



Western Australia

**Diamond (Argyle Diamond Mines Joint  
Venture) Agreement Act 1981**

Compare between:

[01 Dec 2008, 01-e0-02] and [28 Jun 2010, 01-f0-02]



Western Australia

## **Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981**

**An Act to ratify and authorise the implementation of an agreement between the State of Western Australia and CRA Exploration Pty. Limited, Ashton Mining Limited, Tanaust Proprietary Limited, A.O. (Australia) Pty. Limited and Northern Mining Corporation N.L. and CRA Limited relating to the mining, marketing and processing of diamonds and to matters related thereto; to make provisions as to rights in respect of certain land and minerals to which the Agreement relates and as to the security of operations carried on pursuant to or for the purposes of the Agreement; and for incidental and other purposes.**

## Part I — Preliminary

### 1. Short title

This Act may be cited as the *Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981*<sup>1</sup>.

[Section 1 inserted by No. 12 of 1983 s. 2.]

### 2. Interpretation

In this Act unless the contrary intention appears —

***the Agreement*** means the agreement a copy of which is set out in Schedule 2 and, except in section 3(1), includes that agreement as altered from time to time in accordance with its provisions and by the first supplementary agreement, the second supplementary agreement and the third supplementary agreement;

***the Company*** means CRA Exploration Pty. Limited, a company incorporated in the State of New South Wales;

***the first supplementary agreement*** means the agreement a copy of which is set out in Schedule 3;

***the Joint Venturers*** has the same meaning as that expression has in and for the purposes of the Agreement;

***the second supplementary agreement*** means the agreement a copy of which is set out in Schedule 4;

***the third supplementary agreement*** means the agreement a copy of which is set out in Schedule 5.

[Section 2 amended by No. 12 of 1983 s. 3; No. 39 of 2001 s. 4; No. 37 of 2008 s. 4.]

## **Part II — Ratification of Agreement and supplementary agreements**

*[Heading amended by No. 39 of 2001 s. 5.]*

### **3. Agreement ratified and implementation authorised**

- (1) The Agreement is hereby ratified.
- (2) The implementation of the Agreement is authorised.

### **3A. First supplementary agreement**

The first supplementary agreement is approved and ratified.

*[Section 3A inserted by No. 39 of 2001 s. 6.]*

### **3B. Second supplementary agreement**

The second supplementary agreement is approved and ratified.

*[Section 3B inserted by No. 39 of 2001 s. 6.]*

### **3C. Third supplementary agreement**

The third supplementary agreement is ratified.

*[Section 3C inserted by No. 37 of 2008 s. 5.]*

### **4. By-laws**

- (1) The Governor may, on the recommendation of the Joint Venturers, make by-laws in accordance with and for the purposes referred to in the Agreement.
- (2) By-laws made pursuant to this section —
  - (a) are not subject to section 36 of the *Interpretation Act 1918*<sup>2</sup> but —
    - (i) shall be published in the *Gazette*; and
    - (ii) shall take effect and have the force of law from the date they are so published or from a later date provided for in the by-laws;

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- (b) may provide that contravention of or failure to comply with a by-law constitutes an offence and provide penalties not exceeding a fine of \$100 for offences against the by-laws.

**5. Money Lenders Act 1912 not to apply**

- (1) Subject to subsection (2), the *Money Lenders Act 1912*<sup>3</sup> does not apply to or in relation to any loan made, before the termination date as defined in section 6(1), to or by a party to the Agreement, or to or in relation to any contract or security relating to such a loan.
- (2) Subsection (1) does not prevent the application of the *Money Lenders Act 1912*<sup>3</sup> to or in relation to a loan made by a party to the Agreement to a person who is not a party to the Agreement, or to or in relation to any contract or security relating to such a loan, unless the loan is made for the purposes of, or for purposes incidental to, the implementation of the Agreement.
- (3) In this section —  
*loan* has the meaning given to that expression by section 2 of the *Money Lenders Act 1912*<sup>3</sup>;  
*party to the Agreement* means the Joint Venturers, or any of them, or CRA Limited, a company incorporated in Victoria.

[Section 5 amended by No. 12 of 1983 s. 5.]

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## **Part III — Mining tenements and rights as to minerals**

### **6. Interpretation and application of this Part**

- (1) In this Part unless the contrary intention appears —  
*court* includes a tribunal or person acting judicially, administratively or otherwise and, without limiting the generality of the foregoing, includes a warden presiding at a warden's court or acting or adjudicating in any other capacity;  
*marking out* includes marking off;

*Minister* and *warden* —

- (a) before the coming into operation of section 3 of the *Mining Act 1978*, have the same meanings as those expressions have, respectively, in and for the purposes of the *Mining Act 1904*<sup>4</sup>;
- (b) after the coming into operation of section 3 of the *Mining Act 1978*, have the same meanings as those expressions have, respectively, in and for the purposes of that Act;

*temporary reserve* means a reserve created under section 276 of the *Mining Act 1904*<sup>4</sup>;

*termination date* means the date of the cessation or determination of the Agreement in accordance with the terms thereof or of the determination of the Agreement by agreement between the parties thereto;

*the Department* means the Department of Mines<sup>5</sup> of the Public Service of the State;

*the Mining Act 1904* includes the regulations made thereunder;

*the Mining Act 1978* includes the regulations made thereunder;

*the subject land* means the area within the surveyed boundaries described on the plan marked "A" (initialled by or on behalf of the parties to the Agreement for the purposes of identification) which area is coloured blue on that plan for the purposes of identification and for those purposes only;

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*the temporarily reserved land* means the land that was, immediately before the coming into operation of this Act, comprised in temporary reserves 7216H, 7217H, 7311H and 7323H but does not include any portion of the subject land.

- (2) A reference to the marking out of land includes a reference to the occupation of and marking out of land or the taking possession of and marking out of land.
- (3) The provisions of this Part apply notwithstanding any law or the provisions of any other Act or any regulation.

**7. Registration and validity of certain mineral claims**

- (1) The applications recorded in a register kept in the Department as —
  - (a) applications by the Company for mineral claims with the designations MC 80/6787, MC 80/6788, MC 80/7854 and MC 80/7855, respectively;
  - (b) applications by the Company for mineral claims with the respective designations set out in Schedule 1; and
  - (c) applications by the Company for mineral claims with the designations MC 80/6834, MC 80/6835 and MC 80/6836, respectively,

are deemed to be and always to have been validly and effectually made and received for the purposes of the *Mining Act 1904*<sup>4</sup>.

- (2) On the coming into operation of this Act —
  - (a) each application mentioned in subsection (1)(a) is, by operation of this subsection, approved under and for the purposes of the *Mining Act 1904*<sup>4</sup> for the whole of the area the subject of the application;
  - (b) the whole of the area the subject of each application mentioned in subsection (1)(a) shall, by operation of this subsection, cease to be temporarily reserved pursuant to section 276 of the *Mining Act 1904*<sup>4</sup>; and



- (c) a mineral claim for diamonds with the appropriate designation mentioned in subsection (1)(a) is, by operation of this subsection, registered in the name of the Company under and for the purposes of the *Mining Act 1904*<sup>4</sup> for the whole of the area the subject of each of the applications mentioned in subsection (1)(a).
- (3) The mineral claims registered by operation of subsection (2) shall be subject to the same conditions as were imposed on the approval of the application recorded in a register kept in the Department as an application for a mineral claim with the designation MC 80/6792.
- (4) the approval of each of the applications mentioned in subsection (1)(b) under and for the purposes of the *Mining Act 1904*<sup>4</sup> is deemed to be and always to have been valid and effectual according to its tenor, and in each case, on the coming into operation of this Act —
  - (a) such portion or portions of the area the subject of the application as are temporarily reserved under section 276 of the *Mining Act 1904*<sup>4</sup> shall, by operation of this subsection, cease to be so reserved;
  - (b) a mineral claim with the appropriate designation set out in Schedule 1 is, by operation of this subsection, registered in the name of the Company under and for the purposes of the *Mining Act 1904*<sup>4</sup> in accordance with the terms on which the application was so approved and subject to the conditions imposed when the application was so approved.
- (5) Such entries may be made in registers and on documents, and such certificates or other documents may be issued, as may be appropriate to record and evidence the approvals, cessations of reservation and registrations effected by subsection (2), the conditions imposed by subsection (3), and the cessations of reservation and registrations effected by subsection (4).

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- (6) The approval of each of the applications mentioned in subsection (1)(c) under and for the purposes of the *Mining Act 1904*<sup>4</sup> and the registration in each case of a mineral claim in the name of the Company with the appropriate designation mentioned in subsection (1)(c) are deemed to be and always to have been valid and effectual according to their tenor.
- (7) The mineral claims registered by operation of subsections (2) and (4) and the mineral claims the registration of which is mentioned in subsection (6) are deemed to be and always to have been valid mineral claims under and for the purposes of the *Mining Act 1904*<sup>4</sup>.
- (8) The following matters, that is to say —
- (a) the validity or effect of —
    - (i) an application mentioned in this section; or
    - (ii) an approval or registration effected by, or mentioned in, this section;
  - or
  - (b) the validity of a mineral claim registered by operation of, or mentioned in, this section,

shall not be liable to be challenged, appealed against, reviewed, quashed, or called in question by or in any proceedings before a court whether instituted before or after the coming into operation of this Act.

**8. Protection of certain rights and interests of Company**

- (1) Without limiting any other right, title, interest, benefit or entitlement the company may have in or in respect of the subject land or any minerals found thereupon, or the effect of section 7, it is hereby expressly declared —
- (a) that on and from the coming into operation of this Act the Company has exclusive possession of the subject land for the purposes of the *Mining Act 1904*<sup>4</sup> and the *Mining Act 1978*; and

- (b) that —
- (i) all diamonds found upon the subject land before the coming into operation of this Act excluding diamonds removed from the subject land before 15 October 1979 by a person other than the Company; and
  - (ii) all diamonds found upon the subject land after the coming into operation of this Act but before the relevant date,

shall be the absolute property of the Company,

and the entitlement of the Company to such possession and such property shall not be liable to be challenged, appealed against, reviewed, quashed, or called in question by or in any proceedings before a court whether instituted before or after the coming into operation of this Act.

- (2) Subsection (1) does not —
- (a) apply to or in relation to the possession after the relevant date of the subject land;
  - (b) apply on or after the relevant date to or in relation to diamonds found before the relevant date upon the subject land but not removed from that land before that date; or
  - (c) affect any right, title, interest, benefit or entitlement of the Joint Venturers or any of them.
- (3) In this section *relevant date* means —
- (a) the date of the grant of a mining lease of the subject land pursuant to clause 15 of the Agreement; or
  - (b) the termination date,

whichever is the earlier.

## **9. Termination of other rights and interests**

- (1) Any right, title, interest, benefit or entitlement that is held —

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- (a) immediately before the coming into operation of this Act;
  - (b) under and for the purposes of the *Mining Act 1904*<sup>4</sup>;
  - (c) by any person other than —
    - (i) the Company; or
    - (ii) the Joint Venturers or any of them;
- and
- (d) in or in respect of the subject land or any portion thereof or in or in respect of any mineral found thereupon,

is, by operation of this subsection, extinguished and deemed never to have existed.

- (2) Any right, title, interest, benefit or entitlement that might, but for this subsection, vest or otherwise be acquired —
  - (a) under and for the purposes of the *Mining Act 1904*<sup>4</sup> or the *Mining Act 1978*;
  - (b) in or by any person other than —
    - (i) the Company;
    - (ii) the Joint Venturers or any of them; or
    - (iii) a person acting for or on behalf of the Company or the Joint Venturers or any of them;
  - (c) in or in respect of the subject land or any portion thereof or in or in respect of any mineral found thereupon; and
  - (d) by reason of any act, matter or thing done or commenced before the coming into operation of this Act, or after the coming into operation of this Act but before the relevant date,

shall not so vest or be so acquired.

- (3) In subsection (2) ***relevant date*** means the termination date unless the portion of land in question is surrendered to the State under clause 15(5) of the Agreement in which case ***relevant***

*date* means, in relation only to that portion of land, the date on which that surrender takes effect.

- (4) Any right, title, interest, benefit or entitlement that is held —
- (a) immediately before the coming into operation of this Act;
  - (b) under and for the purposes of the *Mining Act 1904*<sup>4</sup>;
  - (c) by any person other than —
    - (i) the Company; or
    - (ii) the Joint Venturers or any of them;
- and
- (d) in or in respect of the temporarily reserved land or any portion thereof or in or in respect of any mineral found thereupon,

is, by operation of this subsection, extinguished and deemed never to have existed.

- (5) Any right, title, interest, benefit or entitlement that might, but for this subsection, vest or otherwise be acquired —
- (a) under and for the purposes of the *Mining Act 1904*<sup>4</sup> or the *Mining Act 1978*;
  - (b) in or by any person other than —
    - (i) the Company;
    - (ii) the Joint Venturers or any of them; or
    - (iii) a person acting for or on behalf of the Company or the Joint Venturers or any of them;
  - (c) in or in respect of the temporarily reserved land or any portion thereof, or in or in respect of or in any mineral found thereupon; and
  - (d) by reason of any act, matter or thing done or commenced before the coming into operation of this Act, or after the coming into operation of this Act but before the relevant date,

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shall not so vest or be so acquired.

- (6) In subsection (5) *relevant date* means —
- (a) the date of the expiration of a period of 5 years from the coming into operation of this Act; or
  - (b) the termination date,

whichever is the earlier.

- (7) Nothing in subsections (1) to (6), both inclusive, affects any right, title, interest or entitlement of the Crown in right of the State except that a mining tenement shall not be granted to any person under the *Mining Act 1904*<sup>4</sup> or the *Mining Act 1978* in or in respect of any land or mineral if the vesting in that person, or the acquisition otherwise by that person, of any right, title, interest, benefit or entitlement in or in respect of the land or mineral under and for the purposes of either of those Acts is precluded by those subsections.

**10. Effect of marking out of certain land**

- (1) The marking out of any portion of the subject land as a mining tenement for the purposes of the *Mining Act 1904*<sup>4</sup> —
- (a) before the coming into operation of this Act; and
  - (b) otherwise than by or on behalf of the Company,

shall have no effect and shall be deemed never to have had any effect.

- (2) The marking out of any portion of the subject land as a mining tenement for the purposes of the *Mining Act 1904*<sup>4</sup> or the *Mining Act 1978* —
- (a) after the coming into operation of this Act but before the relevant date; and
  - (b) otherwise than by or on behalf of the Company,

shall have no effect.

- (3) In subsection (2) *relevant date* has the same meaning as it has in section 9(2).
- (4) The marking out of any portion of the temporarily reserved land as a mining tenement for the purposes of the *Mining Act 1904*<sup>4</sup> —
- (a) before the coming into operation of this Act; and
  - (b) otherwise than by or on behalf of the Company,
- shall have no effect and shall be deemed never to have had any effect.
- (5) The marking out of any portion of the temporarily reserved land as a mining tenement for the purposes of the *Mining Act 1904*<sup>4</sup> or the *Mining Act 1978* —
- (a) after the coming into operation of this Act but before the relevant date; and
  - (b) otherwise than by or on behalf of —
    - (i) the Company; or
    - (ii) the Joint Venturers or any of them,
- shall have no effect.
- (6) In subsection (5) *relevant date* has the same meaning as it has in section 9(5).

## **11. Saving of applications**

- (1) In this section *pending application* means an application for the registration of a mining tenement for the purposes of the *Mining Act 1904*<sup>4</sup> being an application that —
- (a) relates to a portion of land that is marked out wholly or partly on the temporarily reserved land;
  - (b) was made by a person other than —
    - (i) the Company; or
    - (ii) the Joint Venturers or any of them,

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after the creation of the temporary reserve on which the portion of land is marked out but before 9 February 1980; and

- (c) is pending immediately before the coming into operation of this Act.
- (2) Nothing in section 9(4), 9(5) or 10(4) prevents —
- (a) the warden from recommending the approval of a pending application if he is satisfied that the applicant was, at the time of the creation of the temporary reserve on which the portion of land is marked out, carrying out *bona fide* prospecting operations on that portion of land; or
  - (b) the Minister, in his absolute discretion, from approving a pending application if —
    - (i) the warden has, in accordance with paragraph (a), recommended the approval thereof; and
    - (ii) the Minister is satisfied as to the matter mentioned in paragraph (a);or
  - (c) the registration of a mining tenement that is the subject of a pending application if the Minister has, in accordance with paragraph (b), approved the application,

to the extent, and only to the extent, that the portion of land marked out is not within the subject land.

**12. Validity of mining lease under Agreement**

No proceedings shall be taken or maintained in any court to prevent or restrain the grant of a mining lease pursuant to clause 15 of the Agreement and where such a mining lease has been granted —



- (a) the validity of the mining lease including, without limiting the generality of the foregoing, its validity in respect of any land included therein pursuant to clause 15(6) of the Agreement; and
- (b) the rights, powers and authorities granted under or by virtue of the mining lease,

shall not be liable to be challenged, appealed against, reviewed, quashed, or called into question by or in any proceedings before a court on any ground including, without limiting the generality of the foregoing, the ground —

- (c) that any land in respect of which the mining lease is granted was not, at the time application was made under clause 15 of the Agreement for the grant of the mining lease, land in respect of which the Company held a mineral claim; or
- (d) that any land included in the mining lease pursuant to clause 15(6) of the Agreement was not land in respect of which the Company or the Joint Venturers or any of them held mining tenements under the *Mining Act 1904*<sup>4</sup> or mining leases under the *Mining Act 1978*.

### **13. Continuation of mining tenements**

Without limiting or otherwise affecting the application of the *Government Agreements Act 1979* to and in relation to the Agreement it is hereby expressly declared —

- (a) that notwithstanding anything contained in the *Mining Act 1904*<sup>4</sup> or the *Mining Act 1978* the mineral claims mentioned in clauses 16(1) and 19(1) of the Agreement and the mining tenements mentioned in clause 16(3) of the Agreement shall remain in force for the periods respectively provided for in the Agreement; and
- (b) that except as provided in this Part or in the Agreement the mineral claims and mining tenements referred to in paragraph (a) shall be subject to the *Mining Act 1904*<sup>4</sup>

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and shall continue to be subject to that Act after the coming into operation of section 3 of the *Mining Act 1978* as though the first-mentioned Act had not been repealed.

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## **Part IV — Security of diamond mining and processing areas**

### **14. Interpretation of this Part**

In this Part unless the contrary intention appears —

***authorised officer*** means any person acting in the exercise or performance of a power, authority, duty or function conferred or imposed by or under any Act and having a right of entry conferred by or under any Act but does not include a police officer;

***controlled access point*** means a place provided and designated in accordance with regulations made under section 29(2)(b) and, where used in relation to an act of a particular kind, means a place so provided and designated for acts of that kind or for acts of that kind and acts of any other kind or kinds;

***designated area*** means land that is, or premises that are, for the time being declared to be a designated area pursuant to section 15;

***medical practitioner*** means a person registered under the *Medical Practitioners Act 2008*;

***police officer*** means a person appointed under Part I of the *Police Act 1892* to be a member of the Police Force of Western Australia;

***premises*** means any building or structure or part of a building or structure, and includes any area surrounding such building or structure or part of a building or structure;

***property*** includes goods or articles of any kind;

***security officer*** means a person who is the holder of a security officer's licence under the *Security and Related Activities (Control) Act 1996* and is employed by the Owners or any of them;

*the Owners* means the Joint Venturers and each of them and any company formed by the Joint Venturers, or any of them, to manage operations conducted pursuant to the Agreement;

*this Part* includes the regulations made under this Part;

*uncut diamond* includes any crushed diamond, diamond dust, diamond fragment or partly cut or partly processed diamond;

*vehicle* has the same meaning as it has in and for the purposes of the *Road Traffic Act 1974*.

[Section 14 amended by No. 27 of 1996 s. 96; No. 22 of 2008 s. 162.]

**15. Designated areas**

- (1) Where it appears to the Governor that the mining, treatment, processing, sorting, storage or cutting of diamonds is being, or is proposed to be, carried out —
  - (a) on any land in the State; or
  - (b) on or within any premises in the State,

in the course of operations conducted for the purposes of or incidental to the implementation of the Agreement, the Governor may by Order in Council published in the *Gazette* declare that land or those premises, as the case may be, to be a designated area for the purposes of this Part.

- (2) An Order in Council published under subsection (1) —
  - (a) declaring land to be a designated area shall define the boundaries of that land;
  - (b) declaring premises to be a designated area shall describe the boundaries or limits of those premises.
- (3) The Governor may by Order in Council published in the *Gazette* amend or revoke any previous Order in Council published under this section.

- (4) An Order in Council published under this section shall take effect on the day of its publication or on such later day as is specified therein.

**16. Unlawful possession of diamonds**

A person who is within a designated area and who, without lawful authority or excuse, the proof of which lies on him, has an uncut diamond —

- (a) on his person; or
- (b) in his possession, or under his control, in any vehicle or other property or in any place,

commits an offence and is liable to a fine not exceeding \$10 000 or to imprisonment for a term not exceeding 2 years.

**17. Entry to and egress from designated area**

- (1) A person shall not —

- (a) enter or leave a designated area;
- (b) drive a vehicle into or out of a designated area; or
- (c) take or consign any property into or out of a designated area,

other than by way of a controlled access point.

- (2) A security officer may —

- (a) require a person who is entering or leaving a designated area to stop;
- (b) require a person driving a vehicle into or out of a designated area to stop the vehicle;
- (c) require a person who is taking or consigning property into or out of a designated area to produce the property to a security officer for examination; and
- (d) direct a person to —
  - (i) enter or leave a designated area;

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- (ii) drive a vehicle into or out of a designated area;  
or
  - (iii) take or consign any property into or out of a designated area,  
by way of a controlled access point specified by the security officer.
- (3) A person shall not enter, drive a vehicle into, or take or consign any property into a designated area without the permission of a security officer on duty at a controlled access point.
- (4) A police officer acting in the course of his duty shall not be refused permission to enter a designated area unless he fails to comply with a request made by a security officer at a controlled access point to —
  - (a) produce evidence that he is a police officer; or
  - (b) state the purposes for which he wishes to enter the designated area,to the security officer.
- (5) An authorised officer shall not be refused permission to enter a designated area unless he fails to comply with a request made by a security officer at a controlled access point to —
  - (a) furnish his name and address;
  - (b) state and provide evidence of his authority for entering the designated area; or
  - (c) state the purpose for which he wishes to enter the designated area,to the security officer.
- (6) Subject to subsections (4) and (5) a security officer may refuse permission without giving any reason for that refusal.
- (7) Without limiting the generality of subsection (6) permission for a person to enter a designated area, other than permission that is required to be granted by subsection (4) or (5), may be withheld

by a security officer until the person agrees in writing to abide by such reasonable conditions of entry as the security officer considers necessary for the security of the designated area and of operations, persons and property therein, including, without limiting the generality of the foregoing, a condition that the person will, while within or leaving the designated area, allow a search of himself (other than a search by way of an examination of his body cavities), or a search of any vehicle he is driving or any other property in his possession or under his control, to be carried out by a security officer whenever requested to do so by a security officer.

- (8) A person who —
- (a) contravenes subsection (1) or (3); or
  - (b) fails to comply with a requirement imposed pursuant to subsection (2)(a), (2)(b) or (2)(c),

commits an offence and is liable to a fine not exceeding \$5 000 or to imprisonment for a term not exceeding one year.

- (9) A person who having been given a direction by a security officer pursuant to subsection (2)(d) —
- (a) enters or leaves a designated area;
  - (b) drives a vehicle into or out of a designated area; or
  - (c) takes or consigns any property into or out of a designated area,

by way of a controlled access point other than that specified by the security officer commits an offence and is liable to a fine not exceeding \$500.

- (10) In this section *permission* means permission under and for the purposes of subsection (3).

**18. Security officer may give direction etc. to persons on designated area**

- (1) A security officer may —

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- (a) direct a person entering or within a designated area not to enter or remain within any portion of the designated area specified by the security officer either absolutely or unless he is in the company of security officer;
  - (b) require a person within a designated area to stop or require a person driving a vehicle within a designated area to stop the vehicle;
  - (c) require a person within a designated area to furnish his name and address and to state his authority for being within the designated area and the purpose for which he is within the designated area; and
  - (d) give such other direction to, or impose such other requirement on, a person entering or within a designated area, whether that direction or requirement is of a similar kind to those mentioned in paragraphs (a), (b) and (c) or of a different kind, as the security officer considers necessary for the security of the designated area and of operations, persons and property therein.
- (2) Where —
- (a) a person within a designated area fails to comply with a direction given or requirement imposed pursuant to subsection (1)(a), (1)(b) or (1)(c) or with any direction given or requirement imposed pursuant to subsection (1)(d) that may lawfully be complied with; or
  - (b) a security officer is not satisfied that a person who has been permitted to enter a designated area has any need to remain therein,

a security officer may require the person to leave the designated area forthwith.

- (3) A person who fails, without lawful authority or excuse, the proof of which lies on him, to comply with a requirement imposed pursuant to subsection (2) commits an offence and is liable to a fine not exceeding \$500.



**19. Removal of persons and things**

Without affecting the liability of any person for an offence against section 17 or 18 a security officer may, using only such force as is reasonably necessary —

- (a) stop a person who fails to comply with a requirement imposed pursuant to section 17(2)(a) or 18(1)(b) or a vehicle the driver of which fails to comply with a requirement imposed pursuant to section 17(2)(b) or 18(1)(b);
- (b) remove from a designated area a person who fails to comply with a requirement imposed pursuant to section 18(2);
- (c) remove any vehicle or other property from a designated area; and
- (d) enter a vehicle for the purpose of removing it pursuant to paragraph (c) or section 20(1)(b).

**20. Search of property**

- (1) A security officer may search any vehicle or other property in the possession or under the control of a person within a designated area or which is being driven, taken or consigned out of designated area and, for that purpose may —
  - (a) dismantle the property;
  - (b) remove the property to a place of safe custody and detain it there pending search or further search.
- (2) In subsection (1) *property* does not include clothing being worn by a person.

**21. Detention and search of persons**

- (1) Where a person —
  - (a) appears to a security officer to have an uncut diamond on his person, or in his possession or under his control

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within a designated area without lawful authority or excuse;

- (b) is reasonably suspected by a security officer of stealing or concealing an uncut diamond within a designated area; or
- (c) is found within a designated area without having received permission to enter that designated area under and for the purposes of section 17(3),

a security officer may, using only such force as is reasonably necessary, detain that person at a place within the designated area set aside for that purpose in accordance with the regulations, until the arrival of a police officer.

- (2) Without limiting the generality of subsection (1)(b), where a person who has, at any time before entering a designated area agreed in writing that he will, while within or leaving the designated area, allow a search of himself (other than a search by way of an examination of his body cavities), or a search of any vehicle he is driving or any other property in his possession or under his control, to be carried out by a security officer whenever requested to do so by a security officer fails, when such a request is made, to allow such a search to be carried out, a security officer shall be deemed to have reasonable grounds for suspecting the person of stealing or concealing an uncut diamond.
- (3) On detaining a person pursuant to subsection (1) a security officer shall forthwith report the detention to the nearest police officer or, if the whereabouts of the nearest police officer is not known, the nearest police station.
- (4) Subject to subsections (5) and (7) a police officer may search any person who is detained pursuant to this section and any clothing worn by such a person.

- (5) Subject to subsection (6) a search under subsection (4) shall be carried out by a police officer of the same sex as the person to be searched.
- (6) Where it is not immediately practicable for subsection (5) to be complied with in relation to a search under subsection (4) a police officer may, subject to subsection (7), cause the search to be carried out, under the direction of a police officer, by a security officer of the same sex as the person who is to be searched or may —
- (a) detain the person until; or
  - (b) convey or conduct the person to a place where,
- it is practicable for subsection (5) to be complied with.
- (7) Subsections (4) and (6) do not authorise a police officer, or a security officer acting under the direction of a police officer, to carry out a search by way of an examination of the body cavities of a person but a police officer may arrange for a medical practitioner nominated by the police officer to examine the body cavities of the person and may —
- (a) detain the person until the arrival of that medical practitioner; or
  - (b) convey or conduct the person to that medical practitioner.
- (8) Subject to subsection (9) an examination arranged under subsection (7) shall be carried out in the presence of a police officer of the same sex as the person to be examined.
- (9) Where it is not immediately practicable for subsection (8) to be complied with in relation to an examination arranged under subsection (7) a police officer may cause the examination to be carried out in the presence of a security officer of the same sex as the person to be examined or may —
- (a) detain the person until; or
  - (b) convey or conduct the person to a place where,

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it is practicable for subsection (8) to be complied with.

- (10) A medical practitioner is hereby authorised to carry out an examination of the body cavities of a person arranged by a police officer under subsection (7) and no action shall lie against the medical practitioner in respect of anything reasonably done by him for the purposes of the examination.
- (11) A police officer may use such force as is reasonably necessary, and may call on such assistance as he considers necessary, in order to —
- (a) detain a person under this section;
  - (b) carry out a search under this section; or
  - (c) facilitate the carrying out of a search caused by him or an examination arranged by him under this section.
- (12) A person who —
- (a) resists detention under this section;
  - (b) escapes or attempts to escape —
    - (i) from a place at which he is being detained under this section; or
    - (ii) from a police officer who is conveying or conducting him under subsection (6)(b), (7)(b) or (9)(b);
  - (c) obstructs or hinders a police officer or a security officer in the carrying out of a search of that person, or clothing worn by that person, under subsection (4) or (6); or
  - (d) obstructs or hinders a medical practitioner in the carrying out of any examination of that person under subsection (7),

commits an offence and is liable to a fine not exceeding \$10 000 or to imprisonment for a term not exceeding 2 years.

**22. Emergency action exempted**

Sections 17 to 20, both inclusive, and section 21(1)(c) do not apply to or in relation to a police officer or authorised officer acting lawfully in an emergency.

**23. Powers of police not affected**

The powers conferred on a police officer by section 21 are in addition to any other powers that a police officer has apart from this Act and nothing in this Part shall be construed as limiting or otherwise affecting the powers and duties that a police officer may exercise and perform within or in respect of a designated area.

**24. Evidence**

In any prosecution under this Part an averment in the prosecution notice —

- (a) that the place at or in respect of which a contravention of this Part is alleged to have occurred was, or was within, a designated area; or
- (b) that a place was a controlled access point for a specified purpose; or
- (c) that a person was at a material time a security officer,

shall be deemed to be proved in the absence of proof to the contrary.

*[Section 24 amended by No. 84 of 2004 s. 79.]*

**25. Restitution of diamonds**

Notwithstanding any law or any other Act, upon the conviction of any person for an offence against this or any other Act committed within a designated area and involving the stealing, receiving or possession of uncut diamonds the court shall order the uncut diamonds to be delivered to the Owners.

**26. Security and Related Activities (Control) Act 1996 to apply**

The provisions of the *Security and Related Activities (Control) Act 1996* that are applicable to a security officer licensed under that Act shall apply to and in relation to a security officer.

*[Section 26 inserted by No. 27 of 1996 s. 96.]*

**27. Offences under other Acts not excluded**

Subject to section 17 of *The Criminal Code* and section 11 of the *Sentencing Act 1995*, nothing in this Part affects the liability of any person to be prosecuted and punished for an offence under any other written law.

*[Section 27 amended by No. 78 of 1995 s. 33; No. 84 of 2004 s. 78.]*

**28. Exercise of powers lawful**

A security officer or police officer who duly exercises any power conferred by this Part in relation to a person shall not, by reason of exercise of the power, be liable for any offence of obstructing or hindering a person in the exercise of a power, or the performance of a function or duty, under any Act or law.

**29. Regulations**

- (1) The Governor may make regulations prescribing all matters that are necessary or convenient to be prescribed for giving effect to the purposes of this Part.
- (2) Without limiting the generality of subsection (1) regulations may be made under this section —
  - (a) requiring the Owners to erect and maintain fences, walls and other physical barriers around a designated area in accordance with the regulations;
  - (b) requiring the Owners to provide and designate places, in accordance with the regulations, for —
    - (i) the entry of persons to a designated area;

- (ii) the egress of persons from a designated area;
  - (iii) the driving of vehicles into a designated area;
  - (iv) the driving of vehicles out of a designated area;
  - (v) the taking or consignment of property into a designated area;
  - (vi) the taking or consignment of property out of a designated area; or
  - (vii) any 2 or more of the purposes referred to in the preceding subparagraphs;
- (c) requiring the Owners to erect and maintain notices and signs at or near the perimeter of a designated area in accordance with the regulations;
  - (d) prohibiting the damaging, defacing, removal or destruction of fences, barriers, signs and notices erected pursuant to the regulations;
  - (e) regulating the detention of persons under this Part and in particular requiring the setting aside of places within designated areas for the detention of persons;
  - (f) regulating the carrying out of searches and examinations of persons under this Part;
  - (g) regulating the custody of, and carrying out of searches of, vehicles and other property under this Part;
  - (h) prohibiting or regulating search by X-ray apparatus;
  - (i) prohibiting persons from obstructing, hindering or interfering with a security officer acting under the authority of this Part;
  - (j) providing that contravention of or failure to comply with a regulation constitutes an offence and providing penalties not exceeding a fine of \$500 for offences against the regulations.
- (3) Regulations may be made under this section —
- (a) so as to apply —

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- (i) generally or in a particular class of case or in particular classes of cases;
  - (ii) at all times or at a specified time or at specified times; and
  - (iii) to all designated areas or to a specified designated area or specified designated areas;
- (b) so as to require a matter affected by them to be —
- (i) in accordance with a specified standard or specified requirement; or
  - (ii) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body;
- and
- (c) so as to confer on a specified person or body or a specified class of person or body a discretionary authority.
- (4) In subsection (3) *specified* means specified in the regulations.  
*[Section 29 amended by No. 12 of 1983 s. 6.]*



## **Schedules**

**Schedule 1**

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MC 80/6792, MC 80/6793, MC 80/6794, MC 80/6795, MC 80/6796,  
MC 80/6797, MC 80/6798, MC 80/6799, MC 80/6800, MC 80/6801,  
MC 80/6802, MC 80/6803, MC 80/6804, MC 80/6805, MC 80/6806,  
MC 80/6807, MC 80/6808, MC 80/6809, MC 80/6810, MC 80/6811,  
MC 80/6812, MC 80/6813, MC 80/6814, MC 80/6815, MC 80/6816,  
MC 80/6817, MC 80/6818, MC 80/6819, MC 80/6820, MC 80/6821,  
MC 80/6825, MC 80/6826, MC 80/6827, MC 80/6828, MC 80/6829,  
MC 80/6832, MC 80/6833, MC 80/6853, MC 80/6858, MC 80/6859,  
MC 80/6860, MC 80/6861, MC 80/6862, MC 80/6863, MC 80/6864,  
MC 80/6865, MC 80/6866, MC 80/6867, MC 80/6868, MC 80/7856,  
MC 80/7857, MC 80/10261, MC 80/10262, MC 80/10263, MC 80/10264,  
MC 80/10265, MC 80/10266, MC 80/10267, MC 80/10268, MC 80/10275,  
MC 80/10276, MC 80/10277, MC 80/10278, MC 80/10376, MC 80/10377,  
MC 80/10378, MC 80/10379, MC 80/10380, MC 80/10381, MC 80/10382,  
MC 80/10383, MC 80/10384, MC 80/10385, MC 80/10386, MC 80/10387,  
MC 80/10388, MC 80/10389, MC 80/10390, MC 80/10391, MC 80/10392,  
MC 80/10393, MC 80/10394, MC 80/10395, MC 80/10396, MC 80/10397,  
MC 80/10398, MC 80/10399, MC 80/10400, MC 80/10401, MC 80/10402,  
MC 80/10403, MC 80/10404, MC 80/10405, MC 80/10406, MC 80/10407,  
MC 80/10408, MC 80/10409, MC 80/10410, MC 80/10411, MC 80/10412,  
MC 80/10413, MC 80/10414, MC 80/10487, MC 80/10489, MC 80/10490,  
MC 80/10491, MC 80/10492, MC 80/10493, MC 80/10494, MC 80/10495,  
MC 80/10496, MC 80/10497, MC 80/10498, MC 80/10499, MC 80/10500.

## **Schedule 2**

THIS AGREEMENT made this 17th day of November, 1981, BETWEEN THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, K.C.M.G., 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 first part CRA EXPLORATION PTY. LIMITED a company incorporated in the State of New South Wales and having its principal place of business in the State of Western Australia at 21 Wynyard Street, Belmont, (hereinafter called "CRAE") ASHTON MINING LIMITED a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 6th Floor, 189 St. George's Terrace, Perth, TANAUST PROPRIETARY LIMITED a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 2nd Floor, Cecil Building, 6 Sherwood Court, Perth, A.O. (AUSTRALIA) PTY. LIMITED a company incorporated in the State of New South Wales and having its principal place of business in the State of Western Australia at 6th Floor, 189 St. George's Terrace, Perth and NORTHERN MINING CORPORATION N.L. a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at Homeric House, 442 Murray Street, Perth (the said CRAE, Ashton Mining Limited, Tanaust Proprietary Limited, A.O. (Australia) Pty. Limited and Northern Mining Corporation N.L. being hereinafter collectively called "the Joint Venturers" in which term shall be included their respective successors and permitted assigns and appointees) of the second part and CRA Limited a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 191 St. George's Terrace, Perth, (hereinafter called "the Guarantor") of the third part.

### **W H E R E A S:**

- (a) the Joint Venturers have established the existence of diamond bearing ore bodies (including kimberlite pipes and alluvial deposits) within the Argyle mining area and the Ellendale mining area defined in Clause 1 and have carried out certain investigations relating inter alia to the mining and treatment of that ore and the sale of diamonds;
- (b) the Joint Venturers intend to mine such ore bodies and recover and market diamonds and investigate the economic feasibility of and promote the processing of diamonds in the said State;

- (c) the Joint Venturers intend to provide such facilities and services as may be necessary for their operations under this Agreement and for the accommodation and welfare of their workforce at or in the vicinity of the said mining areas or elsewhere within the Kimberley region.

NOW THIS AGREEMENT WITNESSETH:

**Definitions**<sup>6</sup>

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 and any inflexion or derivation of any of those words has a corresponding meaning;

“approved proposal” means any proposal approved under this Agreement;

“Argyle mining area” means the area defined as “the temporarily reserved land” in the Bill referred to in Clause 3 which area is for the purposes of identification coloured red on the plan marked “A” (initialled by or on behalf of the parties hereto for the purposes of identification) (hereinafter called “the red area”) and the area defined as “the subject land” in the said Bill which area is for the purposes of identification coloured blue on the said plan (hereinafter called “the blue area”);

“associated company” means —

- (a) any company or corporation having a paid up 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 Joint Venturers or any of them for all or any of the purposes of this Agreement and in which the Joint Venturers or any of them or some other company or corporation acceptable to the Minister hold 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 one or more of the Joint Venturers or to any company or corporation in which the Joint Venturers or any of them or some other company or corporation acceptable to the Minister hold not less than 25% of the issued ordinary share capital; and
  - (iii) is notified to the Minister by the Joint Venturers or any of them 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 the Commonwealth of Australia and includes the Government for the time being thereof;

“Ellendale mining area” means the area bordered green on the plan marked “B” (initialled by or on behalf of the parties hereto for the purposes of identification);

“Land Act” means the *Land Act 1933*;

“local authority” means the council of a municipality that is a city, town or shire constituted under the *Local Government Act 1960*;

“*Mining Act 1904*” means (unless the context otherwise requires) the *Mining Act 1904* and the amendments thereto and the regulations made thereunder as in force on 31st December, 1981;

“*Mining Act 1978*” means the *Mining Act 1978*;

“mining leases” subject to the context means the mining lease or mining leases granted pursuant to Clauses 15 and 18 and includes any renewal thereof and according to the requirements of the context shall describe the area of land demised as well as the instrument by which it is demised and any area or areas added thereto pursuant to the provisions of Clause 15;

“Minister” means the Minister in the Government of the State for the time being responsible (under whatsoever title) for the administration of the Act to ratify this Agreement and pending the passing of that Act

means the Minister for the time being designated in a notice from the State to the Joint Venturers 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 1904* or the *Mining Act 1978*;

“month” means calendar month;

“notice” means notice in writing;

“ore” means any rock soil or alluvium bearing diamonds mined from mining leases granted pursuant to this Agreement;

“person” or “persons” includes bodies corporate;

“private road” means a road (not being a public road) which is either constructed by the Joint Venturers in accordance with their proposals as approved by the Minister 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 *Road Traffic Act 1974*;

“relevant town” in relation to the Argyle mining area means the town or towns to be developed in the Kimberley region with the approval of the State by the Joint Venturers as the principal housing area for their mine workforce serving the Argyle mining area and in relation to the Ellendale mining area means the town or towns to be developed in the Kimberley region with the approval of the State by the Joint Venturers as the principal housing area for their mine workforce associated with the Ellendale mining area and may in either case with the approval of the State include an existing town;

“relevant townsite” means the site on which the relevant town is or is to be situated;

“said State” means the State of Western Australia;

“sorting” means the classification of diamonds after any necessary cleaning into categories in relation to their size, shape, colour or value and “sorted” has a corresponding meaning;

“State Energy Commission” means The State Energy Commission of Western Australia as described in section 7 of the *State Energy Commission Act 1979*;

“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.

**Interpretation**<sup>6</sup>

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 40 to extend any period or date shall be without prejudice to the power of the Minister under Clause 40;
  - (c) marginal notes do not affect the interpretation or construction<sup>6</sup>; and
  - (d) reference to an Act (other than the *Mining Act 1904*) 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 State**<sup>6</sup>

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, 1981; and
  - (b) to the extent reasonably necessary for the purposes of this Agreement allow the Joint Venturers to enter upon Crown Lands (including, if applicable, land the subject of a pastoral lease).

**Ratification and operation**<sup>6</sup>

4. (1) The provisions of this Agreement other than this Clause and Clauses 1, 2 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, 1981 the said Bill has not commenced to operate as an Act then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto 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.

**Initial obligations of the Joint Venturers**<sup>6</sup>

5. (1) The Joint Venturers shall continue their field and office engineering, environmental, market and finance studies and other matters necessary to enable them to finalise and to submit to the Minister the detailed proposals referred to in Clause 7 and their proposed marketing arrangements pursuant to Clause 6.
- (2) The Joint Venturer shall keep the State fully informed in writing quarterly as to the progress and results of their operations under subclause (1) of this Clause. The first quarterly report shall be lodged during the month of April, 1982 and shall be in respect of the quarter ending on the last day of March, 1982 and thereafter the quarterly reports shall be in respect of the quarter ending on the last day of the month preceding the month in which they are lodged.
- (3) The Joint Venturers shall co-operate with the State and consult with the representatives or officers of the State regarding matters referred to in subclause (1) of this Clause and any other relevant studies in relation to that subclause that the Minister may wish to undertake;

**Marketing arrangements**<sup>6</sup>

6. (1) Prior to or at the time of the submission of the proposals required pursuant to subclause 1(A) of Clause 7 the Joint Venturers shall also submit to the Minister for his approval their proposed arrangements for the marketing of diamonds to be produced pursuant to this Agreement.



- (2) The Minister shall within 2 months after receipt of any such submission notify the Joint Venturers of his approval or otherwise of the proposed arrangements.
- (3) In the event that the Minister does not approve the said submission (which approval shall not be unreasonably withheld) the Minister shall give reasons and shall afford the Joint Venturers full opportunity to consult with him and should they so desire to submit new or revised arrangements for his approval.
- (4) The Minister's determination in respect of any submission by the Joint Venturers pursuant to this Clause shall be final and shall not be referable to arbitration hereunder.
- (5) The Joint Venturers shall submit a report to the Minister at half yearly intervals unless the Minister otherwise requires commencing from the date the said proposed arrangements are approved concerning their implementation of those arrangements.
- (6) If the Joint Venturers at any time during the continuance of this Agreement desire to significantly modify, expand or otherwise vary the approved marketing arrangements, they shall inform the Minister and submit their revised marketing arrangements for his approval pursuant to this Clause.

**Joint Venturers to submit proposals for the Argyle mining area <sup>6</sup>**

7. (1) The Joint Venturers shall, subject to the provisions of this Agreement, submit to the Minister to the fullest extent reasonably practicable their detailed proposals —
  - (A) on or before 31st December, 1982 for the mining and recovery of diamonds from not less than 500,000 tonnes per annum of diamond bearing alluvium from the Argyle mining area to commence not later than 6 months from the date of approval of such proposals; and
  - (B) on or before 31st December, 1983 for the mining and recovery of diamonds from not less than 2 million tonnes per annum of kimberlite ore from the Argyle mining area such plant to be in operation not later than 31st December, 1986

which proposals shall include plans where practicable and specifications where reasonably required by the Minister and shall make provision where appropriate for the necessary workforce and associated population required to enable the Joint Ventures to mine and recover diamonds from ore from the area the subject of the proposals and shall include the location, area, lay-out, design, quantities, materials and time programme for the commencement completion of construction or the provision (as the case may be) of each of the following matters, namely —

- (a) the mining and recovery of diamonds from ore including plant facilities and security measures;
- (b) roads;
- (c) relevant townsite and relevant town including housing, provision of utilities and services and associated facilities including, subject to the provisions of Clause 26, transitional arrangements;
- (d) water supply;
- (e) power supply;
- (f) airstrip in or adjacent to the mining areas and other airport facilities and services;
- (g) any other works, services or facilities desired by the Joint Venturers;
- (h) use of local professional services labour and materials and measures to be taken with respect to the engagement and training of employees by the Joint Venturers, their agents and contractors;
- (i) any leases (other than mining leases), licences or other tenures of land required from the State; and
- (j) an environmental management programme as to measures to be taken, in respect of the Joint Venturers' activities under this Agreement, for the protection and management of the environment.

**Order of proposals**<sup>6</sup>

- (2) Each of the proposals pursuant to subclause (1) of this Clause may with the approval of the Minister or if so required by him be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (j) of subclause (1) of this Clause.

**Use of existing infrastructure**<sup>6</sup>

- (3) Each of the proposals pursuant to subclause (1) of this Clause 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 Joint Venturers of any existing facilities of such kind belonging to the Joint Venturers or upon reasonable terms and conditions of any other existing facilities of such kind.

**Financial arrangements**<sup>6</sup>

- (4) At the time when the Joint Venturers submit each of the proposals pursuant to subclause (1) of this Clause they shall furnish to the State's satisfaction evidence of —
- (a) the availability of finance necessary for the fulfilment of the operations to which the said proposals refer; and
  - (b) the readiness of the Joint Venturers to embark upon and proceed to carry out the operations referred to in the said proposals.

**Consideration of proposals**<sup>6</sup>

8. (1) On receipt of each of the proposals pursuant to subclause (1) of Clause 7 the Minister shall —
- (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 Joint Venturers submit a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) of Clause 7 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 Joint Venturers make such alteration there to 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 Joint Venturers 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.

**Advice of Minister's decision**<sup>6</sup>

- (2) The Minister shall within two months after receipt of each of the said proposals pursuant to subclause (1) of this Clause give notice to the Joint Venturers of his decision in respect to the same.

**Consultation with Minister**<sup>6</sup>

- (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 Joint Venturers full opportunity to consult with him and should they so desire to submit new or revised proposals either generally or in respect to some particular matter.

**Minister's decision subject to arbitration**<sup>6</sup>

- (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 Joint Venturers consider that the decision is unreasonable the Joint Venturers within two months after receipt of the notice mentioned in subclause (2) of this Clause may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision.

**Arbitration award**<sup>6</sup>

- (5) An award made on an arbitration pursuant to subclause (4) of this Clause shall have force and effect as follows —
  - (i) if by the award the dispute is decided against the Joint Venturers then unless the Joint Venturers within 3 months after delivery of the award give notice to the Minister of their acceptance of the award this Agreement shall on the expiration of that period of 3 months cease and determine; or

- (ii) if by the award the dispute is decided in favour of the Joint Venturers 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.

**Effect of non-approval of proposals**<sup>6</sup>

- (6) Notwithstanding that under subclause (1) of this Clause any detailed proposals of the Company are approved by the Minister or determined by arbitration award, unless each and every such proposal and matter is so approved or determined by —
  - (i) 31st December, 1983 in respect of the proposals made pursuant to paragraph (A) of subclause (1) of Clause 7; and
  - (ii) 31st December, 1984 in respect of the proposals made pursuant to paragraph (B) of subclause (1) of Clause 7

or in each case by such extended date or period if any as the Joint Venturers shall be granted pursuant to the provisions of this Agreement then the Minister may give to the Joint Venturers 12 months notice of intention to determine this Agreement and unless before the expiration of the said 12 months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of Clause 42.

**Implementation of proposals**<sup>6</sup>

- (7) The Joint Venturers shall implement the approved proposals in accordance with the terms thereof.

**Further proposals — Ellendale mining area**<sup>6</sup>

- 9. (1) On or before 31st December, 1990 the Joint Venturers shall submit to the Minister detailed proposals for the development of the Ellendale mining area and as to such of the matters mentioned in paragraphs (a) to (j) of subclause (1) of Clause 7 as the Minister may require.
- (2) The provisions of Clauses 6, 7 and 8 (other than subclauses (5) and (6) of Clause 8) shall mutatis mutandis apply to detailed proposals submitted pursuant to this Clause.

**Additional proposals**<sup>6</sup>

10. If the Joint Venturers at any time during the continuance of this Agreement desire to significantly modify expand or otherwise vary their activities carried on pursuant to this Agreement beyond those specified in any approved proposals or desire to mine minerals other than diamonds they 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 of the other matters mentioned in paragraphs (a) to (j) of subclause (1) of Clause 7 as the Minister may require. The provisions of Clause 7 and Clause 8 (other than subclauses (5) and (6)) shall mutatis mutandis apply to detailed proposals submitted pursuant to this subclause. The Joint Venturers shall implement the approved proposals in accordance with the terms thereof.

**Protection and management of the environment**<sup>6</sup>

11. (1) The Joint Venturers shall in respect of the matters referred to in paragraph (j) of subclause (1) of Clause 7 and 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 they are taking pursuant to such approved proposals for rehabilitation and the protection and management of the environment.
- (2) The Joint Venturers shall during the currency of this Agreement at yearly intervals commencing from the respective dates when the Joint Venturers' proposals are approved submit an 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 Joint Venturers 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 Joint Venturers 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 Clause 7 and Clause 8 (other than subclauses (5) and (6)) where applicable shall mutatis mutandis apply in respect of such proposals.
- (5) The Joint Venturers shall implement the decision of the Minister or an award made on arbitration as the case may be in accordance with the terms thereof.

**Use of local professional services labour and materials**<sup>6</sup>

- 12. (1) The Joint Venturers shall, for the purposes of this Agreement, as far as it is reasonable and economically practicable so to do —
  - (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 preparing specifications calling for tenders and letting contracts for works materials plant equipment and supplies ensure that Western Australian suppliers manufacturers and contractors are given fair and 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 Joint Venturers shall in every contract entered into with a third party for the supply of services labour works materials plant equipment and supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) of this Clause and shall report to the Joint Venturers concerning such third party's implementation of that condition.

- (3) The Joint Venturers shall submit a report to the Minister at quarterly intervals or such longer period as the Minister determines commencing from the date of this Agreement concerning their implementation of the provisions of this Clause together with a copy of any report received by the Joint Venturers pursuant to subclause (2) of this Clause during that quarter.

**Roads — Private roads** <sup>6</sup>

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

**Public roads — construction** <sup>6</sup>

- (2) The State shall construct or cause to be constructed by either the Joint Venturers or others after consultation with the Joint Venturers within such period of time as the parties shall agree public roads in accordance with the requirements of the Commissioner of Main Roads to connect the relevant town and the mining areas with existing public roads. The cost of such construction shall be borne by the Joint Venturers subject to the State contributing such amount as the State considers to be a reasonable proportion thereof.

**Maintenance of public roads** <sup>6</sup>

- (3) The State shall maintain or cause to be maintained those public roads under the control of the Commissioner of Main Roads or a local authority which may be used by the Joint Venturers to a



standard similar to comparable public roads maintained by the Commissioner of Main Roads or a local authority as the case may be.

**Upgrading of public roads**<sup>6</sup>

- (4) In the event that the Joint Venturers' operations hereunder require the use of a public road referred to in subclause (3) of this Clause which is inadequate for the purpose, or result in excessive damage to or deterioration of any such public road (other than fair wear and tear) the Joint Venturers 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 public road by others.

**Acquisition of private roads**<sup>6</sup>

- (5) Where a road constructed by the Joint Venturers for their own use is subsequently required for public use, the State may, after consultation with the Joint Venturers and so long as resumption thereof shall not unduly prejudice or interfere with the operations of the Joint Venturers under this Agreement, resume and dedicate such road as a public road. Upon any such resumption the State shall pay to the Joint Venturers such amount as the State considers to be reasonable.

**Liability**<sup>6</sup>

- (6) The parties hereto further covenant and agree with each other that —
- (a) for the purposes of determining whether and if so the extent to which —
- (i) the Joint Venturers are 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 Joint Venturers are responsible

hereunder and for no other purpose the Joint Venturers 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 Joint Venturers; and

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

#### **Airport**<sup>6</sup>

14. The Joint Venturers shall confer with the Minister with a view to reaching agreement on any upgrading of existing airport facilities and services in the Kimberley region that may be necessary for or result from the Joint Venturers’ operations hereunder.

#### **Mining lease Argyle mining area**<sup>6</sup>

15. (1) On application made by the Joint Venturers, not later than 3 months after all their proposals submitted pursuant to paragraph (A) of subclause (1) of Clause 7 have been approved or determined and the Joint Venturers have complied with the provisions of Clause 6 and subclause (4) of Clause 7, for a mining lease of the blue area and in respect of which CRAE then holds mineral claims, the State shall upon the surrender by CRAE of all such mineral claims cause to be granted to the Joint Venturers at the rental specified from time to time in the *Mining Act 1978* a mining lease of such land (notwithstanding that the survey in respect thereof has not been completed but subject to such corrections to accord with the survey when completed at the Joint Venturers’ expense) such mining lease to be granted under and, except as otherwise provided in this Agreement, subject to the *Mining Act 1978* but in the form of the Schedule hereto for all minerals and subject to such of the conditions of the surrendered mineral claims as the Minister for Mines determines.

#### **Term and renewal**<sup>6</sup>

- (2) Subject to the performance by the Joint Venturers of their obligations under this Agreement and the *Mining Act 1978* and notwithstanding any provisions of the *Mining Act 1978* to the

contrary the term of the mining lease shall be for a period of 21 years commencing from the date of receipt of the application therefor under subclause (1) of this Clause with the right during the currency of this Agreement to take successive renewals of the said term each for a further period of 21 years upon the same terms and conditions, subject to the sooner determination of the said term upon cessation or determination of this Agreement, such right to be exercisable by the Joint Venturers making written application for any such renewal not later than 1 month before the expiration of the current term of the mining lease.

**Exemption from expenditure conditions**<sup>6</sup>

- (3) The State shall ensure that during the currency of this Agreement and subject to compliance with their obligations hereunder the Joint Venturers shall not be required to comply with the expenditure conditions imposed by or under the *Mining Act 1978* in regard to the mining lease.

**Access over mining lease**<sup>6</sup>

- (4) The Joint Venturers shall at all times permit the State and third parties with the consent of the State (with or without stock vehicles and rolling stock) to have access to and to pass over the mining lease (by separate route, road or railway) so long as that access and passage does not unduly prejudice or interfere with the operations of the Joint Venturers under this Agreement and subject at all times to any law of the State relating to security within any area or areas on which the Joint Venturers' operations are carried on.

**Surrender of part of mining lease**<sup>6</sup>

- (5) Notwithstanding the provisions of this Clause and the *Mining Act 1978* the Joint Venturers may from time to time (with abatement of future rent in respect to the area surrendered but without any abatement of rent already paid or any rent which has become due and has been paid in advance) surrender to the State all or any portion or portions of the mining lease.

**Incorporation of additional areas in the mining lease**<sup>6</sup>

- (6) Notwithstanding the provisions of the *Mining Act 1978* the Joint Venturers may, once within 5 years from the date of this

Agreement, apply to the Minister for Mines for inclusion in the mining lease of such part or parts of the red area as the Joint Venturers nominate and in respect of which CRAE or the Joint Venturers or any of them then hold mining tenements under the *Mining Act 1904* or mining leases under the *Mining Act 1978*. The Minister for Mines may at his election include the whole or any part of the land applied for in the mining lease upon the surrender by the holder of the relevant mining tenements or mining leases subject to such of the conditions of the surrendered mining tenements and mining leases as the Minister for Mines determines but otherwise subject to the same terms covenants and conditions as apply to the mining lease (with such apportionment of rents as is necessary), notwithstanding that the survey of such additional land has not been completed (but subject to correction to accord with the survey when completed at the Joint Venturers' expense).

**Mineral claims in the Argyle mining area — blue area**<sup>6</sup>

16. (1) Notwithstanding the provisions of the *Mining Act 1978* any mineral claims in respect of the blue area held by CRAE on the commencement date shall subject to the provisions of subclauses (4) and (5) of this Clause be held under the provisions of the *Mining Act 1904* for a period of 2 years (or until such earlier time as such mineral claims are surrendered for the purposes of subclause (1) of Clause 15 or such longer period as may be obtained pursuant to subclause (2) of this Clause) from the commencement date and shall then expire.
- (2) The Minister shall at the request of the Joint Venturers extend the period referred to in subclause (1) of this Clause by additional periods each of 1 year but such extensions shall not exceed in total 3 years.

**Red area**<sup>6</sup>

- (3) Notwithstanding the provisions of the *Mining Act 1978* any mining tenements in respect of the red area held by CRAE on the commencement date or subsequently granted to CRAE or to the Joint Venturers or any of them under the *Mining Act 1904*, shall subject to the provisions of subclauses (4) and (5) of this Clause be held under the provisions of the *Mining Act 1904* for a period ending 5 years (or such earlier time as such mining tenements are

surrendered for the purposes of subclause (6) of Clause 15 or otherwise) from the commencement date and shall then expire.

**Exemption from labour conditions and other conditions of work**<sup>6</sup>

- (4) The mining tenements referred to in subclauses (1) and (3) of this Clause shall be exempt from the labour conditions and other conditions of work imposed by or under the *Mining Act 1904* subject to compliance by the holder thereof with its other obligations thereunder.

**Rent**<sup>6</sup>

- (5) The rent payable in respect of the mining tenements referred to in subclauses (1) and (3) of this Clause shall as from 1st January, 1984 be at the rate applicable to a mining lease from time to time pursuant to the *Mining Act 1978*.

**Mining leases in the Argyle mining area — red area**<sup>6</sup>

- (6) Any mining leases under the *Mining Act 1978* in respect of the red area held by CRAE at the commencement date or subsequently granted to CRAE or to the Joint Venturers or any of them shall, subject to compliance with the obligations thereunder, remain in force for a period of 5 years (or such earlier time as such mining leases are surrendered for the purposes of subclause (6) of Clause 15 or otherwise) from the commencement date and shall then expire.

**Exemption from expenditure conditions**<sup>6</sup>

- (7) During such time as the mining leases referred to in subclause (6) of this Clause remain in force and subject to compliance with the other obligations thereunder the holder shall not be required to comply with the expenditure conditions imposed by or under the *Mining Act 1978*.

**Continuation of Temporary Reserves and rights of occupancy**<sup>6</sup>

17. (1) Subject to the provisions of this Clause and notwithstanding the provisions of the *Mining Act 1904* or the *Mining Act 1978* Temporary Reserves numbered 7216H 7217H 7311H and 7323H as they exist immediately after the commencement date and the rights of occupancy held by CRAE in respect thereto shall, subject

to compliance by CRAE with the terms thereof (other than the requirement of relinquishment), continue for a period of 5 years from the commencement date and then be cancelled.

- (2) Notwithstanding the provisions of subclause (1) of this Clause the Minister may from time to time cancel such portions of the said Temporary Reserves and the rights of occupancy as may be included in any mining tenement granted pursuant to the *Mining Act 1904* or the *Mining Act 1978*.

**Mining lease Ellendale mining area**<sup>6</sup>

18. On application made by the Joint Venturers, not later than 3 months after all their proposals submitted pursuant to Clause 9 have been approved or determined for a mining lease of such part or parts of the Ellendale mining area as the Joint Venturers nominate and in respect of which CRAE or the Joint Venturers or any of them then holds mineral claims, the State shall upon the surrender of all such mineral claims cause to be granted to the Joint Venturers a mining lease of such land on the same terms covenants and conditions mutatis mutandis that apply to the mining lease granted pursuant to Clause 15 but excluding the provisions of subclause (6) of that Clause.

**Mineral claims in the Ellendale mining area**<sup>6</sup>

19. (1) Notwithstanding the provisions of the *Mining Act 1978* any mineral claims in respect of the Ellendale mining area held by CRAE or the Joint Venturers or any of them at the date of this Agreement or subsequently granted to CRAE or the Joint Venturers or any of them subject to the provisions of this Clause, shall be held under the provisions of the *Mining Act 1904* for a period of 10 years (or such earlier time as such mineral claims are surrendered for the purposes of Clause 18 or otherwise) from the commencement date and shall then expire.

**Exemption from labour conditions and programme of work**<sup>6</sup>

- (2) The State shall ensure that subject to the holder undertaking annually a programme of work in respect of such mineral claims which shall first be approved by the Minister after consultation with the Minister for Mines, such holder shall not be required to

comply with the labour conditions imposed by the *Mining Act 1904* in respect of such mineral claims.

**Rent**<sup>6</sup>

- (3) The rent payable in respect of mineral claims held by CRAE or the Joint Venturers or any of them in the Ellendale mining area shall as from 1st January, 1984 be at the rate applicable to a mining lease from time to time pursuant to the *Mining Act 1978*.

**Right to remove stone, sand, clay and gravel**<sup>6</sup>

20. The Joint Venturers may for the purposes of this Agreement and without payment of royalty, remove stone sand clay or gravel from the mining leases or from any other mining tenement held from time to time by CRAE or the Joint Venturers or any of them in the Argyle mining area or the Ellendale mining area under the *Mining Act 1904* or the *Mining Act 1978*.

**Electricity — Argyle**<sup>6</sup>

21. (1) (a) For the purposes of the provision of electricity to the Argyle mining area and the relevant town to be constructed for the Joint Venturers' operations at the Argyle mining area, the Joint Venturers shall undertake studies with the State Energy Commission with a view to the establishment, on terms and conditions to be agreed between the State Energy Commission and the Joint Venturers, of hydro electric generation works on the Ord River and distribution works to supply inter alia the Argyle mining area and the relevant town at the Argyle mining area.
- (b) Subject to paragraph (d) of this subclause, the Joint Venturers shall following completion of the studies referred to in paragraph (a) of this subclause enter into an agreement with the State Energy Commission for the purchase by the Joint Venturers of electricity required for the Argyle mining area and the relevant town at the Argyle mining area from the hydro electric generation works referred to in paragraph (a) of this subclause.
- (c) The Joint Venturers in accordance with their approved proposals hereunder may, pending agreement being reached

with the State Energy Commission pursuant to paragraphs (a) and (b) of this subclause and the commencement of the supply of electricity from the said hydro electric generation works, install and operate equipment to generate electricity for the Argyle mining area and the relevant town at the Argyle mining area and the provisions of paragraphs (a) (b) and (c) of subclause (3) of this Clause shall apply to any such installation and operation.

- (d) In the event of the Joint Venturers demonstrating to the satisfaction of the Minister that the terms of the proposed agreements between the State Energy Commission and the Joint Venturers for the establishment of the said generation and distribution works and the supply of electricity to the Joint Venturers pursuant to paragraphs (a) and (b) of this subclause would result in an overall cost to the Joint Venturers which would be greater than the overall cost (including capital and operating costs) of supplying electricity to the Argyle mining area and the relevant town at the Argyle mining area from a power station constructed by the Joint Venturers at the Argyle mining area, the provisions of subclauses (3) (4) (5) (6) (7) (8) and (9) of this Clause shall apply to the supply of such electricity to the Argyle mining area and the relevant town at the Argyle mining area.

**Ellendale**<sup>6</sup>

- (2) (a) For the purposes of the provision of electricity to the Ellendale mining area and the relevant town constructed for the Joint Venturers' operations at the Ellendale mining area and for the purposes of facilitating integration of electricity generation and transmission facilities in the Ellendale mining area the Joint Venturers shall purchase electricity if available from the State Energy Commission, or, negotiate with the State Energy Commission for the payment by the Joint Venturers of an equitable contribution towards the augmentation of the facilities of the State Energy Commission to enable it to supply electricity to the Joint Venturers. Electricity supplied to the Joint Venturers pursuant to this subclause shall be at rates to be agreed



between the State Energy Commission and the Joint Venturers from time to time.

- (b) In the event of the Joint Venturers demonstrating to the satisfaction of the Minister that the provisions of paragraph (a) of this subclause would be unduly prejudicial to their operations, the provisions of subclauses (3) (4) (5) (6) (7) and (8) of this Clause shall apply to the supply of electricity to the Ellendale mining area and the relevant town.
- (3) Subject to subclauses (1) and (2) of this Clause the Joint Venturers may —
  - (a) in accordance with their approved proposals hereunder and subject to the provisions of the *Electricity Act 1945* and the approval and requirements of the State Energy Commission, install and operate without cost to the State, at an appropriate location equipment to generate electricity of sufficient capacity for their operations hereunder;
  - (b) transmit power within the mining areas and from the mining areas to the relevant town or elsewhere subject to the provisions of the *Electricity Act 1945* and the approval and requirements of the State Energy Commission; and
  - (c) subject to the provisions of the *Electricity Act 1945* and the requirements of the State Energy Commission sell power transmitted pursuant to paragraph (b) of this subclause to third parties within the mining areas and to third parties elsewhere.
- (4) In the event that the Joint Venturers are unable to procure easements or other rights over land required for the purposes of subclause (3) of this Clause on reasonable terms the State shall assist the Joint Venturers to such extent as may be reasonably necessary to enable them to procure the said easements or other rights over land.
- (5) Should the Joint Venturers' relevant approved proposal provide for the State Energy Commission to reticulate electricity to houses occupied by the Joint Venturers' workforce and by any other persons connected directly with the Joint Venturers' operations

whether employees or not and to commercial establishments directly connected with such operations, the Joint Venturers shall sell to the State Energy Commission in bulk electricity in sufficient quantities to meet the needs of such workforce persons and establishments on terms and conditions to be negotiated between the State Energy Commission and the Joint Venturers.

- (6) If the State Energy Commission desires to purchase power for its own use and the Joint Venturers have the ability to supply such power, the Joint Venturers shall use their best endeavours to supply on terms and conditions to be negotiated between the State Energy Commission and the Joint Venturers, and the Joint Venturers shall in that event be empowered to supply such power.

**Acquisition of facilities**<sup>6</sup>

- (7) Notwithstanding the provisions of the State Energy Commission Act the State may at any time give to the Joint Venturers 12 months' notice of its intention to acquire and may thereafter acquire the Joint Venturers' electricity facilities or any part thereof up to the first point of voltage breakdown or such other appropriate point as may be agreed, at a price to be agreed between the parties and the Joint Venturers shall take all such steps as may be necessary to effect the acquisitions. The State undertakes that in such event the Joint Venturers shall for their purposes hereunder have first call on the power generated and transmitted by such electricity facilities so acquired at levels of supply from time to time agreed between the State and the Joint Venturers and the State undertakes subject only to its inability to supply power for any of the reasons set forth in Clause 39 to supply the Joint Venturers with power for their purposes hereunder at the said levels of supply and that in the event of such inability to supply power occurring the State shall take all possible steps to restore such supply regardless of the time or day when such inability arises.

**Charges for electricity**<sup>6</sup>

- (8) In the event of the State acquiring the Joint Venturers' electricity facilities the Joint Venturers shall pay to the State Energy Commission the cost of all electricity supplied to the Joint Venturers by the State Energy Commission at rates to be agreed between the State Energy Commission and the Joint Venturers

from time to time. Should the Joint Venturers desire to expand their operations hereunder and for that purpose require power beyond the level agreed pursuant to subclause (7) of this Clause the Joint Venturers shall give to the State 1 years notice of their additional power requirements and the State shall thereupon cause the State Energy Commission to negotiate with the Joint Venturers the terms and conditions under which the additional generating capacity required to meet the needs of such expansion is to be provided.

**Alternative power — Argyle** <sup>6</sup>

- (9) Notwithstanding that the Joint Venturers have installed equipment to generate electricity at the Argyle mining area pursuant to the provisions of subclause (3) of this Clause the Joint Venturers may during the continuance of this Agreement enter into negotiations with the State Energy Commission with a view to obtaining further or alternative electricity for the Argyle mining area and the relevant town from hydro electric generation works on the Ord River.

**Water — Argyle** <sup>6</sup>

22. (1) The State and the Joint Venturers shall agree upon the amount of the Joint Venturers' annual and maximum daily water requirements for their purposes hereunder at the Argyle mining area and the relevant town constructed for the Joint Venturers' operations at the Argyle mining area (which amount or such other amounts as shall from time to time be agreed between the parties to be reasonable are hereinafter called "the Argyle water requirements").

**Lake Argyle** <sup>6</sup>

- (2) The Joint Venturers may, subject to the relevant approved proposal and their entering into an agreement with the State or a statutory body designated by the State with respect to the construction operation and maintenance of facilities to take water from Lake Argyle and supply it to the Argyle mining area obtain subject to that agreement all or part of the Argyle water requirements from Lake Argyle.

**Search in Argyle mining area** <sup>6</sup>

- (3) The Joint Venturers may at their cost and in collaboration with the State continue to search for underground water within the Argyle mining area. Where appropriate the Joint Venturers shall employ and retain experienced groundwater consultants. The Joint Venturers shall furnish to the Minister details of the results of their investigations and copies of the reports of such consultants as they become available.

**Grant of licence** <sup>6</sup>

- (4) If the investigations referred to in subclause (3) of this Clause prove to the satisfaction of the Minister the availability of any suitable underground water source in the Argyle mining area which can continue to be drawn on by the Joint Venturers without seriously affecting the water level in that water source beneath the Argyle mining area or adjacent areas the State shall on the request of the Joint Venturers grant to the Joint Venturers a licence to develop and draw from that source, at the Joint Venturers' cost but without fee, so much of the Argyle water requirements as shall be agreed between the parties on such terms and conditions as are necessary to ensure good water resource management as the Minister may from time to time require and during the continuance of this Agreement grant renewals of any such licence PROVIDED HOWEVER that should that source prove hydrologically inadequate to meet the agreed amount of Argyle water requirements, the State may on at least 6 months prior notice to the Joint Venturers (or on at least 48 hours prior notice if in the opinion of the Minister an emergency situation exists) limit the amount of water which may be taken from that source at any one time or from time to time to the maximum which that source is hydrologically capable of meeting as aforesaid.

**Alternative water source** <sup>6</sup>

- (5) Should the State at any time pursuant to the proviso to subclause (4) of this Clause limit the amount of water to be taken from any underground water source or if otherwise the Argyle water requirements cannot be met from any water source on a continuous basis the State shall with all reasonable expedition and in conjunction with and upon the request of the Joint Venturers

search for new or additional water sources with a view to restoring or ensuring the full quantity of the Argyle water requirements. The Joint Venturers shall pay to the State a fair and reasonable proportion of the cost of investigating and developing such new and additional water sources as agreed between the Joint Venturers and the State.

**Development of water sources**<sup>6</sup>

- (6) The Joint Venturers shall provide at their cost or with finance arranged by them and construct to standards and in accordance with designs approved by the State and operate and maintain in accordance with the relevant approved proposals all necessary bores, valves, pipelines, meters, tanks, equipment and appurtenances necessary to draw transport use and dispose of water obtained by the Joint Venturers pursuant to this Clause.

**State's acquisition of water facilities**<sup>6</sup>

- (7) If during the currency of this Agreement the Minister is of the opinion that it would be desirable for water conservation purposes or water management purposes that sources of water utilised by the Joint Venturers be controlled and operated by the State as part of a regional water supply scheme, the Minister may, on giving 6 months prior notice to the Joint Venturers of his intention to do so, acquire the Joint Venturers' water supply facilities for a monetary consideration to be determined by the Minister. Immediately thereafter the State shall, subject only to the continued hydrological availability of water from such sources commence and thereafter continue to supply water up to an amount and at a rate required by the Joint Venturers being the amount and rate to which the Joint Venturers were previously entitled and the proviso to subclause (4) of this Clause and the provisions of subclause (5) of this Clause shall in like manner apply to this subclause.

**Enlarged water capacity**<sup>6</sup>

- (8) The State, after first having due regard to the Argyle water requirements and to the hydrological adequacy of existing water sources, may in its discretion develop all or any of the surface and/or underground water resources referred to in this Clause or construct any works in connection therewith to a greater capacity

than that required to supply the Argyle water requirements but in that event the Joint Venturers shall pay to the State a share of the cost of the system as so enlarged as may be agreed between the parties to be fair in all the circumstances.

**Third party use**<sup>6</sup>

(9) The State may after first having due regard to the Argyle water requirements and to the hydrological adequacy of the applicable water source, upon not less than 3 months prior notice to the Joint Venturers 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 that source PROVIDED HOWEVER that —

- (a) where the Joint Venturers have paid (in whole or in part) any moneys in respect of the investigation development and utilisation of that water source the State shall require as a condition of the grant that where the third party is or will be a substantial drawer of water from that water source within 5 years of the commencement date the third party (but not the State) shall reimburse to the Joint Venturers prior to the third party exercising its rights to draw water, such proportion of those moneys as the Minister determines is fair and reasonable; and
- (b) where the Joint Venturers draw water from that water source the State shall ensure that it is a condition of the grant to third parties that in the event that the capacity of that water source is reduced, such reduction shall be first applied to the third parties and thereafter if further reduction is necessary the State's and the Joint Venturers' requirements shall be reduced in such proportion as may be agreed.

**Payment for water**<sup>6</sup>

(10) The Joint Venturers shall pay to the State for water supplied by the State pursuant to subclauses (2) and (7) of this Clause a fair price to be agreed between the parties hereto having regard to the actual cost of establishing operating and maintaining the supply and

provision for replacement of the water supply facilities.  
Notwithstanding the foregoing provisions of this subclause in respect of water supplied by the State to the Joint Venturers as aforesaid for domestic purposes the Joint Venturers shall pay to the State therefor charges as levied from time to time pursuant to the provisions of the *Country Areas Water Supply Act 1947*.

**Design of plant**<sup>6</sup>

- (11) The Joint Venturers shall to the extent that it is practical and economical design construct and operate all plant required under this Clause so as to ensure the most efficient use of the available water resources including if required by the Minister the use of brackish or saline water.

**State to restrict adverse grants**<sup>6</sup>

- (12) The State shall ensure that no rights to mine minerals petroleum or other substances are granted over the area of any water source from which the Joint Venturers are drawing water or from time to time have the right to draw water hereunder unless the Minister reasonably determines that such grant is not likely to unduly prejudice or to interfere with the operations of the Joint Venturers hereunder and is not likely to render the water source incapable of supplying the Argyle water requirements on a continuous basis.

**Charges for supply of water to third parties**<sup>6</sup>

- (13) The Joint Venturers may supply water to third parties including the State at a charge to be approved by the Minister after consultation with the Joint Venturers. The Joint Venturers shall have all the powers and authorities with respect to such water as are determined by the Minister which may include all or any of the powers of a water board under the *Water Boards Act 1904* and, with the consent of the Minister for Local Government, a local authority.

**Rights in Water and Irrigation Act**<sup>6</sup>

- (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 Joint Venturers' purposes under this Agreement.

**Water — Ellendale**<sup>6</sup>

23. (1) The State and the Joint Venturers shall agree upon the amount of the Joint Venturers' annual and maximum daily water requirements for their purposes hereunder at the Ellendale mining area and the relevant town constructed for the Joint Venturers' operations at the Ellendale mining area (which amount or such other amounts as shall from time to time be agreed between the parties to be reasonable are hereinafter called "the Ellendale water requirements").

**Search in Ellendale mining area**<sup>6</sup>

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

**Search outside Ellendale mining area**<sup>6</sup>

- (3) If in the opinion of the Minister, the details and reports of the consultants pursuant to subclause (2) of this Clause indicate that any source of underground water in the Ellendale mining area is likely to be inadequate or unsuitable to supply the Ellendale water requirements the parties hereto shall collaborate and agree on a programme which shall be carried out by the State at the cost of the Joint Venturers to search for water inside and outside the Ellendale mining area.

**Grant of licence**<sup>6</sup>

- (4) If the investigations referred to in subclauses (2) and (3) of this Clause prove to the satisfaction of the Minister the availability of any suitable underground water source in or near the Ellendale mining area which can continue to be drawn on by the Joint Venturers without seriously affecting the water level in that water source beneath the Ellendale mining area or adjacent areas or the



availability of water in the adjacent areas the State shall grant to the Joint Venturers a licence to develop and draw from that source at the Joint Venturers' cost but without fee, the Ellendale water requirements on such terms and conditions as are necessary to ensure good water resource management as the Minister may from time to time require and during the continuance of this Agreement grant renewals of any such licence PROVIDED HOWEVER that should that source prove hydrologically inadequate to meet the Ellendale water requirements, the State may on at least 6 months prior notice to the Joint Venturers (or on at least 48 hours prior notice if in the opinion of the Minister an emergency situation exists) limit the amount of water which may be taken from that source at any one time or from time to time to the maximum which that source is hydrologically capable of meeting as aforesaid.

**Investigation of surface water** <sup>6</sup>

- (5) In the event of water supplies from available underground sources proving insufficient to meet the Ellendale water requirements the Joint Venturers shall notwithstanding the provisions of subclause (4) of this Clause collaborate with the State in an investigation of surface water, water catchments and storage dams. The Joint Venturers shall if they propose 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.
- (6) The provisions of Clause 22 subclauses (5) to (14) inclusive (but with the deletion in subclause (10) of "subclauses (2) and (7) of this Clause" and the substitution therefor of "subclause (5) of Clause 23 and subclause (7) of this Clause") shall mutatis mutandis apply to the Ellendale mining area and the Ellendale water requirements.

**Lands** <sup>6</sup>

24. (1) For the purposes of the Joint Venturers' operations and associated works at the relevant town the State shall grant to the Joint Venturers for residential agricultural professional business commercial and industrial purposes and the provision of communal or other facilities at the relevant townsite a special lease or special

leases under the provisions of the Land Act or occupancy rights on terms and conditions to be determined by the Minister for Lands of the said State for an area or areas of land in the relevant townsite in accordance with the Joint Venturers' proposals as finally approved. Such lease or leases or occupancy rights as the case may be shall be for a term not exceeding 21 years from the date of such grant and shall be at reasonable rentals subject to periodic review. The Joint Venturers may at any time during the currency of such lease or leases or occupancy rights purchase the fee simple of any relevant townsite lot on which buildings or structures of a type and to a value to be approved by the Minister have been erected and at such reasonable price and on and subject to such terms and conditions not inconsistent with this Agreement as the Minister for Lands considers applicable in the circumstances and including a right for the State notwithstanding the provisions of Clause 36 at any time and from time to time to exclude from such lease or leases or occupancy rights or to resume without compensation any part or parts of such land on which no building or structure or any substantial improvements have been erected as the State may require for public purposes.

- (2) The State shall in accordance with the Joint Venturers' approved proposals grant to the Joint Venturers, 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 rental and renewal rights) as shall be reasonable having regard to the requirements of the Joint Venturers, leases and where applicable licences easements and rights of way for all or any of the purposes of the Joint Venturers' operations hereunder including any of the following namely — private roads, tailing areas, water pipelines, pumping installations and reservoirs, airstrip, power transmission lines and plant site areas and borrow pits for sand gravel and aggregate.

**Modification of Land Act**<sup>6</sup>

- (3) For the purpose of this Agreement in respect of any land sold or leased to the Joint Venturers by the State 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 grant occupancy rights over land on such terms and conditions as the Minister for Lands may determine;
- (f) the inclusion of a power to offer for sale or leasing land within or in the vicinity of the relevant townsite notwithstanding that the relevant townsite has not been constituted a townsite under section 10; and
- (g) 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 subclause 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.

**Sale of Land Act** <sup>6</sup>

- (4) Notwithstanding the provisions of the *Sale of Land Act 1970*, the Joint Venturers shall, subject to the prior consent of the Minister, have the right during the currency of any lease or leases or occupancy rights granted to them under subclause (1) of this Clause to enter into an agreement to sell any lot the subject of such lease or leases or occupancy rights on condition that the purchaser erects on such lot within 2 years from the date of such agreement, buildings or structures of a type and to a value to be approved by the Minister.

**Townsite and town development**<sup>6</sup>

25. (1) (a) Should the approved proposals provide for the establishment of a new town or new towns the Joint Venturers shall at their cost or with finance arranged by them and in accordance with the approved proposals —
- (i) Provide at the relevant townsite such housing accommodation services and works (including sewerage reticulation and treatment works water supply works and drainage works and also social cultural and civic facilities) as may be necessary in order to provide for the needs of persons (and the dependants of those persons) connected directly with the Joint Venturers operations under this Agreement, whether or not such persons are employed by the Joint Venturers;
  - (ii) provide at the relevant townsite all necessary public roads and buildings required for educational, hospital, medical, police, recreation, fire and other services;
  - (iii) provide all equipment required for the operation and proper functioning of the services and works referred to in subparagraphs (i) and (ii) of this paragraph;
  - (iv) service maintain and where necessary repair and renovate the housing accommodation services and works mentioned in subparagraphs (i) and (ii) of this paragraph;
  - (v) (subject to and in accordance with by-laws from time to time to be made and altered by the Joint Venturers which include provisions for fair and reasonable prices rentals or charges or if no such by-laws are made or in force then at such prices rentals or charges and upon and subject to such terms and conditions as are fair and reasonable) ensure that the said housing accommodation services and works are at all times readily available to persons requiring the same being employees licencees or agents of the Joint Venturers or persons engaged in providing a legitimate and

normal service to or for the Joint Venturers or their employees licencees or agents including the dependants of such persons; and

- (vi) ensure that the roads buildings and other works mentioned in subparagraph (ii) of this paragraph and the equipment mentioned in subparagraph (iii) of this paragraph are readily available free of charge to the State.

**Limitation on Joint Venturers' obligations**<sup>6</sup>

- (b) Nothing contained in paragraph (a) of this subclause shall be construed as placing on the Joint Venturers an obligation to provide and pay for personnel required to operate the educational hospital medical or police services (except as provided in Clause 31) mentioned in that paragraph.

**Equipment**<sup>6</sup>

- (2) The Joint Venturers shall at their cost or with finance arranged by them equip all the buildings mentioned in paragraph (a) of subclause (1) of this Clause to the extent and of a standard at least equal to that normally adopted by the State in similar types of buildings used for similar purposes in comparable townsites.

**Staff housing**<sup>6</sup>

- (3) The Joint Venturers shall at their cost or with finance arranged by them provide adequate housing accommodation for married and single staff directly connected with the educational hospital medical and police services mentioned in subparagraphs (i) and (ii) of paragraph (a) of subclause (1) of this Clause.

**Existing towns**<sup>6</sup>

- (4) If the approved proposals provide for the assimilation into any existing town of the whole or part of the Joint Venturers' workforce (including their dependants) and any other persons (including their dependants) connected directly with the Joint Venturers' operations (whether employees of the Joint Venturers or not) whereby the normal population of such existing town is significantly increased then the Joint Venturers to the extent

necessary to provide for the needs of the said increase in population of such existing town shall bear the cost of the provision at that existing town of the matters mentioned in subparagraphs (i) (ii) and (iii) of paragraph (a) of subclause (1) of this Clause. The said additional housing services works and equipment may be provided by the State, or, after consultation by the Minister with the Joint Venturers, by another party under an agreement with the State and in either case shall be to the extent and of a standard at least equal to that normally adopted by the State in similar types of buildings used for similar purposes in comparable towns. The Joint Venturers shall pay to the State or such other party such proportion of the cost of such additional housing services works and equipment as is fair and reasonable having regard to the extent of the said increase in the population of such existing town.

**State services**<sup>6</sup>

- (5) Should the approved proposals place an obligation on the State to provide for any of the matters mentioned in subparagraphs (i) (ii) and (iii) of paragraph (a) of subclause (1) of this Clause or require the State to procure and accept the responsibility of the provision of any services and facilities the State shall provide or procure the provision of the same but (unless the approved proposals otherwise provide) subject to the following conditions namely —
- (a) that the State is satisfied that the need to provide such services and facilities results from or is reasonably attributed to the Joint Venturers' operations under this Agreement; and
  - (b) the Joint Venturers agree to bear the capital cost involved and thereafter to pay reasonable charges for the maintenance and operation of the said services or facilities other than the operation charges in respect of education hospital medical and police services.

**By-laws**<sup>6</sup>

- (6) Unless and until the relevant townsite is declared a townsite pursuant to section 10 of the Land Act or otherwise with the consent of the Minister, the Governor in Executive Council may upon the recommendation of the Joint Venturers make alter and

repeal by-laws for the purpose of enabling the Joint Venturers to fulfil their obligations under this Clause upon terms and subject to conditions (including terms and conditions as to user charging and limitation of the liability of the Joint Venturers) consistent with the provisions hereof. If at any time it appears that any by-law made hereunder has as a result of altered circumstances become unreasonable or inapplicable then the Joint Venturers shall recommend to the Governor that he makes such alteration or repeal thereof as the State may reasonably require or (in the event of there being any dispute as to the reasonableness of such requirement) as may be decided by arbitration as herein provided.

**Transitional arrangements — Town**<sup>6</sup>

26. The Minister may in lieu of requiring the Joint Venturers to comply with all of the provisions of Clause 25 for the establishment of a new town or towns, or for the assimilation into any existing town, permit the Joint Venturers to enter into such transitional arrangements as he may approve, provided that such arrangements continue only until such time as the quantity of kimberlite ore from the Argyle mining area treated for the recovery of diamonds exceeds 3 million tonnes in any calendar year, or 31st December, 1987, whichever occurs first.

**Sewerage facilities**<sup>6</sup>

27. (1) The Joint Venturers shall unless the Minister otherwise determines and subject to such conditions as the Minister may from time to time approve at their cost or with finance arranged by them construct or cause to be constructed and operate sewerage facilities at the relevant town and charge for such services. The Joint Venturers shall have all such powers and authorities with respect to such facilities as are determined by the Minister which may include, with the consent of the Minister for Local Government, all or any of the powers of a local authority.
- (2) If at any time the Minister is of the opinion that it would be desirable that the sewerage facilities operated by the Joint Venturers under subclause (1) of this Clause be controlled and operated by the State, the Minister may (after first affording the Joint Venturers a reasonable opportunity to consult with him) on giving 6 months prior notice to the Joint Venturers of his intention,

acquire the Joint Venturers' sewerage facilities for a monetary consideration to be determined by the Minister.

Thereafter in respect of sewerage facilities operated by or on behalf of the State within the relevant town, rates and charges as levied from time to time pursuant to the provisions of the *Country Towns Sewerage Act 1948* shall apply.

**Appointment of Administrator**<sup>6</sup>

28. The State may after consultation with the Joint Venturers appoint an administrator to administer (at the cost of the Joint Venturers) any new relevant town established by the Joint Venturers for the purposes of this Agreement and in so doing to exercise all or any of the functions and powers of a local authority under the *Local Government Act 1960* until such time as agreement may be reached between the Joint Venturers, the State and the relevant local authority as to the transfer of those functions and powers to the relevant local authority.

**Royalties — Diamonds**<sup>6</sup>

29. (1) For the purpose of this Clause —
- (a) “above zero profit” means in relation to a year the amount (if any) by which the sales value for that year exceeds the allowable deductions for that year;  
“allowable deductions” means —
    - (i) operating costs properly incurred by the Joint Venturers (but excluding those cost provisions not allowed under the *Income Tax Assessment Act 1936*) and directly attributable to the mining, recovery and sorting of rough diamonds from the areas the subject of this Agreement and such other costs as the Joint Venturers demonstrate to the reasonable satisfaction of the Minister are reasonably and necessarily incurred by the Joint Venturers in connection with the mining, recovery and sorting of rough diamonds from the areas the subject of this Agreement;
    - (ii) such apportionment of costs as are reasonably attributable to or reasonably and necessarily incurred



by the Joint Venturers but which are not wholly incurred in connection with or applicable to the mining, recovery, sorting and marketing of rough diamonds from the areas the subject of this Agreement as the Minister may approve;

- (iii) direct marketing and selling expenses properly incurred by the Joint Venturers in connection with and prior to the sale of sorted rough diamonds from the areas the subject of this Agreement and such other expenses which the Joint Venturers demonstrate to the reasonable satisfaction of the Minister are reasonable and necessary in connection with the sale of sorted rough diamonds from the areas the subject of this Agreement;
- (iv) transport and insurance costs relating to rough diamonds from the areas the subject of this Agreement properly incurred by the Joint Venturers prior to the sale, transfer, disposal or processing thereof;
- (v) expenditure on exploration for diamonds within the areas the subject of this Agreement reasonably incurred by the Joint Venturers after the 31st December, 1981;
- (vi) the value of unsold sorted rough diamonds from the areas the subject of this Agreement which the Joint Venturers had on hand at the beginning of a year less the value of unsold sorted rough diamonds from the areas the subject of this Agreement which the Joint Venturers have on hand at the end of that year. For the purpose of this paragraph (vi) the value of the diamonds to be taken into account shall be deemed to be the direct cost of production (excluding depreciation, overheads, interest and financing costs) thereof;
- (vii) depreciation of allowable capital expenditure;
- (viii) expenditure which the Joint Venturers demonstrate to the reasonable satisfaction of the Minister was

reasonably incurred by the Joint Venturers or any of them (or any corporation related within the meaning of that term as used in subsection (5) of section 6 of the *Companies Act 1961* to one or more of the Joint Venturers) prior to 1st January, 1982 in the exploration for and evaluation of diamonds in the Kimberley region amortised on the basis and over the period hereinafter provided for the calculation of depreciation of allowable capital expenditure;

- (ix) actual interest costs and borrowing expenses incurred by the Joint Venturers on borrowings, not exceeding in amount 80% of the total investment proposed by the Joint Venturers to be incurred in their activities hereunder prior to 31st December, 1986, the repayment provisions of which are approved by the Minister and thereafter actual interest costs and borrowing expenses incurred by the Joint Venturers on such borrowings as the Minister (on the basis of proposals submitted by the Joint Venturers with respect to the financing of their operations under this Agreement and repayment of loans) may allow for the purposes of this paragraph (ix)

but does not include —

- (I) royalties except where payable pursuant to an Act of the State (other than the Act to ratify this Agreement);
- (II) taxes on or affecting income or profits; and
- (III) any investment allowance permitted under the *Income Tax Assessment Act 1936*;

“allowable f.o.b. revenue costs” means the following costs directly incurred in connection with the sale transfer or disposal of sorted rough diamonds from the areas the subject of this Agreement to the extent that they are reasonably and necessarily incurred and paid by the Joint Venturers —

- (i) insurance and freight ex Perth;
- (ii) selling and marketing expenses;

- (iii) such other costs and charges as the Minister may in his discretion consider reasonable in respect of any shipment or sale;

“allowable capital expenditure” means expenditure of a capital nature properly incurred by the Joint Venturers being —

- (i) expenditure on plant and equipment owned by the Joint Venturers and used by them for diamond mining and recovery within the mining areas the subject of this Agreement;
- (ii) expenditure on buildings plant and equipment owned by the Joint Venturers and used by them for sorting rough diamonds in the said State;
- (iii) expenditure on site preparation, mine development and buildings and other improvements located within the areas the subject of this Agreement;
- (iv) expenditure on housing, educational, hospital, medical, police, recreation, fire and other services pursuant to the relevant approved proposal for employees and associated workforce, which facilities and services are located within the Kimberley region;
- (v) expenditure in providing, or contributing to the cost of providing, water, electricity, sewerage, radio and telephone communications, roads and airstrips pursuant to the relevant approved proposals and used for the diamond mining and recovery and associated relevant townsite operations of the Joint Venturers;
- (vi) such other capital expenditure as the Minister may determine to be reasonable and necessary for the Joint Venturers’ diamond mining recovery and sorting operations under this Agreement;

“depreciated value” means the cost to the Joint Venturers of the assets on which allowable capital expenditure is incurred less the total amount deducted therefrom by way of

depreciation pursuant to the provisions of paragraph (b) of this subclause;

“f.o.b. revenue” means in relation to a year the sales value for that year less the allowable f.o.b. revenue costs for that year;

“offset amount” means the amount or amounts which the Joint Venturers may be entitled to offset against future royalty payments pursuant to subclause (3) of this Clause;

“processing” means all or any of the following activities carried out in relation to sorted rough diamonds —

- (i) the physical and chemical treatment of diamonds;
- (ii) the cutting and polishing of diamonds; and
- (iii) all other processes and treatment of diamonds which increase their market value

but does not include the sorting of rough diamonds;

“sales value” means —

- (i) the greater of the gross sales revenue from the sale transfer or disposal by the Joint Venturers of sorted rough diamonds on an arms length basis or the fair and reasonable market value on an arms length basis of sorted rough diamonds sold transferred or disposed of by the Joint Venturers as determined by the Minister after consultation with the Joint Venturers; and
- (ii) in respect of sorted rough diamonds processed by the Joint Venturers the fair and reasonable market value prior to processing as determined by the Minister (having regard to any current sales on an arms length basis by the Joint Venturers of comparable categories of sorted rough diamonds and where sorted rough diamonds are processed in the said State by the Joint Venturers, having regard to the allowable f.o.b. revenue costs) after consultation with the Joint Venturers; and

“year” means the period from the commencement date to the 31st December, 1981 and thereafter a calendar year beginning on the 1st day of January;

- (b) depreciation of allowable capital expenditure shall be calculated as follows —
- (i) where at the end of a year the estimated remaining life of the mine at which the Joint Venturers are carrying on diamond mining operations under this Agreement (or, where there is more than one such mine the estimated remaining life of the mine with the largest production) exceeds five years, by applying a rate of 20% to the depreciated value of allowable capital expenditure; and
  - (ii) where at the end of a year the mine with the largest production has an estimated life of 5 years or less by dividing, each year thereafter, the depreciated value of allowable capital expenditure by the remaining estimated life of that mine.

For the purposes of this paragraph (b) —

- (I) the total amount of depreciation claimed in respect of any asset shall not exceed the cost of that asset; and
  - (II) the depreciated value of allowable capital expenditure shall be reduced in respect of any asset sold or otherwise disposed of by the proceeds of sale or disposal (if any);
- (c) where in relation to a year the allowable deductions exceed the sales value a loss shall be deemed to have been incurred by the Joint Venturers in respect of that year and the amount of the loss shall be deemed to be the amount by which the allowable deductions for that year exceed the sales value for that year. So much of the losses incurred in any one of the 7 years next preceding a particular year as has not been allowed as a deduction from sales value in any one of those years shall be allowed as a deduction from sales value in calculating above zero profit for that year. The ageing of the

balance on losses carried forward shall be determined on a first in first out basis;

- (d) where the Minister is required to be satisfied as to or to approve any costs or expenses or the calculation or apportionment thereof in connection with allowable deductions or sales value as defined in this Clause, the Minister shall consult with the Joint Venturers and have regard to any relevant provisions of the *Income Tax Assessment Act 1936*.

**Profit based royalty**<sup>6</sup>

- (2) The Joint Venturers shall each year during the continuance of this Agreement pay to the State in respect of diamonds from the areas the subject of this Agreement (whether produced before or after the commencement date) royalty at the rate of 22.5% of the above zero profit for that year PROVIDED HOWEVER that whenever in respect of a year the royalty payable at the rate aforesaid is less than 7.5% of the f.o.b. revenue for that year or there is no above zero profit the Joint Venturers shall pay to the State in respect of that year by way of a minimum royalty payment an amount equal to 7.5% of the f.o.b. revenue for that year.

**Royalty offset**<sup>6</sup>

- (3) (a) Where a minimum royalty payment has been made by the Joint Venturers pursuant to the proviso to subclause (2) of this Clause the Joint Venturers may offset against future royalties payable, in the manner set forth in subparagraphs (b) and (c) of this subclause, an amount equal to the amount by which that minimum royalty payment exceeds 22.5% of the above zero profit for the year in respect of which that minimum royalty payment was made or if there is no above zero profit for that year the amount of the minimum royalty payment.
- (b) In any year in which three quarters of 22.5% of the above zero profit for that year is equal to or greater than 7.5% of the f.o.b. revenue for that year, one quarter of 22.5% of the above zero profit for that year or such lesser amount as shall be equal to the offset amount shall be retained by the Joint

Venturers and the amount so retained shall be applied in reduction or retirement as the case may be of the offset amount.

- (c) In any year in which 22.5% of the above zero profit for that year exceeds 7.5% of the f.o.b. revenue for that year and three quarters of 22.5% of the above zero profit is less than 7.5% of the f.o.b. revenue, the amount by which 22.5% of the above zero profit for that year exceeds 7.5% of the f.o.b. revenue for that year or such lesser amount as shall be equal to the offset amount shall be retained by the Joint Venturers and the amount so retained shall be applied in reduction or retirement as the case may be of the offset amount.

**Review of method of calculation**<sup>6</sup>

- (4) (a) The method of calculation of the profit based royalty referred to in subclause (2) of this Clause shall during the currency of this Agreement be subject to review by the Joint Venturers and the State in the event that either party gives notice to the other that in its opinion the method of calculation is unfair, inequitable or unworkable.
- (b) In the event of any dispute between the parties arising from any review under paragraph (a) of this subclause the matter shall be referred to arbitration hereunder.

**Quarterly royalty returns**<sup>6</sup>

- (5) (a) The Joint Venturers shall during the continuance of this Agreement within 14 days after the following quarter days (which quarter days are referred to in this paragraph as "the due date") namely the last days of March, June, September and December in each year (commencing on 31st March, 1982) furnish to the Minister for Mines a return in a form approved by the Minister for Mines showing the quantity, value, allowable f.o.b. revenue costs and such other details (including estimated costs of production and claimed deductions itemised) as the Minister for Mines may require of diamonds on which royalty has accrued payable hereunder during, in respect of the return for the quarter ending 31st March, 1982, the period from the

commencement date to 31st March, 1982 and thereafter, during the quarter immediately preceding the due date of the return and on such return shall state the opening and closing balance of stocks on hand and estimate the amount of royalty paid and payable in respect of the diamonds the subject of the return. The Joint Venturers, if required by the Minister for Mines, shall consult with him with respect to such estimates and revise such estimates if required on the basis of actual quarterly sales. Royalty at the rate aforesaid shall be payable on the due date and shall be paid by the Joint Venturers on the amount of the estimate or other amount agreed between the Joint Venturers and the Minister for Mines within 45 days of the due date.

**Annual royalty returns**<sup>6</sup>

- (b) The Joint Venturers shall during the continuance of this Agreement within 4 months after the 31st December in each year (other than 31st December, 1981) (hereinafter called the annual return date) furnish to the Minister for Mines a return, audited by registered auditors, showing full details of all income derived and expenditure and all other details required to enable the calculation of the royalty payable thereon and the quantity and value of all diamonds sold transferred or otherwise disposed of during the year of return. Returns shall be in a form approved from time to time by the Minister and shall itemise the basis of apportionment of any indirect costs that may be approved by the Minister as allowable deductions. The return for the year ending 31st December, 1982 shall be in respect of the period from the commencement date to the 31st December, 1982.
- (c) Where a return furnished pursuant to paragraph (b) of this subclause shows that the estimated royalty paid in respect of the period to which the return relates is —
  - (i) less than the royalty payable for that period the difference shall be paid on lodgement of the annual return;



- (ii) greater than the royalty payable for that period the amount overpaid may be deducted by the Joint Venturers from the next quarterly payment.

**Royalty on cessation of this Agreement**<sup>6</sup>

- (6) On the cessation or determination of this Agreement and notwithstanding any other provision of this Agreement, unless the Minister otherwise determines, the provisions of this Clause shall continue to apply until royalty has been paid in accordance with the provisions of this Clause on all rough diamonds produced by or on behalf of the Joint Venturers from the areas the subject of this Agreement.

**Inspections**<sup>6</sup>

- (7) (a) The Joint Venturers shall permit the Minister for Mines or his nominee —
  - (i) at all reasonable times to inspect all books of accounts, records and documents of the Joint Venturers or any of them or of any person acting on their behalf relative to the operations of the Joint Venturers hereunder and to any shipment or sale of diamonds including sales contracts and to take extracts and copies therefrom. The information obtained by the Minister for Mines or his nominee as a result of any such inspection shall be used only for the purposes of verifying the amount of royalty payable by the Joint Venturers and for no other purpose and shall be confidential and shall not be disclosed by the State, the Minister or the Minister for Mines or his nominee to any other party for any other purpose;
  - (ii) at all reasonable times, notwithstanding any law of the State relating to security at areas on which the operations of the Joint Venturers are carried on, to have access to the areas the subject of this Agreement and all other areas and facilities at which diamonds are stored or sorted and to inspect all diamonds held

by or on behalf of the Joint Venturers and to value such diamonds.

- (b) A valuer appointed by the Minister for Mines for the purpose of this paragraph shall be appointed after consultation with the Joint Venturers.

**Lodgement of returns**<sup>6</sup>

- (8) Returns pursuant to this Clause may, with the prior consent of the Minister, be lodged by the Joint Venturers individually.

**Other minerals**<sup>6</sup>

- (9) Subject to the provisions of Clause 20, the Joint Venturers shall pay to the State in respect of all minerals other than diamonds produced or obtained from the areas the subject of this Agreement royalties at the rates from time to time prescribed under or pursuant to the *Mining Act 1904* or the *Mining Act 1978* as the case may be.

**Valuation and auditing procedures**<sup>6</sup>

- (10) (a) The Joint Venturers shall for the purposes of this Clause take all reasonable steps to satisfy the Minister for Mines as to the adequacy of its valuation and auditing procedures.
- (b) Nothing in this subclause shall limit the power of the Minister for Mines to appoint independent valuers and auditors after consultation with the Joint Venturers to carry out further valuations and audits.

**Further processing**<sup>6</sup>

- 30. (1) For the purposes of this Clause “further processing” means all or any of the following activities carried out in the said State by or on behalf of the Joint Venturers or any of them in relation to cleaned, but unsorted diamonds from the areas the subject of this Agreement, namely:
  - (a) the classification and sorting of diamonds,
  - (b) the physical and chemical treatment of diamonds,
  - (c) the cutting and polishing of diamonds, and

- (d) all other processes and treatment of diamonds which increase their market value.

**Establishment of sorting facilities**<sup>6</sup>

- (2) (a) Within one year after the commencement of production of diamonds under this Agreement, the Joint Venturers shall establish facilities in the said State for the sorting of diamonds from the areas the subject of this Agreement and shall thereafter during the continuance of this Agreement operate the said facilities.
- (b) The nature and extent of the facilities provided by the Joint Venturers pursuant to this subclause and the operation of those facilities shall be compatible with the Joint Venturers' marketing arrangements as approved from time to time by the Minister.

**Investigation of further processing**<sup>6</sup>

- (3) (a) During the continuance of this Agreement, the Joint Venturers shall investigate the technical and economic feasibility of appropriate further processing of diamonds and shall use their best endeavours to promote the establishment and operation of facilities to achieve the maximum further processing of diamonds in the said State, whether by themselves or in association with others.
- (b) The Joint Venturers shall when required by the Minister, but not more frequently than once in every 2 years, submit to the Minister detailed reports of their investigations and endeavours to promote further processing carried out pursuant to paragraph (a) of this subclause.

**Establishment of other facilities for further processing**<sup>6</sup>

- (4) Subject to the provisions of subclauses (6) and (7) of this Clause and in addition to their obligations under subclauses (2) and (3) of this Clause, the Joint Venturers shall, within 5 years after the commencement of production of diamonds pursuant to subclause (1)(B) of Clause 7, establish and thereafter during the continuance of this Agreement operate, or cause to be established and operated, facilities in the said State for the further processing

of diamonds which shall result in increasing the value for sales purposes of diamonds produced from the areas the subject of this Agreement (or from elsewhere in exchange for diamonds produced from the areas the subject of this Agreement) in any year by an amount equivalent to 20% of the above zero profit (as defined in Clause 29) for that year less the amount of royalty payable to the said State for that year. For the purposes of this subclause not more than one half of the increase in the said value for sales purposes may accrue from sorting.

**Effect of non-compliance with subclause (4) <sup>6</sup>**

- (5) Notwithstanding anything contained in this Clause the failure by the Joint Venturers to establish or operate the facilities as required by the provisions of subclause (4) of this Clause shall not constitute a breach of this Agreement by the Joint Venturers but subject as otherwise provided in this Clause the only consequence arising from such failure will be that set out in subclauses (6) and (9) of this Clause.

**Additional royalty <sup>6</sup>**

- (6) If the Joint Venturers fail to observe and perform their obligations under subclause (4) of this Clause, then in respect of each year in which they so fail the royalty payable for such year pursuant to Clause 29 shall, subject to subclause (7) of this Clause, be increased in accordance with the following formula —

$$R_1 = \frac{R}{100} [ 100 + 0.5 ( 20 - D ) ]$$

where

$R_1$  is the royalty payable pursuant to this subclause.

$R$  is the royalty payable pursuant to Clause 29 for that year.

$D$  is the increase in sales revenue from further processing for that year expressed as a percentage of the above zero profit (as defined in Clause 29) for that year less the amount of royalty payable to the said State for that year.

PROVIDED ALWAYS that the operation of this subclause shall not in any event reduce the royalty payable for any year below that payable in accordance with Clause 29.

**Waiver of additional royalty** <sup>6</sup>

- (7) (a) If the Joint Venturers at any time during the currency of this Agreement are able to demonstrate to the reasonable satisfaction of the Minister that further processing at the level provided for in subclause (4) of this Clause does not or would not be likely to result in a projected after tax internal rate of return of 10% on funds employed by the Joint Venturers in the further processing of diamonds to fulfil their obligations under this Clause the Minister shall release the Joint Venturers from their obligation to pay the increase in royalty provided for in subclause (6) of this Clause.
- (b) For the purposes of this subclause —
- (i) the internal rate of return shall be measured using the discounted cash flow internal rate of return method on the basis of a ten year project life and cash flow estimates at current exchange rates expressed in constant dollar terms and disregarding current and projected general or particular inflation rates and all aspects of project financing (including loans, loan guarantees, and principal repayments);
  - (ii) in determining annual net project cash flows such indirect costs and working capital as the Joint Venturers are able to demonstrate to the reasonable satisfaction of the Minister as attributable to the project shall be included in the calculation;
  - (iii) the expression “the discounted cash flow internal rate of return” shall mean the discount rate that equates the present value of expected cash outflows with the present value of expected cash inflows.
- (c) Any release by the Minister pursuant to paragraph (a) of this subclause shall remain in force for a period of 3 years but shall not during that period limit or affect the other obligations of the Joint Venturers under this Clause.

**Supply to third parties**<sup>6</sup>

- (8) If the Joint Venturers —
- (a) supply diamonds produced from the areas the subject of this Agreement; or
  - (b) are instrumental in causing or arranging sales of diamonds produced from areas other than the areas the subject of this Agreement

to third parties for further processing by such third parties in the said State, the Minister after consultation with the Joint Venturers shall, in the circumstances referred to in paragraph (a) of this subclause, and may, in the circumstances referred to in paragraph (b) of this subclause, allow all or part of the increase in value arising from the further processing of such diamonds by that third party as a credit to the Joint Venturers in the measurement of the compliance by the Joint Venturers of their further processing obligations pursuant to subclause (4) of this Clause.

**Obligations to supply to third parties**<sup>6</sup>

- (9) If the Joint Venturers fail to establish the facilities referred to in subclause (4) of this Clause or, having established such facilities, cease at any time to operate them for a continuous period of 2 years, the Minister may, having regard to the approved marketing proposals require the Joint Venturers to make available and continue to make available during the currency of this Agreement to third parties, on fair and reasonable commercial terms, diamonds from the areas the subject of this Agreement for further processing by such third parties in the said State.

**Additional royalty returns**<sup>6</sup>

- (10) (a) To enable the Minister for Mines to determine whether any additional royalty is payable pursuant to subclause (6) of this Clause, the Joint Venturers shall furnish to the Minister such returns accompanied by audited accounts and other relevant information as the Minister may require from time to time.

- (b) Any additional royalty payable pursuant to subclause (6) of this Clause shall be paid to the State within 45 days of the determination of the amount thereof.

**Security**<sup>6</sup>

- 31. (1) The State recognises the need for the Joint Venturers to have adequate security arrangements for their operations under this Agreement and shall include in the Bill to be introduced in the Parliament of Western Australia referred to in Clause 3 provisions for that purpose.
- (2) The Minister shall during the currency of this Agreement, and after consultation with the Minister for Police and the Joint Venturers, take such reasonable measures (consistent with the Joint Venturers' approved proposals) as may be necessary and, at the Joint Venturers' expense, to provide adequate security.

**Zoning**<sup>6</sup>

- 32. The State shall ensure after consultation with the relevant local authority that the mining leases and any lands the subject of any Crown Grant lease licence or easement granted to the Joint Venturers under this Agreement shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the operations of the Joint Venturers hereunder may be undertaken and carried out thereon without any interference or interruption by the State or 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.

**Rating**<sup>6</sup>

- 33. 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 and treatment of diamonds) 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 Joint  
Venturers making the election provided for by section 533B of the *Local  
Government Act 1960*.

**No discriminatory rates**<sup>6</sup>

34. Except as provided in this Agreement the State shall not impose, nor shall it permit or authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes rates or charges of any nature whatsoever 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 Joint Venturers in the conduct of their business hereunder nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Joint Venturers of full enjoyment of the rights granted and intended to be granted under this Agreement.

**Resumption for the purposes of this Agreement**<sup>6</sup>

35. 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 that land to the Joint Venturers and the provisions of subsections (2) to (7) inclusive of section 17 and 17A of that Act shall not apply to or in respect of that land or the resumption thereof. The Joint Venturers 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 Joint Venturers.

**No resumption**<sup>6</sup>

36. Subject to the performance by the Joint Venturers of their obligations under this Agreement the State shall not during the currency hereof without the consent of the Joint Venturers resume nor suffer nor permit to be resumed by any State instrumentality or by any local or other authority of the State any of the works installations plant equipment or other property for the time being belonging to the Joint Venturers and the subject of or used for the purpose of this Agreement or any of the works on the lands the subject of any lease or licence granted to the Joint Venturers in terms of this Agreement AND without such consent (which shall not be unreasonably withheld) the State shall not create or grant or permit or suffer to be created or granted by any instrumentality or



authority of the State as aforesaid any road right-of-way water right or easement of any nature or kind whatsoever over or in respect of any such lands which may unduly prejudice or interfere with the Joint Venturers' operations hereunder or which may conflict with any law of the State relating to security within any area or areas on which the Joint Venturers' operations are carried on.

**Assignment** <sup>6</sup>

37. (1) Subject to the provisions of this Clause the Joint Venturers or any of them may at any time —
- (a) assign mortgage charge sublet or dispose of to each other or to an associated company as of right, or to any other company or persons with the consent of the Minister the whole or any part of the rights of the Joint Venturers hereunder (including their rights to or as the holder of the mining leases or any other lease licence easement grant or other title) and of the obligations of the Joint Venturers 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 of the powers functions and authorities which are or may be conferred on the Joint Venturers hereunder;

subject however in the case of an assignment subletting disposition or appointment to the assignee sublessee disponent 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 Joint Venturers 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 Joint Venturers 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 their part contained herein and in the mining leases or any other lease licence easement grant or other

title the subject of an assignment mortgage subletting disposition or appointment under subclause (1) of this Clause PROVIDED THAT the Minister may agree to release the Joint Venturers or any of them 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 1904*, the *Mining Act 1978*, 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 sublease or disposition made or given pursuant to this Clause of or over the mining leases or any other lease licence easement grant or other title granted hereunder or pursuant hereto by the Joint Venturers or any assignee sublessee disponent 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 1904* or the *Mining Act 1978* as the case may be.

- (4) The provisions of this Clause shall not apply to any sale by the Joint Venturers of a townsite lot to any employee engaged in their operations hereunder.

**Variation**<sup>6</sup>

38. (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 grant or other title 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 addition 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 majeure**<sup>6</sup>

39. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations hereunder and to the temporary suspension of 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 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 to sell diamonds profitably 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 use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

**Power to extend periods**<sup>6</sup>

40. Notwithstanding any provision of this Agreement the Minister may at the request of the Joint Venturers from time to time extend or further extend

any period or vary or further vary any date referred to in this Agreement or in any approved proposal hereunder 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 Agreement**<sup>6</sup>

41. (1) In any of the following events namely if —

- (a) (i) the Joint Venturers make 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 the mining leases or any other lease licence easement grant or other title or document granted or assigned under this Agreement on their part to be performed or observed; or
- (ii) the Joint Venturers abandon or repudiate this Agreement or their operations under this Agreement

and such default is not remedied or such operations resumed within a period of 180 days after notice is given by the State as provided in subclause (2) of this Clause or, if the default or abandonment is referred to arbitration, then within the period mentioned in subclause (3) of this Clause; or

- (b) the Joint Venturers or any of them go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 3 months from the date of such liquidation the interest of that Joint Venturer is assigned to another Joint Venturer or to an assignee approved by the Minister under Clause 37

the State may by notice to the Joint Venturers determine this Agreement.

- (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 Joint Venturers and all such assignees mortgagees chargees and disponees for the time being of the Joint Venturers' said rights to or in favour of whom or

by whom an assignment mortgage charge or disposition has been effected in terms of Clause 37 whose name and address for service of notice has previously been notified to the State by the Joint Venturers or any such assignee mortgagee chargee or disponee.

- (3) (a) If the Joint Venturers contest the alleged default abandonment or repudiation referred to in paragraphs (a) and (b) of subclause (1) of this Clause the Joint Venturers shall within 60 days after notice given by the State as provided in subclause (2) of this Clause refer the matter in dispute to arbitration.
- (b) If the question is decided against the Joint Venturers, the Joint Venturers shall comply with the arbitration award within a reasonable time to be fixed by that award **PROVIDED THAT** if the arbitrator finds that there was a bona fide dispute and that the Joint Venturers were not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.
- (4) If the default referred to in subclause (1) of this Clause shall not have been remedied after receipt of the notice referred to in subclause (1) of this Clause 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 Joint Venturers and to make use of all plant machinery equipment and installations thereon) and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Joint Venturers to the State on demand.

#### **Effect of cessation or determination of Agreement <sup>6</sup>**

42. (1) Subject to the provisions of Clause 29 on the cessation or determination of this Agreement —
- (a) except as otherwise agreed by the Minister the rights of the Joint Venturers to in or under this Agreement and the rights of the Joint Venturers or of any assignee of theirs or any

mortgagee to in or under the mining leases and any other lease licence easement grant or other title or right granted hereunder or pursuant hereto (but excluding townsite lots which have been granted to or acquired by the Joint Venturers and which are no longer owned by them) shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder;

- (b) the Joint Venturers shall forthwith pay to the State all moneys which may then have become payable or accrued due;
  - (c) save as aforesaid and as otherwise provided in this Agreement neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing 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 except as otherwise determined by the Minister all buildings erections and other improvements erected on any land then occupied by the Joint Venturers under the mining leases or any other lease, licence, easement grant or other title 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 Joint Venturers or any other party and freed and discharged from all mortgages and other encumbrances and the Joint Venturers 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 Joint Venturers immediately prior to the cessation or determination of this Agreement or subsequently thereto desiring to remove any of their fixed or moveable plant and equipment or any part thereof from any part of the land occupied by them at the date of such cessation or determination they 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 such fixed or moveable plant and equipment at a

fair valuation to be agreed between the parties or failing agreement determined by arbitration hereunder.

**Provision of finance**<sup>6</sup>

43. (1) Where under any provision of this Agreement the Joint Venturers are liable to make payments to the State the Joint Venturers may, subject to the prior consent of the Minister, in lieu of such payments otherwise provide finance or cause finance to be provided to an equal amount to the particular liability in such manner as may be determined by the Minister.
- (2) Where under any provision of this Agreement or any approved proposal hereunder the Joint Venturers are liable to make payments to the State for services and facilities to be provided by the State the parties shall subject to the relevant provision or approved proposal enter into an agreement regarding the nature and extent of such payments prior to the commencement of any such work or expenditure.

**Environmental protection**<sup>6</sup>

44. Nothing in this Agreement shall be construed to exempt the Joint Venturers from compliance with any requirement in connection with the protection of the environment arising out of or incidental to their activities hereunder that may be made by the State or by any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act from time to time in force.

**Indemnity**<sup>6</sup>

45. The Joint Venturers 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 or on behalf of the Joint Venturers pursuant to this Agreement or relating to their operations hereunder or arising out of or in connection with the construction maintenance or use by the Joint Venturers or their servants agents contractors or assignees of the Joint Venturers' works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith PROVIDED THAT subject to the provisions of any other relevant Act such indemnity shall not apply in circumstances where the State, its servants, agents, or

contractors are negligent in carrying out work for the Joint Venturers pursuant to this Agreement.

**Commonwealth licences and consents**<sup>6</sup>

46. (1) The Joint Venturers shall from time to time make application to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to them of any licence or consent under the laws of the Commonwealth necessary to enable or permit the Joint Venturers to enter into this Agreement and to perform any of their obligations hereunder.
- (2) On request by the Joint Venturers the State shall make representations to the Commonwealth or to the Commonwealth constituted agency authority or instrumentality concerned for the grant to the Joint Venturers of any licence or consent mentioned in subclause (1) of this Clause.

**Sub-contracting**<sup>6</sup>

47. The State shall ensure that without affecting the liabilities of the parties under this Agreement either party shall have the right from time to time to entrust to third parties the carrying out of any portions of the operations which it is authorised or obliged to carry out hereunder.

**Stamp duty exemption**<sup>6</sup>

48. (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) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Joint Venturers or any of them or any permitted assignee any tenement lease licence easement or other right or rights;
  - (c) any assignment sublease or disposition and any appointment to or in favour of the Joint Venturers or any of them or an associated company of any interest right obligation power function or authority made pursuant to the provisions of this Agreement;



- (d) any instrument securing a charge (or in respect of any such charge, any statement note or memorandum evidencing or showing the amount or containing particulars of the loan the subject of such charge) over the assets of the Joint Venturers or any of them or an associated company for the purposes of this Agreement; and
- (e) any insurance policy in the name of the Joint Venturers or any of them or an associated company for the purposes of this Agreement

PROVIDED THAT this subclause shall not apply to any instrument or other document executed or made more than 7 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 a 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.

**Arbitration**<sup>6</sup>

- 49. (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 otherwise provided in this Agreement, 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 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.

**Consultation**<sup>6</sup>

50. The Joint Venturers shall during the currency of this Agreement consult with and keep the State fully informed on a confidential basis concerning any action that the Joint Venturers propose to take with any third party (including the Commonwealth or any Commonwealth constituted agency authority instrumentality or other body) which might significantly affect the overall interest of the State under this Agreement.

**Notices**<sup>6</sup>

51. Any notice consent or other writing authorised 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 Civil Service of the said State acting by the direction of the Minister and forwarded by prepaid post or handed to the Joint Venturers at their respective nominated offices for the time being in the said State and by the Joint Venturers if signed on their behalf by any person or persons authorised by the Joint Venturers or by their solicitors as notified to the State from time to time and forwarded by prepaid post or handed to the Minister and except in the case of personal service any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

**Guarantee**<sup>6</sup>

52. Notwithstanding any addition to or deletion or variation of the provisions of this Agreement or any time or other indulgence granted by the State to the Joint Venturers whether or not notice thereof is given, to the Guarantor by the State, the Guarantor hereby guarantees to the State the due performance by CRA Exploration Pty. Limited of all its obligations to be performed hereunder.

**Applicable law** <sup>6</sup>

53. This Agreement shall be interpreted according to the law for the time being in force in the State of Western Australia.

THE SCHEDULE

WESTERN AUSTRALIA

*MINING ACT 1978*

*DIAMOND (ASHTON JOINT VENTURE) AGREEMENT ACT 1981*

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 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 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 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 for the time being and from time to time prescribed pursuant to the provisions of the *Mining Act 1978* at the times and in the manner so prescribed and the 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 successive renewals of the term each for a further period of 21 years upon the same terms and conditions subject to the sooner determination of the said term upon cessation or determination of the Agreement PROVIDED ALWAYS that this lease and any renewal thereof shall

not be determined or forfeited otherwise than in accordance with the Agreement.

In this Lease —

- “Lessee” includes the respective successors and permitted assigns of each Lessee.
- The liability of the Lessee hereunder shall be joint and several.
- Reference to an Act includes all amendments to that Act and to any Act passed in substitution therefor or in lieu thereof and to the regulations and by-laws for the time being in force thereunder.

#### FIRST SCHEDULE

(name address and description of the Lessee)

CRA EXPLORATION PTY. LIMITED a company incorporated in the State of New South Wales and having its principal place of business in the State of Western Australia at 21 Wynyard Street, Belmont, ASHTON MINING LIMITED a company Incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 6th Floor, 189 St. George’s Terrace, Perth, TANAUST PROPRIETARY LIMITED a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 2nd Floor, Cecil Building, 6 Sherwood Court, Perth, A.O. (AUSTRALIA) PTY. LIMITED a company incorporated in the State of New South Wales and having its principal place of business in the State of Western Australia at 6th Floor, 189 St. George’s Terrace, Perth and NORTHERN MINING CORPORATION N.L. a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at Homeric House, 442 Murray Street, Perth.

#### SECOND SCHEDULE

(the Agreement)

An Agreement made between the State of Western Australia and the Lessee and ratified by the *Diamond (Ashton Joint Venture) Agreement Act 1981*.

#### THIRD SCHEDULE

(Description of land:)

Locality:

Mineral Field:

Area, etc.:

and

Being the land delineated on Survey Diagram No.  
recorded in the Department of Mines, Perth.

**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 .....

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, )  
K.C.M.G., O.B.E., M.L.A. in the )  
presence of: )

CHARLES COURT

PETER JONES

MINISTER FOR RESOURCES DEVELOPMENT

**Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981**  
**Schedule 2**

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SIGNED SEALED AND DELIVERED )  
for and on behalf of CRA )  
EXPLORATION PTY. LIMITED by its ) [L.S.]  
duly authorised attorney LEO JOHN ) JOHN CARDEN  
CARDEN under Power of Attorney )  
dated the 12th day of November, 1981 )  
in the presence of: )

M. A. O'LEARY

SIGNED for and on behalf of ASHTON )  
MINING LIMITED by its duly )  
appointed Attorney EWEN WILLIAM ) E. W. J. TYLER  
JOHN TYLER under Power of Attorney )  
dated the 28th day of October, 1981 in )  
the presence of: )

IAN K. WARNER

SIGNED for and on behalf of )  
TANAUST PROPRIETARY LIMITED )  
by its duly appointed Attorney EWEN ) E. W. J. TYLER  
WILLIAM JOHN TYLER under Power )  
of Attorney dated the 28th day of )  
October, 1981 in the presence of: )

IAN K. WARNER

SIGNED for and on behalf of A.O. )  
(AUSTRALIA) PTY. LIMITED by its )  
duly appointed Attorney EWEN ) E. W. J. TYLER  
WILLIAM JOHN TYLER under Power )  
of Attorney dated the 28th day of )  
October, 1981 in the presence of: )

IAN K. WARNER

THE COMMON SEAL of )  
NORTHERN MINING )  
CORPORATION N.L. was hereunto ) [C.S.]  
affixed by authority of the Board of )  
Directors in the presence of: )

N. R. TOWIE  
Director

BARRY D. MORGAN  
Director

SIGNED SEALED AND DELIVERED )  
for and on behalf of CRA LIMITED by )  
its duly authorised attorney LEO JOHN ) [L.S.]  
CARDEN under Power of Attorney )  
dated the 12th day of November, 1981 ) JOHN CARDEN  
in the presence of: )

M. A. O'LEARY

### **Schedule 3**

THIS AGREEMENT is made the 11th day of October 1983, BETWEEN THE HONOURABLE BRIAN THOMAS BURKE, 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 first part NEW BROKEN HILL CONSOLIDATED LIMITED a Company deemed by Act of parliament of the State of Victoria to be incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 18th Floor, 191 St. George's Terrace, Perth (hereinafter called "NBHC"), THE ZINC CORPORATION, LIMITED a company deemed by Act of Parliament of the State of Victoria to be incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 18th Floor, 191 St. George's Terrace, Perth (hereinafter called "ZC"), ASHTON MINING LIMITED a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 6th Floor, 189 St. George's Terrace, Perth (hereinafter called "Ashton"), TANAUST PROPRIETARY LIMITED a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 2nd Floor, Cecil Building, 6 Sherwood Court, Perth (hereinafter called "Tanaust"), A.O. (AUSTRALIA) PTY. LIMITED a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 6th Floor, 189 St. George's Terrace, Perth (hereinafter called "AO") and NORTHERN MINING CORPORATION N.L. a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 2nd Floor, 31 Ventnor Avenue, West Perth (hereinafter called "Northern Mining") of the second part (the said parties of the second part being hereinafter collectively called "the Joint Venturers" in which term shall be included their respective successors and permitted assigns and appointees) and CRA LIMITED a company incorporated in the State of Victoria and having its principal place of business in the State of Western Australia at 191 St. George's Terrace, Perth, (hereinafter called "the Guarantor") of the third part.

WHEREAS:

- (a) on the 17th day of November, 1981 the State, CRA Exploration Pty. Limited, Ashton, Tanaust, AO, Northern Mining and the Guarantor entered into an agreement which was ratified by the *Diamond (Ashton Joint Venture) Agreement Act 1981* and is hereinafter referred to as "the principal Agreement";



- (b) by an agreement effective as from the 1st day of July, 1982  
CRA Exploration Pty. Limited assigned all its interest in and under the  
principal Agreement to NBHC and ZC; and
- (c) the parties have agreed to new arrangements in respect of the  
accommodation of the Joint Venturers' mine workforce and royalty  
payable under the principal Agreement and desire 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 provisions of this Agreement shall not come into operation until a Bill  
to approve and ratify this Agreement is passed by the Legislature of the  
said State and comes into operation as an Act.
- 3. The principal Agreement is hereby varied as follows —
  - (1) Clause 1 —
    - (a) by deleting the definition of “relevant town” and substituting the  
following —

“ “relevant town” means in relation to the Argyle mining area  
and the Ellendale mining area respectively a town established in  
the Kimberley region by the Joint Venturers as a housing area for  
their mine workforce pursuant to an approved proposal and may  
in either case with the approval of the Minister include an  
existing town;”;
    - (b) by deleting in the definition of “relevant townsite”, “the relevant  
town” and substituting the following —

“a relevant town”.
  - (2) Clause 7 subclause (1) —
    - (a) by deleting the following —

“shall make provision where appropriate for the necessary  
workforce and associated population required to enable the Joint

Venturers to mine and recover diamonds from ore from the area the subject of the proposals and”;

(b) by deleting paragraph (c) and substituting the following paragraphs —

“(c) accommodation for the mine workforce in the Kimberley region comprising, in the discretion of the Joint Venturers, any one or more of the following —

(i) establishment of a relevant town;

(ii) assimilation into any existing town; and

(iii) establishment of accommodation facilities for the mine workforce to commute from elsewhere within the said State

including the provision of utilities, services and associated facilities;

(cc) any arrangements to commute the mine workforce from any place or places within the said state desired by the Joint Venturers;”.

(3) Clause 21 subclause (9) —

by deleting subclause (9) and substituting the following subclauses —

“(9) Notwithstanding that the Joint Venturers have installed equipment to generate electricity at the Argyle mining area pursuant to the provisions of subclause (3) of this Clause, the Joint Venturers shall upon request by the State at any time or times before 31st December, 1988 enter into negotiations with the State Energy Commission with a view to the establishment on terms and conditions to be agreed between the State Energy Commission and the Joint Venturers of hydro electric generation works on the Ord River and distribution works to supply, *inter alia*, the Argyle mining area and any relevant town at the Argyle mining area.

(10) Subject to subclause (9) of this Clause and notwithstanding that they have installed equipment to generate electricity at the Argyle mining area pursuant to the provisions of subclause (3)

of this Clause, the Joint venturers may during the continuance of this Agreement enter into negotiations with the State Energy Commission with a view to obtaining further or alternative electricity for the Argyle mining area and any relevant town at the Argyle mining area.

- (11) The provisions of subclauses (9) and (10) of this Clause shall not oblige the Joint Venturers or the State Energy Commission to enter into any agreement with the other pursuant to any negotiations under those subclauses and the provisions of subclause (1) of this Clause shall not apply to any such negotiations or to any agreement that may result from those negotiations.”.

- (4) By inserting after Clause 24 the following clauses —

**“Provision for mine workforce <sup>6</sup>**

24A. The Joint venturers shall make provision for the mine workforce serving the Argyle mining area and the Ellendale mining area respectively in any one or more (in their discretion) of the following ways —

- (a) commuting the mine workforce on a regular basis, as determined by the Joint Venturers in accordance with approved proposals, from any place or places within the said State to the relevant mining area and the provision of necessary accommodation facilities at or in the vicinity of the relevant mining area;
- (b) the establishment of a relevant town;
- (c) the assimilation of the mine workforce into any existing town in the Kimberley region.

**Modification of Mines Regulation Act <sup>6</sup>**

- 24B. (1) For the purpose of this Agreement in respect of any mining operations of the Joint Venturers under this Agreement the *Mines Regulation Act 1946* shall, where such mining operations are being conducted in accordance with a schedule of work approved by the

Minister for Mines, be deemed to be modified by the deletion of paragraph (c) of subsection (1) of section 38.

- (2) Where in the opinion of the Minister for Mines any schedule of work approved for the purpose of subclause (1) of this Clause should be altered for reasons of safety the Joint Venturers shall consult with the Minister for Mines with a view to making any alterations to that schedule as the Minister may consider reasonable in the circumstances.”.

(5) Clause 25 —

- (a) subclause (1) —

by deleting “Should the approved proposals” and substituting the following —

“Where any approved proposals”;

- (b) subclause (4) —

by deleting “If the approved proposals” and substituting the following —

“Where any approved proposals”;

- (c) subclause (5) —

by deleting “Should the approved proposals” and substituting the following —

“Where any approved proposals”;

- (d) subclause (6) —

by deleting “the relevant townsite” and substituting the following —

“a relevant townsite”.

- (6) By deleting Clause 26.

- (7) Clause 29 —
- (a) subclause (1) —
    - (i) by inserting in paragraph (I) of the definition of “allowable deductions” after “this Agreement” the following —

“or the Act to ratify the agreement dated 11th October, 1983 varying this Agreement”;
    - (ii) by inserting in paragraph (v) of the definition of “allowable capital expenditure” after “and”, where it last occurs, the following —

“any”;
  - (b) subclause (5) paragraph (c) —
    - (i) by inserting after “paid” where it first occurs the following —

“or where any offset has or offsets have been deducted pursuant to Clause 29C, the estimated royalty that would have been paid but for that offset or those offsets”;
    - (ii) by inserting after “period” where it occurs in subparagraph (i) and in subparagraph (ii) the following —

“but excluding any offsets deducted therefrom pursuant to Clause 29C”.
- (8) By inserting after Clause 29 the following clauses —
- “29A. The Joint Venturers shall pay to the State —
- (a) royalties in the manner and at the times provided in Clause 29 and any increase thereto pursuant to subclause (6) of Clause 30; and
  - (b) an additional royalty under this Agreement in the manner and at the times provided in Clause 29B.

**Further royalty provisions <sup>6</sup>**

- 29B. (1) The Joint Venturers shall pay to the State an additional royalty of \$50,000,000 in the manner and at the times following —
- (a) as to \$25,000,000 or such lesser amount as the Minister may allow, within 7 days after the date of approval by the Minister of the proposals submitted by the Joint Venturers pursuant to paragraph (B) of subclause (1) of Clause 7 (hereinafter called “the approval date”); and
  - (b) as to the balance, within 45 days of the approval date or within such later time or times as the Minister may allow.
- (2) If the amount of \$25,000,000 referred to in paragraph (a) of subclause (1) of this Clause or such lesser amount as the Minister may allow as therein provided is not paid by the Joint Venturers to the State within 30 days of the coming into operation of the Act to ratify the agreement dated 11th October, 1983 varying this Agreement, the Joint Venturers shall pay interest at the rate of 14% per annum on the said sum of \$50,000,000 for the period from whichever is the later of 14th November, 1983 or the approval date to the date on which the said amount of \$25,000,000 (or such lesser amount as aforesaid) is paid to the State such interest to be paid to the State at the time of payment of the said sum of \$25,000,000 (or such lesser amount as aforesaid).
- (3) The Joint venturers shall on demand by the State from time to time pay to the State interest at the rate of 14% per annum on so much of the said sum of \$50,000,000 as may from time to time after the expiration of 7 days from the approval date be unpaid.
- 29C. (1) Subject to subclause (2) of this Clause, the amount of royalties that become due for payment by the Joint Venturers in respect of diamonds recovered from the areas the subject of this Agreement under Clause 29 and

any increase thereto pursuant to subclause (6) of Clause 30 in respect of each quarter set forth in the Schedule below shall be partially offset by the amount shown as the scheduled offset amount for each quarter.

SCHEDULE.

Production Year (commencing 1st January)	Quarter	Scheduled Offset Amount
1986 .....	First .....	\$1,000,000
	Second .....	\$1,000,000
	Third .....	\$1,000,000
	Fourth .....	\$1,000,000
1987 .....	First .....	\$1,625,000
	Second .....	\$1,625,000
	Third .....	\$1,625,000
	Fourth .....	\$1,625,000
1988 .....	First .....	\$1,875,000
	Second .....	\$1,875,000
	Third .....	\$1,875,000
	Fourth .....	\$1,875,000
1989 .....	First .....	\$2,000,000
	Second .....	\$2,000,000
	Third .....	\$2,000,000
	Fourth .....	\$2,000,000
1990 .....	First .....	\$1,500,000
	Second .....	\$1,500,000
	Third .....	\$1,500,000
	Fourth .....	\$1,500,000
1991 .....	First .....	\$1,500,000
	Second .....	\$1,500,000
	Third .....	\$1,500,000
	Fourth .....	\$1,500,000
1992 .....	First .....	\$2,000,000
	Second .....	\$2,000,000
	Third .....	\$2,000,000
	Fourth .....	\$2,000,000
1993 .....	First .....	\$1,000,000
	Second .....	\$1,000,000

Production Year (commencing 1st January)	Quarter	Scheduled Offset Amount
	Third . . . . .	\$1,000,000
	Fourth . . . . .	\$1,000,000

(2) Whenever the scheduled offset amount for a quarter plus any amount added thereto as hereinafter provided exceeds 50% of the royalty otherwise due for payment in respect of that quarter the amount that may be offset for that quarter shall be limited to an amount equal to 50% of that royalty and the excess together with interest on such excess at the rate of 14% per annum calculated from the date of payment of the royalty for the quarter to which the excess relates to subject to the proviso first hereinafter contained) whichever is the sooner of the date upon which royalty in respect of such succeeding quarter is paid or the date upon which such royalty becomes payable shall be carried forward and applied by the Joint Venturers to increase the scheduled offset amount applicable to the next succeeding quarter by the amount carried forward (which increased amount shall then become the scheduled offset amount for that quarter) PROVIDED THAT where in such succeeding quarter a royalty is payable by the Joint Venturers pursuant to subparagraph (i) of paragraph (c) of subclause (5) of Clause 29 including any increase effected thereto pursuant to subclause (6) of Clause 30 the excess and the interest then accrued thereon or so much thereof as does not exceed 50% of that royalty shall be retired by offset to the extent thereof against that royalty AND PROVIDED FURTHER that in the event that any such excess remains at the end of 1993 then it shall be carried forward and applied by the Joint Venturers in the manner provided in this subclause (2) until the amount of any such excess is reduced to zero.



- (3) The scheduled offset amounts mentioned in subclause (1) of this Clause shall apply in respect of any royalty, tax or other impost whatsoever that may be levied or imposed by the State at any time in the future in lieu of royalty payable pursuant to this Agreement.
  - (4) If the State takes action otherwise than in accordance with the terms of this Agreement whereby the Joint Venturers lose the benefit of this Agreement any outstanding scheduled offset amounts shall, except where the State has taken such action after an abandonment by the Joint Venturers of this Agreement or their operations under this Agreement, become amounts owing by the State to the Joint Venturers at the respective times they would have otherwise been available as offset amounts pursuant to Clause 29C.”
- (9) Clause 30 subclause 6 —
- by deleting in factor R “payable pursuant to Clause 29 for that year”
- and substituting the following —
- “that would be payable pursuant to Clause 29 for that year unaffected by any offsets deducted therefrom pursuant to Clause 29C”.
- (10) by deleting “the revelant town”, wherever it occurs in the principal Agreement, and substituting the following —
- “any relevant town”.
4. The Guarantor hereby consents to this Agreement.

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 BRIAN THOMAS  
BURKE, M.L.A. in the presence of —  
  
MALCOLM J. BRYCE.  
  
Minister for Economic Development  
and Technology

BRIAN BURKE.

SIGNED SEALED AND DELIVERED  
for and on behalf NEW BROKEN  
HILL CONSOLIDATED LIMITED by  
its duly authorised attorney THOMAS  
BARLOW under Power of Attorney  
dated the 10th day of October, 1983 in  
the presence of —

M. A. O'LEARY.

(L.S.)  
T. BARLOW.

SIGNED SEALED AND DELIVERED  
for and on behalf of THE ZINC  
CORPORATION, LIMITED by its duly  
authorised attorney THOMAS  
BARLOW under Power of Attorney  
dated the 10th day of October, 1983 in  
the presence of —

M. A. O'LEARY.

(L.S.)

T. BARLOW.

SIGNED for and on behalf of ASHTON  
MINING LIMITED by its duly  
appointed Attorney RORY EDWARD  
STANLEY ARGYLE under Power of  
Attorney dated the 7th day of October,  
1983 in the presence of —

G. BILLARD.

R. E. S. ARGYLE.

SIGNED for an on behalf of  
TANAUST PROPRIETARY LIMITED  
by its duly appointed Attorney RORY  
EDWARD STANLEY ARGYLE under  
Power of Attorney dated the 7th day of  
October, 1983 in the presence of —

G. BILLARD.

R. E. S. ARGYLE.

SIGNED for an on behalf of A.O.  
(AUSTRALIA) PTY. LIMITED by its  
duly appointed Attorney RORY  
EDWARD STANLEY ARGYLE under  
Power of Attorney dated the 7th day of  
October, 1983 in the presence of —

G. BILLARD.

R. E. S. ARGYLE.

THE COMMON SEAL of  
NORTHERN MINING  
CORPORATION N.L. was hereunto  
affixed by authority of the Board of  
Directors in the presence of —

Director

C. L. S. HEWITT.

Director

A. G. BIRCHMORE.

(C.S.)

SIGNED SEALED AND DELIVERED  
for and on behalf of CRA LIMITED by  
its duly authorised attorney THOMAS  
BARLOW under Power of Attorney  
dated the 10th day of October, 1983 in  
the presence of —

M. A. O'LEARY.

(L.S.)

T. BARLOW.

*[Schedule 3 inserted by No. 12 of 1983 s. 7.]*

## **Schedule 4**

[s. 2]

**THIS AGREEMENT is made the 15th day of October 2001**

**BETWEEN**

**THE HONOURABLE GEOFFREY IAN GALLOP BEc, MA, MPhi1, DPhi1, MLA**, 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**

**CAPRICORN DIAMONDS LIMITED ACN 009 102 621, ASHTON ARGYLE HOLDINGS PTY LIMITED ACN 083 175 991 and AML NOMINEES LIMITED ACN 006 378 329** each of 2 Kings Park Road, West Perth, Western Australia (hereinafter called "**the Joint Venturers**") of the other part

**WHEREAS:**

- (a) the State and the Joint Venturers are now the parties to the agreement ratified by the *Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981* which agreement has been varied by the agreement ratified by the *Diamond (Ashton Joint Venture) Agreement Amendment Act 1983* and which (as so varied) is hereinafter called "**the Principal Agreement**";
- (b) pursuant to Clause 18 of the Principal Agreement Mining Lease No. 275SA (hereinafter called "**the Ellendale Mining Lease**") has been granted in respect of the area defined in the Principal Agreement as the Ellendale mining area; and
- (c) the Joint Venturers desire to sell the Ellendale Mining Lease and for such purpose the parties hereto desire to further vary the Principal Agreement and the Ellendale Mining Lease as provided herein.

**NOW THIS AGREEMENT WITNESSES —**

1. Subject to the context words and phrases 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 30 June 2002 or such later date as the parties hereto may agree.
3.
  - (1) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not commence to operate until the Bill referred to in Clause 2 has been passed by the Parliament of Western Australia and comes into operation as an Act.
  - (2) If before 30 June 2002 or such later date as may be agreed pursuant to Clause 2 the said Bill has not come into operation as an Act then unless the parties hereto otherwise agree this Agreement shall cease and determine and no party hereto shall have any claim against any other party hereto 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 coming into operation as an Act all provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.
4. In clauses 5 and 6 of this Agreement, “**Sale Date**” means the date on which the Ellendale Mining Lease is transferred by the Joint Venturers to —
  - (a) Kimberley Diamond Company NL (ACN 061 899 634) pursuant to the Asset Sale Agreement dated 5 September 2001 and made between Argyle Diamond Mines Pty Limited (ACN 008 912 418) as manager for the Argyle Diamond Mines Joint Venture, the Joint Venturers and the said Kimberley Diamond Company NL;
  - (b) any other party that the Minister responsible for the administration of the Principal Agreement shall consent to.
5. Subject to Clause 6 of this Agreement, the Principal Agreement and the Ellendale Mining Lease are respectively varied with effect on and from the Sale Date as follows —
  - (A) The Principal Agreement:
    - (1) Clause 1 —
      - (a) by deleting the definition of “Ellendale mining area”;

- (b) in the definition of “mining leases” —
  - (i) by amending the definition to be a definition of “mining lease”;
  - (ii) by deleting “or mining leases”; and
  - (iii) by deleting “Clauses 15 and 18” and substituting the following —
    - “Clause 15”;
- (c) in the definition of “ore”, by deleting “leases” and substituting the following —
  - “lease”;
- (d) in the definition of “relevant town” —
  - (i) by deleting “and the Ellendale mining area respectively”; and
  - (ii) by deleting “in either case”.
- (2) by deleting Clause 9.
- (3) by deleting Clause 18.
- (4) by deleting Clause 19.
- (5) Clause 20 —
  - by deleting “or the Ellendale mining area”.
- (6) Clause 21 —
  - (i) by deleting subclause (2);
  - (ii) in subclause (3), by deleting “subclauses (1) and (2)” and substituting the following —
    - “subclause (1)”.
- (7) by deleting Clause 23.



- (8) Clause 24A —
  - (i) by deleting “and the Ellendale mining area respectively”; and
  - (ii) by deleting “relevant” in both cases where it occurs in paragraph (a).
- (9) Clause 32 —  
by deleting “leases” and substituting the following —  
“lease”.
- (10) Clause 37(1)(a) —  
by deleting “leases” and substituting the following —  
“lease”.
- (11) Clause 37(2) —  
by deleting “leases” and substituting the following —  
“lease”.
- (12) Clause 37(3)(a)  
by deleting “leases” and substituting the following —  
“lease”.
- (13) Clause 41(1)(a)(i) —  
by deleting “leases” and substituting the following —  
“lease”.
- (14) Clause 42 —  
in subclauses (1)(a) and (2), by deleting “leases” and substituting the following —  
“lease”.

(B) The Ellendale Mining Lease:

(1) in the heading, by deleting the following —

*“Diamond (Ashton Joint Venture) Agreement Act 1981”.*

(2) in the body of the lease —

(i) by deleting “(except as otherwise provided by the Agreement described in the Second Schedule to this lease)”.

(ii) by deleting “subject to the Agreement”.

(iii) by deleting “except as otherwise provided by the Agreement”.

(iv) by deleting “for the time being and from time to time” and substituting the following —

*“and royalties for the time being and from time to time respectively”.*

(v) by deleting “and the 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 successive renewals of the term each for a further period of 21 years upon the same terms and conditions subject to the sooner determination of the said term upon cessation or determination of the Agreement PROVIDED ALWAYS that this lease and any renewal thereof shall not be determined or forfeited otherwise than in accordance with the Agreement.”.

(3) by deleting the Second Schedule.

(4) by inserting at the end of the Third Schedule the following —

“The boundary of the land being identical to the external boundaries of the following former contiguous surveyed mineral claims:

04/2230 04/2277 04/2308 04/2731 04/10420 04/10439

04/2231	04/2278	04/2309	04/2732	04/10421	04/10440
04/2232	04/2279	04/2310	04/2733	04/10422	04/10441
04/2233	04/2283	04/2311	04/2736	04/10423	04/10442
04/2234	04/2284	04/2419	04/5270	04/10424	04/10443
04/2235	04/2285	04/2420	04/9016	04/10425	04/10444
04/2236	04/2286	04/2421	04/9022	04/10426	04/10445
04/2238	04/2287	04/2470	04/9023	04/10427	04/10446
04/2239	04/2289	04/2471	04/9024	04/10428	04/10447
04/2240	04/2290	04/2472	04/9025	04/10429	04/10448
04/2241	04/2291	04/2474	049028	04/10430	04/10449
04/2242	04/2292	04/2475	04/9029	04/10431	04/10450
04/2243	04/2293	04/2476	04/9030	04/10432	04/10451
04/2244	04/2302	04/2477	04/9031	04/10433	04/10452
04/2246	04/2303	04/2480	04/10415	04/10434	04/10456
04/2247	04/2304	04/2481	04/10416	04/10435	04/10457
04/2249	04/2305	04/2582	04/10417	04/10436	04/10458
04/2250	04/2306	04/2583	04/10418	04/10437	04/10735
04/2269	04/2307	04/2584	04/10419	04/10438	04/10736.?”.

- (5) by deleting Conditions 8 and 9 of the Schedule of Conditions attached to the lease.
6. From and including the Sale Date the Ellendale Mining Lease (as amended by this Agreement) shall continue in force and effect under and subject to the *Mining Act 1978* (notwithstanding the provisions of section 73 of that Act restricting the area of land in respect of which a mining lease may be granted) and the provisions of the Principal Agreement shall no longer apply to the Ellendale Mining Lease which shall thenceforth be assigned to the West Kimberley Mineral Field and be designated Mining Lease 04/372 on the tenement register maintained under the *Mining Act 1978* in lieu of the designation Mining Lease No. 275SA.
7. If the transfer of the Ellendale Mining Lease referred to in Clause 4 of this Agreement is not effected by 31 December 2002 or such later date as

the parties hereto may agree, this Agreement shall on that date cease and  
thenceforth have no effect.

**IN WITNESS WHEREOF this Agreement has been executed by the parties  
as a Deed.**

SIGNED by **THE HONOURABLE** )  
**GEOFFREY IAN GALLOP** in the ) Geoff Gallop  
presence of: )

C M Brown

Minister for State Development

THE COMMON SEAL of )  
**CAPRICORN DIAMONDS LIMITED** ) C.S.  
is affixed to this document in the presence of: )

Director T J Appleby

Secretary/~~Director~~ Francis T Hoare

THE COMMON SEAL of )  
**ASHTON ARGYLE HOLDINGS PTY** ) C.S.  
**LIMITED** is affixed to this document: )  
in the presence of: )

Director T J Appleby

Secretary/~~Director~~ Francis T Hoare

THE COMMON SEAL of )  
**AML NOMINEES LIMITED** ) C.S.  
is affixed to this document: )  
in the presence of: )

Director E W J Tyler

Secretary/~~Director~~ T J Appleby

*[Schedule 4 inserted by No. 39 of 2001 s. 7.]*

**Schedule 5 — Third supplementary agreement**

[s. 2]

*[Heading inserted by No. 37 of 2008 s. 6.]*

**2008**

**THE HONOURABLE ALAN JOHN CARPENTER  
PREMIER OF THE STATE OF WESTERN AUSTRALIA**

**AND**

**ARGYLE DIAMONDS LIMITED  
ACN 009 102 621**

**AND**

**RIO TINTO DIAMONDS LIMITED**

**DIAMOND (ARGYLE DIAMOND MINES JOINT VENTURE)  
AGREEMENT 1981**

**RATIFIED VARIATION AGREEMENT**

[Solicitor's details]

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**THIS AGREEMENT** is made this 21<sup>st</sup> day of May 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**

**ARGYLE DIAMONDS LIMITED** ACN 009 102 621 of 2 Kings Park Road, West Perth, Western Australia (**Company**)

**AND**

**RIO TINTO DIAMONDS LIMITED** (Company No. 05266164) a company incorporated in the United Kingdom and having its registered office at 2 Eastbourne Terrace, London, England (**RTDL**).

**RECITALS**

- A. The State and the Company are now the parties to the agreement dated 17 November 1981 which was ratified by and is scheduled to the Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981 and which as subsequently varied is referred to in this Agreement as the “**Principal Agreement**”.
- B. The Company proposes to continue its mining operations under the Principal Agreement by undertaking underground mining operations. The State for the purpose of supporting a continuation of the Company’s mining operations under the Principal Agreement and employment opportunities generally in the Kimberley region of Western Australia has agreed to grant to the Company certain royalty and other concessions.
- C. The Company and RTDL propose that RTDL be permitted to undertake the sorting and marketing of diamonds produced from the areas the subject of the Principal Agreement. The State has agreed to permit RTDL to do so on certain terms and conditions including RTDL becoming a party to the Principal Agreement.
- D. The State, the Company and RTDL wish to vary the Principal Agreement to address the matters referred to in recitals B and C.

**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 shall not come into operation until the said Bill referred to in clause 2 is passed by the Parliament of Western Australia and comes into operation as an Act.  
(2) If by 31 December 2008 or such later date as may be agreed pursuant to clause 2 the said Bill has not come into operation as an Act then unless the parties hereto otherwise agree this Agreement shall cease and determine and no party hereto shall have any claim against any other party hereto 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 coming into operation as an Act 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 positions:

*primary cleaning and sizing* means the removal of all non-diamond material from the surface of rough diamonds by chemical means and their classification after such cleaning into size categories as required by subclause (1) of Clause 30;

*RTDL* means Rio Tinto Diamonds Limited (Company No. 05266164) a company incorporated in the United Kingdom and having, at the date of the variation agreement made on or about 22 May 2008 between the State, the Joint Venturers and RTDL, its registered office at 2 Eastbourne Terrace, London, England and in which term shall be included its successors and permitted assigns;

*variation date* means the date on which the Bill to ratify the variation agreement made on or about 22 May 2008 between the State, the Joint Venturers and RTDL comes into operation as an Act;

- (b) by deleting “parties hereto” in the definition of “Argyle mining area” and substituting “State and the Joint Venturers”;
- (c) by deleting “parties” in the definition of “private road” and substituting “State and the Joint Venturers”; and
- (d) in the definition of “sorting”:
- (i) by deleting “any” and substituting “primary cleaning and sizing and other”; and



- (ii) by inserting “but does not include such primary cleaning and sizing and other necessary cleaning” after “value”;
- (2) in clause 4 by inserting the following new subclause:
  - “(4) From and including the variation date RTDL shall be deemed to be a party to this Agreement with the State and the Joint Venturers.”;
- (3) in clause 6 by inserting the following new subclauses:
  - “(7) The Joint Venturers may from time to time during the continuance of this Agreement after the variation date sell transfer or dispose of to RTDL unsorted rough diamonds produced pursuant to this Agreement for sorting and marketing by RTDL rather than by the Joint Venturers, provided that:
    - (a) the approvals of the Minister and the Minister for Mines referred to in subclauses (3)(c)(ii) and (iii) respectively of Clause 30 have been given and RTDL’s proposed arrangements with respect to the sorting of such rough diamonds are otherwise in accordance with subclauses (3)(c)(i), (ii) and (iii) of Clause 30; and
    - (b) RTDL’s proposed arrangements for the marketing of such diamonds as sorted rough diamonds have been first submitted by it to, and approved of by, the Minister in accordance with this Clause. The provisions of subclauses (2) – (6) inclusive of this Clause shall apply mutatis mutandis to the submission, approval, modification, expansion or other variation of and implementation by RTDL of arrangements for the marketing by it of such sorted rough diamonds and as if references in those subclauses to the Joint Venturers were to RTDL.
  - (8) The Joint Venturers may from time to time during the continuance of this Agreement after the variation date sell transfer or dispose of to RTDL sorted rough diamonds produced pursuant to this Agreement for marketing by

RTDL rather than by the Joint Venturers provided that RTDL's proposed arrangements for the marketing of such sorted rough diamonds have been first submitted by it to, and approved of by, the Minister in accordance with this Clause. The provisions of subclauses (2) – (6) inclusive of this Clause shall apply mutatis mutandis to the submission, approval, modification, expansion or other variation of and implementation by RTDL of arrangements for the marketing by it of such sorted rough diamonds and as if references in those subclauses to the Joint Venturers were to RTDL.”;

- (4) in clauses 13(2) and (6) by deleting “parties” and substituting “State and the Joint Venturers”;
- (5) in clause 15(1) by deleting “the Schedule” and substituting “Schedule 1”;
- (6) in clause 21(7) by deleting “parties” and substituting “State and the Joint Venturers”;
- (7) in clause 22:
  - (a) by deleting “parties” in subclauses (1), (4) and (8) and substituting “State and the Joint Venturers”; and
  - (b) by deleting “parties hereto” in subclause (10) and substituting “State and the Joint Venturers”;
- (8) in clause 29(1)(a):
  - (a) by inserting the following new definitions in their appropriate alphabetical positions:

“Bank” means a body corporate that is authorised under the Banking Act 1959 of the Commonwealth to carry on banking business as defined in that Act;

“bank undertaking” means an unconditional and irrevocable undertaking issued by a Bank (first approved of by the Minister for Mines) in favour of the State to pay on demand to the State any amounts from time to time demanded by the Minister for Mines up to the specified limit of the undertaking and in a form approved by the Minister for Mines but substantially in the form contained in Schedule 2;

“Banker’s Undertaking 2007” means the undertaking issued on 7 May 2007 by Australia and New Zealand Banking Group Limited in favour of the State;

“milestone achievement date” means the date on which the milestone event occurs;

“milestone deadline” means 30 June 2009 or such later date as the Minister may before that date approve;

“milestone event” means first blasting of the undercut to commence the caving process by which the underground mining operations the subject of proposals approved by the Minister pursuant to this Agreement on 13 January 2006 is to occur;

(b) in the definition of “allowable deductions”:

- (i) by inserting “or RTDL” in subparagraphs (i), (ii), (iii), (iv) and (vi) after each reference to “the Joint Venturers”; and
- (ii) by inserting “, primary cleaning and sizing” in subparagraph (i) after each reference to “mining, recovery”; and
- (iii) by inserting “, primary cleaning and sizing,” in subparagraph (ii) after “mining, recovery”;

(c) in the definition of “allowable f.o.b. revenue costs”:

- (i) by inserting “by the Joint Venturers or RTDL” after “sorted rough diamonds”; and
- (ii) by inserting “or RTDL” after “paid by the Joint Venturers”;

(d) in the definition of “sales value”:

- (i) by inserting in subparagraph (i):
  - (A) “in respect of the sale, transfer or disposal of sorted rough diamonds by the Joint Venturers (other than to RTDL as permitted under subclause (8) of

- Clause 6),” at the beginning of that subparagraph; and
- (B) “such” after “sale transfer or disposal by the Joint Venturers of”; and
- (C) “(other than to RTDL as permitted under subclause (8) of Clause 6)” after “sold transferred or disposed of by the Joint Venturers”;
- (ii) by inserting in subparagraph (ii):
- (A) “or RTDL” after the first and second reference to “the Joint Venturers”; and
- (B) “of the Joint Venturers” after “and where sorted rough diamonds”;
- (iii) by renumbering subparagraph (ii) as subparagraph (iii) and inserting the following new subparagraph:
- “(ii) in respect of the sale, transfer or disposal of sorted rough diamonds by RTDL (including without limitation those sold transferred or disposed of to it by the Joint Venturers as permitted under subclause (8) of Clause 6), the greater of the gross sales revenue from the sale transfer or disposal by RTDL of such sorted rough diamonds on an arms length basis or the fair and reasonable market value on an arms length basis of sorted rough diamonds sold transferred or disposed of by RTDL (including without limitation those sold transferred or disposed of to it by the Joint Venturers as permitted under subclause (8) of Clause 6) as determined by the Minister after consultation with RTDL; and”;
- (9) in clause 29(1) by inserting the following new paragraphs:

- “(e) (i) A reference to a sales value, or a price, of sorted rough diamonds is to be treated as a reference to that value or price, reduced by an amount equal to the net GST (if any) payable on the supply to which the value or price relates.
- (ii) A reference to the value of sorted rough diamonds at a particular point in its production (other than its supply), or in a particular form, is to be treated as a reference to that value, reduced by an amount equal to the amount of GST that would be payable if the diamonds were supplied at that point, or in that form.
- (iii) If, when determining a value or price of sorted rough diamonds an amount (an “expense”) that relates to obtaining the diamonds may be deducted from another amount, the amount that may be deducted is reduced by an amount equal to the net input tax credit (if any) that arises in relation to the expense.
- (iv) The “net input tax credit” that arises in relation to an expense is:
- (a) the input tax credit that arises in relation to that expense; plus
- (b) the sum of any decreasing adjustments in relation to that expense; minus
- (c) the sum of any increasing adjustments in relation to that expense.
- (v) In this paragraph (e), “decreasing adjustment”, “GST”, “increasing adjustment”, “input tax credit”, “net GST” and “supply” have the respective meanings given by section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 of the Commonwealth.
- (f) Where, for the purposes of determining the amount of royalty payable for sorted rough diamonds, it is necessary to convert an amount or a price to Australian currency, the conversion is to be calculated

using a rate that has been approved by the Minister at the request of the Joint Venturers and in the absence of such request as determined by the Minister to be a reasonable rate for the purpose.”;

- (10) in clause 29(2) by deleting “The” and substituting “Subject to subclauses (2a), (2b) and (2c) of this Clause, the”;
- (11) by inserting the following new subclauses (2a) – (2e) after clause 29(2):

**“Underground Mining Royalty Concession**

(2a) Subject to subclauses (2b) and (2c) of this Clause, the Joint Venturers shall each year after 31 December 2005 during the continuance of this Agreement:

- (a) remain liable to pay to the State in respect of diamonds from the areas the subject of this Agreement royalty at the relevant rate specified in subclause (2) of this Clause;
- (b) pay to the State on account of that royalty liability an amount equal to 5% of the f.o.b. revenue for that year; and
- (c) provide to the State bank undertakings in accordance with subclause (2d) of this Clause.

(2b) If the milestone event occurs on or before the milestone deadline:

- (a) the Joint Venturers shall each year after the milestone achievement date during the continuance of this Agreement pay to the State in respect of diamonds from the areas the subject of this Agreement a royalty payment in an amount equal to 5% of the f.o.b. revenue for that year;
- (b) the Joint Venturers shall in respect of each year that the royalty payment arrangements set out in subclause (2a) of this Clause applied be deemed released from liability under this Clause to pay royalty

over and above the amount payable by them pursuant to paragraph (b) of subclause (2a) of this Clause;

- (c) Venturers' obligation under paragraph (c) of subclause (2a) of this Clause shall cease to apply; and
- (d) the State shall return all bank undertakings provided to it in accordance with subclause (2d) of this Clause which are then held by it to the Bank or Banks who provided them and notify the Bank or Banks that they are no longer required.

(2c) If the milestone event does not occur by the milestone deadline:

- (a) the royalty payment arrangements set out in subclause (2a) of this Clause shall continue to apply in respect of the year during which the milestone deadline was to occur but in respect of each following year during the continuance of this Agreement the Joint Venturers shall resume payment of the royalty payable by them under subclause (2) of this Clause (subject to subclause (3) of this Clause) at the times and in the manner they were formerly required to do so by this Clause; and
- (b) the Joint Venturers shall on lodgement of the annual return pursuant to subclause (5) of this Clause for the year during which the milestone deadline was to occur, pay to the State the aggregate amount of unpaid royalty for which they are liable under this Clause in respect of the years commencing after 31 December 2005 and ending at the end of that year. If on the basis of an audit pursuant to this Clause of the Joint Venturers' returns relating to that period the Minister for Mines determines that the amount so paid by the Joint Venturers is less than the amount owed by them, the difference shall be paid by the Joint Venturers to the State within 7 days of demand by the Minister for Mines. In the event that the Joint Venturers fail to comply with this paragraph (b) the State may enforce the bank undertakings provided to

it pursuant to subclause (2d) of this Clause which it then holds. Enforcement of such bank undertakings shall not release the Joint Venturers from liability to pay to the State upon demand by the Minister the difference referred to above to the extent it exceeds the amount recovered by the State in enforcing the bank undertakings; and

- (c) as soon as practicable after the State has received all outstanding royalties as referred to in paragraph (b) above it shall return all bank undertakings provided to it pursuant to subclause (2d) of this Clause which it then still holds but has not enforced to the Bank or Banks who provided them and notify the Bank or Banks that they are no longer required.
- (2d) (a) As security for the payment by the Joint Venturers to the State in respect of the years to which the royalty payment arrangements set out in subclause (2a) of this Clause apply of the difference between their royalty liability under subclause (2) of this Clause and the amount payable by them on account of that royalty liability pursuant to paragraph (b) of subclause (2a) of this Clause, the Joint Venturers shall provide bank undertakings to the State in accordance with this subclause (2d).
- (b) The Joint Venturers shall before the date occurring 14 days after the variation date provide to the State a bank undertaking in an amount equal to the difference between:
  - (i) the aggregate of the amounts estimated in accordance with paragraph (a) of subclause (5) of this Clause as the amount of royalty the Joint Venturers are liable under subclause (2) of this Clause to pay in respect of the diamonds the subject of their return for the quarter ended 31 March 2006 and for each subsequent quarter expiring before the variation date; and



- (ii) the aggregate amount of royalty payable by the Joint Venturers in respect of those quarters pursuant to paragraph (b) of subclause (2a) of this Clause.

Upon receipt of that bank undertaking the State shall promptly return the Banker's Undertaking 2007 to Australia and New Zealand Banking Group Limited and refund to the Joint Venturers any royalties paid by them in respect of the abovementioned quarters in excess of the royalties payable by them in respect of those quarters pursuant to paragraph (b) of subclause (2a) of this Clause.

- (c) The Minister for Mines may at any time or times during the application of the royalty payment arrangements set out in subclause (2a) of this Clause require the Joint Venturers to furnish replacement or additional security by way of bank undertaking so as to enable the State to at all times hold security in an amount equal to the then difference between the Joint Venturers' aggregate royalty liability under subclause (2) of this Clause and the aggregate of the amounts payable by them on account of that liability pursuant to paragraph (b) of subclause (2a) of this Clause. The Joint Venturers shall within 14 days after written request from the Minister for Mines furnish to the State replacement or additional security by way of bank undertaking in such amount as the Minister for Mines shall nominate for the purposes of this subclause (2d). On receipt of an approved replacement security the State shall release and discharge the original security.

- (2e) (a) For the purposes of determining whether or not the milestone event has occurred by the milestone deadline, the Joint Venturers:
  - (i) may at least 30 days prior to the date on which the Joint Venturers consider the milestone event will occur, notify the Minister for Mines

in writing of the date on which they consider the milestone event will occur; and

- (ii) shall within 7 days after the date upon which the Joint Venturers consider the milestone event has occurred and in any event by no later than the milestone deadline, notify the Minister for Mines in writing of the date of and the occurrence of the milestone event.

If the Joint Venturers fail to give notification by the milestone deadline in accordance with subparagraph (ii), the milestone event shall be deemed to not have occurred by the milestone deadline.

- (b) Within 14 days after receipt of notification in accordance with paragraph (a)(i) the Minister for Mines shall appoint (at the State's expense) a suitably qualified mining engineer to consult with the Joint Venturers about the achievement of the milestone event and what (if any) additional measures the Joint Venturers need to take to achieve the milestone event. The Joint Venturers will co-operate fully with such person and provide that person with such access to the mining lease and records of the Joint Venturers as that person may reasonably require for the purpose of the consultation.
- (c) Within 14 days after receipt of notification in accordance with paragraph (a)(ii), the Minister for Mines may appoint (at the State's expense) a suitably qualified mining engineer to verify within 14 days after being appointed whether or not the milestone event has occurred. The Joint Venturers will co-operate fully with such person and provide that person with such access to the mining lease and undercut and records of the Joint Venturers as that person may reasonably require to enable verification. If after receipt of notification in accordance with paragraph (a)(ii) the Minister for Mines does not appoint a person under this paragraph (c), the milestone event shall be deemed to have occurred on

the date notified by the Joint Venturers in accordance with paragraph (a)(ii).

- (d) The Minister for Mines shall advise the Joint Venturers of the conclusion of the person appointed under paragraph (c) within 7 days of the Minister for Mines being advised of it. If that person concludes that the milestone event was not achieved:
  - (i) then if the milestone deadline has not passed, the Joint Venturers may take further steps to achieve the milestone event by the milestone deadline and in which case the provisions of paragraphs (a)(ii) and (c) shall continue to apply; or
  - (ii) if the Joint Venturers wish to dispute that conclusion they may within 28 days after being notified of the conclusion refer the dispute to arbitration in accordance with the provisions of Clause 49.”;

(12) in clause 29(3) by inserting the following new paragraphs:

- “(d) Paragraphs (b) and (c) shall not apply in respect of the years that the royalty payment arrangements referred to in subclause (2a) of this Clause apply.
- (e) If the milestone event occurs by the milestone deadline, paragraphs (a), (b) and (c) shall cease to apply.”;

(13) in clause 29(4):

- (a) by deleting “parties” in paragraph (b) and substituting “State and the Joint Venturers”; and
- (b) by inserting the following new paragraph:
  - “(c) This subclause shall not apply in respect of or during the years that the royalty payment arrangements referred to in subclause (2a) of this Clause apply.”;

(14) in clause 29(5):

- (a) in paragraph (a) by deleting all the words after “a return in a form approved by the Minister for Mines” and substituting a colon followed by:
- “(i) showing the quantity, value, allowable f.o.b. revenue costs and such other details (including estimated costs of production and claimed deductions itemised) as the Minister for Mines may require of diamonds on which royalty has accrued payable hereunder during, in respect of the return for the quarter ending 31st March, 1982, the period from the commencement date to 31st March, 1982 and thereafter, during the quarter immediately preceding the due date of the return and estimating the amount of royalty paid and payable in respect of such diamonds including in respect of the years that the royalty payment arrangements set out in subclause (2a) of this Clause apply, pursuant to paragraph (b) of that subclause; and
  - (ii) in respect of each quarter occurring after the variation date, showing the RTDL information specified below and such other details as the Minister for Mines may from time to time require with respect to unsorted rough diamonds which the Joint Venturers have sold transferred or disposed of to RTDL for sorting and marketing by RTDL and to sorted rough diamonds which the Joint Venturers have sold transferred or disposed of to RTDL for marketing; and
  - (iii) showing the opening and closing balance of stocks on hand of the Joint Venturers including rough diamonds being sorted for the Joint Venturers; and
  - (iv) in respect of each quarter occurring after the variation date and in relation to unsorted rough diamonds produced pursuant to this Agreement and which were sold transferred or disposed of by the Joint Venturers to RTDL for sorting and marketing by RTDL rather than by the Joint Venturers, showing the opening and closing stocks on hand of RTDL; and

- (v) in respect of each quarter occurring after the variation date and in relation to sorted rough diamonds produced pursuant to this Agreement and which were sold transferred or disposed of by the Joint Venturers to RTDL for marketing by RTDL, showing the opening and closing stocks on hand of RTDL.

The Joint Venturers, if required by the Minister for Mines, shall consult with him with respect to such abovementioned estimates of royalty and revise such estimates if required on the basis of actual quarterly sales. Royalty at the applicable rate (as defined below) shall be payable on the due date and shall be paid by the Joint Venturers on the amount of the estimate or other amount agreed between the Joint Venturers and the Minister for Mines within 45 days of the due date.

For the purposes of this paragraph (a) “the applicable rate” means:

- (A) in respect of the years that the royalty payment arrangements set out in subclause (2a) of this Clause apply, 5% of the f.o.b. revenue;
- (B) in respect of the years referred to in paragraph (a) of subclause (2b) of this Clause, 5% of the f.o.b. revenue; and
- (C) otherwise at the rate specified in subclause (2) of this Clause.

For the purposes of this paragraph (a) “RTDL information” means:

- (A) the quantity of unsorted rough diamonds sold transferred or disposed of by the Joint Venturers to RTDL for sorting and marketing by RTDL;
- (B) the quantity of unsorted rough diamonds sent by the Joint Venturers to RTDL during the quarter for sorting on behalf of the Joint Venturers;

- (C) the quantity of sorted rough diamonds sold transferred or disposed of by the Joint Venturers to RTDL for marketing by RTDL;
  - (D) the quantity of sorted rough diamonds received by the Joint Venturers from RTDL during the quarter being diamonds that the Joint Venturers sent to RTDL for sorting on their behalf;
  - (E) copies of the sales invoices for sorted rough diamonds sold by RTDL during the quarter; and
  - (F) details of RTDL costs (and supporting documentation) claimed by the Joint Venturers as allowable deductions or allowable f.o.b. revenue costs.”;
- (b) in paragraph (b) by inserting “(including without limitation sales transfers or disposals by RTDL (after sorting) of unsorted rough diamonds sold transferred or disposed of by the Joint Venturers to it for sorting and marketing and of sorted rough diamonds sold transferred or disposed of by the Joint Venturers to it for marketing)” after “during the year of return.”;
- (c) by deleting “Where” at the beginning of paragraph (c) and substituting “Subject to paragraph (d), where”;
- (d) by inserting the following new paragraphs (d) and (e):
- “(d) In respect of the years that the royalty payment arrangements set out in subclause (2a) of this Clause apply and of the years after the milestone achievement date, the references in paragraph (c) of this subclause (5) to “estimated royalty” and “royalty payable for that period” shall be to the royalty payable by the Joint Venturers pursuant to paragraph (b) of subclause (2a) of this Clause.
  - (e) RTDL covenants with the Joint Venturers and with the State that it will promptly provide to the Joint Venturers all such information as shall be required to

enable the Joint Venturers to comply with their obligations under paragraphs (a) and (b).”;

(15) in clause 29(7):

(a) by deleting the opening words of paragraph (a) before subparagraph (i) and substituting:

“The Joint Venturers and RTDL shall permit the Minister for Mines or his nominee or as the case may be ensure that the Minister for Mines or his nominee are permitted.”;

(b) in paragraph (a)(i):

(i) by inserting “, RTDL” after the first reference to the “Joint Venturers”;

(ii) by inserting “or on behalf of any one or more of them,” after “any person acting on their behalf”; and

(iii) by inserting “or RTDL” after the second reference to the “Joint Venturers”;

(c) in paragraph (a)(ii):

(i) by inserting “or RTDL” after the first reference to the “Joint Venturers”;

(ii) by inserting “(within or outside the said State)” after “all other areas and facilities”; and

(iii) by inserting “or RTDL (being diamonds produced from the areas the subject of this Agreement)” after the second reference to the “Joint Venturers”; and

(d) in paragraph (b) by deleting “this paragraph” and substituting “paragraph (a)”;

(16) in clause 29(10):

(a) by deleting the heading to this clause and substituting:

**“Sorting, Valuation and Auditing Procedures”;**

(b) in paragraph (a):

- (i) by inserting “and RTDL” after “Joint Venturers”; and
  - (ii) by deleting “its” and substituting “their (or of their agent’s or contractor’s as the case may be) respective sorting”; and
  - (c) in paragraph (b) by inserting “or RTDL as the case may be” after “Joint Venturers”;
- (17) by deleting clause 30 and the heading to that clause and substituting the following new clause and heading:

**“Primary cleaning and sizing, cutting and polishing and sorting of rough diamonds**

30. (1) During the continuance of this Agreement after the variation date the Joint Venturers shall undertake:
- (a) the primary cleaning and sizing of rough diamonds from the areas the subject of this Agreement at the mining lease or at such other place in the said State approved from time to time by the Minister; and
  - (b) except to the extent otherwise permitted from time to time by the Minister, the cutting and polishing of high colour, low inclusion pink diamonds having an expected polished weight greater than 0.25 carats in Perth Western Australia or at such other place in the said State approved from time to time by the Minister.

The Joint Venturers further undertake that the sizing of rough diamonds as part of the abovementioned primary cleaning and sizing shall involve their classification after cleaning into a minimum of 10 size categories approved by the Minister. The Minister may from time to time at the request of the Joint Venturers approve a reduction in the number of size categories to below 10.

- (2) (a) Except to the extent they are permitted under subclause (7) of Clause 6 to sell transfer or



dispose of unsorted rough diamonds to RTDL, the Joint Venturers shall undertake or cause to be undertaken on their behalf (whether in or outside the said State) the sorting of all rough diamonds from the areas the subject of this Agreement before they are sold transferred or otherwise disposed of by the Joint Venturers.

- (b) The Joint Venturers shall during the continuance of this Agreement:
  - (i) keep the Minister and the Minister for Mines fully informed with respect to the arrangements for the sorting of its rough diamonds including without limitation as to the place or places at which such sorting is being or is to be undertaken; and
  - (ii) ensure that the nature and extent of such sorting will be to a standard and level reasonably necessary to maximise the value of its diamonds before sale transfer or disposal as the case may be as approved by the Minister; and
  - (iii) ensure that such sorting is undertaken in accordance with sorting and auditing procedures approved by the Minister for Mines.
- (c) If such sorting is to be undertaken outside of the said State the Joint Venturers must also comply, or ensure compliance, with such procedures and provide such information as the Minister for Mines may from time to time require to track the rough diamonds produced from the areas the subject of this Agreement from the mining lease through to the place or places at which sorting is being or is to be undertaken.

- (3) (a) RTDL shall comply with the following paragraphs in respect of the unsorted rough diamonds sold transferred or disposed of to it by the Joint Venturers as permitted under subclause (7) of Clause 6.
- (b) RTDL shall undertake or cause to be undertaken on its behalf (whether in or outside the State) the sorting of all such rough diamonds before they are sold transferred or disposed of by RTDL.
- (c) RTDL shall during the continuance of this Agreement:
- (i) keep the Minister and the Minister for Mines fully informed with respect to the arrangements for the sorting of such rough diamonds including without limitation as to the place or places at which such sorting is being or is to be undertaken; and
  - (ii) ensure that the nature and extent of such sorting will be to a standard and level reasonably necessary to maximise the value of its diamonds before sale transfer or disposal as the case may be as approved by the Minister; and
  - (iii) ensure such sorting is undertaken in accordance with auditing procedures approved by the Minister for Mines.
- (d) If such sorting is to be undertaken outside of the said State the Joint Venturers and RTDL must comply, or ensure compliance, with such procedures and provide such information as the Minister for Mines may from time to time require to track the rough diamonds produced from the areas the subject of this Agreement from the mining lease through to the place or

places at which sorting is being or is to be undertaken.”;

(18) in clause 37:

(a) by inserting “subclauses (1) – (4) inclusive of” in subclause (1) after “Subject to the provisions of”; and

(b) by inserting the following new paragraphs:

“(5) Subject to the provisions of subclauses (5) and (6) of this Clause, RTDL may at any time assign mortgage charge or dispose of to any company or persons with the consent of the Minister the whole or any part of the rights of RTDL hereunder and of the obligations of RTDL hereunder subject in the case of an assignment or disposition to the assignee or donee (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form approved by the Minister to comply with observe and perform the provisions hereof on the part of RTDL to be complied with observed or performed in regard to the matter or matters the subject of such assignment or disposition.

(6) Notwithstanding anything contained in or anything done under or pursuant to subclause (5) of this Clause, RTDL 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 PROVIDED THAT the Minister may agree to release RTDL or any party comprising RTDL from such liability where he considers such release will not be contrary to the interests of the State.”;

(19) in clause 38(1):

(a) by deleting “The parties” and substituting “The State and the Joint Venturers”; and

(b) by inserting the following new sentence at the end of it:

“After the variation date and while RTDL is a party to this Agreement its agreement shall be required to add to substitute for cancel or vary all or any of the provisions of this Agreement.”;

(20) in clause 40 by inserting the following sentence at its end:

“This clause shall not apply to any extension of the milestone deadline as defined in subclause (1) of Clause 29 otherwise than as contemplated by that definition.”;

(21) in clause 41(1):

(a) by inserting in paragraph (a)(i):

(i) “(including without limitation to provide bank undertakings to the State in accordance with subclause (2d) of Clause 29)” after “State herein”;  
and

(ii) by inserting “or pursuant to” after “assigned under”;  
and

(b) by inserting “; or” after paragraph (b) followed by:

“(c) (i) RTDL makes default which the State considers material in the due performance or observance of any of the covenants or obligations to the State herein and on its part to be observed or performed; or

(ii) RTDL abandons or repudiates this Agreement or its operations under this Agreement,

and within a period of 180 days after notice is given by the State as provided in subclause (2) of this Clause or, if the default or abandonment is referred to arbitration, then within the period mentioned in subclause (3) of this Clause:

(A) such default is not remedied or such operations resumed; or

- (B) the Joint Venturers do not cease selling transferring or disposing of to RTDL rough diamonds produced pursuant to this Agreement for marketing or for sorting and marketing by RTDL as the case may be rather than by the Joint Venturers and resume such sorting and marketing activities themselves; or
  - (d) RTDL goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 3 months RTDL's interest is assigned to an assignee approved by the Minister under Clause 37 or the Joint Venturers cease selling transferring or disposing of to RTDL rough diamonds produced pursuant to this Agreement for marketing or for sorting and marketing by RTDL as the case may be rather than by the Joint Venturers and resume such sorting and marketing activities themselves;"; and
  - (c) by inserting "and to RTDL" after "the Joint Venturers" where that reference appears last in subclause (1);
- (22) in clause 41(2):
- (a) by inserting "to RTDL and" after "given to the Joint Venturers and";
  - (b) by inserting "and RTDL's" after "time being of the Joint Venturers"; and
  - (c) by inserting "or RTDL (as the case may be) or" after "State by the Joint Venturers";
- (23) in clause 41(3)
- (a) by inserting "and RTDL" after each reference to "Joint Venturers" in paragraphs (a) and (b); and
  - (b) by deleting "(a) and (b)" and substituting "(a), (b), (c) or (d) as the case may be";
- (24) in clause 42(1):

- (a) in paragraph (a):
    - (i) by inserting “and of RTDL” after the first reference to “Joint Venturers”;
    - (ii) by deleting “either” and substituting “any”; and
    - (iii) by inserting “or bank undertaking” after “indemnity”;
  - (b) by deleting “neither of the parties hereto” in paragraph (c) and substituting “none of the State, the Joint Venturers or RTDL”;
- (25) in clauses 42(3) and 43(2) by deleting “parties” and substituting “State and the Joint Venturers”;
- (26) in clause 47 by deleting “either” and substituting “each”;
- (27) in clause 49:
- (a) by deleting subclause (1) and inserting the following new subclause:
    - “(1) Any dispute or difference between the State and either or both of the Joint Venturers and RTDL arising out of or in connection with this Agreement the construction of this Agreement or as to the rights, duties or liabilities of any of them hereunder or as to any matter to be agreed upon between the State and either or both of the Joint Venturers and RTDL under this Agreement shall in default of agreement between those having the dispute or difference 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 the State and the other by the Joint Venturers and RTDL (or if only one of them is having the dispute or difference with the State then that one) 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 Commercial Arbitration Act 1985”; and



Payment of the Amount or any part thereof will be made by the Bank to the State without reference to the Customer, despite any notice from the Customer to the Bank not to pay any amount and irrespective of the performance or non-performance by the Customer or the State of the provisions of the State Agreement.

The Bank's liability under this Undertaking is continuing and irrevocable and (without limitation) shall not be impaired or discharged by any variation that may be made to the provisions of the State Agreement or by any extension of time or other forbearance on the part of any of the State, the Minister or the Minister for Mines (each as defined in the State Agreement) or the Customer under or pursuant to the State Agreement.

The Bank's obligations under this Undertaking shall continue in force until the earlier of:

- written notification being received by the Bank from the State that the Undertaking is no longer required;
- the Undertaking being returned to the Bank by the State; and
- the aggregate of all payments made by the Bank to the State under this Undertaking equalling the Amount.

Dated at ....., this .....

Signed as a deed for and on behalf of .....

.....

Print name of the Bank

by its duly appointed attorney pursuant to a power of attorney dated

.....

.....

Signature

Signature

Name:

Name:

Title:

Title:

In the presence of:



.....

Signature

Name:”

**EXECUTED** as a deed.

**SIGNED** by **THE HONOURABLE** )  
**ALAN JOHN CARPENTER** )      [Signature]  
in the presence of: )

[Signature]

\_\_\_\_\_

Name: MATT KEOGH

**THE COMMON SEAL** of )  
**ARGYLE DIAMONDS LIMITED** )  
ACN 009 102 621 was hereto affixed )      C.S.  
in accordance with its constitution )  
in the presence of: )

[Signature]

\_\_\_\_\_

Director  
Name: KEVIN MCLEISH

[Signature]

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Director/~~Secretary~~  
Name: SHANE SULLIVAN

**EXECUTED by RIO TINTO** )  
**DIAMONDS LIMITED** by its )  
Attorney )  
pursuant to a power of )  
attorney dated 16 May 2008 )  
in the presence of: )

[Signature]

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Witness  
Name: CATHRYN WELLS

[Signature]

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Attorney  
Name: SHANE SULLIVAN

*[Schedule 5 inserted by No. 37 of 2008 s. 6.]*

## Notes

- <sup>1</sup> This is a compilation of the *Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981* and includes the amendments made by the other written laws referred to in the following table<sup>1a</sup>. The table also contains information about any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Diamond (Ashton Joint Venture) Agreement Act 1981</i> <sup>7</sup>	108 of 1981	4 Dec 1981	4 Dec 1981
<i>Diamond (Ashton Joint Venture) Agreement Amendment Act 1983</i>	12 of 1983	31 Oct 1983	31 Oct 1983
<i>Sentencing (Consequential Provisions) Act 1995</i> Pt. 24	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Security and Related Activities (Control) Act 1996</i> s. 96	27 of 1996	22 Jul 1996	1 Apr 1997 (see s. 2 and <i>Gazette</i> 27 Mar 1997 p. 1693)
<i>Diamond (Argyle Diamond Mines Joint Venture) Agreement Amendment Act 2001</i>	39 of 2001	7 Jan 2002	4 Feb 2002 (see s. 2)
<b>Reprint of the <i>Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981</i> as at 10 May 2002</b> (includes amendments listed above)			
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 78 and 79	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Medical Practitioners Act 2008</i> s. 162	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and <i>Gazette</i> 25 Nov 2008 p. 4989)
<i>Diamond (Argyle Diamond Mines Joint Venture) Agreement Amendment Act 2008</i>	37 of 2008	1 Jul 2008	s. 1 and 2: 1 Jul 2008 (see s. 2(a)); Act other than s. 1 and 2: 2 Jul 2008 (see s. 2(b))

<sup>1a</sup> [On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included](#)

[in this compilation. For the text of the provisions see the endnotes referred to in the table.](#)

**Provisions that have not come into operation**

<u>Short title</u>	<u>Number and year</u>	<u>Assent</u>	<u>Commencement</u>
<a href="#">Standardisation of Formatting Act 2010 s. 4</a> <sup>8</sup>	<a href="#">19 of 2010</a>	<a href="#">28 Jun 2010</a>	<a href="#">To be proclaimed (see s. 2(b))</a>

- <sup>2</sup> Repealed by the *Interpretation Act 1984*.
- <sup>3</sup> Repealed by the *Acts Amendment and Repeal (Credit) Act 1984*.
- <sup>4</sup> Repealed by the *Mining Act 1978*.
- <sup>5</sup> Under the *Alteration of Statutory Designations Order (No. 2) 2001* the name of the department that was formerly the Department of Mines was changed to the Department of Mineral and Petroleum Resources.
- <sup>6</sup> Marginal notes in the agreement have been represented as bold headnotes in this reprint but that does not change their status as marginal notes.
- <sup>7</sup> Short title changed to the *Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981* (see note under s. 1).
- <sup>8</sup> [On the date as at which this compilation was prepared, the \*Standardisation of Formatting Act 2010\* s. 4 had not come into operation. It reads as follows:](#)

**4. Schedule headings reformatted**

- [\(1\) This section amends the Acts listed in the Table.](#)
- [\(2\) In each Schedule listed in the Table:](#)
  - [\(a\) if there is a title set out in the Table for the Schedule — after the identifier for the Schedule insert that title;](#)
  - [\(b\) if there is a shoulder note set out in the Table for the Schedule — at the end of the heading to the Schedule insert that shoulder note;](#)
  - [\(c\) reformat the heading to the Schedule, as amended by paragraphs \(a\) and \(b\) if applicable, so that it is in the current format.](#)

<u>Act</u>	<u>Identifier</u>	<u>Title</u>	<u>Shoulder note</u>
<a href="#">Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981</a>	<a href="#">Schedule 1</a>	<a href="#">Mineral claims</a>	
	<a href="#">Schedule 2</a>	<a href="#">Diamond (Argyle Diamond Mines Joint Venture) Agreement</a>	<a href="#">[s. 2]</a>

***Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981***

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<u>Act</u>	<u>Identifier</u>	<u>Title</u>	<u>Shoulder note</u>
	<a href="#">Schedule 3</a>	<a href="#">First supplementary agreement</a>	[s. 2]
	<a href="#">Schedule 4</a>	<a href="#">Second supplementary agreement</a>	