

DATED.....

THE COAL AUTHORITY

AND

[TENANT]

---

SURFACE MINING

LEASE

---

[SITE]

[REFERENCE]

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**THIS LEASE** made on the ..... day of .....

**BETWEEN :-**

- (1) **THE COAL AUTHORITY** whose office is at 200 Lichfield Lane, Mansfield, Nottinghamshire NG18 4RG (“the Authority”); and
- (2) the person whose details appear in the First Schedule (“the Tenant”).

**WITNESSES** as follows :-

**1. DEFINITIONS**

In this Lease, unless the context otherwise requires :-

- “Act”** means the Coal Industry Act 1994;
- “Authority’s Property”** means any land or premises (including any coal mine or former coal mine) in which the Authority has or comes to have any interest or other right in land (not being land comprised in this Lease);
- “Base Rate”** means the base rate as announced from time to time by the Monetary Policy Committee of the Bank of England (or any replacement committee);
- “Coal”** means the coal (as defined in Section 65(1) of the Act) vested in the Authority, which is within the Mine;
- “Coal-Mining Operations”** means coal-mining operations (as defined in Section 65(1) of the Act) to which Section 25 of the Act applies whether they were carried out before, on or after the restructuring date (as defined by Section 65(1) of the Act);
- “Demised Rights”** means the rights (if any) described in the Second Schedule;
- “Interaction Agreement”** means the agreement of that name dated 31 October 1994 made initially between (1) the Authority and (2) the British Coal Corporation as the same may be varied from time to time;
- “Lease”** means the lease hereby granted and any document which is made supplemental hereto, or which is entered into pursuant to or in accordance with the terms hereof;
- “Licence”** means the licence [of even date herewith/dated [ ]] issued by the Authority in exercise of the powers conferred on it by the Act;
- “Licensee”** means the licensee as defined in the Licence;
- “Mine”** means the coal and (where relevant) coal mines as described in the Third Schedule and the Minerals and each and every part thereof;

<b>“Minerals”</b>	means any unworked minerals (other than Coal) vested in the Authority which can only be economically worked in association with the working of any Coal described in the Third Schedule or which can only be economically brought to the surface by the use of the coal mine described in the Third Schedule (or created as a consequence of the working of the Coal therein described);
<b>“Plan”</b>	means the plan (which may be in two or more parts) signed and annexed hereto which forms part of this Lease;
<b>“Prescribed Rate”</b>	means [one point five per cent (1.5%)] per annum above the Base Rate;
<b>“Produced Coal”</b>	means Coal mined pursuant to the Licence and brought to the surface;
<b>[“Produced Minerals”</b>	means Minerals mined and brought to the surface;]
<b>“Production Related Rents”</b>	means the rents referred to in clause 3.2;
<b>“Relevant Property”</b>	means any property which before being brought into the Mine was, or after being brought into the Mine became, the property of the Tenant;
<b>“Satisfactory Condition”</b>	means (subject to clause 2.12 of this Lease) at any time such state and condition as is required in all respects to ensure that the Authority does not have or incur any present or future liabilities or potential liabilities (including any liabilities which may revert to the Authority on the expiry or sooner determination of this Lease) as a result, directly or indirectly, of :- <ul style="list-style-type: none"> <li>(i) the existence, state or condition of the Mine (including without limitation shafts and outlets from or within the Mine) or anything contained or occurring therein or passing through or emanating therefrom at any time; and/or</li> <li>(ii) any omission at any time to take any steps which might reasonably be expected to be taken by a prudent mine licensee or landowner;</li> </ul>
<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 Tenant to provide from time to time under the terms of the Lease and the Licence;

<b>“Surface Hazard”</b>	means any occurrence or state of affairs of any description (including the presence of holes or voids, flooding, landslip, the escape of gas or the manifestation of any effects of underground spontaneous combustion) on or near the surface within the area shown edged [blue] on Plan [A] constituting an imminent danger or hazard to any person which is due wholly or partly to Coal- Mining Operations (whensoever carried out) or the presence of Coal (and any such occurrence or state of affairs shall be deemed for the purposes of this Lease to be due to Coal- Mining Operations unless the contrary be proved on the balance of probabilities);
<b>“Tenant’s Group Company”</b>	means the Tenant and all companies which are holding companies, subsidiaries or subsidiary undertakings (as defined by Sections 753 and 736 of Companies Act 1985) of the Tenant;
<b>“Term”</b>	means [words (numbers)] years from and including the Term Commencement Date (subject to earlier termination as provided herein);
<b>“Term Commencement Date”</b>	means the date set out in the Fourth Schedule;
<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 Mine is situated.

## 2. INTERPRETATION

In this Lease, unless there is something in the subject or context inconsistent therewith :-

- 2.1 the expressions “Authority” and “Tenant” include their respective successors in title;
- 2.2 where two or more persons are included in the expression the obligations expressed or implied to be made by the Tenant shall be deemed to be made by such persons jointly and severally;
- 2.3 words importing one gender include all other genders and words importing the singular include the plural and vice versa;
- 2.4 references to a person or persons shall include a body of persons corporate or unincorporate;
- 2.5 terms used in the Act and not specifically defined in this Lease bear the same meanings as in the Act;
- 2.6 the expression “Term” includes any period of extension or continuance thereof whether by statute or common law;

- 2.7 references to any right of or obligation to permit the Authority to have access to the Mine shall be construed as extending to all persons authorised by the Authority (including agents, professional advisers, contractors, workmen and others) and shall include access with plant, machinery and other equipment;
- 2.8 any obligation by the Tenant not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done and to use its reasonable endeavours to prevent such act or thing being done;
- 2.9 any reference to a statute or statutory instrument (whether specifically named or not) includes any amendment or re-enactment of it for the time being in force and all instruments, orders, regulations, permissions, notices, plans and directions for the time being given issued or made under or deriving validity from it;
- 2.10 the headings appearing in this Lease are inserted for convenience and do not affect its construction;
- 2.11 references in this Lease to clauses, sub-clauses or schedules are references to the clauses and sub-clauses of or schedules to this Lease and references to paragraphs are references to paragraphs of the schedule in which the reference is made;
- 2.12 where the Tenant is required by the terms of this Lease to do or refrain from doing any acts or things in connection with keeping or leaving the Mine in Satisfactory Condition, the Tenant's obligations shall not extend beyond using the best techniques then available not entailing excessive cost provided that the Tenant has complied in full with all standards and criteria required by any relevant law or statute;
- 2.13 Any agreement, approval, consent, denial, notice, request, requirement, stipulation or other matter to be given, issued or made under this Lease shall be in writing and signed by the person giving, issuing or making it or that person's authorised officer or representative; and
- 2.14 The words "including" and "includes" and other similar expressions shall be deemed to be followed by the words "without limitation".
- 2.15 This Lease is executed in separate counterparts and such counterparts when executed and delivered shall be an original.

### **3. THE DEMISE**

- 3.1 In consideration of the rents hereinafter reserved and of the covenants on the part of the Tenant hereinafter contained the Authority hereby DEMISES to the Tenant (so far as the Authority has power so to do) the Mine TOGETHER WITH (so far as aforesaid) the right to carry out Coal-Mining Operations (but limited to surface mining (opencast) methods and any operations ancillary thereto) and DEMISES also (so far as aforesaid) all fixtures and fittings attached to the Coal and/or the Mine (including props, supports, bolts, conduits and all equipment, plant and machinery of whatever nature) and DEMISES also (so far as aforesaid) the Demised Rights (in common with the Authority and those authorised by it) EXCEPT AND RESERVING to the Authority and those authorised by it the rights and easements (if any) specified in the Fifth Schedule TO HOLD the same for the Term SUBJECT to all rights, easements, quasi-easements, privileges, covenants, restrictions and stipulations of whatsoever nature affecting the Mine YIELDING AND PAYING to the Authority the Production Related Rents and, at the time stipulated herein for the payment thereof, any other monies of any description payable by the Tenant to the Authority under this Lease.



- 3.2 For the purposes of this Lease the Production Related Rents shall be :-
- 3.2.1 a rent at the rate of **£[Coal Authority standard production related rent] per tonne** for every tonne of Produced Coal [or such other rent or rents as may become payable for Produced Coal under and by virtue of the provisions of the Eighth Schedule]; [and
- 3.2.2 a further rent at the rate of **£[Agreed rate] per tonne** for every tonne of Produced Minerals [or such other rent or rents as may become payable for Produced Minerals under and by virtue of the provisions of the Eighth Schedule].]
- 3.3 The Production Related Rents shall be payable (by such method as may be notified from time to time by the Authority to the Tenant) without any deduction on the last working day of the calendar month following the calendar month in which the Coal, in respect of which such Production Related Rents are payable, becomes Produced Coal [and the Minerals, in respect of which such Production Related Rents are payable, becomes Produced Minerals.]

#### **4. TENANT'S COVENANTS**

The Tenant covenants with the Authority to observe and perform the obligations and stipulations set out in the Sixth Schedule.

#### **5. AUTHORITY'S COVENANTS**

The Authority covenants with the Tenant to observe and perform the obligations and stipulations set out in the Seventh Schedule.

#### **6. RE-ENTRY**

Notwithstanding and without prejudice to any other right remedy or power contained in this Lease or otherwise available to the Authority, if any covenant, obligation or stipulation on the part of the Tenant contained in this Lease or the Interaction Agreement or any other lease entered into between the Authority and the Tenant, or any other Tenant's Group Company, relating to any of the Authority's property, shall not be substantially performed or observed, then the Authority may at any time thereafter re-enter the Mine or any part thereof in the name of the whole and thereupon this demise shall absolutely determine but without prejudice to any rights or remedies of either party in respect of any antecedent breach of any of the covenants herein contained provided that :-

- (i) the Authority shall not exercise its right of re-entry without giving at least thirty days' notice to the Tenant of its intention so to do referring to the breaches on which reliance is placed and in the event that before the expiry of such period the Tenant remedies (or makes a substantial start on remedying and evidences its intent and ability to continue with and complete the remedying) in the exclusive judgement of the Authority of all such breaches then the Authority shall not exercise its right of re-entry for so long as the Tenant thereafter continues to perform and observe all the covenants and obligations on its part contained in this Lease subject where the breach was not remedied within the specified period, to the Tenant completing as soon as reasonably practicable the remedying of such breach; and

- (ii) where the interest of the Tenant in this Lease has been charged by way of a bona fide charge to a third party (not being a charge by way of sub-demise) of which notice has been given to the Authority in accordance with paragraph 20 of the Sixth Schedule, then the Authority shall not exercise its right of re-entry without giving at least thirty days' notice to the chargee (at the last address of the chargee notified to the Authority) of its intention so to do referring to the breaches on which reliance is placed and, in the event that before the expiry of such period the chargee procures the remedying (or makes a substantial start on remedying and evidences its intent and ability to continue with and complete the remedying) in the exclusive judgement of the Authority of all such breaches and enters into a binding and effective deed with the Authority (in a form reasonably acceptable to the Authority) whereunder the chargee assumes all of the Tenant's obligations hereunder (including for the avoidance of doubt those binding on the Tenant but unperformed prior to the date of such deed) then the Authority shall not exercise its right of re-entry for so long as the chargee performs and observes its covenants under such deed subject, where the breach was not remedied within the specified period, to the remedying of such breach as soon as reasonably practicable.

**7. FRUSTRATION**

If the whole or a substantial part of the Mine shall at any time be destroyed or so damaged as to render the whole or a substantial part of the Mine unfit for occupation or use either permanently or temporarily, this Lease shall not terminate (except as otherwise herein provided).

**8. EFFECT OF WAIVER**

Each of the Tenant's covenants herein shall remain in full force notwithstanding that the Authority shall have waived or released temporarily any such covenant, or waived or released, temporarily or permanently, revocably or irrevocably, a similar covenant or similar covenants affecting any part of the Authority's Property.

**9. EXCLUSION OF WARRANTY AS TO USER**

Nothing in this Lease or in any consent granted by the Authority under this Lease shall imply or warrant that the Mine may lawfully be used for any purpose or that there is any Coal or other Minerals within or near the Mine.

**10. PROPERTY IN THE COAL AND THE MINERALS**

Property in any Coal or Minerals worked pursuant to this Lease shall pass to the Tenant when such Coal or Minerals is or are severed from the relevant seam or bed and brought to the surface.

**11. ACCIDENTS**

Otherwise than caused by the negligence of the Authority or its servants acting in the course of their employment the Authority will not be liable in respect of any death or personal injury sustained by the Tenant or for any damage to or loss of any of the Tenant's property sustained in the Mine or any associated land. In particular the Authority shall not be liable to the Tenant in any circumstances whatsoever for damage caused to the Tenant by the negligence, wilful default or breach of statutory duty of any independent contractor or its servants acting in the course of their employment or engaged by the Authority.

**12. OTHER TENANTS**

Without prejudice to any liability of the Authority to the Tenant pursuant to clauses 35.1 or 40.2 of the Interaction Agreement, and otherwise than caused by the negligence of the Authority or its servants acting in the course of their employment, the Authority will not be liable in respect of any death or personal injury sustained by the Tenant or for any damage to or loss of any of the Tenant's property sustained in the Mine or any associated land, arising out of, or in consequence of, any act or omission of any tenant or licensee of the Authority.

**13. REPRESENTATIONS ETC.**

The Tenant acknowledges that this Lease has not been entered into in reliance wholly or partly on any statement, warranty, condition or representation made or given whether orally or in writing by, or on behalf of, the Authority except any such statement, warranty, condition or representation that is expressly set out in this Lease and liability for all such warranties, conditions, statements or representations which are not expressly set out herein is hereby excluded.

**14. TENANT'S PROPERTY**

If on the expiry of the Term or earlier termination of this Lease any Relevant Property remains in or on the Mine it is agreed that such property shall on and from the date of such expiry or earlier termination belong to the Authority absolutely unless the Authority otherwise requires. Notice of such requirement may be given by the Authority at any time and the Authority may if it so requires give notice of such requirement in respect of part only of the Relevant Property. The Authority may also require the Tenant to remove any such Relevant Property. The Tenant shall indemnify the Authority against any costs losses or damages of any nature suffered by the Authority as a result (directly or indirectly) of any Relevant Property (or any property of any other person in circumstances where the Tenant has placed or suffered the placing of such other person's property in the Mine) being in the Mine following the expiry or earlier termination of this Lease.

**15. COMPENSATION**

Except where any statutory provision now or hereafter in force prohibits the Tenant's right to compensation being reduced or excluded by agreement, the Tenant shall not be entitled to claim from the Authority on quitting the Mine any compensation for improvements or otherwise.

**16. NO IMPLIED EASEMENTS**

The operation of Section 62 of the Law of Property Act 1925 shall be excluded from this Lease and the only rights granted to the Tenant are those expressly set out herein and the Tenant shall not, by virtue of this Lease, be deemed to have acquired or be entitled to and shall not during the Term acquire or become entitled by any means whatsoever (other than specific written grant) to any easement right or privilege (including any right of support) over or affecting any part of the Authority's Property.

## **17. NOTICES**

### **17.1 Address for service**

Any demand, notice or other communication to be given under this Lease shall be in writing and shall be sufficiently served if it is delivered personally, or sent by facsimile transmission or by pre-paid registered or recorded delivery mail :-

17.1.1 in the case of the Authority, to it at 200 Lichfield Lane, Berry Hill, Mansfield, Nottinghamshire, NG18 4RG (Fax No: 01623 620363) or at such other address and facsimile number in the United Kingdom as the Authority may for the time being have notified to the Tenant; and

17.1.2 in the case of the Tenant, to it (and, if there shall be more than one person within the definition of the Tenant, then any one of them), either at the address or facsimile number set out in the First Schedule or at such other address and facsimile number in the United Kingdom as that person may for the time being have notified to the Authority, or in the case of a body corporate, at the registered or principal office for the time being of the body corporate.

### **17.2 Service by facsimile**

For the purposes of this clause 17, facsimile transmission to the specified facsimile number will count as good service only if the party serving the demand notice or other communication also despatches or delivers a copy of it by one of the other methods of service.

### **17.3 When service effected**

Service shall be deemed to have been effected, in the case of posting by pre-paid mail, on the second Working Day after posting and in the case of facsimile transmission, subject to compliance with clause 17.2, at the time when it was sent by facsimile transmission except that any notice sent by facsimile transmission after 4.30 p.m. shall be deemed to have been served at 9.00 a.m. on the next Working Day.

### **17.4 Postal disputes**

If, at the time at which any notice or other communication referred to in clause 17.1 or 17.2 is to be served or given, there is in progress any industrial dispute affecting postal deliveries either generally or to or within the postal area in which is situated the address of the intended recipient thereof, then, notwithstanding the provisions of clause 17.1, clause 17.2 or clause 17.3, such notice or other communication shall be deemed to be sufficiently served only if it is served in accordance with clause 17.2 (but with the copy of the notice or other communication being delivered personally) and/or is delivered personally.

## **18. TENANT'S RIGHT TO DETERMINE**

At any time if the Tenant is not in material breach of any of the terms, conditions and obligations binding on it under this Lease, the Tenant may by giving at least three (3) months' notice to the Authority seek to determine this Lease and in such case (and subject to the provisions hereinafter appearing) this Lease shall determine on the date ("the Expected Termination Date") which is the later of :-

- (i) the date specified in such notice; or

- (ii) the fifth anniversary of the date on which the Tenant shall have permanently closed the whole Mine and apparently complied in all material respects with all of its obligations relating to such closure and the leaving of the Mine in Satisfactory Condition as set out in this Lease.

Provided that if it is shown during the period between the permanent closure of the Mine and the Expected Termination Date that the Tenant has not fully complied (excepting *de minimis* breaches) in the exclusive judgement of the Authority with its obligations relating to the closure and the leaving of the Mine in Satisfactory Condition and any other obligations to be performed before the expiry or earlier termination of this Lease, this Lease shall not terminate until the date which is the fifth anniversary of the date on which any such breach has apparently been fully remedied but subject to the terms of this proviso *mutatis mutandis*. Such deferment of the termination of this Lease shall be repeated as many times as necessary so that termination shall not occur until the first date upon which five years have elapsed from the last date on which breaches (other than *de minimis* breaches) in the exclusive judgement of the Authority of such obligations have apparently been remedied by the Tenant without any further such breaches or any indication that the previous steps taken may not have remedied the breach. Any such determination shall be without prejudice to any rights or remedies of either party in respect of any antecedent breach of any of the covenants herein contained.

## **19. VAT**

- 19.1 All sums payable under or pursuant to this Lease by the Tenant shall be deemed to be exclusive of VAT.
- 19.2 Where under or pursuant to the terms of this Lease the Authority makes a supply to the Tenant and VAT is payable in respect of such supply, the Tenant shall pay to the Authority on the date of such supply (in addition to any fee and any other consideration) a sum equal to the amount of the VAT so payable.
- 19.3 Where the Tenant is required by the terms of this Lease 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 Tenant 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.

## **20. INTERACTION AGREEMENT**

- 20.1 Nothing in this Lease 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 Tenant carrying out either any Subsidence Causing Operations or any Operations :-
  - 20.1.1 which give rise to or increase or are likely to give rise to or increase the liabilities of the Authority (other than in relation to the Mine itself); or
  - 20.1.2 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 of any third party situated from time to time outside the Mine; or

20.1.3 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", "Operations", "Potential Operations" and "Subsidence Causing Operations" having in this clause the same meanings as in the Interaction Agreement).

20.2 The Tenant acknowledges that the Authority may disclose the existence of this Lease and the name and address of the Tenant (but not commercial terms of this Lease) to any other party for the purpose of enabling such party to engage with the Tenant in terms of the Interaction Agreement if applicable.

## **21. AUTHORITY'S RIGHT TO DETERMINE**

21.1 The Authority may at any time after the Tenant has :-

21.1.1 ceased to work the Coal and commenced operations which may reasonably be said to comprise closure of the whole Mine (including without limitation the filling of the whole Mine); or

21.1.2 done or omitted to do actions or things so that it may reasonably be said that abandonment of the whole of the Mine has occurred (such actions or things to include the Tenant ceasing to work the Coal but so that abandonment of the Mine shall not necessarily be said to have occurred solely by reason of the Tenant having ceased to work the Coal); or

21.1.3 given notice to the Health and Safety Executive of the abandonment or discontinuance of the Mine or all the shafts and outlets seams and veins therein without at the same time having specified that such abandonment or discontinuance is of a temporary nature only and that resumption of working of the Coal will occur within one year of the date of such notice;

give not less than three months' notice to the Tenant to determine this Lease and in such case (and subject to the provisions hereinafter appearing) this Lease shall determine on the date of the expiration of such notice.

21.2 Where the Authority has given notice pursuant to clause 21.1 on any ground set out in clauses 21.1.1 or 21.1.2 (but not for the avoidance of doubt clause 21.1.3) determination of this Lease shall not occur if within one month of receipt of the Authority's notice of determination the Tenant provides evidence to the satisfaction of the Authority (acting reasonably) that :-

21.2.1 the Tenant is a tenant under a lease of a mine or prospective mine adjacent to the Mine or is in active negotiations with the Authority for such a lease and a licence from the Authority to work the coal in such mine or prospective mine; and

21.2.2 the Tenant has a definite and firm intent (as evidenced by a commercially prudent and technically practicable mining plan) to work the Coal within one year by gaining access thereto from such adjacent mine;

and any notice of determination served by the Authority shall in such circumstances cease to be of any effect provided always that where the requirements of this clause 21.2 as to evidence have been satisfied by the Tenant but where substantive working of the Coal from the relevant adjacent mine has not commenced within one year from the date upon which the Tenant fulfilled such requirements (or where the Tenant ceases to be in active negotiations with the Authority for a lease and a licence relating to the relevant adjacent mine or acknowledges at any time to the Authority in writing that it is no longer the tenant of the relevant adjacent mine or that it no longer has a firm and definite intent to mine the Coal) the Authority shall be entitled (but not obliged) to determine this Lease on not less than three months' notice and without any further application of the earlier provisions of this clause 21.2.

- 21.3 If the Tenant has given notice of abandonment or discontinuance to the Health and Safety Executive as referred to in clause 21.1.3 specifying also that such abandonment or discontinuance is of a temporary nature only but substantive working of the Coal then fails to be resumed within one year of the date of such notice (or the Tenant acknowledges to the Health and Safety Executive that such substantive working will not resume within such period) the Authority shall then be entitled (but not obliged) to determine this Lease on not less than three months' notice and without any further application of clause 21.2.
- 21.4 The Authority may withdraw any notice of determination at any time prior to actual determination of this Lease.
- 21.5 Upon any determination of this Lease occurring (whether pursuant to this clause 21 or to clause 18 or for any other reason) the Tenant shall promptly take all such steps as may reasonably be required by the Authority to effect and complete the documentation relating to such termination including without limitation the handing over of the original of this Lease any documents supplemental to it and any Land Certificate to the Authority and the drafting completion and execution of any necessary applications to HM Land Registry or any other relevant body in order to record the fact that this Lease has terminated and the Tenant shall hand over to the Authority all information plans and documentation in its possession or control relating to the physical state of the Mine (including physical matters outside of the Mine but having (or capable of having) a physical effect on it).
- 21.6 The Tenant hereby irrevocably appoints by way of security the Authority as its attorney for the doing of all acts and things contemplated by clause 21.5.

## **22. NO AGREEMENT FOR LEASE**

It is hereby certified that there is no agreement for lease or tack to which this Lease (or tack) gives effect.

## **23. ARBITRATION**

Unless otherwise specified herein any dispute or difference arising out of or in connection with the provisions of this Lease except any matter which falls to be determined by the Authority under the said provisions shall (in default of agreement within 28 days of the dispute or difference arising) be referred to the decision of a single arbitrator on the application of either party to be appointed by agreement between the Authority and the Tenant and in default of an 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 in accordance with the provisions of the Arbitration Acts 1950 to 1979.

**24. PERPETUITY PERIOD**

The perpetuity period applicable to this Lease shall be eighty years from the Term Commencement Date and whenever in this Lease either party is granted a future interest in property there shall be deemed to be included in respect of every such grant a provision requiring the future interest to vest within the perpetuity period and for it to be void for remoteness if it shall not have so vested.

**25. ENTIRE AGREEMENT**

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

25.1.1 constitute the entire agreement and understanding between the parties with respect to the subject matter of this Lease and such other agreements and documents; and

25.1.2 (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);

except as expressly incorporated in this Lease, 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 Lease are excluded.

**26. JURISDICTION AND GOVERNING LAW**

This Lease 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 Lease and for such purposes they irrevocably submit to the jurisdiction of such courts.

**IN WITNESS** whereof **THE COAL AUTHORITY** and the **TENANT** have executed this Deed the day and year first before written.



**THE FIRST SCHEDULE**

**Tenant's Details**

**[TENANT]** [of/whose [registered] office is situated at] :-

[Tenant's Address]

[Company registered in England & Wales / Scotland No.[Company Registration Number]]

Tel: [Tel No.]

Fax: [Fax No.]

Model Document

**THE SECOND SCHEDULE**

**Demised Rights**

[Working Note: Rights could include access, rights to drainage through old workings etc]

Model Document

## THE THIRD SCHEDULE

### The Mine

([Site Name])

All the Coal and coal mine contained within or comprising the Specified Seam[s] within an area of [ ] hectares or thereabouts in the [County/County Borough of [ ]] shown edged red on the Plan.

In this schedule :-

**“Specified Seam[s]”** means

Such part of the [ ] seam[s] as lie[s] beneath the surface area of [ ] hectares shown edged red on the Plan.

*OR*

All the Coal and (where relevant) coal mine comprising an area of [ ] hectares or thereabouts and shown edged red on the Plan [down to and including the [ ] Seam / down to a level of [ ] metres above/below Ordnance Datum] within the [County/County Borough of [ ]].

**THE FOURTH SCHEDULE**

**Term Commencement Date**

[The Date of this Lease/[Date]]

Model Document

**THE FIFTH SCHEDULE**  
**Exceptions and Reservations**

**1. Access**

The full and free right and liberty to enter the Mine at all reasonable times on reasonable prior notice (except in case of emergency) and the right to use the Tenant's property including machinery or plant for the purpose of such entry for the purposes of :-

- (i) viewing the state and condition of the Mine and ascertaining whether the Tenant is complying with the covenants on its part contained herein; or
- (ii) exercising any of the rights granted or reserved to the Authority by this Lease; or
- (iii) carrying out work which the Authority is permitted under this Lease to carry out whether or not the Tenant is liable to make a contribution; or
- (iv) carrying out, in the circumstances described in paragraph 24.3 of the Sixth Schedule, any works which the Authority considers necessary or desirable for the purpose of remedying or otherwise bringing to an end any Surface Hazard (or an event or state of affairs that the Authority acting reasonably perceives as a Surface Hazard); or
- (v) performing any of the rights or duties granted or reserved to the Authority and/or carrying out any powers granted by the Act.

**2. Access To Workings**

The full and free right and liberty to use at all reasonable times on reasonable prior notice (except in case of emergency) any chattels machinery plant and equipment situated for the time being in the Mine which are used in connection with the gaining of access to any part of the Mine.

**3. Coal Bed Methane**

The full and free right and liberty to enter (by means of wells or boreholes) and/or affect the Coal and Minerals for the purpose of testing, sampling and stimulating the Coal (or in order to access other coal for the purposes of testing, sampling and stimulating the same) for (and/or ancillary to) the extraction of methane or any other oil or gas which, in its natural condition in strata, is or becomes absorbed in or adsorbed to any coal or other minerals (notwithstanding that the exercise of any such right may interfere with the enjoyment of the Mine and the right to carry out Coal-Mining Operations).

## THE SIXTH SCHEDULE

### Tenant's Covenants

#### 1. Surface Facilities

1.1 To use all reasonable endeavours to obtain and ensure that there are at all times in place and in effect all rights and permissions (and to provide the Authority from time to time with evidence of the same) required :-

1.1.1 to enable the Authority to gain access to the Mine for the purpose of exercising all rights reserved to it by this Lease; and

1.1.2 in connection with the carrying out of any works which may be required by this Lease;

and to the extent that failure to do so may expose the Authority to any present or future liability, or prevent the Authority from gaining access to the Mine, to observe and perform the terms and conditions of any agreement conferring any such rights or permissions.

#### 2. Outgoings

To pay and indemnify the Authority against all existing and future rates, taxes, assessments, duties, charges, impositions, liabilities and outgoings whatsoever (whether parliamentary, parochial, local or of any other description and whether or not of a capital or non-recurring nature or of a wholly novel character) which now or during the Term shall be charged assessed or imposed on or payable in respect of the Mine or upon the owner or occupier of the Mine or any person carrying out any operations in it (but excluding any tax payable by the Authority occasioned by any disposition of or dealing with the reversion of this Lease) and, in the absence of a direct assessment on the Mine, to pay to the Authority a fair proportion (to be reasonably determined by the Authority) of any such outgoings.

#### 3. Electricity, etc. consumed

To pay to the suppliers, and to indemnify the Authority against, all expenses and charges (of any kind whatsoever) for electricity, water and other services consumed or used at or in relation to the Mine or provided therein.

#### 4. Acceptance of Mine and Maintenance in Satisfactory Condition

4.1 To accept the Mine at the commencement of this Lease in its state and condition at that time and at all times throughout the Term to take all requisite steps at the Tenant's expense to keep the Mine and all additions or improvements thereto, fixtures, fittings and Tenant's plant and machinery in Satisfactory Condition.

4.2 Without prejudice to paragraph 4.1 above to carry out on or prior to any closure or part closure of the Mine (or immediately after such closure or part closure where the works in question can only be carried out at such stage) all works necessary to ensure that the Mine (or any relevant part of it) is left and will (so far as is foreseeable) remain in Satisfactory Condition such works to include, where relevant, the treatment of shafts or outlets below the base of the Mine or opening onto the walls thereof.

- 4.3 At least six (but not more than eight) months prior to the expiration of this Lease by effluxion of time and in any event forthwith prior to closure of any part of the Mine, to deliver to the Authority in a form reasonably satisfactory to the Authority a report containing an accurate assessment of the state and condition of the Mine and the possible dangers and physical consequences of the closure of the whole or the relevant part thereof, together with details of the steps which the Tenant proposes to take in the course of and/or following such closure (or part closure) to ensure that the Mine is left and will (so far as is foreseeable) remain in Satisfactory Condition, to consult with the Authority on and seek to agree all such matters as soon as reasonably practicable after the date of delivery of the report and to supply such further information in connection therewith as the Authority may reasonably require.
- 4.4 To carry out prior to the earliest of the expiry or earlier termination of this Lease and the closure (or part closure) of the Mine by the Tenant all works identified in any reports referred to in paragraph 4.2 as such reports may have been modified by agreement, and all such further works as may be necessary to ensure that the Mine is left and will (so far as is foreseeable) remain in Satisfactory Condition.
- 4.5 Not later than the date which is thirty days prior to the expiration of any notice given by the Authority to the Tenant pursuant to clause 21.1 (but only in circumstances where the provisions of clause 21.2 do not apply) or clause 21.3, to deliver promptly to the Authority a report containing an accurate assessment of the state and condition of the Mine and the possible dangers and physical consequences of the closure or abandonment of the same. In the event that this Lease is determined by the Authority pursuant to clause 21.1 or clause 21.3 and all works identified in any reports referred to in this paragraph 4.5 or otherwise necessary to ensure that the Mine is left and will (so far as is foreseeable) remain in Satisfactory Condition have not by then been completed to the satisfaction of the Authority, then without prejudice to the Tenant's other obligations under this Lease it shall pay forthwith to the Authority a sum equal to the Authority's reasonable estimate of the cost of carrying out such works.

## **5. Rent**

To pay the Production Related Rents at the times and in the manner provided for in this Lease and not to exercise or seek to exercise any right or claim to withhold rent or any right of compensation or set-off.

## **6. Warranties**

- 6.1 The Tenant hereby warrants that all the information supplied and representations made by the Tenant to the Authority in so far as such information relates directly or indirectly to any matter herein prior to the date of this Lease including any information supplied or representations made in the course of any application for a licence or rights in relation to Coal owned by the Authority are true and accurate.
- 6.2 The Tenant further undertakes to keep the Authority informed of any variations to any such information supplied to or any such representations made to the Authority up to the date hereof so that such information and representations remain true and accurate in all material respects.

**7. Interest on late payment**

- 7.1 Without prejudice to any other right, remedy or power herein contained or otherwise available to the Authority, where any sum of money payable by the Tenant to the Authority under this Lease shall remain unpaid after the date when payment was due, such sum shall bear interest at the Prescribed Rate from and including the date on which payment was due to the date of payment of the same (both before and after any judgment) and the Tenant shall pay such interest to the Authority at the same time as it pays the principal sum.
- 7.2 In the event that the Authority reasonably incurs any costs (including, without limitation, legal, surveyors and administrative costs and expenses) in recovering or attempting to recover overdue sums from the Tenant, any such costs as are reasonable shall be reimbursed by the Tenant to the Authority on demand.

**8. Yielding up**

At the expiry or sooner determination of this Lease quietly to surrender and yield up to the Authority the Mine in such state and condition as shall in all respects be consistent with a full and due performance by the Tenant of the covenants and provisions contained in this Lease.

**9. Statutory and Title Obligations**

- 9.1 At the Tenant's own expense, promptly and diligently to execute all works and provide and maintain all arrangements in or in respect of the Mine or the use to which the Mine is being put which are directed or required (whether affecting an owner, tenant or occupier) by any statute now or hereafter in force or by any government department, local or other competent authority or duly authorised officer or court of competent jurisdiction and to indemnify and keep the Authority indemnified against all costs, charges, fees and expenses of or incidental to the execution of any works or the provision or maintenance of any arrangements so directed or required.
- 9.2 Not to do or omit to do in or near the Mine any act or thing by reason of which the Authority may, under any statute or common law or by reason of any matter affecting or relating to either the Mine or the consequences of any activities carried out (whether before or after the date of this Lease) in the Mine incur, have imposed upon it or become liable to pay, any penalty, fine, damages, compensation, costs, charges or expenses or incur expenditure.
- 9.3 To observe and perform all agreements, covenants, restrictions and stipulations of whatever nature affecting or relating to the Mine or the consequences of any activities carried out (whether before or after the date of this Lease) in the Mine, so far as the same are still subsisting and capable of taking effect and relate to the Mine, or the consequences of such activities and to keep the Authority indemnified against all actions, claims, demands, costs, expenses, damages and liability in any way relating thereto and any expenditure incurred by the Authority.



- 9.4 (Unless otherwise required by the Authority) to carry out before the determination of this Lease, howsoever determined, any works stipulated to be carried out to the Mine or any nearby land as a condition of any statutory consent or permission relating to the Mine (whether or not with other land) or otherwise binding on the Authority whether under any town and country planning legislation or otherwise or if the Authority so requires (in place of the carrying out of such works) to pay to the Authority a sum equal to a reasonable estimate of the cost to the Authority of carrying out any such works thereafter. Any such sum shall be agreed upon by the Authority and the Tenant or, in the event of failure so to agree within 28 days of the date on which the first of the parties produces its estimate of cost to the other party, shall be determined by a chartered surveyor (who shall act either as an expert or an arbitrator at the sole option of the Authority) who is experienced in the estimation of such costs. Such surveyor shall be nominated (in default of agreement between the parties) within 42 days of the end of the said 28 day period at the request of the Authority or the Tenant by the President or other proper officer for the time being of the Royal Institution of Chartered Surveyors.
- 9.5 Not to enter into any agreement pursuant to Section 106 of the Town and Country Planning Act 1990 which would actually or contingently bind the Authority (or any like agreement binding on the owner or occupier of the Mine for the time being) without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed).

#### **10. Shafts and outlets**

- 10.1 To ensure that any known shaft or outlet from any part of the Mine which has not been permanently closed or abandoned and put in Satisfactory Condition as at the date hereof and which can be accessed from the surface is secured with an efficient device or barrier so designed and constructed to prevent any person from accidentally entering the shaft or outlet and to notify the Authority in writing within five (5) days of any previously unknown shaft or outlet being discovered and, together with such notification, supply a plan showing the location of same.
- 10.2 Upon becoming aware of any shafts or outlets from or forming part of the Mine (unless otherwise required by the Authority) promptly to treat any such shafts or outlets to leave them in Satisfactory Condition.
- 10.3 If at any time during the Term the Tenant intends to abandon or discontinue the use of any shafts or outlets from or forming part of the Mine, or the Tenant becomes aware of any shaft or outlet from or forming part of the Mine, (unless otherwise required by the Authority) the Tenant shall promptly treat such shafts or outlets to leave them in Satisfactory Condition.

#### **11. User**

Not to take or discharge into or deposit in the Mine (including, for the avoidance of doubt, any void or space which was occupied by any Coal or Minerals prior to the working thereof) any solid, gaseous or liquid substance (whether natural or artificial) (except any natural substance necessarily displaced during the working of the Coal or the Minerals). Provided however that to the extent (if at all) that the Tenant may first have obtained the express written approval of the Authority, the Tenant shall be permitted (subject to the Tenant obtaining the necessary permissions, licences or consents, statutory or otherwise) to take or discharge into or deposit in the Mine (including as aforesaid) such substances as the Authority may specify and as shall be inert, non-toxic, non-hazardous, non-putrescible and not capable of harming the environment.

## **12. Nuisance**

To take in respect of the Mine all precautions which may be necessary to prevent any nuisance to the public at large the Authority or the owners, tenants or occupiers of any land (but so that this paragraph shall not extend to any nuisance which may result from withdrawal of support).

## **13. Notices and defects**

### **13.1 To give notice forthwith to the Authority of :-**

13.1.1 any defect, item, substance or process or matter in or in connection with the Mine or the Authority's Property there and any other nearby property of the Authority (or any fixtures or fittings therein) which might give rise to an obligation on the Authority to do or refrain from doing any act or thing in order to comply with the provisions of this Lease;

13.1.2 any duty of care that may be imposed upon the Authority by statute or at common law;

13.1.3 any proceedings issued by any person in connection with the Mine or anything occurring in it or emanating from it;

13.1.4 (insofar as they relate to the Mine, the Tenant's presence or operations therein or anything in or emanating from it) all notices, permissions, orders or proposals for a notice or order made, given or issued to the Tenant by any government department or local or public or other competent authority (other than the Authority) under or by virtue of any powers, and forthwith to give to the Authority a certified copy of each such notice, permission, order or proposal and to comply in all respects with the provisions thereof, and, if so required by the Authority, to make or join in making such objections or representations in respect of any such notice, order or proposal as the Authority may reasonably require; and

13.1.5 material damage to or destruction of the Mine.

13.2 At all times to display and maintain at the Mine all notices which the Authority may from time to time reasonably require.

## **14. Rights of entry by Authority**

14.1 Insofar as it has power so to do at all times to permit the Authority to enter the Mine (or where filling of part of the Mine has taken place to permit the Authority to enter the unfilled parts) at all reasonable times by prior arrangement upon written notice and subject to the Authority giving reasons for requiring entry (but in an emergency, at any time without notice and without giving reasons) for the purpose of :-

14.1.1 exercising without interruption or interference any of the rights granted to it or reserved under this Lease subject only to the Authority being responsible for making good all damage thereby occasioned to the Mine and causing as little interference with the Tenant's Coal-Mining Operations as is reasonably practicable without involving the Authority in any significant extra expense and save as aforesaid (or otherwise expressly specified) the Tenant shall have no claim against the Authority for compensation or otherwise arising from the exercise of such rights;

14.1.2 ascertaining that the terms and conditions of this Lease have been observed and performed;

- 14.1.3 viewing the state and condition of the Mine and/or any fixtures or fittings therein;
  - 14.1.4 giving the Tenant or (in the event that there is no representative of the Tenant who is readily available and who is willing to accept service) leaving upon the Mine in a prominent position a notice specifying any works of repair, maintenance or otherwise required to be carried out in accordance with the provisions of this Lease and requesting the Tenant forthwith to execute the same; or
  - 14.1.5 performing any of the rights or duties granted or reserved to the Authority and/or carrying out any powers granted by the Act.
- 14.2 To provide any facility necessary for any such inspection to be carried out effectively or for the effective exercise of any such right and an appropriate representative to accompany and give reasonable assistance to any person making such inspection or exercising such right.

**15. To comply with notices**

- 15.1 Forthwith to carry out such works as may be required by such notice referred to in paragraph 14.1.4 above.
- 15.2 If, within one month of the service of such a notice or sooner if requisite, or, in the case of emergency, as soon as reasonably possible, the Tenant shall not have commenced and be proceeding diligently with the execution of the work referred to in the notice, or shall fail to complete such work as quickly as reasonably possible or if, in the Authority's reasonable opinion, the Tenant is unlikely to have completed the work within the said period, to permit the Authority and those authorised by it to enter the Mine to execute such work as may be necessary to comply with the notice and to pay to the Authority the reasonable and proper cost of so doing and all expenses incurred by the Authority (including legal costs and surveyors' fees) within fourteen days of a written demand therefor.

**16. Authority's costs**

- 16.1 Without prejudice to any other provisions contained in this Lease, to pay to the Authority, on an indemnity basis, all proper and reasonable costs, charges and expenses (including, but without prejudice to the generality of the foregoing, solicitors' and other professional fees) properly and reasonably incurred by the Authority in connection with or in reasonable contemplation of :-
  - 16.1.1 the preparation and service of a schedule of dilapidations (or any notice or schedule in respect of the Tenant's failure to perform its obligations) at any time during or after the expiry of the Term (but relating in all cases only to dilapidations or failure by the Tenant to perform its obligations which occur prior to or on the expiry or sooner determination of this Lease however the same may be determined);
  - 16.1.2 the remedy of any breach (or reasonably apprehended breach in circumstances where the Tenant has not supplied information to the Authority sufficient for it to judge whether a breach has occurred or not) of obligations or payment of sums overdue on the part of the Tenant provided for by this Lease notwithstanding that any steps taken hereunder may be rendered unnecessary by the Tenant's subsequent compliance with the provisions of this Lease;
  - 16.1.3 any application to the Authority for consent or approval pursuant to this Lease or in consequence thereof, whether successful or otherwise or subsequently withdrawn;

- 16.1.4 any application made by the Tenant to the Authority for or under the Licence and anything which the Authority must or may do, or any request which the Authority makes to the Tenant, under the terms of the Licence;
- 16.1.5 consideration by the Authority and any requirement relating to the provision of Security under the terms of this Lease or the Licence, the valuation and investigation of any such Security offered by the Tenant and the approval of the arrangements and documentation of such Security; or
- 16.1.6 receipt and consideration by the Authority of any information submitted by the Tenant to the Authority under the terms of the Licence.

**17. Sale of Authority's interest and letting**

To afford the Authority, in the case of a proposed sale, at any time during the Term and in the case of re-letting, at any time during the last six months of the Term (howsoever determined), reasonable facilities for the purpose of selling or, as the case may be, re-letting the Mine including access to the Mine by the Authority or prospective purchasers, tenants or others having written authority from the Authority (accompanied by appropriate representatives) such access to be obtained upon prior written notice and during reasonable hours.

**18. Indemnity**

Otherwise than as caused by the negligence of the Authority to indemnify and keep indemnified the Authority at all times from liability howsoever and whensoever incurred in respect of any injury to death of or loss by any person, damage to any property, court action, the infringement, disturbance or destruction of any rights, easements or other privileges or otherwise by reason of or arising, directly or indirectly, out of the state of repair, existence or condition in or in relation to the Mine, anything in, occurring or passing through or emanating from it, any activity in the Mine or any failure or omission by the Tenant or its employees, agents or others whether or not authorised by any of them in the implementation and observance of the covenants and obligations on its part contained in this Lease and from all proceedings, costs, claims and demands of whatsoever nature in respect of any such liability or alleged liability.

**19. Alienation**

- 19.1 Not to assign or charge the whole, part or parts (as distinct from the whole) of this Lease or the Mine.
- 19.2 Not to part with possession or share the occupation of the whole or any part or parts of the Mine or permit any person to occupy the same, save by way of an assignment or underlease of the whole of the Mine or an underlease of part thereof in accordance with the provisions of this paragraph provided that the Tenant may nonetheless permit occupation by contractors as envisaged by the Tenant's licence under Part II of the Act so long as :-
  - 19.2.1 no tenancy or relationship of landlord and tenant between the Tenant and such contractor shall arise;
  - 19.2.2 the Tenant shall keep the Authority informed in writing at all times with full details of all such contractors; and
  - 19.2.3 the Tenant shall ensure that such contractors do not do or omit to do anything which would put the Tenant in breach of any of the terms and conditions of this Lease.

- 19.3 Without prejudice to the foregoing provisions not to assign the whole of the Mine without the prior written consent of the Authority (such consent not to be unreasonably withheld or delayed subject to the agreements contained in paragraphs 19.4 and 19.5)
- 19.4 19.4.1 It is agreed that the Authority will not be deemed to be unreasonable in withholding consent to a proposed assignment of the whole of the Mine if it is withheld on the ground (and it is the case) that one of or more of the circumstances mentioned below exists (whether or not such withholding is solely on such ground or on that ground together with other grounds) :-
- 19.4.1.1 that in the reasonable opinion of the Authority the likely ability of the proposed assignee to meet its obligations under this Lease having regard to all relevant circumstances will be substantially less than that of the assignor at the time of the assignment or grant of the Lease to the assignor
- 19.4.1.2 that in the reasonable opinion of the Authority the proposed assignee is not of sufficient financial standing to enable it to comply with the Tenant's covenants in the Lease
- 19.4.1.3 that either at the date of the Tenant's application for licence to assign or at any time thereafter (and prior to the completion of the assignment in question) (i) any rent reserved by this Lease or any other sums which are due and payable thereunder (and whether or not demanded) have not been duly paid in accordance with the terms of the Lease or (ii) any covenants on the part of the Tenant contained in the Lease have not been observed and performed in all material respects to the reasonable satisfaction of the Authority
- 19.4.1.4 that in the Authority's reasonable opinion the proposed assignee is of a materially lower financial standing than the assignor at the time of the assignment or grant of the Lease to the assignor
- 19.4.1.5 there is an outstanding statutory demand (or its equivalent in any other relevant jurisdiction) against the proposed assignee or a guarantor
- 19.4.2 clause 19.4.1 shall operate without prejudice to the right of the Authority to withhold consent on any other ground or grounds where such withholding of consent would be reasonable.
- 19.5 It is agreed that any permitted assignment of the whole of the Mine will be subject to the following conditions :-
- 19.5.1 a requirement that the assignor execute and deliver prior to the assignment an authorised guarantee agreement (as defined in and for the purposes of Section 16 of the Landlord and Tenant (Covenants) Act 1995) under which the assignor will agree with the Authority :-
- 19.5.1.1 that he is liable as sole or principal debtor in respect of all obligations to be owed by the assignee under the Tenant Covenants (as defined in Section 28 of that Act) in this Lease; and

19.5.1.2 to be liable as guarantor in respect of the assignee's performance of the Tenant Covenants (as above defined) in this Lease (provided that such liability shall be no more onerous than the liability to which the assignor would be subject in the event of his being liable as sole or principal debtor in respect of the obligations owed by the assignee under the said Tenant Covenants); and

19.5.1.3 in the event of the Lease being disclaimed, to enter into a new Lease of the Mine the term of which shall expire simultaneously with the date upon which (but for any such disclaimer) this Lease would have expired by effluxion of time (and not by any other means) and the Tenant Covenants in which shall be identical to (*mutatis mutandis* but in any event no more onerous than) the Tenant Covenants in this Lease;

19.5.1.4 provisions incidental or supplementary to any of paragraphs 19.5.1.1 - 19.5.1.3;

The form of such authorised guarantee agreement is to be subject to the foregoing as reasonably required by the Authority;

19.5.2 a requirement that the assignee enters into direct covenants and obligations with the Authority that from the date of the assignment of this Lease until a permitted assignment of the Lease the assignee will observe and perform the Tenant Covenants and conditions contained in this Lease and the Security Document;

19.5.3 19.5.3.1 If the Authority shall reasonably so require to obtain on or prior to assignment of this Lease an acceptable guarantor for any person to whom this Lease is to be assigned who shall execute and deliver to the Authority a deed containing covenants by such guarantor (or if more than one such guarantor joint and several covenants) with the Authority as a primary obligation in the terms from time to time determined by the Authority acting reasonably;

19.5.3.2 If the Authority shall in its absolute discretion so require to procure that on or prior to assignment of this Lease there shall be given by the intending assignee to the Authority security for the performance of all (or any) of the covenants stipulations and obligations on the part of the Tenant hereunder. The form and the amount of the Security shall be such as the Authority may in its absolute discretion require but subject nonetheless to the following provisos :-

(a) it shall be a document of the type referred to as a Security Document in paragraph 25.2 and shall be based upon the particular form thereof previously executed by the intending assignor ("the Assignor's Document") but with such amendments as the Authority may reasonably require to take into account:-

(i) whether this Lease alone is being assigned to the intending assignee or whether any other similar lease or leases or other matters or facilities are simultaneously being assigned or new leases or rights granted by the Authority; and

- (ii) any technical matters changes in the law changes in circumstances or any other things whatever which would failing amendments to the form of the Assignor's Document cause the Security or benefits which would otherwise have been conferred on or enjoyed by the Authority (whether actually or potentially) under the Security Document to be entered into by the intending assignee ("the Assignee's Document") to be reduced or prejudiced in any way whatsoever; and
- (b) the amount of such Security shall be the amount notified to the intending assignee by the Authority pursuant to a request by the intending assignee which amount shall be valid only for one month from the date of such notification;
- (c) where the Assignee's Document is to relate to this Lease as well as any other lease or leases or other matters or facilities the amount required shall be the aggregate of the costs referred to in paragraph 19.5.3.2.(b) and all sums calculated on a similar basis for all of the other leases matters or facilities; and
- (d) where there is to be an Assignee's Document and the form of the Assignor's Document provided for payment of any sums by instalments then the Assignee's Document shall stipulate that there be immediate payment of a lump sum equivalent to the aggregate of all instalments previously falling due under the Assignor's Document prior to the date of assignment (including any increments for inflation or other additions) and shall also stipulate that further instalments (increased for inflation or any other additions in accordance with any provisions governing the same in the Assignor's Document) will thereafter become payable on the same dates as they would have fallen due under the Assignor's Document; and
- (e) where the Authority determines the amount of any sum or sums referred to in paragraph 19.5.3.2.(b) prior to the date of assignment the actual sums required to be paid on assignment and all subsequent instalments shall (if the Assignor's Document has indexation provisions) be indexed from the date of such determination up to the date of actual assignment in order to take account of inflation;

19.5.3.3 If the Tenant and the intending assignee agree to the transfer of the Assignor's Document and the Authority in its absolute discretion permits the transfer then the Tenant and the intending assignee will on the assignment of this Lease execute a Deed of Novation. The form of such Deed of Novation shall be as required by the Authority (acting reasonably).

19.6 The Tenant shall not underlet or agree to underlet the whole of the Mine or any part or parts (as distinct from the whole) of the Mine without the Authority's prior written consent and prior to any permitted underlease will procure that the undertenant enters into direct covenants with the Authority as follows :-

19.6.1 an unqualified covenant by the undertenant that the undertenant shall not assign or charge any part or parts of the property to be thereby demised;

19.6.2 an unqualified covenant by the undertenant that the undertenant shall not underlet the whole or any part or parts of the property to be thereby demised nor (save by way of an assignment of the whole or an underlease of the whole of the property to be thereby demised) part with possession or share the occupation of the whole or any part of the property to be thereby demised or permit any person the same;

19.6.3 a covenant by the undertenant that the undertenant shall not assign or underlet the whole of the property to be thereby demised without obtaining the prior written consent of the Authority such consent not to be unreasonably withheld or delayed;

19.6.4 a covenant by the undertenant to perform and observe all the Tenant's covenants and the other provisions contained in this Lease (save for payment of rent) so far as the same are applicable to the property to be thereby demised for the period in which the underlease is vested in the undertenant.

19.7 Every permitted underlease shall contain :-

19.7.1 a covenant by the undertenant (which the Tenant hereby covenants to enforce) prohibiting the undertenant from doing or suffering any act or thing upon or in relation to the property underlet inconsistent with or in breach of the provisions of this Lease;

19.7.2 a condition for re-entry on breach of any covenant by the undertenant (which the Tenant hereby covenants to enforce); and

19.7.3 the same restrictions as to assignment underletting charging parting with or sharing the possession or occupation of the property underlet and the same provisions for direct covenants and registration as are in this Lease (*mutatis mutandis*) but subject in addition always to the direct covenants to be given by the undertenant to the Authority as referred to in paragraph 19.6.

19.8 In the event that breach by any undertenant of any covenants provisions or conditions in any underlease would place the Tenant in breach of its obligations under this Lease to enforce the performance and observance by every undertenant of the covenants provisions and conditions of every underlease and not without the consent of the Authority at any time either expressly or by implication to waive any breach of the same.



19.9 Not to accept any surrender of any permitted underlease or vary the terms thereof so that they become inconsistent with the terms of this Lease without the prior written consent of the Authority (such consent not to be unreasonably withheld).

**20. Registration of dispositions**

Within twenty-one (21) days of every assignment, transfer, assent, underlease, assignment of underlease, mortgage, charge or any other disposition of or relating to the Mine, to produce to and leave with the Authority a certified copy of the deed, instrument or other document evidencing or effecting such disposition, and on each occasion to pay to the Authority their reasonable registration fee (including, if appropriate, any legal fees in connection therewith).

**21. Information**

21.1 Upon making any application or request in connection with the Mine or this Lease, to disclose to the Authority such information as the Authority may reasonably require and, whenever the Authority shall reasonably request, to supply full particulars of all occupations and derivative interests in the Mine, however remote or inferior.

21.2 Following a request therefor from the Authority, promptly to supply to the Authority such information as the Authority may reasonably require in relation to any items of any nature connected with keeping the Mine and any fixtures and fittings therein in Satisfactory Condition, any activities carried on in the Mine which could give rise to liability by the Authority to any person or any consent or permission connected therewith or any application made by the Tenant therefor.

**22. Subsidence damage**

Without prejudice to paragraph 18, to indemnify the Authority against all liability and expense arising or incurred directly or indirectly under or by virtue of the general law relating to withdrawal of support in connection with the Mine or the result of any activities carried out in it and to waive any liability of the Authority to the Tenant in respect of or in connection with any withdrawal of support from the Mine or any other land.

**23. Records**

23.1 To provide the Authority with the following information at such time intervals as described :-

23.1.1 within 10 working days of the last working day of each calendar month during the Term, a report as to the amount of Coal which became Produced Coal [and the amount of minerals which became Produced Minerals] during that month (including nil returns); and

23.1.2 such other reports as shall be specified by the Authority from time to time.

23.2 The Tenant shall upon receipt of not less than 24 hours notice in writing from the Authority permit any duly authorised officer of the Authority to have access to and inspect and to take copies of all books, accounts, invoices and records relating to the operation of the Mine and shall supply any other information that may be required to enable the Authority to verify the returns made by the Tenant pursuant to paragraph 23.1.1.

- 23.3 To keep and maintain all existing records of the Authority (or of the operator of the Mine for the purposes of The Quarries Regulations 1999) relating to the Mine together with any additional records required to be kept by the Tenant in a safe, efficient and orderly condition, and to return all such records in the same condition to the Authority at the expiry or earlier termination of the Term, and to make such records available, without cost to the Authority, for inspection upon reasonable prior notice during normal working hours and to deliver copies of any such records to the Authority, if required to do so.
- 23.4 To supply to the Authority free of charge a copy of any report obtained in relation to the Mine in particular (but without limitation) in relation to the Coal reserves of the Mine.
- 23.5 To maintain on a scale satisfactory to the Authority, during the period of the Lease, working plans relative to National Grid and Ordnance Datum. Within the areas shown edged [blue] on Plan [A], the working plans shall show surface features, location and level of excavations at surface, individual seam plans detailing the extent of all areas where coal has been extracted, in-situ thickness of the coal seam, location of all faults, areas of old workings and washouts, seam contours and/or levels in sufficient detail satisfactory to the Authority and the Tenant shall deliver to the Authority a copy of such plan within 14 days if so requested by the Authority.
- 23.6 Within 3 months of completion of works or termination of the Lease whichever shall occur first, to submit to the Authority a completion plan on a scale satisfactory to the Authority, based on the detail recorded on the working plans described in clause 23.5, showing the extent and detail of all excavations and coal seams extracted within the Mine. In addition the following records shall accompany the completion plan :-
- 23.6.1 A vertical section showing the nature of materials encountered, indicating relative location of coal seams within the strata;
- 23.6.2 The nature of materials used for backfilling, indicating any areas of compacted backfill;
- 23.6.3 Coaling start and completion dates;
- 23.6.4 A plan, at a scale satisfactory to the Authority, showing final restoration levels and/or contours including surface detail on completion.

## **24. Surface Hazard**

- 24.1 Upon becoming aware of the presence of any Surface Hazard, forthwith :-
- 24.1.1 to notify the Authority, the emergency services (if appropriate), any statutory undertakers, public bodies or providers of utilities whose facilities, conduits, roads, plant or equipment may be affected by the Surface Hazard and any persons who may reasonably be perceived to occupy, use or have an interest in the land in question;
- 24.1.2 to do all acts or things and execute in a good sound and workmanlike manner such works as may reasonably be necessary to isolate and prevent entry to the area in which the Surface Hazard has occurred, give verbal warning of the Surface Hazard to all persons in such area, erect prominent and adequate warning notices and (unless such persons refuse to be evacuated or evacuation by the Tenant would interfere with the work of the emergency services) evacuate or assist in the evacuation of persons from such area; and
- 24.1.3 to execute in a good sound and workmanlike manner such works as may reasonably be necessary to bring the Surface Hazard to an end provided that :-

- 24.1.3.1 the Tenant shall be obliged only to use best available techniques not entailing excessive cost; and
  - 24.1.3.2 the Tenant's obligations under this paragraph shall not include any obligation to carry out works to or repair buildings affected by subsidence or fill in voids appearing at the surface.
- 24.2 The Tenant shall furnish the Authority with addresses and telephone numbers for representatives of the Tenant of whom at least one can be contacted twenty four hours a day on every day in the year in the event of the Authority learning of a Surface Hazard and wishing to communicate details of it to the Tenant and the Tenant shall promptly inform the Authority of any changes in such addresses and telephone numbers from time to time as necessary.
- 24.3 In the event that a Surface Hazard (or an event or state of affairs that the Authority acting reasonably perceives to be a Surface Hazard) occurs and the Tenant is not contactable or the Tenant fails to comply with its obligations under the foregoing sub-paragraphs of this paragraph 24, the Tenant shall indemnify the Authority in respect of any costs losses or damages of any nature which the Authority may incur in taking any of the actions described in the foregoing sub-paragraphs.
- 25. Security**
- 25.1 The Tenant shall comply (and continue to comply) with any requirements of the Authority notified to the Tenant for the provision and maintenance of Security for the performance by the Tenant of its obligations under this Lease, such Security to be in form and substance satisfactory to the Authority.
- 25.2 The Tenant shall also comply (and continue to comply) with all covenants, obligations, stipulations or conditions binding upon it contained in any agreement, deed, document or other instrument ("Security Document") entered into by it and concerned with security relating to this Lease or to both this Lease and any other mines, leases or other matters or facilities (and whether the Security Document predates, postdates or is dated the same as this Lease).
- 25.3 The Tenant shall procure the execution of any additional documents, required as Security by the Authority, by the Guarantor under any Security Document.
- 26. Mining Code Agreements**
- 26.1 In this paragraph, "Mining Code Agreements" means any agreement enforceable by or against the Authority relating to (a) the actual or potential sterilisation of any coal or other minerals of the Authority and/or (b) the steps to be taken as a result, or compensation to be provided, in respect of any actual or potential damage or other actual or potential consequences occasioned by or ancillary to the working of any such coal or other minerals.
- 26.2 Without prejudice to paragraph 18, to observe and perform all provisions of the Mining Code Agreements in so far as they relate to or affect the Mine or the consequences or potential consequences of any activities carried out in the Mine (whether such obligations are imposed upon the Authority or upon the Tenant) save to the extent, if at all, that the Authority may have previously notified to the Tenant (either generally or in any particular case).
- 26.3 Promptly to supply to the Authority such information as the Authority may reasonably request in relation to any matters covered by paragraph 26.2.

26.4 To comply with any directions in writing given by the Authority to the Tenant as to the manner in which the provisions of any one or more of the Mining Code Agreements or matters ancillary thereto or issues arising therefrom are to be complied with or otherwise dealt with (whether generally or in relation to specific provisions or particular circumstances).

**27. Auditor's Certificates**

[27.1 Throughout the term of this Lease the Tenant shall, in respect of each company accounting year end during which there is Produced Coal, tender to the Authority an Auditor's Certificate in the form set out in paragraph 27.2. The period shown in the first certificate submitted by the Tenant shall be at the end of the accounting year after the Term Commencement Date and thereafter shall be for each subsequent accounting year during the Term of this Lease with a final Auditor's Certificate at the end of the accounting year following the completion of coal-mining operations.]

*OR FOR SMALL OPERATIONS AT THE AUTHORITY'S DISCRETION*

[27.1 The Tenant shall, at the end of the accounting year following the completion of coal-mining operations, tender to the Authority an Auditor's Certificate in the form set out in paragraph 27.2.]

27.2 "We have made an examination of the records relating to the tonnage of Produced Coal [and Produced Minerals] from the Mine and we have satisfied ourselves by such audit tests as we deemed necessary that the records are properly maintained so as to give reliable figures of tonnage of Produced Coal [and Produced Minerals] from the Mine.

In our opinion the total tonnage of Produced Coal for the period [Start Date] to [End Date] amounting to [Amount] tonnes has been properly calculated in accordance with the Lease between the Authority and the Tenant.

[In our opinion the total tonnage of Produced Minerals for the period [Start Date] to [End Date] amounting to [Amount] tonnes has been properly calculated in accordance with the Lease between the Authority and the Tenant]"

## THE SEVENTH SCHEDULE

### Authority's Covenants

**1. Quiet enjoyment**

That the Tenant observing and performing the covenants and conditions on the part of the Tenant herein contained shall and may peaceably hold and enjoy the property hereby demised during the Term without any interruption by the Authority or any person lawfully claiming through, under, or in trust for it, save as provided for herein.

Model Document

**THE EIGHTH SCHEDULE**

**Review of Rent**

[None / Agreed Rent review provisions if any]

Model Document

Executed as a Deed on behalf of

[TENANT]

by :-

..... *Position*

..... *Print Name*

..... *Position*

..... *Print Name*

duly authorised to act in that capacity

Executed as a Deed by affixing the  
Common Seal of **THE COAL AUTHORITY**  
in the presence of :-

Model Document