

Schedule 1

[s. 3]

THIS AGREEMENT is made the 16th day of October 1995

BETWEEN

THE HONOURABLE RICHARD FAIRFAX COURT B.Com., M.L.A.,
Premier of the State of Western Australia, acting for and on behalf of the said
State and its instrumentalities from time to time (hereinafter called “the State”)
of the one part,

AND

BHP DIRECT REDUCED IRON PTY. LTD. ACN 058 025 960 a company
incorporated in the State of Western Australia and having its principal office at
Level 18, 200 St. George’s Terrace, Perth (hereinafter called “the Company” in
which term shall be included its successors and permitted assigns) of the other
part.

W H E R E A S:

- (a) the Company proposes to establish and operate a direct reduction plant at
Port Hedland capable of processing iron ore to produce at least one (1)
Mt/a of direct reduced iron; and
- (b) the State, for the purpose of promoting employment opportunity and
industrial development and in particular the establishment of further
processing facilities in Western Australia, has agreed to assist the
establishment and operation of the direct reduction plant upon and subject
to the terms of this Agreement.

NOW THIS AGREEMENT WITNESSES:

Definitions

1. In this Agreement subject to the context —

“**Acquisition Act**” means the *Public Works Act 1902*;

“**advise**”, “**apply**”, “**approve**”, “**approval**”, “**consent**”, “**certify**”,
“**direct**”, “**notify**”, “**request**”, or “**require**”, means advise, apply,
approve, approval, consent, certify, direct, notify, request, or require in
writing as the case may be and any inflexion or derivation of any of those
words has a corresponding meaning;

“**approved proposal**” means a proposal approved or deemed to be
approved under this Agreement;

“**Clause**” means a clause of this Agreement;

“**Commonwealth**” means the Commonwealth of Australia and includes the Government for the time being thereof;

“**Company’s workforce**” means the persons (and the dependants of those persons) engaged whether as employees, agents or contractors in the construction and operation of the facilities to be established pursuant to approved proposals;

“**Disposal Facilities**” means facilities on the Disposal Site for the storage or disposal of residues from the Project and from a project for handling and beneficiating iron ore established at Port Hedland under an agreement between the State and BHP Direct Reduced Iron Pty Ltd, together with ancillary facilities necessary for the operation of the Disposal Facilities;

“**Disposal Site**” means the site on which the Disposal Facilities will be established and which the parties anticipate will be within the area depicted as “**Disposal Area**” on the Plan, or such other site approved as the Disposal Site pursuant to approved proposals;

“**DRI Plant**” means a plant on the Plant Site which uses low temperature pyrometallurgical processes to convert iron ore into metallic iron and has a nominal output of at least one million tonnes per annum of direct reduced iron, together with ancillary facilities necessary for the operation of the DRI Plant, which ancillary facilities may include facilities for stockpiling, reclaiming or storage of iron ore, beneficiated iron ore and direct reduced iron, and facilities for conveyance of inputs including water, gas, electricity and feedstock to and outputs including water, direct reduced iron and by products from the DRI Plant;

“**EP Act**” means the *Environmental Protection Act 1986*;

“**Land Act**” means the *Land Act 1933*;

“**laws relating to native title**” means laws applicable from time to time in Western Australia in respect of native title and includes the NTA;

“**local authority**” means the council of a municipality that is a city, town or shire constituted under the *Local Government Act 1960*;

“**Minister**” means the Minister in the Government of the State for the time being responsible for the administration of the Act to ratify this Agreement and, pending the passing of that Act, means the Minister for the time being designated in a notice from the State to the Company and includes the successors in office of the Minister;

“**month**” means calendar month;

“**native title**” and “**native title rights and interests**” have the meanings given to them in the NTA;

“**notice**” means notice in writing;

“NTA” means the *Native Title Act 1993* (Commonwealth);

“person” or “persons” includes bodies corporate;

“Pipelines Act” means the *Petroleum Pipelines Act 1969*;

“Plan” means the plan attached to this Agreement and initialled by or on behalf of the parties hereto for the purposes of identification;

“Plant Site” means the site on which the DRI Plant will be established and which the parties anticipate will be within the area depicted as “Plant Area” on the Plan, or such other site approved as the Plant Site pursuant to approved proposals;

“private roads” means the roads referred to in subclause (1) of Clause 11 and any other roads constructed by the Company in accordance with an approved proposal or agreed by the parties to be a private road for the purposes of this Agreement;

“Project” means the DRI Plant, the Disposal Facilities and related facilities;

“public road” means a road as defined by the *Road Traffic Act 1974*;

“related facilities” means the ancillary facilities owned by the Company which are —

- (a) necessary for the operation of the DRI Plant but not situated on the Plant Site; or
- (b) necessary for the operation of the Disposal Facilities but not situated on the Disposal Site;

“subclause” means subclause of the Clause in which the term is used;

“this Agreement” “hereof” and “hereunder” refer to this Agreement whether in its original form or as from time to time added to varied or amended.

Interpretation

- 2. (1) In this Agreement —
 - (a) monetary references are references to Australian currency unless otherwise specifically expressed;
 - (b) power given under any clause other than Clause 18 to extend any period or date shall be without prejudice to the power of the Minister under Clause 18;
 - (c) clause headings do not affect the interpretation or construction;

- (d) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
 - (e) one gender includes the other genders; and
 - (f) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.
- (2) Nothing in this Agreement shall be construed to exempt the State or the Company from compliance with, or to require the State or the Company to do anything contrary to, any law relating to native title or any lawful obligation or requirement imposed on the State or the Company, as the case may be, pursuant to any law relating to native title.
- (3) Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to its activities under this Agreement that may be made pursuant to the EP Act.

Ratification and operation

3. (1) The State shall introduce and sponsor a Bill in the State Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 31 December 1995 or such later date as may be agreed between the parties hereto.
- (2) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation until the Bill to ratify this Agreement as referred to in subclause (1) is passed as an Act.
- (3) If before 31 December 1995 or such later agreed date the said Bill has not commenced to operate as an Act then, unless the parties hereto otherwise agree, this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (4) On the said Bill commencing to operate as an Act, all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

Initial obligations of the Company

4. (1) The Company shall undertake field and office engineering, environmental and market studies and other matters necessary for

the purposes of this clause and to enable it to finalise and to submit to the Minister the detailed proposals referred to in Clause 5.

- (2) The Company shall keep the State fully informed in writing quarterly as to the progress and results of its operations under subclause (1) and shall supply to the State such information in relation thereto as the Minister may request.
- (3) The Company shall co-operate with the State and consult with the representatives or officers of the State regarding matters referred to in subclauses (1) and (2) and any other relevant studies in relation to those subclauses that the Minister may wish to undertake.
- (4) For the purposes of this Clause and to the extent reasonably necessary to enable the Company to carry out its obligations under this Clause and to carry out surveys of land and other works in relation to the Project and for the purpose of complying with and making applications with respect to land under the *Aboriginal Heritage Act 1972* (for which purpose the Company shall be deemed to be within the expression “the owner of any land” in section 18 of that Act), but subject to the adequate protection of the environment (including flora and fauna) —
 - (a) the State shall, subject to the adequate protection of the land affected (including improvements thereon), allow the Company and its agents and contractors to enter upon Crown lands (including land the subject of a pastoral lease); and
 - (b) the Company and its agents and contractors may enter land to carry out surveys and other works in relation to the Project and may, subject to sections 82 and 83A of the Acquisition Act and authorisations pursuant to those sections exercise the powers set out in those sections as if the Project was a work under that Act.

Company to submit proposals

5. (1) Subject to and in accordance with the EP Act and the provisions of this Agreement, the Company shall on or before 30 June 1996 submit to the Minister to the fullest extent reasonably practicable its detailed proposals (including plans where practicable and specifications where reasonably required by the Minister and any other details normally required by a local authority in whose area any works are to be situated) with respect to the establishment and operation of the Project, 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, namely —

- (a) the DRI Plant;
- (b) the Disposal Facilities;
- (c) related facilities;
- (d) a construction camp and any other arrangements providing temporary accommodation and other facilities for the Company's workforce engaged in the construction and commissioning of the Project;
- (e) housing or other appropriate accommodation and facilities for the Company's workforce;
- (f) process and potable water supply and disposal;
- (g) sea water extraction, use and discharge;
- (h) any other works, services or facilities required by the Company;
- (i) an environmental management programme as to measures to be taken, in respect of the Company's activities under this Agreement, for rehabilitation and the protection and management of the environment;
- (j) use of local labour, professional services, manufacturers, suppliers, contractors and materials; and
- (k) any lease, licence, easement or other title of Crown lands desired for the Project.

Order of proposals

- (2) Each of the proposals pursuant to subclause (1) may, with the approval of the Minister or if so required by him, be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (k) of subclause (1).

Use of other infrastructure

- (3) Each of the proposals pursuant to subclause (1) may, with the consent of the Minister and that of any other parties concerned, instead of providing for the construction of new works, facilities or equipment or the provision of new services of the kind therein mentioned, provide for the use by the Company of any other works, facilities, equipment or services of such kind belonging to the Company or (upon terms and conditions agreed between the Company and the other persons concerned) of any other works, facilities equipment or services of such kind belonging to any other persons.

Additional submissions

- (4) At the time when the Company submits the said proposals it shall 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 therefor and shall, if required by the Minister, consult with the Minister with respect thereto.

Consideration of proposals

6. (1) In respect of each proposal pursuant to subclause (1) of Clause 5 the Minister shall —
 - (a) approve of the proposal without qualification or reservation; or
 - (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) of Clause 5 not covered by the said proposal; or
 - (c) require, as a condition precedent to the giving of his approval to the said proposal, that the Company makes such alteration thereto or complies with such conditions in respect thereto as he thinks reasonable, and in such a case the Minister shall disclose his reasons for such alterations or conditions,

PROVIDED ALWAYS that where implementation of any proposals hereunder have been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this Clause shall, if the case so requires, incorporate a requirement that the Company makes such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

Advice of Minister's decision

- (2) The Minister shall, within two months after receipt of proposals pursuant to subclause (1) of Clause 5 give notice to the Company of his decision in respect to the proposals, PROVIDED THAT —
 - (a) where a proposal is to be assessed under section 40(1)(b) of the EP Act the Minister shall only give notice to the Company of his decision in respect to the proposal within 2 months after service on him of an authority under section 45(7) of the EP Act; and

- (b) where implementation of a proposal by the State will require the State to take any native title rights and interests the Minister shall only give notice to the Company of his decision in respect to the proposal within 2 months of the process of taking such native title rights and interests by the State being completed.

Consultation with Minister

- (3) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1), the Minister shall afford the Company full opportunity to consult with him and, should it so desire, to submit new or revised proposals either generally or in respect to some particular matter.

Minister's decision subject to arbitration

- (4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) and the Company considers that the decision is unreasonable, the Company within two months after receipt of the notice mentioned in subclause (2), may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder.

Arbitration award

- (5) An award made on an arbitration pursuant to subclause (4) shall have force and effect as follows —
 - (a) if by the award the dispute is decided against the Company then, unless the Company within 3 months after delivery of the award gives notice to the Minister of its acceptance of the award, this Agreement shall on the expiration of that period of 3 months determine and neither the State nor the Company shall have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement; or
 - (b) if by the award the dispute is decided in favour of the Company, the decision shall take effect as (and be deemed to be) a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

Effect of non-approval of proposals

- (6) Notwithstanding that under subclause (1) any proposals of the Company are approved by the Minister or deemed to be approved as a consequence of an arbitration award, unless each and every

such proposal and matter is so approved or deemed to be approved within 12 months of the date on which the last of those proposals is submitted pursuant to subclause (1) of Clause 5 or by such extended date or period if any as the Company shall be granted or entitled to pursuant to the provisions of this Agreement, then the Minister may give to the Company 12 months' notice of intention to determine this Agreement and, unless before the expiration of the said 12 months' period all the detailed proposals and matters are so approved or determined, this Agreement shall determine and neither the State nor the Company shall have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement.

Implementation of proposals

- (7) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall use its best endeavours to implement the approved proposals in accordance with the terms thereof.

Variation of proposals

- (8) Notwithstanding Clause 16, the Minister may during the implementation of approved proposals approve variations to those proposals.

Extension of periods

- (9) The periods set forth in subclause (1) of Clause 5 and subclause (6) of this Clause will be extended (in addition to any extension granted pursuant to Clause 17 or 18) upon request of either the Company or the State for such reasonable period or periods as may be necessary from time to time to enable either of the parties hereto to comply with laws relating to native title.

Termination of Agreement

- (10) If either the Company or the State considers the development of the Project should not proceed having regard to matters arising out of laws relating to native title or by reason of claims or objections lodged under laws relating to native title, that party shall consult with the other in regard thereto. Subject to such consultation, either party may, at any time before the commissioning of the DRI Plant is commenced, for reasons the subject of such consultation, determine this Agreement by notice to the other, whereupon this Agreement shall determine and neither the State nor the Company shall have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement.

Additional proposals

7. (1) If the Company at any time during the continuance of this Agreement desires to significantly modify, expand or otherwise vary its activities carried on pursuant to any approved proposals it shall give notice of such desire to the Minister and, within 2 months thereafter, shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (k) of subclause (1) of Clause 5 as the Minister may require.
- (2) The provisions of Clause 5 and Clause 6 (other than subclauses (5)(a), (6) and (7) of Clause 6) shall mutatis mutandis apply to detailed proposals submitted pursuant to this Clause, with the proviso that the Company may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice to the Minister that it shall not be proceeding with the same. Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement approved proposals pursuant to this Clause in accordance with the terms thereof.

Land

8. (1) On application made by the Company, not later than 3 months after a proposal submitted pursuant to subclause (1) of Clause 5 or subclause (1) of Clause 7 has been approved or deemed to be approved and the Company has complied with the provisions of subclause (4) of Clause 5, the State shall in accordance with the approved proposal and insofar as is permitted by laws relating to native title grant to the Company, or arrange to have the appropriate authority or other interested instrumentality of the State grant on conditions set out in and for periods determined in accordance with subclause (5) and on such further terms and conditions as shall be reasonable having regard to the requirements of the Company —
 - (a) leases for the Plant Site and the Disposal Site;
 - (b) leases or easements for access roads to the Plant Site and the Disposal Site;
 - (c) a lease for a construction camp in the vicinity of the Plant Site providing accommodation and other facilities for the Company's workforce engaged in the construction and commissioning of the Project; and
 - (d) other leases, licences for the use of land or easements as are appropriate for the Project

under and, except as otherwise provided in this Agreement, subject to the Land Act (as modified by this Agreement), the Pipelines Act or the *Mining Act 1978*.

- (2) Notwithstanding the provisions of subclause (1) leases, licences or easements which are the subject of approved proposals may be granted in accordance with this Clause before all the proposals submitted pursuant to subclause (1) of Clause 5 have been approved or determined but each lease, licence or easement shall be issued subject to a condition that if this Agreement ceases and determines before all the said proposals submitted pursuant to subclause (1) of Clause 5 have been approved or determined, the lease, licence or easement as the case may be shall thereupon itself cease and determine subject to the provisions of Clause 20.

Licence fees and rentals

- (3) The Company shall pay in respect of the leases, licences and easements granted hereunder reasonable rentals or other reasonable amounts to be agreed between the Minister and the Company PROVIDED THAT where leases, licences or easements are granted under the *Mining Act 1978* rentals applicable under that Act will be payable.

Modification of Land Act

- (4) For the purposes of this Agreement, in respect of any land sold or leased, or the subject of a licence, to the Company by the State the Land Act shall be deemed to be modified by —
 - (a) the substitution for subsection (2) of section 45A of the following subsection —

“(2) Upon the Minister signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be sold or leased.”;
 - (b) the inclusion in section 116 of the following purpose for which the Minister may grant a lease under that section —

“For the storage or disposal of residue from the beneficiation or direct reduction of iron ore.”;
 - (c) the deletion of the proviso to section 116;
 - (d) the deletion of section 135;
 - (e) the deletion of section 143;
 - (f) the inclusion of a power to offer for sale or grant leases, licences or other titles for terms or periods and on such terms

and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods, the terms and conditions and the forms referred to in the Land Act.

The provisions of this subclause shall not operate so as to prejudice the rights of the State to determine any lease, licence or other title in accordance with the other provisions of this Agreement.

Term of leases, licences and easements

- (5) (a) Notwithstanding any provisions of the Land Act or the *Mining Act 1978* to the contrary the term of each lease, licence or easement granted under subclause (1) other than a lease granted under paragraph (c) of subclause (1) shall be for a period expiring 50 years after the date on which the Bill to ratify this Agreement is passed as an Act with the right, exercisable subject to paragraph (b) by the Company giving written notice thereof to the Minister, to extend the term for a further period of 10 years upon the same terms and conditions including this right to extend the term.
- (b) The Company may only exercise its right to extend the term of any lease, licence or easement granted under subclause (1):
 - (i) prior to the determination of this Agreement; and
 - (ii) not more than one year or less than six months before the expiration of the term of the lease, licence or easement.
- (c) The term of any lease granted under paragraph (c) of subclause (1) shall be for a reasonable period agreed between the Minister and the Company which in any event shall be no greater than is required for the construction and commissioning of the Project and the rehabilitation of the land subject to it to the satisfaction of the Minister.
- (d) The term of any lease, licence or easement granted under subclause (1) shall, if the Company so requires, be for a period shorter than that provided for under paragraph (a).
- (e) Each lease (other than any lease for the Disposal Site), licence or easement granted under subclause (1) shall be granted subject to the condition which shall survive the expiration or determination of this Agreement that it shall terminate if the Company ceases to operate a DRI Plant.

Surrounding Land

- (6) With respect to the area hatched on the Plan (“the surrounding land”) or such other area within a five kilometre radius of the centre of the Plant Site and not extending east of longitude 118°34'45" as is approved by the Minister as the surrounding land the State shall ensure —
- (a) that the boundaries of the Port Hedland Town Planning Scheme within the surrounding land at the date of this Agreement shall not be altered;
 - (b) that no part of the land within those boundaries shall be zoned urban; and
 - (c) that neither the State nor any agency of the State shall approve any residential development or any residential use of land within the surrounding land except as envisaged in proposals submitted in accordance with paragraph (d) of subclause (1) of Clause 5

without in each case prior consultation by the Minister with the Company.

Protection and management of the environment

9. (1) The Company shall in respect of the matters referred to in paragraph (i) of subclause (1) of Clause 5 and which are the subject of approved proposals, carry out a continuous programme including monitoring to ascertain the effectiveness of the measures it is taking pursuant to such approved proposals for rehabilitation and the protection and management of the environment and shall, as and when reasonably required by the Minister from time to time, submit to the Minister a detailed report thereon.
- (2) Whenever as a result of its activities pursuant to subclause (1) or otherwise information becomes available to the Company which, in order to more effectively rehabilitate, protect or manage the environment, may necessitate or could require any changes or additions to any approved proposals or require matters not addressed in any such proposals to be addressed, the Company shall forthwith notify the Minister thereof and with such notification shall submit a detailed report thereon.
- (3) The Minister may, within 2 months of the receipt of a detailed report pursuant to subclause (1) or (2), notify the Company that he requires additional detailed proposals to be submitted in respect of all or any of the matters the subject of the report and such other reasonable matters as the Minister may require in connection therewith.

- (4) The Company shall, within 2 months of receipt of a notice given pursuant to subclause (3), submit to the Minister additional detailed proposals as required and the provisions of subclauses (1), (2), (3) and (4) of Clause 6 shall mutatis mutandis apply.
- (5) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Company shall implement the decision of the Minister or any award on arbitration, as the case may be, in accordance with the terms thereof.

Use of local labour professional services and materials

10. (1) The Company shall, for the purposes of this Agreement —
- (a) except in those cases where the Company can demonstrate it is impracticable so to do, use labour available within Western Australia or if such labour is not available then, except as aforesaid, use labour otherwise available within Australia;
 - (b) as far as it is reasonable and economically practicable so to do, use the services of engineers, surveyors, architects and other professional consultants, experts and specialists, project managers, manufacturers, suppliers and contractors resident and available within Western Australia, or if such services are not available within Western Australia, then, as far as practicable as aforesaid, use the services of such persons otherwise available within Australia;
 - (c) during design and when preparing specifications, calling for tenders and letting contracts for works, materials, plant, equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that suitably qualified Western Australian and Australian suppliers, manufacturers and contractors are given fair and reasonable opportunity to tender or quote;
 - (d) give proper consideration and, where possible, preference to Western Australian suppliers, manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price, quality, delivery and service are equal to or better than that obtainable elsewhere or, subject to the foregoing, give that consideration and, where possible, preference to other Australian suppliers, manufacturers and contractors; and
 - (e) if, notwithstanding the foregoing provisions of this subclause, a contract is to be let or an order is to be placed with other than a Western Australian or Australian supplier,

manufacturer or contractor, give proper consideration and, where possible, preference to tenders, arrangements or proposals that include Australian participation.

- (2) Except as otherwise agreed by the Minister, the Company shall, in every contract entered into with a third party for the supply of services, labour, works, materials, plant, equipment or supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) and shall report to the Company concerning such third party's implementation of that condition.
- (3) The Company shall submit a report to the Minister at monthly intervals or such longer period as the Minister determines, commencing from the date of this Agreement, concerning its implementation of the provisions of this Clause, together with a copy of any report received by the Company pursuant to subclause (2) during that month or longer period as the case may be PROVIDED THAT the Minister may agree that any such reports need not be provided in respect of contracts of such kind or value as the Minister may from time to time determine.
- (4) The Company shall keep the Minister informed on a regular basis as determined by the Minister from time to time or otherwise as reasonably required by the Minister during the currency of this Agreement of any services (including any elements of the project investigations, design and management) and any works, materials, plant, equipment and supplies that it may be proposing to obtain from or have carried out or permit to be obtained from or carried out outside Australia, together with its reasons therefor and shall, as and when required by the Minister, consult with the Minister with respect thereto.

Private roads

11. (1) The Company shall —
 - (a) be responsible for the cost of the construction and maintenance of all private roads which will be used in its activities hereunder;
 - (b) at its own cost erect signposts and take other steps that may be reasonable in the circumstances to prevent any persons and vehicles other than those engaged upon the Company's activities and its invitees and licensees from using the private roads; and
 - (c) at any place where any private roads are constructed by the Company so as to cross any railways or public roads, provide at its cost such reasonable protection and

signposting as may be required by the Commissioner of Main Roads or The Western Australian Government Railways Commission as the case may be.

Maintenance of public roads

- (2) The State shall maintain or cause to be maintained those public roads under the control of the Commissioner of Main Roads or a local authority, which may be used by the Company for the purposes of this Agreement to a standard similar to comparable public roads maintained by the Commissioner of Main Roads or a local authority, as the case may be.

Upgrading of public roads

- (3) In the event that for or in connection with the Company's activities hereunder the Company or the Company's workforce uses or wishes to use a public road (whether referred to in subclause (2) or otherwise) which is inadequate for the purpose, or any use by the Company or the Company's workforce of any public road results in excessive damage to or deterioration thereof (other than fair wear and tear), the Company shall pay to the State or the local authority, as the case may require, the whole or an equitable part of the total cost of any upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads, having regard to the use of such public road by others.

Acquisition of private roads

- (4) Where a road constructed by the Company for its own use is subsequently required for public use, the State may, after consultation with the Company and so long as resumption thereof shall not unduly prejudice or interfere with the activities of the Company under this Agreement, resume and dedicate such road as a public road. Upon any such resumption the State shall pay to the Company such amount as is reasonable.

Water

12. (1) No charge or royalty shall be payable by the Company in respect of sea water drawn by the Company for operations carried on in accordance with approved proposals.
- (2) The State and the Company shall agree upon the amounts and qualities of the Company's annual and daily maximum water requirements for use in its operations under this Agreement (which amounts or such other amounts as shall from time to time be agreed between the parties to be reasonable are hereinafter called "the Company's water requirements").

- (3) Except as otherwise provided for under this clause the Company's water requirements shall be obtained in accordance with the provisions of the *Water Authority Act 1984* or other relevant Acts.
- (4) The Company may with the agreement of the Water Authority of Western Australia (hereinafter called the "Water Authority") and on terms and conditions reasonably determined by the Water Authority draw the Company's water requirements from:
 - (a) an existing or augmented or extended Water Authority water supply scheme;
 - (b) a water supply scheme developed and operated by the Company under the provisions of this clause; or
 - (c) any combination of these sources.
- (5) Where water is available from an existing Water Authority water supply scheme and where the Company and the Water Authority agree that water will be supplied by the Water Authority to the Company from that scheme for all or part of the Company's water requirements the Company shall obtain such water from the Water Authority subject to the provisions of the *Water Authority Act 1984* and other relevant Acts and subject to agreement on reasonable charges and tariffs to be paid by the Company to the Water Authority for the supply of such water.
- (6) The Company may request the Water Authority to grant the Company access for the Company's water requirements to water entitlements that are subject to a water supply agreement made pursuant to the agreement ratified by the *Iron Ore (Mount Goldsworthy) Agreement Act 1964* or the agreement ratified by the *Iron Ore (Mount Newman) Agreement Act 1964*, in any case on terms and conditions reasonably determined by the Water Authority and agreed by the Company and the parties to the relevant ratified Agreement.
- (7) If at any time the Company's water requirements cannot be met from existing Water Authority water supply schemes or from the water entitlements referred to in subclause (5), the Company shall endeavour to reach agreement with the Water Authority regarding the supply of further water to the Company from schemes developed and operated by the Company using underground water obtained from beneath land to which the Company has the right of occupancy, a miscellaneous licence under the *Mining Act 1978* for the purposes of water supply or other appropriate title.
- (8) If the Company's water requirements can not economically be met in full from any of the sources referred to in subclause (7) the Company and the State shall endeavour to reach agreement with

each other and with the Water Authority regarding the supply of further water to the Company from schemes developed and operated by the Company using surface water or underground water obtained from or from beneath land other than that referred to in subclause (7).

- (9) If the Company advises the Minister that it has not been able, for a period of at least two months, to reach agreement with the Water Authority as envisaged by any of subclauses (5), (6), (7) or (8) and if the Company then provides to the Minister such details of the matters in question as are available to the Company and as the Minister may request, the Minister may require that the Water Authority provide the Minister forthwith with details of the matter.
- (10) Consequent upon any advice pursuant to subclause (9) the Minister shall, unless the Water Authority enters into arrangements with the Company satisfactory to the Minister and to the Company for resolution of the matter, make a determination as to the terms and conditions which he reasonably considers are appropriate in the circumstances to the agreement. Unless the Minister is advised within one month of his determination that the Water Authority and the Company have resolved the matters between them or that those matters have been referred to arbitration for resolution, the Minister, on the expiration of that period, shall cause the Minister in the Government of the State responsible at that time for the administration of the *Water Authority Act 1984* to direct the Water Authority to apply the determination of the Minister.

Resumption for the purposes of this Agreement

13. (1) The State, pursuant to the Acquisition Act may, for the purpose of conferring interests therein on the Company, take any land required for the Project as specified in approved proposals and may grant leases, licences or easements in respect of the whole or portions of that land to the Company. The Company shall pay to the State, on demand, the costs to the State of and incidental to the taking of any land pursuant to this Clause, including the cost of any compensation due to any holder of native title or of native title rights and interests in the land.
- (2) For the purposes of this Agreement, and in the Acquisition Act when construed for the purposes of this Agreement, a reference to "land" shall be read as extending to any land, or to any portion of any land, or to the subsoil, surface or airspace relating thereto and to any estate, right, title, easement, lease, licence, privilege, native title right or interest or other interest, in, over, under, affecting, or in connection with that land or any portion, stratum or other specified sector of that land.

Training levy exemption

14. The provisions of the *Building and Construction Industry Training Levy Act 1990* and the *Building and Construction Industry Training Fund and Levy Collection Act 1990* shall have no application to the Company when acting pursuant to and in accordance with the provisions of this Agreement.

Assignment

15. (1) Subject to the provisions of this Clause, the Company may at any time assign, mortgage, charge, sublet or dispose of to any person, with the consent of the Minister, the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of any lease, licence, easement or other title) and of the obligations of the Company hereunder subject however, in the case of an assignment, subletting or disposition, to the assignee, sublessee or disponent (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with, observe and perform the provisions hereof on the part of the Company to be complied with, observed or performed in regard to the matter or matters the subject of such assignment, subletting or disposition.
- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1), the Company shall, at all times during the currency of this Agreement, be and remain liable for the due and punctual performance and observance of all the covenants and agreements on its part contained in this Agreement and in any lease, licence, easement or other title the subject of an assignment, mortgage, subletting or disposition under subclause (1) PROVIDED THAT the Minister may agree to release the Company from such liability where the Minister considers such release will not be contrary to the interests of the State.
- (3) Notwithstanding the provisions of the Land Act and the *Transfer of Land Act 1893*, insofar as the same or any of them may apply —
 - (a) no assignment, mortgage, charge, sublease or disposition made or given pursuant to this Clause of or over any lease, licence, easement or other title granted under or pursuant to this Agreement by the Company or any assignee, sublessee or disponent who has executed and is for the time being bound by deed of covenant made pursuant to this Clause; and
 - (b) no transfer, assignment, mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge

shall require any approval or consent, other than such consent as may be necessary under this Clause, and no equitable mortgage or charge shall be rendered ineffectual by the absence of any approval or consent (otherwise than as required by this Clause).

Variation

16. (1) The parties to this Agreement may from time to time, by agreement in writing, add to, substitute for, cancel or vary all or any of the provisions of this Agreement or of any lease, licence, easement, grant or other title granted under or pursuant to this Agreement for the purpose of more efficiently or satisfactorily implementing or facilitating any of the subject matter of this Agreement.
- (2) The Minister shall cause any agreement made pursuant to subclause (1) in respect of any addition, substitution, cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.
- (3) Either House may, within 12 sitting days of that House after the agreement has been laid before it, pass a resolution disallowing the agreement, but if after 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.

Force majeure

17. This Agreement shall be deemed to be made subject to any delays in the performance of the obligations under this Agreement and to the temporary suspension of continuing obligations under this Agreement that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including, without limiting the generality of the foregoing, delays or any such temporary suspension as aforesaid caused by or arising from act of God, force majeure, earthquakes, floods, storms, tempest, washaways, fire (unless caused by the actual fault or privity of the party responsible for such performance), act of war, act of public enemies, riots, civil commotions, strikes, pickets, industrial boycotts, lockouts, stoppages, restraint of labour or other similar acts (whether partial or general), acts or omissions of the Commonwealth, shortages of labour or essential materials, reasonable failure to secure contractors, delays of contractors or factors due to overall world economic conditions or factors due to action taken by or on behalf of any government or governmental authority (other than an act authorised by this Agreement or, where the State is the party claiming force majeure, any act of the State or any authority of the State), or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give

notice to the other party of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

Power to extend periods

18. Notwithstanding any provision of this Agreement, the Minister may, at the request of the Company from time to time, extend or further extend any period or vary or further vary any date referred to in this Agreement or in any approved proposal for such period or to such later date as the Minister thinks fit, whether or not the period to be extended has expired or the date to be varied has passed.

Determination of Agreement

19. (1) If —

- (a) the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations of the Company in this Agreement or in any lease, licence or other title granted or assigned under this Agreement on its part to be performed or observed, and such default is not remedied within a period of 180 days after notice is given by the State as provided in subclause (2) or, if the default is referred to arbitration, then within the period mentioned in subclause (3); or
- (b) the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 3 months from the date of such liquidation the interest of the Company is assigned to an assignee approved by the Minister under Clause 15

the State may, by notice to the Company, determine this Agreement.

- (2) The notice to be given by the State in terms of paragraph (a) of subclause (1) shall specify the nature of the alleged default so entitling the State to exercise such right of determination and, where appropriate and known to the State, the party or parties responsible therefor and shall be given to the Company and all such assignees, mortgagees, chargees and disponees for the time being of the Company's said rights to or in favour of whom or by whom an assignment, mortgage, charge or disposition has been effected in terms of Clause 15, whose name and address for service of notice has previously been notified to the State by the Company or any such assignee, mortgagee, chargee or disponee.

- (3) (a) If the Company contests the alleged default referred to in paragraph (a) of subclause (1) or the materiality thereof the Company shall, within 60 days after notice given by the State as provided in subclause (2), refer the matter in dispute to arbitration.
 - (b) If the question is decided against the Company, the Company shall comply with the arbitration award within a reasonable time to be fixed by that award PROVIDED THAT if the arbitrator finds that there was a bona fide dispute and that the Company was not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.
- (4) If the default referred to in paragraph (a) of subclause (1) shall not have been remedied within 180 days after receipt of the notice referred to in that subclause or within the time fixed by the arbitration award as aforesaid the State, instead of determining this Agreement as aforesaid because of such default, may itself remedy such default, or cause the same to be remedied (for which purpose the State by agents, workmen or otherwise shall have full power to enter upon lands occupied by the Company and to make use of all plant, machinery, equipment and installations thereon), and the actual costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand.

Effect of determination of Agreement

20. (1) On the determination of this Agreement pursuant to Clause 19 or Clause 34 —
- (a) except as otherwise agreed by the Minister the rights of the Company to, in or under this Agreement and the rights of the Company or of any assignee of the Company or any mortgagee to in or under any lease, licence or other title granted under this Agreement shall thereupon cease and determine but without prejudice to the liability of any of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given under this Agreement;
 - (b) the Company shall forthwith pay to the State all moneys which may then have become payable or accrued due; and
 - (c) save as aforesaid and as otherwise provided in this Agreement, none of the parties shall have any claim against

any other of them with respect to any matter or thing in or arising out of this Agreement.

- (2) Where, on the determination of this Agreement pursuant to Clause 19 approved proposals have been implemented by the Company in accordance with the terms thereof if the Minister in his discretion at the request of the Company so agrees:
- (a) any lease, licence, easement or other title granted pursuant to such approved proposals shall continue subject to its terms and conditions; and
 - (b) any facility established pursuant to such approved proposals may, insofar as is permitted by the laws for the time being in force in Western Australia continue to be operated under such laws.
- (3) (a) In respect of :
- (i) any lease, licence, easement or other title; and
 - (ii) any buildings, erections or other improvements (if any) comprised in any facility established on such lease, licence, easement or other title,

not being a lease, licence, easement or other title or facility the continuation or continued operation of which has been agreed by the Minister under subclause (2), upon the determination of this Agreement pursuant to Clause 19 or Clause 34, except as otherwise agreed by the Minister and subject to paragraph (b) of this subclause, all such buildings, erections and other improvements comprised in such facility erected on any land then occupied by the Company under any such lease, licence, easement or other title granted under this Agreement shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Company or any other party and freed and discharged from all mortgages and other encumbrances, and the Company shall do and execute all such deeds, documents and other acts, matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.

- (b) In the event of the Company immediately prior to determination of this Agreement or within 3 months thereafter desiring to remove any of its fixed or movable plant and equipment or any part thereof from any part of the land referred to in paragraph (a) of this subclause, it shall give to the State notice of such desire and thereby shall grant to the State the right or option exercisable within 3 months

thereafter to purchase in situ such fixed or moveable plant and equipment at a fair valuation to be agreed between the parties, or failing agreement, determined by arbitration under this Agreement.

- (c) If the State does not exercise the right or option referred to in paragraph (b) the Company may on the expiry of the 3 month period referred to, or sooner with the consent of the Minister, remove the fixed or movable plant and equipment to which the right or option refers.

Indemnity

- 21. The Company shall indemnify and keep indemnified the State and its servants, agents and contractors in respect of all actions, suits, claims, demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Company pursuant to this Agreement or relating to its activities hereunder or arising out of or in connection with the construction, maintenance or use by the Company or its servants, agents, contractors or assignees of the Company's works or services the subject of this Agreement or the plant, apparatus or equipment installed in connection therewith PROVIDED THAT, subject to the provisions of any other relevant Act, such indemnity shall not apply in circumstances where the State, its servants, agents, or contractors are negligent in carrying out work for the Company pursuant to this Agreement.

Commonwealth licences and consents

- 22. (1) The Company shall from time to time make application to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to it of any licence or consent under the laws of the Commonwealth necessary to enable or permit the Company to enter into this Agreement and to perform any of its obligations hereunder.
- (2) On request by the Company the State shall make representations to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to the Company of any licence or consent mentioned in subclause (1).

Subcontracting

- 23. Without affecting the liabilities of the parties under this Agreement the State and the Company shall have the right from time to time to entrust to third parties the carrying out of any portions of the activities which it is authorised or obliged to carry out hereunder.

Arbitration

24. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement, the construction of this Agreement or as to the rights, duties or liabilities of either party under this Agreement, or as to any matter to be agreed upon between the parties under this Agreement, shall, in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary, be referred to and settled by arbitration under the provisions of the *Commercial Arbitration Act 1985* and, notwithstanding section 20(1) of that Act, each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.
- (2) Except where otherwise provided in this Agreement, the provisions of this Clause shall not apply to any case where the State, the Minister or any other Minister in the Government of the said State is, by this Agreement, given either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered, upon the application of a party, to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which, having regard to the circumstances, may reasonably be required in order to preserve the rights of that party under this Agreement and an award may, in the name of the Minister, grant any further extension or variation for that purpose.

Consultation

25. The Company shall, during the currency of this Agreement, consult with and keep the State fully informed on a confidential basis concerning any action that the Company proposes to take with any third party (including the Commonwealth or any Commonwealth constituted agency, authority, instrumentality or other body) which might significantly affect the overall interest of the State under this Agreement.

Notices

26. Any notice, consent or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Public Service of Western Australia acting by the direction of the Minister and forwarded by prepaid post or handed to the Company at its address hereinbefore set forth or other address in Western Australia nominated by the Company to the Minister and by the Company if signed on its behalf by any person or persons authorised by the Company or by its solicitors as notified to the Minister from time to time and forwarded

by prepaid post or handed to the Minister and, except in the case of personal service, any such notice, consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

Term

27. (1) Subject to the provisions of this Agreement relating to sooner determination and subject to subclauses (2) and (3) of this Clause, this Agreement shall expire 60 years after the date on which the Bill to ratify this Agreement is passed as an Act.
- (2) In the year 2044 the parties to this Agreement shall meet and consider in good faith the extension of the term of this Agreement.
- (3) The parties shall record any agreement reached by them pursuant to subclause (2) and such agreement shall be dealt with in accordance with subclauses (2) and (3) of Clause 16 as if it were an agreement made pursuant to subclause (1) of that Clause.
- (4) The expiration of this Agreement pursuant to this Clause shall not affect:
- (a) any lease, licence, easement or other title the term of which has been extended pursuant to subclause (5) of Clause 8 which shall continue subject to its terms and conditions;
 - (b) any facility established on lands the subject of any such lease, licence, easement or other title which shall continue to operate subject to the terms and conditions of such lease, licence, easement or other title and otherwise under the laws for the time being in force in Western Australia.

Stone sand clay and gravel

28. The State shall in accordance with approved proposals grant to the Company a mining lease or mining leases for the obtaining of stone, sand, clay and gravel for the construction of works the subject of approved proposals, such mining lease or mining leases to be granted under and, except as otherwise provided herein, subject to the *Mining Act 1978* but limited in term to a reasonable period required for construction of the works and rehabilitation in accordance with the proposals. No royalty shall be payable under the *Mining Act 1978* in respect of stone, sand, clay and gravel obtained from any such mining lease.

Zoning

29. The State shall ensure after consultation with the relevant local authority, that any lands the subject of any lease, licence, easement or other title granted to the Company under this Agreement shall be and remain zoned

for use or otherwise protected during the currency of this Agreement so that the activities of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State or by any State agency or instrumentality or by any local or other authority of the State on the ground that such activities are contrary to any zoning, by-law, regulation or order.

Rating

30. The State shall ensure during the currency of this Agreement that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of the lands the subject of any lease, licence, easement or other title granted pursuant to this Agreement (except any parts of such lands on which accommodation units or housing for the Company's workforce is erected or which is occupied in connection with such accommodation units or housing and except as to any part upon which there stands any improvements that are used in connection with a commercial undertaking not directly related to the activities carried out by the Company pursuant to approved proposals) shall for rating purposes under the *Local Government Act 1960*, be deemed to be on the unimproved value thereof, and no such lands shall be subject to any discriminatory rate.

No discriminatory rates

31. Except as provided in this Agreement, the State shall not impose, nor shall it permit or authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes, rates or charges of any nature whatsoever on or in respect of the titles, property or other assets products, materials or services used or produced by or through the activities of the Company in the conduct of its business hereunder, nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Company of full enjoyment of the rights granted and intended to be granted under this Agreement.

No resumption

32. Subject to the performance by the Company of its obligations under this Agreement, the State shall not, during the currency of this Agreement, without the consent of the Company, resume or suffer or permit to be resumed by any State instrumentality or by any local or other authority of the State any of the works, installations, plant, equipment or other property for the time being belonging to the Company and the subject of or used for the purpose of this Agreement AND without the consent of the Company (which shall not be unreasonably withheld), the State shall not create or grant or permit or suffer to be created or granted by any instrumentality or authority of the State as aforesaid any road, right-of-way, water right or easement of any nature or kind whatsoever

over or in respect of any lands the subject of any lease, licence, easement or other title granted to the Company under this Agreement which may unduly prejudice or interfere with the Company's activities under this Agreement.

Stamp Duty

33. The State shall exempt the following instruments from any stamp duty which, but for the operation of this clause, would or might be assessed as chargeable on them:
- (a) this Agreement;
 - (b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee, any licence, lease, easement or other title;
 - (c) any assignment, sublease or disposition (other than by way of mortgage or charge) made by BHP Direct Reduced Iron Pty Ltd arising from transactions the subject of not more than three proposals submitted to the Minister and consented to by the Minister in conformity with the provisions of subclause (1) of Clause 15,

PROVIDED THAT this subclause shall not apply to any instrument or other document executed or made after 31 December 1998.

Determination by the Company

34. (1) If at any time after commissioning of the DRI Plant is commenced the Company is of the opinion that the continuing operation of the DRI Plant is uneconomic to the Company it may give notice to the Minister of its desire to determine this Agreement.
- (2) The notice to be given by the Company in terms of subclause (1) shall specify the reasons for the Company's desire to determine this Agreement.
- (3) The Minister may require the Company to supply such further details as he may reasonably require and shall afford the Company full opportunity to consult with him.
- (4) (a) Within 2 months after receipt of the notice pursuant to subclause (1), the Minister shall notify the Company of his decision in respect to the determination.
- (b) If the Minister does not agree that this Agreement should be determined, he shall disclose his reasons therefor.
- (c) If the Minister agrees that this Agreement should be determined, then the determination shall, subject to

Clause 20, take effect on the date of receipt of the notice mentioned in paragraph (a) by the Company.

- (5) If the Company considers that the Minister's decision is unreasonable, the Company within 2 months after receipt of the notice mentioned in subclause (4), may elect to refer to arbitration the question of the reasonableness of the decision.
- (6) An award made on arbitration pursuant to subclause (5) shall have force and effect as follows —
 - (a) If by the award the dispute is decided against the Company, the Company shall continue to perform its obligations under this Agreement; or
 - (b) if by the award the dispute is decided in favour of the Company, the decision shall take effect as (and be deemed to be) a notice by the Minister that subject to Clause 20, he approves the determination of the Agreement.

Applicable law

35. This Agreement shall be interpreted according to the law for the time being in force in the State of Western Australia.

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by the said)
THE HONOURABLE RICHARD) R F Court
FAIRFAX COURT in the)
presence of:)

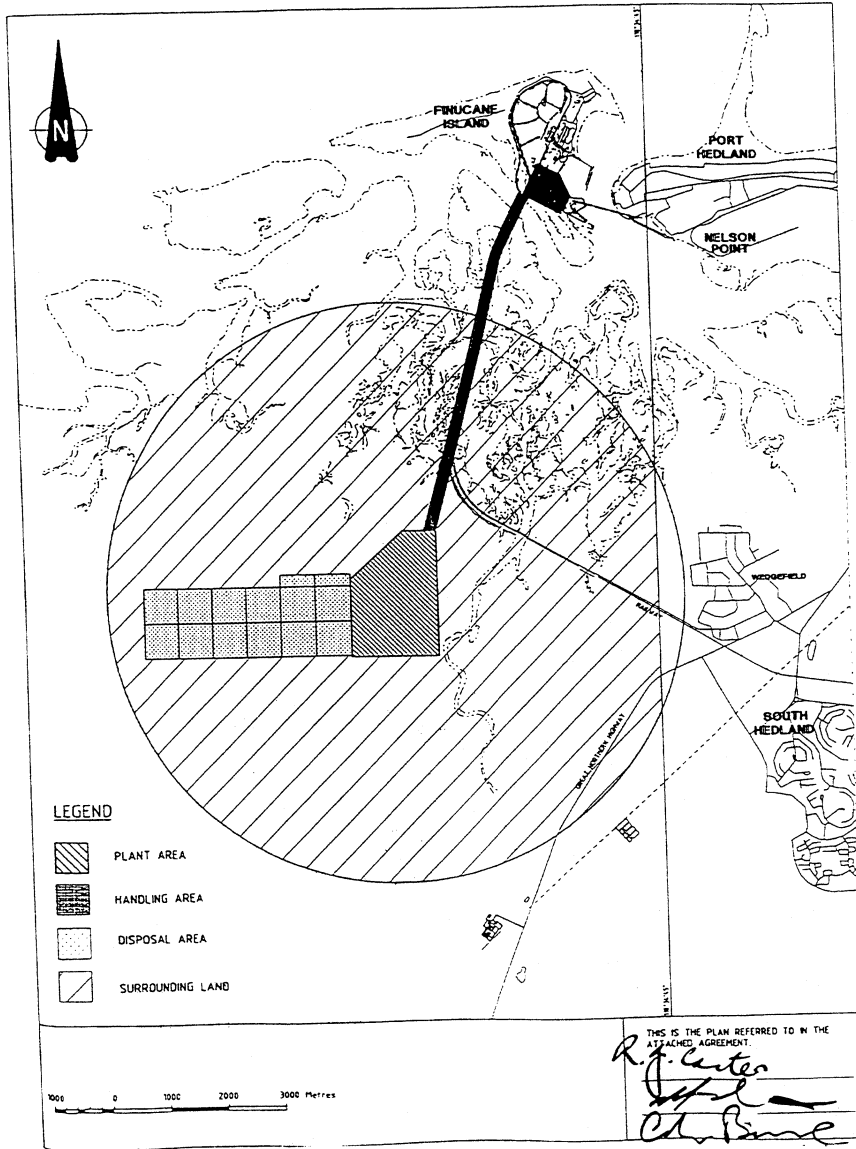
Colin Barnett
MINISTER FOR RESOURCES DEVELOPMENT

THE COMMON SEAL of)
BHP DIRECT REDUCED IRON)
PTY. LTD. was hereunto) C.S.
affixed by authority of)
the Directors)

Director R J Carter

Secretary M Knowles

THE PLAN



Schedule 2

[s. 5]

THIS AGREEMENT is made the 11th day of April 2000.

B E T W E E N :

THE HONOURABLE RICHARD FAIRFAX COURT B.Com., M.L.A.,
Premier of the State of Western Australia, acting for and on behalf of the said
State and its instrumentalities from time to time (hereinafter called “the State”) of
the one part

AND

BHP DIRECT REDUCED IRON PTY. LTD. ACN 058 025 960 a company
incorporated in the State of Western Australia and having its principal office at
Level 18, 200 St, George’s Terrace, Perth (hereinafter called “the Company”) of
the other part.

W H E R E A S:

- (a) the State and the Company are the parties to the agreement ratified by the
Iron Ore-Direct Reduced Iron (BHP) Agreement Act 1996, which
agreement is hereinafter called “the Principal Agreement”;
- (b) the State and the Company wish to vary the Principal Agreement.

NOW THIS AGREEMENT WITNESSES:

- 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 2000 or such later date as may be agreed
between the parties hereto.
- 3. (1) The provisions of this Agreement other than this Clause and
Clauses 1 and 2 shall not come into operation unless and until —
 - (a) the Bill to ratify this Agreement as referred to in Clause 2;
and
 - (b) Bills to ratify the following agreements of even date
herewith, namely:—
 - (i) an agreement between the State and BHP Direct
Reduced Iron Pty. Ltd. to vary the Iron Ore
Beneficiation (BHP) Agreement;

- (ii) an agreement between the State, BHP Minerals Pty. Ltd., CI Minerals Australia Pty. Ltd. and Mitsui Iron Ore Corporation Pty. Ltd. to vary the Iron Ore (Mount Goldsworthy) Agreement;
- (iii) an agreement between the State and BHP Minerals Pty. Ltd., CI Minerals Australia Pty. Ltd. and Mitsui Iron Ore Corporation Pty. Ltd. to vary the Iron Ore (Marillana Creek) Agreement;
- (iv) an agreement between the State and BHP Iron Ore (Jimblebar) Pty. Ltd. to vary the Iron Ore (McCamey's Monster) Agreement;
- (v) an agreement between the State and BHP Minerals Pty. Ltd., Mitsui-Itochu Iron Pty. Ltd. and CI Minerals Australia Pty. Ltd. to vary the Iron Ore (Mount Newman) Agreement; and
- (vi) an agreement between the State and BHP Minerals Pty. Ltd., CI Minerals Australia Pty. Ltd. and Mitsui Iron Ore Corporation Pty. Ltd. to vary the Iron Ore (Goldsworthy-Nimingarra) Agreement

are passed as Acts before 31 December 2000 or such later date if any as the parties hereto may agree upon.

- (2) If before 31 December 2000 or such later agreed date the said Bills have not commenced to operate as Acts then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
 - (3) On the said Bills commencing to operate as Acts all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.
4. The Principal Agreement is hereby varied with effect on and from the coming into operation of this agreement by deleting in Clause 33 "1998" and substituting the following —
- "2000"
5. The Principal Agreement is hereby further varied with effect on and from the later of the coming into operation of the Water Agreement (as hereinafter defined) or the coming into operation of this agreement as follows —
- (1) Clause 5(1)(f) —

by deleting “supply and”.

(2) Clause 12 —

(a) by deleting the subclause designation (1); and

(b) by deleting subclauses (2) to (10) inclusive.

(3) By inserting after Clause 12 the following clause —

“Water — Port Hedland

12A.(1) In this clause —

“Water Agreement” means an agreement entered into between the Water Corporation (established pursuant to section 4 of the *Water Corporation Act 1995*) and BHP Iron Ore Pty. Ltd. ACN 008 700 981 as agent for BHP Direct Reduced Iron Pty. Ltd. and the Mount Newman and Mount Goldsworthy Mining Associates Joint Venturers in a form approved by the Minister in relation to the supply of water for, inter alia, the Joint Venturers’ water requirements for the purposes of this Agreement at Port Hedland;

“Commencement Date”, “Renewal Period”, “Buyer” and “Default” have the same meanings respectively as they have in the Water Agreement.

(2) Notwithstanding any provision of the Water Agreement, the State shall ensure during the period from the Commencement Date until the later of the sixtieth (60th) anniversary of the Commencement Date or the end of the Renewal Period that (except where the Water Agreement is lawfully terminated because of the Buyer’s Default) —

(a) the Waters and Rivers Commission (established by section 4 of the *Waters and Rivers Commission Act 1995*) will allocate water reserves sufficient to meet the quantities set out in the Water Agreement; and

(b) in the event of expiration of the Water Agreement the Coordinator of Water Services under the *Water Services Coordination Act 1995* will impose a condition on any relevant licence to supply water in Port Hedland that the supplier is to supply BHP Iron Ore Pty. Ltd. (as agent as aforesaid) with water on the same terms as those contained in the Water Agreement.”.

6. If the Water Agreement referred to in Clause 5 of this agreement shall not have come into operation by 1 January 2001, Clause 5 of this agreement shall on that date cease and thenceforth have no effect.

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by THE HONOURABLE
RICHARD FAIRFAX COURT in
the presence of —

} RICHARD COURT

COLIN BARNETT
MINISTER FOR RESOURCES DEVELOPMENT

THE COMMON SEAL of **BHP DIRECT
REDUCED IRON PTY. LTD.** was
hereunto affixed by authority
of the Directors —

} [C.S.]

STEFANO GIORGINI
Director

MICHAEL KNOWLES
Secretary

[Schedule 2 inserted by No. 57 of 2000 s. 30.]