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TREASURER; MINISTER FOR COMMERCE;  
SCIENCE & INNOVATION; HOUSING & WORKS

Our ref : 7045139

Ms Shirley Int'Veld  
Chief Executive Officer  
Verve Energy  
Level 11  
Australia Place  
15-17 William Street  
PERTH WA 6000

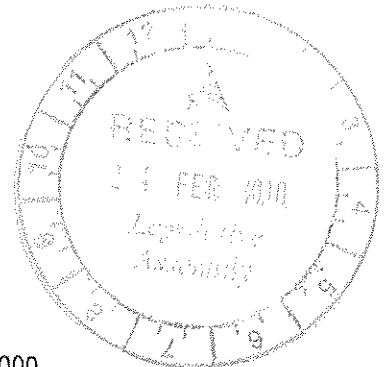
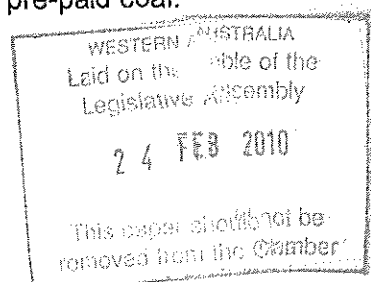
Dear Ms Int'Veld

**PROPOSED PRE-PAYMENT BY VERVE ENERGY FOR DELIVERY OF COAL BY  
THE GRIFFIN COAL MINING COMPANY PTY LTD**

I refer to the proposed arrangements to be entered into by Verve Energy with The Griffin Coal Mining Company Pty Ltd (Griffin) for Verve Energy to pre-pay Griffin, if so requested by Griffin, up to \$4 million for the delivery of coal under their Coal Supply Contract on the terms set out in the attached Term Sheet.

In consideration of Verve Energy entering into those arrangements at the request of the State, the State has agreed to provide to Verve Energy the undertaking set out below.

The State undertakes that in the event Griffin does not Deliver (as defined in the Coal Supply Contract) to Verve Energy, in accordance with their Coal Supply Contract (as varied by the Term Sheet), coal to the value pre-paid by Verve Energy in accordance with the abovementioned arrangements, the State will, upon the termination of the Coal Supply Contract or 30 June 2010 whichever occurs first, pay to Verve Energy an amount equal to the amount of the then undischarged liability of Griffin to pay liquidated damages (and interest on such damages) to Verve Energy (in accordance with the abovementioned arrangements) in respect of the pre-payment and non-delivery of pre-paid coal.



The State's obligation to pay under this undertaking is subject to Verve Energy:

- (1) first assigning to the State and in a form acceptable to the State:
  - (a) Griffin's abovementioned debt; and
  - (b) all security granted to Verve Energy pursuant to clause 3.2 of the Term Sheet; and
- (2) Verve Energy, not without the prior written consent of the State, compromising or settling its claim, or otherwise waiving its rights, to be paid the abovementioned debt (and interest) that would otherwise be payable to it.

Yours sincerely



**TROY BUSWELL MLA  
TREASURER; MINISTER FOR COMMERCE;  
SCIENCE AND INNOVATION; HOUSING AND WORKS**

### Griffin Coal – Pre-Payment under Coal Supply Contract with Verve

- 1.1 The Griffin Coal Mining Company Pty Ltd (ACN 008 667 285) (*Griffin*) and Verve Energy (ABN 68 673 830 106) (*Verve*) are parties to the Consolidated Deed to the Coal Supply Agreement (Incorporating the 1995 Amendments) dated 11 November 1991 as amended (*Coal Supply Contract*).
- 1.2 The Administrators are Brian McMaster, Clifford Rocke, Mark Mentha and Scott Kershaw (*Administrators*).
- 1.3 Griffin and Verve have agreed to amend the Coal Supply Contract on the terms of this Term Sheet.
- 1.4 This Term Sheet is binding in accordance with its terms.

#### 2. Terms

Term			
1.	<b>Contract</b>	1.1	Griffin will Deliver coal under the terms of the Coal Supply Contract as effected by this amendment.
		1.2	This amendment takes effect from its date ( <i>Effective Date</i> ).
2.	<b>Pre-Payment</b>	2.1	At any time prior to the end of 5 Business Days after the Effective Date, Griffin may request payment in advance ( <i>Pre-payment</i> ) for coal to be supplied under the Coal Supply Contract in accordance with the following provisions and, subject to Griffin complying with the Coal Supply Contract and the terms of this amendment, Verve will pay the amount requested by Griffin by way of Pre-payment for coal under the Coal Sale Contract before the close of business on the business day following the receipt of that request .
		2.2	Griffin may not request the Pre-payment of more than \$4 million, and Griffin may make only one request for a Pre-payment.
		2.3	Any Pre-payment monies received by Griffin must be deposited to a separate bank account with a Western Australian branch of an Australian trading bank (having a credit rating of least AA by Moody's Investor Services) styled "Verve Pre-Prepayment Trust Account" ( <i>Account</i> )
		2.4	The signatories to the Account must be the Administrators or any one of them.
		2.5	Moneys may only be withdrawn by the Administrators from the Account to be immediately applied by the Administrators in the payment of the following expenses of Griffin (directly, or by way of payment or reimbursement to a contractor of Griffin for those expenses incurred by that contractor) for which the Administrators are liable under section 443A or section 443B of the Corporations Act 2001: <ul style="list-style-type: none"> <li>(a) employee wages, superannuation contributions, payroll tax, group tax and other direct employment overheads accruing after the date of this amendment for employees engaged in, or in the direct supervision, management and</li> </ul>

<b>Term</b>	
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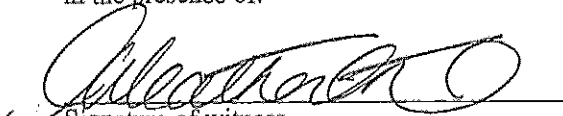
- administration of, the conduct of mining operations in the Muja pit at Collie and at any other coal mining operations conducted by Griffin at Collie;
  - (b) payments to contractors of Griffin or Carpenter Mine Management Pty Ltd (Administrators Appointed) engaged in removing the overburden from the coal seams in the Muja pit at Collie and otherwise involved in the preparation or facilitation of mining operations at Collie;
  - (c) machinery rental, hire purchase commitments, equipment finance payments and similar charges for the use or occupation of property in connection with the conduct of mining operations, in the Muja pit at Collie;
  - (d) machine operating costs, necessary maintenance expenses, in connection with the conduct of mining operations, in the Muja pit at Collie accruing after the date of this amendment ;
  - (e) costs of weighing, sampling and analysis of coal for compliance by Griffin with its obligations under Article V of the Coal Supply Contract accruing after the date of this amendment .
- 2.6 Any monies actually withdrawn from the Account shall be applied by Griffin against the obligation of Verve, and shall *pro tanto* extinguish the obligation of Verve, to pay for coal delivered by Griffin after the date of this amendment. Verve shall have no obligation to pay for coal delivered by Griffin pursuant to the Coal Supply Contract until the aggregate amount of the Pre-Payment has been so applied.
- 2.7 The coal for which Pre-payment has been made is *Pre-Paid Coal*.
- 2.8 The price of Pre-paid Coal is the price provided under the Coal Supply Contract, calculated as a cost per tonne delivered, less 10%.
- 2.9 If Griffin has not delivered Pre-paid Coal to Verve to the value of the amount of the Prepayment (the value of such deficit being the *Pre-Paid Coal Deficit*) within 20 Business Days of the receipt by the Administrators of that Pre-payment (*End Date*):
- (a) it is a breach of this Term Sheet;
  - (b) Griffin must pay to Verve, as liquidated damages for that breach, an amount (the *Damages*), calculated as the sum of:
    - (i) the amount of the Pre-Paid Coal Deficit ; less
    - (ii) the amounts refunded under paragraph 2.9(c); less
    - (iii) the value of Pre-Paid Coal delivered after the End

## Term

		Date but before 31 March 2010 and the value of any coal extracted by or on behalf of Verve under clause 3.1 (being the product of tonnage actually delivered and accepted by Verve at the price payable for that coal under this amendment); plus
		(iv) an amount equal to the sum of (i) and (ii) multiplied by a rate equal to 7% per annum for the period from the End Date to the earlier of the date that all Pre-Paid Coal is delivered and the date all liquidated damages are paid.
		(c) the amount outstanding to the credit of the Account at the close of business on that End Date shall be immediately refunded by the Administrators to Verve, in full without set off or deduction of any kind.
	2.10	Griffin acknowledges and agrees that the Damages are a genuine pre-estimate of the loss that Verve will suffer in the event that Griffin has not delivered Pre-paid Coal to Verve to the value of the amount of the Prepayment, and Griffin irrevocably waives and surrenders any claim or defence to the effect that recovery by Verve (or its permitted assigns) of the Damages constitutes an unenforceable penalty.
	2.11	Griffin agrees that Verve may (in its sole and absolute discretion) assign to the State of Western Australia all of Verve's rights, title and interest in its rights to recover Damages from Griffin.
3.	<b>Security</b>	
	3.1	If Griffin is unable for any reason to Deliver coal for which a Pre-payment has been made under clause 2.1 within 20 Business Days of the date on which the Pre-payment was made, Griffin grants Verve all reasonable access to its premises and all reasonable access to its equipment as may be necessary for Verve (or a contractor on Verve's behalf) to enter upon its premises and extract and take possession of an aggregate quantity of coal from the Coal Mining Leases comprising: <ul style="list-style-type: none"> <li>(a) the balance of Griffin's obligations to deliver Pre-Paid Coal to Verve; and</li> <li>(b) the quantity of coal having a value (calculated as Pre-paid Coal) equal to the cost to Verve of extracting and taking possession of coal to discharge Griffin's obligations (<i>Cost Recoupment Coal</i>) until those costs have been fully recovered</li> </ul>
	3.2	If a Pre-payment request is made under clause 2.1, then at the request of Verve, and subject to obtaining all necessary consents, Griffin will grant Verve security over the coal extracted from the Coal Mining Leases up to the aggregate volume of Pre-Paid Coal and Cost Recoupment Coal. The grant of security is a condition subsequent to the Pre-payment under clause 2.1. Griffin will seek

Term		
		all consents necessary to grant such security.
	3.3	Griffin will enter into such other documents or agreements and obtain such other consents as may be necessary to give Verve the access to its premises and equipment and otherwise to give effect to the rights of access contemplated in clause 3.1.
4.	<b>Administrators protection</b>	4.1 This is an amendment to the Coal Supply Contract and the Administrators do not adopt the Coal Supply Contract and this does not constitute a new contract.
		4.2 The Administrators do not by virtue of this amendment assume a personal liability under section 443A of the <i>Corporations Act 2001</i> .
5.	<b>Supply contract preserved</b>	5.1 In all other respects the Coal Supply Contract will survive in accordance with its terms.
		5.2 Except is expressly provided, above, nothing in this amendment suspends, varies or derogates from any right, power or privilege of Verve, now accrued or hereafter accruing under the Coal Supply Contract.
		5.3 In particular, nothing in this amendment derogates from the Notice of Default delivered by Verve to Griffin on 8 January 2010 in respect of the breach by Griffin of its obligations under clause 6.3(d) of the Coal Sales Contract.
6.	<b>Interpretation</b>	6.1 Capitalised terms not otherwise defined in this Term Sheet have the meanings given to those terms in the Coal Supply Contract.

Signed by  
**The Griffin Coal Mining  
Company Pty Limited**  
(Administrators Appointed)  
by its joint and several administrator  
in the presence of:

  
\_\_\_\_\_  
Signature of witness

Level 11, 37 St Georges Tce  
Perth WA 6000

  
\_\_\_\_\_  
Signature of Administrator

Signed by  
**Verve Energy**  
by its authorised person in the  
presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Authorised Person

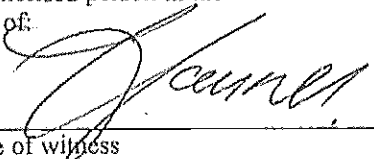
Term Sheet

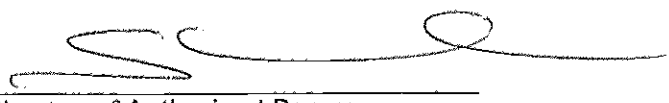
Signed by  
The Griffin Coal Mining  
Company Pty Limited  
(Administrators Appointed)  
by its joint and several administrator  
in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of Administrator

Signed by  
Verve Energy  
by its authorised person in the  
presence of:

  
\_\_\_\_\_  
Signature of witness

  
\_\_\_\_\_  
Signature of Authorised Person

(S.E. FN' (VELP))