

DATED

THE COAL AUTHORITY

AND

[OPERATOR]

**SECURITY DEPOSIT DEED
in respect of a cash deposit**

[COLLIERY / SITE]

[REFERENCE]

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This **DEED** is made the.....day of.....

BETWEEN :-

1. **THE COAL AUTHORITY** whose office is at 200 Lichfield Lane, Mansfield, Nottinghamshire, NG18 4RG (the “Authority”)
2. **[OPERATOR]** whose office is situated at [Operator’s Address]; Company registered in England & Wales No. xxxxxxxx (the “Operator”)

RECITALS :

- A. The Operator is the holder of the Licence (as defined below) and is the tenant of the Lease (as defined below). In accordance with the respective terms of the Licence and the Lease the Operator is obliged to provide security.
- B. Accordingly the Operator has agreed to deliver to the Authority the Security to be held by them or to their order in accordance with the provisions of this Deed.
- C. The Operator and the Authority have agreed to enter into this Deed to declare the basis upon which the Security shall be held and have agreed to observe and perform their respective obligations set out below.

NOW THIS DEED WITNESSES AND IT IS AGREED as follows :-

1. DEFINITIONS

In this Deed, unless the context requires otherwise, the following expressions shall have the meanings given to them :-

- 1.1 **“1994 Act”** means the Coal Industry Act 1994;
- 1.2 **“Area of Responsibility”** has the meaning given to that expression in the Licence;
- 1.3 **“Authority’s Notice”** means a notice given by the Authority to the Operator either :-
 - 1.3.1 pursuant to clause 15.2 of the Licence stating that the Operator has failed to comply with a notice previously given by the Authority to the Operator pursuant to clause 15.1 of the Licence on the grounds referred to in sub-clause (b) of that clause; or
 - 1.3.2 stating that the Operator is required to make a Commutation Payment in accordance with the Licence and that payment of the same has not been made within the time stipulated by the Licence; or
 - 1.3.3 in respect of any non-payment or delay in payment of any sum due under the Licence or the Lease; or
 - 1.3.4 in respect of any loss or damage of any nature (including the incurring of cost by the Authority where it has lawfully performed any of the Tenant’s Covenants) suffered by the Authority as a result of any breach or non-performance by the Operator of any Tenant’s Covenant or breach of any obligation or covenant on its part contained in the Lease (as the case may require); or

- 1.3.5 in respect of the amount of the costs which the Authority (acting reasonably) considers likely to be incurred by the Authority in the carrying out of works specified in a notice previously given in accordance with paragraph 14 of the Seventh Schedule to the Lease, with which notice the Operator has failed to comply in accordance with paragraph 15.2 of the Seventh Schedule to the Lease;
- 1.4 **“Authority’s Reversionary Interest”** means the interest in reversion to the Lease and/or the interest of the Authority in relation to the Licence;
- 1.5 **“Business Days”** means a day (other than a Saturday or Sunday) on which banks are generally open for business in London;
- 1.6 **“Cash Deposit”** means all sums from time to time forming part of the Deposit Account or which have accrued to such sums by way of interest;
- 1.7 **“Commutation Payment”** has the meaning given to that expression in the Licence;
- 1.8 **“Deposit Account”** means the **deposit account no. xxxxxxxx** held with the Deposit Account Provider and all rights and benefits attaching to or associated with it, and includes any renewal, redesignation or renumbering of it from time to time;
- 1.9 **“Deposit Account Provider”** means **[Bank, Bank address]**;
- 1.10 **“Deposit Sum Minimum Level”** means the aggregate from time to time of the Authority’s assessments of the value of security properly required to be provided by the Operator pursuant to the Licence and the Lease;
- 1.11 **“Lease”** means the [underground/surface] coal lease for [mine/site] dated [date of Lease] made between (i) the Authority and (ii) the Operator (whether or not any such lease has been or is in future varied or amended) and includes any instrument supplemental to it;
- 1.12 **“Licensed Area”** has the meaning given to the expression in the Licence;
- 1.13 **“Licence”** means the [underground/surface] mining operating licence for [mine/site] dated [date of Licence] issued by the Authority (whether or not such licence has been or is in future varied or amended) and includes any instrument supplemental to it;
- 1.14 **“Mandate”** means a bank mandate relating to the Deposit Account in the form set out in Schedule 1 (including the letter annexed in the form of the draft set out in Schedule 2);
- 1.15 **“Operator’s Liabilities”** means all liabilities under the Licence, the Lease or this Deed;
- 1.16 **“Tenant’s Covenants”** means all covenants, stipulations or obligations on the part of the tenant in the Lease;
- 1.17 **“Trigger Date”** means the date of an Authority Notice;

2. INTERPRETATION

In this Deed, unless the context requires otherwise :-

- 2.1 words importing the masculine gender only shall include the feminine gender and neuter meaning and vice versa and words importing the singular number shall include the plural number and vice versa;
- 2.2 all references to a Clause or Schedule shall mean a Clause of or Schedule to this Deed;
- 2.3 any reference to a statute (whether specifically named or not) shall include any amendment or re-enactment of such statute for the time being in force and all instruments, orders, notices, regulations, directions, bye-laws, permissions and plans for the time being made, issued or given under, or deriving validity from, it;
- 2.4 the words “including” and “includes” and other similar expressions shall be deemed to be followed by the words “without limitation”;
- 2.5 titles and headings to clauses are for convenience only and shall not be construed in or affect the interpretation of this Deed;
- 2.6 all the provisions of this Deed are severable and distinct from one another and if at any time one or more of such provisions is or becomes invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby ;
- 2.7 words and phrases defined in the Lease or Licence and not otherwise define herein shall have the same meaning in this Deed.

3. PROVISION OF SECURITY

Within seven days after the date of this Deed the Operator shall provide confirmation to the Authority that the security is in place in the form of cleared funds for the Deposit Sum Minimum Level.

4. DEPOSIT ACCOUNT

- 4.1 The Operator and the Deposit Account Provider have, prior to the date of this Deed, entered into the Mandate relating to the Deposit Account.
- 4.2 The Authority acknowledges that the obligations on the part of the Operator to deliver security to the Authority in accordance with clause 3 may be satisfied by the Cash Deposit (as defined in clause 1.6).
- 4.3 From time to time and at the written request of the Authority, the Operator shall sign such instruments, execute such documents and do such things as the Authority may reasonably require in order :-
 - 4.3.1 to open, maintain, perfect, operate, transfer or close the Deposit Account or deal with the Deposit Account in accordance with the terms of this Deed;
 - 4.3.2 to perfect the security given in this Deed;
 - 4.3.3 to perfect a transfer of the security created by this Deed in favour of any transferee of any Authority’s Reversionary Interest
- 4.4 The Operator shall supply promptly to the Authority copies of all statements of account relating to the Deposit Account together with copies of all correspondence, memoranda or documentation in respect of the Deposit Account and shall not take any action or make any request to the Deposit Account Provider which would be contrary to the terms of the Mandate
- 4.5 All interest from time to time earned on or accrued in respect of the Deposit Account shall be added to the amount standing to the credit of the Deposit Account and shall not be paid out to the Operator

5. CHARGE OF DEPOSIT ACCOUNT AND POWER OF ATTORNEY

- 5.1 The Authority acknowledges to the Operator that, subject to the rights of the Authority and the charge contained in this Deed, the Deposit Account and the Cash Deposit are the property of the Operator.
- 5.2 The Operator, with full title guarantee, hereby charges to the Authority, by way of first fixed charge :-
- 5.2.1 all the Operators interest in the Deposit Account and the Cash Deposit (including any interest or other income earned or accrued on any of the Cash Deposit) and the debt to the Operator thereby represented;
- 5.2.2 all of the Operator's rights and benefit under the Mandate;
- as a continuing security for all monies and liabilities, present or future, actual or contingent (including liabilities as surety or guarantor) for which the Operator is now or may at any time or times after the date of this Deed be liable as the holder of the Licence, as tenant of the Lease and/or under the terms of this Deed
- 5.3 To secure performance of all liabilities and obligations for which the Operator is now or may at any time or times after the date of this Deed be liable as the holder of the Licence, as tenant of the Lease and/or under the terms of this Deed the Operator hereby appoints the Authority to be the attorney of the Operator :-
- 5.3.1 in accordance and for the purposes mentioned in this Deed, to withdraw from the Deposit Account the whole or any part of the Cash Deposit; and
- 5.3.2 in the name of the Operator, to do anything in relation to the Deposit Account or the Cash Deposit which the Operator is or may be required to do (whether expressly or impliedly) under the terms of this Deed (including the taking of any steps or actions in connection with remedying any breach of or non-compliance with negative covenants or pledges by the Operator under this Deed).

6. ENFORCEMENT OF SECURITY

The Operator acknowledges to the Authority as follows :-

- 6.1 that the Authority shall be entitled without prior notice to the Operator on or as soon as reasonably practicable after the Trigger Date (and not before) to enforce and/or utilise any security given pursuant to this Deed (such utilisation to include withdrawal from the Deposit Account) to the extent of such sum as may be required from time to time in order to pay or make good to, or to compensate the Authority for any matters referred to in an Authority's Notice;
- 6.2 that the Authority may in its absolute discretion elect, if more than one, the priority of matter the subject of an Authority's Notice to which the security is to be applied;
- 6.3 the Authority shall from time to time give notice to the Operator in the event that the security then in place or any part thereof has been applied by the Authority in accordance with this clause.

7. OPERATOR'S REPRESENTATION, WARRANTY AND UNDERTAKINGS

- 7.1 The Operator represents and warrants that :-
- 7.1.1 it is the sole and beneficial owner of the Cash Deposit now subject to, or which at any time after this date may become subject to, the charge contained in this Deed and that the rights of the Operator in respect of the Cash Deposit are free from any charge, encumbrance, mortgage, lien (including banker's lien) or security agreement, security interest, right of set-off or retention, trust or any other interest whatsoever other than the charge contained in this Deed;

- 7.1.2 it has not sold or agreed to sell or otherwise disposed of or agreed to dispose of, and (save with the Authority's prior written consent) will not at any time during the subsistence of the security hereby constituted sell or agree to sell or otherwise dispose of, the benefit of all of any of the Operator's right, title and interest in and to the Cash Deposit or any part thereof;
- 7.1.3 it has and will at all times have the necessary power to enable it to enter into and perform the obligations expressed to be assumed by it under this Deed;
- 7.1.4 this Deed constitutes its legal, valid, binding and enforceable obligation and is a security over the Cash Deposit and every part thereof;
- 7.1.5 all necessary authorisations to enable or entitle it to enter into this Deed have been obtained and are in full force and effect and will remain in such force and effect at all times during the subsistence of the security hereby constituted.
- 7.2 The Operator irrevocably undertakes with the Authority that subject to Clause 7.3 until the full payment and discharge of the Operator's Liabilities it will at all times (unless the Authority otherwise agrees in writing) :-
- 7.2.1 not take any action claim or proceeding against the Authority or any other party for the return or payment to any person of the Cash Deposit or any part thereof and shall not purport to sell assign discount pledge charge or otherwise dispose of or deal with or permit third party rights to arise over any of its rights titles benefits and interests whether present or future in the Cash Deposit or any part thereof, or attempt to agree so to do;
- 7.2.2 not purport to release grant time or indulgence or compound with any third party or suffer to arise any set-off or other adverse rights against any of the rights titles benefits and interests of the Operator whatsoever present and future in the Cash Deposit not to do or omit to do anything which may delay or prejudice the right of the Authority to utilise withdraw transfer or set-off the Cash Deposit in accordance with the provisions of this Deed;
- 7.2.3 do all such things and execute all such assignments charges authorities and documents as the Authority shall from time to time require for perfecting the Authority's rights over the Cash Deposit or to enable the Authority to utilise withdraw transfer or set-off the Cash Deposit such documents to be prepared by or on behalf of the Authority at the cost of the Operator in such form as the Authority may reasonably require.
- 7.3 The Authority hereby agrees to reimburse to the Operator or to release (as applicable) following a written request from the Operator such amount of the Cash Deposit (if any) or such value of other security which in the absolute discretion of the Authority is the amount by which the aggregate of the Cash Deposit and other security provided by the Operator exceeds the Deposit Sum Minimum Level as at the date of the request.
- 7.4 The Operator shall not assign to any person whatsoever the benefit of any of the Operator's rights under this Deed.

8. OPERATOR'S ACKNOWLEDGEMENTS

The Operator acknowledges to the Authority as follows :-

- 8.1 for the purposes of this Deed, the Lease and the Tenant's Covenants shall be treated as still existing and all covenants, obligations and warranties binding on the Tenant in any of them still subsisting notwithstanding the disclaimer of (or analogous action in respect of) any of the Lease or the Tenant's Covenants by any Liquidator or other person having the power to disclaim all or any thereof;

- 8.2 that any application by the Authority pursuant to Clause 6.1 of any monies either recovered by the enforcement of any security or utilised from the Cash Deposit given pursuant to this Deed shall not be deemed to be payment of rent and shall not prejudice the Authority's right of re-entry under any of the Lease;
- 8.3 that, in any case where the Operator is in breach of any covenant or obligation on its part contained in this Deed that the Authority shall be entitled in its absolute discretion to withhold consent to any intended assignment of the relevant Lease pending such breach being remedied;
- 8.4 that the provisions of this Deed and any right or remedy of the Authority arising under it :-
- 8.4.1 are in addition to, and not in substitution for, those contained in or arising under each of the Lease or otherwise;
- 8.4.2 shall continue to apply after the expiration or sooner determination or disclaimer of any of the Lease, but subject as provided by Clause 9.1;
- 8.5 that any right of re-entry of the Authority arising under the Lease or any of them shall be exercisable in the event of any breach of any covenant or obligation on the part of the Operator contained in this Deed, to the intent that any such covenants or obligations shall be deemed to be covenants and obligations contained in each Lease itself; and
- 8.6 that no forfeiture, disclaimer or termination of any of the Lease, nor any other act, matter or thing (including the bankruptcy, liquidation, receivership or administration of the Operator) shall be deemed to operate so as to terminate, curtail or otherwise affect any right or remedy of the Authority under any of the Lease and to the extent it may be necessary to give full effect to the terms of this Deed, upon the occurrence of any such events, the Lease and the covenants, obligations and warranty in them shall (if and to the extent that the Authority so requires) be deemed still to exist.

9. AUTHORITY'S ACKNOWLEDGMENTS AND OBLIGATIONS

- 9.1 The Authority shall within 28 days following twelve years from the latest date of termination of any of the Lease or the Licence (howsoever determined) whichever of the two shall be the later, subject as herein provided and subject to the rights of any person or persons for the time being entitled thereto in priority to the Operator, at the request and cost of the Operator, procure repayment to the Operator of the Cash Deposit then remaining and payment of any interest (less tax where requisite) earned or accrued on it.
- 9.2 Following any repayment under clause 9.1 the Authority shall at the written request and at the cost of the Operator, and in such manner as shall be appropriate :-
- 9.2.1 consent to the closure of the Deposit Account; and
- 9.2.2 discharge the charge contained in clause 5.2
- 9.3 The Authority shall :-
- 9.3.1 procure from any transferee of the Authority Reversionary Interest a deed, in such form as may be reasonably required by the Operator, containing a covenant by such transferee in favour of the Operator to perform, at all times following completion of the transfer of such interest, the covenants and to observe the acknowledgments on the part of the Authority contained in this Deed (but it shall not be necessary for the Operator to execute such deed);
- 9.3.2 deliver to the Operator such deed within seven (7) days after completion of such transfer;
- 9.3.3 forthwith on completion of such transfer the Authority shall assign to the transferee the benefit of the Authority's rights under this Deed;

9.3.4 as soon as may be practicable after completion of such assignment, take such steps as may be necessary to cancel the authority of the existing signatories under the Mandate and substitute for them such new signatories as shall be authorised by the transferee of the Authority's Reversionary Interest.

10. SURVIVAL OF THIS DEED

For the avoidance of doubt, the provisions of this Deed shall not terminate upon the Area of Responsibility (or any part thereof) being extinguished or modified pursuant to the Licence.

11. PAYMENT OF AUTHORITY'S COSTS

The Operator shall pay to the Authority on written demand any fees and expenses (including solicitors', surveyors', engineers' and other professional or consultants' fees and expenses, and the Authority's own internal costs at a reasonable rate and any value added tax on them insofar as not recoverable by the Authority by repayment or credit) properly incurred by the Authority in connection with:

- 11.1 the enforcement by the Authority of any of the provisions of this Deed;
- 11.2 the completion of securities pursuant to this Deed and the costs any dealings with or actions against the issuer of any security required pursuant to this Deed.

12. FURTHER ASSURANCE

From time to time and at the written request of the Authority, the Operator shall sign such instruments, execute such documents and do such things as the Authority may reasonably require in order to perfect the compliance by the Operator with its obligations contained in this Deed and any security given hereunder.

13. INDEMNITY

The Operator shall indemnify the Authority in respect of :-

- 13.1 any tax, charge, assessment or other imposition (other than taxation of interest) incurred by the Authority in connection with this Deed or any matters under this Deed and any security given hereunder;
- 13.2 any loss, damage, claim, cost or expense which the Authority may suffer, directly or indirectly, as a result of any breach by the Operator of any covenant or obligation on its part contained in this Deed and any security given hereunder.

14. NOTICES

The parties acknowledge that the provisions of the Licence relating to the service of demands, notices or other communications shall be deemed to be incorporated into this Deed (with any necessary changes).

15. ENTIRE AGREEMENT

This Deed and any other document which is made supplemental hereto or which is entered into pursuant to or in accordance with the terms hereof :-

- 15.1 constitute the entire agreement and understanding between the parties with respect to the subject matter of this Deed and such other agreements and documents;
- 15.2 (in relation to such subject matter) supersede all prior discussions, understandings and agreements between the parties, their agents (or any of them) and all prior representations and expressions of opinion by any party (or its agent) to any other party (or its agent); and

15.3 except as expressly incorporated in this Deed, and any other document which is made supplemental hereto or which is entered into pursuant to or in accordance with the terms hereof all warranties, conditions, statements or representations with respect to the subject matter of this Deed are excluded.

16. GOVERNING LAW AND JURISDICTION

This Deed shall be governed by and construed in accordance with the law of England and Wales and each party hereby agrees for the benefit of the other party that the Courts of England and Wales shall have the exclusive jurisdiction to hear and determine any suit action or proceeding and to settle any disputes which may arise under and/or out of and/or relating to and/or in connection with this Deed and for such purposes they irrevocably submit to the jurisdiction of such courts.

IN WITNESS whereof this document has been executed by the parties as a Deed the day and year first before written.

Model Document

The Common Seal of
THE COAL AUTHORITY
was affixed hereto in the presence of :-

Executed as a Deed on behalf of
[OPERATOR]

by :-

..... *Position*
..... *Print Name*
..... *Position*
..... *Print Name*

duly authorised to act in that capacity

SCHEDULE 1

BANK MANDATE [Operator]

(Note. If the reversioner to the Lease is no longer the Coal Authority, references to the Coal Authority in this Mandate and the attached form of letter from the Bank should be changed to refer to the new reversioner)

[Deposit Account Provider]
[Deposit Account Provider's Address]

[Date]

Dear Sirs,

Account Holder : [Operator]
Account Name : [Account Name]
Account Number : [Account Number] (“the Deposit Account”)

We shall be grateful if you will pay into the Deposit Account the enclosed banker's draft for [£xxx,xxx.xx].

Please note that these instructions are strictly conditional upon your supplying, simultaneously with the paying in of the banker's draft, a letter to the Coal Authority in the form annexed (the “Letter”) such Letter to be dated with the same date as the paying in of the banker's draft. The reason for this condition is that the Coal Authority is to have an interest in the Deposit Account, its contents and all rights attaching thereto pursuant to a charge contained in a Security Deposit Deed being entered into between ourselves and the Coal Authority; it is therefore essential for the Coal Authority to receive the Letter, failing which it would not enter into such deposit deed.

The only persons authorised to make withdrawals from, or to transfer or close, the Deposit Account are the persons whose names and specimen signatures have already been forwarded to you when setting up the Deposit Account. The signature of only one of such persons will be required for any of those purposes.

Any authorised signatory for the time being may, by notice in writing to you (such notice being on the headed notepaper of the Coal Authority unless all the authorised signatories at that time confirm that such notice need not be on the headed notepaper of the Coal Authority) appoint some other person to be an authorised signatory in his or her place, whereupon he or she shall cease to be an authorised signatory.

Except with the written consent of any authorised signatory for the time being, the mandate conferred by this letter is irrevocable, and we undertake to ratify anything which the Bank may do under its terms.

The Deposit Account has been opened on the strict understanding that the Bank will not claim any lien, right of set-off or retention or other interest in the funds from time to time in it.

Statements in respect of the Deposit Account are to be sent to us at quarterly intervals at [Operator, Operator's address] or at such other address as we may, by notice in writing to the Bank, from time to time stipulate, with a copy to the Coal Authority at 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire, NG18 4RG (for the attention of Finance Department) or at such other address as it may, by notice in writing to the Bank, from time to time stipulate.

Yours faithfully

Director – for and behalf of [Operator]

SCHEDULE 2

FORM OF LETTER TO COAL AUTHORITY FROM BANK

(For attachment to Bank Mandate upon submission of Bank Mandate to Bank)

The Coal Authority
200 Lichfield Lane
Berry Hill
Mansfield
Nottinghamshire
NG18 4RG

[Date]

Dear Sirs

Account Holder : [Operator]
Account Name : [Account Name]
Account Number : [Account Number] (“the Deposit Account”)

We refer to the requests to ourselves from [Operator] contained in a form of a bank mandate (“the Mandate”) dated [date of mandate] requesting payment into the Deposit Account of [£xxx,xxx.xx] and the simultaneous supply to yourselves of a letter in the form of this letter (and the payment into it of a banker’s draft as referred to in the Mandate being conditional upon such supply).

We now hereby confirm to you as follows :-

- (a) That we will at all times operate the Deposit Account strictly on the basis set out in the Mandate.
- (b) Where any other accounts of [Operator] are held by this Bank, steps have and will continue to be taken to distinguish in this Bank’s records the fact that the monies in the Deposit Account are held strictly and solely on the terms of the Mandate and not in accordance with any other mandates, documents, correspondence, instructions or directions of any nature.
- (c) We are aware that the signatories to the Deposit Account are not officers of or any other persons acting on behalf of or connected with [Operator] but are persons acting on behalf of the Coal Authority.
- (d) In any case where instructions or directions are given in respect of the Deposit Account its contents or any rights or benefits attaching to it other than in writing on Coal Authority headed notepaper, we will inform you immediately and not act on such instructions or directions without first having obtained written confirmation from yourselves that you concur in and ratify them.
- (e) We are aware that the Deposit Account and its contents have been or are to be charged to yourselves and that you could suffer loss if actions were taken or omissions made meaning that the matters referred to in the Mandate or the above paragraphs of this letter were not observed and complied with.

Yours faithfully

For and on behalf of [Bank]