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**SURFACE MINING OPERATING LICENCE**

**Dated .....**

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**FOR**

**[SITE]**

**issued by the Coal Authority in exercise of the  
powers conferred on it by the Coal Industry Act 1994**

**[REFERENCE]**



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Model Document



**THE AUTHORISATION**

**THE COAL AUTHORITY** (“the Authority”), subject to the conditions and other provisions of this Licence **HEREBY AUTHORISES** the Licensee (as defined in Condition 1) for the period of **[words (numbers)] years** beginning on the date of this Licence, to carry out Coal-Mining Operations (as defined in Condition 1) within the Licensed Area (as defined in Condition 1).

Model Document

**Signed for and on behalf of the Coal Authority :** .....

**Name :** .....

**Position :** .....



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## CONDITIONS AND OTHER PROVISIONS

### 1. DEFINITIONS

In this Licence :-

- “1985 Act”** means the Companies Act 1985 or any subsequent legislation incorporating the provisions of the 1985 Act;
- “1986 Act”** means the Insolvency Act 1986 or any subsequent legislation incorporating the provisions of the 1986 Act;
- “1991 Act”** means the Coal Mining Subsidence Act 1991 or any subsequent legislation incorporating the provisions of the 1991 Act;
- “1994 Act”** means the Coal Industry Act 1994 or any subsequent legislation incorporating the provisions of the 1994 Act;
- “Approved Chargee”** means any chargee or mortgagee of this Licence under a charge or mortgage :-
- (a) to which the Authority has consented under Condition 12.1;
  - (b) of which the Authority has received actual notice; and
  - (c) which is still subsisting at the relevant time;
- “Area of Responsibility”** means the land for the time being designated as such (or varied) in accordance with the provisions of Conditions 4.1, 4.2 and 18.1 (but subject to Condition 4.3), provided that where the surface boundary of such land, as determined in accordance with the foregoing provisions, divides any buildings, structures or works on, in or over land in such circumstances that part of those buildings, structures or works would be outside any area of responsibility, the whole of those buildings, structures or works shall be deemed to be included within the Area of Responsibility;
- “Associated Person”** where the Licensee for the time being is or includes a body corporate, means :-
- (a) any person who Controls that Licensee or that body corporate;
  - (b) any body corporate which is Controlled by that person; and
  - (c) any body corporate which is Controlled by that Licensee or the body corporate included in that Licensee;
- “Authorisation”** means the Authorisation granted by the Authority to carry on Coal-Mining Operations pursuant to this Licence;

<b>“Authority”</b>	means the Coal Authority whose office is at 200 Lichfield Lane, Mansfield, Nottinghamshire, NG18 4RG;
<b>“Authority’s Property”</b>	means Authority’s Property as defined in the Lease;
<b>“Base Rate”</b>	means the base rate as announced from time to time by the Monetary Policy Committee of the Bank of England (or any replacement committee);
<b>“Coal”</b>	is coal as defined in Section 65(1) of the 1994 Act;
<b>“Coal-Mining Operations”</b>	are coal-mining operations (as defined by section 65(1) of the 1994 Act) to which section 25 of the 1994 Act applies (but limited to surface mining (opencast) methods and any operations ancillary thereto), and for the purposes of Condition 4.1(b)(ii) and Condition 5.1(a) include coal-mining operations as described in Section 25(2) of that Act whether they were carried out before, on or after the restructuring date (as defined by Section 65(1) of that Act);
<b>“Commutation Payment”</b>	means a payment to be made by the Licensee to the Authority in accordance with Condition 4.4 or Condition 16.3;
<b>“Control”</b>	is control as defined in Section 840 of the Income and Corporation Taxes Act 1988 (as extended by Section 168(12) of that Act), and <b>“Controls”</b> and <b>“Controlled”</b> are to be construed accordingly;
<b>“Insolvency Officeholder”</b>	means any person appointed over the property or assets of the Licensee including those persons described in Section 388 of the 1986 Act, the Official Receiver, the Accountant in Bankruptcy or any person appointed pursuant to a charge over the Licensee’s property or pursuant to a scheme of arrangement under Section 425 of the 1985 Act;
<b>“Interaction Agreement”</b>	means the agreement of that name dated 31 October 1994 made between initially (1) the Authority and (2) British Coal Corporation, as the same may be varied from time to time;
<b>“Lease”</b>	means the lease [dated [ ]/of even date herewith] granted by the Authority to the Licensee relating to, <i>inter alia</i> , the Coal described in Part 2 of Schedule 2;
<b>“Licence”</b>	means this licence and includes any instrument which is supplemental to this Licence;
<b>“Licensed Area”</b>	is the land described in Part 1 of Schedule 2 or as may be modified from time to time in accordance with Condition 18.1;

<b>“Licensee”</b>	means the person or persons named in Schedule 1 or the person or persons to whom the Licensee’s rights and obligations as holder of this Licence were last transferred in accordance with Condition 12 and, where the Licensee for the time being is an individual, includes the personal representatives (or in Scotland the executors) of that individual;
<b>“Licensee’s Group Company”</b>	means the Licensee and all companies which are holding companies, subsidiaries or subsidiary undertakings (as defined in Sections 735 and 736 of the 1985 Act) of the Licensee;
<b>“Local Agreement”</b>	has the meaning given to that expression in the Interaction Agreement;
<b>“Mine”</b>	means the Mine as defined in the Lease;
<b>“Plan”</b>	means the plan[s] (which may be in two or more parts) signed and annexed hereto which form[s] part of this Licence;
<b>“Prescribed Rate”</b>	means [one point five per cent (1.5%)] per annum above the Base Rate;
<b>“Records”</b>	includes registers, maps, plans and accounts, as well as computer records and other records kept otherwise than in documentary form;
<b>“Security”</b>	includes a bond, charge, deposit, guarantee, indemnity, mortgage or policy, or such other form of security as the Authority may require the Licensee to provide from time to time under the conditions of this Licence;
<b>“Subsidence Damage”</b>	is subsidence damage as defined in Section 1 of the 1991 Act (as amended by Section 42(1) of the 1994 Act), and includes (unless the context otherwise requires) any liability which may be imposed by or arise under the 1991 Act or the 1994 Act in respect of or arising from such subsidence damage or the possibility of such damage;
<b>“VAT”</b>	means value added tax and any tax or duty of a similar nature which may from time to time be levied in addition thereto or in substitution therefor;
<b>“Working Day”</b>	means any day other than a Saturday or a Sunday or a day which is a general public or bank holiday in the part of the United Kingdom in which the Licensed Area is situated.

## **2. INTERPRETATION**

- 2.1 The headings appearing in this Licence do not affect its construction.
- 2.2 In this Licence, unless the context requires otherwise :-

- (a) 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 and all references to person or persons shall include a body of persons corporate or unincorporate;
  - (b) any reference to a Condition or Schedule is to the relevant condition and other provisions of or schedule to this Licence;
  - (c) any reference to a licence is to any licence granted under Part II of the 1994 Act, and references to any other area of responsibility, licensed area or licensee are to be construed accordingly;
  - (d) the words “including” and “includes” and other similar expressions shall be deemed to be followed by the words “without limitation”;
  - (e) any term of this Licence imposing an obligation on the Licensee not to do any act or thing includes an obligation not to permit or suffer it to be done;
  - (f) any reference to a statute or statutory instrument shall include any amendment or re-enactment of it 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 it, or deriving validity from it; and
  - (g) unless otherwise specified, any reference to “land” includes all the land below its surface.
- 2.3 Where the Licensee comprises for the time being more than one person, the liability of those persons under this Licence is joint and several.
- 2.4 Where the Licensee is a Scottish partnership, the liabilities and obligations of the Licensee under this Licence shall subsist and remain in full force and effect notwithstanding any change or changes in the name or constitution of the partnership whether by the assumption of a new partner or partners or by any individual partner or partners ceasing to be such for any reason.
- 2.5 Any agreement, approval, consent, denial, notice, request, requirement, stipulation or other matter to be given, issued or made under this Licence shall be in writing and signed by the person giving, issuing or making it or that person’s authorised officer or representative.
- 2.6 Nothing in this Licence shall be taken as consent for the purposes of the Interaction Agreement (clauses 42.2 and 42.3 of which being disapplied to the extent stipulated) to the Licensee carrying out either any Operations or Subsidence Causing Operations :-
- (a) which give rise to an increase or are likely to give rise to an increase in the liabilities of the Authority; or
  - (b) which do or are likely directly or indirectly materially to affect any Potential Operations in relation to any Coal or any Coal Mine of the Authority or any third party; or
  - (c) which do or are likely directly or indirectly materially to affect any Coal or Coal Mine or any Operations or any Potential Operations in relation to any Coal or Coal Mine of any person for the time being holding a licence or consent (not being an Authorisation) from the Authority to carry on any Operations where and to the extent that such Operations or the Coal Mine in question are or may be covered by such licence or consent.

("Authorisation", "Coal Mine", "Operations", "Potential Operations" and "Subsidence Causing Operations" in this Condition have the same meanings as in the Interaction Agreement).

### **3. COAL-MINING OPERATIONS**

- 3.1 The Licensee shall commence to carry out Coal-Mining Operations within [six (6)] months from the commencement date of this licence. So long as the Authorisation remains in force Coal-Mining Operations carried out under this Licence may be carried out by the Licensee or through any officer, agent, nominee, employee or contractor of the Licensee provided that the carrying out of those Coal-Mining Operations remains under the control of the Licensee and in any event liability for the acts and/or omissions of any such officer, agent, nominee, employee or contractor shall rest with the Licensee.
- 3.2 Where the Licensee for the time being was an individual or comprised persons who were all individuals, and that individual has or all those individuals have died, the Authorisation granted by this Licence applies only in respect of any Coal-Mining Operations which it may be necessary for the personal representatives of that individual or those individuals to carry out to effect an orderly and speedy discontinuation of any Coal-Mining Operations which have been carried out within the Licensed Area prior to the death of that Licensee or the last of the persons who were the Licensee (as the case may require).
- 3.3 Neither the Authorisation granted by this Licence nor anything arising out of this Licence authorises the carrying out by the Licensee of any Coal-Mining Operations within the Licensed Area which may result in Subsidence Damage :-
- (a) within any land which is within the area of responsibility for the time being designated under any other licence unless :-
    - (i) the Subsidence Damage in question was not foreseeable, or
    - (ii) the consent of the Licensee holding that other licence to such Coal-Mining Operations has been given pursuant to the Interaction Agreement and/or a Local Agreement; or
  - (b) within any land which is not within the Area of Responsibility and not within the area of responsibility for the time being designated under any other licence unless :-
    - (i) the Subsidence Damage in question was not foreseeable, or
    - (ii) the consent of the Authority to such Coal-Mining Operations has been given pursuant to the Interaction Agreement and/or a Local Agreement.
- 3.4 For the purposes of Conditions 3.3(a)(i) and 3.3(b)(i), Subsidence Damage shall be deemed not to be foreseeable if it was not reasonably foreseeable from the information which was, prior to the relevant event, in the possession or under the control of the Licensee, or would then have been in the possession or under the control of the Licensee if the Licensee had been competent and prudent.

### **4. AREA OF RESPONSIBILITY**

- 4.1 Subject as mentioned in Conditions 4.2 and 18.1 and to any extinguishment under Conditions 4.3 or 16.3, for the purpose of Part III of the 1994 Act the Area of Responsibility shall be :-

- (a) the parcel or parcels of land delineated by the centre of the blue line(s) shown on [the Plan/Plan [A]] and any further land which the Licensee may from time to time by notice to the Authority request and to which the Authority has agreed, subject to that further land not being land which is within the area of responsibility for the time being designated under any other licence; and
- (b) such greater area of land as the Authority may from time to time stipulate to the Licensee having regard to either or both of the following factors, and to no others :-
  - (i) the effect on potential ground movement of any geological, geotechnical or other condition (whether naturally occurring or not) in, or likely to be found in, the locality; and
  - (ii) any Subsidence Damage which has been caused or is likely to be caused as a result of any Coal Mining Operations which have been carried out or are planned to be carried out within the Licensed Area.

but not being land which is within the area of responsibility for the time being designated under any other licence.

- 4.2 If any part of the Area of Responsibility and any part of an area of responsibility under any other licence are at any time contiguous, the Authority may by notice to the Licensee and the licensee holding that other licence direct that the Area of Responsibility and the area of responsibility under that other licence shall be varied in accordance with a request to the Authority (to which the Authority has agreed), made jointly by the Licensee and that other licensee, to adjust the boundaries of the Area of Responsibility and that other area of responsibility.
- 4.3 The Authority may give notice to the Licensee extinguishing the whole of the Area of Responsibility or such part or parts of the Area of Responsibility as may be specified by the Authority in the notice (or further notice(s)) :-
- (a) at any time after the Authority has given notice pursuant to Condition 15.2; or
  - (b) at any time after the appointment of an Insolvency Officeholder acting in relation to the Licensee; or
  - (c) immediately before exercising the power to revoke the Licence pursuant to Condition 16.1.
- 4.4 Immediately following any extinguishment under Condition 4.3 of the whole or any part of the Area of Responsibility, and if demanded by the Authority, there shall become due as a debt payable by the Licensee to the Authority, within thirty Working Days of a demand therefor given by the Authority to the Licensee, such sum as the Authority determines is equal to the total anticipated cost of any claims (including the likely cost of dealing with such claims) which have then been made or which are then likely to be made in relation to any Subsidence Damage occurring or which may then be likely to occur within the Area of Responsibility or the part of it extinguished (as the case may require) (but only to the extent that those claims have not then been satisfied or otherwise disposed of).
- 4.5 Any extinguishment under Condition 4.3 of the whole or part of the Area of Responsibility shall be without prejudice to any other power, remedy or right of the Authority against the Licensee or any other person.

4.6 In the event of any variation of the Licensee's Area of Responsibility such variation shall be recorded by the Authority.

## 5. SECURITY

5.1 Subject to Condition 6, the Licensee shall provide, and continue to keep in place, (and shall not carry out any Coal-Mining Operations within the Licensed Area unless the Licensee has provided and continues to keep in place) such Security (if any) as the Authority may from time to time require, in form and substance satisfactory to the Authority, and in such amount or of such value as the Authority may from time to time require, as may be sufficient to meet any claims in relation to any Subsidence Damage within the Area of Responsibility which has occurred or which may be likely to occur and :-

- (a) which may have been caused or be likely to be caused as a result of any Coal- Mining Operations which have already been carried out (whether or not carried out by the Licensee); or
- (b) which may be caused or be likely to be caused as a result of any Coal-Mining Operations intended to be carried out during the following twelve months by the Licensee, or by a licensee under another licence in respect of which the Licensee has received notification pursuant to the Interaction Agreement;

in each case to the extent that, at the relevant time, those claims may still be enforceable and have not been satisfied or otherwise disposed of.

5.2 For the purposes of assisting in the determination of the form and substance and the amount or value of any Security which the Licensee may be required to provide from time to time under Condition 5.1 or Condition 6.1 and of the Area of Responsibility, the Licensee shall submit to the Authority at intervals of not more than twelve months beginning on the date of this Licence, or at such other intervals as the Authority may from time to time by notice to the Licensee require :-

- (a) plans, on a scale satisfactory to the Authority, showing in detail the date of commencement and the total extent and method of Coal-Mining Operations which the Licensee intends carrying out within the Licensed Area;
- (b) plans and sections, on a scale satisfactory to the Authority, showing in detail up to date surface features within the Area of Responsibility (or as the same is proposed to be extended) and the date of commencement, and the extent, location and nature of the Coal-Mining Operations (if any) which the Licensee then intends carrying out within the Licensed Area during the following twelve months;
- (c) an assessment (conducted on such basis, and presented in such form, as the Authority may from time to time approve) of any geological, geotechnical or other condition (whether naturally occurring or not) in, or likely to be found in the locality which might affect the possibility of ground movements within and outside the Area of Responsibility;
- (d) the results of any subsidence monitoring including that which the Authority may from time to time require the Licensee to carry out (conducted on such basis, and presented in such form, as the Authority may from time to time approve);

- (e) the best estimate of the Licensee, prepared on a basis satisfactory to the Authority, of the anticipated costs of any claims in respect of the Subsidence Damage referred to in Condition 5.1 (but only to the extent that those claims may still be enforceable and have not then been satisfied or disposed of), and details of the calculation of those anticipated costs;
- (f) details of any Security which may be required under Condition 5.1 and which is then proposed by the Licensee;
- (g) a plan or plans showing the extended Area of Responsibility (if any) which, in the opinion of the Licensee, should be stipulated by the Authority in accordance with Condition 4.1(b); and
- (h) such further information in respect of any matter referred to in sub-paragraphs (a) to (g) of this Condition as the Authority may require.

5.3 If at any time the Licensee becomes aware of any circumstance, event or situation which may have a material effect on the determination of the Area of Responsibility in accordance with this Licence or on any estimate of liability which has been previously made for the purposes of determining the amount or value of any Security which the Licensee may be required to provide under this Licence, the Licensee shall :-

- (a) forthwith give to the Authority details of that circumstance, event or situation; and
- (b) if required by the Authority, submit to the Authority (as appropriate) revised details of any information last submitted pursuant to Condition 5.2.

## **6. PROVISION OF NEW OR FURTHER SECURITY**

6.1 If at any time the Authority is of the opinion that Security should be provided by the Licensee under the conditions of this Licence where none exists or that any Security provided under this Licence by the Licensee may be or become inadequate for the purposes for which it was, or is required to be, provided under the conditions of this Licence and gives to the Licensee notice of that fact, the Licensee shall :-

- (a) within twenty Working Days after the giving of that notice or such longer period as the Authority may allow, provide Security or (as the case may require) further or other Security in form and substance satisfactory to the Authority, and in such amount or of such value as the Authority may require, and
- (b) on the expiration of that period and if that Security or (as the case may require) further or other Security has not been provided, and save as mentioned in Condition 6.2, discontinue any Coal-Mining Operations within the Licensed Area or such part of them as the Authority may by notice to the Licensee stipulate.

6.2 Any requirement under Condition 6.1(b) to discontinue Coal-Mining Operations does not extend to any which it may be necessary for the Licensee to carry out to effect an orderly and speedy discontinuation of any Coal-Mining Operations which have been carried out within the Licensed Area.



## **7. DELIVERY OF FINANCIAL AND CORPORATE INFORMATION**

- 7.1 The Licensee shall provide to the Authority as soon as reasonably practicable such information as the Authority may from time to time require regarding the financial standing of the Licensee and (as the case may require) of each person comprising the Licensee.
- 7.2 Where the Licensee for the time being is or includes a body corporate, the Licensee shall deliver to the Authority, within the time and in the form required by Section 242 of the 1985 Act for the delivery to the Registrar of Companies of accounts and reports, a copy of those accounts and reports of that Licensee or that body corporate.
- 7.3 Where the Licensee for the time being is Controlled by a body corporate or the Licensee for the time being includes a body corporate which is Controlled by another body corporate :-
- (a) the Licensee shall deliver to the Authority, within the time and in the form required by Section 242 of the 1985 Act for the delivery to the Registrar of Companies of accounts and reports, a copy of those accounts and reports for the body corporate having such Control; and
  - (b) the Licensee shall deliver to the Authority as soon as practicable such further or other information regarding the financial standing of the body corporate having such Control as the Authority may from time to time require.

## **8. DELIVERY OF CLAIMS REPORTS, CLAIMS AND MINING RECORDS ETC.**

- 8.1 The Licensee :-
- (a) shall deliver to the Authority :-
    - (i) at intervals not exceeding five Working Days or at such other intervals as the Authority may from time to time require, in either case beginning on the date of this Licence, up to date particulars, in such form and by such method as the Authority may from time to time require, of any claims made against the Licensee in relation to Subsidence Damage and for which the Licensee may be liable by virtue of being the holder of this Licence (including any claims received, accepted, disputed or discharged, proceedings issued, awards or orders made or executed, and stop notices served, in each case during the immediately preceding interval) and of the manner or method of discharge or satisfaction of such claims;
    - (ii) at intervals not exceeding twelve months or at such other intervals as the Authority may from time to time require, in either case beginning on the date of this Licence :-
      - (A) copies of the plans and sections in respect of any Coal-Mining Operations which have been carried out within the Licensed Area (but only to the extent that there has been any change in the information revealed by any such plans and sections copies of which have been previously delivered by the Licensee or its predecessor to the Authority), or
      - (B) where there has been no such change, a statement to that effect; and

- (iii) at intervals not exceeding twelve months beginning on the date of this Licence, or at such other intervals as the Authority may from time to time require, plans on a scale satisfactory to the Authority showing in outline the Coal-Mining Operations (if any) which the Licensee then intends to carry out within the Licensed Area during the following two years and such other details as the Authority may from time to time require;
  - (b) at the request from time to time of the Authority, shall make available for inspection by the Authority (or by its authorised representatives or agents) :-
    - (i) the Records referred to in Condition 8.3, and
    - (ii) the originals of the plans and sections referred to in sub-paragraph (a)(ii) of this Condition, save to the extent that they have been sent to the Inspector under Regulation 45(3) of the Quarries Regulations 1999.
- 8.2 In so far as such information is not required to be provided under Condition 8.1, the Licensee shall deliver to the Authority at intervals not exceeding five Working Days, or at such other intervals as the Authority may from time to time require, all or any information the Authority may require to enable it to respond to requests for coal-mining searches received by it (in such form as may from time to time be agreed between the Authority and the Law Society or in such other form as the Authority may from time to time specify to the Licensee as a form in which it is prepared as a replacement for the form as aforesaid to respond to requests for coal-mining searches received by it) in so far as such searches relate to land or property within the Licensed Area and/or the Area of Responsibility.
- 8.3 The Licensee shall maintain adequate and sufficient Records of full particulars, including financial details, of all claims in relation to Subsidence Damage made against the Licensee or previous holders of this Licence by reason of being a holder of this Licence, including all matters referred to in Condition 8.1(a)(i). Without prejudice to the generality of the foregoing provisions of this Condition, the Licensee shall, so far as reasonably practicable, keep in a safe and satisfactory condition all and any Records it may receive from time to time which relate to claims made against any person in relation to Subsidence Damage affecting land within the Area of Responsibility from time to time designated in accordance with the provisions of this Licence (whether such claims were made before or after the date of this Licence).
- 8.4 On any extinguishment under Condition 4.3 or Condition 16.3 of the whole or any part of the Area of Responsibility, and if required by the Authority, the Licensee shall at its own expense deliver to the Authority copies in a written form (or in such other form as the Authority may approve) of the Records referred to in Condition 8.3 or of such of those Records which relate to the part of the Area of Responsibility extinguished (as the case may require).

## **9. DELIVERY OF OTHER INFORMATION**

The Licensee shall provide to the Authority from time to time and as soon as reasonably practicable such further information :-

- (a) as the Authority may from time to time reasonably require concerning any matter mentioned in or arising out of this Licence and for which no express provision is made in this Licence or in the 1994 Act; and

- (b) as the Authority may require in order that the Authority may discharge its duties under the 1991 Act or the 1994 Act.

#### **10. DISPUTE RESOLUTION**

Unless otherwise specified herein any dispute between the Authority and the Licensee as to any matter to which the Licence relates except any matter which falls to be determined by the Authority under the Conditions of the Licence shall (in default of agreement within 28 days of the dispute arising) be referred to the determination of a single arbitrator on the application of either party to be appointed by agreement between the Authority and the Licensee and in default of agreement within 28 days to an arbitrator appointed by or on behalf of the President for the time being of the Law Society on the application of either party and shall be determined by virtue of Section 28(6) of the 1994 Act in accordance with the provisions of this condition and Part 1 of the Arbitration Act 1996 in so far as that Part is applicable.

#### **11. INSPECTION BY AUTHORITY**

Subject to the Authority having first given to the Licensee not less than one Working Day's notice of the date on which the Authority proposes carrying out an inspection to which this Condition relates and of the reason for the inspection, the Licensee :-

- (a) shall allow the Authority and its authorised representatives and agents to inspect so far as practicable the Licensed Area and any Coal-Mining Operations then being carried on in respect of any Coal within it; and
- (b) shall provide so far as practicable :-
  - (i) any facility necessary for the inspection to be carried out effectively including the use of the Licensee's machinery or plant for the purpose of such access; and
  - (ii) a suitably qualified representative of the Licensee to accompany any person making the inspection.

#### **12. TRANSFER AND CHARGE OF LICENCE AND CHANGE OF CONTROL OF LICENSEE**

- 12.1 The Licensee may transfer or charge the Licensee's rights and obligations as holder of this Licence with the prior consent of the Authority (such consent not to be unreasonably withheld having regard to the duties of the Authority under the 1994 Act).
- 12.2 Where the Licensee for the time being is or includes a body corporate, the Licensee shall notify the Authority of any change of Control of that Licensee or that body corporate.
- 12.3 On the making of any application to the Authority for consent under Condition 12.1 or informing the Authority under Condition 12.2, the Licensee shall provide to the Authority such information as it may require concerning the intended transaction, including :-
  - (a) in the case of consent under Condition 12.1, a copy of the proposed form of transfer or charge, and any instrument evidencing the terms on which the transfer or charge is to be made or given;

- (b) details of the financial standing and (in the case of a body corporate) the Control of :-
  - (i) the intended transferee; and
  - (ii) any person to whom it is intended Control of the Licensee is to pass, and (where that person is a body corporate) any person who Controls that body corporate, and any body corporate which is Controlled by that person;
- (c) in the case of an intended transferee, details of :-
  - (i) the experience and expertise of that transferee and any person who Controls, or body corporate which is Controlled by, that transferee, or body corporate which is Controlled by that person; and
  - (ii) the proposals of that transferee with regard to the carrying out of future Coal-Mining Operations within the Licensed Area; and
- (d) in the case of any person to whom it is intended Control of the Licensee or any body corporate included in the Licensee is to pass, details of any experience of that person, and (where that person is a body corporate) any person who Controls that body corporate, and any body corporate which is Controlled by that person.

12.4 In giving any consent under Condition 12.1 or following notification under Condition 12.2, the Authority shall be entitled to impose such conditions as it shall think fit, including any conditions requiring:-

- (a) the provision of such guarantee as the Authority may require in respect of performance and observance of the obligations of the Licensee under this Licence;
- (b) the transfer to the intended transferee of the interest (if any) of the Licensee in any Security provided under the terms of this Licence;
- (c) the provision of new, further or other Security under the terms of this Licence;
- (d) the consent of the Authority to lapse unless completion of the intended transaction takes place within such period following the giving of consent as the Authority may stipulate; and
- (e) notification to the Authority of completion of the intended transaction within such period following completion, and including such particulars, as the Authority may stipulate.

### **13. FEES AND VAT**

13.1 The Licensee shall pay to the Authority within ten Working Days of a demand therefor given by the Authority to the Licensee :-

- (a) in connection with the exercise by the Authority of its functions in connection with or in consequence of the grant of this Licence such fees as may from time to time be prescribed by the Authority as being payable upon the grant or the coming into force of this Licence; and

- (b) such payments at times whilst the Licence is in force for any of the purposes of the 1994 Act as may be determined by the Authority therefor; and
- (c) to the extent that no particular fee is for the time being prescribed by the Authority, such reasonable fees of the Authority (including reasonable administration fees) as it may require, and reasonable expenses incurred by the Authority (including those of any agent appointed by, or consultant of, the Authority and, where appropriate legal fees), in each case in connection with any action taken by the Authority to enforce compliance by the Licensee with any of the terms and conditions of this Licence, (including any action under Sections 31 and 32 of the 1994 Act or for any other purposes of the 1994 Act).

13.2 The following provisions apply in relation to VAT :-

- (a) all sums payable under or pursuant to this Licence by the Licensee shall be deemed to be exclusive of VAT;
- (b) where under or pursuant to the terms of this Licence the Authority makes a supply to the Licensee and VAT is payable in respect of such supply, the Licensee shall pay to the Authority on the date of such supply (in addition to the fee and any other consideration provided for by this Licence) a sum equal to the amount of the VAT so payable; and
- (c) where the Licensee is required by the terms of this Licence to reimburse the Authority or any other person for the costs or expenses of, or any other sum in respect of, any supply made to the Authority or such other person (including any supply which the Authority or such other person is deemed to make to itself), the Licensee shall also at the same time pay and indemnify and keep indemnified the Authority and any such other person against all amounts in respect of VAT incurred by the Authority (or such other person, as the case may be) in respect of that supply, save to the extent that the Authority (or such other person, as the case may be) is entitled to, and retains, repayment or credit in respect of such amounts.

#### **14. CONFIDENTIAL INFORMATION AND LIABILITY FOR INACCURATE INFORMATION**

14.1 For the purposes of Conditions 14.2 and 14.3 “Confidential Information” shall mean all and any information from time to time provided by the Licensee to the Authority pursuant to any of the conditions of this Licence insofar as it relates specifically to the financial affairs or business activities of the Licensee or of any other person, and for the avoidance of doubt Confidential Information shall not include details of past, current or proposed Coal-Mining Operations (as defined by Section 65(l) of the 1994 Act).

14.2 Subject to Condition 14.3, all Confidential Information (except insofar as it is, or becomes, in the public domain) shall be kept confidential by the Authority and not disclosed to any person not in its employment and shall not be used for any purposes unconnected with the administration and enforcement of the conditions of this Licence without the Licensee’s prior consent (such consent not to be unreasonably withheld).

14.3 Condition 14.2 does not apply to the disclosure or use of Confidential Information :-

- (a) to which the Licensee has given its consent;
- (b) which is required by law;

- (c) which is required to enable the Authority to carry out its functions or to discharge its duties under the 1991 Act or the 1994 Act;
  - (d) which is for the time being excluded by virtue of sub-Sections (2) to (5) of Section 59 of the 1994 Act from the prohibition contained in the arrangements under sub-Section (1) of that Section;
  - (e) which is required to enable the Authority to reply to the requests for coal-mining searches referred to in Condition 8.2;
  - (f) received by the Authority in accordance with Condition 8.4 or Condition 16.3, where it is disclosed or delivered to any person who has applied for or who has been granted a licence pursuant to which that person will assume or assumes responsibility for Subsidence Damage within the Area of Responsibility or part of it extinguished (as the case may require) provided that person delivers to the Licensee a duly executed undertaking with regard to the confidentiality of such information in such form as the Authority may approve.
- 14.4 Notwithstanding Condition 14.3, all and any information from time to time provided by the Licensee to the Authority pursuant to Conditions 5.2, 5.3, 8.1(a), 8.2, 9 or 12.4(c)(ii) may be disclosed by the Authority for the purposes of replying to requests for coal-mining searches.
- 14.5 All and any information of the descriptions specified in Condition 14.4 that is disclosed by the Authority for the purposes specified in that Condition shall be treated, for the purposes of Section 58 of the 1994 Act, as information whose accuracy the Licensee has undertaken to secure.

## **15. LICENSEE'S DEFAULT AND TERMINATION OF COAL-MINING RIGHTS**

- 15.1 Without prejudice to any other power, remedy or right of the Authority :-
- (a) if the Licensee fails to comply with a final enforcement order (within the meaning of Section 31 of the 1994 Act) or with a provisional enforcement order (within the meaning of that Section) which has been confirmed under that Section; or
  - (b) in the event that the Licensee is guilty of persistent or substantial breaches of any of the Conditions of this Licence or any other licence issued by the Authority to the Licensee or any other Licensee's Group Company relating to any of the Authority's Property or any other document or agreement between the parties which is supplemental hereto or is entered into or pursuant to or in accordance with the Conditions hereof or if the Licensee fails to observe any duty imposed by, or any duty arising under, the 1991 Act or, in relation to Subsidence Damage, the 1994 Act;

the Authority may give notice to the Licensee and any Approved Chargee specifying the failure to comply or breach in question and requiring it to be remedied within such period as the Authority may reasonably require (being not less than ten Working Days). Provided that no notice shall be given by the Authority pursuant to this Condition on the grounds mentioned in paragraph (a) above before the expiration of the period within which an application under Section 33 of the 1994 Act can be made questioning the validity of the final or provisional enforcement order or before proceedings relating to any such application are finally determined. Provided further that where the Authority is satisfied that any failure to comply or breach specified in a notice given by the Authority pursuant to this Condition has been remedied, the Authority shall give the Licensee and any Approved Chargee notice to that effect.

- 15.2 Where the Authority has given a notice pursuant to Condition 15.1 on either of the grounds referred to in paragraphs (a) or (b) of that Condition and any failure to comply or breach specified in such notice continues after the expiration of the period specified in the notice for remedying any such failure to comply or breach, the Authority may, at any time after the expiration of such period, give notice to the Licensee and any Approved Chargee to that effect, and where prior to such notice the Authorisation granted by this Licence is still in force, a notice given pursuant to this Condition shall terminate forthwith such Authorisation and the notice shall contain a statement to that effect.
- 15.3 Upon the termination of the Authorisation granted by this Licence under Condition 15.2 or Condition 17.1 or by reason of the expiration of the period specified in the Authorisation, the Licensee shall forthwith permanently discontinue all Coal-Mining Operations within the Licensed Area and shall not subsequently recommence them, provided that such requirement to discontinue any Coal-Mining Operations does not extend to any which it may be necessary for the Licensee to carry out to effect an orderly and speedy discontinuation of any Coal-Mining Operations which may have been carried out within the Licensed Area.
- 15.4 Any termination of the Authorisation granted by this Licence under Condition 15.2 or Condition 17.1 or by reason of the expiration of the period specified in the Authorisation shall not relieve the Licensee from any obligation or liability imposed by or arising under this Licence.

## **16. REVOCATION**

- 16.1 The Authority may revoke this Licence :-
- (a) in respect of the whole of the Licensed Area :-
- (i) by notice to the Licensee and any Approved Chargee given at any time after the Authority has given notice pursuant to Condition 15.2;
- (ii) if the Licensee for the time being is a body corporate or if the Licensee for the time being comprises persons any of which is a body corporate, and that Licensee or each of those bodies corporate is dissolved as provided by the 1985 Act, the 1986 Act or any other legislation having similar effect;

- (iii) if the Licensee for the time being is an individual or if the Licensee for the time being comprises persons any of whom is an individual, and if that Licensee or each of those individuals is adjudged bankrupt and the interest of the Licensee in this Licence is not transferred in accordance with its conditions to some other person or persons within six months after the making of a bankruptcy order against that Licensee or against each of those persons (as the case may require);
  - (iv) if the Licensee or any one or more of the persons comprising the Licensee become subject to any insolvency proceedings including liquidation, bankruptcy or administration or an arrangement or composition with its creditors by which an Insolvency Officeholder is appointed to run the Licensee's affairs within the jurisdiction of England, Wales and Scotland;
  - (v) if the interest of the Licensee in this Licence is not transferred in accordance with its conditions to some other person or persons within 6 months after the appointment of an Insolvency Officeholder;
  - (vi) if the Licensee for the time being is a Scottish partnership and if that partnership is, or each of the partners are, sequestrated and the interest of the Licensee in this Licence is not transferred in accordance with its Conditions to some other person or persons within six months of the award of sequestration against that Licensee or against each of the partners (as the case may require);
  - (vii) if the Licensee or any one or more of the persons comprising the Licensee, becomes subject to any insolvency proceedings analogous or similar to liquidation, bankruptcy or administration or an arrangement or composition with its creditors by which a person analogous to an Insolvency Officeholder is appointed to run the Licensee's or that person's affairs under a jurisdiction other than England, Wales and Scotland; or
  - (viii) by notice to the Licensee and any Approved Chargee given at any time after the Lease has terminated for any reason;
- (b) at the request of the Licensee, in respect of the whole of the Licensed Area or such part of it as the Licensee may request and on such terms as the Authority may require.
- 16.2 Where the Authority has grounds to revoke this Licence pursuant to Condition 16.1(a)(vii), the Authority may instead of revoking this Licence vary the provisions of this Licence as the Authority considers appropriate in the circumstances.
- 16.3 The Authority shall, at the request of the Licensee, revoke this Licence and may extinguish the Area of Responsibility provided that all of the following conditions have been satisfied :-
- (a) the Licensee's request for revocation of this Licence is made at any time after the expiration of a period of five years from the permanent cessation of all Coal-Mining Operations authorised by this Licence;
  - (b) the Licensee has delivered to the Authority copies in a written form (or in such form as the Authority may approve) of the Records referred to in Condition 8.4; and



- (c) the Licensee has paid to the Authority a Commutation Payment in such sum as may be agreed between the Authority and the Licensee (both parties acting reasonably) calculated in accordance with the provisions of Condition 4.4 (*mutatis mutandis*) as at the anticipated date of revocation under this Condition.

16.4 Any revocation of this Licence under Condition 16.1 or Condition 16.3 shall be without prejudice to any other power, remedy or right of the Authority against the Licensee or any other person.

## **17. INSOLVENCY**

17.1 Upon the appointment of an Insolvency Officeholder the Authorisation granted by this Licence shall automatically terminate until such time as the Authority shall have consented (such consent not to be unreasonably withheld having regard to the duties of the Authority under the 1994 Act) to the Insolvency Officeholder carrying on the Coal-Mining Operations under and in accordance with the conditions of this Licence and in accordance with such terms as the Authority may impose in giving consent.

17.2 An Insolvency Officeholder acting in relation to the Licensee shall immediately upon his appointment provide the Authority with a copy of his appointment document together with any other documents necessary to verify his appointment and powers. The Insolvency Officeholder shall at all times act within the powers granted to him pursuant to his appointment documents and by statute and shall comply with the 1994 Act.

17.3 An Approved Chargee shall be entitled to exercise such powers as he may have within his charge or mortgage to transfer the Licensee's rights and obligations as holder of this Licence, subject to and in accordance with the conditions of this Licence, provided that (for avoidance of doubt) such an Approved Chargee, notwithstanding the terms of his charge or mortgage, shall not have the authority and power to continue the Coal-Mining Operations of the Licensee.

## **18. VARIATION OF LICENCE**

18.1 The conditions and other provisions of this Licence (including the Licensed Area and/or the Area of Responsibility) may be varied from time to time, temporarily or permanently, by express agreement between the Authority and the Licensee and on such terms as the Authority and the Licensee may agree.

18.2 In the absence of such express agreement, no failure by the Authority at any time to enforce any obligation of the Licensee under this Licence, or time or indulgence given to the Licensee in that regard shall vary, waive or release that or any other such obligation.

## **19. LATE PAYMENT**

If any payment due from the Licensee to the Authority under the conditions of this Licence is not made within the relevant period specified for payment thereof, the Licensee shall pay to the Authority interest at the Prescribed Rate on the payment outstanding from the expiry of such period to and including the date of payment.

**20. SERVICE OF DOCUMENTS**

The provisions of Section 63 of the 1994 Act (service of documents) and Section 7 of the Interpretation Act 1978 (as modified by that Section 63) shall apply to any demand, notice or other communication to be served on any person under this Licence (whether by being given, made or sent to that person or otherwise) as such provisions apply in relation to any document which is required or authorised to be served on any person by virtue of the 1994 Act.

**21. MISCELLANEOUS**

- 21.1 This Licence replaces and supersedes 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).
- 21.2 Except as expressly incorporated in this Licence and such other agreements and documents, all warranties, conditions, statements or representations with respect to the subject matter of this Licence and such other documents and agreements which are made supplemental hereto or which are entered into pursuant to or in accordance with the terms hereof are excluded.
- 21.3 The grant of this Licence by the Authority does not imply any representation by the Authority that there is any Coal within the Licensed Area or the nature position or extent of any coal reserves.
- 21.4 This Licence constitutes statutory permission to the Licensee to carry out, subject to its terms, any Coal Mining Operations within the Licensed Area. It does not confer on the Licensee any proprietary interest in that Area. It is for the Licensee to obtain and maintain any necessary proprietary right or any necessary consent from the owner of or other person with an interest in the Licensed Area.
- 21.5 Neither the issue of this Licence nor anything arising out of it relieves the Licensee of any need, before commencing any Coal Mining Operations, to obtain and maintain :-
  - (a) any necessary planning permission to carry out those Coal Mining Operations;
  - (b) if required, a separate licence to vent methane; and
  - (c) the approval of any other statutory body (including the Health and Safety Executive).

**THE LICENSEE HEREBY ACCEPTS AND AGREES TO BE BOUND BY THE CONDITIONS AND OTHER PROVISIONS OF THIS LICENCE.**

**Signed :..... Date :.....**

*Print Name* .....

**for and on behalf of the Licensee**

**SCHEDULE 1**

**Licensee**

**[LICENSEE]**

whose registered office is situated at :-

[Licensee's Registered Address]

[Company Registered in [England and Wales/Scotland] No.[Registration Number]]

Tel: [Licensee's telephone number]

Fax: [Licensee's fax number]

Model Document

## **SCHEDULE 2**

### **Part 1**

#### **Licensed Area**

The land used or occupied at the date of this Licence in connection with the winning, working or getting of Coal from the Specified Seam[s] which [is/are] within the area shown edged [red] on the Plan;

### **Part 2**

#### **The Specified Seam[s]**

The [name(s)] seam[s]/All coal seams] [down to a depth of [words (numbers)] metres [above/below] Ordnance Datum], such part thereof as lie beneath the surface area of [words (numbers)] hectares or thereabouts, [in the [District/Borough] of [ ] in the County of [ ]], shown edged [red] on the Plan.

Model Document

### SCHEDULE 3

#### Restrictions and Conditions

1. (a) Prior to exercising any rights granted by this Licence in respect of any particular part of the Licence Area, the Licensee shall obtain, and thereafter during the exercise of any such rights, ensure that there are at all times in place and in effect, all permissions under all relevant legislation and all rights and permissions required to enable the Licensee lawfully to :-
    - (i) carry out Coal-Mining Operations within that part of the Licence Area; and
    - (ii) comply with any site specific conditions or limitations attached to any relevant permission;
  - (b) To the extent that failure to do so may expose the Authority to any present or future liability the Licensee shall at all times during the subsistence of this Licence observe and perform the terms and conditions of any permission or agreement referred to in Condition 1(a) above and shall, unless otherwise agreed between the parties (such agreement not to be unreasonably withheld), carry out and complete before the expiry or earlier determination of this Licence (and where determined as to part only, in relation to the relevant part of the Licence Area) any works required to be carried out as a condition or limitation of any planning permission implemented by the Licensee in exercising the rights granted by this Licence or incidental thereto, whether or not the date by which the planning permission requires such works to be carried out is within the Licence Period.
  - (c) The Licensee shall, from time to time, when so required by the Authority, produce to the Authority evidence sufficient to establish that the Licensee has complied and is complying with the requirements of this Condition 1.
2. To the extent that failure to do so may expose the Authority to any (other than *de minimis*) present or future liability, the Licensee shall comply in all respects with the provisions of any statute and any other obligation imposed by law relating to the Licence Area (or any part of it), or any activities carried on within it pursuant to or in connection with this Licence, and shall not do or omit to be done any act or thing which may result in the Authority incurring or having imposed on it or becoming liable to pay, by reason of any statute or other obligation imposed by law, any penalty, damages, compensation, costs, charges or expenses.
  - [3. Site Specific Conditions, if any]