

NORTHERN TERRITORY OF AUSTRALIA
MCARTHUR RIVER PROJECT AGREEMENT RATIFICATION ACT

As in force at 4 May 2007

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NORTHERN TERRITORY OF AUSTRALIA

This reprint shows the Act as in force at 4 May 2007. Any amendments that commence after that date are not included.

MCARTHUR RIVER PROJECT AGREEMENT RATIFICATION ACT

An Act to ratify an agreement between the Territory and Mount Isa Mines Limited, and for related purposes

1. Short title

This Act may be cited as the *McArthur River Project Agreement Ratification Act*.

2. Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. Definitions

In this Act –

"Agreement" means the agreement between the Territory and the Company which is set out in the Schedule and includes the Agreement as varied from time to time in accordance with its provisions;

"Company" has the same meaning as in the Agreement;

"McArthur River Project" has the same meaning as in the Agreement.

3A. Incorporation of words of *Mining Act*

(1) For the purposes of this Act and the Agreement, the words used in the *Mining Act* as in force or purporting to be in force immediately before the commencement of this section, with the necessary changes, are incorporated in and, subject to section 4A(3) and (4) and clause 4(2) and (6) of the Agreement, shall be read and applied as provisions of this Act.

(2) A reference in the Agreement or this Act to the *Mining Act* includes a reference to the words incorporated in this Act by subsection (1).

4. Agreement ratified

(1) For the purposes of clause 2(1) of the Agreement, the Agreement is ratified.

(2) The implementation of the Agreement is authorised.

(3) Subject to section 4A, the provisions of the Agreement shall operate and take effect according to their terms notwithstanding anything to the contrary in any Act or law in force in the Territory.

(4) Where a provision of the Agreement provides for the modification of an Act or law in force in the Territory, the Act or law shall, for the purposes of the Agreement, operate and take effect as provided for in the Agreement as if the Act or law had been so modified.

(5) Subject to section 4A, an Act passed after the commencement of this Act shall not amend, modify or repeal a provision of the Agreement or affect the operation of a provision of the Agreement unless the Act expressly provides accordingly.

(6) The Territory, its Ministers, instrumentalities and authorities and any local government authority are authorised, empowered and required to do all things necessary or expedient for the carrying out or giving full effect to the Agreement.

(7) Subject to this Act and the Agreement, the Company, its servants, agents and contractors shall observe and comply with all Acts and laws in force in the Territory applicable in any way to the McArthur River Project.

4A. Regranting of mining interests

(1) Notwithstanding the granting or purported granting of the mineral leases and the exploration licence specified in Schedule 2, there is hereby granted to the Company in respect of each area of land that was, immediately before the commencement of this section –

(a) comprised in the respective mineral leases or purported mineral leases; or

(b) subject to the exploration licence or purported exploration licence,

specified in Schedule 2, a mineral lease or an exploration licence, as the case may be, under this Act.

(2) Notwithstanding anything in the Agreement or the *Mining Act* –

(a) a mineral lease granted by subsection (1) is granted for a period of 50 years from the commencement of this section; and

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- (b) subject to paragraph (a), in respect of a mineral lease or exploration licence granted by subsection (1), time shall be calculated as if it were granted on 5 January 1993.

(3) Subject to subsection (2), a mineral lease or exploration licence validated by section 3 of the *McArthur River Project Agreement Ratification Amendment Act 1993* or granted by subsection (1) of this section has the same force and effect, and is subject to the same terms and conditions, as applied or purported to apply to the mineral lease or exploration licence, as the case may be, in respect of the relevant area of land, granted or purported to have been granted before the commencement of this section under the *Mining Act* in pursuance of the Agreement and, subject to subsection (4), a reference in the *Mining Act* (other than sections 17, 19, 20, 22(1), 55(j), 57, 58, 59 and 163 of the Act) or the Agreement to –

- (a) a mineral lease (or, in general terms, to a mining tenement); or
- (b) an exploration licence (including the renewal of an exploration licence),

includes a reference to a mineral lease or exploration licence granted by subsection (1) or so validated.

(4) For the avoidance of doubt and notwithstanding any other law in force in the Territory, a mineral lease or exploration licence is validly and effectively granted by subsection (1) notwithstanding that an application has not been made nor any action that would be required before an equivalent lease or licence could be granted under the *Mining Act* (including the giving of any notices and a hearing by and recommendation of the Warden) has not been taken.

4AB. Ratification of certain instruments

- (1) Despite any law to the contrary, the Authorisation:
 - (a) is valid and effective; and
 - (b) authorises mining activity of any kind (including the conversion of the Mine from an underground into an open-cut mine).
- (2) Despite any law to the contrary, the Mining Management Plan:
 - (a) is valid and effective; and
 - (b) was validly approved by the Minister for Mines and Energy on 13 October 2006.

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- (3) This section operates retrospectively and prospectively as follows:
 - (a) subsection (1) operates on each of the constituent authorisations from the date on which it was purportedly made; and
 - (b) subsection (2) operates from 13 October 2006.
- (4) In this section:

"Authorisation" means the constituent authorisations;

"constituent authorisations" means:

- (a) the authorisation under section 36 of the *Mining Management Act* dated 21 January 2003 and numbered 0059-01; and
- (b) the further authorisation under section 36 of the *Mining Management Act*, varying that authorisation, dated 13 October 2006, and numbered 0059-02;

"Mine" means the mine that forms part of the McArthur River Project;

"mining activity", see the *Mining Management Act*;

"Mining Management Plan" means the mining management plan related to the Mine and purportedly approved by the Minister for Mines and Energy on 13 October 2006.

4B. Compensation

(1) To the extent that a relevant legislative or administrative act results in the acquisition of property on terms that would not (apart from this section) be just, the Territory is liable to pay compensation sufficient to remedy the injustice.

(1A) The compensation is to be determined by agreement between the person from whom the property was acquired and the Territory or, in default of agreement, by the Supreme Court.

(2) A person is not entitled to compensation under this section unless, within 3 years after the acquisition, the person lodges a claim with the Administrator setting out:

- (a) the person's name and an address for service in the Territory; and
- (b) the nature of the property acquired; and
- (c) the amount of compensation claimed.

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(3) If, at any time after a person has lodged a claim under this section, the Administrator serves on the person a notice in writing that the Administrator is satisfied, on reasonable grounds, that no agreement, or no further agreement, can be reached in respect of the claim, an action by the person against the Territory under this section for compensation shall not be instituted later than 6 months after service of the notice.

(4) Where an action has been instituted under this section in the Supreme Court and, on application by the Territory for an order under this subsection, the Court is satisfied that the person claiming compensation is not diligently prosecuting the action, the Court may dismiss the action for want of prosecution.

(5) A notice by the Administrator for the purposes of this section may be served by post on the claimant at the claimant's address in the Territory for service set out in the claim lodged with the Administrator.

(6) In this section –

"acquisition of property" includes –

- (a) the extinguishment or diminution of an interest in or right in relation to land; and
- (b) any effect on such an interest or right, being an effect of a kind referred to in section 174B or 174D of the *Mining Act* in relation to private land;

"compensation" may include –

- (a) facilities or services agreed on between the claimant and the Territory provided or to be provided to the claimant or as the claimant directs; and
- (b) property in substitution for property acquired.

"relevant legislative or administrative act" means:

- (a) a grant effected by section 4A; or
- (b) a validation effected by section 3 of the *McArthur River Project Agreement Ratification Amendment Act 1993*; or
- (c) the enactment of section 4AB; or
- (d) anything done under this Act.

5. Enforcement

Notwithstanding any Act or law in force in the Territory to the contrary, a decree of specific performance may be granted and enforced against the Territory in respect of its obligations under the Agreement in the same circumstances and on the same conditions as such a decree could be granted and enforced against a subject of the Crown.

6. Calculation of royalties exclusive of GST

(1) For the purpose of calculating or recalculating an amount of royalty under clause 22(4) of the Agreement, subject to subsection (2), an amount or value that affects the calculation or recalculation is to be taken to be the amount or value exclusive of the amount of GST (if any) payable in relation to a supply to which that amount or value relates.

(2) Where an amount or value that affects the calculation or recalculation referred to in subsection (1) is directly attributable to an acquisition that relates to a supply that is input taxed, the amount or value is to be taken to be the amount or value inclusive of the amount of GST (if any) payable in relation to the acquisition to which that amount or value relates.

(3) For the purposes of section 4(5), the Agreement is to be taken to be amended to the extent necessary to give effect to subsections (1) and (2).

(4) In subsections (1) and (2), "acquisition", "GST", "input taxed" and "supply" have the same respective meanings as in the *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth.

SCHEDULE 1

McARTHUR RIVER PROJECT AGREEMENT

THIS AGREEMENT is made the 25th day of November 1992.

BETWEEN

THE NORTHERN TERRITORY OF AUSTRALIA care of the Department of Mines and Energy having its offices in the Paspalis Centrepoint Building, Smith Street, Darwin in the Northern Territory of Australia (the "Territory") of the first part

AND

MOUNT ISA MINES LIMITED (A.C.N. 009 661 447) a company duly incorporated in the State of Queensland and having its registered office in that State at Level 2, MIM Plaza, 410 Ann Street, Brisbane (hereinafter with its successors and permitted assigns called the "Company") of the second part

WHEREAS

- A. In 1955 the Company discovered a major zinc, lead and silver deposit called the H.Y.C. deposit in the McArthur River district in the Northern Territory of Australia.
- B. Pursuant to section 147A of the *Mining Ordinance* by Notice in *Gazette* No. 2 of 14 January 1977 certain lands at McArthur River were reserved from occupation ("Reservation from Occupation No.581"). The area of Reservation from Occupation No. 581 was altered by Notice in *Gazette* No. 13 of 31 March 1978.
- C. By virtue of section 69 of the *Northern Territory (Self-Government) Act 1978* the H.Y.C. deposit was vested in the Territory.
- D. Pursuant to section 191(22) of the *Mining Act*, RO581 is deemed to be a reservation from occupation under section 178(1) of that Act.
- E. Pursuant to section 178(2) of the *Mining Act* the Minister is empowered to authorise a person to occupy and use land reserved from occupation under section 178(1) provided that that person has entered into a contract with the Territory relating to the exploration, mining or treatment of deposits of a particular mineral or extractive mineral.
- F. On 4 October 1989 the Company entered into a contract with the Territory under which the Company was required to carry out exploration which included feasibility studies of the H.Y.C. deposit in the northern portion of RO581 in accordance with a pre-development program schedule.

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- G. On 4 October 1989 the Minister for Mines and Energy authorised ("AN299") the Company to occupy and use the northern portion of RO581 for the purposes of carrying out exploration, mining and feasibility studies. A further authorisation ("AN343") to occupy and use the northern portion of RO581 was issued on 13 December 1990 with effect on and from 1 January 1991 to and including 31 January 1993.
- H. The Company is the holder of Existing Tenements situate within the external boundaries of RO581 but not forming part of RO581.
- I. Following technological and commercial studies, the Company wishes to commence development of the McArthur River Project.
- J. The Territory and the Company wish to enter into this Agreement in respect of the McArthur River Project for the purposes of:–
- (a) granting Mineral Leases for the purposes of the McArthur River Project situate within the external boundaries of the northern portion of RO581 and any adjoining area and over an area situate within the Bing Bong Pastoral Lease No. 686 and adjacent Territory waters; and
 - (b) facilitating the development, construction and operation of the McArthur River Project.

NOW THIS AGREEMENT witnesses as follows :–

1. DEFINITIONS AND INTERPRETATION

- (1) In this Agreement unless the contrary intention appears –

"Agreement" means this Agreement as varied from time to time in accordance with this Agreement.

"Concentrate" means concentrate to be produced from the Ore.

"Contractors" includes subcontractors.

"Existing Tenements" means the mining tenements set out in Annexure A of this Agreement held by the Company together with any other mining tenement or interest granted pursuant to the *Mining Ordinance* or the *Mining Act* including but not limited to a Miners Right, Reward Claim and Authority to Prospect held by the Company, or any other related company approved in writing by the Minister, over or in connection with, all the land within the external boundaries of the northern portion of RO581.

"McArthur River Project" means the project to be developed by the Company in the Northern Territory of Australia relating to the mining of zinc-lead-silver from the mineral deposit known as the H.Y.C. deposit and

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the subsequent treatment, storage and transport of Ore and Concentrate within and between the Mineral Leases within the external boundaries of the northern portion of RO581 as at the date of this Agreement and any adjoining areas and the area of one Mineral Lease on the Bing Bong Pastoral Lease No. 686 and adjacent Territory waters. The project is for the purposes of:

- (a) mining of Ore;
- (b) processing, treatment and concentration of Ore;
- (c) storing Ore or Concentrate;
- (d) transporting Concentrate for sale, export or further processing;
- (e) exploration for minerals; and
- (f) for such other purposes in connection with the McArthur River Project as are necessarily incidental to paragraphs (a), (b), (c), (d) and (e).

"Mineral Lease" means a mineral lease granted pursuant to clause 4 of this Agreement.

"Minister" means the Minister of the Territory who for the time being is the Minister administering the *Mining Act* and includes any Minister for the time being acting for and on behalf of the Minister.

"Mortgage" means any mortgage, charge, assignment, encumbrance or other dealing by way of security.

"northern portion of RO581" means that portion of RO581 as is hatched black in the plan shown in Annexure C.

"Ore" means ore containing zinc, lead or silver together with any associated minerals which must necessarily be mined in conjunction with the minerals of zinc, lead or silver.

"RO581" means the Reservation from Occupation No. 581 notified by *Gazette* Notice Serial No. 46/77 in the Northern Territory Government *Gazette* No. 2 of 14 January 1977 but excluding from that area so reserved all that land described in the Schedule to the Notice in Northern Territory Government *Gazette* No. 13 of 31 March 1978.

"Services" means the services of engineers, surveyors, architects and other professional consultants, experts and specialists, project managers, manufacturers, wholesalers, retailers, suppliers and Contractors and includes any other services necessary or incidental to the construction,

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continued operation or care and maintenance of the McArthur River Project.

- (2) This Agreement shall be interpreted in accordance with the *Interpretation Act* of the Territory as if it were a document subject to interpretation in accordance with that Act.

2. RATIFICATION BY PARLIAMENT

- (1) This Agreement, other than sub-clause (2), shall have no force or effect and shall not be binding on either party unless and until it is signed by both parties and is ratified by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth.

- (2) The Minister shall take all necessary action to have submitted to the Legislative Assembly at the earliest practicable date a Bill for an Act to ratify this Agreement.

3. TERM

This Agreement shall commence on the date the *McArthur River Project Agreement Ratification Act 1992* comes into operation and shall continue for the term of the Mineral Leases or any of them and any renewal unless the Agreement is terminated in accordance with the terms of this Agreement.

4. MINERAL LEASES AND EXPLORATION LICENCE

- (1) Subject to sub-clause (2) of this clause, the Company may apply for Mineral Leases in accordance with the provisions of the *Mining Act* for the purposes of the McArthur River Project over areas of land within the external boundaries of the northern portion of RO581, any area adjoining the northern portion of RO581 but outside of RO581 and in any event subject to and in accordance with section 25 of the *Mining Act*, and one Mineral Lease over an area of land within the Bing Bong Pastoral Lease No. 686 and adjacent Territory waters.
- (2) For a period of 2 years from the commencement of this Agreement the provisions of sections 57, 58, 59 and 163 of the *Mining Act* shall not apply to the McArthur River Project and the Minister shall as soon as practicable following the applications made by the Company grant the Mineral Leases for a term of 25 years in respect of the areas applied for notwithstanding there being no recommendation of the Warden.
- (3) The Minister shall renew the Mineral Leases in accordance with section 68 of the *Mining Act* for a further term of 25 years.

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- (4) For the purposes of this Agreement and section 168 of the *Mining Act*, the Mineral Leases within the external boundaries of the northern portion of RO581 shall be deemed to be granted in substitution for those Existing Tenements set out in Annexure A, those Existing Tenements being automatically cancelled by the granting of the Mineral Leases.
- (5) The Company's, and any related company's, obligations and liabilities under the Existing Tenements set out in Annexure A which would survive or commence to apply upon cancellation, expiration or substitution of those Existing Tenements shall become part of the obligations and liabilities of the Company under the Mineral Leases provided that where there is any inconsistency between the Company's obligations and liabilities under the Existing Tenements and those under the Mineral Leases, the latter shall prevail.
- (6) Following receipt by the Minister of applications by the Company for Mineral Leases under this clause, the following shall apply:
 - (a) The Company shall as soon as possible thereafter deliver to the Minister a letter stating that it does not propose to apply for any further mineral leases under this clause.
 - (b) Upon receipt of that letter the Minister shall cancel the northern portion of RO581 with effect immediately upon signature of the notice of cancellation and notwithstanding section 178 of the *Mining Act*.
 - (c) Immediately upon that cancellation, the Company shall make application for and the Minister shall grant to the Company an exploration licence under the *Mining Act* for a term of 6 years over the balance of the former northern portion of RO581 as is not the subject of any mineral lease application by the Company. For the purpose of that grant, sections 17, 19, 20, 22(1) and 163 of the *Mining Act* shall not apply.

5. LEASES, LICENCES, EASEMENTS AND RIGHTS OF WAY

The Territory shall use its best endeavours to grant or cause to be granted to the Company, upon such terms and conditions as shall be agreed upon in writing between the parties, mining tenements, licences, easements and rights of way reasonably required or incidental to the construction and operation by the Company of the McArthur River Project, for a term terminating no later than the termination or expiration of the Mineral Leases or any renewals of the Mineral Leases.

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6. ACQUISITION

- (1) The Company shall use its best endeavours to voluntarily acquire land or any interest in land reasonably required for the purposes of the McArthur River Project before making any written request to the Territory pursuant to sub-clause (2) of this clause.
- (2) On the written request of the Company, the Territory shall use its best endeavours to voluntarily acquire or under the *Lands Acquisition Act* compulsorily acquire land or any interest in that land if, in the reasonable opinion of the Minister, it is of significance to and is reasonably required for the purposes of the McArthur River Project and shall sell, lease or grant licences, easements or rights of way in respect of that land to the Company on terms which shall be agreed between the Territory and the Company.
- (3) Subject to the provisions of any agreement entered into pursuant to sub-clause (2) of this clause the Company shall reimburse the Territory for any moneys paid by the Territory in respect of the acquisition of that land or any interest in that land.

7. RESUMPTION

- (1) The Territory may under and in accordance with the *Lands Acquisition Act* resume any of the land the subject of the Mineral Leases for the purposes of roads, rights of way, stock routes, railways, pipelines, power lines, communications routes, drainage, schools and health facilities of any kind provided that the resumption does not now or in the future unreasonably prejudice or interfere with the McArthur River Project.
- (2) For all other purposes, the Territory shall not, without the written consent of the Company (which shall not be unreasonably withheld), resume any part of the land the subject of the Mineral Leases.
- (3) Nothing in this clause shall prevent the Territory, its servants, agents and Contractors and any other person authorised by the Territory from lawfully entering upon and remaining on any of the land the subject of the Mineral Leases or any part of the land the subject of the Mineral Leases at any time.

8. ROADS

- (1) Subject to this clause, the Territory shall, at no expense to the Company, with all reasonable expedition having regard to the proposed timetable for the McArthur River Project and subject to clause 19 Force Majeure, where necessary construct and maintain all the road from the intersection of the access road from the H.Y.C. deposit with the Carpentaria Highway to the

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Mineral Lease on Bing Bong Pastoral Lease No. 686 as shown in Annexure B (in this clause referred to as the "road").

- (2) The road shall be a public road which may where necessary be excised by the Territory from Bing Bong Pastoral Lease No.686 at no cost to the Territory.
- (3) The construction and maintenance of the road shall at least be to a standard determined by the Territory which is reasonable for the purposes of the operation of the McArthur River Project following consultation with the Company, its agents and Contractors.
- (4) Vehicles used on any public street as defined by the *Motor Vehicles Act* during the construction and operation of the McArthur River Project shall be registered in the Northern Territory and operated in accordance with the *Motor Vehicles Act*, the *Control of Roads Act* and the *Traffic Act*.
- (5) Subject to sub-clause (4) of this clause, the Company, its servants, agents and Contractors with vehicles of all types shall at all times be entitled to use the road for all purposes associated with the McArthur River Project.
- (6) The Territory shall not assess any road toll or subject to sub-clause (4) of this clause other charges in relation to the use of the road by the Company, its agents and Contractors.
- (7) Subject to sub-clauses (1) and (3) of this clause, the Territory shall not be liable for any failure to maintain or construct the road within any time or to any standard under this clause.

9. [Deleted]

10. PORT

- (1) Construction of the barge loading facility (in this clause referred to as the "port") to be located within the Mineral Lease over an area situate within the Bing Bong Pastoral Lease No. 686 and adjacent Territory waters, shall be the responsibility of the Company.
- (2) The Company shall be the manager and operator of the port and shall be entitled to license or permit the use of the port or parts of the port by other persons and to charge users of the port such fees as are necessary to recover the Company's costs of the port.
- (3) The Territory shall use its best endeavours to issue all necessary consents, permits, licences and approvals to allow construction, maintenance and operation of the port and if requested so to do will join with the Company in seeking any consents, permits, licences and approvals which may be necessary from any Commonwealth Department or Authority.

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11. ELECTRICITY

- (1) Subject to sub-clause (2) of this clause and subject to the signing of an electricity supply contract between the Territory and the Company, the Territory shall provide electricity for the McArthur River Project.
- (2) The Company is entitled to provide electricity for the McArthur River Project. If the Company elects to construct, maintain and operate facilities necessary for the supply of electricity for the purposes of the McArthur River Project by itself, its agents or Contractors or in conjunction with the Territory, the Territory shall use its best endeavours to issue all necessary consents, permits, licences and approvals to allow construction, maintenance and operation of those facilities. Any on-selling of electricity by the Company will be subject to the prior written consent of the Territory.

12. DOWNSTREAM PROCESSING

- (1) Having regard to the Territory's intention to have established downstream processing within the Northern Territory, the Company shall in accordance with this clause, unless otherwise agreed in writing by the Minister, investigate downstream processing of zinc, lead and silver within the Northern Territory.
- (2) The Company shall within 7 years of the date of this Agreement and every 5 years thereafter provide to the Minister, unless otherwise agreed in writing, a written report setting out the technical and economic feasibility of downstream processing of zinc, lead and silver.
- (3) The Company shall use its best endeavours to encourage and support downstream processing of zinc, lead and silver within the Northern Territory if it is technically feasible and commercially sound.
- (4) Nothing in this clause shall oblige the Company to disclose its own confidential information or any information the disclosure of which will or may be in breach of any obligation (whether statutory or otherwise) and which in either event will or may render the Company liable to a fine, penalty, forfeiture or detriment of any kind.
- (5) Nothing in this clause shall oblige the Company to process or sell the Ore or Concentrate on other than commercial terms acceptable to it or impinge upon or restrict in any way the rights of the Company to enter into and comply with contracts for the sale of zinc, lead and silver in any form.

13. USE OF LOCAL PROFESSIONAL SERVICES, LABOUR AND MATERIALS

- (1) The Company shall, for the purposes of the McArthur River Project, except in those cases where the Company can reasonably demonstrate to the Territory that it is impractical for commercial, technical or other reasons so to do:
 - (a) use labour available within the Northern Territory;
 - (b) use Services located and available within the Northern Territory or if such Services are not available within the Northern Territory then as far as practical, use Services otherwise available within Australia;
 - (c) when preparing specifications, calling for tenders and letting contracts for works, materials, plant, equipment and supplies ensure that the Services providers within the Northern Territory are given a reasonable opportunity to tender or quote; and
 - (d) give, and require Contractors of the Company to give, preference to workers and Services providers within the Northern Territory when letting contracts or placing orders for works, materials, plant, equipment and supplies where price, quality, delivery and service are equal to or better than that obtainable elsewhere.
- (2) The Company shall, when requested by the Minister, such request not to be made more frequently than annually, submit a written report concerning the Company's compliance with and implementation of the provisions of this clause and use its best endeavours to provide reasonable information concerning the Contractor's compliance with paragraph (d) of sub-clause (1) of this clause.
- (3) For the purpose of this clause, the Company shall, at no expense to itself, accept the secondment of an officer of the Territory Industrial Supplies Office, on terms and conditions to be agreed between the Territory and the company.

14. NON DISCRIMINATION

- (1) Except as provided in clause 22 of this Agreement and section 64 of the *Mining Act*, the Territory shall not impose or allow its instrumentalities or authorities, or any local government authority to impose discriminatory taxes, rates or charges on or in respect of the activities of the Company, its agents or Contractors in the construction and operation of the McArthur River Project.

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- (2) The Territory shall not take or permit to be taken, any other discriminatory action which would deprive the Company of full enjoyment of the rights granted or to be granted to the Company under this Agreement. Provided that nothing in this sub-clause shall prevent the Territory, servants, agents, and statutory corporations from taking any lawful action under a law in force in the Territory relating to the protection, conservation or rehabilitation of the "environment" as defined in the *Mining Act*.

15. FINANCE

- (1) The Territory shall if it gives a notice, request or demand to the Company under this Agreement, concerning other than routine matters, provide to a party which has the benefit of a Mortgage a copy of that notice, request or demand.
- (2) The Company shall notify the Territory of the name, address, telephone and facsimile numbers of any party which has the benefit of a Mortgage upon execution of this Agreement and any change in any of them within 14 days of such a change.
- (3) It is agreed between the parties that the provisions of sub-clause (1) of this clause shall in no way affect the Territory's remedies at law against the Company.
- (4) A party which has the benefit of a Mortgage shall not be liable for the Company's operation of the McArthur River Project or for the performance of any of the Company's obligations under this Agreement provided that where pursuant to any Mortgage, such a party conveys to itself an interest in a Mineral Lease and the McArthur River Project, such party may then become so liable to the extent of the interest so conveyed.

16. VARIATION

- (1) The parties may vary this Agreement by further agreement in writing signed by the Territory and the Company.
- (2) The Territory shall cause any further agreement made pursuant to sub-clause (1) of this clause, to be laid before the Legislative Assembly at the next sittings of the Legislative Assembly.
- (3) The Legislative Assembly may, within 10 full sitting days including the day upon which the further agreement was laid before it, pass a resolution disallowing the further agreement, but if after the last day on which the further agreement might have been disallowed the Legislative Assembly has not passed such a resolution the further agreement shall have effect from and after that last day.

17. NO ASSIGNMENT

- (1) The Company shall not assign its rights or obligations under this Agreement or any of them without the prior written consent of the Minister first had and obtained. Such consent shall not be unreasonably withheld.
- (2) The Company may mortgage, charge or encumber a Mineral Lease and the Minister shall consent to that mortgage, charge or encumbrance, provided that the consent of the Minister shall be required for any subsequent sale or transfer by the mortgagee, chargee or encumbrancee exercising its powers under the mortgage, charge or encumbrance.

18. POWER TO VARY PERIODS

Notwithstanding any provision of this Agreement, the Territory may in writing and at the request of the Company, vary any period in this Agreement whether or not the period to be varied has expired.

19. FORCE MAJEURE

- (1) Subject to this clause, the time for the performance of any obligation of this Agreement or the Mineral Leases, except an obligation to pay money, which performance is delayed by circumstances beyond the reasonable control of the party responsible for the performance of such obligation, shall be extended by the period of the delay but no longer and a party shall, subject to sub-clauses (2) and (3) of this clause, not be liable in damages to the other nor shall any action, claim or demand be taken or made against a party by reason solely of such delay in the performance of such obligation in circumstances beyond the reasonable control of that party.
- (2) The party responsible for the performance of any such obligation shall use all reasonable diligence to remove the said circumstances and minimise the effects of the said circumstances as soon as is reasonably practicable after notice of the same shall have come to its attention save and except that the settlement of any strike, lockout, or other industrial dispute shall be entirely within the discretion of any party directly concerned therewith and nothing herein shall require the settlement thereof by acceding to the demands of the opposing party or parties where such course is considered inadvisable in the absolute discretion of the party so concerned.
- (3) A party shall as soon as reasonably practicable give notice to the other party of each event alleged to constitute circumstances beyond its reasonable control, of any delay in the performance of any obligation of this Agreement or the Mineral Leases, of the likely duration of the delay and of the cessation of the circumstances.

- (4) In this clause, the expression "circumstances beyond the reasonable control" shall include, without limitation, earthquakes, floods, storms, tempests, cyclones, washaways, fires not caused by the wilful default or gross negligence of the party responsible for such performance, acts of God, acts of war, acts of public enemies, riots and civil commotions, strikes, lockouts, bans, "go-slow" activity, stoppages, restraints of labour or other similar acts (whether partial or entire), acts or omissions of the Commonwealth or any instrumentality of the Commonwealth (whether legislative, executive or administrative) or any other government or governmental authority or instrumentality or any local government authority (whether legislative, executive or administrative), shortages of labour or essential materials, reasonable inability to obtain Contractors or, retain Contractors, delays of Contractors, actual or reasonably forecast inability to profitably sell the minerals, delays or restrictions on the remittance or provision of funds to a party, inability or delay in obtaining any government or local government authority approval, permit or licence, or any other cause whether of a kind specifically enumerated above or otherwise which is not reasonably within the control of the party delayed.

20. TERMINATION

- (1) The Territory may terminate this Agreement, by giving not less than a period of one hundred and eighty (180) days notice in writing to the Company in the event that the Company:
- (a) is in default in the due and punctual performance or observance of any of the provisions in this Agreement, which default the Territory reasonably considers material and which has not been remedied within that notice period;
 - (b) subject to clause 19 abandons the McArthur River Project and does not resume operations on the McArthur River Project within that notice period. For the purposes of this provision, "abandons" shall include placing the McArthur River Project on a care and maintenance basis for a period of more than one year or a number of periods which total more than one year, provided that the Minister may in writing in his discretion extend that period of one year;
 - (c) repudiates any obligation the Territory reasonably considers material under this Agreement and does not rectify such repudiation within that notice period;

such that this Agreement shall terminate upon the expiration of that notice period unless such default has been sooner remedied or unless such operations have been sooner resumed, or unless such repudiation has been sooner rectified (as the case may be).

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Provided that in the case of a default by the Company which is not of the type capable of remedy within that notice period, and if the Company has promptly commenced to use, upon receipt of that notice, and has continued to use, its best endeavours to remedy that default, then this Agreement shall not terminate upon the expiration of that notice period and the Minister shall extend that notice period for such further period as is reasonably necessary to remedy the default. Upon such an extension, the Company shall continue to use its best endeavours to remedy that default or may pay to the Territory in lieu thereof such sum as is adequate to compensate the Territory, its servants, agents, Contractors, instrumentalities, authorities and local government authorities for that default.

- (2) The Territory may terminate this Agreement by giving not less than a period of ninety (90) days notice in writing to the Company if the Company goes into liquidation (other than voluntary liquidation for the purposes of reconstruction) and the Agreement shall terminate at the expiration of that ninety (90) day period unless within that period the interest of the Company in this Agreement is assigned to an assignee approved in writing by the Minister.
- (3) The Company may terminate this Agreement by giving not less than a period of one hundred and eighty (180) days notice in writing to the Territory in the event that the Territory:
 - (a) is in default in the due and punctual performance or observance of the provisions in this Agreement, which default the Company reasonably considers material and which has not been remedied within that notice period; or
 - (b) enacts legislation which significantly increases the obligations of the Company pursuant of the McArthur River Project;

such that this Agreement shall terminate upon the expiration of that notice period unless such default has been sooner remedied or unless such legislation has been sooner repealed (as the case may be).

- (4) Notice given pursuant to this clause shall specify the nature of the default or the ground entitling the party to exercise such right of termination.
- (5) A party who has the benefit of a Mortgage shall be entitled but not obliged, to rectify the default within the relevant notice period.
- (6) This Agreement may be terminated at any time by agreement in writing signed by the Territory and the Company.

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21. EFFECTS OF TERMINATION

- (1) On termination of this Agreement the Company shall immediately pay all amounts due under this Agreement but unpaid to the Territory.
- (2) Notwithstanding any notice of termination by the Territory, nothing in clause 20 shall prevent the Territory from administering and enforcing the law in force in the Territory in its application to the Company, the McArthur River Project and the Mineral Leases.
- (3) Termination of this Agreement shall not terminate the Mineral Leases or any lease, licence, easement or right of way.
- (4) Any obligations of confidentiality between the parties shall continue after termination of this Agreement unless otherwise agreed.
- (5) Termination of this Agreement shall not otherwise affect any accrued rights or remedies a party may have against the other party.

22. IMPOSTS

- (1) Subject to this clause, the Company shall not be exempt from rent, royalty, duties, fees, levies, taxes or any other impost.

- (2) Stamp Duty

The Territory shall exempt from or refund where already paid stamp duty which but for the operation of this clause would or might be assessed and chargeable against any party to:

- (a) any joint venture agreement;
- (b) any agreement granting a right to acquire from the Company an interest in any of the Existing Tenements and a right to participate in a joint venture; or
- (c) any transfer or assignment of an interest in or grant of a right to occupy the existing tenements or Mineral Leases or any of them;

being an agreement, transfer or assignment entered into or grant made by the Company before 30 April 1994 for the purpose of the McArthur River Project.

- (3) Business Franchise Act Licence Fees

If the Company, its agents or Contractors, acquire in the Northern Territory any of their fuel for the McArthur River Project through distributors operating in the Northern Territory, the Territory shall waive any fee payable in respect of that fuel by the Company, its agents or

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Contractors under the *Business Franchise Act* to the extent that that fee exceeds, in the reasonable opinion of the Minister, that which would have been payable in Queensland under the equivalent legislation (if any) had the McArthur River Project been in Queensland and the fuel was acquired in Queensland.

(4) Royalty

- (a) Subject to this clause, the Company shall pay royalty to the Territory in accordance with the provisions of the *Mineral Royalty Act*.
- (b) Notwithstanding the *Mineral Royalty Act*, but subject to section 4D of that Act and paragraph (c) of this sub-clause, the Minister shall allow additional deductions being for costs incurred by the Company, or by any other related company, and directly relating to the McArthur River Project and the Existing Tenements or any of them or to RO581, in calculating net value for royalty under the *Mineral Royalty Act*, being costs so incurred from 1 January 1955 which are otherwise not deductible provided that the total additional deductions of the Company shall be included in the assessment of royalty in the first royalty year of the Company (subject to paragraph (d) of this sub-clause) and shall not exceed thirty-two million dollars (A\$32,000,000.00) in actual dollars incurred.
- (c) The Minister shall appoint a person for the purposes of paragraph (b) of this sub-clause. The additional deductions shall be allowed under that paragraph after that person has checked the relevant accounts and other records and has advised the Secretary in writing that he has reasonably satisfied himself that the amounts claimed as additional deductions were incurred by the Company or by any related company in the manner specified in paragraph (b) of this sub-clause.
- (d) In calculating net value for royalty under the *Mineral Royalty Act*, the Company shall be entitled to carry forward into the next royalty year as a deduction any negative net value assessed in respect of production by the Company from the Mineral Leases for the immediately preceding royalty year.
- (e) The rate of royalty shall upon request from either party be reviewed by the Territory ten (10) years from the 30th day of June prior to the first royalty year covered by the first royalty return, the Territory having regard to such matters as the profitability of the McArthur River Project and the level of royalties generally in the

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Commonwealth of Australia for zinc, lead and silver over that ten (10) year period.

- (f) The rate of or formula for royalty payable by the Company for the period succeeding the review shall be the rate or formula agreed in writing by the parties or in the event that agreement is not reached then the *Mineral Royalty Act* will continue to apply.
- (g) If the Company undertakes downstream processing in the Northern Territory of the zinc, lead or silver Concentrate produced from the McArthur River Project, then:
 - (i) for the purposes of calculation of royalty payable by the Company, the value of the Concentrate used in that downstream processing shall be used as the basis of that calculation;
 - (ii) in consideration of the Company undertaking downstream processing in the Northern Territory, the Minister may, by further agreement in writing with the Company, reduce the royalty rate.

23. TERRITORY ASSISTANCE

- (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 permit, consent, approval, authorisation, licence under the laws of the Commonwealth required for the purposes of the McArthur River Project.
- (2) On request by the Company and where appropriate, the Territory shall make representations to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to the Company of any permit, consent, approval, authorisation, licence or permission referred to in sub-clause (1) of this clause.

24. CONFIDENTIALITY

- (1) Except to the extent otherwise required by law or the Stock Exchange Listing Rules, the Territory and the Company agree that a party shall not make public any confidential information provided by the other party pursuant to this Agreement without first obtaining the consent of the other party.
- (2) Nothing in sub-clause (1) of this clause shall prevent the Territory from conducting its affairs of government in the usual way.

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25. NOTICES

- (1) A notice given under this Agreement shall be:
- (a) in writing;
 - (b) addressed to the address of the recipient specified in this Agreement or as altered by notice given in accordance with this clause; and
 - (c) hand delivered or sent by pre-paid post to that address or sent by telex or facsimile transmission and immediately confirmed by hand delivery or pre-paid post.
- (2) A notice given in accordance with sub-clause (1) of this clause shall be deemed received:
- (a) if hand delivered, on the date of delivery;
 - (b) if sent by pre-paid post, ten (10) days after the date of posting;
 - (c) if sent by telex, on the business day immediately following receipt by the sender of the answerback of the addressee at the end of the message; and
 - (d) if sent by facsimile, on the business day immediately following the day of transmission (provided that the addressee has acknowledged receipt, which receipt shall be promptly acknowledged).
- (3) Notice shall be sent to the parties at the following addresses:

The Territory: care of The Minister for
 Mines and Energy
 NT House, Mitchell Street
 Darwin NT 0800
 Telephone: (089) 896 277
 Facsimile: (089) 813 640

or where appropriate: The Secretary
 Department of Mines and Energy
 Paspalis Centrepont Building,
 Smith Street,
 Darwin NT 0800
 Telephone: (089) 895461
 Facsimile: (089) 411284

The Company: The Secretary
 Mount Isa Mines Limited
 (A.C.N. 009 661 447)

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Level 2, MIM Plaza
410 Ann Street
Brisbane Qld 4000
Telephone: (07) 833 8000
Telex: AA40160
Facsimile: (07) 832 2426

or to such other address which is advised in writing by one party to the other party from time to time.

26. APPLICABLE LAW

This Agreement is governed by the laws of the Northern Territory of Australia and the Company shall comply with all applicable laws of the Commonwealth and subject to the *McArthur River Project Agreement Ratification Act 1992* and this Agreement, all laws of the Territory applicable to the McArthur River Project.

ANNEXURE A

Existing Tenements held by the Company as at 31 July 1992:-

<u>TITLE</u>	<u>LOCATION</u>	<u>SIZE</u>	<u>GRANT DATE</u>
MLN 586	McArthur River	16.18 Hect.	1.3.60
MLN 587	" "	" "	1.3.60
MLN 588	" "	" "	3.11.64
MLN 589	" "	" "	"
MLN 590	" "	" "	"
MLN 591	" "	" "	"
MLN 592	" "	" "	"
MLN 593	" "	" "	"
MLN 594	" "	" "	"
MLN 595	" "	" "	"
MLN 596	" "	" "	"
MLN 597	" "	" "	"
MLN 598	" "	" "	"
MLN 599	" "	" "	"
MLN 600	" "	" "	"
MLN 601	" "	" "	"
MLN 602	" "	" "	5.1.77
MLN 603	" "	" "	"
MLN 604	" "	" "	"
MLN 605	" "	" "	"
MLN 606	" "	" "	"
MLN 607	" "	" "	"
MLN 608	" "	" "	"
MLN 609	" "	" "	"

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MLN 610	"	"	"	"	"
MLN 611	"	"	"	"	"
MLN 612	"	"	"	"	"
MLN 613	"	"	"	"	"
MLN 614	"	"	"	"	"
MLN 615	"	"	"	"	"
MLN 616	"	"	"	"	"
MLN 618	McArthur River		16.18 Hect.		5.1.77
MLN 619	"	"	"	"	"
MLN 620	"	"	"	"	"
MLN 621	"	"	"	"	"
MLN 622	"	"	"	"	"
MLN 623	"	"	"	"	5.1.77
MLN 637	"	"	"	"	"
MLN 638	"	"	"	"	"
MLN 639	"	"	"	"	"
MLN 640	"	"	"	"	"
MLN 641	"	"	"	"	"
MLN 642	"	"	"	"	"
MLN 643	"	"	"	"	"
MLN 644	"	"	"	"	"
MLN 645	"	"	"	"	"
MLN 646	"	"	"	"	"
MLN 647	"	"	"	"	"
MLN 648	"	"	"	"	"
MLN 649	"	"	"	"	"
MLN 650	"	"	"	"	"
MLN 651	"	"	"	"	"
MLN 652	"	"	"	"	"
MLN 653	"	"	"	"	"
MLN 965	"	"	"	"	"
MLN 1114	"	"	"	"	6.4.66
MLN 1115	"	"	"	"	"

Authorised Holdings

HLDN 88	6.71 Hect.	28.7.75 (Regn 12.8.75)
HLDN 89	2.7 Hect.	28.7.75 (Regn 12.8.75)
HLDN 90	6.1 Hect.	6.12.78 (Regn 23.1.79)
HLDN 91	1.0 Hect.	6.12.78 (Regn 23.1.79)

ANNEXURE B

ROAD

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ANNEXURE C

NORTHERN PORTION OF RO581

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IN WITNESS WHEREOF the parties have executed this Agreement.

SIGNED for and on behalf of)
the NORTHERN TERRITORY OF)
AUSTRALIA by BARRY)
FRANCIS COULTER, Minister) (Sgd.) Barry Coulter
for Mines and Energy in the)
presence of:)
Signature

(Sgd.) Mary Louise Potts
.....
Signature of Witness

Mary Louise Potts
.....
Name of Witness

25 November 1992
.....
Date

The COMMON SEAL of)
MOUNT ISA MINES LTD)
(A.C.N. 009 661 447))
was hereunto affixed by) (Sgd.) N. Coldham-Fussell
authority of a resolution) (Sgd.) R.E. Freund
of its Board of Directors)
in the presence of:)
Signature/Common Seal

Norman Coldham-Fussell
.....
Name

(Sgd.) R.P. Woods
.....
Signature of Witness
Peter Edwin Freund
.....
Name

Richard Paul Woods
.....
Name of Witness

25 November 1992
.....
Date

SCHEDULE 2

Section 4A(1)

McARTHUR RIVER PROJECT AREA

ML N1121	372.40 Hct
ML N1122	3348.00 Hct
ML N1123	3884.00 Hct
ML N1124	3283.00 Hct
ML N1125	656.80 Hct
ML N1126	900.00 Hct
EL 8078	6 blocks

ENDNOTES

1. KEY

Key to abbreviations

amd = amended

bl = by-law

ch = Chapter

div = Division

exp = expires/expired

Gaz = *Gazette*

hdg = heading

ins = inserted

lt = long title

om = omitted

pt = Part

r = regulation/rule

renum = renumbered

rep = repealed

s = section

sch = Schedule

sdiv = Subdivision

SL = Subordinate Legislation

sub = substituted

2. LIST OF LEGISLATION

McArthur River Project Agreement Ratification Act 1992 (Act No. 79, 1992)

Assent date 18 December 1992

Commenced 5 January 1993 (*Gaz* S1, 5 January 1993)

McArthur River Project Agreement Ratification Amendment Act 1993 (Act No. 27, 1993)

Assent date 30 June 1993

Commenced 30 June 1993

Financial Relations Agreement (Consequential Provisions) Act 2000 (Act No. 32, 2000)

Assent date 27 June 2000

Commenced 1 July 2000 (s 2)

McArthur River Project Amendment (Ratification of Mining Authorities) Act 2007 (Act No. 6, 2007)

Assent date 4 May 2007

Commenced 4 May 2007

3. LIST OF AMENDMENTS

s 3A ins No. 27, 1993, s 4

s 4 amd No. 27, 1993, s 5

s 4A ins No. 27, 1993, s 6

s 4AB ins No. 6, 2007, s 3

s 4B ins No. 27, 1993, s 6

amd No. 6, 2007, s 4

s 6 isn No. 32, 2000, s 45

sch 1 amd Deed dated 11 January 1995, (table paper No. 414)

sch 2 ins No. 27, 1993, s 7