



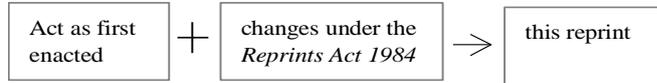
Western Australia

# **Mineral Sands (Beenup) Agreement Act 1995**

**Reprint 1: The Act as at 18 July 2003**

## Guide for using this reprint

### *What the reprint includes*



### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original Act are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

Editorial notes show if something has been omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

The text of anything omitted can be found in an earlier reprint (if there is one) or the Act as passed.

### *Reprint numbering and date*

1. The reprint number (in the footer of each page of the document) shows how many times the Act has been reprinted. For example, numbering a reprint as “Reprint 3” would mean that the reprint was the 3<sup>rd</sup> reprint since the Act was passed. Reprint numbering was implemented as from 1 January 2003.
2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

Reprinted under the  
*Reprints Act 1984* as  
at 18 July 2003

Western Australia

## Mineral Sands (Beenup) Agreement Act 1995

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Western Australia

Reprinted under the  
*Reprints Act 1984* as  
at 18 July 2003

## **Mineral Sands (Beenup) Agreement Act 1995**

**An Act to ratify, and authorise the implementation of, an agreement between the State and Mineral Deposits Pty. Ltd. in relation to the establishment of a proposed heavy mineral mining operation at Beenup in the south west of Western Australia.**

**1. Short title**

This Act may be cited as the *Mineral Sands (Beenup) Agreement Act 1995*<sup>1</sup>.

**2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent<sup>1</sup>.

**3. Interpretation**

In this Act unless the contrary intention appears “**the Agreement**” means the Mineral Sands (Beenup) Agreement, a copy of which is set out in Schedule 1, and includes the Agreement as varied from time to time in accordance with its provisions.

**4. Agreement ratified and implementation authorised**

- (1) The Agreement is ratified.

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

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[Section 3]

### MINERAL SANDS (BEENUP) AGREEMENT

THIS AGREEMENT is made this 22nd day of December 1994

#### BETWEEN

**THE HONOURABLE RICHARD FAIRFAX COURT**, B.Com., M.L.A., Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "the State") of the one part and **MINERAL DEPOSITS PTY. LTD.** ACN 000 154 067 a company incorporated in the State of New South Wales and having its principal place of business in the State of Western Australia at Suite 2, 72 Melville Parade, South Perth (hereinafter called "the Company" in which term shall be included its successors and permitted assigns) of the other part.

#### WHEREAS:

- (a) the Company has established within the Mining Leases hereinafter defined heavy mineral sands deposits of tonnages and grades sufficient to warrant economic recovery and marketing;
- (b) the Company has put forward a project proposal for a mining operation which will have a capacity to produce not less than 500,000 tonnes per year of heavy mineral products for transportation from the Mining Leases to the Port of Bunbury for export;
- (c) the Company and the State have agreed with respect to the funding of the initial costs of constructing a power line to the minesite and of constructing or upgrading certain public roads to be used for product haulage as hereinafter appears;
- (d) the Company has undertaken to continue to investigate economically viable means to add value to ilmenite from the Mining Leases through processing activities within Western Australia and to report the results of such investigations to the Minister on a regular basis; and
- (e) the State for the purpose of promoting employment opportunity and development within Western Australia has agreed to enter into

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this Agreement to assist the establishment of the proposed mining operation upon and subject to the terms of this Agreement.

**NOW THIS AGREEMENT WITNESSES:**

**Definitions**

1. In this Agreement subject to the context —

**“advise”, “apply”, “approve”, “approval”, “consent”, “notify”, “request”, or “require”,** means advise, apply, approve, approval, consent, 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 a proposal approved or determined under this Agreement;

**“Berth C”** means the Bunbury Port Authority’s planned Berth C comprising a wharf, conveyor, ship loading facilities and storage area to be situated on the northern side of the Inner Harbour of the port;

**“Berth 2”** means the Bunbury Port Authority’s general purpose berth known as Berth 2 and situated on the southern side of the Inner Harbour of the port;

**“Bunbury Port Authority”** means the body corporate established pursuant to the *Bunbury Port Authority Act 1909*;

**“Clause”** means a clause of this Agreement;

**“Commissioner of Main Roads”** means the Commissioner of Main Roads appointed under the *Main Roads Act 1930*;

**“Commissioner of Railways”** means the Commissioner of the Western Australian Government Railways for the time being in office under the *Government Railways Act 1904*;

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

**“Company’s workforce”** means the persons (and the dependents of those persons) engaged whether as employees, agents or contractors in the Company’s activities under this Agreement;

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

**“haulage route”** means those parts of the route between the Mining Leases and the northern end of the Capel bypass shown coloured red and green on the plan marked “A” initialled by or on behalf of the parties hereto for the purpose of identification;

**“heavy minerals”** means titaniferous minerals (including ilmenite rutile and leucoxene) and magnetite zircon monazite kyanite staurolite xenotime and garnet obtained from the Mining Leases;

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

**“heavy mineral products”** means commercially valuable heavy minerals recovered for sale by the separation into its component minerals of heavy mineral concentrates;

**“Land Act”** means the *Land Act 1933*;

**“laws relating to traditional usage”** means laws applicable from time to time in Western Australia in respect of rights or entitlements to or interests in land or waters which rights, entitlements or interests are acknowledged, observed or exercisable by Aboriginal persons (whether communally or individually) in accordance with Aboriginal traditions, observances, customs or beliefs;

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

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

**“Mining Leases”** means mining leases Nos. M70/574, M70/575, M70/576, M70/577, M70/747 and M70/787 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;

**“Minister”** means the Minister in the Government of the State for the time being responsible 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 Company and includes the successors in office of the Minister;

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

**“month”** means calendar month;

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“**notice**” means notice in writing;

“**person**” or “**persons**” includes bodies corporate;

“**port**” means the port as defined in section 2 of the *Bunbury Port Authority Act 1909*;

“**public road**” means a road as defined by the *Road Traffic Act 1974*;

“**said State**” means the State of Western Australia;

“**SECWA**” means the State Energy Commission of Western Australia as described in section 7 of the *State Energy Commission Act 1979* and includes, in respect of any particular statutory function of the State Energy Commission under the State Energy Commission Act, any successor of the State Energy Commission in respect of that statutory function;

“**SECWA Agreement**” means the agreement to be entered into between SECWA and the Company in respect of supply of electricity to the Mining Leases;

“**specified date**” means the date specified in any current notice from the Company to the Bunbury Port Authority pursuant to subclause (1) of Clause 12;

“**subclause**” means subclause of the Clause in which the term is used;

“**this Agreement**” “**here of**” and “**hereunder**” refer to this Agreement whether in its original form or as from time to time added to varied or amended.

**Interpretation**

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 25 to extend any period or date shall be without prejudice to the power of the Minister under Clause 25;
- (c) clause headings do not affect the interpretation or construction;

- (d) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
- (e) one gender includes the other genders; and
- (f) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder, except that in the case of a reference to the *State Energy Commission Act 1979*, a reference to that Act relating to any particular subject matter or statutory function of the State Energy Commission includes a reference to any Act or particular provision passed in substitution therefor relating to that same or a similar subject matter or statutory function.

**Ratification and operation**

- 3. (1) 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 1995 or such later date as the parties may agree.
- (2) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation until the Bill referred to in subclause (1) has been passed by the Parliament of Western Australia and comes into operation as an Act.
- (3) If before 30 June 1995 or such later date as aforesaid 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.
- (4) 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.

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**Company to submit proposals**

4. (1) The Company shall on or before 31 December 1995 (or by such extended date as the Minister may allow as hereinafter provided) and subject to the EP Act, the laws relating to traditional usage and the provisions of this Agreement submit to the Minister to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister and any other details normally required by the local authority in which area the project is to be situated) for a mining and treatment project with a capacity to produce not less than 500,000 tonnes per year of heavy mineral products and the transport and shipment through the port of heavy mineral products which proposals shall make provision for the Company's workforce required in connection with the project and shall include the location, area, layout, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters, namely
- (a) the mining and concentration of heavy mineral ore from the Mining Leases and the separation of heavy mineral concentrates into heavy mineral products including plant facilities and the transport of heavy mineral products to the port;
  - (b) accommodation of construction and permanent workforce;
  - (c) water supplies;
  - (d) energy supplies;
  - (e) storage and ship loading of heavy mineral products at the port;
  - (f) use of local professional services, labour and materials and measures to be taken with respect to the engagement and training of employees by the Company, its agents and contractors;
  - (g) any other works, services or facilities desired by the Company;

- (h) an environmental management programme as to measures to be taken, in respect of the Company's activities under this Agreement, for rehabilitation and the protection and management of the environment.

**Order of proposals**

- (2) Each of the proposals pursuant to subclause (1) 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 (h) of subclause (1).

**Additional submissions**

- (3) At the time when the Company submits the said proposals it shall —
  - (a) submit to the Minister details of any services (including any elements of the project investigations design and management) and any works materials plant equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia together with its reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto; and
  - (b) furnish to the Minister's satisfaction evidence of —
    - (i) marketing arrangements demonstrating the Company's ability profitably to sell or use heavy minerals and heavy mineral products in accordance with the said proposals;
    - (ii) the availability of finance necessary for the fulfilment of the operations to which the said proposals refer; and
    - (iii) the readiness of the Company to embark upon and proceed to carry out the operations referred to in the said proposals.

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**Consideration of proposals**

5. (1) Subject to the EP Act and laws relating to traditional usage, in respect of proposals submitted pursuant to subclause (1) of Clause 4 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 Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) of Clause 4 not covered by the said proposals; or
  - (c) require as a condition precedent to the giving of his approval to the said proposals that the Company makes such alteration thereto or complies with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use by others as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions,

PROVIDED ALWAYS that where implementation of any proposals hereunder has been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this Clause shall if the case so requires incorporate a requirement that the Company makes such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

**Advice of Minister's decision**

- (2) The Minister shall within two months after receipt of the said proposals pursuant to subclause (1) of Clause 4 or where the said proposals are to be assessed under section 40(1)(b) of the EP Act or where laws relating to traditional usage apply, then within two months after service on him of an authority under section 45(7) of the EP Act or satisfaction of the requirements under laws relating to traditional usage (as the case may be) give notice to the Company of his decision in respect to the proposals.

**Consultation with Minister**

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

**Minister's decision subject to arbitration**

- (4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) and the Company considers that the decision is unreasonable the Company within two months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder.

**Arbitration award**

- (5) An award made on an arbitration pursuant to subclause (4) shall have force and effect as follows —
- (a) if by the award the dispute is decided against the Company then unless the Company within 3 months after delivery of the award gives notice to the Minister of its acceptance of the award this Agreement shall on the expiration of that period of 3 months cease and determine; or
  - (b) if by the award the dispute is decided in favour of the Company the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

**Effect of non-approval of proposals**

- (6) Notwithstanding that under subclause (1) any 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 31 December 1996 or by such extended date or period if any as the Company shall be granted pursuant to the provisions of this Agreement then the Minister may give to the Company 12 months notice of intention to determine

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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 30.

**Implementation of proposals**

- (7) Subject to and in accordance with the EP Act and any approvals and licences required under that Act and laws relating to traditional usage the Company shall implement the proposals as approved or determined pursuant to this Clause in accordance with the terms thereof.

**Additional proposals**

6. If the Company at any time during the continuance of this Agreement desires to significantly modify expand or otherwise vary its activities carried on pursuant to this Agreement (including levels of production) beyond those activities specified in approved proposals or to mine minerals from the Mining Leases in addition to heavy minerals or to extend mining (whether of heavy minerals or other minerals) into any area of the Mining Leases not the subject of the approved proposals it shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (h) of subclause (1) of Clause 4 and other relevant information as the Minister may require. The provisions of Clause 4 and Clause 5 (other than subclauses (5)(a) and (6)) shall mutatis mutandis apply to proposals submitted pursuant to this Clause with the additional provision that the Company may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same. Subject to and in accordance with the EP Act and any approvals and licences required under that Act and laws relating to traditional usage the Company shall implement proposals approved or determined pursuant to this Clause in accordance with the terms thereof.

**Protection and management of the environment**

7. (1) The Company shall in respect of the matters relating to the environment which are the subject of approved proposals, carry out

a continual programme of investigation, research and monitoring to ascertain the effectiveness of the measures they are taking both generally and pursuant to the approved proposals for rehabilitation and the protection and management of the environment.

- (2) The Company shall during the currency of this Agreement submit to the Minister —
- (a) not later than 31 July 1997 and 31 July in each year thereafter (except those years in which a comprehensive report is required to be submitted pursuant to paragraph (b) of this subclause) a brief report concerning investigations, research and monitoring carried out pursuant to subclause (1) and the implementation by the Company of the elements of the approved proposals relating to rehabilitation and the protection and management of the environment in the year ending 31 May immediately preceding the due date for the brief report; and
  - (b) not later than 31 July 1999 and 31 July in each third year thereafter, a comprehensive report on the result of such investigations and research and the implementation by the Company of the elements of the approved proposals relating to rehabilitation and the protection and management of the environment during the three year period ending 31 May immediately preceding the due date for the detailed report together with a mining plan setting forth the proposed mining operations of the Company during the three year period commencing 1 June immediately preceding such due date and the programme proposed to be undertaken by the Company during that period in regard to investigation and research under subclause (1) and the implementation by the Company of the elements of the approved proposals relating to rehabilitation and the protection and management of the environment.
- (3) The Minister may within 2 months of receipt of a report pursuant to paragraph (b) of subclause (2) notify the Company that he —
- (a) requires amendment of the report and/or programme for the ensuing 3 years; or

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- (b) requires additional detailed proposals to be submitted for rehabilitation and the protection and management of the environment.
- (4) The Company shall within 2 months of receipt of a notice pursuant to paragraph (a) of subclause (3) submit to the Minister an amended report and/or programme as required. The Minister shall afford the Company full opportunity to consult with him on his requirements during the preparation of any amended report or programme.
- (5) The Minister may within 1 month of receipt of an amended report or programme pursuant to subclause (4) notify the Company that he requires additional detailed proposals to be submitted for rehabilitation and the protection and management of the environment.
- (6) The Company shall within 2 months of receipt of a notice pursuant to paragraph (b) of subclause (3) or subclause (5) submit to the Minister additional detailed proposals as required and the provisions of subclauses (1), (2), (3), (4) and (5)(b) of Clause 5 shall mutatis mutandis apply to those proposals.
- (7) Subject to and in accordance with the EP Act and any approvals and licences required under that Act and laws relating to traditional usage the Company shall implement the decision of the Minister or an award on arbitration as the case may be in accordance with the terms thereof.

**Mining Leases**

- 8. (1) During the currency of this Agreement each of the Mining Leases shall, subject to compliance by the Company with the terms and conditions applicable thereto (as modified by this Clause) be held under and subject to the Mining Act modified as follows —
  - (a) the term of each Mining Lease shall be for a period of 21 years commencing from its date of grant with the right during the currency of this Agreement to take two successive renewals of the said term each for a further period for 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 Company making written application for any such renewal not later than one month before the expiration of the current term of each Mining Lease;

- (b) the Company shall not be required to comply with the expenditure conditions imposed by or under the Mining Act in regard to the Mining Leases; and
- (c) the Company shall lodge with the Department of Minerals and Energy at Perth —
  - (i) such periodical reports (except reports in the form of Form 5 of the *Mining Regulations 1981* or other reports relating to expenditure on the Mining Leases) and returns as may be prescribed in respect of mining leases pursuant to regulations under the Mining Act provided that the Minister for Mines may waive any requirement for provision of technical data in respect of areas within the Mining Leases;
  - (ii) on an annual basis, a report on ore reserves within the Mining Leases (using the scheme recommended by the Australasian Institute of Mining and Metallurgy and the Australian Mining Industry Council or future equivalent) together with a list of any geotechnical, metallurgical, geochemical and geophysical investigations carried out during the year and, if requested by the Department, details of any of those investigations;
  - (iii) reports on drilling operations and drill holes where the main purpose of the drilling was to discover or define future ore reserves on the Mining Leases and, if requested by the Department, reports on drilling done within blocks of proven ore for the purpose of mine planning.

**Additional areas**

- (2) Notwithstanding the provisions of the Mining Act the Company may from time to time during the currency of this Agreement apply to the Minister for approval that the provisions of this Agreement be extended to a mining lease or mining leases held by the

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Company under the Mining Act. The Minister shall confer with the Minister for Mines in regard to any such application and if they approve the application the provisions of this Agreement shall thereafter during the term of this Agreement apply to such mining lease or mining leases as if they were Mining Leases.

**Scott River Road**

- (3) Notwithstanding anything to the contrary contained in the Mining Leases, the Company shall have the right to mine Scott River Road within the Mining Leases subject to it providing at its cost during mining suitable deviations of the road to a standard acceptable to the Minister after consultation with the Commissioner of Main Roads and the relevant local authority. Following mining the Company shall at its cost restore the road to an alignment and standard to the satisfaction of the Minister after consultation with the Commissioner of Main Roads.

**Royalties**

9. (1) The Company shall pay to the State in respect of all minerals mined or produced from the Mining Leases and used, sold, transferred or otherwise disposed of royalties at the rates from time to time prescribed under or pursuant to the provisions of the Mining Act.
- (2) The Company shall comply with the provisions of the Mining Act and regulations thereunder with respect to the filing of production reports and royalty returns and the assessment, verification and payment of royalties.

**Roads**

10. (1) Except as provided in subclause (5) or as otherwise approved by the Minister in consultation with the Commissioner of Main Roads and the relevant local authority, the Company shall not use any roads other than the haulage route for the transport of heavy minerals, heavy mineral concentrates and heavy mineral products between the Mining Leases and the northern end of the Capel bypass.

**Road works**

- (2) The State shall cause the haulage route to be constructed to a standard suitable for the haulage of heavy minerals, heavy mineral concentrates and heavy mineral products and shall use all reasonable endeavours to ensure such works are completed by the time heavy minerals, heavy mineral concentrates or heavy mineral products are to be transported on a regular basis from the Mining Leases pursuant to the approved proposals.

**Contribution to cost of road works**

- (3) (a) The Company shall pay to the State an amount and at such time or times as shall be agreed between the Company and the State towards the cost to construct that part of the haulage route coloured red on the said plan marked "A".
- (b) Any expenditure incurred by the Company on preliminary design, site studies and land acquisition for the haulage route and approved by the Minister after consultation with the Commissioner of Main Roads for the purposes of this subclause shall be credited against the amount payable by the Company under paragraph (a) of this subclause.

**Maintenance of haulage route**

- (4) (a) The State shall maintain or cause to be maintained all public roads comprising the haulage route which are under the control of the Commissioner of Main Roads or a local authority and which are used by the Company for the purposes of this Agreement to a standard suitable, in the opinion of the Commissioner of Main Roads, for the transport of heavy minerals, heavy mineral concentrates or heavy mineral products pursuant to the approved proposals.
- (b) Until such time as the Company ceases permanently to use the haulage route for its transport requirements pursuant to the approved proposals the Company shall pay to the State such proportion or proportions as may be agreed from time to time by the Company and the Commissioner of Main Roads of the cost of maintaining the sections comprising that part of the haulage route which is coloured red on the said plan marked "A".

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**Interim route**

- (5) In the event that the road works mentioned in subclause (2) are not completed by the time therein mentioned the Minister after consultation with the Commissioner of Main Roads, the relevant local authority and the Company shall determine an interim route for use by the Company for its transport requirements under this Agreement pending completion of those works. The Company shall not be required to make any capital contribution to any upgrading of the interim route necessary for the use thereof by the Company but shall pay such reasonable proportion of the cost of maintaining the interim route during its use as is agreed by the Minister, after consultation with the Commissioner of Main Roads and the relevant local authority, and the Company.

**Damage to roads**

- (6) (a) Subject to paragraph (b), in the event that for or in connection with the Company's operations hereunder any use by the Company or any person engaged by the Company of any public road results in excessive damage to or deterioration of any such public road (other than fair wear and tear) the Company shall pay to the State or the local authority as the case may require the whole or an equitable part of the total cost of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads in consultation with the relevant local authority having regard to the use of such public road by others.
- (b) The provisions of paragraph (a) shall not apply in respect of roads the subject of subclause (5) or to any section of the haulage route referred to in subclause (4)(b) for which a specific arrangement has been entered into pursuant to subclause (4).

**Road making materials**

- (7) If the Commissioner of Main Roads is given access to the Mining Leases for the purpose of recovering laterite, sand or other materials for use in the construction or upgrading of the haulage route, such materials shall be recovered by the Commissioner of Main Roads without charge by or cost to the Company provided

that if, at the request of the Commissioner of Main Roads, the Company agrees to carry out any excavation, processing, stockpiling, loading or transporting of such materials the Company shall be entitled to recover any reasonable direct costs of so doing from the Commissioner of Main Roads.

**Power**

11. (1) The State shall cause SECWA to construct a 132 kV power line from Manjimup Substation to an electrical 132/22 kV substation at Beenup for the supply of electrical power required for the Company's operations pursuant to this Agreement and shall use all reasonable endeavours to ensure that electrical power from SECWA is available when required for the operations of the project in accordance with approved proposals.

**Cost of works**

- (2) (a) The Company shall pay to SECWA an amount and at such time or times as shall be agreed between the Company and the State towards the costs of the power line referred to in subclause (1). All payments made by the Company to SECWA in respect of route investigations and the preparation of an environmental submission for the said power line shall be credited against the amount payable by the Company under this paragraph.
- (b) The electrical substation at Beenup referred to in subclause (1) shall be constructed by SECWA but at the expense of the Company.
- (c) If between the beginning of the electricity supply period and 1 January 2006 SECWA uses or reasonably expects to use the power line referred to in subclause (1) to supply a new or increased expected maximum demand to a mining or industrial customer of SECWA, where the new or aggregate expected increase in demand exceeds 1000KW and the expected aggregate increased amount of energy so supplied per calendar year exceeds 900,000 KWH, then SECWA shall make a refund to the Company, calculated and payable in accordance with the terms of the SECWA Agreement or on such other terms as are agreed between SECWA and the

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Company, of a proportion of the monies paid by the Company pursuant to paragraph (a) of this subclause.

**Electricity generation**

- (3) In the event SECWA is unable to provide supply of power to the Company or the Company or SECWA gives notice pursuant to its supply contract with SECWA of its intention to terminate that contract or the Company wishes to generate all or part of its electricity requirements as permitted by the supply contract the Company may —
- (a) in accordance with its approved proposals hereunder and subject to the provisions of the *Electricity Act 1945* and the approval and requirements of SECWA pursuant to any Act or the SECWA Agreement, install and operate without cost to the State, at an appropriate location equipment to generate electricity of sufficient capacity for its operations hereunder;
  - (b) transmit power within the areas of its mining operations and from those areas subject to the provisions of the *Electricity Act 1945* and the approval and requirements of SECWA pursuant to any Act or the SECWA Agreement.

**Port facilities**

12. (1) Within 30 days of the date on which the proposals submitted by the Company pursuant to paragraph (e) of subclause (1) of Clause 4 become approved proposals the Company shall give notice to the Bunbury Port Authority of the date (being a date not less than 12 months after the date of the notice) on which it reasonably anticipates commencing shipment of product from Bunbury Port. The Company shall promptly give notice to the Bunbury Port Authority of any change it reasonably anticipates from time to time in the specified date (which may not be earlier in time than the specified date).
- (2) If the Bunbury Port Authority gives notice to the Company at least 9 months prior to the specified date that it reasonably anticipates that Berth C will be available by the specified date to meet the Company's storage shiploading and shipping requirements pursuant to the approved proposals, the Company shall provide or arrange for the provision of storage and connection to the Bunbury

Port Authority's conveyor and shiploading facilities appropriate for the project requirements at Berth C after consultation with the Bunbury Port Authority and at the Company's cost unless otherwise agreed with the Bunbury Port Authority.

- (3) If the Bunbury Port Authority gives notice to the Company at least 9 months prior to the specified date that it reasonably anticipates that Berth C will not be available by the specified date to meet the Company's storage and shipping requirements pursuant to the approved proposals but will be available to meet the Company's storage and shipping requirements pursuant to the approved proposals within six months of the specified date, then the Bunbury Port Authority shall agree with the Company on appropriate arrangements for the use by the Company of Berth C for its product storage facilities and of Berth 2 for the Company's portable shiploading facilities until such time as Berth C is fully available for the Company's use.
- (4) If the Bunbury Port Authority does not give either of the notices to the Company referred to in subclauses (2) and (3) then the Bunbury Port Authority shall agree with the Company on appropriate arrangements for the use by the Company of Berth 2 for its product storage facilities and shipping arrangements for the purposes of this Agreement PROVIDED THAT if Berth C is subsequently developed and becomes available for use by the Company then the Company shall relocate its storage facilities to Berth C at its cost except where otherwise agreed with the Bunbury Port Authority within 12 months of notice to do so from the Bunbury Port Authority, which notice shall not be given before 31 December 2001 without the consent of the Company.
- (5) The arrangements for the use by the Company of Berth C and Berth 2 pursuant to the foregoing subclauses shall be on such reasonable terms as are agreed between the Company and the Bunbury Port Authority or, failing agreement, determined by the Minister after consultation with the Company and the Bunbury Port Authority. Such terms shall include, in the case of each berth, a lease in favour of the Company at reasonable rental and on reasonable terms of suitable land adjacent to the berth on which the Company shall erect its storage facilities and, in the case of Berth 2, the payment by the Bunbury Port Authority to the Company, upon a relocation by the Company to Berth C pursuant

**Schedule 1**

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to the proviso to subclause (4) of the sum of \$1,000 as consideration for the sale by the Company to the Bunbury Port Authority of the Company's storage facilities at Berth 2.

**Use of local labour professional services and materials**

13. (1) The Company shall, for the purposes of this Agreement —
- (a) except in those cases where the Company can demonstrate it is impracticable so to do, use labour available within the said State or if such labour is not available then, except as aforesaid, use labour otherwise available within Australia;
  - (b) as far as it is reasonable and economically practicable so to do use the services of engineers surveyors architects and other professional consultants, experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within the said State or if such services are not available within the said State then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;
  - (c) during design and when preparing specifications calling for tenders and letting contracts for works materials plant equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that suitably qualified Western Australian and Australian suppliers, manufacturers and contractors are given fair and reasonable opportunity to tender or quote;
  - (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 or, subject to the foregoing, give that consideration and, where possible, preference to other Australian suppliers, manufacturers and contractors; and
  - (e) if, notwithstanding the foregoing provisions of this subclause, a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier,

manufacturer or contractor, give proper consideration and, where possible, preference to tenders, arrangements or proposals that include Australian participation.

- (2) Except as otherwise agreed by the Minister the Company 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) and shall report to the Company concerning such third party's implementation of that condition.
- (3) The Company shall submit a report to the Minister at monthly intervals or such longer period as the Minister determines commencing from the date of this Agreement concerning its implementation of the provisions of this Clause together with a copy of any report received by the Company pursuant to subclause (2) during that month or longer period as the case may be PROVIDED THAT the Minister may agree that any such reports need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine.
- (4) The Company shall keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as reasonably required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations, design and management) and any works materials plant equipment and supplies that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia together with its reasons therefor and shall as and when required by the Minister consult with the Minister with respect thereto.

**Water**

14. (1) Subject to the *Water Authority Act 1984* and other relevant Acts and in accordance with the approved proposals the State shall grant or cause to be granted to the Company a licence to develop and draw its water requirements from the source specified in those proposals and dispose of mine dewatering water at the Company's cost but without charge (other than generally applicable administration fees), on such terms and conditions as are necessary

**Schedule 1**

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to ensure good water resource management and the protection of neighbouring areas 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 inadequate to meet the project water requirements the State may on at least 6 months prior notice to the Company (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 in the opinion of the Minister that source is hydrologically capable of meeting as aforesaid.

- (2) The Company shall to the extent that it is practical and economical design construct and operate all plant and equipment used in its activities under this Agreement so as to minimise water consumption and shall at all times use all reasonable endeavours to minimise the consumption of water in its activities under this Agreement and ensure the most efficient use of the available water resources.
- (3) The State shall ensure that it is a condition of the grant of a licence to third parties to draw water from the same source as the Company following the commencement of the Agreement that in the event that the capacity of the water source is reduced, such reduction shall be first applied to the third parties and thereafter if further reduction is necessary, the Company's requirements shall be reduced by such amount as may be agreed by the Minister and the Company.
- (4) Nothing in this Agreement shall be construed to exempt the Company from any liability to the State or to third parties arising out of or caused by extraction of water from the Mining Leases by dewatering or any discharge or escape from the Mining Leases of water obtained by dewatering.

**Rail transport**

15. (1) Subject to subclause (2) if the State constructs a railway to Beenup suitable for the transport to Bunbury of heavy minerals, heavy mineral concentrates and heavy mineral products the Company shall have the right to use the railway on such reasonable terms and conditions as are agreed with the Commissioner of Railways

PROVIDED THAT as part of such terms the Company shall not be required to contribute to the capital costs to construct the railway.

- (2) Should the Company desire to significantly expand its operations under this Agreement and as a consequence the operation of a railway for product haulage from the Mining Leases to Bunbury may in the opinion of the Company and the Commissioner of Railways become commercially viable, the Company and the Commissioner of Railways shall enter into discussions with a view to reaching agreement on terms and conditions (including sharing the cost of construction of the railway) for the transport to Bunbury of all or some part of the Company's production of heavy minerals, heavy mineral concentrates and heavy mineral products.

**Other infrastructure**

16. At any time the Company submits to the Minister proposals pursuant to Clause 6 the Company shall confer with the Minister and the relevant local authorities with a view —
  - (a) to ensuring that appropriate planning is being made for the provision of adequate serviced land for housing the Company's workforce; and
  - (b) to assisting in the cost of providing community, recreation, civic and social amenities, where appropriate, having due regard to the size of the Company's workforce and the scope of the Company's operations to be carried out pursuant to this Agreement.

**Zoning**

17. The State shall ensure after consultation with the relevant local authority that the Mining Leases shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the activities of the Company 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 activities are contrary to any zoning by-law regulation or order.

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**Rating**

18. (1) Except where a basis for rating is otherwise agreed in writing between the Company and the relevant local authority, 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 the Mining Leases (except any part or parts thereof on which accommodation units or housing for the Company's workforce is erected or which is occupied in connection with such accommodation units or housing 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 activities carried out by the Company pursuant to approved proposals) 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 and further as regards the Mining Leases that the unimproved value thereof shall be calculated on the basis that the Mining Leases are mining leases under the Mining Act and not as land held pursuant to an agreement made with the Crown in right of the State and scheduled to an Act approving the agreement.
- (2) It is hereby declared and agreed that the provisions of section 533B of the *Local Government Act 1960* shall not apply to any lands the subject of this Agreement.

**No discriminatory rates**

19. 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 activities of the Company in the conduct of its 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 Company of full enjoyment of the rights granted and intended to be granted under this Agreement.

**No resumption**

20. Subject to the performance by the Company of its obligations under this Agreement the State shall not during the currency of this Agreement without the consent of the Company 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 Company 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 Company 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 Company's activities under this Agreement.

**Assignment**

21. (1) Subject to the provisions of this Clause the Company may at any time with the consent of the Minister assign mortgage charge sublet or dispose of the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of the Mining Leases) and of the obligations of the Company hereunder and subject however in the case of an assignment subletting or disposition to the assignee sublessee or disponee (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company to be complied with observed or performed in regard to the matter or matters the subject of such assignment subletting or disposition.
- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained in this Agreement and in the Mining Leases the subject of an assignment mortgage subletting or disposition under subclause (1) PROVIDED THAT the Minister may agree to release the Company from such liability where the

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Minister considers such release will not be contrary to the interests of the State.

- (3) Notwithstanding the provisions of the Mining Act —
- (a) no assignment mortgage charge sublease or disposition made or given pursuant to this Clause of or over the Mining Leases by the Company or any assignee sublessee or disponee 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.

**Variation**

22. (1) The parties to this Agreement 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 the Mining Leases 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) 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**

23. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations under this Agreement and to the temporary suspension of continuing obligations under this Agreement 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 earthworks 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 pickets industrial boycotts 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 inability to profitably sell products produced pursuant to this Agreement 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.

**Further processing**

24. (1) During the continuance of this Agreement the Company shall undertake ongoing investigations into the technical and economic feasibility of establishing facilities within the said State either alone or in association with others for the further processing of ilmenite obtained from the Mining Leases and as and when requested by the Minister, but not more frequently than once in every two years, shall submit detailed reports of its investigations to the date of request and its conclusions in regard thereto.
- (2) The State may undertake similar investigations in respect of ilmenite and other heavy mineral products obtained from the Mining Leases and, for this purpose, the Company shall provide the State within a reasonable time of request with such information as the State may reasonably request. The Company shall not be

**Schedule 1**

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obliged to supply technical information of a confidential nature or financial and economic information the disclosure of which would unduly prejudice contractual or commercial arrangements between the Company and third parties, but will use reasonable endeavours to arrange for the supply of this or like information on request by the State.

- (3) If as a result of investigations undertaken under subclause (1) or (2), the Company or the State reasonably concludes that further processing of ilmenite or other heavy mineral products from the Mining Leases by the Company alone or in association with others is technically and economically feasible, then the State and the Company shall consult on the implementation of such further processing.
- (4) If following consultation under subclause (3) the Company is unwilling to proceed with implementation of such further processing on a timetable acceptable to the State, the State may allow a third party to carry out that implementation but the State will not grant to the third party terms and conditions more favourable on the whole than it was prepared to grant to the Company. In such circumstances, the Company will if required by the third party, but without prejudice to the Company's contractual obligations to other parties, supply ilmenite or other heavy mineral products as the case requires to the third party at such place as the third party and the Company agree or, failing agreement, as is determined by the Minister in sufficient quantities and appropriate rates to meet the requirements of the third party for at least the first ten years of its operations at a reasonable price but in any event not more than the equivalent (taking into account the place of delivery to the third party) of the average f.o.b. values then being obtained by the Company for its exports of ilmenite or other heavy mineral products. The Minister may relieve the Company in whole or in part of its obligations under this subclause where the Company demonstrates to the satisfaction of the Minister that full or partial supply of the required ilmenite or other heavy mineral products is not practicable on economic or technical grounds.
- (5) The Company may at any time apply to the Minister for approval that the carrying out by the Company or related bodies corporate of alternative mineral processing investments be accepted by the State

in lieu of all or some part of the Company's obligations pursuant to this Clause.

**Power to extend periods**

25. Notwithstanding any provision of this Agreement the Minister may at the request of the Company from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement or in any approved proposal 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.

**Indemnity**

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

**Commonwealth licences and consents**

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

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**Subcontracting**

28. 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 activities which it is authorised or obliged to carry out hereunder.

**Determination of Agreement**

29. (1) In any of the following events namely if —
- (a) (i) the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations of the Company in this Agreement or in the Mining Leases on its part to be performed or observed; or
  - (ii) the Company abandons or repudiates this Agreement or its activities under this Agreement and such default is not remedied or such activities resumed within a period of 180 days after notice is given by the State as provided in subclause (2) or, if the default or abandonment is referred to arbitration, then within the period mentioned in subclause (3); or
  - (b) the Company goes into liquidation (other than voluntary liquidation for the purpose of reconstruction) and unless within 3 months from the date of such liquidation the interest of the Company is assigned to an assignee approved by the Minister under Clause 21

the State may by notice to the Company determine this Agreement.

- (2) The notice to be given by the State in terms of paragraph (a) of subclause (1) shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the party or parties responsible therefor and shall be given to the Company and all such assignees mortgagees chargees and disponees for the time being of the Company's said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 21 whose name and address for service

of notice has previously been notified to the State by the Company or any such assignee mortgagee chargee or disponent.

- (3) (a) If the Company contests the alleged default abandonment or repudiation referred to in paragraph (a) of subclause (1) the Company shall within 60 days after notice given by the State as provided in subclause (2) refer the matter in dispute to arbitration.
  - (b) If the question is decided against the Company, the Company 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 Company was 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 paragraph (a) of subclause (1) shall not have been remedied after receipt of the notice referred to in that subclause or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand.

**Effect of cessation of Agreement**

30. On the cessation or determination of this Agreement —
  - (a) except as otherwise agreed by the Minister the rights of the Company to in or under this Agreement and the rights of the Company or of any assignee of the Company or any mortgagee to in or under the Mining Leases 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 under this Agreement;

**Schedule 1**

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- (b) the Company 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 shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.

**Consultation**

31. The Company shall during the currency of this Agreement consult with and keep the State fully informed on a confidential basis concerning any action that the Company proposes 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.

**Arbitration**

32. (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 under this Agreement 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 and settled by arbitration under the provisions of the *Commercial Arbitration Act 1985* and notwithstanding section 20(1) of that Act each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.
- (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 either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration under this Agreement is 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

under this Agreement and an award may in the name of the Minister grant any further extension or variation for that purpose.

**Stamp duty exemption**

33. (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) instruments of transfer under the Mining Act, of even date with this Agreement, by BHP Minerals Pty. Ltd. ACN 008 694 782 to the Company of mining leases Nos. M70/574, M70/575, M70/576, M70/577 and M70/787; and
  - (c) any assignment made by the Company in conformity with the provisions of subclause (1) of Clause 21 of its interest in this Agreement (and the Mining Leases) to a body corporate related, within the meaning of the Corporations Law, to the Company

PROVIDED THAT this subclause shall cease to apply if the Company does not provide the evidence required by subclause (3)(b) of Clause 4 by 31 December 1995 and in any event shall not apply to any instrument or other document executed or made more than 2 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 or transaction referred to in subclause (1) the State when such Bill is passed as an Act shall on demand refund any stamp duty paid on any such instrument or other document or transaction to the person who paid the same.

**Notices**

34. 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 a senior officer of the Public Service of the said State acting by the direction of the Minister and

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forwarded by prepaid post or hand to the Company at its address hereinbefore set forth or other address in the said State nominated by the Company to the Minister and by the Company if signed on its behalf by any person or persons authorised by the Company or by its 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 have been delivered in the ordinary course of post.

**Environmental protection**

35. Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under this Agreement that may be made pursuant to the EP Act.

**Term of Agreement**

36. Subject to the provisions of subclause (6) of Clause 5 and Clauses 29 and 30, this Agreement shall expire on the expiration or sooner determination of the last of mining leases Nos. M70/574, M70/575, M70/576, M70/577, M70/747 and M70/787 to expire or determine.

**Applicable law**

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

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

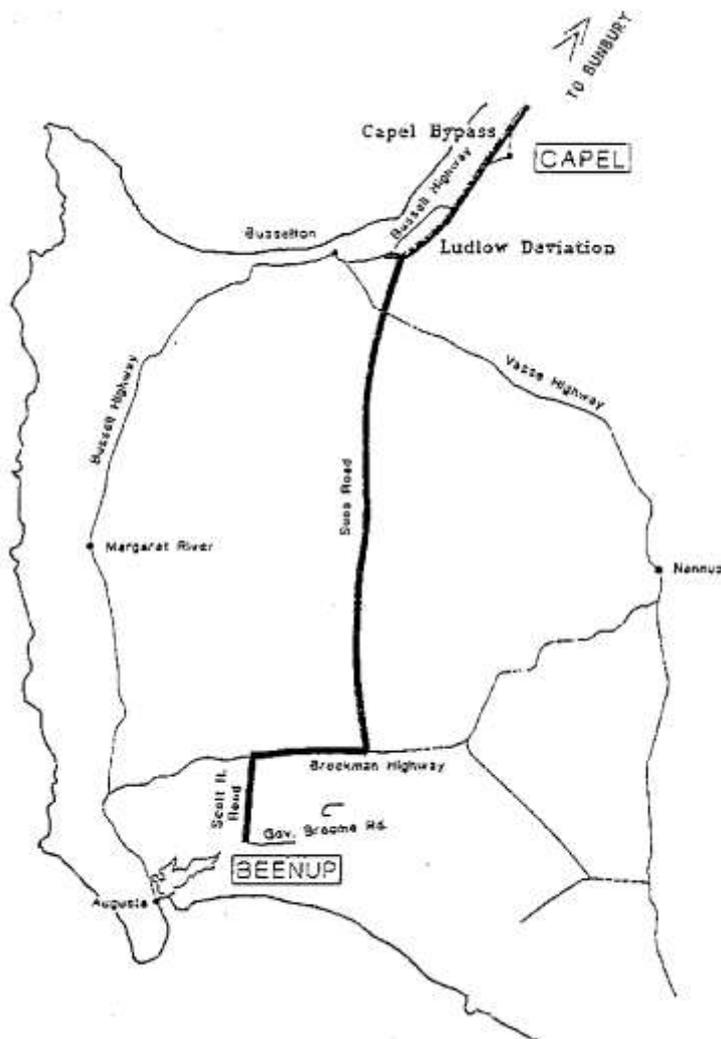
SIGNED by the said )  
**THE HONOURABLE RICHARD** ) RICHARD COURT  
**FAIRFAX COURT** in the presence of: )

MINISTER FOR RESOURCES  
DEVELOPMENT  
COLIN BARNETT

SIGNED for and on behalf of )  
**MINERAL DEPOSITS PTY. LTD.** by )  
its duly appointed Attorney, Ian Roy ) IAN R EGAN  
Egan, under Power of Attorney dated )  
30 November 1994 in the presence of: ) REGINALD J GLOVER

Schedule 1

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HAULAGE ROUTE  
CAPEL — BEENUP SECTION  
PLAN A

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## Notes

- <sup>1</sup> This is a reprint as at 18 July 2003 of the *Mineral Sands (Beenup) Agreement Act 1995*. The following table contains information about that Act and any reprint.

### Compilation table

Short title	Number and year	Assent	Commencement
<i>Mineral Sands (Beenup) Agreement Act 1995</i>	17 of 1995	4 Jul 1995	4 Jul 1995 (see s. 2)
<b>Reprint 1: The <i>Mineral Sands (Beenup) Agreement Act 1995</i> as at 18 Jul 2003</b>			