

Western Australia

**Mineral Sands (Eneabba) Agreement
Amendment Act 2008**

As at 10 Dec 2008

No. 45 of 2008

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Western Australia

Mineral Sands (Eneabba) Agreement Amendment Act 2008

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Western Australia

Mineral Sands (Eneabba) Agreement Amendment Act 2008

No. 45 of 2008

An Act to amend the *Mineral Sands (Eneabba) Agreement Act 1975*.

[Assented to 10 December 2008]

The Parliament of Western Australia enacts as follows:

s. 1

1. Short title

This is the *Mineral Sands (Eneabba) Agreement Amendment Act 2008*.

2. Commencement

This Act comes into operation as follows —

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

3. Act amended

This Act amends the *Mineral Sands (Eneabba) Agreement Act 1975*.

4. Section 2 amended

In section 2 before the definition of *the Agreement* insert:

the 2008 Variation Agreement means the agreement a copy of which is set out in Schedule 3;

5. Section 5 inserted

After section 4 insert:

5. 2008 Variation Agreement

- (1) The 2008 Variation Agreement is ratified and its implementation is authorised.
- (2) Without limiting or otherwise affecting the application of the *Government Agreements Act 1979*, the 2008 Variation Agreement operates and takes effect despite any other Act or law.

6. **Schedule 3 inserted**

After Schedule 2 insert:

Schedule 3 — The 2008 Variation Agreement

[s. 2]

THIS AGREEMENT is made this 28th day of July 2008

BETWEEN

THE HONOURABLE ALAN JOHN CARPENTER MLA.,
Premier of the State of Western Australia acting for and on behalf
of the said State and its instrumentalities from time to time (**State**)

AND

ILUKA RESOURCES LIMITED ACN 008 675 018 of Level 23,
140 St Georges Terrace, Perth, Western Australia (**Company**).

RECITALS

- A. The State and the Company are now the parties to the agreement dated 27 June 1975 which was ratified by and is scheduled to the *Mineral Sands (Eneabba) Agreement Act 1975* and which as subsequently varied is referred to in this Agreement as the “*Principal Agreement*”.
- B. In order to prolong the economic life of its Narngulu mineral processing facilities as the quantities of heavy mineral concentrates produced from the Mining Lease diminish, the Company wishes, as part of its operations under the Principal Agreement, to handle at such facilities the separation into heavy minerals of heavy mineral concentrates produced from its Jacinth-Ambrosia Project in South Australia and, with the Minister’s consent, of heavy mineral concentrates produced by itself or third parties from other projects within Australia or overseas.
- C. The State for the purpose of promoting the development of the heavy minerals sands industry generally in Western Australia and employment opportunities generally in the Mid-West region

of Western Australia has agreed to vary the Principal Agreement upon the terms and conditions set out in this Agreement to enable the Company to undertake such new activities as part of its operations under the Principal Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Subject to the context, the words and expressions used in this Agreement have the same meanings respectively as they have in and for the purpose of the Principal Agreement.
2. The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 2008 or such later date as the parties may agree.
3.
 - (1) Clause 4 does not come into operation unless or until an Act passed in accordance with clause 2 ratifies this Agreement.
 - (2) If by 31 December 2008, or such later date as may be agreed pursuant to clause 2, clause 4 has not come into operation then unless the parties hereto otherwise agree this Agreement shall cease and determine and neither party hereto shall have any claim against the other party with respect to any matter or thing arising out of done performed or omitted to be done or performed under this Agreement.
 - (3) On clause 4 coming into operation all the provisions of this Agreement will operate and take effect despite any enactment or other law.
4. The Principal Agreement is hereby varied as follows:
 - (1) in clause 1:
 - (a) by inserting the following new definitions in their appropriate alphabetical position:

“Jacinth-Ambrosia Project” means the project, currently being undertaken by the Company, in the Eucla Basin of South Australia for the mining and concentration of rock soil or sand bearing heavy minerals;

“Narngulu mineral processing facilities” means the Meru separation plant, the Narngulu synthetic rutile plant and associated facilities constructed under this Agreement at Narngulu;

“Non-Mining Lease ore” means any rock soil or sand bearing heavy minerals mined from areas other than within the Mining Lease and whether within or outside Australia;

- (b) by deleting the definition of “heavy mineral concentrates” and substituting the following new definition:

“heavy mineral concentrates” means:

- (a) ore;
(b) Non-Mining Lease ore,

concentrated prior to separation into component heavy minerals;”

- (2) in clause 6C(2) by deleting “section 40(1)(b)” and substituting “Part IV”;
- (3) by deleting “If” at the beginning of clause 7 and substituting “Subject to Clause 7A, if”;
- (4) by inserting after clause 7 the following new clause:

“Non-Mining Lease heavy mineral concentrates

- 7A. (1) During the continuance of this Agreement and while the Company is still mining ore from the Mining Lease the Company may, subject to the EP Act and the other provisions of this Agreement, submit to the Minister its fully detailed proposals (including, in connection with any proposed new works or modifications to existing works, plans where practicable and specifications where reasonably required by the Minister and any other details normally required by a local government in whose

area any such new or modified works are to be situated) with respect to the separation into heavy minerals at the Narngulu mineral processing facilities of heavy mineral concentrates produced from the Jacinth-Ambrosia Project, and subject to subclause (5) from other Non-Mining Lease ore, and if the Company so wishes the production at the Narngulu mineral processing facilities of heavy mineral products from such heavy minerals, and the transport and shipment of such heavy minerals and heavy mineral products produced which proposals shall include the location, area, lay-out, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters:

- (a) the unloading and storage at the port of heavy mineral concentrates to be used in such operations;
- (b) the transport by road of such heavy mineral concentrates from the port to the Narngulu mineral processing facilities;
- (c) the modification or expansion of the Narngulu mineral processing facilities including, without limitation, by the construction of new works as part of those facilities;
- (d) the separation of such heavy minerals concentrates into heavy minerals;
- (e) the production (if the Company so wishes) of any heavy mineral products from such heavy minerals

- including, without limitation,
synthetic rutile from ilmenite;
- (f) water supplies;
 - (g) gas and electricity supplies;
 - (h) the transport by road of such heavy minerals and heavy mineral products from the Narngulu mineral processing facilities to the port for export;
 - (i) storage and ship loading facilities at the port for such export;
 - (j) the storage upon the Mining Lease during the continuance of this Agreement of monazite and any other heavy minerals separated from the heavy mineral concentrates;
 - (k) disposal of waste rock and tailings;
 - (l) any other works, services or facilities desired by the Company in connection with the proposed operations; and
 - (m) subject to subclause (5)(c), any leases, licences or other tenure of land required from the State;
 - (n) measures to be taken for the protection and management of the environment including rehabilitation and/or restoration of storage areas upon the Mining Lease.
- (2) Any of the proposals pursuant to subclause (1) may with the approval of the Minister, be submitted separately and in any order as to the matters mentioned in one or more of paragraphs (a) to (n) of subclause (1). Until all of its proposals under

this Clause have been approved the Company may withdraw and may resubmit any proposal but the withdrawal of any proposal shall not affect the obligations of the Company to submit a proposal under this Clause in respect of the subject matter of the withdrawn proposal.

- (3) The Company shall, whenever any of the following matters referred to in this subclause are proposed by the Company (whether before or during the submission of proposals under this Clause), submit to the Minister details of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that it proposes to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia, together with its reasons therefore and shall, if required by the Minister, consult with the Minister with respect thereto.
- (4) The provisions of subclauses (5) and (6) of Clause 6B and the provisions of Clause 6C shall mutatis mutandis apply to detailed proposals submitted pursuant to this Clause including pursuant to subclause (6) of this Clause. For the avoidance of doubt the reference in subclause (1)(b) of Clause 6C to “subclause (3) of Clause 6B” is to be read as a reference to subclause (1) of this Clause.
- (5) Notwithstanding any other provisions of this Agreement the Company shall not without the Minister’s prior consent submit proposals under this Clause:
 - (a) in respect of more than 600,000 tonnes (in aggregate) of heavy minerals concentrates; or

- (b) in respect of heavy mineral concentrates obtained other than from the Jacinth-Ambrosia Project; or
 - (c) for the grant of any leases, licences or other tenure to support the undertaking of operations pursuant to such proposals; or
 - (d) to bring heavy mineral concentrates into Western Australia otherwise than through the port or to export heavy minerals or heavy mineral products obtained from such heavy minerals otherwise than through the port.
- (6) Subject to subclause (5) if the Company at any time during the continuance of this Agreement desires to significantly modify expand or otherwise vary its activities in relation to Non-Mining Lease ore that are the subject of this Agreement and that may be carried on by it pursuant to this Agreement beyond those activities specified in any proposals submitted and approved pursuant to this Clause it shall give notice of such desire to the Minister and shall within 2 months thereafter submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in subclause (1) as the Minister may require.
- (7) To avoid doubt the parties acknowledge that the provisions of this Agreement do not apply to the mining of Non-Mining Lease ore, the production of heavy mineral concentrates from such ore or to the transport of such heavy mineral concentrates to Western Australia.”;

- (5) in clause 12 by inserting the following new subclause:
- “(17) This Clause does not apply to the transport of heavy mineral concentrates produced from Non-Mining Lease ore or to heavy minerals or heavy mineral products produced from such heavy mineral concentrates.”;
- (7) by inserting in clause 20 the following new subclause:
- “(4) (a) In this subclause :
- “Mining Lease heavy mineral concentrates” means ore concentrated prior to separation into component heavy minerals; and
- “Non-Mining Lease heavy mineral concentrates” means Non-Mining Lease ore concentrated prior to separation into component heavy minerals.
- (b) The Company may with the approval from time to time of the Minister blend a heavy mineral resulting from the separation of Mining Lease heavy mineral concentrates with the same type of heavy mineral resulting from the separation of Non-Mining Lease heavy mineral concentrates.
- (c) The authority given under paragraph (b) is subject to the Minister being reasonably satisfied that there is in place adequate systems and controls for the correct apportionment between the Mining Lease and the areas from within which Non-Mining Lease ore is being mined of the quantities of the relevant heavy mineral being blended and which systems and controls monitor production, concentration, processing, transportation, stockpiling and shipping activities in respect of all such blended heavy minerals. If at any time the Minister ceases to be so satisfied he may,

after consulting the Company and provided that Company has not within three (3) months after the commencement of such consultation addressed the matters of concern to the Minister to his satisfaction, by notice in writing to the Company suspend the above authority in respect of the relevant blending arrangements until he is again satisfied in terms of this paragraph (c).

- (d) If any blending occurs as contemplated by this subclause then for the purposes of calculating royalty as provided in subclause (1) on the quantity of heavy mineral resulting from the separation of Mining Lease heavy mineral concentrates and used in the admixture, the gross sale price of the blended heavy mineral product as set out in the invoices relating to the sale (and converted if necessary to Australian currency in accordance with the *Mining Regulations 1981*) shall be apportioned to the abovementioned quantity of heavy mineral (as its gross invoice value) in the same proportion as that quantity of heavy mineral bears to the total quantity of the blended heavy mineral product.” ;

(8) by deleting clause 23; and

(9) by inserting after clause 39 the following new clause:

“Term of Agreement

39A. Subject to the provisions of Clauses 32 and 33, this Agreement shall expire on the earlier of:

- (a) the date occurring 5 years (or with the Minister’s approval such longer time not exceeding 7 years) after the Company ceases to mine ore from the Mining Lease; and

(b) the expiration or sooner determination of the Mining Lease.”

EXECUTED as a deed.

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

A J Carpenter

Name
Kent Frederick Alott

Kent Alott

THE COMMON SEAL of)
ILUKA RESOURCES LIMITED)
ACN 008 675 018 was hereto affixed) [C.S.]
in accordance with its constitution)
in the presence of:)

David Robb

Director

C. Wilson

~~Director~~/Secretary

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