



Western Australia

Mineral Sands (Eneabba) Agreement Act 1975

Compare between:

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Western Australia

Mineral Sands (Eneabba) Agreement Act 1975

An Act to ratify an agreement between the State of Western Australia and Allied Eneabba Pty. Ltd. with respect to the mining and concentrating of mineral sands and the production of heavy minerals.

1. Short title

This Act may be cited as the *Mineral Sands (Eneabba) Agreement Act 1975*¹.

[Section 1 amended by No. 61 of 1988 s. 4.]

2. Interpretation

In this Act unless the contrary intention appears —

[the 2008 Variation Agreement means the agreement a copy of which is set out in Schedule 3;](#)

the Agreement means the agreement a copy of which is set out in Schedule 1 and, if that agreement is altered in accordance with the provisions thereof, includes the agreement as so altered from time to time;

the Variation Agreement means the agreement a copy of which is set out in Schedule 2.

[Section 2 inserted by No. 61 of 1988 s. 55; amended by No. 45 of 2008 s. 4.]

3. Ratification of the Agreement

The Agreement is hereby ratified.

4. Variation Agreement

- (1) The Variation Agreement is ratified and its implementation is authorised.
- (2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the Variation Agreement shall operate and take effect notwithstanding any other Act or law.

[Section 4 inserted by No. 61 of 1988 s. 6.]

5. 2008 Variation Agreement

- (1) The 2008 Variation Agreement is ratified and its implementation is authorised.
- (2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the 2008 Variation Agreement operates and takes effect despite any other Act or law.

[Section 5 inserted by No. 45 of 2008 s. 5.]

Schedule 1

[Heading amended by No. 61 of 1988 s. 8.]

THIS AGREEMENT made this 27th day of June, 1975 BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., M.L.A. Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "the State") of the one part and ALLIED ENEABBA PTY. LTD. a company incorporated under the Companies Act of the State of Western Australia and having its registered office situate at 283 Rokeby Road Subiaco (hereinafter called "the Company" in which term shall be included the Company and its successors and permitted assigns and appointees) of the other part.

WHEREAS:

- (a) the Company has established the existence of a heavy mineral sands ore body near Eneabba;
- (b) the Company has constructed at a cost in excess of \$1 000 000 a pilot plant at Eneabba to establish the methods to be adopted in the mining, concentration and separation of the heavy minerals and the design engineering and economic feasibility of a mining and treatment project and has commenced the construction of a plant with a designed capacity to produce not less than 450 000 tonnes per year of heavy minerals at a capital cost in excess of \$16 000 000;
- (c) the Company now desires to mine and concentrate ore at Eneabba, to transport heavy mineral concentrates by rail to Meru for separation into heavy minerals and to transport heavy minerals to the port of Geraldton for shipment;
- (d) the Company has obtained the finance necessary to implement the said project;
- (e) the Company has entered into long term contracts for the sale overseas of heavy minerals;
- (f) the State requires the Company, subject to the provisions of this Agreement, to pursue actively and progressively a policy leading ultimately to the processing in Western Australia of heavy minerals to the maximum degree possible.

Schedule 1

NOW THIS AGREEMENT WITNESSETH:

1. In this Agreement subject to the context —

“advise”, “apply”, “approve”, “approval”, “consent”, “certify”, “direct”, “notify”, “request” or “require” means advise, apply, approve, approval, consent, certify, direct, notify, request, or require in writing as the case may be;

“approved project” means the project referred to in recitals (b) and (c) of this Agreement and more specifically described in a bound volume marked “B” (initialled by or on behalf of the parties hereto for the purposes of identification);

“associated company” means —

(a) any company or corporation providing for the purpose of this Agreement capital of not less than \$2 000 000 which is incorporated or formed within the United Kingdom, the United States of America or Australia or such other country as the Minister may approve and which —

(i) is promoted by the Company for all or any of the purposes of this Agreement and in which the Company or some other company or corporation acceptable to the Minister has not less than a 25% interest or some lesser interest acceptable to the Minister; or

(ii) is related within the meaning of that term as used in section 6 of the *Companies Act 1961*, to any company or corporation in which the Company or some other company or corporation acceptable to the Minister holds not less than 25% of the issued ordinary share capital and

(iii) is notified to the Minister by the Company as being such a company;

(b) any company or corporation approved in writing by the Minister;

“Clause” means a clause of this Agreement;

“commencement date” means the date the Bill referred to in Clause 3 comes into operation as an Act;

“Commonwealth” means Commonwealth of Australia and includes the Government for the time being thereof;

“common inloading system” means the mineral sands iron ore handling system extended by the Geraldton Port Authority pursuant to Clause 19(3) for the purpose of train unloading and conveying heavy minerals and heavy mineral products to the respective stockpile areas of the Company and other companies shipping heavy minerals and heavy mineral products through the port;

“common materials handling system” means the common inloading system extended by the Geraldton Port Authority pursuant to Clause 19(3) for the purpose of conveying heavy minerals and heavy mineral products directly to the shiploader from the respective stockpile areas of the Company and other companies shipping heavy minerals and heavy mineral products through the port;

“concentration plant” means the plant being constructed by the Company near Eneabba for the concentration of ore into heavy mineral concentrates;

“heavy minerals” means titaniferous minerals (including ilmenite rutile and leucoxene) and magnetite zircon monazite kyanite staurolite xenotime and garnet resulting from the separation of heavy mineral concentrates;

“heavy mineral concentrates” means ore concentrated prior to separation into component heavy minerals;

“heavy mineral products” means the products resulting from secondary processing;

“Land Act” means the *Land Act 1933*;

“mineral claim” means a mineral claim granted pursuant to regulations made under the Mining Act or any mining right (other than a mineral lease) granted in substitution therefor under any amendment to the Mining Act or any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder;

Schedule 1

“mineral lease” means the mineral lease referred to in Clause 15 and includes any renewal thereof and according to the context shall describe the area of land demised as well as the instrument by which it is demised;

“mineral sands-iron ore handling system” means the handling system at the port of Geraldton constructed for the purposes of the WMC Joint Venturers under the *Iron Ore (Tallering Peak) Agreement Act 1964* and to be modified by the WMC Joint Venturers for the purposes of handling heavy minerals and heavy mineral products for Western Titanium Ltd. and WMC Mineral Sands Limited through the port;

“Mining Act” means the *Mining Act 1904*;

“mining areas” means the areas delineated and coloured red (hereinafter called “the red areas”) on the plan marked “A” (initialled by or on behalf of the parties hereto for the purposes of identification) over which the Company as at the date hereof holds mineral claims together with such of the areas delineated and coloured yellow (hereinafter called “the yellow areas”) on the said plan over which mineral claims may at any time within 3 years after the date of commencement of the mineral lease, be granted to the Company by the Minister for Mines or transferred to the Company with the approval of that Minister;

“Minister” means the Minister in the Government of the State for the time being responsible (under whatsoever title) for the administration of the ratifying Act and pending the passing of the Act means the Minister for the time being designated in a notice from the State to the Company and includes the successors in office of the Minister;

“Minister for Mines” means the Minister in the Government of the State for the time being responsible for the administration of the Mining Act;

“month” means calendar month;

“notice” means notice in writing;

“ore” means any rock soil or sand bearing heavy minerals mined from the mineral lease;

“person” or “persons” includes bodies corporate;

“port” means the existing port of Geraldton, or with the consent of the Minister any other port that may be established near Geraldton under the control of the Geraldton Port Authority;

“private road” means a road (not being a public road) which is either constructed by the Company for the purposes of the approved project and where applicable in accordance with an approved proposal hereunder or agreed by the parties to be a private road for the purposes of this Agreement;

“public road” means a road as defined by the *Traffic Act 1919*;

“Public Works Act” means the *Public Works Act 1902*;

“Railways Commission” means the Western Australian Government Railways Commission established pursuant to the *Government Railways Act 1904*;

“ratifying Act” means the Act to ratify this Agreement and referred to in Clause 4;

“said State” means the State of Western Australia;

“secondary processing” means the processing of heavy minerals in the said State to substantially enhance their economic value;

“separation plant” means the plant being constructed by the Company at Meru for the separation of heavy mineral concentrates into component heavy minerals;

“State Electricity Commission” means the State Electricity Commission of Western Australia established pursuant to the *State Electricity Commission Act 1945*;

“this Agreement” “hereof” and “hereunder” refer to this Agreement whether in its original form or as from time to time added to varied or amended;

“town” means the townsite of Eneabba as amended and redescribed from time to time pursuant to section 10 of the Land Act;

“WMC Joint Venturers” means and includes Western Mining Corporation Limited, The Hanna Mining Company and Homestake Mining Company and their permitted assigns being the parties bound by an agreement dated 20th November 1964 entered into with the

Schedule 1

then Premier on behalf of the State of Western Australia and ratified by the *Iron Ore (Talling Peak) Agreement Act 1964*.

Interpretation²

2. In this Agreement —
- (a) monetary references are references to Australian currency unless otherwise specifically expressed;
 - (b) power given under any clause other than Clause 31 to extend any period or date shall be without prejudice to the power of the Minister under Clause 31;
 - (c) marginal notes do not affect the interpretation or construction²; and
 - (d) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.

Initial obligations of the State²

3. The State shall —
- (a) introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31st December 1975; and
 - (b) to the extent reasonably necessary for the purposes of this Agreement allow the Company to enter upon Crown lands.

Ratification and operation²

4. (1) The provisions of this Agreement other than this Clause and Clauses 1 and 3 shall not come into operation until the Bill referred to in Clause 3 has been passed by the Parliament of Western Australia and comes into operation as an Act.

(2) If before 31st December 1975 the said Bill is not passed then unless the parties hereto otherwise agree this Agreement shall then cease and determine and neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement.

(3) On the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

Environment. Company to submit proposals²

5. On or before 30th September 1975 (or thereafter within such extended time as the Minister may allow as hereinafter provided) the Company shall submit to the Minister to the fullest extent reasonably practicable its detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister) for measures to be taken in respect of the approved project for the protection and management of the environment including rehabilitation and/or restoration of the mined areas, the prevention of the discharge of tailings, slimes, pollutants or overburden into the surrounding country, water courses, lakes or underground water supplies and the prevention of soil erosion.

Consideration of proposals²

6. (1) On receipt of the said proposals the Minister shall —
- (a) approve of the said proposals either wholly or in part without qualification or reservation; or
 - (b) require as a condition precedent to the giving of his approval to the said proposals that the Company makes such alteration thereto or complies with such conditions in respect thereto as he thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions.

Advice of Minister's decision²

(2) The Minister shall within 2 months after receipt of the said proposals give notice to the Company of his decision in respect to the same.

Consultation with Minister²

(3) If the decision of the Minister is as mentioned in paragraph (b) of subclause (1) of this Clause the Minister shall afford the Company full opportunity to consult with him should it be so desire to submit new proposals either generally or in respect of some particular matter.

Schedule 1

Minister's decision subject to arbitration²

(4) If the decision of the Minister is as mentioned in the said paragraph (b) and the Company considers that the condition precedent is unreasonable the Company may within 2 months after receipt of the notice mentioned in subclause (2) of this Clause elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the condition precedent.

Arbitration award²

(5) An award made on an arbitration pursuant to subclause (4) of this Clause shall have force and effect as follows —

- (a) if by the award the dispute is decided against the Company then unless the Company within 3 months after delivery of the award gives notice to the Minister of its acceptance of the award this Agreement shall on the expiration of that period of 3 months cease and determine; or
- (b) if by the award the dispute is decided in favour of the Company the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

Additional proposals²

7. If the Company at any time during the continuance of this Agreement desires to significantly modify expand or otherwise vary its activities beyond those specified in the approved project it shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such other matters as the Minister may require. The provisions of Clauses 5 and 6 where applicable shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause. The Company shall implement the approved proposals in accordance with the terms thereof.

Additional proposals for the protection and management of the environment²

8. (1) The Company shall, in respect of the matters referred to in Clause 5 which are the subject of approved proposals under this Agreement, carry out a continuous programme of investigation and research including monitoring and

the study of sample areas to ascertain the effectiveness of the measures it is taking pursuant to its approved proposals for the protection and management of the environment.

(2) The Company shall during the currency of this Agreement at yearly intervals commencing from the date when the Company's proposals are approved submit interim report to the Minister concerning investigations and research carried out pursuant to subclause (1) of this Clause and at 3 yearly intervals commencing from such date submit a detailed report to the Minister on the result of the investigations and research during the previous 3 years.

(3) The Minister may within 2 months of the receipt of the detailed report pursuant to subclause (2) of this Clause notify the Company that he requires additional detailed proposals to be submitted in respect of all or any of the matters the subject of the detailed report.

(4) The Company shall within 2 months of the receipt of a notice given pursuant to subclause (3) of this Clause submit to the Minister additional detailed proposals as required and the provisions of Clauses 5 and 6 where applicable shall *mutatis mutandis* apply in respect of such proposals.

(5) The Company shall implement the approved proposals in accordance with the terms thereof.

Completion of approved project²

9. The Company shall complete the approved project within 1 year of the commencement date and implement the approved proposals in accordance with the terms thereof.

Use of local professional services, labour and materials²

10. (1) The Company shall for the purposes of this Agreement as far as it is reasonable and economically practicable —

- (a) use the services of engineers, surveyors, architects and other professional consultants resident and available within the said State;
- (b) use labour available within the said State;
- (c) when calling for tenders and letting contracts for works materials plant equipment and supplies ensure that Western

Schedule 1

Australian suppliers manufacturers and contractors are given reasonable opportunity to tender or quote; and

- (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere.

(2) The Company shall from time to time during the currency of this Agreement when requested by the Minister submit a report concerning its implementation of the provisions of subclause (1) of this Clause.

Roads²

11. (1) The Company shall —

Private Roads²

- (a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in its operations hereunder;
- (b) at its own cost make such provision as shall ensure that all persons and vehicles (other than those engaged upon the Company's operations and its invitees and licensees) are excluded from use of any such private roads; and
- (c) at any place where such private roads are constructed by the Company so as to cross any railways or public roads provide such reasonable protection as may be required by the Commissioner of Main Roads or the Railways Commission as the case may be.

Public Roads²

(2) The State shall maintain or cause to be maintained public roads over which it has control (and which may be used by the Company) to a standard similar to comparable public roads maintained by the State.

(3) In the event that the Company's operations require the use of a public road which is inadequate for the purpose, or result in excessive damage or deterioration of any public road (other than fair wear and tear) the Company shall pay to the State the whole or an equitable part of the total cost of any

upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads having regard to the use of such road by others PROVIDED THAT nothing in this subclause shall apply to the Eneabba-Geraldton highway.

Liability²

(4) The parties hereto further covenant and agree with each other that —

(a) for the purposes of determining whether and the extent to which —

(i) the Company is liable to any person or body corporate (other than the State); or

(ii) an action is maintainable by any such person or body corporate

in respect of the death or injury of any person or damage to any property arising out of the use of any of the roads for the maintenance of which the Company is responsible hereunder and for no other purpose the Company shall be deemed to be a municipality and the said roads shall be deemed to be streets under the care control and management of the Company; and

(b) for the purposes of this Clause the terms “municipality” “street” and “care control and management” shall have the meanings which they respectively have in the *Local Government Act 1960*.

Railways Freight to be carried²

12. (1) The State shall authorise and cause the Railways Commission to transport or arrange to transport and the Company shall so consign —

(a) by rail, or by road (at the election of the Railways Commission) all its production of heavy mineral concentrates from a loading point or points to be agreed at or near the concentration plant to an unloading point or points to be agreed at the separation plant;

(b) by rail all its production of heavy minerals from a loading point or points to be agreed at the separation plant to the port or elsewhere as the State may agree; and

Schedule 1

- (c) in so far as is practicable, all other bulk commodities required for the Company's operations hereunder.

Other commodities²

(2) The Company may at its election transport either by road or by rail all commodities other than those referred to in subclause (1) of this Clause required for its operations hereunder PROVIDED THAT the Railways Commission shall not be required to accept rail freight in less than full wagon loads.

Method of transport²

(3) Until such time as the Railways Commission operates a rail service between the separation plant and the port the Company may transport its heavy mineral concentrates and heavy minerals, by road between the separation plant and the port.

Road licenses²

(4) Where the Company elects to transport commodities by road pursuant to subclause (2) of this Clause or where the Company desires to transport heavy mineral concentrates and heavy minerals by road between the separation plant and the port pursuant to subclause (3) of this Clause the Commissioner of Transport shall upon request by the Company and upon payment of the licence fees prescribed by him under the *Transport Commission Act 1966* issue licences for road carriage to the Company or its nominees provided that such nominees shall be persons whose character qualifications and financial stability are approved by the Commissioner.

(5) If the Railways Commission elects to transport or arrange the transport of the Company's heavy mineral concentrates by road from the concentration plant to the separation plant the following provisions shall apply —

- (a) The Railways Commission shall with suitable covered bulk road vehicles provide a road service between the concentration plant and the separation plant Monday to Saturday inclusive in each week. Should additional services be provided at the request of the Company on Sundays, the Company shall reimburse the Railways Commission for any additional expenses which are payable as a consequence.

- (b) The Company shall provide and maintain a stockpile of heavy mineral concentrates at the concentration plant of sufficient size to ensure the continuity of the road service.
- (c) The Company shall be responsible for the loading and unloading of the heavy mineral concentrates and shall provide suitable equipment for this purpose.

Rail Additional facilities²

(6) subject to the provisions of Clause 19 when the Railways Commission commences to transport heavy mineral concentrates by rail from the concentration plant to the separation plant, the Company shall if required by the Railways Commission and in accordance with plans and specifications approved by the Railways Commission at its own cost provide and maintain loading and unloading facilities sufficient to meet train operating requirements and terminal equipment (including weighing devices, communication systems, sidings, shunting loops, spurs and other connections) together with a staff adequate to ensure the proper operation of all such loading and unloading facilities and terminal equipment.

Maintenance²

(7) Subject to the provisions of subclause (6) of this Clause the Railways Commission shall at its own cost provide maintain and service all railways, locomotives, brakevans and wagons necessary and suitable for the purposes of this Agreement provided that the Company may if it so elects provide wagons to a design and specification approved by the Railways Commission and such wagons shall be maintained and serviced by the Railways Commission. The Railways Commission shall be responsible for the cleaning of all wagons used for the purposes of this Agreement.

Loading facilities²

(8) To enable the Railways Commission to transport or arrange the transport of the Company's heavy minerals by rail from the separation plant to the port the Company shall at its own cost provide maintain and operate loading facilities at the separation plant to the satisfaction of the Railways Commission.

Notice of requirements²

(9) The Company shall provide to the satisfaction of the Railways Commission adequate notice in advance of its requirements (including

Schedule 1

anticipated tonneages in each year) as to the use of the railway to enable the Railways Commission to make arrangements to meet those requirements and shall thereafter give not less than 18 months prior notice of any change in those requirements. In particular the Company shall agree with the Railways Commission the pattern of working including weekly and monthly despatches.

Conditions of carriage²

(10) All commodities transported by or on behalf of the Railways Commission pursuant to this Clause shall be carried at the Company's risk and shall be subject to the by-laws made under the *Government Railways Act 1904* (in so far as those by-laws are not inconsistent with this Agreement) and to the provisions of this Clause.

Freight rates²

(11) The Company shall pay to the State freight in respect of all commodities specified in the First Schedule hereto carried by the Railways Commission pursuant to this Agreement at the appropriate freight rates and in the manner and subject to the conditions set out in that Schedule.

New railway²

(12) The State shall for the purposes of this Agreement and as authorised by the *Dongara-Eneabba Railway Act 1974* cause the Railways Commission to construct and operate a railway to the mining areas. The route of the railway south of Eneabba shall be aligned by the Railways Commission after consultation with the Company.

Mining²

(13) The Company shall ensure that mining adjacent to the railway shall be carried out in such manner as not to endanger the railway. The Company shall obtain the prior approval of the Railways Commission before commencing any mining which might be likely to affect the stability of the railway.

Railway crossings²

(14) Notwithstanding the provisions of Clause 11(1)(c) the Company shall be permitted access over the railway only at crossings approved by the Railways Commission.

Removal of railway²

(15) The Railways Commission shall at its cost remove any section of the railway not required by the Railways Commission for serving the mineral sands mining and processing operations of the Company or other companies so engaged.

Diversion of railway²

(16) Should any portion of the railway be within the mineral lease the Company may not earlier than 1st January 1980 request the Railways Commission to divert the railway to allow mining of that portion of the mineral lease. On receipt of such request the Railways Commission shall with reasonable expedition determine an alternative route for the railway satisfactory to the Railways Commission and for this purpose may require the Company to provide land at the Company's expense. The Railways Commission shall subject to the availability of land divert the railway within 12 months of the determination of the alternative route as aforesaid PROVIDED THAT the Railways Commission shall only be required to make one diversion pursuant to this subclause during the currency of this Agreement.

Electricity²

13. (1) The State shall cause the State Electricity Commission to use its best endeavours to complete by not later than 30th June 1978 a 132 kV transmission line to Eneabba and a 33 kV feeder line to a point on or adjacent to the mineral lease with the object of meeting *inter alia* the Company's requirements of electricity for its operations hereunder.

(2) Subject to completion of the said transmission line and feeder line the State Electricity Commission shall supply and the Company shall purchase from the State Electricity Commission all its requirements of electricity for its operations hereunder on the State Electricity Commission's usual conditions and at the tariffs prescribed from time to time appropriate to the Company's level of use.

(3) Notwithstanding the terms of subclause (2) of this Clause the Company may in accordance with the approved project and subject to the provisions of the *Electricity Act 1945* and the approval and requirements of the State Electricity Commission, install and operate at its cost, at a convenient location within the mineral lease, equipment to generate electricity for all or part of its operations hereunder and continue to operate such equipment in

Schedule 1

generating all or part of its requirements of electricity after completion of installation by the State Electricity Commission of the transmission line and the feeder line referred to in subclause (1) of this Clause for such period as the parties may agree.

Water supply mining areas²

14. (1) The Company has given the State notice in the form required by the Minister in respect of its daily requirements of water at the mining areas (which amounts or such other amounts as shall from time to time be agreed between the parties hereto to be reasonable shall hereinafter be called "the Company's daily water requirements").

Search in mining areas²

(2) The Company shall at its cost and in collaboration with the State continue to search for underground water within the mining areas. Where appropriate the Company shall employ and retain experienced groundwater consultants. The Company shall furnish to the Minister details of the results of its investigations and copies of the reports of such consultants as they become available.

Search outside mining areas²

(3) If in the opinion of the Minister, the reports of the consultants pursuant to subclause (2) of this Clause indicate that the source of underground water in the mining areas is likely to be inadequate to supply the Company's daily water requirements, the parties hereto shall agree on a programme which shall be carried out by the State at the cost of the Company to search for water inside and outside the mining areas. The State may at its discretion extend such water search to provide a quantity of water greater than that required to supply the Company's daily water requirements, but in that event, the cost of such search shall be shared by the parties hereto in such a manner as may be agreed to be fair in all the circumstances.

Grant of licence²

(4) If the investigations referred to in subclauses (2) and (3) of this Clause prove to the satisfaction of the Minister the availability of suitable underground water sources which can continue to be drawn on by the Company without seriously affecting the water pressure in the aquifer beneath the mining areas or adjacent areas or the availability of water in the adjacent areas, the State shall continue to grant to the Company a licence to develop and draw from such

sources without cost the Company's daily water requirements on such terms and conditions as the Minister may approve and during the continuance of this Agreement grant renewals of such licence on such terms and conditions as the Minister may approve PROVIDED HOWEVER that if at any time the Minister, having regard to the reports of the Company's consultants, considers that such sources are hydrologically inadequate to meet the Company's daily water requirements, the State may after consultation with the Company limit the amount of water which may be taken from such sources at any one time or from time to time to the maximum which such sources are hydrologically capable of meeting.

Construction of water works²

(5) The Company shall at its own expense provide and construct to standards approved by the State all necessary bores valves pipelines meters tanks pumps equipment and appurtenances necessary to draw transport use and dispose of water drawn from any source licensed to the Company.

Surrender of licence²

(6) If during the currency of a licence granted under the provisions of this Clause the Minister is of the opinion that it would be desirable for water conservation purposes or water management purposes that sources of water licensed to the Company be controlled and operated by the State as part of a district or regional water supply scheme, the Minister may on giving 6 months prior notice to the Company of his intention, revoke the licence and acquire the Company's water supply facilities for a monetary consideration to be determined by the Minister.

Immediately from the revocation of such licence the State shall, subject only to the continued hydrological availability of water from such sources, commence and thereafter continue to supply water to the Company up to the same amount and at the same rate as that which the Company would have been entitled to draw under such surrendered licence and the proviso to subclause (4) of this Clause shall in like manner apply to this subclause.

Regional water supply²

(7) If at any time after the State has acquired the Company's water supply facilities in terms of subclause (6) of this Clause it is necessary to expand those facilities to meet the Company's daily water requirements then the State may in the course of developing any district or regional water supply, construct further works of the kind mentioned in subclause (5) of this Clause

Schedule 1

and the cost thereof having regard to the utilisation of such further works by the State in meeting the Company's daily water requirements shall be shared by the parties hereto in such a manner as may be agreed to be fair in all the circumstances.

Supply to third party²

(8) The State may after first having due regard to the Company's daily water requirements and the hydrological adequacy of the sources from which the Company draws water or from which the Company's daily water requirements are supplied, upon not less than three months prior notice to the Company specifying the identity of the third party including where applicable the State and the estimated maximum daily and total quantity of water to be drawn by that third party and the period over which such drawing is to occur grant to a third party rights to draw water or itself draw water from such sources PROVIDED THAT —

- (a) where the Company has paid (in whole or in part) any moneys in respect of the investigation proving development and utilisation of such sources as provided pursuant to this Clause, the State shall require as a condition of such grant that where such third party is or will be a substantial user of water within five years of the commencement date that party (but not the State) shall reimburse to the Company a proportion of such moneys as the Minister determines is fair and reasonable having regard *inter alia* to the proportion which that party's actual or potential requirements for water bears to the total capacity of such sources; and
- (b) where the Company draws or is supplied with water from a source developed wholly at its expense pursuant to this Clause, the State shall ensure that it is a condition of such grant to third parties (other than the State) that in the event that the capacity of the source is reduced, such reduction shall be first applied to such third parties and thereafter if further reduction is necessary the State's and the Company's requirements shall be reduced in such proportion as may be agreed.

Investigation of surface water²

(9) In the event of water supplies from available underground sources proving insufficient to meet the Company's daily water requirements the

Company shall notwithstanding the provisions of subclause (3) of this Clause collaborate with the State in an investigation of surface water catchments and storage dams. The Company shall if it proposes to utilise such surface water, water catchments, and storage dams pay to the State a sum or sums to be agreed towards the cost of such investigation and towards the cost of constructing any water storage dam or dams and reticulation facilities required PROVIDED THAT the State may in its sole discretion elect to construct a water storage dam or dams and reticulation facilities having a capacity in excess of that required to supply the Company's needs and in that event the Company's contribution shall be limited to a fair and reasonable proportion of the total cost of constructing such water storage dam or dams and reticulation facilities.

Water supply at separation plant²

(10) The State shall for the purposes of the approved project and where applicable an approved proposal hereunder supply the Company's water requirements at the separation plant from existing sources and for such purposes shall pay to the State a fair and reasonable sum to cover the capital costs involved PROVIDED HOWEVER that should such sources prove hydrologically inadequate to meet the State's and the Company's requirements the State may limit the amount of water which may be taken from such sources at any one time or from time to time to the maximum which such sources are hydrologically capable of meeting in such proportion as may be agreed between the State and the Company.

Additional water search²

(11) Should the Minister at any time consider that it is likely that it will be necessary pursuant to the proviso to subclause (10) of this Clause to limit the amount of water to be taken from the water sources therein mentioned the State shall with all reasonable expedition search for new or additional underground water sources with a view to maintaining the full quantity of water required by the Company at the separation plant. The Company shall pay to the State a fair and reasonable proportion (whether by way of capital contribution or otherwise as the Minister may approve) of the cost of investigating and developing such new or additional water sources.

Payment for water²

(12) The Company shall pay the State for water supplied by the State and consumed on the mining areas and at the separation plant a fair price to be negotiated between the parties having regard to the actual cost of operating and

Schedule 1

maintaining the supply and provision for replacement of the water supply facility. Water supplied by the State within the town shall be subject to the provisions of the *Country Areas Water Supply Act 1947*.

Design of works²

(13) The Company shall to the extent that it is practical and economical design, construct and operate its works under this Clause so as —

- (a) to make use of brackish or saline water;
- (b) to recycle all water, and
- (c) to prevent loss of water by leakage, spillage or evaporation.

Rights in Water and Irrigation Act²

(14) Any reference in the foregoing provisions of this Clause to a licence is a reference to a licence under the *Rights in Water and Irrigation Act 1914* and the provisions of that Act relating to water rights and licences shall except where inconsistent with the provisions of this Agreement apply to any water source developed for the Company's purposes under this Agreement.

Sea water licence²

(15) Upon the request of the Company the State shall grant to the Company a licence to draw from the sea its requirements of sea water for the purposes of the approved project and where applicable an approved proposal hereunder and shall assist the Company in acquiring rights of way for any pipeline involved.

Mineral lease²

15. (1) On application made by the Company, as soon as practicable after the commencement date for a mineral lease over so much of the land in the red areas as the Company desires and in respect of which the Company then holds mineral claims, the State shall upon the surrender by the Company of all such mineral claims cause to be granted to the Company at the rental specified from time to time in the Mining Act a mineral lease of such land within the mining areas so applied for (notwithstanding that the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed) such mineral lease to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act but in the form of the Second Schedule hereto and in respect of the minerals set out therein and

subject to such other conditions as the Minister for Mines may reasonably require from time to time for the purpose of reducing or making good injury to the surface of the land in the mineral lease or injury to anything on or below the surface of that land.

(2) Subject to the performance by the Company of its obligations under this Agreement and the Mining Act and notwithstanding any provisions of the Mining Act to the contrary, the term of the mineral lease shall be for a period of 21 years commencing from the date of receipt of application with the right during the currency of this Agreement to take successive renewals of the said term each for a period of 21 years upon the same terms and conditions, subject to the sooner determination of the said term upon the cessation or determination of this Agreement, such right to be exercisable by the Company making written application for any such renewal not later than 1 month before the expiration of the current term of the mineral lease.

Labour conditions²

(3) The State shall ensure that during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the labour conditions imposed by or under the Mining Act in regard to the mineral lease.

Other mining tenements²

(4) The State shall not during the currency of this Agreement register any claim or grant any lease or other mining tenement under the Mining Act or otherwise by which any person other than the Company or an associated company will obtain under the laws relating to mining or otherwise any rights to mine or take the natural substances (other than petroleum as defined in the *Petroleum Act 1967*) within the mineral lease unless the Minister reasonably determines that it is not likely to unduly prejudice or to interfere with the operations of the Company hereunder assuming the taking by the Company of all reasonable steps to avoid the interference.

Access over mineral lease²

(5) The Company shall at all times permit the State and third parties (with or without stock vehicles and rolling stock) to have access to and to pass over the mineral lease (by separate route, road or railway) so long as that access and passage does not materially prejudice or interfere with the operations of the Company under this Agreement PROVIDED THAT the provisions of this subclause shall not apply to privately owned land in the mineral lease.

Schedule 1

Mining on private land²

(6) The Company shall not commence any mining or related operations for the purposes of this Agreement on privately owned land unless and until it has entered into a written agreement with the owner and occupier of such land for the purpose of providing for compensation arising out of its operations or proposed operations on the land, and within 14 days after the date thereof or (in the case of an agreement entered into before the date hereof) after the execution of this Agreement, lodge a true copy of the agreement with the Minister for Mines.

Incorporation of yellow areas in the mineral lease²

- (7) (a) The Company shall not later than 3 years after the date of commencement of the mineral lease surrender the yellow areas to the State.
- (b) The Company shall in respect of the yellow areas surrendered pursuant to paragraph (a) of this subclause have the right at the date of surrender, notwithstanding the provisions of the Mining Act to apply for and have included in the mineral lease upon and subject to the same terms covenants and conditions as apply to the mineral lease (with such apportionment of rents as is necessary), such of the yellow areas as the Company desires over which the Company at the date of surrender holds mineral claims notwithstanding that the survey of such additional land has not been completed (but subject to correction to accord with the survey when made at the Company's expense).

Mining on Reserve No. 31030²

(8) Subject to the provisions of the mineral lease and such other terms and conditions as the Minister may require pursuant to approved proposals hereunder the Company shall have the right to mine such part of the land the subject of Reserve No. 31030 and any other land reserved under the Land Act as is included in the mineral lease.

Land²

16. The State shall, for the purposes of the approved project and where applicable an approved proposal hereunder, grant to the Company, or arrange to have the appropriate authority or other interested instrumentality of the State grant for such periods and on such terms and conditions (including renewal

rights) as shall be reasonable having regard to the requirements of the Company, leases for any purposes related to the Company's operations under this Agreement.

Modification of Land Act²

17. For the purpose of this Agreement in respect of any land sold or leased to the Company by the State where applicable the Land Act shall be deemed to be modified by: —

- (a) the substitution for subsection (2) of section 45A of the following subsection: —
 - (2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be sold or leased;
- (b) the deletion of the proviso to section 116;
- (c) the deletion of section 135;
- (d) the deletion of section 143;
- (e) the inclusion of a power to offer for sale or leasing land within or in the vicinity of the town; and
- (f) the inclusion of a power to offer for sale or grant leases or licences for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods, the terms and conditions and the forms referred to in the Land Act.

The provisions of this Clause shall not operate so as to prejudice the rights of the State to determine any lease licence or other right or title in accordance with the other provisions of this Agreement.

Town development²

18. (1) To enable the Company to do those things necessary to attract and sustain a stable and content workforce and associated population (including the development and maintenance of an attractive physical environment together with appropriate community, recreation, civic, social and commercial amenities) the Company shall continue to collaborate with the State in the development of

Schedule 1

an area or areas in the town for the purposes of the approved project and where applicable an approved proposal hereunder.

(2) The Company shall at its cost cause to be provided and maintained at the town and made available at such prices, rentals or charges and upon such terms and conditions as are fair and reasonable under the circumstances, housing accommodation to the extent necessary to provide for the needs of persons and the dependants of such persons engaged in connection with the Company's operations hereunder.

(3) For the purposes of subclause (2) of this Clause the State shall in accordance with the approved project and where applicable an approved proposal hereunder make available lots of land in the town for purchase by the Company at prices determined by the State.

(4) The parties recognise that as a consequence in part of the progressive development of the Company's operations hereunder the need will progressively develop at the town for additional sewerage treatment works water supply headworks main drainage educational hospital medical and police services and community recreation civic social and commercial amenities. The Company accepts the principle of fair and reasonable sharing by it whether by way of capital contribution or otherwise of the costs of establishing and extending such works services and amenities having regard to the benefits flowing to the State, the community, the Company and others therefrom.

Port²

19. (1) The Company shall ship through the port such portion of its heavy minerals and heavy mineral products which are produced pursuant to this Agreement as are destined for shipment in bulk overseas (and for that purpose shall have access to the wharf) and shall subject to the provisions of this Clause provide at no cost to the State all necessary storage and reclaiming equipment and all other facilities required at the port to carry out its obligations under this Agreement.

Stockpile area²

(2) The State shall cause the Geraldton Port Authority to grant to the Company a lease of land at the port for a stockpile area for such period and on such terms and conditions (including renewal rights) as shall be reasonable having regard to the purposes of the Company's operations hereunder and the term of the mineral lease.

Common inloading system and common materials handling system²

(3) In the event that the State, having regard, *inter alia*, to the tonnages of heavy minerals and heavy mineral products being shipped through the port by the Company and others, causes the Geraldton Port Authority after consultation with the Company and other companies shipping heavy minerals and heavy mineral products through the port to construct either the common inloading system or the common materials handling system, or both, and the WMC Joint Venturers to operate such system or systems the Company shall use such system or systems for its operations hereunder and together with other companies shipping heavy mineral and heavy mineral products through the port shall make such contribution to the State in respect of such system or systems (whether by way of capital contribution or otherwise) as the State considers equitable in the circumstances.

Operation of common inloading system and common materials handling system²

(4) The State shall use its best endeavours to arrange for the WMC Joint Venturers to operate and maintain the common inloading system and/or the common materials handling system as the case may be on terms and conditions to be agreed between the WMC Joint Venturers and the Company and approved by the State.

(5) In the event that the WMC Joint Venturers do not operate and maintain the common inloading system and/or the common materials handling system as the case may be pursuant to subclause (4) of this Clause the State shall cause the Geraldton Port Authority to operate and maintain either or both systems on terms and conditions to be determined by the State after consultation with the Company, and the Company shall use such system or systems as the case may be for its operations hereunder.

Avoidance of dust nuisance²

(6) The Company shall design and operate its stockpiling, reclaiming and other equipment and facilities at the port so as to avoid dust nuisance and loss of heavy minerals and heavy mineral products during handling and storage operations.

Royalties²

20. (1) The Company shall pay to the State in respect of all minerals mined or produced by the Company from the mineral lease and sold by it royalties at

Schedule 1

the rates from time to time prescribed under or pursuant to the provisions of the Mining Act.

(2) Notwithstanding the provisions of subclause (1) of this Clause the royalties payable by the Company in respect of all minerals mined or produced by it from the mineral lease during a period of 4 years commencing from 30th June 1976 shall be at rates not exceeding those prescribed pursuant to the provisions of the Mining Act in force at 30th June 1976.

Return and payment of royalties²

(3) The Company shall during the continuance of this Agreement within 14 days after the following quarter days namely the last days of March, June, September and December in each year (commencing with the quarter day next following the date when the first commercial shipment or sale is made) furnish to the Minister for Mines a return showing such particulars as the Minister for Mines requires to enable the calculation of the royalty payable under this Clause and shall pay to the Minister for Mines, at the time of furnishing the return the royalty payable hereunder.

Inspection²

(4) The Company shall permit the Minister for Mines or his nominee to inspect at all reasonable times and to take copies of or extracts from all books of account and records of the Company as are relevant for the purpose of determining the amount of royalty payable under this Clause and if required by the State take reasonable steps to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the reasonable satisfaction of the Minister for Mines as to all relevant weights and analyses and shall give due regard to any objection or representation made by the Minister for Mines or his nominee as to any particular weight or assay of minerals mined or produced by the Company from the mineral lease and sold by it which may affect the amount of royalty payable hereunder.

Secondary processing²

21. (1) At a time convenient to the Company but in any event not later than four years after the commencement date the Company shall investigate the technical and economic feasibility of establishing a plant for secondary processing to the maximum degree then practicable (but excluding therefrom heavy minerals the subject of existing contractual commitments) either by the Company alone or jointly with any other company or companies. The Company

shall report in detail the progress and results of such investigations to the Minister not later than 90 days after the expiry of the period referred to in this subclause.

(2) The State may also undertake the studies mentioned in subclause (1) of this Clause and for that purpose the Company shall provide the State on a confidential basis with such information as it may reasonably require but the Company shall not be obliged to supply technical information of a confidential nature with respect to processes that have been developed by the Company alone or with others or acquired from other sources and that is not generally available to the mineral sands industry.

(3) The Minister may consider the studies undertaken under subclauses (1) and (2) of this Clause and if the Minister is of the opinion that in all the circumstances then applying to the Company the establishment of a plant for secondary processing is technically and economically feasible and competitive on world markets, then the Minister may notify the Company of such decision. If so requested by the Company the Minister shall give to the Company all information obtained during such studies (other than information confidential to third parties).

(4) If the Company disagrees with the result of such studies and/or the Minister's decision thereon the Company shall have the right at any time within six months after the receipt of the Minister's notice to refer the matter to arbitration hereunder. If the Company shall agree that the establishment of a plant for secondary processing is technically and economically feasible and competitive on world markets (in which case it shall so advise the Minister promptly) or if it shall be so determined by arbitration as aforesaid then the Company shall submit a proposal therefor in accordance with the provisions of Clause 7 of this Agreement, either alone or jointly with another, company or other companies. Any such plant shall be in operation not later than three years after the date upon which the Company shall advise the Minister as to its agreement aforesaid or the date of the arbitration award.

(5) If —

- (a) the Company on completion of its investigations within the period and in the manner outlined in subclause (1) of this Clause is of the opinion that the establishment of a plant for secondary processing is not technically and economically feasible and competitive on world markets and the Minister concurs; or

Schedule 1

- (b) the Minister shall disagree with such opinion but on a reference to arbitration in terms of subclause (4) of this Clause the award shall be in favour of the Company

then the provisions of subclauses (1), (2), (3) and (4) of this Clause shall continue to apply *mutatis mutandis* but in relation to the next ensuing four years and so on during the term of this Agreement until such time as the Company shall become obligated in terms of subclause (4) to proceed with the establishment of a plant for secondary processing.

- (6) (a) If the Company having become obligated in terms of subclause (4) of this Clause fails to submit proposals or to complete and commission a plant for secondary processing within the time and in the manner prescribed by that subclause, neither failure shall give rise to any action for breach of contract nor shall the provisions of Clause 32 apply but in either such event the State may give notice to the Company that it proposes to negotiate with any other person (in this Clause called “the third party”) to establish a plant capable of subjecting the whole or any part of “the Company’s surplus production” (as hereinafter defined in this Clause) to secondary processing on terms and conditions not more favourable on the whole to the third party than any terms available to the Company and notifying the Company that the whole or part of the Company’s surplus production may be required for secondary processing after the date specified in such notice and may require the Company, during the period specified in such notice, not exceeding 12 months from the date thereof, to refrain from entering into any contract for the sale of the whole or any part of the Company’s surplus production for delivery after the date specified in such notice.
- (b) If the third party at any time after the date of the notice referred to in paragraph (a) of this subclause enters into an agreement with the State under which the third party undertakes —
- (i) to establish a plant capable of subjecting the whole or any part of the Company’s surplus production to secondary processing; and
 - (ii) to have the plant in full production by a certain fixed date

and the State is satisfied that the other party has the financial resources to carry out and perform its obligations under the agreement with the State and under any contract with Company (as hereinafter mentioned in this Clause) then at the request of the third party, the State may direct the Company to enter into a contract or contracts with the third party for the sale by the Company to the third party of the whole or a specified portion of the Company's surplus production on the following terms and conditions namely:

- (I) for such period as is reasonable having regard to the practice in the industry, to such matters as the Company's ore reserves, the capital investment of the third party in the said plant and the period or periods of contracts with other purchasers then *bona fide* under negotiation or available to the Company at the time;
 - (II) at such price or prices as the Company is then selling heavy minerals or the price or prices which the Company is able to obtain under any *bona fide* proposed sale between the Company and a purchaser or purchasers dealing at arms length with the Company; and
 - (III) on such other terms and conditions as the Company may reasonably impose.
- (c) For the purposes of this subclause the term "the Company's surplus production" in relation to each heavy mineral produced by the Company means 50% of the total quantity of such heavy mineral produced by the Company from the mineral lease in a particular year after first having deducted the quantity of such heavy mineral required by the Company to fulfil any contractual arrangements entered into at any time (other than during the period specified in the notice referred to in paragraph (a) of this subclause) and the quantity of such heavy mineral which is subjected to secondary processing by any other company or companies.

Schedule 1

Zoning²

22. The State shall ensure that the mineral lease and any lands the subject of any Crown grant lease licence or easement granted to the Company under this Agreement and all freehold and leasehold land occupied by the Company in accordance with the approved project or proposals approved hereunder shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the operations of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State by any State agency or instrumentality or by any local or other authority of the State on the ground that such operations are contrary to any zoning by-law regulation or order.

Rating²

23. The State shall ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection with that residence and except as to any part upon which there stands any improvements that are used in connection with a commercial undertaking not directly related to the mining of ore, the transportation and processing of heavy mineral concentrates and shipment of heavy minerals and heavy mineral products) shall for rating purposes under the *Local Government Act 1960* be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate, PROVIDED THAT nothing in this Clause shall prevent the Company making the election provided for by Section 533B of the *Local Government Act 1960*.

No discriminatory rates²

24. Except as provided by this Agreement the State shall not impose or permit or suffer any instrumentality of the said State or any local or other authority to impose discriminatory taxes, rates or charges of any nature whatever on or in respect of the titles, property or other assets, products, materials or services used or produced by or through the operations of the Company hereunder and the State shall not take or permit any such instrumentality or any local or other authority to take any other discriminatory action that would deprive the Company of any rights granted or intended to be granted to it under this Agreement.

Resumption for the purposes of this Agreement²

25. The State may as and for a public work under the *Public Works Act 1902*, resume any land required for the purposes of this Agreement and notwithstanding any other provisions of that Act may sell lease or otherwise dispose of the land to the Company. The Company shall pay to the State on demand the costs of and incidental to any land resumed at the request of and on behalf of the Company pursuant to this Clause.

No resumption²

26. The State agrees that subject to the performance by the Company of its obligations hereunder the State shall not resume or suffer or permit to be resumed by an instrumentality or by any local or other authority of the said State any portion of the land the subject of any special lease mentioned in Clause 16 the resumption which would materially impede the Company's works and activities thereon or any portion of the mineral lease whereon any of the Company's works are situate for the purposes of the approved project and where applicable an approved proposal hereunder the resumption of which would materially impede the Company's mining or other activities thereon nor shall the State create or grant or permit or suffer to be created or granted by an instrumentality or authority of the said State any road right of way or easement of any nature or kind whatsoever over or in respect of the land comprised in the said leases whereon any of the Company's works are situate for the purposes of the approved project and where applicable an approved proposal hereunder without the consent of the Company first had and obtained which consent the Company agrees it shall not arbitrarily or unreasonably withhold.

Assignment²

27. (1) Subject to the provisions of this Clause the Company may at any time —

- (a) assign mortgage charge sublet or dispose of to an associated company as of right or to any other company or person with the consent of the Minister the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of any lease licence easement grant or other title) and of the obligations of the Company hereunder; and
- (b) appoint as of right an associated company or with the consent of the Minister any other company or person to exercise all or any

Schedule 1

of the powers functions and authorities that are or may be conferred on the Company hereunder;

subject however in the case of an assignment subletting or disposition to the assignee sublessee disponee or the appointee (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company to be complied with observed or performed in regard to the matter or matters the subject of such assignment subletting disposition or appointment.

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this Clause the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained herein and in any lease licence easement grant or other title the subject of an assignment mortgage subletting or disposition or appointment under subclause (1) of this Clause PROVIDED THAT the Minister may agree to release the Company from such liability where he considers such release will not be contrary to the interests of the State.

(3) Notwithstanding the provisions of the Mining Act, the *Transfer of Land Act 1893* and the Land Act, insofar as the same or any of them may apply —

- (a) no assignment mortgage charge sub-lease or disposition made or given pursuant to this Clause of or over the mineral lease or any other lease sublease licence reserve or tenement granted hereunder or pursuant hereto by the Company or any assignee sublessee disponee or appointee who has executed and is for the time being bound by deed of covenant made pursuant to this Clause; and
- (b) no transfer assignment mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge

shall require any approval or consent other than such consent as may be necessary under this Clause and no equitable mortgage or charge shall be rendered ineffectual by the absence of any approval or consent (otherwise than as required by this Clause) or because the same is not registered under the provisions of the Mining Act.

Substituted securities²

28. Where the Company whether before or after the execution of this Agreement executes and has registered in the Department of Mines a mortgage over a mineral claim in the mining areas, and the land the subject of that mineral claim, on the surrender of such claim, becomes incorporated in the mineral lease, then provided the consent of the mortgagee is first obtained, the mineral lease shall notwithstanding the provisions of the Mining Act be deemed to be the subject of such mortgage as if the mineral lease had been referred to in the mortgage. A memorandum of any such mortgages shall be endorsed on the mineral lease in the order in which they appeared registered against any such mineral claim at the time of its surrender and shall be noted in the appropriate registers of the Department of Mines by the Principal Registrar who shall also endorse on the original and duplicate copies of such mortgages the fact of their having been registered as an encumbrance against the mineral lease.

Variation²

29. (1) The parties hereto may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement or of any lease licence easement or right granted hereunder or pursuant hereto for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.

(2) The Minister shall cause any agreement made pursuant to subclause (1) of this Clause in respect of any additional substitution cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.

(3) Either House may, within 12 sitting days of that House after the agreement has been laid before it pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

Force majeure²

30. This Agreement is deemed to be made subject to any delays in the performance of the obligations hereunder and to the temporary suspension of the continuing obligations hereunder that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including without limiting the generality of the

Schedule 1

foregoing delays or any such temporary suspension as aforesaid caused by or arising from Act of God force majeure earthquakes, floods, storms, tempest, washaways, fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war, act of public enemies, riots, civil commotions, strikes, lockouts, stoppages, restraint of labour or other similar acts (whether partial or general) acts or omissions of the Commonwealth shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability profitably to sell heavy minerals and heavy mineral products or factors due to overall world economic conditions or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party of the event or events and shall minimise the effect of such causes as soon as possible after the occurrence.

Power to extend periods²

31. Notwithstanding any provision of this Agreement the Minister may at the request of the Company from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

Determination of Agreement²

32. (1) In any of the following events namely if the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations to the State herein or in any lease, sublease, licence or other title or document granted or assigned under this Agreement on its part to be performed or observed, or if the Company abandons or repudiates its operations under this Agreement and such default is not remedied or such operations resumed within a period of 180 days after notice as provided in subclause (2) of this Clause is given by the State (or if the alleged default abandonment or repudiation is contested by the Company and within 60 days after such notice is submitted by the Company to arbitration — within a reasonable time fixed by the arbitration award but not less than 90 days after the making of the arbitration award where the question is decided against the Company the arbitrator finding that there was a *bona fide* dispute and that the Company had not been dilatory in pursuing the arbitration), or if the Company goes into liquidation (other than a voluntary liquidation for the purpose of

reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement and the rights of the Company hereunder and under any lease, licence, easement or right granted hereunder or pursuant hereto shall thereupon determine.

(2) The notice to be given by the State in terms of subclause (1) of this Clause shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the party or parties responsible therefor and shall be given to the Company and all such assignees mortgagees charges and disponees for the time being of the Company's said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 27 whose name and address for service of notice has previously been notified in writing to the State by the Company or any such assignee mortgagee chargee or disponee.

(3) The abandonment or repudiation by or liquidation of the Company referred to in subclause (1) of this Clause means the abandonment or repudiation by or the liquidation of all of them the Company and all assignees and appointees who have executed and are for the time being bound by a deed of covenant in favour of the State as provided in Clause 27.

(4) If the default referred to in subclause (1) of this Clause shall not have been remedied after such notice or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand.

Effect of cessation and determination of Agreement²

33. (1) Upon the cessation or determination of this Agreement —
- (a) except as otherwise agreed by the Minister the rights of the Company and those of any assignee or mortgagee of the Company under this Agreement or under the mineral lease or any other lease, licence, easement or right granted hereunder or pursuant hereto and all the right title and interest of the Company and of any such assignee or mortgagee in and to any

Schedule 1

land wherever situated granted to the Company or to such assignee for any other of the purposes of this Agreement shall thereupon cease and determine, but without prejudice to the liability of either of the parties in respect of any antecedent breach or default under this agreement or in respect of any indemnity given hereunder; and

- (b) the Company shall forthwith pay to the State all moneys that may then have been payable or accrued due hereunder; and
- (c) except as provided in this Clause or otherwise provided in this Agreement neither of the parties shall have any claim against the other of them in respect to any matter or thing contained in or arising out of this Agreement.

(2) Subject to the provisions of subclause (3) of this Clause upon the cessation or determination of this Agreement all buildings erections and other improvements erected on any land then occupied by the Company or any associated company or assignee of the Company under the mineral lease or any other lease, licence, easement, right or grant made hereunder for the purpose hereof shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Company or any other party and freed and discharged from all mortgages and other encumbrances and the Company shall do and execute all such deeds documents and other acts matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.

(3) In the event of the Company immediately prior to the cessation or determination of this Agreement or subsequently thereto desiring to remove any of its electricity generating plant and transmission system or any of its other fixed or moveable plant and equipment from any part of the land occupied by it at the date of such cessation or determination the Company shall give to the State notice of such desire and thereby shall grant to the State the right or option exercisable within 3 months thereafter to purchase *in situ* the said electricity generating plant transmission system and other fixed or moveable plant and equipment or any part thereof at a fair valuation to be agreed between the parties or failing agreement determined by arbitration hereunder.

Environmental protection²

34. Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the

environment arising out of or incidental to the operations of the Company hereunder that may be made by the State or any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act for the time being in force.

Indemnity²

35. The Company shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by the Company pursuant to this Agreement or relating to its operations hereunder or arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

Licences and consents²

36. The Company shall make all necessary applications from time to time to the proper authorities and the Commonwealth and the State for the grant to it of any licences or consents required under Commonwealth or State law to permit it to enter into this Agreement and perform its obligations hereunder.

Stamp Duty Exemption²

37. (1) The State shall exempt from any stamp duty which but for the operation of this Clause would or might be chargeable on —

- (a) this Agreement;
- (b) the Agreement dated 19th December 1972 between Allied Minerals N.L. and the Company;
- (c) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee of the Company any lease licence easement or right granted or demised hereunder or pursuant hereto; and
- (d) any assignment sublease or disposition (other than by way of mortgage or charge) and any appointment to or in favour of the Company or an associated company of any interest right obligation power function or authority made pursuant to the provisions of this Agreement.

Schedule 1

PROVIDED THAT this Clause shall not apply to any instrument or other document executed or made more than seven years from the date hereof.

(2) If prior to the date on which the Bill referred to in Clause 3 to ratify this Agreement is passed as an Act stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1) of this Clause the State when such Bill is passed as an Act shall on demand refund any stamp duty paid on any such instrument or other document to the person who paid the same.

Arbitration²

38. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement the construction of this Agreement or as to the rights duties or liabilities of either party hereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to the arbitration of two arbitrators one to be appointed by each party, the arbitrators to appoint their umpire before proceeding in the reference, and every such arbitration shall be conducted in accordance with the provisions of the *Arbitration Act 1895*.

(2) Except where proposals are pursuant to the provisions of this Agreement referred, to arbitration, the provisions of this Clause shall not apply to any case where the State the Minister or any other Minister in the Government of the said State is by this Agreement given either expressly or impliedly a discretionary power.

(3) The arbitrators or umpire (as the case may be) of any submission to arbitration hereunder are hereby empowered upon the application of either of the parties to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties hereunder and an award may in the name of the Minister grant any further extension or variation for that purpose.

Notices²

39. Any notice consent or other writing authorised by or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Public Service of the State acting by the direction of the Minister and forwarded by prepaid post to the Company, at its registered office for the time being in the

State and by the Company if signed on its behalf by a director manager or secretary of the Company or by any person or persons authorised by the Company in that behalf or by its solicitors (which solicitors have been notified to the State from time to time) and forwarded by prepaid post to the Minister and any such notice consent or writing shall be deemed to have been duly given or sent (unless the contrary be shown) on the day on which it would be delivered in the ordinary course of post.

Applicable law²

40. This Agreement shall be interpreted according to the law for the time being in force in the said State.

THE FIRST SCHEDULE

A. *Heavy mineral concentrates by rail*

1. (i) The freight rate/s for the haulage of heavy mineral concentrates by rail from the concentration plant to the separation plant shall be as follows: —

Tonnes per Annum	\$ Per Tonne
Over 100 000 and up to 200 000	3.00
Over 200 000 and up to 300 000	2.70
Over 300 000 and up to 400 000	2.50
Over 400 000 and up to 500 000	2.40
Over 500 000 and up to 600 000	2.30
Over 600 000	2.26

(ii) In the event that the Company makes a voluntary capital contribution towards the cost of constructing and/or upgrading the railway between the concentration plant and the separation plant and/or the rolling stock required for the Company's operations the Railways Commission may review the freight rates.

(iii) The minimum freight payable under this subparagraph in respect of any year commencing from the date that heavy mineral concentrates are first railed from the concentration plant to the separation plant shall, subject to adjustment in accordance with the provisions of paragraph 2(x) of this Schedule, be \$2.70 x 250 000.

2. The freight rates set out in paragraph 1(i) of this Schedule are subject to the following additional conditions: —

Schedule 1

- (i) Trains shall operate up to a maximum of 6 days per week, commencing 12.01 a.m. Monday and ceasing 12.00 midnight on Saturday. The Railways Commission shall arrange a train operating pattern between Monday and Saturday consistent with the requirements of the Company as advised from time to time under Clause 12(9). The train operating pattern shall be based as far as is practicable on the utilisation of the maximum number of wagons possible per train and the least number of trains per week required to meet the haulage programme of the Company and such trains shall be tabled at the time most convenient to the operational requirements of the Railways Commission.
- (ii) If the needs of the company reasonably require operation on Sunday and such needs do not arise solely from any failure or inability of the Railways Commission, the Company shall reimburse the Railways Commission for any additional expenses which are payable as a consequence.
- (iii) The Company shall ensure that all wagons are loaded within the authorised axle load capacity and shall be subject to such minimum load per wagon and per train as may be defined by the Railways Commission.
- (iv) The Company shall ensure that all wagons are properly trimmed and secured to permit safe transport at all times.
- (v) Unless otherwise determined by the Railways Commission the Company shall be responsible for the movement of wagons at the loading and unloading points. The Company shall ensure that the loading and unloading rates are not less than 1 000 tonnes per hour respectively. If such rates are not regularly adhered to the Railways Commission reserves the right to review the freight rates.
- (vi) Freight charges shall be paid by monthly payments in the month next following the month of haulage on the basis of the tonnages hauled charged at the rate or rates applicable to the anticipated annual tonnage and subject to annual adjustment after the expiration of each year with regard to the tonnage actually carried at the rate or rates applicable thereto.
- (vii) In ascertaining the actual number of tonnes carried the method of measurement shall be agreed between the parties.

- (viii) If in any year the Railways Commission transports a total of more than 600 000 tonnes of heavy mineral concentrates and heavy minerals by rail from Eneabba for the Company and other operators in the mineral sands industry the Railways Commission in its sole discretion may review the level of the annual minimum tonnage provisions in this Schedule.
- (ix) The Railways Commission shall if required by the Company provide wagons for heavy minerals haulage to meet the anticipated requirements of the Company given to the Railways Commission pursuant to the provisions of Clause 12(9). If wagons so provided by the Railways Commission are not fully utilised for the Company's operations the Company shall compensate the Railways Commission for loss of wagon usage to an amount to be agreed between the parties.
- (x) The freight rates set out in paragraph 1(i) of this Schedule are based on costs prevailing on the 1st July, 1973 and shall be adjusted on the 1st January, and 1st July of each year with the changes becoming effective on and from these dates, in accordance with the following formula —

$$F1 = F + \left[.65 F \left\{ .80 \left\{ \frac{HR1 - HR}{HR} \right\} + .05 \left\{ \frac{D1 - D}{D} \right\} + .15 \left\{ \frac{SR1 - SR}{SR} \right\} \right] \right]$$

WHERE

- F1 = New freight rate.
- F = The existing freight rate.
- HR = The average hourly rate payable as at 1st July, 1973.
- HR1 = The average hourly rate payable as at the date of adjustment.
- D = The wholesale price (duty free) of distillate in Perth as at 1st July, 1973.
- D1 = The wholesale price (duty free) of distillate in Perth as at the date of adjustment.

Schedule 1

- SR = Price of heavy steel rails per tonne c.i.f. Port of Fremantle as ascertained from price schedule covering despatches from Broken Hill Proprietary Company Limited and Australian Iron and Steel Proprietary Limited as at 1st July, 1973.
- SR1 = The price of heavy steel rails per tonne c.i.f. Port of Fremantle ascertained as aforementioned as at the date of adjustment.

The rates applicable at the 1st July, 1973 are —

	Per Hour \$
1st Class Driver	2.6700
1st Class Guard	2.3700
Trackman	1.8725
	<hr/>
	6.9125
	<hr/>

Average hourly rate — \$2.3042.

Price of distillate per litre — 4.707 cents.

Price of heavy steel rails per tonne c.i.f. Port of Fremantle — \$121.05.

Adjustments made in accordance with this formula shall be expressed in a figure of dollars per tonne and calculated to 4 decimal places of a dollar and in doing so the fifth decimal place shall also be calculated so that if the fifth decimal place is .5 or above, the fourth decimal place shall be increased by 1.

This formula shall be subject to review by the Railways Commission after consultation with the Company on the 1st July, 1978 and thereafter at intervals of 5 years.

- B. *Heavy mineral concentrates by road from the concentration plant to the separation plant*
- C. *Heavy minerals by rail from the separation plant to the port*

The freight rates under Items B and C shall be fixed by the Railways Commission after consultation with the Company.

D. *Other commodities by rail*

All commodities other than those referred to in this Schedule shall, unless otherwise determined by the Railways Commission, be carried subject to By-law 55 made under the *Government Railway Act 1904*.

THE SECOND SCHEDULE

WESTERN AUSTRALIA

MINING ACT 1904

MINERAL SANDS (ALLIED ENEABBA) AGREEMENT ACT 1975

MINERAL LEASE

Lease No. Mineral Field

ELIZABETH THE SECOND by the Grace of God Queen of Australia and Her other Realms and Territories Head of the Commonwealth:

TO ALL TO WHOM THESE PRESENTS shall come GREETINGS:

KNOW YE that WHEREAS by section 48 of the *Mining Act 1904*, power is given to the Governor of our State of Western Australia, in the Commonwealth of Australia, to grant leases of land for the purposes of mining thereon for any mineral other than gold upon the terms and conditions set forth in the said Act AND WHEREAS by an Agreement made between the State of Western Australia and ALLIED ENEABBA PTY. LTD. a company incorporated under the Companies Act of Western Australia and having its registered office situate at 283 Rokeby Road, Subiaco (hereinafter called "the Company" which expression includes its successors and permitted assigns) which Agreement (hereinafter referred to as "the Agreement") was ratified by the *Mineral Sands (Allied Eneabba) Agreement Act 1975* — the State agreed to grant to the Company on application made by the Company a mineral lease under and, except as otherwise provided by the Agreement, subject to the *Mining Act 1904* AND WHEREAS the Company has now made application for a mineral lease of the land hereinafter described for the purpose of mining thereon for titaniferous minerals (including ilmenite rutile and leucosene) and magnetite zircon monazite kyanite staurolite xenotime and garnet NOW WE in

Schedule 1

consideration of the rents and royalties reserved by the Agreement and in consideration of the other covenants and conditions in this lease and in the Agreement to be observed by the Company DO BY THESE PRESENTS GRANT AND DEMISE UNTO THE COMPANY but subject to the provisions of the Agreement all those pieces and parcels of land situated in the Mineral Field containing approximately hectares (subject to such corrections as may be necessary to accord with the survey when made) and particularly described and delineated on the plan in the schedule hereto and all those mines, veins, seams, lodes, or deposits of titaniferous minerals (including ilmenite rutile and leucosene) and magnetite zircon monazite kyanite staurolite xenotime and garnet in, on, or under the said land (hereinafter called "the said mines") together with the rights, liberties, easements, advantages and appurtenances thereto belonging or appertaining to a lessee of a mineral lease under the *Mining Act 1904*, including all amendments thereof for the time being in force and all regulations made thereunder for the time being in force (which Act and regulations are hereinafter referred to as "the Mining Act") or to which the Company is entitled under the Agreement, excepting and reserving out of this demise any portion of the said land which is now used for any public works or building whatsoever TO HOLD the said land and the said mines and all and singular the premises hereby demised for the term of twenty-one (21) years from the day of 19..... with the right to renew the same from time to time for further periods each of twenty-one (21) years as provided in but subject to the terms covenants and conditions set out in the Agreement and to the Mining Act (as modified by the Agreement) YIELDING and paying therefor the rents and royalties as provided for in the Agreement AND WE do hereby declare that this lease is subject to the condition that the Company shall observe perform and carry out the provisions of the *Mines Regulation Act 1946*, and all amendments thereof for the time being in force and the regulations for the time being in force made thereunder and the provisions of the Mining Act (as modified by the Agreement) in so far as the same affect or have application to this lease or any renewal thereof.

PROVIDED THAT this lease and any renewal thereof shall not be determined or forfeited otherwise than under and in accordance with the Agreement.

AND PROVIDED FURTHER that all petroleum and other minerals (apart from titaniferous minerals (including ilmenite rutile and leucosene) and magnetite zircon monazite kyanite staurolite xenotime and garnet) on or below the surface of the demised land are reserved to Her Majesty or any person claiming under her and that any person lawfully authorised in that behalf may have access to the demised land for the purpose of searching for and obtaining petroleum or

subject to the terms of the Agreement other minerals (other than those aforesaid) in any part of the land under the provisions of the Mining Act or the *Petroleum Act 1967*.

IN WITNESS WHEREOF we have caused our Minister for Mines to affix his seal and set his hand hereto at Perth in our said State of Western Australia and the common seal of the Company was hereunto affixed by authority of the Board of Directors this day of 19.....

THE SCHEDULE ABOVE REFERRED TO (plan of lease).

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by the said THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., M.L.A., in the presence of —
ANDREW MENSAROS,
Minister for Industrial
Development.

} CHARLES COURT.

THE Common Seal of ALLIED ENEABBA PTY. LTD. was hereunto affixed by authority of the Directors and in the presence of —
T. GOSLING,
Director.
ROBERT AINSLIE,
Director.

} [C.S.]

Schedule 2

Schedule 2

THIS AGREEMENT is made the 7th day of NOVEMBER 1988 BETWEEN THE HONOURABLE PETER M'CALLUM DOWDING, LL.B., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "the State") of the one part and ALLIED ENEABBA LIMITED a company incorporated in Western Australia and having its registered office situate at 45 Stirling Highway, Nedlands (hereafter with its successors permitted assigns and appointees called "the Company") of the other part.

WHEREAS:

- (a) the State and the Company are the parties to the agreement dated the 27th day of June 1975 which was ratified by the *Mineral Sands (Allied Eneabba) Agreement Act 1975* and is hereinafter referred to as "the principal Agreement"; and
- (b) the State and the Company (pursuant to an assignment agreement) are the parties to the agreement dated the 27th day of May 1975 which was ratified by the *Mineral Sands (Western Titanium) Agreement Act 1975* and is hereinafter referred to as "the WT Agreement";
- (c) the parties desire to amalgamate the principal Agreement and the WT Agreement and otherwise to vary the principal Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. Subject to the context the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the principal Agreement.
2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 29 December 1988.
3. (1) The provisions of this clause and clause 2 of this Agreement shall come into operation on the execution hereof.
(2) Subject to the Bill referred to in clause 2 coming into operation as an Act prior to 29 December 1988 the other provisions of this Agreement shall come into operation on 29 December 1988.

4. The principal Agreement is hereby varied as follows:

(1) Clause 1 —

(a) by deleting the following definitions —

“concentration plant”

“mineral claim”

“mineral lease”

“separation plant”;

(b) by inserting, in the appropriate alphabetical positions, the following definitions —

“ “approved proposals” means proposals approved or determined under this Agreement or the WT Agreement;

“Eneabba separation plant” means the plant constructed under the WT Agreement near Eneabba for the separation of heavy mineral concentrates into component heavy minerals;

“EP Act” means the *Environmental Protection Act 1986*;

“Meru separation plant” means the plant constructed under this Agreement at Meru for the separation of heavy mineral concentrates into component heavy minerals;

“Mining Lease” means the mining lease granted pursuant to Clause is and includes any renewals extensions or substitutions therefor whether extending over a greater or lesser area and according to the requirements of the context shall describe the land leased as well as the instrument by which it is leased;

“WT Agreement” means the agreement ratified by the *Mineral Sands (Western Titanium) Agreement Act 1975*. ”;

Schedule 2

- (c) in the definition of “associated company” by deleting “section 6 of the *Companies Act 1961*” and substituting the following —
 - “ section 7 of the *Companies (Western Australia) Code* ”;
- (d) by deleting the definition of “Mining Act” and substituting the following definition —
 - “ “Mining Act” means the *Mining Act 1978*; ”;
- (e) by substituting for the plan marked “A” referred to in the principal Agreement, the plan marked “B” initialled by or on behalf of the parties hereto for the purpose of identification;
- (f) by deleting the definition of “mining areas” and substituting the following definition —
 - “ “mining areas” means the areas shaded red and the areas hatched red (hereinafter together called “the red areas”), the areas shaded yellow and the areas hatched yellow (hereinafter together called “the yellow areas”) and the areas shaded green and the areas hatched green (hereinafter together called “the green areas”) on the said plan marked “B”; ”;
- (g) in the definition of “ore” by deleting “mineral lease” and substituting the following —
 - “ Mining Lease ”;
- (h) in the definition of “private road” by deleting “and where applicable in accordance with an approved proposal hereunder” and substituting the following —
 - “ or pursuant to approved proposals, ”;
- (i) by deleting the definition of “State Electricity Commission” and substituting the following definition —
 - “ “State Energy Commission” means The State Energy Commission of Western Australia as described in section 7 of the *State Energy Commission Act 1979*; ”;

- (j) by deleting the definition of “town” and substituting the following definition —
- “ “towns” means the townsite of Eneabba and the townsite of Leeman as respectively amended and redescribed from time to time pursuant to section 10 of the Land Act or any other townsite or townsites requested by the Company and approved by the Minister pursuant to proposals hereunder; ”;
- (k) in the definition of “WMC Joint Venturers” —
- (i) by deleting “and includes”;
- (ii) by deleting “Act 1964” and substituting the following —
- “ Act 1964 or any one or more of those parties ”.
- (2) By inserting after Clause 6 the following clauses —
- “ 6A. From and after the grant of the Mining Lease —
- (a) the proposals made by the Company pursuant to Clause 5 of the WT Agreement and approved by the Minister pursuant to Clause 6 of that Agreement shall be deemed to apply to those lands comprised within the Mining Lease that are shaded red and yellow on Plan “B”; and
- (b) the approved project shall apply to those lands within the Mining Lease that are hatched red and yellow on Plan “B”, and the said proposals and the approved project shall subject to this Agreement be implemented and given effect to by the Company accordingly.
- 6B. (1) The Company shall not mine any area or areas comprised within the green areas on Plan B unless and until proposals with respect thereto are approved or determined pursuant to this Clause.
- (2) If the Company desires to commence mining heavy minerals on the green areas on plan B or any part thereof it shall give notice of such desire to the

Schedule 2

Minister and shall within 2 months of the date of such notice (or thereafter within such extended time as the Minister may allow as hereinafter provided) and subject to the provisions of this Agreement submit to the Minister its detailed proposals with respect thereto which shall include the matters mentioned in paragraphs (a), (b) and (i) of subclause (3) (but with the proviso that rehabilitation and/or restoration of the mined areas within the areas shaded green shall be consistent with agricultural land use and that rehabilitation and/or restoration of the mined areas within the areas hatched green shall be for such purposes or uses as the State may require) and such of the other matters mentioned in subclause (3) as the Company may desire or the Minister may require.

- (3) The matters referred to in subclause (2) are —
- (a) the mining, and concentrating of ore and the separation of heavy mineral concentrates into heavy minerals;
 - (b) roads;
 - (c) facilities for the export of heavy minerals and heavy mineral products through the port;
 - (d) water supplies for the mining concentrating and separating of ore;
 - (e) housing, provision of utilities and services and associated facilities in the town;
 - (f) power supply;
 - (g) any other works, services or facilities desired by the Company;
 - (h) any leases, licences or other tenures of land required from the State; and
 - (i) measures to be taken for the protection and management of the environment including

rehabilitation and/or restoration of the mined areas, the prevention of the discharge of tailings, slimes, pollutants or overburden into the surrounding country, water courses, lakes or underground water supplies, the prevention of soil erosion and, to the extent that the Company is responsible for implementing the matters referred to in paragraphs (a) to (h) of this subclause, consideration of the environmental effects relating thereto.

- (4) The proposals may with the approval of the Minister and shall if so required by the State be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (i) of subclause (3).
- (5) The proposals relating to any one of the matters mentioned in subclause (3) may with the approval of the Minister and that of any third parties concerned instead of providing for the construction of new facilities of the kind therein mentioned provide for the use by the Company upon reasonable terms and conditions of any existing facilities of such kind.
- (6) At the time when the Company submits the said proposals it shall furnish to the State's satisfaction in all respects evidence of —
 - (a) marketing arrangements demonstrating the Company's ability to profitably sell or use heavy minerals or a substantial proportion thereof in accordance with the said proposals;
 - (b) the availability of finance necessary for the fulfilment of the operations to which the said proposals refer; and
 - (c) the readiness of the Company to embark upon and proceed to carry out the operations referred to in the said proposals.

Schedule 2

- (7) The provisions of Clause 6C shall apply to detailed proposals submitted pursuant to this Clause.
 - (8) The Company shall forthwith on the request of the State made at any time after the expiration of four years from the commencement of mining pursuant to proposals first approved under this Clause or such longer period as the Minister may approve from time to time surrender to the State all green areas on Plan B (other than any portions containing mineable coal deposits) which at the date of such request are within the Mining Lease and are not the subject of proposals approved under this Clause.
- 6C. (1) In respect of proposals submitted pursuant to Clause 6B, 7 or 8 the Minister shall consistent with the EP Act —
- (a) approve of the said proposals either wholly or in part without qualification or reservation; or
 - (b) defer consideration of or decision upon the same until such time as the Company submit a further proposal or proposals in respect of some other of the matters mentioned in subclause (3) of Clause 6B not covered by the said proposals; or
 - (c) require as a condition precedent to the giving of his approval to the said proposals that the Company make such alteration thereto or comply with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use by others as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions,

PROVIDED ALWAYS that where implementation of any proposals hereunder have been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this Clause

shall if the case so requires incorporate a requirement that the Company make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

- (2) The Minister shall within two months after receipts of the said proposals pursuant to subclause (1) of this Clause or where the said proposals are to be assessed under section 40(1)(b) of the EP Act then within two months after service on him of an authority under section 45(7) of the EP Act give notice to the Company of his decision in respect to the said proposals.
- (3) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) of this Clause the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) of this Clause and the Company considers that the decision is unreasonable the Company within two months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) of this Clause shall not be referable to arbitration hereunder.
- (5) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement proposals approved or determined pursuant to this Clause in accordance with the terms thereof. ”.

(3) Clause 7 —

(a) by inserting after “the approved project” the following —

Schedule 2

“ any approved proposals or desires to mine minerals granted by the Mining Lease which are not the subject of any approved proposals ”;

- (b) by deleting “The provisions of Clauses 5 and 6 shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause. The Company shall implement the approved proposals in accordance with the terms thereof” and substituting the following —

“ The provisions of subclauses (4), (5) and (6) of Clause 6B and the provisions of Clause 6C shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this Clause. ”.

- (4) Clause 8 —

by deleting subclauses (2), (3), (4) and (5) and substituting the following subclauses —

- “ (2) The Company shall during the currency of this Agreement submit to the Minister not later than 31st December 1989 and the 31st December in each third year thereafter, a detailed report on the result of such investigations and research and the implementation by the Company of approved proposals relating to the protection and management of the environment during the three year period ending 31st October immediately preceding the due date for the detailed report together with a mining plan setting forth the proposed mining operations of the Company during the three year period commencing 1st November immediately preceding such due date and the programme proposed to be undertaken by the Company during that period in regard to investigation and research under subclause (1) of this Clause and the implementation by the Company of approved proposals relating to the protection and management of the environment.
- (3) The Minister may within 2 months of receipt of a detailed report pursuant to subclause (2) of this Clause notify the Company that he —
- (a) approves the report and programme; or

- (b) requires amendment of the programme for the ensuing 3 years; or
 - (c) requires additional detailed proposals to be submitted for the protection and management of the environment.
- (4) The Company shall within 2 months of receipt of a notice pursuant to paragraph (b) of subclause (3) of this Clause submit to the Minister an amended programme as required. The Minister shall afford the Company full opportunity to consult with him on his requirements during the preparation of any amended programme.
- (5) The Minister may within 1 month of receipt of an amended report or programme pursuant to subclause (4) of this Clause notify the Company that he requires additional detailed proposals to be submitted for the protection and management of the environment.
- (6) The Company shall within 2 months of receipt of a notice pursuant to subclause (3)(c) or subclause (5) of this Clause submit to the Minister additional detailed proposals as required and the provisions of Clause 6C shall *mutatis mutandis* apply to those proposals.
- (7) In addition to the reports provided for in subclause (2) the Company shall when required by the Minister from time to time, but not more frequently than once in every 12 months, submit to the Minister interim reports in a form and to a level of detail determined by the Minister of its investigations and research carried out pursuant to subclause (1) and its implementation of approved proposals relating to the environment. ”.
- (5) By deleting Clause 9.
- (6) Clause 12 —
- (a) by deleting subclause (1) and substituting the following subclause: —
 - “ (1) The State shall cause the Railways Commission to transport by rail, and the company shall so consign:

Schedule 2

- (a) all its production of heavy mineral concentrates, heavy minerals or heavy minerals products (in this Clause either separately or collectively called “the bulk minerals”) —
 - (i) from Eneabba to the port, the Meru separation plant, the Narngulu synthetic rutile plant, or Capel synthetic rutile plant; and
 - (ii) from the Meru separation plant or the Narngulu synthetic rutile plant to the port; and
 - (b) in so far as is practicable, all other bulk commodities required for the Company’s operations hereunder. ”.
- (b) subclause (3) —
- by inserting before “separation plant” in both cases where it occurs the following —
- “ Meru ”;
- (c) by deleting subclause (4) and substituting the following subclause —
- “ (4) Where the Company elects to transport commodities by road pursuant to subclause (2) of this Clause or where the Company desires to transport heavy mineral concentrates and heavy minerals by road between the Meru separation plant and the port pursuant to subclause (3) of this Clause the Minister under the *Transport Co-ordination Act 1966* shall upon request by the Company and upon payment of the licence fees prescribed by him under the said Act issue licences for road carriage to the Company or its nominees provided that such nominees shall be persons whose character qualifications and financial stability are approved by the said Minister. ”;
- (d) by deleting subclause (5);
- (e) subclause (6) —

by deleting “when the Railways Commission commences to transport heavy mineral concentrates by rail from the concentration plant to the separation plant,” and substituting the following —

“ , for the purposes of this Agreement ”;

(f) by deleting subclause (8);

(g) subclause (11) —

by deleting subclause (11) and substituting the following subclause —

“ (11) The Company and the Railways Commission may from time to time enter into, add to, ratify, adopt, substitute for, cancel or vary an agreement or agreements in writing (which if the Company and the Railways Commission so agree may operate retrospectively) embodying the terms and conditions under which commodities are to be carried by the Railways Commission pursuant to this Agreement and for all other related matters insofar as they are not provided for in this Agreement. The provisions of Clause 29 of this Agreement shall not apply to this subclause. ”;

(h) subclause (16) —

(a) by deleting “the mineral lease” where it first occurs and substituting the following —

“ the red areas and yellow areas of the Mining Lease ”;
and

(b) by deleting “the mineral lease” where it secondly occurs and substituting the following —

“ the Mining Lease ”.

(7) Clause 13 —

(a) by deleting “State Electricity Commission” wherever it occurs and substituting in each place the following —

“ State Energy Commission ”;

Schedule 2

(b) by deleting “mineral lease” wherever it occurs and substituting in each place the following —

“ Mining Lease ”.

(8) Clause 14 —

(a) subclauses (10) and (11) —

by inserting before “separation plant” the following —

“ Meru ”;

(b) subclause (12) —

(i) by deleting “and consumed on the mining areas and at the separation plant” and substituting the following —

“ pursuant to this Agreement ”;

(ii) by deleting “town” and substituting the following —

“ towns ”.

(9) Clause 15 —

(a) subclause (1) —

by deleting subclause (1) and the marginal note thereto and substituting the following subclauses —

Mining Lease

“ (1) Notwithstanding the provisions of the Mining Act on application made by the Company on 29 December 1988 for a mining lease over so much of the land in the red areas, the yellow areas and the green areas as the Company desires and in respect of which the Company, Ilmenite Proprietary Limited, Western Titanium Ltd, Indoon Resources Pty Ltd or Circular Quay Holdings Pty Limited then holds mining titles and subject to the surrender on that day of all mining titles held by the Company and/or the other companies referred to in this subclause in respect of land within the red areas, the yellow areas and the green areas and to the withdrawal on that day of all applications for mining

leases and all applications for coal mining leases made by the Company and/or the other companies referred to in this subclause in respect of those areas and the withdrawal of the application for Mining Lease 256 SA the State shall cause to be granted to the Company at the rents specified from time to time in the Mining Act a mining lease (the "Mining Lease") of the lands so applied for (notwithstanding that the survey in respect thereof has not been completed but subject to such corrections to accord with survey when completed at the Company's expense) for all minerals such Mining Lease to be granted under and, except as otherwise provided in this Agreement, subject to the Mining Act but in the form of the Second Schedule hereto and subject to such of the conditions of the surrendered mining leases as the Minister for Mines determines and such other conditions as the Minister for Mines may impose pursuant to section 84 of the Mining Act.

(1a) In subsection (1) "mining titles" means mining leases and other mining tenements under the Mining Act and mineral claims held under clause 3 of the Second Schedule to that Act;

(1b) The Minister for Mines shall make such apportionments of rents as may be necessary in respect of the surrendered mining leases. ”;

(b) subclause (2) —

by deleting "mineral lease" wherever it occurs and substituting in each place the following —

“ Mining Lease ”;

(c) subclause (3) —

by deleting subclause (3) and the marginal note thereto and substituting the following —

Expenditure Conditions

Schedule 2

“ (3) The State shall ensure that during the currency of this Agreement and subject to compliance with its obligations hereunder the Company shall not be required to comply with the expenditure conditions imposed by or under the Mining Act in regard to the Mining Lease. ”;

(d) by deleting subclause (4);

(e) subclause (5) —

by deleting “mineral lease” wherever it occurs and substituting in each place the following —

“ Mining Lease ”;

(f) in subclause (6) —

by deleting “, and within 14 days after the date thereof or (in the case of an agreement entered into before the date hereof) after the execution of this Agreement, lodge a true copy of the agreement with the Minister for Mines”;

(g) by deleting subclause (7);

(h) subclause (8) —

by deleting “mineral lease” wherever it occurs and substituting in each place the following —

“ Mining Lease ”;

(i) by inserting after subclause (8) the following subclauses —

Surrender of parts of the Mining Lease

“ (9) Notwithstanding the provisions of this Clause the Company may from time to time with the approval of the Minister for Mines, subject to survey if required by the Minister for Mines at the Company’s expense, surrender to the State all or any portion or portions (of reasonable size and shape) of the Mining Lease (with abatement of future rent in respect to the area surrendered) provided however that such portion or portions have been rehabilitated and/or restored in

accordance with approved proposals hereunder and any condition relating to rehabilitation and/or restoration applicable pursuant to the Mining Lease in manner acceptable to the Minister for Mines.

Additional Areas

- (10) Notwithstanding the provisions of the Mining Act the Company may from time to time during the currency of this Agreement apply to the Minister for areas held by the Company under an exploration licence or mining lease granted under the Mining Act to be included in the Mining Lease. The Minister shall confer with the Minister for Mines in regard to any such application and if they approve the application the Minister for Mines shall upon the surrender of the relevant mining tenement include the area the subject thereof in the Mining Lease subject to such of the conditions of the surrendered mining tenement as the Minister for Mines determines. In respect of any such land —
- (a) the land shall in addition to any conditions so determined by the Minister for Mines be subject to the same terms covenants and conditions as apply to the Mining Lease;
 - (b) the Minister for Mines may make such apportionment of rents as may be necessary in connection therewith;
 - (c) the land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Company's expense. ”.

(10) Clause 18 —

- (a) by deleting “town” wherever it occurs and substituting the following —
“ towns ”;
- (b) subclause (1) —

Schedule 2

by deleting “and where applicable an approved proposal hereunder” and substituting the following —

“ the approved proposals ”;

(c) subclause (4) —

(i) by deleting “educational hospital medical and police services”;

(ii) by inserting after “commercial amenities” the following —

“ and also, in respect of Eneabba, for additional educational hospital medical and police services ”;

(11) Clause 19 —

(a) by deleting subclause (2) and substituting the following subclause —

“ (2) The State shall cause the Geraldton Port Authority, subject to the surrender of all leases then affecting the land to grant to the Company a lease of land at the port shown coloured blue on the plan marked “D” (initialled by or on behalf of the parties hereto for the purpose of identification) for a stockpile area for such period and on such terms and conditions (including renewal rights and provision for surrender of unrequired portions) as shall be agreed having regard to the purposes of the Company’s operations hereunder and the term of the Mining Lease. ”;

(b) subclause (3) —

by inserting after “WMC Joint Venturers” the following —

“ or the Geraldton Port Authority ”;

(c) subclause (4) —

by deleting “The State shall” and substituting the following —

“ Where the State causes the WMC Joint Venturers to operate the common inloading system or the common materials handling system, or both, the State shall ”.

(12) Clause 20 —

(a) subclause (1) —

by deleting “mineral lease” and substituting the following —

“ Mining Lease ”;

(b) by deleting subclause (2);

(c) subclause (4) —

by deleting “mineral lease” and substituting the following —

“ Mining Lease ”.

(13) Clause 21 —

(a) subclause (1) —

by deleting “four years after the commencement date the Company shall investigate the technical and economic feasibility of establishing a plant for secondary processing to the maximum degree then practicable (but excluding therefrom heavy minerals the subject of existing contractual commitments)” and substituting the following —

“ 31 December 1992 the Company shall investigate the technical and economic feasibility of establishing a new plant for secondary processing to the maximum degree then practicable ”.

(b) subclause (6)(c) —

by deleting “mineral leases” and substituting the following —

“ Mining Lease ”.

(14) By inserting after Clause 21 the following clause —

“ 21A. (1) The provisions of Clause 21 shall cease to apply if a plant approved by the Minister for the purpose of this Clause for the processing of at least 12,000 tonnes per annum of monazite to rare earth oxides is constructed within the said State before 31 December 1991 or such later date as the Minister may allow.

Schedule 2

- (2) The Company has advised the State that at 28 October 1988 only one agreement for the sale of monazite from the mining areas is in existence. If the plant referred to in subclause (1) of this Clause shall not be built within the period therein mentioned the Company shall if and when required by the State, determine such agreement pursuant thereto by such date (being not less than twelve months after the date of the request) as the Minister may direct.
- (3) From and after 28 October 1988 until (a) 31 December 1991 or such later date as the Minister may allow pursuant to subclause (1) of this Clause or (b) the completion and commissioning by the Company of a new plant for secondary processing pursuant to clause 21 the Company shall not sell or agree to sell any monazite from the mining areas without obtaining the prior consent of the Minister who may require as a condition of such consent that any such agreement shall be terminable by the Company forthwith on request of the Minister in the event the plant referred to in subclause (1) of this Clause is not constructed as therein provided. ”.

(15) Clause 22 —

- (a) by deleting “mineral lease” and substituting the following —
“ Mining Lease ”;
- (b) by deleting “or proposals approved hereunder” and substituting the following —
“ , approved proposals ”.

(16) Clause 26 —

- (a) by deleting “mineral lease” and substituting the following —
“ Mining Lease ”;
- (b) by deleting “and where applicable an approved proposal hereunder” and substituting the following —

“ , approved proposals ”.

(17) Clause 27 subclause (3) —

by deleting “mineral lease” and substituting the following —

“ Mining Lease ”.

(18) Clause 28 —

(a) by deleting “mineral claim” wherever it occurs and substituting in each place the following —

“ mining lease ”;

(b) by deleting “such claim” and substituting the following —

“ such lease ”;

(c) by deleting “mineral lease” wherever it occurs and substituting in each place the following —

“ Mining Lease ”;

(19) Clause 33 —

by deleting “mineral lease” wherever it occurs and substituting in each place the following —

“ Mining Lease ”.

(20) Clause 38 —

by deleting “*Arbitration Act 1895*” and substituting the following —

“ *Commercial Arbitration Act 1985* and notwithstanding section 20(1) of that Act each party may be represented before the arbitrators by a duly qualified legal practitioner or other representative ”.

(21) The First Schedule is deleted.

Schedule 2

- (22) The Second Schedule is deleted and the following Schedule substituted —

“

THE SECOND SCHEDULE

WESTERN AUSTRALIA

MINING ACT 1978

MINERAL SANDS (ENEABBA) AGREEMENT ACT 1975

MINING LEASE

Mining Lease No.

The Minister for Mines a corporation sole established by the *Mining Act 1978* with power to grant leases of land for the purposes of mining in consideration of the rents hereinafter reserved and of the covenants on the part of the Lessee described in the First Schedule to this lease and of the conditions hereinafter contained and pursuant to the *Mining Act 1978* (except as otherwise provided by the Agreement (hereinafter called “the Agreement”) described in the Second Schedule to this lease) hereby leases to the Lessee the land more particularly delineated and described in the Third Schedule to this lease for all minerals subject however to the provisions of the Agreement, to the exceptions and reservations set out in the Fourth Schedule to this lease and to any other exceptions and reservations which subject to the Agreement are by the *Mining Act 1978* and by any Act for the time being in force deemed to be contained herein to hold to the Lessee this lease for a term of twenty-one years commencing on the date set out in the Fifth Schedule to this lease upon and subject to such of the provisions of the *Mining Act 1978* except as otherwise provided by the Agreement as are applicable to mining leases granted thereunder and to the terms covenants and conditions set out in the Agreement and to the covenants and conditions herein contained or implied and any further conditions or stipulations set out in the Sixth Schedule to this lease the Lessee paying therefor the rents and royalties as provided in the Agreement with the right during the currency of the Agreement and in accordance with the provisions of the Agreement to take

Schedule 2

FOURTH SCHEDULE

All petroleum as defined in the *Petroleum Act 1967* on or below the surface of the land the subject of this lease is reserved to the Crown in right of the State of Western Australia with the right of the Crown in right of the State of Western Australia and any person lawfully claiming thereunder or otherwise authorised to do so to have access to the land the subject of this lease for the purpose of searching for and for the operations of obtaining petroleum (as so defined) in any part of the land.

FIFTH SCHEDULE

(Date of commencement of the lease)

SIXTH SCHEDULE

(Any further conditions or stipulations)

In witness whereof the Minister for Mines has affixed his seal
and set his hand hereto this day of 19 ”.

5. The WT Agreement is hereby cancelled and the rights and obligations of the parties thereto hereby terminated.

Stamp Duty Exemption

6. (1) The State shall exempt from any stamp duty which but for the operation of this Clause would or might be assessed and chargeable on —
 - (a) this Agreement
 - (b) the assignment whereby Western Titanium Ltd assigns all its right title and interest in the WT Agreement to the Company.

PROVIDED THAT this Clause shall not apply to any instrument or other document executed or made more than three years from the date hereof.

- (2) If prior to the date on which the Bill referred to in Clause 2 to ratify this Agreement is passed as an Act stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1) the State when such Bill is passed as an Act shall on demand refund

any stamp duty paid on any such instrument or other document to the person who paid the same.

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore written.

SIGNED by the said
THE HONOURABLE PETER
M'CALLUM DOWDING, LL.B.,
M.L.A. in the presence of —

}

PETER DOWDING

D. PARKER,
MINISTER FOR ECONOMIC
DEVELOPMENT AND TRADE.

}

THE COMMON SEAL OF ALLIED
ENEABBA LIMITED was hereunto
affixed by authority of the Directors in
the presence of —

}

[C.S.]

DIRECTOR,
CAMPBELL ANDERSON.

}

SECRETARY,
W. J. C. DAWES.

[Schedule 2 inserted by No. 61 of 1988 s. 9.]

Schedule 3 — The 2008 Variation Agreement

[s. 2]

[Heading inserted by No. 45 of 2008 s. 6.]

THIS AGREEMENT is made this 28th day of July 2008

BETWEEN

THE HONOURABLE ALAN JOHN CARPENTER MLA., Premier of the State of Western Australia acting for and on behalf of the said State and its instrumentalities from time to time (State)

AND

ILUKA RESOURCES LIMITED ACN 008 675 018 of Level 23, 140 St Georges Terrace, Perth, Western Australia (Company).

RECITALS

- A.** The State and the Company are now the parties to the agreement dated 27 June 1975 which was ratified by and is scheduled to the *Mineral Sands (Eneabba) Agreement Act 1975* and which as subsequently varied is referred to in this Agreement as the “*Principal Agreement*”.
- B.** In order to prolong the economic life of its Narngulu mineral processing facilities as the quantities of heavy mineral concentrates produced from the Mining Lease diminish, the Company wishes, as part of its operations under the Principal Agreement, to handle at such facilities the separation into heavy minerals of heavy mineral concentrates produced from its Jacinth-Ambrosia Project in South Australia and, with the Minister’s consent, of heavy mineral concentrates produced by itself or third parties from other projects within Australia or overseas.
- C.** The State for the purpose of promoting the development of the heavy minerals sands industry generally in Western Australia and employment opportunities generally in the Mid-West region of Western Australia has agreed to vary the Principal Agreement upon the terms and conditions set out in this Agreement to enable the Company to undertake such new activities as part of its operations under the Principal Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 2008 or such later date as the parties may agree.
3. (1) Clause 4 does not come into operation unless or until an Act passed in accordance with clause 2 ratifies this Agreement.
(2) If by 31 December 2008, or such later date as may be agreed pursuant to clause 2, clause 4 has not come into operation then unless the parties hereto otherwise agree this Agreement shall cease and determine and neither party hereto shall have any claim against the other party with respect to any matter or thing arising out of done performed or omitted to be done or performed under this Agreement.
(3) On clause 4 coming into operation all the provisions of this Agreement will operate and take effect despite any enactment or other law.
4. The Principal Agreement is hereby varied as follows:
 - (1) in clause 1:
 - (a) by inserting the following new definitions in their appropriate alphabetical position:
“Jacinth-Ambrosia Project” means the project, currently being undertaken by the Company, in the Eucla Basin of South Australia for the mining and concentration of rock soil or sand bearing heavy minerals;
“Narngulu mineral processing facilities” means the Meru separation plant, the Narngulu synthetic rutile plant and associated facilities constructed under this Agreement at Narngulu;
“Non-Mining Lease ore” means any rock soil or sand bearing heavy minerals mined from areas other than within the Mining Lease and whether within or outside Australia;

(b) by deleting the definition of “heavy mineral concentrates” and substituting the following new definition:

“heavy mineral concentrates” means:

(a) ore;

(b) Non-Mining Lease ore,

concentrated prior to separation into component heavy minerals;”

(2) in clause 6C(2) by deleting “section 40(1)(b)” and substituting “Part IV”;

(3) by deleting “If” at the beginning of clause 7 and substituting “Subject to Clause 7A, if”;

(4) by inserting after clause 7 the following new clause:

“Non-Mining Lease heavy mineral concentrates

7A. (1) During the continuance of this Agreement and while the Company is still mining ore from the Mining Lease the Company may, subject to the EP Act and the other provisions of this Agreement, submit to the Minister its fully detailed proposals (including, in connection with any proposed new works or modifications to existing works, plans where practicable and specifications where reasonably required by the Minister and any other details normally required by a local government in whose area any such new or modified works are to be situated) with respect to the separation into heavy minerals at the Narngulu mineral processing facilities of heavy mineral concentrates produced from the Jacinth-Ambrosia Project, and subject to subclause (5) from other Non-Mining Lease ore, and if the Company so wishes the production at the Narngulu mineral processing facilities of heavy mineral products from such heavy minerals, and the transport and shipment of such heavy minerals and heavy mineral products produced which proposals shall include the location, area, lay-out, design, quantities, materials and time programme for the commencement and completion of construction or the

provision (as the case may be) of each of the following matters:

- (a) the unloading and storage at the port of heavy mineral concentrates to be used in such operations;
- (b) the transport by road of such heavy mineral concentrates from the port to the Narngulu mineral processing facilities;
- (c) the modification or expansion of the Narngulu mineral processing facilities including, without limitation, by the construction of new works as part of those facilities;
- (d) the separation of such heavy minerals concentrates into heavy minerals;
- (e) the production (if the Company so wishes) of any heavy mineral products from such heavy minerals including, without limitation, synthetic rutile from ilmenite;
- (f) water supplies;
- (g) gas and electricity supplies;
- (h) the transport by road of such heavy minerals and heavy mineral products from the Narngulu mineral processing facilities to the port for export;
- (i) storage and ship loading facilities at the port for such export;
- (j) the storage upon the Mining Lease during the continuance of this Agreement of monazite and any other heavy minerals separated from the heavy mineral concentrates;
- (k) disposal of waste rock and tailings;
- (l) any other works, services or facilities desired by the Company in connection with the proposed operations; and

(m) subject to subclause (5)(c), any leases, licences or other tenure of land required from the State;

(n) measures to be taken for the protection and management of the environment including rehabilitation and/or restoration of storage areas upon the Mining Lease.

(2) Any of the proposals pursuant to subclause (1) may with the approval of the Minister, be submitted separately and in any order as to the matters mentioned in one or more of paragraphs (a) to (n) of subclause (1). Until all of its proposals under this Clause have been approved the Company may withdraw and may resubmit any proposal but the withdrawal of any proposal shall not affect the obligations of the Company to submit a proposal under this Clause in respect of the subject matter of the withdrawn proposal.

(3) The Company shall, whenever any of the following matters referred to in this subclause are proposed by the Company (whether before or during the submission of proposals under this Clause), submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia, together with its reasons therefore and shall, if required by the Minister, consult with the Minister with respect thereto.

(4) The provisions of subclauses (5) and (6) of Clause 6B and the provisions of Clause 6C shall mutatis mutandis apply to detailed proposals submitted pursuant to this Clause including pursuant to subclause (6) of this Clause. For the avoidance of doubt the reference in subclause (1)(b) of Clause 6C to “subclause (3) of Clause 6B” is to be read as a reference to subclause (1) of this Clause.

(5) Notwithstanding any other provisions of this Agreement the Company shall not without the Minister’s prior consent submit proposals under this Clause:

- (a) in respect of more than 600,000 tonnes (in aggregate) of heavy minerals concentrates; or
- (b) in respect of heavy mineral concentrates obtained other than from the Jacinth-Ambrosia Project; or
- (c) for the grant of any leases, licences or other tenure to support the undertaking of operations pursuant to such proposals; or
- (d) to bring heavy mineral concentrates into Western Australia otherwise than through the port or to export heavy minerals or heavy mineral products obtained from such heavy minerals otherwise than through the port.

(6) Subject to subclause (5) if the Company at any time during the continuance of this Agreement desires to significantly modify expand or otherwise vary its activities in relation to Non-Mining Lease ore that are the subject of this Agreement and that may be carried on by it pursuant to this Agreement beyond those activities specified in any proposals submitted and approved pursuant to this Clause it shall give notice of such desire to the Minister and shall within 2 months thereafter submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in subclause (1) as the Minister may require.

(7) To avoid doubt the parties acknowledge that the provisions of this Agreement do not apply to the mining of Non-Mining Lease ore, the production of heavy mineral concentrates from such ore or to the transport of such heavy mineral concentrates to Western Australia.”;

(5) in clause 12 by inserting the following new subclause:

“(17) This Clause does not apply to the transport of heavy mineral concentrates produced from Non-Mining Lease ore or to heavy minerals or heavy mineral products produced from such heavy mineral concentrates.”;

(7) by inserting in clause 20 the following new subclause:

“(4) (a) In this subclause :

“Mining Lease heavy mineral concentrates” means ore concentrated prior to separation into component heavy minerals; and

“Non-Mining Lease heavy mineral concentrates” means Non-Mining Lease ore concentrated prior to separation into component heavy minerals.

(b) The Company may with the approval from time to time of the Minister blend a heavy mineral resulting from the separation of Mining Lease heavy mineral concentrates with the same type of heavy mineral resulting from the separation of Non-Mining Lease heavy mineral concentrates.

(c) The authority given under paragraph (b) is subject to the Minister being reasonably satisfied that there is in place adequate systems and controls for the correct apportionment between the Mining Lease and the areas from within which Non-Mining Lease ore is being mined of the quantities of the relevant heavy mineral being blended and which systems and controls monitor production, concentration, processing, transportation, stockpiling and shipping activities in respect of all such blended heavy minerals. If at any time the Minister ceases to be so satisfied he may, after consulting the Company and provided that Company has not within three (3) months after the commencement of such consultation addressed the matters of concern to the Minister to his satisfaction, by notice in writing to the Company suspend the above authority in respect of the relevant blending arrangements until he is again satisfied in terms of this paragraph (c).

(d) If any blending occurs as contemplated by this subclause then for the purposes of calculating royalty as provided in subclause (1) on the quantity of heavy mineral resulting from the separation of Mining Lease heavy mineral concentrates and used in the admixture, the gross sale price of the blended heavy mineral

product as set out in the invoices relating to the sale (and converted if necessary to Australian currency in accordance with the *Mining Regulations 1981*) shall be apportioned to the abovementioned quantity of heavy mineral (as its gross invoice value) in the same proportion as that quantity of heavy mineral bears to the total quantity of the blended heavy mineral product.” ;

(8) by deleting clause 23; and

(9) by inserting after clause 39 the following new clause:

“Term of Agreement

39A. Subject to the provisions of Clauses 32 and 33, this Agreement shall expire on the earlier of:

(a) the date occurring 5 years (or with the Minister’s approval such longer time not exceeding 7 years) after the Company ceases to mine ore from the Mining Lease; and

(b) the expiration or sooner determination of the Mining Lease.”

EXECUTED as a deed.

SIGNED by THE HONOURABLE)
ALAN JOHN CARPENTER)
in the presence of:)

A J Carpenter

Name
Kent Frederick Alott

Kent Alott

THE COMMON SEAL of)
ILUKA RESOURCES LIMITED)
ACN 008 675 018 was hereto affixed) [C.S.]

in accordance with its constitution)
in the presence of:)

David Robb
Director

C. Wilson
Director/Secretary

[Schedule 3 inserted by No. 45 of 2008 s. 6.]

Notes

¹ This ~~reprint~~ is a compilation ~~as at 7 March 2003~~ of the *Mineral Sands (Eneabba) Agreement Act 1975* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Mineral Sands (Allied Eneabba) Agreement Act 1975</i> ³	54 of 1975	15 Oct 1975	15 Oct 1975
<i>Mineral Sands (Allied Eneabba) Agreement Amendment Act 1988</i>	61 of 1988	8 Dec 1988	Act other than s. 7: 8 Dec 1988 (see s. 2(1)); s. 7: 29 Dec 1988 (see s. 2(2))
Reprint <u>1</u>: The <i>Mineral Sands (Eneabba) Agreement Act 1975 as at 7 Mar 2003</i> (includes amendments listed above)			
<u><i>Mineral Sands (Eneabba) Agreement Amendment Act 2008</i></u>	<u>45 of 2008</u>	<u>10 Dec 2008</u>	<u>s. 1 and 2: 10 Dec 2008 (see s. 2(a)); Act other than s. 1 and 2: 11 Dec 2008 (see s. 2(b))</u>

² Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.

³ Short title changed to the *Mineral Sands (Eneabba) Agreement Act 1975* (see note under s. 1).