

01-16-2002



IN THE

101948010

RADEMARK OFFICE

1-9-02

In Re the Application of:

TOTA et al.

Serial No.: 09/794,202

Filed: February 26, 2001

Atty. File No.: 3957-72

For: CARTRIDGE SHELL AND  
CARTRIDGE FOR BLAST HOLES  
AND METHOD OF USE

) Group Art Unit: 3641

) Examiner:

) RECORDATION OF ASSIGNMENT

) CERTIFICATE OF MAILING

) I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS  
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) SHERIDAN ROSS P.C.

BY: Christine Jacquet

BOX ASSIGNMENTS  
Commissioner of Patents  
Washington, D.C. 20231

Dear Sir:

Please record the attached original documents or copy thereof:

1. Name of conveying party(ies):

Edward Tota

2. Name and address of receiving party(ies):

RockTek Limited  
Lot 333 Harries Way  
Pinjarra, WA 6208 Australia

3. Nature of Conveyance:

☐ Assignment ☐ Merger  
☐ Security Agreement ☐ Change of Name  
☒ Other: Executive Service Agreement

Execution Date: 12/19/97

4. Application number(s) or patent number(s)

If this document is being filed together with a new application, the execution date of the application is:

01/15/2002 TDIAZ1 00000256 09794202

01 FC:581

40.00 DP

**PATENT**  
**REEL: 012456 FRAME: 0230**

- A. Patent Application No.(s): 09/794,202  
B. Patent No.(s): None.

5. Name and address of party to whom correspondence concerning documents should be mailed:

Robert D. Traver  
Sheridan Ross P.C.  
1560 Broadway, Suite 1200  
Denver, Colorado 80202-5141

6. Total number of applications and patents involved: 1.

7. Total fee (37 CFR 3.41).....\$40.00.

☒ Enclosed

☒ Any deficiency in payment of recording fee is authorized to be charged to Deposit Account.

☐ Authorized to be charged to deposit account.

8. Deposit account number: 19-1970.

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Total number of pages including cover sheet, attachments and document: 20

Respectfully submitted,

SHERIDAN ROSS P.C.

By: Robert D. Traver  
Robert D. Traver  
Registration No. 47,999  
1560 Broadway, Suite 1200  
Denver, Colorado 80202-5141  
(303) 863-9700

Date: 1 November 2001

**EXECUTIVE SERVICE AGREEMENT**

Between

**BRANDRILL LIMITED**  
(A.C.N. 061 845 529)  
("the Company")

and --

**EDWARD W TOTA**  
("the Executive")

*WJ B.*

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EXECUTIVE SERVICE AGREEMENT made the 19 day of December 1997

BETWEEN

BRANDRILL LIMITED (A.C.N. 061 845 529) a company incorporated in Western Australia and having its registered office at Lot 236 Butler Street, Pinjarra, Western Australia ("Company")

AND

EDWARD W TOTA of 26 Barton Street Parkes New South Wales 2820 ("Executive")

IT IS AGREED:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement, unless the context otherwise requires:

"Board" means the Board of Directors of the Company.

"Commencement Date" has the meaning given in clause 3.

"Complying Superannuation Fund" means a superannuation fund which is a complying superannuation fund as defined in section 267 of the Income Tax Assessment Act 1936.

"Confidential Information" has the meaning given in clause 10.

"CPI Rate" shall mean an amount calculated by multiplying the Remuneration paid immediately prior to a Review Date by a fraction obtained by dividing the Consumer Price Index All Groups (Weighted Average of Eight Capital Cities) as determined immediately prior to that Review Date by the Consumer Price Index All Groups (Weighted Average of Eight Capital Cities) as determined immediately prior to the previous Review Date or the Commencement Date (as the case may be). For the purposes hereof the Consumer Price Index All Groups (Weighted Average of Eight Capital Cities) means the Consumer Price Index All Groups (Weighted Average of Eight Capital Cities) published from time to time by the Australian Bureau of Statistics. In the event of the discontinuance or suspension of the Consumer Price Index as aforesaid then the method of adjustment of the Remuneration in relation to the Consumer Price Index as defined shall cease and thereafter the basis of any variation in lieu of the Consumer Price Index shall be a principal measure of the rate of economic inflation determined by a valuer nominated by the Company and the Executive and in default of agreement by the President from the time being of the Australian Society of Accountants, Western Australian Branch such valuer acting as an expert whose decision shall be final

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and binding on the Company and the Executive. The costs of such determination shall be borne by the Company.

"Documents" includes software (including source code and object code versions), manuals, diagrams, graphs, charts, projections, specifications, estimates, records, concepts, documents, accounts, plans, formulae, designs, methods, techniques, processes, supplier lists, price lists, customer lists, market research information, correspondence, letters and papers of every description, including all copies of and extracts from any of the same.

"Employment" means the employment of the Executive under this Agreement.

"Executive Remuneration Package" means the sum of the remunerations for salary, superannuation and motor vehicle referred to in clauses 5, 6 and 8 of this agreement.

"Expiry Date" has the meaning given in clause 3.

"Remuneration" means the annual remuneration specified in clause 5.1 as reviewed from time to time in accordance with clause 5.1.

"Review Date" means the anniversary date of the Commencement Date in each year during the continuance of this Agreement.

"subsidiary" has the meaning given in section 9 of the Corporations Law.

"Term" has the meaning given in clause 3.

## 1.2 Interpretation

In this Agreement:

- (a) clause headings are inserted for convenience only and will be ignored in the interpretation of this Agreement;

and unless the context otherwise requires:

- (b) references to a clause will be construed as references to a clause of this Agreement;
- (c) references to this Agreement or to any specified provision of this Agreement or to any other agreement or document will be construed as references to this Agreement or the specified provision of this Agreement or that other agreement or document as amended or substituted with the agreement of the relevant parties and in force at any relevant time;

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- (d) references to any statute, ordinance or other law include all regulations and other enactments thereunder and all consolidations, amendments, re-enactments or replacements thereof;
- (e) words importing the singular include the plural and vice versa. words importing a gender include other genders and references to a person will be construed as including an individual, the estate of an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency.

## 2. ENGAGEMENT

The Company will employ the Executive and the Executive will serve the Company as General Manager - Rockbreaking Solutions Australia Pty Ltd. The Executive's appointment as General Manager will continue only as long as he is employed by the Company under this Agreement and is willing so to act. The Executive will also assist the Managing Director on special projects as required including the

## 3. TERM

- (a) Subject to the provisions for termination of this Agreement hereinafter contained, the Employment shall be for a term of three (3) years, commencing on the date of this agreement ("Commencement Date") and terminating on midnight on the day before the 3rd anniversary of the Commencement Date ("the Expiry Date"), the term being referred to as "the Term".
- (b) Not less than three (3) months prior to the Expiry Date, the parties shall endeavour to negotiate a new contract for the employment of the Executive from the day after the Expiry Date, but if the parties cannot agree on the terms by the Expiry Date the Company shall be under no obligation to negotiate further with the Executive, whereupon his employment will terminate on the Expiry Date and without any liability on the part of the Company other than for Remuneration and other entitlements due to the Executive up to and including that date.

## 4. DUTIES

### 4.1 Executive to serve Company

The Executive will:

- (a) assume and exercise the powers and perform the duties from time to time vested in or assigned to him by the Board or any officer or employee

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authorised by it for that purpose and will comply in all respects with the directions and regulations given or made by the Board or any such officer or employee;

- (b) well and faithfully serve the Company and its subsidiaries and use his best endeavours to promote their interest and welfare;
- (c) unless absent on leave as provided in this Agreement or through illness or involuntary injury, or subject to Board approval to the contrary, devote the whole of his time and attention to the business of the Company and its subsidiaries during the normal working hours of the Company and at such other times as may be reasonably necessary; and
- (d) perform such services for the Company's subsidiaries and, without further Remuneration unless otherwise agreed, accept such offices in such subsidiaries as the Board may from time to time reasonably require.

#### 4.2 Other activities

Notwithstanding clause 4.1, during the continuance of this Agreement, the Executive may devote time and attention to his other business interests and affairs so long as such activities in the reasonable opinion of the Company do not conflict or interfere with the performance of the Executive's obligations under this Agreement and the Executive agrees that if at any time the Company, by notice in writing, informs the Executive of any such conflict or interference, he shall immediately cease such activity.


#### 4.3 Executive not to accept inducements

The Executive must not accept any payment or other benefit in money or in kind from any person as an inducement or reward for any act or forbearance in connection with any matter or business transacted by or on behalf of the Company or its subsidiaries.

#### 4.4 Executive to maintain records

The Executive will maintain in reasonable order all relevant documents, receipts, papers, log books, books, records, notes, minutes, dockets and diaries in relation to any fringe benefit provided to him (within the meaning of section 136(1) of the Fringe Benefits Tax Assessment Act 1986) and will promptly, and in any case not more than 5 days following a request for the same by or on behalf of the Company, produce and surrender them to the Company.

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## 5. Remuneration

### 5.1 Executive to receive Remuneration package

The Company will remunerate the Executive for his services with an Executive Remuneration Package to a total value of : annum (

) to be paid or satisfied in a manner agreed to by the Executive and the Company from time to time, which value will be reviewed annually on each Review Date in such manner as the parties mutually agree PROVIDED THAT (

### 5.2 Remuneration payable fortnightly

That part of the Remuneration that comprises salary from time to time is payable in equal fortnightly instalments in arrears or otherwise as agreed.

### 5.3

### 5.4 Incentive Schemes

The Company shall:

- (a) allow the Executive to subscribe for shares or other securities in the Company in accordance with any employee share or option incentive scheme, as the Board may approve from time to time, subject to compliance with the ASX Listing Rules and the Corporations Law; and
- (b) allow the Executive to subscribe for additional shares in the Company other than in accordance with any incentive scheme, subject to compliance with the ASX Listing Rules and the Corporations Law.

### 5.5

In the event that the Company acquires a share of the either directly or through a joint venture company, the Company agrees to grant to the Executive an irrevocable option for a period not less than 2 years and not more than 5 years after the date of acquisition of the mine, to purchase up to two per

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cent of the Company's share of the equity in the \_\_\_\_\_ at the same price as that originally paid by the Company for each percent of equity in the mine.

If the Company acquires a share of the \_\_\_\_\_ and subsequently disposes of all or part of its share, the Company will pay to the Executive a sum equal to two per cent of the difference between the original purchase price and the disposal price per percent of the Company's equity in the mine for each percent of the Company's equity in the mine disposed of.

## 6. SUPERANNUATION

### 6.1 Company to make contributions

As part of the Executive's Remuneration package provided for in clause 5.1, the Company shall, during the Term, make employer contributions on behalf of the Executive to a Complying Superannuation Fund (with or without death and disability cover attached thereto) nominated by the Executive. The amount of the employer contribution shall be as nominated by the Executive and agreed to by the Company, but shall be not less than the amount required from time to time under superannuation guarantee legislation.

## 7. EXPENSES

### 7.1 General

On provision of all documentary evidence reasonably required by the Company, the Company will, in addition to paying the Executive the Remuneration and other benefits referred to in this Agreement,

performance of his duties in connection with the business of the Company and its subsidiaries.

### 7.2 Telephone and Facsimile

During the Employment the Company shall, in addition to paying the Executive the Remuneration and other benefits referred to in this Agreement, indemnify the Executive against:

(a)

(b)

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### 7.3 Fringe Benefits Tax and Capital Gains Tax

The Company shall pay in addition to paying the Executive the remuneration and

## 8. MOTOR VEHICLE

## 9. LEAVE

### 9.1 Annual Leave

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**9.2 Sick Leave**

In addition to holiday leave as mentioned in clause 9.1, the Executive shall be entitled to sick leave as outlined in clause 5.3, and such leave that is unused shall accrue from year to year PROVIDED HOWEVER THAT accrued sick leave shall not be payable on termination of this Agreement.

**9.3 Long Service Leave**

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vice.

**10. EXECUTIVE'S ACKNOWLEDGMENTS**

The Executive acknowledges that:

- (a) the property of the Company and its subsidiaries includes and will include all trade and business secrets and other confidential information and Documents relating to the affairs or business of the Company and its subsidiaries, or any person with whom the Executive comes into contact as a result of this Agreement, or which come into the Executive's possession in the course and by reason of the Employment, whether or not the same were originally supplied by the Company or its subsidiaries ("Confidential Information");
- (b) the Confidential Information has been and will be acquired by the Company or its subsidiaries at the Company's or the subsidiaries' initiative and expense; and
- (c) the Company and its subsidiaries have expended and will expend effort and money in establishing and maintaining their customer base, employee skills and the Confidential Information.

Accordingly, it is reasonable that the Executive should enter into the representations and warranties contained in this Agreement and that if the Employment is terminated, the Executive should continue to be subject to clauses 11, 12 and 13.

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## 11. CONFIDENTIALITY

The Executive represents and warrants that he will not either during the Employment or at any time thereafter, except in the proper course of his duties under this Agreement or as required by law or by the Company, use or disclose to any person any Confidential Information, and will use his best endeavours to prevent the unauthorised use or disclosure of any such information by third parties.

## 12. DISCOVERIES

### 12.1 Information

The Executive represents and warrants that:

- (a) he will immediately inform the Company of any matter which may come to his notice during the Employment which may be of interest or of any importance or use to the Company or its subsidiaries; and
- (b) he will immediately communicate to the Company any proposals or suggestions occurring to him during the Employment which may be of service for the furtherance of the business of the Company or its subsidiaries.

### 12.2 Inventions

The Executive represents and warrants that:

- (a) he will immediately communicate to the Company any and all processes, inventions, improvements, innovations, modifications and discoveries which he may make either alone or in conjunction with others in connection with or arising out of the Employment and in any way connected with any of the matters in which the Company has been or is now or hereafter interested during the Employment ("Inventions"), whether or not the Inventions are capable of being protected by copyright, letters patent, registered design or other protection ("Protection"), and the Inventions will thereafter be the sole and exclusive property of the Company; and
- (b) he will immediately deliver to the Company full particulars concerning the Inventions and will at the expense of the Company execute all documents and do and execute all such acts, matters and things as may be necessary or reasonable to obtain Protection for the Inventions, and to assign to the Company all rights which may be acquired by it in relation thereto and to vest title thereto in the Company absolutely.

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### 13. NON-COMPETITION

The Executive represents and warrants that he will not without the prior written consent of the Company during the Employment either directly or indirectly in any capacity (including without limitation as principal, agent, partner, employee, shareholder, unitholder, joint venturer, director, trustee, beneficiary, manager, consultant or adviser) carry on, advise, provide services to or be engaged, concerned or interested in or associated with any business or activity which is competitive with any business carried on by the Company or any of its subsidiaries, or be engaged or interested in any public or private work or duties which in the reasonable opinion of the Board may hinder or otherwise interfere with the performance of the Executive of his duties under this Agreement. This clause does not prohibit the holding (whether directly or through nominees) of shares listed on a recognised stock exchange, provided that the Executive does not hold more than ten per cent (10%) of the issued capital of any company other than the Company.

### 14. TERMINATION BY COMPANY

#### 14.1 Grounds for termination

The Company may at its sole discretion terminate the Employment in the manner specified in clause 14.2 if at any time the Executive is or becomes:

- (a) incapacitated by illness, accident or injury of any kind which prevents the Executive from performing his duties under this Agreement for a period of three (3) consecutive months or any periods aggregating three (3) months in any period of 12 months during the term of the Employment; or
- (b) in breach of any of the terms of this Agreement; or
- (c) charged with any criminal offence which in the reasonable opinion of the Board brings the Executive or the Company or any of its subsidiaries into disrepute; or
- (d) bankrupt or makes a composition or arrangement with his creditors generally, or takes advantage of any statute for the relief of insolvent debtors; or
- (e) of unsound mind or a person whose person or estate is liable to be dealt with under any law relating to mental health or guardianship.

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#### 14.2 Company to give notice

Where the Company decides to terminate the Employment for a reason specified in clause 14.1 it will do so in the following manner:

- (a) for a reason specified in clause 14.1(a), by giving not less than one month's written notice at any time after the expiry of the period of three (3) months or periods aggregating three (3) months referred to therein or by paying one month's salary in lieu thereof; or
- (b) for any reason specified in clauses 14.1(b), (c), (d) or (e) by giving notice effective immediately and without payment of any Remuneration or other entitlements, other than Remuneration or entitlements and reimbursement of any expenses as provided by this Agreement, accrued to the date of termination.

#### 14.3 Executive entitled to payment

#### 14.4 Executive to repay amounts owing

- (a) Subject to any agreement to the contrary (including without limitation, the terms of the Employee Share Scheme), on termination of the Employment, the Executive will pay or repay to the Company or its subsidiaries all sums which the Executive then owes the Company and its subsidiaries, whether such sums are then due to be paid or not; and
- (b) Notwithstanding the terms of paragraph (a) above, if the Executive terminates his Employment in accordance with clause 15, all sums which the Executive owes to the Company and its subsidiaries, shall be repaid on the Expiry Date, rather than the earlier date of termination.

#### 14.5 Not to prejudice rights

Termination of the Employment will not prejudice any rights or remedies already accrued to either party under, or in respect of any breach of, this Agreement.

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**15. TERMINATION BY EXECUTIVE**

15.1 The Executive may terminate the Employment in the manner specified in clause 14.2 if at any time the Company:

- (a) is in breach of any of the terms of this Agreement;
- (b) appoints another person to the office of General Manager of the Company whilst the Executive maintains this position in accordance with this Agreement;
- (c) passes a resolution, or has an order made by a Court of competent jurisdiction for the winding up of the Company, other than an order for the purpose of reconstruction or amalgamation;
- (d) has a receiver or receiver and manager appointed to all or any part of its assets or undertaking;
- (e) enters into any scheme of arrangement with its creditors or any class of them;
- (f) passes a resolution to appoint an administrator, or has an administrator appointed to it, pursuant to Part 5.3A of the Corporations Law;
- (g) has a provisional liquidator appointed to it; or
- (h) has an inspector appointed to it pursuant to the Corporations Law to investigate all or any part of the affairs of the Company.

**15.2 Executive to Give Notice**

Where the Executive decides to terminate the Employment for a reason specified in Clause 15.1, he will do so by giving not less than 1 month's written notice to the Company.

**15.3 Payment upon termination**

On termination of the Employment in accordance with this clause 15, the provisions of clauses 14.3, 14.4 and 14.5 shall apply in mutatis mutandis to termination under this clause 15.

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## 16. CONSEQUENCES OF TERMINATION

### 16.1 Deliver up all property

On termination of the Employment, however occurring, the Executive will immediately deliver up to the Company all property belonging to the Company or any of its subsidiaries which is in his possession, including (without limiting the foregoing) the Company's Documents.

### 16.2 Resign offices

On termination of the Employment, however occurring, the Executive at the request of the Board will resign without claim for compensation from any office (including that of director) held by him in the Company or in any subsidiary of the Company. If the Executive fails to do so, the Company is hereby irrevocably authorised to appoint some person in his name and on his behalf to execute all documents and to do all things requisite to give effect thereto.

### 16.3 No representations

After termination of the Employment, however occurring, the Executive will not represent himself as being in any way connected with or interested in the business of the Company or any of its subsidiaries.

### 16.4 Limit to termination/retirement benefits

Nothing contained in this Agreement will oblige the Company to pay or entitle the Executive to receive under this Agreement (if the Executive is a Prescribed Person for the purposes of section 237 of the Corporations Law) any sum of money or other compensation which, when added to any other compensation, lump sum payment, superannuation, retiring allowance, superannuation gratuity or similar payment (excluding any part of any compensation or payment attributable to contributions made by the Executive) would exceed an amount calculated in accordance with section 237(6) of the Corporations Law or any other legislation of a similar nature in force at the date of termination of the Employment.

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**17. DELEGATION AND ASSIGNMENT**

This Agreement is personal to the parties and:

- (a) the Executive will not delegate the performance of the duties set out in this Agreement to any employee or agent of the Company without the prior written consent of the Board or any nominee of the Board; and
- (b) this Agreement will not be assigned by either party without the prior written consent of the other party.

**18. SEVERABILITY**

Any provision of this Agreement which is or becomes illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability and will not invalidate the remaining provisions.

**19. VARIATION**

This Agreement will not be changed or modified in any way subsequent to its execution except in writing signed on behalf of the Company and by the Executive.

**20. NO WAIVER**

Failure or omission by the Company at any time to enforce or require strict or timely compliance with any provision of this Agreement will not affect or impair that provision in any way or the right of the Company to avail itself of the remedies it may have in respect of any breach of any such provision.

**21. NOTICES****21.1 Service of notice**

Any notice, approval, consent or other communication under this Agreement must be in writing, and delivered personally or sent by prepaid registered post or facsimile to a party at the address of that party indicated at the beginning of this Agreement, or to such other address as that party may from time to time notify to the other for the purposes of this clause.

**21.2 Proof of service**

Proof of posting by prepaid registered post or of dispatch of facsimile will be proof of receipt, in the case of a letter, on the third day after posting and in the

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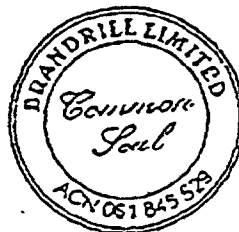
case of facsimile, on the day immediately following dispatch, provided that the sender's facsimile machine produced a simultaneous report of successful transmission.

## 22. GOVERNING LAW

This Agreement is governed by, takes effect and will be construed in accordance with the laws of Western Australia and the parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of Western Australia and courts entitled to hear appeals therefrom.

SIGNED as an agreement.

THE COMMON SEAL of  
BRANDRILL LIMITED  
(A.C.N. 061 845 529)  
was affixed by the authority  
of the Board of Directors  
in the presence of:



*[Signature]*  
.....  
(Signature of Secretary/Director)

*Matthew Joseph Whyte*  
.....  
(Name of Secretary/Director in Full)

*[Signature]*  
.....  
(Signature of Director)

*JEFFREY W BRANSON*  
.....  
(Name of Director in Full)

SIGNED by  
EDWARD W TOTA in the presence of:

*[Signature]*  
.....  
(Signature)

*[Signature]*  
.....  
(Signature of Witness)

*David Howard Jones*  
.....  
(Name of Witness in Full)

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*[Signature]*