



TASMANIA

**GOLDAMERE PTY LTD (AGREEMENT) ACT
1996**

No. 30 of 1996

CONTENTS

1. Short title
 2. Commencement
 3. Interpretation
 4. Ratification, approval and effect of Agreement
 5. Powers of Ministers, &c.
 6. Modification of laws of the State
 7. Enforcement of Agreement
 8. Application of Environmental Legislation, &c., to ABM Project
 9. Protection from liability
 10. Certain action, &c., may not be taken
 11. Administration of Act
- Schedule 1 – Agreement



GOLDAMERE PTY LTD (AGREEMENT) ACT 1996

No. 30 of 1996

An Act to provide for the approval and ratification of an Agreement with respect to mining and mineral processing operations at Savage River and Port Latta and for related matters

[Royal Assent 16 December 1996]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

Short title

1. This Act may be cited as the *Goldamere Pty Ltd (Agreement) Act 1996*.

Commencement

2. This Act commences on the day on which it receives the Royal Assent.

Interpretation

3. (1) In this Act –

"Agreement" means the Agreement made between the Crown in right of the State of Tasmania and Goldamere Pty Ltd (ACN 073 634 581), trading as Australian Bulk Minerals, and Ivanhoe Capital Pte Ltd, a copy of which is set out in Schedule 1;

"law of the State" means an Act of the Parliament of the State and any subsidiary legislation made under any such Act.

(2) If a word or expression used in this Act is defined in the Agreement, that word or expression has, unless the contrary intention appears in this Act, the same meaning in this Act as in the Agreement.

Ratification, approval and effect of Agreement

4. (1) The Agreement is ratified and approved.

(2) The provisions of the Agreement have the force of law as if the Agreement were enacted by this Act.

Powers of Ministers, &c.

5. The Crown by its relevant Ministers and Agencies is authorised, empowered and required –

- (a) to do all things as may be necessary to implement and enforce the Agreement; and
- (b) to exercise the powers, rights and discretions conferred on them respectively under the Agreement; and
- (c) to discharge all obligations imposed on them under the Agreement.

Modification of laws of the State

6. The provisions of any law of the State are modified, so far as may be necessary, to give full effect to the Agreement and are, except where the contrary intention appears in the Agreement, to be construed subject to any such modification.

Enforcement of Agreement

7. The Agreement may be enforced only by or on behalf of the State, an Indemnified Person or another party to it or a successor or assign of another party.

Application of Environmental Legislation, &c., to ABM Project

8. The EMPCA, the *Land Use Planning and Approvals Act 1993*, the *Resource Management and Planning Appeal Tribunal Act 1993* and any other Environmental Legislation is to apply and to be applied to the Project on the basis that –

- (a) ABM is not responsible, and is not to be held responsible, for any contamination, pollutant or pollution on, beneath or emanating from the Leased Land which has been caused or introduced to the Leased Land by Past Operations; and
- (b) ABM is not responsible, and is not to be held responsible, for any contamination, pollutant or pollution on, above, beneath or emanating from the Leased Land which is or has been caused or introduced to the Leased Land on or after the commencement of the Agreement by

PMI or the Crown or any person performing work for PMI or the Crown; and

- (c) a term, condition or restriction imposed in any Authorisation given to ABM in relation to the Project must not require ABM to meet measurable environmental standards in respect of water quality, soil contamination or any other criterion which may be affected by contamination or pollution caused or introduced to the Leased Land before the commencement of the Agreement, but should impose management requirements which are based on the principles in paragraph (a), Best Practice Environmental Management and the principles in clause 5 of the Agreement.

Protection from liability

9. An Indemnified Person is not liable in respect of any contamination, pollutant or pollution on, beneath or emanating from the Leased Land which has been caused or introduced to the Leased Land by Past Operations.

Certain action, &c., may not be taken

10. (1) No action may be taken, or claim or demand made, against an Indemnified Person in respect of any contamination, pollutant or pollution on, beneath or emanating from the Leased Land which has been caused or introduced to the Leased Land by Past Operations.

(2) Subject to section 9, nothing in subsection (1) prevents any action being taken or claim or demand being made against an Indemnified Person for any negligence or wilful misconduct by that person which has aggravated or

extended the effect of any contamination, pollutant or pollution referred to in subsection (1).

Administration of Act

11. Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for State Development; and
- (b) the Department responsible to the Minister for State Development in relation to the administration of this Act is Tasmania Development and Resources.

SCHEDULE 1 - AGREEMENT

Section 3

Dated 26th September 1996

AGREEMENT

**THE CROWN IN RIGHT OF THE
STATE OF TASMANIA
("THE CROWN")
GOLDAMERE PTY LTD (trading
as Australian Bulk Minerals)
("ABM")
IVANHOE CAPITAL PTE LTD
("IVANHOE")**

**Mallesons Stephen Jaques
Solicitors**

Rialto
525 Collins Street
Melbourne Vic 3000
Telephone (61 3) 9643 4000
Fax (61 3) 9643 5999
DX 101 Melbourne
Ref: AJH
MELBOURNE/0177751.01

Contents AGREEMENT

1 Definitions and interpretation

Definitions

Interpretation

2 Approval and ratification by Parliament**3 Term****4 Covenants and acknowledgments**

Investigation and Development of New Mining Operation

Non-exclusivity of ABM's Leasehold Interest where PMI or the Crown is Concerned

Use of Tasmanian Services and Products

Environmental Management

Indemnity

Proportional reduction of Indemnity Cover

Grant of Mining Lease

Royalties

Rehabilitation Bonds

Ivanhoe's Undertaking to Procure Finance

5 Responsibility for previous and ongoing operations and environmental management**6 Recognition of environmental matters****7 Determination of responsibility**

8 Deemed compliance with all environmental requirements with respect to pre-existing state of the Lease Land

9 Occupational Health and Safety

10 Relationship of the parties

11 Resolution of disputes

12 Termination by Crown

13 Termination by ABM

14 Notices

15 General

Variation

Governing Law

Force Majeure

Assignment

Costs

Inconsistency with State Law

Whole of Agreement

AGREEMENT

Date: 26th September 1996

Parties: **THE CROWN IN RIGHT OF THE STATE OF TASMANIA** (“the Crown”) **GOLDAMERE PTY LTD (ACN 073 634 581)** having its registered office at 180 Moggill Road, Taringa, Queensland trading as **Australian Bulk Minerals** (“**ABM**”) and **IVANHOE CAPITAL PTE LTD** having its registered office at 156 Chin Swee Road, #02-20, Manhattan House, Singapore (“**Ivanhoe**”)

Recitals:

- A. ABM is undertaking a feasibility study at Savage River and Port Latta to determine whether it will proceed with the development of a mining operation and secondary processing on the Leased Land.
- B. Previous mining operations within the Leased Land have caused site conditions resulting in the generation of pollution including sediment, acid drainage and extensive areas of currently unrehabilitated land for which ABM is not responsible.
- C. The parties have consulted on issues associated with the environmental management of the Leased Land consequent upon previous mining operations on the Leased Land.

- D. The State, recognising the impact of mining and other operations on the Leased Land and the pre-existing contamination, pollution and unrehabilitated land arising therefrom, is prepared to make special arrangements in respect of the Project to ensure, so far as practicable, that, if Commercial Production is to be undertaken, the commercial intention of ABM to carry out mining operations on the Leased Land, in an environmentally responsible manner, may be achieved.
- E. The parties wish to record in detail herein understandings reached between them in respect of operations on the Leased Land, including, among other things, the commercial arrangements agreed upon, the limits of ABM's responsibility for pollution and rehabilitation of disturbed land and an indemnity to be given by the Crown as set out herein.
- F. The Crown has undertaken to introduce into Parliament a Bill ratifying and to give effect to this Agreement.
- G. ABM has agreed to proceed with the Project following receipt of the environmental indemnity as provided for by sub-clause 4.2 in this Agreement. The State recognises the potential benefit to the Crown and ABM of the further development of the Savage River and Port Latta area, which will require capital expenditure by ABM.
- H. In the course of mining operations and site rehabilitation some of the pollution or

disturbance for which ABM is responsible will inevitably become mixed with the disturbance or pollution for which ABM is not responsible.

IT IS HEREBY AGREED AS FOLLOWS:

1 Definitions and interpretation

Definitions

1.1 In this Agreement unless the context otherwise requires:

ABM means Goldamere Pty Ltd and its successors and permitted assigns.

ACDC means Australian Commercial Disputes Centre Ltd.

Acid drainage means surface or underground drainage or mine water containing acid and pollution derived from sulphide or metal bearing rock.

Authorisation means:

- (a) any authorisation, approval, agreement, consent, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration and exemption; and
- (b) in relation to any matter affecting the Project which will be restricted or prohibited in whole or in part by law if, within a specified period after receipt of

notification, a Government Agency intervenes or acts, the expiry of such period without the Government Agency intervening or acting.

Best Practice Environmental Management has the meaning given to the term “best practice environmental management” in EMPCA, excepting that:

- (a) the standards to which section 4(1) refers must not include measurable standards in respect of water quality or any other criterion which may be affected by contamination or pollution caused or introduced to the Leased Land prior to the commencement of this Agreement;
- (b) the Best Practice Environmental Management of any activity is to be determined in accordance with the principles agreed in clauses 5 and 6 of this Agreement.

Board has the meaning given to that term in section 3 of EMPCA.

Business Day means a day on which banks are open for general business in Hobart.

Commercial Cost shall include all the cost ABM would not have incurred had it

not been requested by the Crown to deal with the pollution and rehabilitation requirements for which ABM is not responsible. In terms of assessing such cost an arbitrator is entitled to look at the overall resources required to cope with dealing with pollution and rehabilitation requirements for which ABM is not responsible. The parties recognise that the decision may not be able to be based on scientific grounds or calculated with any precision and accept that the arbitrator may have to make an overall judgement.

Commercial Production means the production of saleable mining products from the Leased Land.

Damages means:

- (a) all claims, judgments, actions, Proceedings, orders, directions, demands, damages, losses, penalties, fines, liabilities, encumbrances, liens, costs of Proceedings;
- (b) expenses of investigation of and defence of any claims, clean-up orders, rehabilitation orders, orders to install equipment or monitor any pollution control equipment, other monitoring orders, orders under any trade waste agreement;
- (c) the cost of compliance with the terms of any environmental

bond or guarantee (except for any bond or guarantee contemplated in this Agreement) or any order made pursuant to any Environmental Requirement; and

- (d) the cost of compliance with an environmental protection notice;

whether or not any such costs, claim, order or action is ultimately defeated or set aside and

- (d) settlements, of whatever kind or nature, contingent or otherwise, including reasonable legal fees, disbursements, consultant's fees and including without limitation:

- (i) damages for personal injury or injury to property of any nature; and

- (ii) fees incurred for the services of solicitors, barristers, consultants, contractors, experts, laboratories and any other costs associated with the investigation (other than any investigation required under this Agreement) or remediation of any land, pollutants, pollution or the violation of Environmental Requirements.

- (iii) personal liability for
 - (A) fines,
 - (B) damages,
 - (C) breach of an Environmental Requirement,
 - (D) expenses for investigation of, satisfaction and defence of, any claim, Proceeding, clean up order, or rehabilitation order, and
- (iv) liability to any third person or Government Agency or to indemnify that person or agency for such costs and damages.

provided however it is agreed that the expression "Damages" shall not include any consequential loss of earnings, profits or business, or losses suffered by ABM or any other Indemnified Person as a result of non-performance of any obligations under any contracts entered into by ABM or any other Indemnified Person whether or not associated with a shut-down of the Project (either temporarily or permanently).

Director of Environmental Management means the person or his successors appointed and holding office pursuant to section 18 of the EMPCA.

Director of Mines means the person or his successors in office appointed and holding the office of Director of Mines as defined in the **Mineral Resources Development Act 1995 (Tas.)**.

EMP means the environmental management plan to be developed by ABM in accordance with Board guidelines evidencing ABM's obligations with respect to the management of its operation on the Leased Land for assessment by the Board in setting permit conditions for the Project.

EMPCA means the **Environmental Management and Pollution Control Act 1994 (Tas)**.

Environmental Legislation means all legislation which directly or indirectly touches or affects the environment so far as ABM's obligations or requirements are concerned.

Environmental Requirement means Commonwealth, State or local law or regulation, including without limitation any environmental legislation, dangerous goods or poisons law, regulation, direction, guideline, ordinance, code, order, approval or plan or which governs or affects any substance's or pollutant's manufacture, use, handling treatment, transportation, (incorporating the Australian Code for Transportation of Dangerous goods by Road and Rail) storage, control, management, disposal or labelling, including Australian Standards published by the Standards Association of Australia,

Australian and Tasmanian State environmental and remediation policies, standards and requirements and environmental and remediation terms and conditions of any authorisation, lease, permit or other requisite needed for ABM to operate.

Financial Year means the accounting period commencing 1st July in one year ending on 30th June in the following year.

Force majeure means an act, event or cause (other than an obligation to pay money) which is beyond the reasonable control of the concerned party, including but not limited to act of God, peril of the sea, accident of navigation, war, sabotage, riot, insurrection, civil commotion, national emergency (whether in fact or law), martial law, fire, lightning, flood, cyclone, earthquake, landslide, storm or other adverse weather conditions, explosion, power shortage, epidemic, quarantine, radiation or radioactive contamination or the impossibility of obtaining materials.

Government Agency includes any government, whether federal, state or local, and any minister, department, office, commission, delegate, instrumentality, agency, board, authority or organ thereof, whether statutory or otherwise, and any person or body which has been granted or delegated any power or authority by any such body.

Indemnified Claim means any claim or Proceeding in relation to which an

Indemnified Person has incurred Damages including without limitation a criminal or civil enforcement or liability (corporate or personal) to the Crown or third parties resulting from:

- (a) the fact that parts of the Leased Land are unrehabilitated as a result of Past Operations;
- (b) contamination, pollution and pollutants upon, about or beneath the Leased Land or migrating to or from the Leased Land, which contamination, pollution or pollutants have been caused or introduced to the Leased Land by Past Operations;
- (c) the undertaking of any Environmental Requirement which is required as a result of pollution or contamination occurring from Past Operations;

and being a claim or proceeding which does not fall within the exceptions to the Crown's liability appearing under clause 4.2.

Indemnified Person means ABM, its directors, officers, employees, agents, any liquidator or administrator of ABM, ABM's contractors and sub-contractors, any permitted joint venturer or assignee of ABM and any financier or other person

in whose favour ABM has created a security interest in the Leased Land.

Leased Land means the land of an area not greater than that the subject of mining lease no. 44M66 and supplemental leases SL1 to SL12 (inclusive) granted to PMI (unless otherwise agreed by the Crown) which is or will be the subject of the mining lease issued or to be issued to ABM (and any renewal thereof) under Part 4 of the Mineral Resources Development Act 1995.

Minister means, in reference to this Agreement:

- (a) for all clauses other than those specified in sub-clauses (b)-(d) immediately following the Minister for State Development for the time being for the State of Tasmania; and
- (b) for the purposes of sub-clause 4.3, the Attorney-General of the State of Tasmania; and
- (c) for the purposes of Clauses 4, 5 and 7, the Minister for Environment and Land Management for the time being for the State of Tasmania; and
- (d) for the purposes of clause 4.5, the Minister responsible for administration of the Mineral

Resources Development Act
1995.

Past Operations means:

- (a) mining or other operations or activities which have been undertaken on any part of the Leased Land; or
- (b) the occupation or use of any part of the Leased Land,

where the operations, activities, occupation or use:

- (i) occurs prior to the date on which ABM commences Commercial Production; and
- (ii) is by a person other than ABM or any other Indemnified Person (or any person undertaking work or acting, for, or on behalf of ABM or any Indemnified Person).

PMI means Pickands Mather & Co International.

Pollutants has the meaning assigned to that expression by the EMPCA.

Pollution has the meaning assigned to that expression by the EMPCA and also to the expression "Environmental Harm" in the EMPCA and without limiting the generality of the foregoing includes acid drainage and also site degradation.

Proceeding means all inquiries, proceedings or investigations concerning environmental pollution or rehabilitation matters in relation to the Leased Land which ABM is required to attend or assist and shall include but shall not be limited to all Commissions of Inquiry, Royal Commissions, local government inquiries, administrative proceedings, Parliamentary inquiries (State and Federal), investigative proceedings and civil and criminal proceedings.

Project means ABM's occupation of , and the activities carried on or to be carried on by ABM on, the Leased Land in accordance with this Agreement.

Project Assets means the assets necessary to carry on Commercial Production, including the crusher, the concentrator, the pelletising plant (including the stacker and reclaimers), the pipeline between Savage River and Port Latta (and its supporting structures) and the offshore loading facilities.

Ratifying Act means the Act approving and ratifying this Agreement and more particularly described in Clause 2.

Starting Date means the date on which the Ratifying Act receives the Royal Assent.

Interpretation

- 1.2 In the interpretation of this Agreement, unless the context otherwise requires:

- (a) the respective obligations of the parties as set out in this Agreement whether positive or negative shall be construed as if each such obligation is a separate and independent agreement or covenant made by one party in favour of the other or others and continuing (unless the context otherwise requires) so long as the same remains to be performed; and
- (b) derivatives of any term to which a meaning is assigned in this Agreement shall have a corresponding meaning; and
- (c) if any provision of this Agreement is void, voidable by any party or illegal, it shall be read down so as to be valid and enforceable or, if it cannot be so read down, the provision (or where possible, the offending words) shall be severed from this Agreement without thereby affecting the validity, legality or enforceability of the remaining provisions (or parts of those provisions) of this Agreement, which shall continue in full force and effect provided always that this clause shall not apply if it is the indemnity or the remaining provisions of Clause 4 that are sought to be severed; and
- (d) words importing only persons include corporations, associations, and/or bodies and vice versa in each respective case; and

- (e) words importing the singular number include the plural and vice versa, and a reference to a gender includes the other gender; and
- (f) headings and marginal notes are included as a convenience only and should not affect the interpretation or construction of this Agreement; and
- (g) all references to fees and expenses incurred for the services of consultants, solicitors, barristers, accountants and all other specialists and experts are to be construed as referred to reasonable fees and reasonable expenses as the case may be, and the liability for any payment thereof shall be construed accordingly, and
- (h) reference to the State means the State of Tasmania; and
- (i) reference to a statute, ordinance, code or other law includes all subsidiary legislation regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.

2 Approval and ratification by Parliament

2.1 Subject to sub-clause 2.2 the Minister shall, as soon as practicable after the execution of this Agreement, ensure that there is introduced into the Parliament of the State a Bill for the Ratifying Act to provide, inter alia, that:

- (a) this Agreement shall be ratified and approved;
- (b) the provisions of this Agreement have the force of law as if those provisions were enacted by the Ratifying Act;
- (c) the Crown by its relevant Ministers, public authorities, agencies and public officers be authorised, empowered and required to do all such things necessary or expedient to implement and enforce this Agreement and for the exercise of the powers, rights and discretions conferred on them respectively under this Agreement, or for the discharge of all obligations imposed on them under this Agreement; and
- (d) the provisions of any law of the State are modified, so far as may be necessary, to give full effect to the Agreement and shall, except where the contrary intention appears in the Agreement, be construed subject to any such modification.

- 2.2 The Minister shall, subject to the terms hereof, endeavour to secure the enactment and commencement of all sections of the Ratifying Act on or before 30 December 1996, or such later date as agreed in writing by the Minister and ABM prior to 30 December 1996. In the event that this does not occur, then this Agreement shall terminate and thereafter the parties shall have no claim against each other with respect to any matter or thing arising out of, done or omitted to be done or performed under this Agreement.
- 2.3 Subject to clause 2.2, until the enactment of the Ratifying Act the Parties expressly agree that the terms and conditions contained in this Agreement shall be of full force and binding effect upon the parties so far as the same can apply and operate in accordance with the laws of the State and be and continue to be of such force, effect and operation until enactment of the Ratifying Act.

3 Term

- 3.1 This Agreement commences on the date of its execution by the parties and continues unless terminated in accordance with the provisions hereof, save always that with respect to ABM's activities on the Leased Land:
- (a) the provisions of the deemed compliance during the period of this Agreement under Clause 8;

- (b) the provisions of clauses 4.2, 4.3, 4.4 and 5 of this Agreement insofar as they relate to the operations of ABM or other Indemnified Persons on the Leased Land prior to the termination of this Agreement or to the rehabilitation obligations of ABM or compliance by ABM with any Environmental Requirements imposed prior to the termination of the Agreement which remain to be performed after the termination of this Agreement;
- (c) the liabilities and obligations of ABM incurred as a result of its occupation or use of the Leased Land or arising in connection with the abandonment, cessation or suspension of its operations or activities on the Leased Land,

shall survive the termination hereof.

3.2 This Agreement shall terminate:

- (a) if ABM gives a notice to the Crown under clause 4.1(f) that it does not intend to establish Commercial Production on the Leased Land or ABM fails to give any notice under clause 4.1(f) by the date referred to therein;
- (b) in accordance with clauses 12 or 13;
- (c) in accordance with clause 2.2; or

- (d) if a mining lease is granted to ABM pursuant to clause 4.5, upon the revocation or surrender of the mining lease (unless it is replaced by another mining lease in respect of the Leased Land).

4 Covenants and acknowledgments

4.1 ABM covenants with the Crown that:

Investigation and Development of New Mining Operation

- (a) ABM shall carry out and complete the feasibility study in relation to:
 - (i) the re-establishment and continuation of Commercial Production on the Leased Land; and
 - (ii) the establishment of facilities within the State for the manufacture of direct reduced iron, steel and/or iron products or other processes from the output of the mine at the Leased Land, and

ABM shall deliver the feasibility study to the Crown by not later than 15 November 1996 (or such later date as the Crown may, at its discretion, determine);

- (b) ABM shall, by not later than 1 October 1996 (or such later date as may be agreed by the Crown)

complete the exploration drilling of the Savage River Mine;

- (c) ABM shall prepare an EMP (in accordance with guidelines agreed between the Crown and ABM) and submit the EMP to the Crown by not later than 1 December 1996 (or such later date as the Crown may determine);
- (d) ABM shall, for the purposes of gathering environmental data and environmental management, include in the EMP an environmental study report on the extent of the environmental impact of previous mining and other operations carried out on the Leased Land (in accordance with guidelines agreed between the Crown and ABM);
- (e) ABM shall provide such further information in relation to the feasibility study or ABM's proposals as the Crown may, from time to time, reasonably request;
- (f) ABM shall notify the Crown by not later than 30 November 1996 (or such later date as the Crown may determine) whether it proposes to establish Commercial Production on the Leased Land. If ABM notifies the Crown that it wishes to establish Commercial Production on the Leased Land, ABM shall at the same time submit to the Crown a mining

plan and its proposals for
Commercial Production;

- (g) ABM shall from the time at which it obtains ownership, control or possession of the Project Assets until it commences Commercial Production, keep those assets (including in particular the pipeline from Savage River to Port Latta) in at least the same working order and condition as applied when it obtained ownership, control or possession. If, at any time after ABM obtains ownership, control or possession of the Project Assets, ABM fails to so maintain the assets, the Crown may enter upon the Leased Land and effect such maintenance and ABM shall reimburse the Crown for the cost of doing so.
- (h) If ABM notifies the Crown in accordance with clause 4.1(f) that it wishes to establish Commercial Production on the Leased Land, ABM shall develop a new mining operation on the Leased Land, subject to satisfactory Authorisations and conditions relating to those Authorisations, by not later than 1 April 1997 (or such later date as the Crown may, at its discretion, determine);
- (i) ABM shall not cease to maintain the pipeline from Savage River to Port Latta unless it first gives the Crown

30 days notice of its intention to do so.

Non-exclusivity of ABM's Leasehold Interest where PMI or the Crown is Concerned

- (j) ABM shall allow PMI and the Crown after reasonable notice has been given to ABM to enter upon the Leased Land and remain there solely for the purpose of PMI complying with its environmental rehabilitation and management obligations or the Crown undertaking rehabilitation and management activities (with or without machinery for that purpose). The undertaking of these activities by PMI or the Crown shall in no way interfere with ABM operations on the site without the written consent of ABM. This clause shall not limit or fetter the rights of the Crown or any Governmental Agencies under EMPCA or the Mineral Resources Development Act 1995 to have access to or inspect the leased land.

Use of Tasmanian Services and Products

- (k) That in the conduct of its existing operations as well as for any capital expenditure programmes ABM and/or a related body corporate or related entity shall:
- (i) use the services of workers, engineers, surveyors, professional consultants including lawyers and accountants and contractors resident in or available within

the State of Tasmania to the extent of the proven capacity and experience of such workers, engineers, surveyors, consultants and contractors;

- (ii) when calling for tenders and letting contracts for works, materials, plant, equipment and supplies ensure that Tasmanian suppliers, manufacturers and contractors are given a reasonable opportunity to tender or quote for contracts for the supply of works and services to the extent of the proven capacity and experience of such suppliers, manufacturers and contractors and give due consideration to any such tender or quote; and
- (iii) stipulate in any agreements, contracts, or arrangements with their agents or contractors that all agents and contractors engaged by ABM or a related body corporate or related entity shall comply with the requirements of this clause 4.1(k) as if named as a party to this Agreement,

PROVIDED THAT ABM, any related body corporate or related entity, and the agents and contractors referred to in clause 4.1(k), shall not be required to use such services unless the price, quality, experience, delivery and service offered or available in respect

of such Tasmanian services, works, materials, plant, equipment and supplies (as the case may be) are no less favourable than those obtainable from outside Tasmania.

It is agreed:

- (iv) nothing contained in this clause 4.1(k) shall require ABM or any related body corporate or related entity or agent or contractor of ABM to act upon other than commercial considerations; and
- (v) for the purposes of this clause 4.1(k), the expression “related body corporate” and “related entity” shall have the meaning assigned to those expressions by the Corporations Law;

Environmental Management

- (1) ABM shall conduct operations on the Leased Land in accordance with the EMP, Best Practice Environmental Management, this Agreement and the laws of the State (as modified by the Ratifying Act);

Indemnity

4.2

- (a) The Crown covenants with ABM that in return for the commitment made to it by ABM in the form of the covenants and acknowledgments contained in this Agreement, it will indemnify the Indemnified Persons in relation to any Indemnified Claim. It

is agreed that the indemnity will not operate:

- (i) to the extent that:
 - (A) the Indemnified Claim was caused by the negligence or wilful misconduct of any Indemnified Person; or
 - (B) the Indemnified Claim has arisen as a consequence of a breach by any Indemnified Person of this Agreement or of a law of the State (as modified by the Ratifying Act);
- (ii) where ABM has failed to comply with the requirements described in clause 4.3; or
- (iii) in relation to consequential loss of earnings, profits or business suffered by any Indemnified Person or any losses or damages suffered by any Indemnified Person as a result of any non-performance of any obligation under any contract entered into by any Indemnified Person.

Proportional reduction of Indemnity Cover

- (b) To the extent that the Indemnified Claim was partly contributed to or caused by the negligence or wilful misconduct of an Indemnified Person, the Crown's indemnity will be proportionately reduced in respect to

the particular Indemnified Claim by the percentage by which the negligence or wilful misconduct of an Indemnified Person caused the Indemnified Claim.

4.3 ABM covenants with the Crown:

- (a) that, unless otherwise agreed in writing by the parties, in a situation where an indemnity is sought from the Crown under sub-clause 4.2(a), ABM will give the Minister
 - (i) notice of any Indemnified Claim made against any Indemnified Person not later than 15 Business Days after ABM receives notification of the claim and which notice must be accompanied by all relevant information then available to ABM; and
 - (ii) all other relevant documentary evidence immediately it becomes available to ABM or at the option of the Crown full access to the aforesaid information; and
 - (iii) full assistance and co-operation to locate all relevant documentation;
- (b) that ABM shall (in a situation where the Crown is providing an indemnity under sub-clause 4.2(a)), prior to settlement of any claim, obtain the prior approval in writing of the

Crown to the terms of that settlement, which consent shall not be unreasonably withheld;

- (c) that where a proceeding is commenced against an Indemnified Person, and the Crown believes that it may have to provide an indemnity under sub-clause 4.2(a), the Crown shall be entitled to conduct the proceeding in the name of the Indemnified Person and shall have full discretion in the conduct of the proceeding and ABM shall ensure that the Indemnified Person gives all information and assistance as the Crown may reasonably require in the conduct or settlement of any such proceeding **PROVIDED THAT** in the event that any claim is ultimately determined not to be an Indemnified Claim, ABM agrees, where it was reasonable for the Crown to have elected to conduct the proceeding and that proceeding has been diligently conducted and where the Crown has been unable to recover after using its best endeavours from any third party any costs incurred by the Crown as a result of the aforesaid election, to indemnify the Crown for any costs incurred by the Crown as a result of any aforesaid election and those costs shall be reimbursed within 20 Business Days of receipt by ABM of a formal demand being made by the Crown;

- (d) that ABM shall use its best endeavours to ensure that any relief or indemnity in relation to any such claim is obtained from any third party or parties against whom such relief or indemnity is obtainable PROVIDED ALWAYS it is agreed ABM shall have the same rights as provided in clause 4.4(a) in the pursuit of any such relief or indemnity, subject to ABM obtaining the written approval of the Crown before pursuing any third party or parties and the Crown being responsible for any costs of diligently conducting the proceedings or incurred as a result of the proceedings.

4.4 The Crown covenants with ABM that

- (a) where a proceeding is commenced against an Indemnified Person, and the Indemnified Person reasonably believes the proceeding relates to a situation where the Crown will be providing an indemnity under sub-clause 4.2(a), the Indemnified Person shall have the right to require the Crown to elect either to:
 - (i) take over the conduct of the proceeding in the name of the Indemnified Person, in which case the Crown shall have full discretion in the conduct of such proceeding, and the Indemnified Person shall give all information and assistance as the Crown

may reasonably require in the conduct or settlement of any such action; or

- (ii) reimburse to the Indemnified Person all legal, expert and technical costs and expenses incurred by the Indemnified Person in the conduct of any such proceeding by way of periodic payments as the costs and expenses are incurred by the Indemnified Person;

PROVIDED THAT except in the case of proceedings under clause 4.3(d) the Indemnified Person has first agreed with the Crown that, in the event that any claim is ultimately determined not to be an Indemnified Claim, where it was reasonable for the Crown to have elected to conduct the proceeding and that proceeding has been diligently conducted and where the Crown has been unable to recover after using its best endeavours from any third party any costs incurred by the Crown as a result of the aforesaid election, to reimburse those costs within 20 Business Days of receipt by the Indemnified Person of a formal demand being made by the Crown.

- (b) if a final judgment, determination or award of damages is made against the Indemnified Person in the proceeding referred to above, or if a settlement, which has been approved

by the Crown, is agreed with the other party (in a situation where the Crown is providing an indemnity under clause 4.2(a)), the Crown shall:

- (i) not less than 5 Business Days before the date on which the Indemnified Person must pay the amount referred to in the judgment, award of damages or settlement; or
- (ii) if no date for payment is fixed by that judgment, determination, award of damages or settlement within 10 Business Days of receipt of a notice in writing from the Indemnified Person that it intends to pay the amount referred to in that judgment, award of damages or settlement;

pay to the Indemnified Person a sum equivalent to the sum that the Indemnified Person is required to pay;

- (c) it shall pay to the Indemnified Person all other sums including reasonable costs and expenses required to be paid under the indemnity provided under clause 4.2(a) within 30 Business Days of receipt of a written notice from the Indemnified Person requiring payment of those sums.

Grant of Mining Lease

4.5 If each of the following are satisfied:

- (a) ABM has given notice to the Crown under clause 4.1(f) that it proposes to establish Commercial Production on the Leased Land;
- (b) the lodgement by ABM of the bonds contemplated in clause 4.7; and
- (c) ABM is not in breach of any of its obligations under this Agreement,

the Crown shall grant a mining lease in respect of the Leased Land to ABM and the associated licences and easements, such mining lease to have a term of 30 years and otherwise include such conditions as may be imposed by the Minister. One of the conditions to the mining lease becoming valid and effective will be that the Crown is satisfied that ABM has and will continue to have ownership or possession of the Project Assets which are necessary for Commercial Production.

Royalties

4.6 ABM shall pay a royalty in respect of mineral extraction for the purposes of the **Mineral Resources Development Act 1995 (Tas)** at the rate prescribed in the **Mineral Resources Development Act 1995 (Tas)** or regulations made thereunder from time to time.

Rehabilitation Bonds

4.7 ABM must establish and deliver to the Crown a bond or bonds under EMPCA for the rehabilitation of the Leased Land:

- (a) for an amount of \$3,500,000, by not later than the Starting Date;
- (b) for a further amount or amounts to be determined by the Crown after ABM submits its mining plan required under the Mineral Resources Development Act 1995; and
- (c) depending on the mining plan and the EMP, for a reduction or increase in the original amount or further amounts of the bonds contemplated under paragraph (b), as determined under EMPCA.

The bond shall be provided by way of cash deposit or a guarantee from a bank acceptable to the Crown and on terms acceptable to the Crown.

4.8 The Crown agrees that it will expend any moneys received from PMI in connection with its environmental obligations on environmental improvements or rehabilitation at the Savage River mine and Port Latta but the Crown shall not be under any restriction as to how or when it expends such moneys.

Ivanhoe's Undertaking to Procure Finance

4.9 Ivanhoe covenants with the Crown that it will procure from third parties, failing

which Ivanhoe shall provide, sufficient finance to ABM to enable ABM to:

- (a) undertake and complete the feasibility studies and the EMP referred to in sub-clauses 4.1(a) and 4.1(c); and
- (b) establish and conduct the Project in accordance with this Agreement and the laws of the State (as modified by the Ratifying Act).

5 Responsibility for previous and ongoing operations and environmental management

Neither ABM nor any other Indemnified Person will:

- (a) be responsible to any person or subject to any Environmental Requirement for any pre-existing or ongoing contamination or pollution or unrehabilitated land caused by Past Operations; or
- (b) be subject to any requirement to alter the water course which currently flows through the mine area of the Leased Land where that requirement is a consequence of Past Operations only (under which the existing mine pits were developed on both sides of the water course) and is not a consequence of ABM's operations or activities. If, however, ABM in the course of its operations wishes to move the water course it will prepare an EMP for assessment and

undertake any alteration at its cost and in accordance with resultant permit conditions and Best Practice Environmental Management.

6 Recognition of environmental matters

- 6.1 It is recognised that it is presently impossible or impractical on the existing information to accurately predict the nature or extent of future environmental impacts resulting from pre-existing pollution and contamination and unrehabilitated land. This determination is necessary in order to determine the extent of the liability and responsibility of ABM;
- 6.2 The parties also recognise that, despite factors such as the implementation of improvements designed to decrease pollution, remediation activities, the rectification of existing defective rehabilitation and the construction of modern plant and equipment, the possibility that existing AMD sources will become more active over years make a short term increase in pollution probable;
- 6.3 The parties therefore recognise that both in the short term and in the long term while it may be possible to set measurable objectives, it will be impossible or impractical to set requirements based on measurements or testing and that it is preferable to set requirements in terms of works to be implemented and practices to be adopted based on Best Practice Environmental Management.

7 Determination of responsibility

7.1 When a dispute arises as to whether ABM is responsible for any pollution or contamination, or as to the degree to which ABM is so responsible, then ABM's responsibility shall be determined as follows:

- (a) The amount or extent of the pollution and contamination for which ABM will be responsible will be determined by two experts with qualifications and experiences relevant to matters subject to the expert determination. They shall follow procedures as directed by the Crown and ABM but in the absence of direction as they, in their discretion, shall determine.
- (b) Each party shall be entitled to nominate an expert (including replacing an existing nominee).
- (c) A person shall qualify as an expert if he or she would be qualified as an expert to give evidence in a court of law on the relevant type of pollution or contamination in respect of a mine of the type at Savage River.
- (d) If either party shall dispute the nomination of an expert on the basis of that nominee's expertise the question of the expertise of the nominee shall be determined by an expert appointed by the ACDC under the Rules for expert determination.

- (e) If the experts cannot agree on any issue relating to the allocation of responsibility, study approach, methodology, implementation of the methodology, revision of the methodology, sampling or the interpretation of data or any determination under this agreement then a third expert shall be nominated by agreement of the two experts or in default of agreement by an expert nominated by the ACDC. The determination of that issue shall be the majority view of the three experts and their procedures shall be governed by the ACDC Rules for Expert Determination.

7.2 Unless otherwise agreed, in the event that the co-treatment of pollution is necessary, the following principles are to apply:

- (a) In the event that any form of pollution for which ABM is responsible is mixed with, or is incapable of separate treatment from, pollution for which ABM is not responsible, then by taking and treating over a twelve month period an amount of that form of pollution equal to that proportion for which it is determined to be responsible by the expert process for such twelve month period, ABM will be deemed to have treated all the pollution for which it is responsible during that twelve month period.

(b) Should ABM construct or install any process to deal with pollution for which it is responsible then if there is pollution for which ABM is not responsible which can be treated by the same process then ABM will, at the request of the Crown, increase or modify its process or operation so as to be able to treat the pollution for which ABM is not legally responsible PROVIDED THAT:

- (i) the Crown or a third party nominated by the Crown pays to ABM the Commercial Cost to ABM of such increase or modification (in the absence of agreement the amount of such commercial cost to be determined by arbitration in accordance with clause 11);
- (ii) the Crown or a third party nominated by the Crown pays to ABM the Commercial Cost to ABM of treating the pollution for which ABM is not responsible.

(c) If requested by the Crown ABM will co-treat such pollution for which ABM is not responsible as the additional facilities funded by the Crown or a third party nominated by the Crown have the capacity to treat, but will not be liable for any breach of any Environmental Requirement, environmental offence or any cost or liability of any proceedings if the breach would not have occurred but

for the amount or constitution of the pollution ABM has co-treated in excess of that for which ABM is responsible AND the Crown will keep ABM fully indemnified against all proceedings relating to the Leased Land and facilities and emissions related to the co-treatment of pollution (including the tailings dam) which would not have arisen but for the treatment of pollution by ABM for which it was not responsible.

- (d) If ABM at the request of the Crown deals with pollution for which ABM is not responsible in accordance with the Crown's instructions, ABM will not lose any indemnity, deemed compliance, release, covenant, protection (statutory or otherwise) or any other benefit howsoever conferred by this Agreement which it would have otherwise had nor shall the same be modified or reduced from that which it would have otherwise had. Nor will ABM by dealing with pollution in mine water for which it is not responsible on behalf of the Crown and at the request of the Crown become responsible for the same.

8 Deemed compliance with all environmental requirements with respect to pre-existing state of the Leased Land

8.1 Compliance by ABM or any Indemnified Person with all lease and permit

conditions and with the terms and conditions of this Agreement and the laws of the State (as modified by the Ratifying Act) shall be deemed to constitute a compliance by that person with all Environmental Requirements then existing, and unless subsequent Environmental Legislation specifically provides otherwise, with all future Environmental Requirements to the extent to which such future Environmental Requirements would otherwise impose obligations on ABM in relation to any contamination, pollutants or pollution caused by Past Operations. Save as provided in clause 9, nothing in this Agreement shall modify ABM's obligations to comply with all existing or any future laws relating to occupational health or safety matters.

- 8.2 ABM shall, upon the written request of the Crown, and within a reasonable time depending on the nature of the request provide the Crown with documentary evidence adequate for the purposes of enabling the Crown to satisfy itself that ABM has complied with all its obligations described in clause 4.1.
- 8.3 In any prosecution of ABM or an Indemnified Person for any breach of any Environmental Requirement the Crown must prove that ABM or that Indemnified Person would have been in breach independently of the effect of any pre-existing or ongoing contamination or pollution caused by Past Operations.

9 Occupational Health and Safety

- (a) ABM shall, during a period of four (4) years commencing on the issue of the mining lease referred to in clause 4.5, carry out a programme of improvements to the work place sites formerly operated by PMI at Savage River and Port Latta.
- (b) The reference to work place sites in this clause 9 includes a reference to buildings, structures, plant, equipment and appliances identified in the programme of improvements.
- (c) The programme of improvements referred to in clause 9(a) is a programme to be agreed between the Director of Industry Safety under the Workplace Health and Safety Act 1995 and ABM. The parties will use every reasonable endeavour to set the programme before 31 January 1997. In the event that agreement is not reached between the parties by 31 January 1997 the matter is to be resolved pursuant to clause 11 of this Agreement by 1 April 1997. To facilitate a resolution of the matter by 1 April 1997 the notification periods in clauses 11.2 and 11.3 are to be dispensed with and the Independent Expert or Arbitrator is to be appointed by the ACDC on 5 February 1997 if the parties are unable to reach agreement as to the Independent Expert or Arbitrator. The Workplace Health and Safety

Act 1995 shall have full force and effect until the matter is resolved pursuant to clause 11 of this Agreement.

- (d) No action will be taken against ABM under the provisions of the Workplace Health and Safety Act 1995 during the currency of the programme of improvements in relation to any circumstance which was the subject of the programme and is still to be addressed pursuant to it otherwise than in respect of ensuring compliance with the programme or rectifying non-compliance with the programme.

10 Relationship of the parties

Nothing contained or implied in this Agreement shall constitute or be deemed to constitute a partnership or relationship of agency between the Crown and the parties hereto or constitute or be deemed to constitute any relationship other than that of independent parties.

11 Resolution of disputes

- 11.1 If a dispute arises between the Crown and ABM under this Agreement (except in relation to any discretion, approval, authorisation or other action exercised or given pursuant to statute and except for a dispute in respect of which the procedures in clause 7 are to apply), the parties undertake in good faith to use all reasonable endeavours to resolve the

dispute between them by negotiations as further provided hereafter.

- 11.2 If one party has given to the other party written notice of a dispute and the parties are unable to resolve the dispute within 20 Business Days of the receipt of such notice by means of a meeting or meetings held between them within that time, the dispute must be submitted for resolution under the following subclauses.
- 11.3 If a party wishes to submit a dispute for resolution it must give written notice to the other parties of its wish, within 10 Business Days of expiry of the period referred to in clause 11.2. The parties must then endeavour to agree to an independent expert ("Independent Expert") or arbitrator ("Arbitrator"). Having so agreed, the parties must then jointly appoint and refer the dispute to that Independent Expert or Arbitrator, provided always that where agreement as to the person to hear the dispute cannot be reached then all references must be to an Arbitrator. For the purposes of this Agreement the reference to an Independent Expert is a reference to a person who is, by virtue of his knowledge and experience with respect to the matter for determination, qualified to determine the matter.
- 11.4 If the parties cannot agree under clause 11.3 within 10 business days from the giving of the notice under clause 11.3, the Expert or an Arbitrator shall be appointed by the Australian Commercial Disputes

Centre Ltd (“ACDC”). The ACDC shall assist the parties if required, by providing a list of Experts or Arbitrators.

- 11.5 Any reference to an Expert shall be administered by and in accordance with the Rules of Binding Expert Determination of the ACDC provided that in the event of a claim which is less than \$500,000 or, if more than one, the aggregate of which is less than \$500,000, and in respect of which the Crown denies the operation of the indemnity hereunder the reference will be required to be an Expert only.
- 11.6 In the event of any claim not coming under clause 11.5 hereof and in respect of which the Crown denies the operation of the indemnity, which denial is disputed by ABM, the dispute shall be determined by arbitration.
- 11.7 Any determination required, shall be referred to a single arbitrator if the parties agree upon one but in default of such agreement, the dispute shall be referred to three arbitrators. In the event of such dispute, each party shall appoint one arbitrator and the third arbitrator shall be appointed by agreement between the arbitrators so appointed or in default of agreement, then by the ACDC. The ACDC may assist the parties by providing a list of arbitrators. The arbitrator(s) may:
- (a) consult, with or without the parties and their representatives, any expert

consultant whom they may think proper to consult and they may adopt as they see fit, the opinion of the expert consultant in making an award; and/or

- (b) retain the services of an assessor to advise them in relation to technical matters. The assessor shall sit with the arbitrator(s) during the hearing of all technical evidence and may take part in the hearing. The arbitrator(s) may consult with the assessor with or without the parties and their representatives and may act upon the advice of the assessor as they see fit.

The arbitrator(s) shall seek advice from a consultant or assessor with relevant expertise in relation to relevant technical issues of fact or opinion which are in dispute. The costs of the consultant and/or assessor including the costs of obtaining his/her opinion shall be dealt with as part of the costs and expenses of the arbitration.

- 11.8 The arbitration shall be held in Hobart or in such other place as the parties may agree in accordance with and subject to the laws of the State of Tasmania. The procedures for the arbitration shall be in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration. The costs of the arbitration shall be shared equally by the parties.

- 11.9 The Arbitrator's or Independent Expert's decision, including any decision as to an expense arising from the dispute, is final and binding on the parties.
- 11.10 Within 10 Business Days of written request by the Arbitrator or Independent Expert, each party must provide to the Independent Expert or Arbitrator and the other party all relevant information in its possession and must use all reasonable endeavours to ensure that its employees, agents and consultants are available to provide further information required by the Independent Expert or Arbitrator. If a party makes a written submission to the Independent Expert or Arbitrator it must at the same time provide a copy of the submission to the other party.
- 11.11 The Arbitrator or Independent Expert must resolve the dispute and notify the parties of the resolution within 1 month from the date of the Arbitrator's or Independent Expert's appointment or within such other period as the Arbitrator or Independent Expert reasonably determines in light of the nature of the dispute.
- 11.12 No party may commence or maintain any action by way of legal proceedings relating to the dispute until it has been resolved under this clause, except to enforce this clause.
- 11.13 The costs of a reference either to an Arbitrator or an Independent Expert shall be met equally by the parties unless

determined otherwise by the Arbitrator or Independent Expert as the case may be.

- 11.14 Notwithstanding the foregoing, the parties may at any time refer to the Supreme Court of Tasmania, a dispute involving a question of law.
- 11.15 In the event that the ACDC does not exist at the time of any dispute or is unable to assist the parties in connection with a dispute in the absence of agreement between the parties the matter in dispute shall be determined pursuant to the provisions of the Commercial Arbitration Act 1986 (Tas).

12 Termination by Crown

12.1 If:

- (a) ABM or Ivanhoe fails to:
- (i) comply with clauses 4.1(a), (b) or (c) or
 - (ii) comply in any material respect with any of its other obligations under this Agreement; and
- (b) ABM or Ivanhoe fails to remedy any such breach or fails to make or continue to make reasonable progress towards the remedying of any such breach, within 45 Business Days of having been notified of that breach by the Crown (or such longer period as by the Crown in its discretion may allow),

the Crown may, subject to clauses 12.2 and 12.3, terminate this Agreement by notice in writing to ABM and Ivanhoe, that notice being effective immediately upon its receipt by ABM.

12.2 In the event that the breach the subject of a notice under clause 12.1 is referred to arbitration or expert determination under Clause 11 hereof within 10 days of receipt of that notice and ABM is unsuccessful in that process, the parties agree that the 45 Business Days notice period under clause 12.1 runs from the formal notice of determination of the arbitration proceedings.

12.3 Where a financier having a security interest in the Leased Land by arrangement with ABM has notified the Crown in writing of that interest the Crown will endeavour to provide, contemporaneously with notice to ABM under the preceding sub-clause, notice to that financier (to its last known address) of which it has been notified, allowing that party to elect, at its option, to remedy the breach of ABM within the time allowed to ABM under clause 11.1, where the financier concerned believes that ABM will not cure its default within the time allowed it.

13 Termination by ABM

13.1 If:

- (a) the Crown fails to comply in any material respect with its obligations under this Agreement;
- (b) the Crown has failed to remedy any such breach or has failed to make or continue to make reasonable progress towards the remedying of any such breach within 45 Business Days of having been notified of that breach by ABM (or such longer period as by ABM in its discretion may allow),

ABM may, subject to clause 13.2, terminate this Agreement by notice in writing, that notice being effective immediately upon its receipt by the Crown.

- 13.2 In the event that the breach the subject of a notice under clause 13.1 is referred to arbitration or expert determination under Clause 11 hereof within 10 days of receipt of that notice and the Crown is unsuccessful in that process, the parties agree that the 45 Business Days notice period under clause 13.1 runs from the formal notice of determination of the arbitration proceedings or expert determination.

14 Notices

- 14.1 All notices, requests demands and other communications hereunto shall be in writing and shall be deemed to have been duly given or supplied if delivered in person or sent by facsimile to the party concerned at its address as follows:

- (a) For the purposes of sub-clauses 4.2(a), 4.3 and 4.4 only:

The Attorney General for the State of
Tasmania
1st Floor
Franklin Square Offices
Franklin Square
HOBART Tas 7000

Facsimile: (03) 62240 617

- (b) For all other purposes herein:

The Chief Executive
Major Projects Tasmania
22 Elizabeth Street
HOBART Tas 7000

Facsimile (03) 62335 711

ABM: The Managing Director
Australian Bulk Minerals
180 Moggill Road
TARINGA QLD 4068
Facsimile: (07) 3871 2720

IVANHOE: Ivanhoe Capital Pte Ltd
International Head office
No. 1 Temasek Avenue
37th floor
Millenia Tower
SINGAPORE 039192
Facsimile: (0015) 65 338 8228

- 14.2 A notice sent by facsimile (provided the sending facsimile machine produces a print-out of the time, date and uninterrupted transmission record of the

sending of the notice and the original of the notice is despatched immediately by prepaid post or airmail if overseas) shall be deemed served immediately upon completion of sending if such completion is within business hours in the place where the addressee's facsimile machine is located, but if not, then at 9.00 am on the next following business day in such place.

- 14.3 A party may at any time designate a substitute address for the purposes of this Clause 14 by notice in writing to the other parties.

15 General

Variation

- 15.1 The parties may from time to time, by agreement in writing, add to or substitute or cancel or vary all or any of the provisions of this Agreement for the purpose of more effectively or satisfactorily implementing or facilitating any of the objects of this Agreement PROVIDED THAT no such agreement shall take effect except as provided under this clause.
- 15.2 The Minister shall cause any agreement made pursuant to sub-clause 15.1 to be laid before each House or Parliament of Tasmania within 14 sitting days next following its execution.
- 15.3 Either House may, within 14 sitting days of that House after the agreement has been laid before it, pass a resolution

disallowing the agreement but if on the last day on which the agreement might have been disallowed neither House has passed such a resolution, the agreement shall have effect from and after that last day.

Governing Law

15.4 This Agreement shall be governed by the law for the time being in force in the State of Tasmania and each of the parties irrevocably and unconditionally submits to the jurisdiction of the Courts of the State of Tasmania.

Force Majeure

15.5 If a party (the “**affected party**”) becomes unable, wholly or in part, by Force Majeure, to carry out an obligation placed on it under this agreement:

- (a) the affected party must give to the other parties prompt, written notice of:
 - (i) reasonable particulars of the Force Majeure; and
 - (ii) so far as is known, the probable extent to which the affected party will be unable to perform or be delayed in performing its obligations
- (b) the relevant obligation so far as it is affected by the Force Majeure, will be suspended during but no longer than the delay occasioned by the

continuance of the Force Majeure;
and

- (c) the affected party must be duly diligent to overcome or remove the Force Majeure as quickly as possible.

Assignment

15.6 Neither ABM nor Ivanhoe may assign, mortgage, declare itself a trustee or deal with, any of its rights under this Agreement, or create a joint venture, partnership or similar arrangement with any other person in relation to the Project, unless:

- (a) the prior written approval of the Crown has been given (which approval shall not be unreasonably withheld) and any conditions to an approval imposed at the reasonable discretion of the Crown have been satisfied; and
- (b) the proposed assignee or transferee first enters into a deed in favour of the Crown assuming all the liabilities and obligations of ABM or Ivanhoe (as the case may be) under this Agreement.

15.7 If ABM ceases, for any reason, to be a subsidiary (as that term is defined in the Corporations Law) of Ivanhoe without the prior written approval of the Crown (which approval shall not be unreasonably withheld), ABM shall be deemed to be in breach of this Agreement and the provisions of clause 12 shall apply.

- 15.8 The Crown agrees to approve any assignment by way of security of ABM's rights or obligations hereunder to a lending institution approved of by the Crown and which has previously agreed in a written undertaking in favour of the Crown in the form of the schedule hereto (or as otherwise first agreed by the Crown) to be bound to observe the same terms and conditions as ABM undertakes herein.

Costs

- 15.9 The parties hereto will pay their own costs of and associated with the preparation and execution of this Agreement other than for stamp duty, which will be the responsibility of ABM.

Inconsistency with State Law

- 15.10 Where any inconsistency arises between any provision or term of this Agreement and any provision of any current or future law of the State, the provision of term of the Agreement prevails unless subsequent legislation expressly provides otherwise.

Whole of Agreement

- 15.11 The covenants and provisos contained in this Agreement, expressly or by necessary statutory implication, cover and comprise the whole of the Agreement between the parties. It is accordingly expressly agreed and declared by them that no further or other covenants or provisions shall be deemed to be implied in this Agreement or arise between the parties by way of collateral or other agreement by reason of any promise, representation, warranty or

undertaking, given or made by any party to another on or prior to the execution of this Agreement and the existence of any such implication or collateral or other agreement is hereby negated.

IN WITNESS this Agreement has been executed by the parties on the day and year appearing next to their respective signatures.

EXECUTED as an agreement

Schedule

Benefited Party: To the Crown in right of the State of Tasmania (the "Crown")

The Company: Goldamere Pty Ltd.
ACN 073 634 581 trading as Australian Bulk Minerals ("ABM")

..... (the "Financial Institution") asks the Crown to accept this Undertaking in connection with an Agreement between the Crown and ABM dated day of 1996 (the Agreement).

The Financial Institution undertakes to perform, fulfil and complete any of the obligations of ABM under the Agreement which are still to be performed, fulfilled or completed, always to the satisfaction of the Crown (in the manner provided in the Agreement) and within the time and in the manner contemplated by the Agreement.

To the extent required by law the Financial Institution will make application for the transfer of any rights of whatever kind held by ABM in respect of the Agreement forthwith upon this Undertaking coming into operation by notification.

Alterations to the terms of the Agreement or any extensions of time or any other forbearance by the Crown or ABM will not impair or discharge the Financial Institution's liability under this Undertaking.

Subject to execution and delivery by the Financial Institution and acceptance by the Crown of this Undertaking the Financial Institution will be treated in all respects as an approved assignor under the Agreement

and have all rights and liabilities thereunder as if it had been named in the Agreement in lieu of ABM.

This Undertaking remains in force for the term of the Agreement.

DATED this day of 199 .

EXECUTED AS A DEED

Execution page

SIGNED SEALED AND DELIVERED)
 this 26th day of September 1996)
 for and on behalf of **THE CROWN IN**)
RIGHT OF THE STATE OF)
TASMANIA by **ANTHONY MAXWELL**) **TONY RUNDLE**
RUNDLE being and as the Premier and)
 Minister for State Development for the)
 time being for the State of Tasmania)
 in the presence of:)

C. BROOKS

SIGNED SEALED AND DELIVERED)
 this 26th day of September 1996)
 for and on behalf of **THE CROWN IN**)
RIGHT OF THE STATE OF)
TASMANIA by **PETER CURTIS**) **PETER HODGMAN**
LEIGH HODGMAN being and as the)
 Minister for Environment and Land)
 Management for the time being for the)
 State of Tasmania in the presence of:)

C. BROOKS

THE COMMON SEAL of GOLDAMERE)
PTY LTD ACN 073 634 581)
 was hereunto affixed this 26 day of)
SEPTEMBER 1996 by)
GORDON SMITH)
 a Director and the Secretary thereof) **GORDON SMITH**
 in the presence of:)

P. DARROUZET

SIGNED SEALED AND DELIVERED)
 by **GORDON L TOLL** for and on behalf)
 of **IVANHOE CAPITAL PTE LTD**) **G. L. TOLL**
 in the presence of:)

P. DARROUZET

*[Second reading presentation speech made in:-
House of Assembly on 15 and 16 October 1996
Legislative Council on 22 October 1996]*