “ “the Mining Lease” means the mining lease referred to in subclause (1) of Clause 21 and includes any renewal thereof and according to the requirements of the context shall describe the land leased as well as the instrument by which it is leased and any area or areas added thereto pursuant to the provisions of subclause (2a) of Clause 21; ”.
- (2) Clause 5 —
by deleting “the Coal Mining Lease” and substituting the following —
“ the Mining Lease ”.
- (3) Clause 6 —
by deleting “the Coal Mining Lease” wherever it occurs and substituting the following —
“ the Mining Lease ”.
- (4) Clause 9 —
by deleting “the Coal Mining Lease” and substituting the following —
“ the Mining Lease ”.

(5) Clause 10 —

by deleting “Clauses 7 and 8” and substituting the following —

“ Clause 7 and Clause 8 (other than subclauses (5) and (6)) ”.

(6) Clause 11 —

(a) subclause (2) —

by deleting subclause (2) and substituting the following —

“ (2) The Company shall during the currency of this Agreement submit to the Minister —

(a) not later than 31st May, 1986 and the 31st May in each year thereafter (except those years in which a detailed report is required to be submitted pursuant to paragraph (b) of this subclause) an interim report concerning investigations and research carried out pursuant to subclause (1) of this Clause during the year ending 31st March immediately preceding the due date for the interim report; and

(b) not later than 31st May, 1988 and the 31st May in each third year thereafter, a detailed report on the result of such investigations and research during the three year period ending 31st March immediately preceding the due date for the detailed report. ”;

(b) subclause (4) —

by deleting “Clauses 7 and 8” and substituting the following —

“ Clause 7 and Clause 8 (other than subclauses (5) and (6)) ”;

Schedule 2

(c) subclause (5) —

by deleting subclause (5) and substituting the following —

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

(7) Clause 14 —

by deleting Clause 14 and the marginal note thereto and substituting the following —

“ **Mining Plan to be furnished** ²

14. On 11th September, 1987 (or such later date as the Minister may agree as hereinafter provided) and thereafter during the currency of this Agreement at 5 yearly intervals or such longer periods as the Minister may agree (commencing from the date of the first submission of a plan pursuant to this Clause) furnish to the Minister a plan of the Company’s proposed mine development and coal production pursuant to the approved proposals for the ensuing 5 years. ”.

(8) Clause 17 —

by deleting “the Coal Mining Lease” wherever it occurs and substituting the following —

“ the Mining Lease ”.

(9) Clause 18 —

by deleting subclause (2) and substituting the following —

“ (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 and agreement on cost and payment terms divert at the expense of the Company the transmission lines within 12 months of the determination of the alternative route as aforesaid. ”.

(10) Clause 19 —

by deleting “the Coal Mining Lease” wherever it occurs and substituting the following —

“ the Mining Lease ”.

(11) Clause 21 —

(a) subclause (1) —

by deleting subclause (1) and the marginal note thereto and substituting the following —

“ **Mining Lease**²

(1) (a) On application made by the Company within 12 months after all its proposals submitted pursuant to Clause 7 have been approved for a mining lease for the mining of coal over so much of the land in the red areas and the yellow areas as the Company desires and in respect of which the Company then holds mining leases, the State shall upon the surrender by the Company of all such mining leases cause to be granted to the Company, at a rental equal to eighty per cent of the rental specified from time to time in the Mining Act in respect of a mining lease, a mining lease for the mining of coal of any part or parts of such land within the mining areas 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 Mining Lease to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act but in the form of the Schedule hereto and subject to such of the conditions of the surrendered mining leases as the

Schedule 2

Minister for Minerals and Energy determines and such other conditions as the Minister for Minerals and Energy may reasonably require from time to time for the purpose of reducing or making good injury to the surface of the land in the Mining Lease or injury to anything on or below the surface of that land.

(b) Upon the granting of the Mining Lease the rights of the Company as the holder of any mining lease over so much of the red areas and the yellow areas respectively as are outside the Mining Lease shall forthwith cease and determine (but without any refund of rent already paid) but nothing in this paragraph shall limit any obligation of the Company to rehabilitate as provided by the relevant approved proposal.”;

(b) subclause (2) —

by deleting “the Coal Mining Lease” wherever it occurs and substituting the following —

“ the Mining Lease ”;

(c) by inserting after subclause (2) the following subclauses —

“ **Incorporation of additional areas in the Mining Lease**²

(2a) Notwithstanding the provisions of the Mining Act the Company may, from time to time during the currency of this Agreement apply to the Minister for Minerals and Energy for areas (outside the mining areas) held by the Company under a mining lease granted or deemed to be granted under the Mining Act to be included in the Mining Lease and the Minister for Minerals and Energy may in his discretion upon the surrender by the Company of the relevant mining lease include the land the subject thereof in the Mining Lease subject to such of the conditions of the surrendered mining lease as the Minister for Minerals and Energy

determines but otherwise subject to the same terms covenants and conditions as apply to the Mining Lease (with such apportionment of rents as is necessary), notwithstanding that the survey of such additional land has not been completed (but subject to correction to accord with the survey when completed at the Company's expense).

(2b) Notwithstanding anything contained in paragraph (a) of subclause (1) or subclause (2a) of this Clause the surrender by the Company of mining leases under those subclauses for the purpose of the grant to the Company of the Mining Lease or the inclusion therein of additional land shall not include mining plant affixed to the land comprised in such surrendered mining leases. ”;

(d) subclause (3) —

by deleting subclause (3) and the marginal note thereto and substituting the following —

“ **Expenditure conditions** ²

(3) 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 expenditure conditions imposed by or under the Mining Act in regard to the Mining Lease. ”;

(e) subclause (4) —

by deleting subclause (4) and substituting the following —

“ (4) Notwithstanding anything contained in the Mining Act or this Agreement or the Mining Lease the State may grant or register in favour of persons other than the Company mining leases and other mining tenements in respect of the area subject to the Mining Lease for minerals other than coal unless the

Schedule 2

Minister for Minerals and Energy determines (after considering proposals by the person applying for any such lease or other mining tenement to avoid undue prejudice to or interference with the operations (present or future) of the Company and consulting with the Company thereon) that such grant or registration is likely unduly to prejudice or interfere with the operations of the Company hereunder assuming the taking by the Company of reasonable steps to avoid the prejudice or interference. Upon the grant of any such lease or other mining tenement the land contained therein shall be deemed to be automatically excised from the Mining Lease (with abatement of future rent in respect to the area excised but without any abatement of rent already paid or any rent which has become due and has been paid in advance). ”;

- (f) subclause (5) —
 - (i) by deleting “the Coal Mining Lease” and substituting the following —

“ the Mining Lease ”;
 - (ii) by deleting, in the marginal note thereto, “coal”;
- (g) subclause (6) —

by deleting “the Coal Mining Lease” and substituting the following —

“ the Mining Lease ”;
- (h) subclause (7) —
 - (i) by deleting “Minister for Mines” wherever it occurs and substituting the following —

“ Minister for Minerals and Energy ”;
 - (ii) by deleting “the Coal Mining Lease” and substituting the following —

“ the Mining Lease ”;

- (iii) by deleting, in the marginal note thereto, “coal”;
 - (i) subclause (8) —
by deleting subclause (8);
 - (j) subclause (9) —
 - (i) by deleting “a Coal Mining Lease” and substituting the following —
“ the Mining Lease ”;
 - (ii) by deleting “coal”.
- (12) By inserting after Clause 21 the following clauses —
- “ **Extraction of other minerals** ²
- 21A. (1) Subject to the provisions of this Clause the Company shall have the right during the currency of this Agreement to extract in addition to coal but in conjunction with and as part of its coal mining operations minerals other than bauxite from the minesites within the Mining Lease.
- (2) (a) The Company shall not extract any minerals pursuant to this Clause otherwise than in accordance with a mode or modes of operations first approved by the Minister.
- (b) Any approval given by the Minister pursuant to this subclause may be given subject to such conditions as the Minister may reasonably determine.
- (3) The Company shall pay to the State in respect of minerals extracted pursuant to this Clause royalties at rates from time to time prescribed under the Mining Act and shall comply with the provisions of the Mining Act and regulations made thereunder with respect to the completion of production reports and payment of royalties.
- Lease for other minerals** ²
- 21B. (1) Notwithstanding the existence of the Mining Lease the Company may mark out and apply for a mining

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lease or mining leases in respect of any part of the Mining Lease for minerals other than bauxite and coal subject to the provisions of the Mining Act and, subject to subclause (2) of this Clause, the Minister for Minerals and Energy may grant such mining lease or mining leases.

(2) No mining lease shall be granted pursuant to this Clause without the approval of the Minister.

(3) In the event of the grant of a mining lease pursuant to this Clause the land the subject thereof shall thereupon be deemed to be excised from the Mining Lease.

(4) A mining lease granted pursuant to this Clause shall in addition to any covenants and conditions that may be prescribed or imposed pursuant to the Mining Act be subject to the following special conditions —

- (a) a breach by the Company under the mining lease shall be deemed to be a breach of this Agreement;
- (b) the provisions of section 82(1)(d) of the Mining Act shall be modified so that the mining lease may not be assigned or underlet except as part of an assignment or underletting pursuant to Clause 32 of this Agreement.

(5) Where any mortgages or charges are registered in the Department of Mines against the Mining Lease and any part of the land the subject of the Mining Lease becomes the subject of a mining lease granted pursuant to this Clause then, unless the Company has with the consent of all relevant mortgagees or chargees notified the Minister to the contrary prior to the grant of such mining lease, that mining lease notwithstanding the provisions of the Mining Act shall be deemed to be subject to any such mortgages or charges as if it had been referred to therein and such mortgages or charges shall be registered as mortgages against that mining lease in the order in which they appear registered against the Mining Lease.

Effect of termination of mining lease ²

21C. On the expiration or sooner determination of any mining lease granted pursuant to Clause 21B hereof the land the subject of that mining lease shall thereupon be deemed to be part of the land in the Mining Lease and shall be subject to the terms and conditions of the Mining Lease and this Agreement (other than Clause 21B hereof). ”.

- (13) Clause 26 —
- (a) by deleting “the Coal Mining Lease” wherever it occurs and substituting the following —
- “ the Mining Lease ”;
- (b) by deleting “Minister for Mines” wherever it occurs and substituting the following —
- “ Minister for Minerals and Energy ”.
- (14) Clause 27 —
- by deleting “the Coal Mining Lease” and substituting the following —
- “ the Mining Lease ”.
- (15) Clause 31 —
- by deleting “the Coal Mining Lease” and substituting the following —
- “ the Mining Lease ”.
- (16) Clause 32 subclause (3) —
- by deleting “the Coal Mining Lease” and substituting the following —
- “ the Mining Lease ”.
- (17) Clause 33 —
- by deleting “the Coal Mining Lease” wherever it occurs and substituting the following —
- “ the Mining Lease ”.
- (18) Clause 38 —

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- (a) subclause (1) paragraph (a) —
 - (i) by deleting “the Coal Mining Lease” and substituting the following —
 - “ the Mining Lease ”;
 - (ii) by deleting “(notwithstanding the provisions of the Mining Act) under any coal mining leases granted pursuant to the Mining Act” and substituting the following —
 - “ (notwithstanding the provisions of the Mining Act) under any mining leases ”;
 - (b) subclause (2) —
 - (i) by deleting “the Coal Mining Lease” and substituting the following —
 - “ the Mining Lease ”;
 - (ii) by deleting “granted pursuant to the Mining Act”.
- (19) The Schedule is deleted and the following Schedule substituted —

“
THE SCHEDULE
WESTERN AUSTRALIA
MINING ACT 1978
COLLIE COAL (WESTERN COLLIERIES)
AGREEMENT ACT
MINING LEASE

Mining Lease No.

The Minister for Minerals and Energy a corporation sole established by the *Mining Act 1978* with power to grant leases of land for the purposes of mining in consideration of the rents hereinafter reserved and of the covenants on the part of the Lessee described in the First Schedule to this lease and of the conditions hereinafter contained and pursuant to the *Mining Act 1978* (except as otherwise provided by the Agreement (hereinafter called “the Agreement” described in the Second Schedule to this lease) hereby leases to the Lessee the land more particularly delineated and

described in the Third Schedule to this lease for coal subject however to the exceptions and reservations set out in the Fourth Schedule to this lease and to any other exceptions and reservations which subject to the Agreement are by the *Mining Act 1978* and by any Act for the time being in force deemed to be contained herein and excepting and reserving out of this lease any portion of the said land which is now used for any public works or building whatsoever to hold to the Lessee for a term of twenty one years commencing on the date set out in the Fifth Schedule to this lease with the right to renew the same as provided in the Agreement for one further period of twenty one years (subject to sooner determination of the said term upon cessation or determination of the Agreement) upon and subject to such of the provisions of the *Mining Act 1978* except as otherwise provided by the Agreement as are applicable to mining leases granted thereunder and to the terms covenants and conditions set out in the Agreement and to the covenants and conditions herein contained or implied and any further conditions stipulations set out in the Sixth Schedule to this lease the Lessee paying therefor the rents and royalties as provided in the Agreement PROVIDED ALWAYS that this lease is subject to the condition that the Company shall observe perform and carry out the provisions of the *Coal Mines Regulation Act 1946* and PROVIDED FURTHER that this lease and any renewal thereof shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this lease —

- “Lessee” includes the successors and permitted assigns of the Lessee and if the Lessee be more than one the respective successors and permitted assigns of each Lessee.
- If the Lessee be more than one the liability of the Lessee hereunder shall be joint and several.
- Reference to any Act includes all 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 and by-laws for the time being in force thereunder.

FIRST SCHEDULE

Schedule 2

WESTERN COLLIERIES LTD a company incorporated under the provisions of the Statutes of Western Australia and having its registered office at 29th Floor, 44 St. George's Terrace, Perth.

SECOND SCHEDULE

The Agreement ratified by the *Collie Coal (Western Collieries) Agreement Act 1979* including any amendments to that Agreement.

THIRD SCHEDULE

(Description of land)

Locality:

Mineral Field (s): Area, etc.:

Being the land delineated on Original Plan(s) No. and recorded in the Department of Mines, Perth.

FOURTH SCHEDULE

All petroleum as defined in the *Petroleum Act 1967* on or below the surface of the land the subject of this lease is reserved to the Crown in right of the State of Western Australia with the right of the Crown in the right of the State of Western Australia and any person lawfully claiming thereunder or otherwise authorised to do so to have access to the land the subject of this lease for the purpose of searching for and for the operations of obtaining petroleum (as so defined) in any part of the land.

FIFTH SCHEDULE

(Date of commencement of the lease)

SIXTH SCHEDULE

(Any further conditions or stipulations)

In witness whereof the Minister for Minerals and Energy has affixed his seal and set his hand hereto this day of
19 .

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

SIGNED by THE HONOURABLE
BRIAN THOMAS BURKE, M.L.A.
in the presence of:

}

BRIAN BURKE.

D. C. PARKER
MINISTER FOR MINERALS
AND ENERGY

THE COMMON SEAL of
WESTERN COLLIERIES LTD
was hereunto affixed by order
of and at a meeting of the
Directors of the said Company
this 18th day of September
1985 in the presence of:

}

(C.S.)

Director: T. S. IVANKOVICH.

Director A. FOGARTY.

Secretary

DAVID I. CRAWFORD.

[Schedule 2 inserted by No. 76 of 1985 s. 6.]

Schedule 3

Schedule 3

THIS AGREEMENT is made the 30th day of April 1990

BETWEEN:

THE HONOURABLE CARMEN MARY LAWRENCE, B. Psych., Ph.D., 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 first part WESTERN COLLIERIES LTD. a company incorporated in Western Australia and having its registered office at 10th Floor, 40 The Esplanade, Perth (hereinafter called "the Company") of the second part WESTERN COLLIERIES & DAMPIER PTY. LTD. a company incorporated in Western Australia and having its registered office at 10th Floor, 40 The Esplanade, Perth (hereinafter called "WCD") of the third part and BHP MINERALS LIMITED a company incorporated in Western Australia and having its registered office at 12 Level, 221 St George's Terrace, Perth (hereinafter called "BHPM") of the fourth part.

WHEREAS:

- (a) the State and the Company are the parties to the agreement dated 17 January 1979 ratified by the *Collie Coal (Western Collieries) Agreement Act 1979* which agreement has been varied by the agreement dated 7 October 1985 ratified by the *Collie Coal (Western Collieries) Agreement Amendment Act 1985* and as so varied is hereinafter called "the principal Agreement";
- (b) the State, WCD, the Company and BHPM are the parties to the agreement dated 28 May 1981 which was ratified by the *Collie Coal (Western Collieries & Dampier) Agreement Act 1981* and is hereinafter called "the WCD Agreement";
- (c) the parties to this Agreement have agreed that the WCD Agreement shall be determined and the State and the Company have agreed that the principal Agreement shall be varied, inter alia to include the land the subject of the WCD Agreement in the principal Agreement, in manner hereinafter set forth.

NOW THIS AGREEMENT WITNESSES:

1. Subject to the context the words and expression used in this Agreement have the same meanings respectively as they have in and for the purpose of the principal Agreement.
2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.
3. The subsequent clauses of this Agreement shall not operate unless and until the Bill to ratify this Agreement referred to in clause 2 hereof is passed as an Act before the 31st December 1990 or such later date if any as the parties hereto may mutually agree upon.
4. The State and the Company agree that the principal Agreement shall be varied with effect from the coming into operation of this Agreement as follows —
 - (1) Clause 1 —
 - (a) by deleting the definitions of “Conservator of Forests and Forests Act”;
 - (b) by inserting, in the appropriate alphabetical positions, the following definitions —
 - “ “CALM Act” means the Conservation and *Land Management Act 1984*;
 - “Executive Director” means the person holding, or acting in, the office established by section 36(1) of the CALM Act;
 - “the blue areas” means the areas delineated and coloured blue on the plan marked “B” initialled by or on behalf of the parties hereto for the purposes of identification; ”;
 - (c) in the definition of “associated company” by deleting “section 6 of the *Companies Act 1961*” and substituting the following —
 - “section 7 of the *Companies (Western Australia) Code*”;

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- (d) by deleting the definition of “Minister for Minerals and Energy” and substituting the following definition —
 - “ “Minister for Mines” means the Minister in the Government of the State for the time being responsible for the administration of the Mining Act;”;
 - (e) in the definition of “private road”, by deleting “its proposals as approved by the Minister pursuant to Clause 7” and substituting the following —
 - “proposals approved under this Agreement”;
 - (f) in the definition of “State Energy Commission”, by deleting “established pursuant to the *State Energy Commission Act 1945*” and substituting the following —
 - “preserved and continued by the *State Energy Commission Act 1979*”;
 - (g) by deleting the definition of “State forest” and substituting the following definition —
 - “ “State forest” has the meaning given to it in section 3 of the CALM Act;”;
 - (h) by deleting the definition of “timber reserve” and substituting the following definition —
 - “ “timber reserve” has the meaning given to it in section 3 of the CALM Act; ”.
- (2) Clause 9 —
- by inserting after “Mining Lease” the following —
- “(other than the blue areas)”.
- (3) By inserting after Clause 9 the following clause —
- “9A (1) The Company shall not mine any area or areas comprised within the blue areas except in accordance with proposals approved or determined under this Agreement.

- (2) The Company may at any time prior to the end of year 30 submit to the Minister to the fullest extent reasonably practicable its detailed proposals for the exploration and development of the coal resource within the blue areas which proposals shall address the matters referred to in paragraphs (a), (b) and (d) to (m) of Clause 7(1) and also the total tonnage of coal which the Company proposes to mine pursuant to those proposals for sale to all purchasers including the State Energy Commission from the blue areas during the remaining term of this Agreement. The provisions of 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 decision of the Minister or an award made on arbitration as the case may be in accordance with the terms thereof.
- (3) The Company shall forthwith on the request of the State made at any time after the expiration of year 30 surrender to the State out of the Mining Lease all land within the blue areas which at the date of the request is within the Mining Lease but is not the subject of proposals approved or determined under this Agreement.”.
- (4) Clause 11 subclause (2) —
- (a) by deleting “31st May” wherever it occurs and substituting in each place the following —
“30th November”;
- (b) by deleting “31st March” wherever it occurs and substituting in each place the following —
“30th September”.
- (5) Clause 13 —
by deleting “Conservator of Forests” wherever it occurs and substituting in each place the following —
“Executive Director”.

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(6) By inserting after Clause 13 the following Clause —

- “13A (1) On 28th February 1991 and the 28th February in each year thereafter the Company shall submit to the Department of Mines a report of all exploration carried out within the Mining Lease during the preceding calendar year such reports to be in accordance with the Code for Reporting of Identified Coal Resources and Reserves ratified by the Australian Minerals and Energy Council on 8th November 1986 as amended from time to time or otherwise as agreed between the Company and the State.
- (2) The exploration and other reports provided to the Department of Mines pursuant to this Agreement or the Mining Act shall if required by the Director General of Mines and provided the Company has suitable data and transmission equipment be reported in total or in part by electronic reporting formats and/or devices.
- (3) The Company shall progressively explore the land within the Mining Lease to determine the coal resources present to the “indicated” level as described in the Code referred to in subclause (1) of this Clause to a minimum depth of 450 metres where technically appropriate. The Company shall complete at least the following cumulative amounts of exploration drilling and associated downhole geophysical logging within the lease by 31st December 1994:

Calendar Year	Cumulative Drilling and Electric Logging
1990	2,000 metres
1991	4,000 metres
1992	6,000 metres
1993	8,000 metres
1994	10,000 metres

provided the Minister for Mines at the request of the Company may, in exceptional circumstances, agree to vary the timetable and allow a lesser

amount of drilling and logging in any one year. Before the commencement of 1991 and at the corresponding time each year thereafter until 10,000 metres has been drilled the Company shall discuss its exploration programme for the ensuing year with the Department of Mines and will use reasonable endeavours to include in the programme any reasonable requirements of the Department not inconsistent with the provisions of this Clause. ”.

(7) Clause 15 —

(a) subclause (1) —

(i) by deleting paragraph (a) and substituting the following paragraph —

“(a) use the services of engineers surveyors architects professional consultants experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within the said State or if such services are not available within the said State then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;”;

(ii) by inserting in paragraph (b) after “State” the following —

“or if such labour is not available then use labour otherwise available within Australia”;

(iii) by deleting paragraph (c) and substituting the following paragraph —

“(c) during design and when preparing specifications calling for tenders and letting contracts for works materials plant equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that Western Australian and Australian

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suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote.”;

- (iv) in paragraph (d) by deleting “elsewhere.” and substituting the following —

“elsewhere or, subject to the foregoing, give that consideration and where possible preference to other Australian suppliers manufacturers and contractors; and”;

- (v) by inserting after paragraph (d) the following paragraph —

“(e) if notwithstanding the foregoing provisions of this subclause a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier, manufacturer or contractor, proper consideration and where possible preference shall be given to tenders arrangements or proposals that include Australian participation including without limitation joint ventures technology transfers or offsets.”;

- (b) by inserting after subclause (1) the following subclause —

“(1a) The Company shall in every contract entered into with a third party for the supply of services labour works materials plant equipment and supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) and shall report to the Company concerning such third party implementation of that condition.”;

- (c) subclause (2) —

by inserting after “subclause (1)” the following —

“and subclause (1a)”.

- (8) Clause 18 —

- (a) subclause (1) —
by deleting “The” and substituting the following —
“Subject to subclause (3) of this Clause the”;
 - (b) by inserting after subclause (2) the following subclause —
“(3) The Company shall not without the prior consent of the Minister carry out any operations on any part of the land outlined in yellow on the said plan marked “B” if there is a likelihood of the bores pumps pipelines and appurtenant works which supply water to the Muja Power Station being thereby interfered with or endangered. The consent of the Minister (which shall not be unreasonably withheld) may be given subject to such conditions as the Minister considers necessary to minimize or eliminate the likelihood of such interference or danger.”.
- (9) Clause 20 —
- (a) by deleting “Conservator of Forests” and “Conservator” wherever they occur and substituting in each place the following —
“Executive Director”;
 - (b) by deleting “Forests Act” and substituting the following —
“CALM Act”;
 - (c) in subclause (2), by deleting “shall issue” and substituting the following —
“shall (provided in the case of a permit applied for in respect of the blue areas that the permit does not conflict with the relevant management plan of the Executive Director prepared pursuant to the CALM Act) issue”.
- (10) Clause 21 —
- (a) subclause (1) —
by deleting “Minister for Minerals and Energy” wherever it occurs and substituting in each place the following —

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“Minister for Mines”;

- (b) by deleting subclause (2a) and substituting the following subclause —

“(2a) Notwithstanding the provisions of the Mining Act —

- (a) the Company shall on or before 31st December 1990 or such later date as the parties hereto may agree surrender or cause to be surrendered to the State or withdraw or cause to be withdrawn as the case may require all mining tenements and other mining titles and all applications for mining tenements and other mining titles then existing in respect of the blue areas and upon such surrender and withdrawal the Minister for Mines shall include the blue areas in the Mining Lease by endorsement on the Mining Lease subject to such of the conditions of the surrendered mining tenements and mining titles as the Minister for Mines determines but otherwise subject to the same terms covenants and conditions as apply to the Mining Lease (with such apportionment of rents as is necessary), notwithstanding that the survey of such additional land has not been completed (but subject to correction to accord with the survey when completed at the Company’s expense);
- (b) the Company may from time to time during the currency of this Agreement apply to the Minister for Mines for areas (outside the mining areas) held by the Company under a mining lease granted or deemed to be granted under the Mining Act to be included in the Mining Lease and the Minister for Mines in his discretion and providing the land has been explored to his satisfaction may upon the surrender by the Company of the relevant mining lease likewise include the land subject thereof in the Mining Lease subject to such terms covenants and

conditions as the Minister for Mines may determine.”;

- (c) subclause (4) —
by deleting “Minister for Minerals and Energy” and substituting the following —
“Minister for Mines”;
 - (d) subclause (6) —
by deleting “and has lodged a true copy of the agreement with the Department of Mines”;
 - (e) subclause (7) —
by deleting “Minister for Minerals and Energy” wherever it occurs and substituting in each place the following —
“Minister for Mines”.
- (11) Clause 21B subclause (1) —
by deleting “Minister for Minerals and Energy” and substituting the following —
“Minister for Mines”.
- (12) Clause 25 —
- (a) subclause (2) —
by deleting “the provisions of Clause 7(1)(c) and Clause 8” and substituting the following —
“approved proposals”;
 - (b) by inserting after subclause (3) the following subclause —
“(4) The Company shall when reasonably required by the Minister from time to time report to the Minister on its investigations and endeavours to promote the sale of coal and to secure markets for coal from the areas the subject of the Mining Lease.”.
- (13) Clause 26 —

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by deleting “Minister for Minerals and Energy” wherever it occurs and substituting in each place the following —

“Minister for Mines”.

(14) By deleting Clause 33.

(15) Clause 38 —

(a) subclause (1) —

by deleting “or (notwithstanding the provisions of the Mining Act) under any mining leases in respect of coal mining lease applications numbered 671, 672, 673, 674, 675, 684 and 731”;

(b) subclause (2) —

by deleting “or under any coal mining leases in respect of coal mining lease applications numbered 671, 672, 673, 674, 675, 684 and 731”.

(16) Clause 43 subclause (1) —

by deleting “*Arbitration Act 1895*” and substituting the following —

“*Commercial Arbitration Act 1985* and notwithstanding section 20(1) of that Act each party may be represented before the arbitrators by a duly qualified legal practitioner or other representative ”.

5. The WCD Agreement is hereby cancelled and the rights and obligations of the parties thereto hereby terminated.

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

SIGNED by the said)
THE HONOURABLE CARMEN)
MARY LAWRENCE, B.Psych., Ph.D.,) CARMEN MARY LAWRENCE
M.L.A. in the presence of —)

DAVID CHARLES PARKER
MINISTER FOR RESOURCES AND TRADE

THE COMMON SEAL of)
WESTERN COLLIERIES LTD.) (C.S.)
was hereto affixed by)
authority of its Directors —)

Director M. A. CHANEY

Director D. I. CRAWFORD

Secretary M. A. EGERT

THE COMMON SEAL of)
WESTERN COLLIERIES &)
DAMPIER PTY. LTD. was) (C.S.)
was hereto affixed by authority)
of its Directors —)

Director M. A. CHANEY

Director D. I. CRAWFORD

Secretary M. A. EGERT

THE COMMON SEAL of)
BHP MINERALS LIMITED was) (C.S.)
was hereto affixed by authority)
of the Board of Directors —)

Director D. J. WOOD

Secretary G. J. HEATH

[Schedule 3 inserted by No. 9 of 1990 s. 7.]

Schedule 4

Schedule 4

[S. 6.]

THIS AGREEMENT is made the 5th day of May 1994

B E T W E E N :

THE HONOURABLE RICHARD FAIRFAX COURT, B. Com., 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 **WESTERN COLLIERIES LTD.** a company incorporated in Western Australia and having its registered office at 10th Floor, 40 The Esplanade, Perth (hereinafter called "the Company") of the other part

WHEREAS:

- (a) the State and the Company are the parties to the agreement dated 17 January 1979 ratified by the *Collie Coal (Western Collieries) Agreement Act 1979* which agreement has been varied by —
 - (i) the agreement dated 7 October 1985 ratified by the *Collie Coal (Western Collieries) Agreement Amendment Act 1985*; and
 - (ii) the agreement dated 30 April 1990 ratified by the *Collie Coal (Western Collieries) Agreement Amendment Act 1990*and as so varied is hereinafter called "the principal Agreement";
- (b) the parties desire to vary the provisions of the principal Agreement.

NOW THIS AGREEMENT WITNESSES:

- 1. Subject to the context the words and expression used in this Agreement have the same meanings respectively as they have in and for the purpose of the principal Agreement.
- 2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act.
- 3. The subsequent clauses of this Agreement shall not operate unless and until the Bill to ratify this Agreement referred to in clause 2 hereof is passed as an Act before the 30th June 1994 or such later date if any as the parties hereto may mutually agree upon.

4. The principal Agreement is hereby varied as follows —

(1) Clause 5 —

by deleting “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 include coal to be mined by open-cut methods and coal to be mined by deep mining methods and 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” and substituting the following —

“strategic industries (including power generation) determined by the Minister from time to time and such proportion of the said reserves (or so much thereof as those industries may from time to time require) shall be made available to those industries pursuant to mutually acceptable commercial arrangements to be entered into between the Company and the persons conducting those industries”.

(2) Clause 6 —

by inserting after “Clause 7.” the following —

“Any requirements of the overall scheme which provide for underground mining of coal shall cease to have any effect after 30 June 1994.”.

(3) Clause 7(1)(a) —

by deleting “, including measures to be taken to achieve a fair balance between the mining of coal by open-cut methods and deep mining methods”.

(4) Clause 7(1)(b) —

by deleting “Energy Commission have been met for the period covered by such proposals on a basis commercially acceptable to both the Company and the State Energy Commission” and substituting the following —

“for strategic industries (including power generation) have been met for the period covered by such proposals on commercially acceptable bases”.

Schedule 4

- (5) Clause 19(1) —
by inserting after “hereunder” the following —
“or any agreement between the Company and a person for the supply of water to that person which agreement has been approved by the Minister for the purpose of this subclause”.
- (6) By inserting after Clause 21C the clauses set forth in the Schedule to this Agreement.

THE SCHEDULE

21D. Where, pursuant to an agreement between the Company and a person which agreement has been approved by the Minister for the purpose of this Clause, the Company surrenders land out of the Mining Lease (“the surrendered land”) for the purpose of assisting that person to construct and operate a coal conveyor or coal conveyors on the surrendered land —

- (a) the State shall ensure that, during the period that the surrendered land is being used by that person for the conveyance of coal and for the period of 3 months after the cessation of that use, no person shall acquire any right under the mining laws of the said State in or over the surrendered land or any part thereof save with the consent of the Company; and
- (b) at any time during the period of 3 months referred to in paragraph (a) of this Clause the Company may apply to the Minister for Mines for the surrendered land to be included in the Mining Lease and upon such application the Minister for Mines shall include the surrendered land in the Mining Lease by endorsement on the Mining Lease and subject to the same terms covenants and conditions as apply to the Mining Lease.

For the purposes of this Clause, section 19 of the Mining Act shall be deemed to be modified to include the surrendered land in land that may be the subject of an exemption referred to in paragraph (a) of subsection (1) of that section.

21E. (1) If in order to recover coal from within the boundaries of the Mining Lease it is necessary for the Company to mine beyond any such boundaries on land which is the subject of a mining tenement (“the adjoining tenement”) held by any third party (“the adjoining

tenement holder”) under or pursuant to an Agreement with the State which contains a corresponding provision to this Clause the Company shall be entitled to do so if the following conditions are first fulfilled:

- (a) the Company gives to the Minister and to the adjoining tenement holder notice (“notice of intention to mine”) specifying the portion of the adjoining tenement wished to be mined by it and the anticipated time at which and period during which such mining works will be carried out; and
 - (b) the terms and conditions upon which the Company may carry out such mining works are agreed between the Company and adjoining tenement holder or failing such agreement within twenty four (24) months of service of the notice of intention to mine are determined by arbitration under the *Commercial Arbitration Act 1985* on the basis that:
 - (i) all coal recovered from the adjoining tenement in consequence of the mining works carried out by the Company on the adjoining tenement shall belong to, and be stockpiled by the Company on the adjoining tenement for the benefit of, the adjoining tenement holder;
 - (ii) works carried out by the Company on the adjoining tenement shall be carried out in accordance with good coal mining practices; and
 - (iii) such obligations as are fair and reasonable in the circumstances shall be imposed upon the Company with respect to removal and disposal of overburden and interburden, the management of ground and surface water, rehabilitation works and compliance with any relevant environmental requirements.
- (2) If in order to recover coal from within the boundaries of any adjoining tenement held by any third party under or pursuant to an Agreement with the State which contains a corresponding provision to this Clause it is necessary for an adjoining tenement holder to mine beyond any such boundaries on land which is the

Schedule 4

subject of the Mining Lease the adjoining tenement holder shall be entitled to do so if the following conditions are first fulfilled:

- (a) the adjoining tenement holder gives to the Minister and to the Company a notice of intention to mine specifying the portion of the Mining Lease to be mined by it and the anticipated time at which and period during which such mining works will be carried out; and
- (b) the terms and conditions upon which the adjoining tenement holder may carry out such mining works are agreed between the adjoining tenement holder and the Company (and if such terms and conditions are not agreed within twenty four (24) months of service of the notice of intention to mine the Company agrees that such terms and conditions shall be determined by arbitration under the *Commercial Arbitration Act 1985*) on the basis that:
 - (i) all coal recovered from the Mining Lease in consequence of the mining works carried out by the adjoining tenement holder on the Mining Lease shall belong to, and be stockpiled by the adjoining tenement holder on the Mining Lease for the benefit of, the Company;
 - (ii) works carried out by the adjoining tenement holder on the Mining Lease shall be carried out in accordance with good coal mining practices; and
 - (iii) such obligations as are fair and reasonable in the circumstances shall be imposed upon the adjoining tenement holder with respect to removal and disposal of overburden, the management of ground and surface water, rehabilitation works and compliance with any relevant environmental requirements.

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

SIGNED by the said)
THE HONOURABLE RICHARD)
FAIRFAX COURT in the)
presence of —)

COLIN BARNETT
MINISTER FOR RESOURCES DEVELOPMENT

THE COMMON SEAL of)
WESTERN COLLIERIES LTD.) [C.S.]
was hereunto affixed in the)
presence of:)

Director: THOMAS J R KUZMAN

Director/Secretary: MICHAEL A EGERT

[Schedule 4 inserted by No. 57 of 1994 s. 6.]

Notes

¹ This is a compilation of the *Collie Coal (Western Collieries) Agreement Act 1979* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Collie Coal (Western Collieries) Agreement Act 1979</i>	4 of 1979	17 May 1979	17 May 1979
<i>Collie Coal (Western Collieries) Agreement Amendment Act 1985</i>	76 of 1985	4 Dec 1985	4 Dec 1985 (see s. 2)
<i>Collie Coal (Western Collieries) Agreement Amendment Act 1990</i>	9 of 1990	7 Aug 1990	7 Aug 1990 (see s. 2)
<i>Collie Coal (Western Collieries) Agreement Amendment Act 1994</i>	57 of 1994	2 Nov 1994	2 Nov 1994 (see s. 2)

Reprint of the *Collie Coal (Western Collieries) Agreement Act 1979* as at 5 Apr 2002
(includes amendments listed above)

² Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.