

Western Australia

**Diamond (Argyle Diamond Mines Joint
Venture) Agreement Amendment Act 2008**

As at 01 Jul 2008

No. 37 of 2008

Extract from www.slp.wa.gov.au, see that website for further information

Western Australia

Diamond (Argyle Diamond Mines Joint Venture) Agreement Amendment Act 2008

CONTENTS

1.	Short title	2
2.	Commencement	2
3.	The Act amended	2
4.	Section 2 amended	2
5.	Section 3C inserted	3
	3C. Third supplementary agreement	3
6.	Schedule 5 inserted	3
	Schedule 5 — Third supplementary agreement	

Western Australia

**Diamond (Argyle Diamond Mines Joint
Venture) Agreement Amendment Act 2008**

No. 37 of 2008

**An Act to amend the *Diamond (Argyle Diamond Mines Joint Venture)
Agreement Act 1981*.**

[Assented to 1 July 2008]

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

This is the *Diamond (Argyle Diamond Mines Joint Venture) Agreement Amendment Act 2008*.

2. Commencement

This Act comes into operation as follows:

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on the day after that day.

3. The Act amended

The amendments in this Act are to the *Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981*.

4. Section 2 amended

Section 2 is amended as follows:

- (a) in the definition of “the Agreement” by deleting “, and” and inserting instead —
“ and, except in section 3(1), ”;
- (b) in the definition of “the Agreement” by inserting after “provisions” —

“

and by the first supplementary agreement, the second supplementary agreement and the third supplementary agreement

”;

- (c) in the definition of “the second supplementary agreement” by deleting the full stop and inserting instead a semicolon;

- (d) by inserting after the definition of “the second supplementary agreement” —

“

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

”.

5. Section 3C inserted

After section 3B the following section is inserted —

“

3C. Third supplementary agreement

The third supplementary agreement is ratified.

”.

6. Schedule 5 inserted

After Schedule 4 the following Schedule is inserted —

“

Schedule 5 — Third supplementary agreement

[s. 2]

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]

=====

THIS AGREEMENT is made this 21st 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.

s. 6

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

s. 6

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;

s. 6

- (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.

s. 6

- (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

s. 6

- (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

s. 6

- (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

s. 6

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

s. 6

- 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.”;

s. 6

- (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

s. 6

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.

s. 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 disponent (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

s. 6

(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";

s. 6

- (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

- (b) in subclause (3) by deleting “either of the” and substituting “the State or the other party or”;
- (28) in clause 50:
 - (a) by inserting “and RTDL” after “The Joint Venturers”; and
 - (b) by inserting “or RTDL” after “the Joint Venturers”;
- (29) in clause 51 by inserting “(and if by RTDL if signed on its behalf by any person authorised by it or by its solicitors as notified to the State from time to time)” after “authorised by the Joint Venturers”;
- (30) by inserting after the existing provision of clause 53 the following sentence:

“The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Western Australia and of all courts competent to hear appeals therefrom.”;
- (31) in the Schedule by deleting the heading “THE SCHEDULE” and substituting “SCHEDULE 1”; and
- (32) by inserting a Schedule 2 as follows:

“SCHEDULE 2

BANKER’S UNDERTAKING

To: State of Western Australia (**State**)

At the request of the Joint Venturers as defined in the agreement ratified by the Diamond (Argyle Diamond Mines Joint Venture) Agreement Act 1981 (**Customer**)

In consideration of the State at the request of the Customer agreeing to accept this Undertaking from [] (**Bank**) as security in accordance with clause 29(2d) of the abovementioned agreement (which as varied from time to time is herein referred to as the **State Agreement**) the Bank unconditionally and irrevocably undertakes to pay on demand to

s. 6

the State any amount or amounts which may from time to time be demanded in writing by the Minister for Mines (as defined in the State Agreement) on behalf of the State up to a maximum in aggregate of \$..... (the **Amount**).

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
Name:
Title:

Signature
Name:
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]

Director/~~Secretary~~
Name: SHANE SULLIVAN

s. 6

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

[Signature]

[Signature]

Witness
Name: CATHRYN WELLS

Attorney
Name: SHANE SULLIVAN

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