

# **Scheme Implementation Agreement**

**Coalspur Mines Limited**  
Coalspur

**KC Euroholdings S.à. r.l.**  
KCE

**Cline Resource and Development Company**  
Cline

**HARDY♦BOWEN**  
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Our Ref – SDG:MCN:140248

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**This Agreement** is made this

day of

2015

**Parties**

**Coalspur Mines Limited ACN 003 041 594** of Level 1, 28 Ord Street,  
West Perth, WA 6005 (**Coalspur**)

and

**KC Euroholdings S.à r.l.**, a private limited liability company (*société à responsabilité limitée*) incorporated under the laws of the Grand Duchy of Luxembourg, having its registered office at 40, avenue Monterey, L-2163 Luxembourg, registered with the Luxembourg Register of Commerce and Companies under number B 189548 and having a share capital of USD20,900 (**KCE**)

and

**Cline Resource and Development Company** of 430 Harper Park Drive,  
Beckley, West Virginia 25801 (**Cline**)

**Recitals**

- A. KCE and Coalspur have agreed that KCE will acquire all of the issued and outstanding Coalspur Shares at a price of \$0.023 per Coalspur Share pursuant to the Scheme, subject to the approval of the holders of the Coalspur Shares and the Court.
- B. Coalspur intends to propose the Scheme and issue the Scheme Booklet.
- C. KCE and Coalspur have agreed to do the things required by this agreement in order to enable the Scheme to be proposed, approved and implemented.
- D. Cline has agreed to guarantee the performance of the obligations of KCE under this agreement.

**The Parties agree** as set out in the operative part of this agreement, in consideration of, among other things, the mutual promises contained in this agreement.

**Agreed Terms**

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## **1. Defined Terms and Interpretation**

### **1.1 Defined terms**

In this agreement:

**Accounting Standard** has the meaning given to that term in section 9 of the Corporations Act.

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means ASX Limited (ABN 98 008 624 691) or the Australian Securities Exchange, as appropriate.

**Borrowdale** means Borrowdale Park S.A.

**Borrowdale Facility** means all Financial Indebtedness of the members of the Coalspur Group to Borrowdale, and all rights Borrowdale has against any person in connection with that indebtedness.

**Business Day** means a day that is not a Saturday, Sunday, bank holiday or public holiday in Western Australia, Australia or British Columbia, Canada.

**Canadian National Railway Agreement** means the CN Confidential Transportation Agreement No. 523969-AA made as of 25 March 2013 between Canadian National Railway Company and Coalspur Mines (Operations) Ltd.

**Canadian Securities Regulatory Authorities** means the securities regulatory authorities of the following provinces of Canada: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland.

**Cancellation Consideration** means the aggregate consideration to be provided to holders of Coalspur Options, being CAD \$14,103.70 comprised of the amounts set out opposite each tranche of Coalspur Options as described in the following table:

Exercise Price	Number of options	Number of option holders	Issue Date	Expiry Date	Cancellation Consideration
CAD \$0.30	2,780,739	10	5 March 2014 and 30 May 2014	13 February 2019	CAD \$0.005 per option
A\$1.05	700,000	1	16 July 2010	30 June 2015	CAD \$50 per option holder
A\$1.05	750,000	1	14 May 2010	30 June 2015	CAD \$50 per option holder
A\$0.70	350,000	1	24 March 2010	30 June 2015	CAD \$50 per option holder
A\$0.25	2,750,000	1	30 September 2009	30 June 2015	CAD \$50 per option holder

**CHESS** means the Clearing House Electronic Sub-register System operated by ASX.

**Claim** means any obligation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise.

**Cline Representations and Warranties** means the representations and warranties of Cline set out in Schedule 4.

**Coal Leases** means collectively, the various leases by virtue of which the holder thereof is entitled to mine, recover, remove or dispose of coal, issued by any Regulatory Authority in connection with the business or activities of any member of the Coalspur Group, including without limitation those specified in Part 1 of Schedule 6, together with any renewals, extensions, modifications, substitutions, amalgamations,

successions, conversions, demise to lease, renaming or variation of any of those mineral claims.

**Coalspur Board** means the board of directors of Coalspur.

**Coalspur Costs** has the meaning given to that term in clause 12.2(b)(i).

**Coalspur Diligence Materials** the information fully and fairly disclosed by Coalspur to KCE and its Representatives in the Coalspur data room hosted by Merrill DataSite on behalf of Coalspur and any additional information that has been fully and fairly disclosed in writing by Coalspur in response to a request by KCE.

**Coalspur Director** means a director of Coalspur.

**Coalspur Financial Statements** means the audited consolidated balance sheets, audited consolidated statements of operations, comprehensive income (loss) and deficit and audited consolidated statements of cash flows of Coalspur for the financial year ended December 31, 2013 and the unaudited consolidated financial statements of Coalspur for the nine month period ended September 30, 2014.

**Coalspur Group** means Coalspur and its Related Entities.

**Coalspur Indemnified Parties** means each member of the Coalspur Group and their respective directors, officers and employees.

**Coalspur Information** means all information contained in the Scheme Booklet, but does not include KCE Information or the Independent Expert's report that is included in or accompanies the Scheme Booklet.

**Coalspur Option** means an option to acquire a Coalspur Share

**Coalspur Performance Rights** means a performance right exchangeable for, or exercisable or convertible into, a Coalspur Share.

**Coalspur Prescribed Occurrence** means other than:

- (a) as required by this agreement or the Scheme;
- (b) matters which have been fully and fairly disclosed in:
  - (i) Coalspur Diligence Materials; or
  - (ii) documents released by Coalspur on ASX and SEDAR; or
- (c) as agreed to in writing by KCE,

the occurrence of any of the following between the date of this agreement and 8.00am on the Second Court Date:

- (a) Coalspur converting all or any of the Coalspur Shares into a larger or smaller number of shares;
- (b) any member of the Coalspur Group resolving to reduce its share capital in any way or reclassifying, combining, splitting or redeeming or repurchasing directly or indirectly any of its shares;
- (c) any member of the Coalspur Group:

- (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) any member of the Coalspur Group declaring, paying or distributing any dividend, bonus or other share of its profits or assets or returning or agreeing to return any capital to its members;
- (e) a member of the Coalspur Group issuing securities, including without limitation Coalspur Shares, or granting an option (over Coalspur Shares, or agreeing to make such an issue or grant such an option other than to Coalspur or to a direct or indirect wholly-owned subsidiary of Coalspur or pursuant to the exercise on an option disclosed to ASX prior to the date of this agreement), including pursuant to a dividend reinvestment or other share plan;
- (f) a member of the Coalspur Group issuing or agreeing to issue securities convertible into shares, including pursuant to a dividend reinvestment or other share plan;
- (g) a member of the Coalspur Group making any change to its constitution or constituting documents, as applicable;
- (h) a member of the Coalspur Group disposing, or agreeing to dispose, of the whole, or a part, of its assets (including, without limitation, the Coal Leases, the Mining and Environmental Approvals and its other coal assets), business or property;
- (i) a member of the Coalspur Group:
  - (i) acquiring, leasing or disposing of;
  - (ii) agreeing to acquire, lease or dispose of; or
  - (iii) irrevocably offering, proposing, announcing a bid or tendering for, any business, assets, entity or undertaking, the value of which exceeds \$150,000 (individually or in aggregate);
- (j) a member of the Coalspur Group terminating, varying or consenting to the termination or variation of, or waiving or releasing any material right under, any Coal Lease, Mining and Environmental Approval, or any other material agreement, deed or other arrangement or understanding;
- (k) a member of the Coalspur Group creating, or agreeing to create, any mortgage, charge, lien or other encumbrance over the whole, or a part, of its business or property other than a lien which arises by operation of law or legislation securing an obligation that is not yet due in the ordinary course of business;
- (l) an Insolvency Event occurring in relation to any member of the Coalspur Group; or
- (m) a member of the Coalspur Group:
  - (i) entering into any contract or commitment (including in respect of Financial Indebtedness) requiring payments by any member of the Coalspur Group, as applicable, in excess of \$150,000 (individually or



in aggregate) other than any payment required by law, or which is otherwise material to the Coalspur Group;

- (ii) waiving any third party default where the financial impact on the Coalspur Group will be in excess of \$150,000 (individually or in aggregate);
- (iii) otherwise waiving, releasing, granting or transferring any rights with a value of more than \$150,000 (individually or in aggregate);
- (iv) other than pursuant to commitments that existed prior to the date of this agreement and which have been fully and fairly disclosed to KCE, a member of the Coalspur Group providing financial accommodation other than to members of the Coalspur Group (irrespective of what form of Financial Indebtedness that accommodation takes) in excess of \$150,000 (individually or in aggregate);
- (v) a member of the Coalspur Group being deregistered as a company or otherwise dissolved except in the case of a member of the Coalspur Group with less than \$150,000 (individually or in aggregate) in net assets as at the date of this agreement; or
- (vi) a member of the Coalspur Group changing any accounting policy applied by them to report their financial position other than any change in policy required by a change in Accounting Standards.

**Coalspur Registry** means the manager from time-to-time of the Register.

**Coalspur Reimbursement Fee Amount** means \$150,000.00.

**Coalspur Representations and Warranties** means the representations and warranties of Coalspur set out in Schedule 4.

**Coalspur Share** means a fully paid ordinary share issued in the capital of Coalspur.

**Coalspur Shareholder** means at the relevant time each person who is registered in the Register as the holder of Coalspur Shares.

**Coalspur Warrant** means a warrant to acquire a Coalspur Share.

**Communications** has the meaning given to that term in clause 3.4(c).

**Competing Proposal** means any proposal or offer received by Coalspur from a third party (other than KCE or its Related Entities) to evaluate or enter into any transaction that is similar to the Transaction or under which (other than as required or contemplated by the Scheme):

- (a) a person would acquire a relevant interest or voting power in 50.1% or more of Coalspur Shares or of the securities of any of member of the Coalspur Group;
- (b) a person would enter into, buy, dispose of, terminate or otherwise deal with any cash settled equity swap or other synthetic, economic or derivative transaction connected with or relating to 50.1% or more of Coalspur Shares or of the securities of any member of the Coalspur Group;
- (c) a person would directly or indirectly acquire or obtain an interest (including an economic interest) in all or a substantial part or material part of the business conducted by, or property of, Coalspur or any member of the Coalspur Group;

- (d) a person would acquire Control of Coalspur or any member of the Coalspur Group;
- (e) a person may otherwise acquire, or merge with, Coalspur or any member of the Coalspur Group (including by way of takeover bid, scheme of arrangement, capital reduction, sale of assets, sale of securities, strategic alliance, dual listed company structure or joint venture); or
- (f) Coalspur will issue, on a fully diluted basis, 50.1% or more of its capital as consideration for the assets or share capital or another person,

or which is conditional upon Coalspur failing to proceed with the Scheme or terminating this agreement, or any proposal by Coalspur to implement any material reorganisation of capital or dissolution. The variation of a proposal or offer constitutes a proposal or offer for the purposes of this definition.

**Competition Act** means the *Competition Act* (Canada), as amended from time to time and the regulations thereunder.

**Conditions Precedent** means the conditions precedent set out in clause 3.1.

**Confidentiality Agreement** means the confidentiality agreement dated 3 September 2014 between Cline and Coalspur.

**Control** has the meaning given to that term in section 50AA of the Corporations Act.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Counterproposal** has the meaning given to that term in clause 11.6(c).

**Court** means the Federal Court of Australia, unless otherwise agreed by the parties.

**Deed Poll** means the deed poll substantially in the form of Schedule 5 (or in such other form as agreed between Coalspur and KCE in writing).

**Effective** means, when used in relation to a Scheme, the order of the Court made under section 411(4)(b) in relation to the Scheme coming into effect pursuant to section 411(10) of the Corporations Act.

**Effective Date** means the date on which the Scheme becomes Effective.

**EIG** means EIG Energy Fund XV-A, L.P., EIG Energy Fund XV, L.P., EIG Energy Fund XV-B, L.P., EIG Energy Fund XV (Cayman), L.P. and EIG Management Company, LLC.

**EIG Facility** means all Financial Indebtedness of the members of the Coalspur Group to EIG (including all of the Coalspur Warrants on issue), and all rights EIG has against any person in connection with that indebtedness.

**EIG Amended and Restated Liquidity Notes Letter** means the letter (known as the 'Liquidity Notes Letter') from EIG to one or more members of the Coalspur Group dated 23 June 2014, as amended and restated on or about 30 July 2014, 30 September 2014, 13 November 2014, 4 December 2014 (by email from Ken Lee to Robert Gough), 15 January 2015 (by email from Ken Lee to Robert Gough), 10 February 2015 (by email from Ken Lee to Robert Gough) and on or about the date of this agreement.

**Environmental Laws** means all applicable laws whether foreign or domestic, including applicable common law, relating to the protection of the environment and employee

and public health and safety, and for the regulation of contaminants, pollutants, waste, toxic and hazardous substances.

**Exchanges** means, collectively, the ASX and TSX.

**Exclusivity Period** means the period commencing on the date of this agreement and ending on the earlier of the date this agreement is terminated, the Implementation Date or the Sunset Date.

**Explanatory Statement** means the statement pursuant to section 412 of the Corporations Act, which will be registered by ASIC in relation to the Scheme, copies of which will be included in the Scheme Booklet.

**Financial Advisor** means any advisor or advisors retained by Coalspur or KCE, as applicable, in relation to the Scheme or a Competing Proposal from time to time.

**Financial Indebtedness** means any debt or other monetary liability (whether actual or contingent) in respect of moneys borrowed or raised or any financial accommodation.

**First Court Date** means the first day on which an application made to the Court for an order under section 411(4)(a) of the Corporations Act convening the Scheme Meeting is heard.

**GST** means a goods and services tax or similar value added tax levied or imposed under the GST Law.

**GST Law** has the meaning given to it in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Implementation Date** means the fifth Business Day after the Record Date, or such other date agreed to in writing by the parties.

**Independent Expert** means a person to be appointed by Coalspur pursuant to clause 6.1(d) as an independent expert to prepare a report to be provided to the Coalspur Board and Coalspur Shareholders stating whether, in the expert's opinion, the Scheme is in the best interests of Coalspur Shareholders.

**Insolvency Event** means, in relation to any entity:

- (a) the person is or becomes unable to pay its debts as and when they fall due within the meaning of the Corporations Act or is otherwise presumed to be insolvent under the Corporations Act, or would be presumed to be insolvent if that Act applied;
- (b) the person suspends or threatens to suspend payment of its debts generally;
- (c) the calling of a meeting to consider a resolution to wind up the person (other than where the resolution is frivolous or cannot reasonably be considered to be likely to lead to the actual winding up of the person) or the making of an application or the making of any order, or the passing of any resolution, for the winding up, liquidation or bankruptcy of the party other than where the application or order (as the case may be) is set aside within 14 days;
- (d) the appointment of a provisional liquidator, liquidator, receiver or a receiver and manager or other insolvency official (whether under Australian law or foreign law) to the person or to the whole or a substantial part of the property or assets of the person;

- (e) the appointment of an administrator to the person;
- (f) the entry by a person into any compromise or arrangement with creditors; or
- (g) the person ceases or threatens to cease to carry on business.

**KCE Board** means the board of directors of KCE.

**KCE Costs** has the meaning given to that term in clause 12.1(b)(i).

**KCE Group** means KCE and its Related Entities.

**KCE Indemnified Parties** means each member of the KCE Group and their respective directors, officers and employees.

**KCE Information** means the information about KCE described in, and provided to Coalspur by KCE under, clause 6.3(a).

**KCE Reimbursement Fee Amount** means \$150,000.00.

**KCE Representations and Warranties** means the representations and warranties of KCE set out in Schedule 4.

**KERP Payments** means the key employee retention plan payments (K.E.R.P) referred to in Appendix A of the EIG Amended and Restated Liquidity Notes Letter.

**Listing Rules** means the official listing rules of ASX.

**Mining and Environmental Approvals** means all present and future permits, certificates, authorisations, approvals, orders, consents, instructions, registrations, directions, decisions, decrees, conditions, notifications, demands, filings, licenses or permits whether or not having the force of law, issued by any Regulatory Authority in connection with the business or activities of any member of the Coalspur Group, including without limitation in relation to Environmental Laws and those specified in Part 2 of Schedule 6 (as amended, varied or replaced from time to time).

**Notice of Meeting** means the notice convening the Scheme Meeting together with the proxy forms for that meeting.

**Option Cancellation Deeds** has the meaning given to that term in clause 3.1(p).

**Record Date** means 7.00pm (Sydney time) on the fifth Business Day following the Effective Date, or such other date (after the Effective Date) as Coalspur and KCE may agree in writing or as ordered by the Court or as may be required by the ASX or TSX.

**Register** means the share register of Coalspur kept pursuant to the Corporations Act.

**Regulator's Draft** means the draft of the Scheme Booklet in a form acceptable to KCE and Coalspur, which is provided to ASIC for approval pursuant to section 411(2) of the Corporations Act.

**Regulatory Approval** has the meaning given to that term in clause 3.1(a).

**Regulatory Authority** includes, in any jurisdiction:

- (a) a government or governmental, semi-governmental, administrative, fiscal or judicial entity or authority;

- (b) a minister, department, office, commission, delegate, instrumentality, tribunal, agency, board, authority or organisation of any government;
- (c) any regulatory organisation established under statute; and
- (d) in particular, ASX, ASIC, TSX, the Canadian Securities Regulatory Authorities and the Government of Alberta.

**Regulatory Review Period** means the period from the date on which the Regulator's Draft is submitted to ASIC to the date on which ASIC provides a letter indicating whether or not it proposes to appear to make submissions, or will intervene to oppose the Scheme, when the application made to the Court for orders under section 411(1) of the Corporations Act convening the Scheme Meeting to consider the Scheme is heard.

**Related Entity** means, in relation to a party, any entity that is related to that party within the meaning of section 50 of the Corporations Act or which is an economic entity (as defined in the Accounting Standards) that is Controlled by that party.

**Representatives** means, in relation to an entity:

- (a) each of the entity's Related Entities; and
- (b) each of its and its Related Entities' directors, officers, employees, contractors, advisers (including legal, financial and other expert advisers) and agents, but excluding the Independent Expert.

**Required Consultation Period** means the shorter of:

- (a) five Business Days after both parties becoming aware that clause 3.8(a)(i), 3.8(a)(ii) or 3.8(a)(iii) as the case may be, is triggered; and
- (b) the period commencing at the time both parties become aware that clause 3.8(a)(i), 3.8(a)(ii) or 3.8(a)(iii), as the case may be, is triggered and ending at 8.00am on the Second Court Date.

**Ridley Terminals Agreements** means:

- (a) the terminal services agreement dated 26 October 2011; and
- (b) the terminal services agreement dated 28 March 2012, as amended and restated on 31 August 2012,

each between Ridley Terminals Inc. and Coalspur Mines (Operations) Ltd.

**RG 60** means Regulatory Guide 60 issued by ASIC on 23 September 2011 (as amended).

**Scheme** means the scheme of arrangement pursuant to Part 5.1 of the Corporations Act proposed between Coalspur and the Scheme Participants, the form of which is contained in Schedule 3, together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by KCE and Coalspur.

**Scheme Booklet** means the information to be despatched to all Coalspur Shareholders and approved by the Court in connection with the Scheme, including the Scheme, the Explanatory Statement in respect of the Scheme, an independent expert's report prepared by the Independent Expert and the Notice of Meeting.

**Scheme Consideration** means the consideration to be provided to Scheme Participants under the terms of the Scheme, being \$0.023 in respect of each Coalspur Share held by a Scheme Participant on the Record Date, the aggregate Scheme Consideration for each Scheme Participant being rounded to the nearest whole cent.

**Scheme Meeting** means the meeting of Coalspur Shareholders convened by the Court in relation to the Scheme pursuant to section 411(1) of the Corporations Act and includes any adjournment of that meeting.

**Scheme Participant** means each person who is a Coalspur Shareholder as at the Record Date (other than KCE).

**Second Court Date** means the first day on which an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned or appealed application is heard.

**SEDAR** means the computer system established under National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* for the transmission, receipt, acceptance, review and dissemination of documents filed in electronic format in Canada.

**STIP Payments** means the short term incentive plan payments for calendar year 2014 (S.T.I.P.), as approved by the Coalspur Board and referred to in Section 2(b) of the EIG Amended and Restated Liquidity Notes Letter.

**Subsidiaries** has the meaning given to that term in section 9 of the Corporations Act.

**Sunset Date** means 30 June 2015, or such later date as agreed to in writing between the parties.

**Superior Offer** means a bona fide Competing Proposal (which was not obtained in breach of clause 11) that the Coalspur Board, acting reasonably and in good faith, and after taking advice from its legal advisors practising in the area of corporate law and Financial Advisors, determines:

- (a) is reasonably capable of being valued and completed on a timely basis, taking into account all aspects of the Competing Proposal and the person making it, including without limitation having regard to legal, regulatory and financial matters and any conditions precedent; and
- (b) would, if completed in accordance with its terms, be more favourable to Coalspur and Coalspur Shareholders than the Scheme, after taking into account all of the terms and conditions of, and the identity, reputation and standing of the person making, the Competing Proposal.

**Takes effect or taking effect** means, in relation to the Scheme, on and from the first time when an office copy of the Court order approving the Scheme pursuant to section 411(4)(b) of the Corporations Act is lodged with ASIC pursuant to section 411(10) of the Corporations Act.

**Third Party Bidder** has the meaning given to that term in clause 11.4(b)(i).

**Timetable** means the indicative timetable for the implementation of the Transaction, as set out in Schedule 1, or as otherwise agreed by KCE and Coalspur, acting reasonably.

**Transaction** means the acquisition by KCE of all of the Coalspur Shares by means of the Scheme in accordance with the terms of this agreement.

**Trust Account** means an Australian dollar denominated trust account nominated by Coalspur, details of which Coalspur must notify to KCE and Cline at least 5 Business Days before the Implementation Date.

**TSX** means the Toronto Stock Exchange.

**TSX Rules** means the TSX Company Manual.

## **1.2 Interpretation**

In this agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, or schedule is to a clause or paragraph of, or schedule to, this agreement, and a reference to this agreement includes any schedule;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, dollar or \$ is to Australian currency, unless another currency is expressly specified;
- (f) a reference to time is to Perth, Western Australia time, unless otherwise noted;
- (g) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the Corporations Act and not otherwise defined in this agreement has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;

- (n) any statement made by a party on the basis of its awareness or knowledge, including for the purposes of the representations and warranties set forth in Schedule 4, is made on the basis that the party has, in order to establish that the statement is true and not misleading in any respect:
  - (i) made all reasonable enquiries of the officers, managers, employees and other persons who could reasonably be expected to have information relevant to the matters to which the statement relates; and
  - (ii) where those enquiries would have prompted a reasonable person to make further enquiries, made those further enquiries,and that, as a result of those further enquiries, the party has no reason to doubt that the statement is true and not misleading in any respect;
- (o) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (p) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

### 1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

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## 2. Agreement to propose Scheme

### 2.1 Proposal of Scheme

- (a) Coalspur agrees to propose and implement the Scheme upon and subject to the terms of this agreement.
- (b) KCE agrees with Coalspur to assist Coalspur to propose and give effect to the Scheme on and subject to the terms of this agreement.

### 2.2 Compliance with obligations

Coalspur's obligations under this agreement to propose the Scheme are subject to its compliance with Coalspur's respective obligations, functions, powers and duties under Coalspur's constitution, at law and under the Listing Rules and TSX Rules.

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## 3. Conditions Precedent

### 3.1 Conditions Precedent to implementation of the Scheme

The Scheme, the obligations of Coalspur under clause 6.1 and the obligations of KCE under clause 6.3 are subject to the satisfaction of the following Conditions Precedent (unless waived by a party in accordance with clause 3.2):

- (a) **Regulatory Approvals:** before 8.00am on the Second Court Date:
  - (i) **ASIC:** ASIC issues or provides such consents, approvals, modifications or exemptions, or does such other acts which the



parties agree are reasonably necessary or desirable to implement the Scheme;

- (ii) **ASX and TSX:** ASX and TSX issue or provide such consents or approvals or does such other acts which the parties agree are reasonably necessary to implement the Scheme; and
- (iii) all other regulatory approvals required to implement the Scheme being granted or obtained and those regulatory approvals not being withdrawn, cancelled, revoked or varied in a manner that is materially adverse to the parties,

(together, **Regulatory Approvals**);

- (b) **Shareholder approval:** before 8.00am on the Second Court Date, Coalspur Shareholders approve the Scheme at the Scheme Meeting by the requisite majorities under the Corporations Act;
- (c) **Coalspur Board Recommendation:** the Coalspur Board unanimously recommending that Coalspur Shareholders vote in favour of the Scheme, in the absence of a Superior Offer and in the absence of the Independent Expert finding that the Scheme is not in the best interests of Coalspur Shareholders and including that recommendation in the Scheme Booklet and no Coalspur Director withdrawing or varying that recommendation or otherwise making any public statement or taking any action which would suggest that the Scheme is not so recommended before 8.00am on the Second Court Date;
- (d) **Restraining orders:** as at 8.00am on the Second Court Date, no temporary restraining order, preliminary or permanent injunction or other order or decision has been issued or made by any court of competent jurisdiction or any Regulatory Authority and there is no other legal restraint or prohibition preventing the consummation of any aspect of the Transaction on the Implementation Date;
- (e) **Court Approval:** the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act;
- (f) **Independent Expert's report:** the Independent Expert providing a report to Coalspur that concludes that the Scheme is in the best interests of Coalspur Shareholders and the Independent Expert not withdrawing or adversely modifying that conclusion before 8.00am on the Second Court Date;
- (g) **EIG:** KCE entering into an agreement in writing with EIG for the acquisition by KCE of EIG's rights and interests under the EIG Facility (including the acquisition of all of the Coalspur Warrants on issue) and the transactions contemplated by that agreement completing before 8.00am on the Second Court Date;
- (h) **Borrowdale:** KCE entering into an agreement in writing with Borrowdale for the acquisition by KCE of Borrowdale's rights and interests under the Borrowdale Facility and the transactions contemplated by that agreement completing before 8.00am on the Second Court Date;
- (i) **Ridley Terminals:** before 8.00am on the Second Court Date, either:
  - (i) Coalspur Mines (Operations) Ltd. has entered into a written agreement with Ridley Terminals Inc. to amend the Ridley Terminals Agreements; or

- (ii) the Ridley Terminals Agreements are terminated and a member of the Coalspur Group acceptable to KCE (in KCE's absolute discretion) has entered into one or more written agreements with Ridley Terminals, Inc. in substitution of the Ridley Terminals Agreements,

such amendment, or termination and replacement agreements, taking effect on or before the Effective Date and being on terms acceptable to KCE (in KCE's absolute discretion);

- (j) **Canadian National Railway:** before 8.00am on the Second Court Date, either:

- (i) Coalspur Mines (Operations) Ltd. has entered into a written agreement with Canadian National Railway to amend the Canadian National Railway Agreement; or
- (ii) the Canadian National Railway Agreement is terminated and a member of the Coalspur Group acceptable to KCE (in KCE's absolute discretion) has entered into one or more written agreements with Canadian National Railway in substitution of the Canadian National Railway Agreement,

such amendment, or termination and replacement agreement, taking effect on or before the Effective Date and being on terms acceptable to KCE (in KCE's absolute discretion);

- (k) **Coal Leases and Mining and Environmental Approvals:** before 8.00am on the Second Court Date, the relevant Coalspur Group entities have properly made all notifications to applicable Regulatory Authorities required in connection with the Transaction under or in respect of the Coal Leases and Mining and Environmental Approvals, and those notifications have not been withdrawn;

- (l) **No Coalspur Prescribed Occurrence:** no Coalspur Prescribed Occurrence occurs between the date of this agreement and 8.00am on the Second Court Date;

- (m) **Coalspur Representations and Warranties:** the Coalspur Representations and Warranties given by Coalspur under Schedule 4 are true and correct in all material respects as at the date of this Agreement and as at 8.00am on the Second Court Date;

- (n) **No KCE Insolvency Event:** no Insolvency Event occurring in relation to the KCE between the date of this agreement and 8.00am on the Second Court Date;

- (o) **KCE and Cline Representations and Warranties:** the KCE Representations and Warranties given by KCE and Cline Representations and Warranties given by Cline under Schedule 4 are true and correct in all material respects as at the date of this Agreement and as at 8.00am on the Second Court Date;

- (p) **Cancellation of Coalspur Options:** before 8.00am on the Second Court Date:

- (i) each Coalspur Option has been cancelled in consideration for the payment by Coalspur to the holder of the Coalspur Option of the Cancellation Consideration; or

- (ii) each person who is a holder of Coalspur Options has entered into a deed with Coalspur (in a form acceptable to KCE, acting reasonably) (**Option Cancellation Deeds**) to have his or her Coalspur Options cancelled, with effect on or before the Record Date, in consideration for the payment by Coalspur to the person of the Cancellation Consideration, and such cancellation is subject only to the Scheme becoming Effective; and
- (q) **Extension of Mining and Environmental Approvals:** KCE has obtained assurances to the satisfaction of KCE from the Alberta Energy Regulator regarding its processes for extending the term of the Mining and Environmental Approvals and the probability of obtaining extensions for the Mining and Environmental Approvals.

### 3.2 Waiver of Conditions Precedent

- (a) The Conditions Precedent in clauses 3.1(a), 3.1(b), 3.1(d) and 3.1(e) are for the benefit of Coalspur and KCE, and cannot be waived.
- (b) The Conditions Precedent in clauses 3.1(c), 3.1(g), 3.1(h), 3.1(i), 3.1(j), 3.1(k), 3.1(l), 3.1(m), 3.1(p) and 3.1(q) are for the sole benefit, and any breach or non-fulfilment of those Conditions Precedent may only be waived with the written consent, of KCE.
- (c) The Conditions Precedent in clauses 3.1(n) and 3.1(o) are for the sole benefit, and any breach or non-fulfilment of those Conditions Precedent may only be waived with the written consent, of Coalspur.
- (d) The Condition Precedent in clause 3.1(f) is for the benefit of each party, and any breach or non-fulfilment of that Condition Precedent may only be waived with the written consent of each of the parties.
- (e) A party entitled to waive the breach or non-fulfilment of a Condition Precedent pursuant to this clause 3.2 may do so in its absolute discretion.
- (f) Waiver of a breach or non-fulfilment in respect of one Condition Precedent does not constitute:
  - (i) a waiver of breach or non-fulfilment of any other Condition Precedent resulting from the same event; or
  - (ii) a waiver of breach or non-fulfilment of that Condition Precedent resulting from any other event.

### 3.3 Reasonable endeavours to satisfy Conditions Precedent

To the extent it is within its power to do so, each of Coalspur and KCE will use its reasonable endeavours to procure that:

- (a) each of the Conditions Precedent is satisfied as soon as practicable after the date of this agreement and continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
- (b) there is no occurrence within the control of Coalspur or KCE (as the context requires) or their Related Entities that would prevent the Conditions Precedent being satisfied, except to the extent such occurrence is required by law.

### 3.4 Pre implementation steps

Without limiting the generality of clause 3.3:

- (a) **Regulatory Approvals:** each party must promptly apply for all relevant Regulatory Approvals and take all steps it is responsible for as part of the Regulatory Approval process, including responding to requests for information at the earliest practicable time.
- (b) **Filing Fees:** All filing fees required in connection with the notification of the transactions contemplated by this agreement shall be borne by KCE.
- (c) **Consultation:** each party must consult with the other in advance in relation to all communications (whether written or oral, and whether direct or via agents or advisers) with any Regulatory Authority relating to any Regulatory Approval (**Communications**) including:
  - (i) providing the other party with drafts of any material written Communications to be sent to a Regulatory Authority and making such amendments thereto as the other party reasonably requires; and
  - (ii) providing copies of any material written Communications sent to or received from Regulatory Authority to the other party promptly upon despatch or receipt (as the case may be),in each case to the extent it is reasonable to do so and such Communications do not contain commercially sensitive information of the first party;
- (d) **Participation:** each party will have the right to be represented and make submissions at any proposed meeting with any Regulatory Authority relating to any Regulatory Approval; and
- (e) **Alberta Energy Regulator:** Coalspur will use its reasonable endeavours to assist KCE in obtaining assurances from the Alberta Energy Regulator regarding extending the term of the Mining and Environmental Approvals at the end of their term.

### 3.5 Assistance of Representatives

Each party must procure that its Representatives work (including by attending meetings and by providing information) in good faith and in a timely and co-operative fashion with the other party, and the other party's Representatives, to satisfy the Conditions Precedent.

### 3.6 Notice of failure to satisfy Condition Precedent

- (a) A party must promptly give the other notice of a failure to satisfy a Condition Precedent or of any event that will prevent a Condition Precedent being satisfied.
- (b) Coalspur or KCE (as the case may be) must give written notice to the other party as soon as reasonably practicable (and in any event before 5.00pm on the day before the Second Court Date) as to whether or not it waives the breach or non- fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question.

### **3.7 Certificates in relation to Conditions Precedent**

Each party must:

- (a) give the Court on the Second Court Date a certificate confirming (in respect of matters within its knowledge) whether or not the Conditions Precedent have been satisfied or waived; and
- (b) give the other party a draft of its certificate by 5.00pm on the Business Day prior to the Second Court Date.

### **3.8 Conditions Precedent not met**

- (a) If:
  - (i) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this agreement;
  - (ii) there is an act, failure to act, event or occurrence which will prevent a Condition Precedent being satisfied by the date specified in clause 3.1 for its satisfaction (and the breach or non-fulfilment of the Condition Precedent which would otherwise occur has not already been waived in accordance with this agreement), or
  - (iii) if it becomes probable that the Scheme will not become Effective by the Sunset Date,

either Coalspur or KCE may serve notice on the other of them and then Coalspur and KCE must consult in good faith with a view to:

- (iv) consider and if agreed, determine whether the Scheme or a transaction that results in KCE having beneficial ownership of all of the Coalspur Shares may proceed by way of alternative means or methods;
  - (v) consider and if agreed, extend the time or date for satisfaction of the relevant Condition Precedent or the Sunset Date; and/or
  - (vi) consider and if agreed, change the date of application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Scheme or adjourning that application (as applicable) to another date agreed to in writing by Coalspur and KCE (being a date no later than five Business Days before the Sunset Date).
- (b) If Coalspur and KCE are unable to reach agreement under clause 3.8(a) within the Required Consultation Period, either Coalspur or KCE may, provided that Condition Precedent is for the benefit of that party, terminate this agreement by notice in writing to the other without incurring any liability to the other party because of that termination (other than under clause 12 if applicable), unless the relevant occurrence or the breach or non-fulfilment of the Condition Precedent arises out of a breach of clauses 3.3 or 3.4 by the terminating party.
- (c) Subject to any rights or obligations arising under or pursuant to clauses that are expressed to survive termination (including by virtue of clause 9.4), on termination of this agreement, no party shall have any rights against or obligations to any other party under this agreement except for those rights and obligations which accrued prior to termination.

- (d) If the condition in clause 3.1(b) is not satisfied only because of a failure to obtain the majority required by section 411(4)(a)(ii)(A) of the Corporations Act, then either party may by written notice within 3 Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that section, provided the party has in good faith formed the view that the prospect of the Court exercising its discretion in that way is reasonable.
  - (e) If the Court refuses to make an order approving the Scheme satisfying clause 3.1(e), at KCE's request Coalspur must appeal the Court's decision to the fullest extent possible (except to the extent that the parties agree otherwise, or an independent Senior Counsel indicates that, in his or her view, an appeal would have negligible prospects of success before the Sunset Date). Coalspur may bring an appeal even if not requested by KCE. If any such appeal is undertaken at the request of KCE, KCE will bear Coalspur's costs of the appeal (including costs of the independent Senior Counsel) unless the parties otherwise agree. If any such appeal is undertaken by Coalspur, without the prior request from KCE, Coalspur will bear KCE's costs of the appeal unless the parties otherwise agree.
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## **4. Transaction Steps**

### **4.1 Scheme**

- (a) Coalspur must propose the Scheme to Coalspur Shareholders.
- (b) If the Scheme becomes Effective, then on the Implementation Date:
  - (i) all of the Coalspur Shares held by Scheme Participants on the Record Date will be transferred to KCE;
  - (ii) in exchange, each Scheme Participant will be entitled to receive the Scheme Consideration for each Coalspur Share held by them at the Record Date; and
  - (iii) Coalspur will pay the Cancellation Consideration to each holder of Coalspur Options that has agreed to the cancellation of his or her Coalspur Options and cancel their Coalspur Options in accordance with the Option Cancellation Deeds.

### **4.2 No Amendment to the Scheme Without Consent**

Coalspur must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of KCE.

### **4.3 Consideration**

- (a) Subject to the Scheme becoming Effective, KCE undertakes and warrants to Coalspur (in its own right and on behalf of each Scheme Participant) that in consideration of the transfer to KCE of each Coalspur Share held by a Scheme Participant under the terms of the Scheme, KCE will:
  - (i) pay the aggregate of the Scheme Consideration in accordance with the Scheme and Deed Poll; and

- (ii) accept the transfer to it of the Coalspur Shares under the terms of the Scheme.
- (b) Coalspur acknowledges that the undertaking by KCE in clause 4.3(a) is given to Coalspur in its capacity as agent for each Scheme Participant.

#### **4.4 Timetable**

The parties must use their commercially reasonable endeavours to implement the Transaction and perform their respective obligations substantially in accordance with the Timetable.

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### **5. Cline Guarantee**

#### **5.1 Guarantee**

Cline irrevocably and unconditionally guarantees to Coalspur (in its own right and as trustee on behalf of the Scheme Participants and each of the Coalspur Indemnified Parties), on demand, the full, complete and punctual performance and observance by KCE of all of KCE's obligations and liabilities under this agreement and the Deed Poll.

#### **5.2 Extent of guarantee**

The liability of Cline under this clause 5, is not affected by anything that, but for this clause 5, might operate to release or exonerate Cline in whole or in part from its obligations including any of the following, whether with or without the consent of Cline:

- (a) the grant to KCE, Cline or any other person of any time, waiver or other indulgence, or the discharge or release of KCE, Cline or any other person from any liability or obligation;
- (b) Coalspur exercising or refraining from exercising its rights under any rights, powers or remedies against KCE, Cline or any other person; and
- (c) any legal limitation, disability, incapacity or other circumstances related to KCE, Cline or any other person.

#### **5.3 Principal and independent obligation**

This clause 5 is a principal obligation and is not to be treated as ancillary or collateral to any other right or obligation and extends to cover each of this agreement and the Deed Poll as amended, varied, supplemented, renewed or replaced (whether with or without the consent of Cline).

#### **5.4 Continuing guarantee**

This clause 5 is a continuing obligation of Cline and:

- (a) extends to cover the obligations of KCE to pay the Scheme Consideration;
- (b) extends to cover the breach of any of the representations and warranties in clause 8.1 of this agreement; and
- (c) continues despite implementation of the Scheme under this agreement, and remains in full force and effect for so long as KCE has any liability or obligation to a Coalspur Indemnified Party under this agreement or the Deed Poll as and until all of those liabilities or obligations have been fully discharged.

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## 6. Implementation

### 6.1 Coalspur's obligations

Coalspur must execute all documents and do all acts and things within its power as may be necessary or desirable for the implementation and performance of the Scheme on a basis consistent with this agreement and substantially in accordance with the Timetable (and must consult with KCE on a regular basis about its progress in that regard), and in particular Coalspur must:

- (a) **promote merits of Transaction:** participate in, and ensure the Coalspur Board participates in, efforts reasonably requested by KCE to promote the merits of the Transaction, including meeting with key members of Coalspur at the reasonable request of KCE;
- (b) **prepare Scheme Booklet:** prepare the Scheme Booklet in respect of the Scheme in accordance with clause 6.4 and all applicable laws and in particular with the Corporations Act, RG 60 and the Listing Rules;
- (c) **directors' recommendation:** include in the Scheme Booklet a statement by the Coalspur Board:
  - (i) unanimously recommending that Coalspur Shareholders vote in favour of the Scheme in the absence of any Superior Offer unless there has been a change of recommendation permitted under this agreement; and
  - (ii) that each Coalspur Board member will (in the absence of a Superior Offer) vote, or procure the voting of any Coalspur Shares (as applicable) held by or on behalf of a Coalspur Board Member at the time of the Scheme Meeting in favour of the Scheme at the Scheme Meeting;
- (d) **commission Independent Expert's report:** promptly appoint the Independent Expert and provide all assistance and information reasonably requested by them in connection with the preparation of the Independent Expert's report for inclusion in the Scheme Booklet (including any updates to such report) and any other materials to be prepared by them for inclusion in the Scheme Booklet (including any updates thereto);
- (e) **amend Scheme Booklet:** implement such changes to those parts of the Scheme Booklet relating to KCE which are provided to Coalspur by KCE in accordance with clause 6.3(a) as reasonably requested by KCE prior to finalising the Regulator's Draft;
- (f) **consultation with KCE:** as soon as practicable after the date of this agreement:
  - (i) provide to KCE a draft of the Scheme Booklet and the Independent Expert's Report for the purpose of enabling KCE to review and comment on those draft documents. In relation to the Independent Expert's Report, KCE's review is to be limited to a factual accuracy review;
  - (ii) take the comments made by KCE into account in good faith when producing revised drafts of the Scheme Booklet; and



- (iii) provide KCE with revised drafts of the Scheme Booklet within a reasonable time before the Regulator's Draft is finalised and to enable KCE to review the Regulator's Draft at least two Business Days before its submission;
- (g) **Coalspur Board approval of Regulator's Draft:** as soon as practicable after finalisation of an advanced draft of the Regulator's Draft suitable for review by ASIC, procure that a meeting of the Coalspur Board is convened to consider approving the Regulator's Draft as being in a form appropriate for provision to ASIC for review;
- (h) **liaise with ASIC:** as soon as reasonably practicable after the date of this agreement but no later than 14 days before the First Court Date, provide a copy of the Regulator's Draft to ASIC for its review and approval for the purposes of section 411(2) of the Corporations Act;
- (i) **keep KCE informed:** during the Regulatory Review Period:
  - (i) promptly provide to KCE and include in revised drafts of the Scheme Booklet any new information in relation to the Coalspur Group not included in the Regulator's Draft which is required by the Corporations Act or RG 60 to be included in the Scheme Booklet; and
  - (ii) promptly inform and consult with KCE in relation to any matters raised by ASIC in connection with the Scheme Booklet or the Scheme including in relation to any presentation and/or the making of any submission in writing or at any proposed meeting with ASIC, and co-operate with KCE to resolve any such matters (which will include allowing KCE to participate in Coalspur's meetings and discussions with ASIC);
- (j) **approval of Scheme Booklet:** as soon as practicable after the end of the Regulatory Review Period, procure that a meeting of the Coalspur Board is convened to consider approving the Scheme Booklet for despatch to Coalspur Shareholders, subject to approval of the Court;
- (k) **Court direction and advice:** promptly after, and provided that the approvals in clauses 6.1(j) and 6.3(e) have been obtained, apply to the Court for orders under section 411(1) of the Corporations Act directing Coalspur to convene the Scheme Meeting to consider the Scheme and take all reasonable steps necessary to comply with the orders of the Court;
- (l) **registration of Scheme Booklet and provision of copy to KCE:** request ASIC to register the Explanatory Statement included in the Scheme Booklet in relation to the Scheme in accordance with section 412(6) of the Corporations Act and, promptly after such registration, provide a copy of the registered Scheme Booklet to KCE;
- (m) **section 411(17)(b) Statement:** apply to ASIC for the production of:
  - (i) an indication of intent letter that it does not intend to appear before the Court at the hearing on the First Court Date; and
  - (ii) a statement pursuant to section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;

- (n) **Scheme Meeting:** promptly convene the Scheme Meeting in accordance with any orders which are made by the Court pursuant to section 411(1) of the Corporations Act;
- (o) **waiver in relation to cancellation of options:** to the extent ASX requires Coalspur to obtain a waiver from Listing Rule 6.23.2 to enable the Coalspur Options to be cancelled in consideration for the Cancellation Consideration, Coalspur shall submit a waiver application to ASX as soon as practicable after the date of this agreement and will use its reasonable endeavours to procure that ASX grants such waiver prior to 8.00am on the Second Court Date;
- (p) **Court documents:** promptly prepare, consult with KCE in relation to the content of, the documents required for the purpose of each Court hearing held, including for the purposes of sections 411(1) and 411(4)(b) and, if applicable, 411(6) of the Corporations Act in relation to the Scheme (including originating process, affidavits, submissions and draft minutes of Court orders) and consider in good faith, for the purpose of amending drafts of those documents, reasonable comments from KCE and its Representatives on those documents;
- (q) **Court approval:** as soon as practicable after Coalspur Shareholders approve the Scheme at the Scheme Meeting, apply (and to the extent necessary, re-apply) to the Court for an order approving the Scheme under section 411(4) and, if applicable, 411(6) of the Corporations Act substantially in accordance with the Timetable;
- (r) **lodge copy of Court orders:** if the Court makes orders under section 411(4) and, if applicable, 411(6) of the Corporations Act approving the Scheme, lodge with ASIC an office copy of the order of the Court approving the Scheme under section 411(10) of the Corporations Act on the day such office copy is received or such later date as agreed in writing by KCE;
- (s) **registration:** if the Court makes orders under section 411(4) of the Corporations Act approving the Scheme:
  - (i) use its reasonable endeavours to ensure that the ASX and TSX suspend trading in Coalspur Shares with effect from close of trading on the Effective Date;
  - (ii) close the Register as at the Record Date to determine the identity of the Scheme Participants and their entitlements to the Scheme Consideration;
  - (iii) provide to KCE all information about the Scheme Participants that KCE reasonably requires in order for KCE to provide the Scheme Consideration to the Scheme Participants in accordance with the Scheme;
  - (iv) execute proper instruments of transfer of the Coalspur Shares and effect and register the transfer of the Coalspur Shares in accordance with the Scheme;
  - (v) register all transfers of Coalspur Shares to KCE on the Implementation Date; and
  - (vi) do all other things contemplated by or necessary to give effect to the Scheme and the orders of the Court;

- (t) **Coalspur Performance Rights:** subject to the Scheme becoming Effective, on the date that the Scheme becomes Effective, issue to each person who is at that time the holder of a Coalspur Performance Right one Coalspur Share per Coalspur Performance Right held in full and final satisfaction of such Coalspur Performance Right held and ensure that each such person is registered as the holder of the relevant Coalspur Shares in the Register by no later than the Record Date;
- (u) **access to information:** provide to KCE and its Representatives reasonable access to employees, officers and other facilities and properties of the Coalspur Group and to the books and records of the Coalspur Group, for the purpose of implementing the Transaction;
- (v) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all laws and regulations applicable in relation to the Transaction (including, without limitation, doing everything reasonably within its powers to ensure the Transaction complies with all applicable securities laws or is otherwise exempt therefrom);
- (w) **Competition Act:** without limiting clause 6.1(v), ensuring that as at the Implementation Date, the Canadian assets and revenues of it and its affiliates as calculated in accordance with clause 1(p) of Schedule 4 do not exceed the respective thresholds set out in that clause;
- (x) **listing:** use its reasonable endeavours to ensure that the Coalspur Shares continue to be quoted on ASX and TSX until completion of the Transaction and not do anything to cause Coalspur Shares to cease being quoted on the ASX or TSX or to become permanently suspended from quotation or listing prior to completion of the Transaction, unless KCE has agreed in writing;
- (y) **delivery of due diligence:** make available promptly to KCE the Coalspur Diligence Materials; and
- (z) **Coalspur Prescribed Occurrence:** between the date of this agreement and 8.00am on the Second Court Date, ensure that no Coalspur Prescribed Occurrence occurs.

## 6.2 Coalspur Registry details

For the purpose of clause 6.1(s), Coalspur must give all necessary directions to the Coalspur Registry to ensure that any information that KCE reasonably requests in relation to the Register, including any CHESS sub-register and any issuer sponsored sub-register, is promptly provided to KCE and, where requested by KCE, Coalspur must procure that such information is made available in such electronic form as is reasonably requested by KCE.

## 6.3 KCE's obligations

KCE must execute all documents and do all acts and things within its power as may be necessary or desirable for the implementation and performance of the Scheme on a basis consistent with this agreement and substantially in accordance with the Timetable, and in particular KCE must:

- (a) **KCE Information:** prepare and provide to Coalspur all information in relation to KCE that is required to be included in the Scheme Booklet to comply with applicable laws relevant to that information (**KCE Information**), consult with Coalspur in relation to the content of that information and consider in good

faith, for the purpose of amending those drafts, comments from Coalspur and its Representatives on that information;

- (b) **assist Independent Expert:** subject to the Independent Expert entering into arrangements with Coalspur, including in relation to confidentiality, in a form reasonably acceptable to KCE, provide any assistance and information reasonably requested by the Independent Expert to enable it to prepare its report to be sent together with the Scheme Booklet;
- (c) **review drafts of Scheme Booklet:** as soon as practicable after delivery, review drafts of the Scheme Booklet prepared by Coalspur and provide comments on those drafts in good faith;
- (d) **approval of Regulator's Draft:** as soon as practicable after finalisation of an advanced draft of the Regulator's Draft suitable for review by ASIC, procure that a meeting of the KCE Board is convened to consider approving those sections of the Regulator's Draft that relate to the KCE Information as being in a form appropriate for provision to ASIC for review;
- (e) **approval of Scheme Booklet:** as soon as practicable after the end of the Regulatory Review Period, procure that a meeting of the KCE Board is convened to consider approving those sections of the Scheme Booklet that relate to the KCE Group appropriate for despatch to Coalspur Shareholders, subject to the approval of the Court;
- (f) **compliance with laws:** do everything reasonably within its power to ensure that the Transaction is effected in accordance with all laws and regulations applicable in relation to the Transaction (including, without limitation, doing everything reasonably within its powers to ensure the Transaction complies with all applicable securities laws or is otherwise exempt therefrom);
- (g) **Competition Act:** without limiting clause 6.3(f), ensuring that as at the Implementation Date, the Canadian assets and revenues of it and its affiliates as calculated in accordance with clause 2(j) of Schedule 4 do not exceed the respective thresholds set out in that clause;
- (h) **KCE Scheme Consideration:** if the Scheme becomes Effective, provide the Scheme Consideration in the manner and amount contemplated by clause 4 and the terms of the Scheme and the Deed Poll;
- (i) **KCE Insolvency Event:** ensure that no Insolvency Event occurs in relation to the KCE between the date of this agreement and 8.00am on the Second Court Date; and
- (j) **Deed Poll:** before the hearing on the First Court Date, execute the Deed Poll.

#### 6.4 Scheme Booklet

- (a) Coalspur must consult with KCE as to the content of the Scheme Booklet (other than KCE Information).
- (b) KCE must consult with Coalspur as to the content of KCE Information.
- (c) The parties agree that:
  - (i) the efficient preparation of the Scheme Booklet is in the interests of the parties and Coalspur Shareholders; and

- (ii) they will use all reasonable endeavours and utilise all necessary resources (including management resources and the resources of external advisers) to produce the Scheme Booklet as soon as reasonably practicable and in substantial accordance with the Timetable.
- (d) KCE's obligations under clauses 6.3(c), 6.3(d) and 6.3(e) relate only to the factual accuracy of KCE Information and KCE takes no responsibility for information in the Scheme Booklet other than KCE Information. To that end, the Scheme Booklet will include a statement to the effect that:
  - (i) Coalspur has provided, and is responsible for, the Coalspur Information in the Scheme Booklet, and that KCE and its directors, officers and advisors do not assume any responsibility for the accuracy or completeness of the Coalspur Information;
  - (ii) KCE has provided, and is responsible for, the KCE Information in the Scheme Booklet, and that Coalspur and its directors, officers and advisors do not assume any responsibility for the accuracy or completeness of the KCE Information; and
  - (iii) the Independent Expert has provided, and is responsible for, the Independent Expert's Report, and that neither Coalspur, KCE, nor their respective directors, officers or advisors assume any responsibility for the accuracy or completeness of the Independent Expert's Report.
- (e) Coalspur must undertake appropriate due diligence and verification processes for the purposes of complying with clause 6.1(j) and will make such verification material available to KCE on request by it.
- (f) KCE must undertake appropriate due diligence and verification processes for the purposes of complying with clause 6.3(e).
- (g) The parties must promptly inform the other if they have any reason to believe that any information in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise) whether because of KCE Information or otherwise.
- (h) If there is a dispute as to the content of any part of the Scheme Booklet (including KCE Information), the parties must consult in good faith and use their reasonable endeavours to resolve the dispute within two Business Days. If the parties fail to agree on the form or content of the Scheme Booklet:
  - (i) Coalspur will have the final decision on the form or content of any Coalspur Information; and
  - (ii) KCE will have the final decision on the form or content of any KCE Information.

Even if there is a dispute as to the form or content of the Scheme Booklet and the parties use this procedure, the parties will continue to perform their obligations under this agreement.

## **6.5 Good faith co-operation**

Each party must procure that its Representatives work (including by attending meetings and by providing information) in good faith and in a timely and co-operative

fashion with the other parties to implement the Scheme and to prepare all documents required relating to the Scheme.

## **6.6 Directors' Recommendation**

- (a) Subject to clause 6.6(b), the Coalspur Board must:
- (i) unanimously recommend that the Scheme is in the best interests of Coalspur Shareholders and not subsequently change, withdraw or modify that recommendation in the absence of a Superior Offer;
  - (ii) unanimously recommend that Coalspur Shareholders vote in favour of all resolutions to be proposed at the Scheme Meeting in relation to the Scheme and approve the Scheme, and not subsequently change, withdraw or modify that recommendation in the absence of a Superior Offer;
  - (iii) include in all public statements made after execution of this agreement and relating to the Scheme or the Transaction a statement to the effect of clauses 6.6(a)(i) and 6.6(a)(ii); and
  - (iv) not make any public statement or take any other action that contradicts or qualifies the recommendation of the Scheme by the Coalspur Directors in the absence of a Superior Offer,

and the Scheme Booklet must state that each Coalspur Director who holds Coalspur Shares, or on whose behalf Coalspur Shares are held, intends to vote in favour of the Scheme in the absence of a Superior Offer.

- (b) The Coalspur Board collectively, and the members of the Coalspur Board individually, must not, change, withdraw or modify his or her recommendation unless:
- (i) the Independent Expert fails to provide a report to Coalspur that concludes that the Scheme is in the best interests of Coalspur Shareholders; or
  - (ii) a majority of the Coalspur Directors have:
    - (A) made the determination contemplated by clause 11.7(b) in respect of a Superior Offer after KCE's rights under clause 11.6(c) have been exhausted and after evaluation of any Counterproposal in accordance with clause 11.6(c); and
    - (B) publicly recommended that the Superior Offer is in the best interests of Coalspur Shareholders.

## **6.7 Court refuses to make orders**

If the Court refuses to make any orders pursuant to section 411(1) of the Corporations Act convening the Scheme Meeting to consider or approve the Scheme, Coalspur must appeal the Court's decision to the fullest extent possible (with costs to be borne equally by KCE and Coalspur) except where:

- (a) the parties agree otherwise; or
- (b) Coalspur and KCE are each advised by their legal counsel that an appeal would have no reasonable prospect of success.

## **6.8 Appointment of Directors**

Coalspur must, as soon as practicable:

- (a) on the Implementation Date, ensure that all directors on the Coalspur Board resign and release Coalspur from any Claims they may have against Coalspur; and
- (b) on the Implementation Date, take all actions to ensure that subject to clause 6.8(a), all directors on the boards of each Coalspur Group member resign and release Coalspur and the applicable each Coalspur Group member and, subject to the receipt of appropriate consents to act, to cause the appointment of nominees of KCE to those boards.

## **6.9 Employees**

- (a) In the event that KCE agrees to terminate on the Effective Date, or to cause Coalspur to terminate on the Effective Date, each of the current employees of Coalspur (other than those employees who enter into retention agreements or arrangements), KCE confirms that it will honour, or to cause Coalspur to honour, all of the existing employment arrangements and agreements with such employees, including, without limitation, by paying to the individuals party to or subject to such arrangements and agreements, in each case, such amounts as are payable in respect of severance, change of control and other amounts owing to such individuals upon termination in accordance with such arrangements or agreements without consideration of the remaining term of any such agreement.
- (b) KCE acknowledges and agrees to Coalspur paying to its employees:
  - (i) part of the STIP Payments in February 2015;
  - (ii) the remaining STIP Payments on completion of the assignment of all of EIG's rights and interests under the EIG Facility to KCE; and
  - (iii) the KERP Payments on the Effective Date,as approved by the Coalspur Board and in accordance with the terms of the EIG Amended and Restated Liquidity Notes Letter.

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## **7. Conduct of Business**

### **7.1 Conduct of business by Coalspur**

- (a) From the date of this agreement until the Implementation Date, in consultation with the KCE, Coalspur must conduct its business, and must cause its Subsidiaries to conduct their respective businesses, in the ordinary course of business consistent with past practice, including making all reasonable efforts to:
  - (i) maintain its business and assets;
  - (ii) subject to clause 8.7(c), maintain the insurance (or reinsurance) policies of the Coalspur Group;
  - (iii) other than as a result of retirement, redundancy, non-renewal of contracts or resignation in the ordinary course, make no changes to,

and keep available the services of, its directors, officers and key employees for the operations of the Coalspur Group;

- (iv) maintain and preserve their relationships with Government Agencies, customers, suppliers, licensors, licensees and others having business dealings with a member of the Coalspur Group (including, using reasonable endeavours to obtain consents from Third Parties to any change of control provisions which KCE reasonably requests in contracts or arrangements to which a member of the Coalspur Group is a party); and
- (v) not enter into any lines of business or other activities in which members of the Coalspur Group are not engaged as of the date of this agreement,

except:

- (vi) as may be required or contemplated by this agreement or to the Scheme; or
  - (vii) as may be undertaken with the prior approval of KCE, such approval not to be unreasonably withheld or delayed.
- (b) Notwithstanding clause 7.1(a), Coalspur must not, and must ensure that its Subsidiaries do not:
- (i) except for making the STIP Payments and KERP Payments in accordance with clause 6.9(b), increase the remuneration of or pay any bonus or issue any securities or options to, or otherwise vary the employment agreements with, any of its directors or any employees with an existing annual total fixed remuneration greater than \$50,000;
  - (ii) accelerate the rights of any of its directors or employees to benefits of any kind;
  - (iii) pay a director or employee a termination payment, other than as provided for in an existing employment contract in place as at the date of this agreement and a copy of which has previously been disclosed to KCE;
  - (iv) enter into or amend in any material respect any long term supply agreement with a term of more than 12 months other than any proposed such agreements or amendments which have been disclosed in writing to KCE prior to the date of this agreement;
  - (v) give or agree to give a financial benefit to a related party of Coalspur other than in accordance with the exceptions set out in Chapter 2E of the Corporations Act;
  - (vi) amend in any material respect any arrangement with its Financial Advisors in respect of the transactions contemplated by this agreement;
  - (vii) enter into any new financing arrangements in excess of \$150,000 in aggregate;
  - (viii) except pursuant to an agreement with an adviser that was entered into prior to the date hereof and which has been disclosed in writing



to KCE prior to the date of this agreement, pay any fee to any adviser where such fee is contingent on completion of the Transaction;

- (ix) take any action that would be reasonably expected to give rise to a Coalspur Prescribed Occurrence;
  - (x) modify the rules of any option plan in respect of, or the terms of issue of, the Coalspur Options;
  - (xi) take any action:
    - (A) in respect of its information technology systems which would have a material adverse impact on those systems; or
    - (B) in respect of its distribution and logistics arrangements which would have a material adverse impact on those arrangements;
  - (xii) satisfy or settle any material Claim, dispute, liability or obligation, except such as have been included in the Coalspur Financial Statements or which constitutes a Claim between Coalspur and the Coalspur Group;
  - (xiii) grant any waiver, exercise any option or relinquish any material contractual rights; or
  - (xiv) enter into any interest rate, currency or commodity swaps, hedges, caps, collars, forward sales or other similar financial instruments; or
  - (xv) agree to do any of the matters set out above,
- except:
- (xvi) with the prior written consent of KCE; or
  - (xvii) as required by law or under this agreement or the Scheme.

## **7.2 Transaction implementation and access to information**

- (a) From the date of this agreement until the Implementation Date:
  - (i) Coalspur must:
    - (A) provide KCE with reasonable access to such officers, documents, records and other information which KCE or its Related Entities reasonably require for the purposes of:
      - (1) understanding the Coalspur Group's financial position, prospects and affairs including its cash flow and working capital position;
      - (2) implementation of the Scheme; and
      - (3) preparing for carrying on the business of the Coalspur Group following implementation of the Scheme; and
    - (B) without limiting clause 7.2(a)(i)(A), provide KCE with:

- (1) monthly management reports; and
    - (2) details of any material agreements that are proposed to be entered into during that period.
  - (b) The rights and obligations of the parties under this clause 7.2 are subject to the terms of the Confidentiality Agreement.
  - (c) Nothing in this clause 7.2 requires Coalspur or KCE to act at the direction of the other. The business of each party and their Subsidiaries will continue to operate independently of the other until the Implementation Date.
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## **8. Representations, Warranties and Undertakings**

### **8.1 KCE and Cline representations and warranties**

- (a) KCE represents and warrants to Coalspur each of the KCE Representations and Warranties.
- (b) Cline represents and warrants to Coalspur (in its own its own right and as trustee on behalf of the Scheme Participants and each of the Coalspur Indemnified Parties) each of the Cline Representations and Warranties.

### **8.2 Coalspur's representations and warranties**

Coalspur represents and warrants to KCE each of the Coalspur Representations and Warranties.

### **8.3 Qualifications on Coalspur Warranties**

The Coalspur Representations and Warranties under clause 8.2 and Schedule 4 are subject to matters that have been fully and fairly disclosed prior to the parties' entry into this agreement in:

- (a) the Coalspur Diligence Materials; and
- (b) documents released by Coalspur on ASX and SEDAR.

### **8.4 Survival of representations**

Each representation and warranty referred to in clauses 8.1 and 8.2 will survive termination of this agreement and completion of the Transaction.

### **8.5 Timing of representation and warranties**

Each representation and warranty made or given under clauses 8.1 or 8.2 is given:

- (a) at the date of this agreement; and
- (b) at 8.00am on the Second Court Date; or

where expressed to be given at a particular time, at that time.

### **8.6 Reliance**

Each party acknowledges that the other has entered into this agreement in reliance on the representations and warranties given by the party in this clause 8.

## 8.7 Liability of directors and officers

- (a) Each party agrees that it will release its rights against, and will not make any claim against, any past or present director, officer or employee of the other in relation to information provided to it or in relation to its entry into this agreement, except where the person has not acted in good faith or has engaged in wilful misconduct. In this clause 8.7(a), a reference to any past or present director, officer or employee of the other refers to any past or present director, officer or employee of the KCE Group or the Coalspur Group.
- (b) Each party holds the releases in clause 8.7(a) in respect of its directors, officers and employees as trustee for its past and present directors, officers and employees.
- (c) KCE agrees that Coalspur may by no later than the Implementation Date arrange for new or amend existing directors and officers insurance policies for each of its directors and officers so as to provide run off cover in accordance with the terms of the insurance policy for a seven year period from the end of the term of the insurance policy and pay all premiums required so as to ensure that the insurance cover is provided under the insurance policy on those terms until that date. Coalspur agrees to consult in good faith with KCE regarding the cost of the insurance cover referred to in this clause in advance of taking out such insurance cover.
- (d) KCE must procure that each member of the Coalspur Group preserve the indemnities and other rights under the deeds of indemnity, access and insurance made by them in favour of their respective directors and officers from time to time, and in particular, must not take any action which would prejudice or adversely affect any directors' and officers' run- off insurance cover taken out prior to the Implementation Date.

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## 9. Termination Rights

### 9.1 Termination events

Without limiting any other provision of this agreement:

- (a) either party (**terminating party**) may terminate this agreement by notice in writing to the other party given at any time prior to the commencement of the Court hearing on the Second Court Date:
  - (i) if the Sunset Date has passed before the Scheme has become Effective;
  - (ii) if each of the following has occurred:
    - (A) the other party (**defaulting party**) is in breach of a material provision of this agreement (including, without limitation, a representation or warranty in clauses 1 or 2 of Schedule 4) other than as a result of a breach by the terminating party of its obligations under this agreement;
    - (B) the terminating party has given notice to the defaulting party setting out the relevant circumstances of the breach and stating an intention to terminate the agreement; and

- (C) if the defaulting party's breach is capable of remedy, the relevant circumstances have continued to exist five Business Days (or any shorter period ending at 8.00am on the Second Court Date) from the time the notice in clause 9.1(a)(ii)(B) is given;
  - (iii) if the Court fails to make order in accordance with section 411(1) of the Corporations Act to convene the Scheme Meeting and either all appeals from such failure are unsuccessful or the parties, in accordance with clause 6.7, determine not to initiate an appeal;
  - (iv) provided that the terminating party has complied with its obligations under clauses 3.8(d) and 3.8(e), if the required majorities of Coalspur Shareholders do not approve the Scheme at the Scheme Meeting;
  - (v) if a Court or other Regulatory Authority has issued an order, decree or ruling or taken other action that permanently restrains or prohibits the Transaction and that order, decree, ruling or other action has become final and cannot be appealed; or
  - (vi) in accordance with clause 3.8(b); or
- (b) KCE may terminate this agreement by notice in writing to Coalspur given at any time prior to the commencement of the Court hearing on the Second Court Date:
- (i) a Coalspur Director fails to recommend that Coalspur Shareholders vote in favour of the Scheme or withdraws his or her recommendation that Coalspur Shareholders vote in favour of the Scheme or otherwise makes a public statement or takes any action indicating that he or she no longer supports the Scheme or that they support a Competing Transaction;
  - (ii) a Coalspur Prescribed Occurrence occurs prior to the commencement of the Court hearing on the Second Court Date;
  - (iii) the Coalspur Board recommends a Competing Proposal; or
  - (iv) a Competing Proposal is announced, made, or becomes open for acceptance and, pursuant to that Competing Proposal, the bidder for Coalspur acquires voting power (within the meaning of section 610 of the Corporations Act) of 50% or more of Coalspur and that Competing Proposal is (or has become) free from any defeating conditions.
- (c) Coalspur may terminate this agreement by notice in writing to KCE given at any time prior to the commencement of the Court hearing on the Second Court Date if:
- (i) at any time prior to the date of the Scheme Meeting, a majority of the Coalspur Directors have changed, withdrawn or modified their recommendation in accordance with clause 6.6(b)(ii);
  - (ii) in order to permit the Coalspur Board to recommend a Superior Offer, provided that Coalspur has first complied with clause 11.6 in relation to the Competing Proposal constituting such Superior Offer; or

- (iii) an Insolvency Event occurs in relation to the KCE prior to the commencement of the Court hearing on the Second Court Date.

## **9.2 Notice of breach**

Each party must give notice to the other as soon as practicable after it becomes aware of a breach by it of this agreement (including in respect of any representation or warranty).

## **9.3 Termination right**

- (a) Any right to terminate this agreement under clauses 9.1(a), 9.1(b) or 9.1(c) that arises before the Second Court Date ceases at the commencement of the court hearing on the Second Court Date.
- (b) Subject to clause 9.3(a), any right to terminate this agreement ceases when the Scheme becomes Effective.

## **9.4 Effect of termination**

- (a) If a party terminates this agreement, each party will be released from all further obligations under this agreement other than under clauses 1, 3.8(c), 8, 9, 10, 12, 13, and 14.
- (b) Termination of this agreement does not affect any accrued rights or remedies of a party (including in respect of any past breach of this agreement by the other party).

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# **10. Public Announcements**

## **10.1 Announcement of transaction**

Immediately after the execution of this agreement, Coalspur must issue a public announcement, substantially in the form set out in Schedule 2, or as otherwise agreed by KCE and Coalspur, acting reasonably. The announcement must include a unanimous recommendation by the Coalspur Board to Coalspur Shareholders that, in the absence of a Superior Offer and in the absence of the Independent Expert finding that the Scheme is not in the best interests of Coalspur Shareholders, Coalspur Shareholders vote in favour of the Scheme and that all the members of the Coalspur Board will vote (or will procure the voting of) all Coalspur Shares held by or on behalf of a member of the Coalspur Board in favour of the Scheme.

## **10.2 Public announcements**

- (a) Subject to clause 10.2(b), no public announcement or disclosure in relation to the Transaction or any subject matter thereof, or any other transaction the subject of this agreement or the Scheme may be made other than in a form approved by each party (acting reasonably), but each party must use all reasonable efforts to provide such approval as soon as practicable.
- (b) Where a party is required by law and/or the Listing Rules, the listing rules of the TSX or pursuant to Canadian securities laws to make any announcement or make any disclosure in relation to the Transaction or any other transaction the subject of this agreement or the Scheme, it may do so only after it has given as much notice (if any) as possible to, and has consulted (to the fullest

extent reasonable in the circumstances) with the other party prior to making the relevant disclosure.

### **10.3 Statements on termination**

The parties must act in good faith and use all reasonable endeavours to issue agreed statements in respect of any termination of this agreement and, to that end but without limitation, clause 10.2 applies to any such statements or disclosures.

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## **11. Exclusivity**

### **11.1 No-shop**

During the Exclusivity Period, Coalspur must ensure that none of it, its Subsidiaries or any of its or their Representatives directly or indirectly:

- (a) solicits, invites, facilitates, encourages or initiates any enquiries, negotiations, discussions or proposals;
- (b) subject to clause 11.7, enter into any agreement, arrangement or understanding (whether or not in writing and whether or not legally binding); or
- (c) subject to clause 11.7, communicates any intention to do any of the things in clause 11.1(b),

in relation to, or which may reasonably be expected to lead to, a Competing Proposal.

### **11.2 No-talk**

During the Exclusivity Period, but subject to clause 11.7, Coalspur must ensure that none of it, its Subsidiaries or any of its or their Representatives directly or indirectly:

- (a) initiates, negotiates or enters into or participates in negotiations or discussions with any person; or
- (b) has any intention to do any of these things,

in relation to, or which may reasonably be expected to lead to:

- (i) a Competing Proposal, even if that person's Competing Proposal was not directly or indirectly solicited, encouraged or initiated by Coalspur or any of its Representatives or the person has publicly announced the Competing Proposal; or
- (ii) the Transaction not completing.

### **11.3 Due diligence information**

During the Exclusivity Period, subject to clause 11.7, Coalspur must ensure that none of it, its Subsidiaries or any of its or their Representatives:

- (a) solicits, invites, or initiates, any party other than KCE to undertake due diligence investigations on the Coalspur Group or their respective businesses and operations; or

- (b) makes available to any person (other than KCE or its Representatives) or permits any such person to receive any non-public information in relation to the Coalspur Group or their respective businesses and operations.

#### **11.4 Notification of approaches**

- (a) During the Exclusivity Period, Coalspur must promptly, notify KCE in writing if it, its Subsidiaries, or any of its or their Representatives becomes aware of:
  - (i) any approach, inquiry or proposal made to, and any attempt or any intention on the part of any person to initiate or continue any negotiations or discussions with Coalspur or any of its Representatives with respect to, or that could reasonably be expected to lead to, any Competing Proposal, whether unsolicited or otherwise;
  - (ii) any proposal whether written or otherwise made to Coalspur, its Representatives or any of its Subsidiaries or their Representatives, in connection with, or in respect of any exploration or consummation of, a Competing Proposal or a proposed or potential Competing Proposal, whether unsolicited or otherwise;
  - (iii) any request for information relating to Coalspur or any member of the Coalspur Group or any of their businesses or operations or any request for access to the books or records of Coalspur or any member of the Coalspur Group, which Coalspur has reasonable grounds to suspect may relate to a current or future Competing Proposal;
  - (iv) any action by Coalspur or any of its Representatives, or any intention of Coalspur or any of its Representatives to take any action, in reliance on clause 11.7; or
  - (v) any breach of this clause 11.4.
- (b) A notice given under this clause 11.4 must be accompanied by all material details of the relevant event, including:
  - (i) the identity of the person or persons taking any action referred to in clause 11.4(a)(i) or 11.4(a)(ii) or on whose behalf any such action was taken or any person to whom Coalspur intends to provide information under clause 11.4(a)(iii) (**Third Party Bidder**);
  - (ii) the terms and conditions of any Competing Proposal or any proposed Competing Proposal (to the extent known); and
  - (iii) the circumstances in which any information is provided to the Third Party Bidder.

#### **11.5 Access to information**

- (a) Where, in reliance on clause 11.7, and subject to applicable law, the Coalspur Group or any member of the Coalspur Group or any of their Representatives proposes to provide any information relating to the Coalspur Group to any Third Party Bidder in connection with or for the purposes of a current or future Competing Proposal, it must, to the extent that KCE has not previously been provided with the information, provide KCE with a complete copy of that information at the same time as it is provided to the Third Party Bidder.

- (b) Nothing in this clause 11 prevents Coalspur or any of their Representatives from:
  - (i) providing information to its Representatives;
  - (ii) providing information required to be provided by law (including Canadian securities laws), a Court or any Regulatory Authority; or
  - (iii) making presentations to brokers, portfolio investors and analysts in the ordinary and usual course of business.

#### **11.6 Coalspur's response to Third Party Bidder and KCE's right to respond**

- (a) If Coalspur is permitted by virtue of clause 11.7 to engage in activity that would otherwise breach clause 11.2, Coalspur must enter into a confidentiality agreement with the Third Party Bidder which is on terms no less onerous to the Third Party Bidder than the Confidentiality Agreement is to KCE.
- (b) Without prejudice to KCE's rights under this clause 11, if at any time during the Exclusivity Period any Coalspur Director wishes to approve or recommend entry into any agreement, commitment, arrangement or understanding relating to a Competing Proposal (other than a confidentiality agreement contemplated by clause 11.6(a)), Coalspur must ensure that he or she does not do so:
  - (i) unless the Competing Proposal is bona fide and, assuming that the Competing Proposal is implemented, it would mean a person (other than KCE) would directly or indirectly acquire 100% of the Coalspur Group; and
  - (ii) until each of the following has occurred:
    - (A) the Coalspur Directors have made the determination contemplated by clause 11.7(b) in respect of that Competing Proposal;
    - (B) Coalspur has given KCE notice in writing of its intention to enter into an agreement, commitment, arrangement or understanding relating to that Competing Proposal, subject to KCE's rights under clause 11.6(c). Such notice must include or be accompanied by the information referred to in clause 11.4, unless that information has previously been notified to KCE pursuant to clause 11.4;
    - (C) KCE's rights under clause 11.6(c) have been exhausted;
    - (D) the Coalspur Directors have made the determination contemplated by clause 11.7(b) in respect of that Competing Proposal after KCE's rights under clause 11.6(c) have been exhausted and after evaluation of any Counterproposal in accordance with clause 11.6(c); and
    - (E) that Competing Proposal has been publicly announced by that person.
- (c) If Coalspur gives notice to KCE under clause 11.6(b)(ii)(B), KCE will have the right, but not the obligation, at any time during the period of 5 Business Days following receipt of the notice, to:



- (i) offer to amend the terms of the Scheme;
- (ii) make a takeover bid for Coalspur; or
- (iii) propose any other form of transaction,

(each a **Counterproposal**), and if it does so then Coalspur and the Coalspur Directors must review the Counterproposal in good faith. If the Counterproposal would provide at least an equivalent outcome for Coalspur Shareholders in all material respects compared to the Competing Proposal (having regard to the matters noted in clause 11.7(b)), then:

- (iv) if the Counterproposal contemplates an amendment to the Scheme – the parties must enter into an amended agreement in relation to the Scheme reflecting the Counterproposal; or
  - (v) if the Counterproposal contemplates any other form of transaction – Coalspur must announce promptly to the market that the Coalspur Directors unanimously recommend the Counterproposal, and the parties must pursue implementation of the Counterproposal in good faith.
- (d) Where at any time before the Scheme Meeting, a Counterproposal is received in accordance with clause 11.6(c) then, subject to applicable laws, at KCE's request, Coalspur will:
- (i) apply to the Court for an order adjourning the Scheme Meeting to a date acceptable to KCE, acting reasonably, which (where the Counterproposal involves a revision to the terms of the Scheme) must not be later than 10 Business Days after the scheduled date of the Scheme Meeting; and
  - (ii) if KCE and Coalspur amend the terms of this agreement pursuant to clause 11.6(c)(iv) or the Coalspur Directors unanimously recommend the Counterproposal under clause 11.6(c)(v) the parties must ensure that the details of such amended agreement or recommended Counterproposal are communicated to the Coalspur Shareholders as soon as practicable and in any event before the resumption of the adjourned Scheme Meeting.
- (e) For the purposes of this clause 11.6, each successive modification of any third party expression of interest, offer or proposal in relation to a Competing Proposal will constitute a new Competing Proposal.

## 11.7 Fiduciary and other carve-out

The restrictions in clauses 11.2 and 11.3 do not apply to the extent that they restrict Coalspur or the Coalspur Directors from taking or refusing to take any action with respect to a Competing Proposal (in relation to which there has been no contravention of this clause 11) provided:

- (a) the Competing Proposal is bona fide and is made in writing by or on behalf of a person that each of the Coalspur Directors consider is of reputable commercial standing; and
- (b) the Coalspur Directors have resolved in good faith and acting reasonably that:
  - (i) the Competing Proposal is a Superior Offer, and

- (ii) after having received advice from its external legal adviser practising in the area of corporate law, taking such action (where such action would otherwise be prevented by this agreement) or failure to take such action (where such action would otherwise be required by this agreement) would more likely than not to constitute a breach of the Coalspur Directors' fiduciary duties or statutory obligations.

## 11.8 Legal advice

Coalspur represents and warrants that:

- (a) prior to entering into this agreement it has received legal advice on this agreement and the operation of this clause 11; and
- (b) it and the Coalspur Board consider this clause 11 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 11 in order to secure the significant benefits to it, and Coalspur Shareholders, resulting from the Transaction.

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## 12. Reimbursement Fees

### 12.1 KCE

- (a) **KCE Declaration**

KCE represents and warrants to Coalspur that it would not have entered into this agreement without the benefit of this clause 12.1 and it would not have entered into and continued the negotiations and conducted due diligence into Coalspur leading up to this agreement unless KCE had a reasonable expectation that Coalspur would agree to enter into a clause of this kind.

- (b) **Acknowledgments**

- (i) Coalspur acknowledges that KCE has incurred:

- (A) significant external advisory costs;
- (B) out of pocket expenses including air fares and hotel accommodation;
- (C) commitment fees and other financing costs; and
- (D) reasonable opportunity costs incurred by KCE in pursuing the Transaction or in not pursuing other alternative acquisitions or strategic initiatives,

in relation to the Transaction and will incur further costs if the Transaction is not successful (**KCE Costs**).

- (ii) Coalspur represents and warrants that:

- (A) prior to entering into this agreement it has received legal advice on this agreement and the operation of this clause 12.1;

- (B) it has clear documentary evidence supporting the Coalspur Board's detailed consideration of this agreement and this clause 12.1 in particular; and
- (C) it and the Coalspur Board considers this clause to be fair and reasonable and that it is appropriate to agree to the terms in this clause 12.1 in order to secure the significant benefits to it, and Coalspur Shareholders, resulting from the Transaction.

(c) **Agreement on KCE Costs**

The parties acknowledge that the amount of the KCE Costs is inherently unascertainable and that, even after termination of this agreement, the KCE Costs will not be able to be accurately ascertained. As a genuine and reasonable pre-estimate of the costs that KCE will suffer if the Transaction does not proceed, the parties agree that, for the purposes of this clause 12.1, the KCE Costs will be equal to the amount of the Coalspur Reimbursement Fee Amount (it being acknowledged by the parties that the KCE Costs would most likely be significantly in excess of this amount).

(d) **Reimbursement of KCE Costs**

- (i) Coalspur agrees to pay to KCE the Coalspur Reimbursement Fee Amount if at any time after execution of this agreement, any of the following events occur:
  - (A) any Coalspur Director fails to recommend, or recommends against, qualifies their support of or withdraws its recommendation or approval of, the Transaction other than as a result of the Independent Expert opining that the Scheme is not in the best interests of Coalspur Shareholders (other than where the Independent Expert forms that opinion as a result of a Competing Proposal having been announced or made public);
  - (B) any Coalspur Director recommends or promotes a Competing Proposal, including for greater certainty, making any determination under clause 11.6(b);
  - (C) the Court fails (taking into account all appeals) to approve the Scheme for the purposes of section 411(4)(b) of the Corporations Act as a result of a material non-compliance by Coalspur with any of its obligations under this agreement;
  - (D) the Effective Date of the Scheme has not occurred prior to the Sunset Date as a consequence solely of:
    - (1) non-compliance by Coalspur with any of its obligations under this agreement; or
    - (2) without limiting clause 12.1(d)(i)(D)(1), the Scheme Meeting not being held in a reasonably expeditious manner due to Coalspur delaying the Scheme Meeting as a result of a Competing Proposal;
  - (E) a Competing Proposal is announced before the date of the Scheme Meeting, the Scheme is not approved by the

Coalspur Shareholders at the Scheme Meeting and, as contemplated by the Competing Proposal, a third party acquires voting power (within the meaning of section 610 of the Corporations Act) of 50% or more of Coalspur within twelve months of the Competing Proposal being announced; or

- (F) KCE terminates this agreement under clause 9.1(a)(ii).
- (ii) The payment of the Coalspur Reimbursement Fee Amount to KCE provided for in this clause 12.1(d) must be made within five Business Days of receipt by Coalspur of a written demand for payment from KCE. The demand may only be made after the occurrence of an event referred to in clause 12.1(d)(i).
- (iii) Coalspur can only ever be liable to pay the Coalspur Reimbursement Fee once.

## 12.2 Coalspur

### (a) Coalspur Declaration

Coalspur represents and warrants to KCE that it would not have entered into this agreement without the benefit of this clause 12.2 and it would not have entered into and continued the negotiations and conducted due diligence into KCE leading up to this agreement unless Coalspur had a reasonable expectation that KCE would agree to enter into a clause of this kind.

### (b) Acknowledgments

- (i) KCE acknowledges that Coalspur has incurred:
  - (A) significant external advisory costs;
  - (B) out of pocket expenses including air fares and hotel accommodation; and
  - (C) reasonable opportunity costs incurred by Coalspur in pursuing the Transaction or in not pursuing other alternative strategic initiatives,in relation to the Transaction and will incur further costs if the Transaction is not successful (**Coalspur Costs**).
- (ii) KCE represents and warrants that:
  - (A) it has received legal advice on this agreement and the operation of this clause 12.2;
  - (B) it has clear documentary evidence supporting the KCE Board's detailed consideration of this agreement and this clause 12.2 in particular; and
  - (C) it and the KCE Board considers this clause to be fair and reasonable and that it is appropriate to agree to the terms in this clause 12.2 in order to secure the significant benefits to it, and KCE shareholders, resulting from the Transaction.

(c) **Agreement on Coalspur Costs**

The parties acknowledge that the amount of the Coalspur Costs is inherently unascertainable and that, even after termination of this agreement, the Coalspur Costs will not be able to be accurately ascertained. As a genuine and reasonable pre-estimate of the costs that Coalspur will suffer if the Transaction does not proceed, the parties agree that, for the purposes of this clause 12.2, the Coalspur Costs will be equal to the amount of the KCE Reimbursement Fee Amount (it being acknowledged by the parties that the Coalspur Costs would most likely be significantly in excess of this amount).

(d) **Reimbursement of Coalspur Costs**

- (i) KCE agrees to pay to Coalspur the KCE Reimbursement Fee Amount if at any time after execution of this agreement, any of the following events occur:
  - (A) the Court fails (taking into account all appeals) to approve the Scheme for the purposes of section 411(4)(b) of the Corporations Act as a result of a material non-compliance by KCE with any of its obligations under this agreement;
  - (B) the Effective Date of the Scheme has not occurred prior to the Sunset Date as a consequence of non-compliance by KCE with any of its obligations under this agreement; or
  - (C) Coalspur terminates this agreement under clause 9.1(a)(ii).
- (ii) The payment of the KCE Reimbursement Fee Amount to Coalspur provided for in this clause 12.2(d) must be made within five Business Days of receipt of a written demand for payment by Coalspur. The demand may only be made after the occurrence of an event referred to in clause 12.2(d)(i) and termination of this agreement.
- (iii) KCE can only ever be liable to pay the KCE Reimbursement Fee Amount once.

**12.3 Circumstances in which Reimbursement Fees are not payable**

(a) **No amounts payable**

Notwithstanding the occurrence of any event in clause 12.1(d), no Coalspur Reimbursement Fee is payable once the Scheme becomes Effective.

(b) **Compliance with law**

- (i) If a court or the Takeovers Panel determines that any part of the Coalspur Reimbursement Fee:
  - (A) constitutes or would, if performed, constitute:
    - (1) a breach of the fiduciary or statutory duties of the Coalspur Board, as appropriate; or
    - (2) unacceptable circumstances within the meaning of the Corporations Act; or

- (B) is unenforceable or would, if paid, be unlawful for any reason,

then Coalspur will not be obliged to pay such part of the Coalspur Reimbursement Fee and, if such fee has already been paid, then KCE must within 5 Business Days after receiving written demand from Coalspur refund that part of the Coalspur Reimbursement Fee.

- (ii) If in Takeovers Panel proceedings described in clause 12.3(b)(i), the Takeovers Panel indicates to a party that in the absence of a written undertaking pursuant to section 201A of the Australian Securities and Investments Commission Act 2001 (Cth) it is minded to make a declaration of unacceptable circumstances, each of the parties (as the case may be) may give that undertaking on their own behalf and must give reasonable consideration to giving that undertaking if requested by the other parties. Where such undertakings are given, this clause 12 will operate in a manner consistent with the terms of such undertakings.

#### **12.4 Claims against Coalspur**

- (a) Notwithstanding any other clause in this agreement, the maximum aggregate amount which Coalspur is required to pay in relation to any breach(es) by Coalspur of this agreement is the Coalspur Reimbursement Fee Amount.
- (b) For greater certainty, each party agrees that, upon termination of this agreement under circumstances where KCE is entitled to the Coalspur Reimbursement Fee Amount, and such fee is paid in full, KCE shall be precluded from any other remedy against Coalspur at law or in equity or otherwise (including, without limitation, an order for specific performance), and shall not seek to obtain any recovery, judgment or damages of any kind, including consequential, indirect or punitive damages, against Coalspur or any of its Subsidiaries or any of the respective directors, officers, employees, partners, managers, members, shareholders or affiliates or their respective representatives in connection with this agreement or the transactions contemplated hereby.

#### **12.5 Claims against KCE or Cline**

- (a) Notwithstanding any other clause in this agreement, the maximum aggregate amount which KCE and Cline (in aggregate) are required to pay in relation to any breach(es) of this agreement by either of them is the KCE Reimbursement Fee Amount.
- (b) For greater certainty, each party agrees that, upon termination of this agreement under circumstances where Coalspur is entitled to the KCE Reimbursement Fee Amount, and such fee is paid in full, Coalspur shall be precluded from any other remedy against KCE or Cline at law or in equity or otherwise (including, without limitation, an order for specific performance), and shall not seek to obtain any recovery, judgment or damages of any kind, including consequential, indirect or punitive damages, against KCE or Cline or any of their respective Subsidiaries or any of the respective directors, officers, employees, partners, managers, members, shareholders or affiliates or their respective representatives in connection with this agreement or the transactions contemplated hereby.

## 12.6 Limitation of Damages

In no event shall any party to this Agreement be liable for any consequential, indirect, punitive or exemplary damages in connection with a breach of this Agreement or any of the transactions contemplated herein.

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## 13. Notices

### 13.1 Service of notices

A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

- (a) in writing and in English; and
- (b) hand delivered or sent by facsimile to the recipient's address below:

Name: Coalspur Mines Limited

Address: 600 – 543 Granville Street  
Vancouver, BC  
V6C 1X8  
Canada

Fax no: +1 604 697 4499

For the attention of: Chief Executive Officer

Name: KC Euroholdings S.à r.l.

Address: 3801 PGA Boulevard, Suite 903  
Palm Beach Gardens  
Florida 33410  
United States of America

Fax no: +1 561 626 4938

For the attention of: Paul Vining

Name: Cline Resource and Development Company

Address: 3801 PGA Boulevard, Suite 903  
Palm Beach Gardens  
Florida 33410  
United States of America

Fax no: +1 561 626 4938

For the attention of: Timothy Elliott

- (c) in the case of Notices to KCE or Cline, with a copy (being necessary but not sufficient without also complying with clause 13.1(b)) to:

Address: Bailey & Glasser, LLP  
209 Capitol Street, Charleston  
West Virginia 25301  
United States of America

Fax no: +1 304 342 1110  
For the attention of: Brian Glasser

## **13.2 Effective on receipt**

A Notice given in accordance with clause 13.1 takes effect when received (by the last of the recipients specified in clause 13.1, if there are multiple such recipients) (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery; or
- (b) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery or transmission under clause 13.2(a) or 13.2(b) is after 5.00pm in the place of receipt, or is on a Saturday, Sunday or bank or public holiday in the place of receipt, the Notice is taken to be received at 9.00am (local time) on the next day that is not a Saturday, Sunday or bank or public holiday in the place of receipt.

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## **14. General**

### **14.1 Alterations**

This agreement may be altered only in writing signed by each party.

### **14.2 Approvals and consents**

Except where this agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this agreement.

### **14.3 Assignment**

A party may only assign, novate or otherwise transfer this agreement or a right or obligation under this agreement with the prior written consent of the other party.

### **14.4 Entire agreement**

This agreement and the Confidentiality Agreement contain the entire agreement between the parties as at the date of this agreement with respect to their subject matter and supersede all prior agreements and understandings between the parties in connection with them.

### **14.5 Costs and stamp duty**

- (a) Except as otherwise provided in this agreement, each party must pay its own costs of negotiating, preparing, executing and performing this agreement and the Scheme Booklet and the proposed, attempted or actual implementation of this agreement and the Scheme.
- (b) Any stamp duty payable on the transfer of Coalspur Shares to KCE under the Scheme must be paid by KCE.



## **14.6 GST**

- (a) Unless expressly included, the consideration for any supply under or in connection with this agreement does not include GST.
- (b) To the extent that any supply made by a party to another party (**Recipient**) under or in connection with this agreement is a taxable supply and a tax invoice has been provided to the Recipient, the Recipient must pay, in addition to the consideration to be provided under this agreement for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.
- (c) The amount of GST payable in accordance with this clause 14.6 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.

## **14.7 Counterparts**

This agreement may be executed in counterparts. All executed counterparts constitute one document.

## **14.8 Merger**

The rights and obligations of the parties under this agreement will not merge on completion of any transaction contemplated by this agreement.

## **14.9 Severability**

A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or part of a term of this agreement continue in force.

## **14.10 Waiver**

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

## **14.11 Relationship**

Except where this agreement expressly states otherwise, this agreement does not create a relationship of employment, trust, agency or partnership between the parties.

## **14.12 Representation or reliance**

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement;
- (b) it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement; and

- (c) clauses 14.12(a) and 14.12(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX or on SEDAR.

#### **14.13 Governing law and jurisdiction**

This agreement is governed by the law of Western Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

#### **14.14 Specific performance**

The parties acknowledge that monetary damages alone would not be adequate compensation for a breach by any party of an obligation under this agreement and that specific performance of that obligation is an appropriate remedy.

#### **14.15 Effect of agreement**

- (a) This agreement supersedes any previous understandings or agreements between the parties concerning the subject matter of this agreement.
- (b) Despite clause 14.15(a), the Confidentiality Agreement continues to apply to the parties in accordance with its terms.

#### **14.16 Mutual further assurances**

Each party must do all things necessary or expedient to be done by it in connection with the matters referred to in this agreement.

### Schedule 1 - Timetable

Event	Target Date (Australia)
Signing of Scheme Implementation Agreement	Wednesday, 25 February 2015
Announcement of Scheme Implementation Agreement	Wednesday, 25 February 2015
Draft Scheme Booklet lodged with ASIC	Thursday, 26 February 2015
First Court Hearing	Wednesday, 18 March 2015
Dispatch of Scheme Booklet to Coalspur shareholders	Monday, 23 March 2015
Scheme Meeting	Wednesday, 22 April 2015
Second Court Hearing	Tuesday, 28 April 2015
Effective Date	Wednesday, 29 April 2015
Record Date	Wednesday, 6 May 2015
Implementation Date	Wednesday, 13 May 2015

## Schedule 2 – Coalspur Announcement

### NEWS RELEASE

[ ] February 2015

### COALSPUR ANNOUNCES TRANSACTION

**VANCOUVER, British Columbia: Coalspur Mines Limited (“Coalspur” or “Company”)** (ASX: CPL, TSX: CPT) is pleased to announce it has entered into a definitive agreement (Scheme Implementation Agreement, “SIA”) for the proposed acquisition of Coalspur by KC Euroholdings S.à r.l. (“KCE”) by way of an Australian scheme of arrangement (“Scheme”). Under the proposed Scheme, KCE will seek to acquire all of the outstanding shares of the Company (the “Transaction”) offering a cash payment of \$0.023 per Coalspur share (the “Consideration”), subject to the fulfilment of the conditions set out in the SIA, some of which are described below. The total equity value of the Transaction is approximately \$15 million on a fully-diluted basis. All amounts are in Australian dollars unless noted otherwise.

The Consideration represents a [ ]% premium over the closing price of the Company's ordinary shares on the Australian Securities Exchange on [ ] February and a [ ]% premium based on the volume weighted average price of the ordinary shares over the 60 days prior to this announcement.

KCE is the parent company of Kameron Collieries ULC, the owner of the Donkin coal mine in Nova Scotia, Canada and is an affiliate of the Cline Group LLC (“Cline”), a major coal producer in the United States. KCE will fund the acquisition from internal cash sources.

The Transaction with KCE represents the culmination of the strategic review process that was announced by Coalspur on June 23, 2014. The strategic review process, overseen by a Special Committee of the Board of Directors, had the express objective to attempt to maximize value for all stakeholders of Coalspur. During the past seven months Coalspur and its financial advisor, Deutsche Bank, have canvassed a significant number of strategic and financial parties worldwide with a view to achieving the full funding of the Vista project, the sale of all or a portion of the Company's assets, the outright sale of the Company or a merger or other third party transaction for refinancing and/or recapitalization of the Company. The competitive process resulted in the selection of KCE's proposal which has the unanimous support of the Coalspur Board.

“After running a comprehensive, global process, the Company is pleased to enter into this agreement with KCE. Despite the challenging environment for thermal coal exporters globally, and limited capital market access for single asset developers of thermal coal projects, we have managed to run a competitive process and secured a positive outcome for all stakeholders. The agreement with KCE is the best option for our shareholders in the context of the Company's upcoming obligation to repay its debts with EIG Global Energy Partners (“EIG”) and Borrowdale Park S.A. (“Borrowdale”). Cline is an industry leader with the technical capability and financial capacity to bring Vista into production,” said Gill Winckler, President and Chief Executive Officer of Coalspur.

“The acquisition of the high quality Vista asset in Alberta will combine well with our recent purchase of the Donkin mine in Nova Scotia and advances our strategy to service growing international markets through a low cost coal production platform” said Paul Vining, Chief Executive Officer of KCE. “We look forward to working with key stakeholders as we develop Vista and our other international businesses.”

### Coalspur Board and Major Shareholder Support

The Board has unanimously approved the Transaction and unanimously recommends that shareholders vote their shares in favour of the Scheme. The Scheme is supported by a unanimous recommendation of the Board and a commitment that all Coalspur Directors will vote any Shares they directly or indirectly own, control or represent in favour of the Scheme.

Borrowdale Park, Coalspur's major shareholder, has confirmed to the Coalspur Board that it intends to vote the shares it directly or indirectly owns, controls or represents in favour of the Scheme; and has entered into a standstill agreement with KCE, pursuant to which it has agreed not to dispose of a parcel of Coalspur shares representing 19.9% of the total Coalspur shares outstanding prior to the Scheme becoming effective (unless the SIA is terminated). The Coalspur Board, Director and Borrowdale Park approvals, recommendations and commitments are granted in the absence of a superior proposal and, in the case of the Coalspur Board and Director approvals, recommendations and commitments, subject to the Independent Expert opining that the Scheme is in the best interests of Coalspur shareholders.

### Transaction details

The Transaction is to be completed by way of a Scheme and will be subject to a number of conditions including the approval of 75% of the votes cast by Coalspur's shareholders and a simple majority of the number of shareholders present and voting at the Scheme meeting, which is expected to be held in mid-April 2015. It is intended that the Scheme Booklet and proxy materials will be mailed out to shareholders in mid-March 2015 following the customary regulatory and court review and approval. If the conditions to the Transaction are satisfied, including approval by Coalspur's shareholders and the court, the acquisition of the Company by KCE is expected to complete in early May 2015.

In addition to executing the SIA, KCE has also executed a definitive agreement to purchase EIG's senior, secured debt (at a discount to face value) and warrants for consideration comprising a partial cash settlement together with future payments contingent on future coal prices. Completion of that agreement is subject to limited conditions precedent and is not contingent upon completion of the Scheme.

The Scheme includes a number of conditions precedent including KCE completing the purchase debts owed to EIG and Borrowdale by the Coalspur group. KCE has agreed in-principle terms with Borrowdale for the purchase of its sub-ordinated, secured debt which will be acquired for a royalty based on future production. In addition, KCE will engage in negotiations with Ridley Terminals Inc and CN Rail to amend key terms of the Company's current contracts with those entities. Resolution of those negotiations to the satisfaction of KCE is condition precedent to completion of the Scheme.

The SIA contains customary deal protection mechanisms such as no shop and no talk provisions, matching and notification rights in the event of a competing proposal and a mutual reimbursement fee payable by KCE or the Company in specified circumstances.

A copy of the SIA is available on the Company's website, the ASX website and [www.sedar.com](http://www.sedar.com).

### Indicative timetable

The indicative timetable for implementation of the Scheme is anticipated to be as follows:

<b>Event</b>	<b>Target Dates</b> <i>(subject to change)</i>
1st Court hearing to approve Scheme Booklet	Mid March
Scheme Booklet sent to Coalspur shareholders	Mid March
Scheme meeting	Mid April
2nd Court hearing to approve Scheme	Late April
Scheme becomes effective	Late April
Coalspur shareholders receive Consideration	Early May

## **Impairment**

As a result of entering into the SIA, Coalspur is expecting to recognise a non-cash impairment charge in its 2014 full year accounts. The impairment charge is subject to finalisation of Coalspur's full year accounts, which are expected to be released before 30 March 2015.

## **Advisors**

Coalspur is being advised by Deutsche Bank and its legal counsel are Hardy Bowen Lawyers (Australia) and McCarthy Tétrault LLP (Canada).

## **About Coalspur**

Coalspur is a coal development company with approximately 55,000 hectares of coal leases located within the Hinton region of Alberta, Canada. Coalspur's flagship project is Vista, which covers approximately 10,000 hectares and provides a large scale, surface mineable, thermal coal development. Vista is located adjacent to CN Rail's main line, which is suitable for the transport of coal to deepwater ports on Canada's west coast. Coalspur has secured a port allocation agreement with Ridley Terminals, which is essential to the logistics supply chain necessary to export coal from Vista to the growing thermal coal demand from countries in the Asia Pacific region. The Transaction is the outcome of the strategic review process announced by Coalspur on 23 June 2014.

## **About KCE**

KCE is a Cline affiliate put in place in 2014 to acquire, develop and operate coal mines in international (non-U.S.) markets. In August 2014, Kameron Collieries ULC, a subsidiary of KCE expanded into Canada by acquiring Glencore's 75% interest in the Donkin coal mine in Nova Scotia. Subsequently in December 2014 Kameron Collieries ULC increased its ownership of the Donkin coal mine to 100% by acquiring Morien Resources Corp.'s 25% shareholding.

Cline is a private coal company founded by Chris Cline. Its focus is on developing highly productive mining operations and it has a track record spanning 35 years. Cline's subsidiaries and affiliates control over four billion tons of reserves in the Illinois coal basin and Canada. Cline's subsidiaries and affiliates own approximately 86% of Foresight Energy LP (NYSE: "FELP") a U.S. thermal coal producer that currently operates four mining complexes consisting of four longwall mines and one room and pillar mine. FELP is the most productive and one of the lowest cost coal companies in the U.S. with 2014 EBITDA of US\$404 million.

For additional information, please contact:

### **Ryan Walchuck**

Media and Investor Relations

[rwalchuck@coalspur.com](mailto:rwalchuck@coalspur.com)

P: +1 604 220 8595

No regulatory authority has approved or disapproved of the information contained in this release.

This release contains forward-looking information concerning Coalspur, including information regarding Coalspur's plans for concluding the strategic review process that was announced on 23 June 2014 and plans for the acquisition of Coalspur by way of an Australian scheme of arrangement ("Scheme"). All statements in this release, other than statements of historical facts, that address events or developments that Coalspur expects to occur, are statements of forward-looking information. Although Coalspur believes that such forward-looking information is based on reasonable assumptions, such information is not a guarantee of future performance and actual results or developments may differ materially from the forward-looking information. Material factors or assumptions used by Coalspur to develop forward-looking information include the following: (a) the conditions to the Scheme will be fulfilled, including those relating to reaching agreement with EIG Global Energy Partners, Borrowdale Park S.A. and Ridley Terminals Inc; (b) coal price and currency exchange rate assumptions; (c) regulatory approvals, permits and licences for the development, construction and operation of Vista will be obtained, amended and maintained on a basis consistent with Coalspur's current expectations; (d) accuracy of mineral resource and reserve estimates; (e) Coalspur's title to mineral and surface rights will be maintained; and (f) Coalspur's secured creditors will continue to be supportive of the strategic process. Factors that could cause actual results to differ materially from forward-looking information include: (i) uncertainties relating to the fulfilment of the conditions precedent to the Scheme; (ii) conditions for drawdown and other requirements under existing credit facilities, including the acceleration of debt due to events of default; (iii) fluctuations in coal prices and currency exchange rates; (iv) uncertainties regarding the receipt, maintenance, amendment and conditions of regulatory approvals, permits and licences required for the development, construction and operation of Vista; (v) take or pay commitments with Ridley Terminals; (vi) uncertainties in Coalspur's mineral resource or reserve estimates; (vii) uncertainties related to aboriginal claims and overlapping mineral or surface rights; and (viii) uncertainties related to general economic, market and business conditions. For more information on Coalspur, investors should review Coalspur's continuous disclosure filings that are available at [www.sedar.com](http://www.sedar.com) and [www.asx.com.au](http://www.asx.com.au).

## **Schedule 3 - Scheme**

# **Scheme of Arrangement**

**Coalspur Mines Limited**  
**ACN 003 041 594**

**Each Scheme Participant**

**HARDY♦BOWEN**  
**LAWYERS**  
**Level 1, 28 Ord Street, West Perth 6005**  
**PO Box 1364, West Perth WA 6872**  
**Tel + 61 8 9211 3600 Fax + 61 8 9211 3690**  
**Our Ref – SDG:MCN:140248**

## **Scheme of Arrangement made under section 411 of the Corporations Act 2001 (Cth)**

**Parties**                      **Coalspur Mines Limited ACN 003 041 594** of Level 1, 28 Ord Street, West Perth, WA 6005 (**Coalspur**)

**Each Scheme Participant**

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## **1. Definitions & Interpretation**

### **1.1 Definitions**

In this Scheme, except where the context otherwise requires:

**ASX** means ASX Limited (ABN 98 008 624 691) or the Australian Securities Exchange, as appropriate.

**Business Day** has the meaning given in the ASX Listing Rules.

**Canadian Securities Regulatory Authorities** means the securities regulatory authorities of the following provinces of Canada: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland.

**Cline** means Cline Resource and Development Company, a West Virginia corporation.

**Coalspur Option** means an option to acquire a Coalspur Share.

**Coalspur Performance Rights** means a performance right exchangeable for, or exercisable or convertible into, a Coalspur Share.

**Coalspur Share** means a fully paid ordinary share issued in the capital of Coalspur.

**Coalspur Shareholder** means at the relevant time each person who is registered in the Register as the holder of Coalspur Shares.

**Coalspur Warrant** means a warrant to acquire a Coalspur Share.

**Conditions Precedent** means the conditions precedent set out in clause 3.1 of the Implementation Agreement.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Court** means the Federal Court of Australia, unless otherwise agreed by Coalspur and KCE.

**Deed Poll** means the deed poll by KCE and Cline in the form of Schedule 5 of the Implementation Agreement.

**Effective** means, when used in relation to a Scheme, the order of the Court made under section 411(4)(b) in relation to the Scheme taking effect pursuant to section 411(10) of the Corporations Act.

**Effective Date** means the date on which the Scheme becomes Effective.



**Electronic Payment Election** means, in respect of a Scheme Participant, an election made before the Record Date by the Scheme Participant (in accordance with the requirements of Coalspur's share registry) to receive dividend payments from Coalspur by electronic funds transfer to a bank account nominated by the Scheme Participant.

**Implementation Agreement** means the Scheme Implementation Agreement dated on or about 25 February 2015 between KCE, Cline and Coalspur, as amended or varied from time to time.

**Implementation Date** means the fifth Business Day after the Record Date, or such other date agreed to in writing by Coalspur, KCE and Cline.

**KCE** means KC Euroholdings S.à r.l. of 40, avenue Monterey, L-2163, Luxembourg, Luxembourg.

**Listing Rules** means the official listing rules of ASX.

**Record Date** means 7.00pm (Sydney time) on the fifth Business Day following the Effective Date, or such other date (after the Effective Date) as Coalspur and KCE may agree in writing or as ordered by the Court or as may be required by the ASX or TSX.

**Register** means the share register of Coalspur kept pursuant to the Corporations Act.

**Registered Address** means, in relation to a Scheme Participant, the address of that Scheme Participant as shown in the Register as at the Record Date.

**Regulatory Authority** includes:

- (a) a government or governmental, semi-governmental, administrative, fiscal or judicial entity or authority;
- (b) a minister, department, office, commission, delegate, instrumentality, tribunal, agency, board, authority or organisation of any government;
- (c) any regulatory organisation established under statute; and
- (d) in particular, ASX, ASIC, TSX, the Canadian Securities Regulatory Authorities and the Government of Alberta.

**Scheme** means this scheme of arrangement pursuant to Part 5.1 of the Corporations Act between Coalspur and the Scheme Participants as set out in this document together with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and approved in writing by KCE and Coalspur.

**Scheme Consideration** means \$0.023 in respect of each Scheme Share, the aggregate Scheme Consideration for each Scheme Participant being rounded to the nearest whole cent.

**Scheme Meeting** means the meeting of Coalspur Shareholders convened by the Court in relation to the Scheme pursuant to section 411(1) of the Corporations Act and includes any adjournment of that meeting.

**Scheme Participant** means each person who is a Coalspur Shareholder as at the Record Date (other than KCE).

**Scheme Shares** means each Coalspur Share on issue as at the Record Date, other than Coalspur Shares held by KCE.

**Scheme Transfer** means one or more proper instruments of transfer in respect of the Scheme Shares for the purpose of section 1071B of the Corporations Act, which may be or include a master transfer of all or part of the Scheme Shares.

**Second Court Date** means the first day on which an application made to the Court for an order pursuant to section 411(4)(b) of the Corporations Act approving the Scheme is heard or, if the application is adjourned or subject to appeal for any reason, the day on which the adjourned or appealed application is heard.

**Sunset Date** means 30 June 2015, or such later date as agreed to in writing between KCE, Cline and Coalspur.

**Takes effect** or **taking effect** means, in relation to the Scheme, on and from the first time when an office copy of the Court order approving the Scheme pursuant to section 411(4)(b) of the Corporations Act is lodged with ASIC pursuant to section 411(10) of the Corporations Act.

**Trust Account** means an Australian dollar denominated trust account nominated by Coalspur, details of which Coalspur must notify to KCE and Cline at least five Business Days before the Implementation Date.

**TSX** means the Toronto Stock Exchange.

## **1.2 Interpretation**

In this Scheme:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, or schedule is to a clause or paragraph of, or schedule to, this agreement, and a reference to this agreement includes any schedule;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, dollar or \$ is to Australian currency;
- (f) a reference to time is to Perth, Western Australia time, unless otherwise noted;
- (g) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;

- (j) a word or expression defined in the Corporations Act and not otherwise defined in this agreement has the meaning given to it in the Corporations Act;
- (k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (l) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (m) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it; and
- (n) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

### **1.3 Headings**

Headings are for ease of reference only and do not affect interpretation.

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## **2. Preliminary matters**

- (a) Coalspur is a public company registered in Western Australia, Australia and is admitted to the official list of ASX and TSX.
- (b) As at the date of the Implementation Agreement, there are:
  - (i) 641,544,455 Coalspur Shares on issue;
  - (ii) 7,330,739 Coalspur Options on issue;
  - (iii) 9,965,082 Coalspur Performance Rights on issue; and
  - (iv) 120,000,000 Coalspur Warrants on issue.
- (c) KCE is a Luxembourg registered company.
- (d) Cline is a West Virginia limited liability company.
- (e) If the Scheme becomes Effective:
  - (i) all the Scheme Shares, and all the rights and entitlements attaching to them as at the Implementation Date, will be transferred to KCE and Coalspur will enter the name of KCE in the Register in respect of the Scheme Shares; and
  - (ii) in consideration of the transfer of the Scheme Shares to KCE, KCE will (and Cline unconditionally and irrevocably guarantees the obligation of KCE to) provide the Scheme Consideration to Scheme Participants in accordance with the provisions of this Scheme and the Deed Poll.
- (f) Coalspur, KCE and Cline have agreed, by executing the Implementation Agreement, to implement this Scheme.

- (g) KCE and Cline have agreed, by executing the Deed Poll, to provide or procure the provision of the Scheme Consideration to the Scheme Participants.

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## **3. Conditions**

### **3.1 Conditions to this Scheme**

This Scheme is conditional on, and will have no force or effect until, the satisfaction or waiver of the following conditions:

- (a) all of the Conditions Precedent being satisfied or waived (other than those Conditions Precedent that cannot be waived) in accordance with the terms of the Implementation Agreement, other than the Condition Precedent set out at clause 3.1(e) of the Implementation Agreement;
- (b) neither the Implementation Agreement nor the Deed Poll having been terminated as at 8.00am on the Second Court Date;
- (c) the Court having approved this Scheme, with or without any modification or condition, pursuant to section 411(4)(b) of the Corporations Act, and if applicable, KCE and Coalspur having accepted in writing any alteration or condition ordered by the Court under section 411(6) of the Corporations Act; and
- (d) the order of the Court approving the Scheme under section 411(4)(b) (and if applicable, section 411(6)) of the Corporations Act coming into effect pursuant to section 411(10) of the Corporations Act.

### **3.2 Certification in relation to Conditions**

- (a) Coalspur will provide to the Court on the Second Court Date certificates respectively signed by KCE and Coalspur (or such other evidence as the Court requests) stating whether or not the Conditions Precedent (other than the Condition Precedent set out at clause 3.1(e) of the Implementation Agreement) have been satisfied or waived as at 8.00am on the Second Court Date.
- (b) The certificates provided by KCE and Coalspur shall be conclusive evidence that the relevant conditions have been satisfied or waived (as applicable).

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## **4. Scheme**

### **4.1 Effective Date**

Subject to clause 4.2, this Scheme takes effect on the Effective Date.

### **4.2 Sunset Date**

This Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the Sunset Date.

### **4.3 Termination**

Without limiting any rights under the Implementation Agreement, if the Implementation Agreement is terminated in accordance with its terms before this Scheme becomes Effective, each of Coalspur, KCE and Cline are released from:

- (a) any further obligation to take steps to implement this Scheme; and
- (b) any liability with respect to this Scheme.

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## **5. Implementation**

### **5.1 Lodgement with ASIC**

If the conditions listed in clause 3.1 (other than the condition in clause 3.1(d)) are satisfied or waived, Coalspur must lodge with ASIC in accordance with section 411(10) of the Corporations Act an office copy of the Court orders approving this Scheme as soon as practicable after such office copy is received, and in any event by no later than 5.00pm on the Business Day after the date on which the Court makes those orders (or such other Business Day as Coalspur and KCE agree in writing).

### **5.2 Satisfaction of Coalspur Performance Rights**

Coalspur must:

- (a) on the Effective Date, issue to each person who is at that time the holder of a Coalspur Performance Right the number of Coalspur Shares to which the person is entitled to receive under the terms of their Coalspur Performance Rights as a result of any vesting of their Coalspur Performance Rights in connection with the Scheme, in full and final satisfaction of such Coalspur Performance Rights; and
- (b) by no later than the Record Date, ensure that each such person is registered as the holder of the relevant Coalspur Shares in the Register.

### **5.3 Cancellation of Coalspur Options**

If Coalspur has entered into any Option Cancellation Deeds (as defined in clause 3.1(p)(ii) of the Implementation Agreement), Coalspur must cancel the Coalspur Options the subject of those Option Cancellation Deeds on or before the Record Date.

### **5.4 Transfer of Coalspur Shares**

On the Implementation Date:

- (a) subject to the provision of the aggregate of the Scheme Consideration in the manner contemplated by clause 6.1, all the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares, will be transferred to KCE without the need for any further act by any Scheme Participant (other than acts performed by Coalspur as attorney and agent for the Scheme Participants under this Scheme), by:
  - (i) Coalspur delivering to KCE a duly completed and executed Scheme Transfer (executed by Coalspur as transferor as the attorney and agent of each Scheme Participant under clause 9.4); and

- (ii) KCE duly executing the Scheme Transfer (as transferee) and delivering it to Coalspur for registration; and
- (b) immediately after receipt of the Scheme Transfer under clause 5.4(a)(ii), Coalspur must enter, or procure the entry of, the name and address of KCE in the Register as the holder of all of the Scheme Shares.

## **5.5 Beneficial entitlement to Scheme Shares**

Subject to the provision of the aggregate of the Scheme Consideration in the manner contemplated by clause 6.1, on and from the Implementation Date, KCE will be beneficially entitled to the Scheme Shares transferred to it under the Scheme, pending registration by Coalspur of KCE in the Register as the holder of the Scheme Shares.

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## **6. Scheme Consideration**

### **6.1 Scheme Consideration payment obligation**

- (a) KCE will (and Cline unconditionally and irrevocably guarantees the obligation of KCE to), by no later than 5:00pm on the Business Day prior to the Implementation Date, deposit (or procure the deposit) in cleared funds of an amount equal to the aggregate of the Scheme Consideration into the Trust Account.
- (b) The amount deposited into the Trust Account under clause 6.1(a) is to be held on trust by Coalspur for the Scheme Participants for the purpose of paying the Scheme Consideration to the Scheme Participants in accordance with clause 6.2 (except that any interest on the amount will be for the account of KCE). Coalspur must not pay or apply those funds for any other purpose.

### **6.2 Payment of Scheme Participants**

Subject to clauses 6.1 and 6.3, Coalspur will pay or procure the payment, from the Trust Account, to each Scheme Participant the Scheme Consideration attributable to that Scheme Participant within five Business Days after the Implementation Date by:

- (a) where the Scheme Participant has made an Electronic Payment Election, making a payment of the relevant amount by electronic means in accordance with that election; or
- (b) otherwise, despatching or procuring the despatch to the Scheme Participant of a cheque in the name of the Scheme Participant for the relevant amount, by pre-paid ordinary post (or, if the Registered Address of the Scheme Participant is outside Australia, by pre-paid airmail post) in an envelope addressed to the Registered Address as at the Record Date.

### **6.3 Joint holders**

In the case of Scheme Shares held in joint names:

- (a) any cheque referred to in clause 6.2 will be made payable to the joint holders; and

- (b) any cheque or other document required to be sent to the Scheme Participant in connection with the Scheme will be forwarded to the holder whose name appears first in the Register as at the Record Date.

#### **6.4 Unclaimed moneys**

- (a) In the event that Coalspur believes that a Scheme Participant is not known at the Scheme Participant's address on the Register, Coalspur may credit the amount payable to the relevant Scheme Participant to a separate bank account of Coalspur to be held on trust by Coalspur for the Scheme Participant until the Scheme Participant claims the amount or the amount is dealt with in accordance with applicable unclaimed money legislation.
- (b) Coalspur must hold the amount on trust for the relevant Scheme Participant, but any benefit accruing from the amount will be to the benefit of KCE. An amount credited to the account is to be treated as having been paid to the Scheme Participant when credited to the account. Coalspur must maintain records of the amounts paid, the persons who are entitled to the amount and any transfer of the amounts.
- (c) Coalspur may cancel a cheque issued under this clause 6 if the cheque:
  - (i) is returned to Coalspur or its agents as undeliverable; or
  - (ii) has not been presented for payment within six months after the Implementation Date.
- (d) During the period of one year commencing on the Implementation Date, on request from a Scheme Participant a cheque that was previously cancelled under clause 6.4(c) must be reissued.

#### **6.5 Orders of a court or Regulatory Authority**

If written notice is given to KCE, Coalspur (or Coalspur's share registry) of an order or direction made by a court of competent jurisdiction or by another Regulatory Authority:

- (a) that requires provision to a third party of all or part of the Scheme Consideration, which would otherwise be provided to a particular Scheme Participant in accordance with this clause 6, then Coalspur shall be entitled to procure that all or part of that Scheme Consideration (as the case may be) is provided in accordance with that order or direction; or
- (b) that prevents all or part of the Scheme Consideration being provided to any particular Scheme Participant in accordance with this clause 6, or the provision of such Scheme Consideration is otherwise prohibited by applicable law, Coalspur shall be entitled (at its sole discretion) to:
  - (i) pay such amount of the Scheme Consideration as that Scheme Shareholder would otherwise be entitled to receive, to a trustee or nominee for that trustee or nominee to retain; or
  - (ii) retain for its own benefit such amount of the Scheme Consideration, as that Scheme Shareholder would otherwise be entitled to receive,

until such time as full payment in accordance with clause 6 is permitted by that order or direction or otherwise by law, or the funds the Scheme

Shareholder would otherwise be entitled to receive are dealt with in accordance with applicable unclaimed money legislation.

For the avoidance of doubt, if the relevant order, direction or law prevents the provision of only part of the Scheme Consideration which would otherwise be provided to a Scheme Participant, Coalspur will provide the maximum possible portion of the Scheme Consideration to the Scheme Participant without giving rise to a breach of that order, direction or law, and this clause 6.5 shall only apply only in respect of the remaining portion.

## **6.6 Withholding and other taxes**

If Coalspur receives professional advice that any withholding or other tax is required by law to be withheld from any payment under this clause 6, Coalspur must withhold the relevant amount before making the payment to the Scheme Participant (and payment of the reduced amount shall be taken to be full payment of the relevant amount for the purposes of this Scheme). Coalspur must procure that any amount so withheld is paid to the relevant taxation authorities within the time permitted by law, and that a receipt or other appropriate evidence of such payment is promptly provided to the relevant Scheme Participant.

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## **7. Dealing in Coalspur Shares**

### **7.1 Determination of Scheme Participants**

- (a) For the purposes of establishing the identity of the Scheme Participants, dealings in Coalspur Shares will only be recognised if:
  - (i) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Register as holder of the relevant Coalspur Shares on or before the Record Date; and
  - (ii) in all other cases, registrable transmission applications or transfers in registrable form in respect of those dealings are received on or before the Record Date at the place where the Register is kept.
- (b) Coalspur must register any transmission application or transfer received in accordance with clause 7.1(a) by the Record Date.
- (c) If the Scheme becomes Effective:
  - (i) no dealing in Coalspur Shares, whenever effected, will be recognised or given effect to by Coalspur if it is received after the Record Date or is received before the Record Date but not in registrable form; and
  - (ii) any purported dealing in Coalspur Shares after the Record Date or agreement to deal after the Record Date in Coalspur Shares will be void and of no effect.

### **7.2 Maintenance of the Register**

In order to determine entitlements to the Scheme Consideration, Coalspur will maintain, or procure the maintenance of, the Register in accordance with this clause 7 until the Scheme Consideration has been provided to the Scheme Participants and the Register in this form will solely determine entitlements to the Scheme Consideration.



### **7.3 Effect of holding statements**

From the Record Date, all holding statements for Scheme Shares will cease to have effect as documents of title in respect of those Coalspur Shares and, as from that date, each entry current at that date on the Register (other than entries in respect of KCE) will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the Coalspur Shares relating to that entry.

### **7.4 Information to KCE**

Coalspur will at least four Business Days before the Implementation Date give to KCE and Cline or procure that KCE and Cline be given details of the name, address and the number of Coalspur Shares held by each Scheme Participant, as shown in the Register at the Record Date, in whatever form KCE and Cline reasonably require.

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## **8. Quotation of Coalspur Shares**

(a) Coalspur will apply to ASX and TSX to suspend trading in Coalspur Shares with effect from the close of trading on the Effective Date.

(b) Coalspur will apply:

(i) for termination of the official quotation of Coalspur Shares on ASX; and

(ii) to have itself removed from the official list of ASX; and

(iii) to delist Coalspur Shares from TSX,

in the case of (i) and (ii) with effect on and from the close of trading on the trading day immediately following the date on which the name and address of KCE are entered into in the Register as the holder of all of the Scheme Shares, and in the case of (iii) as soon as practicable following the Effective Date.

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## **9. General**

### **9.1 Amendments to Scheme**

Coalspur may by its counsel or solicitors consent on behalf of all persons concerned, including Scheme Participants, to any modification of or addition to this Scheme or to any condition, which the Court may think fit to approve or impose and to which KCE has consented.

### **9.2 Effect of Scheme**

This Scheme binds Coalspur and all of the Scheme Participants (including those who did not attend the Scheme Meeting or who did not vote at that meeting or who voted against this Scheme at that meeting) and, to the extent permitted by law, overrides the constitution of Coalspur to the extent of any inconsistency.

### **9.3 Scheme Participants**

(a) Each Scheme Participant:

- (i) agrees to the transfer of its Scheme Shares, together with all rights and entitlements attaching to those Scheme Shares, to KCE in accordance with the terms of this Scheme;
  - (ii) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares constituted by or resulting from this Scheme;
  - (iii) consents to Coalspur, KCE and Cline doing all things and executing all deeds, instruments, transfer or other documents as may be necessary, incidental or expedient to the implementation and performance of this Scheme; and
  - (iv) acknowledges that this Scheme binds all Scheme Participants.
- (b) Each Scheme Participant is deemed to have warranted to KCE and appointed and authorised Coalspur as their agent to warrant to KCE that all their Scheme Shares (including any rights and entitlements attaching to those Scheme Shares) will, as at the time of the transfer of them to KCE, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and interests of third parties of any kind, whether legal or otherwise, and from any restrictions on transfer of any kind, and that they have full power and capacity to sell and to transfer their Scheme Shares (including any rights and entitlements attaching to those shares) to KCE under the Scheme. Coalspur undertakes in favour of each Scheme Participant that it will provide such warranty to KCE on behalf of the Scheme Participant.
- (c) To the extent permitted by law, the Scheme Shares transferred to KCE under this Scheme (including any rights and entitlements attaching to those shares) will vest in KCE free from all mortgages, charges, liens, encumbrances, pledges, security interests and interests of third parties of any kind, whether legal or otherwise.

#### **9.4 Appointment of agent and attorney**

Upon the Scheme becoming Effective, each Scheme Participant, without the need for any further act, is deemed to have irrevocably appointed Coalspur as its agent and attorney for the purpose of:

- (a) executing any document or form or doing any other act necessary, incidental or expedient to give effect to the terms of this Scheme, including without limitation, the execution of the Scheme Transfer,
- (b) enforcing the Deed Poll against KCE or Cline,

and Coalspur accepts such appointment. Coalspur, as agent and attorney of each Scheme Participant, may delegate its functions, authorities or powers under this clause 9.4 to all or any of its directors and officers (jointly, severally or jointly and severally).

#### **9.5 Appointment of KCE as sole proxy**

Upon the Scheme becoming Effective until Coalspur registers KCE as the holder of all of the Scheme Shares in the Register, each Scheme Participant:

- (a) irrevocably appoints KCE as attorney and agent (and directs KCE in each capacity) to appoint any director, officer, secretary or agent nominated by KCE

as its sole proxy and, where applicable, corporate representative, to attend shareholders' meetings of Coalspur, exercise the votes attaching to the Scheme Shares registered in its name and sign any shareholders resolutions;

- (b) undertakes not to otherwise attend or vote at any of those meetings or sign any resolutions, whether in person, by proxy or by corporate representative (other than pursuant to clause 9.5(a));
- (c) must take all other actions in the capacity of the registered holder of Scheme Shares as KCE directs; and
- (d) acknowledges and agrees that in exercising the power conferred in clause 9.5(a), KCE and any director, officer, secretary or agent nominated by KCE under that clause may act in the best interests of KCE as the intended registered holder of the Scheme Shares.

## **9.6 Costs and stamp duty**

- (a) Subject to clause 9.6(b), Coalspur will pay all the costs of the Scheme.
- (b) KCE will (and Cline will procure that Cline will) pay all stamp duty in respect of the transfer of the Scheme Shares under the Scheme.

## **9.7 Further assurances**

- (a) Each Scheme Participant consents to Coalspur doing all things necessary, incidental or expedient to give full effect to the implementation of this Scheme and the transactions contemplated by it.
- (b) Coalspur will execute all documents and do all things (on its own behalf and on behalf of each Scheme Participant) necessary or expedient to give full effect to the implementation of this Scheme and the transactions contemplated by it.

## **9.8 Notices**

- (a) Where a notice, transfer, transmission application, direction or other communication referred to in the Scheme is sent by post to Coalspur, it will be deemed to be received on the date (if any) on which it is actually received at Coalspur and on no other date.
- (b) The accidental omission to give notice of the Scheme Meeting to any Coalspur Shareholder, or the non-receipt of such notice by any Coalspur Shareholder, will not, unless ordered by the Court, invalidate this Scheme or the proceedings at the Scheme Meeting.

## **9.9 Governing Law**

- (a) This Scheme is governed by the law in force in Western Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

#### **9.10 Limitation of liability**

Neither Coalspur, KCE, Cline nor any of their respective directors or officers will be liable for anything done or for anything omitted to be done in performance of this Scheme in good faith.

## Schedule 4 - Representations and Warranties

### 1. Coalspur representations and warranties

Coalspur represents and warrants to KCE that:

- (a) **incorporation:** it is a body corporate validly existing under the laws of its place of incorporation and each member of the Coalspur Group is a corporation validly existing under the laws of its place of incorporation;
- (b) **corporate power:** it has the corporate power to enter into and perform or cause to be performed its obligations under this agreement and to carry out the transactions contemplated by this agreement;
- (c) **corporate authorisations:** it has taken all necessary corporate action to authorise the entry into of this agreement and the Scheme and, subject to Coalspur Shareholders approving the Scheme, has taken all necessary corporate action to authorise the performance of this agreement and the Scheme and to carry out the transactions contemplated by this agreement and the Scheme;
- (d) **binding obligations:** subject to laws generally affecting creditors' rights and principles of equity, this agreement is valid and binding upon it;
- (e) **issued securities:** the issued Coalspur securities and rights to be issued Coalspur securities as of the date of this agreement are:
  - (i) 641,544,455 Coalspur Shares;
  - (ii) 7,330,739 Coalspur Options;
  - (iii) 9,965,082 Coalspur Performance Rights; and
  - (iv) 120,000,000 Coalspur Warrants, which are all held by EIG,and Coalspur has not issued, or agreed to issue, any other securities or instruments which are still in force and may convert into Coalspur Shares or any other securities in Coalspur; all issued and outstanding Coalspur Shares have been duly authorized and are validly issued and outstanding as fully paid, free of pre-emptive rights; there are no outstanding bonds, debentures or other evidences of indebtedness of Coalspur or any other member of the Coalspur Group having the right to vote with the Coalspur Shareholders on any matter; there are no outstanding contractual obligations of Coalspur or any other member of the Coalspur Group to repurchase, redeem or otherwise acquire any outstanding Coalspur Shares or with respect to the voting or disposition of any outstanding Coalspur Shares; and none of Coalspur or any of the Coalspur Group is party to any shareholder, pooling, voting trust or similar agreement relating to its issued and outstanding securities;
- (f) **Coalspur Performance Rights:** each Coalspur Performance Right on issue, once exercised, will entitle the holder to receive one Coalspur Share;
- (g) **no default:** this agreement does not conflict with or result in the breach of or default under any provision of Coalspur's constitution, any material term or provision of any material agreement, or any writ, order or injunction, judgement, law, rule, regulation or instrument to which Coalspur or any member of the Coalspur Group is party or subject to;

- (h) **books and records:** the corporate records and minute books of Coalspur and each member of the Coalspur Group have been maintained in accordance with all applicable laws and are complete and accurate, except where such incompleteness or inaccuracy would not omit material information required to be included;
- (i) **Coal leases:** a member of the Coalspur Group possesses a valid lease in respect of the Coal Leases. The Coal Leases have been issued by the relevant Canadian Regulatory Authority and are in full legal force and effect. No member of the Coalspur Group has received any notice of proceedings relating to the revocation or material modification of any Coal Leases.
- (j) **disclosure:** Coalspur is not in breach of its continuous disclosure obligations under the Corporations Act, the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure or under any Canadian law (including any rules and regulations of the TSX or any Regulatory Authority or government agency) and has filed in a timely manner all such documents, information and statements required under such laws, rules and regulations, and, at the time of filing, no such documents contained a misstatement of a material fact or omitted to state a material fact except where corrected by a subsequently filed document. Coalspur has not been the subject of a continuous disclosure review by ASIC or any Canadian Securities Regulatory Authority within the last 24 months;
- (k) **all information:** the information and statements contained in this agreement are true and correct in all material respects and together with the Coalspur Diligence Materials and Coalspur public disclosures, has been prepared in good faith, constitute full, true and plain disclosure of all material facts relating to Coalspur and the Coalspur Group on a consolidated basis, contain no misrepresentations and do not omit a material fact which is necessary to make the information and statements contained therein not misleading in light of the circumstances in which they were made;
- (l) **Coalspur Information:**
  - (i) the Coalspur Information:
    - (A) will be prepared and included in the Scheme Booklet in good faith and on the understanding that KCE and its directors will rely on that information for the purpose of considering and approving the KCE Information in the Scheme Booklet;
    - (B) will comply in all material respects with the requirements of the Corporations, the Listing Rules and relevant ASX Regulatory Guides and the terms of this agreement as they apply to such information;
    - (C) will be true and correct and will not be misleading or deceptive in any material respect (whether by omission or otherwise) as at the date of the Scheme Booklet;
  - (ii) Coalspur will (but in respect of the KCE Information, subject to KCE complying with its obligations under clause 2(g) of this Schedule 4) update the Scheme Booklet as soon as reasonably practicable with all such further or new information which may arise after the date of the Scheme Booklet until the Scheme Meeting which is either necessary to ensure that the Scheme Booklet is not misleading or deceptive in any material respect (whether by omission or otherwise)

or which is otherwise material for disclosure to Coalspur Shareholders or that is required to be disclosed to Coalspur Shareholders under any applicable law;

- (iii) all information provided by or on behalf of Coalspur to the Independent Expert to enable the Independent Expert's Report to be prepared and included in the Scheme Booklet will be provided in good faith and on the understanding that the Independent Expert will rely on that information for the purpose of preparing the Independent Expert's Report for inclusion in the Scheme Booklet;
- (m) **no Competing Proposal:** as at the date of this agreement, it is not involved in or aware of any negotiations or discussions, approach or attempt to initiate any negotiations or discussions, or intention to make such an approach or attempt to initiate any negotiations or discussions in respect of any expression or interest, offer, proposal or discussion in relation to a Competing Proposal, whether direct or indirect, solicited or unsolicited and in writing or otherwise;
- (n) **solvency:** no member of the Coalspur Group is affected by an Insolvency Event;
- (o) **regulatory action:** no regulatory action of any nature has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this agreement; and
- (p) **Competition Act:** Coalspur together with its affiliates (as defined in the Competition Act) does not have assets in Canada that exceed CAD \$250 million and has no annual gross revenues from sales in, from and into Canada, in either case, as determined pursuant to section 109 of the Competition Act.

## 2. KCE representations and warranties

KCE represents and warrants to Coalspur that:

- (a) **incorporation:** it is a body corporate validly existing under the laws of its place of incorporation;
- (b) **corporate power:** it has the corporate power to enter into and perform or cause to be performed its obligations under this agreement and to carry out the transactions contemplated by this agreement;
- (c) **corporate authorisations:** it has, or will have at the time performance is required in accordance with the terms of the agreement, taken all necessary corporate action to authorise the entry into of this agreement and the Scheme and has taken all necessary corporate action to authorise the performance of this agreement and the Scheme and to carry out the transactions contemplated by this agreement and the Scheme;
- (d) **binding obligations:** (subject to laws generally affecting creditors' rights and principles or equity) this agreement is valid and binding upon it;
- (e) **no default:** this agreement does not conflict with or result in the breach of or default under any provision of KCE's constitution, any material term or provision of any material agreement or any writ, order or injunction, judgement, law, rule, regulation or instrument to which KCE is party or subject or of which it is bound;

- (f) **sufficient funds:** KCE has funding arrangements in place such that sufficient funds will be ready and available to satisfy its obligations under the Scheme and Deed Poll;
- (g) **KCE Information:**
  - (i) the KCE Information:
    - (A) will be prepared and provided to Coalspur in good faith and on the understanding that Coalspur and its directors will rely on that information for the purpose of preparing the Scheme Booklet and proposing the Scheme;
    - (B) will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and relevant ASX Regulatory Guides and the terms of this agreement as they apply to such information;
    - (C) will be true and correct and will not be misleading or deceptive in any material respect (whether by omission or otherwise) as at the date of the Scheme Booklet;
  - (ii) KCE will provide to Coalspur all such further or new material information which may arise after the date of the Scheme Booklet until the Scheme Meeting which is necessary to ensure that the KCE Information, in the form and context in which that information appears in the version of the Scheme Booklet despatched to Coalspur Shareholders, is not misleading or deceptive in any material respect (whether by omission or otherwise);
- (h) **solvency:** KCE is not affected by an Insolvency Event;
- (i) **regulatory action:** no regulatory action of any nature has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this agreement; and
- (j) **Competition Act:** KCE together with its affiliates (as defined in the Competition Act) does not have assets in Canada that exceed CAD \$150 million or annual gross revenues from sales in, from or into Canada that exceed CAD \$400 million, in either case, as determined pursuant to section 109 of the Competition Act.

### 3. Cline representations and warranties

Cline represents and warrants to Coalspur that:

- (a) **incorporation:** it is a body corporate validly existing under the laws of its place of incorporation;
- (b) **corporate power:** it has the corporate power to enter into and perform or cause to be performed its obligations under this agreement and to carry out the transactions contemplated by this agreement;
- (c) **corporate authorisations:** it has, or will have at the time performance is required in accordance with the terms of the agreement, taken all necessary corporate action to authorise the entry into of this agreement and has taken all necessary corporate action to authorise the performance of this agreement and to carry out the transactions contemplated by this agreement;



- (d) **binding obligations:** (subject to laws generally affecting creditors' rights and principles or equity) this agreement is valid and binding upon it;
- (e) **no default:** this agreement does not conflict with or result in the breach of or default under any provision of Cline's constitution, any material term or provision of any material agreement or any writ, order or injunction, judgement, law, rule, regulation or instrument to which Cline is party or subject or of which it is bound;
- (f) **sufficient funds:** Cline has funding arrangements in place such that sufficient funds will be ready and available to satisfy KCE's obligations under the Scheme and Deed Poll.

## **Schedule 5 - Deed Poll**

### **Deed Poll**

**KC Euroholdings S.à r.l.**  
KCE

**Cline Resource and Development Company**  
Cline

**HARDY•BOWEN**  
LAWYERS  
Level 1, 28 Ord Street, West Perth 6005  
PO Box 1364, West Perth WA 6872  
Tel + 61 8 9211 3600 Fax + 61 8 9211 3690  
Our Ref – SDG:MCN:140248

This deed poll is made this                      day of

2015

**Parties**                      **KC Euroholdings S.à r.l.** of 40, avenue Monterey, L-2163, Luxembourg, Luxembourg (**KCE**)

**Cline Resource and Development Company** of 430 Harper Park Drive, Suite A, Beckley, West Virginia 25801 (**Cline**)

**In favour of**                      **Each Scheme Participant**

## **Recitals**

- A.            Coalspur, KCE and Cline have entered into the Implementation Agreement.
- B.            In the Implementation Agreement, KCE and Cline agreed to enter into this deed poll.
- C.            KCE and Cline are entering into this deed poll for the purpose of covenanting in favour of Scheme Participants to perform their respective obligations in connection with the Scheme, in accordance with the terms of the Implementation Agreement and attributed to them under the Scheme.

This deed poll provides

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## **1. Definitions and interpretation**

### **1.1 Definitions**

In this deed poll:

- (a)            **Implementation Agreement** means the Scheme Implementation Agreement entered into between Coalspur, KCE and Cline dated on or about 25 February 2015, as amended or varied from time to time;
- (b)            **Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act between Coalspur and Scheme Participants, under which Scheme Participants will receive the Scheme Consideration, in the form attached as Schedule 3 to the Implementation Agreement, subject to any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to in writing by KCE and Coalspur; and
- (c)            unless the context otherwise requires, terms defined in the Implementation Agreement or the Scheme have the same meaning when used in this deed poll.

### **1.2 Interpretation**

Clauses 1.2 and 1.3 of the Implementation Agreement apply to the interpretation of this deed poll, except that references to "this agreement" are to be read as references to "this deed poll".

### **1.3 Nature of deed poll**

KCE and Cline acknowledge that:

- (a) this deed poll may be relied on and enforced by any Scheme Participant in accordance with its terms, even though the Scheme Participant is not party to it; and
- (b) under the Scheme, upon the Scheme becoming Effective, each Scheme Participant irrevocably appoints Coalspur as its agent and attorney to enforce this deed poll against KCE and Cline on behalf of that Scheme Participant, and Coalspur may delegate its functions, authorities or powers as agent and attorney to all or any of its directors and officers (jointly, severally, or jointly and severally).

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## **2. Conditions precedent**

### **2.1 Conditions precedent to obligations of the Scheme**

The obligations of KCE and Cline under this deed poll are subject to the Scheme becoming Effective.

### **2.2 Termination**

The obligations of KCE and Cline under this deed poll to Scheme Participants will automatically terminate and the terms of this deed poll will be of no force or effect if:

- (a) the Implementation Agreement is terminated in accordance with its terms; or
- (b) the Scheme is not Effective by the Sunset Date.

### **2.3 Consequences of termination**

If this deed poll is terminated under clause 2.2, in addition and without prejudice to any other rights, powers or remedies available to it:

- (a) KCE and Cline are released from their obligations to further perform this deed poll, except those obligations under clause 7.6; and
- (b) each Scheme Participant retains the rights they have against KCE and Cline in respect of any breach of this deed poll which occurs before it is terminated.

---

## **3. Scheme obligations**

### **3.1 Undertaking to pay Scheme Consideration**

Subject to clause 2, KCE:

- (a) offers to acquire all the Scheme Shares pursuant to the Scheme; and
- (b) in consideration of the transfer of each Scheme Share to KCE, undertakes in favour of each Scheme Participant (and Cline undertakes in favour of each Scheme Participant to unconditionally and irrevocably guarantee the obligation of KCE) to:

- (i) deposit (or procure the deposit) in cleared funds of an amount equal to the aggregate of the Scheme Consideration into the Trust Account; and
- (ii) undertake all other actions attributed to it under the Scheme,

all in accordance with the terms of the Scheme and the Implementation Agreement.

---

## 4. Warranties

Each of KCE and Cline represents and warrants in favour of each Scheme Participant that:

- (a) it is a corporation validly existing under the laws of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this deed poll and to carry out the transactions contemplated by this deed poll;
- (c) it has taken all necessary corporate action to authorise its entry into this deed poll and has taken or will take all necessary corporate action to authorise the performance of this deed poll and to carry out the transactions contemplated by this deed poll;
- (d) this deed poll is valid and binding on it and enforceable against it in accordance with its terms; and
- (e) this deed poll does not conflict with, or result in the breach of or default under, any provision of its constitution or any material term or provision of any agreement, or any writ, order or injunction, judgment, law, rule or regulation to which it is a party or subject or by which it is bound.

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## 5. Continuing obligations

This deed poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) KCE and Cline have each fully performed their obligations under this deed poll; or
- (b) the earlier termination of this deed poll under clause 2.

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## 6. General

### 6.1 Notices

Any notice or other communication to KCE or Cline in respect of this deed poll must be in legible writing and in English and:

- (a) must be addressed as shown below (as applicable):

**KC Euroholdings S.à r.l.**

Attention: Paul Vining

Address: 3801 PGA Boulevard, Suite 903  
Palm Beach Gardens  
Florida 33410  
United States of America  
Facsimile: +1 561 626 4938

**Cline Resource and Development Company**

Attention: Timothy Elliott  
Address: 3801 PGA Boulevard, Suite 903  
Palm Beach Gardens  
Florida 33410  
United States of America  
Facsimile: +1 561 626 4938

**and in either case, with a copy to:**

Attention: Brian Glasser  
Address: Bailey & Glasser, LLP  
209 Capitol Street, Charleston  
West Virginia 25301  
United States of America  
Facsimile: +1 304 342 1110

must be signed by the person making the communication or by a person duly authorised by that person; and

- (b) must be delivered or posted by prepaid post to the address of KCE or Cline (as the case may be) in accordance with clause 6.1(a) or sent by facsimile to the facsimile number of KCE or Cline (as the case may be) specified above.

## **6.2 Effective on receipt**

A notice given in accordance with clause 6.1 takes effect when received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the tenth day after posting; or

- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the hand delivery or transmission is after 5.00pm in the place of receipt, or the hand delivery, tenth day after posting or transmission is or is on a Saturday, Sunday or bank or public holiday in the place of receipt, the notice is taken to be received at 9.00am (local time) on the next day that is not a Saturday, Sunday or bank or public holiday in the place of receipt.

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## **7. General**

### **7.1 Governing law and jurisdiction**

This deed poll is governed by the law of Western Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia.

### **7.2 Waiver**

A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.

### **7.3 Alterations**

This deed poll may not be altered unless:

- (a) if before the First Court Date, the variation is agreed to by Coalspur; or
- (b) if on or after the First Court Date, the variation is agreed to by Coalspur and the Court indicates that the variation would not of itself preclude approval of the Scheme,

in which event KCE and Cline will enter into a further deed poll in favour of Scheme Participants giving effect to the variation.

### **7.4 Cumulative rights**

The rights, powers and remedies of KCE, Cline and Scheme Participants under this deed poll are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this deed poll.

### **7.5 Assignment**

The rights created by this deed poll are personal to each Scheme Participant and may only be assigned with the prior written consent of KCE and Cline.

## **7.6 Stamp duty**

KCE must (and Cline must procure that KCE will) pay any stamp duties and any related fines and penalties in respect of this deed poll, the performance of this deed poll and each transaction effected by or made under or pursuant to this deed poll.

## **7.7 Further assurances**

KCE and Cline must promptly do all things necessary or expedient to be done by it in connection with the matters referred to in this deed poll and to implement the Scheme.



## SIGNING PAGE

**Executed** as a deed poll.

**Executed by** and on behalf of **KC Euroholdings S.à r.l.**

\_\_\_\_\_  
Signature of Class A Manager



\_\_\_\_\_  
Signature of Class B Manager



\_\_\_\_\_  
Name of Class A Manager (print)

\_\_\_\_\_  
Name of Class B Manager (print)

**Executed by** and on behalf of **Cline Resource and Development Company**

\_\_\_\_\_  
Signature of Authorised Representative



\_\_\_\_\_  
Signature of Authorised Representative



\_\_\_\_\_  
Name of Authorised Representative (print)

\_\_\_\_\_  
Name of Authorised Representative (print)

## Schedule 6 - Coal Leases and Mining and Environmental Approvals

### Part 1: Coal Leases

#### Vista Coal Project

Lease No.	Lands
1308020345	5-23-051: 7;18S
1308020346	5-24-051: 12
1308020347	5-24-051: 8L16;9N,L7,L8
1308020348	5-24-051: 13S;14S
1308020349	5-24-051: 16SW,L1,L2,L7,L11-L13;17N,SE,L6;20SW,L1,L2
1311040471	5-22-051: 5NW;7SE;8S;9SW
1311040472	5-24-051: 25S;NW,L9,L10,L15;26;36SW,L2,L12
1308050904	5-22-051: 6L2-L5
1308050905	5-23-051: 16L4;17SW,L1,L2
1311050576	5-22-051: 6NE,L1,L6-L8
1311050581	5-23-051: 6E
1311050582	5-23-051: 18L9,L10
1307060429	5-24-051: 10;11;15
1307070587	5-23-050: 25L16;35NE,L14;36N,L1,L5-L8 5-23-051: 1S,NW,L9,L10,L15;2NE,L1,L6-L8; 11SE;12L3,L4
1307070588	5-23-051: 2NW;3NE,L13,L14;4L16;8N,SE,L5,L6;9
1399080001	5-23-050: 34N;35S,L11-L13;36L2-L4 5-23-051: 2L2-L5;3S,L11,L12;4S,NW,L9,L10,L15;5;8L3,L4
1308120620	5-23-050: 31-33;34S
1308120622	5-23-051: 6W 5-24-050: 35;36 5-24-051: 1;2N,L6-L8
1308120624	5-23-051: 18NW,L15,L16;19 5-24-051: 13N;14N;23;24

#### Vista South Project

Lease No.	Lands
1310090997	5-23-049: 18 5-24-049: 13;22-24
1310090998	5-24-049: 29
1310090999	5-24-050: 1;2;3N,4N;9-12
1310091000	5-24-050: 7N;8N
1310091001	5-25-050: 29L3,L4
1309120451	5-23-049: 19;30;31 5-23-050: 6 5-24-049: 35;36
1309120452	5-23-049: 28;29;32;33 5-23-050: 4;5
1309120453	5-24-049: 25-28;33;34 5-24-050: 3S;4S

Lease No.	Lands
1309120454	5-24-049: 31;32 5-24-050: 5;6;7S;8S
1309120455	5-23-050: 7-9; 18
1309120456	5-23-050: 16;21;22;27;28
1309120457	5-23-050: 17;19L1,L3-L5,L8,L12,,L13,L16;20;29;30 5-23-050: 19L2P, L6P, L7P, L9P, L10P, L11P, L14P, L15P PORTION(S) LYING OUTSIDE FORESTRY RESEARCH INSTALLATION.
1309120458	5-24-050: 13;14;23-26
1309120459	5-24-050: 15;16;21;22;27;28
1309120460	5-24-050: 17;18;20;29;30N
1309120461	5-25-050: 2S;3;4;9;10S
1309120462	5-25-050: 15NE,L1,L8
1309120463	5-25-050: 15L4,L5;16S,NW,L9,L10,L15;17;20S,NW,L9,L10, L15;21L3- L5;30W,L1,L2,L7,L10,L15,L16
1309120464	5-25-50: 21L9,L15,L16;28SE,L3,L5,L6
1308120621	5-24-050: 19;30S 5-25-050: 22N,SE,L3, L5, L6; 23-25;26S,NW, L9, L10, L15;27
1308120623	5-25-050: 1;2N;10N;11-14

### Athabasca River Project

Lease No.	Lands
1311120568	5-24-052: 17-19 5-25-052: 12;13;24
1311120570	5-25-052: 9-11;14-16
1311120572	5-25-052: 21-23;27;28
1311120573	5-26-052: 13;14; 15E;22-24
1311120574	5-26-052: 25-27;34-36

### Vista Extension Project

Lease No.	Lands
1307050787	5-22-051: 19N 5-23-051: 22N; 23N; 24N; 25; 26
1307050788	5-22-051: 28-31
1307050789	5-22-051: 32; 33; 5-22-052: 4; 5
1307050790	5-22-052: 6; 7; 5-23-052: 1; 12
1307050791	5-22-052: 8; 9; 16; 21
1307050792	5-22-051: 17-20
1307050793	5-23-051: 27; 34-36
1307050794	5-24-051: 16SW, L1, L2, L7, L11-L13; 17N, SE, L6; 20SW, L1, L2
1307050795	5-23-051: 30; 31

<b>Lease No.</b>	<b>Lands</b>
	5-24-051: 25L16; 36NE, L1, L7, L8, L11, L13, L14
1307050796	5-23-052: 2; 3; 10; 11
1307050797	5-22-051: 6NW; 7N, SW 5-23-051: 1L16; 11NE, L13, L14; 12N, SE, L5, L6; 13SW, L1, L2; 14S, L9-L12
1307050798	5-23-051: 10L16; 15; 16N, SE, L3, L5, L6; 17N, L7, L8, 20L1-L4
1307050799	5-22-051: 18 5-23-051: 13N, L7, L8; 14L13-L16; 23S; 24S
1307050800	5-23-051: 20N, L5-L8; 21; 22S
1307050801	5-22-051: 8N; 9N; 16; 17
1307050802	5-22-051: 19S, 20, 21
1308060419	5-22-050: 33N
1308060420	5-22-051: 9SE

## Part 2: Mining and Environmental Approvals

	<b>Coal Conservation Act (s. 10 (1) (b), 13, 15 (1) and 21) and Coal Conservation Rules (s. 5)</b>	
1.	Coal Processing Plant Approval	Coal Processing Plant Approval No. C 2011-3A issued May 8, 2014.
2.	Coal Mine Permit (to extend or otherwise substantially modify a previously permitted exploratory or experimental project, mine site or mine)	Coal Mine Permit No. C 2011-5A issued May 8, 2014.
3.	Licence to commence mining operations at a mine site	Coal Mine License No. C 2014-5 issued May 8, 2014 for Pit 1.
4.	Licence for waste rock dumps	Coal Mine License No. C 2014-4 issued May 8, 2014 for the South Dump, Coal Mine License No. C 2014-6 issued May 8, 2014 for the Subcrop Dump, and Coal Mine License No. C 2014-7 issued May 8, 2014 for the North Dump.
	<b>Environmental Protection and Enhancement Act (s. 58, 59, 60, 188; 5 (b) of Schedule of Activities), Code of Practice for Exploration Operations (s. 3(2), Waste Control Regulation, Section 3(d) of the Activities Designation Regulation</b>	
5.	Approval of the construction, operation and reclamation of a mine, quarry or pit	Approval No. 301345-00-00 issued August 22, 2014.
	<b>Water Act (s. 36; 1 (1) b); Code of Practice for Pipeline and Telecommunication Lines Crossing a Waterbody; Code of Practice for Watercourse Crossings</b>	
6.	Approval of the construction, operation, and maintenance of works and license to divert groundwater and surface water	Approval No. 00311969-00-00 issued August 22, 2014 and License No. 00311965-00-00 issued August 22, 2014.
	<b>Mines and Minerals Act (s. 64)</b>	
7.	Mineral Surface Lease (applicable to coal rights that are the property of the Crown in right of Alberta)	Mineral Surface Lease MSL 130948 issued October 10, 2014.
	<b>Historical Resources Act (s. 30, s. 34, s. 37 (2))</b>	
8.	Excavation Permit to carry out any operation or activity that may result in the alteration, damage or destruction of Alberta's historic resource sites.	Alberta Mitigative Permit 2011-105 and Mitigative Palaeontological Excavation Permit held by Lifeways of Canada Limited (historical resource contractor).
9.	Clearance Letter	File 4560-13-0002-003.
	<b>Hydro and Electric Energy Act (s 18(1))</b>	
10.	Order approving connection of a facility to a power plant, transmission line or electric distribution system	Permit and License No. U 2014-36 for the Vista substation, Permit and License No. U 2014-37 for the transmission line and Permit and License No. U 2014-38 for interconnection into the grid, all dated January 30, 2014.
	<b>Public Lands Act (s.20)</b>	
11.	Mineral Surface Lease	MSL 130948 issued October 10, 2014.
12.	Coal Exploration Program/Letters of Authority	Letter of Authority issued January 7, 2010; Letter of Authority 100004 issued June 16, 2010; Letter of Authority 100005 issued August 10, 2010; Letter of Authority 120003 issued July 9, 2012; Letter of Authority 140002 issued July 11, 2014.
	<b>Other</b>	
13.	Alberta Energy Approval	2014 ABAER 004

**Executed** as an agreement.

**Executed by Coalspur Mines Limited**  
**ACN 003 041 594** in accordance with  
section 127 of the *Corporations Act*:

*[Mark Rodda]*

\_\_\_\_\_  
Signature of Director

Mark Rodda

\_\_\_\_\_  
Name of Director in full

*[Simon Robertson]*

\_\_\_\_\_  
Signature of Secretary/other Director

Simon Robertson

\_\_\_\_\_  
Name of Secretary/other Director in full

**Executed by KC Euroholdings S.à r.l.:**

*[Robert Keith Varney]*

\_\_\_\_\_  
Signature of Class A Manager

Robert Keith Varney

\_\_\_\_\_  
Name of Class A Manager in full

*[Onno Bouwmeister] [Sean Murray]*

\_\_\_\_\_  
Signature of Class B Manager

Lux Business Management Sarl represented by  
Onno Bouwmeister and Sean Murray

\_\_\_\_\_  
Name of Class B Manager in full

**Executed by Cline Resource and  
Development Company:**

*[Chris Cline]*

\_\_\_\_\_  
Signature of Authorised Representative

Chris Cline

\_\_\_\_\_  
Name of Authorised Representative in full

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Name of Authorised Representative in full