

**COLLIE COAL (WESTERN  
COLLIERIES & DAMPIER)  
AGREEMENT.**

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No. 83 of 1981.

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**AN ACT to ratify an Agreement between the State of Western Australia and Western Collieries & Dampier Pty. Ltd., Western Collieries Ltd., and Dampier Mining Company Limited with respect to the mining, development and rehabilitation of certain coal reserves and to matters related thereto.**

*[Assented to 23 November 1981.]*

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Collie Coal (Western Collieries & Dampier) Agreement Act 1981.* Short title.

Interpreta-  
tion.

2. In this Act—

“the Agreement” means the Agreement a copy of which is set out in the Schedule to this Act, and includes that Agreement as altered from time to time in accordance with its provisions.

Ratifica-  
tion  
of the  
Agreement.

3. (1) The Agreement is hereby ratified.

(2) The implementation of the Agreement is authorized, and all the provisions of the Agreement shall operate and take effect notwithstanding any other Act or law.

### SCHEDULE.

S. 2.

THIS AGREEMENT made this 28th day of May 1981, 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 first part WESTERN COLLIERIES & DAMPIER PTY. LTD. a company incorporated under the provisions of the Statutes of Western Australia and having its registered office at 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 second part and WESTERN COLLIERIES LTD. a company incorporated under the provisions of the Statutes of Western Australia and having its registered office at 44 St. George’s Terrace, Perth aforesaid and DAMPIER MINING COMPANY LIMITED a company incorporated under the provisions of the Statutes of Western Australia and having its registered office at 37 St. George’s Terrace, Perth aforesaid (hereinafter called “the Guarantors”) of the third part.

#### WHEREAS:

- (a) the Company proposes to mine coal on its coal mining leases and has applied for additional coal mining leases;
- (b) the State desires to ensure that the coal resource at Collie is developed in the most economic and practicable way and that the coal requirements of

the State Energy Commission and industry in Western Australia are adequately safeguarded consistent with the purposes of this Agreement.

NOW THIS AGREEMENT WITNESSETH—

1. In this Agreement subject to the context—

Definitions.

“advise”, “apply”, “approve”, “approval”, “consent”, “certify”, “direct”, “notify”, “request”, or “require”, means advise, apply, approve, approval, consent, certify, direct, notify, request or require in writing as the case may be and any inflexion or derivation of any of these words has a corresponding meaning;

“associated company” means—

(a) any company or corporation providing for the purpose of this Agreement capital of not less than \$2 000 000 or the equivalent thereof which is incorporated or formed within the United Kingdom the United States of America or Australia or such other country as the Minister may approve and which—

(i) is promoted by the Company for all or any of the purposes of this Agreement and in which the Company or some other company or corporation acceptable to the Minister has not less than a 25% interest or some lesser interest acceptable to the Minister; or

(ii) is related within the meaning of that term as used in section 6 of the Companies Act, 1961, to any company or corporation in which the Company or some other company or corporation acceptable to the Minister holds not less than 25 per cent 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;

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

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

“mining areas” means the areas delineated and coloured green (hereinafter called “the green 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 purple (hereinafter called “the purple areas”) on the said plan in respect of which the Company or Western Collieries Ltd. is at the date hereof the applicant for coal mining leases;

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

“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 hereunder 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 as described in section 7 of the State Energy Commission Act, 1979;

“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 the date on which all the Company’s proposals submitted pursuant to Clause 7 have been approved and “year” followed immediately by any other numeral has a corresponding meaning.

2. In this Agreement—

Interpreta-  
tion.

- (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; and

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- (d) reference to an Act other than the Mining Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.

Initial obligations of the State.

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, 1981; and
- (b) to the extent reasonably necessary for the purposes of this Agreement allow the Company to enter upon Crown lands.

Ratification and operation.

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

(2) If before 31st December, 1981 the said Bill is not passed then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

(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.

5. The parties agree that during the currency of this Agreement fifty per cent 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 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.

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 of the mining areas and for the development of the coal reserves contained therein taking full account of the need to satisfy the coal

requirements of both the State Energy Commission and industry in the said State for the projected period of this Agreement and the need to take adequate steps to progressively rehabilitate all areas mined for coal within the Coal Mining Lease whether mined by the Company or some other party and such of the green 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 subclause (1) of Clause 7.

7. (1) On or before the 31st December, 1982 (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, layout, 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—

Company  
to submit  
proposals.

- (a) measures to be taken for the mining of coal by open-cut methods and deep mining methods consistent with the purposes of this Agreement;
- (b) 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;
- (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 green 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 proposals.

(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 infrastructure.

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

Consideration of proposals.

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.

(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. Advice of Minister's decision.

(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. Consultation with Minister.

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

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

(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.

(6) Notwithstanding the provisions of Clause 35 and notwithstanding that under subclause (1) of this 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 31st December, 1983 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 Effect of non-approval of proposals.

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matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of Clause 38.

Implementa-  
tion of  
proposals.

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

Company's  
obligations  
for further  
proposals.

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

Additional  
proposals.

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

Protection  
and  
management  
of the  
environ-  
ment.

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.

Reports.

(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.

(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.

Additional proposals.

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

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

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

Access.

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.

Implementation of approved proposals relating to the environment.

14. During the currency of this Agreement the Company shall from the commencement of year 1 and thereafter at 5 yearly intervals furnish to the Minister in sufficient detail a plan of the Company's proposed mine development and coal production under this Agreement for the ensuing 5 years.

Mining plan to be furnished to Minister.

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

Use of local professional services labour and materials.

- (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.**

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) 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.**

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

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

**Liability.**

(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 terms "municipality" "street" and "care control and management" shall have the meanings which they respectively have in the Local Government Act, 1960.

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

Rail  
loading  
facilities.

- (2) The Company shall ensure that—

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

Loading and  
trimming of  
wagons and  
loading  
rates.

(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 Railway Commission from time to time are adhered to.

(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 payment, provide such railway track in accordance with plans and specifications determined by the Railways Commission at the cost of the Company. The provisions of Clause 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.

Extensions  
and  
additions to  
track.

Mining.

(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.

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

Diversion of railway.

(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.

Additional rail requirements.

(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 Non-interference with Muja Power Station transmission lines.

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

Diversion of transmission lines.

(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.

(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 "A" 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 minimise or eliminate the likelihood of such interference or danger.

Non-interference with Muja Power Station water supply.

19. (1) Subject to any right of the Company to utilize or otherwise dispose of 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 or shall diminish any obligation upon the Company to comply with the provisions of any Act or law of the State.

Water.

(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.

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—

Forests.

- (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.

(2) Notwithstanding the provisions of subclause (1) of this Clause, the Company shall from time to time as may be necessary apply for a permit under the Forests Act to fell, cut, split and remove timber for mining purposes and

Permit to take timber for mining purposes.

provided that the company is not in default hereunder and subject to the provisions hereof the Conservator of Forests shall (unless the permit applied for conflicts with the relevant working plan of the Conservator of Forests prepared pursuant to section 31 of the Forests Act) issue such permit (upon payment of the appropriate fee) modified where necessary to enable the Company to carry out its obligations under this Agreement.

Coal Mining  
Lease.

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 green areas and the purple areas as the Company desires and in respect of which the Company then holds coal 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 or prescribed under or pursuant to any Act passed in substitution therefor or in lieu thereof 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 green areas and the purple 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 except as otherwise provided in this Agreement under the Mining Act, the term of the Coal Mining Lease shall be for a period of 21 years commencing from the date of receipt of the application for a Coal Mining Lease under subclause (1) of this Clause with the right during the currency of this Agreement to take a renewal of the said term for a further period of 21 years upon the same terms and conditions, subject to the sooner determination of the said term upon the cessation or determination of this Agreement, such right to be exercisable



by the Company making written application for such renewal not later than 1 month before the expiration of the initial term of the Coal Mining Lease.

(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.

Labour conditions.

(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 any similar title under any Act passed in substitution therefor or in lieu thereof or otherwise by which any person other than the Company or an associated company will obtain under the laws related to mining or otherwise any rights to mine or take the natural substances (other than petroleum in a liquid or gaseous state) within the 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.

Other mining tenements.

(b) In the event of the registration of any claim or grant of any lease or other mining tenement or other similar title other than a prospecting area pursuant to paragraph (a) of this subclause, the land contained therein shall be deemed to be automatically excised from the 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).

(5) The Company shall not prohibit the State and third parties with the consent of the State (with or without stock vehicles and rolling stock) from having access to and passing over the 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.

Access over Coal Mining Lease.

(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 or any Act passed in substitution therefor or in lieu thereof) arising out of its operations or proposed operations on the land and has lodged a true copy of the agreement with the Department of Mines.

Mining on privately owned land.

(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

Surrender of part of Coal Mining Lease.

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 provided that such portion or portions have been rehabilitated in accordance with approved proposals hereunder (with abatement of future rent in respect to the area surrendered but without any abatement of rent already paid or any rent which has become due and has been paid in advance) and the provisions of section 115 of the Mining Act are modified accordingly.

Amendment  
of the  
Mining  
Act.

(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 purple areas as have not then been included in a coal mining lease on such terms and conditions as the Minister shall approve PROVIDED THAT in the case of privately owned land the consent of the owner and occupier shall first be obtained.

Leases,  
licences,  
permits and  
easements.

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.

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

1981.] *Collie Coal (Western Collieries [No. 83.  
& Dampier) Agreement.*

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.

24. The Company shall from time to time liaise with the State and the relevant local 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.

Liaison for  
townsite  
development.

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.

Agreements  
with other  
parties.

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

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

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 or any Act passed in substitution therefor or in lieu thereof.

Royalties.

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

Return and  
payment of  
royalties.

Inspection.

(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.

Zoning.

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.

Rating.

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 discrim-  
inatory  
rates.

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.

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.

Resumption  
for the  
purposes of  
this  
Agreement.

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.

No  
resumption.

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

Assignment.

- (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; and
- (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

disposition or appointment 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 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 securities.

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 unless the Company with the consent of all relevant mortgagees notifies the Minister to the contrary at the time of applying for the Coal Mining Lease pursuant to Clause 21, the Coal

Mining Lease shall notwithstanding the provisions of the Mining Act be deemed to be the subject of any such mortgage as if the Coal Mining Lease had been referred to in that mortgage. A memorandum of any such mortgages shall subject as aforesaid be endorsed on the Coal Mining Lease in the order of date 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.

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. Variation.

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

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

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 wash-aways fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) acts or omissions of the Commonwealth shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability profitably to sell coal or factors due to overall world economic conditions or factors due to action taken by or on Force majeure.

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 effects of such causes as soon as possible after the occurrence.

Power to extend periods.

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 Agreement.

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 180 days after notice as provided in subclause (2) of this Clause is given by the State (or—if the alleged default (or the materiality thereof) abandonment or repudiation is contested by the Company and within 60 days after such notice is submitted by the Company to arbitration—within a reasonable time fixed by the arbitration award but not less than 90 days after the making of the arbitration award where the question is decided against the Company the arbitrator finding that there was a *bona fide* dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement.

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

(5) Notwithstanding the provisions of this Clause, the determination by the State Energy Commission of any contract for the supply of coal (from time to time in force) between the Company and the State Energy Commission, by reason of the established default of the Company under such contract, shall be deemed to be a breach of this Agreement entitling the State to determine this Agreement forthwith by notice to the Company. The State shall cause a copy of such notice to be served upon all such assignees, mortgagees, chargees and 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 to the State by the Company or any such assignee, mortgagee, chargee or disponent.

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 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 antecedents breach or default under this Agreement or in respect of any indemnity given hereunder; and

Effect of  
cessation  
and deter-  
mination of  
Agreement.

- (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 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.

Environ-  
mental  
protection.

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.

Indemnity.

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.

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.

Licences  
and  
consents.

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

Stamp duty  
exemption.

- (a) this Agreement;
- (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee of the Company any lease licence easement or right granted or demised hereunder or pursuant hereto;
- (c) the transfer of applications for coal mining leases Numbered 12/665, 12/666, 12/667, 12/668, 12/669 and 12/670 from Western Collieries Ltd. to the Company and any agreement relating thereto; and
- (d) 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.

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

Arbitration.

appointed by each party the arbitrators to appoint their umpire before proceeding in the reference and every such arbitration shall be conducted in accordance with the provisions of the Arbitration Act, 1895.

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

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

Notices.

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.

Consulta-  
tion.

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-  
contracting.

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 authorised or obliged to carry out hereunder.

47. Notwithstanding any addition to deletion or variation of the provisions of this Agreement or any time or other indulgence granted by the State to the Company whether or not notice thereof is given to the Guarantors by the State the Guarantors hereby jointly and severally guarantee to the State the due performance by the Company of all its obligations to be performed hereunder. Guarantee.

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

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THE SCHEDULE.

WESTERN AUSTRALIA.

Mining Act, 1904.

Collie Coal (Western Collieries & Dampier)  
Agreement Act 1981

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 of the first part WESTERN COLLIERIES & DAMPIER PTY. LTD. a company incorporated under the provisions of the Statutes of Western Australia and having its registered office at 44 St. George's Terrace, Perth, in the said State (hereinafter called "the Company" which expression includes its successors and permitted assigns) of the second part and WESTERN COLLIERIES LTD. a company incorporated under the provisions of the Statutes of Western Australia and having its registered office at 44 St. George's Terrace, Perth, aforesaid and DAMPIER MINING COMPANY LIMITED a company incorporated under the provisions of

the Statutes of Western Australia and having its registered office at 37 St. George's Terrace, Perth, aforesaid as guarantors of the third part which Agreement (hereinafter referred to as "the Agreement") was ratified by the Collie Coal (Western Collieries & Dampier) Agreement Act, 1981 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 the amendments thereto and the regulations made thereunder as in force at the date of the Agreement (hereinafter referred to as "the Mining Act") 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 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

198 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.



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 22nd day of April 1981 in  
the presence of—

[C.S.]

Director A. FOGARTY.

Director T. S. IVANKOVICH.

Secretary G. A. HALLIDAY.

THE COMMON SEAL of  
DAMPIER MINING COMPANY  
LIMITED was hereunto affixed  
by authority of the Board of  
Directors—

[C.S.]

D. S. ADAM, Director.

G. D. STEPHENSON, Secretary.